KPMG
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MEDIA AND ENTERTAINMENT

Film Financing and Television Programming

A Taxation Guide

Sixth Edition

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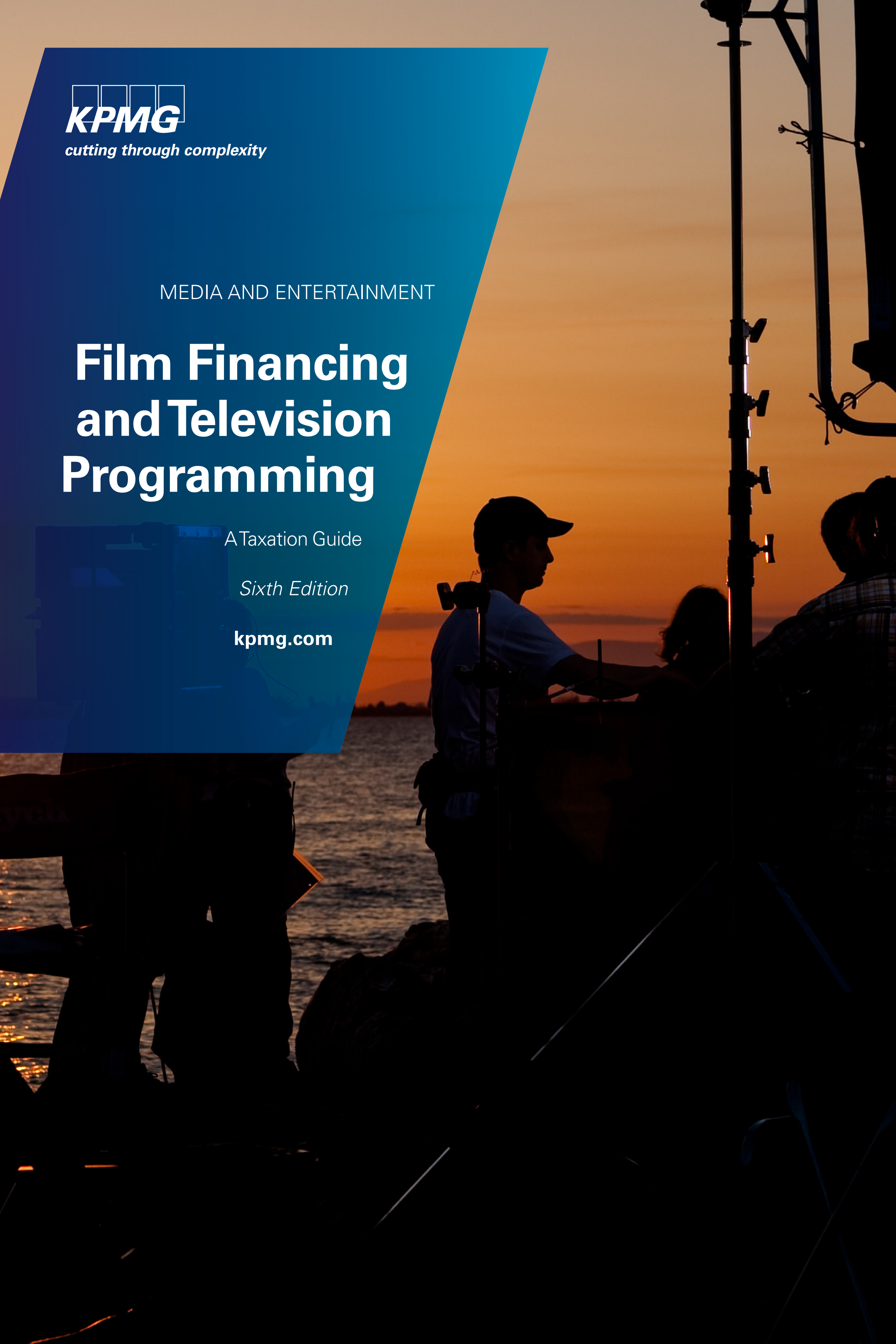

Contents

Preface

KPMG LLP's (KPMG) Film Financing and Television Programming: A Taxation Guide, now in its sixth edition, is a fundamental resource for film and television producers, attorneys, tax, and finance executives involved with the commercial side of film and television production. The guide is recognized as a valued reference tool for motion picture and television industry professionals.
Its primary focus is on the tax and business needs of the film and television industry with information drawn from the knowledge of KPMG International's global network of media and entertainment Tax professionals.

KPMG published the first guide more than 15 years ago as a resource for global coverage of incentives and tax updates as they apply to the film and television industry. Subsequent editions expanded into coverage of financing techniques, credits/incentives, and a thorough appendix of withholding tax rates–a valuable reference tool for all finance and tax professionals.

Each chapter of the sixth edition focuses on a single country and provides a description of commonly used financing structures in film and television, as well as their potential commercial and tax implications for the parties involved. Additionally, the United States chapter focuses on both federal and state incentives, highlighting the states that offer the more popular and generous tax and financial incentives. Key sections in each chapter include:

Introduction
A thumbnail description of the country's film and television industry contacts, regulatory bodies, and financing developments and trends.

Key Tax Facts
At-a-glance tables of corporate, personal, and VAT tax rates; normal non-treaty withholding tax rates; and tax year-end information for companies and individuals.

Financing Structures
Descriptions of commonly used financing structures in film and television in the country and the potential commercial tax implications for the parties involved. The section covers rules surrounding co-productions, partnerships, equity tracking shares, sales and leaseback, subsidiaries, and other tax-effective structures.

Tax and Financial Incentives
Details regarding the tax and financial incentives available from central and local governments as they apply to investors, producers, distributors, and actors, as well as other types of incentives offered.

Corporate Tax
Explanations of the corporate tax in the country, including definitions, rates, and how they are applied.

Personal Tax
Personal tax rules from the perspective of investors, producers, distributors, artists, and employees.

Appendices
Additionally, withholding tax tables setting forth the non-treaty and treaty-based dividend, interest, and film royalty withholding tax rates for the countries surveyed are included as an appendix and can be used as a preliminary source for locating the applicable withholding rates between countries.

KPMG and Member Firm Contacts
References to KPMG and KPMG International member firm contacts at the end of each chapter are provided as a resource for additional detailed information.

The sixth edition of KPMG's Film and Television Tax Guide is available in an online PDF format at www.kpmg.com/filmtax and on CD. The guide is searchable by country.

Please note: While every effort has been made to provide up-to-date information, tax laws around the world are constantly changing. Accordingly, the material contained in this book should be viewed as a general guide only and should not be relied upon without consulting your KPMG or KPMG International member firm Tax advisor.

Finally, we would sincerely like to thank all of the KPMG International member firm Tax professionals from around the world who contributed their time and effort in compiling the information contained in this book and assisting with its publication. Production opportunities are not limited to the 35 countries contained in this guide. KPMG and the other KPMG International member firms are in the business of identifying early-stage emerging trends to assist clients in navigating new business opportunities. We encourage you to consult a KPMG or KPMG International member firm Tax professional to continue the conversation about potential approaches to critical tax and business issues facing the media and entertainment industry.

Thank you and we look forward to helping you with any questions you may have.

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Chapter 05
Canada

Introduction

The Canadian film and television production industry is a vibrant industry which has flourished since the early 1980's when a combination of factors brought more talent into the industry, more investment by private investors, governments and financial institutions, and more foreign productions to Canada. The cheaper Canadian dollar attracted foreign producers, especially U.S. studios, independents and broadcasters. As a result, a large talent pool has developed and excellent facilities have been built and continue to be enhanced. Canadian sites have often been referred to as *Hollywood North*.

In addition there have been tremendous advantages provided by tax incentives, as well as government support through loans, grants, equity investment and pools of funds investing in development and distribution. In addition, there are now corporate funding and industry association funding, including the Canadian Media Fund (see below).

Within the last few years there has been a significant change in the financing of Canadian film and television production. In order to access lucrative tax incentives (both federal and provincial), it is no longer possible to raise financing through tax shelter syndications sold to passive individual investors; such a structure would put a film project offside with respect to the tax credit systems, which are designed from a government policy perspective to replace all previous tax shelter structures for both Canadian certified film, as well as production services activity accessing the Production Services Tax Credits.

Tax legislation provides a refundable tax credit system. In its February 27, 1995 Federal budget, the Department of Finance first introduced the refundable Canadian Film or Video Production Tax Credit (CPTC). A credit is available equal to 25 percent of qualified salaries and wages, in respect of Canadian residents, now limited to 60 percent of the total certified film cost, net of assistance, hence resulting in a tax credit of a maximum of 15 percent of the total certified film cost. It is available only to a qualified Canadian-owned, taxable corporations that are primarily in the business of Canadian film or video production. The CPTC is administered by the Canada Revenue Agency (CRA) as it is claimed in the tax return of the production company; however, the film certification process is administered by the Department of Canadian Heritage through its Canadian

Audio-Visual Certification Office (CAVCO). CAVCO performs two distinct functions: 1) Canadian content certification, and 2) valuation of the estimation of the eligible expenses of production.

In 1997, the Federal Film or Video Production Services Tax Credit (PSTC) was first announced as an 11 percent credit with respect to "qualifying Canadian labor expenditures" paid to Canadian residents or taxable Canadian corporations for services provided to the production in Canada. There is no cap on the amount of credit that may be claimed, furthermore, it may be claimed by either a Canadian or foreign producer. This credit is now 16 percent and is administered in a similar manner to the CPTC through the tax return filing process. CAVCO must accredit the particular production.

All provinces plus the Yukon Territory have followed suit, providing tax credits and other subsidies for both certified film as well as production services, with respect to qualifying labor expenditures made in their province.

Several Canadian producers and distributors are publicly listed companies. This has provided them with the opportunity to raise a significant amount of capital to invest in film properties, equipment and related business ventures, including interactive technology, broadcast assets, and other new forms of media and entertainment, allowing them to become more fully integrated entertainment companies.

Several film production and distribution companies have merged to create more efficient, integrated entertainment companies and more recently several have been targeted for takeover by foreign entertainment or venture capital companies.

Another opportunity is that several producers, in partnership with others including foreign broadcasters, have been granted cable specialty channel licenses, providing more opportunity for exploitation of film properties within Canada.

Key Tax Facts

Highest corporate profits tax rate*	26.5%
Highest personal income tax rate*	46.41%
Federal GST (Goods and Services Tax)	5%
Federal Harmonization Sales Tax (HST)	12% (BC), 13% (ON, BN, NF) and 15% (NS)
Annual GST registration limit	C$30,000
Normal non-treaty withholding tax rates: Dividends	25%
Interest (other than certain exempted interest)**	25%
Royalties (other than certain copyright royalties eligible for 0%)	25%
Tax year-end: Companies (other than excepted businesses)	Fiscal year
Tax year-end: Individuals and unincorporated business	Calendar year

* Combined Federal and Provincial effective January 1, 2012, using Ontario as sample province.

** No withholding tax on interest paid to non-related non-resident.

Note that corporate tax returns are due six months after the fiscal year-end and there are no extensions. However the final corporate tax payment is due two months after the year-end; in certain cases Canadian controlled companies may have until the end of the third month to make their final installment. Personal returns are due April 30th after the calendar year, though there is an extension to June 15th in respect of those earning business income; the final tax payment is due April 30th.

