



Inland Revenue  
*Te Tari Taake*

# **INCOME TAX TREATMENT OF NEW ZEALAND SCREEN PRODUCTION INDUSTRY UNDER THE INCOME TAX ACT 1994**

**Important Note: Income Tax Act 1994 was rewritten as the Income Tax Act 2004 effective from 1st April 2005. There are no intended legislative changes affecting film in the Income Tax Act 2004 but some references and definitions are different. The Income Tax Act 2004 and the 2004 version of this paper are accessible on Inland Revenue's website [www.ird.govt.nz](http://www.ird.govt.nz)**

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## EXECUTIVE SUMMARY

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The New Zealand screen production industry has been subject to a special tax regime since the early 1980s. This paper provides a comprehensive analysis of the income tax treatment of the screen production industry under the Income Tax Act 1994 (the "1994 Act"). All statutory references in this paper are to the 1994 Act, unless otherwise stated.

All income from a film derived by a film owner is the gross income of that film owner (section CJ 2).

Expenditure on films that is allowed as a deduction under sections EO 3 and EO 4 is accumulated until the film is completed (as defined in section OB 1). The expenditure is then spread and allowed as a deduction according to the nature of the film. Section EO 3 is the primary provision. Subsection (4) provides for a write-off for feature films over a period of 24 months. Subsection (5) deals with non-feature films, and allows a write-off over 2 income years.

Section EO 4 provides for an accelerated write-off for the cost of producing films. The costs of producing New Zealand films can be deducted in the year they are completed (section EO 4(4)). Costs of producing other films can be spread over two income years (section EO 4(5)). Section EO 4 does not apply to films for which a Large Budget Screen Production Grant is claimed.

Deductions available under section EO 3 or EO 4 can be clawed back by section EO 4A under certain circumstances, where an arrangement might otherwise provide two deductions to film investors for one amount of expenditure. Where section EO 4A applies, the Commissioner of Inland Revenue is entitled to assess taxpayers outside the time bar (section EO 4B).

Deductions otherwise available under section EO 3 or EO 4 may be deferred under section DK 1 (prior to 1 April 2004) or subpart ES (after 1 April 2004) where the film investment is financed out of a limited-recourse loan. The deduction is deferred until the investors are personally at risk of the expenditure incurred relating to films.

Sections GC 11 and GD 12 are specific anti-avoidance provisions in relation to films. Both provisions target at non-arm's length transactions and arrangements which are aimed to manipulate sections EO 3 and EO 4.

In November 2003, the Government introduced the large budget screen production grant scheme, which provides a rebate of 12.5 per cent of the Qualifying New Zealand Production Expenditure to film and television production companies provided certain requirements are satisfied. The Large Budget Screen Production Grant Criteria can be viewed on the website of New Zealand Film Commission.

## **PART I. BACKGROUND**

### **CHAPTER 1 - INTRODUCTION**

- 1.1 The New Zealand screen production industry is subject to special income tax rules under current tax laws. This is in line with the Government's efforts to encourage the development of the New Zealand screen production industry. A recent development is the introduction of the large budget screen production grant scheme in November 2003.
- 1.2 This paper will provide an analysis of the income tax treatment of the screen production industry under the Income Tax Act 1994 (the "1994 Act"). All legislative references are references to the 1994 Act, unless otherwise stated. Following the structure of the 1994 Act, this paper covers the following topics:
- income derived from films: section CJ 2;
  - timing of deductions in relation to films: sections EO 3, EO 4 and EO 4A;
  - deferred deductions relating to money not at risk: section DK 1 in the 1994 Act (repealed from 1 April 2004); and the deferred deduction rule in subpart ES (with effect from 1 April 2004);
  - specific anti-avoidance provisions in relation to films: sections GC 11 and GD 12; and
  - the large budget screen production grant scheme.
- 1.3 A diagram showing how these topics interact is included in Appendix A.

## **PART II. INCOME DERIVED FROM FILMS: SECTION CJ 2**

### **CHAPTER 2 - FILM INCOME**

- 2.1 Section CJ 2(1) includes within gross income all income from a film derived by a film owner. “Income from a film” is further defined in section CJ 2(2) and means any amount derived by a film owner from the sale, use, rental, or other exploitation of a film, including—
- (a) any amount received or receivable by the film owner for the use of, or the right to use, the film or any right or interest in a right in the film; and
  - (b) any amount received or receivable by the film owner for the granting of any licence in respect of any future right in the film; and
  - (c) any consideration received or receivable by the film owner in respect of:
    - (i) the disposal of the whole or any part of any right or interest in any right in the film; or
    - (ii) the assignment of any right or any interest in any right; or
    - (iii) the assignment of any right to derive income from the use of such a right or interest.
- 2.2 For the purposes of section CJ 2, “film owner” means the person who owns the film (section OB 1, paragraph (b)).
- 2.3 “Film”, in respect of “film owner” in that sense, means a cinematograph film and includes (section OB 1, paragraph (a))—
- (a) a videotape, and any other material record of visual moving images that is capable of being used for the subsequent projection of those images in a fixed sequence on to any screen; and
  - (b) any part, or any copy or part of a copy of the whole or any part of a film; and
  - (c) any right therein.

## PART III. TIMING OF DEDUCTIONS

### CHAPTER 3 - INTRODUCTION

- 3.1 Subpart EO of the 1994 Act provides for a special deduction regime for expenditure in relation to films. Such expenditure can be deducted under the following two timing rules:
- section EO 3: the costs of **acquiring** any film or any right in any film (Chapter 4); and
  - section EO 4: the cost of **producing** films (Chapter 5).
- 3.2 It is important to note that deductions under section EO 3 or EO 4 will only be available when the film is completed, regardless of whether it is a feature film, a non-feature film, a New Zealand film or a non-New Zealand film.
- 3.3 Sections EO 3 and EO 4 are however expressly made subject to section EO 4A (refer to sections EO 3(7) and EO 4(2)). Section EO 4A works to claw back deductions allowed under section EO 3 or EO 4 in certain circumstances where an arrangement might otherwise provide two deductions to film investors for one amount of expenditure. Where section EO 4A applies to an arrangement, section EO 4B allows the Commissioner of Inland Revenue (“Commissioner”) to reassess a taxpayer outside the normal four-year time bar set out in section 108 of the Tax Administration Act 1994. (See Chapter 6 for details of sections EO 4A and EO 4B.)
- 3.4 Sections EO 3 and EO 4 were also subject to section DK 1 in respect of income years prior to 1 April 2004 (sections EO 3(7) and EO 4(2)). The allowable deductions under section EO 3 or EO 4 will be reduced to the extent that the film investment is funded by a limited recourse loan. (See Chapter 8 for details of section DK 1.)
- 3.5 Section DK 1 was repealed from 1 April 2004 by a newly introduced deferred deduction rule (subpart ES). Subpart ES will apply to reduce the deductions otherwise allowable under section EO 3 or EO 4 if certain requirements are met. The effect of the deferred deduction rule is that deductions are deferred until the investors are personally at risk of the expenditure incurred relating to films. (See Chapter 9 for details of the deferred deduction rule.)

## CHAPTER 4 - COSTS OF ACQUIRING ANY FILM OR ANY RIGHT IN ANY FILM: SECTION EO 3

- 4.1 Where a taxpayer incurs expenditure in acquiring a film or any right in a film, such expenditure will be subject to different deduction rules depending on whether the film is a feature film or a non-feature film.
- 4.2 A feature film (as defined in section OB 1) means a film produced for, primarily and principally, exhibition in a cinema, being a film -
- which is to be so exhibited in 35 millimetre gauge; **and**
  - which will, when so exhibited, have a continuous running time of not less than 75 minutes.

### Feature film – section EO 3(4)

- 4.3 Where in an income year a taxpayer who is or becomes a film owner, owns or becomes the owner of any **completed** feature film or any right in such a film and remains the owner of that film or right until the end of that income year, the taxpayer is allowed a deduction in that income year of an amount that is the lesser of:
- (a) The amount of the specified deduction in relation to that income year;
- (b) An amount equal to the residual value in relation to that income year.
- 4.4 “Specified deduction” is defined in section EO 3(9) and means an amount calculated in accordance with the following formula:

$$(x / y) \times z$$

where –

- x is the number of complete months in the period that commenced on the later of the first day of the month in which the film is completed and the first day of the income year, and ends on the last day of the income year; and
- y is 24, reduced by such number (if any) as is equal to the number of complete months in the period that commences on the first day of the month in which the film is completed and ends on the last day of the income year that immediately precedes the income year first mentioned in this definition; and
- z is an amount equal to the sum of the residual value, in relation to that income year, in relation to that film and to any right in that film.

- 4.5 “Residual value” is also defined in section EO 3(9) and means the amount of the cost of acquisition of the film or the right in relation to a film incurred prior to the end of the income year, reduced by so much of the amount as has been allowed as a deduction to the taxpayer in any income year preceding that income year.
- 4.6 Under section EO 3(4), no deduction may be allowed until the year in which the film is completed. Costs incurred up to that date are accumulated and the total allowed rateably over a 24-month period commencing with the month in which the film was completed. The amount allowed as a deduction in the year of completion and subsequent years is calculated on the basis of the formula contained in the definition of “specified deduction”, but is limited to the amount of the specified deduction for that income year or the residual value in relation to that income year (refer Public Information Bulletin No. 120 (March 1983) (“PIB No. 120”)).

*Proviso to section EO 3(4)*

- 4.7 The proviso to section EO 3(4) permits a higher portion of costs to be written off in any year where the income derived from the film (or any right in the film) in that year exceeds the specified deduction which would otherwise be allowable:

Provided that in any case where the gross income derived by that taxpayer from the sale, use, rental, or other exploitation of that film or that right in that income year exceeds the specified deduction, in relation to that film, for that year, the taxpayer shall be allowed a deduction of such amount of the cost of acquisition of that film or of that right in that income year as is equal to the lesser of -

- the amount of the residual value of that film or of that right in relation to that income year;
- the gross income derived from the sale, use, rental or other exploitation of that film or of that right which was derived during that income year.

- 4.8 An example illustrating how section EO 3(4) works is set out below (SMART Tax Income Tax Commentary (Brookers, 20040324) ITAC-EO 3. paragraph 3.8):

**Scenario:**

A film commenced production in the 1995 income year. The film was completed on 15 January 1997. The specified deduction for such a film is as follows:

**Year ending 31 March 1995**

Production costs	\$1,000,000
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No deduction is allowed for calculating assessable income until the film is completed.

**Year ending 31 March 1996**

Production costs \$2,000,000

Deduction is again a nil figure as the film has not yet been completed.

