

Income Tax (Film-making and Audio-visual Incentives) Regulations 2016

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In exercise of the powers conferred upon me under section 142(1) of the Income Tax Act 2015, I hereby make these Regulations—

PART 1—GENERAL

Short title and commencement

1.—(1) The Regulations may be cited at the Income Tax (Film-making and Audio-visual Incentives) Regulations 2016.

(2) These Regulations shall come into force on 1 January 2016.

Interpretation

2.—(1) For the purposes of these Regulations, unless the context otherwise requires— “Act” means the Income Tax Act 2015;

“Film Fiji” means the corporation established under section 3 of the Film Fiji Act 2002;

“FRCA” means the Fiji Revenue and Customs Authority;

and “Minister” means the Minister responsible for Finance.

(2) In these Regulations, unless otherwise defined herein, words and phrases shall have the meanings given to them under the Act or, where the case may be, the Tax Administration Decree 2009.

(3) For the avoidance of doubt, a certificate issued under the Sixth Schedule to the Income Tax Act (Cap. 201) shall be deemed to have been issued under these Regulations.

Regulations

3. Film Fiji may with the concurrence of the Minister make regulations to prescribe—

(a) forms and fees payable for the purpose of these Regulations; and

(b) the type of expenditure to be specified for the purpose of regulations 73, 74, 75, 76 and 77 of Part 5.

Limitation on applications for incentives

4.—(1) A company, production entity or any person engaged in the making of a film or audio-visual production in Fiji may apply for only one incentive under Parts 2, 3, 4 or 5 of these Regulations for each film or audio-visual production made in Fiji.

(2) Notwithstanding anything contained in subregulation (1), the Minister may approve an application made under Part 2 by a company, production entity or any person engaged in the making of a film or audio-visual production who has applied for an incentive under either Part 3 or 5 of these Regulations.

Audits to be in a form approved by Film Fiji

5.—(1) Any company, production entity or person engaged in the making of a film or audio-visual production in Fiji that applies for an incentive under these Regulations shall provide Film Fiji with an audited report in a form approved by Film Fiji.

- (2) An audit referred to in subregulation (1) must be conducted—
- (a) in accordance with all applicable Fiji accounting standards, including any standards relating to the independence of auditors; and
 - (b) by an auditor who has been approved in writing by FRCA.

PART 2—NON-RESIDENT EMPLOYEE TAX WAIVER

Interpretation

6. For the purposes of this part, unless the context otherwise requires—
- “applicant” means a film company which makes an application under either regulation 8 or 18;
- “application” means an application made under either regulation 8 or 17;
- “film” means a cinematographic or digital or analogue film made or intended for public exhibition or for use in connection with television;
- “film company” means a non-resident company engaged, or intending to be engaged, in making a film in Fiji;
- “local goods and services” means—
- (a) employment income paid to employees who are citizens or are permanently resident in Fiji; and
 - (b) the cost of goods produced in their entirety in Fiji except that, if goods acquired in Fiji have foreign and local cost contents, the estimated foreign cost content is excluded; and
- “qualifying employee” means an employee of a film company who, other than in relation to being in Fiji for the purpose of the film company making a film, is a non-resident, and includes an individual engaged by a film company to work in Fiji on a contract of service or contract for services either with that individual or with any other person.

Non-resident tax incentive

7. If the Minister is satisfied that it is expedient for the economic development of the film-making industry in Fiji, the Minister may upon the recommendation of Film Fiji approve the income of the film company’s qualifying employees to be—
- (a) exempt from tax; or
 - (b) taxed at a reduced rate specified by the Minister, for a period determined by the Minister.

Application for approval

8.—(1) A film company seeking exemption or reduction of the rate of tax under this part may apply to Film Fiji for the Minister’s approval under regulation 7.

(2) An application under subregulation (1) must be made in the prescribed form and must include—

- (a) the full name and address of the film company;

- (b) the full name, address, nationality and country of usual residence of each qualifying employee concerned and the amount of employment income payable by the film company while the employee is engaged in Fiji;
- (c) the total amount of employment income that the film company proposes to pay local employees who would be engaged by it;
- (d) the total amount the film company proposes to expend on local goods and services and a brief description of the goods and services in respect of which the goods and services will be used;
- (e) the duration for which the film company will be engaged in making the film in Fiji;
- (f) the title of the film and the script; and
- (g) the locations where the film company will be engaged during the making of the film in Fiji.

Film Fiji to consider applications and make recommendations

9.—(1) Film Fiji shall consider and refer each application to the Minister together with the recommendation in respect of the application.

(2) Film Fiji may before making a recommendation to the Minister require an applicant to provide additional information or particulars in order that it may properly consider the application.

Minister must approve or reject an application

10. The Minister upon receiving an application and recommendation from Film Fiji shall consider and by written notice to Film Fiji approve or refuse the application.

Approval must specify details of exemption or reduction

11.—(1) Where the Minister approves an application in accordance with subregulation 10 and the approval allows for—

- (a) an exemption, it shall specify—
 - (i) the qualifying employees whose income is exempt from tax; and
 - (ii) the period during which the exemption of tax applies;
- (b) a reduced rate of tax, it shall specify—
 - (i) the qualifying employees whose income is chargeable to tax at a reduced rate;
 - (ii) the reduced rate of tax determined by the Minister; and
 - (iii) the period during which the reduced rate of tax applies.

Film Fiji to inform applicant

12.—(1) Film Fiji shall inform the applicant in writing of the Minister's decision.

(2) If the Minister approves an application, Film Fiji shall provide the CEO with a copy of the approval.

Method of relief if final certificate is granted

13. Where a final certificate has been granted, the amount of tax payable by the applicant in respects of each qualifying employee the lesser of—

- (a) the amount of tax assessed in accordance with the general provisions of this Act; or
- (b) the amount of tax assessed in accordance with the Minister’s approval under regulation 7.

Film Fiji may require security

14. An approved film company may be required by Film Fiji to provide a suitable monetary security in favour of the CEO on the basis of tax payable by its qualifying employees under regulation 13.

PART 3—F1 /F2 AUDIO-VISUAL INCENTIVE

*Division 1—Interpretation**Interpretation*

15.—(1) In this part, unless the context otherwise requires—

“applicant” means an applicant for a provisional or final certificate who is a resident individual, a resident partnership or a company incorporated in Fiji but excludes—

- (a) a holder of a broadcast license in television or radio in Fiji or any associated company or individual with substantial holdings in a broadcast license in Fiji; and
- (b) a theatrical exhibitor in Fiji or any associated company or individual with substantial holdings in a theatre or group of theatres in Fiji;

“approved financing charges” means the reasonable budgeted and approved cost of financing an audio-visual production and includes legal fees for financing, brokerage for financing, prospectus or offer document costs and disbursements if those charges do not exceed 8% of the production budget of an audio-visual production;

“approved marketing materials costs” means the reasonable budgeted and approved cost of generating masters for marketing materials if not less than 85% of the expenditure to produce such items is spent in Fiji and the budgets have been approved by Film Fiji;

“audio recording” means an audio recording for commercial sale on disk, audio cassette, audio disc or on line services and includes music, a voice recording of spoken word, a book on tape or audio disc and a dramatic performance in any language;

“audio-visual production” has the meaning given to it in regulation 16;

“audio-visual production account” means, in relation to an audio-visual production, an account that opened in a Fiji bank for the purpose of audio-visual production and from which withdrawals may only be made for expending audio-visual production costs;

“audio-visual production costs” means, in relation to an audio-visual production, monies expended directly—

- (a) in producing the audio-visual production;
- (b) on approved financing charges; and
- (c) on approved marketing materials costs;

“audio-visual production levy” means a fee prescribed by Film Fiji included in the budget of every qualifying audio-visual production payable to Film Fiji;