Film Financing

Financing Structures

Co-Production

Canada has production treaties with about 55 countries as well as several additional agreements with other countries. Pursuant to these treaties and agreements, the Canadian producer/partner spends a portion of the production budget in Canada and in return retains certain territories from which revenues can be earned, including Canada; similarly the producer/partner from the other country contributes his share of the production costs, usually in his country. It is possible to arrange a treaty co-production among producers from multiple countries as participants. The treaties are administered by Telefilm Canada through its Co-production department.

Co-productions must be certified by the Minister of Canadian Heritage and as a result become eligible for enhanced Canadian license fees, and tax depreciation as a certified production with respect to the Canadian portion of the budget. As well, the Canadian certified budget should qualify for the CPTC.

The co-production structure does not create a partnership or joint business venture unless that is the intention of the parties and it is so structured. Thereby the foreign party to the co-production should not become subject to tax in Canada unless they otherwise carry on business in Canada.

Careful planning is required to ensure that the worldwide exploitation of the co-production does not constitute the carrying on of a business in Canada, to avoid reporting all of the distribution activity in Canada. Often it is the case that there is some form of revenue collection agreement by which all parties are "equalized" after recovering revenues in their respective territories. These arrangements should be carefully structured to avoid unnecessary tax withholding and reporting in more than one country.

Non-Certified Film

There is no co-production treaty with the U.S. In the past U.S. producers have used other structures to produce in Canada and/or to gain access to benefits of Canadian tax incentives. Specifically, the PSTC is not dependent on certification of the film asset and to an extent was designed as an incentive to U.S. producers and other foreign producers wishing to film in Canada. They can use their own production subsidiary to produce the film in Canada in order to access these credits.

It is also possible to consider producing in a structure to qualify not only for the PSTC but also for Canadian Content rules under the CRTC, which would allow for other Canadian non-tax related benefits. This is referred to as the Co-venture Structure and requires that the production be made by a Canadian producer (as defined). These rules are outlined in CRTC Public Notice 2000-42.

In some cases, U.S. producers have licensed production rights to a Canadian producer so that the production can be made as a certified film. In some cases U.S. broadcasters or distributors provide revenue guarantees to assist in completing the financing structure of a particular production. In all situations of "co-productions" with non-treaty partners, care must be taken to ensure that the film remains certifiable, specifically that the producer control guidelines are respected, as more fully described below.

Public Companies

Several Canadian film producers and distributors are publicly listed companies on Canadian stock exchanges. A few have been listed on U.S. exchanges as well.

By virtue of selling shares or units to the public, they have raised a substantial amount of capital which has been applied among other things to acquire new film properties either for production or exploitation, enhancing their respective film libraries and acquiring new production equipment. In addition, some have made significant acquisitions in related/complementary businesses including animation, post-production, distribution and broadcasting.

Tax and Financial Incentives

Tax credits are obtained through the filing of corporate tax returns accompanied by prescribed forms calculating the credit, as well as the applicable form of certification or accreditation to confirm the project qualifies for the respective credit. Other incentives include enhanced depreciation for certified film assets as described below.

Canadian Film or Video Production Tax Credit (CPTC)

In its 1995 federal budget, the government introduced a fully refundable tax credit for qualified Canadian production companies that own the copyright in the production. Since a November 14, 2003 announcement by the Ministers of Finance and Canadian Heritage, this tax credit is worth up to 25 percent of qualified labor expenditures on an eligible Canadian film or video production, to a maximum credit of 60 percent of certified production costs, resulting in a maximum credit of 15 percent of the film cost, net of assistance.

The CPTC can be assigned to lenders as security for bridge financing; in this manner producers can obtain financing from third parties for this portion of their production budget, since obtaining the refund is potentially subject to long delays for processing the certification (discussed below) and audit of the tax return by CRA. CRA has committed to 120-day turnaround for tax return filings which are complete, though subsequent delays do arise if CRA requires more substantiation or other outstanding tax matters exist in respect of the company.

The Income Tax Act and Regulations outline the tests that a Canadian production must meet to earn this production credit. These tax rules also create a separate depreciation class for productions that qualify for the credit.

The CPTC is available to taxable Canadian corporations whose primary business activity is the production of Canadian *certified films*, carried on through a permanent establishment in Canada ("Eligible Production Company").

A company must file with its tax return a Canadian Film or Video Production Certificate obtained from the Minister of Canadian Heritage. The certification process effective in 2006 is a two part process. A Part A certificate ("Canadian Film or Video Production Certificate") is obtained by filing a Part A application form including all requested material; this includes providing a detailed budget, a breakdown of eligible labor expenditures, a copy of production financing agreements, and a copy of all distribution, exploitation and license agreements. A final Part B certificate ("Certificate of Completion") can be obtained by filing the "Application for a Certificate of Completion" which requires the inclusion of a declaration by the producer that the production is fully complete and commercially exploitable, a final cost report, a breakdown of the eligible labor expenditures, an audited schedule of production costs (productions under $500,000 may not require an audit), and a declaration of citizenship for all production and creative related personnel. This certificate also certifies that the production was completed within two years after the end of the corporate taxation year in which the principal photography began. In addition, the submission must include a DVD copy of the production. In respect of obtaining this certification the Minister/CAVCO issued the proposed guidelines discussed below.

No credit is available to a production which is a tax shelter investment, or in respect of which a person with an interest in it, is a tax shelter investment (as prescribed in the Income Tax Act).

To ensure that the credit is reserved for productions that are developed, produced and exploited by Canadians and under the effective control of Canadians, the Department of Canadian Heritage has provided "Producer Control Guidelines" that will need to be met in order for the production to be certified as Canadian. In addition they have issued documents Public Notice – CAVCO 2006-02 and Public Notice CAVCO 2007-01 which set out the current positions of the Department of Canadian Heritage.

The producer is defined as the individual who is:

- the central decision maker for the production
- directly responsible for acquiring the story or screenplay, the development, creative and financial control, and exploitation of the production
- identified as the "producer" in the production

For purposes of the credit, "Canadian" includes Canadian citizens, permanent residents (defined in the Immigration Act) and Canadian-controlled corporations (as defined in the Investment Canada Act).

Canadian broadcasters may qualify for this credit, but the Department of Finance has announced that their production activity will be monitored to ensure their proportionate share of certified productions does not increase beyond historical levels, in order to protect the viability of the Canadian independent production sector.

Public Notices

As noted in the November 14, 2003 announcements of amendments to the tax credit laws by the Ministers of Finance and Canadian Heritage, CAVCO has issued the below referenced Notices to announce their guidelines. In addition, it is noted that Department of Canadian Heritage continues to review the requirement that a production company have ownership of copyright in order to access the CPTC.

The following are the guidelines from Public Notice – CAVCO 2005-01:

- *Copyright Ownership:* Only prescribed taxable Canadian corporations and persons qualify. Canadian producers must retain ownership of copyright in the production as demonstrated by a clear chain-of-title, though profit participation, under certain conditions, will be allowed for example as part of financing arrangements with distributors, broadcasters and interim lenders. Any security interest in the production must be lifted after delivery

- The term of copyright ownership is currently set at 25 years. Access to foreign tax-based funds that require copyright ownership in foreign hands, will render the production ineligible for Canadian certification
- *Production Financing:* Distribution advances and broadcast pre-sales should be characterized as license fees. Only financing from Telefilm Canada and other qualified corporations such as private financing funds of Canadian broadcasters, should be treated as equity in a production
- *Acceptable Share of Revenues from Exploitation in a Non-Canadian Market:* A production corporation or a taxable Canadian corporation related to it must retain an "acceptable share of revenues" requiring minimum profit participation and limits on exploitation rights held by distributors and broadcasters. They must retain not less than 25 percent of the worldwide value, in addition to Canada, which includes not less than 25 percent of worldwide net profits from ancillary and subsidiary rights in non-Canadian markets; maximum term for a distribution arrangement is 25 years ; distribution fees must be reasonable and expenses direct and actual; broadcast licenses are not recoupable in any territory; profit participation outside an investor's territory shall not exceed its percentage of production financing; the Canadian territory cannot be cross-collateralized with non-Canadian, nor can it provide revenue to non-Canadian investors; and other investors cannot include federal tax credits in their revenue stream
- *Control of Initial Licensing:* Must be held by the production corporation. A production is ineligible where meaningful development or exploitation arrangements were initiated by non-Canadians before copyright ownership is secured by the eligible Canadian. Also, non-Canadian owners of underlying rights would not be permitted to obtain exploitation rights in the completed production in any territory
- Non-Canadian show runners must submit an affidavit declaring that all work is under the control of the Canadian producer. The contract for this person must be submitted. The Producer Control Guidelines set out criteria to determine if the Producer has control over the production
- A format program produced under a licence issued by a non-Canadian owner, is eligible for CPTC however the Canadian producer must demonstrate they control the initial exploitation of the Canadian version
- There are a series of Screen Credits Guidelines to ensure the Canadian producer has prominence and that non-Canadians given credits provide an affidavit that their duties were carried out under the direction and control, and with full knowledge of the Canadian producer

Production Control Guidelines

The producer of the production must be a Canadian resident individual or eligible corporation from beginning to end. The producer is involved in and ultimately responsible for the acquisition and/or meaningful development of the story; the commissioning of the writing of the screenplay/series bible; the selection, hiring and firing of key artists and creative personnel; the preparation, revision and final approval of the budget; all overages; the binding of the production company to talent and crew contracts; the arranging of the production financing; the supervision of the filming/taping and post-production; final creative control (as per contract); production expenditures (as per contract); production bank accounts (sole and unfettered cheque signing authority); and the arranging of the commercial exploitation of the production.

- *The Canadian Producer:*
  - Must have and maintain full control over the development of the project from the time at which the producer has secured underlying rights
  - Must have and maintain full responsibility and control over all aspects (creative and financial) of the production of the project
  - Must have and maintain full responsibility and control over all aspects of production financing
  - Must have and maintain full responsibility and control over the negotiation of initial exploitation agreements
  - Is entitled to a reasonable and demonstrable monetary participation in terms of budgeted fees and overhead, and participation in revenues of exploitation

NOTE: The producer will have the onus of establishing all of the above, to the satisfaction of CAVCO.

- *Limited Use Rights:* Rights related to underlying works acquired under license, are acceptable if the copyright owner retains worldwide copyright for all commercial purposes for 25 years, and no one other than the copyright owner can commercially exploit the production. It is expected that an arrangement such as the following will be treated as a service deal not eligible for CPTC: where the original owner of a right has all distribution rights outside Canada; where the rights to the story and exploitation in certain territories and medium are retained by the author; where a Canadian producer exploits the concept only in Canada; where the producer does not acquire world rights. The production may however qualify for production services tax credits (see discussion below)

The credit is available for Canadian film or video productions that are treaty co-productions, and for other productions that meet all of the following criteria:

- The producer must be a Canadian at all times during the production
- Six "points" for Canadian creative services involved in the production, must be allotted by the Minister of Canadian Heritage (see below)
- At least 75 percent of costs for services provided in respect of the production must be payable to, and in respect of, services provided by Canadians. This calculation excludes, among other things, amounts payable in respect of insurance, financing, legal and accounting fees; remuneration payable to individuals or the producer in respect of all the "points" categories; and post-production costs
- At least 75 percent of costs incurred for post-production, including sound rerecording, picture editing and so on, is incurred in respect of services provided in Canada

The production must obtain a Certificate of Completion (Part B) as described above, from the Minister of Canadian Heritage within 30 months of the end of the corporation's taxation year in which principal photography began, certifying that it was completed within two years after the end of that year. This signifies the completion of the certification process.

