

SIXTH SCHEDULEⁱ
(Section 16A)

FILM-MAKING AND AUDIO-VISUAL INCENTIVES

PART I – GENERAL

Interpretation

1. For the purposes of this Schedule—
- “Fiji Islands Audio-Visual Commission” means the corporation of that name established by section 3 of the Fiji Islands Audio-Visual Commission Act 2002;
- “FAVC” means the Fiji Islands Audio-Visual Commission.

Regulations

- 2ⁱⁱ. The FAVC may, with the concurrence of the Minister make regulations to prescribe-
- (a) forms and fees payable for the purpose of this Schedule; and
- (b) the type of expenditure to be specified for the purpose of paragraphs 65-35, 65-45 and 65-50 of Part IV.

PART II – FILM-MAKING INCENTIVES

Interpretation

3. For the purposes of this Part, unless the context otherwise requires—
- “applicant” means a film company which makes an application under paragraph 5;
- “application” means an application made under paragraph 5;
- “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 the Fiji Islands;
- “local goods and services” means—
- (a) emoluments paid to employees who are citizens or are permanently resident in the Fiji Islands; and
- (b) the cost of goods produced in their entirety in the Fiji Islands except that, if goods acquired in the Fiji Islands have foreign and local cost contents, the estimated foreign cost content is excluded;

“qualifying employee” means an employee of a film company who, other than in relation to being in the Fiji Islands 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 the Fiji Islands on a contract for services either with that individual or with any other person.

Film-making incentive

4. If the Minister is satisfied that it is expedient for the economic development of the film-making industry in the Fiji Islands, the Minister may, approve an application for the income of the applicant’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

- 5.—(1) A film company may apply to the FAVC for the Minister’s approval under paragraph 4.
- (2) An application under subparagraph (1) must be 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 emoluments payable by the film company while the employee is engaged in the Fiji Islands;
 - (c) the total amount of emoluments that the film company proposes to pay to 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 this amount will be used;
 - (e) the duration for which the film company will be engaged in making a film in the Fiji Islands;
 - (f) the title of the film and brief particulars of the script; and
 - (g) the location where the film company will be engaged during the making of the film in the Fiji Islands.

FAVC must consider applications and make recommendation

- 6.—(1) The FAVC must consider each application and refer it to the Minister together with its recommendation in respect of the application.
- (2) The FAVC 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 may approve or reject an application

- 7.—(1) The Minister must, on receiving from the FAVC an application and its recommendation, consider them and, by written notice to the FAVC, may approve or refuse the application.
- (2) The Minister's approval under subparagraph (1)(a) must specify—
- (a) the qualifying employees whose income is exempt from tax;
 - (b) the qualifying employees whose income is chargeable to tax at a reduced rate;
 - (c) in respect of subparagraph 4(b) – the reduced rate of tax determined by the Minister; and
 - (d) the period during which the exemption or reduced rate of tax applies.

FAVC must inform applicant

8. The FAVC must, by written notice—
- (a) inform the applicant of the Minister's decision; and
 - (b) if the Minister approves an application, provide the Commissioner with a copy of the approval.

Method of relief if approval is granted

9. The amount of tax payable by each qualifying employee is 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 paragraph 4.

Commissioner may require security

10. An approved film company may be required by the Commissioner to provide a suitable security in favour of the Commissioner on the basis of tax payable by its qualifying employees under paragraph 9.

PART III – AUDIO-VISUAL INCENTIVES

Division 1 – INTERPRETATION

Definitions

11.—(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 the Fiji Islands but excludes—

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

“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]ⁱⁱⁱ for marketing materials if not less than 85% of the expenditure to produce such items is spent in the Fiji Islands and the budgets have been approved by the FAVC;

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

“Audio-Visual Collection” means an archive of international standard to preserve, maintain and manage the audio-visual production of the Fiji Islands established by the FAVC;

“audio-visual production” has the meaning given to it in paragraph 12;

“audio-visual production account” means, in relation to an audio-visual production, an account that opened in a Fiji Islands 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 the FAVC included in the budget of every qualifying audio-visual production payable to the FAVC to support its operations and the educational aims of the Audio-Visual School and activities of the Audio-Visual Collection;

“Audio-Visual School” means an educational tertiary institute for citizens and citizens of other Pacific island countries to provide education in the skills of the audio-visual industry established by the FAVC;

“AVP” means audio-visual production;

“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;

“citizen” means a citizen of the State;

“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 the Fiji Islands 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 disk, Zip disk, computer disk, digital video disk, 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 disk 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;
- “Fiji Islands bank” means a financial institution licensed under the Banking Act 1995;
- “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 FAVC approved 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 commercial 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 the Fiji Islands and has significant and substantial Fiji Islands 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;

“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 a film produced for exhibition in theatres and at festivals with a running time of less than 60 minutes and intended primarily as a demonstration of new and emerging film-making talent;

“studio city company” means the company that owns or leases the land declared as a studio city zone;

“studio city zone” means the land (including any buildings situated or erected on that land) declared as such by the Minister under paragraph 45...^{iv};

“temporary studio city zone” means land (including any buildings situated or erected on that land) declared as such by the Minister under paragraph 45;

“theatrical feature film” or “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/place but no other deductions.

Audio-visual productions

- 12.** Subject to paragraphs 13 to 15, “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 disk programme;

(e) an audio recording;

(f)^v computer software for use solely in relation to sub-paragraphs (a), (b), (c), (d) or (e) of this paragraph; and;

(g)^{vi} interactive websites and other e-commerce and telecommunications operations for use solely in relation to sub-paragraphs (a), (b), (c), (d), or (e) of this paragraph.

Deemed audio-visual productions

- 13.** For the purposes of this Part, the development and establishment of e-commerce websites and e-commerce businesses [for use solely in relation to sub-paragraphs (a), (b), (c), (d) or (e) of paragraph 12]^{vii} is deemed to be an audio-visual production.

Exclusions from references to audio-visual productions

- 14.** 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;
- (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

15. 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—

- (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;
- (d) more than one short film by an individual director.

References to audio-visual production

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

Division 2 – PROVISIONAL CERTIFICATES

Application for provisional certificate

17. An applicant may apply to the Commission 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.

Form of application

18. An application under paragraph 17 must be—
- (a) in the prescribed form and accompanied by the prescribed fee;
 - (b) signed by or on behalf of the applicant; and
 - (c) accompanied by such information as the FAVC requires.