“broadcast television programmes” means programmes produced on film or video tape, or digitally recorded for broadcast on free-to-air, free satellite or pay television, and includes television movies, mini-series, drama series, situation comedy series, documentaries and documentary series, educational programmes and series, animation series and current affairs series;

“completion bond” means an insurance policy ensuring completion of an audio-visual production for the benefit of the production entity and investors;

“completion bond company” means a company specialising in insuring and managing the risk associated with audio-visual production with operations and offices in Fiji which has in place necessary underwriting arrangements with internationally recognised insurance companies;

“computer software” means an interactive product or instruction set, operating system, manufacturing system, manufacturer controller set or communications protocol for use in or use such as computers, modems, play stations and other games consoles, televisions, video players, digital equipment, telecommunication devices, web servers, CD-rom drives and stored on media including CD, Zip drive, computer disc, digital video disc, computer chip or online or any other electronic equipment and includes games, educational products and business products produced for sale, products for research and design and development, and the establishment software costs of a commercial operation, online e-commerce businesses, websites or internet businesses;

“direct to video or video disc programme” means a programme produced for marketing to the public by retail sale produced specifically for home use;

“F1 audio-visual production” means an audio-visual production which qualifies under Division 4;

“F2 audio-visual production” means an audio-visual production which qualifies under Division 4;

“feature film” means any film production with a running time of not less than 80 minutes and is intended for public exhibition as a theatrical release or television film or for sale as direct to video film;

“bank” means a financial institution licensed under the Banking Act 1995;

“Fiji Production Company” means a limited liability company registered in Fiji and having 100% of its shares owned by residents;

“final certificate” means a certificate issued under Division 3;

“gross international and domestic revenues” means the revenues derived from the commercial exploitation of an audio-visual production (including advances, licence fees and royalties) collected by a collection agent or by other arrangements on behalf of international sales agents, distributors (including the production company where it performs that function) and their sub agents (including associated companies or entities operating at arm’s - length);

“large format film” means a film produced in 70mm for exhibition in IMAX, IWERKS, SHOWSCAN and other 15/70, 81/70 and 4/70 large format theatres and ride simulators;

“marketing materials”, in relation to an audio-visual production, includes—

- (a) broadcast television commercials (no more than 2 commercials per audio-visual production);
- (b) radio commercials (no more than 2 commercials per audio-visual production);
- (c) film art for advertising including posters;
- (d) press kit masters;
- (e) electronic press kits;
- (f) internet websites; and
- (g) film trailers;

“production entity” means an applicant entity which has been granted a provisional certificate or a final certificate;

“provisional certificate” means a certificate issued under Division 2;

“qualifying audio-visual production” means an F1 or F2 audio-visual production that has been made—

- (a) wholly or substantially in Fiji and for F1 has substantial Fiji content; or
- (b) in pursuance of an agreement or arrangement entered into between the Fiji Government or an authority of the Fiji Government and the Government or an authority of the Government of another country under a co-production agreement or arrangement;

“resident” has the meaning given to it under this Act ;

“relevant 24 months period” in relation to an audio-visual production, means the period of 24 months after the end of the year of assessment in which monies of a capital nature were first expended as audio-visual production costs, or by way of contribution to those costs;

“short film” means an approved film produced for public exhibition, television, theatres or at film festivals with a running time of less than 60 minutes and intended primarily as a demonstration of new and emerging film-making talent;

“substantial Fiji content” means at least 51 % of the running time of the completed qualifying audio-visual production showing Fiji as Fiji; and

“theatrical feature film” means a film intended to be produced for initial release in theatres.

(2) For the purposes of the definition of “gross international and domestic revenues”, the income is net of any deduction of the distributor in a specific country or place but no other deductions.

Audio-visual productions

16. Subject to regulations 17 and 18, “audio-visual production” means the production, wholly or principally for exhibition or sale, or use in the conduct of business, of—

- (a) a large format film in large format theatres;
- (b) a theatrical film or a short film in cinemas;
- (c) broadcast television programmes by—
 - (i) broadcast on free-to-air, satellite or pay television; or
 - (ii) internet broadcast;
- (d) a direct-to-video and video disc programme; or
- (e) an audio recording.

Exclusions from references to audio-visual productions

17. For the purposes of Divisions 2 to 6, a reference to an audio-visual production does not include a reference to an audio-visual production that is or is intended to be to a substantial extent—

- (a) an audio-visual production for exhibition as an advertising programme or a commercial other than where that advertising programme or commercial is part of the marketing budget of an audio-visual production and is only advertising the audio-visual production which has funded it;
- (b) an audio-visual production for exhibition as a discussion programme, a quiz programme, a panel programme, a variety programme or a programme of like nature, unless the AVP is produced by a Fiji Production Company;
- (c) an audio-visual production which is substantially (more than 50%) of a public event; and
- (d) an audio-visual production produced principally as a training aid.

Further exclusions from references to audio-visual productions

18.—(1) For the purposes of Divisions 2 to 6, a reference to an audio-visual production does not include—

- (a) an extension of broadcast television programmes beyond the first 26 episodes of a continuing series;
- (b) an extension of broadcast television programmes and television movies beyond 2 full length films in a continuing series;
- (c) more than 2 audio recordings by the same artist or substantially the same artist; or
- (d) more than 1 short film by an individual director.

(2) Subregulation (1) does not apply in the case of an AVP produced by a Fiji Production Company.

*Division 2—Provisional Certificates**Reference to audio-visual production*

19. In this part, unless a contrary intention appears, a reference to an audio-visual production includes a reference to a proposed audio-visual production.

Application for provisional certificate

20. An applicant may apply to Film Fiji for a provisional certificate stating that a proposed audio-visual production will, when complete, be a qualifying audio-visual production for the purposes of this part.

Application for another provisional certificate

21.—(1) An applicant who holds a current provisional certificate may not apply to Film Fiji for a provisional certificate for another or a new audio visual production until after a final certificate for the first or current audio-visual production has been issued by Film Fiji.

(2) Notwithstanding anything in subregulation (1), Film Fiji may if it deems it expedient for the development of the audio-visual industry in Fiji, exercise its discretion to grant a provisional certificate for another or a new audio-visual production to an applicant who holds a current provisional certificate and has not yet been issued with a final certificate in respect thereof.

Form of application

22. An application under regulation 20 shall be—

- (a) in the prescribed form and accompanied by the prescribed fee;
- (b) signed by an authorised officer of the applicant; and
- (c) accompanied by such information as Film Fiji requires.

Film Fiji to consider and decide applications

23.—(1) Upon receipt of an application under regulation 20, Film Fiji must consider it and either approve or refuse it.

- (2) Film Fiji must not approve an application, unless it is satisfied that—
- (a) the proposed audio-visual production, when complete, will be a qualifying Fiji audio-visual production; and
 - (b) having regard to the role of the applicant in the production of the audio-visual production, a provisional certificate should be issued.

Film Fiji to issue provisional certificate or give notice of refusal

24. Film Fiji shall—

- (a) if it approves the application, issue a provisional certificate to the applicant in respect of the proposed audio-visual production; or
- (b) if it refuses the application, give written notice to the applicant of its refusal of the application.

Information to be provided to Film Fiji

25. A production entity that applies for a provisional certificate shall furnish to Film Fiji in writing, within a period specified by Film Fiji, any information in relation to the proposed audio-visual production as Film Fiji requests.

Film Fiji may revoke or vary certificate in certain circumstances

26. If Film Fiji has issued a provisional certificate and—

- (a) at any time after the issue of the certificate, Film Fiji becomes satisfied that the proposed audio-visual production does not comply with the conditions or requirements in respect of which the certificate was issued; or
- (b) the production entity fails to comply with a request for information made by Film Fiji under regulation 25, Film Fiji may, by written notice to the person to whom the provisional certificate was issued revoke the provisional certificate with effect from the date of the certificate's issue or in the case of a qualifying audio-visual production which is an F1 AVP, vary its audio-visual production status from F1 to F2.

