Alberta's Film and Television Tax Credit: A new frontier

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In January, 2020 the government of Alberta implemented a Film and Television Tax Credit (FTTC) which offers a refundable Alberta tax credit on eligible production and labour costs to corporations that produce films, television series and other eligible screen-based productions in the province. Applicants may apply for either a 22 per cent or 30 per cent tax credit based on whether they meet certain eligibility criteria.

In March 2021, to build on the success of the program, the Government of Alberta also removed the FTTC's original $10 million tax credit cap, which limited film and television productions to a maximum $10 million tax credit claim per project.

Qualification and eligibility

To be eligible under the FTTC, a corporation must:

- be primarily engaged in film, television or digital media production;
- be incorporated in Alberta under the Business Corporations Act, registered as an extra-provincial company in Alberta or continued as an Alberta company through a Certificate of Continuance;
- not be exempt from paying taxes under the Alberta Corporate Tax Act (and not be controlled by a corporation that is exempt);
- be making an eligible production with total production costs of $499,999 CAD (before GST) or greater; and
- not have received funding from the Alberta Production Grant or the Alberta Screen-Based Production Grant.

Eligible Alberta Production costs generally include all expenditures where goods or services are purchased, consumed or used in Alberta and are considered an essential cost incurred as a normal part of business, while production costs incurred or paid outside of Alberta are not eligible for the tax credit. Applicants for the FTTC must submit an application, which must include a production plan that sets out a business case for receiving the FTTC.

To determine what are considered eligible production costs, the costs must generally be:

- listed on the Estimated Total Production Costs worksheet found on the program webpage;
- purchased directly from businesses located in Alberta;
- incurred and fully paid in Alberta during the eligibility period;
- directly related to the portion of the production that occurs in Alberta; and
- considered an essential cost incurred as a normal part of business.

The FTTC is not available for certain types of productions. The list of excluded production types generally includes:

- News, current events, and sports programming;
- Reality television and gameshows;
- Advertising and promotional videos;
- Video games; and
- Productions for which public financial support may be contrary to public policy.

The Tax Credit

The FTTC allows production companies to apply for either a 22 per cent or 30 per cent tax credit. To be eligible for the 30 per cent tax credit, a production must meet the following criteria:

- For all projects, including a “treaty co-production project”, which is defined as a project whose production is contemplated in a co-production treaty entered into between Canada and another country:
    - Have at least one producer that is an eligible individual; and
    - Spend at least 60 per cent of the total production costs in Alberta or spend at least 70 per cent of the total production salary or wages on Alberta-based individuals; and
- In addition, if it is not a treaty co-production project:
    - At least 50 per cent of the project is owned by eligible individuals, whether as individuals, members of a partnership or voting shareholders of a corporation; and
    - The copyright for the project must be held, at least in part, in Alberta at the time of the application and for a minimum of 10 years following the completion of production.

The 22 per cent tax credit is available for all other productions that do not meet the above requirements. The FTTC is separate from other federal and provincial tax incentives such as the Canadian Film or Video Production Tax Credit.

Results

The Province has reported that since the introduction of the FTTC, over 50 productions have been approved, bringing in nearly $1 billion in production costs to the province and resulting in 9,000 new direct and indirect jobs. Productions such as HBO’s The Last Of US and The Predator sequel are only a couple of the productions that have began shooting in Alberta since the introduction of the FTTC.

To take advantage of the tax incentives, production studios must apply to the program before principal photography starts in Alberta and must begin filming within six months after the issuance of the Authorization Letter.

Services

To access the FTTC, foreign producers who plan to produce in Alberta will also need to navigate financing, labour and immigration issues as they arise. Additionally, foreign producers may face additional challenges where treaty co-production requirements intersect with the FTTC requirements. BLG is uniquely positioned to help production companies navigate the legal landscape from pre to post-production. BLG can assist production companies:

- on lending opportunities including financing using tax credits as collateral;
- on International and film specific tax advice including combining multi-jurisdictional incentives;
- on immigration specific to the film industry;
- with co-production and treaty co-production applications;
- on navigating Alberta labour laws and unions; and
- on corporate formations and various corporate matters.

Conclusion

The FTTC highlights Alberta's willingness to support the film industry and marks a special opportunity for productions in Alberta of all sizes as well as an opportunity for international film studios to take advantage of Alberta's unique backdrop. We expect the FTTC to help boost Alberta's burgeoning film industry and continue to create job opportunities in related industries.

With broad industry experience and particular expertise in entertainment contract negotiations and corporate structuring, our lawyers who specialize in entertainment law are here to help clients navigate the opportunities and challenges this new program is expected to bring. For more information on the Alberta Film and Television Tax Credit, please reach out to your BLG lawyer or one of the key contacts listed below.

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