FAVC to consider and decide applications

- 19.—(1) Upon receiving an application under paragraph 17, the FAVC must consider it and either approve or refuse it.
- (2) The FAVC must not approve an application unless it is satisfied that—
- (a) the proposed audio-visual production, when complete, will be a qualifying Fiji Islands audio-visual production; and
 - (b) having regard to the role of the applicant in the proposed production of the audio-visual production, the applicant is an appropriate individual, partnership or company to whom a provisional certificate should be issued in respect of the proposed audio-visual production.

FAVC to issue provisional certificate or give notice of refusal

20. The FAVC must—
- (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 FAVC

21. A production entity issued with a provisional certificate must furnish to the FAVC in writing, within a period specified by the FAVC, any information in relation to the proposed audio-visual production as the FAVC requests.

FAVC may revoke or vary certificate in certain circumstances

22. If the FAVC has issued a provisional certificate and—
- (a) at any time after the issue of the certificate, the FAVC becomes satisfied that the proposed audio-visual production in respect of which the certificate was issued does not comply with the certificate in any respect; or
 - (b) the production entity fails to comply with a request for information made by the FAVC under paragraph 21,

the FAVC may, by written notice to the person to whom the provisional certificate was issued —

- (i) revoke the provisional certificate with effect from the date of the certificate's issue; or
- (ii) in the case of a qualifying audio-visual production which is an F1 AVP – vary its audio-visual production status be varied from F1 to F2.

Revocation does not prevent subsequent issue of certificate

23. The revocation of a provisional certificate in respect of a proposed audio-visual production does not prevent the issue of a further provisional certificate in respect of that proposed audio-visual production.

Certificate deemed to be in force from time of issue

24. Subject to paragraphs 22 and 25, 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

25. 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 6 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.

Division 3 – FINAL CERTIFICATES

Application for final certificate

26. An applicant may apply to the FAVC 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

27. An application under paragraph 26 must be—
- (a) in the prescribed form and accompanied by the prescribed fee;
 - (b) signed by or on behalf of the applicant; and
 - (c) accompanied by such information as the FAVC requires.

FAVC to consider and decide applications

- 28.—(1) If an application is made under paragraph 26, the FAVC must consider it and either approve or refuse it.
- (2) The FAVC 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, the applicant is an appropriate individual, partnership or company to whom a final certificate should be issued.

FAVC to issue final certificate or give notice of refusal

- 29.** The FAVC must, on receiving written notice under paragraph 32—
- (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 the FAVC

- 30.** A production entity issued with a final certificate must furnish to the FAVC in writing, within a period specified in writing by the FAVC, such information in relation to the proposed audio-visual production as the FAVC requests.

FAVC may revoke or vary certificate in certain circumstances

- 31.** If the FAVC has issued a final certificate and -
- (a) at any time after the issue of the certificate, the FAVC becomes satisfied that the audio-visual production in respect of which the certificate was issued does not comply with the certificate in any respect; or
 - (b) the production entity fails to comply with a request for information made by the FAVC under paragraph 30,

the FAVC may, by written notice to the person to whom the final certificate was issued -

- (i) revoke the final certificate with effect from the date of the certificate's issue; or
- (ii) 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

- 32.** The revocation of a final certificate in respect of a completed audio-visual production does not prevent the issue of a further final certificate in respect of that completed audio-visual production.

Final certificate deemed to be in force from time of issue

33. Subject to paragraph 31, a final certificate is deemed to have been in force at all times from the date of its issue.

Division 4 – QUALIFYING AUDIO-VISUAL PRODUCTIONS

AVP may qualify as F1 or F2 AVP

34. An audio-visual production qualifies as an F1 AVP or an F2 AVP if—
- (a) it satisfies the minimum prerequisites set out in paragraph 35; and
 - (b) it satisfies the additional criteria set out in paragraph 36, in the case of F1 AVPs, or paragraph 37, in the case of F2 AVPs.

Minimum prerequisites for F1 and F2 AVPs

35. 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 must be deposited in an audio-visual production account prior to the commencement of the production;
 - (b) 100% of the gross international and domestic revenues disbursed to investors, distributors and sales agents, producers, creative profit participants and any other parties must pass through a Fiji bank account prior to any disbursement and the Commissioner is provided with half yearly statements of income and disbursement;
 - (c) either—
 - (i) in the case of an audio-visual production – the appropriate audio-visual production levy must be paid on the first day of pre-production or full financing, whichever is the sooner;or—
 - (ii) in the case of a proposed audio-visual production – the production budget contains an audio-visual production levy which must be paid on the first day of pre-production or full financing, whichever is the sooner;
 - (d) the audio-visual production is not, in the opinion of the FAVC, culturally derogative in its portrayal of the Fiji Islands or the people of the Fiji Islands;
 - (e) the audio-visual production must be produced by a production entity;

- (f) the audio-visual production must have a completion bond from a company at arm's length to the production company and approved by the FAVC as an acceptable completion bond company;
- (g) 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) either—
 - (aa) in the case of a completed audio-visual production – the production entity has in its best endeavours used suitably qualified Fiji Islands employees and facilities and locations;
 - or—
 - (bb) in the case of a proposed audio-visual production – the production entity has in its best endeavours budgeted and researched to use suitably qualified Fiji Islands employees and facilities and locations;
 - (iii) producer fees and overheads paid or payable to the production entity for services of production do not exceed 12½% of the total budget;
 - (iv) expenses paid to the production entity or non-arm's length parties associated with the production are or will be genuine and reasonable reimbursement of costs;
 - (v) approved financing charges and approved marketing materials costs will be, or have been, spent in accordance with this Part;
 - (vi) all expenses, allowances, wages and fees for service in the budget are commercial and have been, or will be, paid for services rendered on the audio-visual production; and
 - (vii) the audio-visual production has been, or will be able to be, completed within the relevant 24 months period.