Under the currently applicable guidelines:

- The corporation (or a related taxable Canadian corporation) must hold the exclusive worldwide copyright for all commercial exploitation for twenty-five years after the completion of post-production. The corporation must also control the initial licensing of commercial exploitation and retain a share of revenue from the exploitation in non-Canadian markets that is "acceptable to the Minister of Canadian Heritage"
- A written agreement must exist for fair market value consideration with a Canadian film or video distributor or a CRTC-licensed broadcaster, to have the production broadcast in Canada within two years of the production's completion. Within these first two years, it cannot be distributed in Canada by a non-Canadian

Also note that credits are specifically denied for certain genres of productions, including non-dramatic television programming such as news, current affairs and sports programs, game shows (unless aimed at minors), talk shows, and productions made for industrial, corporate or institutional purposes. Also excluded are productions "for which public financial support would be contrary to public policy, in the opinion of the Minister of Canadian Heritage".

Qualified Labor Expenditures

To be eligible for the production credit, labor expenditures of qualified corporations must be "reasonable" and they must be included in the production's cost. Salary or wages qualify for the credit; amounts determined by profits or revenues, and stock option benefits do not qualify. Qualifying labor expenditures are reduced by any assistance received or expected to be received by the production, including provincial tax credits.

Salary or wages must be attributable to the period from the final script stage (following acquisition of the story or script) to the end of post-production, and they must be paid within 60 days of the year end. Remuneration paid to a non-employee for personal services or the services of that person's employees in respect of the production, qualifies for the purposes of the credit. Expenditures in respect of non-residents of Canada do not qualify for the credit other than in respect of Canadian citizens. Also eligible are payments to taxable Canadian corporations, partnerships carrying on business in Canada, and Canadian personal service corporations, subject to certain tests to determine the percentage of the remuneration which qualifies.

Wholly-owned subsidiaries of taxable Canadian corporations will be able to reimburse their parents for labor expenditures that would otherwise qualify in respect of a production.

Qualifying post-production services are specifically identified in the regulations, and include certain sound effects, editing, special effects, computer graphics and printing tasks.

"Production costs" for purposes of calculating the credit arise from the "final script stage" and can be incurred from as early as two years prior to commencement of principal photography, but not before incurring the first development cost or the acquisition of the story.

The Points System

Non-animated productions. To qualify as "Canadian" for purposes of the new production tax credit, the director or principal screenwriter and one of the two highest paid performers must be Canadian. The production must also have a total of six "points", which are earned by having Canadians occupy the following key creative roles:

- director
- principal screenwriter (i.e., if more than one writer is credited, each writer must be Canadian, or one writer must be Canadian and the screenplay must be adapted from a Canadian work published in Canada)

- lead performer (highest remuneration; billing and screen time may also be considered).
- 2nd lead performer (second highest remuneration; billing and screen time will also be considered)
- art director
- director of photography
- music composer
- picture editor.

Each of the above except for director and principal screenwriter qualifies for one point. Director and principal screenwriter qualify for two points.

Animated productions. To qualify as "Canadian", the director or both the principal screenwriter and storyboard supervisor, must be Canadians; one of the two highest paid voices must be Canadian; and the key animation must be performed in Canada. The production must also have a total of six "points", which are earned by having Canadians occupy the following key creative roles or by having key creative work done in Canada:

- director
- lead voice with highest or second highest remuneration (length of time voice is heard may also be considered)
- design supervisor
- camera operator (if camera operation is done in Canada)
- music composer
- picture editor
- principal screenwriter and storyboard supervisor (if both are Canadian)
- layout and background done in Canada
- key animation done in Canada
- assistant animation and in-betweening done in Canada.

Each of the above qualifies for one point.

Documentary productions. For documentary productions, all creative positions must be occupied by Canadian individuals unless the "six points" test is otherwise met.

Film or Video Production Services Tax Credit (PSTC)
On October 29, 1997, the Department of Finance first released draft legislation to implement a refundable tax credit to corporations carrying on a production services business in Canada. This program now provides a credit of 16 percent of qualified labor expenditures incurred and is available to Canadian as well as foreign-based film producers.

PSTC is designed primarily to encourage the employment of Canadians by a producer. In return for hiring Canadian residents to perform work in Canada, the producer may be entitled to this fully refundable tax credit. A production that receives CPTC is not eligible for a PSTC.

The credit is available to corporations including foreign corporations. The corporation has to meet the following conditions to be entitled to the credit:

- Its activities in Canada should be primarily (50 percent or more) a film or video production business or a film or video production services business carried on through a permanent establishment in Canada
- Have contracted directly with the owner of the copyright to provide production services if the owner is not an eligible production corporation in respect of the production

The Department of Canadian Heritage is responsible for ensuring that the production conforms to the following requirements:

- The film or video's production cost should be in excess of Canadian $1,000,000 or with respect to TV series, episodes of less than 30 minutes cost more than $100,000 or if longer, cost more than $200,000.

Ineligible productions include:

- news, current events or public affairs programming, or a program that includes weather or market reports
- a talk show
- a production in respect of a game, questionnaire or contest
- a sports event or activity
- a gala presentation or awards show
- a production that solicits funds
- reality television
- pornography

- advertising
- a production produced primarily for industrial, corporate or institutional purposes

An accreditation certificate must be obtained from the Minister of Canadian Heritage certifying that the production is an accredited production. The application to CAVCO for an accreditation certificate can be made by either the copyright owner or by an agent appointed by the copyright owner, referred to as the "Official Designee". If the latter, then the copyright owner must sign and notarize the Official Designee Affidavit and provide all documentation requested. In addition, if there is more than one copyright owner, an affidavit from only one of these owners, will be sufficient to fulfill the requirements of the program. It can be applied for any time after the budget for the production or series is locked-in and a detailed synopsis of the production or series can be provided.

Qualified Labor Expenditures

Labor expenditures that are incurred and which are directly attributable to the production, qualify for the credit, as long as they are "reasonable" in amount. The expenditure should relate to services rendered in Canada for the stages of the production from the final script stage to the end of the post-production stage. The expenses have to be paid by the corporation in the year or within 60 days after the year-end end to employees of the corporation who are residents of Canada at the time of payment, or to a person, corporation or a partnership that carries on a business through a permanent establishment in Canada, for services rendered to the corporation.

Provincial Tax Credits

Note that unless otherwise stated, there are fees charged to apply for each credit.

Ontario

Ontario Film and Television Tax Credit (OFTTC)

The OFTTC is a refundable tax credit available to qualifying production companies with respect to eligible Ontario labor expenditures in respect of eligible Ontario productions. The OFTTC is calculated as 35 percent of the eligible Ontario labor expenditures, net of assistance reasonably related to these expenditures, incurred by a qualifying production company with respect to an eligible Ontario production. An enhanced credit rate of 40 percent on the qualifying labor expenditure subject to certain thresholds is available for first time producers. Productions that are shot in Ontario entirely outside of the Greater Toronto area, or that have at least five location days in

Ontario (or in the case of a television series, the number of location days is at least equal to the number of episodes in the series), and at least 85 percent of the location days in Ontario are outside the Greater Toronto Area, receive a 10 percent bonus on all Ontario labor expenditures incurred for the production.

A qualifying production company must be a Canadian corporation which is Canadian-controlled, maintains a permanent establishment in Ontario, and files an Ontario corporate tax return. Only productions with at least 6 out of 10 Canadian content points or international treaty co-productions are eligible. Productions must be in the eligible genre; have an agreement to be shown commercially in Ontario within two years of completion; have an Ontario producer; meet a minimum Ontario threshold of spending 75 percent of total final costs on Ontario expenditures and 85 percent of principal photography days in Ontario; and if for broadcast, be suitable for at least 30 minute time slot. The producer must have been a resident of Ontario at the end of the two calendar years prior to commencement of principal photography.

Ontario Production Services Tax Credit (OPSTC)

The OPSTC is a refundable tax credit net of any Ontario taxes payable. The OPSTC has been expanded for expenditures incurred after June 30, 2009, and is calculated as 25 percent of eligible Ontario production expenditures incurred after December 31, 2007 by a qualifying production company with respect to eligible production net of assistance. For expenditures incurred before this date, the OPSTC is calculated as 25 percent of the eligible Ontario labor expenditures incurred, net of assistance relating to such expenditures. There is no limit on the amount of labor expenditures which may be eligible or other production expenditures. In addition, this credit can be combined with the federal Film or Video Production Services Tax Credit. There are no per project or annual corporate tax credit limits. The credit is available to eligible production companies (including foreign-owned production companies) in respect of Ontario production expenditures in connection with eligible film or television productions. Production companies must be taxable Canadian or foreign-owned corporations with a permanent establishment in Ontario, and must own the copyright or contract directly with the copyright owner to provide production services. Productions must be in an eligible genre and have production expenditures net of government assistance in excess of $1,000,000 CDN per feature production or $200,000 per episode (greater than 30 minutes, otherwise $100,000 per episode). A production that receives an OFTTC is not eligible for an OPSTC, Ontario Computer Animation and Special Effects Tax Credit (OCASE)

The OCASE tax credit is a 20 percent refundable tax credit (net of Ontario taxes payable) on eligible Ontario labor expenditures for eligible computer animation and special effects activities in respect of eligible film or television productions. The credit is available to taxable Canadian or foreign owned corporations which perform eligible activities at a permanent establishment in Ontario, and can be claimed by a wholly owned subsidiary in respect of expenditures incurred by its parent in respect of the subsidiary's production, for productions after March 22, 2007. Productions must be produced for commercial exploitation and be of an eligible genre. OCASE may be claimed in addition to the OFTTC or OPSTC.

Ontario Interactive Digital Media Tax Credit (OIDMTC)
The OIDMTC is a refundable tax credit based on eligible Ontario labor expenditures and eligible marketing and distribution expenses claimed by a qualifying corporation with respect to interactive digital media products. A qualifying corporation is a Canadian corporation (that is Canadian or foreign-owned), that develops an eligible product at a permanent establishment in Ontario operated by it, and files an Ontario tax return. A qualifying small corporation meets these criteria as well, and had during the preceding taxation year (on an associated company basis) neither annual gross revenues in excess of $20 million nor total assets in excess of $10 million.

The OIDMTC is calculated as 40% of eligible Ontario labor expenditures and eligible marketing and distribution expenses incurred after March 26, 2009 by qualifying corporations, regardless of the size of corporation, to create "non-specified" interactive digital media products in Ontario. For those qualifying corporations applying for an OIDMTC on "specified products", products developed under a fee-for-service arrangement, the OIDMTC tax rate is 35% on qualifying expenditures incurred after March 26, 2009. There is no limit on the amount of eligible Ontario labor expenditures which may qualify and there are no per project or annual corporate limits on the amount of the OIDMTC which may be claimed. Eligible marketing and distribution expenses are capped at $100,000 per non-specified product.

British Columbia

British Columbia Film and Television Tax Credit (FTTC)
The FTTC program provides five refundable tax credits to corporations that produce eligible film and/or video productions in British Columbia.
The tax credits are for domestic productions with qualifying levels of Canadian content and are based on the British Columbia labor expenditures.

The FTTC program includes five distinct tax credits to encourage film and television production in British Columbia.

The Basic Tax Credit incentive assists British Columbia producers in the form of a tax credit of up to 35 percent of eligible British Columbia labor costs. The tax credit is available to British Columbia.-controlled production companies that have controlling ownership of the copyright in qualifying productions. The producer must be a British Columbia resident and a Canadian.

