

Caution:

This consultation draft is intended to facilitate dialogue concerning its contents. Should the decision be made to proceed with the proposal, the comments received during consultation will be considered during the final preparation of the regulation. The content, structure, form and wording of the consultation draft are subject to change as a result of the consultation process and as a result of review, editing and correction by the Office of Legislative Counsel.

CONSULTATION DRAFT

ONTARIO REGULATION

to be made under the

TAXATION ACT, 2007

Amending O. Reg. 37/09

(GENERAL)

1. Section 23 of Ontario Regulation 37/09 is amended by adding the following definitions:

“alternative means” means a means of making a film or television production commercially available for viewing by the public via download or streaming over the Internet, via video-on-demand or on physical media;

“application deadline” means, in respect of an application for certification by a qualifying production company for a film or television production, the later of,

- (a) the day that is 24 months after the end of the qualifying production company’s taxation year in which the production’s principal photography began, or
- (b) the day that is 18 months after the day referred to in clause (a), if
 - (i) the qualifying production company has filed with the Ontario Minister a waiver described in subparagraph 152 (4) (a) (ii) of the Federal Act within the company’s normal reassessment period for its first and second taxation years ending after the production’s principal photography began, and
 - (ii) a copy of the waiver is provided to the Ontario Media Development Corporation or such other person as may be designated by the Minister of Culture;

“Canadian broadcaster” means a corporation that carries on a broadcasting undertaking licensed by the Canadian Radio-television and Telecommunications Commission under the *Broadcasting Act* (Canada);

“documentary” means a film or television production that is an original work of non-fiction primarily designed to inform, but that may also educate and entertain, and that provides an in-depth critical analysis of a specific subject or point of view;

“prescribed taxable Canadian corporation” means a taxable Canadian corporation that is a Canadian, other than,

- (a) a corporation that is controlled directly or indirectly in any manner whatever by one or more persons all or part of whose taxable income is exempt from tax under Part I of the Federal Act, or
- (b) a corporation that is a prescribed labour-sponsored venture capital corporation under section 6701 of the Federal regulations;

“prime time” means the period of four hours beginning at 7:00 p.m.;

“Producer Control Guidelines” means the section on production control of the Canadian Film or Video Production Tax Credit (CPTC) Application Guidelines of the Canadian Audio-Visual Certification Office (CAVCO);

“television broadcast” means the scheduled transmission of a film or television production for reception by the public by a broadcasting undertaking, as defined in the *Broadcasting Act* (Canada), but not by an undertaking for the transmission or retransmission over the Internet for reception by the public;

“theatrical distribution” means an arrangement with a distributor to have a film or television production shown commercially in cinemas for viewing by the paying public;

“treaty co-production” means a film or television production whose production is contemplated under an instrument listed in subsection 1106 (3) of the Federal regulations and to which the instrument applies.

2. (1) Subsection 27 (1) of the Regulation is amended by striking out the portion before paragraph 1 and substituting the following:

Eligible Ontario production, principal photography commenced before November 1, 2022

(1) A film or television production that is made by a qualifying production company and for which principal photography had commenced before November 1, 2022 is an eligible Ontario production for the purposes of section 91 of the Act if the following conditions are satisfied:

(2) Subsection 27 (4) of the Regulation is revoked.

3. The Regulation is amended by adding the following section:

Eligible Ontario production, principal photography commenced on or after November 1, 2022

27.1 (1) A film or television production that is made by a qualifying production company and for which principal photography commences on or after November 1, 2022 is an eligible Ontario production for the purposes of section 91 of the Act if the following conditions are satisfied:

1. The production consists solely of non-interactive audiovisual content that is either a single installment or a group of two or more episodes.
2. The production is made for commercial exploitation by means of one or more of the following:
 - i. Theatrical distribution.
 - ii. Television broadcast.
 - iii. Alternative means.
3. The production is not an excluded production for the corporation.
4. If the production is for television broadcast and is not intended primarily for children, the production or, if the production consists of two or more episodes, each episode of the production, is suitable for initial broadcast in a standard television time slot of at least 30 minutes.
5. Neither the production nor any interest in any entity that has, directly or indirectly, an interest in the production is a tax shelter investment for the purposes of section 143.2 of the Federal Act.
6. The producer of the production or, if the production is an interprovincial co-production or treaty co-production, the producer of the Ontario portion of the production is at all times an individual who was resident in Ontario at the end of the last two calendar years ending before principal photography for the production commences.
7. If the production is not a treaty co-production, the Ontario Media Development Corporation or another person designated by the Minister of Culture has allotted