**Year ending 31 March 1997**

Production costs \$1,000,000

Direct marketing costs \$200,000

Direct selling costs \$100,000

As the film was completed on 15 January 1997 the aggregate figure for production costs amounts to \$4,000,000

Direct selling and marketing costs cannot be included as part of the formula used to ascertain “film production expenditure” – these costs are specifically excluded from that definition. The selling and marketing costs are deductible in the year incurred.

Therefore, the allowable deduction, in terms of production costs, is

$3 / 24 \times 4,000,000$  \$500,000

The direct selling and marketing costs are deductible as well.

**Year to 31 March 1998**

Production costs nil

Aggregate production costs available for write off \$3,500,000

Therefore, the allowable deduction is:

$12 / 21 \times 3,500,000$  \$2,000,000

**Year to 31 March 1999**

Production costs nil

Aggregate production costs available for write off \$1,500,000

Allowable deduction:

$12 / 9 \times 1,500,000$  or residual value of \$1,500,000 (whichever is the lesser) \$2,000,000

Therefore costs of production allowed will be \$1,500,000

**Non-feature film – section EO 3(5)**

4.9 Where, at any time during an income year, a taxpayer becomes the owner of any **completed** film other than a feature film, or of any right in any **completed** film other than a feature film, that taxpayer is allowed a deduction for the cost

Document content is Income Tax Act 1994 effective until 1 April 2005 now Income Tax Act 2004

of acquisition of that film or of that right (to the extent that cost of acquisition was incurred by that taxpayer during that income year) in that income year and in the immediately succeeding income year in the following proportions –

- (a) 50% in the income year in which that film or that right was acquired; and
- (b) the balance in the income year immediately succeeding the income year in which that film or that right was acquired.

4.10 Under section EO 3(5), no deduction may be allowed until the year in which the film is completed. Costs incurred up to that date are accumulated and the total allowed over a two year period, 50 per cent in the income year in which the film is completed and the balance in the following year (refer PIB No. 120). In other words, where a taxpayer acquires a completed non-feature film or any right in such film, the deduction of the costs of acquisition will be split 50:50 over two income years commencing with the year of acquisition.

*Proviso to section EO 3(5)*

4.11 The proviso to section EO 3(5) permits more than 50 per cent of the costs to be written off in the year of completion (or acquisition) where the income from the film (or from any right therein) which was derived in that year exceeds that 50 per cent deduction which would otherwise be allowable under this subsection. The amount of deduction which may be allowed in that income year will then be the lesser of:

- The total cost of acquisition which was incurred by the taxpayer prior to the end of that income year; or
- The gross income from the sale, use, rental or other exploitation of the film or film rights which was derived during that income year.

**Deduction on disposal of film rights – section EO 3(6)**

4.12 Where in any income year any taxpayer, being the owner of a film **or** any right in any film, or being the owner of a film **and** of any right in that film, ceases to own that film **or** every right in that film, or, as the case may be, ceases to own that film **and** every right in that film which that taxpayer possessed at any time during that income year, a deduction for the balance of the cost of acquisition which has not already been allowed can be claimed by that taxpayer in the income year that the taxpayer ceases to own the film or film rights.

4.13 Section EO 3(6) works with the effect that in any year where ownership of any film or any right in that film is relinquished, all remaining deductions are brought forward and are allowed to be deducted as a lump sum in that income year.

4.14 The taxpayer must dispose of **all** his/her rights in the film before the deduction becomes available.

## **Application**

- 4.15 The deduction rules under section EO 3 apply in relation to any film and to any film owner who (section EO 3(2)):
- (a) becomes a film owner by reason of being the person who first owns a right in relation to that film and who, before so owning that right, incurred expenditure directly in the production of that film; or
  - (b) otherwise becomes a film owner and who incurs expenditure in purchasing or otherwise acquiring a film or a right in that film.
- 4.16 This means, in effect, that section EO 3 applies to any person who, whether through direct contribution towards production or through any other means of acquisition, becomes the owner of a film or any right in a film.
- 4.17 Broadcasters are excluded from the application of section EO 3. “Broadcaster” is defined in section EO 3(9) and means a person who operates a television station or network or a cable television system.
- 4.18 Taking into account the amendments to the definitions of “film owner” and “right” brought by section 50 of the Taxation (Remedial Matters) Act 1999 (with effect from 7 July 1999), section EO 3 applies to expenditure incurred on and after 7 July 1999 (section EO 3(2A)). For this purpose, “expenditure incurred” includes the portion of a depreciation loss or an allowance for depreciation that is attributable to the period on and after 7 July 1999 (section EO 3(2B)).

## **Some definitions for the purposes of section EO 3**

### *Film Owner*

- 4.19 “Film owner” for the purposes of section EO 3 means the person who owns the film or a person who owns any rights in or in relation to the film (section OB 1, paragraph (a)).

### *Film*

- 4.20 “Film”, in section EO 3 and in the definitions of “cost of acquisition” and “feature film”, means a cinematograph film, and includes (section OB 1, paragraph (b)):
- a videotape, and any other material record of visual moving images that is capable of being used for the subsequent projection of those images in a fixed sequence on to any screen; and
  - any part of any such film, or any copy or part of a copy of the whole or any part of a film.

4.21 “Film” in this context, however, does not include a film which is intended for exhibition as an advertising programme or as a commercial.

#### *Feature Film*

4.22 “Feature film” is defined in section OB 1 and means a film produced for, primarily and principally, exhibition in a cinema, being a film -

- which is to be so exhibited in 35 millimetre gauge; **and**
- which will, when so exhibited, have a continuous running time of not less than 75 minutes.

#### *Cost of acquiring [Cost of acquisition]*

4.23 “**Cost of acquiring**” [or “cost of acquisition”] in sections EO 3 and GC 11, in relation to the acquisition of any film or of any right in any film, means (section OB 1):

- in the case of a film owner to whom section EO 3(2)(a) applies (where the film owner invested in the actual production of the film), the amount that represents the share borne by the owner of the cost of producing the film; **and**
- in the case of a film owner to whom section EO 3(2)(b) applies (where the film owner purchased the film or the right in a film), the cost of such acquisition.

#### *Right*

4.24 “Right” in this context means (section OB 1, paragraph (a))—

- any copyright;
- any licence relating to the copyright;
- any other right which subsists in or attaches to the film, including any right to income or a share of income from sale, use, rental or other exploration of that film;
- any equitable right in the copyright in the film or in a licence under the copyright.

#### *Cost of producing [Cost of production]*

4.25 “Cost of producing” [or “cost of production”] in the definition of “cost of acquisition” and in section EO 3, in relation to a film, means (section OB 1)—

- the sum of the film expenditure incurred in producing the film; and

- all other film expenditure incurred after the completion of the film,

being in each case film expenditure incurred in relation to the production of the film; but does not include any expenditure directly incurred in marketing or selling the film.

4.26 PIB No. 120 states that the definition covers all pre-production and production costs together with any post-production costs related to the actual production of the film (as opposed to those associated with marketing the film).

4.27 Post-production costs include (refer PIB No. 120):

- taking the film from the double head finecut stage to the stage where it is ready for distribution to cinemas.
- costs of converting the film from 18mm gauge to 35mm.
- costs of adapting the film for overseas exhibition, such as dubbing or cutting. (These cannot be said to be marketing costs. Although it would be difficult to market the film without changes being made, the costs are in fact costs of production of the film for its exhibition in a specific market, not costs of selling to that market.)

### *Film Expenditure*

4.28 “Film expenditure” in the definition of “cost of production” and in sections EO 3 and GC 11, in relation to a film, includes (section OB 1):

- any expenditure (not being expenditure incurred in acquiring any asset in respect of which a deduction by way of depreciation is allowed) in respect of which a deduction is allowed; and
- any loss in respect of which a deduction is allowed in section BD 2(1)(b)(i) and (ii); and
- any depreciation loss.

### **No other deductions – section EO 3(3)**

4.29 Where a film owner incurs any expenditure in respect of which a deduction has been or is to be allowed under section EO 3, or where a film owner incurs any expenditure in acquiring any assets in respect of which a deduction by way of depreciation loss has been or is to be allowed under section EO 3, no other deduction shall be allowed under any other provision of the 1994 Act—

- (a) in respect of that expenditure; or
- (b) to that film owner by way of depreciation in respect of any asset acquired by the film owner, or of which the film owner has become possessed, as a result of that expenditure.

### **Adjustment for depreciation loss – section EO 3(8)**

- 4.30 Where any amount by way of depreciation loss has been included in the cost of acquisition of any film or any right in a film or in any part of that cost of acquisition, **and** any cost of acquisition has been allowed as a deduction in any income year, **and** the asset in relation to which that depreciation loss was calculated is sold or otherwise disposed of or used otherwise than in producing the film to which that cost of acquisition relates, the Commissioner is entitled to make adjustments as the Commissioner considers fair and equitable, to the extent of an amount which is, or amounts which in the aggregate are, not greater than that amount of depreciation loss.
- 4.31 Section EO 3(8) allows in effect the Commissioner to recoup any depreciation loss that was claimed in respect of an asset that was later sold or otherwise disposed of or used other than for producing the film to which the acquisition cost relates. Any such adjustments cannot exceed any loss that had been claimed when the asset (on which depreciation was claimed) was either sold or otherwise disposed off. The Commissioner has a discretion to ascertain adjustments that he or she considers to be fair and equitable.

### **Interrelationship with other provisions**

- 4.32 It should be noted that deductions allowable under section EO 3 for costs of acquiring a film or any right in the film are subject to sections EO 4A and DK 1. (See Chapters 6 and 8 for details of sections EO 4A and DK 1 respectively.)
- 4.33 The application of section EO 3 is also subject to sections EO 4 (dealing with the cost of producing films) and GD 12 (anti-avoidance provision dealing with costs of producing films).
- 4.34 Any taxpayer who claims a deduction under section EO 3 is also subject to section GC 11, which is an anti-avoidance provision dealing with non-market transactions in acquiring a film or any right in the film. (See Chapter 11 for details of section GC 11.)

## **CHAPTER 5 - COST OF PRODUCING FILMS: SECTION EO 4**

5.1 Section EO 4 provides for deductions for expenditure incurred in producing films. Different deduction rules will apply depending on whether the film produced is a New Zealand film (as defined in section OB 1) or not. (See paragraphs 5.16-5.18 below for details of “New Zealand film”.)

### **Production of New Zealand films – section EO 4(4)**

5.2 Where a film owner has incurred film production expenditure (as defined) in producing a film, which has, by means of a final certificate issued by the New Zealand Film Commission (the “NZFC”), been certified as a New Zealand film, such expenditure is entitled to a 100 per cent deduction in the later of:

- (a) the income year in which the New Zealand film is completed;
- (b) the income year in which that film production expenditure is incurred.

