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INCOME TAX (FILM-MAKING AND AUDIO-VISUAL INCENTIVES AMENDMENT) DECREE 2001
(DECREE NO. 4 OF 2001)

ARRANGEMENT OF SECTIONS

1. Short title, etc.
2. Section 16 amended
3. Section 16A inserted
4. Section 17 amended
5. Section 21 amended
6. Sixth Schedule amended

INCOME TAX ACT (FILM-MAKING AND AUDIO-VISUAL INCENTIVES AMENDMENT) DECREE 2001

(Interim Civilian Government Decree No. 4)

In exercise of the powers conferred upon the Interim Civilian Government by section 4 of the Interim Civilian Government (Transfer of Executive Authority) Decree No.19 of 2000, I, Ratu Josefa Iloilovatu Uluivuda, President of the Republic of Fiji, acting on the advice of Cabinet, hereby make this Decree to make fresh provision for film-making incentives and to make new provision for incentives to encourage the development of the audio-visual industry in Fiji.

Short title, etc.

1.—(1) This Act may be cited as the Income Tax (Film-Making and Audio-Visual Incentives Amendment) Decree 2001.

(2) In this Decree "principal Act" means the Income Tax Act (Cap. 201).

(3) This Decree comes into force on a date appointed by the Minister by notice in the *Gazette*.

Section 16 amended

2. Section 16(2) of the principal Act is amended by deleting paragraph (e).

Section 16A inserted

3. The principal Act is amended by inserting after section 16 the following new section—

"16A. The film-making and audio-visual incentives in the Sixth Schedule have effect.

Section 17 amended

4. Section 17 of the principal Act is amended by deleting the full stop at the end of paragraph (57), substituting a semi-colon and adding the following new paragraph—

"(58) the income of—

- (a) the Fiji Audio-Visual Commission established by the Fiji Audio-Visual Commission Decree 2000; and
- (b) the Audio-Visual Collection and the Audio-Visual School established by the Fiji Audio-Visual Commission."

Section 21 amended

5. Section 21(1)(n) of the principal Act is amended by inserting "Fiji Audio-Visual Commission, Audio-Visual Collection, Audio-Visual School" after "Fiji Blind Society".

Sixth Schedule replaced

6. The Sixth Schedule to the principal Act is repealed and replaced by the following Schedule—

"SIXTH SCHEDULE
(Section 16A)

FILM-MAKING AND AUDIO-VISUAL INCENTIVES

Part I – GENERAL

Interpretation

1. For the purposes of this Schedule—

"Fiji Audio-Visual Commission" means the corporation of that name established by section 3 of the Fiji Audio-Visual Commission Decree 2000;

"FAVC" means the Fiji Audio-Visual Commission.

Prescription of forms and fees

2. The FAVC may prescribe, by notice published in the *Gazette*, forms and the amount of any fee payable for the purposes of this Schedule.

Part II – FILM-MAKING INCENTIVES

Interpretation

3. For the purposes of this Part, unless the context otherwise requires—

“applicant” means a film company which makes an application under paragraph 5;

“application” means an application made under paragraph 5 for a film-making incentive under paragraph 4;

“film” means a cinematographic film made or intended for public exhibition or for use in connection with television;

“film company” means a non-resident company engaged, or intending to be engaged, in making a film in Fiji;

“local goods and services” means—

(a) emoluments paid to employees who are citizens or are permanently resident in Fiji; and

(b) the cost of goods produced in their entirety in Fiji except that, if goods acquired in Fiji have foreign and local cost contents, the estimated foreign cost content is excluded;

“qualifying employee” means an employee of a film company who, other than in relation to being in Fiji for the purpose of the film company making a film, is a non-resident, and includes any individual who has been engaged by a film company to work in Fiji on a contract for services either with that person or with any other person.

Film-making incentive

4. If the Minister is satisfied that it is expedient for the development of the film-making industry in Fiji, he or she may, in accordance with this Part, approve an application for the income of the applicant’s qualifying employees to be—

(a) exempt from tax; or

(b) taxed at a reduced rate specified by the Minister,

for a period determined by the Minister.

Application for approval

5.—(1) A film company may apply to the FAVC for the Minister’s approval under paragraph 4.

(2) An application under subparagraph (1) must be in the prescribed form and must include—

(a) the full name and address of the film company;

(b) the full name, address, nationality and country of usual residence of each qualifying employee concerned and the amount of emoluments payable by the film company while the employee is engaged in Fiji;

(c) the total amount of emoluments that the film company proposes to pay to local employees who would be engaged by it;

(d) the total amount the film company proposes to expend on local goods and services and a brief description of the goods and services in respect of which this amount will be used;

(e) the duration for which the film company will be engaged in making a film in Fiji;

(f) the title of the film and brief particulars of the script;

(g) the location or locations where the film company will be engaged during the making of the film in Fiji.

FAVC must consider applications and make recommendation

6.—(1) The FAVC must consider each application and refer it to the Minister together with its recommendation in respect of the application.

(2) The FAVC may, before making a recommendation to the Minister, require an applicant to provide additional information or particulars in order that it may properly consider the application.

Minister may approve or reject an application

7.—(1) The Minister must, on receiving from the FAVC an application and its recommendation, consider them and, by written notice to the FAVC, either—

(a) approve the application; or

(b) refuse the application.

