

# CPTC Program Eligibility Requirements

Canadian Audio-Visual Certification Office

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# Film and Video Incentives on Canada 2013

<u>Federal</u>	<u>Rate</u>	<u>Eligible Costs</u>	<u>Other Requirements</u>	<u>Application Fees</u>	<u>Contacts</u>
Canadian Film or Video Production Tax	25%	Labour		Min: \$200	<a href="http://www.pch.gc.ca/cavco">www.pch.gc.ca/cavco</a>
Canadian Film or Video Production Services Tax Credit	16%	Labour	Production meet min cost	Min: \$1000	<a href="http://www.pch.gc.ca/cavco">www.pch.gc.ca/cavco</a>
<u>Provincial</u>					
Alberta Media fund	25-30%	Production		No Fee	<a href="http://www.albertafilm.ca">www.albertafilm.ca</a>
Film Incentive BC Tax Credit	35%	Labour & Production	Min 75% BC content	Min: \$200	<a href="http://www.creativebc.com">www.creativebc.com</a>
British Columbia Production Services Tax Credit	33%	Labour	Meet min cost	N/A	<a href="http://www.creativebc.com">www.creativebc.com</a>
Manitoba Film and Video Production Tax Credit	30-45%	Labour or Production	Min 25% paid to province resident	No Fee	<a href="http://www.mbfilmmusic.ca">www.mbfilmmusic.ca</a>
New Brunswick Multimedia Initiative	25%	Expenses		No Fee	<a href="http://www.gnb.ca">www.gnb.ca</a>
Newfoundland and Labrador Film and Video Industry Tax Credit	40%	Labour	Min 25% paid to province resident	No Fee	<a href="http://www.nlfcd.ca">www.nlfcd.ca</a>
Nova Scotia Film Industry Tax Credit	50%	Labour	Min 25% paid to province resident	Min: \$200	<a href="http://www.film.ns.ca">www.film.ns.ca</a>
Nunavut Spend Incentive Rebate	17-30%	Expenses	Min \$25,000 expenses from province	No Fee	<a href="http://www.nunavutfilm.ca">www.nunavutfilm.ca</a>
Ontario Production Services Tax Credit	25%	Expenses	Meet min cost	\$5000 Flat Fee	<a href="http://www.omdc.on.ca">www.omdc.on.ca</a>
Quebec Film and Television Production Tax Credit	35-65%	Labour		Min: \$250	<a href="http://www.sodec.gouv.gc.ca">www.sodec.gouv.gc.ca</a>
Quebec Production Services Tax Credit	25%	Expenses	Meet min cost	Min: \$1000	<a href="http://www.sodec.gouv.qc.ca">www.sodec.gouv.qc.ca</a>
Quebec Film and Television Dubbing Tax Credit	35%	Labour		Min: \$100	<a href="http://www.sodec.gouv.qc.ca">www.sodec.gouv.qc.ca</a>
Saskatchewan Film Employment Tax Credit	45%	Labour & Production		No Fee	<a href="http://www.saskfilm.com">www.saskfilm.com</a>
Yukon Film Location Incentive	25-50%	Labour and Expenses		No fee	<a href="http://www.reelyukon.com">www.reelyukon.com</a>

