

Ontario Media Development Corporation (OMDC)
An Agency of the Ontario Ministry of Tourism, Culture & Sport

**ONTARIO INTERACTIVE DIGITAL MEDIA TAX CREDIT
(OIDMTC)**

GUIDELINES

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Ontario Media Development Corporation
La Société de Développement de L'Industrie
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Ontario Interactive Digital Media Tax Credit Guidelines

The February 2017 version of the Guidelines has been updated to advise of the new tax credit administration fee structure, effective April 1, 2017.

The Guidelines

These Guidelines have been prepared to assist companies applying for an Ontario Interactive Digital Media Tax Credit (the “OIDMTC”).

Please note that the OIDMTC legislation (sections 93, 93.1 and 93.2 of the *Taxation Act, 2007*) and OIDMTC regulation (Regulation 37/09) take precedence over any provisions of these Guidelines.

The 2015 Ontario Budget of April 23, 2015 proposed several changes to the OIDMTC. The Ministry of Finance published a bulletin on the OIDMTC on May 6, 2015 that further clarified these proposed changes. On November 2, 2015 the Ontario Government posted the proposed OIDMTC regulations on Ontario’s Regulations Registry. [Note: these are reproduced in Appendix 5]. The Ministry of Finance also released an updated bulletin on November 2, 2015 related to the proposed regulations. On November 14, 2016 the Ontario Government introduced further proposed changes to the OIDMTC in the Fall Economic Statement and the Building Ontario Up for Everyone Act (Budget Measures) 2016 – Bill 70, which was passed into law on December 8, 2016. The OMDC will be administering the OIDMTC based on the government’s direction provided in these documents.

A. Overview of the OIDMTC¹

The Ontario Interactive Digital Media Tax Credit (OIDMTC) is a refundable tax credit which means that the amount of the credit, minus any Ontario taxes payable, will be paid to the qualifying corporation. The OIDMTC is based on eligible Ontario labour, marketing and distribution expenditures for the development of interactive digital media products.

What Is It?

If you develop interactive digital media products in Ontario, your company may receive a tax credit of 35% or 40% of your eligible expenditures. The tax credit rate depends on how you

¹ Overview of guidelines follows for section 93 specified and non-specified products. For information on section 93.1 qualifying digital game corporations and section 93.2 specialized digital game corporations please refer to section titled “Large Digital Game Companies”.

create and exploit your digital products. Eligible OIDMTC expenditures include Ontario labour costs, and may also include up to \$100,000 of marketing and distribution expenditures. You can claim an OIDMTC for your interactive digital media product for the tax year in which it is completed.

What is Eligible?

i. Interactive Digital Media Products

To be eligible for the OIDMTC, the primary purpose of your interactive digital media product must be to entertain the user or educate users under the age of 12 (per the Ontario Budget of April 23, 2015 and proposed regulations of November 2, 2015).

Please note that the 2015 Budget and proposed November 2015 regulations narrowed the primary purpose test. Prior to the 2015 Budget, eligible OIDMTC products could have a primary purpose to educate, inform or entertain.

The primary purpose must be achieved by presenting information in at least two of the following three formats: i) text, ii) sound and iii) images.

Additionally, your product must also meet the following requirements:

- **Choice:** User can choose the form and sequence in which information is presented.
- **Use:** Intended to be used by individuals.
- **Communication:** Not used primarily for interpersonal communication.
- **Non-promotional:** Not used primarily for promotion of any products and services or your company.

Products that may be eligible for the OIDMTC include, but are not restricted to, digital games, mobile applications and e-learning products. Products that are used to sell or promote your company's goods and services or those of a third party, such as coupon websites, online classified listings, corporate websites that list services/products, promotional content products and sweepstakes games, are not considered to be products whose primary purpose is to entertain the user or educate users under the age of 12. These products are also not considered to meet the primary purpose test in effect prior to April 23, 2015 (to educate, inform or entertain).

The 2015 Ontario Budget and draft November 2015 regulations proposed excluding certain types of products, including:

- Products providing any content that is news, public affairs, opinion, commentary, advice or current events including weather or financial markets reporting, and blogs;
- Vocational/job training products;
- Reference material products, such as software user guides, dictionaries and maps;
- Content aggregators
- Search engines; and

- Databases, such as real estate or recipe databases.

Most websites would be excluded. Websites would only be eligible products if the site primarily contains or hosts:

- Digital games
- Content related to film or television intellectual properties
- Virtual or augmented reality experiences; and/or
- Children’s educational products

The Budget and draft regulations proposed applying these product exclusions on expenditures incurred after April 23, 2015.

The Budget and draft regulations also proposed strengthening the rules concerning promotional products. A product will be required to have a revenue generating stream. Without this, the product will be deemed to be promotional and therefore excluded. The Budget and draft regulations proposed applying this requirement to expenditures incurred after April 23, 2015.

Products that can be claimed under the OIDMTC as specified or non-specified products are summarized in Table 1 below. For qualifying and specialized digital game corporations see Table 3.

Table 1 – Non-specified and Specified Products

Product	Definition	
Non-specified products	Developed for sale or licensing to arm’s length parties (not developed under a fee-for-service arrangement). Product must be completed.	Must meet the 80/25 rule as it relates to total development labour incurred in the claim period.
Specified products	Developed by your company under terms of an agreement with an arm’s length buyer. For sale or license to one or more people who deal at an arm’s length with the buyer.	

As announced in the Ontario 2015 Budget and draft regulations, the requirement that 90% or more of the product must be developed in Ontario by your company, has been replaced with a rule based on labour costs to develop the product. The new 80/25 rule requires that 80% of total development labour costs to create the product be for work performed in Ontario and paid as eligible salaries or wages and eligible remuneration to personal corporations and individuals providing services as part of a sole proprietorship with no employees. The 80% test applies to all products, including those awaiting certification. As well, 25% of the total development labour costs must be paid as eligible salaries or wages to employees of your

company for work performed in Ontario. The 25% test applies to products for which application for certification was received by OMDC after April 23, 2015. However, the new 80/25 rule does not apply to products that were certified before April 24, 2015.

To demonstrate that your company has met the 80/25 rule you must provide detailed labour schedules that identify all development labour incurred to create the product during the claim period. This includes development labour costs that may not be eligible for OIDMTC, such as labour claimed under the federal tax credit for Scientific Research & Experimental Development (SR&ED), or for work done outside Ontario, etc.

ii. Qualifying Corporations

A qualifying corporation is an Ontario-based Canadian or foreign-controlled corporation that develops an eligible product at a permanent establishment in Ontario. The qualifying corporation must operate the business and file Ontario tax returns.

iii. OIDMTC Expenditures

You can claim Ontario labour expenditures (salaries for employees and remuneration for arm's length non-employees) as well as marketing and distribution expenditures for non-specified products.

Additionally, OIDMTC labour expenditures must be:

- Paid to individuals that reside in Ontario.
- Directly attributable to the development of the interactive digital media product.
- Paid for services rendered at a permanent establishment in Ontario.
- Incurred in the three-year period prior to the completion of the product.

Marketing and distribution expenditures claimed for non-specified interactive digital media products:

- Must be incurred in the 24-month period prior to and/or the twelve months following the completion of the product.
- Can only include up to a maximum claim of \$100,000 in marketing and distribution expenditures per product.

How Much is the OIDMTC?

Your company's eligible OIDMTC expenditures can be refunded at 35% or 40% depending on the stream under which you apply. Table 2 below summarizes current OIDMTC rates for non-specified and specified products.

Table 2 – Current OIDMTC Rates for Non-specified and Specified Products

Product	Current OIDMTC Rates as of March 26, 2009		
	Tax Credit Rate	Wages & Remuneration	Marketing & Distribution
Non-specified products	40%	√	Maximum \$100,000/product
Specified products	35%	√	N/A

Please note: There is no maximum for eligible Ontario labour expenditures that may qualify for a credit. Also, there are no per-project or annual corporate limits on the amount of OIDMTC that can be claimed.

How is the Tax Credit Administered?

The OIDMTC is jointly administered by the Ontario Media Development Corporation (OMDC), an agency of the Ministry of Tourism, Culture and Sport, and the Canada Revenue Agency (CRA). Your application is submitted to the OMDC for a Certificate of Eligibility at your company's year-end, based on expenditures that have already been paid.

To claim the OIDMTC, your company must file the certificate with the CRA along with your corporate tax return. The amount of the credit, net of any Ontario taxes owing, will be paid to your company. If you do not owe any taxes, the full amount will be paid out.

Please note: The OIDMTC is an after-the-fact tax credit. You can apply to the OMDC for a Certificate of Eligibility:

- After your product is completed (for non-specified and specified products).
- After you have incurred and paid the costs to develop your product.
- At the end of the tax year in which you completed your product.
- There is an application deadline that requires your company to apply to OMDC for an OIDMTC Certificate of Eligibility for specified and/or non-specified products by the day that is 18 months after the end of your company's taxation year in which development of the eligible product(s) was completed. This 18 month application deadline is in effect the day that is six months after November 14, 2016. The OMDC will accept OIDMTC applications older than 18 months so long as the complete application with all required supporting documentation is submitted through our online application portal on or before May 15, 2017.

Large Digital Game Companies

Large, Ontario-based digital game companies have the option of applying for the OIDMTC under two additional streams:

- a) Qualifying Digital Game Corporations under Section 93.1 (s93.1)

b) Specialized Digital Game Corporations under Section 93.2 (s93.2)

Eligible expenditures include Ontario labour costs for work rendered in Ontario that is related to the development of interactive digital games. The tax credit rate is 35%.

There are several benefits for large digital game companies which apply under these streams. For example:

- Your game does not have to meet the 80/25 rule.
- Your game does not need to be completed.
- You can be related to the buyer/publisher of your game.
- You can apply annually (under s93.2).

Eligibility requirements are summarized in Table 3 below.

Table 3 – Qualifying and Specialized Digital Game Corporations

Games	Definition	
Developed by a <u>qualifying</u> digital game corporation (s93.1)	Developed under a fee-for-service arrangement. Incur a minimum of \$1 million in Ontario labour, over a 3 year period for a single game.	Your game products do <u>not</u> need to meet the 80/25 rule.
Developed by a <u>specialized</u> digital game corporation (s93.2)	Incur \$1 million in Ontario labour directly related to the development of digital games in a tax year. In addition: - 80% of salaries and wages rendered in Ontario must be directly related to game development OR - 90% of yearly gross revenues must be directly related to games development. Can claim OIDMTC annually.	

Note: Your game does not need to be completed. Eligible expenditures are those incurred after March 26, 2009.

B. Legislative Requirements

1. Eligibility Criteria

i. Interactive Digital Media Products

Your interactive digital media product is defined as a combination of one or more application files and one or more data files that are digital, integrated and intended to be operated together.

For your interactive digital media product to be eligible for the OIDMTC, the following criteria must be met:

- **80/25 Rule:** As proposed in the 2015 Ontario Budget, this 80/25 rule based on labour costs will replace the former 90% development requirement. The new rule requires that 80% of total development labour costs to create the product be for work performed in Ontario and paid to your company's Ontario resident employees, and eligible remuneration paid to arm's length personal corporations and individuals providing services as part of a sole proprietorship with no employees. Also, 25% of total development labour costs to create the product must be paid to your Ontario based employees for work performed in Ontario.
- **Primary Purpose:** As proposed in the 2015 Ontario Budget, the primary purpose of your products must be to entertain the user or educate users under 12 years of age. For products with eligible expenditures on or before April 23, 2015, the primary purpose can also include products that inform the user or educate users 12 years of age and over. However, for these products, only expenditures on or before April 23, 2015 will be eligible for a tax credit.
- **Present Information:** Use at least two of the three following formats: i) text, ii) sound and iii) images.
- **Choice:** User can choose the form and sequence in which information is presented.
- **Use:** Intended to be used by individuals.
- **Communication:** Not used primarily for interpersonal communication.
- **Non-promotional:** Not used primarily for promotion of any products and services or your company.
- **Completion:** Products must be completed.

Products must also not be "contrary to public policy".²

² Products for which public financial support would in the opinion of the OMDC be contrary to public policy may include products which are capable of inciting hatred against an identifiable group, including a section of the public distinguished by colour, race, religion, sex, sexual orientation or ethnic origin and products whose dominant characteristic is the undue exploitation of sex or violence, or the combination of sex and one or more of the following subjects: crime, horror, cruelty or violence.

a) 80/25 Rule

Previously, when a company applied for the OIDMTC for a specified or non-specified product, they would have to demonstrate that they had developed all or substantially all (at least 90%) of the product to qualify for the OIDMTC. However, to improve the certification process the Ontario 2015 Budget and draft regulations proposed amending the requirement that all or substantially all (at least 90%) of a product be developed in Ontario by the company claiming the credit. To provide certainty to applicants and reduce processing times for product certification, it was proposed that the 90% developed by requirement will be replaced by a rule based on labour costs of the company developing the product. The new quantitative rule would have two concurrent tests, an 80% test and a 25% test (known as the 80/25 rule). Both tests would need to be met in order for a product to be eligible.

The 80% test (or Ontario labour ratio) would require that the following formula is 80% or greater:

$$\frac{A}{B}$$

A is the total amount of eligible development labour expenditures incurred in the claim period for work performed in Ontario and paid by your company:

- As salaries and wages to your company's Ontario-based employees;
- As remuneration to arm's length individuals who are not employees of your company, and who provide their services to your company as part of a sole proprietorship with no employees;
- As remuneration to arm's length individuals who provide their services to your company through their personal loan-out corporation which is a taxable Canadian corporation where there are no employees other than the individual, all of the issued and outstanding shares of the capital stock of the loan-out corporation (other than directors' qualifying shares) are owned by the individual, and the loan-out corporation's primary activity is the provision of that individual's services.

B is the total amount of development labour expenditures incurred in the claim period that is directly attributable to the development of the product. Expenditures included as part of B are not required to be eligible under OIDMTC. They may include development labour costs paid to non-Ontario residents, or for work performed outside of Ontario, or incurred by another corporation etc.

The 25% test (or Ontario wage ratio) would require that the following formula is 25% or greater:

$$\frac{C}{D}$$

C is the total amount of eligible development labour expenditures incurred in the claim period and paid to your Ontario-based employees for services rendered in Ontario.