### **Production of non-New Zealand films – section EO 4(5)**

5.3 Where a non-New Zealand film is produced, the film production expenditure incurred by the film owner is deductible in the following way:

- (a) 50% in the year of completion; and
- (b) 50% in the immediately succeeding year.

#### *Proviso to section EO 4(5)*

5.4 A deduction greater than 50% in the year of completion is allowed where the income from a film, or from any right to the film, derived in the year of completion exceeds the 50% deduction that would otherwise be available. In such a case the deduction allowed in the year of completion is the lesser of:

- the total film production expenditure which the taxpayer incurred prior to the end of that income year; or
- the income derived from the sale, use, rental or other exploitation of the film which was derived in that income year.

The remaining portion of the film production expenditure may be deducted in the following income year.

### **Application**

5.5 Taking into account the amendments made to the definitions of “film owner” and “right” made by section 50 of the Taxation (Remedial Matters) Act 1999 (with effect from 7 July 1999), section EO 4 applies to expenditure incurred on and after 7 July 1999 (section EO 4(3A)). For this purpose, “expenditure

incurred” includes the portion of a depreciation loss or an allowance for depreciation that is attributable to the period on and after 7 July 1999 (section EO 4(3B)).

#### **Later expenditure- section EO 4(6)**

- 5.6 Any film production expenditure which is incurred by a film owner after the completion of the film is deductible in the year it is incurred. This applies to both New Zealand films and non-New Zealand films.

#### **Cessation of ownership of non-New Zealand films – section EO 4(7)**

- 5.7 Where in the income year in which a non-New Zealand film is completed, any taxpayer, being the film owner of that non-New Zealand film, ceases to own that film or every right in that film or, as the case may be, ceases to own that film and every right in it which the taxpayer possessed at any time during that income year, the taxpayer is entitled to a deduction of the total of the film production expenditure in the year of completion. In other words, in any year where ownership is relinquished all remaining deductions are allowed to be deducted as a lump sum in the income year in which ownership ceases.

#### **No other deductions – section EO 4(3)**

- 5.8 Where any taxpayer incurs any film production expenditure (not being a depreciation loss) in respect of which a deduction has been or is to be allowed under section EO 4, or where any taxpayer incurs any expenditure in acquiring any asset in respect of which a deduction of film production expenditure (being depreciation loss) has been or is to be allowed under section EO 4, no other deduction shall be allowed under any other provision of the 1994 Act–

- (a) in respect of that film production expenditure or that expenditure in acquiring that asset; or
- (b) to that taxpayer by way of depreciation in respect of any asset acquired by the taxpayer, or of which the taxpayer has become possessed, as a result of that film production expenditure or that expenditure in acquiring that asset.

#### **Non-application to large budget screen production grant**

- 5.9 Section EO 4(1B) was introduced by the Taxation (GST, Trans-Tasman Imputation and Miscellaneous Provisions) Act 2003 (enacted on 25 November 2003). It works to ensure that the current concessional tax treatment of New Zealand films under section EO 4 does not apply to a screen production for which a large budget screen production grant is made (refer Tax Information Bulletin, Vol. 16, No. 1 (February 2004), page 69). (A full discussion of the large budget screen production grant regime is set out in Chapter 13.)

## Some definitions for the purposes of section EO 4

### *Film production expenditure*

5.10 “Film production expenditure”, in relation to a film and to any taxpayer, is defined in section OB 1 to include:

- any expenditure (not being expenditure incurred in acquiring any asset in respect of which a deduction by way of depreciation is allowed) in respect of which a deduction is allowed; **and**
- any loss which may be allowed as a deduction under section BD 2(1)(b)(i) and (ii); **and**
- any depreciation loss in relation to the film.

5.11 In other words, “film production expenditure” includes expenditure or loss incurred by a taxpayer in producing any film (whether that expenditure was incurred prior to, on, or subsequent to the date on which the film is completed) in relation to which the taxpayer is, or is expected to become, a film owner and includes any depreciation loss in relation to the film.

5.12 “Film production expenditure”, however, does not include any expenditure incurred by the taxpayer—

- in the acquisition, from any other person, of a film that is completed (provided for in section EO 3);
- in the acquisition, from any other person, of any right in a film that is completed (provided for in section EO 3);
- directly in marketing or selling the film (deductible in the year the cost is incurred).

5.13 For the purposes of section EO 4, any film production expenditure incurred by any taxpayer, prior to the film being completed, in reimbursing any other person for film production expenditure incurred by that other person in relation to that film will be treated as if it were film production expenditure incurred by that taxpayer in producing that film (section EO 4(1)). In other words, a taxpayer who makes a film reimbursement payment, prior to the completion of the film will be treated as having incurred film production expenditure for the purposes of section EO 4.

5.14 If a taxpayer reimburses any other person for expenditure on interest incurred by the other person in producing a film, the taxpayer **may** treat the reimbursed expenditure as film production expenditure (section EO 4(2B)). (This rule was enacted with application to the 1997-98 and subsequent income years. For a detailed explanation, see Tax Information Bulletin, Vol. 15, No. 5 (May 2003), page 75.)

*Film owner*

- 5.15 “Film owner”, in the definition of “film production expenditure” and in sections EO 4 and GD 12, means the person who owns a film that has been completed or a person who owns any rights in or in relation to the film (section OB 1, paragraph (c)).

*New Zealand film*

- 5.16 “New Zealand film” is defined in section OB 1 and means a film which has been certified by the NZFC as being a film which the NZFC is satisfied has a significant New Zealand content in accordance with the criteria set out in section 18 of the New Zealand Film Commission Act 1978 (the “NZFC Act”).

- 5.17 Section 18(2) of the NZFC Act lists out the factors that the NZFC will consider in determining whether or not a film has or is to have a significant New Zealand content:

- (a) The subject of the film:
- (b) The locations at which the film was or is to be made:
- (c) The nationalities and places of residence of—
  - (i) The authors, scriptwriters, composers, producers, directors, actors, technicians, editors, and other persons who took part or are to take part in the making of the film; and
  - (ii) The persons who own or are to own the shares or capital of any company, partnership, or joint venture that is concerned with the making of the film; and
  - (iii) The persons who have or are to have the copyright in the film:
- (d) The sources from which the money that was used or is to be used to make the film was or is to be derived:
- (e) The ownership and whereabouts of the equipment and technical facilities that were or are to be used to make the film:
- (f) Any other matters that in the opinion of the Commission are relevant to the purposes of this Act.

- 5.18 As provided for in section 18(2A) of the NZFC Act, a film will be deemed to have significant New Zealand content if it is made pursuant to an agreement or arrangement entered into in respect of the film between the New Zealand Government or the NZFC on the one hand and the Government of another country or relevant public authority of another country on the other.

## Certification from the NZFC

- 5.19 Taxpayers are to make written applications to the NZFC for certification of a film as a New Zealand film (section EO 4(9)).
- 5.20 Certification will normally take two steps (see the NZFC's website for details of Certification as a New Zealand film: [www.nzfilm.co.nz/cert.php](http://www.nzfilm.co.nz/cert.php)):
- **Provisional Certification:** A "provisional certificate" in relation to a film that is proposed to be produced or is in the course of being produced, means a certificate issued by the NZFC certifying that the NZFC is satisfied that the film so proposed to be produced or in the course of being produced, and described in the certificate, will, when completed, qualify for certification as a New Zealand film (section EO 4(13)). Taxpayers may apply for provisional certificates at any stage prior to completion of films.
  - **Final Certification:** A "final certificate" in relation to a film means a certificate issued by the NZFC certifying that the film described in the certificate is a New Zealand film (section OB 1). A final certificate will be issued by the NZFC once the film is completed and the producer has demonstrated that the criteria for a New Zealand film have been fulfilled.
- 5.21 Application forms for both provisional and final certificates can be obtained from the NZFC's website at [www.nzfilm.co.nz/cert.php](http://www.nzfilm.co.nz/cert.php).
- 5.22 It should be noted that the deduction allowable under section EO 4(4) requires a film to be a New Zealand film, by means of a **final certificate** issued by the NZFC. A provisional certificate **does not** allow any deductions under section EO 4(4) for film production expenditure.
- 5.23 However, obtaining a provisional certificate amounts to interim approval of the film as a New Zealand film by the NZFC. Once a provisional certificate is issued, it is likely that the taxpayer will be able to obtain a final certificate if the film is produced as provisionally approved.

### *Revocation – section EO 4(10)*

- 5.24 The NZFC has power to revoke any of its certificates at any time if any incorrect statement was made in the furnishing of information for the purposes of obtaining a certificate, or for any other reason, the NZFC is satisfied that the certificate should not remain in force. Once revoked, a certificate is void from the time of its issue.

### *The Commissioner be notified – section EO 4(11)*

- 5.25 Under section EO 4(11), the Commissioner is required to be notified of:

- any issue of a provisional certificate or a final certificate; and
- any revocation of any provisional or final certificate by the NZFC.

### **Deduction for deferred fees – section EO 4(12)**

5.26 Deferred fees and similar expenses are deemed to be incurred at the time of making payment, and accordingly will not be deductible until the year of payment. This is the case where, in relation to any income year:

- an amount (referred to as the “specified amount”) is contributed by any taxpayer or contingently liable to be contributed in payment of any of the costs of producing any film; and
- all or any part of the specific amount relates to the provision of services or the supply of goods; and
- the payment for the provision of goods or services according to the relevant agreement is to be deferred, and
- the period between the time of provision of those services or the supply of those goods and the time of payment is, in the opinion of the Commissioner, excessive or the liability for payment is dependent upon a contingency.

### **Depreciation recovery – section EO 4(8)**

5.27 The Commissioner is permitted to make an adjustment where:

- any amount by way of depreciation loss that is film production expenditure has been allowed as a deduction under section EO 4; and
- the asset on which that depreciation loss was calculated is sold or otherwise disposed of or used otherwise than in producing the film.

5.28 Any such adjustments cannot exceed the amount of depreciation loss claimed up until the time the asset is sold or otherwise disposed of. The Commissioner of Inland Revenue has discretion to ascertain adjustments to a fair and equitable extent.

### **Interrelationship with other provisions**

5.29 Similarly to section EO 3, the deductions available under section EO 4 are subject to the application of other special rules, including sections EO 4A and DK 1 (section EO 4(2)).