(2) The Minister’s approval under subparagraph (1)(a) must specify—

(a) the qualifying employees whose income is exempt from tax;

(b) the qualifying employees whose income is chargeable to tax at a reduced rate;

- (c) in respect of paragraph 4(b) – the reduced rate of tax determined by the Minister; and
- (d) the period during which the exemption or reduced rate of tax applies.

FAVC must inform applicant

8. The FAVC must, by written notice—
- (a) inform the applicant of the Minister's decision; and
 - (b) if the Minister approves an application – provide the Commissioner with a copy of the approval.

Method of relief if approval is granted

9. The amount of tax payable by each qualifying employee is the lesser of —
- (a) the amount of tax assessed in accordance with the general provisions of this Act; or
 - (b) the amount of tax assessed in accordance with the Minister's approval under paragraph 4.

Commissioner may require security

10. An approved film company may be required by the Commissioner to provide a suitable security in favour of the Commissioner on the basis of tax payable by its qualifying employees under paragraph 9.

Part III – AUDIO-VISUAL INCENTIVES

Division 1 – INTERPRETATION

Definitions

- 11.—(1) In this Part, unless the context otherwise requires—

“applicant” means an applicant for a provisional or final certificate who is a resident individual, a resident partnership or a company incorporated in Fiji but excludes—

- (a) a holder of a broadcast licence in television or radio in Fiji or any associated company or individual with substantial holdings in a broadcast licence in Fiji; and
- (b) a theatrical exhibitor in Fiji or any associated company or individual with substantial holdings in a theatre or group of theatres in Fiji;

“approved financing charges” means the reasonable budgeted and approved cost of financing an audio-visual production and includes legal fees for financing, brokerage for financing, prospectus or offer document costs and disbursements if those charges do not exceed 8% of the production budget of an audio-visual production;

“approved marketing materials costs” means the reasonable budgeted and approved cost of generating masters for marketing materials if not less than 85% of the expenditure to produce such items is spent in Fiji and the budgets have been approved by the FAVC;

“audio recording” means an audio recording for commercial sale on disk, audio cassette or on-line services and includes music, a voice recording of spoken word, a book on tape or CD and a dramatic performance in any language;

“Audio-Visual Collection” means a world class archive to preserve, maintain and manage the audio-visual production of Fiji which will be established by the FAVC;

“audio-visual production” has the meaning given to it in paragraph 12;

“audio-visual production account” means, in relation to an audio-visual production, an account that has been opened with a Fiji bank to produce that audio-visual production and from which withdrawals may only be made for expending audio-visual production costs;

“audio-visual production costs” means, in relation to an audio-visual production, monies expended directly—

- (a) in producing the audio-visual production;
- (b) on approved financing charges; and
- (c) on approved marketing materials costs;

“audio-visual production levy” means a fee prescribed by the FAVC included in the budget of every qualifying audio-visual production payable to the FAVC to support its operations and the educational aims of the Audio-Visual School and activities of the Audio-Visual Collection;

“Audio-Visual School” means an educational tertiary institute for citizens and citizens of other Pacific island countries to provide education in the skills of the audio-visual industry to be established by the FAVC;

“AVP” means audio-visual production;

“broadcast television programmes” means programmes produced on film or video tape, or digitally recorded for broadcast on free-to-air, free satellite or pay television, and includes television movies, mini series, drama series, situation comedy series, documentaries and documentary series, educational programmes and series, animation series and current affairs series;

“citizen” means a citizen of the State;

“completion bond” means an insurance policy ensuring completion of an audio-visual production for the benefit of the production entity and investors;

“completion bond company” means a company specialising in insuring and managing the risk associated with audio-visual production with operations and offices in Fiji which has in place necessary underwriting arrangements with internationally recognised insurance companies;

“computer software” means an interactive product or instruction set or operating or manufacturing system or manufacturer controller set or communications protocol for use in or use on electronic equipment (such as computers, modems, play stations and other games consoles, televisions, video players, digital equipment, telecommunication devices, web servers, CD rom drives and stored on media including CD disk, Zip disk, computer disk, digital video disk, computer chip or online) including games, educational products and business products produced for sale, products for research and design and development, and the establishment software costs of a commercial operation including online e-commerce businesses, websites or internet businesses;

“direct to video or video disk programme” means a programme produced for marketing to the public by retail sale produced specifically for home use;

“F1 audio-visual production” means an audio-visual production which qualifies as such under Division 4;

“F2” audio-visual production” means an audio-visual production which qualifies as such under Division 4;

“Fiji bank” means a financial institution licensed under the Banking Act 1995;

“final certificate” means a certificate issued by the FAVC in accordance with Division 3;

“gross international and domestic revenues” means the monies derived from the commercial exploitation of an audio-visual production (including advances, licence fees and royalties) collected by a collection agent or by other FAVC approved arrangements on behalf of international sales agents, distributors (including the production company where it performs that function) and their sub-agents (including associated companies or entities operating at arm’s length);

“large format film” means a film produced in 70mm for exhibition in IMAX, IWERKS, SHOWSCAN and other 15/70, 81/70 and 4/70 large format theatres and ride simulators;

“marketing materials”, in relation to an audio-visual production, includes—

- (a) broadcast television commercials (no more than 2 per audio-visual production);
- (b) radio commercials (no more than 2 per audio-visual production);
- (c) film art for advertising including posters,
- (d) press kit masters;
- (e) electronic press kits;
- (f) internet websites; and
- (g) film trailers;