D is the same amount as determined for **B** in the formula for the 80% test.

Please note for **A** and **C** in the formulas above, amounts claimed under the federal Scientific Research & Experimental Development (SR&ED) tax credit may be included as part of eligible development labour for the purposes of this 80/25 rule. SR&ED amounts that relate to development labour expenditures for the product should also be included in **B** and **D**. Also the amount included for **A**, **B**, **C** and **D** would only include development labour costs incurred in the claim period, which is 37 months preceding the end of the month in which the product was completed.

The 2015 Budget and draft regulations announced that the 80% test will apply to all products except for those products certified on or before April 23, 2015. In addition, the 25% test will apply to all products except for those that applied for certification on or before April 23, 2015. If you intend to apply for the OIDMTC, please keep detailed records during product development.

b) Primary Purpose

The 2015 Budget and draft regulations proposed that the primary purpose test should be focused on only those products that entertain the user or educate children under the age of 12.

- **Entertain:** The product should be designed for recreation. A product with the primary purpose of informing, or educating the user is not considered to be primarily entertaining. For example, news products would not be considered to have the primary purpose of entertaining the user, even if the user engages with the product during leisure time.

Digital games (that do not primarily promote any product, service or company) would be considered to have the primary purpose of entertaining the user.

- **Educate Children Under 12:** The product should be designed as a tool for teaching children under the age of 12. This could include a product that is designed to teach the

letters of the alphabet. A product that is designed primarily to educate youths and adults would not be considered to have the primary purpose of educating users under the age of 12.

Prior to the 2015 Budget, products were required to have the primary purpose of entertaining, educating or informing the user. The 2015 Budget and draft regulations proposed that the narrower primary purpose test outlined above would apply to expenditures incurred after April 23, 2015. If a product's primary purpose is to educate users age 12 and older, or its primary purpose is to inform, but the product otherwise meets the eligibility requirements, you can apply for the ODMTC but in your calculation of your tax credit you can only include expenditures incurred on or before April 23, 2015.

More than 50% of product content must meet the primary purpose test. A product can only have one primary purpose. Products that are used to sell or promote goods and services (whether they are goods and services of your own company or those of a third party) such as coupon websites, online classified listings, corporate websites that list services and products, promotional content products and sweepstakes games are not considered to be products whose primary purpose is to entertain the user or educate users under the age of 12. These products are not considered to meet the primary purpose test in effect prior to April 23, 2015 (to educate, inform or entertain).

If your product is a tool that requires the user to add all the content, your product will not meet the primary purpose test. Companies must provide the OMDC with access to the version of the product as it existed upon completion.

c) Product Exclusions

The 2015 Ontario Budget and draft regulations proposed excluding certain types of products, including the following:

- Products providing any content that is news, current events or public affairs programming; opinion, commentary or advice; or weather or market reports;
- Products produced primarily for industrial, corporate or institutional purposes including vocational training products or products that educate or inform employees;
- Products that are primarily a reference material or otherwise designed to be used as a resource for finding information, such as a guide for equipment or software, a dictionary or a map; Products that aggregate content from various internet sources;
- Products that are a search Engine;
- Products that are a blog; and
- Products that are primarily a database, including a real estate or recipe database.

Most websites would be excluded. Websites would only be eligible products if more than 50% of the site hosts any of the following:

- One or more digital games;
- Content related to a film, television or internet production that is hosted under a licence agreement in respect of a copyright for the film, television or internet production, but that is not a broadcast of all or part of the film, television or internet production;
- One or more virtual or augmented reality experiences; and/or
- Content that is designed to educate users who are under 12 years of age; or
- Any combination of the above.

Digital games: must be played by one or more users; set out goals and rules for game play; challenge the user and have an uncertain outcome.

Film, television or internet production: A film, television or internet production is a production that is produced:

- For commercial release in theatres;
- For broadcasting on television; or
- For broadcasting over the internet where the end user is required to pay a purchase, licence or subscription fee.

In addition, a film, television or internet production does not include a production that is any of the following:

- (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.

Your company must have access to the film, television or internet production intellectual property through an ownership or license agreement. Content related to film, television or internet production intellectual properties would include characters or story elements related to, featured in or adapted from, eligible film, television or internet productions.

Similar Content Products: If the majority of the content of a particular product is available in another product that is excluded from the OIDMTC, then that product would also be excluded. For example, if a product is an app and the same content is available through a website, or print version, that is excluded, the app would also be an excluded product.

The 2015 Budget and draft regulations proposed applying these product exclusions on expenditures incurred after April 23, 2015. For example, for a news website that otherwise meets the eligibility requirements, you could still claim the OIDMTC but in calculating your tax credit amount, you would only be able to include expenditures incurred up to and including April 23, 2015. You would not receive a tax credit on any expenditures incurred after April 23, 2015.

d) Promotional Products

The 2015 Ontario Budget and draft regulations proposed strengthening the rule that excludes products that are primarily promotional. Products with no revenue generating stream will be excluded as they are considered to promote the developer or the products of the developer (or the purchaser or products of the purchaser in the case of specified products).

Revenue Generating Streams include (immediate or planned future):

- The sale of the product;
- Fees for use of the product, including licence and subscription fees;
- In-product purchases (also called an in-game or in-app purchase, which occurs when the user can purchase an enhancement to the product);
- Third party advertising within the product (marketing and promotion of a corporation or person, or products or services of a corporation or person, that is not related to the product developer or the purchaser corporation in the case of a specified product); and
- The sale or licence of another product developed by your company that can reasonably be considered an extension or upgrade of the product.

The product must be used by your company to generate revenue if you are applying for the OIDMTC on a non-specified product, while the product must be used by the purchaser company to generate revenue if you are applying for the OIDMTC on a specified product (one that was

developed by you under a fee-for-service arrangement with an arm's length purchaser company). The agreement between your company and an arm's length purchaser company to develop the product is not proof of a revenue generating stream.

The Budget and draft regulations proposed applying this revenue generating stream requirement to expenditures incurred after April 23, 2015. This means that for products that don't have a revenue generating stream but otherwise meet the eligibility requirement, you can apply for the OIDMTC but you can only include in your tax credit calculation those expenditures incurred on or before April 23, 2015.

ii. Qualifying Corporations

To apply for the OIDMTC, your company must be a qualifying corporation. A qualifying corporation is an Ontario-based Canadian or foreign-controlled corporation that develops an eligible product at a permanent establishment in Ontario. It must operate the business and file Ontario tax returns. Partnerships are not eligible to claim the OIDMTC. Your qualifying corporation cannot be controlled by another corporation that is exempt from paying tax in Ontario.

iii. Expenditures

You can claim Ontario labour expenditures for services rendered in Ontario to develop your product. For non-specified products, you can also claim up to \$100,000 of your marketing and distribution expenditures.

a. Ontario Labour

You can claim salaries and wages for employees of your company and remuneration for arm's length non-employees.

Remuneration paid to the following can be included in your OIDMTC claim if they are arm's length entities:

- Individuals
- Personal corporations (where the individual service provider is the sole shareholder)
- Partnerships (for the services rendered by a member of the partnership or employees of the partnership)
- Other Ontario corporations for the services rendered by their employees

Your labour expenditures must also meet the following criteria:

- Be directly attributable to the development of the interactive digital media product.
- Paid to individuals resident in Ontario at the end of the year preceding the year in which services were rendered.³
- Paid for services rendered at a permanent establishment in Ontario.
- Paid no later than 60 days after the end of the tax year of your OIDMTC application.
- Incurred in the three-year period prior to the completion of the interactive digital media product.
- Not incurred as part of scientific research and experimental development (SR & ED Federal Tax Credit).
- Not incurred as part of OCASE, OFTTC or OPSTC claims.

b. Marketing/Distribution

You can claim marketing and distribution expenditures for your non-specified product. The expenditures must meet the following criteria:

- Be incurred in the 24-month period prior to and/or during the twelve months following the completion of the product.
- Maximum of \$100,000 per product.
- Not already be claimed as Ontario labour expenditures.
- Be directly attributable to advertising or promoting the eligible product or distributing the eligible product to customers or potential customers.
- Be paid no later than 60 days after the end of the tax year of your OIDMTC application.
- Note: Only 50% of meals and entertainment costs is allowed.

Examples of eligible marketing and distribution expenses include:

- Attending trade shows where the product is being promoted.
- Consultant fees for public relations and marketing/portion of wages and salaries of employee(s) attributable to specific product marketing and distribution.
- Advertising the product in print and electronic media (including design and preparation).
- Preparing the product for display or demonstration.
- Product market research/ focus group testing.
- Product visual identity: logos, branding, merchandising/promotional products e.g. mugs, shirts.
- In-store promotions, product samples.
- Direct mail marketing/telemarketing.
- Media kits, news releases, media lists.

If you sell your products directly to customers, you cannot include expenditures for processing or shipping orders.

³ Factors that are relevant in establishing an individual's residency in a jurisdiction include the location of the individual's principal residence, and social and financial ties to the jurisdiction.

2. How Much Is the OIDMTC?

Your company can be refunded 35% of eligible expenditures for specified products developed under a fee-for-service agreement. The rate is 40% for non-specified products. Eligible labour expenditures for specified and non-specified products include employee salaries and remuneration paid to arm's length persons who are not employees. You can also claim marketing and distribution (M&D) expenditures of up to \$100,000 for each non-specified product. There is no limit on the amount of eligible Ontario labour expenditures which may qualify. As well, there are no per-project or annual corporate limits on the amount of OIDMTC claimed.

The claim period for Ontario labour expenditures is 37 months preceding the end of the month in which the product was completed. If you are claiming M&D expenditures for non-specified products, the claim period is 24 months preceding the date of completion of the product and 12 months following.

The OIDMTC is calculated as the sum of all eligible expenditures less government assistance, multiplied by the applicable tax credit rate. Table 4 below illustrates an estimate for a non-specified product.

Table 4 – How to Estimate OIDMTC for a Non-specified Product

Steps to Calculate Estimated OIDMTC for a Non-specified Product		Example
1.	Determine the completion date of development.	July 15 th 2016
2.	Determine the claim period (37 months preceding the end of the month in which the product was completed).	July 1, 2013 to July 31, 2016
3.	Include salaries and wages paid to your Ontario based employees for product development that were incurred during the claim period.	+ \$500,000
4.	Include Ontario arm's length remuneration paid for work on the product that was incurred during the claim period.	+ \$35,000
	Subtotal: Eligible Ontario Development Labour	= \$535,000
5.	Deduct government assistance that relates to development labour (e.g. IRAP grant).	- \$10,000
6.	Net Eligible Ontario Development Labour	= \$525,000
7.	If you have M&D costs, determine the M&D claim period (24 months preceding the date of product completion and 12 months following).	July 15, 2014 to July 15, 2017
8.	Include eligible M&D costs capped at \$100,000 incurred in the M&D claim period.	+ \$75,000
9.	Deduct government assistance related to M&D costs (e.g. OMDC Export Fund)	- \$10,000
10.	Net Eligible M&D Costs	= \$65,000
11.	Add Net Eligible Ontario Labour (Step 6) + Net Eligible M&D Costs (Step 10)	+ \$525,000 + \$65,000
12.	Multiply by 40% tax credit rate	= \$590,000 x 40%
	Estimated OIDMTC	= \$236,000

To calculate an estimate for a specified product, skip steps 7 through 11 and use the 35% OIDMTC rate in step 12.

3. Large Digital Game Companies

Large digital game companies have the option to apply for an OIDMTC as a qualifying digital game corporation or a specialized digital game corporation. Products being claimed under section 93.1 or 93.2 must be a “digital game” in the opinion of the OMDC (see *iii. Digital Games* below).

Your company’s qualifying expenditures can be refunded at 35% of eligible labour if it is a qualifying or specialized digital game corporation.

Games claimed by qualifying and specialized digital game corporations are not required to meet the 80/25 rule. As well, these products are not required to be completed to claim an OIDMTC.

Your large digital game company must be an Ontario-based, Canadian or foreign-controlled corporation which develops digital games at a permanent establishment in Ontario. It must operate the business and file Ontario tax returns.

i. Qualifying Digital Game Corporations (Section 93.1)

Eligible interactive digital games are those created by your qualifying digital game corporation and are developed under a fee-for-service agreement. The agreement is between your company and a buyer for the purpose of sale or license to one or more arm’s length customers. Your company and the buyer can be related entities.

Labour expenditures directly related to game development must equal a minimum of \$1 million incurred over any three-year period per game. The game must not have previously received an OIDMTC tax credit.

ii. Specialized Digital Game Corporations (Section 93.2)

Eligible interactive digital games are developed by your specialized digital game corporation for the purpose of sale or license by your company, or a buyer, to one or more arm’s length customers.

Ontario labour expenditures directly related to game development must equal an aggregated minimum of \$1 million incurred in the tax year that the company makes an OIDMTC claim. The \$1 million threshold in Ontario labour can be for work done on more than one digital game in the tax year.

Additionally, your company must meet the following test:

- 80% of salaries and wages rendered in Ontario must be directly related to game development

OR

- 90% of yearly gross revenues must be directly related to games development.

iii. Digital Games

Games developed by your qualifying or specialized digital game corporation must meet the OMDC requirements of an interactive digital media product. Your game must also include the following components:

- Be played on one or more platforms using digital technology.
- Be played interactively by one or more users and involve a set of goals and rules for game play.
- Have variable outcomes and a number of elements used in combination (i.e. narrative, visual representation, music, sound).
- Be a screen-based interactive game intended for a general consumer audience. Note that customized games may be considered on a case-by-case basis.

iv. Expenditures

Eligible expenditures for your qualifying and specialized digital game corporations must:

- Include employee salaries and wages for work rendered in Ontario that is directly attributable to the development of the digital game.
- Include arm's length remuneration paid to non-employees for services rendered in Ontario by individuals, personal corporations for the services of the sole shareholder, or partnerships for the services of one of the partners.
- Exclude amounts paid to another taxable Canadian corporation for the services of their employees.

v. How To Estimate the OIDMTC for Large Digital Game Companies

To estimate your company's OIDMTC refund, please refer to Table 5 below.

Table 5 – Expenditure Conditions for Large Digital Game Companies

Qualifying Digital Game Corporations	Specialized Digital Game Corporations
35% of the eligible labour expenditures incurred in any 36-month period, net of government assistance.	35% of the eligible labour expenditures incurred in the tax year, net of government assistance.