5.30 Section EO 4 is also subject to section GD 12 (the anti-avoidance provision dealing with costs of producing films).

## CHAPTER 6 - CLAWBACK PROVISIONS: SECTIONS EO 4A AND EO 4B

- 6.1 Section EO 4A is headed “Arrangement for expenditure on film and sale of property”. This section was inserted by the Taxation (Accrual Rules and Other Remedial Matters) Act 1999 to combat arrangements relating to films, under which two deductions could be claimed for one amount of expenditure. Before the enactment of section EO 4A, investors could enter into arrangements, usually through a group of companies, and claim two tax deductions for one amount of expenditure: the first deduction for expenditure on films; the second deduction in relation to the disposal of property under the arrangement.
- 6.2 Section EO 4A applies to expenditure incurred on and after 17 November 1998, the date of introduction of the Taxation (Accrual Rules and Other Remedial Matters) Bill (refer Tax Information Bulletin, Vol. 11, No. 6 (July 1999), page 35). Section EO 4A reduces the deductions for film expenditure to the extent that the expenditure is effectively reimbursed to investors by way of any proceeds from disposal of property.
- 6.3 Section EO 4A contains a saving provision in section EO 4A(2A), which in turn restricts the application of section EO 4A. The saving provision, however, is itself subject to the further restrictions contained in section EO 4A(2B). Essentially, in order for section EO 4A not to apply, the criteria contained in both sections EO 4A(2A) and (2B) must be met.
- 6.4 A diagram showing how section EO 4A operates is included in Appendix B.

### Section EO 4A overrides sections EO 3 and EO 4

- 6.5 Section EO 4A is of an overriding effect (section EO 4A(1)). This means that deductions available under section EO 3 or EO 4 are subject to the application of section EO 4A. The allowable deductions under section EO 3 or EO 4 will be reduced by section EO 4A if certain requirements are met.

### Application – section EO 4A(2)

- 6.6 Section EO 4A will apply to reduce the deductions available under section EO 3 or EO 4 in certain circumstances where:
- (a) a person incurs expenditure under an arrangement and the expenditure would be—
    - (i) deductible under section EO 3 or EO 4; or
    - (ii) otherwise deductible under section BD 2 if the expenditure is for a right in or in relation to a film; **and**
  - (b) the person or an associated person may dispose of property—
    - (i) under the arrangement; or

- (ii) under a right given by the arrangement to the person or to an associated person; or
  - (iii) in meeting an obligation of the person or of the associated person that arises from a right given by the arrangement; **and**
- (c) all or some of consideration for the property would not be income from a film under section CJ 2.

6.7 For the purposes of section EO 4A, “associated person” has the meaning set out in section OD 7 or in section OE 8(3). For the purposes of section EO 4A, a loss attributing qualifying company and a shareholder in the loss attributing qualifying company are associated persons (sections EO 4A(6) and (7)).

**Allowable deduction – section EO 4A(3)**

6.8 Subject to the adjustments provided for in section EO 4A(4), the allowable deduction in an income year for the expenditure referred to in section EO 4A(2)(a) is equal to the greater of nil and the amount determined by the following formula:

$$a - (b - c)$$

where:

- a is the amount of the expenditure that would be deductible in the income year;
- b is the total amount of the consideration for the property that is
  - (a) derived before or during the income year; and
  - (b) not income from a film under section CJ 2.
- c is the lesser of:
  - (a) the amount given by item “b”; and
  - (b) the total amount of the expenditure that would be deductible in earlier income years.

**Adjustment of deductions previously available – section EO 4A(4)**

6.9 Section EO 4A(4) restricts the application of section EO 4A(3). If consideration that is not income from a film under section CJ 2 is derived in an income year, the person’s deductions in earlier income years for the expenditure referred to in section EO 4A(2)(a) are reduced so that the total of

those deductions is equal to the greater of nil and the amount given by the formula:

$$a - b$$

where:

- a is the amount of the expenditure that would be deductible in earlier income years;
- b is the total amount of the consideration for the property that is—
  - (a) derived before or during the income year; and
  - (b) not income from a film under section CJ 2.

#### **Order of disallowed deductions – section EO 4A(5)**

- 6.10 Section EO 4A(5) clarifies the operation of section EO 4A(4) by specifying the order of disallowed deductions. It provides that in making an adjustment under section EO 4A(4), deductions are treated as being disallowed in the same order in time as they would have been deductible – that is, a first in first out basis.
- 6.11 Examples of the application of sections EO 4A(3), (4) and (5) are provided in Tax Information Bulletin Vol. 11, No. 6 (July 1999), pages 34-35.

#### **Special Return – section 44A of the Tax Administration Act 1994**

- 6.12 If a taxpayer's deductions are reduced under section EO 4A(4), that taxpayer and any other persons who are affected by that reduction must file a special return. The special return is to be filed for the income year in which the consideration is derived and by the date that the taxpayer's return of income for that income year would be due.

#### **Restrictions on application of section EO 4A – section EO 4A(2A)**

- 6.13 Section EO 4A(2A) was introduced by the Taxation (Annual Rates and Remedial Matters) Act 1999 (with effect from 7 July 1999) to restrict the application of section EO 4A. This is the so-called “concession” or “savings provision”.
- 6.14 Section EO 4A does not apply to a person who incurs expenditure in relation to a film under an arrangement that is entered into on or before 30 June 2001 if all of the following requirements are satisfied:

- (a) The film is either a New Zealand film or a film for which the NZFC has issued a provisional certificate, unless materially incorrect information was provided to the NZFC in obtaining the certificate; **and**
- (b) To the extent that the expenditure is incurred on depreciable intangible property of a type listed in Schedule 17, the expenditure is an amount paid to another person—
  - (i) who at all times in the income year in which the payment is made—
    - (A) is a resident of one of the grey-list countries, and
    - (B) is liable to income tax in that grey-list country by reason of domicile, residence, place of incorporation or place of management in that country; and
    - (C) has calculated its income liable to income tax in that country without applying a feature of the taxation law of that country specified in Schedule 1, Part B; or
  - (ii) which is gross income of the other person; **and**
- (c) All expenditure to which section EO 4A(2)(a) applies incurred by persons (as if no person satisfied the other paragraphs of section EO 4A(2A)) is not more than 140 per cent of the physical cost of production of the film; **and**
- (d) Without in any way limiting the application of section BG 1, on the date that the arrangement is entered into, there is an expectation based on reasonable commercial assumptions that the gross income to be derived by the person as a result of the expenditure will be at least equal to the sum of—
  - (i) all expenditure incurred by the person under the agreement; and
  - (ii) a return on each amount of expenditure that is equivalent to the return on 5-year Government stock measured on the date that the arrangement is entered into.

6.15 “Physical cost of production” is defined in section EO 4A(8) and means all expenditure incurred in producing a film, whether incurred in New Zealand or elsewhere. However, expenditure in marketing or selling the film, and expenditure on depreciable intangible property of a type listed in Schedule 17 of the Act are not included.

**Limits on the application of section EO 4A(2A) – section EO 4A(2B)**

6.16 Section EO 4A(2A), however, is itself subject to further restrictions contained in section EO 4A(2B).

- 6.17 According to section EO 4A(2B), the concession contained in section EO 4A(2A) will apply only if all of the following criteria are satisfied:
- (a) One or more contracts have been entered into before 7 July 1999 for the supply of goods or services in New Zealand in relation to the film; **and**
  - (b) At least \$1 million of expenditure has been incurred under the contract or contracts before 7 July 1999; **and**
  - (c) The film has not been completed before 7 July 1999; **and**
  - (d) Any person who has entered into a contract referred to paragraph (a) notifies the Commissioner in writing on or before 1 November 1999 that paragraphs (a) – (c) are satisfied.
- 6.18 It is clear that a significant amount of expenditure must have been incurred for an incomplete film as at 7 July 1999 in order for section EO 4A(2B) to apply. Section EO 4A(2A) further requires the arrangement in question to be entered into before 30 June 2001. The application of the concession contained in section EO 4A(2A) is, therefore, very limited. All other arrangements, which are not covered by section EO 4A(2B), will be subject to the potential application of section EO 4A if the application criteria contained in section EO 4A(2) are satisfied.

#### **Summary of the operation of section EO 4A**

- 6.19 Section EO 4A overrides sections EO 3 and EO 4 in that it applies to claw back deductions otherwise allowable under section EO 3 or EO 4 if the criteria contained in section EO 4A(2) are met. The allowable deduction will then be determined under section EO 4A(3).
- 6.20 In order for section EO 4A not to apply, the requirements contained in both sections EO 4A(2A) and (2B) must be satisfied.
- 6.21 A diagram showing how section EO 4A works is included in Appendix B.

#### **No time bar for adjustment resulting from section EO 4A**

- 6.22 Section EO 4B authorises the Commissioner to amend a person's assessment at any time so that the assessment reflects the deductions allowed by section EO 4A, notwithstanding the time bar in section 107A or section 108 of the Tax Administration Act 1994.<sup>1</sup>

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<sup>1</sup> For the period from 1 October 1996 to 31 March 1997, the relevant time bar for income tax was in section 107A of the Tax Administration Act 1994.

## **PART IV. SPECIAL RULES DEFERRING DEDUCTIONS FOR EXPENDITURE IN RELATION TO FILM INVESTMENT**

### **CHAPTER 7 - INTRODUCTION**

- 7.1 Deductions generally allowed for expenditure in relation to film investment are also subject to special rules which can defer the deductions under certain circumstances. These special rules include:
- section DK 1 (prior to 1 April 2004)
  - subpart ES (deferred deductions from 1 April 2004)
- 7.2 Section DK 1 of the 1994 Act contained a rule which limited the deductions normally available to expenditure incurred in producing or acquiring a film (section EO 3 or EO 4) to the extent that the taxpayer is personally at risk. Where a film investment has been financed out of a limited recourse loan, no deduction may be claimed for expenditures arising out of the loan until such time as the borrower is personally at risk for the funds invested.
- 7.3 Section DK 1 was repealed by section 15(1) of the Taxation (GST, Trans-Tasman Imputation and Miscellaneous Provisions) Act 2003 with application from 1 April 2004 (with exceptions). Subpart ES was instead introduced. This is the so-called “deferred deduction rule”. (See Chapter 9 for a full discussion of the deferred deduction rule.)
- 7.4 This paper will provide a brief discussion of section DK 1 and subpart ES in Chapters 8 and 9 respectively.

## **CHAPTER 8 - LIMITATION OF DEDUCTION FOR CERTAIN FILM EXPENDITURE TO AMOUNT AT RISK: SECTION DK 1**

8.1 Where a film investment is financed out of a limited recourse loan, section DK 1 worked to defer deductions for such expenditure otherwise available until such time as the taxpayer is personally liable for the repayment of the loan. The effect of section DK 1 was that any allowable deduction, whether on account of revenue expenditure or the ordinary depreciation allowance, is carried forward until such time as the loan is repaid (sections DK 1(2) and (3)). Film investors may claim deductions (as provided for under section EO 3 or EO 4 or other provisions) or depreciation only in respect of expenditures which have not been financed out of a limited recourse loan.

