

SCREEN PRODUCTION INCENTIVE FUND GRANT

FREQUENTLY ASKED QUESTIONS

These Frequently Asked Questions and Answers (FAQs) are intended only as a guide to assist with the interpretation of the SPIF Criteria dated 1 July 2008. As such, these FAQs are not intended to be legal advice nor are they intended to be comprehensive. Before acting on this information, readers are strongly advised to seek advice from the NZFC and/or other professional and legal advice.

These FAQs will be updated regularly so please check them each time you submit a SPIF application.

DATE: 10 February 2009

The following abbreviations are used:

NZFC New Zealand Film Commission
SPIF Screen Production Incentive Fund
QNZPE Qualifying New Zealand Production Expenditure
TPE Total Production Expenditure
MCH Ministry of Culture and Heritage
IRD Inland Revenue Department

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1. ADMINISTRATION

1.1 Who administers the SPIF?

The New Zealand Film Commission.

1.2 How do I get an application form?

Contact the NZFC or download a form from: www.nzfilm.co.nz. [INSERT LINK]

1.3 What documentation will I need to include with my application?

Please refer to the relevant application form (provisional or final). This sets out the documentation that needs to be included with the application form. In the course of reviewing your application the NZFC (or its consultant) may request further documentation or information from you.

1.4 When should I apply for provisional certification?

We recommend that you apply for provisional certification prior to green-lighting your project and at least 2 months before you expect to go into pre-production.

1.5 How can I be sure that the money in the fund won't run out?

If a bank or other financial entity is cashflowing your SPIF grant then it is likely that it will ask you to obtain confirmation from the NZFC that there will be enough money left in the SPIF to pay your grant when you submit your final application. The process for receiving this confirmation is as follows:

You MUST obtain provisional certification and:

- Start principal photography no later than 6 months after the date of the provisional certificate; and
- Nominate a delivery date and apply for final certification within 3 months of that date. The applicant may apply for one extension to the nominated delivery date.

In your application for provisional certification you MUST indicate that you require the NZFC to provide this confirmation. At that point the NZFC will 'tag' the amount of the estimated SPIF grant in the fund and allocate this to the applicant. If the applicant does not achieve the above milestones within the timeframes then the 'tag' will be removed.

1.6 Who can apply for the grant?

The applicant must be an NZ registered company and be responsible for all activities involved in making the production NZ and have access to full financial information for the production worldwide.

Productions must not have started principal photography or received any government production funding prior to 1 July 2008.

1.7 How long will it take for my application to be processed?

Assuming that all relevant information is included in the application, the NZFC will endeavour to process all provisional applications within 4 to 6 weeks of receipt, and will endeavour to process and pay all final applications within 3 months of receipt.

1.8 If a SPIF grant is approved, how do I get paid?

Once your final SPIF application has been approved you will be sent an approval letter along with a pro forma invoice. You must then send an invoice to the NZFC including bank account details and the payment will be made into the nominated bank account within 10 working days of the NZFC receiving the invoice. An applicant may assign the benefit of the grant to a 3rd party and may nominate a bank account into which the grant should be paid. The Ministry for Culture and Heritage will make funds available for payment of grants to NZFC on a case-by-case basis.

1.9 If there are several companies working on the screen production, which company should apply?

The applicant must be the entity responsible for all activities involved in making the production in NZ. Only one entity per screen production can be eligible for the Grant.

1.10 Can I still access other incentives if I apply for the grant?

Eligible feature film productions may receive a SPIF grant as well as funding from other NZ government agencies (e.g. NZFC, NZ On Air, Te Mangai Paho).

However, other screen formats (teofilms, series) are NOT eligible for a SPIF grant if they have received other government production funding.

All productions continue to be eligible for development funding that is financed by NZ government agencies.

1.11 If I have received production funding from the NZFC can I still apply for the grant?

No, but feature films that have not previously received production funding may apply for the SPIF and for co-investment from NZ government agencies.

1.12 Can I apply for a SPIF grant and a Large Budget Screen Production or Post, Digital, Visual Effects grant?

No, you can only apply for one grant per production.