Note: Eligible labour costs are those incurred after March 26, 2009.

C. Administrative Process

The OIDMTC is jointly administered by the OMDC and the Canada Revenue Agency (CRA) as described below.

1. OMDC Role

i. Issuance of Certificates of Eligibility

The OMDC is responsible for issuing Certificates of Eligibility which your company files with your corporate tax return with the CRA in order to claim the OIDMTC. Certificates of Eligibility will be issued for all specified and non-specified products that have been completed in your company's tax year.

A Certificate of Eligibility sets out the following:

- a. Eligibility of the company claiming the OIDMTC,
- b. Eligibility of the product(s) included in the OIDMTC claim, and
- c. Estimated amount of the OIDMTC.⁴

Where more than one product has been completed by your company, the Certificate of Eligibility will list all eligible products and an estimated OIDMTC attributed to each product.

For companies that apply as a qualifying digital game corporation under s93.1, a Certificate of Eligibility will be issued for the tax year after the 36-month period in which your company incurred \$1 million in Ontario labour costs in respect of a digital game.

For specialized digital game corporations that make a claim under s93.2, a Certificate of Eligibility will be issued for the tax year in which your company has incurred \$1 million in Ontario labour costs in respect of a digital game or slate of digital games.

OMDC reserves the right to ask any question necessary to determine eligibility issues. As issues and fact patterns will differ depending on the specifics of any application, so too may the line of inquiry. Please note that receipt of a certificate for one product may not be relied upon as a guarantee of certification for subsequent filings.

ii. Amendment and Revocation of Certificates of Eligibility

A Certificate of Eligibility may be amended to correct an error and, under certain circumstances, may be revoked by the OMDC. An amended Certificate of Eligibility replaces any Certificate of Eligibility previously issued to your company. If a Certificate of Eligibility is revoked by the OMDC, the revoked Certificate of Eligibility is treated as if it had never been issued.

⁴ The amount of the OIDMTC is subject to verification by the Canada Revenue Agency as indicated below.

Please note that as of January 1, 2017 there is a fee for requesting an amended Certificate of Eligibility. Please see section 5(iii) below.

2. Canada Revenue Agency Role

The CRA is responsible for assessing and auditing your company's Corporate Income Tax Return. The T2 Form, along with Schedule T2SCH560, must be filed by your company in order to claim the OIDMTC.

3. Filing a Corporate Tax Return

The CRA administers both Federal and Ontario corporate taxes for tax years ending after December 31, 2008. A corporation must file its T2 return for a tax year with the CRA within six months after the end of the corporation's tax year.

To claim the OIDMTC tax credit, your company must file its T2 return with Schedule T2SCH560 and the Certificate of Eligibility with the CRA. Following its review or audit of the OIDMTC claim, the CRA processes the T2 return, issues a notice of assessment and, if applicable, a refund. The refund amount may be reduced by any of your corporation's outstanding federal and Ontario taxes.

In the event that your Certificate of Eligibility is not available at the time of submitting your Corporation's Tax Return to the CRA, we recommend that you enter your own OIDMTC estimate on Schedule T2SCH560 and include this schedule with your corporate tax return. Once the Certificate of Eligibility is received from the OMDC, submit the Certificate (or copy of) to the CRA. The CRA will process the claim once they have received the Certificate of Eligibility as well as the T2 Corporation Income Tax Return and applicable schedules.

The T2 Corporation Income Tax Return and applicable schedules are available on the CRA website at: www.cra.gc.ca/formspubs/menu-eng.html.

For additional information, visit the following CRA website: www.cra.gc.ca/filmservices

Inquiries should be directed to CRA's Toronto Film Services Unit at (416) 973-3407 or (416) 952-7349.

4. Payment of an OIDMTC Refund

If a corporate tax refund (which may include an OIDMTC refund) is due, a cheque made payable to your company will be sent by the CRA.

5. Applying for a Certificate of Eligibility

i. Who Applies to the OMDC?

Your company must submit a completed OIDMTC Application via the OMDC Online Application Portal for all eligible products for the applicable tax year. For administrative convenience, your company may appoint an agent to apply on its behalf but any Certificate of Eligibility issued will be in the name of your company.

ii. When Should Your Application Be Made to the OMDC?

You can apply to the OMDC at the end of your company's tax year in which your specified or non-specified product has been completed.

Please note: new versions of website products can only be claimed every two years.

If your company has not incurred all eligible marketing and distribution (M&D) costs at the time of application you can submit cost schedules with projected expenditures up to the end of the tax year in which the products were completed. To claim additional M&D costs on products certified in a previous tax year, your company should submit a new application for the tax year that these additional M&D costs were incurred.

There is an application deadline that requires your company to apply to OMDC for an OIDMTC Certificate of Eligibility for specified and/or non-specified products by the day that is 18 months after the end of your company's taxation year in which development of the eligible product(s) was completed. This 18 month application deadline is in effect the day that is six months after November 14, 2016.

If your qualifying digital game corporation is making an OIDMTC claim, apply to the OMDC after the end of the 36-month period in which your company incurred \$1 million in Ontario labour expenditures developing the eligible digital game.

If your specialized digital game corporation is making an OIDMTC claim, apply to the OMDC at the end of the tax year in which your company has incurred \$1 million in Ontario labour expenditures developing eligible digital games.

Please note that each application is subject to an application fee.

Please note that as of January 1, 2017 there is a fee for filing claims that are more than 18 months old. Please see section 5(iii) below.

iii. What is the Application Fee?

A non-refundable Application Fee is payable with respect to each OIDMTC application submitted to the OMDC. Application Fees are used to offset operating costs of the OIDMTC program.

The Application Fee is calculated as 0.1 per cent of the total eligible OIDMTC expenditures. The minimum Application Fee is \$100 and the maximum is \$2,000 per application.

For example, where eligible OIDMTC expenditures total \$200,000, the Application Fee is calculated as follows:

$$\begin{aligned}\text{Application Fee} &= \text{Qualifying Expenditure} \times 0.001 \\ &= \$200,000 \times 0.001 \\ &= \$200\end{aligned}$$

Fees are payable to the OMDC by cheque or money order when the application is submitted. They must be paid in full in order for your application to be reviewed.

Please note: Effective January 1, 2017 there is an additional filing fee of \$100:

- For applications made for specified and non-specified products under section 93 the additional filing fee is in effect for applications received more than 18 months from the year-end in which the product was completed.
- For non-specified products that are only making a marketing and distribution claim for an eligible product that was previously certified, the additional filing fee is in effect for applications received more than 18 months from the subsequent year-end following the year in which the eligible product was completed.
- For applications made by specialized digital game corporations under section 93.2 the additional filing fee is in effect for applications received more than 18 months from the year-end in which the applicant is claiming as a specialized digital game corporation.
- For applications made by qualifying digital game corporations under section 93.1 the additional filing fee is in effect for applications received more than 18 months from the year-end of that claim.

Please note: Effective January 1, 2017 there is a fee of \$100 for amended Certificates that are requested.

Please note: Effective April 1, 2017 there is a new administration fee structure for tax credits which will offset the costs of administering the program. The OIDMTC administration fee will be calculated as 0.15% of eligible expenditures for the application. There is a minimum fee of \$1,000 per application and a maximum fee of \$10,000 per application.

iv. What Documentation is Required?

You must submit the documents that are outlined in the OIDMTC Document Checklist (see Appendix 2). In some cases, the OMDC may also require additional documentation or information in order to issue a Certificate of Eligibility. All documentation and correspondence

that relates to your application must go through the OMDC Application Portal. All documentation or information received from an applicant is subject to the confidentiality provisions of the *Taxation Act* and will be maintained in strictest confidence by the OMDC, the Ministry of Finance and the CRA.

v. How Long Does the Process Take?

The OMDC Tax Credit Department reviews completed applications on a first-come, first-served basis. Processing time will depend on the volume of applications received. If you file an incomplete application, you will be notified about deficiencies with the filing. Where significant delays are encountered in obtaining responses from applicants, the OMDC reserves the right to close the file after 30 days.

vi. Online Application

All OMDC tax credit applications must be submitted via the Online Application Portal.

OMDC has created a series of training videos describing in detail how to perform the most common actions on the portal. These training videos can be accessed on the OMDC website at:

http://www.omdc.on.ca/collaboration/oap/Online_Application_Portal_Training_Videos.htm

When you start an application on the OAP you can save your work and come back to it before submitting the application online. However, please note that once you have started the application on the OAP you have 90 days to submit it before the application expires.

vii. Do Different Versions of a Product Need to be Submitted as Separate Products in an OIDMTC Claim?

Yes. Each version of a product that is developed for a specific platform should be submitted as a separate product in an OIDMTC application, e.g. Product A (Android), Product A (iOS), Product A (Blackberry). Each version of a product should have separate cost allocations and may also have different start and completion dates.

APPENDIX 1 - CONTACT INFORMATION

OMDC Tax Credits Department Who's Who

Listed below are the members of the Tax Credits Department who work on the OIDMTC. For general information, forms or information on the status of an application, please contact the Programs Officer. For specific questions on eligibility, labour expenditure calculations, definitions or any issue concerning a specific project; please contact the Tax Credits Phone Duty line (416) 642-6659 or mailbox at taxcredits@omdc.on.ca. Please leave a detailed message including your name, company, phone number and which tax credit or file you are inquiring about. Phone calls and emails will be responded to within one business day. Policy issues may be addressed to the Director.

Table 6 – OMD Tax Credits Staff Contact Information

Name	Title	Email	Phone
Phone Duty Line		taxcredits@omdc.on.ca	(416) 642-6659
Jennifer Blitz	Director, Tax Credits & Financing Programs	jblitz@omdc.on.ca	(416) 642-6694
Monica Szenteszky	Team Leader	mszenteszky@omdc.on.ca	(416) 642-6692
Manya Rouben	Team Leader	mrouben@omdc.on.ca	(416) 642-6643
Paritosh Mehta	Programs Officer	pmehta@omdc.on.ca	(416) 642-6639
Marc Betsworth	Business Officer	mbetsworth@omdc.on.ca	(416) 644-8780
Raymond Chua	Business Officer	rchua@omdc.on.ca	(416) 642-6649
Rick Mazza	Business Officer	rmazza@omdc.on.ca	(416) 642-6691
Elissa McBride	Business Officer	emcbride@omdc.on.ca	(416) 642-6685
Joan McGuinness	Business Officer	jmcguinness@omdc.on.ca	(416) 572-0432
Deborah Morris	Business Officer	dmorris@omdc.on.ca	(416) 642-6645
Anna Newallo	Business Officer	anewallo@omdc.on.ca	(416) 642-6640
Caitlin O'Leary	Business Officer	coleary@omdc.on.ca	(416) 644-8779
Mike Olivier	Business Officer	molivier@omdc.on.ca	(416) 642-6642
Kathy Paljus	Business Officer	kpajlus@omdc.on.ca	(416) 642-6641
Christine Pond	Business Officer	cpond@omdc.on.ca	(416) 642-6646
Mara Ravins	Business Officer	mravins@omdc.on.ca	(416) 642-6653
Mark Sonnenberg	Business Officer	msonnenberg@omdc.on.ca	(416) 642-6655
Rachel Arlene Singh	Business Officer	asingh@omdc.on.ca	(416) 642-6686
Albert Tan	Business Officer	atan@omdc.on.ca	(416) 642-6657
Angela Zehr	Business Officer	azehr@omdc.on.ca	(416) 642-6656

APPENDIX 2 - OIDMTC DOCUMENT CHECKLIST

Your company is responsible for ensuring that all application documentation is current and accurate.

1.	OIDMTC Application Form (You must register on the OMDC Online Application Portal to access the Application Form.)
2.	<p>Application Fee, payable to the Ontario Media Development Corporation. The fee is calculated as 0.1 percent of the total final Eligible Expenditures. The minimum Application Fee is \$100 and the maximum is \$2000 per application. Effective January 1, 2017:</p> <ul style="list-style-type: none"> - There is an additional filing fee of \$100 for applications that are submitted more than 18 months from the company's relevant year-end; and - There is a fee of \$100 for requests for amended Certificates. <p>Please note: Effective April 1, 2017 there is a new administration fee structure for tax credits which will offset the costs of administering the program. The OIDMTC administration fee will be calculated as 0.15% of eligible expenditures for the application. There is a minimum fee of \$1,000 per application and a maximum fee of \$10,000 per application.</p>
3.	Incorporation documents for your company, including amendments. (If these documents are already on file with the OMDC Tax Credits Department, please provide all updates, amendments or revisions).
4.	Corporate chart for Qualifying Corporation. If applying for an OIDMTC for non-specified and specified products, please provide a corporate chart for all associated companies (e.g. chart or schedule indicating the relationship between the applicant corporation and all associated corporations, including percentage of share ownership).
5.	Consolidated annual financial statements of your company for the current tax year.
6.	<p>If applying under section 93.2 as a Specialized Digital Game Corporation please provide: Detailed Payroll report or Wage Schedule that relates to the tax year in which the Specialized Digital Game Corporation is making an annual claim. The detailed Payroll Report or Wage Schedule should list names of all employees, their addresses, and job description.</p>
7.	<p>Chain of title documentation for each interactive digital media product included in the application (i.e. documentation of ownership rights to the product, for example, licensing agreements, rights agreements, domain name registration, co-production agreements, distribution agreements, where applicable. For specified products provide fee-for-service agreement with the purchaser corporation. Documentation should clearly indicate ownership rights to the completed product).</p> <p>If applying under section 93.1 as a Qualifying Digital Game Corporation, please provide: Development Agreement(s) between the Qualifying Digital Game Corporation and Purchaser Corporation(s) for each eligible digital game included in the application (i.e. purchaser agreements, fee-for-service agreements etc.)</p> <p>If applying under section 93.2 as a Specialized Digital Game Corporation, please provide: Development Agreements between the Specialized Digital Game Corporation and Purchaser Corporation(s) <u>if applicable</u> for each eligible digital game included in the application (i.e. purchaser agreements, fee-for-service agreements etc.)</p>

