

[LEGAL NOTICE NO. 60]

## INCOME TAX ACT 2015

## Income Tax (Film-making and Audio-visual Incentives) (Amendment) Regulations 2017

IN exercise of the powers conferred on me by section 142 of the Income Tax Act 2015, I hereby make these Regulations—

*Short title and commencement*

1.—(1) These Regulations may be cited as the Income Tax (Film-making and Audio-visual) (Amendment) Regulations 2017.

(2) These Regulations come into force on 1 August 2017.

(3) In these Regulations, the Income Tax (Film-making and Audio-visual) Regulations 2016 is referred to as the “Principal Regulations”.

*Regulation 6 amended*

2. Regulation 6 of the Principal Regulations is amended in the definition of “film company” by deleting “non-resident”.

*Part 5 amended*

3. Part 5 of the Principal Regulations is amended by—

(a) in the heading after “REBATE”, inserting “AND TELEVISION COMMERCIAL”;

(b) in regulation 67, inserting the following new definitions—

““approved local production company” means a locally registered company that is a subsidiary company of a licensed audio-visual agent that is approved by Film Fiji to be used by a foreign production company for the purposes of carrying out television commercial production;

“television commercial” means an audio-visual production of not more than one minute in duration made exclusively for advertising or promoting a product or service on television”;

(c) after Division 2, inserting the following new Division—

*“Division 2A—Tax Rebate for Fiji Expenditure in Making a Television Commercial*

*Approved local production company entitled to tax rebate*

70A. An approved local production company is entitled to a tax rebate for an income year in respect of a television commercial if—

(a) the television commercial was completed in the income year;

(b) Film Fiji, with the concurrence of the Minister, has issued a certificate to the approved local production company for the television commercial under regulation 70D;

- (c) the approved local production company claims (which are irrevocable) the rebate in its income tax return for the income year;
- (d) the approved local production company is a Fijian resident;
- (e) the approved local production 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 approved local production company is able to release and have the television commercial distributed for the production in at least one significant international market to the satisfaction of the Minister responsible for Film Fiji;
- (g) the Minister responsible for Film Fiji is satisfied that the approved local production company will—
  - (i) engage the services of Fijian citizens in the production of television commercials; and
  - (ii) utilise technicians, students and technical aid facilities at the film-making school at the Fiji National University or any other specified local institution;
- (h) the approved local production company engages an audio-visual agent for the production of television commercials; and
- (i) the approved local production company allows Film Fiji to use the television commercial for promotional purposes.

*Amount of tax rebate*

70B.—(1) Subject to subregulation (2), the amount of tax rebate is 47% of the total of the approved local production company's qualifying Fiji production expenditure on the television commercial.

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

*Access to documents*

70C. A foreign production company and approved local production company must grant Film Fiji or the Fiji Revenue and Customs Authority access to or provide legal and financial records in relation to the production of a television commercial, as required.

*Film Fiji may issue certificate for a television commercial*

70D.—(1) Film Fiji may, with the concurrence of the Minister, issue a certificate to an approved local production company, provided Film Fiji is satisfied of the following requirements—

- (a) the audio-visual agent has registered a subsidiary company solely for the production of television commercials;
- (b) Film Fiji has approved the subsidiary company specified under paragraph (a) to be an approved local production company by Film Fiji;
- (c) the approved local production company—
  - (i) has a separate trust bank account for each production of television commercials, to receive and expend funds from the production company; and
  - (ii) all payments relating to the production of a television commercial are made into the trust bank account under paragraph (c)(i);
- (d) the foreign production company has entered into a legally binding agreement with the approved local production company for the purpose of making an application for rebate and distribution of funds;
- (e) the company's total qualifying Fiji production expenditure on the television commercial is at least \$250,000;
- (f) the approved local production company has either carried out or made arrangements to carry out all the activities in Fiji necessary for the production of the television commercial;
- (g) the approved local production company is the only company that satisfies the requirements under paragraph (f);
- (h) the television commercial is not culturally derogative in its portrayal of Fiji or the people of Fiji;
- (i) the application for a certificate for rebate was made not later than 12 months from the time the television commercial was completed; and
- (j) the approved local production company demonstrates to the satisfaction of the Minister that—
  - (i) Fijian citizens will be engaged in the production of television commercials; and
  - (ii) technicians, students and technical aid facilities at the film-making school at the Fiji National University or any other specified local institution will be engaged or utilised.