1.13 Who assesses applications for a SPIF grant?

An NZFC sub-committee with the assistance of external consultants will approve all provisional and final applications. This committee comprises:

- (a) 2 NZFC Board members
- (b) The NZFC CEO, Deputy CEO and Head of Business Affairs
- (c) Up to 5 independent screen production industry practitioners.

A representative from the IRD and MCH is invited to attend all committee meetings as observers.

Final applications are unable to be approved for payment until the IRD has verified the tax information provided to the NZFC. The NZFC will provide a copy of all final applications to the IRD for this purpose.

Any applications which involve complex issues or which are 'borderline' in terms of their significant NZ content (as determined by the committee) will be referred to the NZFC Board for decision.

1.14 Is there a process by which the SPIF committee decisions can be appealed?

No, the decisions of the committee or the NZFC Board, (as the case may be) are final. Prior to each committee meeting, the NZFC or the Independent Consultant will advise applicants of the proposed recommendation to the Panel and applicants will have an opportunity to comment on the recommendation.

2. FORMATS

2.1 What formats are eligible for a SPIF grant?

Feature Films	for release in cinema and at least 60 minutes long
Telemovie or film to DVD	for release on DVD or online and at least 1 commercial hour long)
Documentary	at least 1 commercial half-hour long
Episodic series	at least 1 commercial half-hour per episode
Short form animation	at least 1 commercial quarter-hour

2.2 What formats are ineligible?

Reality TV shows, Advertising Programmes, Commercials, Training Programmes, Productions of Public Events/Sports Events, Discussion Programmes, Current Affairs, News, Panel Programmes, Variety, Magazine, Light Entertainment Programmes.

2.3 Does a series of documentaries qualify as a format?

There is no separate provision for a documentary series. However, if each episode is at least ½ commercial hour long and achieves the spend threshold of \$250,000 then it can apply as a stand alone documentary.

2.4 What are the expenditure thresholds?

Feature Films	\$4 million
Telemovie or film to DVD	\$1 million
Documentary	\$250,000
Episodic series	\$1 million (and not less than \$500,000 per commercial hour)
Short form animation	\$250,000 (and not less than \$1m per commercial hour)

2.5 Is there a cap on the SPIF?

There is no cap on the total fund, however, adjustments to the initial government appropriation and any appropriations beyond the initial 5-year period need to be approved by Cabinet.

The maximum SPIF grant payable on any one project is \$6m.

2.6 What is the expenditure threshold for an official co-production?

Productions which qualify as an official co-production may use their Total Production Expenditure (i.e. cost over both countries less specified exclusions) for the purposes of meeting the expenditure threshold (as opposed to QNZPE). However, any SPIF grant will only be paid on approved QNZPE.

2.7 Are you able to bundle projects in order to reach the threshold?

No.

3. SIGNIFICANT NZ CONTENT

3.1 How is a project deemed to have significant NZ content?

All projects must have 'significant NZ content' in order to be eligible for a SPIF grant. Guidelines on what 'significant NZ content' means for the purposes of SPIF are available here [INSERT LINK].

Official Co-Productions are deemed to have significant NZ content for the purposes of SPIF and, provided they can supply evidence of certification as an official co-production, they do not need to complete the 'significant NZ content' section in the application forms.

3.2 How is the amount of activity in Section B of the significant NZ content test measured?

This is measured by reference to the proportion of the budgeted line item spent on that activity in NZ.

3.3 What is a NZ setting?

This is easiest described by giving examples. The settings in *The Lord of the Rings* and in *Perfect Creature* are NOT NZ settings. However, the settings in *Apron Strings* and *Perfect Strangers* are NZ settings. Some of *The World's Fastest Indian* is a NZ setting. The proportion of a film that is set in NZ is measured by the estimated number of on-screen minutes that that setting is shown (this is measured by reading the script at provisional application stage and by reference to the completed film at final application stage).

