

UK production tax credit updates for Canadian producers

Bob Tarantino 00:00

Hello entertainment law nerds, enthusiasts and aficionados, and welcome back to another episode of the Dentons' Canada Entertainment Media Law Signal podcast. I'm your host, Bob Tarantino, and I'm joined today by Isla McGillivray. Isla is a partner in the film, TV and video games team at Saffery LLP, and is based in their London, UK office. Saffery LLP is a UK audit, accounting and tax practice that operates throughout the UK and Ireland. All right. Isla, welcome, how are you?

Isla MacGillivray 00:33

I'm good, thank you. How are you?

Bob Tarantino 00:35

I'm doing well. I'm excited to chat with you today about UK tax incentives for film and television productions. And I understand that there have been some changes recently over the last six months or so, which may be of interest to Canadian producers. So would you mind just outlining what those changes have been?

Isla MacGillivray 00:57

Yeah, no problem at all. And yeah, it's been a busy side on the UK production incentive side of things. But all really good news. So first of all, oh golly, about two years ago now, the UK government issued a consultation to do with our tax reliefs and nothing to do with any issues of the ones that existed at the time. But it was actually a lot of it was driven by the OECD pillar two model rules, and to ensure that companies that fall into those rules weren't penalized by claiming the UK production incentives. And what that meant, to cut a long story down to quite a short summary of it, we now have the Audio-Visual Expenditure Credit, which you'll hear bandied about as AVEC, but that actually includes our film, TV, and that's our high-end TV, animation TV and children's TV tax reliefs now fall under the new AVEC, and that's been implemented since first of January 24 so any expenditure incurred from that date onwards can fall into the new AVEC. However, the government has been really generous, and there's a really long transition period. So actually up till 31st of March 27 you can stay on the old tax relief if you wanted to and there is a point in between that, some from first of April 25 if you're starting PP on or after, you do have to move on to AVEC, but it does mean for productions ongoing, or that are already finished, you have that option. But, we are finding most people are moving on to it, because it's really good news, you actually get another half a percent of credit back in your pocket, compared to the old tax relief. So previously, 25%, now under AVEC a net of 25 and a half for film and high-end TV. So in addition to the 25 and a half percent for film and high-end TV, there's also been a bump up for animation film and TV and children's TV. So where it was 25% before we now get an increased net credit up to 29.25% for those categories. And we've already seen an increase in the production side

coming to the UK for-- for animation in particular, which is great to see. So it's really had the intended consequences that UK government was looking to incentivize.

Bob Tarantino 03:23

Nice, and so I guess I want to ask a couple of more detailed questions, but before we sort of delve into the weeds, just taking a step back, wondering if you could give us a sense of comparatively how it is that the UK presents a really sort of great platform for productions, right? There's, there's lots of tax credit incentives around the world. Why is the UK sort of a good landing pad for producers?

Isla MacGillivray 03:59

It's a really good question. And there's probably, excuse me, lots of reasons of why the UK incentive is a really appealing incentive to uptake, but just the UK is a really appealing place to come in and do production work. I think, first and-- and foremost, you know, whatever is going on with an incentive side of things the UK's just a really strong hub of production skill sets, and that's shoot and post-work and VFX work as well. We have really great facilities. We have a lot of facilities, and they're all really high quality and expanding. But also the personnel we have here in the UK is a really high caliber. So for people looking to do really good quality production work, which, whether that's film, high-end TV animation and/or children's as well, is a really popular place to come. In terms of the incentive side, and it's a really dependable incentive. Yeah, it's run by sort of our government, and it's a tax credit. And what that means is, there's a process to follow, and as long as you're meeting the criteria and you are following what is qualifying spend what is not, you can track how much incentive you will get very accurately, so there's no question mark around how much you will get. And also, when you do come to submit it, it's a very well-trodden path. They have very quick turnaround times compared to other jurisdictions. And so from that side of it, is a really dependable incentive. On top of that, I'm sure everyone could talk about at length why their incentive is a really great one, but the UK has a couple of quite unique things about it that, again, makes it really appealing. Whereas in most jurisdictions, your incentive is maybe based on spend in the country, or nationality residency of those personnel, for example, the UK works slightly differently, and it's based on a used or consumed basis. So UK qualifying spend is cost incurred, used or consumed throughout the production here in the UK. So the example we always like to give, because I think it's an easy one for people to get their head around, is if you have an American cast member, but they come to the UK and do 100% of their shoot days in the UK, 100% of their fee would be UK qualifying spend. So it means there's a real incentive to come to the UK, to bring the best people, whether that's outside of the UK, specifically for your production, or there's a huge hub of really highly skilled people here in the UK, you can come to the UK, do your work here, and for the spend you're using or consuming in the UK, you will get UK tax credit on it. There's also the benefit of here in the UK, it's not just your hard production costs, you also are able to get UK tax credit on contingent compensation. So further down the line, take a film, for example, it's been released, if you're paying out back-end payments, so for example, participation payments to that cast member that came and did all their work here in the UK, 100% of their fee is UK spend, you're going to be able to claim potentially, and if things have been structured correctly, UK tax credit on that participation payment as well, which is a really unique thing about the UK incentive.