(under the rules in subsection 1106 (5) of the Federal regulations) not less than six points,

- i. to the production if it is a single installment,
 - ii. to each episode if the production is a group of two or more episodes.
8. Not less than 75 per cent of the cost of producing the production or, if the production is an interprovincial co-production or treaty co-production, not less than 75 per cent of the cost of producing the Ontario portion of the production, other than costs determined by reference to the amount of profits or revenue from the production, is for amounts payable to Ontario-based individuals or corporations for goods or services provided by the Ontario-based individuals or corporations in the course of carrying on their businesses at permanent establishments in Ontario.
9. If the production is not an interprovincial co-production or a treaty co-production,
 - i. at least 95 per cent of the cost of post-production work for the production was for post-production work carried out in Ontario, and
 - ii. if the production is not a documentary, the photography or key animation for the production was done in Ontario during at least 85 per cent of the total number of days during which photography or key animation was done for the production.
10. If the production is an interprovincial co-production, not less than 20 per cent of the cost of producing the production, other than costs determined by reference to the amount of profits or revenue from the production, is in respect of the Ontario portion of the production.
11. If the production is a treaty co-production and contains a Canadian portion that, if considered alone, would be an interprovincial co-production, not less than 20 per cent of the cost of producing the Canadian portion of the production, other than costs determined by reference to the amount of profits or revenue from the production, is in respect of the Ontario portion of the production.
12. The production is not a production for which public financial support would be contrary to public policy.
13. If principal photography for the production commences after December 31, 2022, the end credits of all domestic and international versions of the production or of each episode, if the production consists of two or more episodes, include the following:

- i. The Province of Ontario wordmark logo in use at the time the production is completed.
- ii. The wordmark logo of the Ontario Media Development Corporation in use at the time the production is completed.
- iii. One of the following statements:
 - A. “Produced with film and television tax credit assistance from the Government of Ontario” if the production’s end credits are in English.
 - B. “Avec l’aide du gouvernement de l’Ontario grâce aux crédits d’impôt pour la production cinématographique et télévisuelle” if the production’s end credits are in French.
 - C. A statement that represents a translation of the statement “Produced with film and television tax credit assistance from the Government of Ontario” in the language used in the production’s end credits if the production’s end credits are in a language that is neither English nor French.

14. If the production is made for commercial exploitation by alternative means,

- i. the total of all expenditures included in the cost of producing the production, other than any deferred or unpaid expenditures, are equal to or greater than,
 - A. \$250,000, if the entity that makes the production available for viewing in Ontario deals at arm’s length with the qualifying corporation, or
 - B. \$500,000, if the entity that makes the production available for viewing in Ontario does not deal at arm’s length with the qualifying corporation, and
- ii. the cost per minute of the production, determined by dividing the total of all expenditures included in the cost of producing the production, other than any deferred or unpaid expenditures, by the total number of minutes in the completed runtime of the production, is equal to or greater than \$2,000.

(2) For the purposes of paragraph 3 of subsection (1), a film or television production is an excluded production with respect to a corporation,