Revocation does not prevent subsequent issue of certificate

27. The revocation of a provisional certificate in respect of a proposed audio-visual production does not prevent the re-issue of a provisional certificate in respect of the same proposed audio-visual production or for a new audio-visual production by the same applicant.

Certificate deemed to be in force from time of issue

28. Subject to regulations 26 and 29, a provisional certificate is deemed to have been in force at all times from the date of its issue.

Certificate lapses unless application for final certificate made

29.—(1) If an application for a final certificate in respect of an audio-visual production is not made in accordance with Division 3 before the expiration of 12 months after the time when the audio-visual production is completed, a provisional certificate in respect of that audio-visual production is deemed never to have been in force.

(2) If an application is made by a Fiji Production Company, a provisional certificate issued in respect of the proposed AVP is deemed never to have been in force if the application for a final certificate in respect of the AVP is not made in accordance with Division 3 before the expiration of 6 months after the time when the AVP is completed.

(3) For the purposes of this part, an audio-visual production is deemed complete when Film Fiji is satisfied that it is ready for commercial distribution.

(4) Film Fiji may at its discretion extend the periods in subregulations (1) and (2) above.

Division 3—Final Certificates

Application for final certificate

30. An applicant may apply to Film Fiji for a final certificate stating that an audio-visual production that has been completed is a qualifying audio-visual production for the purposes of this part.

Method of application

31. An application under regulation 30 must be—

- (a) in the prescribed form and accompanied by the prescribed fee;
- (b) signed by an authorised officer of the applicant; and
- (c) accompanied by such information as Film Fiji requires.

Film Fiji to consider and decide applications

32.—(1) If an application is made under regulation 30, Film Fiji must consider it and either approve or refuse it.

(2) Film Fiji must not approve an application unless it is satisfied that—

- (a) the audio-visual production is a qualifying audio-visual production; and
- (b) having regard to the role of the applicant in the production of the audio-visual production, a final certificate should be issued.

Film Fiji to issue final certificate or give notice of refusal

33. Film Fiji must, on receiving an application under regulation 30—

- (a) if it approves the application, issue a final certificate to the applicant in respect of the audio-visual production; or
- (b) if it refuses the application, give written notice to the applicant of its refusal of the application.

Information to be provided to Film Fiji

34. A production entity that applies for a final certificate must furnish to Film Fiji in writing, within a period specified in writing by Film Fiji, such information in relation to the proposed audio-visual production as Film Fiji requests.

Final certificate deemed to be in force from time of issue

35. A final certificate is irrevocable and deemed to have been in force from the date of its issue.

Division 4—Qualifying Audio–visual Productions

AVP may qualify as F1 AVP or F2 AVP

36. An audio-visual production qualifies as an F1 AVP or an F2 AVP if—
- (a) it satisfies the minimum prerequisites set out in regulation 37; and
 - (b) it satisfies the additional criteria set out in—
 - (i) regulation 38, in the case of F1 AVPs; and
 - (ii) regulation 39, in the case of F2 AVPs.

Minimum prerequisites for F1 AVPs and F2 AVPs

- 37.—(1) The minimum prerequisites for an audio-visual production to qualify as an F1 AVP or an F2 AVP are—
- (a) 100% of the production budget less approved pre-production expenses must be deposited in an audio-visual production account prior to the commencement of the production;
 - (b) 100% of the profits or revenues to be paid to any Fiji investors in the production must pass through an approved Fiji bank account prior to disbursement and the Commissioner must be provided with half yearly statements of income and disbursement;
 - (c) an audio-visual production levy must be paid to Film Fiji upon full financing;
 - (d) a refundable producer’s bond equal to 5% of the budgeted producer’s fees must be paid to Film Fiji before principal photography begins in Fiji;
 - (e) the audio-visual production is not, in the opinion of Film Fiji, culturally derogative in its portrayal of Fiji or the people of Fiji;
 - (f) the audio-visual production must be produced by a production entity;
 - (g) the audio-visual production must have a completion bond from a company that is independent of the applicant and is approved by Film Fiji as an acceptable completion bond company;
 - (h) the audio-visual production has a certificate from the completion bond company confirming that—
 - (i) the budget does not contain fees or costs which are not commercial;
 - (ii) producer fees and overheads paid or payable by the production entity for services of production do not exceed 15% of the total budget;
 - (iii) expenses to be paid by the production entity to non-arms’ length parties associated with the production are genuine and reasonable;
 - (iv) all expenses, allowances, wages and fees for service in the budget are commercial and are for services to be rendered on the audio-visual production;

- (v) the audio-visual production has been, or will be able to be, completed within the relevant 24 months period; and
- (vi) approved financing charges or approved marketing materials costs will be, or have been, spent in accordance with this part.

(2) If an application is made by a Fiji Production Company, the requirement under subregulation (1)(g) does not apply but without requiring a certificate from a completion bond company Film Fiji must be satisfied that the conditions under subregulation (1)(h) are met.

Additional criteria to be satisfied for F1 status

38.—(1) Subject to regulation 37, an audio-visual production who qualifies as an F1 AVP, shall satisfy the following—

- (a) the production entity, has secured for the audio-visual production, to the satisfaction of Film Fiji and on commercial terms, distribution for the production when complete in at least one significant international market; and
- (b) one of the following levels of expenditure has been or is budgeted, to be spent in Fiji—
 - (i) 40% for a large format film, a feature film or broadcast television programmes;
 - (ii) 50% for a direct to video programme or video disk programme; and
 - (iii) 55% for an audio recording.

(2) In addition to subregulation (1), an audio visual production which qualifies as F1 AVP must also satisfy one of the criteria—

- (a) a large format film, a feature film, a short film, broadcast television, a direct to video or video disc programme is directed, written or based on the creative idea of a citizen or a resident;
- (b) an audio recording is produced or composed by or is the performance principally of a resident or citizen;
- (c) computer software is based on the original creative idea developed by a resident or citizen; or
- (d) the content satisfies the guidelines set down by Film Fiji from time to time for being a satisfactory portrayal of Fiji, the history or life of the people of Fiji and Fiji's flora and fauna.

(3) If the F1 AVP is produced by a Fiji Production Company, then the requirement under subregulation (1)(i) does not apply provided Film Fiji is satisfied that the F1 AVP shall distribute through at least one significant local distributor when production is completed.

(4) For the purposes of assessing the levels of expenditure in subregulation (1)(ii), the provisions of Division 3 of Part 5 shall apply and any reference to “tax rebate” therein shall for the purposes of subregulation (3) be read as or to mean “F1 incentive”.

Additional criteria to be satisfied for F2 status

39.—(1) Subject to regulation 37, an audio-visual production which qualifies as an F2 AVP shall also satisfy the following—

- (a) the production entity has secured for the audio-visual production, to the satisfaction of Film Fiji and on commercial terms, distribution for the production when completed in at least one significant international market;
- (b) one of the following levels of expenditure has been, or is budgeted to be, spent in Fiji—
 - (i) 40% for a large format film, a feature film or broadcast television programmes;
 - (ii) 50% for a direct to video programme or video disk programme; and
 - (iii) 55% for an audio recording.

(2) If the F2 AVP is produced by a Fiji Production Company then the requirement under subregulation (1)(a) does not apply provided that Film Fiji is satisfied that the F2 AVP will when completed be distributed through at least one significant local distributor.

(3) For the purposes of assessing the levels of expenditure in subregulation (1)(b), the provisions of Division 3 of Part 5 shall apply and any reference to “tax rebate” therein shall for the purposes of subregulation (1)(b) be read as or to mean “F2 incentive”.

