



MALTA FILM COMMISSION

Financial Incentives for Audiovisual Productions

Guidelines

Malta Film Commission

St. Rocco Street

Kalkara

Tel: +356 2180 9135-6

E-mail: commissioner@maltafilmcommission.com

Web: www.maltafilmcommission.com

Financial Incentives for Audiovisual Productions Guidelines by the Malta Film Commission

The following guidelines are issued by the Film Commissioner in accordance with the Financial Incentives for the Audiovisual Industry Regulations, 2015 (L.N. 47 of 2015) (hereinafter the “Regulations”).

This document has been designed to assist individuals or organisations applying for the cash rebates available under the above-mentioned Regulations. This document also maps out the process followed by the Malta Film Commission in determining the percentage to be granted to a qualifying production.

Applicants interested in obtaining further information about these incentives or any related topic may contact the Malta Film Commission as follows:

**Office of the Film Commissioner
Malta Film Commission
St. Rocco Street
Kalkara
Malta**

Tel: +356 21809135-6

Email: info@mfc.com.mt

www.maltafilmcommission.com

Version 6 (October 2016)

INFORMATION ON INCENTIVES AVAILABLE TO AUDIOVISUAL INDUSTRY

INTRODUCTION

The intention of this document is to provide interested parties with information about all the fiscal and financial incentives available in Malta for the international film and television industry.

Although Malta is known within the international film industry for the diversity and versatility of its locations and for the large water tanks at the Mediterranean Film Studios, it also offers an advantageous financial services environment that gives film and television producers and financiers the possibility of obtaining lucrative incentives both for the production and the distribution of audiovisual projects.

Under various legislations, the Maltese Government has continued to offer filmmakers the possibility to produce and distribute audiovisual productions from Malta and pay the lowest corporate tax rates in the European Union.

Companies or individuals investing in audiovisual infrastructure in Malta can qualify for tax credits of up to 50% of their investment on the islands, whilst producers filming on location in Malta can obtain a cash grant of up to 27% of their eligible expenditure in the country.

Film financiers can also invest in audiovisual productions through private investment funds registered in Malta and be exempt from paying tax on dividends and capital gains obtained through their investment from Malta. No withholding taxes are imposed on dividends, interests and royalties paid to non-residents, thus granting maximum flexibility in terms of repatriation of profits out of Malta.

These measures are administered by various government agencies including the Malta Film Commission, the Malta Financial Services Authority (MFSA) and Malta Enterprise. Competitive company incorporation and maintenance fees as well as professional fees have ensured that the financial services sector is one of the Island's main industries.

The information contained herein is of a general nature and is not intended to address the circumstances of any particular individual or entity. Although we endeavour to provide accurate and timely information, there can be no guarantee that such information is accurate as of the date it is received or that it will continue to be accurate in the future. No one should act upon such information without appropriate professional advice after a thorough examination of the particular situation. For further information about any of these initiatives or about filming in Malta, kindly contact the Malta Film Commission.

FINANCIAL INCENTIVES FOR THE AUDIOVISUAL INDUSTRY

CASH REBATES

The Malta Film Commission offers generous financial incentives to audiovisual productions filming on the island. These incentives are in the form of a cash rebate given to qualifying companies on eligible production expenditure incurred in Malta, with qualifying EU expenditure on the island also being eligible.

Up to 27% of eligible expenditure in Malta can be obtained as a cash rebate once shooting has taken place. This expenditure includes services engaged in Malta during production, and includes items such as below-the-line labour (EU spend in Malta is also eligible), accommodation, transportation, location fees, catering services, per diems, marine construction, leasing of offices and facilities, props rental, animals, grip equipment rental, and air travel and shipping. Other qualifying expenditure includes wardrobe rentals, SFX and telecommunications, craft services, marine services, professional services and post-production. The following guidelines include a full list of qualifying expenditure.

A cultural test is required to be passed in order for productions to be eligible to receive the incentives, the results of which determine the percentage rebate that will be granted.

The application and administration process of the scheme is straightforward and efficient, since the rebate is a direct grant from a specific Government fund. Feature film or Television film or TV Series or Mini-Series, Animation, Creative documentary, Transmedia and crossmedia productions that are all or partially produced in Malta are eligible for the incentives.

The qualifying company applying for the Financial Incentives for the Audiovisual Industry with an eligible audiovisual production, as defined herein, must have a minimum spend of €100,000 for Qualifying Productions and €50,000 for Difficult Audiovisual Works in Malta to be eligible to apply for this scheme¹.

Procedure

A qualifying production is required to present an application to the Commissioner for provisional approval, together with a detailed projection of the Malta budget for the production and a completed Cultural Test. Upon assessment based on specific guidelines and performance in the Cultural Test, the Commissioner would grant a provisional certificate no later than three weeks after receipt of the application.

Should there be any changes to the application presented for provisional approval and the budget differs by 10% or more from the original estimations, an application would have to be re-submitted to the Commissioner for final approval. The Commissioner will normally complete assessment of this application within twenty working days (excluding any period during which the Commissioner is awaiting additional information requested). On final approval, the qualifying company will be requested to sign an agreement detailing the terms and conditions as specified in the certificate which is to be signed by the qualifying company and the Commissioner, prior to start of principal photography in Malta.

Once shooting is complete the qualifying company is to present its account records, invoices, receipts and final production expenditure in Malta which will be sent for audit. Should the final overall budget and overall qualifying expenditure exceed the estimated overall budget and estimated eligible qualifying expenditure (as provided on the final application and on which the rebate was calculated) as indicated in the provisional certificate and final agreement; the final incentive will be granted on not more than 110% of the total qualifying expenditure as set out on the certificate. Should further allowances be made, this will be made at the discretion of the Commissioner.

¹ Minimum Spend criteria relating to the production activity in Malta, imposed by the Malta Film Commission, to the Qualifying Company cannot exceed 50% of the production budget, as outlined in the EU Communication 2013/C 332/01.

