# INVESTOR TAX CREDITS AND GOVERNMENT FUNDING

Tax credits and Government Funding Programs are increasingly generous in Canada and the UK. Just in the last few years, a number of enhancements have been made to the grant programs at various levels of government that can be utilized in conjunction with the co-production treaties. Taking full advantage of applicable tax credits for investors and funding opportunities available from both Governments, is one of the overall financing strategies for the Bluenose feature film project, both to initialize and continue funding.

**Following is a brief outline of what the Bluenose project will qualify under in both countries.**

## CANADA TAX CREDITS

**FEDERAL:**

**Type of Incentive:** Refundable tax credit

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**Benefit:** 25% of qualifying Canadian labour expenditures (net of 'assistance' which includes provincial incentives) stackable with Provincial credits. The above noted Federal incentive is stackable with Canada's various provincial tax incentives.

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**Project Caps/ Funding Per Year:** Project labour caps at 60% of 'total production costs', net of assistance (which includes provincial incentives).

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**Project Criteria:** Qualifying production must-

- Earn 6 out of 10 key creative services points under the CAVCO point system.
- Meet the “producer control" guidelines.
- Be completed within 2 years, and a certificate of completion must be issued within 30 months after the end of the tax year in which principal photography commenced.
- Be exhibited/broadcast in Canada by a Canadian distributor/broadcaster within 2 years of completion.
- 75% of the production costs must be paid to Canadian individuals/companies (net of specific excluded costs)
- 75% of the post-production/laboratory work must be performed in Canada.
- Qualifying production company must own exclusive worldwide copyright in the production for 25 years from completion and control the initial licensing and retain a share of revenues from the exploitation in non-Canadian markets.

Eligible Entities:

The production company must be a Canadian-owned and controlled corporation, taxable in Canada, whose primary activity is the production of Canadian films or videos. Private broadcasting/cable subsidiaries are eligible.

Sunset/Review: None

Film Commission:

Canadian Audio-Visual Certification Office (CAVCO)
25 Eddy Street, 8th Floor, Room 038 (25-9-O)
Gatineau, Quebec K1A 0M5
Robert Soucy, Director
P: 819.934.9830 or 888.433.2200
F: 819.934.9828
DETAIL: http://www.canadafilmcapital.com/Tax_Data/cc_federal.html

**PROVINCIAL:**

**Type of Incentive:** Refundable tax credit

**Benefit:** 50% of qualifying Nova Scotia (NS) labour expenditures

**Bonuses:**

- Regional Credit: 10% of qualifying NS labour expenditures for productions shooting outside metro Halifax (tax credit caps at 30% of total production costs).
- Frequent Filming credit: 5% of qualifying NS labour expenditures on third film shot within 2-year period (credit not capped) (speak to Canada Film Capital about how one can access this bonus through them, or through companies which have frequent filming status)
- Stackable with Federal credit

The above noted provincial incentive is stackable with Canada's Federal Tax Incentive which is 16% of qualifying Canadian labour expenditures net of ‘assistance’ (‘assistance’ includes any provincial incentives that are directly attributable to qualifying labour spend).

**Compensation and Project Caps / Funding Per Year:** Project labour caps at 50% of total production costs. No annual funding caps

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**Project Criteria:** No cap on labour costs for NS residents (including personal service corporations)

- Eligible employees must be NS residents for tax purposes during the project or production period
- Wages and salaries paid to NS residents for work performed outside province also qualify;
- Projects with budgets > C\$500,000 require an audited cost report; budgets > C\$100,000 require a review engagement report; budgets < C\$100,000 require a producer's affidavit certifying final actual costs.

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**Eligible Entities:** The production company must be a corporation taxable in Canada, with a permanent establishment in NS, primarily carrying on the business of film, TV, or video production; broadcasters are not eligible.

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**Sunset/Review:** Subject to review in 2016

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Film Commission:
Nova Scotia Film Development Corporation
Collins Bank Building
Historic Properties, 3rd Floor
1869 Upper Water Street
Halifax, NS B3J 1S9

Carolyn Horton, Acting CEO
P: 902.424.7177
F: 902.424.0617

DETAIL: http://www.canadafilmcapital.com/Tax_Data/pstc_nova.html

# UNITED KINGDOM TAX RELIEF

**BRITISH GOVERNMENT TAX RELIEF:**
**VALUE OF UK TAX RELIEF**

- For films with a total core expenditure of £20 million or less, the film production company can claim payable cash rebate of up to 25% of UK qualifying film production expenditure;
- For films with a core expenditure of more than £20 million, the film production company can claim a payable cash rebate of up to 20% of UK qualifying film production expenditure;
- We have an example of a British film claiming tax relief to download (in related media on the right hand side of this page).

  **ACCESSING UK TAX RELIEF**
- Tax relief is available for British qualifying films. Films must either pass the Cultural Test or qualify as an official co-production;
- Films must be intended for theatrical release;
- Films, including those made under official co-production treaties, must reach a minimum UK spend requirement of 25%;
- Tax relief is available on qualifying UK production expenditure on the lower of either:
  - 80% of total core expenditure; or
  - the actual UK core expenditure incurred.
- There is no cap on the amount which can be claimed.
- The FPC responsible for the film needs to be within the UK corporation tax net.