### **Some definitions for the purposes of section DK 1**

8.2 “Limited recourse loan” is defined in section DK 1(8) and means any amount borrowed by a taxpayer where the taxpayer is protected, either wholly or partially, against loss arising from any investment of the amount borrowed. The protection from any loss can be achieved by way of:

- a non-recourse loan; or
- a guarantee provided by any person who has an interest (other than interest as a creditor) in the business or activity in which the amount so borrowed is invested or in any product, consequence, effect or result of the carrying on of the business; or
- an arrangement which the Commissioner considers to be of a substantially similar nature.

8.3 It is not necessary that the limited recourse loan should have been made directly to the taxpayer. It may have been made to an associated person of the taxpayer. In other words, a limited recourse loan includes a loan received by the taxpayer which has been funded by means of a limited recourse loan made to an associated person of the taxpayer. This prevents the practice of the limited recourse loan being made to the associated person and then passed onto the taxpayer as a normal commercial loan.

8.4 “Non-recourse loan” is also defined in section DK 1(8) and means a loan arrangement entered into between a taxpayer and another person—

- where the repayment of the loan or any interest is secured upon the income to be derived from any venture or upon the happening of any other future event; and
- where in the event that the proceeds (whether of an income or capital nature) from that venture are less than the sum of the amount borrowed and any interest accrued, or that that event does not occur, or for any other

reason, the taxpayer is liable to repay less than the whole of the loan, or is liable to pay less than the whole of the interest accrued on it.

### **Application of section DK 1**

8.5 Section DK 1 applies to (section DK 1(1)):

- Any limited recourse loan made on or after 6 August 1982 which is used in any income year by the taxpayer in respect of or in relation to the acquisition, production, or marketing of any film;
- Any expenditure incurred in any income year by any taxpayer in respect of or in relation to the acquisition, production or marketing of any film where that expenditure is financed from any such limited recourse loan.

### **Interest deduction**

8.6 Where a taxpayer uses a limited recourse loan in the payment of expenditure incurred in respect of the acquisition, production or marketing of a film, and interest is payable on that loan, the deduction from assessable income in respect of that interest is allowed only in the year the interest is paid (section DK 1(7)). In other words, the deduction for interest must be on a cash basis and not an accrual basis.

### **The order of the application of the loan**

8.7 Section DK 1(4) provides for the order in which a limited recourse loan is deemed to be used:

- Expenditure of a revenue nature towards which the limited recourse loan was intended to be applied, being expenditure which was incurred in a year preceding the income year under consideration and which has not been paid before the commencement of that income year;
- Expenditure of a capital nature towards which the limited recourse loan was intended to be applied, being expenditure which was incurred in a year preceding the income year under consideration and which has not been paid before the commencement of that income year;
- Any expenditure of a revenue nature which was incurred in the income year under consideration;
- Any expenditure of a capital nature which was incurred in the income year under consideration.

8.8 The notional application is deemed to have occurred irrespective of the use to which the loan was actually put.

## **Repayment of the loan**

8.9 Any repayment of a limited recourse loan is deemed to be matched against expenditure in the same order as that to which the loan was deemed to have been applied (section DK 1(5)):

- Repayment of revenue expenses of the earlier income year;
- Repayment of capital expenditure of the earlier income year which gave rise to the depreciation claim;
- Repayment of revenue expenses of the later income year; and
- Repayment of capital expenditure of the later income year which gave rise to the depreciation claim.

## **Exception to the repayment rule**

8.10 The repayment rules contained in section DK 1(5) does not apply where the whole or any part of a limited recourse loan is used or could have been used to repay the limited recourse loan (section DK 1(6)).

## **Repeal of section DK 1**

8.11 Section DK 1 was repealed by the Taxation (GST, Trans-Tasman Imputation and Miscellaneous Provisions) Act 2003 with application from 1 April 2004.

### *Exceptions to the repeal*

8.12 The repeal of section DK 1, however, does not apply to a person who entered into an arrangement to which subpart ES of the 1994 Act applies if, in an income year preceding the person's 2004-05 income year:

- (a) the taxpayer can reasonably expect that 10 or more persons hold or will hold an interest in the arrangement; **or**
- (b) the circumstances described in section ES 1(1)(b) exist and not less than 70% of the amount of allowable deductions arising from the person's interest in the arrangement (calculated under section ES 1(1)(b)(i)) arises from the ownership of fixed life intangible property or software.

## CHAPTER 9 - DEFERRED DEDUCTION RULE: SUBPART ES

- 9.1 Subpart ES of the 1994 Act contains the “deferred deduction rule” (“DDR”). The DDR was enacted by the Taxation (GST, Trans-Tasman Imputation and Miscellaneous Provisions) Act 2003, with application for the 2004–05 and subsequent income years (with some exceptions). The general purpose of the DDR is to combat aggressive tax arrangements which provide taxpayers with excessive tax advantages in the form of large deductions, regardless of the success of the arrangement.
- 9.2 Broadly, sections ES 1 to ES 3 require a taxpayer who is a party to an arrangement based on a limited recourse loan to defer the deductions or losses arising from the arrangement in any of the first 3 years of the arrangement, when gross income from the arrangement is less than those total deductions and losses. The deferral mechanism operates by denying deductions that would otherwise be allowable to the extent that the limited recourse loans are outstanding and the investor continues not to be at real risk of having to repay them. For arrangements which are commercially unsuccessful, such deferral can be permanent. Taxpayers involved in film investment arrangements are potentially subject to the DDR if the statutory criteria are met.
- 9.3 A detailed explanation of the DDR is set out in Tax Information Bulletin Vol. 16, No. 1 (February 2004), pages 58-66.

### Application date

- 9.4 The DDR will generally apply to arrangements entered into on or after 1 April 2004 if the statutory criteria contained in section ES 1 are met. The DDR will also retrospectively apply to a taxpayer in an arrangement entered into before 1 April 2004 in the following circumstances (section 18(3), Taxation (GST, Trans-Tasman Imputation and Miscellaneous Provisions) Act 2003):
- (a) at the time of entering the arrangement, the taxpayer could reasonably expect that 10 or more persons would acquire an interest in the arrangement; **and**
  - (b) 70% or more of the allowable deductions of the taxpayer from the arrangement for the income year arise from an interest of the participant in:
    - (i) fixed life intangible property:
    - (ii) software.
- 9.5 The Tax Information Bulletin statement (at page 61) uses a connection of “**or**” between paragraphs (a) and (b) above. The author’s view is that the correct connection between paragraphs (a) and (b) should be “and”, this being the wording used in section 18(3) of the Taxation (GST, Trans-Tasman Imputation and Miscellaneous Provisions) Act 2003.

## Arrangements subject to the DDR – section ES 1

9.6 The statutory criteria contained in section ES 1(1) for the DDR to apply include:

- There is an arrangement which a taxpayer (called a “participant”) is either a party to or is affected by that arrangement; and
- After the arrangement commences, a person sells, issues or promotes the selling or issuing of the arrangement (section ES 1(a)); and
- As part of or for the purposes of the arrangement, the participant or an affected associate of the participant (as defined in section ES 2(1)) borrows a limited recourse amount under a limited recourse loan (section ES 1(d)); and
- The arrangement results in allowable deductions for the participant and that person’s affected associates (section ES 1(b)(i)); and
- The deductions are for the income year in which the taxpayer or the taxpayer and the associates acquired an interest in the arrangement, or that initial year and the next year, or that initial year and the next two income years (section ES 1(c)); and
- Gross income resulting from the arrangement (except gross income arising under subpart ES) is less than the total amount of allowable deductions of the taxpayer and affected associates (section ES 1(b)(ii)); and
- The total cost of property held by the participant and affected associates on the balance date for any of the first 3 years of the arrangement is:
  - (i) Less than twice the total of the limited recourse amounts borrowed (in other words, the limited recourse loans are 50% or more of that total cost) (section ES 1(e)(i));
  - (ii) More than 142.85% of the total cost of the part of that property is land, buildings, plant, machinery, certain listed company shares, employee share options and certain shares in a foreign company (in other words, the cost of land, buildings and other tangible property, expressed as a percentage of the total cost of all assets held, is 70% or less) (section ES 1(e)(ii)).

9.7 The calculation of gross income and allowable deductions resulting from an arrangement for each person in a group of persons, and the cost of property under the arrangement is effected by consolidating to eliminate intra-group balances in accordance with generally accepted accounting practice (section ES 1(2)).

- 9.8 The gross income, allowable deductions and the cost of property held by individual members in a group of persons are calculated using the proportionate method in accordance with generally accepted accounting practice (section ES 1(3)). This method applies to members in partnerships or joint ventures, and share holders in loss attributing qualifying companies.
- 9.9 An example of whether the DDR applies is provided for in Tax Information Bulletin Vol. 16, No. 1 (February 2004), page 62.

### **Key definitions – section ES 2**

- 9.10 Section ES 2 further defines some terms for the purposes of the DDR.

#### *Limited-recourse loan*

- 9.11 “Limited-recourse loan” is defined in section ES 2(3) and means a financial arrangement that—
- (a) is not an excepted financial arrangement; and
  - (b) involves the provision of money by a person (called a ‘lender’) to another person (called a ‘borrower’); and
  - (c) has an effect, or has a purpose or effect of achieving an economic effect that is substantially similar to the effect of—
    - (i) relieving the borrower under the financial arrangement from the obligation to repay all or some of the money, whether the relief is contingent or not;
    - (ii) requiring the borrower under the financial arrangement to make no repayment for a period of 10 or more years from the date on which the loan is made, other than repayments for the purpose of defeating the intent and application of subpart ES;
    - (iii) providing that the repayment of the money is in substance secured solely against assets that are employed in the arrangement; and
  - (d) involves money that is not provided to the borrower on arm’s-length terms.
- 9.12 Loan made by banks and financiers who are regular providers of money to persons on arm’s length terms **and** who are resident in New Zealand or carrying on business in New Zealand through a fixed establishment in New Zealand are excluded from the definition of “limited-recourse loan” (section ES 2(3)(d)(i)).
- 9.13 If the lender and borrower are associated persons under either section OD 7 or section OD 8(3), there will be a limited recourse loan if the lender obtains the loan funds on a limited recourse basis as discussed above in paragraphs 9.11 (a)-(c).