Bob Tarantino 07:35

Yeah, wow. That's amazing. I mean, I was going to say it sounds like there's a lot of similarities between Canada and the UK in the sense of the dependability of the tax credit, and the quality of the of the cast and the crew and the facilities, but that last component that you mentioned, I mean, that's quite remarkable, that—that-- that really does provide an incentive. And I mean in terms of how this plays out for Canadian producers, this often is, so look, we often see international treaty co-productions, which are, you know, joint efforts between Canadian and UK-based producers. I will confess I used to see more of those than I've seen recently. But it sounds like ,and maybe you can expand on this, it sounds like there are some features of the recent changes which actually make it more likely that we're going to see more Canada, UK co-productions going forward, and those are budget-related. So could I ask you to expand on that a little bit?,

Isla MacGillivray 08:37

Yeah, absolutely. I mean, first of all, I would just say, to your point, I would say exactly the same: We used to see a lot of co-productions in the UK, full stop. Canada is a really popular place to do it and I'm certain that is driven by the high quality production work that happens in Canada. But same as you, it's definitely decreased over the years. However, to your point, the UK has recently introduced, just in 2024, what was initially announced as the independent film tax credit, which is now being called the 'Enhanced AVEC' for lower budget films. And what that allows is actually an increased tax credit rate. So if we compare them, in film AVEC, you're getting 25 and a half. If you fall into this Enhanced AVEC, and meet the qualifying criteria, you can get a net credit of 39.75%, so a huge increase. And the qualifying criteria for that is, you have to have a core-- core spend of up to £23.5 million, but only 80% of £15 million would actually qualify for that increased uplift. If I can elaborate on that a little bit more, because people will be like, 'Why is there so many numbers with different rates?' Initially it got announced that the limited budget, so the lower budget element would be, and qualifying films would be up to £15 million budgets. And-- but what that actually meant was, if you were within that £15 million, you were getting that 39.75 and you could just tip over that you would be out of that 39.75% tax credit figure, you'd fall back into 25.5% for just going over it a little bit, and there was this gaping hole, whereas the 23.5% sorry, £23.5 million allows for a tapering to happen between £15 million budget and \$23.5 million budget, of core, spend. So in short, it means that you can get 39.75% up to £12 million as your tax credit. And then after that, you can get the same within that regime, so within your Enhanced AVEC amount, up to the 23.5 million. But once you're there, you can switch on to AVEC, and so you could transfer over, which you would want to do anyway, because you'd start getting more tax credit. I apologize, that's a lot of numbers.

Bob Tarantino 11:07

No, it made perfect sense, and it's very helpful. I mean, it sounds like for those-- this is going to be the wrong descriptor, but for what I'll call sort of mid-budget projects, it becomes much more attractive to partner up with a UK co-producer, right? Because, I think part of the reason why we saw a fall-off was because it became harder to justify the increased sort of expenditures and efforts to do a co-production, because co-productions are tricky. It became harder to justify doing those at a lot of the budget levels that a lot of Canadian producers sort of work in. But now, with those numbers being that--, with that band in place, it sounds like, I think, the expectation on, certainly our hope, is that there's going to be more projects which are going to qualify for that, and which are going to find this to be an attractive, you

know, regime under which to actually produce the project, so that's great. That looks excellent. Have you started seeing an uptick already, or are we still sort of waiting for the impact to materialize?