Criteria for determining Fiji’s content of AVP

40. An F1 or F2 AVP has, or will have substantial Fiji content for the purposes of being a qualifying audio-visual production, Film Fiji must have regard to—

- (a) the subject matter of the audio-visual production;
- (b) the place where the audio-visual production was, or will be, made;
- (c) the nationalities and places of residence of—
 - (i) the persons who took part, or will take part, in the making of the audio-visual production (including actors, authors, composers, designers, directors, editors, musicians, producers, script writers, singers and technicians);
 - (ii) the persons who are, or will be, the beneficial owners of the copyright in the audio-visual production; and
 - (iii) the persons who are, or will be, the beneficial owners in any shares in any company concerned in the making of the audio-visual production;
- (d) the source from which monies that were used in the making of the audio-visual production were, or that are to be used in the making of the proposed audio-visual production will be derived;
- (e) details of the production expenditure incurred, or the budgeted production expenditure to be incurred, in respect of the audio-visual production; and
- (f) any other matter that Film Fiji considers relevant.

Division 5—Deductions for Capital Expenditure on Audio-visual Productions

Deduction for capital expenditure

41. Subject to this Division, if a taxpayer during a year of assessment expends monies of a capital nature, under a contract by way of contribution to the audio-visual production costs in respect of a qualifying AVP and at the time when the monies were expended a provisional certificate or a final certificate was in force in relation to the AVP, an amount shall be allowed as a deduction in the assessment of the taxpayer in respect of the income in the year the monies are expended, being an amount equal to—

- (a) in the case of an F1 AVP - 150% of the monies expended; or
- (b) in the case of an F2 AVP - 125% of the monies expended.

Deduction in event of taxpayer's death

42. If a taxpayer dies before he has realised any deductions in relation to a qualifying AVP to which regulation 41 applies, an amount must be allowed as a deduction in the assessment of the taxpayer's estate in respect of the year of income in which the taxpayer died, being an amount equal to—

- (a) in the case of an F1 AVP - 150% of the monies expended; or
- (b) in the case of an F2 AVP - 125% of the monies expended.

Licensees may not claim deduction

43. A taxpayer, being a production entity, which is a licensee for the purposes of Part 4, shall not claim a deduction under this Division.

Division 6—Taxation of Audio-visual Income

Tax exemption of income derived from qualifying AVP

44. If a taxpayer expends monies of a capital nature, under a contract, by way of contribution to the audio-visual production costs in respect of a qualifying AVP, the income derived by the taxpayer from his investment in the qualifying AVP is exempt from tax until the taxpayer has received a return of—

- (a) in the case of an F1 AVP-60% of the monies expended; or
- (b) in the case of an F2 AVP - 50% of the monies expended, and thereafter all income so derived must be included in total income.

Sale of copyright interest

45. A taxpayer who sells any copyright interest in a qualifying AVP, in respect of which a deduction under Division 5 has been claimed, must include the gross receipts of the sale in his total income.

PART 4—STUDIO CITY ZONE

Division 1—Studio City Zone Definitions

Interpretation

46. In this Division, unless the context otherwise requires—

- “applicant for an audio visual operating licence” means a sole proprietor, a partnership or a company, which makes an application for an audio-visual operating licence;

“applicant for the zone” means a sole proprietor, a partnership or a company which makes an application for a declaration by the Minister pursuant to subregulation 47(5);

“audio-visual operating licence” means a licence issued under regulation 48; “AVOL” means audio-visual operating licence;

“company” means a company incorporated in Fiji carrying on a business of production activity in Fiji and which has its operations exclusively in the studio city zone or temporary studio city zone;

“licensee” means a sole proprietor, a partnership or a company holding an audio-visual operating licence;

“partnership” means a partnership of 2 or more residents carrying on a business of production activity in Fiji and which has as its exclusive operating location in the studio city zone or temporary studio city zone;

“production activity” means any activity in the production of, world-wide distribution of, conduct of business in, or supply of services to—

- (a) a large format film in large format theatres;
- (b) a theatrical film or a short film in cinemas;
- (c) broadcast television programmes by—
 - (i) broadcast on free-to-air, satellite or pay television; or
 - (ii) internet broadcast;
- (d) a direct-to-video and video disk programme;
- (e) musical recordings for the purposes of local or international distribution;
- (f) the development of computer software; and
- (g) development of interactive websites and other e-commerce and telecommunications operations; and

“sole proprietor” means a resident carrying on a business of production activity in Fiji and whose business has as its exclusive operating location the studio city zone or temporary studio city zone.

Minister may declare studio city zone

47.—(1) Subject to other provisions of this regulation, the Minister may, declare by notice in the Gazette any area of land (including any buildings situated or erected on that land) in Fiji to be a studio city zone for the purposes of this part.

(2) Subject to the issue of a licence required under any written law and the Town Planning Act, the Minister may declare—

- (a) a studio city zone for the purposes of the development of infrastructure, services and resources for the audio-visual industry and tourist attractions, hotels, residential accommodation, sporting facilities, amusement parks; and

(b) a temporary studio city zone for the purposes of the development of infrastructure, services and resources for the audio-visual industry.

(3) The Minister may declare, by notice published in the Gazette, any area of land (including buildings situated or erected on that land) in Fiji to be incorporated into and to form part of a studio city zone or a temporary studio city zone.

(4) The Minister may not declare more than one studio city zone at any time for a period of 15 years from the date the studio city zone was first declared following which period this provision will be subject to review.

(5) The Minister may declare, by order in the Gazette, any area of land (including any buildings situated or erected on that land) to be a temporary studio city zone in order that the land (and buildings) may be developed by the applicant for the zone for use by a licensee to conduct any production activity.

(6) The Minister may declare more than one temporary studio city zone.

(7) A temporary studio city zone may be used as an interim facility for such period or periods as the Minister may declare.

(8) The Minister may, by notice in the Gazette, revoke any declaration of a temporary studio city zone under this regulation.

Film Fiji may approve application for operating licence in studio city zone

48.—(1) An application for an audio visual operating licence authorising the carrying on of a production activity in the studio city zone or in a temporary studio city zone, by a sole proprietor, a partnership or a company for an audio-visual must be made to Film Fiji.

(2) Film Fiji may approve the operating licence in accordance with this part.

Method of application

49. An application under regulation 48 must be—

- (a) made to Film Fiji in writing in the prescribed form and accompanied by the prescribed fee;
- (b) signed by an authorised officer; and
- (c) accompanied by such information as Film Fiji requires.

Film Fiji to consider and decide applications

50.—(1) If an application is made under regulation 48, Film Fiji may approve or refuse the application.

(2) Film Fiji must not approve an application unless it is satisfied that—

- (a) the applicant has entered into a contract or has secured a right to operate from facilities within the studio city zone or temporary studio city zone and will engage in a production activity;
- (b) the applicant's production activity will generate employment opportunities for the people of Fiji; and
- (c) the applicant's production activity will enhance, expand and improve the technological, trading capability and capacity of the economy of Fiji.

(3) Film Fiji may approve an application subject to the applicant complying with any other condition Film Fiji considers to be appropriate.

Film Fiji to issue audio-visual operating licence or give notice of refusal

51. Film Fiji must—

- (a) on approval of an application – issue an audio-visual operating licence, including any conditions imposed by it; or
- (b) on refusal of an application – give written notice to the applicant of its refusal of the application.

Film Fiji may vary conditions of audio-visual operating licence

52.—(1) Film Fiji, may, if it considers it appropriate in the circumstances, vary the conditions of an audio-visual operating licence.

(2) Film Fiji must, by written notice, inform a licensee of any variation in the conditions of the licensee’s audio-visual operating licence and the variation is deemed to be effective from the date the notice is received by the licensee.