# Digital Media and Animation Incentives on Canada 2013

<u>Animation</u>	<u>Rate</u>	<u>Eligible costs</u>	<u>Other requirements</u>	<u>Application Fees</u>	<u>Contact</u>
British Columbia Digital Animation or Visual Effects Tax Credit	17.5%	labour		No Fee	<a href="http://www.bcfm.ca">www.bcfm.ca</a>
Ontario Computer Animation and Special Effects Tax Credit	20%	labour		> 0.06% labour & \$100 (Max: \$5K)	<a href="http://www.omdc.on.ca">www.omdc.on.ca</a>
Quebec Computer Animation and Special Effects Tax Credit	10%	labour		No Fee	<a href="http://www.sodec.gouv.qc.ca">www.sodec.gouv.qc.ca</a>
<u>Digital Media</u>					
British Columbia Interactive Digital Media Tax Credit	17.5%	labour		\$1-5 K based # employees	<a href="http://www.sbr.gov.bc.ca/itb">www.sbr.gov.bc.ca/itb</a>
British Columbia New Media Venture Tax Credit	30%	investment		No Fee	<a href="http://www.equitycapital.gov.bc.ca">www.equitycapital.gov.bc.ca</a>
Manitoba Interactive Digital Media Tax Credit	40%	labour	min 25% Manitoba content	No Fee	<a href="http://www.gov.mb.ca/iem">www.gov.mb.ca/iem</a>
Ontario Interactive Digital Media Tax Credit (OIDMTC)	35-40%	labour & marketing	min 90% Ontario content	> 0.1% expenses & \$100 (Max: \$2K)	<a href="http://www.omdc.on.ca">www.omdc.on.ca</a>
Quebec Production of Multimedia Titles Tax Credit	26.5-37.5%	labour		\$113 + various %'s expenses	<a href="http://www.investquebec.com/en">www.investquebec.com/en</a>
Prince Edward Island Innovation & Development Labour Rebate	25%	labour		No Fee	<a href="http://www.innovationpei.com">www.innovationpei.com</a>
New Brunswick Digital Media Development Program	30%	labour	Max \$15K / employee	No Fee	<a href="http://www.newbrunswick.ca">www.newbrunswick.ca</a>
Nova Scotia Digital Media Tax Credit (lesser of):	50%	labour		No Fee	<a href="http://www.novascotia.ca/finance">www.novascotia.ca/finance</a>

# OVERVIEW OF PROGRAM ELIGIBILITY REQUIREMENTS

For a production to be eligible under the CPTC program, it must meet all requirements set out below; each is further described in the noted sections of this guide.

1. A Part B application must be received within 24 months of the first fiscal year end following the commencement of principal photography, and the Part B certificate must be issued by CAVCO within six months of this date. An 18-month extension to these deadlines may be granted where a Waiver Declaration for a Part B application is completed. *(s. 1.14)*
2. The production company must be a qualified corporation as defined in the *Income Tax Act*, and a prescribed taxable Canadian corporation as defined in the *Income Tax Regulations*. *(s. 2.01 and 2.02)*
3. The production cannot fall under any of the excluded genre categories that render a production an “excluded production.” *(s. 3.03)*

- 4. The production company must be the exclusive worldwide copyright owner (whether alone, with one or more domestic co-producers, or jointly with other prescribed persons) in the production for the 25-year period that begins at the earliest time after the production was completed that it is commercially exploitable. (s. 3.04)\*
- 5. A production must meet CAVCO's minimum key creative point requirements. (s. 4.02 and 4.03)\*
- 6. All producer-related personnel (other than those receiving exemptions permitted in limited circumstances) must be Canadian. For productions involving non-Canadian development, financing or distribution, the producer should read s. 4.09 and s. 4.10 thoroughly before entering into any agreements with non-Canadians.\*
- 7. Not less than 75% of the total of all costs for services provided toward producing the production (other than excluded costs) must be payable for services provided to or by individuals who are Canadians, and not less than 75% of the total of all costs incurred for the post-production must be incurred for services provided in Canada. (s. 5.06)\*

- 8. The production company must control the initial worldwide exploitation rights over the production. *(s. 6.01)\**
- 9. There must be confirmation in writing from a Canadian distributor or a CRTC-licensed broadcaster that the production will be shown in Canada within the two-year period following its completion. *(s. 6.02)*
- 10. The production cannot be distributed in Canada by an entity that is not Canadian within the two-year period that begins when the production first becomes commercially exploitable. *(s. 6.03)*
- 11. The production company or a related taxable Canadian corporation must retain an acceptable share of revenues from the exploitation of the production in non-Canadian markets. *(s. 6.04)\**



# ADMINISTRATION

## 1.0 Contacting CAVCO

Canadian Audio-Visual Certification Office

- 8th Floor, 25 Eddy Street Gatineau, Quebec K1A 0M5
- Telephone (toll-free): 1-888-433-2200
- E-mail: [bcpac-cavco@pch.gc.ca](mailto:bcpac-cavco@pch.gc.ca)
- Web site: [www.pch.gc.ca/cavco](http://www.pch.gc.ca/cavco)

## 1.02 Administration of CPTC Program

- The production company must submit a tax credit claim to the CRA as part of its T2 Corporation Income Tax Return, to receive a tax credit.