The Regional Tax Credit incentive stimulates production outside Vancouver with a tax credit of up to 12.5 percent of eligible British Columbia labor for productions that shoot a minimum of 5 days and a minimum of 50 percent of the total number of days in which principal photography is done in British Columbia and have production offices outside the Vancouver area. This incentive can be accessed together with the Basic Incentive or alone.

The Distant Location Regional Tax Credit is an additional 6 percent of qualifying British Columbia labor expenditure. The credit is prorated by the number of days of principal photography done in a distant location in British Columbia, over the total number of days in which principal photography is done in British Columbia. You can view a detailed map of the regional and distant locations areas on the British Columbia Film website.

The Film Training Tax Credit incentive promotes the development of skilled workers in the industry. The available tax credit is calculated as the lesser of 30 percent of trainee salaries or 3 percent of total eligible labor costs. It must be accessed in conjunction with one of the other credits. It assists producers to hire trainees registered in recognized training programs.

The Digital Animation or Visual Effects Tax Credit incentive is calculated on the British Columbia labor expenditures directly attributable to digital animation or visual effects activities. The tax credit available is 17.5 percent of expenditures incurred after February 28, 2010, for productions that started principal photography after February 28, 2010 and 15 percent of the expenditures incurred after December 31, 2002, for productions that started principal photography after March 31, 2003 and must be accessed in conjunction with the Basic Incentive.

The qualified British Columbia labor expenditure for a taxation year is the lesser of the following amounts:

- the total of the corporation's British Columbia labor expenditures for the production for the year, and for the prior taxation year, if not previously included in the qualified B.C. labor expenditures, and

- for production that started principal photography prior to March 1, 2010, the amount by which 48 percent of total production costs incurred, less assistance, exceed the total of the labor expenditures for prior years, or
- for production that started principal photography after February 28, 2010, the amount by which 60 percent of total production costs incurred, less assistance, exceed the total of the labor expenditures for prior years.

There is no minimum size of production that may qualify. There is also no project cap limiting FTTC that can be claimed with respect to a particular production and no corporate cap limiting FTTC that a corporation or group of corporations may claim.

There are conditions which production companies and their productions must meet to qualify for the FTTC incentive. The corporation claiming the tax credit must be Canadian-controlled, and must own more than 50 percent of the copyright for 25 years, whether by itself or an affiliate which is a British Columbia controlled company owns the copyright in the production. The production must qualify as "Canadian content", which means it must achieve 6 out of 10 Canadian content points; these points are represented by key Canadian individuals in a production, such as the director and lead actors. At least 75 percent of total production and post production costs must be spent in British Columbia and be paid to British Columbia residents or companies, and at least 75 percent of a project's total days of principal photography must occur in British Columbia. The production must be distributed by a Canadian distributor or broadcaster and be exhibited in Canada within two years. There are excluded genres and special rules for international treaty co-productions and interprovincial co-productions.

In addition, during the relevant taxation year, an eligible production corporation must have a permanent establishment in British Columbia and its activities must primarily be the carrying on of a film or video production business through a permanent establishment in Canada. The eligible production corporation must be British Columbia -controlled, which requires one or more British Columbia -based individuals to own a majority of the voting interests of the corporation throughout the taxation year.

The producer of the film or video production must be a British Columbia -based individual who is a Canadian citizen or permanent resident. The corporation must own more than 50 percent of the worldwide copyright in the production for the 25-year period following the completion of the production; and control the initial licensing of the commercial exploitation. The remaining copyright interests in the production may be held by a Canadian-controlled film or video production company, a Canadian broadcaster, a federal or provincial government film agency or a non-profit organization funding film or video productions.

British Columbia Production Services Tax Credit (PSTC)
This tax credit is 33 percent of qualified British Columbia labor costs with no limitation. There is a 12 percent (maximum) regional credit as well. The tax credits are available to taxable corporations with a permanent establishment in British Columbia in the business of film production. There is also a Digital Animation or Visual Effects PSTC incentive which is calculated on the British Columbia labor expenditures directly attributable to digital animation or visual effects activities; the available tax credit is 17.5 percent of those costs and must be accessed in conjunction with the Basic Production Services Tax Credit.

Alberta

Alberta Multimedia Development Fund (AMDF)
The AMDF is designed to assist conventional production practices and encourage new business models and alternative distribution or broadcast delivery options for screen-based audio-visual content creators.

The AMDF provides funding for screen-based content creation through the following five funding programs:

- Alberta Production Program (APP) – support for the production of screen-based content (note that it was formerly known as the Alberta Film Development Program (AFDP).
- Project/Script Development Program – support for Alberta writers, directors, and producers towards the creation of qualified marketable and commentarial production-ready projects/scripts.
- Alberta Stories Program – support to encourage the production of stories that are inherently Albertan in content and expression; stories written and produced by Albertans that reflect some aspect of Alberta in screen-based production.
- Export Market Development Program – support to assist professional producers of quality screen-based content in expanding marketing opportunities for Alberta products and services; applicants must demonstrate well-conceived, researched and documented marketing and/or export development plans.
- Training and Mentorship Program – support for mentorship opportunities specific to the creation, marketing and distribution of screen-based content for broad audiences.

APP is available to corporations incorporated in Alberta or registered to conduct business in Alberta. The production must be an eligible production as defined in the AMDF guide. The amount spent in Alberta for the project must be greater than $50,000 for projects with commercial license agreement and $100,000 for projects without a commercial license agreement. The maximum annual funding available to any project is $5 million.

APP is offered under the following three Streams:

Stream I – Majority Albertan Ownership – 27 percent of all eligible Alberta costs. The following are the requirements:

- Minimum 51 percent Albertan ownership with major financial and creative control
- Minimum employment of Albertans in two of the eight key creative positions
- Bonus funding of 1 percent for each additional Albertan key creative person employed, to a maximum of 29 percent of Alberta production costs

Stream II – Equal or Minority Albertan Ownership – 25 percent of all eligible Alberta costs. The following are the requirements:

- Between 11 percent to 50 percent Albertan ownership
- Minimum employment of Albertans in 2 of the 8 key creative positions or one key creative position and two trainee key creative positions
- Bonus funding of 1 percent for each additional Albertan key creative person employed to a maximum of 27 percent of Alberta production costs

Stream III – All other Eligible Productions – 20 percent of all eligible Alberta costs where the producer is an Alberta incorporated company (foreign ownership permissible):

- No minimum Albertan employment requirements
- Bonus funding of 0.5 percent for each two Albertan key creative person employed, to a maximum of 22 percent of Alberta production costs

Saskatchewan

Saskatchewan Film Employment Tax Credit (SFETC)

The SFETC, is 45 percent of eligible Saskatchewan labor costs (including non-Saskatchewan labor where there is no qualified Saskatchewan resident, and a detailed training plan is in place for the non-Saskatchewan resident to train a resident) to a maximum of 50 percent of the total production cost. There is also a bonus tax credit of 5 percent on all production costs if the fixed base of operations of the corporation is more than 40 kilometers outside of Regina or Saskatoon. Additionally, there is a "key position bonus" of an additional 5 percent. The key position bonus is an incentive designed to encourage visiting and local producers to hire specific Saskatchewan crew members and technicians in both above-the-line and below-the-line positions.

The eligible corporation must pay at least 25 percent of salaries to Saskatchewan residents; it must be incorporated under Federal or Saskatchewan statutes; and its primary business is film, video or multimedia production. It must not hold a broadcasting license issued by the Canadian Radio Television and Telecommunications Commission (CRTC) or deal non-arm's length with a corporation that holds such a license. It must not be controlled by a corporation that does not have a permanent establishment in Saskatchewan or by individuals non-resident of Saskatchewan.

A film will be deemed eligible if the production is intended for a television, cinema, videotape, digital, CD-ROM, multimedia or non-theatrical production. The subject matter must be drama, variety, animation, children's programming, music programming, an educational resource, an informational series or a documentary; certain genres of film do not qualify.

Manitoba

Manitoba Film and Video Production Tax Credit (MFVPTC)

The MFVPTC is a fully refundable corporate tax credit available to qualifying producers of eligible Manitoba productions and co-productions. The MFVPTC, which was set to expire March 1, 2011, has been extended to March 1, 2014. Corporations must have a permanent establishment in Manitoba and be incorporated in Canada. As well they must be a taxable Canadian corporation with less than $50 million in assets, and should not have a CRTC license. The credit is up to 45 percent of approved Manitoba labor expenditures. Starting with productions which commence principal photography after March 2010, production companies will be able to elect to claim either the maximum aggregate 65 percent film tax credit described above based on eligible labor cost or a new 30 percent tax credit based on production costs incurred and paid for labor, goods and services provided in Manitoba that are directly attributable to the production of an eligible film.

Effective April 1st 2007, changes will allow eligible producers to have their application administered at the same time as applications for similar federal tax credits reducing the redundancy and costs of multiple audits and accelerating processing times.

Quebec

Quebec Film and Television Production Tax Credit
A corporation may claim a tax credit for Québec film productions for qualified labor expenditures incurred and paid to produce a Québec film. This refundable tax credit is jointly administered by Revenu Québec and the Société de développement des entreprises culturelles (SODEC).

To qualify for the tax credit, a corporation must have an establishment in Quebec; carry on a film or television production business in Quebec; and not be controlled by one or more persons resident outside of Quebec at any time in the year or in the 24 months preceding the year.

Only a film or television production business that is a corporation may claim the tax credit for a Québec film production. The maximum tax credit was previously $2,187,500 per film or series. However, for a taxation year ending after December 31, 2008, the $2,187,500 limit has been eliminated and the maximum rate of the tax credit has been increased from 48.5625% to 65% of qualified labor costs.

For giant-screen film productions and certain French-language productions, the basic rate of the tax credit is 39.375%. For other productions, the basic rate is 29.1667%, but an additional credit of 10.2083% may be granted for productions that involve computer-aided special effects and animation. For expenses incurred after December 31, 2008, the basic rates of the tax credit have been increased from 39.375% and 29.1667% to 45% and 35%. The additional rate for a production for which no expenses were incurred before January 1, 2009, has been decreased from 10.2083% to 10%.

An additional credit may also be granted for regional productions: 9.1875% for French-language and giant-screen film productions, and 19.3958% for other productions. For a taxation year ending after December 31, 2008, the rates have been increased from 9.1875% and 19.3958% to 10% and 20%.

A 10% additional tax credit also applies to certain productions for which labor expenditures were incurred after December 31, 2008, provided the productions did not receive financial assistance from certain public bodies.

Quebec Tax Credit for Film Production Services (QPSTC)
The refundable QPSTC is jointly administered by the Société de développement des entreprises culturelles (SODEC) and the ministère du Revenu du Québec (Revenu Québec).

The base of the tax credit applies to all-spend production costs, which corresponds to the total of qualified labor costs and the costs of qualified properties. The tax credit corresponds to 25 percent of the qualified expenditures incurred by an eligible corporation for services provided in Québec for the making of an eligible production. In addition, eligible expenditures that relate to computer-aided animation and special effects including the shooting of scenes in front of a chroma-key for use in an eligible production give rise to an increase in the rate of the tax credit. This increase corresponds to an additional rate of 20 percent of the qualified labor cost

The QPSTC is available to corporations that either own the copyright for the eligible production throughout the period during which the production is carried out in Quebec; or in the case where the owner of the copyright is not an eligible corporation regarding such production, has concluded, directly with the owner of the copyright for the eligible production, a contract to supply production services in relation to such production.