(2) The production of a television commercial is completed when it is distributed, broadcasted or exhibited to the general public.”;

(d) in regulation 73—

- (i) in items 2 and 10, deleting “regulation 754(1)” and substituting “regulation 75(1)”; and
- (ii) after item 11, inserting the following new item

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>
“12.	Service Turnover Tax, Environment and Climate Adaptation Levy, prize monies, penalties, fines and payment for damage during production”;	

(e) after Division 3, inserting the following new Division—

*“Division 3A—Production Expenditure and Qualifying Fiji Production Expenditure for Television Commercials*

*Production expenditure*

80A.—(1) An approved local production company’s production expenditure on a television commercial is expenditure that the approved local production company incurs to the extent to which it—

- (a) is incurred in, or in relation to, the making of a television commercial; or
- (b) is reasonably attributable to—
  - (i) the use of equipment or other facilities for; or
  - (ii) activities undertaken in,
 

the making of the television commercial.

(2) The making of a television commercial means the doing of the things necessary for the production of the first copy of the television commercial.

(3) The making of a television commercial includes—

- (a) pre-production activities in relation to the television commercial;
- (b) post-production activities in relation to the television commercial; and
- (c) any other activity undertaken to bring the television commercial to the state where it can be distributed, broadcasted or exhibited to the general public.

- (4) The making of a television commercial does not include—
- (a) developing the proposal for the making of the television commercial;
  - (b) arranging or obtaining finances for the television commercial; and
  - (c) distributing or promoting the television commercial.

(5) Without limiting subregulation (1), an approved local production company's production expenditure on a television commercial may be expenditure that is incurred in the income year for which the rebate is sought or in an earlier income year.

*Production expenditure—special qualifying Fiji production expenditure*

80B. Expenditure of an approved local production company is also production expenditure of the approved local production company on a television commercial if it is qualifying Fiji production expenditure of the approved local production company on the television commercial under regulation 80E.

*Production expenditure—specific exclusions*

80C. Notwithstanding regulations 80A and 80B, the following expenditure of a company is not production expenditure of the approved local production company—

EXPENDITURE THAT DOES NOT COUNT AS PRODUCTION EXPENDITURE ON A TELEVISION COMMERCIAL		
<i>Item</i>	<i>This kind of expenditure by the approved local production company is not production expenditure</i>	<i>Except to the extent to which the expenditure is</i>
1.	<i>Financial expenditure</i> Expenditure incurred by way of, or in relation to, the financing of the television commercial (including returns payable on amounts invested in the television commercial and expenditure in relation to raising and servicing finance for the television commercial).	
2.	<i>Development expenditure</i> Development expenditure on the television commercial.	Qualifying Fiji's production expenditure under item 1 in the table in regulation 80E(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 television commercial.	Qualifying Fiji's production expenditure under item 2 in the table in regulation 80E(1).

4.	<p><i>General business overheads</i></p> <p>Expenditure incurred to meet the general business overheads of the approved local production company that—</p> <p>(a) are not incurred in, or in relation to, the making of the television commercial; and</p> <p>(b) are not reasonably attributable to—</p> <p>(i) the use of equipment or other facilities for; or</p> <p>(ii) activities undertaken in, the making of the television commercial.</p>	Qualifying Fiji's production expenditure under item 3 in the table in regulation 80E(1).
5.	<p><i>Publicity and promotion expenditure</i></p> <p>Expenditure incurred in publicising or otherwise promoting the television commercial (including press expenses, still photography, videotapes, public relations and other similar expenses).</p>	
6.	<p><i>Deferments</i></p> <p>Amounts that are payable only out of the receipts, earnings or profits from the commercial.</p>	
7.	<p><i>Profit participation</i></p> <p>Amounts that—</p> <p>(a) depend on the receipts, earnings or profits from the television commercial; or</p> <p>(b) are otherwise dependent on the commercial performance of the television commercial.</p>	
8.	<p><i>Residuals</i></p> <p>Amounts payable in satisfaction of the residual rights of a person who is a member of the cast.</p>	Paid out by the approved local production company before the television commercial is completed.
9.	<p><i>Advances</i></p> <p>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.</p>	

10.	<i>Acquisition of depreciating asset</i> Expenditure to the extent, to which it sets, or increases, the cost of a depreciating asset.	Qualifying Fiji's production expenditure under item 2 in the table in regulation 80E(1).
11.	<i>Regulations</i> Expenditure specified in regulations.	
12.	Service Turnover Tax, Environment and Climate Adaptation Levy, prize monies, penalties, fines and payment for damage during production.	

