

ONTARIO INTERACTIVE DIGITAL MEDIA TAX CREDIT (OIDMTC)

OIDMTC INFORMATION /OIDMTC APPLICATION PACKAGE

2014 - CTAP INC.

MEDIA FUNDS



Based on Ontario Media Development
Corporation La Société de Développement
de L'Industrie Des Médias de L'Ontario

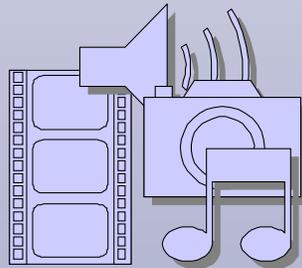


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INTRODUCTION

The Guidelines

These Guidelines have been prepared to assist developers in applying for an Ontario Interactive Digital Media Tax Credit (OIDMTC).

Please note that the OIDMTC legislation (Sections 93, 93.1 and 93.2 of the Taxation Act, 2007 and Regulation 37/09) take precedence over any provision of these Guidelines. These documents are reproduced in Appendices 4 and 5, respectively.

Overview of the OIDMTC

This section sets out the key features of the OIDMTC. For a complete list of the applicable requirements, please consult the subsequent sections of these Guidelines and the OIDMTC legislation and regulation.

What Is It?

The OIDMTC is a refundable tax credit, which means that the amount of the credit, less any Ontario taxes payable, will be paid to the qualifying corporation. The OIDMTC is based upon the Ontario labour expenditures and eligible marketing and distribution expenditures claimed by a qualifying corporation with respect to eligible products.

The OIDMTC is calculated as 40% of the qualifying expenditures incurred after March 26, 2009, by a qualifying corporation, regardless of size of corporation, to create eligible interactive digital media products in Ontario. The OIDMTC is also available to qualifying corporations that develop “specified” products under a fee-for-service arrangement in Ontario calculated as 35% of the qualifying expenditures incurred after March 26, 2009. For products completed prior to March 26, 2009 and applicable tax credit rates prior to that rate see OIDMTC Rates & Eligibility Periods Chart below or contact the OMDC for eligibility and rate information.

There is no limit on the amount of eligible Ontario labour expenditures which may qualify and there are no per-project or annual corporate limits on the amount of the OIDMTC which may be claimed. Eligible marketing and distribution expenses are capped at \$100,000 per eligible product.

The OIDMTC is calculated as 35% of qualifying labour expenditures incurred after March 26, 2009 for the creation of eligible digital games developed in whole or in part by a qualifying digital game corporation or a specialized digital game corporation.

Who is Eligible?

A qualifying corporation is a Canadian corporation (it may be Canadian or foreign-owned), that develops non-specified or specified products at a permanent establishment in Ontario operated by it, and files an Ontario corporate tax return.

A qualifying small corporation is a Canadian corporation (it may be Canadian- or foreign-owned), that develops a non-specified product at a permanent establishment in Ontario operated by it, had during the taxation year (on an associated company basis) neither annual gross revenues in excess of \$20 million nor total assets in excess of \$10 million, and files an Ontario corporate tax return.

Corporations that are prescribed labour-sponsored venture capital corporations under the regulations made under the *Income Tax Act* (Canada) and corporations that are exempt from tax or are controlled directly or indirectly by a corporation exempt from tax are not eligible for the OIDMTC.

What Types of Products Are Eligible for the Tax Credit?

There are four types of products that can be claimed under the OIDMTC, non-specified products, specified products, eligible digital games developed by a qualifying digital game corporation, and eligible digital games developed by a specialized digital game corporation.

To be eligible for the OIDMTC a product must be an interactive digital media product whose primary purpose is to educate, inform, or entertain, and that achieves its primary purpose by presenting information in at least two of: (i) text, (ii) sound and (iii) images.

Types of interactive digital media products that may be eligible for the tax credit include but are not restricted to games, educational or informational products. Operating system software is not eligible for the tax credit.

In addition, the following requirements must be satisfied for a product to be a non-specified product of the qualifying corporation:

1. 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.
2. The product was developed for sale or licensing by the qualifying corporation to one or more arm's length parties who have not previously entered into an arrangement with the qualifying corporation or a qualifying predecessor corporation for the development of the product.
3. The product is not used primarily for interpersonal communication.
4. The product is not used primarily to present or promote the qualifying corporation or a qualifying predecessor corporation.
5. 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.

Specified products are interactive digital media products that are developed under a fee-for-service arrangement under the terms of an agreement between the qualifying corporation and an arm's length purchaser corporation for the purpose of sale or license by the purchaser to one or more persons who deal at arm's length with the purchaser. All or substantially all of the product must be developed in Ontario by the qualifying corporation. The development of the product must be completed by the qualifying corporation after March 23, 2006. Eligible costs are those incurred after March 23, 2006. Please see additional requirements in the OIDMTC Legislation and Regulations attached.

Eligible digital games developed by qualifying digital game corporations are interactive digital media products that are developed under a fee-for-service arrangement under the terms of an agreement between the qualifying digital game corporation and a purchaser corporation for the purpose of sale or license by the purchaser to one or more persons who deal at arm's length with the purchaser. The eligible digital game can be developed in whole in part (less than 90%) by the qualifying digital game corporation and the qualifying digital game corporation can be related to the purchaser corporation. Qualifying labour expenditures directly attributable to the development of the eligible digital game must equal a minimum of \$1 million incurred over any 36 month period for the game. Eligible digital games developed by qualifying digital game corporations are not required to be completed to claim an OIDMTC. Eligible digital games are those that have not previously received an OIDMTC tax credit. Eligible costs are those incurred after March 26, 2009.

Eligible digital games developed by specialized digital game corporations are interactive digital media products that are developed by the specialized digital game corporation for the purpose of sale or license by the specialized digital game corporation or, if applicable, a purchaser, to one or more persons who deal at arm's length with the specialized digital game corporation or the purchaser. The specialized digital game corporation is not required to develop all or substantially all of the eligible digital games.

Qualifying labour expenditures directly attributable to the development of eligible digital games must equal a minimum of \$1million (in the aggregate) incurred in the taxation year in which the specialized digital game corporation makes an OIDMTC claim. The specialized digital game corporation may be related to the purchaser and eligible digital games do not need to be completed to claim an OIDMTC. Eligible costs are those incurred after March 26, 2009. Eligible digital games developed by a specialized digital game corporation may be included in more than one OIDMTC claim.

Eligible digital games developed by a qualifying digital game corporation or a specialized digital game corporation cannot be used primarily, for interpersonal communication, to present or promote the specialized or qualifying digital game corporation, or the purchaser, or to present, promote or sell the products or services of the specialized or qualifying digital game corporation, or the purchaser. An eligible digital game included in an OIDMTC claim is one for which public financial support would not be contrary to public policy in the opinion of the Ontario Media Development Corporation.

What Expenditures Are Eligible?

The credit is claimable with respect to eligible Ontario labour expenditures and eligible marketing and distribution expenditures for eligible products.

Eligible labour expenditures for eligible products (specified and non-specified products) are 100% of salaries and wages for employees and 100% of remuneration paid to arm's length persons who are not employees. "Persons" may include individuals, partnerships and corporations. Remuneration costs incurred prior to March 27, 2009 may be claimed at 50% for non-specified products. Note: For specified products eligible labour expenditures incurred prior to March 27, 2009 are restricted to 100% of salaries and wages for employees.

Eligible labour expenditures must also be paid to individuals resident in Ontario at the end of the calendar year prior to the calendar year in which the services were rendered. Eligible labour Expenditures must also be: directly attributable to the development of the eligible product, paid for services rendered at a permanent establishment in Ontario and paid in the taxation year or within 60 days after the end of the taxation year. For those products completed after March 25, 2008 eligible labour expenditures incurred in the three year period prior to the completion of the product can be included in the OIDMTC claim. For products completed prior to March 26, 2008 eligible labour expenditures incurred in the two year period prior to the completion of the product can be claimed. For more details on claiming eligible labour see OIDMTC Rate & Eligibility Periods Chart for Non-Specified and Specified Products below and Section 93 (4) of the OIDMTC Legislation.

Eligible marketing and distribution expenditures are expenditures directly attributable to advertising or promoting the non-specified product or distributing it to customers or potential customers. Eligible marketing and distribution expenditures must be paid no later than 60 days after the end of the taxation year. The maximum eligible marketing and distribution expenditures of a qualifying corporation per product is \$100,000. Eligible marketing and distribution expenditures will be limited to those incurred in the 24-month period prior to the completion of the eligible interactive digital media product, and those incurred in the twelve months following completion of the product.

Please note: For specified products and eligible digital game products developed by a qualifying digital game corporation or a specialized digital game corporation, qualifying expenditures do not include marketing and distribution expenditures.