“production entity” means an applicant which has been granted a provisional certificate or a final certificate;

“provisional certificate” means a certificate issued by the FAVC in accordance with Division 2;

“qualifying audio-visual production” means an F1 or F2 audio-visual production that has been made—

- (a) wholly or substantially in Fiji and has significant and substantial Fiji content; or
- (b) in pursuance of an agreement or arrangement entered into between the Government of Fiji or an authority of the Government of Fiji and the Government of another country;

“relevant 24 months period” in relation to an audio-visual production, means the period of 24 months after the end of the year of assessment in which monies of a capital nature were first expended as audio-visual production costs, or by way of contribution to those costs;

“short film” means a film produced for exhibition in theatres and at festivals with a running time of less than 60 minutes and intended primarily as a demonstration of new and emerging film-making talent;

“studio city company” means the company which owns or leases the land declared as a studio city zone;

“studio city zone” means the land (including any buildings situated or erected on that land) declared as such by the Minister under paragraph 45, and includes a temporary studio city zone;

“temporary studio city zone” means land (including any buildings situated or erected on that land) declared as such by the Minister under paragraph 45;

“theatrical feature film” or “feature film” means a film intended to be produced for initial release in theatres.

(2) For the purposes of the definition of “gross international and domestic revenues”, the income is net of deductions of the distributor in a specific territory (if any) but no other deductions.

Audio-visual productions

12. Subject to paragraphs 13 to 15, “audio-visual production” means the production, wholly or principally for exhibition or sale, of—

- (a) a large format film in large format theatres;
- (b) a theatrical film or a short film in cinemas;
- (c) broadcast television programmes by—
 - (i) broadcast on free-to-air, satellite or pay television; or
 - (ii) internet broadcast;
- (d) a direct-to-video and video disk programme;
- (e) an audio recording;
- (f) computer software; and
- (g) interactive websites and other e-commerce websites.

Deemed audio-visual productions

13. For the purposes of this Part, the development and establishment of e-commerce websites and e-commerce businesses is deemed to be an audio-visual production.

Exclusions from references to audio-visual productions

14. For the purposes of Divisions 2 to 6, a reference to an audio-visual production does not include a reference to an audio-visual production that is or is intended to be to a substantial extent—

- (a) an audio-visual production for exhibition as an advertising programme or a commercial other than where the advertising programme or commercial is part of the marketing budget of an audio-visual production and is only advertising the audio-visual production which has funded it;
- (b) an audio-visual production for exhibition as a discussion programme, a quiz programme, a panel programme, variety programme or a programme of like nature;
- (c) an audio-visual production which is substantially (more than 50%) of a public event; and
- (d) an audio-visual production produced principally as a training aid.

Further exclusions from references to audio-visual productions

15. For the purposes of Divisions 2 to 6, a reference to an audio-visual production does not include a reference to an audio-visual production that is or is intended to be—

- (a) an extension of broadcast television programmes beyond the first 26 episodes of a continuing series;
- (b) an extension of broadcast television programmes and television movies beyond 2 full length films in a continuing series;
- (c) more than 2 audio recordings by the same artist or substantially the same artist;
- (d) more than one short film by an individual director.

References to audio-visual production

16. In this Part, a reference to an audio-visual production includes, unless a contrary intention appears, a reference to a proposed audio-visual production.

Division 2 – PROVISIONAL CERTIFICATES

Application for provisional certificate

17. An applicant may apply in accordance with this Division for a provisional certificate stating that a proposed audio-visual production will, when complete, be a qualifying audio-visual production for the purposes of this Part.

Method of application

18. An application under paragraph 17 must be—
- (a) made to the FAVC in writing in the prescribed form;
 - (b) signed by or on behalf of the applicant;
 - (c) accompanied by such information as the FAVC requires; and
 - (d) accompanied by the prescribed fee.

FAVC to consider and decide applications

- 19.—(1) If an application is made under paragraph 17, the FAVC must consider it and either approve or refuse it.
- (2) The FAVC must not approve an application unless it is satisfied that—
- (a) the proposed audio-visual production, when complete, will be a qualifying Fiji audio-visual production;
 - (b) having regard to the role of the applicant in the proposed production of the audio-visual production, the applicant is an appropriate individual, partnership or company to whom a provisional certificate should be issued in respect of the proposed audio-visual production; and
 - (c) the undertaking of the proposed audio-visual production is expedient for the development of the audio-visual industry in Fiji.

FAVC to issue provisional certificate or give notice of refusal

20. The FAVC must—
- (a) if it approves the application – issue a provisional certificate to the applicant in respect of the proposed audio-visual production; or
 - (b) if it refuses the application – give written notice to the applicant of its refusal of the application.

Information to be provided to FAVC

21. A production entity, to which a provisional certificate has been issued under paragraph 20, must furnish to the FAVC in writing, within a period specified by the FAVC, such information in relation to the proposed audio-visual production as the FAVC requests.

FAVC must revoke or vary certificate in certain circumstances

22. If the FAVC has issued a provisional certificate and—
- (a) at any time after the issue of the certificate, the FAVC becomes satisfied that the proposed audio-visual production in respect of which the certificate was issued does not comply with the certificate in any respect; or
 - (b) the production entity fails to comply with a request for information made by the FAVC under paragraph 21,
- the FAVC must, by written notice to the person to whom the provisional certificate was issued—
- (i) revoke the provisional certificate with effect from the date of the certificate's issue; or
 - (ii) in the case of a qualifying audio-visual production which is an F1 audio-visual production – vary its audio-visual production status from F1 to F2.

