

# FREQUENTLY ASKED QUESTIONS (FAQs)

## New Zealand Screen Production Grant (NZSPG)

### NEW ZEALAND PRODUCTIONS – 1 JULY 2017 CRITERIA

It is important that you read the NZSPG Criteria for New Zealand Productions dated 1 July 2017 before reading these FAQs. If there are any conflicts between these FAQs and the Criteria, the Criteria will always prevail. These FAQs are intended to help you interpret the Criteria only and are non-binding. Accordingly, the New Zealand Film Commission (NZFC) does not accept any responsibility for errors or misstatements in these FAQs.

#### **Covid-19 related provisions and the exercise by the NZSPG Panel of its Covid-19 related discretions**

If your application is in respect of a “Covid-19 Lockdown production” or a “Post-Covid-19 Lockdown production” (as those terms are defined in the Criteria) and you are requesting that the NZSPG Panel exercise any of its Covid-19 related discretions in the consideration of your application, you must provide such supporting information as you consider is relevant to assist the NZSPG Panel to determine whether or not to exercise its discretion in support of your application.

The NZSPG Panel will consider the information you have provided in your application together with such other information as the NZSPG Panel thinks fit.

If the NZSPG Panel:

- is not satisfied that the information available to the NZSPG Panel supports the exercise of the discretion; or
- considers that there is insufficient information available to the NZSPG Panel to make a decision as to whether or not to exercise its discretion,

your application for the NZSPG Panel to exercise the discretion will be declined.

Therefore, when you prepare your application, your application should specifically address (with supporting evidence) all of the requirements set out in the relevant Covid-19 related Criteria about which the NZSPG Panel must be satisfied in order to exercise that discretion.

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#### **14-DAY RULE**

*How is the 14-day rule applied to crew who work on the production?*

In order for Remuneration – meaning contractual entitlements to fees, accommodation, per diems, childcare and other allowances, to be qualifying New Zealand production expenditure (QNZPE), a crew member who travels to New Zealand must work on the production for at least 14 days in total. This period does not include any days off. For example, a 5-day shoot plus 2 days off count as 5 days.

## A

### ACCOUNTING SYSTEMS

*Do I have to use a particular accounting system?*

No, but your accounting system should be one that is recognised and commonly used for production accounting. It needs to be set up in such a way to enable you to track and code all items of expenditure with reference to, in New Zealand dollars, QNZPE, non-QNZPE and for official co-productions only, TPE and exclusions from TPE.

*Is the cost of licensing accounting software QNZPE?*

The cost of licensing accounting software can be QNZPE if the copyright in the software is or was owned by a person or company that is a New Zealand resident for tax purposes (a “New Zealand Resident”), or the software was created in New Zealand for use in the production.

For example; My Digital Accounting Entertainment Solutions (mydaEs) cannot be claimed as QNZPE, because the copyright is owned by an Australian company that is not a New Zealand Resident. The cost of licensing Xero accounting software can be included as QNZPE, because copyright in the software is owned by a company that is a New Zealand Resident.

### ACCRUALS

*Can I include accrued expenditure in QNZPE?*

No, all QNZPE must have been paid at the time of final application unless it falls within one of the exceptions set out in **Clause 21** of the Criteria. Please note that all of the exceptions in clause 21.2 (unpaid interest, auditor’s fees and marketing or post-production costs) must be approved by the NZFC and the combined total (of interest, auditor’s fees and marketing or post-production costs unpaid at the time of making a final application) must not exceed 1% of the total production budget.

*Can non-cash payments be treated as QNZPE?*

No, for the purposes of the NZSPG scheme, only costs paid in cash can be included in QNZPE. In-kind payments or similar do not qualify.

### ADDITIONAL GRANT

*Do I qualify for a Grant on QNZPE over \$15 million?*

The NZSPG for New Zealand Productions is 40% of QNZPE up to \$15 million. The total baseline Grant is capped at \$6 million per production.

However, if the production has QNZPE of more than \$15 million and meets the requirements of Appendix 4 of the Criteria, an applicant can apply for an Additional Grant. The Additional Grant is paid on QNZPE between \$15 million and \$50 million.

Official Co-productions also require QNZPE of more than \$15 million to apply for an Additional Grant. TPE cannot be used for the Additional Grant expenditure threshold.

To qualify for an Additional Grant the Producer must have the minimum level of experience specified in the Criteria and the production must have market attachments that comprise at least 10% of the production's budget. In addition, the production (including an official co-production) must meet or exceed the minimum points in the Significant Cultural Benefits Test and must provide cultural benefits to New Zealand that are commensurate with the value of the Additional Grant applied for.

The applicant must provide the NZFC with a 50% Equity Share in the amount of Grant that is over-and-above QNZPE of \$15 million threshold. The applicant must be entitled to retain the remaining 50% Equity Share in the amount of the Grant that is over-and-above the QNZPE of \$15 million (see **Producers Income**).

Evidence of legally binding agreements will be required at Final Certification to confirm compliance with the specific eligibility criteria. Full details are set-out under **Appendix 4** of the NZSPG Criteria.

*Is the Additional Grant capped?*

The Additional Grant is capped at \$14 million (40% of additional QNZPE spend of \$35 million). The total maximum New Zealand Grant is \$20 million.

## **ADMINISTRATION COSTS**

*What general administration costs can I claim as QNZPE?*

Administration costs incurred by the applicant on the production in New Zealand are QNZPE. Where these costs have been on-charged by a related party, the applicant should follow the apportionment guidelines outlined in the FAQ and ensure that evidence of the rationale behind the apportionment is available. For example, where parent company personnel and/or equipment have been shared between projects, a record of time spent by those personnel on each project should be maintained.