OIDMTC Rates and Eligibility Periods Chart for Non-Specified and Specified Products

Product Completion Date	Prior to 24 March 2006	After 23 March 2006 & Prior to 26 March 2008	After 25 March 2008 & Prior to 27 March 2009	After 26 March 2009
Qualifying Small Corporation Rate				
Non-Specified Product	20%	30%	30%	40%
Specified Product	N/A	20%	25%	35%
Qualifying Corporation Rate				
Non-Specified Product	N/A	20%	25%	40%
Specified Product	N/A	20%	25%	35%

Qualifying Wage Expenditure				
Non-Specified Product	100%	100%	100%	100%
Specified Product	N/A	100%	100%	100%
Qualifying Remuneration Expenditure				
Non-Specified Product	50%	50%	50%	100%
Specified Product	N/A	N/A	N/A	100%
Marketing & Distribution Expenditure (Non-Specified Products Only)	100% to a maximum \$100,000 per product			

Labour Expenditure Period (*going back in time from...)	*24 months from the beginning of the month in which the product was completed	*25 months from the end of the month in which the product was completed	*37 months from the end of the month in which the product was completed	*37 months from the end of the month in which the product was completed
Marketing & Distribution Expenditure Period	24 months before & 12 months after product completion			

Eligible Expenditures for Qualifying Digital Game Corporations:

For qualifying digital game corporations that develop eligible digital games (described on page 6 of the guidelines) eligible expenditures include 100% of salaries and wages incurred after March 26, 2009 for employees whose services are directly attributable to the development of the eligible digital game. Qualifying digital game corporations may also claim 100% of arm's length remuneration expenditures incurred after March 26, 2009 paid to individuals who are not employees, another taxable Canadian corporation for the services personally rendered by an individual through their personal services corporation, an eligible partnership for the services personally rendered by a member of the eligible partnership or for the services rendered personally by employees of the eligible partnership. Please note qualifying remuneration does not include amounts paid to another taxable Canadian corporation other than a personal services corporation as described in Subsection 35. (3) paragraph 3. of the Ontario Regulations.

Eligible Expenditures for Specialized Digital Game Corporations:

For specialized digital game corporations that develop eligible digital games (described on page 7 of the guidelines) eligible expenditures are identical to those claimed by qualifying digital game corporations (see above) with one exception. Specialized digital game corporations may not claim wages and salaries, or remuneration costs incurred by a predecessor corporation.

Is an Acknowledgement required on the Product?

An Acknowledgement for an Ontario tax credit is not required, due to the fact that tax information is considered confidential. Furthermore, a tax credit is usually not payable until after a product is completed and may be subject to reassessment. However, such an acknowledgement is certainly a welcome and appropriate way to acknowledge taxpayer support. Should you wish to provide an acknowledgement for an Ontario tax credit, we would suggest the following wording: "with the assistance of the Government of Ontario – The Ontario Interactive Digital Media Tax Credit".

How is the Tax Credit Administered?

The OIDMTC is jointly administered by the Ontario Media Development Corporation (OMDC) – an agency of the Ontario Ministry of Tourism and Culture – and the Canada Revenue Agency (CRA). A qualifying corporation submits an application to the OMDC for a Certificate of Eligibility. The OMDC reviews the application and, if applicable, issues a Certificate of Eligibility which certifies eligibility and the estimated amount of the OIDMTC. In order to claim the OIDMTC for taxation years ending after December 31, 2008, the qualifying corporation files its Federal corporate tax return (T2) with Schedule T2SCH560 and the Certificate of Eligibility with the CRA. The CRA audits the return and then issues a notice of assessment and, if applicable, a refund. The amount of the credit may be reduced by any Ontario taxes owing by the qualifying corporation. Please note that the OIDMTC will reduce the cost of the eligible product for tax purposes.

To claim the OIDMTC for taxation years ending prior to January 1, 2009, a corporation must file its CT-23 for a taxation year with the Ontario Ministry of Revenue, Corporations Tax Branch along with the Certificate of Eligibility issued for that taxation year and insert the OIDMTC amount in the appropriate line of the tax return (line 200 of the 1998 and 1999 CT-23 forms).

When do I apply for a Tax Credit?

A corporation submits an application for a Certificate of Eligibility at any time after all eligible products have been completed. The corporation may submit the application before the end of the taxation year if

all eligible products have been completed before the end of the year. If the corporation has not incurred all eligible costs at the time of applying for an OIDMTC Certificate of Eligibility (i.e. there are additional marketing costs to be incurred) the corporation should submit cost schedules with projected expenditures up to the end of the taxation year in which the products were completed. To claim additional marketing and distribution expenditures on products certified in a previous taxation year a corporation should submit a new application for the taxation year that these additional marketing and distribution expenditures were incurred. Please note that each application is subject to an application fee.

A qualifying “specialized digital game corporation” may apply after the end of the taxation year in which they wish to make an annual claim as described in Section 93.2 of the Taxation Act. A corporation that makes an OIDMTC claim as a “qualifying digital game corporation” as described in Section 93.1 of the Taxation Act, may apply to the OMDC for a Certificate of Eligibility after the end of the 36 month period in which the applicant has incurred \$1 million in Ontario labour expenditures in respect of an eligible digital game.

LEGISLATIVE REQUIREMENTS

The following is an overview of the legislative requirements for an OIDMTC as well as commentary regarding the legislative requirements.

The OIDMTC legislation (i.e. sections 93, 93.1 and 93.2 of the *Taxation Act*) and Ontario Regulation 37/09 are reproduced in Appendices 4 and 5, respectively.

1. What Types of Corporations Are Eligible?

Legislative Requirements

In order to be eligible for an OIDMTC for a taxation year, a corporation must be a “qualifying corporation” for the taxation year¹.

A “qualifying corporation” is a corporation which satisfies *all* of the following requirements²:

1. it is a Canadian corporation³;
2. it develops an “eligible product” (see definition provided in Section 2, below) at a “permanent establishment” in Ontario operated by it;
3. it is *not* “controlled directly or indirectly in any manner⁴” 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;
4. it is not a prescribed labour-sponsored venture capital corporation as defined under the Federal regulations.

A “qualifying small corporation”⁵ 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 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 the end of the taxation year and of each associated corporation as 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

¹ Section 93 (1) of the *Taxation Act* .

² Section 93 (14) and (16) of the *Taxation Act*.

³ Subsection 89(1) of the *Income Tax Act* (Canada).

⁴ Subsection 256(5.1) of the *Income Tax Act* (Canada).

⁵ Section 93(14) of the *Taxation Act*.

- (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.

As of March 26, 2009, the OIDMTC is also available to qualifying digital game corporations and specialized digital game corporations.

A qualifying digital game corporation⁶ is 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 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 director's qualifying shares) are owned by that individual.

A qualifying specialized digital game corporation⁷ must meet the same conditions as a qualifying digital game corporation as listed above, and meet the following additional conditions:

1. The corporation's Ontario labour expenditure for the year in respect of eligible digital games is not less than \$1 million.
2. 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, or
 - 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.

⁶ Section 93.1 (8) of the *Taxation Act*.

⁷ Section 93.2 (12) of the *Taxation Act*.

Commentary

A “Canadian corporation,” as defined in Subsection 89(1) of the *Income Tax Act* (Canada), is generally one which was incorporated in Canada (either federally or in one of the provinces); the corporation may be controlled by foreign or Canadian owners. The definition is reproduced for convenience in Appendix 6.

In order to be a qualifying corporation or a “qualifying small corporation”, the corporation must develop an eligible product at a permanent establishment in Ontario operated by it. An “eligible product,” is described in Section 2 below. A “permanent establishment” is defined in Subsection 400 (2) of the Federal Regulations which is reproduced for convenience in Appendix 6-II. A “permanent establishment” generally refers to a fixed place of business. However, whether a fixed place of business is a “permanent establishment” is a *question of fact* which must be determined on a case-by-case basis.

Corporations all or part of whose income is exempt from tax under Part III of the *Taxation Act* include not-for-profit and registered charitable corporations. The meaning of “controlled, directly or indirectly in any manner” is set out in subsection 256(5.1) of the *Income Tax Act* (Canada)(see Appendix 6-III). Corporations which are prescribed labour-sponsored venture capital corporations under Section 6701 of the *Income Tax Act* (Canada) are not eligible for the OIDMTC.

To be an eligible “qualifying small corporation”, the corporation must have annual gross revenues of \$20 million or less and total assets of \$10 million or less at the end of the year. The gross revenues and total assets of the corporation at the end of the year and all “associated corporations”⁸ for the last taxation year of the associated corporation that ends in the corporation’s year. The meaning of “associated corporations” is set out in subsection 256(1) of the *Income Tax Act* (Canada), reproduced for convenience in Appendix 6-V.