9.14 Some examples of a limited-recourse loan are provided in Tax Information Bulletin Vol. 16, No. 1 (February 2004), page 64.

*Affected associate*

9.15 For the purposes of subpart ES, a person is an “affected associate”, for the arrangement, of another person if each person is a party to the arrangement or is affected by the arrangement and –

- one person is a loss attributing qualifying company and the other person is a shareholder in that company:
- the persons are associated under section OD 7 (the general associated person rule) or section OD 8(3) (the rules for association which generally apply in an international taxation context).

**The deferral mechanism – section ES 3**

9.16 Broadly, a participant in an arrangement that is subject to the DDR is treated as deriving an amount of gross income calculated under a formula provided for in section ES 3(2). Such gross income is, in turn, allowed as a deduction in the immediately following year (section ES 3(3)).

9.17 The gross income amount is calculated under the formula below:

$$( a / b ) \times c$$

where:

- a is the amount by which the allowable deductions of the participant from the arrangement for the income year exceed the participant’s gross income from the arrangement;
- b is the total amount by which allowable deductions from the arrangement for the income year exceed the gross income for that year of the group comprising the participant, and any affected associates, other than loss attributing qualifying companies, who each have total deductions exceeding gross income from the arrangement;
- c is the lesser of:
  - the amount by which the total allowable deductions for the income year from the arrangement exceed the gross income from the arrangement for that year of the group comprising the participant and any affected associates (excluding any person which is a loss attributing qualifying company) who have incurred a net loss from the arrangement; and

- the total limited recourse amounts which, at the relevant balance date for the participant and affected associates, those persons have undischarged obligations to repay under the arrangement.

9.18 An example of how the DDR applies to defer deductions in an arrangement is provided in Tax Information Bulletin Vol. 16, No. 1 (February 2004), page 66.

## **PART V. SPECIFIC ANTI-AVOIDANCE PROVISIONS DEALING WITH FILMS: SECTIONS GC 11 AND GD 12**

### **CHAPTER 10 - INTRODUCTION**

- 10.1 Deductions for film expenditure normally allowable under section EO 3 or EO 4 are also subject to the specific anti-avoidance provisions dealing with film investments.
- 10.2 These specific anti-avoidance provisions in relation to film investments include:
- section GC 11: a specific anti-avoidance provision dealing with the film industry;
  - section GD 12: non-market transactions in relation to cost of producing films.
- 10.3 Generally speaking, section GC 11 is directed at deductions allowable under section EO 3 in respect of cost incurred in acquiring a film or any right in a film. Section GD 12, however, counteracts any non-arm's length dealings in relation to expenditure incurred either in producing or acquiring films (or any right in films).
- 10.4 This paper will provide a brief discussion of sections GC 11 and GD 12 in Chapters 11 and 12 respectively.

## **CHAPTER 11 - SPECIFIC ANTI-AVOIDANCE PROVISION DEALING WITH THE FILM INDUSTRY: SECTION GC 11**

- 11.1 Section GC 11 is a specific anti-avoidance provision applying to arrangements involving films.
- 11.2 Generally speaking, section GC 11 applies to any taxpayer who becomes a film owner by either first owning a right in relation to the film (section EO 3(2)(b)) or directly incurring expenditure in producing the film before owning the right (section EO 3(2)(a)).
- 11.3 The Commissioner is entitled to counteract an arrangement which seeks to artificially inflate the cost of producing a film or of acquiring rights in a film in the following four ways:
- section GC 11(1): Excessive time for payment;
  - section GC 11(2): Excessive expenditure on supply of goods and services;
  - section GC 11(3): Excessive expenditure on purchase of film; and
  - section GC 11(4): Arrangements to manipulate section EO 3

### **Excessive time for payment – section GC 11(1)**

- 11.4 Where, in relation to any income year and to any taxpayer who is a film owner by directly incurring expenditure in producing the film before owning a right in the film, if in relation to the cost of acquisition of the film or any right in the film, the time between the provision of any services or the supply of goods and the time of payment for the goods and services is, in the opinion of the Commissioner, excessive, or the liability for payment is dependent on a contingency, the expenditure in the acquiring of those services or those goods will be deemed to be incurred when payment is made.

### **Excessive expenditure on supply of goods and services – section GC 11(2)**

- 11.5 Where, in relation to any income year and to any taxpayer who is a film owner by directly incurring expenditure in producing the film before owning a right in the film, if the Commissioner is satisfied, in relation to the taxpayer who invests in the production of a film and having regard to the relationship between that film owner and the person who supplies any goods or services used in the production of the film, that:
- the film owner and the supplier were not dealing with each other on an arm's length basis; and
  - the expenditure incurred by the film owner in relation to the acquisition of that film or that right exceeds the amount which would have been incurred if they had been dealing on an arm's length basis—

the amount allowed as a deduction from assessable income is limited to the amount which the Commissioner considers the owner might have been expected to have incurred if the owner and the supplier had dealt with each other at arm's length.

### **Excessive expenditure on purchase of film – section GC 11(3)**

11.6 Where, in relation to any income year and to any taxpayer who is a film owner by acquiring a film or any right in a film, if the Commissioner is satisfied, having regard to the relationship between the film owner and the person from whom the film or right was purchased, that:

- the film owner and that person were not dealing with each other at arm's length in relation to the purchase; and
- the expenditure incurred by the film owner on the purchase of that film or that right—
  - exceeds the costs to the previous owner; or
  - does not exceed the cost to the previous owner but exceeds the value of that film or of that right at the time of acquisition by the film owner

the cost of that film or that right to the film owner for the purposes of section EO 3 shall be deemed to be the lesser of:

- the cost of that film or of that right to the previous owner; or
- the value of that film or that right at the time of purchase by the film owner.

11.7 Where the taxpayer acquires a share in a film, or a share in a right to a film, the Commissioner is authorised to determine the cost or value of that share.

### **Arrangements to manipulate section EO 3 – section GC 11(4)**

11.8 The Commissioner also has power to disallow any excess deduction where he/she is satisfied that arrangements have been made between the taxpayer claiming the deduction under section EO 3 and another person with a view to the taxpayer obtaining a more favourable treatment under section EO 3 than would otherwise be the case. The Commissioner is entitled to limit the taxpayer to the deduction that, in his/her opinion, the taxpayer would have obtained if the arrangement had not been made.

## **CHAPTER 12 - NON-MARKET TRANSACTIONS IN PRODUCING FILMS: SECTION GD 12**

12.1 Section GD 12 is another anti-avoidance provision dealing with arrangements involving films. Section GD 12 provides two ways for the Commissioner to counteract arrangements involving artificially inflated costs incurred either in producing a film or acquiring rights in a film:

- section GD 12 (1) and (1A): Not arm's length dealing; and
- section GD (2): Arrangements to manipulate section EO 4.

### **Not arm's length dealing – sections GD 12(1) and (1A)**

12.2 If the Commissioner is satisfied, having regard to any connection between a taxpayer and a person who supplied goods to, or provided services for, the taxpayer in relation to a film, or to any other circumstances that the Commissioner considers relevant, that:

- the taxpayer and the person were not dealing with each other at arm's length when the goods were supplied or the services provided; and
- the film production expenditure or any other expenditure for a right in or in relation to the film incurred by the taxpayer exceeds an amount that would have been incurred had the parties been dealing with each other at arm's length—

then the amount of film production expenditure or other expenditure incurred by the taxpayer will be deemed to be such expenditure that, in the Commissioner's opinion, would have been incurred if the respective parties had been dealing with each other at arm's length.

### **Arrangements to manipulate section EO 4 – section GD 12(2)**

12.3 Where the Commissioner is satisfied that arrangements have been made between a taxpayer and another person with a view to the affairs of the taxpayer and of that other person being so arranged or conducted that any of the provisions of section EO 4 would have a more favourable effect than would otherwise be the case, the amount of the deduction allowed to that taxpayer will not exceed an amount that the taxpayer would, in the opinion of the Commissioner, have been allowed as a deduction if those arrangements had not been made.

## PART VI. LARGE BUDGET SCREEN PRODUCTION GRANTS

### CHAPTER 13 - THE LARGE BUDGET SCREEN PRODUCTION GRANT SCHEME

#### General Information

- 13.1 The Taxation (GST, Trans-Tasman Imputation and Miscellaneous Provisions) Act 2003 introduced tax provisions relating to the large budget screen production grant (“LBSPG”) scheme with application from 1 April 2003. Those provisions were first introduced by Supplementary Order Paper No. 170, dated 18 November 2003.
- 13.2 The LBSPG scheme, in essence, provides for a rebate of 12.5 per cent of the Qualifying New Zealand Production Expenditure (as defined for the purposes of the LBSPG scheme) to film and television production companies if certain requirements are satisfied. The purpose of the LBSPG scheme is to provide an additional financial incentive for the production of large budget film and television projects in New Zealand.
- 13.3 “Large budget screen production grant” is defined in section OB 1 and means a payment that:
- is authorised by the New Zealand Film Commission in respect of a company; and
  - is made in relation to a film or television production; and
  - made to a company that is resident in New Zealand or has a permanent establishment in New Zealand.
- 13.4 The New Zealand Film Commission (“NZFC”) has the responsibility for administering the grant and, essentially, determining the entitlement of such grant to film or television production companies. The criteria developed by the NZFC are available on the NZFC’s website (<http://www.nzfilm.co.nz>). This paper will refer to these criteria as “the Guideline” in this chapter. The criteria described below were current as at June 2005, but reference should be made to the NZFC website to confirm that these have not been altered.
- 13.5 It should be noted that the Inland Revenue Department (“IRD”) **does not** administer the entitlement to grants or set the criteria for grants. The IRD does have a role in the validation of the information that is provided by screen production companies in support of their applications for grants. The contact person in the IRD for the LBSPG at the present time is Gerald Gallacher, a Senior Investigator in the Corporates segment of IRD. Gerald can be contacted by telephone on (04) 802 7252 or by email: [gerald.gallacher@ird.govt.nz](mailto:gerald.gallacher@ird.govt.nz). All external inquiries in relation to the screen production industry should be

directed to the Screen Production Industry Desk at screen@ird.govt.nz or 0800 SCREEN (0800 727 336).

13.6 Appendix C includes a diagram showing how the LBSPG scheme works.

### **Some basic definitions**

13.7 The LBSPG scheme is based on the concepts of Qualifying New Zealand Production Expenditure (“QNZPE”) and Total Production Expenditure (“TPE”). The definitions of these terms are set out in the Guideline published by the NZFC.