## **APPLICATIONS**

*Who can apply?*

The applicant must be the entity responsible for all activities involved in making the production in New Zealand. Only one entity per production is eligible for the Grant. The entity must also be a Special Purpose Vehicle (SPV), as per the requirements set out in **Clause 10** of the Criteria.

*How long will it take to process my application?*

Provided all required information is included with your application, the NZFC will process applications as follows:

- Provisional applications: within 8 weeks of the NZFC's acknowledgement letter.
- Final applications: within 3 months of the NZFC's acknowledgement letter.

Please note that:

- The processing time does not start until the date the NZFC sends you an acknowledgement of receipt letter (which will only be sent once the NZFC has checked that all required information has been received); and
- If the NZFC or an independent consultant requests further information from an applicant, it is expected that requests for further information should be provided within 3 days of a request

being made. Delayed responses may cause processing time to be extended.

*Do I have to apply for provisional certification?*

**All applicants** must **either** apply for provisional certification or have the production registered with the NZFC before the start of Principal Photography.

Applicants who wish to apply for an Additional Grant **must** apply for provisional certification.

Applicants for the baseline New Zealand Grant are strongly advised to apply for provisional certification so that the NZFC can identify potential issues early on and notify applicants.

A provisional certificate is an indication of eligibility only and is not a guarantee that a final certificate will be issued. In all cases, you must submit a final application which provides evidence that all relevant criteria have been satisfied.

A fee may be payable for making a provisional application.

*When should I apply for provisional certification?*

Applicants are advised to apply for provisional certification when their production financing is sufficiently advanced. Any premature applications that require a subsequent re-application may be subject to a further application fee. The NZFC website will publish any application fee information.

*Does provisional certification expire?*

Yes, a provisional certificate expires 6 months after the date of the provisional certificate unless the production has commenced Principal Photography within that timeframe. In exceptional circumstances (including in the case of an application for a Covid-19 Lockdown Production or a Post-Covid-19 Lockdown production) you may apply to the NZFC for an extension, but you may be required to pay an extension fee.

Alternatively, you can submit a new provisional application. An application fee may be payable.

## **APPLICATION FEES**

*The Criteria states that “expenditure on any application fees in relation to the New Zealand Grant” is excluded from QNZPE. Does this exclude the fees of advisors who have advised on the application process?*

No. This exemption applies only to application fees that are payable directly to the NZFC. Application fees are not currently being charged, but should a fee be introduced, it will be excluded from QNZPE.

## **APPLICATION FORMS**

*Where can I get application forms?*

Application forms are available from the NZFC website.

There are a number of application forms on the NZFC website, depending on what Criteria apply and the Grant applied for. Please check that you have used the correct form.

Please ensure that the application form and all attachments are submitted as separate documents (not scanned together) and that each attachment is named and numbered in accordance with the checklist at

the back of the application form.

Note that at final application stage, all agreements that are submitted as attachments must be dated and signed by all parties to the agreement. This includes (but is not limited to) above-the-line agreements, distribution agreements and financing agreements.

## **APPORTIONMENT**

*How should I apportion costs between qualifying and non-qualifying services or between multiple productions or other activities?*

Apportionment is best dealt with on a case-by-case basis. However, there are some overriding guidelines:

- The proportion of costs claimed must be fair and reasonable in the circumstances.
- The amount claimed should reflect the provisions of any contract including the timing of any instalments of the agreed fee or cost.
- The amount claimed should also reflect the actual time spent providing qualifying services. This should be a portion of the actual time spent in New Zealand on the provision of all services, or the actual or carefully estimated use of a good or person by the production as a proportion of the total cost of that good or person over the same period of time.

When looking at apportionment the NZFC will review the relevant contract, the production travel schedule, the timing of payments and any other supporting information to determine what is a fair and reasonable apportionment. If you are unsure of how to apportion any costs, please contact the NZFC for guidance before you submit your application.

*How do I apportion my insurance costs if my production is an official (or un-official) co-production?*

For co-productions – official and un-official - the cost of production insurance (including errors and omissions) is apportioned by multiplying the total cost of production insurance by the New Zealand financing percentage. This calculation also applies to completion bond fees.

## **APPROVED ISSUER LEVY**

*Can I claim the Approved Issuer Levy as QNZPE?*

The Approved Issuer Levy cannot be claimed as QNZPE as it is paid to the IRD in lieu of withholding tax and is essentially a tax on interest.

## **ASSETS**

*Should I treat wardrobe and props 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 be claimed as QNZPE. If there is still some value at the end of production and the item is sold or is deemed to be saleable, then the difference in price should be used for your QNZPE calculation. Please refer to the IRD's website for information on depreciation used to estimate how much assets, props/wardrobe etc., are

worth at the end of a shoot: <http://www.ird.govt.nz>

## **B**

### **BUSINESS OVERHEADS**

*How do I calculate the cap?*

Qualifying business overheads only apply to New Zealand-based entities. Business overheads are generally accepted to mean the ongoing expenses necessary to maintain the business operation and may not necessarily be directly attributed to the specific cost of making the production. They should be calculated using all relevant expenditure for the production. Should this equal less than 5% of the QNZPE or \$400,000, the total amount of overheads can be claimed. Should they equal more than 5% of the QNZPE or \$400,000, only the amount up to 5% of the QNZPE or \$400,000 may be claimed, whichever is the lesser.

The cap on New Zealand business overheads applies to the total amount claimed for the general business overheads of the applicant and any associate entities (including parent and subsidiary entities).

Use the following steps to calculate what business overheads you can claim as QNZPE (capped at 5% of the QNZPE or \$400,000 whichever is lesser):

- Deduct the claimed overhead from the total QNZPE (this is the 'adjusted amount').
- Divide the adjusted amount by 95 then multiply by 5. This then represents the maximum business overhead that can be claimed as QNZPE (as long as it does not exceed \$400,000). Any business overheads in excess of this amount will not qualify as QNZPE.