Prior to the March 23, 2006 Ontario Budget only qualifying small corporations, or those with revenues of \$20 million or less and assets of \$10 million or less, were eligible for an OIDMTC. Now companies which exceed the revenue and asset cap are eligible to claim expenditures incurred after March 23, 2006.

2. What Types of Products Qualify?

Legislative Requirements

An “eligible product”⁹ means a product that satisfies the conditions prescribed by the regulations, or that is a specified product¹⁰, and for which, in the opinion of the Ontario Media Development Corporation, public financial support would not be contrary to public policy.

⁸ Subsection 256(1) of the *Income Tax Act* (Canada).

⁹ Section 93 (14) of the *Taxation Act*.

¹⁰ Section 93 (15) of the *Taxation Act*.

The following are the conditions prescribed by the regulation that must be satisfied for a product to be an eligible product¹¹:

1. The product is an interactive digital media product¹².

“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 is intended to be operated together and that have the following characteristics when they are being operated:

- Their primary purpose is to educate, inform or entertain the user.
- They achieve their primary purpose by presenting information in at least two of the following forms:
 - * text
 - * sound
 - * images
- They are intended to be used by individuals.
- 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.

A combination of application files and data files that is developed primarily for use as system software does not constitute an interactive digital media product.

2. The product is not used primarily for interpersonal communication.

3. The product is not used primarily to present or promote the qualifying corporation.

4. The product is not used primarily to present, promote or sell the products or services of the qualifying corporation.

5. If the product was completed before May 12, 2005 and is not a specified product,

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

6. If the product was completed after May 11, 2005 and is not a specified product,

- 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 to one or more arm's length parties who have not previously entered into an arrangement with the qualifying corporation or a qualifying predecessor corporation for the development of the product.

¹¹ Subsection 34 (3) of the Ontario Regulation.

¹² Subsection 34(1) of the Ontario Regulation.

7. If the product is 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.
 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.
 6. 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 length¹³ with the qualifying corporation.
 7. 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.
 8. All or substantially all of the product is developed in Ontario by the qualifying corporation, and
 9. The development of the product is completed by the qualifying corporation after March 23, 2006.

8. An eligible digital game¹⁴ developed by a qualifying digital game corporation must meet the following conditions:
 1. The product is an interactive digital media product.
 2. The product is a digital game in the opinion of the Ontario Media Development Corporation.
 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 for 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 million.
 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.

¹³ Section 251 of the Income Tax Act (Canada), Appendix 6 OIDMTC Related Provisions 6-V Definition of "Arm's Length"

¹⁴ Section 93.1 (9) of the *Taxation Act*

7. The product is not used primarily,
 - a) for interpersonal communication,
 - b) to present or promote the qualifying digital game corporation, or the purchaser, or
 - c) to present, promote or sell the products or services of the qualifying digital game 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.
9. The definition of an eligible digital game ¹⁵ developed by a specialized digital game corporation is as follows:
1. The product is an interactive digital media product.
 2. The product is a digital game in the opinion of the Ontario Media Development Corporation.
 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.
 - 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.

Commentary

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, violence or of sex and one or more of crime, horror, cruelty or violence. Where applicants are unsure whether a product is “contrary to public policy,” they may request an advance ruling from the OMDC prior to applying for an OIDMTC. If the product is determined by the OMDC not to be contrary to public policy, an application for the OIDMTC could then be made.

“Interactive digital media product” is defined by the regulation as 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.

Eligible products are interactive digital media products whose primary purpose is to educate, inform or entertain. The product must achieve this purpose by presenting information in at least

¹⁵ Section 93.2 (11) of the *Taxation Act*

two of text, sound and images, and must be intended for use by individuals. The product must be interactive; that is, the user can choose what information is to be presented and the sequence and form in which it is presented.

Such products may include, but are not limited to: websites, CD-ROMS, DVD-ROMS and kiosks. Operating system software and software such as word processing, spreadsheet and database software may not constitute an eligible product.

An eligible digital game developed by a Qualifying Digital Game Corporation or Specialized Digital Game Corporation includes but is not limited to the following components:

- played on one or more multiple platforms using digital technology
- played interactively by one or more users, involves a set of rules for game play
- has variable outcomes, may have a number of elements that are used in combination (i.e. narrative, visual representation, music, sound, etc.)
- screen based interactive game that should be intended to entertain and may also be intended to educate or inform, a general consumer audience (with caveat that customized games may be considered on a case by case basis)

Note that games must still meet the eligibility requirements of an interactive digital media product and include at least two of text, sound and images.

New Policy on Streaming Content:

In the past products that were primarily (more than 50%) made up of streaming video/audio content were not considered to be interactive enough to qualify for the OIDMTC. This policy has since been re-evaluated and now products that are made up of more than 50% streaming video or audio content may be eligible for the OIDMTC as long as the user has a choice of information to be presented and the sequence and form in which it is presented, e.g. there is more than one video clip or audio clip to choose from, and/or there is other content that the user can access in the form of text or image included in the product.

90% Developed By:

All or substantially all of the product must be developed in Ontario by the qualifying corporation. The OMDC will interpret “all or substantially all” to mean “at least 90%.” As a result, the qualifying corporation must have developed at least 90% of the product. OMDC requires a detailed description of development activities that relate to the product and this description should include **all** persons, or entities involved in the development of the product even those entities whose labour is not eligible or not included in the OIDMTC claim. “Development” in the digital media industry refers to the stages of production up to (but not including) product launch and may include: concept development, product design, planning, production, and testing. In order for the product to be eligible, all stages of development must be undertaken by the qualifying corporation claiming the tax credit.

For products completed after May 11, 2005 that are not specified products:

The Provincial Government announced in the Budget on May 11, 2005 that for products completed after May 11, 2005, the requirement that eligible corporations demonstrate a minimum 90 per cent copyright ownership in the eligible product would be relaxed, provided that the product is not developed under a fee-for-service arrangement. To reflect these enhancements which have now

passed into law, copyright ownership will no longer be the sole factor in determining whether the qualifying corporation developed all or substantially all of the product. Copyright ownership is just one factor; and all factors which establish that the product was developed at least 90% by the qualifying corporation will now be considered.

For specified products:

As of March 23, 2006, the Provincial Government has extended eligibility for the OIDMTC for fee-for-service work done in Ontario. The qualifying corporation is required to demonstrate that it developed a minimum of 90 per cent of the specified product under the terms of an agreement with another corporation that is not related to the qualifying corporation. The specified product must be developed for the purpose of sale or license by the purchasing corporation to one or more persons who are not related to the purchasing corporation. The specified product must be developed under a contract that can be entered into prior to March 24, 2006 but the specified product must be completed after March 23, 2006.

The product must not be used primarily for interpersonal communication. The OMDC will interpret “primarily” to mean “more than 50%.” Products such as cellular telephones, e-mail software, and social networking products, which are used primarily for communication between people, are therefore ineligible for the tax credit.

The product must not be used primarily to present or promote the qualifying corporation, predecessor corporation or purchaser, nor to present, promote or sell the products or services of the qualifying corporation, predecessor corporation, or purchaser. As indicated above, “primarily” will be interpreted by the OMDC to mean “more than 50%.” Products such as websites whose primary purpose is to present, promote or sell a corporation or its products or services would therefore be ineligible for the tax credit.

For qualifying digital game corporations:

A qualifying digital game corporation can claim an OIDMTC for an eligible digital game that is developed in whole or in part by the qualifying digital game corporation under the terms of an agreement with a purchaser corporation. This means the qualifying digital game corporation is not required to develop 90% or more of the eligible digital game. The qualifying digital game corporation can be related to the purchaser corporation. The qualifying digital game corporation must demonstrate that they have qualifying labour costs directly attributable to the development of the eligible digital game of \$1 million or more, incurred over any 36 month period. The OIDMTC for a qualifying digital game corporation is calculated as 35% of its qualifying labour expenditures in respect of an eligible digital game that are incurred after March 26, 2009. The eligible digital game does not need to be completed.

For specialized digital game corporations:

A specialized digital game corporation can claim an OIDMTC on an annual basis for qualifying Ontario labour costs incurred to develop eligible digital games by the specialized digital game corporation in a taxation year. The specialized digital game corporation is not required to develop 90% or more of the eligible digital games included in the annual claim. A specialized digital game corporation must incur a minimum of \$1 million in qualifying Ontario labour costs in a taxation year that are directly attributable to the development of eligible digital games. The OIDMTC is calculated as 35% of its eligible labour expenditures incurred after March 26, 2009. The eligible digital games included in the annual claim do not

need to be completed and the specialized digital game corporation does not need to operate at arm's length from a purchaser corporation.