On receipt of audit report and upon final review by the Commissioner, the cash rebate is forwarded to the qualifying production no later than five months from the date of receipt of the presented production expenditure in Malta.

TAX CREDITS

The Government of Malta, under various legislative provisions, offers filmmakers the possibility to produce and distribute audiovisual productions from Malta and pay the lowest corporate tax rates in the European Union. Contact the Malta Film Commission for more information.

Investment aid for audiovisual facilities is also available under the Malta Enterprise Act. The aid is offered in the form of tax credits to a qualifying company in respect to an initial investment project in relation to qualifying expenditure. Detailed information on the audiovisual infrastructure tax credits can be obtained from the Malta Film Commission www.maltafilmcommission.com or from Malta Enterprise www.maltaenterprise.com

Value Added Tax in Malta stands at 18% and is fully refundable to productions on all goods and services. For certain supplies a reduced VAT rate is applicable, including a 7% rate for hotel accommodation.

CRITERIA REGARDING THE CONTENT OF A QUALIFYING PRODUCTION

Upon receiving an application under the Regulations, the Commissioner will determine whether the applicant and the audiovisual production in respect of which the application is made satisfy the qualification criteria established by the Malta Film Commission Act, the Regulations and these Guidelines.

1. Cultural Content

Without prejudice to conditions established in Article 25 of the Malta Film Commission Act and regulation 3 of the Financial Incentives for the Audiovisual Industry Regulations, only audiovisual productions abiding by the criteria set out in the Second Schedule to the Regulations shall be considered a “qualifying production”.

In addition to the requirement that an audiovisual production has to pass the “cultural test” as described above (regulation 3(1)(a) and Second Schedule of the Regulations (or Third Schedule of the Regulations applicable to ‘Difficult Audiovisual Works’), the audiovisual production concerned must satisfy the criteria set out in regulation 3(1)(b) to (d) of the Regulations for “qualifying productions”.

2. Format

Pursuant to regulation 3(1)(d) of the Regulations the audiovisual production must be based on a format approved by the Commissioner. Only the following types of audiovisual productions shall be considered a “qualifying production” and be eligible for the financial incentives:

2.1 Feature film

Including those shot direct-to-video, where the film is a film commonly screened as the main attraction in commercial cinemas; of a duration not less than 60 minutes, or in the case of a large format (IMAX) film, not less than 45 minutes;

2.2 Television film or Television series or mini-series

Television Film

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 the television movie is not 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 international telecast;

Television 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 plot 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 international telecast.

2.3. Animation

Full feature and TV animation series for international distribution whether computer generated or otherwise, but excluding computer games.

2.4. Creative documentary

Where the project is based on an original theme which contains a certain "timeless" element so that there is no loss of interest when the event with which it may be linked has passed and contains significant original filming and does not merely report information.

2.5. Transmedia and crossmedia productions

Transmedia and crossmedia film productions that use different media for telling the same story, each medium making a contribution to the whole. Transmedia projects that are linked to the production of a film are considered to be qualifying audiovisual work.

3. Exclusions

The following in particular are not eligible for the financial incentives:

- 3.1 any public or special performances(s) staged for filming or otherwise;
- 3.2 any sporting event;
- 3.3 games or competitions;
- 3.4 current affairs or talk shows;
- 3.5 demonstration programmes for tasks, hobbies or projects;
- 3.6 review, magazine-style, or lifestyle programmes;
- 3.7 unscripted or "reality"-type programmes;
- 3.8 advertising programmes or advertisements;
- 3.9 pornographic or sexually explicit content.

4. Application Process: Provisional Approval

4.1 The Application for financial incentives under the Malta Film Commission Act forms part of these Guidelines.

4.2. Applications must be made on the application form that is available from www.maltafilmcommission.com. The application shall also include the following separate documents:

- 4.2.1 a synopsis of the project or a script
- 4.2.2 a schedule of filming
- 4.2.3 a top sheet of the overall production budget
- 4.2.4 a detailed, itemised estimate of the Malta spend of the pertinent production's expenditure for which a benefit is being sought.

- 4.3 The applicant shall declare in the application whether or not at the time of the application:
- 4.3.1 the qualifying company intends to avail itself of, or has availed itself of any of the incentives or benefits under the Business Promotion Act or Malta Enterprise Act or any relevant or subsidiary legislation made thereunder; and,
 - 4.3.2 the qualifying company has received confirmation or has applied for confirmation from the competent authority that it is a qualifying company in terms of the Business Promotion Act or Malta Enterprise Act or any relevant or subsidiary legislation made thereunder;
 - 4.3.3 the qualifying company intends to avail itself of, or has availed itself of any other incentive, grant, benefit, rebate, tax credits, discounts or support in any other form from any public or public-equivalent entity in Malta that would constitute state aid under the applicable regulations within Malta and the EU.
- 4.4 Upon assessment based on specific guidelines and performance in the Cultural Test, the Commissioner would grant a provisional certificate no later than three weeks after receipt of the application.
- 4.5 Applications for certification must be made at least 30 working days before planned commencement of the production's principal photography. The Commissioner will normally complete assessment of application within twenty working days (excluding any period during which the Commissioner is awaiting additional information requested).
- 4.6 In case the Commissioner requests additional information in respect of an application, processing of the application will not be progressed until the relevant information has been received.
- 4.7 The qualifying company is to ensure that the recruitment of personnel in Malta, including recruitment of extra talent and the engagement of services in Malta, is conducted fairly and without discrimination of any form. Resource lists of experienced crew members, extra talent and service providers are available from the Malta Film Commission.
- 4.8 Prior to the commencement of filming in Malta, the qualifying company will commit to engage personnel with the production and provide the names, to the Commissioner, for:
- a) Creative talent or leading crew members that have their permanent residence in Malta or that otherwise have a demonstrable strong connection to the Maltese film culture.
 - b) a minimum of 2 Maltese Nationals or EU citizens living in Malta as trainees above the line
 - c) a minimum of 3 Maltese Nationals or EU citizens living in Malta as trainees below the line
- 4.9 The qualifying company applying for the Financial Incentives for the Audiovisual Industry with an eligible audiovisual production, as defined herein, must have a minimum spend of €100,000 for Qualifying Productions and €50,000 for Difficult Audiovisual Works in Malta to be eligible to apply for this scheme².

