

## **CAVCO - PRODUCER CONTROL GUIDELINES**

For treaty co-productions, please refer to Telefilm Canada guidelines.

In order to ensure that access to the new Canadian Film or Video Production Tax Credit is limited to productions that are truly owned and controlled by Canadian companies, and in addition to copyright ownership, company eligibility and distribution requirements outlined in subsections 1106(1) and (3) of the Income Tax Regulations, CAVCO will apply a number of tests described herein to determine production eligibility.

The following guidelines will apply to any production whose principal photography begins on September 1, 1996 and beyond.

However, please note that, in consultation with industry associations, the Department of Canadian Heritage has agreed to provide a transition adjustment period allowing television series in respect of which the last day of shooting of its 1997 cycle occurs no later than December 31 of that year, to continue to qualify provided that the series benefitted from either Capital Cost Allowance or the Tax Credit in 1995. This transitional measure will not apply to movies of the week or other non-series programming, or spin-offs, sequels, etc. that might follow the original series in question. This measure will also not apply in cases where only a pilot episode was produced in 1995.

## **Producer definition**

Throughout this document, the term "producer" is used to refer either to the eligible individual, or to the production corporation, or both. For the purposes of the tax credit, an individual producer must, at all relevant times, be a Canadian citizen or a permanent resident as defined in the Immigration Act. A production company must be an eligible company as defined in the Income Tax Act.

The producer shall be defined as follows:

The producer controls and is the central decision maker in respect of the production from beginning to end. The producer is normally involved in and is 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 the 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.

Only those productions for which Canadians assume the preceding responsibilities will be recognized as Canadian film or video productions (see also Non-Canadian Exemption Policy).

The functions of line producer and production manager, in and of themselves, are not sufficient to confer producer status. Furthermore, persons assuming these functions, as well as persons to whom they report, must also be Canadian.

## **Approvals**

Control by the Canadian producer over the financial and creative elements of the production may be subject to reasonable and customary approvals required by other non-Canadian arm's length financial participants such as distributors, broadcasters and financiers. For greater clarity, however, reasonable and customary approvals shall not confer to individuals other than the producer, significant controls and/or approval rights consistent with, or encroaching in any manner on, those of the producer. These individuals (and/or any related, associated or affiliated entity) should not, for example, control expenditures and co-sign cheques, receive under budgeted amounts, supervise certain production functions such as production accountant or production manager, or be able to overrule the producer in the case of a dispute.

## Requirements

1. 100% of the worldwide copyright in the production must be owned and controlled by Canadians for a minimum period of twenty five years<sup>1</sup> that begins the first time the production has been completed and is commercially exploitable;
2. the Canadian distribution rights must be owned and controlled by Canadians for a minimum period of twenty five years<sup>2</sup> that begins the first time the production has been completed and is commercially exploitable;
3. the producer must control the initial licensing of commercial exploitation of the production;
4. the producer must, in the opinion of the Minister, retain a reasonable financial interest in the foreign exploitation of the production (see indicators 2 and 3);
5. the producer must not be a producer-for-hire of a non-Canadian entity (with minimal remuneration and payments tied to incremental or achieved results) or be tied contractually to an ineligible entity in such a way as to restrict the authority and responsibilities of the producer;
6. the producer must not receive less remuneration as a producer (in the aggregate) than the total paid to all credited or uncredited foreign producer-related positions (in the aggregate);
7. the producer must not be a party to an agreement that grants a non-Canadian entity the right to cancel the agreement at any time without suffering a significant penalty;
8. the producer must not be a party to an agreement wherein the producer can be overruled by a non-Canadian entity in the case of a dispute. In addition, no one may have the ability to fire the producer (except for a producer hired by the eligible Canadian production company), subject to normal takeover rights of a completion guarantor or an entity normally in the business of lending money and taking security therefor. Any agreement(s) with such an entity must clearly state that, in the event the production is taken over, the entity will ensure that the production continues to comply with all of CAVCO's requirements (see indicator 7).

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<sup>1</sup> Clause 1106(1)(a)(ii)(A) of the proposed Income Tax Regulations applies to the 1995 year and subsequent taxation years except that the reference to the "twenty-five-year period" in that clause shall be read as a "five-year period" in the case of a film or video production for which a Canadian film or video production certificate is obtained before 1997.

<sup>2</sup> The Department of Finance is presently evaluating an industry proposal to modify subparagraph 1106(1)(a)(iv) of the proposed Income Tax Regulations to raise the Canadian distribution requirement from a two-year period to a twenty-five-year period.