Revocation does not prevent subsequent issue of certificate

23. The revocation of a provisional certificate in respect of a proposed audio-visual production does not prevent the issue of a further provisional certificate in respect of that proposed audio-visual production.

Certificate deemed to be in force from time of issue

24. Subject to paragraphs 22 and 25, a provisional certificate is deemed to have been in force at all times from the date of its issue.

Certificate lapses unless application for final certificate made

25. If an application for a final certificate in respect of an audio-visual production is not made in accordance with Division 3 before the expiration of 6 months after the time when the audio-visual production is completed, a provisional certificate in respect of that audio-visual production is deemed never to have been in force.

Division 3 – FINAL CERTIFICATES

Application for final certificate

26. An applicant may apply in accordance with this Division for a final certificate stating that an audio-visual production that has been completed is a qualifying audio-visual production for the purposes of this Part.

Method of application

27. An application under paragraph 26 must be—
- (a) made to the FAVC in writing in the prescribed form;
 - (b) signed by or on behalf of the applicant;
 - (c) accompanied by such information as the FAVC requires; and
 - (d) accompanied by the prescribed fee.

FAVC to consider and decide applications

- 28.—(1) If an application is made under paragraph 26, the FAVC must consider it and either approve or refuse it.
- (2) The FAVC must not approve an application unless it is satisfied that—
- (a) the audio-visual production is a qualifying audio-visual production;
 - (b) having regard to the role of the applicant in the production of the audio-visual production, the applicant is an appropriate individual, partnership or company to whom a final certificate should be issued; and
 - (c) the completion of the audio-visual production has been expedient for the development of the audio-visual industry in Fiji.

FAVC to issue final certificate or give notice of refusal

29. The FAVC must—
- (a) if it approves the application – issue a final certificate to the applicant in respect of the audio-visual production; or
 - (b) if it refuses the application – give written notice to the applicant of its refusal of the application.

Information to be provided to FAVC

30. A production entity, to which a final certificate has been issued under paragraph 29(a), must furnish to the FAVC in writing, within a period specified by the FAVC, such information in relation to the proposed audio-visual production as the FAVC requests.

FAVC must revoke or vary certificate in certain circumstances

31. If the FAVC has issued a final certificate and—
- (a) at any time after the issue of the certificate, the FAVC becomes satisfied that the audio-visual production in respect of which the certificate was issued does not comply with the certificate in any respect; or
 - (b) the production entity fails to comply with a request for information made by the FAVC under paragraph 30,
- the FAVC must, by written notice to the person to whom the final certificate was issued—
- (i) revoke the final certificate with effect from the date of the certificate's issue; or
 - (ii) in the case of a qualifying audio-visual production which is an F1 audio-visual production – vary its audio-visual production status from F1 to F2.

Revocation does not prevent subsequent issue of certificate

32. The revocation of a final certificate in respect of a completed audio-visual production does not prevent the issue of a further final certificate in respect of that completed audio-visual production.

Final certificate deemed to be in force from time of issue

33. Subject to paragraph 31, a final certificate is deemed to have been in force at all times from the date of its issue.

Division 4 – QUALIFYING AUDIO-VISUAL PRODUCTIONS

AVP may qualify as F1 or F2 AVP

34. An audio-visual production qualifies as an F1 audio-visual production or an F2 audio-visual production if—
- (a) it satisfies the minimum prerequisites set out in paragraph 35; and
 - (b) it satisfies the additional criteria set out in paragraph 36, in the case of F1 audio-visual productions, or paragraph 37, in the case of F2 audio-visual productions.

Minimum prerequisites for F1 and F2 AVPs

35. The minimum prerequisites for an audio-visual production to qualify as an F1 audio-visual production or an F2 audio-visual production are—

- (a) 100% of the production budget must be deposited in an audio-visual production account prior to commencement of the production;
- (b) 100% of the gross international and domestic revenues disbursed to investors, distributors and sales agents, producers, creative profit participants and any other parties must pass through a Fiji bank account prior to any disbursement and the Commissioner is provided with half yearly statements of income and disbursement;
- (c) either—
 - (i) in the case of an audio-visual production – the appropriate audio-visual production levy must be paid on the first day of pre-production or full financing, whichever is the sooner;
 - or—
 - (ii) in the case of a proposed audio-visual production – the production budget contains an audio-visual production levy which must be paid on the first day of pre-production or full financing, whichever is the sooner;
- (d) the audio-visual production is not, in the opinion of the FAVC, culturally derogative in its portrayal of Fiji or the people of Fiji;
- (e) the audio-visual production must be produced by a production entity;
- (f) the audio-visual production must have a completion bond from a company at arm's length to the production company and approved by the FAVC as an acceptable completion bond company;
- (g) the audio-visual production has a certificate from the completion bond company confirming that—
 - (i) the budget does not contain fees or costs which are not commercial;
 - (ii) either—
 - (aa) in the case of a completed audio-visual production – the production entity has in its best endeavours used suitably qualified Fiji personnel and facilities and locations;
 - or—
 - (bb) in the case of a proposed audio-visual production – the production entity has in its best endeavours budgeted and researched to use suitably qualified Fiji personnel and facilities and locations;
 - (iii) producer fees and overheads paid or payable to the production entity for services of production do not exceed 12% of the total budget;
 - (iv) expenses paid to the production entity or non-arm's length parties associated with the production are or will be genuine and reasonable reimbursement of costs;
 - (v) approved financing charges and approved marketing materials costs will be, or have been, spent in accordance with this Part;
 - (vi) all expense allowances, wages and fees for service in the budget are commercial and have been, or will be, paid for services rendered on the audio-visual production; and
 - (vii) the audio-visual production has been, or will be able to be, completed within the relevant 24 months period.