Quebec Film Dubbing Tax Credit

In the Budget Speech of March 30, 2010, the Québec Minister of Finance announced an increase in the rate of the tax credit for film dubbing and the cap on consideration received for the execution of a film dubbing contract. Furthermore, three additional services are now considered eligible dubbing services for the purposes of calculating qualified expenditures. These changes apply to applications for a certificate filed with the Société de développement des entreprises culturelles after March 30, 2010.

The rate of the tax credit for film dubbing will rise from 30 percent to 35 percent. The cap on the consideration received for the execution of a film dubbing contract will rise from 40.5 percent to 45 percent.

Nova Scotia

Nova Scotia Film Industry Tax Credit (FITC)

The Film Nova Scotia administers the Nova Scotia Film Industry Tax Credit on behalf of its Department of Finance. The objective is to stimulate investment, employment and growth in the Nova Scotia Film and Video industry, while facilitating the recognition of Nova Scotia locations, skills and creativity in global markets.

This refundable tax credit is calculated as 50% of eligible Nova Scotia labor for productions that occur in the Halifax region (Metro Halifax) or 60% of eligible Nova Scotia labor for productions that occur in other regions (Eligible Geographic Areas) of the province, for productions commencing principal photography on or after December 1, 2010. For productions commencing principal photography prior to December 1, 2010, the Tax Credit is calculated as the lesser of 50% of eligible Nova Scotia labor or 25% of total production costs for productions that occur in the Halifax region (Metro Halifax) or the lesser of 60% of eligible Nova Scotia labor or 30% of total production cost for productions that occur in other regions (Eligible Geographic Areas) of the province.

Eligible Geographic Areas (EGA) of the province are considered to be those locations that are located 30km driving distance or more from Halifax City Hall. If less than 50% of the days of principal photography are shot outside Metro Halifax, the Regional bonus is prorated based on the number of days principal photography is shot outside the Halifax Region.

A frequent filming bonus of 5% of eligible Nova Scotia labor is available if a third film commences principal photography within a two-year period.

The applicant corporation should be incorporated in Canada (either federally or provincially) and have a permanent establishment in Nova Scotia. At least 25 percent of salaries and wages should be paid to Nova Scotia residents. The copyright does not have to be owned by the Nova Scotia corporation.

Nova Scotia Digital Media Tax Credit
Effective January 1, 2008, Nova Scotia enhanced its refundable Digital Media Tax Credit. The tax credit is applicable to 50 percent of eligible salaries, or up to 25 percent of total expenditures made in Nova Scotia. A 10 percent geographical area bonus on labor expenditures is available for productions developed outside the Halifax Regional Municipality.

New Brunswick

New Brunswick Film Tax Credit
As part of the budget tabled on March 22, 2011, it was announced that the New Brunswick Film Tax Credit will be phased out. Pre-production applications for the film tax credit that have received the Department's approval prior to March 22, 2011 will continue to be eligible for the film tax credit upon completion of the production. Pre-production applications for the film tax credit that have been submitted on or before April 5, 2011 will be reviewed and may receive pre-approval to be eligible for the film tax credit. Productions that have received a development loan or equity investment from Wellness, Culture and Sport prior to March 22, 2011 will continue to be eligible for the film tax credit upon completion of the production.

Newfoundland and Labrador

Newfoundland and Labrador Film and Video Tax Credit
A refundable tax credit of 40 percent of eligible local labor costs is provided, up to 25 percent of total production costs, with a corporation credit limit of $3,000,000 per 12 months. The corporation must have a permanent establishment in Newfoundland and Labrador. To be eligible, a company must

be incorporated in Canada and must have a permanent establishment in the province. The corporation must pay at least 25% of its salaries and wages to residents of the province.

Yukon

Film Location Incentive
There are three components to this incentive program: 1) Travel Rebate; 2) Yukon Spend Rebate; and 3) Training Program.

Travel Rebate – where the production company is from outside the Yukon; and where Yukon labor content equals or exceeds 15 percent of the total person days on the Yukon portion of the production, the production is eligible for a travel rebate of up to 50 percent of travel costs from Vancouver or Edmonton or Calgary to Whitehorse. The rebate is caped depending on the nature of production.

Yukon Spend Rebate – where the production company has either a broadcast or distribution arrangement with an internationally recognized entity, and where eligible Yukon labor content equals or exceeds 50 percent of the total person days on the Yukon portion of the production, the production is eligible for a rebate of up to 25 percent of Yukon below-the-line spend. Productions accessing the Yukon Spend Rebate are not eligible for the Travel Rebate.

Training Program – The production company may apply for a rebate of up to 25 percent of a trainer's wages for the period during which they are actively transferring skills to a Yukon trainee. This must be at a rate no more than that of the position next more senior to the one being trained. The training rebate will be capped based upon available resources. Trainees must be Yukon Labor who have demonstrated commitment to a career in film, who are union permittees, or have significant recent experience working on a film production or have graduated from a recognized film crew training program.

Corporate Funding

Canadian broadcasters have also set up several funds to support development, interim financing etc., primarily for Canadian production. In most cases, the criteria to qualify include meeting the certification rules as outlined by CAVCO as well as the Canadian content rules of the Canadian Radio Television and Telecommunications Commission. Also several financial institutions specifically interim finance productions.

Government Funding

In addition to the tax incentives discussed elsewhere in this chapter, various government bodies provide direct funding to the industry.

The funding levels and/or requirements of each body may change annually, in large part resulting from the implications of changes in their budgetary situations and the political party in power. From time to time there could be many changes to the currently available programs described herein. Interested parties should check more current information at the time of planning applications for funding. Also, applicants should seek out the detailed reporting requirements of each particular agency. Most of this information is posted on the respective government's website.

Provinces and localities for example, provide significant location services and infrastructure support. Reference should be made to their respective websites.

Canadian Media Fund

On April 2, 2010, The Canadian Television Fund, that was created in 1996 to support the production and broadcast of high quality, distinctively Canadian television programs, became the Canadian Media Fund (CMF).

CMF champions the creation of successful, innovative Canadian content and applications for current and emerging digital platforms through financial support and industry research. Created by Canada's cable and satellite distributors and the Government of Canada, the CMF's vision is to connect Canadians to our creative expressions, to each other, and to the world. Projects will be supported through two streams of funding, an Experimental Stream, which invests in the development of innovative content and software applications for eventual integration into mainstream Canadian media platforms; and a Convergent Stream, which supports the creation of convergent television and digital media content.

Through the Convergent Stream, the CMF will support the creation of television shows and related digital media content in four underrepresented genres: drama, documentary, children's and youth, and variety and performing arts. Eligible projects will include content produced for broadcast on television and distribution on at least one digital media platform. Projects must include high levels of Canadian elements, including Canadian creative talent.

While basic digital media components, such as basic websites and video-on-demand will be allowed for the purposes of rendering the entire convergent project eligible, the CMF will encourage the creation of rich, value added content by requiring at least 50 percent of a broadcast corporate group's envelopes be spent on this type of content. Examples include videogames, podcasts, webisodes, mobisodes, and interactive web content. The streaming of a production on the internet at the same time as the television broadcast (i.e. simultaneous streaming) will not be considered an eligible digital media component for the purposes of rendering the entire convergent project eligible. Eligible applicants will include Canadian-controlled, taxable Canadian production corporations with their head office in Canada and Canadian broadcasters (public or private). These include television, interactive and web-based production companies; private and public broadcasters; and broadcaster-affiliated production companies.

CMF offers 12 different programs under the Convergent Stream with total funding available between $250,000 to $277 million per program.

Canada Feature Film Fund

Telefilm Canada is a crown corporation which reports to Parliament though the Federal Department of Canadian Heritage, acting as a Federal cultural agency which funds development production and marketing of film and television programs. It also funds participation in international festivals and markets. It has offices across Canada.

Telefilm administers the Canada Feature Film Fund to fund Development, Marketing and Production, including a program for English Language Productions and one for French Language Productions; these programs will be subject to updated guidelines which to date of publication of this guide, are not as yet published. Funds are provided through a Performance Envelope based on success at the Canadian box office and in which the company is provided an envelope with a floor of $750,000; and through a Selective Component primarily for producers with no box office track record, with the latter being highly competitive to access. The funds are allocated to development first as an advance against production financing through equity investment.

Applicants must be Canadian controlled companies with a head office in Canada, and the producers and key production personnel must be Canadian citizens or permanent residents; the feature film must be owned by a Canadian and meet Canadian content criteria including a Canadian performer in a lead role. A company may be eligible to access performance based envelopes for each of English and French language productions, as well as for distribution. A production company may not be allocated more than $3.5 million for English or French language films annually; and the total allocation from all Telefilm envelopes may not exceed $6 million annually. Production financing for French language films through the Selective Component in the form of equity investment, is capped at $3.5 million per project or 49 percent of Canadian production costs.

Distribution companies may access funds for marketing and distribution if the primary business is distributing feature films in Canada. It is provided in the form of non-interest bearing recoupable advances of up to 75 percent of eligible Canadian marketing costs.

The resources of Telefilm are allocated as to one-third to French language applications and two-thirds to English language. Telefilm also operates the Screenwriting Assistance Program and the Low Budget Independent Feature Film Assistance Program, among other activities.

There are application deadlines and reporting requirements.

Ontario Media Development Corporation (OMDC)
OMDC also administers a Location Promotions and Services program to attract films to Ontario including location scouting and other logistical support.

Société De Development Des Enterprises Culturelles (SODEC)
SODEC Financière is an entity partnering with the Quebec government, National Bank of Canada, Groupe TVA (a prominent French language broadcaster), Fonds de solidarite des travailleurs du Quebec, and entertainment entrepreneurs and risk-capital managers to form Financieres Des Enterprises Culturelle (FIDEC). FIDEC offers production gap financing, loans, equity investment and debentures primarily for Quebec controlled enterprises. Gap financing for film and television productions is a maximum of $5 million per project for a maximum of 36 months for Quebec or foreign companies with Quebec alliances, which maintain a place of business in Quebec and provide economic spin-off in Quebec.

British Columbia Film Commission
Established in 1978, the B.C. Film Commission is a branch of the provincial government working to ensure that the business of film and television production thrives as a value proposition for domestic and international clientele. They offer a full range of services for film producers and production companies.

Manitoba Film and Sound Recording Development Corporation
Manitoba Film and Sound Development Corporation (MFSDC) supports Manitoba film and music through its objectives, which are to create, stimulate, employ and invest in Manitoba by developing and promoting

Manitoba companies, producing and marketing film, television, video and music recording projects as well as promoting Manitoba as a film location for off-shore production companies. MFSDC provides a pitch readiness program for multi-episode productions; television and web-based development fund; market driven feature film development financing program; television and web-based production fund, market driven feature film production financing program, grant program for emerging talent and micro-budget production; feature film marketing fund program; and access to markets and access to festival programs. There is an audit requirement in respect of these expenditures. The program involves an assessment of various criteria including expenditures in Manitoba, days of shooting in Manitoba and confirmed financing. There are enhanced points in this assessment system for aboriginal and French production, as well as television series, winter filming and the use of Manitoba writers and directors.