8.	Description of product development: Design and technical specification documentation, where applicable, including a flow chart, functional design, a description of the user experience, storyboard, a list of technical requirements and specifications or script.
9.	Complete, detailed production schedule and timeline showing who did what and when (e.g. Gantt chart).
10.	Business and Marketing Plan including a description of the target audience/market and revenue model. Where possible, please include letters and or agreements that confirm interest and proposed terms from third-party distributors or equivalent. (Required for each interactive digital media product included in the application). Please provide documentation to prove that the product has a revenue generating stream.
11.	<p>List of names and roles (with brief description) of all individuals and companies working on the product(s) paid or unpaid. This list must also include unclaimed and ineligible individuals and companies working on the product(s). Please include addresses.</p> <p>You must use the ODMTC Expenditure Breakdown Spreadsheet for Specified and Non-Specified Products (Section 93) that can be downloaded from the OMDC website.</p> <p>Please note: OMDC generally does not need to see the Ontario Declaration of Residency/Consent Forms for ODMTC, however, we advise applicants to keep them on file as the CRA may ask to see them should they decide to audit the claim.</p>
12.	List of names and addresses of individuals who are <u>not</u> employees of your company.
13.	Financing plan/sources of financing for the interactive digital media product (required for each interactive digital media product included in the application).
14.	Financing contracts, if available (for all sources of financing for each interactive digital media product included in the application). Include financing documents for government assistance/grants.
15.	<p>For each interactive digital media product included in the application being claimed under section 93 as an “non-specified product” or “specified product”, a cost report or schedule of ACTUAL eligible Ontario labour expenditures, and including split of costs incurred March 27, 2009 up to and including April 23, 2015, and those costs incurred April 24, 2015 and beyond. You must also identify unclaimed or ineligible amounts incurred for each product for the claim period. You must use the ODMTC Expenditure Breakdown Spreadsheet for Specified and Non-Specified Products (Section 93) that can be downloaded from the OMDC website.</p> <p>The schedules should make a clear distinction between, and provide subtotals for:</p> <ul style="list-style-type: none"> ● Wage Amounts on account of salaries and wages of your employees ● Remuneration Amounts paid to arm’s length parties who are not employees of your corporation. <p>To expedite OMDC’s review of the 80/25 Rule please provide the following:</p> <ul style="list-style-type: none"> ● Copies of T4s for the top five highest paid individuals claimed under wages and salaries to develop each product. Please note, additional T4s or employee agreements may be requested by OMDC. ● Contractor Agreements for the top five highest paid individuals or personal corporations claimed under remuneration for the development of each product. If no agreement exists, provide copies of invoices. Please note additional contractor agreements may be requested by OMDC.

16 For each eligible digital game included in the application being claimed under section 93.1 for a Qualifying Digital Game Corporation, a cost report or schedule of ACTUAL eligible Ontario labour expenditures incurred by the qualifying digital game corporation within any period of 36 months that ends in a tax year after March 26, 2009, in which an OIDMTC application is submitted, and those expenditures are not less than \$1,000,000.

The schedules should make a clear distinction between, and provide subtotals for:

- Wage Amounts on account of salaries and wages of your employees; and
- Remuneration Amounts paid to:

- a) Arm's length Ontario-based individuals who are not employees of your corporation;
- b) Ontario-based individuals who deal at arm's length with your qualifying digital game corporation for the services personally rendered by their employees;
- c) Ontario-based Canadian corporations for the services rendered personally by an Ontario based individual if the individual deals at arm's length with the qualifying digital game corporation and is the sole shareholder of the corporation (i.e personal services corporation);
- d) Eligible partnerships for the services rendered personally by a member of the eligible partnership, or for services rendered personally by employees of the eligible partnership

*Please note: Remuneration paid to a taxable Canadian corporation for services rendered by its employees cannot be included as eligible labour under section 93.1.

You must use the OIDMTC Expenditure Breakdown Spreadsheet for Qualified Digital Games (Section 93.1) that can be downloaded from the OMDC website.

17. For each eligible digital game included in the application being claimed under section 93.2 for a Specialized Digital Game Corporation, a cost report or schedule of actual eligible Ontario labour expenditures incurred after March 26, 2009 by the specialized digital game corporation in the year for which an OIDMTC application is submitted.

The schedules should make a clear distinction between, and provide subtotals for:

- Wage Amounts on account of salaries and wages of its employees; and
- Remuneration Amounts paid to:

- a) Arm's length Ontario based individuals who are not employees of your corporation;
- b) Ontario based individuals who deal at arm's length with your qualifying digital game corporation for the services personally rendered by their employees;
- c) Ontario based Canadian corporations for the services rendered personally by an Ontario based individual if the individual deals at arm's length with the qualifying digital game corporation and is the sole shareholder of the corporation (i.e personal services corporation);
- d) Eligible partnerships for the services rendered personally by a member of the eligible partnership or for services rendered personally by employees of the eligible partnership.

* Please note: Remuneration paid to a taxable Canadian corporation for services rendered by its employees and any Ontario labour expenditures incurred by a predecessor corporation cannot be included as eligible labour under section 93.2

You must use the OIDMTC Expenditure Breakdown Spreadsheet for Specialized Digital Games (Section 93.2) that can be downloaded from the OMDC website.

Please note: The OMDC may request documentation to verify costs such as Detailed General Ledger Reports, Project Accounts etc.

18.	<p>For each interactive digital media product included in the application, a schedule of actual and/or projected eligible Marketing and Distribution Expenses** including split of costs incurred March 27, 2009 up to and including April 23, 2015 and those costs incurred April 24, 2015 and beyond. The schedules should make a clear distinction between, and provide subtotals for marketing and distribution expenditures as they relate to specific eligible products. You must use the ODMTC Expenditure Breakdown Spreadsheet for Specified and Non-Specified Products (Section 93) that can be downloaded from the OMDC website.</p> <p>Note: Please submit FINAL numbers if applying after all marketing and distribution expenditures have been incurred.</p> <p>Please submit a schedule of projected total expenditures if applying before all marketing and distribution expenditures have been incurred.</p> <p>** Marketing and Distribution Expenses are not eligible expenditures for “specified products” or for “eligible digital games” claimed under section 93.1 (Qualifying Digital Game Corporation) or 93.2 (Specialized Digital Game Corporation)</p>
19.	<p>For products claimed under section 93 as “non-specified” or “specified”, please provide a copy of each completed interactive digital product or access to the version of the product as it existed when it was completed (including websites).: Product should be shelf-ready or exploitable. For websites, copy of all associated text and image files with address where product may be accessed at time of completion is required. Please include any password, registration or access codes that may be required to review the product.</p> <p>If applying under section 93.1 (Qualifying Digital Game Corporation) or 93.2 (Specialized Digital Game Corporation) please provide evidence or copy of each eligible digital game included in application including online games. Please submit copies of completed eligible digital games if available. Other documentation to evidence development of eligible digital games may include detailed design or technical specification documents, working prototypes, mock ups, wire frames, copies of graphics and art assets created, game design documents, physics or game engine descriptions. For websites, copy of all associated text and image files with address where the game may be accessed is required. Please include any password, registration or access codes that may be required to review the game.</p>
20.	A description of the product is required.
21.	If the product is a website based on a film, television or internet production, the applicant must provide a licence agreement in respect of the copyright related to the film, television or internet production that the website is based on.
22.	If the product’s primary purpose is to educate children under the age of 12, documentation must be provided to demonstrate this.

APPENDIX 3 - ONTARIO INTERACTIVE DIGITAL MEDIA TAX CREDIT LEGISLATION

Section 93 of the *Taxation Act*, S.O. 2007, Chapter 11, Schedule A

Current to January 1, 2017

Ontario interactive digital media tax credit

- 93.** (1) A corporation that complies with the requirements of this section or section 93.1 or 93.2 may claim an amount for the year in respect of and not exceeding the corporation's Ontario interactive digital media tax credit for the year.

Total amount of tax credit under this section and ss. 93.1 and 93.2

- (1.1) The amount of a corporation's Ontario interactive digital media tax credit for a taxation year is the sum of the credits determined under this section and sections 93.1 and 93.2 for the year.

Amount of tax credit under this section

- (2) Subject to subsections (2.4) to (2.6), the amount of a qualifying corporation's credit under this section for a taxation year is the sum of the corporation's eligible credits for the year as determined under this section in respect of eligible products.

Non-specified products, other than qualifying small corporations

- (2.1) A qualifying corporation's eligible credit for a taxation year in respect of an eligible product that is not a specified product is, if the corporation is not a qualifying small corporation, the sum of,
- (a) 20 per cent of the portion of its qualifying expenditure in respect of the product for the year that relates to expenditures incurred after March 23, 2006 and before March 26, 2008;
 - (b) 25 per cent of the portion of its qualifying expenditure in respect of the product for the year that relates to expenditures incurred after March 25, 2008 and before March 27, 2009; and
 - (c) 40 per cent of the portion of its qualifying expenditure in respect of the product for the year that relates to expenditures incurred after March 26, 2009.

Non-specified products, qualifying small corporations

- (2.2) A qualifying corporation's eligible credit for a taxation year in respect of an eligible product that is not a specified product is, if the corporation is a qualifying small corporation, the sum of,
- (a) 20 per cent of the portion of its qualifying expenditure in respect of the product for the year that relates to expenditures incurred before March 24, 2006;

- (b) 30 per cent of the portion of its qualifying expenditure in respect of the product for the year that relates to expenditures incurred after March 23, 2006 and before March 27, 2009; and
- (c) 40 per cent of the portion of its qualifying expenditure in respect of the product for the year that relates to expenditures incurred after March 26, 2009.

Specified products

- (2.3) A qualifying corporation's eligible credit for a taxation year in respect of an eligible product that is a specified product is the sum of,
 - (a) 20 per cent of the portion of its qualifying expenditure in respect of the product for the year that relates to expenditures incurred after March 23, 2006 and before March 26, 2008;
 - (b) 25 per cent of the portion of its qualifying expenditure in respect of the product for the year that relates to expenditures incurred after March 25, 2008 and before March 27, 2009; and
 - (c) 35 per cent of the portion of its qualifying expenditure in respect of the product for the year that relates to expenditures incurred after March 26, 2009.

Claims not allowed under subs. (2.3) and s. 93.1

- (2.4) A qualifying corporation's eligible credit under subsection (2.3) in respect of an eligible product is deemed to be nil for a particular taxation year if the corporation claims a credit under section 93.1 in respect of the eligible product for the year or any previous taxation year.

Claims not allowed under this section and s. 93.2

- (2.5) Subject to subsection (2.6), a qualifying corporation's credit under this section in respect of an eligible product for a particular taxation year is deemed to be nil if the corporation claims a credit under section 93.2 in respect of the eligible product for the year.

Exception, transition to s. 93.2

- (2.6) Subsection (2.5) does not apply in respect of a qualifying corporation for a particular taxation year if the corporation completes an eligible product in the year and the Ontario labour expenditure incurred in respect of the product includes expenditures that were incurred before the later of March 27, 2009 and the beginning of the first taxation year in which the corporation claimed a credit under section 93.2.

Qualifying expenditure

- (3) The qualifying expenditure of a qualifying corporation for a taxation year is,
 - (a) in respect of an eligible product that is not a specified product, the amount of its eligible labour expenditure and eligible marketing and distribution expenditure for the year in respect of the product; and
 - (b) in respect of an eligible product that is a specified product, the amount of its eligible labour expenditure for the year in respect of the product.

Eligible labour expenditure

- (4) A qualifying corporation's eligible labour expenditure for an eligible product for a taxation year is equal to the amount, if any, by which the sum of "A" and "B" exceeds "C" where,
- "A" is the Ontario labour expenditure, if any, incurred by the qualifying corporation in the year for the eligible product,
- "B" is the sum of all amounts, if any, each of which is the Ontario labour expenditure incurred for the eligible product by the qualifying corporation in a previous taxation year or by a qualifying predecessor corporation before the disposition, merger or wind-up, as the case may be, to the extent that,
- (a) if development of the product is completed before March 26, 2008, the expenditure is incurred in the 25-month period ending at the end of the month in which development of the eligible product is completed, or
- (b) if development of the product is completed after March 25, 2008, the expenditure is incurred in the 37-month period ending at the end of the month in which development of the eligible product is completed, and
- "C" is the sum of "D", "E" and "F" where,
- "D" is the total of all amounts, if any, each of which is the eligible labour expenditure for the eligible product that was included in the determination of the amount of a tax credit claimed under this section, section 93.2 or section 43.11 of the Corporations Tax Act for a previous taxation year by the qualifying corporation or by a qualifying predecessor corporation,
- "E" is the total of all amounts, if any, each of which is the eligible labour expenditure for the eligible product that was included in the determination of the amount of a credit claimed under section 93.2 for the year by the qualifying corporation, and
- "F" is the total of all government assistance, if any, in respect of the Ontario labour expenditure for the eligible product that, on the qualifying corporation's filing-due date for the taxation year, the qualifying corporation or any other person or partnership has received, is entitled to receive or may reasonably expect to receive, to the extent that the government assistance has not been included in determining a corporation's eligible labour expenditures under section 93.2 or been repaid under a legal obligation to do so.

Who claims amount in respect of specified product

- (5) For the purposes of subsection (4), if a qualifying corporation develops a specified product under a contract entered into after March 23, 2006, only the qualifying corporation is entitled to claim an amount under this section in respect of the specified product.

Eligible marketing and distribution expenditure

- (6) The eligible marketing and distribution expenditure of a qualifying corporation for an eligible product for a taxation year is the amount that is the lesser of,
- (a) the amount, if any, by which \$100,000 exceeds the total of all amounts, if any, each of which is the corporation's eligible marketing and distribution expenditure for the eligible product or a qualifying predecessor corporation's eligible marketing and distribution expenditure incurred for the eligible product before the disposition, merger or wind-up, as the case may be, that was included in the determination of the corporation's tax credit under this section or section 43.11 of the Corporations Tax Act for a previous taxation year; and
- (b) the amount determined under subsection (7).