Additional criteria to be satisfied for F1 status

36.—(1) In addition to meeting the minimum prerequisites set out in paragraph 35, an audio-visual production qualifies as F1 audio-visual production if—

- (a) one of the following criteria is satisfied—
 - (i) a large format film, a feature film, a short film, broadcast television, a direct to video or video disk programme is directed, written or based on the creative idea of a citizen or a resident;
 - (ii) an audio recording is produced or composed by or is the performance principally of a resident or citizen;
 - (iii) computer software is based on the original creative idea developed by a resident or citizen; or

- (iv) the content satisfies the guidelines set down by the FAVC from time to time for being a portrayal of Fiji, the history and life of the people of Fiji and Fiji's flora and fauna,

and—

(b) all of the following criteria are satisfied—

- (i) the production entity has secured for the audio-visual production, to the satisfaction of the FAVC and on commercial terms, distribution for the production when complete both in Fiji and in at least one significant international market;
- (ii) one of the levels of expenditure in subparagraph (2) has been, or is budgeted to be, spent in Fiji.

(2) The levels of expenditure for the purposes of subparagraph (1)(b)(ii) are—

- (a) for an audio-visual production which commences production between 1st January 2001 and 31st December 2004 (both dates inclusive) – not less than—
- (i) 35% for a large format film, a feature film or broadcast television programmes;
- (ii) 45% for a direct to video or video disk programme; and
- (iii) 50% for an audio recording or computer software;
- (b) for an audio-visual production which commences production between 1st January 2005 and 31st December 2008 (both dates inclusive) – not less than—
- (i) 55% for a large format film, a feature film or broadcast television programmes;
- (ii) 75% for a direct to video or video disk programme; and
- (iii) 80% for an audio recording or computer software;
- (c) for an audio-visual production which commences production on or after 1st January 2009 – not less than—
- (i) 65% for a large format film, a feature film or broadcast television programmes;
- (ii) 85% for a direct to video or video disk programme; and
- (iii) 80% for an audio recording or computer software.

Additional criteria to be satisfied for F2 status

37. In addition to meeting the minimum prerequisites set out in paragraph 35, an audio-visual production qualifies as an F2 audio-visual production if —

- (a) the production entity has secured for the audio-visual production, to the satisfaction of the FAVC and on commercial terms, distribution for the production when complete both in Fiji and in at least 2 significant international markets;
- (b) one of the following amounts is guaranteed as a secured minimum return from international distribution to Fiji investors—
- (i) for an audio-visual production which commences production between 1st January 2001 and 31st December 2004 (both dates inclusive) – not less than—
- (aa) 5% for a large format film;
- (bb) 15% for a feature film;
- (cc) 20% for broadcast television programmes;
- (dd) 25% for a direct to video or video disk programme; and
- (ee) 15% for an audio recording or computer software;
- (ii) for an audio-visual production which commences production between 1st January 2005 and 31st December 2008 (both dates inclusive) – not less than—
- (aa) 25% for a large format film;
- (bb) 35% for a feature film;
- (cc) 40% for broadcast television programmes;
- (dd) 45% for a direct to video or video disk programme; and
- (ee) 30% for an audio recording or computer software;

- (iii) for an audio-visual production which commences production on or after 1st January 2010 – not less than 45%; and
- (c) one of the following levels of expenditure has been, or is budgeted to be, spent in Fiji—
 - (i) for an audio-visual production which commences production between 1st January 2001 and 31st December 2004 (both dates inclusive) – not less than—
 - (aa) 35% for a large format film, a feature film or broadcast television programmes;
 - (bb) 40% for a direct to video or video disk programme; and
 - (cc) 45% for an audio recording or computer software;
 - (ii) for an audio-visual production which commences production between 1st January 2005 and 31st December 2008 (both dates inclusive) – not less than—
 - (aa) 45% for a large format film, a feature film or broadcast television programmes;
 - (bb) 55% for a direct to video or video disk programme; and
 - (cc) 60% for an audio recording or computer software;
 - (iii) for an audio-visual production which commences production on or after 1st January 2009 not less than—
 - (aa) 55% for a large format film, a feature film or broadcast television programmes;
 - (bb) 65% for a direct to video or video disk programme; and
 - (cc) 65% for an audio recording or computer software.

Criteria for determining Fiji content of AVP

38. In determining whether an F1 or F2 audio-visual production has, or will have, significant and substantial Fiji content for the purposes of it being a qualifying audio-visual production, the FAVC must have regard to—

- (a) the subject matter of the audio-visual production;
- (b) the place where the audio-visual production was, or will be, made;
- (c) the nationalities and places of residence of—
 - (i) the persons who took part, or will take part, in the making of the audio-visual production (including actors, authors, composers, designers, directors, editors, musicians, producers, script writers, singers and technicians);
 - (ii) the persons who are, or will be, the beneficial owners of the copyright in the audio-visual production; and
 - (iii) the persons who are, or will be, the beneficial owners in any shares in any company concerned in the making of the audio-visual production;
- (d) the source from which monies that were used in the making of the audio-visual production were, or that are to be used in the making of the proposed audio-visual production will be, derived;
- (e) details of the production expenditure incurred, or the budgeted production expenditure to be incurred, in respect of the audio-visual production; and
- (f) any other matter the FAVC considers to be relevant.