SaskFilm and Video Development Corporation
SaskFilm provides funding in the form of Development Loans, Market Travel Assistance and Festival Travel Assistance to Saskatchewan resident producers and based on specific eligibility criteria. They will also provide equity investment for eligible documentary programs up to $25,000 for a production or $75,000 for a series; and for eligible dramatic productions up to $150,000. There are application deadlines.

Film Nova Scotia (FNS)
This corporation offers a range of production funding programs such as equity investments, development loans, new media equity investments, feature film distribution assistance, and a new pilot web drama series in partnership with the Independent Production Fund for Nova Scotia residents and Nova Scotia based and controlled companies. The FNS will support film and video development and production through the following major types of funding:

Development Loan: projects at the development stage can be supported through loans up to 50% of the development budget that is to be expended in Nova Scotia to a maximum dollar amount of $15,000. Development funding is advanced in three stages throughout the development.

Equity Investments: the FNS will support production through Equity Investment as follows:

- for production budgets under $500,000, up to 40% of that portion of the production budget that is to be expended in Nova Scotia to a maximum dollar amount of $150,000;

- for production budgets of $500,000 to $1,000,000, up to 33% of that portion of the production budget that is to be expended in Nova Scotia to a maximum dollar amount of $200,000;
- for production budgets over $1,000,000, up to 20% of that portion of the production budget that is to be expended in Nova Scotia to a maximum dollar amount of $250,000.

New Media Equity Investment: the FNS will support production through Equity Investment up to 33% of that portion of the production budget that is to be expended in Nova Scotia to a maximum dollar amount of $30,000. Equity funding is generally advanced in four stages throughout the production.

Film New Brunswick

As part of the budget tabled on March 22, 2011, it was announced that the New Brunswick Development Loan and Equity Investment programs will be eliminated. Any project received after March 22, 2011 will not receive funding for projects requesting development loan or equity investment.

Technology Prince Edward Island

Technology PEI provides non-interest bearing loans in respect of development up to the stage of completing production financing to Canadian corporations with a principal place of business in PEI. They also operate a Short Film Program to grant up to $10,000 for the production of a short film by a PEI resident.

Newfoundland and Labrador Film Development Corporation

This corporation will provide equity of 20 percent of total project costs, to projects meeting Canadian-content requirements, with Newfoundland-based producers holding a majority interest in the project, to a maximum of $250,000 for features or series, and $150,000 for a documentary or a children's series.

Other

Also of importance are the various film commissions which provide location and production assistance, including the following: Yukon Film & Sound Commission, British Columbia Film Commission, Greater Victoria Film Commission, Alberta Culture and Community Spirit, Calgary Economic Development Authority, Manitoba Film and Sound, Saskatchewan Film and Video Development Corporation, Ottawa-Gatineau Film and Television Development Corporation, Toronto Film and Television Office, Montreal Film and TV Commission, and Film Nova Scotia.

Producers

Producers may qualify for enhanced tax depreciation with respect to *certified films* (see "Amortization of Expenditure"). This tax depreciation allows the deferral of tax with respect to revenue arising from a certified film until all production costs are recovered. The system differs with respect to certified films made in 1995 or later in which a film tax credit was earned; and all other pre-1996 certified films.

In addition, equipment acquired to produce films may be eligible for enhanced tax depreciation, and taxable profits (of a corporation) may be eligible for reduced tax rates available to all manufacturers of products for sale or exploitation. The rate of tax reduction depends on the portion of capital assets and labor cost used in the manufacturing activity; and some provinces also apply a rate reduction. Accessing this rate reduction may depend on the corporate structure (tax filing by corporations is not on a consolidated basis) and other activities carried on by the corporation.

In addition, businesses are eligible to claim all reasonable business expenses pertaining to their operations, subject to restrictions with respect to meals and entertainment expenses. Generally, only 50 percent of meals and entertainment expenses as defined in the legislation are deductible in computing taxable income. These expenses are fully deductible if included in the taxable income of employees/contractors; or if the employees/contractors are working at a "remote location" as defined in the Income Tax Act.

Producers can access the government funding and private funding described above, in addition to all Federal and Provincial tax credits described above. Generally there is a very favorable climate for producers operating in Canada.

Distributors

No specific tax incentives are available for distributors acquiring film rights. In practice, many distributors follow Canadian GAAP* to amortize the investment in the production or acquisition of film rights. If a copyright in the film is acquired, the distributor may be subject to the same treatment as the producer depending on whether he is actively involved in the production business and hence may be considered an Eligible Production Company.

Royalty payments made to non-resident holders of film copyright are subject to a 25 percent withholding tax, which is reduced under most tax treaties, with 10 percent being the most common treaty rate. Under appropriate circumstances, payments for the purchase of Canadian rights in perpetuity could be construed as not a royalty and, hence, not subject to withholding. Royalties in respect of the reproduction of copyright in literary, dramatic, musical or artistic works are not subject to withholding (e.g., with respect to certain merchandising).

If film copyright royalties arise in the conduct of a business operated in Canada, the business is taxable in Canada unless exempted by treaty; the latter would be the case if activity is not sufficient to create a permanent establishment in Canada (as defined in the appropriate tax treaty article). However, see "Indirect Taxation" section below for applicable rule regarding GST Goods and Services Tax and HST Harmonized Sales Tax (HST).

*Note that certain corporations in Canada have switched to IFRS commencing January 1, 2011; however, material differences as compared to Canadian GAAP are not expected to result.

Actors and Artists

There are no specific tax or other incentives available for actors or other artists who are resident in Canada for tax purposes. Based on appropriate contractual arrangements, CRA generally treats on-camera personnel as independent contractors who are eligible for appropriate and reasonable business expense claims. Such independent contractors may, if they wish, carry out their activity through a loan-out company which may, in appropriate circumstances, reduce the total tax burden on income arising from their performances.

CRA has published a pamphlet to facilitate a determination as to whether the relationship is one of employee/employer, or a business relationship of an independent contractor; it is also possible to obtain a written determination from CRA. Generally behind the scenes personnel who are incorporated and principal actors can be considered independent contractors. This could necessitate registration and hence collection of GST/HST (see "Indirect Taxation").

Other Financing Considerations

Tax Costs of Share or Bond Issues

No tax or capital duty is imposed in Canada on the issue of new common or preference shares or debt instrument, nor with respect to the transfer or reorganization thereof. There are legal procedures to comply with and, in the case of public issues, significant underwriting costs and other expenses of issue (e.g., reporting documents, filing fees, etc.).

Exchange Controls and Regulatory Rules

There are no specific exchange controls or other regulatory rules in Canada, other than with respect to publicly traded securities which are the subject of regulatory, financial and other reporting requirements (e.g., insider trading activity, financial results, and significant transactions). A foreign investor, producer or artist is not prevented from repatriating income arising in Canada back to his or her home country, though nonresident withholding tax will likely apply, the rate of which would be determined based on the tax residency of the non-resident.

Corporate Taxation

Recognition of Income

Film Production Company – Production Fee Income

Canadian-Resident Company

If a special purpose company is set up in Canada to provide production services for a film without acquiring any rights in that film (i.e., a production service company), the tax authorities could query the level of net income if they believe that the level of production fee income is below an arm's-length rate. It is difficult to be specific about the percentage of the total production budget which would be an appropriate level of net income in Canada, but in past experience an accepted level could be between 1 and 2 percent of the production budget.

For example or by comparison, independent production service companies and administration companies have offered to provide their corporation for purposes of obtaining the production services tax credits, for a fee of approximately between 1 and 2 percent of the production budget. This provides arms length support for similar non-arms-length structures.

In past practice many production service companies show zero net income (e.g., if appropriate, arms-length amounts are paid out to all participants); CRA has not, to our knowledge, reassessed these companies, especially if these payments are made to a Canadian taxpayer. However, CRA has more exposure to this issue through their audits of the production services tax credit (see separate description) as well as enhanced corporate tax reporting obligations with respect to transactions with foreign corporations and disclosure requirements regarding transfer-pricing methodology, which must be filed with all corporate tax returns to access tax credits.

Non-Canadian-Resident Company

If a company is not resident in Canada but has a production office to administer location shooting in Canada, it is possible that the tax authorities may take the position that it is carrying on business in Canada and, hence, is subject to tax as a branch, unless specific exemptions are available under the appropriate tax treaty. In this case it might be possible to argue that the location is similar to a "building, construction or installation project" which does not exist for more than the treaty-defined period, assuming it is not otherwise a permanent establishment. CRA takes the administrative position that a business activity carried on in Canada for more than 120 days may constitute a permanent establishment unless different criteria apply pursuant to an applicable tax treaty. The use of equipment and site rentals by a film production may create even more doubt in this regard.

Note that non-resident corporations claiming treaty exemption are required to file Federal tax returns along with a treaty exemption claim in prescribed form.

Clearly the production of a TV series, which takes place over an extended period of time, would result in a permanent establishment.

If CRA were to attempt to tax the company on a proportion of its profits on the basis that it did have a permanent establishment in Canada, they would first seek to determine the appropriate level of profits attributable to the branch. A proper measurement of such profits may be a difficult and time-consuming analysis. It is likely that the Canadian tax authorities would measure the profit enjoyed by the company in its own resident territory and seek to attribute a proportion of this, for example, by arguing that a significant portion should accrue to Canada if the production was "controlled and managed" in Canada. The level of tax liability could ultimately be a matter for competent authority determination.

It is common to use a single purpose production services company, a separate subsidiary of the foreign company and incorporated in the foreign jurisdiction, to produce in Canada for the copyright owner in order to avoid direct reference to profits of the rights holder (parent company).

Note that corporations planning to take advantage of the Canadian film or video production tax credit (CPTC) or the film or video production services tax credit (PSTC) are required to carry on that business through a permanent establishment in Canada in order to be entitled to the credits. Therefore, in practice, we expect that most productions will be set up as a Canadian permanent establishment and will file tax returns in order to access Federal and Provincial tax credits. In this case, it is more efficient to use a separate company to carry on this activity, to avoid the issue of allocating "parent company" profit margin to a branch. However, transfer pricing will be monitored in the audit process.

Film Production Company – Sale of Distribution Rights

If a production company sells distribution rights in a film asset to a distribution company in consideration for a lump-sum payment in advance and subsequent periodic payments based on revenues, the sale proceeds would normally be treated as income arising in the business of exploiting its film library.

If a Canadian production company transfers such assets offshore, the tax authorities would be expected to examine the price charged (and hence revenue recognized) if the transaction was struck between unrelated parties. It is often the case with Canadian production companies that such rights are in fact sold to arm's-length foreign distributors, sales agents or broadcasters, and therefore in fact represent arm's-length prices. However if film rights are sold offshore in a non arms-length transaction at less than fair market value, the sale proceeds would be adjusted to fair market value by CRA.

In the case of producers of television programming, it is often the case that they directly license the film asset for limited periods. In appropriate circumstances for tax purposes this license fee income may be recognized over the term of the license, hence deferring recognition of income.

License fees are included in income for tax purposes at the earlier of date of receipt of cash and an amount becoming receivable under the terms of the contract. A reasonable reserve is available if cash received has been included in income and goods or services have to be delivered after the year end; this reserve may not be available if the film is ready for delivery before year end but is delivered after the end of the year.

Film Distribution Company

If a company acquires distribution rights in a film from an unrelated production company, the payment for the acquisition of the rights is treated as the purchase of a film asset for accounting purposes. This would be the case whether the company exploited the rights in Canada or worldwide, and the same treatment would apply whether or not the production company was resident in a territory which had a double tax treaty with Canada.