Additional criteria to be satisfied for F1 status

36.—(1) In addition to meeting the minimum prerequisites set out in paragraph 35, an audio-visual production qualifies as an F1 AVP if—

(a) one of the following criteria is satisfied—

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

and—

(b) the following criteria are satisfied—

- (i) the production entity has secured for the audio-visual production, to the satisfaction of the FAVC and on commercial terms, distribution for the production when complete both in the Fiji Islands and in at least one significant international market; and
- (ii) one of the levels of expenditure in subparagraph (2) has been, or is budgeted to be, spent in the Fiji Islands.

(2) The levels of expenditure for the purposes of subparagraph (1)(b)(ii) are—

- (a) for an audio-visual production which commences production between [1st January 2001 and 31st December 2006]^{viii} (both dates inclusive) – not less than—
 - (i) 35% for a large format film, a feature film or broadcast television programmes;
 - (ii) 45% for a direct to video programme or video disk programme; and
 - (iii) 50% for an audio recording or a computer software;

- (b) for an audio-visual production which commences production between [1st January 2007 and 31st December 2010]^{ix} (both dates inclusive) – not less than—
 - (i) 55% for a large format film, a feature film or broadcast television programmes;
 - (ii) 75% for a direct to video programme or video disk programme; and
 - (iii) 80% for an audio recording or computer software;

- (c) for an audio-visual production which commences production on or after [1st January 2011]^x – not less than—
 - (i) 65% for a large format film, a feature film or broadcast television programme;
 - (ii) 85% for a direct to video programme or video disk programme; and
 - (iii) 80% for an audio recording or a computer software.

Additional criteria to be satisfied for F2 status

- 37.** In addition to meeting the minimum prerequisites set out in paragraph 35, an audio-visual production qualifies as an F2 AVP if —
- (a) the production entity has secured for the audio-visual production, to the satisfaction of the FAVC and on commercial terms, distribution for the production when completed both in the Fiji Islands and in at least 2 significant international markets;
 - (b) one of the following amounts is guaranteed as a secured minimum return on investment from international distribution to Fiji Islands investors—
 - (i) for an audio-visual production which commences production between [1st January 2001 and 31st December 2006]^{xi} (both dates inclusive) – not less than—
 - (aa) 5% for a large format film;
 - (bb) 15% for a feature film;
 - (cc) 20% for broadcast television programmes;
 - (dd) 25% for a direct to video programme or video disk programme; and

- (ee) 15% for an audio recording or a computer software.
 - (ii) for an audio-visual production which commences production between [1st January 2007 and 31st December 2010]^{xiii} (both dates inclusive) – not less than—
 - (aa) 25% for a large format film;
 - (bb) 35% for a feature film;
 - (cc) 40% for broadcast television programmes;
 - (dd) 45% for a direct to video programme or video disk programme; and
 - (ee) 30% for an audio recording or a computer software;
 - (iii) for an audio-visual production which commences production on or after 1st January 2009 – not less than 45%; and
- (c) one of the following levels of expenditure has been, or is budgeted to be, spent in the Fiji Islands —
- (i) for an audio-visual production which commences production between [1st January 2001 and 31st December 2006]^{xiii} (both dates inclusive) – not less than—
 - (aa) 35% for a large format film, a feature film or broadcast television programmes;
 - (bb) 40% for a direct to video programme or video disk programme; and
 - (cc) 45% for an audio recording or a computer software;
 - (ii) for an audio-visual production which commences production between [1st January 2007 and 31st December 2010]^{xiv} (both dates inclusive) – not less than—
 - (aa) 45% for a large format film, a feature film or broadcast television programmes;
 - (bb) 55% for a direct to video programme or video disk programme; and

- (cc) 60% for an audio recording or a computer software;
- (iii) for an audio-visual production which commences production on or after [1st January 2011]^{xv} not less than—
 - (aa) 55% for a large format film, a feature film or a broadcast television programmes;
 - (bb) 65% for a direct to video programme or video disk programme; and
 - (cc) 65% for an audio recording or a computer software.

Criteria for determining Fiji Islands content of AVP

- 38.** In determining whether an F1 or F2 AVP has, or will have, significant and substantial Fiji Islands content for the purposes of it being a qualifying audio-visual production, the FAVC 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 the FAVC considers relevant.

*Division 5 – DEDUCTIONS FOR CAPITAL EXPENDITURE ON
AUDIO-VISUAL PRODUCTIONS*

Deduction for capital expenditure

39. Subject to this Division, if a taxpayer during a year of assessment expends monies of a capital nature, under a contract entered into on or after 1st January 2001, by way of contribution to the audio-visual production costs in respect of a qualifying audio-visual production, and—

- (a) at the time when the monies were expended a provisional certificate or a final certificate was in force in relation to the audio-visual production;
- (b) the Commissioner is satisfied that, when the monies were expended—
 - (i) the taxpayer expected to become the first owner, or one of the first owners, in the copyright in the audio-visual production when the copyright came into existence; and
 - (ii) the taxpayer intended to use that copyright, or the taxpayer's interest in that copyright, for the purpose of producing income from the commercial exploitation of the copyright;
- (c) by reason of the monies being expended, the taxpayer became the first owner, or one of the first owners, of the copyright in the audio-visual production ; and
- (d) either of the following conditions is applicable—
 - (i) the taxpayer has used the copyright, or the taxpayer's interest in the copyright, for the purpose of producing income from the commercial exploitation of the copyright;
 - (ii) the taxpayer derived income under an agreement entered into before the copyright came into existence under which the taxpayer agreed, upon the copyright coming into existence, to grant rights to another person to exploit the copyright in a commercial manner,

an amount must 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

40. If, in relation to a qualifying audio-visual production to which paragraph 39 otherwise applies, a taxpayer dies before copyright in the audio-visual production comes into existence and either of the following conditions is satisfied—

- (a) before the taxpayer died, the taxpayer derived income under an agreement under which the taxpayer agreed, upon the copyright coming in to existence, to grant rights to another person to commercially exploit the copyright; or
- (b) the Commissioner is satisfied that, if the taxpayer had not died—
 - (i) the taxpayer would have become the first owner, or one of the first owners, in the copyright in the audio-visual production by reason of the monies having been expended; and
 - (ii) the taxpayer would have used that copyright or the taxpayer's interest in that copyright for the purpose of producing income from the commercial exploitation of that copyright,

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

41. A taxpayer, being a production entity, which is a licensee for the purposes of Division 7, may not claim a deduction under this Division.

