

Entertainment Law

April 24, 2015

Ontario Reduces Production Services and Computer Animation and Special Effects Film Tax Credits

On April 23, 2015, Ontario Finance Minister Charles Sousa tabled the 2015 provincial Ontario budget (the “**Budget**”) and announced several related amendments to the three provincial Ontario film and television tax credits, namely, the:

- Ontario Production Services Tax Credit (OPSTC)
- Ontario Computer Animation and Special Effects Tax Credit (OCASE)
- Ontario Film and Television Tax Credit (OFTTC)

Background

Ontario provides significant financial support to the film and television industry through the OPSTC, OCASE and OFTTC, which together amounted to approximately Cdn\$335 million in 2014-15. In the Ontario government’s view: “A lower Canadian dollar is making Ontario an increasingly attractive location for productions and is increasing foreign investment in the film and television sector”. Therefore, according to the Ontario government: “...there is a reduced need for government support of foreign productions”. This is the rationale for the proposed reductions in the respective rates of the OPSTC and OCASE described below. Although not expressly referenced by the Ontario government, reductions to the film tax credits offered by other Canadian provinces (e.g., Quebec, Nova Scotia, Saskatchewan) also likely factored into its decision. The government is also of the view that, notwithstanding the reductions, Ontario will remain competitive with other Canadian and foreign jurisdictions in terms of film incentives.

OPSTC rate reduced from 25% to 21.5%

The OPSTC is a 25% refundable tax credit which provides important subsidies to both foreign and domestic producers in respect of their eligible expenditures for Ontario labour, service contracts and tangible property. It is sometimes referred to as an “all-spend” credit because it covers both eligible labour and non-labour expenditures.

Under the Budget, the OPSTC rate was reduced from 25% to 21.5% for qualifying production expenditures incurred after April 23, 2015. To ensure that the OPSTC fosters employment opportunities for Ontarians, the following additional changes will be effective for taxation years that begin after April 23, 2015:

- a qualifying corporation’s Ontario labour expenditures (including labour under a service contract) must amount to at least 25% of total expenditures; and
- expenditures incurred by a qualifying corporation pursuant to contracts with non-arm’s-length parties are limited to amounts that would have been eligible for the credit if the corporation had incurred the expenditures directly.

Finally, to clarify existing policy, the OPSTC rules will be amended to ensure that only expenditures incurred after the final script stage to the end of the post-production stage are eligible for the credit for all expenditures incurred after June 30, 2009.

OCASE rate reduced from 20% to 18%

The OCASE is a 20% refundable tax credit which provides important subsidies to both foreign and domestic producers in respect of their eligible Ontario computer animation and special effects labour expenditures. Productions may combine the OCASE with the OFTTC or the OPSTC.

Goodmans^{LLP} Update

Under the Budget, the OCASE rate was reduced from 20% to 18% for qualifying production expenditures incurred after April 23, 2015. In addition, to claim the OCASE and to better target the credit, qualifying productions commencing after April 23, 2015 must also be eligible for the OFTTC or the OPSTC (i.e., it will no longer be possible to only claim the OCASE).

OFTTC rate remains unchanged at 35%

The OFTTC is a 35% refundable tax credit which provides important subsidies to domestic Canadian producers (but not foreign producers) in respect of their eligible Ontario labour expenditures for qualifying “Canadian content” film and TV productions. The Budget did not reduce the rate of the OFTTC, unlike the OPSTC and the OCASE.

Recently, the federal Canadian government amended the Canadian Film or Video Production Tax Credit (which is the federal Canadian counterpart to the provincial Ontario OFTTC) to treat a government equity investment in a production as a form of “assistance” which reduced the eligible expenditures under the credit. The OFTTC would have paralleled this federal change, however, the Ontario government “...has a long-standing administrative position...to not treat government equity investments as “assistance” for the purposes of the OFTTC”. The Ontario government will file a regulation, effective after December 31, 2008, to enable this treatment to continue. According to the Ontario government, this will benefit the Ontario industry by approximately CDN\$7 million in 2016-17.

Industry Reaction

To date, Ontario industry reaction to the proposed Budget changes has been mixed. For example, according to Canadian press reports, Michael Hennessy, President and CEO of the Canadian Media Production Association, believes that the changes to the Ontario credits are fair given the state of Ontario’s finances and budget cuts being made in other areas. He is quoted in Playback Daily as follows: “Ontario, we think was pretty balanced: When you look at the fiscal challenge the province had, they still demonstrated faith in cultural industries. And it’s clear they’re not going to grind the federal public assistance – that is very important for the industries. That’s very much a positive”.

On the other hand, Film Ontario, an organization representing numerous Ontario stakeholders, including both producers and guild members, has expressed “deep concern” about both the unexpected cuts to the OPSTC and the OCASE and the immediate implementation of the cuts. Film Ontario will be meeting with the Ontario government in the near future to address its concerns.

For the complete text of the proposed Budget changes to the OPSTC, OCASE and OFTTC, please click *here*.

If you would like further information or have any questions about these changes, contact any member of our Entertainment Law Group.