- (a) if the corporation has not filed an application with the Ontario Media Development Corporation or another person designated by the Minister of Culture for a certificate of completion before the production's application deadline;
- (b) if a certificate certifying that the production has been completed has not been issued within six months after the application deadline for the production by the Ontario Media Development Corporation or such other person as may be designated by the Minister of Culture;
- (c) if, in the case where the production is not a treaty co-production, neither the corporation nor a prescribed taxable Canadian corporation related to the corporation,
 - (i) is, except to the extent of an interest in the production held by the prescribed taxable Canadian corporation as a co-producer of the production or by a person prescribed in subsection 1106 (10) of the Federal regulations, the exclusive worldwide copyright owner of the production for all commercial exploitation purposes for the 25-year period that begins at the earliest time after the production is completed that the production is commercially exploitable, and
 - (ii) controls the initial licensing of commercial exploitation of the production;
- (d) if, in the case where the production is made for commercial exploitation by means of theatrical distribution, there is no agreement in writing with a Canadian corporation having a permanent establishment in Ontario that is a distributor of film productions, for consideration at fair market value, to have the production shown in Ontario within the two-year period that begins at the earliest time after the production is completed that the production is commercially exploitable;
- (e) if, in the case where the production is made for commercial exploitation by means of television broadcast, there is no agreement in writing with a Canadian broadcaster that is not associated with the qualifying corporation, for consideration at fair market value, to have the production shown in Ontario within the two-year period that begins at the earliest time after the production is completed that the production is commercially exploitable;
- (f) if, in the case where the production is made for commercial exploitation by alternative means, there is no agreement in writing with a person or other entity that makes film or television productions available for viewing by the public, for consideration at fair market value, to have the production made available for viewing in Ontario within the two-year period that begins at the earliest time after the production is completed that the production is commercially exploitable;

- (g) if Ontario distribution rights are exploited by a person who is not a Canadian within the two-year period that begins at the earliest time after the production is completed that the production is commercially exploitable;
- (h) if, in the case where the production is made for commercial exploitation by means of television broadcast, the initial broadcast of the production is not during prime time, unless the production is intended primarily for children;
- (i) if the production does not satisfy the requirements of the Producer Control Guidelines issued by the Department of Canadian Heritage;
- (j) if the production is,
 - (i) news, current events or public affairs programming, or a programme that includes weather or market reports,
 - (ii) a talk show,
 - (iii) a production in respect of a game, questionnaire or contest (other than a production directed primarily at minors),
 - (iv) a sports event or activity,
 - (v) a gala presentation or an awards show,
 - (vi) a production that solicits funds,
 - (vii) reality television,
 - (viii) pornography,
 - (ix) advertising,
 - (x) a production produced primarily for industrial, corporate or institutional purposes, or
 - (xi) a production, other than a documentary, all or substantially all of which consists of stock footage;
- (k) if, in the case of a production made for commercial exploitation by alternative means, the production is,
 - (i) an instructional production, including instructional videos or tutorials related to cooking, crafting, renovating, beauty, fitness, parenting, careers or finance,

- (ii) a review or a commentary, opinion or advice video,
- (iii) educational content related to a curriculum or course of study, other than a production directed primarily at children under the age of 12,
- (iv) a vlog, travelogue, video journal or diary, home movie or a production that primarily consists of recreational content,
- (v) a music video,
- (vi) a production in respect of esports, gaming, or gambling,
- (vii) a prank video,
- (viii) a speech, sermon, presentation or discourse,
- (ix) coverage of a conference, gathering, ceremony or event,
- (x) a production that primarily consists of content from another film or television production or an interactive digital media production previously released to the public, or
- (xi) a production all or substantially all of which consists of user-generated footage.

(3) For greater certainty, a documentary made for commercial exploitation by alternative means and containing footage described in clause (k) of subsection (2) is not an excluded production because it contains that footage.

(4) A terms of service agreement or similar agreement with a content platform that enables a user of the platform to post content online does not constitute an agreement in writing at fair market value for the purposes of clause (2) (f).

(5) A production that is made for commercial exploitation by more than one of the means listed in paragraph 2 of subsection (1) is an eligible Ontario production for the purposes of section 91 of the Act if it meets the criteria set out under subsection (1) for one of those means.

(6) For the purposes of subsection (1), a film or television production is an interprovincial co-production if the following conditions are satisfied:

1. The film or television production is jointly produced in accordance with a co-production agreement between one or more qualifying production companies and one or more other corporations.