3. How Much Is the Credit?

(i) Calculation of the Credit

Non-Specified Products of Qualifying Corporations

The amount of the qualifying corporation's OIDMTC for a taxation year for non-specified products is calculated by multiplying the corporation's "qualifying expenditures"¹⁶ for the taxation year by the credit rate of 40% for those expenditures incurred after March 26, 2009. Different tax credit rates apply for expenditures incurred in earlier periods, e.g. 20% rate for expenditures incurred prior to March 27, 2008 and 25% rate for expenditures incurred after March 26, 2008 and before March 27, 2009. See chart of OIDMTC Rates and Eligibility Periods for Non-Specified and Specified Products on page 8 of the Guidelines.

Eligible Products of Qualifying Small Corporations

The OIDMTC tax credit is calculated as 40% of "qualifying expenditures" incurred after March 26, 2009 (regardless of size of corporation). If the corporation is a qualifying small corporation the amount of the OIDMTC for a taxation year for eligible products is calculated by multiplying the corporation's "qualifying expenditures" incurred after March 23, 2006 and up to March 26, 2009 by 30%. For expenditures incurred prior to March 23, 2006 the tax credit rate for qualifying small corporations is 20% of "qualifying expenditures" incurred. Qualifying expenditures include "eligible labour expenditures" (ELE) (see Section ii below) and "eligible marketing and distribution expenditures" (see Section (ix) below) in respect of non-specified products.

Specified Products

For specified products, the tax credit rate is calculated at 35% of qualifying labour amounts incurred after March 26, 2009. Different tax credit rates apply for expenditures incurred in earlier periods e.g. 20% rate for expenditures incurred after March 23, 2006 and before March 26, 2008, and 25% rate for expenditures incurred after March 25, 2008 and before March 27, 2009. As well, prior to March 27, 2009 qualifying expenditures for specified products was limited to salaries and wages of its employees. See chart of OIDMTC Rates and Eligibility Periods for Non-Specified and Specified Products on page 8 of the Guidelines. If a qualifying corporation develops a specified product under the terms of an agreement with a purchaser, only the qualifying corporation is entitled to claim a tax credit in respect of the specified product.

Eligible Digital Games

For eligible digital games developed by qualifying digital game corporations and specialized digital game corporations, the tax credit rate is calculated at 35% of qualifying labour amounts incurred after March 26, 2009.

¹⁶ Section 93 (3) of the *Taxation Act*

(ii) Qualifying Expenditure

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.

(iii) Eligible Labour Expenditure (ELE)*Legislative Requirements*

A qualifying corporation's eligible labour expenditure (ELE)¹⁷ for a taxation year is calculated as the sum of:

- (a) the Ontario labour expenditure incurred by the qualifying corporation in the taxation year for the eligible product; and
- (b) if the development of the eligible product is completed before March 26, 2008, the amount by which the total Ontario labour expenditure incurred by the qualifying corporation in a prior taxation year for the eligible product, to the extent that it is incurred in the 25-month period ending at the end of the month in which the eligible product is completed, or
- (c) if the development of the eligible product is completed after March 25, 2008, the amount by which the total Ontario labour expenditure incurred by the qualifying corporation in a prior taxation year for the eligible product, to the extent that it is incurred in the 37-month period ending at the end of the month in which the eligible product is completed,
- (d) less:
- (e) the total government assistance in respect of the Ontario labour expenditure for the eligible product, that the qualifying corporation or any other person or partnership has received, is entitled to receive or can reasonably be expected to receive, to the extent the government assistance has not been repaid pursuant to a legal obligation, and
- (f) 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 or for a previous taxation year by the qualifying corporation or by a qualifying predecessor corporation.

Commentary

¹⁷ Section 93 (4) of the *Taxation Act*.

An OIDMTC may be claimed in the taxation year in which the eligible product is completed. If activity for more than one eligible product is undertaken in a taxation year, the OIDMTC may be claimed in respect of the activity relating to several products during that taxation year.

The ELE for each non-specified for the taxation year is the Ontario labour expenditure (OLE) incurred in the year plus any OLE incurred in a previous year and not yet claimed less relevant government assistance. Ontario labour expenditure (OLE) is described further in Section (iv) below.

For products completed before March 26, 2008, the qualifying corporation may claim eligible labour expenditures two years prior to completion of the product, i.e. the labour expenditures must be incurred in the 25 months ending at the end of the month in which the product is completed.

For products completed after March 25, 2008, the qualifying corporation may claim eligible labour expenditures three years prior to the completion of the product, i.e. the labour expenditures must be incurred in the 37 months ending at the end of the month in which the product is completed.

The eligible labour expenditure (ELE) per project is calculated as the sum of all eligible Ontario labour expenditures less “government assistance” received or entitled to be received by the corporation or other parties in respect of eligible labour expenditures, to the extent that it has not been repaid, in respect of the eligible product and any eligible Ontario labour expenditures previously included in an annual claim for the product under section 93.2 of the Taxation Act. Section 93.2 of the Taxation Act refers to eligible digital games developed by specialized digital game corporations.

“Government assistance” is described further in Section (x) below.

(iv) Ontario Labour Expenditure for Non-Specified and Specified Products Under Section 93 (OLE)¹⁸

Legislative Requirements

A qualifying corporation’s “Ontario labour expenditure” is calculated as the sum of

- (a) the “qualifying wage amount”¹⁹ incurred by the qualifying corporation or qualifying predecessor corporation on account of salaries and wages of its employees, and
- (b) for expenditures incurred before March 27, 2009, if the product is not a specified product, 50% of “qualifying remuneration amounts”²⁰ incurred by the qualifying corporation or qualifying predecessor corporation; and

¹⁸ Subsection 35 (1) of the Ontario Regulation.

¹⁹ Subsection 35 (2) of the Ontario Regulation.

²⁰ Subsection 35 (7) of the Ontario Regulation.

- (c) for expenditures incurred after March 26, 2009, 100% of the qualifying remuneration amount of the qualifying corporation or qualifying predecessor corporation

The “qualifying wage amount” of the qualifying corporation or qualifying predecessor corporation for a taxation year with respect to the eligible product is the amount incurred by the qualifying corporation or qualifying predecessor corporation during the taxation year on account of salaries or wages of its employees.

The “qualifying remuneration amount” of the qualifying corporation or qualifying predecessor corporation for a taxation year with respect to the eligible product is the amount incurred during the taxation year by the qualifying corporation or qualifying predecessor corporation on account of remuneration, which is 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 and who deals at arm’s length with that corporation, if 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, if the expenditure does not exceed the salaries or 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, and
 - iii. if the activities of 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 for services rendered by employees of the taxable Canadian corporation, if the expenditure does not exceed the salaries or wages of those employees for personally rendering those services, and
5. A partnership carrying on business in Canada, all of whose members are all individuals and for which not 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, who directly or indirectly control the qualifying corporation or qualifying predecessor corporation; or who are related to one or more persons who directly or indirectly control the qualifying corporation or qualifying predecessor corporation,²¹
 - i. for services rendered personally by a member of the eligible partnership, or
 - ii. for services rendered personally by employees of the eligible partnership, if the expenditure does not exceed the salaries or wages of those employees for personally rendering those services.

²¹ Subsection 35(3) 5. and Subsection 35(6) of the Ontario Regulation.

In addition, “Ontario labour expenditures” must be²²

- (a) Directly attributable to the development of the eligible product.
- (b) Included in the cost, or in the case of depreciable property, the capital cost of the eligible product.
- (c) Paid no later than 60 days after the end of the taxation year.
- (d) 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.
- (e) In the case of a qualifying wage amount, paid to an employee of the qualifying corporation or qualifying predecessor corporation who reported to a permanent establishment of that corporation in Ontario at which the eligible product was developed.
- (f) In the case of a qualifying remuneration amount, paid for services rendered at a permanent establishment in Ontario of the qualifying corporation, of a qualifying predecessor corporation or of the individual, corporation or partnership dealing at arm’s length with the qualifying corporation or qualifying predecessor corporation.

Expenditures 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*, or incurred by the corporation in carrying out activities that constitute scientific research and experimental development for the purposes of paragraph 37(1)(a) of the Income Tax Act (Canada) or subparagraph 37(1)(b)(i) of that Act do not constitute Ontario Labour Expenditures under the OIDMTC.