3.4 How would the NZFC exercise its discretion regarding significant NZ content?

Generally, if a production achieves the SPIF points test then it will be deemed to have significant NZ content. The NZFC would only exercise its discretion if the production was 'borderline' in terms of its NZ content or if there were wider policy issues at stake.

4. DEFINITIONS

4.1 I note that I cannot apply later than 3 months after completion of the screen production – when is a screen production considered to be 'completed' for this purpose?

A screen production is regarded as having been completed when it is in a state where it could reasonably be considered ready for distribution, broadcast or exhibition to the general public.

4.2 Do cast and crew perks/expenses count towards QNZPE?

Perks do not count as QNZPE unless the applicant is contractually obliged to provide the 'perk' to the relevant cast or crew member in relation to their services in New Zealand (e.g. companion airfares – note however, that only the incoming fare can be claimed).

5. QNZPE

5.1 Costs excluded from QNZPE:

Specific exclusions from QNZPE are contained in paragraphs 75 to 79 of the criteria.

5.2 What costs should be included in above-the-line?

Paragraph 66 of the criteria requires that development costs (including story rights) and remuneration for the director/s, producer/s and principal cast be included. Although it might be common for producers to include other costs above-the-line (e.g. travel and living costs for a-t-l personnel); for the purposes of SPIF, these are not required to be above-the-line.

5.3 Do deferred fees qualify as QNZPE?

Yes, but only if they are included in the budget and are then deferred in order to cashflow part of the estimated SPIF grant.

5.4 Should wardrobe/makeup/props be treated as expenses or assets?

It depends on what the value of each item is at the end of the production. If items have no value at the end of production and are thrown away or destroyed, then the full purchase price can count towards QNZPE. If there is still some value at the end of production, and the item is sold, then the difference in price is what needs to be counted towards QNZPE. In other words, usual accounting practices should be applied here. For this, use the 'best estimate approach' for value of assets props/wardrobe etc. to evaluate how much they are worth at the end of the shoot.

5.5 Can Business Overheads count towards QNZPE?

Yes. New Zealand business overheads may be claimed as QNZPE to the extent that they are incurred in New Zealand and the amount does not exceed 5% of the Total Production Expenditure or NZ\$500,000, whichever is the lesser. Business overheads are only those costs directly attributable to the production.

5.6 If NZ resident cast and crew are taken to another country for part of the shoot, does this remuneration for services performed outside NZ count towards QNZPE?

It may do. Paragraph 65 of the Criteria provides that where:

- the expenditure is incurred during principal photography;
- the location being used for principal photography is reasonably required by the subject matter of the screen production (such as where a certain landscape or place is needed for a story);
- the expenditure is for the remuneration of a New Zealand resident or the purchase of goods or services from a New Zealand resident company (see clause 26 for a definition of a resident company);
- goods and services provided by non-New Zealand residents outside New Zealand or goods and services provided outside New Zealand during pre- or post-production, are not able to be claimed as QNZPE. An exception to this is where the expenditure meets another special rule for the SPIF, such as freight or travel expenditure; and
- where the remuneration of the person travelling for the screen production is QNZPE under this rule, that person's travel costs to or within any other country are also QNZPE;

then the expenditure may be claimed as QNZPE.

5.7 If I have incurred expenses prior to 1 July 2008 (e.g. development) can these be claimed as QNZPE if I set up a new production company and have those fees transferred to the new company after 1 July 2008?

Expenditure incurred prior to 1 July 2008 and then assigned to another company after 1 July 2008 will not qualify unless the assignment is to an unrelated third party which is

acquiring the rights to the production on an arms-length basis and the expenditure relates to development only.

5.8 If non-NZ cast and crew are used in the production, do these costs count as QNZPE?

Non-resident crew costs for the portion of their time spent working on the production in New Zealand (provided they work for at least 14 consecutive days on the production) do qualify as QNZPE.

Similarly, all non-resident cast costs will qualify for QNZPE, but with no minimum number of days presence required to qualify.

Where a cast or crew member provides services in New Zealand and overseas, then only the proportion of remuneration relating to services performed in NZ qualifies.