5. Application Process: Final Approval

- 5.1 Should there be any changes to the application presented for provisional approval and the budget differs by 10% or more from the original estimations, an application would have to be re-submitted to the Commissioner for final approval. Applications for final approval must be made on the application form that is available from www.maltafilmcommission.com. The application

² Minimum Spend criteria relating to the production activity in Malta, imposed by the Malta Film Commission, to the Qualifying Company cannot exceed 50% of the production budget, as outlined in the EU Communication 2013/C 332/01.

for Final Approval shall also include all the documents requested in the Provisional Approval (see paragraph 4 above), including a top sheet of the overall expenditure of the project and itemised details of the relevant spend for which a benefit is being sought. The qualifying company will also provide confirmation of commencement of principal photography and provide the Commissioner with the final shooting schedule for Malta.

- 5.2. The Commissioner will normally complete assessment of this application within twenty working days (excluding any period during which the Commissioner is awaiting additional information requested).
- 5.3. On final approval, the qualifying company will be requested to sign an agreement detailing the terms and conditions as specified in the certificate which is to be signed by the qualifying company and the Commissioner, prior to start of principal photography in Malta.
- 5.5. If no application is re-submitted and the Commissioner finds that the final overall budget and overall qualifying expenditure exceed the estimated overall budget and estimated eligible qualifying expenditure (as provided on the final application and on which the rebate was calculated) as indicated in the provisional certificate and final agreement; the final incentive will be granted on not more than 110% of the total qualifying expenditure as set out on the certificate. Should further allowances be made, this will be made at the discretion of the Commissioner.

6. Certificate

- 6.1. Scheduled with the Regulations is a sample certificate, which details the general conditions normally attached to such certificates. In addition to these conditions, each certificate might contain certain specific additional conditions particular to an individual applying production.
- 6.2. The certificate is issued on the basis of the information supplied during the application process. Any material or content change in the information supplied to the Commissioner, and on which the issue of the certificate was based, that may arise as the project progresses must be notified and agreed to by the Commissioner. Failure to have obtained such agreement will be regarded as a material breach of the conditions of the certificate.
- 6.3. On final approval, the qualifying company will be requested to sign an agreement detailing the terms and conditions as specified in the certificate which is to be signed by the qualifying company and the Commissioner, prior to start of principal photography in Malta.

7. Level of Aid and Intensity

- 7.1. The financial incentive shall not exceed a maximum rebate of **twenty-seven percent (27%)** of the eligible expenditure of a qualifying production.
- 7.2. In determining the level of rebate the Commissioner shall take into account all possible State subsidies, including aid provided by other EU Member States, in order to ensure that State aid does not go beyond fifty percent (50%) of the total production budget and sixty percent (60%) if it is a co-production.
- 7.3. The applicant is under obligation to present a full and accurate disclosure of any relevant information relating to state aid received from any party and in any form, while the Commissioner will verify that the said threshold is not exceeded both at the stage of receiving the application for funding and prior to making a recommendation to the Commission on the amount of financial incentive to be granted.

- 7.4. In line with State Aid regulations, in determining whether the maximum aid intensity is respected, the total amount of public support measures of Member States for the aided activity shall be taken into account, regardless of whether that support is financed from local, regional, national or Union sources. However, funds awarded directly by EU programmes (i.e. CREATIVE EUROPE), without the involvement of Member States in the award decision, are not State resources. Therefore, their assistance does not count for the purposes of respecting the aid ceilings. Any unlawful aid or double dipping considered as being incompatible by a Commission Decision will not be permitted and will result in funds having to be reimbursed with the corresponding recovery interest (this principle also applies to Co-Productions).
- 7.5. Aid received under the Malta Film Fund which falls under the de minimis aid Regulation, will not be cumulated with this approved scheme provided any such de minimis aid is not awarded towards the same eligible costs as those supported via that approved scheme. De minimis aid cannot be used to top up awards made under approved State aid schemes, resulting in a circumvention of the aid intensities set out in the rules attached to such schemes. In these cases it can only be awarded towards separate eligible costs.
- 7.6. The limits referred to in paragraphs 7.1 and 7.2 above do not apply in the case of difficult audiovisual works.
- 7.7. A difficult audiovisual work is determined by a cultural test in accordance with the Third Schedule to the regulations and these guidelines together with relevant application form and supporting material. In addition a 'difficult audiovisual work' will need to satisfy a number of the parameters listed below (in accordance with the EU's subsidiarity principle which is in line with Malta's national parameters):
- a. Works whose sole original version is in the Maltese language with a limited distribution territory, population or language area;
 - b. Involves a first-time Maltese director;
 - c. Involves a first-time Maltese producer;
 - d. Is considered a low budget production;
 - e. Is considered a commercial difficult work (i.e. has little if any prospect of commercial success because of its experimental nature; has little if any prospect of commercial success because it represents a very high level of creative risk).

Until a decision as to whether the production is considered as a 'difficult audiovisual work' the Commissioner reserves the right to request further information or clarification on any aspect of the above. Once relevant information has been received and assessed by the Commissioner, the Commissioner will then make a recommendation to the Commission to grant the qualifying company and qualifying production the status of being a 'difficult audiovisual work'.

- 7.8. a qualifying production considered as a 'difficult audiovisual work' may then qualify for a maximum rebate of **thirty-two percent (32%)** of the eligible expenditure.
- 7.9. In any case, all qualifying productions, including difficult audiovisual works, are obliged to submit all and any information related to state aid received as stipulated under paragraphs 4.3 and 7.3 of these Guidelines.