Same

- (7) The amount determined under this subsection for the purposes of clause (6) (b) is calculated using the formula,

$$F - (G + H + I)$$

in which,

“F” is the total of all amounts, if any, each of which is a marketing and distribution expenditure in respect of the eligible product incurred by the qualifying corporation in the taxation year or in a previous taxation year or by a qualifying predecessor corporation before the disposition, merger or wind-up, as the case may be, to the extent that it was incurred,

(a) in the month in which development of the eligible product is completed, and

(b) in the period of 24 months before, or in the period of 12 months after, the month in which development of the eligible product is completed,

“G” is the total amount of all government assistance, if any, for the marketing and distribution expenditures described in the definition of “F” for the eligible product that, on the corporation’s filing-due date for the taxation year, the qualifying corporation or any other person or partnership has received, is entitled to receive or may reasonably expect to receive, to the extent that the government assistance has not been repaid under a legal obligation to do so,

“H” is the total of all amounts, if any, each of which is an eligible marketing and distribution expenditure for the eligible product that was included in the determination of a tax credit claimed under this section or section 43.11 of the Corporations Tax Act for a previous taxation year by the qualifying corporation or by a qualifying predecessor corporation, and

“I” is the total of all marketing and distribution expenditures described in the definition of “F” for the eligible product that are Ontario labour expenditures of the qualifying corporation or a qualifying predecessor corporation.

Application for certificate

- (8) In order to be eligible to claim an amount in respect of an Ontario interactive digital media tax credit under this section for a taxation year, a qualifying corporation shall apply to the Ontario Media Development Corporation or a person designated by the Minister of Culture for certification of its eligible products for the purposes of this section.

Time for application

(8.1) No amount may be claimed under this section in respect of an eligible product unless an application for certification under subsection (8) is made in respect of the eligible product on or before the later of,

(a) the day that is 18 months after the end of the taxation year of the corporation in which the development of the eligible product is completed; and

(b) the day that is six months after November 14, 2016.

Same

- (9) A qualifying corporation that applies for certification shall provide the information specified for the purposes of this section by the Ontario Media Development Corporation or a person designated by the Minister of Culture to the person who specified that it be provided.

Certificate

- (10) If a qualifying corporation provides the information in accordance with subsection (9) in respect of its eligible products for a taxation year, the Ontario Media Development Corporation or a person designated by the Minister of Culture shall issue a certificate, and any amended certificates it considers appropriate, to the qualifying corporation with respect to its eligible products for the year, certifying in respect of each eligible product,
- (a) that the product is an eligible product for the purposes of this section; and
 - (b) the estimated amount of the corporation's tax credit under this section applicable to the product.

Certificate to be delivered with return

- (11) In order to claim an amount under this section for a taxation year, a qualifying corporation must deliver to the Ontario Minister with its return for the year the certificate for the year that is most recently issued under subsection (10), or a certified copy of the certificate.

Revocation of certificate

- (12) A certificate or amended certificate issued under subsection (10) may be revoked,
- (a) if an omission or incorrect statement was made and it is reasonable to believe that, if the omitted information had been disclosed or if the person issuing the certificate had known that the statement was incorrect, he or she would not have issued the certificate;
 - (b) if none of the products in respect of which the certificate is issued is an eligible product;
 - (c) if the corporation to which the certificate is issued is not a qualifying corporation; or
 - (d) if, in determining the amount of its tax credit under this section for a taxation year, the corporation claims another corporation as a qualifying predecessor corporation in respect of an eligible product and the other corporation is not a qualifying predecessor corporation of the corporation before the eligible product becomes the property of or is disposed of to the corporation.

Same

- (13) A certificate that is revoked is deemed never to have been issued.

Definitions

- (14) In this section,
- “eligible product” means, in respect of a qualifying corporation, a product,
- (a) that satisfies the prescribed conditions or that is a specified product, and
 - (b) for which public financial support would not be contrary to public policy in the opinion of the Ontario Media Development Corporation or, if another person is designated for the purposes of subsection (8), in the opinion of that person; (“produit admissible”)
- “government assistance” means assistance from a government, municipality or other public authority in any form, including a grant, subsidy, forgivable loan, deduction from tax and

investment allowance, but not including a tax credit under this section or section 43.11 of the Corporations Tax Act; (“aide gouvernementale”)

“marketing and distribution expenditure” means the amount determined under the prescribed rules; (“dépense de commercialisation et de distribution”)

“Ontario labour expenditure” means the amount determined under the prescribed rules; (“dépense de main-d’oeuvre en Ontario”)

“qualifying corporation” means a Canadian corporation,

(a) that satisfies one of the conditions set out in subsection (16),

(b) that is not controlled directly or indirectly in any manner whatever by one or more corporations all or part of whose taxable income is exempt from tax under section 57 of the Corporations Tax Act or Part III of this Act, and

(c) that is not a prescribed labour-sponsored venture capital corporation under the Federal regulations; (“société admissible”)

“qualifying predecessor corporation” means, in respect of a qualifying corporation (the “transferee”), a corporation that was a qualifying corporation in respect of an eligible product and that,

(a) disposes of the eligible product to the transferee in accordance with subsection 85 (1) of the Federal Act if, at the time of the disposition,

(i) the corporation owns all of the issued and outstanding shares of the transferee,

(ii) the transferee owns all of the issued and outstanding shares of the corporation,

or

(iii) all of the issued and outstanding shares of the corporation and the transferee are directly or indirectly owned by the same person,

(b) merges with one or more corporations in accordance with section 87 of the Federal Act to form the transferee, or

(c) is wound up in accordance with subsection 88 (1) of the Federal Act; (“société remplacée admissible”)

“qualifying small corporation”, in respect of a taxation year, means a qualifying corporation where,

(a) the amount of the corporation’s total assets at the end of the year is equal to or less than \$10 million and the amount of the corporation’s total revenue for the year is equal to or less than \$20 million; or

(b) the corporation is associated with one or more corporations during the year and,

(i) the sum of the total assets of the corporation as of the end of the taxation year and of each associated corporation as of the end of the associated corporation’s last taxation year ending in the corporation’s taxation year is equal to or less than \$10 million, and

(ii) the sum of the total revenue of the corporation for the taxation year and of each associated corporation for the last taxation year of the associated corporation

ending in the corporation's taxation year is equal to or less than \$20 million.
("petite société admissible")

Specified product

- (15) A product developed by a qualifying corporation is a specified product for the purposes of this section if the following conditions are satisfied:
1. The product satisfies the prescribed conditions.
 2. The product is developed by the qualifying corporation under the terms of an agreement between the qualifying corporation and a purchaser that is a corporation that deals at arm's length with the qualifying corporation.
 3. The product is developed under the agreement for the purpose of sale or license by the purchaser to one or more persons, each of whom deals at arm's length with the purchaser.
 4. If, before April 24, 2015, the Ontario Media Development Corporation issued a certificate under subsection (10) to the qualifying corporation in respect of the product, or sent a letter to notify the qualifying corporation that the product does not qualify for certification, all or substantially all of the product is developed in Ontario by the qualifying corporation.
 5. The development of the product is completed by the qualifying corporation after March 23, 2006.

Conditions for qualifying corporations

- (16) The following are the conditions referred to in clause (a) of the definition of "qualifying corporation" in subsection (14):
1. The corporation commences development of an eligible product at a permanent establishment in Ontario operated by the corporation, but does not complete development of the product before it is transferred to or otherwise becomes the property of another corporation in circumstances described in clause (a), (b) or (c) of the definition of "qualifying predecessor corporation" in subsection (14).
 2. The corporation completes, at a permanent establishment in Ontario operated by the corporation, the development of an eligible product received from a qualifying predecessor corporation.
 3. The corporation develops an eligible product at a permanent establishment in Ontario operated by the corporation.

Ceasing to be a qualifying corporation

- (17) Despite paragraph 1 of subsection (16), a qualifying predecessor corporation ceases to be a qualifying corporation with respect to an eligible product immediately after the eligible product becomes the property of or has been disposed of to the other corporation.

Amalgamations

(18) Despite the definition of “qualifying small corporation” in subsection (14), a corporation formed as a result of an amalgamation of two or more predecessor corporations is not a qualifying small corporation for the taxation year commencing at the time of the amalgamation unless each predecessor corporation would be considered, but for this subsection, to be a qualifying small corporation for its last taxation year ending immediately before the amalgamation and, for the purposes of this subsection, each predecessor corporation is deemed to have been associated with every other predecessor corporation during the taxation year ending immediately before the amalgamation.

Application of s. 55 (2)

(19) Paragraphs 1 to 6 of subsection 55 (2) apply for the purposes of determining if a qualifying corporation is a qualifying small corporation for the purposes of this section.

Qualifying digital game corporation’s tax credit

93.1 (1) The amount of a qualifying digital game corporation’s tax credit under this section for a taxation year for the purposes of subsection 93 (1.1) is the total of all amounts each of which is the corporation’s eligible credit for the year in respect of an eligible digital game.

Eligible credit, eligible digital games

(2) A qualifying digital game corporation’s eligible credit for a taxation year in respect of an eligible digital game is 35 per cent of its qualifying labour expenditure in respect of the digital game for the year that relates to expenditures incurred after March 26, 2009.

Claims not allowed under s. 93 (2.3) and this section

(3) A qualifying digital game corporation’s eligible credit under subsection (2) in respect of an eligible digital game is deemed to be nil for a particular taxation year if the corporation claims a credit under subsection 93 (2.3) in respect of the digital game for any previous taxation year.

Claims not allowed under this section and s. 93.2

(4) Subject to subsection (5), a qualifying digital game corporation cannot claim a credit under this section for a particular taxation year in respect of an eligible digital game if the corporation has claimed a credit under section 93.2 in respect of the digital game for the year.

Exception, transition to s. 93.2

(5) Subsection (4) does not apply if a qualifying digital game corporation claims a credit under section 93.2 in a taxation year, the 36-month period selected by the corporation for the purposes of paragraph 5 of subsection (9) ends in the year and the Ontario labour expenditure incurred in respect of the digital game includes expenditures that were incurred before the later of March 27, 2009 and the beginning of the first taxation year in which the corporation claimed a credit under section 93.2.

Qualifying labour expenditure

(6) The qualifying labour expenditure of a qualifying digital game corporation in respect of an eligible digital game for a taxation year is equal to the amount, if any, by which the sum of “A” and “B” exceeds “C” where,

“A” is the Ontario labour expenditure, if any, incurred by the qualifying digital game corporation in the year for the eligible digital game, to the extent that the expenditure is incurred in the 36-month period selected by the corporation for the purposes of paragraph 5 of subsection (9),

“B” is the sum of all amounts, if any, each of which is the Ontario labour expenditure incurred for the eligible digital game by the qualifying digital game corporation in a previous taxation year or by a qualifying predecessor corporation before the merger or wind-up, as the case may be, to the extent that the expenditure is incurred in the 36-month period selected by the corporation for the purposes of paragraph 5 of subsection (9), and

“C” is the sum of “D”, “E” and “F” where,

“D” is the total of all amounts, if any, each of which is the eligible labour expenditure for the eligible digital game that was included in the determination of the amount of a tax credit claimed under section 93.2 for a previous taxation year by the qualifying digital game corporation, determined in accordance with the rules prescribed by regulation in respect of a digital game that is an eligible digital game for the purposes of section 93.2,

“E” is the total of all amounts, if any, each of which is the eligible labour expenditure for the eligible digital game that was included in the determination of the amount of a credit claimed under section 93.2 for the year by the qualifying digital game corporation, and

“F” is the total of all government assistance, if any, in respect of the Ontario labour expenditure for the eligible digital game that, on the qualifying digital game corporation’s filing-due date for the taxation year, the qualifying digital game corporation or any other person or partnership has received, is entitled to receive or may reasonably expect to receive, to the extent that the government assistance has not been included in determining a corporation’s eligible labour expenditures under section 93.2 or repaid under a legal obligation to do so.

Application for certificate

(7) Subsections 93 (8) and (9) to (13) apply for the purposes of this section, subject to any prescribed modifications, as if,

- (a) each reference in those provisions to “this section” were read as a reference to this section;
- (b) each reference in those provisions to a “qualifying corporation” were read as a reference to a “qualifying digital game corporation”; and
- (c) each reference in those provisions to an “eligible product” were read as a reference to an “eligible digital game”.

Definitions

(8) In this section,

“eligible digital game” means a product in respect of a qualifying digital game corporation that satisfies all of the conditions set out in subsection (9); (“jeu numérique admissible”)

“government assistance” means assistance from a government, municipality or other public authority in any form, including a grant, subsidy, forgivable loan, deduction from tax and investment allowance, but not including a tax credit under subsection 93 (1); (“aide gouvernementale”)

“Ontario labour expenditure” means the amount determined under the prescribed rules;
 (“dépense de main-d’oeuvre en Ontario”)

“qualifying digital game corporation” means a Canadian corporation,

- (a) that carries on through a permanent establishment in Ontario a business that includes the development of digital games,
- (b) that is not controlled directly or indirectly in any manner whatever by one or more corporations all or part of whose taxable income is exempt from tax under Part III of this Act,
- (c) that is not a prescribed labour-sponsored venture capital corporation under the Federal regulations, and
- (d) that is not a taxable Canadian corporation the primary activity of which is to provide the services of a single individual and all the issued and outstanding shares of the capital stock of which (other than directors’ qualifying shares) are owned by that individual; (“société de jeux numériques admissible”)

“qualifying predecessor corporation” means, in respect of a qualifying digital game corporation (the “transferee”), a corporation that was a qualifying digital game corporation in respect of an eligible digital game and that,

- (a) merges with one or more corporations in accordance with section 87 of the Federal Act to form the transferee, or
- (b) is wound up in accordance with subsection 88 (1) of the Federal Act. (“société remplacée admissible”)

Eligible digital game

(9) The following are the conditions referred to in the definition of “eligible digital game” in subsection (8):

1. The product is an interactive digital media product as determined under the prescribed rules.
2. The product is a digital game in the opinion of the Ontario Media Development Corporation or, if another person is designated by the Minister of Culture, in the opinion of that person.
3. The product is developed in whole or in part by the qualifying digital game corporation under the terms of an agreement between the qualifying digital game corporation and a purchaser that is a corporation.
4. The product is developed for the purpose of sale or license by the purchaser to one or more persons, each of whom deals at arm’s length with the purchaser.
5. The qualifying labour expenditure incurred by the qualifying digital game corporation within any period of 36 months that ends in the taxation year is not less than \$1,000,000.
6. The qualifying digital game corporation or a qualifying predecessor corporation has not previously claimed a tax credit under this section in respect of the eligible digital game.
7. The product is not used primarily,
 - i. for interpersonal communication,

- ii. to present or promote the qualifying digital game corporation, a qualifying predecessor corporation or the purchaser, or
 - iii. to present, promote or sell the products or services of the qualifying digital game corporation, a qualifying predecessor corporation or the purchaser.
8. The product is one for which public financial support would not be contrary to public policy in the opinion of the Ontario Media Development Corporation or, if another person is designated for the purposes of subsection 93 (8), as it applies for the purposes of this section, in the opinion of that person.