2. All of the corporations referred to in paragraph 1 are Canadians.
3. With respect to each of the corporations referred to in paragraph 1 that is not a qualifying production company, less than 75 per cent of the cost to the corporation of producing its portion of the production, other than costs determined by reference to the amount of profits or revenue from the production, is for amounts payable by the corporation to,
 - i. Ontario-based individuals,
 - ii. one or more other corporations in respect of goods or services provided by Ontario-based individuals, or
 - iii. one or more corporations for goods or services provided in the course of carrying on their businesses at permanent establishments in Ontario.

4. (1) Clause 28 (1) (a) of the Regulation is amended by striking out “for the purposes of section 27” and substituting “for the purposes of sections 27 and 27.1”.

(2) Subsection 28 (2) of the Regulation is revoked.

5. (1) Subsection 30.1 (3) of the Regulation is amended by striking out “clause 27 (2) (d)” and substituting “clauses 27 (2) (d) and 27.1 (2) (d), (e) and (f)”.

(2) Subsection 30.1 (4) of the Regulation is amended by striking out “in subsection 27 (4)” in the portion before clause (a) and substituting “in section 23”.

6. Section 31 of the Regulation is amended by striking out the portion before paragraph 1 and substituting the following:

Eligible production, principal photography commenced before November 1, 2022

31. A film or television production for which principal photography had commenced before November 1, 2022 is an eligible production for the purposes of section 92 of the Act for a taxation year if the following conditions are satisfied:

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7. The Regulation is amended by adding the following section:

Eligible production, principal photography commenced on or after November 1, 2022

31.1 A film or television production for which principal photography commences on or after November 1, 2022 is an eligible production for the purposes of 92 of the Act for a taxation year if the following conditions are satisfied:

1. The production consists solely of non-interactive audiovisual content that is a single installment or a group of two or more episodes.
2. The production is made for commercial exploitation by means of one or more of the following:
 - i. Theatrical distribution.
 - ii. Television broadcast.
 - iii. Alternative means.
3. The principal photography for the production commences before the end of the year.
4. If the production is a group of two or more episodes or is a pilot episode for a series production, the total expenditures included in the cost of each episode or, if the production is a depreciable property, in the capital cost of each episode, during the 24 months after principal photography for the production commences, exceed,
 - i. \$100,000 if the episode has a running time that is less than 30 minutes, or
 - ii. \$200,000 in any other case.
5. If the production is not the type of production referred to in paragraph 4, the total expenditures included in the cost of the production or, if the production is a depreciable property, in the capital cost of the production, during the 24 months after principal photography for the production commences, exceed \$1 million.
6. The production is not,
 - i. news, current events or public affairs programming, or a programme that includes weather or market reports,
 - ii. a talk show,
 - iii. a production in respect of a game, questionnaire or contest (other than a production directed primarily at minors),
 - iv. a sports event or activity,
 - v. a gala presentation or an awards show,
 - vi. a production that solicits funds,

- vii. reality television,
 - viii. pornography,
 - ix. advertising, or
 - x. a production produced primarily for industrial, corporate or institutional purposes.
7. The production is not a production for which public financial support would be contrary to public policy.
8. If principal photography for the production commences after December 31, 2022, the end credits of all domestic and international versions of the production or of each episode, if the production consists of two or more episodes, include:
- i. The Province of Ontario wordmark logo in use at the time of production is completed.
 - ii. The wordmark logo of the Ontario Media Development Corporation in use at the time the production is completed.
 - iii. One of the following statements:
 - A. “Produced with film and television tax credit assistance from the Government of Ontario” if the production’s end credits are in English.
 - B. “Avec l’aide du gouvernement de l’Ontario grâce aux crédits d’impôt pour la production cinématographique et télévisuelle” if the production’s end credits are in French.
 - C. A statement that represents a translation of the statement “Produced with film and television tax credit assistance from the Government of Ontario” in the language used in the production’s end credits if the production’s end credits are in a language that is neither English nor French.

8. (1) Subsection 33.1 (2) of the Regulation is amended by adding “and in paragraph 3 of section 31.1” after “section 31”.

(2) Subsection 33.1 (3) of the Regulation is amended by adding “and in paragraphs 4 and 5 of section 31.1” after “section 31” in the portion before clause (a).

Commencement

9. [Commencement]