*Division 5 – DEDUCTIONS FOR CAPITAL EXPENDITURE ON
AUDIO-VISUAL PRODUCTIONS*

Deduction for capital expenditure

39. Subject to this Division, if a taxpayer during a year of assessment expends monies of a capital nature, under a contract entered into on or after 1st January 2001, by way of contribution to the audio-visual production costs in respect of a qualifying audio-visual production, and—

- (a) at the time when the monies were expended a provisional certificate or a final certificate was in force in relation to the audio-visual production;
- (b) the Commissioner is satisfied that, at the time when the monies were expended—
 - (i) the taxpayer expected to become the first owner, or one of the first owners, in the copyright in the audio-visual production when the copyright came into existence; and
 - (ii) the taxpayer intended to use that copyright, or the taxpayer's interest in that copyright, as the case may be, for the purpose of producing income from the commercial exploitation of the copyright;

- (c) by reason of the monies being expended, the taxpayer became the first owner, or one of the first owners, of the copyright in the audio-visual production; and
- (d) either of the following conditions is applicable—
 - (i) the taxpayer has used the copyright, or the taxpayer's interest in the copyright, as the case may be, for the purpose of producing income from the commercial exploitation of the copyright;
 - (ii) the taxpayer derived income under an agreement entered into before the copyright came into existence under which the taxpayer agreed, upon the copyright coming into existence, to grant rights to another person to exploit the copyright in a commercial manner,

an amount must be allowed as a deduction in the assessment of the taxpayer in respect of the income in the year the monies are expended, being an amount equal to—

- (aa) in the case of an F1 audio-visual production – 150% of the monies expended; or
- (bb) in the case of an F2 audio-visual production – 125% of the monies expended.

Deduction in event of taxpayer's death

40. If, in relation to a qualifying audio-visual production to which paragraph 39 otherwise applies, a taxpayer dies before copyright in the audio-visual production comes into existence and either of the following conditions is satisfied—

- (a) before the taxpayer died, the taxpayer derived income under an agreement under which the taxpayer agreed, upon the copyright coming into existence, to grant rights to another person to commercially exploit the copyright; or
- (b) the Commissioner is satisfied that, if the taxpayer had not died—
 - (i) the taxpayer would have become the first owner, or one of the first owners, in the copyright in the audio-visual production by reason of the monies having been expended; and
 - (ii) the taxpayer would have used that copyright or the taxpayer's interest in that copyright for the purpose of producing income from the commercial exploitation of that copyright,

an amount must be allowed as a deduction in the assessment of the taxpayer's estate in respect of the year of income in which the taxpayer died, being an amount equal to—

- (aa) in the case of an F1 audio-visual production – 150% of the monies expended; or
- (bb) in the case of an F2 audio-visual production – 125% of the monies expended.

Licensees may not claim deduction

41. A taxpayer, being a production entity, which is a licensee for the purposes of Division 7, may not claim a deduction under this Division.

Division 6 – TAXATION OF AUDIO-VISUAL INCOME

Tax exemption of income derived from qualifying AVP

42. Subject to paragraph 43, if a taxpayer expends monies of a capital nature, under a contract entered into on or after 1st January 2001, by way of contribution to the audio-visual production costs in respect of a qualifying audio-visual production, the income derived by the taxpayer from the commercial exploitation of the copyright is exempt from tax until the taxpayer has received, from the commercial exploitation, a return of—

- (a) in the case of an F1 audio-visual production – 60% of the monies expended; or
- (b) in the case of an F2 audio-visual production – 50% of the monies expended,

and thereafter all income so derived must be included in total income.

Sale of copyright interest

43. A taxpayer who sells a copyright interest in an audio-visual production, in respect of which a deduction under Division 5 has been claimed, must include the gross receipts of the sale in total income.

Division 7 – STUDIO CITY ZONE

Definitions

44. In this Division, unless the context otherwise requires—

“applicant” means a sole proprietor, partnership or company which makes an application for an audio-visual operating licence;

“audio-visual operating licence” means a licence issued by the FAVC under this Division authorising the licensee to carry on a production activity in the studio city zone;

“company” means a company incorporated in Fiji carrying on a business of audio-visual production or supplying services to audio-visual productions in Fiji and which has as its primary operating location the studio city zone;

“licensee” means a sole proprietor, a partnership or a company holding an audio-visual operating licence;

“partnership” means a partnership of 2 or more residents carrying on a business in Fiji of audio-visual production or supplying services to audio-visual productions in Fiji and which has as its primary operating location the studio city zone;

“production activity” means any activity in the production, world-wide distribution or supply of services to the production of audio-visual productions in Fiji;

“sole proprietor” means a resident carrying on a business in Fiji of audio-visual production or supplying services to audio-visual productions in Fiji and whose business has as its primary operating location the studio city zone.

Minister may declare studio city zone

45.—(1) The Minister may, subject to this paragraph, declare by notice in the *Gazette* any area of land (including any buildings situated or erected on that land) in Fiji to be a studio city zone for the purposes of this Part.