## 1.03 Responsibilities of CAVCO

- CAVCO is responsible for determining if a production meets the CPTC program requirements as set out in section 125.4 of the *Income Tax Act* and section 1106 of the Regulations.
  - Canadian film or video production certificate (known as a “**Part A Certificate**”).
  - Certificate of completion (known as a “**Part B certificate**”).

# Canadian film or video production certificate

## Part A certificate

- Confirms that the production is a Canadian film or video production
- Provides an estimate of the production's qualified labour expenditures, for calculating the tax credit.

# Certificate of completion

## Part B certificate

- If not issued within the prescribed time frame, the CRA will refuse any tax credit claimed in the year and reassess the corporation for any tax credit previously allowed.
- Producer can apply for Part A and B certificate at the same time once a production is completed, and will be issued at the same time.

# 1.04 Responsibilities of the CRA

- Verifies the qualified labour expenditure
- Responsible for helping claimants, reviewing and auditing, assessing T2 returns, and issuing timely refund cheques.
- Ensuring that claimers are qualified corporations and amounts claimed comply with the Act and Regulations.

## 1.05 Certification of Treaty Co-productions

- Telefilm Canada (Telefilm) is responsible for the evaluation of treaty co-productions according to the guidelines.

## 1.06 Submitting an Application to CAVCO

- [www.pch.gc.ca/cavco](http://www.pch.gc.ca/cavco)

## 1.07 Required Documentation for Part A and Part B Applications

- Supporting documentation is required as part of a complete Part A or Part B submission to CAVCO.

## 1.08 Application Review Process

- Once review is complete, a recommendation is made to certify, deny or revoke a production.

## 1.09 Compliance Reviews

- If not eligible under the CPTC program, the file is submitted to CAVCO's Compliance Committee for further review.

# 1.10-1.11 Audits

## **Internal Audits**

- CAVCO reserves the right to request any additional information necessary.
- CAVCO reserves the right to request any additional information necessary for a complete review of the application.

## **Canadian Content Certification Audit**

- Review by the CRA to ensure that a production has met all the requirements.
- On-site field audit of the production company



# 1.12 Preliminary Opinions of Eligibility

- Producer may request that CAVCO provide a preliminary opinion regarding the eligibility.
- A full application for a production must ultimately be received for CAVCO to provide a final determination regarding its overall eligibility.

# 1.13 Application Fees

- Part A: 0.15% of Eligible Production Cost
- Part B: 0.15% of Eligible Production Cost
- Part A/B: 0.30% of Eligible Production Cost (minimum fee of \$200)

## **Additional fees:**

- \$300 for amending a previously issued certificate
- \$100 for a certified copy of a previously issued certificate

## 1.14 Part B Application Deadlines

- A Part B application must be received no later than 24 months from the first fiscal year end date following the commencement of principal photography of the production.

## 1.15 Corporate Fiscal Year End Dates

- Under certain circumstances, when the fiscal year end of a production company changes, immediately inform CAVCO, to ensure that the application deadline is correctly calculated

# 1.16 Denials and Revocations

- When an application is either denied or revoked, you will receive a notification of the intent to deny or revoke the production.
- 30 days from the date of the notification to provide additional information that may impact the evaluation of the application

# 2.01 Qualified Corporation

- A qualified corporation for a taxation year means a corporation that is throughout the year a prescribed taxable Canadian corporation, the activities of which are primarily the carrying on through a permanent establishment in Canada of a business that is a Canadian film or video production business.