#### *Qualifying New Zealand Production Expenditure*

13.8 QNZPE is generally defined as the production expenditure spent by the applicant on the screen production where that expenditure is incurred for, or is attributable to:

- goods and services provided in New Zealand;
- the use of land located in New Zealand; or
- the use of a good that is located in New Zealand at the time that the good is used in the making of the screen production.

13.9 The following New Zealand expenditure items are specifically **included** in QNZPE:

- **New Zealand development and pre-production expenditure**, which is defined as expenditure incurred in New Zealand on the development and pre-production stages of the screen production i.e. prior to the commencement of principal photography, including expenditure to cover:
  - location surveys and other activities undertaken to identify and assess locations for possible use in the production;
  - storyboarding and script writing;
  - research for the production;
  - casting actors;
  - developing a budget;
  - developing a shooting schedule for the production and
  - those legal costs relating to writers’ contracts or to copyright issues, including chain of title.

- **New Zealand copyright acquisition** (provided the cost is allowed as a deduction or depreciation is allowable under the 1994 Act);
- **New Zealand business overheads**, to the extent that the amount does not exceed the lesser of:
  - 2% of the total of the company's TPE on the screen production; or
  - NZ\$500,000
- **New Zealand copyrighted publicity and promotion expenditure**, if:
  - The expenditure was incurred by the applicant company before completion of the production; and
  - Copyright in the publicity material is held by a person the Income Tax Act 1994 treats as either being resident in New Zealand under section OE 1 or OE 2, or who carries on a business in New Zealand through a fixed establishment.
- **Travel to New Zealand**, where that travel relates to incoming journeys:
  - For non-cast personnel whose remuneration qualifies as QNZPE and who work on the screen production in New Zealand for a period totalling fourteen days or more; and
  - For cast personnel whose remuneration qualifies as QNZPE, regardless of the number of days spent working on the screen production in New Zealand.
- **Advances**, where they satisfy the criteria specified in the definition of QNZPE;
- **Production insurance and completion bonds** (with the exception of Errors and Omissions insurance);
- **Freight** (provided that it is paid in New Zealand).

13.10 The following expenditure items are specifically **excluded** from QNZPE:

- Financing expenditure
- Costs relating to Short-term Visits for Non-cast Personnel
- Costs of Services embodied in Goods (This is where the costs of certain services are embodied in the cost of a good that is delivered to

the applicant company, and those services were predominantly performed outside New Zealand.)

- Deferments, Profit Participation, Residuals
- Others (including Errors and Omissions insurance, cast perks, gifts, entertainment and gratuities).

#### *Total Production Expenditure*

13.11 TPE is defined as the production expenditure incurred in, or that is reasonably attributable to, actually making the screen production whether in New Zealand or elsewhere, to bring the production up to the state that the production is ready to be distributed, broadcast or exhibited to the general public.

13.12 TPE includes all expenditure items calculated as part of QNZPE.

13.13 TPE, however, does not include the following expenditure items:

- **Financing expenditure**, including returns payable on amounts invested in the screen production and expenditure connected with raising and servicing finance for the production, such as interest payments;
- **Development and pre-production expenditure** (except where it qualifies as QNZPE);
- **Copyright acquisition** (except where it qualifies as QNZPE);
- **General business overheads** (except where it qualifies as QNZPE);
- **Publicity and promotion expenditure** (except where it qualifies as QNZPE);
- **Deferments, profit participation, residuals**, including:
  - Payments deferred until the screen production provides financial returns through box office receipts, earnings, or profits (e.g. bonuses paid to directors);
  - Payment dependent on eventual profits made on the production; and
  - Amounts payable in relation to the residual rights of cast members concerning the commercial exploitation of the production through future exhibition and distribution.
- **Advances** (except where it qualifies as QNZPE and is non-recoverable);

- **Acquisition of depreciating asset** (except for copyright acquisition expenditure that qualifies as QNZPE);
- **Other exclusions**, including Errors and Omission insurance, cast perks, gifts, entertainment and gratuities.
- **Nominated exclusion** – remuneration, travel and associated costs of one individual to be disregarded.

### **Criteria for the LBSPG**

13.14 The eligibility criteria for the LBSPG include:

- Time of completion
- Expenditure thresholds
- Format
- Relevant entity
- Residency status

#### *Time of completion*

13.15 The LBSPG scheme applies to productions completed after 1 July 2003. Productions substantially completed before 1 July 2003 will not be eligible for the grants.

13.16 Where screen productions are completed after 1 July 2003, QNZPE incurred from 1 April 2003 will be eligible for the grant. Any expenditure on a screen production incurred before 1 April 2003 is excluded.

#### *Expenditure thresholds*

13.17 Access to the LBSPG requires a **minimum level of QNZPE of NZ\$15 million** on the production of a film or television project.

13.18 If the film or television project's QNZPE is between NZ\$15 million and NZ\$50 million, that QNZPE must be at least **70 per cent** of the film or television project's TPE.

13.19 If the film or television project's QNZPE is **NZ\$50 million or more, it will qualify for the grant**, regardless of the percentage ratio of QNZPE to the film or television project's TPE.

13.20 For television series, individual episodes which have completed principal photography within any 12 month period and with a minimum average spend

of \$500,000 per commercial hour may be bundled to achieve the total of NZ\$15 million.

*Format*

13.21 Eligible screen production must be in one of the following formats:

- **a feature film** (including those shot direct-to-video) where the film is:
  - a film commonly screened as the main attraction in commercial cinemas;
  - no less than 60 minutes, or in the case of a large format (IMAX) film no less than 45 minutes; and
  - is shot and processed to commercial release standards for exhibition to the public in cinemas, by way of telecasting (including broadcasting by way of the delivery of a television programme by a broadcasting service), or for distribution to the public as a video recording (whether on video tapes, digital video disks or otherwise).
- **a television movie**, being a drama (i.e. a composition which tells a story through the development of theme and plot, by means of dialogue and action and the portrayal of characters, settings, and life situations) of a like nature to a feature film capable of exhibition on television where television movie is:
  - no less than one commercial television hour in length, or in the case of a programme predominantly utilising cell, stop motion and/or computer animation not less than one half commercial television hour; and
  - is shot and processed to commercial release standards, for cinema exhibition or telecast.
- **a television drama series or mini-series**, being an episodic television drama, including animation, which is either:
  - an extended but self-contained drama made for television wherein the key dramatic elements of character, theme, and plot are introduced, developed and concluded so as to form a narrative structure (similar to that of a novel) which features a major continuous plot enhanced by minor plots and there is the expectation of an ending that resolves the major tensions and is arranged into consecutive episodes for screening purposes; or
  - an anthology of drama works for television where the key dramatic elements of character, theme and plot are introduced, developed and concluded so as to form a narrative structure within each episode (similar to that of a novel or a short story) but there is no continuity of

plot between episodes (although there may be host elements common to each episode) and is made to be broadcast under one generic title; and

- is shot and processed to commercial release standards, for telecast.

13.22 It should be noted that the definition of “feature film” under the LBSPG scheme is different from that contained in section OB 1 of the 1994 Act. (See paragraph 4.22 above for the definition of “feature film” for income tax purposes.)

13.23 Screen productions that are specifically excluded from eligibility include:

- a documentary
- reality TV
- bundling of screen productions (other than television mini-series and series as outlined above)
- an advertising programme or commercial
- a discussion programme, current affairs, news, a panel programme, a variety programme, or a programme of a like nature
- a production of a public event, including a sports event
- a training programme

#### *Relevant Entity*

13.24 An applicant must be the entity responsible for all activities involved in making the production in New Zealand, and must have access to full financial information for the total production worldwide, which can be made available to the NZFC upon request.

13.25 Only one entity per screen production can be eligible for the LBSPG.

#### *Residency status*

13.26 A film or television production company is eligible to the LBSPG if it is a New Zealand resident company or a foreign corporation operating with a fixed establishment in New Zealand for the purposes of lodging an income tax return.

13.27 A company is a New Zealand resident company if:

- the company is incorporated in New Zealand; or

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- although not incorporated in New Zealand, it carries on business in New Zealand and has either its central management or control in New Zealand, or its voting power is controlled by shareholders who are residents of New Zealand.

### **Income tax provisions relating to the LBSPG**

13.28 Following the introduction of the LBSPG scheme, legislative changes have been made to the 1994 Act, which include:

- **Section CB 9(i):** a large budget screen production grant is exempt income.
- **Section DC 1(1B):** a recipient of a large budget screen production grant is not required to reduce claims for allowable deductions in respect of expenditure that is recouped by the grant. Nor will the depreciation value of any capital equipment acquired in the film production be lowered by the amount of the grant.
- **Section EO 4(1B):** the concessional deductions allowed under section EO 4 are not available to a screen production for which a large budget screen production grant is claimed. (See paragraph 5.9 above.)

13.29 The Commissioner has a role in validating information provided in support of applications for the LBSPG. Section 85F(2) of the Tax Administration Act 1994 authorises the Commissioner (from 25 November 2003) to communicate information held by the IRD to the NZFC for the purposes of enabling the NZFC to determine the entitlement of a company to a LBSPG. Upon request from the chief executive of the NZFC, the Commissioner may provide to any authorised officer of the NZFC all of the following information that is held by the IRD:

- Particulars relating to the amount of expenditure incurred in relation to a film that is the subject of an application for a large budget screen production grant;
- Particulars relating to the amount of expenditure incurred in New Zealand in relation to a film that is the subject of an application for a large budget screen production grant;
- The Commissioner's opinion as to the accuracy of any information provided by an applicant in relation to the application for a large budget screen production grant.

13.30 If any of the information specified in section 85F(2) is not held by the IRD, the Commissioner may use any of the Commissioner's powers contained in Part III of the Tax Administration Act 1994 to obtain information.

## **Applications for the LBSPG**

13.31 An application for the grant can be made to the NZFC once:

- a screen production is completed or 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; **or**
- the QNZPE has exceeded NZ \$50 million.<sup>2</sup>

13.32 Film or television companies need to apply for the grants within 3 months of completion of the screen productions. Each application must be made in the Application Form provided on the NZFC's website. This can be obtained from <http://www.nzfilm.co.nz/catalog/LBSPGapplicationformOctober2004.doc>.

13.33 The following information must be included on each application (refer to paragraphs 71-77 of the Guideline for detailed analysis of each item):

- Audited Expenditure Statement
- Sample Footage
- Documentation Requested in Annex A
- Statutory Declaration
- Further Information as Requested

## **Payment of the LBSPG**

13.34 Payment of the final funding will be dependent on the IRD undertaking an audit and validation of the information provided to the NZFC and the decision of the NZFC.

13.35 Provided the application for a LBSPG is complete and has been validated, the NZFC will endeavour to approve payment within 3 months of application.