8. REBATE PERCENTAGES

8.1. The Commissioner shall determine the percentages that are rebated to qualifying production.

8.2. The amount of the financial incentive will be determined on the basis of:

8.2.1 the funds available (with reference to the amount specifically appropriated in the Government's financial estimates for a particular financial year);

8.2.2 the ranking of the qualifying production (other than difficult audiovisual works) in the cultural test based on the criteria set out in Section A (Cultural content), Section B (Creative contribution) and Section C (use of Malta's Cultural Resources) of the Second Schedule to the Regulations, as indicated in the tables below. See appendix 1 of these guidelines.

8.2.3. the ranking of the qualifying production for a difficult audiovisual work in the cultural test based on the criteria set out in Section A (Cultural content), Section B (Creative contribution), Section C (use of Malta's Cultural Resources), and Section D (difficult audiovisual work) of the Third Schedule to the Regulations, as indicated in the tables below. See appendix 2 of these guidelines.

8.3 Qualifying productions (other than Difficult Audiovisual Works):

Points obtained in Cultural Test	Rebate Percentage
40 – 45	20%
46 – 50	21%
51 – 55	22%
56 – 60	23%
61 – 65	24%
66 +	25%
	+ 2% (see below criteria)

The Commissioner has the discretion to award an additional 2% based on the Maltese cultural element.

8.4 Difficult Audiovisual Works:

Points obtained in Cultural Test	Rebate Percentage
50 – 59	20%
60 – 69	24%
70 – 79	26%
80 – 85	28%
85 +	30%
	+2% (see below criteria)

The Commissioner has the discretion to award an additional 2% based on the Maltese cultural element.

8.5. Until a decision on the percentage is communicated, the Commissioner reserves the right to request further information or clarification on any aspect of the application.

9. Eligible and Non-Eligible Expenditure

9.1. The financial incentive shall be calculated on the basis of the eligible expenditure, which may amount to a maximum of 80% of the production budget.

9.2. The following expenses may be eligible for the cash rebate if they are incurred in Malta by the qualifying company, are directly related to the qualifying production, and are supported by fiscal invoices and/or receipts, provided that when suppliers are exempt from VAT registration under Article 11 of the VAT Act, a declaration in this sense will be required from the supplier:

LIST OF ELIGIBLE EXPENDITURE (MALTA BUDGET) incurred in Malta:

9.2.1. Accommodation in Malta

Expenditure on hotel accommodation and rental of real estate for foreign cast and crew. Accommodation expenditure incurred during recesses.

9.2.2. Air travel

Relevant flight expenditure for air freight and air travel between Malta and any airport within the EU/EEA, as well as expenses (including all airport taxes, such as departure tax, passenger service charges, security charges and similar expenses) incurred at Malta International Airport in respect of such air travel.

Flight expenditure within the EU/EEA incurred during recesses.

9.2.3. Animals

Provided that such expenditure shall not exceed 6% of the total eligible expenditure.

9.2.4. Audio Rentals

9.2.5. Catering and craft services

Provided on location in Malta that is directly related to the qualifying production. Provided that expenditure in relation to such services shall not exceed 15% of the total eligible expenditure.

9.2.6. Construction and adaptation of ships and other vessels

Whether self-propelled or not, including barges, pontoons and similar crafts. Provided that such expenditure shall not exceed 15% of the total eligible expenditure.

9.2.7. Diving services

9.2.8. Electricity

9.2.9. Entertainment

Organised by the qualifying company for cast and crew provided that such expenditure shall not exceed 5% of the total eligible expenditure.

9.2.10. Rental of Generators

9.2.11. Grip rental

Provided that such expenditure shall not exceed 15% of the total eligible expenditure.

- 9.2.12. **Ground transport and facility vehicle services**
Rental of chauffer-driven cars, self-drive vehicles, facility vehicles, trucks, cranes, mobile homes and picture vehicles in Malta.
- 9.2.13. **Labour costs**
Expenditure on employees, directly engaged with the production company on a full-time basis, part-time basis or with a contract of service, who are nationals of an EU/EEA Member State and are employed/posted in Malta in accordance with the laws of Malta.
- Provided that eligible expenditure for 'above the line' direct employment (such as directors, producers, cast members and stunts) and for employment of heads of department in the 'below the line category' shall be limited to € 200,000.
For the purposes of these Guidelines:
- 'Above-the-line' labour includes salaries for producers, director, cast and stunts, including their travel and living expenses as well as miscellaneous ancillary associated costs.
 - 'Below-the-line' labour refers to labour directly engaged on a production during its shooting in Malta except those included in the above-the-line labour and expenses.
 - All Heads of Department are excluded in eligible below-the-line labour.
- 9.2.14. **Laundry and cleaning services**
- 9.2.15. **Location fees**
Fees and courtesy payments that are directly related to the qualifying production which are paid to location owners, local councils, non-governmental organisations or other individuals or entities in Malta.
- Provided that where such fees and payments exceed €500 (or equivalent) per day per individual or entity, a fiscal invoice or receipt will be required.
- 9.2.16. **Malta heritage, archaeological and environmental monitoring services**
- 9.2.17. **Per diems**
Daily subsistence given to crew working in Malta, subject to a maximum of €70 per person per day.
- 9.2.18. **Production service company fees**
Provided that such expenditure shall not exceed €100,000.
- 9.2.19. **Professional services**
Including audits, insurance and/or bank charges.
Provided that total expenditure for such services shall not exceed €100,000.
- 9.2.20. **Rental of marine vehicles**
- 9.2.21. **Rental of mobile toilets**
- 9.2.22. **Rental of office furniture and office set-up costs**
- 9.2.23. **Rental of aeroplanes/helicopters**
Provided that such expenditure shall not exceed 6% of the total eligible expenditure.