# 2.01 Qualified Corporation – 2.02 Prescribed Taxable Canadian Corporation

- The production company must be a qualified corporation as defined in the *Income Tax Act*, and a prescribed taxable Canadian corporation as defined in the Income Tax Regulations.
- **Qualified corporation** means a corporation that is a prescribed taxable Canadian corporation, the activities of which are primarily the carrying on through a permanent establishment in Canada of a business that is a Canadian film or video production business.
- It must be Canadian-controlled according to the requirements of sections 26 to 28 of the *Investment Canada Act*
- The Canadian distribution company through which it will distribute the production in Canada, must be owned and controlled, either directly or indirectly, by Canadian citizens or permanent residents.

# CANADIAN FILM OR VIDEO PRODUCTION

## 3.01 General definition

- Certified by CAVCO as a "Canadian film or video production".
- Film or video production, other than an "excluded production", produced by a prescribed taxable Canadian corporation, and that is either a treaty co-production or a film or video production that meets the requirements of the Income Tax Regulations.

## 3.02 Excluded production

- An excluded production is one where:
  - a) A Part B application has not been submitted/issued by the deadline
  - b) The exclusive worldwide copyright owner of the production, or controls the initial licensing of commercial exploitation of the project;
  - c) There is no confirmation that the production will be shown in Canada within two years of it being completed;
  - d) There is distribution made in Canada, within the 2-year period after completion, by an entity that is not Canadian;
  - e) Ineligible genre



## 3.03 Excluded Genres

The production cannot fall under any of the excluded genre categories that render a production an “excluded production” such as:

- a) News, current events, public affairs programming, or a program that includes weather or market reports;
- b) Talk shows
- c) Production in respect of a game, questionnaire or contest
- d) sports event or activity;
- d) Gala presentation or an awards show;
- e) Production that solicits funds;
- f) Reality television
- g) Pornography;
- h) Advertising;
- i) Production produced primarily for industrial, corporate or institutional purposes;
- j) Production, other than a documentary, all or substantially all of which consists of stock footage.

## 3.04 Copyright Ownership

- The production company must be the exclusive worldwide copyright owner (whether alone, with one or more domestic co-producers, or jointly with other prescribed persons) in the production for the 25-year period that begins at the earliest time after the production was completed that it is commercially exploitable.

## 3.05 Administration of Treaty of Co-production

- CAVCO will certify eligible productions that are treaty co-productions
- Co-productions between Canada and another country are eligible for the CPTC only when co-produced under a treaty.

## 3.06 Recognition of Treaty Co-productions Outside of the Certification Process

- If a production is eligible as a treaty co-production but does not qualify for a federal tax credit, CAVCO may, upon request by the producer, issue a letter in lieu of a CPTC certificate confirming that the project has achieved treaty co-production status.

## 3.07 Domestic Co-productions

- A domestic co-production is one where more than one Canadian production company holds copyright ownership in and incurs expenses in relation to a production.
- Each co-producer must claim the relative portion of the tax credit with the CRA.

## 3.08 Co-ventures

- **Co-ventures do not qualify for the Canadian film or video production tax credit.**
- Co-ventures are productions where, among other things, co-producer :
  - performed by non-Canadians
  - have equal measures of decision-making responsibility on creative elements,
  - share responsibilities in the administration of the production budget.

# PRODUCTION PERSONNEL

## 4.01 Proof of Canadian Citizenship or Permanent Residency

- A production company must provide proof that individuals for whom key creative points are being requested, as well as individuals occupying producer-related positions, are Canadian
- Each person confirmed by CAVCO as a Canadian citizen or permanent resident will be assigned a unique CAVCO Personnel Number.

## 4.02 Key Creative Personnel – Live Action Productions

A production must meet CAVCO's minimum key creative point requirements

- To be recognized as a Canadian film or video production, a live action production must (other than where it is a treaty co-production) be allotted a total of **at least six** points.
  - 2 of 4 points allotted for the director and the screenwriter positions (one must be a Canadian).
  - 1 of 2 points allotted for lead performers (one must be a Canadian)
  - See points system below

## 4.03 Key Creative Personnel – Animation Productions

- To be recognized as a Canadian film or video production, an animation production must (other than where it is a treaty co-production) be allotted a total of **at least six** points.
- In addition:
  - either the director, or the screenwriter and storyboard supervisor must be Canadian
  - the lead voice for which the highest or second highest remuneration was payable must be Canadian
  - the key animation must be done in Canada.



