

Le Roux Film Productions International

DTI FILM INCENTIVE – EXECUTIVE SUMMARY

June 2015

The purpose of this document is to provide an overview of the Film & Television Production Incentive (“rebate”) available from the Department of Trade & Industry South Africa (“DTI”). The areas covered are as follows:

- Type of rebate
- Calculation of rebate
- Qualifying criteria
- Payment of rebate
- Definitions
- The application process
- Cash-flowing the rebate – Moonlighting film fund
- Timing of rebate payment and Moonlighting track record

Type of Rebate

There are two distinct rebate programs:

1. Foreign film Rebate – this relates to projects where the South African production company provides facilitation services but does not own any rights in the production.

Foreign film rebates are subject to a R50m cap per project.

2. South African Rebate / Co-Production Rebate (“SA Rebate”) – this relates to projects that qualify as either South African films or as official SA Treaty Co-Productions. South Africa has Co-Production treaties with UK, Ireland, Germany, France, Italy, Canada, Australia and New Zealand.

SA Rebate / Co-pro rebates are uncapped.

Rebate calculation

1. Foreign film Rebate - is calculated as follows:
 - Where SA spend is > R12m (\$1m) and SA Post Production spend is < R1.5m (\$125k): Rebate is 20% of SA spend.

- Where SA spend is > R12m (\$1m) and SA Post Production spend is > R1.5m (\$125k): Rebate is **22.5%** of SA spend.
 - Where SA spend is > R12m (\$1m) and SA Post Production spend is > R3m (\$250k): Rebate is **25%** of SA spend.
2. SA Rebate - is calculated at 35% on first R6million (\$500k) of SA spend and 25% on the balance of SAA spend.

SUMMARY OF FOREIGN FILM REBATE

Where SA spend is	And SA Post is	The Rebate is:
> R12m (\$ 1m)	< R1.5m (\$ 125k)	20% of SA spend
> R12m (\$ 1m)	> R1.5m (\$ 125k)	22.5% of SA spend
> R12m (\$ 1m)	> R3m (\$ 250k)	25% of SA spend

The foreign film rebate is capped at R50m (\$4.17m) per project; the SA / Co-pro rebate is not subject to a cap.

Qualifying criteria

In order to qualify for the rebate the following eligibility criteria must be met:

- Minimum spend:
 - Foreign Film Rebate: R12m (\$ 1m)
 - SA Rebate: R2.5m (\$ 208k)
- Minimum shoot:
 - Foreign Film Rebate: at least 4 weeks **and** at least 50% of total shoot must take place in SA
 - SA Rebate: at least 2 weeks **and** at least 50% of total shoot must take place in SA

Where SA spend exceeds R100m (\$ 8.33m) it is possible for the SA shoot rule to be waived at the discretion of the DTI.

- SPV: the applicant must be a special purpose vehicle set up solely for the project.
- Eligible formats include feature films, telemovies, episodic television / mini-series, documentaries, animation, digital content and gaming.

- Speculative projects are not eligible for the rebate. Speculative projects are defined as projects where work done 1) with no defined goal for broadcast or distribution and 2) is not commissioned.
- Broad-based Black Economic Empowerment (“B-BBEE”) – the DTI requires both the SPV and the parent company to achieve a minimum level of compliance with regard to B-BBEE (Level 4).
- The final application must include a DVD of the final film, including the end-crawl.
- The DTI requires an end-credit, which must include its official logo.
- A feature film must be no less than 80 minutes in length and a television series may be no more than 26 episodes of one hour each.
- For the SA rebate, the over-arching requirement is that the project qualifies as either a SA film or as a SA Co-Production under an official Co-Production treaty. Co-production certification is administered by another government body known as the National Film and Video Foundation (“NFVF”). Please refer to the Co-Production Executive Summary for an overview of South African Treaty Co-Productions.

Payment of rebate

- Foreign Film Rebate - the DTI pays the rebate upon completion of the production (completion is defined as the date upon which the project is ready for distribution / exhibition / broadcast).
- SA Rebate – as above, however where the film is bonded the DTI will pay the SA Rebate in milestones during the production process, as follows:

% of rebate	Milestone
20%	Confirmation of Completion Bond
20%	Start of principal photography
20%	Completion of principle photography
20%	Picture lock
20%	Submission of the Final Application

Definition of QSAPE

The rebate is payable on Qualifying South African Production Expenditure, which is known as “QSAPE”.