5.9 Does the cost of shooting in foreign countries count towards QNZPE?

Yes, part of it could do, provided it meets the requirements of paragraph 65(i) of the criteria.

5.10 If the production employs a non-NZ writer to work on the script will their fee qualify?

Only the portion of the fee paid for any work performed in NZ will qualify, and the writer must have worked in NZ on the production for more than 14 consecutive days.

5.11 Can I claim the cost of copyright clearances for music?

Yes, but only if the copyright in the music is held by a NZer (see paragraph 53 of the criteria).

5.12 What publicity and promotion expenditure qualifies as QNZPE?

Expenditure incurred in relation to publicity or promotion only qualifies if:

- (a) it is incurred prior to the completion of the production, and
- (b) the copyright in the publicity or promotion material is owned by a person or company who is resident in NZ for tax purposes.

For example, costs which relate to the production of a trailer do not qualify unless the copyright in the trailer is held by a NZ tax resident. Also, the costs of any stills photography do not qualify unless the copyright in the stills is held by a NZ tax resident.

5.13 How many copies of master film materials qualify as QNZPE?

Only the cost of the first set of copies qualifies.

5.14 Do the Cook Islands count as part of 'New Zealand' in terms of calculating QNZPE?

No.

5.15 Are Executive Producer fees payable to investors claimable as QNZPE?

If the fee is payable to an EP who works on the production in New Zealand for at least 14 consecutive days then, the portion of the fee which relates to work in NZ is QNZPE.

If the fee is payable to an investor who doesn't work on the production then it is treated as if it were a financing fee and is subject to the provisions in paragraphs 67 – 71 of the criteria.

5.16 Is 'Koha' QNZPE?

No, gifts and gratuities are not QNZPE. However, if you obtain a receipt from the person to whom the koha was paid, and this was an expense of the production in NZ, then you can claim this as QNZPE.

5.17 Is the premium payable on an NZFC development loan QNZPE?

Yes, provided it is paid after 1 July 2008.

5.18 Are any marketing costs claimable as QNZPE?

Only if they are incurred prior to the completion of the production and the copyright in the material is held by a NZ resident.

5.19 Is the SPADA levy claimable as QNZPE?

Yes.

5.20 Do Dolby costs qualify as QNZPE?

No, as these are payable outside NZ.

6. EXCHANGE RATES/IRD/BANKING/TAX/GST

6.1 I understand that the application needs to be in NZ dollars. What rate/s should I use to convert non-NZ dollar spend to NZ dollars?

You can use either the actual rate of exchange at the time the expenditure was incurred OR the Inland Revenue mid-month exchange rates (available on www.ird.govt.nz), however you should apply the same approach consistently to all foreign currency expenditure.

6.2 What is the role of the IRD?

A copy of each application for final certification will be provided to the IRD who are required to verify the information contained in the application against the GST, PAYE, income tax and other returns and information it holds.

6.3 Can transactions through foreign bank accounts and/or transactions in foreign currencies count towards QNZPE?

Yes, so long as the applicant is the person that spent the QNZPE.

6.4 Will payments in foreign currencies count towards QNZPE?

If the payment would otherwise qualify as QZNPE, it will still qualify whichever currency it is paid in as long as the transaction is linked back to the applicant company.

6.5 Does the grant include GST?

The grant is calculated in relation to amounts that are net of GST. However, due to New Zealand tax law it is required that the grant is paid GST inclusive. For this reason, the grant will be made to eligible applicants on a GST plus basis with applicants having to return the GST component during their normal GST returns.

6.6 Do I have to pay NZ income tax on the grant?

No, the grant is tax exempt for the purposes of income tax.

7. TRAVEL

7.1 Does travel count towards QNZPE?

Travel into New Zealand, being the equivalent of half a commercial return airfare to New Zealand, will qualify as QNZPE even though the services may be performed outside New Zealand possibly by an overseas airline and they may be booked through an overseas travel agent. This is a specific concession. However, additional fees charged by overseas travel agents do not qualify. Travel costs in relation to an overseas trip undertaken by a New Zealand resident do not qualify as QNZPE.