Film Fiji may approve transfer of audio-visual operating licence

53.—(1) A licensee may apply to Film Fiji in the prescribed form for its operating licence to be transferred to another sole proprietor, a partnership or a company.

(2) Film Fiji may require the licensee or the proposed transferee to provide any other information as Film Fiji requires in order for it to consider the transfer application.

(3) Film Fiji may—

- (a) approve the transfer of the licensee’s audio-visual operating licence: or
- (b) refuse the application.

(4) Film Fiji may not approve a transfer of an audio-visual operating licence unless it is satisfied that the proposed transferee satisfies the criteria set out in regulation 49(2).

(3).(5) Film Fiji must give written notice to the licensee of its decision under subregulation

Film Fiji may revoke an audio-visual operating licence

54.—(1) Film Fiji may give written notice to a licensee that it intends to revoke the licensee’s audio-visual operating licence if—

- (a) there has been a breach of the audio-visual operating licence;
- (b) there has been non-compliance with any condition of the audio-visual operating licence; or
- (c) the licensee is convicted of an offence against the Act, the Value Added Tax Decree 1991 or the Customs Act 1986.

(2) If notice is given in accordance to subregulation (1), Film Fiji must inform the licensee of the licensee’s right to make representations to Film Fiji on or before a date specified by Film Fiji, being not less than 21 days from the day that notice is given under subregulation (1).

(3) If a licensee makes representations, Film Fiji must consider them and may by written notice to the licensee, withdraw its notice under subregulation (1).

(4) If Film Fiji does not withdraw its recommendation in accordance with subregulation (3), or the licensee does not make any representations by the specified date Film Fiji may, by written notice to the licensee, revoke the audio-visual operating licence from a date (being not less than 14 days and not more than 42 days from the date of the notice).

Register of operating licence

55.—(1) Film Fiji must establish and maintain a register of all audio-visual operating licences and there must be entered in the register in respect of each audio-visual operating licence—

- (a) the date of commencement of the audio-visual operating licence;
- (b) the name, registered address and authorised representative of the sole proprietor, partnership or company to which the audio-visual operating licence was granted; and
- (c) the production activity relating to the audio-visual operating licence.

(2) The register must be kept at Film Fiji's principal office and be open to inspection during the times Film Fiji directs, subject to the payment of the prescribed fee for each inspection.

Transfer must be registered within 7 days

56. If an audio-visual operating licence is transferred under regulation 53, the sole proprietor, partnership or company to which it is transferred must within 7 days of the transfer, submit its name and address, and the name and address of its authorised representative, for inclusion in the register.

Exemption from tax of licensee's production activity income

57. An audio-visual operating licence exempts the licensee from the payment of income tax under the Act (except for withholding tax) on any income derived by the licensee from the production activity with effect from the date of commencement of the audio-visual operating licence.

Non-AVP and distribution income subject to tax

58. Any income of a licensee that is not derived from a production activity must be charged tax in accordance with the other provisions of the Act notwithstanding the business being located in the studio city zone.

Tax assessable on sale of company or business in studio city zone

59.—(1) In respect of any business activity carried out pursuant to this Division and notwithstanding any other provision of the Act, tax must be assessed, levied and paid, at the rate set out in subregulation (2), in respect of any income from—

- (a) the sale of shares in a licensee; or
- (b) the sale of the licensee's business or part of a business, if the sale occurs less than 8 years after the commencement of the business.

- (2) The rate at which tax must be assessed, levied and paid under subregulation (1) is—
- (a) if the sale occurs within 2 years after the commencement of the business - 20%;
 - (b) if the sale occurs within 4 years after the commencement of the business - 15%;
 - (c) if the sale occurs within 6 years after the commencement of the business - 10%; or
 - (d) if the sale occurs within 8 years after the commencement of the business - 21/2%.

Division 2—Taxation Concessions to Residents of the Studio City Zone

Interpretation

60. For the purposes of this Division, unless the context otherwise requires— “audio-visual earnings” means—

- (a) income derived from work in AVPs or production activities including contracted fees, wages, royalties and distributions of profits from AVPs or production activities but does not include any income from an AVP in respect of which a deduction has been claimed under this part; and
- (b) income from sports performances including prize money, performance fees and endorsements.

Film Fiji may approve individuals for studio city zone benefits

- 61.—(1) Film Fiji may approve an individual to enjoy the benefits specified in subregulation (2) if—

- (a) the individual indicates his or her intention to reside in the studio city zone;
- (b) the individual derives audio-visual earnings; and
- (c) the individual complies with the requirements of this Division.

- (2) The earnings derived by an individual approved by Film Fiji under subregulation (1) are exempt from tax.

Applications by non-residents

62. An application under this Division by an individual who is not a resident must be made in writing to Film Fiji in the prescribed form and accompanied by the prescribed fee and must include,—

- (a) confirmation that the applicant’s country of citizenship is other than Fiji;
- (b) confirmation of a contract to take up residence at the studio city zone;
- (c) confirmation and certification by a chartered accountant holding a certificate of public practice of—
 - (i) net annual audio-visual earnings in excess of \$100,000; and

- (ii) assets held in the studio city zone in excess of \$250,000 in either real estate, tangible business assets including stock, plant and equipment and tools of trade, or other valuable and confirmable assets excluding cash and other liquid assets.

Requirements and conditions for tax exemption

63. An individual, who is not a resident, approved by Film Fiji is not eligible to claim in a year of assessment the tax exemption under regulation 61(2) unless the individual—
- (a) is resident in the studio city zone for a period or periods in aggregate of at least 60 days in the year of assessment;
 - (b) maintains a permanent place of residence in the studio city zone during the year of assessment; and
 - (c) provides to the CEO confirmation and certification by a chartered accountant holding a certificate of public practice of—
 - (i) net annual audio-visual earnings in excess of \$100,000 in the year of assessment; and
 - (ii) assets held during the year of assessment in the studio city zone in excess of \$250,000 in either real estate, tangible business assets including stock, plant and equipment and tools of trade, or other valuable and confirmable assets excluding cash and other liquid assets.

Applications by residents

64. An application under this Division by a resident must be made in writing to Film Fiji in the prescribed form and accompanied by the prescribed fee and must include—
- (a) confirmation of a contract to take up residence in the studio city zone;
 - (b) confirmation and certification by a chartered accountant holding a certificate of public practice of—
 - (i) net annual audio-visual earnings in excess of \$50,000; and
 - (ii) assets held in the studio city zone in excess of \$100,000 in either real estate, tangible business assets including but not limited to stock, plant and equipment and tools of trade, or other valuable and confirmable assets excluding cash and other liquid assets.

Requirements and conditions for tax exemption

65. An individual, who is a resident, approved by Film Fiji is not eligible to claim in a year of assessment the tax exemption under regulation 61(2) unless the individual—
- (a) is resident in the studio city zone for a period or periods in aggregate of at least 183 days in the year of assessment; or, in the case of a resident who derives a minimum of 80% of audio-visual earnings from outside Fiji, is resident in the studio city zone for a period or periods in aggregate of at least 60 days in the year of assessment;

- (b) maintains a primary place of residence in the studio city zone during the year of assessment; and
- (c) provides to the Commissioner confirmation and certification by a chartered accountant holding a certificate of public practice of—
 - (i) net annual audio-visual earnings in excess of \$50,000 in the year of assessment;
 - (ii) the source of audio visual earnings whether from within Fiji or from outside Fiji; and
 - (iii) assets held during the year of assessment in the studio city zone in excess of \$100,000 in either real estate, tangible business assets including stock, plant and equipment and tools of trade, or other valuable and confirmable assets excluding cash and other liquid assets.

Film Fiji must consider and decide application

66.—(1) Film Fiji must consider an application made under regulation 62 or 64 for tax exemption and may approve or refuse the application for tax exemption.

