Accessing Canadian Incentives and Working with Canadians

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Goodmans

Goodmans LLP

- Offices in Toronto, Vancouver, Hong Kong
- Over 190 Lawyers
- 20 Lawyers practising in our Entertainment and Media departments

Production Activity in Canada

- Total volume of film and television productions in Canada between March 2002 and March 2003

$4.93 Billion

- of which…
  - $1.78 billion was CAVCO-certified productions
  - $1.90 billion was foreign-location productions
  - $996 million was in-house broadcaster productions
  - $226 million was non-CAVCO certified productions

Types of Canadian Production Incentives

- Refundable Tax Credits
  - Canadian-Content
  - Production Services
- Canadian Radio-Television and Telecommunications Commission (“CRTC”) Canadian-Content
  - garner higher license fees
- Direct Federal Funding
  - e.g. Canada Feature Film Fund
  - e.g. Canadian Television Fund
- Private Sector Assistance
  - e.g. The Harold Greenberg Fund
  - e.g. Rogers Telefund

Four Forms of Production in Canada

- Canadian owned and controlled
- International treaty co-productions
- CRTC co-ventures
- Foreign-controlled

Canadian Owned and Controlled Productions

Benefits Available:

- Canadian-Content Tax Credits
- Canadian Broadcast Sale
- Direct Government and Private Assistance

Canadian Content Tax Credits
What Are They?

- Administered by the Canadian Audio-Visual Certification Office ("CAVCO") and the Canada Customs and Revenue Agency ("CCRA")

- Refundable tax credit equal to 25% of eligible labour expenditures

  - Eligible labour expenditures may not exceed 60% of total cost of production

  - Therefore, credit can provide producers with up to 15% of total cost

- In addition, the provinces of Ontario, Quebec and British Columbia also offer refundable Canadian-content tax credits

Canadian Content Tax Credits Certain Key Requirements:

- For Canadian tax purposes, the production must qualify as a "Canadian film or video production" as certified by CAVCO
- Production company must be "Canadian-controlled" in law and in fact as determined under the Investment Canada Act
- The individual credit as producer of the production must be a citizen or permanent resident of Canada
- The production company must own copyright for a minimum period of 25 years
- The production must be distributed in Canada by a "Canadian-controlled" company

Canadian Content Tax Credits
Live Action Points Test

- To be eligible for credit, production must earn a minimum of **six points** based on key personnel qualifying as “Canadian”:

• Director	2 points
• Screenwriter	2 points
• Highest Paid Actor	1 point
• Second Highest Paid Actor	1 point
• Art Director	1 point
• Director of Photography	1 point
• Music Composer	1 point
• Picture Editor	1 point

Canadian Content Tax Credits
Live Action Points Test

In addition…

- Producer must be Canadian
- Either director or screenwriter must be Canadian
- Either highest paid or second highest paid actor must be Canadian

Canadian Content Tax Credits
Live Action Points Test

Who is “Canadian”?

- Canadian citizen
- Permanent resident
- Corporation that is “Canadian-controlled” in law and in fact as determined under the *Investment Canada Act*

Canadian Content Tax Credits Animation Points Test

- To be eligible for credit, production must earn a minimum of six points based on key personnel qualifying as “Canadian”:

• Director	1 point
• Screenwriter and Storyboard Supervisor	1 point
• Highest or Second Highest Paid Lead Voice	1 point
• Design Supervisor	1 point
• Camera Operator	1 point
• Music Composer	1 point
• Picture Editor	1 point
• Layout and Background (performed in Canada)	1 point
• Key Animation (performed in Canada)	1 point
• Assistant Animation and In-betweening (performed in Canada)	1 point

Canadian Content Tax Credits Animation Points Test

In addition…

- Producer must be Canadian
- Either director or screenwriter and storyboard supervisor must be Canadian
- Lead voice must be Canadian
- Key animation must be done in Canada