Division 6 – TAXATION OF AUDIO-VISUAL INCOME

Tax exemption of income derived from qualifying AVP

42. Subject to paragraph 43, if a taxpayer expends monies of a capital nature, under a contract entered into on or after 1st January 2001, by way of contribution to the audio-visual production costs in respect of a qualifying audio-visual production, the income derived by the taxpayer from the commercial exploitation of the copyright is exempt from tax until the taxpayer has received, from the commercial exploitation, 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

43. A taxpayer who sells a copyright interest in an audio-visual production, in respect of which a deduction under Division 5 has been claimed, must include the gross receipts of the sale in total income.

Division 7 – STUDIO CITY ZONE

Definitions

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

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

“applicant for the zone”^{xvii} means a sole proprietor, a partnership or a company which makes an application for a declaration by the Minister pursuant to subparagraph 45(5);

“audio-visual operating licence” means a licence issued under paragraph 49;

“company”^{xviii} means a company incorporated in the Fiji Islands carrying on a business of production activity in the Fiji Islands 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”^{xix} means a partnership of 2 or more residents carrying on a business of production activity in the Fiji Islands and which has as its exclusive operating location the studio city zone or temporary studio city zone;

“production activity”^{xx} 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) an audio recording;

- (f) computer software; and
- (g) interactive websites and other e-commerce and telecommunications operations;

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

Minister may declare studio city zone

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

(2)^{xxii} 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 accomodation, 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.

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

(3)^{xxiii} 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)^{xxiv} 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]^{xxv}.

(6)^{xxvi} The Minister may within the next 5 years declare more than one temporary studio city zone.

- (7)^{xxvii} A temporary studio city zone may be used as an interim facility for up to 10 years from the date that the temporary studio city zone was first declared by the Minister.

- FAVC may approve application for operating licence in studio city zone*
46. The FAVC may approve, in accordance with this Division, an application by a sole proprietor, a partnership or a company 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]^{xxviii}.

Method of application

47. An application under paragraph 46 must be—
- (a) made to the FAVC in writing in the prescribed form and accompanied by the prescribed fee;
 - (b) signed by or on behalf of the applicant; and
 - (c) accompanied by such information as the FAVC requires.

FAVC to consider and decide applications

- 48.—(1) If an application is made under paragraph 46, the FAVC must consider it and may approve or refuse the application.
- (2) The FAVC must not approve an application unless it is satisfied that—
- (a)^{xxix} the applicant has either entered into a contract to operate from facilities in the studio city zone and will engage in a production activity; or the applicant has been granted the right to operate in a temporary studio city zone under paragraph 45 and will engage in a production activity.
 - (b) the applicant's production activity will generate employment opportunities for the people of the Fiji Islands; and
 - (c) the applicant's production activity will enhance, expand and improve the technological and trading capability and capacity of the economy of the Fiji Islands.
- (3) The FAVC may approve an application subject to the applicant complying with any other condition the FAVC considers to be appropriate.

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

49. The FAVC must—
- (a) if it approves an application – issue an audio-visual operating licence, including any conditions imposed by it; or

- (b) if it refuses the application – give written notice to the applicant of its refusal of the application.

FAVC may vary conditions of audio-visual operating licence

50.—(1) The FAVC, may, of its own accord, or upon the written request of a licensee, if it considers it appropriate in the circumstances, vary the conditions of an audio-visual operating licence.

- (2) The FAVC must, by written notice, inform a licensee of a 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.

FAVC may approve transfer of audio-visual operating licence

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

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

(3) The FAVC may -

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

(4) The FAVC 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 paragraph 48(2).

(5) The FAVC must give written notice to the licensee of its decision under subparagraph (3).

FAVC may revoke an audio-visual operating licence

52.—(1) The FAVC 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 this Act, the Value Added Tax Decree 1991 or the Customs Act 1986.

- (2) If the FAVC gives written notice under subparagraph (1), it must inform the licensee of the licensee's right to make representations to the FAVC on or before a date specified by the FAVC, being not less than 21 days from the day that notice is given under subparagraph (1).
- (3) If a licensee makes representations under subparagraph (2), the FAVC must consider them and may by written notice to the licensee, withdraw its notice under subparagraph (1).
- (4) If the FAVC does not withdraw its recommendation in accordance with subparagraph (3), or the licensee does not make any representations by the specified date the FAVC 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 licences

- 53.—(1)** The FAVC 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 the FAVC's principal office and be open to inspection during the times the FAVC directs, subject to the payment of the prescribed fee for each inspection.

Transfer must be registered within 7 days

- 54.** If an audio-visual operating licence is transferred under paragraph 51, 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

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

Non-AVP and distribution income subject to tax

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

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

- 57.—(1) In respect of any business activity carried out pursuant to this Division and notwithstanding any other provision of this Act, tax must be assessed, levied and paid, at the rate set out in subparagraph (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 subsection (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 –2½%.

Division 8 – TAXATION CONCESSIONS TO RESIDENTS OF THE STUDIO CITY ZONE

Definitions

58. 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]^{xxx} including contracted fees, wages, royalties and distributions of profits from AVPs [or production activities]^{xxxi} but does not include any income from an AVP in respect of which a deduction has been claimed under Division 5; and
- (b) income from sports performances including prize money, performance fees and endorsements.

FAVC may approve individuals for studio city zone benefits

59.—(1) The FAVC may approve an individual to enjoy the benefits specified in subparagraph (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 the FAVC under subparagraph (1) are exempt from tax.

Applications by non-citizens

60. An application under this Division by an individual who is not a citizen must be made in writing to the FAVC 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 the Fiji Islands;
- (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) pre-tax 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

61. An individual, who is not a citizen, approved by the FAVC is not eligible to claim in a year of assessment the tax exemption under paragraph 64(1) 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 Commissioner confirmation and certification by a chartered accountant holding a certificate of public practice of—

- (i) pre-tax 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 citizens

62. An application under this Division by a citizen must be made in writing to the FAVC 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) pre-tax 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 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

63. An individual, who is a citizen, approved by the FAVC is not eligible to claim in a year of assessment the tax exemption under paragraph 59(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 citizen 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) pre-tax audio-visual earnings in excess of \$100,000 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 \$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.