Isla MacGillivray 12:15

So we have seen, pretty much immediately, an uptick. So the announcement was initially made in the spring budget. There was initial legislation that came into play towards the end of July, so around the summer time, but not all of it. And then the final legislation came out just towards the end of October. So now productions can actually get their BFI certificate that certifies them qualifying for this. And we've already seen an increase in terms of the number of productions that-- that can qualify and want to go down this route. Just to expand on the qualifying criteria. So to your point, Bob, so the qualifying criteria for this Enhanced AVEC is: it needs to be a film, so it needs to have the intention for theatrical release. It's got the budget criteria, which I've mentioned, but there's also an additional criteria, so you need to have at least one of: a UK writer, a UK director, or qualify as an official co-production under a co-production treaty. So that's where we've seen a lot more inquiries and productions looking to reinvigorate those co-productions under co-production treaties that used to be around a lot of the time, have decreased massively, and those really popular territories, which definitely include Canada, are certainly at the forefront of UK producers and looking where they can have a co-production agreement with, and work with a co-producer that they can really work with and depend on.

Bob Tarantino 13:52

Great, and sorry, just to pick up on one point that you mentioned there, so 'intended for theatrical release'. So I'm assuming then that projects which are intended for an initial streaming release on a platform will not qualify for this. Is that correct?

Isla MacGillivray 14:07

That's a really good question, and that is correct. So if you have sold to a streaming platform, you've got intention for broadcast, so you fall into our TV incentives. This has to be film, which is intended for theatrical release. It doesn't mean you can't do a broadcast after but the initial intention has to be theatrical.

Bob Tarantino 14:25

Got it, get people back into the theaters. I like it. Okay, so look, it sounds like there are a lot of reasons for producers, Canadian producers, to, you know, refresh their-- their knowledge about the UK incentives. And to take a fresh look at, you know, producing something with a UK co-production partner. As I sort of alluded to before, co-production can be tricky. You're sort of trying to navigate two separate legal and financial regimes. There's a lot of professional advice which is needed to do that successfully. Are there any sort of tips or guidelines that you would give Canadians who are thinking about exploring this further and in terms of, you know, getting themselves best positioned to take advantage of these opportunities?

Isla MacGillivray 15:13

Yes, is the easy answer. I would say, certainly having legal advice of people who have experience of this will make your life significantly easier. And I would say, if you are looking at potentially co-producing with a UK producer, have those conversations early. Because from a UK side, you need to

have your UK company set up, and you need to obtain your BFI certificate certifying you as an official co-production in advance of principal photography starting, and there's quite stringent deadlines around that, so you really need to make sure you have everything in place. From a legal side, it's been structured correctly. Your legal agreements are in place, and you started that certification process early to make sure you meet all the requirements before you start. This isn't a situation you can circumvent after the fact. You have to have everything set up correctly from the beginning.

Bob Tarantino 16:09

Fantastic. Well, I really want to thank you for taking the time to walk us through this today. This has been really informative, and I think it's going to be really helpful for a lot of producers who are looking to get projects you know onto the screen and people into theatres to see them. How can people find you or, and/or Saffery to learn more about this and explore this further?

Isla MacGillivray 16:33

And so I guess the easiest place to find us is online, like everyone else these days. So Saffery, Saffery.com, and on our website, we actually have a couple of sort of hit pages that people can have a quick look and find out a little bit more about the initial AVEC changes, find out some more details about the Enhanced AVEC for lower budget films, and also some details about the newly announced VFX uplift for UK VFX spend, and also it has our details. We're a really big team, it's definitely not just me, so there's other partners in our team that can help with queries. We're a team of over 80 people now working on this, so our contact details are on the website. So if you have any initial questions, definitely have a look there. I would also always suggest the BFI website, so the British Film Institute, they have some really helpful guidance, especially on the co-production side of things. So if you're just wanting to explore a little bit, they are probably two good places to start,

Bob Tarantino 17:36

Fantastic. And of course, for Canadian producers, they should also check out the co-production materials available on the Telefilm Canada website. Well, thanks again. I really appreciate you taking the time, and thanks to our listeners for joining us today. And please be sure to listen in for the next episode of the Dentons' Canada Entertainment media law signal podcast. Thanks everyone.

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