(2) Film Fiji must not approve an application unless—

- (a) it is satisfied that it is expedient for the development of the audio-visual industry in Fiji;
- (b) the work in audio-visual productions from which income is derived is original and creative and has cultural or creative merit; and
- (c) the applicant has complied with all the requirements of this Division.

(1).(3) Film Fiji must give written notice to an applicant of its decision under subregulation

PART 5—FILM TAX REBATE

Division 1—Interpretation

Interpretation

67. In this part, unless the context otherwise requires—

“audio visual agent” has the same meaning given in the Film Fiji (Licensing of Audio Visual Agents) Regulations 2012;

“broadcast television programmes” has the meaning given by regulation 15 in Part 3;

“completed” in relation to a film, has the meaning given by regulation 70(2);

“development expenditure” for a film means expenditure to the extent to which it is incurred in meeting the development costs for the film and includes expenditure to the extent to which it is incurred on any of the following—

- (a) location surveys and other activities undertaken to assess locations for possible use in the film;

- (b) storyboarding for the film;
- (c) scriptwriting for the film;
- (d) research for the film;
- (e) casting actors for the film;
- (f) developing a budget for the film;
- (g) developing a shooting schedule for the film;

“feature film” includes animated feature film;

“film” means an aggregate of images, or of images and sounds, embodied in any material;

“High Court” means the High Court of Fiji;

“large format film” has the meaning given by regulation 16 in Part 3;

“make”, in relation to a film, has the meaning given by regulation 71(2), (3) and (4);

“production expenditure” has the meaning given by regulations 71 to 73;

“qualifying Fiji production expenditure” has the meaning given by regulations 74 to 77;

“short film” has the meaning given by regulation 15 in Part 3; and

“total Fiji expenditure” or “Fiji expenditure” means the production expenditure on goods and services purchased from and paid to a Fiji resident.

Division 2—Tax Rebate for Fiji Expenditure in Making a Film

Film production company entitled to tax rebate

68.—(1) A company is entitled to a tax rebate for an income year in respect of a film if—

- (a) the film was completed in the income year;
- (b) Film Fiji, with the concurrence of the Minister, has issued a certificate to the company for the film under regulation 70;
- (c) the company claims (which are irrevocable) the rebate in its income tax return for the income year;
- (d) the company—
 - (i) is a Fiji resident; or
 - (ii) is not a Fiji resident but lodges an income tax return for the purpose of claiming the tax rebate under this part; and
- (e) the company is not—
 - (i) the holder of a broadcast licence in television or radio in Fiji and it is not associated with any company or individual with substantial holdings in a broadcast licence in Fiji; or

- (ii) a theatrical exhibitor in Fiji and it is not associated with any company or individual with substantial holdings in a theatre or group of theatres in Fiji;
 - (f) the film production company is able to release and have the movie distributed for production in a least one significant International market to the satisfaction of the Minister responsible for Film Fiji;
 - (g) the film production company demonstrates to the satisfaction of the Minister responsible for Film Fiji that it—
 - (i) will engage services of Fiji citizens in movie productions; and
 - (ii) will utilise technicians, students and technical aid facilities at the Film Making School at Fiji National University or any other specified local institution;
 - (h) the company engages audio visual agents for the production of the film; and
 - (i) Fiji as a location needs to be accredited and acknowledged in the film's credits and any other required accreditation as stipulated in the approval letter by Film Fiji.
- (2) The company or any other person is not entitled to the tax rebate if—
- (a) an application has been made under Part 3; or
 - (b) a provisional or final certificate for the film has been issued at any time under Part 3 whether or not the certificate is still in force.

Amount of tax rebate

69.—(1) Subject to subregulation (2), the amount of the tax rebate is 47% of the total of the company's qualifying Fiji production expenditure on the film (worked out using Division 3).

(2) If the qualifying Fiji production expenditure on the film exceeds \$60 million, the maximum allowable tax rebate is \$28.2 million.

Film Fiji may issue certificate for a film

70.—(1) Film Fiji may, with the concurrence of the Minister, issue a certificate to a company stating that a film satisfies the following requirements—

- (a) the company—
 - (i) is a Fiji resident; or
 - (ii) is not a Fiji resident but lodges an income tax return for the purpose of claiming the tax rebate under this part;
- (b) Film Fiji has provided the company with provisional approval to make their film in Fiji under this incentive;
- (c) the film was produced for—
 - (i) exhibition to the public in cinemas;

- (ii) exhibition to the public by way of television broadcasting or pay television;
 - (iii) distribution to the public as a video recording (whether on video tapes, digital video disks or otherwise); or
 - (iv) distribution to the public via the internet;
- (d) the film is—
- (i) a large format film or a feature film or a short film;
 - (ii) a broadcast television programme including television movies, miniseries, drama series, situation comedy series, documentaries and documentary series, educational programmes and series, animation series and current affairs series; or
 - (iii) a production intended for exhibition as an advertising programme or a commercial in at least 1 significant international market;
- (e) the total of the company's qualifying Fiji production expenditure on the film (worked out using Division 3) is at least—
- (i) \$250,000 for films described under paragraph (d)(i) and (ii); or
 - (ii) \$50,000 for films described under paragraph (d)(iii);
- (f) the company either carried out, or made the arrangements for the carrying out of, all the activities in Fiji that were necessary for the making of the film;
- (g) the company is the only company that satisfies paragraph (f) in relation to the film;
- (h) the film is not culturally derogative in its portrayal of Fiji or the people of Fiji;
- (i) the application for certificate for rebate was made no later than 12 months from the time that the film was completed;
- (j) the film production company is able to release and have the movie distributed to the satisfaction of the Minister; and
- (k) the film production company demonstrates to the satisfaction of the Minister that it—
- (i) will engage services of Fiji citizens in movie productions; and
 - (ii) will utilise technicians, students and technical aid facilities at the film making school at Fiji National University or any other specified local institutions.

(2) A film is completed when it is first in a state where it could reasonably be regarded as ready to be distributed, broadcasted or exhibited to the general public.

Division 3—Production Expenditure and Qualifying Fiji Production Expenditure

Production expenditure—general test

- 71.—(1) A company's production expenditure on a film is expenditure that the company incurs to the extent to which it—
- (a) is incurred in, or in relation to, the making of the film; or
 - (b) is reasonably attributable to—
 - (i) the use of equipment or other facilities for; or
 - (ii) activities undertaken in; the making of the film.
- (2) The making of a film means the doing of the things necessary for the production of the first copy of the film.
- (3) The making of a film includes—
- (a) pre-production activities in relation to the film;
 - (b) post production activities in relation to the film; and
 - (c) any other activities undertaken to bring the film up to the state where it could reasonably be regarded as ready to be distributed, broadcasted or exhibited to the general public.
- (4) The making of a film does not include—
- (a) developing the proposal for the making of the film;
 - (b) arranging or obtaining finance for the film;
 - (c) distributing the film; or
 - (d) promoting the film.
- (5) Without limiting subregulation (1), a company's production expenditure on a film—
- (a) may be expenditure that is incurred in the income year for which the tax rebate is sought or in an earlier income year;
 - (b) may be expenditure of either a capital or a revenue nature; and
 - (c) may be expenditure that gives rise to a deduction, subject to item 10 in the table in regulation 73.
- (6) If—
- (a) a company—
 - (i) holds a depreciating asset; and
 - (ii) uses the asset, while held, in the making of a film; and
 - (b) deductions in relation to the asset are available under the Income Tax (Allowances for Depreciation and Improvements) Instructions 1998;
- the production expenditure of the company on the film includes an amount equal to the accumulated depreciation of the asset to the extent to which that accumulated depreciation is reasonably attributable to the use of the asset in the making of the film. The accumulated depreciation of the asset is to be worked out using the Income Tax (Allowances for Depreciation and Improvements) Instructions 1998.