Specialized digital game corporation's credit

- 93.2** (1) The amount of a specialized digital game corporation's credit under this section for a taxation year for the purposes of subsection 93 (1.1) is 35 per cent of the corporation's qualifying labour expenditure in respect of eligible digital games for the year that relates to expenditures incurred after March 26, 2009.

Qualifying labour expenditure

- (2) The qualifying labour expenditure of a specialized digital game corporation in respect of eligible digital games for a taxation year is the total of all amounts each of which is the eligible labour expenditure of the corporation in respect of an eligible digital game for the year.

Eligible labour expenditure

- (3) The eligible labour expenditure of a specialized digital game corporation in respect of an eligible digital game for a taxation year is the amount, if any, by which "A" exceeds "B" where,
- "A" is the corporation's Ontario labour expenditure for the year for eligible digital game activities in respect of the eligible digital game, and
- "B" is the total of all government assistance, if any, in respect of the Ontario labour expenditure for eligible digital game activities in respect of the eligible digital game that, on the specialized digital game corporation's filing-due date for the year, the specialized digital game corporation or any other person or partnership has received, is entitled to receive or may reasonably expect to receive, to the extent that the government assistance has not been repaid under a legal obligation to do so.

Application for certificate

- (4) In order to be eligible to claim a credit under this section for a taxation year, a specialized digital game corporation shall apply to the Ontario Media Development Corporation or a person designated by the Minister of Culture for certification for the year for the purposes of this section.

Same

- (5) A specialized digital game corporation that applies for certification under subsection (4) shall provide the information specified for the purposes of this section by the Ontario Media Development Corporation or a person designated by the Minister of Culture to the person who specified that it be provided.

Certificate

- (6) If a specialized digital game corporation provides the information in accordance with subsection (5) for a taxation year, the Ontario Media Development Corporation or a person designated by the Minister of Culture shall issue a certificate, and any amended certificates it considers appropriate, to the corporation for the year, certifying,
- (a) that the corporation is a specialized digital game corporation;
 - (b) that the corporation's eligible digital game activities were undertaken in respect of digital games that are eligible digital games or would have been eligible digital games had they been completed before the end of the taxation year; and
 - (c) the estimated amount of the corporation's credit under this section for the year in respect of its eligible digital game activities.

Certificate to be delivered with return

- (7) In order to claim an amount under this section for a taxation year, a specialized digital game corporation must deliver to the Ontario Minister with its return for the year the certificate for the year or a certified copy of the certificate.

Revocation of certificate

- (8) A certificate or amended certificate issued under subsection (6) may be revoked,
- (a) if an omission or incorrect statement was made and it is reasonable to believe that, if the omitted information had been disclosed or if the person issuing the certificate had known that the statement was incorrect, he or she would not have issued the certificate;
 - (b) if none of the activities in respect of which the certificate is issued are eligible digital game activities; or
 - (c) if the corporation to which the certificate is issued is not a specialized digital game corporation.

Same

- (9) A certificate that is revoked is deemed never to have been issued.

Definitions

- (10) In this section,
- “eligible digital game” means a product in respect of a specialized digital game corporation that satisfies all of the conditions set out in subsection (11); (“jeu numérique admissible”)
 - “eligible digital game activities” means activities that are carried out in Ontario and are directly attributable to the development of an eligible digital game; (“activités admissibles de conception d’un jeu numérique”)
 - “government assistance” means assistance from a government, municipality or other public authority in any form, including a grant, subsidy, forgivable loan, deduction from tax and investment allowance, but not including a tax credit under subsection 93 (1); (“aide gouvernementale”)
 - “Ontario labour expenditure” means the amount determined under the prescribed rules; (“dépense de main-d’oeuvre en Ontario”)

“specialized digital game corporation” for a taxation year means a Canadian corporation that satisfies all of the conditions set out in subsection (12). (“société de jeux numériques spécialisée”)

Eligible digital game

(11) The following are the conditions referred to in the definition of “eligible digital game” in subsection (10):

1. The product is an interactive digital media product as determined under the prescribed rules.
2. The product is a digital game in the opinion of the Ontario Media Development Corporation or, if another person is designated by the Minister of Culture, in the opinion of that person.
3. The product is developed for the purpose of sale or license by the specialized digital game corporation or, if applicable, the purchaser, to one or more persons, each of whom deals at arm’s length with the specialized digital game corporation and the purchaser.
4. The product is not used primarily,
 - i. for interpersonal communication,
 - ii. to present or promote the specialized digital game corporation or, if applicable, the purchaser, or
 - iii. to present, promote or sell the products or services of the specialized digital game corporation or, if applicable, the purchaser.
5. The product is one for which public financial support would not be contrary to public policy in the opinion of the Ontario Media Development Corporation or, if another person is designated for the purposes of subsection 93 (8), as it applies for the purposes of this section, in the opinion of that person.

Specialized digital game corporation

(12) The following are the conditions referred to in the definition of “specialized digital game corporation” in subsection (10):

1. The corporation carries on through a permanent establishment in Ontario a business that includes the development of digital games.
2. The corporation’s Ontario labour expenditure for the year in respect of eligible digital games is not less than \$1 million.
3. The corporation satisfies one of the following conditions:
 - i. the total of the salaries and wages incurred by the corporation in the year for services rendered in Ontario that are directly attributable to the development of digital games is not less than 80 per cent of the total of the salaries and wages incurred by the corporation in the year for services rendered in Ontario,
 - ii. the amount of the corporation’s gross revenue for the year that is directly attributable to the development of digital games is not less than 90 per cent of the corporation’s total gross revenue for the year, or
 - iii. a condition prescribed for the purposes of this paragraph.

4. The corporation is not controlled directly or indirectly in any manner whatever by one or more corporations all or part of whose taxable income is exempt from tax under Part III of this Act.
5. The corporation is not a prescribed labour-sponsored venture capital corporation under the Federal regulations.
6. The corporation is not a taxable Canadian corporation the primary activity of which is to provide the services of a single individual and all the issued and outstanding shares of the capital stock of which (other than directors' qualifying shares) are owned by that individual.

APPENDIX 4 - ONTARIO INTERACTIVE DIGITAL MEDIA TAX CREDIT REGULATION

ONTARIO REGULATION 37/09

(Note that this does not include the amendments proposed in the Provincial Budget of April 23, 2015 and draft regulations of November 2, 2015. The draft regulations of November 2, 2015 follow in Appendix 5)

ONTARIO INTERACTIVE DIGITAL MEDIA TAX CREDIT

Eligible product

34. (1) In this section,

“interactive digital media product” means a combination of one or more application files and one or more data files, all in a digital format, that are integrated and are intended to be operated together and that have the following characteristics when they are being operated:

1. Their primary purpose is to educate, inform or entertain the user.
2. They achieve their primary purpose by presenting information in at least two of the following forms:
 - i. text,
 - ii. sound,
 - iii. images.
3. They are intended to be used by individuals.
4. By interacting with them, the user can choose what information is to be presented and the form and sequence in which it is to be presented.

(2) For the purposes of this section, a combination of application files and data files developed primarily for use as system software is not an interactive digital media product.

(3) A product that is not a specified product is an eligible product for the purposes of section 93 of the Act if the following conditions are satisfied:

1. The product is an interactive digital media product.
2. If the product was completed before May 12, 2005,
 - i. all or substantially all of the product was developed in Ontario by the qualifying corporation or by the qualifying corporation and a qualifying predecessor corporation, and
 - ii. the product was developed for commercial exploitation by the qualifying corporation or by the qualifying corporation and a qualifying predecessor corporation.
3. If the product is completed after May 11, 2005,
 - i. all or substantially all of the product was developed in Ontario by the qualifying corporation or by the qualifying corporation and a qualifying predecessor corporation, and
 - ii. the product was developed for sale or licensing by the qualifying corporation to one or more persons dealing at arm’s length with the qualifying corporation who have not previously entered into an arrangement with the qualifying corporation or a qualifying predecessor corporation for the development of the product.
4. The product is not used primarily for interpersonal communication.
5. The product is not used primarily to present or promote the qualifying corporation or a qualifying predecessor corporation.
6. The product is not used primarily to present, promote or sell the products or services of the qualifying corporation or of a qualifying predecessor corporation.

- (4) The following are the conditions referred to in paragraph 1 of subsection 93 (15) of the Act with respect to a specified product:
1. The product is an interactive digital media product.
 2. The product is not used primarily for interpersonal communication.
 3. Development of the product was started by a qualifying corporation or a qualifying predecessor corporation and completed by the qualifying corporation in Ontario.
 4. The product is not used primarily to present or promote the qualifying corporation, a qualifying predecessor corporation or the purchaser referred to in paragraphs 2 and 3 of subsection 93 (15) of the Act.
 5. The product is not used primarily to present, promote or sell the products or services of the qualifying corporation, a qualifying predecessor corporation or the purchaser referred to in paragraphs 2 and 3 of subsection 93 (15) of the Act.

Ontario labour expenditure

35. (1) For the purposes of section 93 of the Act, the Ontario labour expenditure of a qualifying corporation for a taxation year for an eligible product is the sum of,

- (a) the qualifying wage amount of the qualifying corporation or qualifying predecessor corporation for the year with respect to the eligible product;
- (b) for expenditures incurred before March 27, 2009, if the eligible product is not a specified product, 50 per cent of the qualifying remuneration amount of the qualifying corporation or qualifying predecessor corporation for the year with respect to the eligible product; and
- (c) for expenditures incurred after March 26, 2009, the qualifying remuneration amount of the qualifying corporation or qualifying predecessor corporation for the year with respect to the eligible product.

(2) Subject to subsection (4), the qualifying wage amount of a qualifying corporation or qualifying predecessor corporation for a taxation year with respect to an eligible product is the amount incurred during the year on account of salaries or wages for the corporation's employees. O. Reg. 37/09, s. 35 (2).

(3) Subject to subsection (4), the qualifying remuneration amount of a qualifying corporation or qualifying predecessor corporation for a taxation year with respect to an eligible product is the sum of all amounts each of which is an expenditure incurred during the year by the qualifying corporation or qualifying predecessor corporation on account of remuneration paid to any of the following persons or entities in the circumstances that are described:

1. An individual who is not an employee of the qualifying corporation or qualifying predecessor corporation, as the case may be, and who deals at arm's length with that corporation, to the extent that the expenditure is attributable to services personally rendered by the individual.
2. An individual described in paragraph 1 for services rendered by the individual's employees, to the extent that the expenditure does not exceed the salaries and wages of those employees for personally rendering those services.
3. A taxable Canadian corporation for services rendered personally by an individual,
 - i. if all of the issued and outstanding shares of the capital stock of the taxable Canadian corporation (other than directors' qualifying shares) are owned by the individual,
 - ii. if the individual deals at arm's length with the qualifying corporation or qualifying predecessor corporation, as the case may be, and
 - iii. if the taxable Canadian corporation's primary activity is the provision of the individual's services.
4. For expenditures incurred before March 27, 2009 in respect of an eligible product and for expenditures incurred after March 26, 2009 in respect of an eligible product that is not a digital game, as referred to in paragraph 2 of subsection 93.1 (9) of the Act, a taxable Canadian corporation that deals at arm's length with the qualifying corporation or qualifying predecessor

corporation for services rendered by employees of the taxable Canadian corporation, to the extent that the expenditure does not exceed the salaries and wages of those employees for personally rendering those services.

5. An eligible partnership described in subsection (6),

- i. for services rendered personally by a member of the eligible partnership, or
- ii. for services rendered personally by employees of the eligible partnership, to the extent that the expenditure does not exceed the salaries and wages of those employees for personally rendering those services.

(4) An expenditure is not included in the qualifying wage amount or qualifying remuneration amount of the qualifying corporation or qualifying predecessor corporation, as the case may be, for a taxation year with respect to an eligible product unless all the following conditions are satisfied:

1. The expenditure is directly attributable to the development of the eligible product.
2. The expenditure is included in the cost or, in the case of depreciable property, the capital cost of the eligible product.
3. The expenditure is paid no later than 60 days after the end of the year.
4. The expenditure was incurred for services personally rendered by an individual who was resident in Ontario at the end of the calendar year that precedes the calendar year in which he or she rendered the services.
5. In the case of the qualifying wage amount, the expenditure is paid to an employee of the qualifying corporation or qualifying predecessor corporation, as the case may be, who reported to a permanent establishment of that corporation in Ontario at which the eligible product was being developed.
6. In the case of the qualifying remuneration amount, the expenditure is paid for services rendered at a permanent establishment in Ontario of the qualifying corporation, of a qualifying predecessor corporation or of a person or entity described in one of the paragraphs of subsection (3).
7. The expenditure is not an amount for which the qualifying corporation or qualifying predecessor corporation makes a claim under section 90, 91 or 92 of the Act or section 43.5, 43.8 or 43.10 of the *Corporations Tax Act*.
8. The expenditure is not an amount incurred by the qualifying corporation or a qualifying predecessor corporation in carrying out activities that constitute scientific research and experimental development for the purposes of paragraph 37 (1) (a) of the Federal Act or subparagraph 37 (1) (b) (i) of that Act.

(5) An expenditure that is not included in the qualifying wage amount or qualifying remuneration amount of the qualifying corporation or qualifying predecessor corporation, as the case may be, for a taxation year because of paragraph 3 of subsection (4) may be included in the qualifying wage amount or qualifying remuneration amount for a subsequent taxation year if the expenditure is paid no later than 60 days after the end of that subsequent taxation year.

(6) For the purposes of paragraph 5 of subsection (3), an eligible partnership is a partnership carrying on business in Canada whose members are all individuals. However, a partnership is not an eligible partnership in relation to a qualifying corporation or in relation to a qualifying predecessor corporation, as the case may be, if more than 50 per cent of the income of the partnership is allocable (or would be allocable if it had income) to one or more members,

- (a) who directly or indirectly control the qualifying corporation or qualifying predecessor corporation; or
- (b) who are related to one or more persons who directly or indirectly control the qualifying corporation or qualifying predecessor corporation.