- 9.2.24. **Rental of production offices, warehouse space, workshop facilities, storage space and stages.**
- 9.2.25. **Rental of props**
- 9.2.26. **Rental of water tanks and Mediterranean Film Studios facilities**
- 9.2.27. **Repairs & restorations**
- 9.2.28. **Rental of Scaffolding**
- 9.2.29. **Security services**
- 9.2.30. **Rental of Green Screen**
- 9.2.31. **SFX services, crew and equipment**
Provided that such expenditure shall not exceed 6% of the total eligible expenditure.
- 9.2.32. **Shipping**
Relevant shipping expenses in relation to maritime transport or sea travel between Malta and any port within the EU/EEA, and ferry services between the Maltese islands.
- 9.2.33. **Telecommunications**
Expenditure on fixed telephony, mobile telephony, internet, email and fax services incurred in Malta (including rental of walkie talkies).
- 9.2.34. **Wardrobe rentals**
Provided that expenditure in relation to wardrobe rentals shall not exceed 15% of the total eligible expenditure.
- 9.2.35. **Rental of Camera Equipment**
- 9.2.36. **Rental of Lighting Equipment**
- 9.2.37. **Fringes:** any taxes and social contribution incurred in Malta.
- 9.2.38. **Local Cast:** i.e. Extras, Stand ins, Day players
- 9.2.39. **Set Striking costs:** waste removal / skips
- 9.2.40. **Health & Safety:** First Aid engagement of Nurses, Doctors & Ambulance, Police, Wardens, Civil Protection and Armed Forces of Malta.
- 9.2.41. **Post production:** Rebate capped at €150,000
- 9.2.42. **Miscellaneous services procured in Malta**
Other than those listed above and that are directly related to the qualifying production.

Provided that expenditure in relation to miscellaneous services shall not exceed 6% of the total eligible expenditure.

- 9.3. The following items are not eligible for the financial incentive:
- 9.3.1. Fuel Expenses
 - 9.3.2. All materials and supplies purchased or otherwise procured in Malta or an EU/EEA Member State or any third country other than those listed as eligible expenses.
- 9.4. All items have to be presented net of Value Added Tax. When applying for the financial incentives the qualifying company should also provide the Commissioner with estimates of their expenditure on non-eligible items.
- 9.5. The same criteria for eligible and non-eligible expenditure shall apply in respect of cash rebates granted to difficult audiovisual works.

10. Post-Certification Process

- 10.1. On completion of the qualifying production, the qualifying company is to submit the following documents to the Commissioner:
- a) an immediate written notification that the filming activity in Malta of the audiovisual production for which a benefit is being sought is completed.
 - b) full details of the qualifying company and of any beneficiary of the cash rebate;
 - c) accounts detailing the amounts spent on each individual element of the project for which a benefit is being sought, including expenditure on the direct employment of Maltese and EU/EEA nationals and on eligible goods and services;
 - d) Full final cast and crew list (distinguishing between the local cast and crew) submitted with the following information:
 - i) Nationality/residency
 - ii) ID/Passport number
 - iii) Contract duration
 - iv) Role in the production
 - e) Final list of locations used (with address)

The accounts must include the following:

- a) a “top sheet” production expenditure summaries covering all expenditure in Malta and the entire production expenditure on the film;
- b) a detailed analysis of relevant labour costs (including gross full-time and part-time wages, withheld tax, Social Security contributions and monies paid to employees employed directly on a contract of service);
- c) All accounts are to be presented net of Value Added Tax and all account entries are to be certified by proper receipts that enable the recipient of the payment to be identified.
- d) Copies of receipts from the pertinent fiscal authorities and companies showing that the amounts due were already paid to such authorities and companies.

- e) the qualifying company is to provide to the satisfaction of the Commissioner details of the eligible expenditure, including invoices and receipts of the pertinent qualifying production.
- f) Copies of receipts relating to withholding tax paid on the income of any individual employed with a film production company, or employed with a company which offers its services to such film production company and is neither ordinarily resident nor domiciled in Malta and said period of employment in Malta does not exceed 183 days. This is subject to any provisions of double taxation agreements that may take general precedence over national law, as the case may arise.
- g) Copies of receipts relating to withholding tax paid by any individual who is neither ordinarily resident nor domiciled in Malta and was employed or offered their services to the production as an actor, front of camera performer or film director. This is subject to any provisions of double taxation agreements that may take general precedence over national law, as the case may arise.
- h) copies of ALL contracts and agreements for which a benefit is being sought for any rebate claim is to be included in the final submission claim for both Malta and EU elements.

10.2. Following the submission of final account records, invoices, receipts and final production expenditure in Malta the qualifying company is to grant access to representatives of the Commissioner to audit the accounts pertaining to the audiovisual production which a benefit is being sought.

10.3. Should there be deemed to be a significant difference where the final overall budget exceeds the estimated overall budget as indicated in the application by more than ten percent (and on which the rebate was calculated as per provisional certificate and final agreement) a new application will need to be re-submitted. Any amount which exceeds 110% of the total qualifying expenditure as set out on the certificate will be made at the discretion of the Commissioner.

10.4. On receipt of audit report and upon final review by the Commissioner, the cash rebate is forwarded to the qualifying production no later than five months from the date of receipt of the presented production expenditure in Malta.

10.5. The cost of the review audit together with administrative fees will be borne by the applicant. It shall be considered an eligible expense and will be deducted from the final rebate. The cost of the review audits will depend on the overall Malta Spend, as follows:

Malta Spend	Audit/Administrative Fee
Under €500,000	€ 2,000
Up to €1 million	€ 3,000
Between €1 and €10 million	€ 4,000
Over €10 million	€ 6,000

10.6. In case additional information in respect of an audit is required, processing of the audit will not be progressed until the relevant information has been received.