The rights should be valued at the end of each accounting period of the distribution company in accordance with GAAP. In most cases the amortization so calculated under GAAP is used in the computation of income for tax purposes as noted above.

The income arising from exploiting such rights is normally recognized as business income. The distribution company would be taxed on the income derived from the exploitation of any of its acquired films, wherever and however these were sublicensed, provided that the parties were not related. If they were related, the tax authorities might review whether the level of income was arms length and consider an upward adjustment. For tax purposes, income is usually recognized in the year it arises, not necessarily when the contract is signed or the income received; this is generally at the commencement of the license period. For appropriate licensing agreements (mostly applicable for television programming) the income may qualify to be deferred over the term of the agreement for tax purposes; this latter treatment would affect the annual amortization accordingly. Note that the ability to defer such revenue may be challenged by the tax authorities.

Revenue from foreign sources should be converted to Canadian dollars at the appropriate rate of exchange and foreign tax credits may be available if tax is withheld at source (see discussion below).

In some distribution arrangements a sales agent earns a fee with respect to revenue collected on behalf of the owner of the film rights. In this case, the fee is recognized as it is earned pursuant to the terms of the contract, sometimes at the time of delivery of the film to the broadcaster/exhibitor or alternatively, when the contract is signed.

At the end of each accounting period, the appropriate accounting provisions are made with respect to unpaid balances; this adjustment may also change the amount of amortization of the cost of the film asset. These adjustments are generally followed for tax purposes.

Transfer of Film Rights between Related Parties

Where a worldwide group of companies holds rights to films and videos and grants sublicenses for exploitation of those rights to an affiliated Canadian company, care must be taken to ensure that the profit margin remaining in the Canadian company represents a reasonable amount, both with respect to the circumstances of the inter-company transaction and the results within the industry in Canada. Any transactions within a worldwide group of companies could be challenged by CRA since they would seek to apply an open-market, third-party value to such transactions. If income is remitted by a Canadian resident company to a lower tax jurisdiction pursuant to a sub-licensing distribution agreement, CRA may seek justification thereof. There is no specific level which they can seek to apply. They always have regard to comparable arrangements made by unrelated distributors. In this regard CRA has a great deal of experience in respect of intercompany arrangements with U.S. studios.

Contemporaneous documentation should be gathered at the time a deal is struck to provide to the tax authorities if they query the arrangement. Also a bona fide contractual arrangement should be documented.

It is possible to obtain an Advance Pricing Agreement from CRA. It requires complete disclosure of the details of all transactions with the related nonresident, as well as full disclosure of the details of the proposed transactions such as royalty agreements, distribution arrangements, etc. Though confidential, it would still form the basis of CRA's industry knowledge and it is unlikely that foreign-controlled companies would wish to give such data to CRA prospectively.

In appropriate circumstances and with appropriate tax planning it may be possible to structure the Canadian distribution company as a special purpose entity eligible for a low corporate tax rate; this may require that ownership and control not be held by the foreign entity and requires careful planning and implementation.

Amortization of Expenditure

Production Expenditure

Where a production company is engaged to produce a film under a production services agreement, the costs incurred under this contract usually relate to an arrangement under which there is a reimbursement or cost recovery out of future (known) revenues arising from that film. In many cases, these are "cost plus" arrangements and the producer is not at risk with respect to the production costs. In such circumstances, the costs are matched to the revenue, as with any other transaction involving the incurring of costs over a period of time. The recognition for tax purposes generally follows the GAAP reporting.

Where a production company also owns substantially all rights to the film including copyright, but intends to sell it on completion, the costs are accumulated and applied as costs of sale against the proceeds of sale at the time the sale occurs; this would apply to any company holding the film as inventory. The production company may also earn a profit from producer fees and overhead cost recoveries charged to the production budget.

In the case where the production company retains the completed film and holds the copyright from which it will derive distribution revenues and government incentives where applicable (see above), the film asset is considered a capital asset. Its costs are capitalized and depreciated for tax purposes.

Films other than certified films described below, are depreciated at 30 percent on a declining balance-basis, except that in the first year of ownership of a completed film, only 15 percent can be claimed. Generally, depreciation can only be claimed in any taxation year, against net income arising from the exploitation of these assets, and only in the year in which the asset is "available for use".

Similarly if the CPTC is being applied for with respect thereto, depreciation can be claimed at 15 percent in year one, and 30 percent thereafter on a declining balance basis. An additional allowance is also available with respect to the amount of net income from all film assets that qualify for this depreciation class (being all films in this category), net of that year's regular statutory depreciation claim, up to the amount of the undepreciated cost of certified films in this class.

If the film is a pre-1996 production and the CPTC is not being applied for, depreciation of 30 percent can be taken on a declining balance basis. An additional allowance is also available against net income from films falling into this class as well as pre-1988 certified film, net of that year's depreciation claim, up to the amount of the undepreciated cost of certified films in these classes.

As a result of the additional allowances available, the producer has the ability to defer income arising on certified films, until all such costs are recovered. The additional allowance with respect to the cost in the post-1995 certified film class cannot be applied to income arising from the previous film classes; therefore taxable income could result where a producer collects revenue from older films while they are investing in building a new film library.

In order to qualify for the additional allowance the film must be certified by the CAVCO of the Department of Canadian Heritage, as a production produced either pursuant to a co-production treaty (as discussed above) or in accordance with the criteria described in the CPTC section above.

The certification process involves an application to CAVCO, which includes a Statement of Production Costs prepared in a prescribed format and audited by an independent chartered accountant (for productions with a budget of $500,000 or more) and is more fully discussed earlier in this chapter.

It is important to note that regular (other than the additional allowance discussed above) tax depreciation claimed with respect to certified films may be claimed as a deduction to shelter other sources of income, where for example there is not sufficient taxable income arising from these films.

CRA has taken the position that meals and entertainment expenses including catering costs, are only allowed as to 50 percent, unless they meet the "special work site" definition or unless they are included in taxable income of the employees/contractors.

Other Expenditure

Neither a film distribution company nor a film production company has any special status under Canadian tax law. Consequently they are subject to the usual rules applicable to other companies. For example, in calculating taxable income they may deduct all reasonable outlays for administering the business, an allocation of prepaid expenses, and depreciation and amortization as described elsewhere in this chapter and further detailed in the regulations to the Income Tax Act.

Certain other expenditures cannot be deducted, for example any expenditure on capital account. However, depreciation may be claimed on buildings and equipment and amortization on purchased goodwill, as allowed by statute. For companies considered to be manufacturing goods as defined by statute, certain equipment used primarily for the manufacturing of goods for sale or lease is eligible for a more generous depreciation of 50 percent straight line rate (for eligible assets acquired after March 19, 2007 and before 2012, 30 percent otherwise) on the declining balance of undepreciated cost. The deduction of certain automobile costs is also restricted under the statute.

All expenditures must be reasonable in amount and incurred for the purpose of producing business (or investment) income.

Foreign Tax Relief

Producers

If a Canadian producer receives revenue from a non-resident, tax is generally withheld at source based on the domestic law in the payer's country and as reduced by the applicable tax treaty. In most foreign countries, written application must be made to enjoy the reduced tax rate.

For Canadian tax purposes, a foreign tax credit may be claimed on a country-by-country basis, with respect to the net income for tax purposes derived in the year from that country, however only up to the amount of tax as reduced by treaty. By virtue of generous deductions claimed for tax depreciation, etc., there may be no claim available. In this case, it is possible to use the foreign tax as a deduction, hence benefiting from a proportion of tax relief, but this is not the preferred method. If it is paid with respect to revenue arising from business carried on in the foreign country, the foreign tax may be carried forward to be applied against future net income from that country; where the income is not considered to arise from carrying on business in a foreign country, there is no carry forward of unused credits.

Alternatively there is a tax provision available whereby there is a notional recognition of foreign taxable income which results in a claim for the foreign tax credit in the current year; the notionally reported income is added to the tax loss carry forward so that it can be applied to reduce future taxable income. This provision is appropriate to apply where for example it is unclear whether the carry forward of the tax credit can be utilized; it converts a tax credit carry forward to a loss carry forward that can be applied against future sources of income.

Also, by virtue of the fact that income may be recognized before it is actually received, it is necessary to ensure that all tax withheld with respect to a particular source of income has been considered in calculating the foreign tax credit.

In situations where withholding at source is a material cost to a company, they could consider structuring their offshore distribution business in a more favorable jurisdiction.

Distributors

If a Canadian resident film distributor receives income from a non-resident with respect to film assets (rights) that it owns, any tax withheld at source is generally accounted for on a basis similar to that for a producer.

Alternatively, if the distributor is operating within a fee-based contract, such as a sales agent, the revenues and any tax withheld with respect to that revenue may be for the account of the owner of the film asset.

In some cases the distributor is carrying on business in Canada by distributing product in foreign territories on behalf of the copyright owner, who is resident in a third country. In that case the payer should withhold tax at the appropriate rate as between the payer's territory and the owner's territory.

If the distributor collects worldwide revenues on behalf of a non-resident owner, and remits a combination of revenues including Canadian-source revenues, there is a risk that CRA will assess withholding tax on the full payment. Therefore it is prudent to separate the Canadian contractual arrangement from that related to the rest of the world, to avoid Canadian withholding tax on the remittance out of Canada of revenue from "the rest of the world".

Indirect Taxation

Goods and Services Tax/Harmonized Sales Tax

Canada's Goods and Services Tax (GST) applies at a rate of 5 percent to most goods acquired and services rendered in Canada. The provinces of Ontario, British Columbia, New Brunswick, Nova Scotia and Newfoundland use a blended federal/provincial Harmonized Sales Tax (HST), which applies to the same base of goods and services as the GST. The HST rate ranges from 12% in B.C. to 15% in Nova Scotia comprises a 5 percent federal component and a provincial component.

Generally, every person who makes a taxable supply (including a zero-rated supply) in Canada in the course of a commercial activity is required to register unless the person qualifies as a small supplier (less than $30,000 annual taxable supplies), is only engaged in selling real property otherwise than in the course of business, or is a non-resident person who does not carry on business in Canada.

Businesses that are registered for GST/HST purposes are required to collect and remit GST/HST on taxable supplies made in Canada and are entitled to claim an offsetting input tax credit (ITC) for GST/HST paid on expenditures acquired for use in making those taxable supplies. The tax is ultimately borne by consumers who generally cannot recover the GST/HST incurred on their expenditures.

Zero-rated supplies (e.g. exported goods/services and basic groceries) are taxable supplies to which a 0 percent rate of GST/HST applies. Suppliers who make zero-rated supplies are generally entitled to recover all of the GST/HST paid on expenditures incurred in order to make such supplies via an ITC.

The GST/HST does not apply to certain supplies deemed to be exempt from tax such as residential rents and financial services. Unlike zero-rated supplies, suppliers who make exempt supplies are not entitled to recover GST/HST paid on expenditures incurred in order to make exempt supplies (although certain suppliers of public services are entitled to partial rebate).

Finally, certain supplies of goods/services are simply deemed not taxable, and the recovery of GST/HST depends on the particular circumstances.

Supply of Production Services

The supply of production services provided in whole or in part in Canada by a Canadian production services company to a Canadian studio will be subject to GST/HST; however, the Canadian studio should be entitled to claim an ITC for such GST/HST. Supplies of production services to a non-resident studio will generally qualify for zero-rating (i.e. taxable at 0 percent). For example, if a non-resident studio hires a Canadian production services company to produce a film in Canada where the producer has no interest in the film rights (i.e. non-resident studio is the owner of the copyright to the film) the production services rendered to the non-resident studio should qualify for zero-rating.