Production expenditure—special qualifying Fiji production expenditure

72. Expenditure of a company is also production expenditure of the company on a film if it is qualifying Fiji production expenditure of the company on the film under regulation 75.

Production expenditure—specific exclusions

73. Notwithstanding regulations 71 and 72, the following expenditure of a company is not production expenditure of the company on a film—

EXPENDITURE THAT DOES NOT COUNT AS PRODUCTION EXPENDITURE ON A FILM		
<i>Item</i>	<i>This kind of expenditure by the company is not production expenditure</i>	<i>except to the extent to which the expenditure is</i>
1.	<i>Financing expenditure</i> Expenditure incurred by way of, or in relation to, the financing of the film (including returns payable on amounts invested in the film and expenditure in relation to raising and servicing finance for the film)	
2.	<i>Development expenditure</i> Development expenditure on the film	Qualifying Fiji production expenditure under item 1 in the table in regulation 754(1)
3.	<i>Copyright acquisition expenditure</i> Expenditure incurred in acquiring copyright, or a licence in relation to copyright, in a pre-existing work for use in the film	Qualifying Fiji production expenditure under item 2 in the table in regulation 75(1)
4.	<i>General business overheads</i> Expenditure incurred to meet the general business overheads of the company that— (a) are not incurred in, or in relation to, the making of the film; and (b) are not reasonably attributable to— (i) the use of equipment or other facilities for; or (ii) activities undertaken in; the making of the film	Qualifying Fiji production expenditure under item 3 in the table in regulation 75(1)
5.	<i>Publicity and promotion expenditure</i> Expenditure incurred in publicising or otherwise promoting the film (including press expenses, still photography, videotapes, public relations and other similar expenses)	

6.	<i>Deferments</i> Amounts that are payable only out of the receipts, earnings or profits from the film	
7.	<i>Profit participation</i> Amounts that— (a) depend on the receipts, earnings or profits from the film; or (b) are otherwise dependent on the commercial performance of the film	
8.	<i>Residuals</i> Amounts payable in satisfaction of the residual rights of a person who is a member of the cast	Paid out by the company before the film is completed
9.	<i>Advances</i> Amounts paid by way of advance on a payment to which item 6, 7 or 8 applies to the extent to which it may become repayable by the person to whom it is paid	
10.	<i>Acquisition of depreciating asset</i> Expenditure to the extent to which it sets, or increases, the cost of a depreciating asset. This item has effect subject to regulation 71(6)	Qualifying Fiji production expenditure under item 2 in the table in regulation 754(1)
11.	<i>Regulations</i> Expenditure specified in regulations	

Qualifying Fiji production expenditure—general test

74. A company's qualifying Fiji production expenditure on a film is the company's production expenditure on the film to the extent to which it is incurred for, or is reasonably attributable to—

- (a) goods and services provided in Fiji and which is paid from a Fiji bank account; or
- (b) the use of land in Fiji and payment for which is made from a Fiji bank account; or
- (c) the use of goods that are located in Fiji at the time they are used in the making of the film and which is paid for from a Fiji bank account.

Qualifying Fiji production expenditure—specific inclusions

75.—(1) The following expenditure of a company is also qualifying Fiji production expenditure of the company on a film—

EXPENDITURE THAT COUNTS AS SPECIAL FIJI EXPENDITURE ON A FILM	
<i>Item</i>	<i>Type of expenditure</i>
1.	<p><i>Fiji development expenditure</i></p> <p>Development expenditure on the film to the extent to which it is incurred for, or is reasonably attributable to—</p> <p>(a) goods and services (including foreign cast, crew and other service providers) provided in Fiji and paid for from a Fiji bank account;</p> <p>(b) the use of land or building located in Fiji and payment for which is made from a Fiji bank account;</p> <p>(c) the use of goods that are located in Fiji at the time they are used in the making of the film and paid for from a Fiji bank account;</p> <p>(d) the allowable expenditure incurred for services rendered by the producer (producer's fees), provided that such expenditure shall not exceed 10% of the total Fiji expenditure. The producer is not restricted to remain in Fiji throughout the production of the film;</p> <p>(e) 75% of the expenditure incurred to purchase costumes, make-up and set design properties not available in Fiji that will be used in relation to the film production in Fiji, provided that any such costumes, make-up and set design properties shall be left in Fiji at the end of the production, and if a film production company requires the use of any such costumes left in Fiji for the purpose of re-shooting the film outside of Fiji, that production company shall make a written request to the Minister, and all expenditure incurred in obtaining any such costumes shall be borne by the production company and shall not qualify for film tax rebate;</p> <p>(f) goods and services provided in Fiji relating to the final location survey and other activities undertaken to assess locations for possible use in the film; or</p> <p>(g) the allowable expenditure incurred for the salaries paid for the services rendered in Fiji by the non-resident cast, subject to such expenditure not exceeding 20% of the total qualifying Fiji production expenditure.</p>
2.	<p><i>Expenditure incurred in acquiring Fiji copyright</i></p> <p>(a) Expenditure incurred to acquire copyright, or a licence in relation to copyright, in a pre-existing work for use in the film if the copyright is held by a qualified person under the Copyright Act 1999;</p> <p>(b) Expenditure incurred to purchase the writer's story and rights for the production of the film provided that the producer submits the following documentary evidence—</p> <p>(i) notarised legal contract with the writer which is registered in Fiji with the Registrar of Deeds upon payment of the appropriate stamp duty;</p>

	<ul style="list-style-type: none"> (ii) evidence of payment made directly into the writer's bank account from the Fiji bank account; and (iii) receipt or acknowledgement of payment received.
3.	<p><i>Fiji business overheads</i></p> <p>Subject to subregulation (3), general business overheads of the company that—</p> <ul style="list-style-type: none"> (a) are incurred in or in relation to the making of the film; and (b) are reasonably attributable to— <ul style="list-style-type: none"> (i) the use of equipment or other facilities for; or (ii) activities undertaken in; <p>the making of the film, to the extent to which they—</p> <ul style="list-style-type: none"> (aa) are incurred for, or are reasonably attributable to— <ul style="list-style-type: none"> (i) goods and services provided in Fiji and paid from a Fiji bank account; or (ii) the use of land or buildings located in Fiji and payment for which is made from a Fiji bank account; or (iii) the use of goods that are located in Fiji at the time they are used in the making of the film and paid from a Fiji bank account; and (bb) represent a reasonable apportionment of those overheads between the making of the film and the other activities undertaken by the company.
4.	<p><i>Travel to Fiji</i></p> <p>Expenditure of the company in relation to a person's travel to Fiji to undertake activities in Fiji in relation to the making of the film if the remuneration paid to the person for those activities is qualifying Fiji production expenditure of the company as follows—</p> <ul style="list-style-type: none"> (a) 100% of the expenditure included in travelling to and from any aircraft operated by Air Pacific Limited; and (b) 15% of the expenditure included in travelling to and from any aircraft not operated by Air Pacific Limited.
5.	<p><i>Approved post-production expenditure</i></p> <p>Approved post-production expenditure on the film paid from a Fiji bank account to the extent that it is incurred or reasonably attributable to approved post-production services in relation to the completing of the film made in Fiji. The maximum amount payable as rebate under these expenditure items shall be as follows, upon the production of documentary evidence of the expenditure—</p> <ul style="list-style-type: none"> (a) budget up to FJ\$3 million – up to \$75,000; (b) budget up to FJ\$5 million – up to \$100,000; (c) budget up to FJ\$7 million – up to \$150,000; (d) budget up to FJ\$10 million – up to \$200,000; and (e) budget more than FJ\$10 million – up to \$250,000.

6.	<i>Equipment</i> The hiring of cameras and filming equipment from outside Fiji, where such cameras and filming equipment are not available in Fiji.
7.	<i>Regulations</i> Expenditure prescribed by the regulations.