**MINIMUM UK SPEND REQUIREMENTS**

- A minimum of 25% of costs must be spent on UK qualifying production expenditure.
- UK qualifying production expenditure is defined as expenditure incurred on filming activities (pre-production, principal photography and post production) which take place within the UK, irrespective of the nationality of the persons carrying out the activity.
- HM Revenue & Customs' (HMRC) definition of UK spend introduces the concept of where a good or service is "used or consumed" in the UK. If they are used or consumed in the UK, the expenditure is treated as UK expenditure (under the rules set out in the clauses of the Finance Bill). If they are used or consumed outside the UK, they do not count as UK expenditure.
- The FPC is defined as the company responsible for the principal photography and post production of the film and for the completion of the finished film. (There is no requirement for the film rights to be owned by the FPC at the time the film is completed).
- The FPC must be within the UK corporation tax net.

Further details on the definition of "used or consumed" are available in HMRC's guidance on Film Tax Relief.

# CANADIAN GOVERNMENT FUNDING

## TELEFILM CANADA

### Feature Film Financial Participation

As a financial participant, Telefilm negotiates its participation, which varies from project to project and may be less than requested.

- Production financing from the selective component is capped at $4.0 million per project (including any performance envelope money), or 49% of the eligible Canadian production costs[18], whichever is less.

- Telefilm's financing, from the producer's envelope, will be provided up to 49% of the eligible Canadian production costs. There is no absolute dollar cap unless the producer is also seeking financing from the selective component, in which case the cap to selective financing will apply.

- Telefilm's financial support will be provided in one of two ways, depending upon the choice of the producer. The producer may choose that Telefilm's financing be provided in the form of an equity investment of up to 49% of the eligible Canadian production costs.

- In such case, Telefilm will acquire a proportionate share of the copyright in the production. Alternatively, the producer may choose to receive Telefilm's financing in the form of a recoupable advance.

- The producer's choice of the method of financing may affect the amount of federal or provincial tax credits that the producer is eligible to receive in connection with the production.

- Consequently, the producer must determine, in consultation with the producer's professional tax advisors, which form of Telefilm financing is optimal for the production project. However, the choice of equity or advance must be clearly indicated at the time of application.

- In exceptional circumstances, Telefilm may provide financing beyond 49%, up to 64% of the eligible Canadian production costs but not exceeding the $4.0 million cap.

- In cases for which the producer has chosen to receive Telefilm's financing in the form of an equity investment, any amount above 49% will be provided in the form of a producer equity advance[19].
- In cases for which the producer has chosen to receive Telefilm's financing in the form of a recoupable advance, any amount above 49% will also be provided in the form of a recoupable advance.

- Projects for which the producer is seeking financing in excess of 49% must:
    - include a hard P&A commitment from an eligible distributor in an amount

  equivalent to at least 15% of the film's budget;
  - demonstrate a distinctly Canadian point of view; and
  - exhibit exceptional creative merit.

**Repayment**

Telefilm will recoup its financing according to the contract it enters into with the production company. The calculation of Telefilm's entitlement to recoupment will not be affected by the form of Telefilm's financial participation.

**Minimum recoupment practices for production financial participations**

Telefilm will recoup its financial participation no less favourably than *pro rata* and *pari passu* with all other financial contributions (except as noted below), including: producer investment, private fund and provincial agency financing, broadcaster investment, craft and creative deferrals (whether or not by related parties) and any form of producer-related financial participation which is directly or indirectly supported by producer fees, corporate overhead or federal or provincial tax credits.

For projects whose financing structures include distribution advances/ minimum guarantees, pre-sales for non-Canadian territories or other similar forms of participation including gap financing, the producer must offer Telefilm a deal that will not unfairly limit Telefilm's ability to recoup its financial participation, and that will permit a reasonable expectation of recoupment. Although a producer may sell worldwide distribution rights in return for an advance/minimum guarantee to be included in the project's financial structure, or arrange gap financing of unsold territories, the advance/guarantee/gap may not recoup from worldwide revenues ahead of Telefilm's participation.

DETAILS:
http://www.telefilm.ca/files/fonds_prog/cfff_production_guidelines_english_language_market_0_0.pdf

## UK GOVERNMENT FUNDING

**BRITISH FILM FUND**

http://industry.bfi.org.uk/funding

The British Film Fund invests 18£ million a year in UK films capable of "creating distinctive and entertaining work," but do not elaborate on what kind of percentage on a project they typically fund.  Best guess estimate on what Bluenose would qualify for as a co-production would be 25% of the UK portion of the co-production.

DETAILS: http://industry.bfi.org.uk/funding

**CANADIAN/UK CO-PRODUCTION TREATY:**
http://www.bfi.org.uk/sites/bfi.org.uk/files/downloads/bfi-uk-canada-films-coproduction-agreement-1991.pdf