Supply of Distribution Rights and Other Intangible Personal Property

The application of GST to the supply of distribution rights and other intangible personal property (IPP) is based on the following rules:

- A supply of IPP is not subject to GST/HST where the IPP may not be used in Canada.
- A supply of IPP is not subject to GST/HST where the IPP is supplied by a person who is not resident in Canada, not registered for GST/HST purposes and not carrying on business in Canada.
- All other supplies of IPP are taxable except that if the supply is made to a non-resident person who is not registered for GST/HST, the supply is zero-rated provided the rights may be exercised both in and out of Canada.

Based on the above, generally the supply of distribution rights or other IPP by a person registered for GST/HST will be subject to GST/HST unless either the rights may only be used outside Canada or the purchaser is not resident in Canada and not registered for GST/HST purposes (unless the rights may only be exercised in Canada).

The supply of distribution rights or other IPP by a non-resident who is not registered for GST/HST will not be subject to GST/HST. A Canadian purchaser of such rights is not required to self assess GST/HST provided the purchaser is registered for the GST/HST and the IPP will be used in the commercial activities of the purchaser.

A number of changes to the place of supply rules were enacted on July 1, 2010 which affects the application of the GST/HST based on the location where the IPP is used. The use in a participating province (HST province) is used as a starting point to determine the application of the GST/HST. The various provincial rules are beyond the scope of this guide; therefore, the provider of IPP should consult their indirect tax service provider in order to properly determine the application of the taxes.

Peripheral Goods and Merchandising

The sale of peripheral goods connected to the distribution of a film (such as books, magazines and advertising materials) and related merchandise (such as clothes, toys, etc.) will attract GST/HST where the goods are supplied by a GST/HST registrant and are delivered or made available to a purchaser in Canada. GST/HST does not apply where such goods are exported from Canada.

Promotional Goods and Services

GST/HST does not generally apply to promotional goods/services provided free of charge. GST/HST registrants who provide such goods are entitled to claim ITC's for the GST/HST paid or payable on expenditures made in the course of supplying such promotional goods/services.

Rebates for Non-Resident Producers

Unregistered non-resident producers are entitled to claim a rebate of GST/HST paid on property or services (other than a service of storing or shipping property) acquired to produce artistic works for export. The property/services eligible for rebate must be acquired for consumption or use exclusively (generally interpreted to mean 90 percent or more) in the production of an original literary, musical, artistic, motion picture or other work in which copyright protection exists.

A non-resident producer is entitled to assign the rights to this rebate to a Canadian supplier of property/services, effectively allowing the non-resident to purchase property or services free of GST/HST.

Importation of Goods into Canada

The GST/HST generally applies to the importation of goods into Canada at a rate of 5 percent calculated on the duty paid value (see below). GST/HST owing on goods imported into Canada is generally payable by the importer of record for the goods.

Quebec Sales Tax

The Quebec Sales Tax is a provincial tax which is levied in the same manner and on essentially the same base of goods and services as the GST/HST. QST applies at a rate of 8.5 percent (propose increase to 9.5% on January 1, 2012) and is calculated on the GST-included price of taxable goods/services supplied in Quebec.

Provincial Sales Tax

Three provinces in Canada; Saskatchewan, Manitoba, and Prince Edward Island, impose provincial sales taxes (PST) on goods and certain services acquired for use in those provinces. These provinces require vendors carrying on business in the province to register and collect PST on their sales. If the vendor does not collect the tax however the purchaser is liable to self assess it. The rates of PST range from 5 percent to 10 percent.

Some provinces offer partial relief from the payment of PST on goods used temporarily in the province. In addition, some provinces provide exemption from PST for equipment and in some cases, props, used in the manufacture of a motion picture.

Customs Duties

Goods imported into Canada may be subject to customs duties. The rate of customs duty imposed will depend on the tariff classification of the goods, the country of origin and the value for duty.

Duty rates can vary according to the country of origin of the goods, for example, many goods of U.S. or Mexican origin enter Canada duty-free or at very low rates of duty under the provisions of the North American Free Trade Agreement. Imports from developing countries are also eligible for beneficial tariff rates. Appropriate documentation certifying the origin of goods must be available for review by customs authorities in order to qualify for these beneficial rates.

The value for customs duty must be determined using one of the methods established in the Customs Act. In most cases the transaction value or the price at which the goods are sold for export to Canada, is the value that is used for customs purposes. Certain adjustments to the transaction price, for example, transportation and insurance cost from the point of direct shipment to Canada, can be deducted in arriving at an acceptable value for customs purposes. Where imported goods are leased from foreign suppliers, the transaction value method or the lease cost cannot be used as the valuation method for customs purposes; in these situations an alternative method must be applied in order to arrive at a determined fair value of the imported leased goods. persons should seek the advice of a Customs Practitioner before the importation of goods into Canada.

Temporary Importations

Goods such as film equipment imported for temporary use in Canada may qualify for duty free entry into Canada. That is, where enumerated goods are imported temporarily for a specific use, relief from customs duty may be available at the time of importation for a period of up to 18 months. Extensions can be granted in 6 month increments up to an additional 30 months.

In some cases, the importer may have to pay a deposit at the time the goods are imported. Upon subsequent export after temporary use in Canada, the deposit will be refunded in whole or in part.

Actors and directors entering Canada for a short period of time generally are allowed to bring in personal effects such as a motor vehicle without paying customs duty. However, the actors and directors may be required to show a work permit at the time of entry into Canada.

Importing of Films and Videotapes
Duty may apply to the importation of motion picture films or videotapes. The duty rates will vary depending on the country of origin and the goods themselves (e.g., the size of the videotape). Generally, motion picture film imported from the U.S. is duty free.

Personal Taxation

Non-Resident Artists

Canada taxes the income arising to a non-resident from services provided in Canada, unless reduced or relieved by a tax treaty, regardless of where the income is received.

The payer is obliged to withhold Federal tax at 15 percent of all remuneration paid to the non-resident in respect of services provided in Canada. Administratively, CRA does not levy withholding tax on per diems for travel, meals, accommodation, if receipts support these expenditures; otherwise, they are subject to tax. Most tax treaties do not provide relief, though there is nominal threshold of relief under the U.S. treaty for example.

Where the payer is a non-resident these rules may not in practice be effective. However, you should be aware that payrolls of many productions carried out in Canada, are audited by CRA; productions applying for labor-driven tax credits are under close scrutiny by CRA as discussed above. CRA is currently taking the position that the value of meals provided (catering), is a taxable benefit unless filming is at a remote location. (Note as discussed above, if taxable to the recipient of this benefit, the amount can be included in the calculation of qualifying labor for tax credit purposes.)

The withholding tax represents a tax installment but not necessarily the final liability. The individual is obliged to file a Canadian personal tax return for the year in which the income is received, using the same net income calculations available to residents. In the past, administratively CRA has not always demanded these filings unless the non-resident returns to Canada on a recurring basis, or remains here for an extended period, for example to complete a television series. CRA's position in this regard however, is that the individual is required to file a tax return. This would result in more non-residents being obliged to file tax returns, and many would owe more tax than the amount withheld at source. Of course their jurisdiction of residence may allow a foreign tax credit for all or part of the Canadian tax.

Quebec levies a similar withholding tax on non-residents at the rate of 9 percent.

In respect of services provided since 2001, actors are subject to a Federal withholding tax of 23 percent as a 'final tax' on Canadian income; no tax return filing is required. However, they may elect to file a tax return to be taxed at regular personal rates in respect of net income (after applicable expenses); if this calculation of tax is less than the withholding, a refund can be claimed.

An artist (or any other non-resident individual) sojourning more than 183 days in Canada in a calendar year, will be deemed resident and taxable on worldwide income for the calendar year (with foreign tax credits or exemptions allowed for income earned outside Canada). Most tax treaties provide for the application of a "tie-breaker" test, so an artist (or other sojourning individual) who has residency ties elsewhere, could be considered a non-resident. However, this possibility should be reviewed and addressed before the 183 days is met, in the event there is risk of a tax liability being assessed by CRA; this is a particular problem if the non-resident does not reside in a treaty jurisdiction. It is possible to obtain a determination of non-residency status before commencing the Canadian contract, by application in prescribed manner to the International Taxation Services Office of CRA.

If an individual, other than an artist or entertainer, subject to the Federal withholding tax is determined to have a fixed base regularly available in Canada, they could not obtain a waiver and their final tax liability would be imposed based on net income attributable to that base. In a relevant court case, an individual succeeded in his filing position that performing services at a client's location, did not create a "fixed base"; however this result will always be dependent on the particular facts and circumstances.

A waiver of withholding taxes is usually approved by CRA if the individual is present less than 180 days in the year on a non-recurring basis; but waiver procedures make it more difficult to obtain a waiver where the individual spends more days in Canada in a year or has recurring visits to Canada. As a result, we expect that fewer waivers may be given, resulting in more individuals filing Canadian tax returns in order to be assessed the appropriate actual tax. Quebec has a similar waiver procedure.

If an artist uses a loan-out company, CRA will agree to subject to withholding tax only the amount paid to the artist (net of bona fide expenses incurred by the company). However, application must be made to reduce the tax withholding on gross revenue, which is otherwise applicable. Many tax treaties do not provide relief from tax with respect to loan-out companies in which the artist participates in profits.

Loan-out companies may be effective, however, for off-camera individuals. The company must apply to CRA to obtain a waiver from tax where the applicable treaty allows relief for a company with no permanent establishment in Canada. Otherwise revenues received for services provided in Canada are subject to the 15 percent withholding (and Quebec if applicable), and a corporate tax return must be filed. Companies seeking treaty relief are obliged to file a tax return as noted above.

HST/GST implications are discussed separately above.

Resident Artists

Canada taxes its residents on worldwide income from all sources. Artists are generally considered not to be employees unless facts and circumstances dictate otherwise; as a result, they would file as independent contractors and claim all reasonable expenses incurred to earn income and depreciation with respect to capital expenditures. They also may claim a foreign tax credit with respect to appropriate foreign tax paid with respect to net foreign income, calculated on a per country basis. Income earned as an independent contractor may also subject to social security tax.

HST/GST implications are discussed separately above.

Artists may consider the use of a corporation as part of their overall personal tax planning structure. A Canadian controlled private corporation may provide attractive tax deferral and savings opportunities with respect to income earned in Canada; expert tax advice should be sought in this regard.

Employees

Employers are obliged to withhold income and social security tax and unemployment insurance premiums from employees, and remit these amounts to the appropriate revenue authority on a regular basis, depending on the size of their payroll. Withholding is based on actual tax rates, but individuals have the right to apply for a reduction of source deductions if they expect to have significant, provable tax deductions or foreign tax credits.

Employers also remit a matching amount for social security and unemployment insurance, and bear other employment levies such as provincial employer health taxes and workers' compensation premiums.

If foreign employees are seconded to Canada there may be relief from Canadian social security pursuant to the applicable Social Security Totalization Agreement and in limited circumstances, relief from unemployment insurance premiums.

Employees may not claim job-related expenses, other than specific expenditures required by the employer and for which the employer provides documentation in prescribed form.

If the employer requires the employee to move temporarily away from his or her home, the employee may in appropriate circumstances obtain tax exempt allowances for "board and lodging" and travel, called "special work site" status.

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