## 4.04 General Rules for Evaluating Key Creative Points

- a) The head individual(s) for each key creative department will be awarded the applicable key creative point(s) for a production.
- b) Any individuals grouped under the same position will be presumed to be performing the same role for the production.
- c) No points will be allotted for a Canadian who shares the functions of a key creative position with one or more non-Canadians.
- d) For television series or a collection of films, each of the episodes in the series or each of the films in the collection is considered a separate production, for CPTC certification by CAVCO.
- e) The point awarded for the camera operator position in animation productions will only be awarded for a Canadian where the work is done in Canada.
- f) Where a production consists of both live action elements and animation elements, the production's key creative points will be evaluated according to the criteria of the predominant production type.

## 4.05 Lead Performers / Voices

- CAVCO will use the following criteria to determine which individuals are lead performers or voices in live action and animation productions:
  - remuneration;\*
  - billing (for live action productions); and
  - time on screen, or, for animation, the length of time that the individual's voice is heard in the production.

## 4.06 Screenwriters

- Must meet **one** of the following conditions:
  - a) Each individual involved in the preparation of the screenplay for the production must be Canadian.
  - b) The principal screenwriter must be Canadian and the screenplay for the production must be based on a work authored by a Canadian and published in Canada.

## 4.07 Music Composer

- The point for the function of music composer is allotted only if the music created for the production is original.

## 4.08 Exceptions

- Documentary production: a production may still meet the creative services criteria even if the production has not been allotted the minimum six points required and/or has not obtained one of the two points allotted for lead performers.

## 4.09 Producer-related Personnel

- All producer-related personnel (other than those receiving exemptions permitted in limited circumstances) must be Canadian.

## 4.10 Production Control

- 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.
- The Canadian producer must have and maintain full responsibility and control over all creative and financial aspects of the production of the project.
- The Canadian producer must have and maintain full responsibility and control over all aspects of production financing.
- The Canadian producer must have and maintain full responsibility and control over the negotiation of initial exploitation agreements.
- The Canadian producer is entitled to a reasonable and demonstrable monetary participation in terms of budgeted fees and overhead,

## 4.11 Courtesy Credit Exemptions for Non-Canadian Producer-Related Personnel

- An exemption for a foreign courtesy credit may be granted only where the functions of the individual in no way interfere with the financial and creative authority of the Canadian producer, and relate either to the arranging of foreign broadcast, distribution or financing, or the provision of services to the production under the strict supervision and control of the producer.

# 4.12 Format Programs

- Format programs, produced outside of Canada, and intended to be produced in Canada by a Canadian producer under a licence issued by the non-Canadian owner of the underlying rights, are eligible for the CPTC.
- Canadian producer must demonstrate that he or she controls the initial exploitation of the Canadian version of the production.

## 4.13 Non-Canadian Showrunners

- Any non-Canadian commonly referred to as a “showrunner” for a production, must submit a non-Canadian showrunner affidavit declaring that work performed is done under the direction and control and with the full knowledge of the Canadian producer.
- In addition, the producer must submit to CAVCO the contract entered into with this individual, outlining the work to be performed and the conditions of employment.

## 4.14 Additional Screen Credit Requirements

- The Canadian production company, as well as the producer, must be identified on screen, in the main titles, and in all billing blocks.
- The Canada Wordmark logo must appear in all domestic and international versions of each production and in all related advertising, publicity and promotional materials.



# FINANCIAL INFORMATION

## 5.01 Expenditures

- Based on a production's eligible cost of production and its net labour expenditures.
  - CAVCO Part A certificate provides an estimate of both of these amounts.