If you are unsure how to calculate this cap, you can contact the Incentives Executive at the NZFC.

## **C**

### **CARNET**

*Can I claim the cost of a carnet as QNZPE?*

A carnet fee paid to a New Zealand entity (usually the Chamber of Commerce) to organise the bond amount to be deposited with Customs can be claimed as QNZPE provided it relates to goods to be used on the production. The 'carnet bond' itself cannot be claimed as QNZPE.

### **CAST AND CREW PERKS**

*What are cast and crew 'perks'?*

Extra benefits provided to cast and crew are assessed as perks and 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. gym membership; nanny/tutor services; companion airfares (only the incoming fare can be claimed, if travelling from off-shore).

## COMPLETION

*When is a production considered to be completed?*

A production is completed when it is first in a state where it could reasonably be regarded as ready for distribution, broadcast or exhibition to the public. Refer to **Appendix 1** of the Criteria for the definition of “Completed”. This is relevant as you must submit your final application no later than 6 months after completion of the production.

If your application is in respect of a Covid-19 Lockdown production or a Post-Covid-19 Lockdown production, you can apply to the NZFC to extend this 6 month period, which the NZFC can do if the NZFC is satisfied that the extension is reasonably necessary due to the disruption caused to the production by the Covid-19 Lockdown.

## CONTINGENCY

*Can I include any contingency in the estimated QNZPE at provisional application stage?*

No. Contingency will not be assessed as QNZPE at provisional stage unless it is necessary for the NZFC to take a view on whether the production qualifies for the New Zealand Grant (for instance, where the QNZPE or TPE is close to the threshold). In these circumstances, the provisional certificate will note any assumption made around contingency.

In a final application, only the amounts of contingency actually spent on qualifying goods and services will be QNZPE.

*Can I include contingency in estimated TPE at provisional application stage?*

If your production is an official co-production (and you are therefore using TPE to meet the threshold), then you can include 100% of contingency in your TPE calculation. The contingency can include the New Zealand contingency portion and the off-shore contingency portion. Applicants should note that this is for the purpose of meeting the expenditure threshold only, and contingency will still not be treated as QNZPE at provisional application stage. At final application stage, only contingency spent on QNZPE can be claimed.

## CO-PRODUCTIONS

*What is an official co-production?*

An official co-production is one that has been certified under one of the co-production treaties that New Zealand has with other countries (see the NZFC website for the most up-to-date list:

<http://www.nzfilm.co.nz/international-productions/co-productions>).

*Does the same co-production criteria apply to non-official co-productions?*

No. Non-official co-productions are subject to the general NZSPG Criteria and the relevant official co-production criteria does not apply.

*How should I apportion contingency between each co-producer's spend?*

This will be determined on a case-by-case basis, however, it is generally expected that contingency will be apportioned in accordance with the estimated total spend of each co-production party. If you wish to apportion the contingency using a different method, then you should set out the rationale for that method in your application.

*What information do I need to get from my co-producer?*

If you are relying on TPE (and not just QNZPE) to meet the relevant expenditure threshold, then you need to have access to full financial information for the production worldwide and you must provide that information in English to the NZFC upon request. The presentation and coding of the financial information (e.g. cost report) must be consistent with the information provided in relation to QNZPE, and must follow standard accounting practices. Please also be aware that audited cost reports will be required.

You may also be required to provide copies of contracts and other documents that your co-producer has entered into if they relate to any costs claimed by you as QNZPE (e.g. cast contracts).

All financial information and other documents supplied by your co-producer must be in English. When submitting a final application, all contracts must be fully executed by all relevant parties and be in English or with a professional certified English translation provided.

*What should I do first – submit my co-production application or my NZSPG application?*

You should submit your co-production application and your NZSPG application around the same time. Please note that the NZFC's process for assessing each application is separate and so you need to submit separate applications with separate copies of all relevant documents. This applies to both provisional and final applications.

*When does my co-production certificate need to be in place?*

If you are applying for provisional certification, you must have submitted your provisional co-production application before your application for provisional certification.

If you are applying for final certification, you must have submitted your final co-production application before your application for final certification.

The Grant will not be paid out until the final co-production certificate has been issued and signed by all competent co-production authorities.

## **CREDITS AND PROMOTIONAL MATERIAL**

*Do I have to provide a credit and NZFC logo in the completed production and promotional materials to the New Zealand Government via the NZFC?*

Yes, this is mandatory. If there are exceptional circumstances which mean you are unable to provide a



credit, logo and/or promotional materials, you need to discuss this with the NZFC before submitting of your final application. Waivers of this requirement will only be given where the applicant is genuinely not in a position to satisfy this requirement.

Please email [nzspg@nzfilm.co.nz](mailto:nzspg@nzfilm.co.nz) to obtain the current version of the NZFC logo.

The promotional material schedule can be viewed on the NZFC website:

<http://www.nzfilm.co.nz/resources/promotional-materials-schedule>

## **CURRENCY**

*Can transactions through off-shore bank accounts or in non-New Zealand currencies be included in QNZPE?*

Yes, as long as the applicant incurred the cost and the payment otherwise qualifies as QNZPE. Please note that payments made in a foreign currency must be converted into New Zealand dollars on a monthly basis at the mid-month exchange rate published on the IRD website for the month in which the payment was made.

## **D**

### **DEFERRALS**

*Can deferred or held-back fees be claimed as QNZPE?*

Yes, provided they meet the requirements in **Clause 21.1** of the Criteria. Please note that only fees or overheads that are held back for the purpose of cashflowing any part of the funding required to meet the budget can be treated as QNZPE under this exception. The funding that is cashflowed by such holdbacks could be (for example) an instalment of a sales advance or minimum guarantee or part of the estimated NZSPG Grant.