FAVC must consider and decide application

- 64.**—(1) The FAVC must consider an application made under paragraph 60 or 62 for tax exemption and may approve or refuse the application for tax exemption.
- (2) The FAVC must not approve an application unless -
- (a) it is satisfied that it is expedient for the development of the audio-visual industry in the Fiji Islands;
 - (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.
- (2) The FAVC must give written notice to an applicant of its decision under subparagraph (1).

PART IV – FILM TAX REBATE^{xxxii}

Table of Divisions

- 1 Guide to Part IV
- 1A Definitions
- 2 Tax rebate for Fiji Islands expenditure in making a film
- 3 Production expenditure and qualifying Fiji Islands production expenditure
- 4 Certificates for films
- 5 Review of operation of this Part
- 6 Tax Rebate Rules

Division 1—GUIDE TO PART IV

What this Part is about

- 65-1.** This Part gives a film company a tax rebate for certain Fiji Islands production expenditure the company incurs on the film production but only if that expenditure exceeds a certain amount.

Structure of this Part

- 65-2.** – (1) Division 1A defines various terms used in this Part.
- (2) Division 2 tells you who can get the tax rebate for a film and what conditions must be met to get the rebate. It also tells you how to work out the amount of the rebate.
- (3) Division 3 explains what is meant by –
- (a) production expenditure on a film; and
 - (b) qualifying Fiji Islands production expenditure on a film.
- It also contains some rules for quantifying expenditure.
- (4) Division 4 deals with a number of administrative matters –
- (a) applying for a certificate for a film;
 - (b) the issue and revocation of a certificate for a film; and
 - (c) the making of rules by the FAVC.
- (5) Division 5 deals with a review of the operation of this Part.
- (6) Division 6 deals with Tax Rebate Rules.

Division 1A—DEFINITIONS

Definitions

- 65-3.** – (1) In this Part, unless the context otherwise requires—
- “broadcast television programmes” has the meaning given by paragraph 11 in Part III;
- “completed” in relation to a film , has the meaning given by paragraph 65-15(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;
- “large format film” has the meaning given by paragraph 11 in Part III;
- “make”, in relation to a film, has the meaning given by subparagraphs 65-25(2), (3) and (4);
- “production expenditure” has the meaning given by paragraphs 65-25 to 65-35;
- “qualifying Fiji Islands production expenditure” has the meaning given by paragraphs 65-40 to 65-55;
- “short film” has the meaning given by paragraph 11 in Part III.

Division 2—TAX REBATE FOR FIJI ISLANDS EXPENDITURE IN MAKING A FILM

Table of paragraphs

- 65-5 Film production company entitled to tax rebate
- 65-10 Amount of tax rebate
- 65-15 FAVC may issue certificate for a film
- 65-20 Company may nominate one person whose remuneration is to be disregarded

Film production company entitled to tax rebate

- 65-5.** (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; and
 - (b) the FAVC, with the concurrence of the Minister, has issued a certificate to the company for the film under paragraph 65-15; and
 - (c) the company claims (which are irrevocable) the rebate in its income tax return for the income year; and
 - (d) the company –
 - (i) is a Fiji Islands resident; or
 - (ii) is not a Fiji Islands 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 the Fiji Islands and it is not associated with any company

or individual with substantial holdings in a broadcast licence in the Fiji Islands; or

(ii) a theatrical exhibitor in the Fiji Islands and it is not associated with any company or individual with substantial holdings in a theatre or group of theatres in the Fiji Islands.

- (2) The company or any other person is not entitled to the tax rebate if –
- (a) an application has been made under Part II of the Sixth Schedule to the Income Tax Act; or
 - (b) a provisional or final certificate for the film has been issued at any time under Part III of the Sixth Schedule to the Income Tax Act (whether or not the certificate is still in force).

Amount of tax rebate

- 65-10.** – (1) Subject to subparagraph (2), the amount of the tax rebate is 15% of the total of the company's qualifying Fiji Islands production expenditure on the film (worked out using Division 3).
- (2) If the qualifying Fiji Islands production expenditure on the film exceeds \$25 million, the maximum allowable tax rebate is \$3.75 million.

FAVC may issue certificate for a film

- 65-15.** – (1) The FAVC 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 Islands resident or
 - (ii) is not a Fiji Islands resident but lodges an income tax return for the purpose of claiming the tax rebate under this Part; and
 - (b) the film has been completed and was completed on or after 1 January 2003 (and no qualifying expenditure was incurred prior to 1 January 2003); and
 - (c) the film was produced for –
 - (i) exhibition to the public in cinemas; or
 - (ii) exhibition to the public by way of television broadcasting or pay television; or
 - (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; and
 - (d) the film is –
 - (i) a large format film or a feature film or a short film; or
 - (ii) a broadcast television programme including television movies, mini series, drama series, situation comedy series, documentaries and documentary series, educational

programmes and series, animation series and current affairs series; [or]^{xxxiii}

(iii)^{xxxiv} a film for exhibition as an advertising programme or a commercial.

(e)^{xxxv}

(f) the total of the company's qualifying Fiji Islands production expenditure on the film (worked out using Division 3) is at least [\$250,000]^{xxxvi}; and

(g) if the total of the company's qualifying Fiji Islands production expenditure on the film is less than \$25 million –

(i) the total of the company's qualifying Fiji Islands production expenditure on the film is at least 35% of the total of all the company's production expenditure on the film; and

(ii) the company either carried out, or made the arrangements for the carrying out of, all the activities that were necessary for the making of the film; and

(iii) the company is the only company that satisfies sub-paragraph (g)(ii) in relation to the film; and

(h) if the total of the company's qualifying Fiji Islands production expenditure on the film is at least \$25 million –

(i) the company either carried out, or made the arrangements for the carrying out of, all the activities in the Fiji Islands that were necessary for the making of the film; and

(ii) the company is the only company that satisfies sub-paragraph (h)(i) in relation to the film; and

(i) the film is not culturally derogative in its portrayal of the Fiji Islands or the people of the Fiji Islands.

(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.

Company may nominate one person whose remuneration is to be disregarded

65-20. – (1) In its application for the certificate under paragraph 65-15, the company may nominate one person as a person to whom this paragraph applies.

(2) If the company nominates a person under subparagraph (1), the following are to be disregarded for the purposes of this Part –

(a) the remuneration and other benefits provided to the person for the person's services in relation to the making of the film;

(b) travel and other costs associated with the services the person provides in relation to the making of the film.