(v) Qualifying Labour Expenditure for Qualifying Digital Game Corporation Under Section 93.1 ²³

Legislative Requirements

A qualifying digital game corporation’s qualifying labour expenditure in respect of an eligible digital game for a taxation year is calculated as the sum of:

- (a) the Ontario labour expenditure incurred by the qualifying digital game corporation in the taxation year in respect of an eligible digital game that is incurred in the 36-month period selected by the corporation to meet the required total Ontario labour amount of \$1 million, and
- (b) the sum of all amounts, if any, of Ontario labour expenditures incurred by the qualifying digital game corporation in a previous taxation year or by a qualifying predecessor corporation in respect of an eligible digital game that is incurred in the 36-month period selected by the corporation to meet the required total Ontario labour amount of \$1 million
- (c) less

²² Subsection 35 (4) of the Ontario Regulation.

²³ Section 93.1 (6) and 93.1 (2) of the *Taxation Act*

- (d) the total government assistance in respect of the Ontario labour expenditure for the eligible digital game, that the qualifying digital game corporation or any other person or partnership has received, is entitled to receive or can reasonably be expected to receive, to the extent the government assistance has not been repaid pursuant to a legal obligation, and
- (e) 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 or for a previous taxation year by the qualifying digital game corporation.

Commentary

An OIDMTC may be claimed by a qualifying digital game corporation in the taxation year in which the 36-month period selected by the qualifying digital game corporation ends. Eligible digital games developed by qualifying digital game corporations must have qualifying labour expenditures totalling not less than \$1 million in any period of 36-months against the eligible digital game. The OIDMTC is calculated as 35% of qualifying labour expenditures incurred after March 26, 2009 in respect of an eligible digital game.

The qualifying labour expenditure per eligible digital game is calculated as the sum of all qualifying Ontario labour expenditures less “government assistance” received or entitled to be received by the corporation or other parties in respect of eligible labour expenditures, to the extent that it has not been repaid, in respect of the eligible digital game and any eligible Ontario labour expenditures included in an annual claim for the product under section 93.2 of the Taxation Act. Section 93.2 of the Taxation Act refers to eligible digital games developed by specialized digital game corporations.

Please note that a qualifying digital game corporation may select a 36-month period in which they have incurred \$1 million in respect of an eligible digital game that starts before March 26, 2009. In this case the qualifying digital game corporation has met the requirement that the eligible digital game has qualifying labour expenditures not less than \$1 million, however, only the qualifying labour expenditures incurred after March 26, 2009 will be used to determine the OIDMTC for the eligible digital game.

(vi) Ontario Labour Expenditure of a Qualifying Digital Game Corporation Under Section 93.1

Legislative Requirements

The Ontario labour expenditure of a qualifying digital game corporation for a taxation year for an eligible digital game is the sum of:

- (a) the qualifying wage amount of the qualifying digital game corporation or qualifying predecessor corporation for the year with respect to the eligible digital game; and
- (b) for expenditures incurred after March 26, 2009, the qualifying remuneration amount of the qualifying digital corporation or qualifying predecessor corporation for the year with respect to the eligible digital game

The “qualifying wage amount” of the qualifying digital game corporation or qualifying predecessor corporation for a taxation year with respect to the eligible digital game is the amount incurred by the qualifying digital game corporation or qualifying predecessor corporation during the taxation year on account of salaries or wages of its employees.

The “qualifying remuneration amount” of the qualifying digital game corporation or qualifying predecessor corporation for a taxation year with respect to the eligible digital game is the sum of all amounts incurred during the taxation year by the qualifying digital game corporation or qualifying predecessor corporation on account of remuneration, which is 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 digital game corporation or qualifying predecessor corporation and who deals at arm’s length with that corporation, if 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, if the expenditure does not exceed the salaries or 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 digital game corporation or qualifying predecessor corporation, and
 - iii. if the activities of the taxable Canadian corporation’s primary activity is the provision of the individual’s services, and
4. A partnership carrying on business in Canada, all of whose members are all individuals and for which not 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, who directly or indirectly control the qualifying digital game corporation or qualifying predecessor corporation; or who are related to one or more persons who directly or indirectly control the qualifying digital game corporation or qualifying predecessor corporation,
 - i. for services rendered personally by a member of the eligible partnership, or
 - ii. for services rendered personally by employees of the eligible partnership, if the expenditure does not exceed the salaries or wages of those employees for personally rendering those services.

In addition, “Ontario labour expenditures” must be

- (a) Directly attributable to the development of the eligible digital game
 - (b) Included in the cost, or in the case of depreciable property, the capital cost of the eligible digital game.
 - (c) Paid no later than 60 days after the end of the taxation year.
 - (d) 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.
 - (e) In the case of a qualifying wage amount, paid to an employee of the qualifying digital game corporation or qualifying predecessor corporation who reported to a permanent
-

establishment of that corporation in Ontario at which the eligible digital game was developed.

- (f) In the case of a qualifying remuneration amount, paid for services rendered at a permanent establishment in Ontario of the qualifying digital game corporation, of a qualifying predecessor corporation or of the individual, corporation or partnership dealing at arm's length with the qualifying digital game corporation or qualifying predecessor corporation.

Expenditures for which the qualifying digital game 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*, or incurred by the corporation in carrying out activities that constitute scientific research and experimental development for the purposes of paragraph 37(1)(a) of the Income Tax Act (Canada) or subparagraph 37(1)(b)(i) of that Act do not constitute Ontario Labour Expenditures under the OIDMTC.

(vii) Eligible Labour Expenditure for Specialized Digital Game Corporation Under Section 93.2²⁴

Legislative Requirements

The eligible labour expenditure of a specialized digital game corporation in respect of an eligible digital game for a taxation year is calculated as the sum of:

- (a) the corporation's Ontario labour expenditure for the year for eligible digital game activities in respect of the eligible digital game
- (b) less
- (c) the total government assistance, if any, in respect of the Ontario labour expenditure for eligible digital game activities in respect of the eligible digital game that 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.

Commentary

An OIDMTC may be claimed by a specialized digital game corporation on an annual basis, at the end of the taxation year in which the corporation has incurred \$1 million in eligible Ontario labour expenditures in respect of eligible digital game activities directly attributable to the development of eligible digital games²⁵. Applicants can aggregate the cost across eligible activities for multiple digital games to reach the minimum of \$1 million in labour expenditures in the year. The corporation must qualify as a specialized digital game corporation for each taxation year that they wish to make an annual claim. A specialized digital game corporation must have either 80% of its total salaries and wages paid for services rendered in Ontario, in the taxation year, that are directly attributable to the development of digital games or the corporation's total gross revenue for the year that is directly attributable to the development of

²⁴ Section 93.2 (3) of the *Taxation Act*

²⁵ Section 93.2 (11) of the *Taxation Act*

eligible digital games cannot be less than 90% of the corporation's total gross revenue for the year.

The OIDMTC is calculated as 35% of the eligible labour expenditures incurred by the specialized digital game corporation in the taxation year, net of assistance. Please note eligible labour costs are those incurred after March 26, 2009.

(viii) Ontario Labour Expenditure of a Specialized Digital Game Corporation Under Section 93.2

Legislative Requirements

The Ontario labour expenditure of a specialized digital game corporation for a taxation year for an eligible digital game is the sum of:

- (a) the qualifying wage amount of the qualifying digital game corporation for the year with respect to the eligible digital game; and
- (b) for expenditures incurred after March 26, 2009, the qualifying remuneration amount of the qualifying digital corporation for the year with respect to the eligible digital game

The “qualifying wage amount” of the specialized digital game corporation for a taxation year with respect to the eligible digital game is the amount incurred by the specialized digital game corporation during the taxation year on account of salaries or wages of its employees.

The “qualifying remuneration amount” of the specialized digital game corporation for a taxation year with respect to the eligible digital game is the sum of all amounts incurred during the taxation year by the specialized digital game corporation on account of remuneration, which is 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 specialized digital game corporation and who deals at arm's length with that corporation, if 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, if the expenditure does not exceed the salaries or 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 specialized digital game corporation, and
 - iii. if the activities of the taxable Canadian corporation's primary activity is the provision of the individual's services, and
4. A partnership carrying on business in Canada, all of whose members are all individuals and for which not 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, who directly or indirectly control

the specialized digital game corporation; or who are related to one or more persons who directly or indirectly control the specialized digital game corporation,

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

In addition, “Ontario labour expenditures” must be

- (a) Directly attributable to the development of the eligible digital game
- (b) Included in the cost, or in the case of depreciable property, the capital cost of the eligible digital game.
- (c) Paid no later than 60 days after the end of the taxation year.
- (d) 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.
- (e) In the case of a qualifying wage amount, paid to an employee of the specialized digital game corporation who reported to a permanent establishment of that corporation in Ontario at which the eligible digital game was developed.
- (f) In the case of a qualifying remuneration amount, paid for services rendered at a permanent establishment in Ontario of the specialized digital game corporation, or of the individual, corporation or partnership dealing at arm’s length with the specialized digital game corporation.