11. Obligations

11.1 The qualifying company shall ensure that the filming activity and all other activities related to the film are conducted in accordance with the Laws of Malta. The Courts of the Republic of Malta shall have jurisdiction on any dispute. Copies of any permits are to be made available to the Malta

Film Commission in relation to all locations being used by the production such as, Planning Authority: Development Notification Orders; Local Council: No objection letter; Police Permits: if location requires such permit; Property Owners (private or governmental entity): No objection letter.

- 11.2. The qualifying company is to ensure that the recruitment of personnel in Malta, including recruitment of extra talent and the engagement of services in Malta, is conducted fairly and without discrimination of any form. Resource lists of experienced crew members, extra talent and service providers are available from the Malta Film Commission.
- 11.3. Prior to the commencement of filming in Malta, the qualifying company will commit to engage personnel with the production and provide the names, to the Commissioner, for:
 - a) Creative talent or leading crew members that have their permanent residence in Malta or that otherwise have a demonstrable strong connection to the Maltese film culture.
 - b) a minimum of 2 Maltese Nationals or EU citizens living in Malta as trainees above the line
 - c) a minimum of 3 Maltese Nationals or EU citizens living in Malta as trainees below the line
- 11.4. Once shooting commences daily call sheets are to be sent to the Malta Film Commission (to the commissioner) every day, as and when they are released to the crew.
- 11.5. During production the Commissioner reserves the right to conduct an interview, conducted in video format, with the main actors / actresses, the director and producers as testimonials which will be used for publicity after release of the film. These will be used to promote the Maltese film industry.
- 11.6. The qualifying company is to include the credits in the language of the film production **“Produced with the support of the financial incentives provided by the Government of Malta”** and **“Filmed on location in Malta”** as the case may be; these credits are to be located in a prominent position in the closing credits, immediately after the cast and crew credits. The logo of the Malta Film Commission must also be featured.
- 11.7. Prior to the payment of the cash rebate and following completion of the qualifying production, the qualifying company is to provide the Commissioner with an electronic press kit (EPK), which includes photos, footage of behind-the-scenes, clips from the actual shoot, and the trailer to be used for international marketing and promotional purposes showcasing Malta. These will be used to promote the Maltese film industry.
- 11.8. Prior to the payment of the cash rebate and following completion of the qualifying production, the qualifying company is to provide the Commissioner, a number of props, costumes, storyboards etc etc to be kept as a record of the production in Malta and possible eventual use for exhibition and promotional purposes when showcasing Malta as a film location. The Film Commission will also be given right of first refusal to acquire any sets, props, costumes, and any other material related to the film.
- 11.9. Following completion of the qualifying production, the qualifying company is to provide the Commissioner with two copies of the film in HD format and two copies in DVD format.
- 11.10. In accordance with the Malta Film Commission Act (Chapter 478), Article 6 (3), the Commissioner may, if he so deems appropriate, reserve the right to request any further documentation in order to fulfill the “Functions of the Commissioner”, as follows:

- (a) Monitor, keep under review and evaluate operations, activities and matters in relation to the audiovisual or film servicing industry;
- (b) Carry out studies, research and investigations relating to any matter regarding the audiovisual industry;
- (c) Provide information and issue guidelines, to the public and relevant entities, regarding film, the audiovisual industry, the film servicing industry and audiovisual policy in general;

12. Transparency and disclosure

In accordance with the Communication from the EU Commission (2014 C198/02) ³, to ensure transparency, Member States shall, as a condition for granting aid in line with the relevant guidelines, disclose full information on aid measures and their beneficiaries as follows:

'Member States shall ensure the publication of the following information on a comprehensive State aid website, at national or regional level:

- *the full text of the approved aid scheme or the individual aid granting decision and its implementing provisions, or a link to it,*
- *the identity of the granting authority/(ies),*
- *the identity of the individual beneficiaries, the form and amount of aid granted to each beneficiary, the date of granting, the type of undertaking (SME / large company), the region in which the beneficiary is located (at NUTS level II) and the principal economic sector in which the beneficiary has its activities (at NACE group level).⁴*

Such a requirement can be waived with respect to individual aid awards below EUR 500 000. For schemes in the form of tax advantage, the information on individual aid amounts⁵ can be provided in the following ranges (in EUR million): [0.5-1]; [1-2]; [2-5]; [5-10]; [10-30]; [30 and more].

Such information must be published after the decision to grant the aid has been taken, must be kept for at least 10 years and must be available to the general public without restrictions.⁶ Member States will not be required to publish the abovementioned information before 1st July 2016.⁷

³ Communication from the Commission amending the Communications from the Commission on EU Guidelines for the application of State aid rules in relation to rapid deployment of broadband networks, on Guidelines on regional State aid for 2014-2020, on State aid for films and other audiovisual works, on Guidelines on State aid to promote risk finance investments and on Guidelines on State aid to airports and airlines.

⁴ With the exception of business secrets and other confidential information in duly justified cases and subject to the Commission's agreement (Commission communication on professional secrecy in State aid decisions, C(2003) 4582, OJ C 297, 9.12.2003, p. 6).

⁵ The amount to be published is the maximum allowed tax benefit and not the amount deducted each year (e.g. in the context of tax credit, the maximum allowed tax credit shall be published rather than the actual amount which might depend on the taxable revenues and vary each year).

⁶ This information shall be published within 6 months from the date of granting (or, for aid in the form of tax advantage, within 1 year from the date the tax declaration is due). In case of unlawful aid, Member States will be required to ensure the publication of this information ex post, at least within 6 months from the date of the Commission decision. The information shall be available in a format which allows data to be searched, extracted, and easily published on the internet, for instance in CSV or XML format.

⁷ Publication of information on aid awards granted before 1st July 2016 and, for fiscal aid, publication for aid claimed or granted before 1st July 2016, will not be required.

APPENDIX 1: CULTURAL TEST FOR QUALIFYING PRODUCTIONS OTHER THAN DIFFICULT AUDIOVISUAL WORKS (27%)

A production's eligibility for the financial incentives is determined by its performance in the cultural test. The ranking of the qualifying production in the cultural test based on the criteria below will subsequently determine the rebate percentage it is eligible for. This cultural test is listed as the Second Schedule to the Legal Notice 'Financial Incentives for the Audiovisual Industry Regulations, 2015'.