## 5.02 Eligible Cost of Production

- The CPTC may not exceed 15% of the cost of production after deduction of any assistance.
- Any assistance received in respect of an eligible production will reduce the cost of production that is eligible for the tax credit. Assistance

# 5.03 Labour Expenditures

Must meet four basic criteria:

1. They must be reasonable in the circumstances;
2. They must be included in the cost or, in the case of depreciable property, the capital cost to the corporation, of the property;
3. They must be incurred for the stages of production of the property from the **production commencement time** (see inset) to the end of post-production stage; and
4. They must be directly attributable to the production of the property.

Domestic co-producer must own at least some portion of copyright where they may have incurred expenses for the production.

## 5.04 Types of Labour Expenditures

- The labour expenditures of a corporation are equal to the total of three categories: salaries or wages, remuneration other than salary or wages, and reimbursement by a wholly-owned corporation to its parent.
- **Salaries or wages** must be paid to Canadian citizens and/or residents of Canada.
- Remuneration, other than salary or wages s. 5.04.2
- Reimbursement by a wholly-owned corporation to its parent s. 5.04.3

## 5.05 Labour Expenditures during Post-production

- Payments are made in the form of salary or wages.
- Paid to another taxable Canadian corporation, for services performed according to duties set out in the *Income tax act*
  - *E.g.* sound-effects technician, a colourist, a computer graphics designer, an optical effects technician, or a special effects editor.
- CRA may request that the service entitles breakdown of the labour(and supply) component of their invoices

### **Exceptions**

- Higher labour rates are permissible for certain work performed during post-production.

Description	Account	%
Voice-over recording and post-synchronization (recording technician and sound engineer)	63.10	100
Foley track (recording technician, Foley technician)	63.35	50
Negative cutting	64.05	100
Original Effects Recording (labour cost for sound engineer and boom operator)	65.01	100
Post-sync Dialogue (ADR) (detection, transcription, work plan, sound engineer and recording technician)	65.25	100

# 5.06 Canadian Expenditures

Must meet the two following requirements

1. Not less than 75% of the total of all costs for services provided toward producing the production (other than excluded costs) must be payable for services provided to or by individuals who are Canadians.
2. Not less than 75% of the total of all costs incurred for the post-production must be incurred for services provided in Canada

# 5.07 Financing Sources

## **Proof of Financing**

- A production must be fully financed, even at the time of a Part A application.
- List financing sources required to cover the Canadian production company's production costs.
- Report any assistance that is known or anticipated

## **Bona fide loans versus forgivable loans**

- Bona fide loan should reflect a fixed maturity date and contain repayment terms that are **not contingent** on a future event.
- A forgivable loan, where repayment is **contingent** upon the occurrence of a possible future event such as profit generation— reducing the eligible production cost for the production



# EXPLOITATION

## 6.01 Exploitation Rights

- The production company must control the initial worldwide exploitation rights over the production.
- Must submit copies of all major distribution or broadcast agreements for a production.
  - particularly where they represent, directly or indirectly, a source of financing for the production
  - terms of the agreement need to be known to confirm that sufficient net revenues are ultimately being remitted to the production company or related party.

## 6.02 Canadian Distribution and Broadcast Rights (Two-year Clause)

- There must be confirmation in writing from a Canadian distributor or a CRTC-licensed broadcaster that the production will be shown in Canada within the two-year period following its completion.
- Distributor must be a Canadian company, or arrange to have a Private Company Declaration (CAVCO Form 01F16).
- The agreement must be for consideration at the fair market value with :
  - a corporation that is a Canadian and is a distributor of film or video productions
  - a corporation that holds a broadcasting licence issued by the CRTC for television markets

## 6.03 Exploitation by a Non-Canadian Entity in Canada

- “excluded production” if it is distributed in Canada by a non-Canadian
- The production cannot be distributed in Canada by an entity that is not Canadian within the two-year period that begins when the production first becomes commercially exploitable.

## 6.04 Acceptable Share of Revenues

- The production company or a related taxable Canadian corporation must retain an acceptable share of revenues from the exploitation of the production in non-Canadian markets.
- “acceptable share of revenues” means producers must retain at least 25% of the net profits from the exploitation of the production in non-Canadian markets.