QSAPE is defined as production expenditure on goods and services provided by South African companies and / or South African individuals. However, this is subject to the following exclusions:

- Crew / cast who do not hold valid SA identity documents.
- Gifts, entertainment (e.g. wrap party), gratuities, fines.
- Any transaction where the funds paid by the SA production company are ultimately remitted abroad (i.e. this is to avoid instances where a “middle-man” is used to create QSAPE but the ultimate beneficiary is a non-SA entity).
- Finance costs and Executive Producer fees.
- General business overheads (i.e. non-direct production costs) – may only claim up to R200k.
- South African Producer fees – may only claim up to R1million (\$ 83k).
- Connected party fees – may only claim up to R1million (\$ 83k).
- Deferments and advances – any expenditure or payment that is dependent on the film’s commercial performance is excluded.
- Assets – the cost of assets must be reflected net of proceeds on disposal, and any assets not disposed of may not be included in QSAPE (sets may be claimed if they are struck at the end of production).
- Services embodied in goods – where at least 50% of the cost of a service embodied in a good was performed outside of South Africa, the expense may not qualify.
- Errors & Omissions insurance and training costs.
- Certain types of training.

The application process

The application process is as follows:

- Submit the **Provisional Application** – the submission is based on preliminary information and must take place before the commencement of principal photography. If the project is a Co-production, evidence of provisional Co-pro approval by the NFVF must be provided.
- Receive **Approval Notification** letter from DTI – if the information set out in the Provisional Application is accepted and approved by the DTI, an Approval Notification letter will be sent to the production company, indicating that the production provisionally qualifies for the rebate and setting out the terms and conditions that must be fulfilled in order for the SA company to make its Final Application upon project completion. The project must obtain the Approval Notification before shooting can commence.
- Confirm the **commencement of principal photography** to the DTI – shooting must commence within three months of the Approval Notification.
- Submit the **Final Application** – the SA company may only submit the Final Application upon completion of the film. Furthermore, it must do so within three

month's of the advised completion date. Several documents are required for the Final Application, including an independent auditors report on the validity of QSAPE, the B-BBEE verification certificate, a DVD of the completed film, SA payroll information, full general ledger, DPRs etc. If the project is a Co-production, evidence of final Co-pro approval must also be provided.

Cash-flowing of the DTI rebate

The rebate is either paid by the DTI at the end of the project or according to milestone payments.

Moonlighting has a film fund (known as "Moonfund") that provides loans against the receipt of the DTI rebate for small to medium-size projects. A Moonfund Executive Summary is available on request.

Timing of rebate payment / Moonlighting track record

Provided that the Final Application is complete and verified, the DTI makes payment within four to five weeks of receiving the application. Payment can be delayed if the DTI selects the application for detailed audit testing by the DTI's external auditors.

The DTI has to date given more than 50 rebates.

"The Giver" (The Weinstein Company)
"Mad Max: Fury Road" (Warner Bros)
"Blended" (Warner Bros)
"Invictus" (Warner Bros),
"10,000B.C." (Warner Bros),
"Blood Diamond" (Warner Bros),
"Safe House" (Universal),
"Blue Crush 2" (Universal),
"Death Race 2" (Universal),
"Death Race 3" (Universal),
"Doomsday" (Rogue),
"Mary and Martha" (Working Title),
"The Borrowers" (Working Title),
"Catch a Fire" (Working Title),
"The Philanthropist" (Carnival/NBC Universal),
"Machine Gun Preacher" (Kuashi),
"Atlantis" (BBC),
"Planet of the Apemen" (BBC),
"Women in Love" (Company Television),
"Ask the Dust" (Cruise/Wagner),
"Avenger" (Warner Bros Television),
"Flood" (Powercorp),
"Crusoe" (Powercorp),
"The Deal" (Muse),
"Flashbacks of a Fool" (Left Bank),

“Natalee Holloway” (Sony Pictures Television),
“Retribution” (Moonlighting),
“Skoonheid” (Swift / Moonlighting),
“Mr Bob” (Mascaret),
“Flight of the Storks” (Europacorp),
“The Dinosaur Project” (Optimum),
“The Girl” (Wall To Wall);
“How We Invented The World” (Nutopia),
“Four Corners” (Giant / Moonlighting),
“Restless” (Endor),
“Final Flight” (BBC),
“Four Corners” (Moonlighting),
“Endless River” (Moonlighting), and
“Lafras” (Sonneblom).

Please do not hesitate to contact the writer should you have any queries or should you require additional information.

Juan le Roux
CEO
+27 81 4784990