(7) For the purposes of the definition of “marketing and distribution expenditure” in subsection 93 (14) of the Act and subject to subsection (8), the marketing and distribution expenditure incurred by a qualifying corporation or qualifying predecessor corporation in respect of an eligible product is sum of all amounts each of which is an expenditure incurred by the qualifying corporation or qualifying predecessor corporation in a taxation year that satisfies all of the following conditions:

1. The expenditure is directly attributable to advertising or promoting the eligible product or distributing the eligible product to customers or potential customers.
2. The expenditure is paid no later than 60 days after the end of the year.
3. The expenditure is not an amount for which the qualifying corporation or qualifying predecessor corporation, as the case may be, makes a claim under 90, 91 or 92 of the Act or section 43.5, 43.8 or 43.10 of the *Corporations Tax Act*.
4. The expenditure is not incurred by the qualifying corporation or qualifying predecessor corporation in carrying out activities that constitute scientific research and experimental development for the purposes of paragraph 37 (1) (a) of the Federal Act or subparagraph 37 (1) (b) (i) of that Act.
5. If the qualifying corporation sells the eligible product directly to a consumer of the eligible product, the expenditure is not directly related to processing an order by a consumer or shipping an eligible product to a consumer.
6. If the expenditure relates to an amount paid or payable for meals or entertainment, only 50 per cent of the amount is included in the marketing and distribution expenditure incurred by the qualifying corporation or qualifying predecessor corporation, as the case may be, in a taxation year.

(8) An expenditure that is not included in the marketing and distribution expenditure incurred by a qualifying corporation or a qualifying predecessor corporation, as the case may be, in a taxation year because of paragraph 2 of subsection (7) may be included in the marketing and distribution expenditure incurred by the corporation in a subsequent taxation year if the expenditure is paid no later than 60 days after the end of that subsequent taxation year.

Interactive digital media product of a qualifying digital game corporation

- 35.1** (1) For the purposes of paragraph 1 of subsection 93.1 (9) of the Act, a product is an interactive digital media product if the product is an interactive digital media product as defined in subsection 34 (1).
- (2) For the purposes of section 93.1 of the Act, the Ontario labour expenditure of a qualifying digital game corporation for a taxation year for an eligible digital game is the amount that would be determined under subsections 35 (1) to (6) in respect of the game if,
- (a) all references to “qualifying corporation” were read as “qualifying digital game corporation”;
 - (b) all references to “eligible product” were read as “eligible digital game”; and
 - (c) those subsections were read without reference to clause 35 (1) (b) and paragraph 4 of subsection 35 (3).

Interactive digital media product of a specialized digital game corporation

- 35.2** (1) For the purposes of paragraph 1 of subsection 93.2 (11) of the Act, a product is an interactive digital media product if the product is an interactive digital media product as defined in subsection 34 (1).
- (2) For the purposes of section 93.2 of the Act, the Ontario labour expenditure of a specialized digital game corporation for a taxation year for an eligible digital game is the amount that would be determined under subsections 35 (1) to (6) in respect of the game if,
- (a) all references to “qualifying corporation” were read as “specialized digital game corporation”;
 - (b) all references to “eligible product” were read as “eligible digital game”;

(c) those subsections were read without reference to clause 35 (1) (b) and paragraph 4 of subsection 35 (3); and

(d) those subsections were read without reference to any qualifying predecessor corporations.

APPENDIX 5 – Draft Regulatory Changes Posted On Ontario's Regulation Registry November 2, 2015

(The Ontario Government posted the proposed ODMTC regulations on Ontario's Regulatory Registry on November 2, 2015. <http://www.ontariocanada.com/registry/view.do?postingId=20162&language=en>)

3. (1) Paragraph 1 of the definition of “interactive digital media product” in subsection 34 (1) of the Regulation is revoked and the following substituted:

1. If a qualifying labour expenditure is incurred in respect of the product before April 24, 2015, their primary purpose is to educate, inform or entertain the user.

1.1 If a qualifying labour expenditure is incurred in respect of the product on or after April 24, 2015 but not before that date, their primary purpose is to entertain the user or to educate users who are under 12 years of age.

(2) Paragraph 3 of subsection 34 (3) of the Regulation is revoked and the following substituted:

3. If the product is completed after May 11, 2005 and if, before April 24, 2015, the Ontario Media Development Corporation issued a certificate under subsection (10) to the qualifying corporation in respect of the product, or sent a letter to notify the qualifying corporation that the product does not qualify for certification,

i. all or substantially all of the product was developed in Ontario by the qualifying corporation or by the qualifying corporation and a qualifying predecessor corporation, and

ii. the product was developed for sale or licensing by the qualifying corporation to one or more persons dealing at arm's length with the qualifying corporation who have not previously entered into an arrangement with the qualifying corporation or a qualifying predecessor corporation for the development of the product.

3.1 If the product is completed after May 11, 2005 and if, before April 24, 2015, the Ontario Media Development Corporation did not issue a certificate under subsection (10) to the qualifying corporation in respect of the product, or send a letter to notify the qualifying corporation that the product does not qualify for certification,

i. the product was developed for sale or licensing by the qualifying corporation to one or more persons dealing at arm's length with the qualifying corporation who have not previously entered into an arrangement with the qualifying corporation or a qualifying predecessor corporation for the development of the product,

ii. the qualifying corporation's Ontario labour ratio in respect of the product is equal to or greater than 0.8, and

iii. if the qualifying corporation applied for certification of the product under subsection 93 (10) of the Act on or after April 24, 2015, the qualifying corporation's Ontario wage ratio in respect of the product is equal to or greater than 0.25.

(4) Subsection 34 (4) of the Regulation is amended by adding the following paragraph:

6. If, before April 24, 2015, the Ontario Media Development Corporation did not issue a certificate under subsection (10) to the qualifying corporation in respect of the product, or send a letter to notify the qualifying corporation that the product does not qualify for certification,

i. the qualifying corporation's Ontario labour ratio in respect of the product is equal to or greater than 0.8, and

ii. if the qualifying corporation applied for certification of the product under subsection 93 (10) of the Act on or after April 24, 2015, the qualifying corporation's Ontario wage ratio in respect of the product is equal to or greater than 0.25.

(5) Section 34 of the Regulation is amended by adding the following subsections:

(5) If a qualifying labour expenditure was incurred in respect of a product on or after April 24, 2015 but not before that date, the following are additional conditions prescribed for the purposes of clause (a) of the definition of "eligible product" in subsection 93 (14) of the Act and for the purposes of subsection 93 (15) of the Act:

1. The product does not provide any content that is,

i. news, current events or public affairs programming,

ii. opinion, commentary or advice, or

iii. weather or market reports.

2. The product is not produced primarily for industrial, corporate or institutional purposes, including vocational training products or products that educate or inform employees.

3. The product is not primarily a reference material or otherwise designed to be used as a resource for finding information, such as a guide for equipment or software, a dictionary or a map.

4. The product does not aggregate content from various internet sources.

5. The product is not used to filter and organize specific content from the internet.
6. The product is not a search engine.
7. The product is not a blog.
8. The product is not primarily a database, including a real estate database or recipe database.
9. The product is not a website, except a website that primarily hosts any of the following:
 - i. One or more digital games.
 - ii. Content that is related to a film, television or internet production described in subsection (6) and that is hosted under a licence agreement in respect of a copyright that relates to the film or television production, but that is not a broadcast of all or part of the film or television production
 - iii. One or more virtual or augmented reality experiences.
 - iv. Content that is designed to educate users who are under 12 years of age.
10. The product is not a product the majority of the content of which is also available on a website, except a website that primarily hosts content described in subparagraphs 9 i to iv.
11. If the product is a specified product, the product is used by the purchaser referred to in paragraphs 2 and 3 of subsection 93 (15) of the Act to generate revenue through,
 - i. the sale of the product,
 - ii. fees for the use of the product, including licence and subscription fees,
 - iii. in-product purchases,
 - iv. advertising, other than advertising of,
 - A. the qualifying corporation,
 - B. the purchaser referred to in paragraphs 2 and 3 of subsection 93 (15) of the Act,
 - C. a person that does not deal at arm's length with the qualifying corporation or the purchaser, or
 - D. products or services of the qualifying corporation, the purchaser or the person that does not

deal at arm's length with the qualifying corporation or the purchaser, or

v. the sale or licence of another product developed by the qualifying corporation that can reasonably be considered an extension or upgrade of the product.

12. If the product is not a specified product, the product is used by the qualifying corporation to generate revenue through,

- i. the sale of the product,
- ii. fees for the use of the product, including licence and subscription fees,
- iii. in-product purchases,
- iv. advertising, other than advertising of,

A. the qualifying corporation,

B. a person that does not deal at arm's length with the qualifying corporation,

C. products or services of the qualifying corporation, or the person that does not deal at arm's length with the qualifying corporation, or

- v. the sale or licence of another product developed by the qualifying corporation that can reasonably be considered an extension or upgrade of the product.

(6) A film, television or internet production for the purposes of subparagraph 9 ii is a production, other than a production that is described in paragraph (b) of the definition of "excluded production" in subsection 1106 (1) of the Federal regulations, that is produced,

(a) for commercial release in theatres;

(b) for broadcasting on television; or

(c) for broadcasting over the internet where the end user is required to pay a purchase, licence or subscription fee.

(7) The Ontario labour ratio of a qualifying corporation in respect of a product is equal to the amount determined by the formula,

A/B

in which,

"A" is the sum of all expenditures of the qualifying corporation or qualifying predecessor

corporation in respect of the product that satisfy the conditions set out in subsection (9).

“B” is the sum of all expenditures in respect of the product that satisfy the conditions set out in subsection (11).

(8) The Ontario wage ratio of a qualifying corporation in respect of a product is equal to the amount determined by the formula,
C/D

in which,

“C” is the sum of all expenditures of the qualifying corporation or qualifying predecessor corporation in respect of the product that satisfy the conditions set out in subsection (10).

“D” is the sum of all expenditures in respect of the product that satisfy the conditions set out in subsection (11).

(9) The following are the conditions referred to in the definition of “A” in subsection (7):

1. The expenditure is incurred during the 37-month period ending at the end of the month in which development of the eligible product is completed.

2. The expenditure satisfies the conditions set out in paragraphs 1, 2, 4, 5 and 6 of subsection 35 (4).

3. The expenditure is incurred,

i. on account of salaries or wages for the qualifying corporation or qualifying predecessor corporation’s employees, or

ii. on account of remuneration paid to,

A. an individual who is not an employee of the qualifying corporation or qualifying predecessor corporation, as the case may be, and who deals at arm’s length with that corporation, to the extent that the expenditure is attributable to services personally rendered by the individual if the individual provides the services as part of a sole proprietorship carried on by the individual and that does not have employees, or

B. a taxable Canadian corporation for services rendered personally by an individual,

1. if all of the issued and outstanding shares of the capital stock of the taxable Canadian corporation (other than directors’ qualifying shares) are owned by the individual,

2. if the individual deals at arm’s length with the qualifying corporation or qualifying

predecessor corporation, as the case may be,

3. if the taxable Canadian corporation's primary activity is the provision of the individual's services, and

4. if the taxable Canadian corporation has no employees other than the individual.

(10) The following are the conditions referred to in the definition of "C" in subsection (8):

1. The expenditure is incurred during the 37-month period ending at the end of the month in which development of the eligible product is completed.

2. The expenditure satisfies the conditions set out in paragraphs 1, 2, 4 and 5 of subsection 35 (4).

3. The expenditure is incurred on account of salaries or wages for the qualifying corporation or qualifying predecessor corporation's employees.

(11) The following are the conditions referred to in the definition of "B" in subsection (7) and in the definition of "D" in subsection (8):

1. The expenditure is incurred during the 37-month period ending at the end of the month in which development of the eligible product is completed.

2. The expenditure is directly attributable to the development of the eligible product.

3. The expenditure is incurred,

i. on account of salaries or wages, or

ii. on account of remuneration paid to an individual, corporation or partnership for services rendered.

4. (1) Subsection 35 (4) of the Regulation is amended by adding the following paragraph:

9. If the expenditure was incurred after April 23, 2015 in respect of the product,

i. the primary purpose of the product is to entertain the user or to educate users under 12 years of age, and

ii. the product satisfies all of the conditions set out in subsection 34 (5).

(2) Subsection 35 (7) of the Regulation is amended by adding the following paragraph:

7. If the expenditure was incurred after April 23, 2015 in respect of the product,

i. the primary purpose of the product is to entertain the user or to educate users under 12 years of age, and

ii. the product satisfies all of the conditions set out in subsection 34 (5).

5. (1) Subsection 35.1 (1) of the Regulation is revoked and the following substituted:

(1) For the purposes of paragraph 1 of subsection 93.1 (9) of the Act, an interactive digital media product means a combination of one or more application files and one or more data files, all in a digital format, that are integrated and are intended to be operated together and that have the following characteristics when they are being operated:

1. Their primary purpose is to educate, inform or entertain the user.

2. They achieve their primary purpose by presenting information in at least two of the following forms:

i. text,

ii. sound,

iii. images.

3. They are intended to be used by individuals.

4. By interacting with them, the user can choose what information is to be presented and the form and sequence in which it is to be presented.

(2) Clause 35.1 (2) (c) of the Regulation is revoked and the following substituted:

(c) those subsections were read without reference to clause 35 (1) (b), paragraph 4 of subsection 35 (3) or paragraph 9 of subsection 35 (4).

6. Subsection 35.2 (1) of the Regulation is revoked and the following substituted:

(1) For the purposes of paragraph 1 of subsection 93.2 (11) of the Act, an interactive digital media product means a combination of one or more application files and one or more data files, all in a digital format, that are integrated and are intended to be operated together and that have the following characteristics when they are being operated:

1. Their primary purpose is to educate, inform or entertain the user.

2. They achieve their primary purpose by presenting information in at least two of the following forms:

i. text,

ii. sound,

iii. images.

3. They are intended to be used by individuals.

4. By interacting with them, the user can choose what information is to be presented and the form and sequence in which it is to be presented.