13.36 The Ministry of Economic Development will make payment of the grant upon advice from the NZFC.

## **Review of the LBSPG**

13.37 The LBSPG scheme will be subject to a review conducted by the Ministry of Economic Development in 2006.

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<sup>2</sup> For screen productions where the QNZPE exceeds NZ \$50 million, an application can essentially be made twice: once at any stage after QNZPE exceeds NZ\$ 50 million and secondly on completion of the production.

Document content is Income Tax Act 1994 effective until 1 April 2005 now Income Tax Act 2004

## **LIST OF REFERENCE MATERIAL**

### **Tax Information Bulletin**

Vol. 16, No. 1 (February 2004), pages 58-66 (Subpart ES: Deferred Deduction Rule)

Vol. 16, No. 1 (February 2004), page 69 (Large Budget Screen Production Grant)

Vol. 15, No. 5 (May 2003), page 75 (Section EO 4(2B): Interest Component of Reimbursement for Film Production Expenditure)

Vol. 11, No. 6 (July 1999), pages 34-35 (Sections EO 4A and 4B: Limiting Deductions under Certain Arrangements)

### **Smart Tax Income Tax Commentary**

20040324 ITAC-EO 3. paragraph 3.8

20040324 ITAC-EO 4. paragraphs 3.7 and 3.8

### **New Zealand Film Commission**

Website:

<http://www.nzfilm.co.nz/>

Certification as a New Zealand film

<http://www.nzfilm.co.nz/cert.php>

Application pack for Provisional Approval of Certification

[http://www.nzfilm.co.nz/pdfs/other\\_prov\\_coprod.pdf](http://www.nzfilm.co.nz/pdfs/other_prov_coprod.pdf)

Application pack for Final Approval of Certification

[http://www.nzfilm.co.nz/pdfs/other\\_final\\_coprod.pdf](http://www.nzfilm.co.nz/pdfs/other_final_coprod.pdf)

### **Large Budget Screen Production Grant**

Large Budget Screen Production Grant Criteria (dated 17 December 2003):

<http://www.nzfilm.co.nz/catalog/LBSPGcriteria.pdf>

Application Form (September 2004):

<http://www.nzfilm.co.nz/catalog/LBSPGapplicationformOctober2004.doc>

### **IRD's Screen Production Desk**

Website:

<http://www.ird.govt.nz/industry-guidelines/screen-production/>

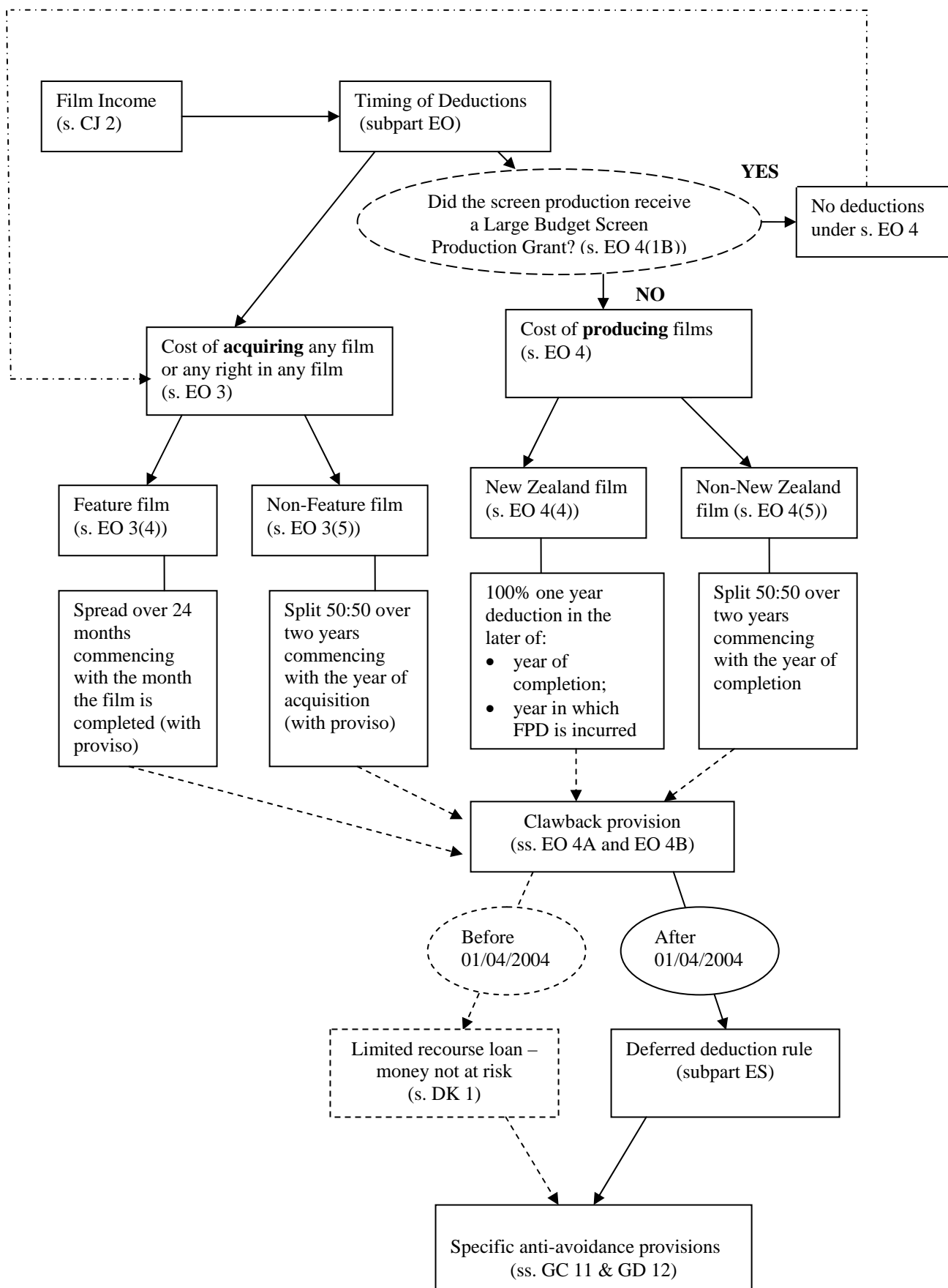
0800 phone number:

0800 SCREEN (0800 727 336)

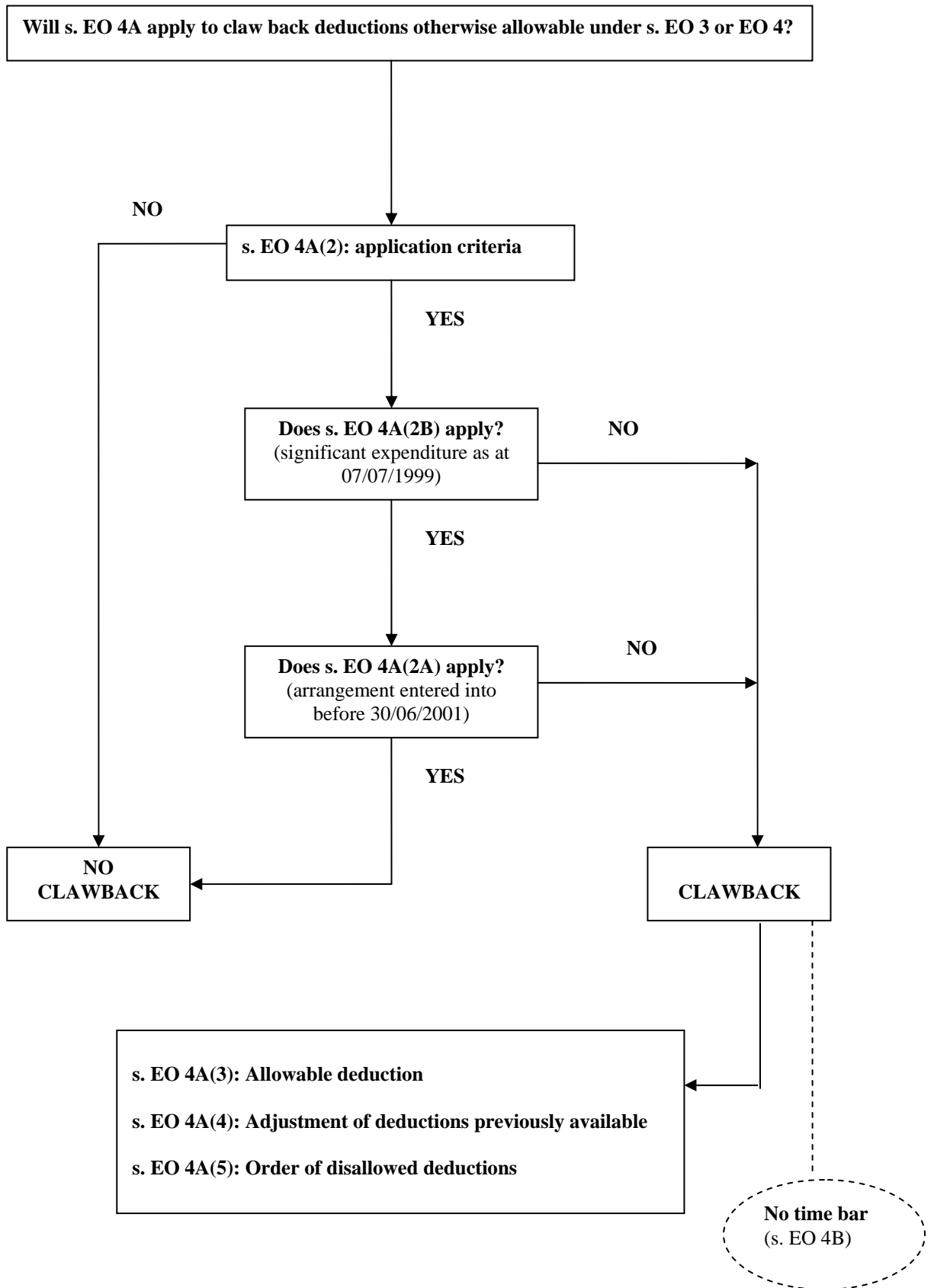
Email:

[screen@ird.govt.nz](mailto:screen@ird.govt.nz)

**APPENDIX A: INCOME TAX TREATMENT OF NEW ZEALAND SCREEN PRODUCTION INDUSTRY UNDER THE INCOME TAX ACT 1994**



**APPENDIX B: OPERATION OF SECTION EO 4A OF THE INCOME TAX ACT 1994**



**APPENDIX C: HOW THE LARGE BUDGET SCREEN PRODUCTION GRANT (LBSPG) SCHEME WORKS**