### **DEVELOPMENT LOAN**

*Does the premium payable on a development loan qualify as QNZPE?*

Yes, provided it is paid after 1 July 2008 and meets the requirements of **Clause 16.3(g)** of the Criteria.

### **DISTRIBUTION**

*Can I apply for a provisional certificate without a distribution agreement?*

You do not need to have a fully executed long form distribution agreement to apply for a provisional certificate. However, you must have a firm offer letter or deal memo from a recognised distributor that demonstrates the audience reach of the production will be commensurate with the expected amount of the New Zealand Grant (e.g., for films, the number of screens and cities, P&A spend etc.; and for TV, the network, intended timeslot and likely audience). You must also provide an audience engagement plan setting out how the production will be seen by audiences in New Zealand (refer to the Audience

Engagement information sheet on the NZFC website for details). You cannot apply for a provisional certificate until you have met these requirements.

*Can I distribute a feature film myself?*

**Feature films:**

*Refer to **Clause 8.4** of the Criteria*

The Criteria requires that, by time of final certification, the production must have secured a legally binding distribution agreement with a recognised theatrical distributor to release the film commercially as the main attraction in New Zealand cinemas. Unless the applicant is a recognised theatrical distributor an application for self-distribution is likely to be declined.

*What are acceptable distribution platforms for non-feature film productions?*

**Television and other non-feature film formats**

*Refer to **Clause 9.4** of the Criteria*

Acceptable New Zealand distribution platforms include New Zealand television broadcast (free-to-air or Pay TV); commercial distribution on DVD/Blu-ray; or commercial distribution via new media platform, or streaming services (including but not limited to Netflix, Lightbox, Amazon etc.) accessible to New Zealand residents, such as on-line or mobile content. In all cases, the applicant must provide a genuine, legally binding commercial distribution agreement by the time of final application.

*The Criteria states that distribution must be “commensurate with the expected amount of the New Zealand Grant” – what does this mean?*

This means that the production must have a distribution deal, or TV network with a likely audience reach that is in line with, and of a scale expected in the industry for the type and cost of the production. For example, a relatively low budget arthouse feature (perhaps a minority co-production with English sub-titles) would not be expected to have the same scale of distribution as a larger budget feature more suited to exhibition in mainstream cinemas.

*Is this the same for Television and other non-feature film formats?*

A television series/programme or telefeature needs to demonstrate how, where and when the intended audience demographic will be able to access the programme and how the chosen format/s will generate an audience reach in New Zealand across the intended demographic. This can be shown by providing a signed letter from the broadcast service outlining the intended percentage of viewers the programme is likely to reach.

**In recognition of the disruption caused by Covid-19, where the application is in relation to a Covid-19 Lockdown production or a Post-Covid-19 Lockdown production, and, as a result of Covid-19, the applicant is unable to satisfy this requirement, the applicant can request that the NZSPG Panel exercises its discretion as contemplated by the Criteria. To obtain an exercise of this discretion, the applicant must first satisfy the NZSPG Panel that:**

- 1. the applicant’s failure to satisfy this requirement is due (whether wholly or to a significant extent) to ongoing market conditions following the Covid-19 Lockdown; and**
- 2. the applicant has demonstrated that it has taken reasonably practicable steps to procure that the audience reach will be commensurate with the expected amount of the New Zealand Grant; and**

3. to the extent that the commitment for a New Zealand release does not demonstrate that the audience reach will be commensurate with the expected amount of the New Zealand Grant, the commitment demonstrates to the Panel's satisfaction that the audience reach will be sufficient, having regard to the market conditions arising as a result of the Covid-19 Lockdown.

Therefore your application must contain evidence supporting each of subparagraphs 1-3 set out above.

## E

### ENTERTAINMENT

*Can I claim for meals in restaurants, when they are part of meetings to discuss the production?*

No. Meals outside the production base can only be claimed as QNZPE where they are provided in place of standard production catering for the crew and cast (i.e. crew working away from set, during recesses, etc). In all cases, if a meal includes alcohol the cost of the entire meal will be assessed as 'entertainment' and excluded from the QNZPE calculations.

### EXCHANGE RATES

*How do I decide what exchange rate to use for non-New Zealand dollar costs?*

For the purpose of converting foreign currency amounts to NZ dollars in an application you must use the mid-month exchange rates published on the IRD's website ([www.ird.govt.nz](http://www.ird.govt.nz)).

*Can I pre-set an exchange rate prior to production?*

Yes, but only for the purpose of meeting the expenditure threshold and only if:

- your estimated QNZPE or TPE is close to the relevant expenditure threshold;
- part of that amount will be spent in non-New Zealand dollars; and
- you are concerned that the exchange rate fluctuations over the production period may lead to your actual expenditure falling below the relevant threshold.

The pre-set rate only applies to the calculation of the spend threshold - nothing else. The mid-month exchange rate published on the IRD website for the month in which the relevant payment was made will be used to calculate the Grant amount. Once you have received a 'pre-set' rate, you may not apply for a new pre-set rate unless you are submitting a new provisional application (and pay an application fee if applicable).

At the time of final application, the IRD mid-month rate for the month in which the relevant payment was made must be used. Once an application is approved, the Grant is paid on the actual QNZPE incurred (not the amount calculated using the 'pre-set' rate).

## EXECUTIVE PRODUCER FEES

*When are executive producer fees treated as financing fees (and therefore subject to the financing cap of 2%)?*

If an executive producer fee is payable to an investor who doesn't actually work on the production then it is treated as if it were a financing fee and is subject to the provisions in **Clause 16.4(h)** of the Criteria. If the executive producer does both financing and production work, the Panel may choose to apportion the fee.

If this doesn't apply, then the usual rules apply to executive producer fees – note the 14-day rule and the apportionment guidelines in particular. The NZFC may require evidence of what services in New Zealand were provided by the executive producer.