Expenditures for which the specialized digital game 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*, or incurred by the corporation in carrying out activities that constitute scientific research and experimental development for the purposes of paragraph 37(1)(a) of the Income Tax Act (Canada) or subparagraph 37(1)(b)(i) of that Act do not constitute Ontario Labour Expenditures under the OIDMTC

*Commentary***Eligible Labour Expenditure Breakdown**

Type of Product	Prior to March 27, 2009	After March 26, 2009
Section 93 Non-Specified Product	- salaries and wages of employees at 100% - remuneration at 50%	- salaries and wages of employees at 100% - remuneration at 100%
Section 93 Specified Product	- salaries and wages of employees at 100% - no remuneration	- salaries and wages of employees at 100% - remuneration at 100%
Section 93.1 Digital Game	N/A	- salaries and wages of employees at 100% - remuneration at 100% *
Section 93.2 Digital Game	N/A	- salaries and wages of employees at 100% - remuneration at 100% *

* remuneration under Section 93.1 and 93.2 is defined more narrowly see note on next page.

Ontario Labour Expenditures must be directly attributable to “development” of the product as that term is used in the interactive digital media industry. As noted above, “development” refers to the stages of production up to (but not including) product launch. Development in the digital media industry may include: concept development, product design, planning, production, and testing.

Expenditures must be included in the cost, or in the case of depreciable property, the capital cost of the eligible product. Expenditures must also be incurred in the taxation year but can be paid within 60 days following the end of the taxation year. If not paid within sixty days, the expenditures may not be claimed for that taxation year but may be claimed in the subsequent taxation year.

Eligible Ontario labour expenditures are limited to amounts incurred for services rendered by individuals liable for personal income tax in Ontario by virtue of being resident in Ontario in the calendar year before the calendar year in which he or she rendered the services. In order to be subject to personal income tax under clause 2(a) of the *Income Tax Act* (Ontario) (reproduced in Appendix 6-VII) in a calendar year, the individual must have been resident in Ontario on the last day of the calendar year. Whether an individual is “resident in Ontario” is a question of fact which must be determined on a case-by-case basis. 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.

Salary or wages may only be included in a corporation's Ontario labour expenditure if they are paid to Ontario resident individuals who "report to" the qualifying corporation's permanent establishment in Ontario at which eligible activities are performed. Individuals who perform eligible activities at the qualifying corporation's permanent establishment in Ontario would be considered to "report to" that establishment. In addition, depending on the facts of the case, individuals who perform eligible activities elsewhere in Ontario but are subject to control and direction regarding their work activities from the permanent establishment of the qualifying corporation in Ontario may be considered to "report to" that establishment.

Qualifying remuneration includes payments to non-employees who deal at arm's length with the corporation. Contractors must render services at the qualifying corporation's permanent establishment or the contractor's permanent establishment in Ontario. That is, the work must be carried out *in Ontario*.

- * Eligible Ontario labour expenditures under sections 93.1 and 93.2 do not include remuneration amounts paid to a taxable Canadian corporation for the services rendered by that corporation's employees. The eligible Ontario labour expenditures for specialized digital game corporations are further restricted and do not include any amounts incurred by a qualifying predecessor corporation.

Expenditures for which the qualifying corporation has made a claim under the Ontario Film and Television Tax Credit, the Ontario Production Services Tax Credit, or the Ontario Computer Animation and Special Effects Tax Credit may not be claimed for the OIDMTC. In addition, expenditures incurred in carrying out scientific research and experimental development eligible for a tax deduction under paragraph 37(1)(a) or subparagraph 37(1)(b)(i) of the *Income Tax Act* (Canada) may not be claimed under the OIDMTC.

(ix) Marketing and Distribution Expenses

Qualifying expenditures include up to \$100,000 of "eligible marketing and distribution expenditures"²⁶ related to non-specified products.

Legislative Requirements

The eligible marketing and distribution expenditure of a qualifying corporation for an eligible product is the lesser of \$100,000 and

- (a) the total marketing and distribution expenditure in respect of the eligible product incurred by the qualifying corporation in the 24 months before or in the 12 months after the completion of the product

²⁶ Section 93 (6) and 93 (7) of the *Taxation Act* and Subsection 35 (7) and 35 (8) of the Ontario Regulation

LESS

- (b) all government assistance for the marketing and distribution expenditures for the eligible product

Marketing and distribution expenditures must meet 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 taxation year.
3. The expenditure is not an amount,
 - i. for which the qualifying corporation makes a claim under section 90, 91 or 92 of the Taxation Act or section 43.5, 43.8, or 43.10 of the *Corporations Tax Act*, or
 - ii. incurred by the corporation in carrying out activities that constitute scientific research and experimental development for the purposes of paragraph 37 (1) (a) of the *Income Tax Act* (Canada) or subparagraph 37 (1) (b) (i) of that Act.
4. 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.
5. 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 a qualifying corporation in a taxation year.

Commentary

Eligible marketing and distribution expenses might include the costs of:

- Attending trade shows where the product is being promoted
- Consultant fees for PR 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 (shelf space), product samples
- Direct Mail Marketing/Telemarketing
- Media kits/news releases (media lists)

Eligible marketing and distribution expenses will be limited to those incurred in the 24-month period prior to the completion of the eligible interactive digital media product, and those incurred in the twelve months following the completion of the product.

Expenditures that have already been claimed as eligible Ontario labour expenditures cannot be claimed as marketing and distribution expenditures.

Marketing and distribution expenditures cannot be claimed in respect of specified products and eligible digital games that do not qualify as eligible products under Section 93 of the Taxation Act.

(x) Government Assistance*Legislative Requirements*

“Government assistance,” for purposes of the OIDMTC means assistance from a government, municipality or other public authority in any form, including a grant, subsidy, forgivable loan, and deduction from tax and investment allowance. The OIDMTC will not be considered “government assistance” in calculating the OIDMTC.

Commentary

The eligible labour expenditure (ELE) for a product is equal to Ontario labour expenditures (OLE’s) for current and previous tax years less “government assistance.” Assistance from government which the qualifying corporation or any other person or partnership has received, is entitled to receive or can reasonably be expected to receive must be deducted. Government assistance is also deducted in calculating the eligible marketing and distribution expenditure for an eligible product. The definition of “assistance” is found in paragraph 12(1)(x) of the *Income Tax Act* (Canada), reproduced for convenience in Appendix 6-VIII.

Government assistance does not include assistance received from a private fund or source.²⁷ Applicants are encouraged to contact the OMDC regarding the treatment of specific funding sources in the calculation of the tax credit.

The relevant amount of assistance must be determined as of the date that the corporation’s tax return is required to be delivered to the Canada Revenue Agency under section 150. (1) of the *Income Tax Act*. This date is generally the last day of the sixth month after the end of the corporation’s taxation year.

The assistance to be deducted is the portion which relates to the corporation’s eligible expenditures for the eligible product. For instance, where assistance is labour-related (i.e., the assistance is provided specifically for labour expenditures), the full amount of assistance must be deducted. Where assistance is not labour-related (i.e., is provided for all costs of the product), the portion of the assistance which must be deducted may be determined by prorating the amount of assistance²⁸.

Where assistance is received for marketing and distribution of the eligible product the assistance to be deducted is the portion which relates to the corporation’s qualifying Marketing and Distribution expenditures for the eligible product.²⁹

²⁷ A “private fund” is one that administers funds provided from a non-government source.

²⁸ The following formula may be used to prorate the amount of assistance: Labour expenditure divided by total expenditure for the product, multiplied by the value of assistance, is equal to assistance related to labour expenditure.

²⁹ The following formula may be used to prorate the amount of assistance as it relates to marketing and distribution expenditures: Total qualifying marketing and distribution expenditures divided by total marketing and distribution expenditures for the product, multiplied by the value of the assistance, is equal to the assistance related to the marketing and distribution expenditure.

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 the qualifying corporation files with the Canada Revenue Agency with its corporate tax return for the applicable taxation year in order to claim the OIDMTC.

A Certificate of Eligibility sets out (i) the eligibility of an applicant corporation; (ii) the eligibility of an applicant product(s); and (iii) the estimated amount of the OIDMTC. The amount of the OIDMTC is subject to verification by the Canada Revenue Agency as indicated below.

A Certificate of Eligibility will be issued to a qualifying corporation in respect of a taxation year for eligible and specified products that have been completed.

In the case of eligible digital game products developed by a qualifying digital game corporation, a Certificate of Eligibility will be issued to the qualifying digital game corporation in respect of qualifying labour costs directly attributable to the development of an eligible digital game that have been incurred over a 36-month period that ends in the taxation year.