CRITERIA FOR THE DETERMINATION OF THE CULTURAL CONTENT OF AN AUDIOVISUAL PRODUCTION

A minimum of:

- (i) 40 points in aggregate; and
- (ii) 20 points under Section A below; and
- (iii) 10 points in each of the Sections B and C below,

is required for an audiovisual production to meet the requirements set out in regulation 3(1)(a) of these regulations.

SECTION A: Cultural Content

	Maximum Points	Total obtained
1. Productions featuring a Maltese, European or Mediterranean story (factual or fictional)	4	
2. Productions featuring a Maltese, European or Mediterranean setting (factual or fictional)	8	
3. Storyline or underlying material is based on literary material	2	
4. Storyline or underlying material is a part of or derived from Maltese, European or Mediterranean culture and / or heritage	4	
5. Productions featuring Maltese or European characters	2	
6. Storyline or underlying material deals with contemporary or historical Maltese, European or Mediterranean issues of political, religious and/or social relevance	3	
7. Storyline or underlying material contains reference to a contemporary or historical personality (eg: Alexander the Great) or to a fictional character in cultural history (eg: Zeus)	2	
8. Storyline or underlying material contains reference to a universally significant and relevant event – fictional or factual.	2	
9. Use of Malta's diverse architectural, archaeological and natural heritage to reflect the European and Mediterranean cultural context	3	
10. Productions featuring at least one European language	3	
11. Use of Maltese language in the dialogue of the production in a manner which contributes to the development of the storyline	2	
12. Use of Malta's cultural subjects and landmarks that allow for them to feature in the setting of the production.	2	
13. Productions with compelling dramaturgical script requirements that cannot logistically, creatively or technically be satisfied in any other EU member state	3	
	40 (max)	

Total obtained for Section A (Cultural Content):		Max 40
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MFC assessment of specific scaled criteria:

1. Productions featuring a Maltese, European or Mediterranean story (factual or fictional)

<i>Entire story</i>	<i>Major element/s</i>	<i>Critical element/s</i>	<i>Minor element/s</i>
4	3	2	1

2. Productions featuring a Maltese, European or Mediterranean setting (factual or fictional)

<i>Wholly set</i>	<i>Over half is set</i>	<i>Half set</i>	<i>Partially set</i>
8	7	6	5

4. Storyline or underlying material is a part of or derived from Maltese, European or Mediterranean culture and / or heritage

<i>Fully derived</i>	<i>Partially derived</i>	<i>Relevant to</i>	<i>Related to</i>
4	3	2	1

6. Storyline or underlying material deals with contemporary or historical Maltese, European or Mediterranean issues of political, religious and/or social relevance

<i>Focal issue</i>	<i>Central issue</i>	<i>Present issue</i>
3	2	1

9. Use of Malta's diverse architectural, archaeological and natural heritage to reflect the European and Mediterranean cultural context

<i>Featured in major capacity</i>	<i>Featured in minor capacity</i>	<i>Featured once</i>
3	2	1

10. Productions featuring at least one European language

<i>Over 50% of dialogue</i>	<i>Under 50% of dialogue</i>	<i>Minimal dialogue</i>
3	2	1

SECTION B: Creative Contribution

(i) Productions with guaranteed, proven or intended theatrical or television distribution in at least three EU Member States	Maximum Points	Total obtained
(Tick appropriate box)		
3-4 EU Member States	6	
5-7 EU Member States	8	
8-10 EU Member States	10	
11-13 EU Member States	12	
14-16 EU Member States	14	
17-19 EU Member States	16	
20-22 EU Member States	18	
24 or more EU Member States	20	
	20 (max)	
<i>SUB -TOTAL:</i>		

(ii) Creative and technical contributors (crew) from Malta or the EEA (nationality) in the following areas at HOD or assistant level where applicable:	Maximum Points	Total obtained
- Director	1	
- Scriptwriter	1	
- Producer / co-producer	1	
- Composer	1	
- Director of photography	1	
- Editor	1	
- Costume designer	1	
- Production designer	1	
- Make-up artist	1	
- Art director	1	
- Set decorator	1	
- Line producer / Unit production manager	1	
	12 (max)	
<i>SUB -TOTAL</i>		

<i>Total obtained for Section B (Creative Contribution):</i>		Max 32
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SECTION C: Use of Malta's Cultural Resources

	Maximum Points	Total obtained
(i) Productions with preparation and pre-production in Malta	6	
(ii) Productions with location or studio shooting in Malta	14	
(iii) Productions with post-production in Malta	8	
	28 (max)	

Total obtained for Section C (Use of Malta's Cultural Resources):			Max 28
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MFC assessment of specific scaled criteria:

i: Productions with preparation and pre-production in Malta

<i>3 weeks +</i>	<i>2 weeks +</i>	<i>1 week +</i>	<i>5 days +</i>	<i>4 days +</i>	<i>3 days +</i>
6	5	4	3	2	1

ii: Productions with location or studio shooting in Malta

<i>50% +</i>	<i>40% +</i>	<i>30% +</i>	<i>20% +</i>	<i>10% +</i>	<i>5% +</i>
14	12	10	8	6	5

NOTE: % = of script pages OR shooting days

iii: Productions with post-production in Malta

<i>50% +</i>	<i>25%+</i>	<i>15%+</i>	<i>5%+</i>
8	6	4	2

APPENDIX 2: CULTURAL TEST – DIFFICULT AUDIOVISUAL WORKS (32%)

The eligibility of a difficult audiovisual works for the financial incentives is determined by its performance in the cultural test. The ranking of the qualifying production in the cultural test based on the criteria below will subsequently determine the rebate percentage it is eligible for. This cultural test is listed as the Third Schedule to the Legal Notice ‘Financial Incentives for the Audiovisual Industry Regulations, 2015’.