## F

### FINANCING

*How do I work out what interest I can claim as QNZPE?*

The amount of interest you can claim on loans used to finance the budget of the production is capped at the NZ Reserve Bank 90-day Bank Bill Rate plus 2% per annum. For the purpose of this calculation you must use the daily 90-day Bank Bill Rate as set out on the Reserve Bank website ([www.rbnz.govt.nz](http://www.rbnz.govt.nz)) at the date of closing the financing (this will often be the date of your Production Financing Agreement).

*What financing costs are not QNZPE?*

- Any interest that is not connected with raising, servicing or cashflowing finance for the production;
- Any financing costs that are not paid to a New Zealand entity, unless the expenditure relates to the cashflowing of the Grant and the entity is located in an approved country;
- Any portion of interest payments that exceed the cap; and
- Any portion of a financing fee that exceeds the cap.

### FREIGHT

*The Criteria states that the cost of "international freight (including excess baggage and freight within a country other than New Zealand)" is excluded from QNZPE. Does this mean that the cost of freight between New Zealand and another country is excluded?*

Yes. All freight between New Zealand and another country is excluded from QNZPE.

*Does the "freight" exclusion from QNZPE include couriers?*

Yes. The exclusion covers all types of freight, including courier delivery.

## G

### GOODS SOURCED FROM OVERSEAS

Refer to **Clause 16.2** and **Clause 16.3** of the Criteria

*What do I need to do if I want to claim the cost of a good sourced from overseas as QNZPE?*

To include a good sourced from overseas as QNZPE, the good must either fit the General QNZPE definition or be a “specific inclusion”.

If you want to include good sourced from overseas as QNZPE, the onus is on you to explain the basis on which you think the good is qualifying and to provide relevant evidence. For example, if you think that a good sourced from overseas should qualify as General QNZPE, you must include with the application, at a minimum:

1. Evidence that the good is not otherwise available in New Zealand. This evidence could take the form of confirmation from New Zealand suppliers of similar goods that they do not have the good; and
2. Evidence that the good is purchased, hired or leased in New Zealand from a New Zealand Resident who is a habitual supplier of those goods in New Zealand.

*What is a habitual supplier of goods?*

In general, a habitual supplier of goods will be a supplier who regularly and continually supplies the good in question (or regularly and continually supplies goods of the same kind or class as the good in question). For example, a furniture shop that regularly sells couches would be considered a “habitual supplier” of couches.

### GOVERNMENT FUNDING

*Is the amount of money available in the NZSPG fund capped?*

No, the pool of government funding available is not capped, but this should not be confused with the cap that applies to individual productions.

The New Zealand Grant for productions with QNZPE below \$15 million is capped at \$6 million per production, unless the production qualifies for an Additional Grant.

The Additional Grant is for QNZPE between \$15 million to \$50 million and is capped at \$14 million per production.

The total maximum New Zealand Grant per production is \$20 million.

*Do I need to meet the required level of non-New Zealand Government funding at provisional application stage?*

(see **Non-New Zealand Government Funding**)

## **GRATUITIES**

*If I give a gratuity can I claim that as QNZPE?*

Gifts and gratuities are not QNZPE. Gratuities include tips, koha, vouchers and similar payments for which no invoice or receipt is provided. However, if you obtain a receipt from the person to whom the koha was paid, and this was an expense of the production in New Zealand, then you can claim this as QNZPE.

## **GUILD PAYMENTS**

*Can I claim the SPADA Levy as QNZPE?*

Yes, the SPADA Levy qualifies as QNZPE. Payments to other New Zealand guilds or industry associations (e.g. NZWG) will also qualify, however any payments to overseas guilds or industry associations will not qualify as QNZPE.

## **I**

## **INSURANCE PROCEEDS**

*How do I treat the proceeds of an insurance claim?*

Proceeds from an insurance claim do not need to be deducted from your QNZPE. For the purposes of the NZSPG, insurance proceeds are treated the same as any other income received to finance budget overages. To the extent that you incur additional expenditure due to an 'insurance event', you can add this expenditure to your claim, provided it is QNZPE.

## **INTEREST**

*How should I calculate accrued (unpaid) interest on any loans cash-flowing the New Zealand Grant as QNZPE?*

You should use the best estimate available to you. In terms of estimating a date for repayment of the loan, we suggest you use the estimated timeframe for processing your final application (3 months) plus 10 days from receipt of invoice to allow for payment of the Grant. Please remember that the portion of the New Zealand Grant payable on any accrued interest (that has been approved under clause 22) will not be paid until proof that the accrued interest has been paid has been provided to the NZFC.

Please be aware that interest on loans cash-flowing the production can only be claimed if it has been paid and incurred at the time of final application. Interest that has been pre-paid but not incurred will not qualify as QNZPE.

## INTERIM APPLICATION

*Can I make an interim application for the New Zealand Grant before my production is Completed?*

In normal circumstances, you can only make a single application for the New Zealand Grant when your production is Completed, there is not scope under the Criteria to make an interim application for the New Zealand Grant.

In recognition of the disruption caused by Covid-19, where the application is in relation to a Covid-19 Lockdown production, where production was underway and was disrupted to a material extent by the Covid-19 Lockdown, an interim application can be made for the New Zealand Grant provided that:

1. the amount of QNZPE under the interim application is not less than 50% of the relevant expenditure threshold for that format as specified in clause 8.2 or clause 9.2 **Error! Reference source not found.** of the Criteria; and
2. the NZFC is satisfied that the production will be Completed.

You will need to comply with the requirements for an application as if for a final application, including completing an audit prior to submitting your interim application. If you apply for an interim application, you are also required to make a final application when the production is Completed.