(2) A studio city zone may be declared for the purposes of the development of infrastructure, services and resources for the audio-visual industry and tourist attractions, hotels, residential accommodation, sporting facilities, amusement parks and casinos (subject to the issue of a licence required under any written law).

(3) The Minister may, at the request of the studio city company, declare, by notice published in the *Gazette*, any area of land (including buildings situated or erected on that land) in Fiji to be incorporated into and to form part of the studio city zone.

(4) The Minister may not declare more than one studio city zone at any time.

(5) The Minister may declare, by notice published in the *Gazette*, any area of land (including any buildings situated or erected on that land) in Fiji to be a temporary studio city zone for the purposes of this Part in order that the land (and buildings) may be used by a licensee as an interim facility prior to the construction and completion of the studio city zone.

(6) A temporary studio city zone ceases upon the completion of the studio city zone in respect of which the temporary studio city zone is used as an interim facility.

FAVC may approve application for operating licence in studio city zone

46. The FAVC may approve, in accordance with this Division, an application by a sole proprietor, partnership or company for an audio-visual operating licence authorising the carrying on of a production activity in the studio city zone.

Method of application

47. An application under paragraph 46 must be—

- (a) made to the FAVC in writing in the prescribed form;
- (b) signed by or on behalf of the applicant;
- (c) accompanied by such information as the FAVC requires; and
- (d) accompanied by the prescribed fee.

FAVC to consider and decide applications

48.—(1) If an application is made under paragraph 46, the FAVC must consider it and either approve or refuse it.

(2) The FAVC must not approve an application unless it is satisfied that—

- (a) the applicant will produce, distribute or contribute specialised services to the production and distribution of qualifying audio-visual productions;
- (b) the applicant’s production activity will generate employment opportunities for the people of Fiji;
- (c) the applicant’s production activity will enhance, expand and improve the technological and trading capability and capacity of the economy of Fiji; and
- (d) the applicant’s production activity will be expedient for the development of the audio-visual industry in Fiji.

(3) The FAVC may approve an application subject to the applicant complying with any other condition considered by the FAVC to be appropriate under the circumstances.

FAVC to issue audio-visual operating licence or give notice of refusal

49. The FAVC must—

- (a) if it approves an application – issue an audio-visual operating licence, including any conditions imposed by it; or
- (b) if it refuses an application – give written notice to the applicant of its refusal of the application.

FAVC may vary conditions of audio-visual operating licence

50.—(1) The FAVC may, of its own accord, or upon the written request of a licensee, if it considers it appropriate in the circumstances, vary the conditions of an audio-visual operating licence.

(2) The FAVC must inform, by written notice, a licensee of a variation in the conditions of the licensee's audio-visual operating licence and the variation is deemed to be effective from the date that the licensee is informed.

FAVC may approve transfer of audio-visual operating licence

51.—(1) A licensee may apply to the FAVC in the prescribed form for its operating licence to be transferred to another sole proprietor, partnership or company.

(2) The FAVC may require the licensee or the proposed transferee to provide such information as the FAVC requires in order for it to consider the transfer application.

(3) The FAVC may—

- (a) approve the transfer of the licensee's audio-visual operating licence; or
- (b) refuse the application.

(4) The FAVC may not approve a transfer of an audio-visual operating licence unless it is satisfied that the proposed transferee satisfies the criteria set out in paragraph 48(2).

(5) The FAVC must give written notice to the licensee of its decision under subparagraph (3).

FAVC may revoke audio-visual operating licence

52.—(1) The FAVC may give written notice to a licensee that it intends to revoke the licensee's audio-visual operating licence if—

- (a) there has been a breach of the audio-visual operating licence;
- (b) there has been non-compliance with any condition of the audio-visual operating licence; or
- (c) the licensee is convicted of an offence against this Act, the Value Added Tax Decree 1991 or the Customs Act 1986.

(2) If the FAVC gives written notice under subparagraph (1), it must inform the licensee in writing of the licensee's right to make representations to the FAVC on or before a date specified by the FAVC, being not less than 21 days from the day that notice is given under subparagraph (1).

(3) If a licensee makes representations under subparagraph (2), the FAVC must consider them and may, by written notice to the licensee, withdraw its notice under subparagraph (1).

(4) If the FAVC does not withdraw its recommendation in accordance with subparagraph (3), or the licensee does not make any representations by the specified date the FAVC must, by written notice to the licensee, revoke the audio-visual operating licence from a date (being not less than 14 days and not more than 42 days from the date of the notice).

Register of operating licences

53.—(1) The FAVC must establish and maintain a register of all audio-visual operating licences and there must be entered in the register in respect of each audio-visual operating licence—

- (a) the date of commencement of the audio-visual operating licence;
- (b) the name, registered address and authorised representative of the sole proprietor, partnership or company to which the audio-visual operating licence was granted; and
- (c) the production activity to which the audio-visual operating licence relates.

(2) The register must be kept at the FAVC's principal office and be open to inspection during the times the FAVC directs, subject to the payment of the prescribed fee for each inspection.

Transfer must be registered within 7 days

54. If an audio-visual operating licence is transferred by the licensee in accordance with paragraph 49 the sole proprietor, partnership or company to which it is transferred must within 7 days of the transfer, submit its name and address, and the name and address of its authorised representative, for inclusion in the register.

