



I assent.

[L.S.]

J. I. ULUIVUDA
President

[21st March, 2003]

AN ACT

TO AMEND THE INCOME TAX ACT FOR THE PURPOSE OF PROVIDING
TAX REBATE FOR FILM MAKING OR PRODUCTION

[1st January, 2003]

ENACTED by the Parliament of the Fiji Islands—

Short title and commencement

1. This Act may be cited as the Income Tax (Film Tax Rebate) (Amendment) Act 2003 and is deemed to have come into force on 1 January 2003.

Sixth Schedule amended

2. The Sixth Schedule to the Income Tax Act (Cap.201) is amended—

(a) by repealing paragraph (2) of Part I and substituting the following paragraph—

“Regulations

2. 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.”; and

(b) by inserting after Part III the following Part IV—

“PART IV – FILM TAX REBATE

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**

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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; and
- (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
- (f) the total of the company's qualifying Fiji Islands production expenditure on the film (worked out using Division 3) is at least \$50,000; 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)(i) 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

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Qualifying Fiji Islands production expenditure

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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) subject to item 10 in the table in paragraph 65-35, may be expenditure that gives rise to a deduction.

(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 —
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1	<p><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)</p>	
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2	<p><i>Development expenditure</i> development expenditure on the film</p>	<p>qualifying Fiji Islands production expenditure under item 1 in the table in paragraph 65-45(1)</p>
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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 –
3	<i>Copyright acquisition expenditure</i> 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	<i>Publicity and promotion expenditure</i> incurred in publicising or otherwise promoting the film (including press expenses, still photography, videotapes, public relations and other similar expenses)	qualifying Fiji Islands production expenditure under item 4 in the table in paragraph 65-45(1)
6	<i>Deferments</i> amounts that are payable only out of the receipts, earnings or profits from the film	
7	<i>Profit participation</i> amounts that: (a) depend on the receipts, earnings or profits from the film; or (b) are otherwise dependent on the commercial performance of the film	
8	<i>Residuals</i> amounts payable in satisfaction of the residual rights of a person who is a member of the cast	paid out by the company before the film is completed
9	<i>Advances</i> amounts paid by way of advance on a payment to which item 6, 7 or 8 applies to the extent to which it may become repayable by the person to whom it is paid	

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 –
10	<i>Acquisition of depreciating asset</i> expenditure to the extent to which it sets, or increases, the cost of a depreciating asset This item has effect subject to paragraph 65-25(6).	qualifying Fiji Islands production expenditure under item 2 in the table in paragraph 65-45(1)
11	<i>Regulations</i> 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; or
- (b) the use of land located in the Fiji Islands; 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.

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 – (a) goods and services provided in the Fiji Islands; or (b) the use of land located in the Fiji Islands; 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
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	<p><i>Fiji Islands business overheads</i> subject to subparagraph (3), general business overheads of the company that:</p> <p>(a) are not incurred in or in relation to the making of the film; and</p> <p>(b) are not reasonably attributable to—</p> <p style="padding-left: 40px;">(i) the use of equipment or other facilities for; or</p> <p style="padding-left: 40px;">(ii) activities undertaken in;</p> <p style="padding-left: 40px;">the making of the film;</p> <p>to the extent to which they—</p> <p>(c) are incurred for, or are reasonably attributable to—</p> <p style="padding-left: 40px;">(i) goods and services provided in the Fiji Islands; or</p> <p style="padding-left: 40px;">(ii) the use of land located in the Fiji Islands; or</p> <p style="padding-left: 40px;">(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</p> <p>(d) represent a reasonable apportionment of those overheads between the making of the film and the other activities undertaken by the company</p>
4	<p><i>Expenditure incurred in producing Fiji Islands copyrighted promotional material</i> 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</p>
5	<p><i>Travel to the Fiji Islands</i> 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</p>
6	<p><i>Regulations</i> expenditure prescribed by the regulations</p>

(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) \$500,000.

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;
- (b) 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

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65-80	Refusal to issue certificate
65-85	Issue of certificate
65-90	Revocation of certificate
65-95	Notice of decision
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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.

(2) 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.

(3) 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—

- (3) 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
- (4) 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 organisation 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.

Passed by the House of Representatives this 19th day of February 2003.

Passed by the Senate this 17th day of March 2003.