## K

**KOHA** (see *Gratuities*)

## M

### MARKET ATTACHMENT THRESHOLD

*What are counted as 'market attachments' for the purpose of assessing the 10% market attachment threshold required for TV and other non-feature film productions?*

Market attachments are sales advances, distribution advances and licence fees that are payable in exchange for certain rights to screen the production where there is no right to share in the net receipts from the production in respect of that advance or fee. Where a broadcaster commissions and funds all or a substantial part of a production, then the NZFC will review the principal funding and distribution agreements to assess what proportion of the funding is a market attachment as opposed to equity or other types of funding.

Please note that market attachments must be from parties unrelated to the applicant and must be from bone fide screen production sales agents, distributors or broadcasters.

In recognition of the disruption caused by Covid-19, where the application is in relation to a Covid-19 Lockdown production or a Post-Covid-19 Lockdown production, and the applicant is unable to satisfy this requirement as a result of Covid-19, the applicant can request that the NZSPG Panel exercises its discretion as contemplated by the Criteria. To obtain an exercise this discretion, the applicant must first satisfy the NZSPG Panel that:

1. the applicant's failure to satisfy this requirement is due (whether wholly or to a significant extent) to ongoing market conditions following the Covid-19 Lockdown; and
2. the applicant has demonstrated that it has taken reasonably practicable steps to satisfy this requirement; and
3. the actual market attachments comprise a percentage of the production budget that is sufficient, having regard to the market conditions arising as a result of the Covid-19 Lockdown.

Therefore, your application must contain evidence supporting each of subparagraphs 1-3 set out above.

## **MINIMUM QNZPE THRESHOLDS**

*Can I claim for the New Zealand Grant if my QNZPE is less than the minimum threshold set out in the Criteria?*

Under the Criteria, in normal circumstances, if your QNZPE (or TPE in the case of an official co-production) is less than the relevant minimum expenditure threshold set out in clause 8.2 or clause 9.2 of the Criteria, you are not eligible for the New Zealand Grant.

In recognition of the disruption caused by the Covid-19 Lockdown, under clauses 16.6 and 16.7 of the Criteria, where the application is in relation to a Covid-19 Lockdown production or a Post-Covid-19 Lockdown production and the NZSPG Panel is satisfied that, among other things, the applicant's qualifying expenditure had been expected to meet the relevant minimum threshold, but the actual qualifying expenditure has failed to meet that threshold due to Covid-19, the NZSPG Panel can exercise its discretion to accept an application for a smaller amount of QNZPE (or TPE where relevant).

To be eligible to apply to the NZSPG Panel to exercise this discretion, your application must contain evidence supporting the requirements of clause 16.6 or clause 16.7 of the Criteria as the case may be.

## **MUSIC LICENCES**

*Can I claim the cost of licences for New Zealand music if the cost is paid to an offshore record company?*

Yes, provided the original owner of the copyright is a person or company who is, or was, resident in New Zealand for tax purposes\*.

It is common for an offshore record company to own the copyright in a sound recording. It is likely that the performer or composer of the sound recording was the original owner of the copyright in that recording.

If the performer or composer is the original owner of the copyright and they are or were a New Zealand Resident, then licence fees for that recording payable to offshore record companies can be treated as QNZPE.

\*The definition of New Zealand Resident used in the Criteria refers to the definition of New Zealand resident in the Income Tax Act 2007. For further information on New Zealand tax residency, please refer to the IRD's website: <http://www.ird.govt.nz/international/residency/>



## N

### NEW ZEALAND PRODUCTIONS

*What is a New Zealand Production?*

A production which has 'Significant New Zealand Content', as determined in accordance with the Significant New Zealand Content Guidelines (incorporating a points test) in **Appendix 3** of the Criteria. A production must achieve a minimum of 20 points to qualify as having significant New Zealand content, unless it is an official co-production, which are deemed to have Significant New Zealand Content by section 18(2A) of the New Zealand Film Commission Act 1798. This means that official co-productions do not need to pass the Significant New Zealand Content points test. However, an official co-production must still pass the Significant Cultural Benefits Test to receive the Additional Grant.

### NEW ZEALAND SETTING

*If I shoot my production in New Zealand does this mean it has a 'New Zealand setting'?*

For the purposes of meeting **Section A1** of the Significant New Zealand Content test, the setting must be identifiable as a New Zealand setting. Not all productions shot in New Zealand will have a New Zealand setting. For example, the setting in *Slow West* is NOT a New Zealand setting. However, the settings in *Boy* and *The Dead Lands* are New Zealand settings. A fictionalised version of New Zealand, that is still clearly identifiable as a New Zealand setting, will be considered a New Zealand setting. The proportion of a film that is set in New Zealand is measured by the estimated number of on-screen minutes that that setting is shown (this is assessed by reading the script at the provisional application stage and by reference to the completed film at final application stage).

### NON-NEW ZEALAND CAST AND CREW

*If I use non-New Zealand cast and crew on the production, do their costs qualify as QNZPE?*

There are different rules for cast and crew. Non-resident crew costs for the portion of their time spent working on the production in New Zealand are QNZPE provided the crew member has spent at least 14 days in total working on the production in New Zealand.

Similarly, non-resident cast costs that are attributable to their time in New Zealand working on the production are QNZPE, but there are no minimum number of working days on the production required. Please refer to the FAQ on **Apportionment** to determine how to apportion costs between work in New Zealand and work in another country.

### NON-NEW ZEALAND GOVERNMENT FUNDING

*Do I need to meet the required level of non-New Zealand Government funding at provisional application stage?*

At provisional application stage, you need to provide evidence that the non-New Zealand funding requirement will be met. You must show that either:

- there is a genuine intention from one or more non-New Zealand Government entities or persons to fund, in aggregate, 10% or more of the production budget, evidenced by a signed letter of offer, deal memo or funding agreement; or
- a written offer of funding from a New Zealand Government entity (or entities) that makes that funding conditional on 10% or more of the production budget being provided by non-New Zealand Government entities.