Exemption from tax of licensee's production activity income

55. An audio-visual operating licence exempts the licensee, as from the commencement of the audio-visual operating licence, from the payment of income tax under this Act (except for withholding tax) on any income derived by the licensee from the production activity.

Non-AVP and distribution income subject to tax

56. Any income of a licensee not derived from a production activity must be charged to tax in accordance with the other provisions of this Act notwithstanding the business being located in the studio city zone.

Tax assessable on sale of company or business in studio city zone

57.—(1) Notwithstanding any other provision of this Act, tax must be assessed, levied and paid, at the rate set out in subparagraph (2), in respect of any income from—

- (a) the sale of shares in a licensee; or
- (b) the sale of a licensee's business or part of a business,

if the sale occurs less than 8 years after the commencement of the business.

(2) The rate at which tax must be assessed, levied and paid under subsection (1) is—

- (a) if the sale occurs within 2 years of commencement of the business – 20%;
- (b) if the sale occurs within 4 years of commencement of the business – 15%;
- (c) if the sale occurs within 6 years of commencement of the business – 10%; or
- (d) if the sale occurs within 8 years of commencement of the business – 2%.

*Division 8 – TAXATION CONCESSIONS TO RESIDENTS OF THE STUDIO CITY ZONE**Definitions*

58. For the purposes of this Division, unless the context otherwise requires—

“audio-visual earnings” means—

- (a) income derived from work in audio-visual productions including contracted fees, wages, royalties and distributions of profits from audio-visual productions but excludes any income from an audio-visual production in respect of which a deduction has been claimed under Division 5; and
- (b) income from sports performances including prize money, performance fees and endorsements.

FAVC may approve individuals for studio city zone benefits

59.—(1) The FAVC may approve an individual to enjoy the benefits specified in subparagraph (2) if—

- (a) the individual indicates his or her intention to reside in the studio city zone;
- (b) the individual derives audio-visual earnings; and
- (c) the individual complies with the requirements of this Division.

(2) The earnings derived by an individual approved by the FAVC under subparagraph (1) are exempt from tax.

Applications by non-citizens

60. An application under this Division by an individual who is not a citizen must be made in writing to the FAVC in the prescribed form and must include—

- (a) confirmation that the applicant's country of citizenship is other than Fiji;
- (b) confirmation of a contract to take up residence at the studio city zone;
- (c) confirmation from a chartered accountant holding a certificate of public practice of—
 - (i) pre-tax annual audio-visual earnings in excess of \$100,000; and
 - (ii) assets held in the studio city zone in excess of \$250,000 in either real estate, tangible business assets including stock, plant and equipment and tools of trade, or other valuable and confirmable assets excluding cash and other liquid assets.

Requirements for tax exemption

61. An individual, who is not a citizen, approved by the FAVC is not eligible to claim in a year of assessment the tax exemption under paragraph 59(2) unless the individual —

- (a) is resident in the studio city zone for a period or periods in aggregate of at least 60 days in the year of assessment;
- (b) maintains a permanent place of residence in the studio city zone during the year of assessment; and
- (c) provides to the Commissioner confirmation from a chartered accountant holding a certificate of public practice of—
 - (i) pre-tax audio-visual earnings in excess of \$100,000 in the year of assessment; and
 - (ii) assets held during the year of assessment in the studio city zone in excess of \$250,000 in either real estate, tangible business assets including stock, plant and equipment and tools of trade, or other valuable and confirmable assets excluding cash and other liquid assets.

Applications by citizens

62. An application under this Division by a citizen must be made in writing to the FAVC in the prescribed form and must include—

- (a) confirmation of a contract to take up residence in the studio city zone;
- (b) confirmation from a chartered accountant holding a certificate of public practice of—
 - (i) pre-tax annual audio-visual earnings in excess of \$100,000; and
 - (ii) assets held in the studio city zone in excess of \$250,000 in either real estate, tangible business assets including but not limited to stock, plant and equipment and tools of trade, or other valuable and confirmable assets excluding cash and other liquid assets.

Requirements for tax exemption

63. An individual, who is a citizen, approved by the FAVC is not eligible to claim in a year of assessment the tax exemption under paragraph 59(2) unless the individual—

- (a) is resident in the studio city zone for a period or periods in aggregate of at least 183 days in the year of assessment;
- (b) maintains a primary place of residence in the studio city zone during the year of assessment; and
- (c) provides to the Commissioner confirmation from a chartered accountant holding a certificate of public practice of—
 - (i) pre-tax audio-visual earnings in excess of \$100,000 in the year of assessment; and
 - (ii) assets held during the year of assessment in the studio city zone in excess of \$250,000 in either real estate, tangible business assets including stock, plant and equipment and tools of trade, or other valuable and confirmable assets excluding cash and other liquid assets.

FAVC must consider and decide applications

64.—(1) The FAVC must consider an application made under paragraph 60 or 62 and either approve or refuse it.

(2) The FAVC must not approve an application unless—

- (a) it is satisfied that it is expedient for the development of the audio-visual industry in Fiji;
- (b) the work in audio-visual productions from which income is derived is original and creative and has cultural or creative merit; and
- (c) the applicant has complied with all the requirements of this Division.

(3) The FAVC must give written notice to an applicant of its decision under subparagraph (1).”

Made at Suva this 19th day of January 2001.

J. I. ULUIVUDA
President of the Republic of Fiji