***Division 3—PRODUCTION EXPENDITURE AND QUALIFYING FIJI ISLANDS
PRODUCTION EXPENDITURE***

Table of paragraphs

Production expenditure

- 65-25 Production expenditure—general test
- 65-30 Production expenditure—special qualifying Fiji Islands production expenditure
- 65-35 Production expenditure—specific exclusions

Qualifying Fiji Islands production expenditure

- 65-40 Qualifying Fiji Islands production expenditure—general test
- 65-45 Qualifying Fiji Islands production expenditure—specific inclusions
- 65-50 Qualifying Fiji Islands production expenditure—specific exclusions
- 65-55 Qualifying Fiji Islands production expenditure—treatment of services embodied in goods

Expenditure generally

- 65-60 Expenditure to be worked out in Fiji dollars
- 65-65 Expenditure to be worked out on an arm's length basis
- 65-70 Expenditure incurred by prior production companies

Production expenditure

Production expenditure—general test

- 65-25.** – (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; and
 - (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; or
 - (b) arranging or obtaining finance for the film; or
 - (c) distributing the film; or
 - (d) promoting the film.
- (5) Without limiting subparagraph (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; and
 - (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 paragraph 65-35.
- (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 Islands production expenditure

65-30. Expenditure of a company is also production expenditure of the company on a film if it is qualifying Fiji Islands production expenditure of the company on the film under paragraph 65-45.

Production expenditure—specific exclusions

65-35. Notwithstanding paragraphs 65-25 and 65-30, 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

Item **This kind of expenditure by the company is not production expenditure –** **except to the extent to which the expenditure is –**

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 Islands production expenditure under item 1 in the table in paragraph 65-45(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 Islands production expenditure under item 2 in the table in paragraph 65-45(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 Islands production expenditure under item 3 in the table in paragraph 65-45(1)

5	<p><i>Publicity and promotion expenditure</i></p> <p>expenditure incurred in publicising or otherwise promoting the film (including press expenses, still photography, videotapes, public relations and other similar expenses)</p>	<p>qualifying Fiji Islands production expenditure under item 4 in the table in paragraph 65-45(1)</p>
6	<p><i>Deferments</i></p> <p>amounts that are payable only out of the receipts, earnings or profits from the film</p>	
7	<p><i>Profit participation</i></p> <p>amounts that:</p> <p>(a) depend on the receipts, earnings or profits from the film; or</p> <p>(b) are otherwise dependent on the commercial performance of the film</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>	<p>paid out by the company before the film is completed</p>
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	<p><i>Acquisition of depreciating asset</i></p> <p>expenditure to the extent to which it sets, or increases, the cost of a depreciating asset</p> <p>This item has effect subject to paragraph 65-25(6).</p>	<p>qualifying Fiji Islands production expenditure under item 2 in the table in paragraph 65-45(1)</p>

-
- 11 *Regulations*
expenditure specified in
regulations
-

Qualifying Fiji Islands production expenditure

Qualifying Fiji Islands production expenditure—general test

- 65-40.** A company's qualifying Fiji Islands 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 the Fiji Islands [and which is paid for from a Fiji bank account]^{xxxvii}; or
 - (b) [the use of land in the Fiji Islands and payment for which is made from a Fiji bank account]^{xxxviii}; or
 - (c) the use of goods that are located in the Fiji Islands at the time they are used in the making of the film [and which is paid for from a Fiji bank account]^{xxxix}.

Qualifying Fiji Islands production expenditure—specific inclusions

- 65-45.** – (1) The following expenditure of a company is also qualifying Fiji Islands production expenditure of the company on a film –

Special Fiji Islands expenditure

Item	Type of expenditure
-------------	----------------------------

- | | |
|---|---|
| 1 | <i>Fiji Islands development expenditure</i>
development expenditure on the film to the extent to which it is incurred for, or is reasonably attributable to – <ul style="list-style-type: none">(a) goods and services provided in the Fiji Islands [and, paid for from a Fiji bank account]^{xl}; or(b) the use of land located in the Fiji Islands [and payment for which is made from a Fiji bank account]^{xli}; or(c) the use of goods that are located in the Fiji Islands at the time they are used in the making of the film [and, paid for from a Fiji bank account]^{xlii} |
| 2 | <i>Expenditure incurred in acquiring Fiji Islands copyright</i>
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 |
-

Special Fiji Islands expenditure

Item Type of expenditure

- 3 *Fiji Islands business overheads*
subject to subparagraph (3), 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;
to the extent to which they –
(c) are incurred for, or are reasonably attributable to –
 (i) goods and services provided in the Fiji Islands [and, paid for from a Fiji bank account]^{xliii}; or
 (ii) the use of land located in the Fiji Islands [and payment for which is made from a Fiji bank account]^{xliv}; or
 (iii) the use of goods that are located in the Fiji Islands at the time they are used in the making of the film [and paid for from a Fiji bank account]^{xlv}; and
(d) represent a reasonable apportionment of those overheads between the making of the film and the other activities undertaken by the company
-
- 4 *Expenditure incurred in producing Fiji Islands copyrighted promotional material*
expenditure incurred in producing material for use in publicising or otherwise promoting the film if the copyright in the material is held by a qualified person under the Copyright Act 1999
-
- 5 *Travel to the Fiji Islands*
expenditure of the company in relation to a person's travel to the Fiji Islands to undertake activities in the Fiji Islands in relation to the making of the film if the remuneration paid to the person for those activities is qualifying Fiji Islands production expenditure of the company
-
- 6 *Regulations*
expenditure prescribed by the regulations
-
- (2) Legal costs will be covered by item 1 in the table in subparagraph (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 subparagraph (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) [\$FD500, 000]^{xlvi}.

Qualifying Fiji Islands production expenditure—specific exclusions

65-50. Notwithstanding paragraphs 65-40 and 65-45, the following expenditure of a company is not qualifying Fiji Islands 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 –
 - (iii) is not a member of the cast; and
 - (iv) enters the Fiji Islands to work on the film for less than two consecutive calendar weeks;
- (c) expenditure prescribed by the regulations.