## Indicators

In addition, the following indicators will be considered in assessing true Canadian ownership and control of the production:

1. evidence that 75% or more of the total budget/final cost is financed (or interim-financed) by a single non-Canadian entity (or through a combination of related, associated or affiliated non-Canadian entities), but specifically excluding recognized lending institutions, along with evidence of substantial foreign controls in other areas;
2. evidence that a Canadian entity does not own or control distribution and exhibition rights to at least either the USA or an economically significant portion of the world outside North America;
3. evidence that the Canadian producer does not retain an effective share of net proceeds equivalent to at least 25% of the value worldwide excluding Canada;
4. evidence that the producer does not have at least a right of first negotiation, or option rights, for subsequent cycles of a television series, sequels and spin-offs based on the specific rights acquired;
5. evidence that the producer does not participate in the meaningful development of the story, concept and/or script acquired;
6. evidence that foreign participants may, through the receipt of weekly expense statements, daily rushes, rough cuts, etc., exercise undue control or require changes (at a cost or at no cost to the producer), save to conform to pre-approved elements or in the opinion of the producer, enhance the production;
7. evidence that a foreign company (other than a recognized lending institution) which is normally involved in the business of either producing, distributing, broadcasting or similar endeavours, is providing the completion guarantee with standard take-over rights.

Where, in the opinion of CAVCO and upon review of all material documents, contractual conditions related to areas outlined above limit the Canadian producer, the production will be considered ineligible for the program. CAVCO will make its determination on a case by case basis, giving due regard to all contractual obligations, facts and representations.

## Non-Canadian Exemption Policy <sup>3</sup>

### **(i) Individual production-related positions and screen credits**

1. Co-production credits (with the exception of treaty co-productions) will not be granted to non-Canadian persons;
2. A maximum of two (2) non-Canadian credits for the following positions are allowed, provided that these functions in no way interfere with the financial and creative authority of the Producer and either relate to the arranging of foreign distribution or financing, or the provision of services to the production under the strict supervision and control of the Producer (exemptions on the sole basis that an individual held initial or previous rights will not be granted):
  - . Executive producer
  - . Senior executive/Executive in charge of production
  - . Supervising producer
  - . Supervising executive
  - . Production supervisor
  - . Associate producer

Persons requiring such exemptions will be required to sign duly notarized affidavits (on a CAVCO-approved form), outlining full and specific duties and responsibilities, and in which they declare that they hold no ultimate creative or financial decision making power. All affidavits are to be sworn before non company-related Commissioners of Oaths. CAVCO also requires full disclosure of all documentation pertaining to exempted individuals' involvement in the production.

[Particular attention will be paid to the favourable positioning (prominence and time on screen) of foreign courtesy credits in various types of productions, as a further indicator of non-Canadian control];

3. In addition to the maximum two (2) non-Canadian credits granted under paragraph (i) 2. above, and subject to paragraph (i) 4. below, a maximum of one (1) individual non-Canadian courtesy credit from among the following positions may be allowed provided that these functions in no way interfere with the financial and creative authority of the Producer (CAVCO also reserves the right to approve or disapprove other similar credits). These functions will also be subject to the filing of exemption affidavits outlining full and specific duties and time on set:
  - Production Executive
  - Production Associate
  - Executive/Production Consultant
  - Creative Consultant

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While these guidelines are expected to apply in most cases, CAVCO may also consider requests for credits whose net effect conforms with this policy.

4. Consideration will also be given to the granting of an Executive producer credit for either a non-Canadian leading performer or a writer-for-hire, provided that the credit is offered solely as a vanity credit. Only one (1) such credit may be granted and a credit granted under these circumstances will disallow the granting of any credit (or similar credit) listed under paragraph (i) 3. to any other production personnel. In certain cases, the writer-for-hire may also be accorded an additional "Created by" or "Creative Consultant" credit provided that it is clearly established by contract that this person is working under the direct supervision and control of the Canadian producer who at all times retains the ability to terminate the person's employment. Evidence in the form of an executed service agreement, as well as an affidavit (on a CAVCO-approved form), must be submitted in support of the writer-for-hire credit. A leading performer is not required to submit an affidavit;
5. The amount of time which may be spent on set by **credited** (exempted) non-Canadian representatives (with the exception of a leading actor or writer-for-hire) is limited to 25% of principal photography;
6. Non-Canadian **individual presenter** credits will only be granted for representatives of bona fide distribution companies or licenced broadcasters whose functions on the production are solely to distribute or broadcast, and involve no creative or financial control. In addition, such credits will require an exemption and will be counted in determining the maximum exemptions granted under paragraphs (i) 2., 3. and 4. However, these individuals cannot also claim a producer-related credit by virtue of paragraphs (i) 2., 3. and 4.
7. All remuneration (including fringes, travel, accommodations and gratuities) for any credited or uncredited producer-related positions (including specific contractual remuneration for leading actors' and writers' courtesy producer-related credits) will be treated as part of the expenditures when calculating the percentage amount of services spent on Canadian and non-Canadian elements.