CRITERIA FOR THE DETERMINATION OF THE CULTURAL CONTENT OF DIFFICULT AUDIOVISUAL WORKS

A minimum of:

- (i) 50 points in aggregate; and
- (ii) 20 points under Section A below; and
- (iii) 10 points in each Section B
- (iv) 10 points in Section C
- (v) 10 points in Section D

is required for an audiovisual production to meet the requirements set out in regulation 3(1)(a) of these regulations.

SECTION A: Cultural Content

		Max Points	Total obtained
1.	Productions featuring a Maltese, European or Mediterranean story (factual or fictional)	4	
2.	Productions featuring a Maltese, European or Mediterranean setting (factual or fictional)	4	
3.	Storyline or underlying material is based on literary material	2	
4.	Storyline or underlying material is a part of or derived from Maltese, European or Mediterranean culture and / or heritage	4	
5.	Productions featuring Maltese or European characters	2	
6.	Storyline or underlying material deals with contemporary or historical Maltese, European or Mediterranean issues of political, religious and/or social relevance	3	
7.	Storyline or underlying material contains reference to a contemporary or historical personality (eg: Alexander the Great) or to a fictional character in cultural history (eg: Zeus)	2	
8.	Storyline or underlying material contains reference to a universally significant and relevant event – fictional or factual.	2	
9.	Use of Malta’s diverse architectural, archaeological and natural heritage to reflect the European and Mediterranean cultural context	3	
10.	Productions featuring at least one European language	3	
11.	Use of Maltese language in the dialogue of the production in a manner which contributes to the development of the storyline	4	
12.	Use of Malta’s cultural subjects and landmarks that allow for them to feature in the setting of the production.	4	
13.	Productions with compelling dramaturgical script requirements that cannot logistically, creatively or technically be satisfied in any other EU member state	3	
	Total obtained for Section A (Cultural Content):	40	

MFC assessment of specific scaled criteria:

1. Productions featuring a Maltese, European or Mediterranean story (factual or fictional)

<i>Entire story</i>	<i>Major element/s</i>	<i>Critical element/s</i>	<i>Minor element/s</i>
4	3	2	1

2. Productions featuring a Maltese, European or Mediterranean setting (factual or fictional)

<i>Wholly set</i>	<i>Over half is set</i>	<i>Half set</i>	<i>Partially set</i>
4	3	2	1

4. Storyline or underlying material is a part of or derived from Maltese, European or Mediterranean culture and / or heritage

<i>Fully derived</i>	<i>Partially derived</i>	<i>Relevant to</i>	<i>Related to</i>
4	3	2	1

6. Storyline or underlying material deals with contemporary or historical Maltese, European or Mediterranean issues of political, religious and/or social relevance

<i>Focal issue</i>	<i>Central issue</i>	<i>Present issue</i>
3	2	1

9. Use of Malta's diverse architectural, archaeological and natural heritage to reflect the European and Mediterranean cultural context

<i>Featured in major capacity</i>	<i>Featured in minor capacity</i>	<i>Featured once</i>
3	2	1

10. Productions featuring at least one European language

<i>Over 50% of dialogue</i>	<i>Under 50% of dialogue</i>	<i>Minimal dialogue</i>
3	2	1

SECTION B: Creative Contribution

(i) Productions with proven or intended theatrical or television distribution in at least three EU Member States	Max Points	Total obtained
(Tick appropriate box)		
17 + EU Member States	1	
14-16 EU Member States	3	
11-13 EU Member States	5	
8-10 EU Member States	7	
5-7 EU Member States	9	
3-4 EU Member States	11	
1-3 EU Member States	13	
Limited territory, population or language area	14	
<i>SUB -TOTAL:</i>	14	

(ii) Creative and technical contributors (crew) from Malta or the EEA (nationality) in the following areas at HOD or assistant level where applicable:	Max Points	Total obtained
- Director	1	
- Scriptwriter	1	
- Producer / co-producer	1	
- Composer	1	
- Director of photography	1	
- Editor	1	
- Costume designer	1	
- Production designer	1	
- Make-up artist	1	
- Art director	1	
- Set decorator	1	
- Line producer / Unit production manager	1	
<i>SUB -TOTAL</i>	12	
<i>Total obtained for Section B (Creative Contribution):</i>	26	

SECTION C: Use of Malta's Cultural Resources

	Max Points	Total obtained
(i) Productions with preparation and pre-production in Malta	2	
(ii) Productions with location or studio shooting in Malta	6	
(iii) Productions with post-production in Malta	6	
Total obtained for Section C (Cultural Resources):	14	

MFC assessment of specific scaled criteria:

ii: Productions with location or studio shooting in Malta

50% +	40% +	30% +	20% +	10% +	5% +
6	5	4	3	2	1

NOTE: % = of script pages OR shooting days

iii: Productions with post-production in Malta

50% +	25%+	15%+	5%+
6	4	2	1

SECTION D: Difficult Audiovisual Work

	Max Points	Total obtained
(i) Works whose sole original version is in the Maltese language with a limited distribution territory, population or language area	6	
(ii) Involves a first-time Maltese director	2	
(iii) Involves a first-time Maltese producer	2	
(iv) Is considered a low budget production;	6	
(v) Commercially difficult work (i.e. little if any prospect of commercial success because of its experimental nature or because it represents a very high level of creative risk).	4	
Total obtained for Section D (Difficult Audiovisual Work):	20	

MFC assessment of specific scaled criteria:

(iv) Is considered a low budget production

Under €200,000 ⁸ .	Under €500,000	Under €1 million	Under €2 million
6	4	2	1

⁸ Minimum Spend criteria relating to the production activity in Malta, imposed by the Malta Film Commission, to the Qualifying Company cannot exceed 50% of the production budget, as outlined in the EU Communication 2013/C 332/01.