Qualifying Fiji Islands production expenditure—treatment of services embodied in goods

65-55. 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 the Fiji Islands;

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

Expenditure generally

Expenditure to be worked out in Fiji dollars

65-60. – (1) Expenditure that is incurred in foreign currencies is to be converted into Fiji dollars for the purposes of quantifying both –

- (a) the total of all of a company’s production expenditure on a film; and
- (b) the total of the company’s qualifying Fiji Islands 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

65-65. 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

- 65-70.** – (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 paragraphs 65-15(1)(g)(ii) and 65-15(1)(h)(i), to have been carried out or made by the incoming company in relation to the film.
- (2) For the purposes of subparagraph (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 subparagraph (1); and
 - (b) activities carried out by the outgoing company in relation to the film include activities that the outgoing company is taken to have carried out in relation to the film because of the operation of subparagraph (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 subparagraph (1).

Division 4—CERTIFICATES FOR FILMS

Table of paragraphs

65-75	Production company may apply for certificate
65-80	Refusal to issue certificate
65-85	Issue of certificate
65-90	Revocation of certificate

- 65-95 Notice of decision
- 65-100 Review of decisions by the High Court
- 65-105 FAVC may make rules

Production company may apply for certificate

- 65-75.** – (1) Once a film is completed, a company may apply to the FAVC for the issue of a certificate to the company for the film under paragraph 65-15.
- (2) The application must be made in accordance with the rules determined by the FAVC under paragraph 65-105 so far as they relate to the requirements for applications.

Refusal to issue certificate

- 65-80.** If the FAVC, with the concurrence of the Minister, decides not to issue a certificate for a film, the FAVC must give the applicant written notice of the decision and reasons for the decision.

Issue of certificate

- 65-85.** – (1) A certificate issued to a company under paragraph 65-15 must be in writing.

The FAVC must give the Fiji Islands Revenue and Customs Authority notice of the issue of a certificate for a film within 30 days after issuing the certificate

- (2) The notice under subparagraph (2) must –
- (a) specify the company's name and address; and
 - (b) be accompanied by a copy of the certificate issued under paragraph 65-15; and
 - (c) specify other matters agreed to between the FAVC and the Fiji Islands Revenue and Customs Authority.

Revocation of certificate

- 65-90.** – (1) The FAVC may, with the concurrence of the Minister, revoke a certificate issued to a company for a film under paragraph 65-15 if FAVC is satisfied that the issue of the certificate was obtained by fraud or serious misrepresentation.
- (2) If the FAVC revokes a certificate under subparagraph (1), the FAVC 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 subparagraph (1), it is taken, for the purposes of this Part, never to have been issued.
- (4) Subparagraph (3) does not apply for the purposes of –
- (a) the operation of this paragraph or paragraph 65-95; or
 - (b) a review by the High Court of the decision to revoke the certificate.

Notice of decision

- 65-95.** – (1) This paragraph applies to a notice of a decision given under paragraph 65-80 or 65-90.
- (2) The notice of the decision is to include the statements set out in subparagraph (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

- 65-100.** Applications may be made to the High Court for review of –
- (a) a decision made by the FAVC to refuse an application for a certificate under paragraph 65-15; or
- (b) a decision made by the FAVC under paragraph 65-90 to revoke a certificate.

FAVC may make rules

- 65-105.** – (1) The FAVC may, by notice in the *Gazette*, make rules –
- (a) for it –
- (i) to consider applications under paragraph 65-75; 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 the FAVC 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 the FAVC’s request, additional information in support of an application.
- (2) Rules under subparagraph (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

- 65-110.** – (1) The FAVC must cause a review of the operation of this Part to be conducted and completed before 1 January 2008 and thereafter at the end of every five year unless the Cabinet directs otherwise.
- (2) The review –

- (a) must include –
- (i)^{xlvii} an evaluation of the success of the tax rebate provided for by this Part as an incentive for attracting audio visual production to the Fiji Islands, taking into account the net cost of the rebate; and
 - (ii)^{xlviii} an assessment of the impact of the tax rebate on the Fiji Islands 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 the FAVC a written report of the review.
- (4) Within three months of receipt by the FAVC of the written report of the review, the FAVC must submit a copy to the Minister for tabling in both Houses of Parliament.

Division 6—TAX REBATE RULES

Tax rebate amount

- 65-115.**-(1) A company entitled to a tax rebate under paragraph 65-5 must complete and lodge a return of income with the Fiji Islands Revenue and Customs Authority for the relevant year in which the production was complete.
- (2) The company that is entitled to a tax rebate under paragraph 65-5 may use that tax rebate as a rebate or credit against any tax due and payable by that company in the Fiji Islands 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 the Fiji Islands Revenue and Customs Authority.

ⁱ Inserted by §19 Act 21/1980 WEF 1st January 1980: Previous insertion repealed and replaced by §6 Decree 4/2001 WEF 1st January 2001. New insertion repealed and replaced by §7 Act 2/2002 WEF 18th May 2001.

ⁱⁱ Repealed and substituted by §2(a) Act 3/2003 WEF 1st January 2003 – previously read:

“Prescription of forms and fees

The FAVC may, with the concurrence of the Minister, prescribe by regulations forms and fees payable for the purposes of this Schedule.”

ⁱⁱⁱ Substituted for “matters” by §2(a) Act 6/2004 WEF 1st January 2004

^{iv} Deleted “, and includes a temporary studio city zone” by §2(b) Act 6/2006 WEF 1st January 2004

^v Repealed and substituted by §20(a) Act 1/2003 WEF 1st January 2003 - previously read:

“(f) computer software; and”

^{vi} Repealed and substituted by §20(b) Act 1/2003 WEF 1st January 2003 - previously read:

“(g) interactive websites and other e-commerce and telecommunications operations.”