*Qualifying Fiji's production expenditure—general test*

80D. An approved local production company's production expenditure on a television commercial is the approved local production company's production expenditure on the television commercial 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 trust bank account;
- (b) the use of land in Fiji and payment for which is made from a Fiji trust bank account; or
- (c) the use of goods that are located in Fiji at the time they are used in the making of the television commercial and which is paid for from a Fiji trust bank account.

*Qualifying Fiji's production expenditure—specific inclusions*

80E.—(1) The following expenditure of an approved local production company is also qualifying Fiji's production expenditure of the approved local production company on a television commercial—

EXPENDITURE THAT COUNTS AS SPECIAL FIJI EXPENDITURE ON A TELEVISION COMMERCIAL	
<i>Item</i>	<i>Type of expenditure</i>
1.	<p><i>Fiji development expenditure</i></p> <p>Development expenditure on the television commercial to the extent to which it is incurred for, or is reasonably attributable to—</p> <ul style="list-style-type: none"> <li>(a) goods and services (including foreign cast, crew and other service providers) provided in Fiji and paid for from a Fiji trust bank account;</li> <li>(b) the use of land or buildings located in Fiji and payment for which is made from a Fiji bank account;</li> <li>(c) the use of goods that are located in Fiji at the time they are used in the making of the television commercial and paid for from a Fiji trust bank account;</li> </ul>

	<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 television commercial; or</p> <p>(e) goods and services provided in Fiji relating to the final location survey and other activities undertaken to assess locations for possible use in the television commercial.</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 television commercial 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> <p>(ii) evidence of payment made directly into the writer's bank account from the Fiji trust bank account; and</p> <p>(iii) receipt or acknowledgment of payment is received.</p>
3.	<p><i>Fiji business overheads</i></p> <p>Subject to subregulation (2), general business overheads of the company that—</p> <p>(a) are incurred in or in relation to the making of the television commercial;</p> <p>(b) are reasonably attributable to—</p> <p>(i) the use of equipment or other facilities for; or</p> <p>(ii) activities undertaken in,</p> <p>the making of the television commercial, to the extent which they—</p> <p>(aa) are incurred for, or are reasonably attributable to—</p> <p>(i) goods and services provided in Fiji and paid from a Fiji trust bank account;</p> <p>(ii) the use of land or buildings located in Fiji and payment for which is made from a Fiji trust bank account; or</p>

	<p>(iii) the use of goods that are located in Fiji at the time they are used in the making of the television commercial and paid from a Fiji trust bank account; and</p> <p>(bb) represent a reasonable apportionment of those overheads between the making of the television commercial and the other activities undertaken by the company.</p>
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 television commercial if the remuneration paid to the person for those activities is qualifying Fiji production expenditure of the company as follows—</p> <p>(a) 100% of the expenditure included in travelling to and from any aircraft operated by Air Pacific Limited trading as Fiji Airways but excluding taxes and surcharges contained in the air ticket price.</p>
5.	<p><i>Approved post-production expenditure</i></p> <p>Approved post-production expenditure on the television commercial paid from a Fiji trust bank account to the extent that it is incurred or reasonably attributable to approved post-production services in relation to the completion of the television commercial made in Fiji.</p> <p>The maximum amount payable as rebate under these expenditure items is \$100,000 upon the production of documentary evidence of the expenditure.</p>
6.	<p><i>Regulations</i></p> <p>Expenditure prescribed by the regulations.</p>

(2) General business overheads of the approved local production 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 approved local production company's total production expenditure on the television commercial; or
- (b) \$75,000.

