

Entertainment Law

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OPSTC and OCASE Tax Credit Rates to be Grandfathered

As discussed in our previous Goodmans Updates (see *Ontario “Grandfathers” Recent Budget Changes to Production Services and Computer Animation and Special Effects Film Tax Credits*, or *Ontario Reduces Production Services and Computer Animation and Special Effects Film Tax Credits*), the 2015 Ontario budget introduced changes to the Ontario Production Services Tax Credit (OPSTC) and the Ontario Computer Animation and Special Effects Tax Credit (OCASE) which, among other things, reduced their respective rates from 25% to 21.5% and from 20% to 18% for eligible expenditures incurred after the budget date, April 23, 2015. On May 25, 2015, Ontario Minister of Tourism, Culture and Sport, Michael Coteau, announced that these changes to the OPSTC and the OCASE will be “grandfathered” for all film and tv projects that were sufficiently advanced before April 23, 2015 and stated: “... we intend to table amendments to the Ontario Production Services Tax Credit (OPSTC) and Ontario Computer Animation and Special Effects Tax Credit (OCASE) that would, if passed, provide a transition period to ensure that producers who made a significant commitment to Ontario before the introduction of the Budget would receive the tax credit rates they expected.”

On May 25, 2015, the Ontario Media Development Corporation (OMDC), which administers Ontario’s provincial film tax credits including the OPSTC and the OCASE, issued a Bulletin with further details regarding the proposed “grandfathering” transition rules announced by the Minister. The Bulletin sets out the proposed measures that would “grandfather” the pre-budget tax credit rates of the OPSTC and the OCASE (ie. 25% and 20%, respectively) for eligible expenditures incurred after April 23, 2015 and before

August 1, 2016 for productions that meet the prescribed criteria set out therein. According to the OMDC, the applicable Ontario tax credit legislation (ie. the Taxation Act) will be amended to incorporate the proposed measures described in the Bulletin. In addition, for productions that commenced principal photography or key animation between August 1, 2015 and November 30, 2015, inclusive, **but** which otherwise meet the criteria set out in the Bulletin, there will be a separate transitional mechanism outside of the Taxation Act with further specifics to follow from the OMDC when the transition program has been finalized.

Below is a copy of the Bulletin:

OPSTC and OCASE tax credit rates to be Grandfathered

The 2015 Ontario Budget introduced changes to reduce the OPSTC and OCASE tax credit rates for expenditures incurred after April 23, 2015. The Ontario Government has heard the concerns of industry and has proposed measures that would grandfather the tax credit rates of 25% and 20% for the OPSTC and OCASE, respectively, for eligible expenditures incurred after April 23, 2015 and before August 1, 2016 for productions that meet the criteria outlined below:

Ontario Production Services Tax Credit (OPSTC):

A qualifying corporation’s Ontario production services tax credit for an eligible production shall be 25 per cent of its qualifying production expenditures incurred after April 23, 2015 and before August 1, 2016 if all of the following criteria are satisfied:

1. Before April 24, 2015, the corporation has entered into at least one written agreement in respect of a qualifying production expenditure with a person that deals at arm’s length with the corporation and

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any of the following criteria are satisfied:

- i. The agreement is in respect of services of a producer, a director, a key cast member, a production crew or a post-production crew.
 - ii. The agreement is in respect of a studio located in Ontario, or a location in Ontario.
 - iii. The agreement demonstrates, in the opinion of the Minister of Tourism, Culture and Sport, that the corporation has made a significant commitment to production activities in Ontario.
2. Before August 1, 2015, the corporation has applied to the Ontario Media Development Corporation for a certificate in respect of the production.
 3. Principal photography or key animation for the production commenced before August 1, 2015.

Ontario Computer Animation and Special Effects Tax Credit (OCASE):

A qualifying corporation's Ontario computer animation and special effects tax credit shall be 20 per cent of its qualifying labour expenditures for expenditures incurred after April 23, 2015 and before August 1, 2016 if all of the following criteria are satisfied:

1. Before April 24, 2015, the corporation has entered into at least one written agreement in respect of a qualifying labour expenditure for the eligible production with a person that deals at arm's length with the corporation and any of the following criteria are satisfied:
 - i. The agreement is in respect of digital animation or digital visual effects for use in the eligible production.
 - ii. The agreement demonstrates, in the opinion of the Minister of Tourism, Culture and Sport, that the corporation has made a significant commitment to production activities related to the eligible production in Ontario.

2. Before August 1, 2015, the corporation has notified the Ontario Media Development Corporation in writing of its intent to apply for a certificate in respect of the eligible production.
3. Before August 1, 2016, the corporation has applied to the Ontario Media Development Corporation for a certificate in respect of the eligible production.
4. Principal photography or key animation for the production commenced before August 1, 2015.

The OPSTC and OCASE legislation will incorporate the above-noted changes. Applicants should review the legislation directly for further details. The applicable tax credit guidelines will be updated on the OMDC website in the coming weeks.

For further information on these amendments to Bill 91, please send an inquiry to taxcredits@omdc.on.ca

Transitional Grant

For productions that commenced principal photography or key animation between August 1, 2015 and November 30, 2015, inclusive, but otherwise met the criteria listed for OPSTC and OCASE above, there will be a separate transitional mechanism outside of the Taxation Act.

More information will follow when the specifics of this program have been developed.

If you have any questions regarding the application of the proposed "grandfathering" rules to your production, please contact any member of our Entertainment Law Group.