Specialized digital game corporations will be issued a Certificate of Eligibility at the end of the taxation year, in respect of eligible labour expenditures incurred in that taxation year for eligible digital games.

The Certificate of Eligibility will encompass an estimate of all qualifying expenditures of an eligible product in the 25-month period ending at the end of the month in which the eligible product was completed plus marketing expenditures incurred in the 12 month period after completion. For eligible and specified products completed after March 25, 2008, the Certificate of Eligibility will encompass an estimate of all qualifying expenditures of a product in the 37-month period ending at the end of the month in which the eligible or specified product was completed plus marketing expenditures for eligible products incurred in the 12 month period after completion.

Qualifying labour expenditures and eligible marketing and distribution expenditures must be paid no later than 60 days after the end of the relevant taxation year. Where more than one product has been completed by a qualifying corporation, a Certificate of Eligibility will be issued that relates to costs incurred for multiple projects.

(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 for the qualifying corporation. If a Certificate of Eligibility is revoked by the OMDC, the revoked Certificate of Eligibility is treated as if it had never been issued.

(iii) Issuance of a Preliminary Assessment

Due to the increased volume of OIDMTC applications, the OMDC is no longer offering to provide Preliminary Assessments except under special circumstances approved by the Director of Tax Credits involving the Bell Broadcast and New Media Fund. Please note: A Preliminary Assessment is based on a description of the product, not a completed version, and on projected costs, not actual costs, therefore, it cannot be relied upon as accurate and will not guarantee that the OMDC will issue a Certificate of Eligibility. In those cases where a Preliminary Assessment is approved, OMDC will require a third party to confirm that a Preliminary Assessment is necessary. An administration fee of \$100 will be required for each Preliminary Assessment requested. Preliminary Assessments will be issued per product, not for all products undertaken by the corporation in its taxation year.

***Please note that if you require a Preliminary Assessment for the purpose of securing the required 10% financing for the Bell Broadcast and New Media Fund, please apply to the OMDC for this letter as soon as possible, and at least 4 weeks prior to the deadline in the Bell Fund Commitment Letter.**

2. Canada Revenue Agency Role

The Canada Revenue Agency is responsible for assessing the Corporations Tax Return T2 along with Schedule T2SCH560 which must be filed by a qualifying corporation in order to claim the OIDMTC and will review or audit such return.

3. Filing a Corporate Tax Return

Canada Revenue Agency (CRA) will administer both Federal and Ontario corporate taxes for taxation years ending after December 31, 2008. A corporation must file its T2 for a taxation year with the CRA within six (6) months after the end of the corporation's taxation year. To claim the OIDMTC a corporation must file its Federal corporate tax return (T2) with Schedule T2SCH560 and the Certificate of Eligibility with the CRA. The CRA audits the return and then issues a notice of assessment and, if applicable, a refund. The amount of the credit may be reduced by any Ontario taxes owing by the qualifying corporation. Please note that the OIDMTC will reduce the cost of the eligible product for tax purposes.

For taxation years ending prior to January 1, 2009, a corporation must file its CT-23 for a taxation year with the Corporations Tax Branch within six (6) months after the end of the corporation's taxation year. In order to claim the OIDMTC for a taxation year, the qualifying corporation must attach the Certificate of Eligibility issued for that taxation year to its CT-23 and insert the OIDMTC amount in the appropriate line of the tax return (line 200 of the 1998 and 1999 CT-23 forms).

In the event that your Certificate of Eligibility is not available at the time of submitting your Corporation's Tax Return to the Ontario Ministry of Revenue, we recommend that you enter your own estimate of the OIDMTC on the appropriate line of the "Specified Tax Credits" section. This action will ensure that the department of the Ontario Ministry of Revenue that processes "Specified Tax Credits" receives the return and holds it for the arrival of the Certificate of Eligibility. If no amount is entered anywhere in the "Specified Tax Credits" section, the return will be processed and the Ontario Ministry of Revenue will issue the usual assessment based on the return as filed.

For taxation years ending prior to January 1, 2009, correspondence should be directed to:

Ministry of Finance
Ministry of Revenue
Corporations Tax
33 King Street West
PO Box 620
Oshawa ON L1H 8E9

Fax: (905) 837-3824

General questions can be directed to OMoR at 1-866-805-7702.

For taxation years ending after December 31, 2008, correspondence should be directed to:

Canada Revenue Agency
Film Services Unit
1 Front Street West
Toronto ON
M5J 2X6

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

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

3. Payment of an OIDMTC Refund

If a corporate tax refund (which may include an OIDMTC) is payable, a cheque made payable to the qualifying corporation is sent by the Canada Revenue Agency to the qualifying corporation.

4. Applying for a Certificate of Eligibility

(i) Who Applies to the OMDC?

The qualifying corporation submits a completed OIDMTC Application to the OMDC via the OMDC Online Application Portal for all eligible products for the corporation's taxation year. For administrative convenience, the qualifying corporation may appoint an agent to apply on its behalf, but any Certificate of Eligibility issued will be in the name of the qualifying corporation.

(ii) When Should Application Be Made to the OMDC?

Application can be made to the OMDC once the eligible or specified product has been completed and at the end of the taxation year. If the corporation has not incurred all eligible costs at the time of applying for an OIDMTC Certificate of Eligibility (i.e. there are additional marketing costs to be incurred) the corporation should submit cost schedules with projected expenditures up to the end of the taxation year in which the

products were completed. To claim additional marketing and distribution expenditures on products certified in a previous taxation year a corporation should submit a new application for the taxation year that these additional marketing and distribution expenditures were incurred. Please note that each application is subject to an application fee.

For qualifying digital game corporations making an OIDMTC claim under Section 93.1, application can be made to the OMDC after the end of the 36-month period in which the applicant has incurred \$1 million in Ontario labour expenditures in respect of an eligible digital game.

For specialized digital game corporations making an OIDMTC claim under Section 93.2, application can be made to the OMDC at the end of the taxation year in which the corporation has incurred \$1 million in Ontario labour expenditures in respect of eligible digital game activities that are directly attributable to the development of eligible digital games.

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

(iii) Is there an Application Fee?

A non-refundable Application Fee is payable with respect to each OIDMTC application submitted to the Ontario Media Development Corporation. Application Fees are used to offset operating costs of the OIDMTC program. An additional fee is requested if applying for a Preliminary Estimate.

To claim additional marketing and distribution expenditures on products certified in a previous taxation year a corporation should submit a new application for the taxation year that these additional marketing and distribution expenditures were incurred. Please note that each application is subject to an application fee.

The Application Fee is calculated as 0.1 per cent of the total final Qualifying Expenditures (line (Z) of Part H) for the application. The minimum Application Fee is \$100 and the maximum Application Fee is \$2,000 per application.

For example, where Qualifying Expenditures total \$200,000, the Application Fee is calculated as follows:

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

The fee for a Preliminary Estimate is an additional \$100.00 per product.

Fees are payable by cheque or money order made payable to the Ontario Media Development Corporation at the time the OIDMTC application is submitted to the OMDC. These fees are required in order for the application to be reviewed.

(iv) What Documentation is Required?

Where a Certificate of Eligibility is requested, the applicant must submit to the OMDC the documents set out in the OIDMTC Documents' Checklist. In some cases the OMDC may also require additional documentation or information in order to issue a Certificate of Eligibility. 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 and the Canada Revenue Agency.

(v) How Long Does the Process Take?

For applications received by the OMDC after April 1, 2010, the OMDC Tax Credits Department will only be reviewing complete applications on a first-come, first-served basis and processing time will depend on the

volume of applications received.

NEW:

(vi) Online Application:

In an effort to streamline our tax credit administration process, please note that starting April 1, 2011, the OMDC has implemented a mandatory policy that all OMDC tax credit applications must be submitted via our Online Application Portal.