^{vii} Inserted by §21 Act 1/2003 WEF 1st January 2003

^{viii} Substituted for “1st January 2001 and 31st December 2004” by §2(c) Act 6/2004 WEF 1st January 2004

^{ix} Substituted for “1st January 2005 and 31st December 2008” by §2(d) Act 6/2004 WEF 1st January 2004

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- ^x Substituted for “1st January 2009” by §2(e) Act 6/2006 WEF 1st January 2004
- ^{xi} Substituted for “1st January 2001 and 31st December 2004” by §2(f) Act 6/2004 WEF 1st January 2004
- ^{xii} Substituted for “1st January 2005 and 31st December 2008” by §2(g) Act 6/2004 WEF 1st January 2004
- ^{xiii} Substituted for “1st January 2001 and 31st December 2004” by §2(i) Act 6/2004 WEF 1st January 2004
- ^{xiv} Substituted for “1st January 2005 and 31st December 2008” by §2(j) Act 6/2004 WEF 1st January 2004
- ^{xv} Substituted for “1st January 2009” by §2(k) Act 6/2004 WEF 1st January 2004
- ^{xvi} Substituted by §10(a) Act 4/2006 WEF 1st January 2006 – previously read:
 ““applicant” means a sole proprietor, a partnership or a company which makes an application for an audio-visual operating licence;”
- ^{xvii} Inserted by §10(a) Act 4/2006 WEF 1st January 2006
- ^{xviii} Substituted by §10(a) Act 4/2006 WEF 1st January 2006 – previously read:
 ““company” means a company incorporated in the Fiji Islands carrying on a business of audio-visual production or supplying services to audio-visual productions in the Fiji Islands and which has as its primary operating location the studio city zone or temporary studio city zone;”
- ^{xix} Substituted by §10(a) Act 4/2006 WEF 1st January 2006 – previously read:
 ““partnership” means a partnership of 2 or more residents carrying on a business in the Fiji Islands of audio-visual production or supplying services to audio-visual productions in the Fiji Islands and which has as its primary operating location the studio city zone or temporary studio city zone”
- ^{xx} Repealed and substituted by §22 Act 1/2003 WEF 1st January 2003 - previously read:
 ““production activity” means any activity in the production, world-wide distribution, conduct of business or supply of services to the production of audio-visual productions in the Fiji Islands;”
- ^{xxi} Substituted by §10(a) Act 4/2006 WEF 1st January 2006 – previously read:
 ““sole proprietor” means a resident carrying on a business in the Fiji Islands of audio-visual production or supplying services to audio-visual productions in the Fiji Islands and whose business has as its primary operating location the studio city zone.”
- ^{xxii} Repealed and substituted by §2(o) Act 6/2004 WEF 1st January 2004 - previously read:
 “(2) Subject to the issue of a licence required under any written law, a studio city zone may be declared for the purposes of the development of infrastructure, services and resources for the audio-visual industry and tourist attractions, hotels, residential accommodation, sporting facilities and amusement parks.”
- ^{xxiii} Repealed and substituted by §2(p) Act 6/2004 WEF 1st January 2004 - previously read:
 “(4) The Minister may not declare more than one studio city zone at any time.”
- ^{xxiv} Repealed and substituted by §2(q) Act 6/2004 WEF 1st January 2004 - previously read:
 “(5) The Minister may declare, by notice published in the *Gazette*, any area of land (including any buildings situated or erected on that land) in the Fiji Islands to be a temporary studio city zone for the purposes of this Part in order that the land (and buildings) may be used by a licensee as an interim facility prior to the construction and completion of the relevant facility in the studio city zone.”
- ^{xxv} Substituted for “be used by a licensee for the purposes of developing infrastructure, services and resources for the audio visual industry” by §10(b) Act 4/2006 WEF 1st January 2006
- ^{xxvi} Repealed and substituted by §2(r) Act 6/2004 WEF 1st January 2004 - previously read:
 “(6) A temporary studio city zone ceases upon the completion of the studio city zone in respect of which the temporary studio city zone is used as an interim facility.”
- ^{xxvii} Inserted by §2(r) Act 6/2004 WEF 1st January 2004
- ^{xxviii} Inserted by §2(s) Act 6/2004 WEF 1st January 2004

^{xxxix} Repealed and substituted by §2(t) Act 6/2004 WEF 1st January 2004 - previously read:

“ (a) the applicant has entered into a contract to operate from facilities in the studio city zone and will engage in a production activity.”

^{xxx} Inserted by §24 Act 1/2003 WEF 1st January 2003

^{xxxix} Inserted by §24 Act 1/2003 WEF 1st January 2003

^{xxxix} Inserted by §2(b) Act 3/2003 WEF 1st January 2003

^{xxxiii} Substituted for “and” by §3(a) Act 6/2004 WEF 1st January 2004

^{xxxiv} Inserted by §3(a) Act 6/2004 WEF 1st January 2004

^{xxxv} Repealed by §3(b) Act 6/2004 WEF 1st January 2004 – previously read:

“(e)the film is not, or is not to a substantial extent –

- (i) a film for exhibition as an advertising programme or a commercial; or
- (ii) a film for exhibition as a discussion programme, a quiz programme, a panel programme, a variety programme or a programme of a like nature; or
- (iii) a film of a public event; or
- (iv) a training film; and”

^{xxxvi} Substituted for “\$50,000” by §3(c) Act 6/2004 WEF 1st January 2004

^{xxxvii} Inserted by §10(c)(i) Act 4/2006 WEF 1st January 2006

^{xxxviii} Deleted and substituted by §10(c)(ii) Act 4/2006 WEF 1st January 2006 – previously read:

“the use of land located in the Fiji Islands”

^{xxxix} Inserted by §10(c)(iii) Act 4/2006 WEF 1st January 2006

^{xl} Inserted by §10(d)(i) Act 4/2006 WEF 1st January 2006

^{xli} Inserted by §10(d)(ii) Act 4/2006 WEF 1st January 2006

^{xlii} Inserted by §10(d)(iii) Act 4/2006 WEF 1st January 2006

^{xliii} Inserted by §10(d)(iv) Act 4/2006 WEF 1st January 2006

^{xliiv} Inserted by §10(d)(v) Act 4/2006 WEF 1st January 2006

^{xliv} Inserted by §10(d)(vi) Act 4/2006 WEF 1st January 2006

^{xlvi} Editorial note – there appears to be a typographical error. Substituted for “\$500,000” by §10(d)(vii) Act 4/2006 WEF 1st January 2006

^{xlvii} An editorial change was done when updating this Act. Instead of “(i)”, “(3)” was actually gazetted. The editorial change is made to allow easier reading of the text.

^{xlviii} An editorial change was done when updating this Act. Instead of “(ii)”, “(4)” was actually gazetted. The editorial change is made to allow easier reading of the text.