Canadian Content Tax Credits 75% Expenditure Tests

- 75% of remuneration for all costs paid or payable for services provided in respect of producing (other than post-production work) must be paid to, or in respect of services provided by Canadians

- 75% of all costs incurred for processing, post-production and final preparation of the production must be incurred in respect of services provided in Canada

Canadian Content Tax Credits Producer Control Guidelines:

- Canadian producer must have control over the financial and creative elements of the production
- Restrictions on granting of screen credits to non-Canadians
- Foreign executive producers must swear and file CAVCO affidavits
- Indicators of non-Canadian control include:
  - Takeover rights (but security documents are okay)
  - Evidence that 75% or more of total budget is financed by a single non-Canadian entity
  - Non-Canadian has distribution rights in both USA and an economically significant portion of the world (outside North America)

International Treaty Co-productions What Are They?

- Canada is party to 56 treaties in effect in 54 countries (excluding the United States)
- Treaties administered by competent government authorities in treaty countries (e.g. Telefilm in Canada, DCMS in England)
- U.S. producers may take indirect advantage

International Treaty Co-productions Benefits:

- International treaty co-productions are eligible for:
  - Canadian-Content Tax Credits (tax credit prorated based on Canadian producer's interest in production)
  - CRTC Canadian Broadcast Sale
  - Direct government financing
  - Foreign financing (e.g. UK sale lease-back)

International Treaty Co-productions Certain Key Requirements:

- Non-Canadian producer must be located in treaty country
- Canadian producer must be Canadian-owned and controlled
- Creative and technical personnel must meet residency/citizenship requirements of treaty countries
- Limited participation by personnel from third party countries

International Treaty Co-productions Certain Key Requirements:

- Minimum financing contribution is generally 20% of total production costs (40% for U.K. co-productions)
- Copyright in production must be owned by co-producers in proportion to their financial contributions
- U.S. broadcaster/distributor may not own copyright in production, but may distribute production outside of co-producers' territories

CRTC Co-Ventures
What Are They?

- Co-venture between non-Canadian (including American) and Canadian producers
- Qualify as “Canadian content” for purposes of CRTC broadcast sale
- Qualify for production services tax credits, but not Canadian-content tax credits

CRTC Co-Ventures Benefits:

- Easier to sell in Canada
- Garner higher broadcast license fees
- Non-Canadian producers can be openly involved in the production process

CRTC Co-Ventures
Certain Key Requirements:

- Canadian producer must have equal measure of decision-making responsibility over all creative elements
- Canadian producer must retain 50% financial participation and a 50% share of the profits
- Foreign co-producer can own 100% of copyright

CRTC Co-Ventures
Certain Key Requirements:

- In the case of a US/Canadian co-venture:
  - production must obtain at least six CRTC “creative points”
  - 75% expenditure tests must be met
- The bar is lower for non-US/Canadian co-productions:
  - production must obtain at least five CRTC “creative points”
  - 50% expenditure tests must be met

Production Services Tax Credits What Are They?

- Refundable tax credit to encourage foreign producers to film in Canada
- Based on cost of qualifying Canadian labour expenditures for services rendered by Canadian in Canada (“eligible labour costs”)
- Administered by CAVCO and CCRA

Production Services Tax Credits Benefits:

- U.S. producer can have complete control over the production and its exploitation
- Federal tax credit equal to 16% of eligible labour costs
- Provincial tax credit equal to 11% of eligible labour costs if production produced in Ontario, Quebec or British Columbia
- Higher provincial tax credits if production is produced in lesser-populated provinces of Canada (i.e. Nova Scotia (30% of eligible labour costs), Saskatchewan (35% of eligible labour costs), Alberta (20% of total production costs), Manitoba (35% of eligible labour costs))

Other Incentives:

- Additional provincial tax credits:
  - Regional and training bonuses

- Tax shelters
  - Eliminated by the Federal government in 2001