(2) Clause 35.2 (2) (c) of the Regulation is revoked and the following substituted:

(c) those subsections were read without reference to clause 35 (1) (b), paragraph 4 of subsection 35 (3) or paragraph 9 of subsection 35 (4); and

Commencement

7. This Regulation comes into force on the day it is filed.

APPENDIX 6 - ONTARIO INTERACTIVE DIGITAL MEDIA TAX CREDIT RELATED PROVISIONS

NOTE: The OMDC versions reproduced in this Appendix are for purposes of convenience only. The authoritative text of the following provisions is set out in the official volumes.

6-I - DEFINITION OF “CANADIAN CORPORATION”

Subsection 89(1) of the Income Tax Act (Canada)

89. (1) “Canadian corporation” at any time means a corporation that is resident in Canada at that time and was

- (a) incorporated in Canada, or
- (b) resident in Canada throughout the period that began on June 18, 1971 and that ends at that time,
and, for greater certainty, a corporation formed at any particular time by the amalgamation or merger of, or by a plan of arrangement or other corporate reorganization in respect of, 2 or more corporations (otherwise than as a result of the acquisition of property of one corporation by another corporation, pursuant to the purchase of the property by the other corporation or as a result of the distribution of the property to the other corporation on the winding up of the corporation) is a Canadian corporation because of paragraph (a) only if
- (c) that reorganization took place under the laws of Canada or a province, and
- (d) each of those corporations was, immediately before the particular time, a Canadian corporation

6-II - DEFINITION OF “PERMANENT ESTABLISHMENT”

Subsection 400 of the Federal Income Tax Regulations

(2) For the purposes of this Part, “permanent establishment” in respect of a corporation means a fixed place of business of the corporation, including an office, a branch, a mine, an oil well, a farm, a timberland, a factory, a workshop or a warehouse, and

(a) where the corporation does not have any fixed place of business it means the principal place in which the corporation’s business is conducted;

(b) where a corporation carries on business through an employee or agent, established in a particular place, who has general authority to contract for his employer or principal or who has a stock of merchandise owned by his employer or principal from which he regularly fills orders which he receives, the corporation shall be deemed to have a permanent establishment in that place;

(c) an insurance corporation is deemed to have a permanent establishment in each province and country in which the corporation is registered or licensed to do business;

(d) where a corporation, otherwise having a permanent establishment in Canada, owns land in a province, such land shall be deemed to be a permanent establishment;

(e) where a corporation uses substantial machinery or equipment in a particular place at any time in a taxation year it shall be deemed to have a permanent establishment in that place;

(e.1) if, but for this paragraph, a corporation would not have a permanent establishment, the corporation is deemed to have a permanent establishment at the place designated in its incorporating documents or bylaws as its head office or registered office;

(f) the fact that a corporation has business dealings through a commission agent, broker or other independent agent or maintains an office solely for the purchase of merchandise shall not of itself be held to mean that the corporation has a permanent establishment; and

(g) the fact that a corporation has a subsidiary controlled corporation in a place or a subsidiary controlled corporation engaged in trade or business in a place shall not of itself be held to mean that the corporation is operating a permanent establishment in that place.

6-III - DEFINITION OF CONTROL IN FACT

“CONTROLLED, DIRECTLY OR INDIRECTLY IN ANY MANNER WHATEVER”

Subsection 256(5.1) of the Income Tax Act (Canada)

256 (5.1) Control in fact – For the purposes of this Act, where the expression “controlled, directly or indirectly in any manner whatever,” is used, a corporation shall be considered to be so controlled by another corporation, person or group of persons (in this subsection referred to as the “controller”) at any time where, at that time, the controller has any direct or indirect influence that, if exercised, would result in control in fact of the corporation, except that, where the corporation and the controller are dealing with each other at arm’s length and the influence is derived from a franchise, licence, lease, distribution, supply or management agreement or other similar agreement or arrangement, the main purpose of which is to govern the relationship between the corporation and the controller regarding the manner in which a business carried on by the corporation is to be conducted, the corporation shall not be considered to be controlled, directly or indirectly, in any manner whatever, by the controller by reason only of that agreement or arrangement.

6-IV – REGARDING APPLICABLE ASSET AND REVENUE CAPS

Subsection 57.2(1) of the Corporations Tax Act (Ontario)

57.2 (1) Except as provided in section 57.11, every corporation subject to tax under Part II for a tax year is liable to pay to the Crown in right of Ontario a corporate minimum tax for the taxation year as determined under this Part if,

- (a) the corporation’s total assets at the end of the tax year exceed \$5,000,000;
- (b) the corporation’s total revenue for the tax year exceeds \$10,000,000; or
- (c) the corporation has one or more associated corporations during the taxation year and,
 - (i) the aggregate of the total assets of the corporation at the end of the taxation year and of each associated corporation at the end of the associated corporation’s last taxation year ending in the corporation’s taxation year exceeds \$5,000,000, or

- (ii) the aggregate of the total revenue of the corporation for the taxation year and of each associated corporation for the last taxation year of the associated corporation ending in the corporation's taxation year exceeds \$10,000,000.

6-V - DEFINITION OF "ASSOCIATED CORPORATIONS"

Subsection 256(1) of the *Income Tax Act (Canada)*

256. (1) Associated corporations – for the purposes of this Act, one corporation is associated with another in a tax year if, at any time in the year,

- (a) one of the corporations controlled, directly or indirectly in any manner whatever, the other;
- (b) both of the corporations were controlled, directly or indirectly in any manner whatever, by the same person or group of persons;
- (c) each of the corporations was controlled, directly or indirectly in any manner whatever, by a person and the person who so controlled one of the corporations was related to the person who so controlled the other, and either of those persons owned, in respect of each corporation, not less than 25% of the issued shares of any class, other than a specified class, of the capital stock thereof;
- (d) one of the corporations was controlled, directly or indirectly in any manner whatever, by a person and that person was related to each member of a group of persons that so controlled the other corporation, and that person owned, in respect of the other corporation, not less than 25% of the issued shares of any class, other than a specified class, of the capital stock thereof; or
- (e) each of the corporations was controlled, directly or indirectly in any manner whatever, by a related group and each of the members of one of the related groups was related to all of the members of the other related group, and one or more persons were members of both related groups, either alone or together, owned, in respect of each corporation, not less than 25% of the issued shares of any class, other than a specified class of the capital stock thereof.

6-VI - DEFINITION OF "ARM'S LENGTH"

Section 251 of the *Income Tax Act (Canada)*

251. (1) Arm's length – for the purposes of this Act,

- (a) related persons shall be deemed not to deal with each other at arm's length;
- (b) a taxpayer and a personal trust (other than a trust described in any of paragraphs (a) to (e.1) of the definition "trust" in subsection 108(1)) are deemed not to deal with each other at arm's length if the taxpayer, or any person not dealing at arm's length with the taxpayer, would be beneficially interested in the trust if subsection 248(25) were read without reference to subclauses 248(25)(b)(iii)(A)(II) to (IV); and
- (c) in any other case, it is a question of fact whether persons not related to each other are, at a particular time, dealing with each other at arm's length.

(2) Definition of “related persons” – for the purposes of this Act, “related persons”, or persons related to each other are

(a) individuals connected by blood relationship, marriage or common-law partnership or adoption:

(b) a corporation and

- (i) a person who controls the corporation, if it is controlled by one person,
- (ii) a person who is a member of a related group that controls the corporation, or
- (iii) any person related to a person described in subparagraph 251(2)(b)(i) or 251(2)(b)(ii);
and

(c) any two corporations

- (i) if they are controlled by the same person or group of persons,
- (ii) if each of the corporations is controlled by one person and the person who controls one of the corporations is related to the person who controls the other corporation,
- (iii) if one of the corporations is controlled by one person and that person is related to any member of a related group that controls the other corporation,
- (iv) if one of the corporations is controlled by one person and that person is related to each member of an unrelated group that controls the other corporation,
- (v) if any member of a related group that controls one of the corporations is related to each member of an unrelated group that controls the other corporation, or
- (vi) if each member of an unrelated group that controls one of the corporations is related to at least one member of an unrelated group that controls the other corporation.

(3) Corporations related through a third corporation – Where two corporations are related to the same corporation within the meaning of subsection 251(2), they shall, for the purposes of subsections 251(1) and 251(2), be deemed to be related to each other.

(3.1) Relation where amalgamation or merger – Where there has been an amalgamation or merger of two or more corporations and the new corporation formed as a result of the amalgamation or merger and any predecessor corporation would have been related immediately before the amalgamation or merger if the new corporation were in existence at the time, and if the persons who were the shareholders of the new corporation immediately after the amalgamation or merger were the shareholder of the new corporation at that time, the new corporation and any such predecessor corporation shall be deemed to have been related persons.

(3.2) Amalgamation of related corporations – Where there has been an amalgamation or merger of 2 or more corporations each of which was related (otherwise than because of a right referred to in paragraph 251(5)(b)) to each other immediately before the amalgamation or merger, the new corporation formed as a result of the amalgamation or merger and each of the predecessor corporations is deemed to have been related to each other.

(4) Definitions concerning groups – In this Act,

“related group” means a group of persons each member of which is related to every other member of the group;

“unrelated group” means a group of persons that is not a related group.

(5) Control by related groups, options, etc – For the purposes of subsection 251(2) and the definition of “Canadian-controlled private corporation” in subsection 125(7).

- (a) where a related group is in a position to control a corporation, it shall be deemed to be a related group that controls the corporation whether or not it is part of a larger group by which the corporation is in fact controlled;
- (b) where at any time a person has a right under a contract, in equity or otherwise, either immediately or in the future and either absolutely or contingently,
 - (i) to, or to acquire, shares of the capital stock of a corporation or to control the voting rights of such shares, the person shall, except where the right is not exercisable at that time because the exercise thereof is contingent on the death, bankruptcy or permanent disability of an individual, be deemed to have the same position in relation to the control of the corporation as if the person owned the shares at that time,
 - (ii) to cause a corporation to redeem, acquire or cancel any shares of its capital stock owned by other shareholders of the corporation, the person shall, except where the right is not exercisable at that time because the exercise thereof is contingent on the death, bankruptcy or permanent disability of an individual, be deemed to have the same position in relation to the control of the corporation as if the shares were so redeemed, acquired or cancelled by the corporation at that time,
 - (iii) to, or to acquire or control, voting rights in respect of shares of the capital stock of a corporation, the person is, except where the right is not exercisable at that time because its exercise is contingent on the death, bankruptcy or permanent disability of an individual, deemed to have the same position in relationship to the control of the corporation as if the person could exercise the voting rights at that time, or
 - (iv) to cause the reduction of voting rights in respect of shares, owned by other shareholders, of the capital stock of a corporation, the person is, except where the right is not exercisable at that time because its exercise is contingent on the death, bankruptcy or permanent disability of an individual, deemed to have the same position in relation to the control of the corporation as if the voting rights were so reduced at that time; and
- (c) where a person owns shares in two or more corporations, the person shall as shareholder of one of the corporations be deemed to be related to himself, herself or itself as shareholder of each of the other corporations.

(6) Blood relationship, etc – For the purposes of this Act, persons are connected by

- (a) a blood relationship if one is the child or other descendant of the other or one is the brother or sister of the other;
- (b) marriage if one is married to the other or to a person who is so connected by blood relationship to the other;
- (b.1) common-law partnership if one is in a common-law partnership with the other or with a person who is connected by blood relationship to the other; and
- (c) adoption if one has been adopted, either legally or in fact, as the child of the other or as the child of a person who is so connected by blood relationship (otherwise than as a brother or sister) to the other.

6-VII - DEFINITION OF LIABILITY FOR ONTARIO PERSONAL INCOME TAX

Subsection 2 of the *Income Tax Act (Ontario)*

2. An income tax shall be paid as hereinafter required for each taxation year by every individual,
- (a) who was resident in Ontario on the last day of the taxation year; or
 - (b) who, not being resident in Ontario on the last day of the taxation year, had income earned in the taxation year in Ontario as defined in section 4.

6-VIII - DEFINITION OF "ASSISTANCE"

Paragraph 12(1)(x) of the *Income Tax Act (Canada)*

12(1)(x) Inducement, reimbursement, etc. – any particular amount (other than a prescribed amount) received by the taxpayer in the year, in the course of earning income from a business or property, from

- (i) a person or partnership (in this paragraph referred to as the "payer") who pays the particular amount
 - (A) in the course of earning income from a business or property,
 - (B) in order to achieve a benefit or advantage for the payer or for persons with whom the payer does not deal at arm's length, or
 - (C) in circumstances where it is reasonable to conclude that the payer would not have paid the amount but for the receipt by the payer of amounts from a payer, government, municipality, or public authority described in this subparagraph or in subparagraph (ii), or
 - (ii) a government, municipality or other public authority,
- where the particular amount can reasonably be considered to have been received
- (iii) as an inducement, whether as a grant, subsidy, forgivable loan, deduction from tax, allowance or any other form of inducement, or
 - (iv) as a refund, reimbursement, contribution or allowance or as assistance, whether as a grant, subsidy, forgivable loan, deduction from tax allowance or any other form of assistance in respect of
 - (A) an amount included in, or deducted as, the cost of property, or
 - (B) an outlay or expense,

to the extent that the particular amount

- (v) was not otherwise included in computing the taxpayer's income or deducted in computing, for the purposes of this Act, any balance of undeducted outlays, expenses or other amounts for the year or a preceding taxation year,
- (v.1) is not an amount received by the taxpayer in respect of a restrictive covenant, as defined by

subsection 56.4(1), that was included, under subsection 56.4(2), in computing the income of a person related to the taxpayer,

- (vi) except as provided by subsection 127(11.1), 127(11.5) or 127(11.6) does not reduce, for the purpose of an assessment made or that may be made under this Act the cost or capital cost of the property or the amount of the outlay or expense as the case may be,
- (vii) does not reduce, under subsection 12(2.2) or 13(7.4) or paragraph 53(2)(s), the cost or capital cost of the property or the amount of the outlay or expense, as the case may be, and
- (viii) may not reasonably be considered to be a payment made in respect of the acquisition by the payer or the public authority of an interest in the taxpayer, an interest in, or for civil law a right in, the taxpayer's business or an interest in, or for civil law a real right in, the taxpayer's property.