*Qualifying Fiji's production expenditure- specific exclusions*

80F. Notwithstanding regulations 80D and 80E, the following expenditure of an approved local production company are not qualifying Fiji production expenditure of an approved company on a television commercial—

- (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 television commercial; or

- (ii) travel and other costs associated with the services a person provides in relation to the making of the television commercial, if the person who is not a member of the cast or crew enters Fiji to work on the television commercial for less than 2 consecutive calendar weeks;
- (b) the expenditure incurred to purchase costumes, make-up and set design properties not available in Fiji that will be used in relation to the television commercial production in Fiji;
- (c) expenditure incurred to acquire copyright, or a licence in relation to copyright, in a pre-existing work for use in the television commercial if the copyright is held by a qualified person under the Copyright Act 1999;
- (d) if the approved local production company—
  - (i) holds a depreciating asset; and
  - (ii) uses the asset, while held, in the making of a television commercial;
- (e) deductions in relation to the asset are available under the Income Tax (Allowances for Depreciation and Improvements) Instructions 1998;
- (f) the production expenditure of the approved local production company on the television commercial includes an amount equal to the accumulated depreciation of the asset to which that accumulated depreciation is reasonably attributable to the use of the asset in the making of the television commercial. The accumulated depreciation of the asset is to be worked out using the Income Tax (Allowances for Depreciation and Improvements) Instructions 1998;
- (g) the hiring of cameras and filming equipment from outside Fiji; and
- (h) legal costs covered by item 1 of the table in regulation 80E(1) which relates to—
  - (i) writers contracts;
  - (ii) chain of title and other copyright issues; and
  - (iii) expenditure prescribed by the regulations.

*Qualifying Fiji's production expenditure-treatment of services embodied in goods*

80G. If—

- (a) a company incurs expenditure for the provision of what is essentially a service;
- (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 Fijian dollars*

80H.—(1) Expenditure that is incurred in foreign currencies is to be converted into Fijian dollars for the purposes of quantifying of the company’s total qualifying Fiji production expenditure on a television commercial.

(2) The conversion rate to be used shall be the rate on the bank telegraphic transfer document on the date of the transaction.

*Expenditure to be worked out on an arm’s length basis*

80I. For the purposes of this Part, if any 2 or more parties to—

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

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.

*Non-transferrable expenditure incurred for provisional certificate*

80J. For the purposes of this Part, any provisional certificate issued by Film Fiji to the approved local production company for the shooting of a television commercial, the rights of ownership, legal and financial records including expenditure incurred are non-transferrable.”;

- (f) in regulation 75(1) in item 1, deleting paragraph (e) and substituting the following paragraphs—

“(e)(i) 75% of the expenditure incurred to purchase costumes, make-up, set design properties and other props not available in Fiji that will be used in relation to the film production in Fiji, provided that any such costumes, make-up, set design property or other prop shall be left in Fiji at the end of the production and is reusable;

- (ii) If a film production company requires the use of any such costumes, make-up, set design property or other prop left in Fiji for the purpose of re-shooting the film outside Fiji, that production company shall make a written request to the Minister and all expenditure incurred in obtaining any such

costumes, make-up, set design property or other prop shall be borne by the production company and shall not qualify for film tax rebate;”;

- (g) in the heading of Division 4 after “FILMS” inserting “AND TELEVISION COMMERCIALS”;
- (h) in regulation 81 after subregulation (1), inserting the following new subregulation—
  - “(1A) Once a television commercial is completed, an approved local production company may apply to Film Fiji for the issue of a certificate on behalf of the foreign production company for the television commercial under regulation 70D.”;
- (i) in regulation 82 after “film”, inserting “or television commercial”;
- (j) in regulation 83 by—
  - (i) in subregulations (1) and (2)(b) after “70”, inserting “or 70A”; and
  - (ii) in subregulation (1) after “film”, inserting “or television commercial”;
- (k) in regulation 84(1) by—
  - (i) after “film”, inserting “or television commercial”; and
  - (ii) after “70”, inserting “or 70A”; and
- (l) in regulation 89(1) and (2) after “68”, inserting “or 70A”.

Made this 31st day of July 2017.

A. SAYED-KHAIYUM  
Attorney-General and Minister for Economy