**(ii) Corporate credits**

1. Co-production credits (with the exception of treaty co-productions) will not be granted to non-Canadian entities;
2. At all times, the main and end titles must clearly and prominently identify the Canadian producer and production company;
3. Corporate presentation credits are allowed for non-Canadian licensed broadcasters;
4. Subject to CAVCO approval, other non-Canadian corporate entities such as distributors, syndicators, packagers and financiers, may be granted up to a maximum of two (2) presentation credits in the main titles;

5. Substitution of corporate presentation credits for distribution and/or broadcasting entities, in non-Canadian territories specifically held by them, will be allowed;
6. "In association with" (or similar) credits:

a) Main titles:

Subject to paragraph (ii) 4., "in association with" (or similar) production credits, may be granted to non-Canadian bona fide distributors and licensed broadcasters only to the extent that these entities provide solely a distribution or a broadcasting service and where the credit conforms to the following:

**"a (Canadian company) production in association with (foreign entity)".**

CAVCO will not recognize credits in the form of "a (Canadian company) production produced in association with (non-Canadian entity)", or "produced by (Canadian company) in association with (non-Canadian entity)".

b) End titles:

There is no restriction as to the number of "in association with" (or similar) production credits for non-Canadian entities, provided that these credits conform with the language in 6.a) above and that the Canadian production company is clearly and no less prominently identified.

7. Logos of non-Canadian broadcasters, distributors, syndicators, packagers and financiers are allowed in the end titles provided that Canadian company logos also appear and are no less prominent;
8. The Canadian copyright is mandatory in the screen credits.

**(iii) Individual and Corporate Credits**

1. A maximum of two (2) credits may be allowed for **any one** non-Canadian company and/or its representative(s) in total, as listed under sections (i) and (ii);
2. Subject to paragraph (ii) 5., CAVCO-approved screen credits are to be maintained in all territories and media throughout the world (by specific contractual agreement). Furthermore, producers will ensure that the credits used in billing blocks, video cassette boxes, posters and all other forms of advertising will be consistent with the approved credits. Intentional deletion of Canadian producers, stars and key creatives (or substitution by non-Canadians) in foreign territories and media may cause the production to lose its certified status.

**i) INDIVIDUAL PRODUCTION-RELATED POSITIONS AND SCREEN CREDITS**

	OPTION 1	OPTION 2	OPTION 3
Producer, Co-Producer, Line Producer	Canadian	Canadian	Canadian
Executive Producer, Senior Executive/Executive in Charge of Production, Supervising Producer, Supervising Executive, Production Supervisor, Associate Producer [par. (i) 2] (notes 1,2)	2 foreign	2 foreign	1 foreign
Production Executive, Production Associate, Executive or Production Consultant, Creative Consultant [par.(i) 3] (notes 1, 10)	1 foreign	0 foreign	1 foreign
OR	OR	OR	OR
Executive Producer for lead performer or writer-for-hire [par. (i) 4] (notes 1,8)	1 foreign	0 foreign	1 foreign
Individual Presenter [par. (i) 6] (notes 1,3,4)	0 foreign	1 foreign	1 foreign

**ii) CORPORATE CREDITS**

	OPTION 1	OPTION 2	OPTION 3
Broadcaster (presenter) [par. (ii) 3]	foreign	foreign	foreign
Distributor, syndicator, packager, financier (presenter) [par. (ii) 4] (notes 5, 9)	2 foreign	1 foreign	0 foreign
«in association with» or (similar) production credits • main title [par. (ii) 6a] (notes 5, 6, 7) • end title [par. (ii) 6b] (note 7)	0 foreign foreign	1 foreign foreign	2 foreign foreign

**NOTES**

1. An exemption is required.
2. For individuals whose functions in no way interfere with the financial and creative authority of the producer and either relate to the arranging of foreign distribution or financing, or the provision of services to the production under the strict supervision and control of the producer.
3. For an individual representative of a bona fide distribution company or a licenced broadcaster whose function on the production is solely to distribute or broadcast, and involves no creative or financial control.
4. This individual cannot also claim a producer-related credit by virtue of paragraphs (i) (2)(3)(4).
5. Subject to CAVCO approval.
6. Granted to non-Canadian bona fide distributors and licenced broadcasters only to the extent that this entity provides solely a distribution or a broadcasting service.
7. The credit must conform to the following: «a (Canadian company) production in association with (foreign entity)».
8. Provided that the credit is offered solely as a vanity credit.
9. A maximum of two (2) non-Canadian corporate credits in total, as listed under paragraphs (ii) 4 and 6a), may be allowed in the main titles.
10. Provided that these functions in no way interfere with the financial and creative authority of the producer.

**GENERAL RULE**

1. The amount of time which may be spent on set by credited (exempted) non-Canadian representatives (with the exception of a leading actor or writer-for-hire) is limited to 25% of principal photography.
2. A maximum of two (2) credits may be allowed for **any one** non-Canadian company and/or its representative(s) in total, as listed under sections (i) and (ii).
3. CAVCO approved credits are to be effective for all territories and media throughout the world (excluding presentation credits for specific distribution entities and/or broadcasters, in foreign territories specifically held by them).

**THIS CHART ONLY INDICATES SOME OF THE POSSIBLE OPTIONS.  
POLICY HAS PRECEDENCE OVER THIS DOCUMENT.**