Accessing Canadian Incentives and Working with Canadians

ABA Forum - Entertainment & Sports Industries
2004 Annual Meeting

David Zitzerman, Partner
Goodmans LLP

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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”:

<table>
<thead>
<tr>
<th>Role</th>
<th>Points</th>
</tr>
</thead>
<tbody>
<tr>
<td>Director</td>
<td>2 points</td>
</tr>
<tr>
<td>Screenwriter</td>
<td>2 points</td>
</tr>
<tr>
<td>Highest Paid Actor</td>
<td>1 point</td>
</tr>
<tr>
<td>Second Highest Paid Actor</td>
<td>1 point</td>
</tr>
<tr>
<td>Art Director</td>
<td>1 point</td>
</tr>
<tr>
<td>Director of Photography</td>
<td>1 point</td>
</tr>
<tr>
<td>Music Composer</td>
<td>1 point</td>
</tr>
<tr>
<td>Picture Editor</td>
<td>1 point</td>
</tr>
</tbody>
</table>
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