7.2 What is a return commercial airfare and what happens if I incur additional costs in changing the outgoing airfare only?

A return airfare is an airfare that is purchased for both legs (incoming and outgoing) of a journey between two countries. It is not the combination of two single airfares for a journey between two countries. If you purchase a return airfare between New Zealand and another country then you can claim as QNZPE, 50% of the value of that airfare. However, if you purchase two single airfares then only the cost of the incoming airfare can be claimed.

If you incur additional costs due to changing an airfare then only the costs relating to the incoming airfare may be claimed as QNZPE.

8. AUDITORS

8.1 How do I find out if the auditor I am using will be approved by the NZFC?

Auditors already approved by the NZFC are listed here [insert link]. If you wish to use a different auditor, please contact the NZFC for approval.

8.2 Do audit costs count towards QNZPE?

Yes, provided they are incurred in New Zealand.

9. DISTRIBUTION

9.1 What does “normal commercial terms” mean in relation to the distribution agreement?

This will mean different things for different types of productions. However, for feature films, it is expected that a minimum guarantee or a P&A commitment will be given and that the distributor will undertake certain obligations to promote and release the film theatrically.

9.2 Does PAY TV count as commercial distribution available to New Zealanders?

Yes, provided it is still accessible to a national audience (i.e. not a channel only available in a small locale).

9.3 Is distribution required at provisional certification stage?

No, evidence of distribution is not a requirement of obtaining a provisional certificate, however, if you would like the provisional certificate to confirm that this requirement has been satisfied then you need to include a copy of a signed, legally binding distribution agreement or deal memo in your application.

If you don't have a signed deal memo or distribution agreement at the time you lodge your provisional application, then you can request the NZFC to approve a draft version. In that case, your provisional certificate will state that provided you enter into a legally binding deal memo/distribution agreement (as the case may be) on the terms submitted with your application, then you will meet the distribution requirements in the SPIF criteria.

10. CASHFLOW AND FINANCING

10.1 How long should I anticipate paying interest on any loan to cashflow the SPIF grant?

It depends on when you draw down the loan and on the length of your production schedule. Bear in mind that you cannot apply for a final certificate until the production is completed and it will take the NZFC approximately 3 months to process the application once received.

10.2 The amount I can claim as interest on financing the SPIF is capped at the 90 day bill rate +2%. At what point in time do I apply this rate?

For the purpose of this calculation you should use 90-day bill rate at the date of closing the financing (this will often be the date of your Production Financing Agreement).

10.3 Will the NZFC (if it is a co-investor) require all of the financing (including any SPIF loan) to be paid upfront into an escrow account?

This will be assessed on a case-by-case basis. You should discuss with the NZFC prior to locking down your budget.

11. ACCOUNTING TREATMENT

12.1 When is a payment “incurred”?

The SPIF Grant scheme is administered on a cash basis. This means that applications will be assessed on a cash basis and that an item of expenditure will generally be considered to have been ‘incurred’ at the time the payment is made.

12.2 Can non-cash payments be treated as QNZPE?

No, for the purposes of the SPIF Grant, only expenses paid in cash can be claimed as QNZPE. In addition, the payment must have been made before the application is submitted.

12. MISC

13.1 What happens if and when the 5-year appropriation is used up?

Cabinet needs to approve any adjustments to the SPIF appropriation. In the meantime the NZFC has established a procedure by which an applicant can obtain confirmation from the NZFC that sufficient funds will be available to pay the estimated grant if the production achieves certain milestones.

13.2 When will the SPIF scheme be reviewed?

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13.3 What happens if, after I have submitted my application, I realise that I forgot to claim some QNZPE?

Provided the application has not yet been considered by the SPIF committee, you can choose to withdraw the application and then re-submit it with the additional costs included. Please note that the additional costs will need to be covered by the auditor’s opinion.

FOR FURTHER INFORMATION, PLEASE CONTACT:

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