(2) Legal costs will be covered by item 1 in the table in subregulation (1) only if they relate to—

- (a) writers contracts; or
- (b) chain of title and other copyright issues.

(3) General business overheads of the company are covered by item 3 in the table in subregulation (1) only to the extent to which they do not exceed the lesser of—

- (a) 2% of the total of all the company's production expenditure on the film; or
- (b) FJD\$250,000.

Qualifying Fiji production expenditure—specific exclusions

76. Notwithstanding regulations 74 and 75, the following expenditure of a company is not qualifying Fiji production expenditure of a company on a film—

- (a) expenditure in relation to—
 - (i) remuneration and other benefits provided to a person for the person's services in relation to the making of the film; or
 - (ii) travel and other costs associated with the services a person provides in relation to the making of the film, if the person is not a member of the cast or crew and enters Fiji to work on the film for less than 2 consecutive calendar weeks;
- (b) expenditure prescribed by the regulations.

Qualifying Fiji production expenditure—treatment of services embodied in goods

77. If—

- (a) a company incurs expenditure for the provision of what is essentially a service; and
- (b) the results of the service are provided to the company by being embodied in goods that are delivered to the company; and
- (c) the service that is embodied in the goods was predominantly performed outside Fiji,

the service is not provided to the company in Fiji merely because the goods are delivered to the company in Fiji.

Expenditure to be worked out in Fiji dollars

78.—(1) Expenditure that is incurred in foreign currencies is to be converted into Fiji dollars for the purposes of quantifying the total of the company's qualifying Fiji production expenditure on a film.

(2) The conversion rate to be used is the average of the exchange rates applicable from time to time during the period that—

- (a) starts on the earliest day on which—
 - (i) principal photography takes place; or
 - (ii) the production of the animated image commences; and
- (b) ends when the film is completed.

Expenditure to be worked out on an arm's length basis

79. For the purposes of this part, if any two or more parties to—

- (a) an arrangement under which a company incurs expenditure in relation to a film; or
- (b) any act or transaction directly or indirectly connected with expenditure that a company incurs in relation to a film,

do not deal with each other at arm's length in relation to the arrangement, or in relation to the act or transaction, the expenditure is taken to be only so much (if any) of the expenditure as would have been incurred if they had been dealing with each other at arm's length in relation to the arrangement, or in relation to the act or transaction.

Expenditure incurred by prior production companies

80.—(1) For the purposes of this part, if a company (the incoming company) takes over the making of a film from another company (the outgoing company)—

- (a) expenditure incurred in relation to the film by the outgoing company is taken to have been incurred in relation to the film by the incoming company; and
- (b) expenditure that the incoming company incurs in order to be able to take over the making of the film is to be disregarded for the purposes of this part; and
- (c) any activities carried out, and arrangements made, by the outgoing company in relation to the film are taken, for the purposes of regulation 70(1)(f) to have been carried out or made by the incoming company in relation to the film.

(2) For the purposes of subregulation (1)—

- (a) expenditure incurred on the film by the outgoing company includes expenditure that the outgoing company is itself taken to have incurred on the film because of the operation of subregulation (1); and
- (b) activities carried out by the outgoing company in relation to the film includes activities that the outgoing company is taken to have carried out in relation to the film because of the operation of subregulation (1); and
- (c) arrangements made by the outgoing company for the carrying out of activities in relation to the film include arrangements that the outgoing company is taken to have made because of the operation of subregulation.

Division 4—Certificates for Films

Production company may apply for certificate

81.—(1) Once a film is completed, a company may apply to Film Fiji for the issue of a certificate to the company for the film under regulation 70

(2) The application must be made in accordance with the rules determined by Film Fiji under regulation 86 so far as they relate to the requirements for applications.

Refusal to issue certificate

82. If Film Fiji, with the concurrence of the Minister, decides not to issue a certificate for a film, Film Fiji must give the applicant written notice of the decision and reasons for the decision.

Issue of certificate

83.—(1) A certificate issued to a company under regulation 70 must be in writing. Film Fiji must give FRCA notice of the issue of a certificate for a film within 30 days after issuing the certificate.

(2) The notice under subregulation (2) must—

- (a) specify the company's name and address; and
- (b) be accompanied by a copy of the certificate issued under regulation 70; and
- (c) specify other matters agreed to between Film Fiji and FRCA.

Revocation of certificate

84.—(1) Film Fiji may, with the concurrence of the Minister, revoke a certificate issued to a company for a film under regulation 70 if Film Fiji is satisfied that the issue of the certificate was obtained by fraud or serious misrepresentation.

(2) If Film Fiji revokes a certificate under subregulation (1), Film Fiji must give the company to whom the certificate was issued written notice of the revocation including reasons for the decision to revoke the certificate.

(3) If a certificate is revoked under subregulation (1), it is taken, for the purposes of this part, never to have been issued.

(4) Sub-regulation (3) does not apply for the purposes of—

- (a) the operation of this regulation or regulation 85; or
- (b) a review by the High Court of the decision to revoke the certificate.

Notice of decision

85.—(1) This regulation applies to a notice of a decision given under regulation 82 or 84.

(2) The notice of the decision is to include the statements set out in subregulation (3).

(3) There must be a statement to the effect that an application may be made to the High Court, by or on behalf of any entity whose interests are affected by the decision, for review of the decision.

Review of decisions by the High Court

86. Applications may be made to the High Court for review of—

- (a) a decision made by Film Fiji to refuse an application for a certificate under regulation 70; or
- (b) a decision made by Film Fiji under regulation 84 to revoke a certificate.

Film Fiji may make rules

87.—(1) Film Fiji may, by notice in the Gazette, make rules—

- (a) for it—
 - (i) to consider applications under regulation 80; and
 - (ii) to perform such other functions in relation to the operation of this part as are specified in the rules;
- (b) specifying procedures to be followed by Film Fiji in performing its functions;
- (c) providing for the issue of provisional certificates; and
- (d) specifying how applications for certificates (including provisional certificates) are to be made, including—
 - (i) the form in which applications are to be made;
 - (ii) the information to be provided in applications;
 - (iii) methods for verifying such information; and
 - (iv) procedures for providing, at Film Fiji's request, additional information in support of an application.

(2) Rules under subregulation (1)(d)(iii) may include rules requiring reports by auditors or independent line producers.

*Division 5—Review of Operation of this part**Review of operation of this part*

88.—(1) Film Fiji must cause a review of the operation of this part to be conducted and completed before 1 January 2016 and thereafter at the end of every five years unless the Cabinet directs otherwise.

(2) The review—

- (a) must include—
 - (i) an evaluation of the success of the tax rebate provided for by this part as an incentive for attracting audio-visual production to Fiji, taking into account the net cost of the rebate; and
 - (ii) an assessment of the impact of the tax rebate on Fiji audio-visual industry including an assessment of the opportunities it generates for employment and skills transfer; and
- (b) must allow an opportunity for any person or organization involved in the audio visual industry to make written submissions to the person conducting the review.

(3) The person who conducts the review must give Film Fiji a written report of the review.

(4) Within three months of receipt by Film Fiji of the written report of the review, Film Fiji must submit a copy to the Minister for tabling to Cabinet.

Division 6—Tax Rebate Rules

Tax rebate amount

89.—(1) A company entitled to a tax rebate under regulation 68 must lodge a return of income with FRCA for the relevant year in which the production was complete.

(2) The company that is entitled to a tax rebate under regulation 68 may use that tax rebate as a rebate or credit against any tax due and payable by that company in Fiji in the relevant income year.

(3) If the total of the rebate exceeds the amount of tax that the company is due to pay in the relevant income year then the company will receive a refund from FRCA.

Made this 1st day of January 2016.

[Legal Notice No. 9]

F. S. KOYA
Acting Minister for Finance