If, after you have been issued a provisional certificate, the circumstances of the production change and the proportion of non-New Zealand Government Production Funding drops below 10%, you can apply to the NZSPG Panel for a waiver of this requirement. For more information, see **Clause 8.5** of the Criteria.

*Does a TVNZ Licence Fee qualify as non-government funding?*

Yes. TVNZ is a commercial broadcaster and therefore its licence fee is non-New Zealand Government funding.

In recognition of the disruption caused by Covid-19, where the application is in relation to a Covid-19 Lockdown production or a Post-Covid-19 Lockdown production, and the applicant is unable to satisfy this requirement as a result of Covid-19, the applicant can request that the NZSPG Panel exercises its discretion as contemplated by the Criteria. To obtain an exercise of this discretion, the applicant must first satisfy the NZSPG Panel that:

1. the applicant's failure to satisfy this requirement is due (whether wholly or to a significant extent) to ongoing market conditions following the Covid-19 Lockdown; and
2. the applicant has demonstrated that it has taken reasonably practicable steps to satisfy this requirement; and
3. the actual proportion of non-New Zealand Government Production Funding will be sufficient, having regard to the market conditions arising as a result of the Covid-19 Lockdown.

Therefore, your application must contain evidence supporting each of subparagraphs 1-3 set out above.

## **NZSPG PANEL DECISIONS** (see *Panel Decisions*)

## **O**

### **OFFICIAL CO-PRODUCTIONS** (see *Co-Productions*)

### **ONGOING ENGAGEMENT**

*What does the ongoing engagement requirement entail?*

**Clause 11.3** of the Criteria requires the applicant or, where the applicant is an SPV, the majority owner of the applicant, to have been actively engaged in the business of film or television production in New Zealand to a significant extent for at least 18 months prior to the scheduled start date of Principal Photography.

## **OTHER NEW ZEALAND SCREEN INCENTIVES AND PRODUCTION FUNDING**

*Can I access other New Zealand screen incentives if I apply for a NZSPG for New Zealand Productions?*

A production cannot receive a New Zealand Grant *and* an International Grant.

A production can only receive other New Zealand government production funding if the production is an eligible feature film, an animated production or a children's television drama.

All productions can receive New Zealand government development funding or other non-production funding and a New Zealand Grant.

## **OVERHEADS (see *Business Overheads*)**

## **OVERSEAS TAXES**

*Refer to **Clause 16.4(n)** of the Criteria*

*What is the intention of the "overseas taxes" exclusion?*

The overseas taxes exclusion is intended to capture taxation "fringes" (as that term is understood in the U.S. screen industry). For example, a U.S state healthcare tax will be excluded from QNZPE. The exclusion is not intended to apply to payments of withholding tax by the production.

## **P**

## **PANEL DECISIONS**

*Can I appeal NZSPG Panel decisions?*

Decisions of the NZSPG Panel are final and cannot be appealed. Prior to each meeting, the NZFC or the independent consultant will attempt to advise applicants of any proposed adjustments to the claimed QNZPE and applicants will have an opportunity to comment on those adjustments. Applicants' comments will be reported to the NZSPG Panel.

*Who sits on the NZPSG Panel?*

Information about the make-up of the NZSPG Panel is in **Clause 38** of the Criteria.

## **PAYMENT**

*What happens if I submit my final application, then realise that I forgot to claim some QNZPE?*

Provided the application has not yet been considered by the NZSPG Panel, you can choose to withdraw the application and then re-submit it with the additional QNZPE included. However, the additional QNZPE will need to be covered by the auditor's report and you must re-submit the application before 6 months has expired from the completion of the production. A further application fee may be payable.

*When is the Grant paid?*

Once your final application has been approved you will be sent an approval letter along with a pro-forma invoice.

You must then send to the NZFC an invoice and formally verified bank account details. Payment will be made into the nominated bank account within 10 business days of the NZFC receiving the invoice and formally verified bank account details.

You may assign the benefit of the Grant to a third party and may nominate a bank account into which the Grant should be paid.

## **PRINCIPAL PHOTOGRAPHY**

*My production is an animation, so how do I define the “principal photography” period?*

The production of the computer-generated image (CGI) commences at the point the asset (object/character) to be animated along with the pre-visualisation development to establish the size, shape and movement of these CG assets are locked and approved. These assets then become the elements to create shots (images) that are all computer generated within live action photography.

A full definition of Principal Photography for all formats is set out in **Appendix 1** of the Criteria.

## **PRODUCERS INCOME**

*Can I agree to give some or all of the Producer NZSPG equity to another entity?*

The applicant (or its parent company) must retain the right to receive a share of net receipts from the exploitation of the production that is commensurate with the expected value of the Grant (often referred to as the NZSPG equity). The applicant must be entitled to both a recoupment position and a profit position in respect of the NZSPG Equity. The NZSPG Panel may request evidence that this requirement will be met. NZSPG equity must be recoupable in a similar position to other equity investors. For example, if the NZSPG equity is 20% of the total equity, we would expect the producer to have a recoupment right in a position that is equal with other equity investors in the film and entitles the applicant (or parent company) to a 20% share of the net receipts. However, the disbursement of net receipts for all projects is different and there are different models for film and TV and for co-productions. Please speak with the NZFC if you require further clarification.

Applicants who wish to assign part of this right to third parties (other than cast or crew) should discuss this with the NZFC in advance to ensure compliance with this requirement. Applicants should be aware that assigning part of this right to third parties (other than cast or crew) may affect the NZSPG Panel’s assessment of whether the recoupment requirements are met. See **Clause 14** of the Criteria.

## **PROVISIONAL CERTIFICATION (see *Applications*)**

## **PUBLICITY AND PROMOTION EXPENDITURE**

*Do costs relating to publicity and marketing materials qualify as QNZPE?*

Yes, but only if the publicity and marketing services are provided and paid for in New Zealand before the completion of the production.

## **R**

### **REGISTRATION**

*Do I need to register the production with the NZFC?*

**All applicants** must **either** apply for provisional certification or have the production registered with the NZFC before the start of Principal Photography.

If you have applied for a Provisional Certificate, then you do not need to register. If you have not applied for a Provisional Certificate, then you must register with the NZFC before the start of Principal Photography. Please note that you must use the then-current version of the registration form provided on the NZFC's website.

If you are not sure whether you will apply for a Provisional Certificate the NZFC recommends that you register with the NZFC, as registration is a simpler and faster process.

### **RESIDENCY REQUIREMENTS**

*Why are the residency requirements for the applicant tougher than in the criteria for International Productions?*

One of the key purposes of the New Zealand Grant is to enable New Zealand producers and production companies to develop their businesses. As such, the New Zealand Government expects that the primary beneficiary of the New Zealand Grant will be a New Zealand-based producer or production company. In line with this purpose, where the applicant is majority-owned by another company (e.g. the applicant is an SPV), the majority-owner must meet the same residency requirements. See **Clauses 11.1 - 11.3** of the Criteria.

## **S**

### **SCREEN PRODUCERS AND DIRECTORS ASSOCIATION (SPADA) LEVY**

*Can I claim the SPADA Levy as QNZPE?*

Yes, the SPADA Levy qualifies as QNZPE. However, any payments to overseas guilds or industry associations will not qualify as QNZPE.

## SERVICE FEES

*Are service or booking fees QNZPE?*

Service fees are QNZPE only when paid to a New Zealand entity, even if the cost of the good or service itself is QNZPE. For example, where an Airbnb is booked in New Zealand for the purposes of the production, costs payable to the New Zealand host would qualify but the service fee payable to Airbnb would not.

## SERVICES OUTSIDE NEW ZEALAND

*I have contracted a New Zealand company to work on the film. Are all of its costs automatically QNZPE?*

No, just because payment is made to a New Zealand company it does not mean all costs are automatically QNZPE. Unless captured by a “specific inclusion” in the Criteria (see **Clause 16.3**), expenditure attributable to a supplier performing any element of its services outside New Zealand will be excluded from QNZPE and must be separately identified in any invoices.

If the application is in relation to a Covid-19 Lockdown production, clause 16.2A of the Criteria gives the applicant the opportunity to apply to the NZSPG Panel to recognize, as QNZPE, certain expenditure for services incurred outside New Zealand that was contracted and budgeted for, prior to the Covid-19 Lockdown, to have been provided in New Zealand, provided that the applicant satisfies the Panel that each of the grounds set out in clauses 16.2A (a), (b), (c), (d) and (e) is satisfied.

Should you wish to apply to the NZSPG Panel to exercise this discretion, your application must contain evidence supporting each of clauses 16.2A (a), (b), (c), (d) and (e).

## SOFTWARE LICENCES

*Is the cost of a software licence QNZPE?*

This is treated in the same way as the acquisition of other intellectual property (e.g. music licences). Therefore, if the intellectual property in the underlying software was created in New Zealand for use in the production or the original owner of the intellectual property is or was a New Zealand Resident, the costs can be claimed.

## T

### TAX

*Are taxes QNZPE?*

Taxes are not goods or services and therefore not QNZPE; including, but not limited to: duties, levies, VAT, withholding tax and GST.

*Do I have to pay income tax on the Grant?*

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

*Does the Grant include GST?*

The Grant is calculated on amounts that are net of GST. However, due to New Zealand tax laws, when the Grant is paid, it is paid plus GST. The applicant must therefore return the GST component as part of its normal GST returns.

**TIPS (see *Gratuities*)**

## **TRAVEL OUTSIDE NEW ZEALAND**

*Can I claim on-the-ground travel costs within a foreign country for NZ resident cast and crew?*

No, on-the-ground travel costs within a foreign country are now excluded from QNZPE.

You can claim as QNZPE expenditure on Remuneration, commercial airfares, accommodation costs, and per diems for New Zealand Resident cast and crew while they are providing services outside New Zealand during Principal Photography, provided these expenses meet the requirements of **Clause 16.3(f)** of the Criteria. Any costs incurred during prep or wrap days offshore are excluded from QNZPE. Where cast/crew have taken a long-haul flight (as that term is understood by the NZFC) costs associated with a “rest day” following that flight may be claimable as QNZPE.

## **TPE (TOTAL PRODUCTION EXPENDITURE)**

*What is TPE?*

TPE (Total Production Expenditure) is defined in **Appendix 2** of the Criteria. It is essentially the total production budget (worldwide) less certain excluded costs.

TPE is only relevant if your production is an official co-production between New Zealand and another country or countries, and you are using TPE to calculate the expenditure threshold.

## **W**

### **WARDROBE PURCHASES (see also: Assets)**

*Are wardrobe items that are sourced from overseas QNZPE?*

Wardrobe items sourced from overseas can only be QNZPE if the required item is not otherwise available to the production in New Zealand. “Not otherwise available” means that the item cannot reasonably be purchased, hired or leased by the production in New Zealand.

To be QNZPE the wardrobe item must be purchased, hired or leased from a New Zealand Resident and the item must be used in the making of the production in New Zealand.

If the wardrobe item is used for the making of the production both in New Zealand and overseas, the cost of the item must be apportioned with respect to the time spent filming in New Zealand.

## **WRITERS**

*If I employ a non-New Zealand writer to work on the script, will their fee qualify as QNZPE?*

Only the portion of their fee for script work actually carried out in New Zealand will qualify as QNZPE. If you employ a New Zealand writer who is based off-shore, then only the work actually carried out in New Zealand will qualify as QNZPE.