DOCUMENTS' CHECKLIST

PART I

SUBMITTED

1.	OIDMTC Application Form (applicants must register on the OMDC Online Application Portal to access the Application Form.)	<input type="checkbox"/> no	<input type="checkbox"/> yes
2.	Application Fee, payable to the Ontario Media Development Corporation. The fee is calculated as 0.1 percent of the total final Qualifying Expenditures. (line Z of Part H of the application). For Example, where the Qualifying Expenditures total \$200,000, the Application fee is calculated as follows: Application Fee = Qualifying Expenditure x 0.001 = \$200,000 x 0.001 = \$200 The minimum Application fee is \$100 and the maximum Application fee is \$2000 per application.	<input type="checkbox"/> no	<input type="checkbox"/> yes
3.	Incorporation documents for the Qualifying Corporation, including amendments (If these documents are already on file with the OMDC Tax Credits, please provide all updates, amendments or revisions to the documents on file).	<input type="checkbox"/> no	<input type="checkbox"/> yes
4.	Corporate chart for Qualifying Corporation. If applying for an OIDMTC for non-specified and specified products please provide corporate chart for all associated companies (i.e. chart or schedule indicating the relationship between the applicant corporation and all associated corporations, including percentage of share ownership).	<input type="checkbox"/> no	<input type="checkbox"/> yes
5.	Consolidated annual financial statements of the Qualifying Corporation for the current taxation year. If claiming as a “qualifying small corporation” (Total assets less than \$10 million or annual total revenues less than \$20 million), please provide consolidated annual financial statements (includes all associated companies) for the preceding taxation year. Please note: If making an OIDMTC application for taxation years prior to 2009, please provide annual financial statements of the Qualifying Corporation for the preceding taxation year. If claiming as a “qualifying small corporation” (Total assets less than \$10 million or annual total revenues less than \$20 million), please provide consolidated annual financial statements (includes all associated companies) for the preceding taxation year.	<input type="checkbox"/> no	<input type="checkbox"/> yes
6.	If applying under section 93.2 as a Specialized Digital Game Corporation please provide: Detailed Payroll report or Wage Schedule that relates to the taxation 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.	<input type="checkbox"/> no	<input type="checkbox"/> yes
7.	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, fee-for-service agreements, co-production agreements, distribution agreements, where applicable. Documentation should clearly indicate ownership rights to the completed product). If applying under section 93.1 as a Qualifying Digital Game Corporation please provide: Development Agreement(s) between the Qualifying Digital Game Corporation and	<input type="checkbox"/> no	<input type="checkbox"/> yes

Purchaser Corporation(s) for each eligible digital game included in the application (i.e. purchaser agreements, fee-for-service agreements etc.)

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) if applicable for each eligible digital game included in the application (i.e. purchaser agreements, fee-for-service agreements etc.)

8.	Description of product development or digital game development activities (if applying under section 93.1 or 93.2): 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.	<input type="checkbox"/> no	<input type="checkbox"/> yes
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9.	Complete, detailed production schedule and timeline (e.g. Gantt chart).	<input type="checkbox"/> no	<input type="checkbox"/> yes
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10.	Business and Marketing Plan including a description of the target audience/market and revenue model.	<input type="checkbox"/> no	<input type="checkbox"/> yes
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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).

11.	List of names and roles (with brief description) of all individuals working on the product(s). Please include addresses.	<input type="checkbox"/> no	<input type="checkbox"/> yes
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Please note: OMDC generally does not need to see the Ontario Declaration of Residency/Consent Forms for OIDMTC, however, we advise applicants to keep them on file as Canada Revenue Agency may ask to see them should they decide to audit the claim.

12.	List of names and addresses of individuals who are not employees of the qualifying corporation.	<input type="checkbox"/> no	<input type="checkbox"/> yes
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13.	Financing plan/indication of sources of financing for the interactive digital media product (required for each interactive digital media product included in the application).	<input type="checkbox"/> no	<input type="checkbox"/> yes
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14.	Financing contracts, if available (for all sources of financing for each interactive digital media product included in the application).	<input type="checkbox"/> no	<input type="checkbox"/> yes
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15.	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 up to and including March 23, 2006, and costs incurred after March 23, 2006 up to and including March 25, 2008, and costs incurred March 26, 2008 up to and including March 26, 2009, and those costs incurred March 27, 2009 and beyond. (The Canada New Media Fund, Bell Broadcast and New Media Fund or similar budget format may be used).	<input type="checkbox"/> no	<input type="checkbox"/> yes
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The schedules should make a clear distinction between, and provide subtotals for:
 Qualifying Wage Amounts on account of salaries and wages of its employees
 Qualifying Remuneration Amounts* paid to arm’s length parties who are not employees of the corporation.

*** Qualifying Remuneration Amounts incurred prior to March 27, 2009 are not eligible expenditures for “specified products”.**

You may wish to use **OIDMTC Expenditure Breakdown Spreadsheet for Specified and Non-Specified Products (Section 93)** that can be downloaded from the **OMDC** website.

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 qualifying Ontario labour expenditures incurred by the qualifying digital game corporation within any period of 36 months that ends in a taxation year after March 26, 2009, in which an OIDMTC application is submitted, and those expenditures are not less than \$1,000,000. Please identify those costs incurred. (The Canada New Media Fund, Bell Broadcast and New Media Fund or similar budget format may be used). no yes

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

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

- a) Arm’s length Ontario based individuals who are not employees of the corporation;
- b) Arm’s length Ontario based individuals who deal at arm’s length with the 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.

To expedite the review please report each type of remuneration (items a-d above) included in claim in separate columns in cost report or schedule of ACTUAL qualifying Ontario labour expenditures submitted with the application.

You may wish to 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 qualifying Ontario labour expenditures incurred after March 26, 2009 by the specialized digital game corporation in the year for which an OIDMTC application is submitted. no yes

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

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

- a) Arm’s length Ontario based individuals who are not employees of the corporation;
- b) Arm’s length Ontario based individuals who deal at arm’s length with the 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

To expedite the review please report each type of remuneration (items a-d above) included in claim in separate columns in cost report or schedule of ACTUAL qualifying Ontario labour expenditures submitted with the application.

You may wish to use the ODMTC 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. 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 up to and including March 23, 2006, those costs incurred after March 23, 2006 up to and including March 25, 2008, and costs incurred March 26, 2008 up to and including March 26, 2009, and those costs incurred March 27, 2009 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. yes

Note: Please submit FINAL numbers if applying after all marketing and distribution expenditures have been incurred.
Please submit a schedule of projected total expenditures if applying before all marketing and distribution expenditures have been incurred.

**** Marketing and Distribution Expenses are not eligible expenditures for “specified products” or for “eligible digital games” claimed under section**

19. For products claimed under section 93 as “non-specified” or “specified”, please provide a copy of each **completed** interactive digital product 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. yes

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

**ONTARIO INTERACTIVE DIGITAL MEDIA TAX CREDIT (OIDMTC)
TAX CREDIT DECLARATION OF RESIDENCY/ CONSENT FORM 2009**

**PLEASE COLLECT THIS FORM FOR ALL INDIVIDUALS BEING INCLUDED IN YOUR LABOUR EXPENDITURE CLAIM.
PLEASE RETAIN FOR YOUR RECORDS FOR PROOF OF RESIDENCY.**

(For services personally rendered between January 1, 2009 to December 31, 2009)

Instructions: Please complete all sections of this form.

_____ the "Corporation"
(name of production company)

Name: _____

S.I.N.: _____ **ON Driver's License #:** _____

Address: _____
(full address including postal code)

I hereby certify and confirm that:

- I was subject to personal income tax in Ontario in the calendar year 2008 by virtue of being resident in Ontario on the 31st day of December, 2008 and my address at that time was:

same as above

(full address including postal code)

- I understand that the Corporation will be relying on this declaration for its application for an Ontario Interactive Digital Media Tax Credit (OIDMTC) which is jointly administered by the Ontario Media Development Corporation (OMDC) and the Canada Revenue Agency and may be subject to government audit, and hereby warrant that the above-noted information is true and correct.
- I understand that an OIDMTC is based on eligible Ontario labour expenditures incurred for product, and as such I hereby grant permission for the Corporation to supply to the Canada Revenue Agency information with respect to my position on the production including, but not limited to, the information contained in this form; the number of hours worked, any and all remuneration I received by the Corporation, and any other information necessary in order to determine that the remuneration I received for my work is an eligible labour expenditure as per Subsection 35(3) of the Ontario Regulations and any information necessary in order to verify that I am an Ontario-based individual¹.
- The information obtained in connection with this Declaration/Consent is collected pursuant to section 93, 93.1, 93.2 of the *Taxation Act*. The above-referenced information shall be used for the purpose of processing the Corporation's application for an OIDMTC tax credit.

Signature of Declarant

Date

¹"Ontario-based individual" means, in relation to an eligible Ontario product, an individual who, by virtue of being an individual described in clause 2(a) of the *Income Tax Act*, is subject to tax under section 2 of that Act for the calendar year before the calendar year in which he or she rendered the services.

**ONTARIO INTERACTIVE DIGITAL MEDIA TAX CREDIT (OIDMTC)
TAX CREDIT DECLARATION OF RESIDENCY/ CONSENT FORM 2010**

**PLEASE COLLECT THIS FORM FOR ALL INDIVIDUALS BEING INCLUDED IN YOUR LABOUR EXPENDITURE CLAIM.
PLEASE RETAIN FOR YOUR RECORDS FOR PROOF OF RESIDENCY.**

(For services personally rendered between January 1, 2010 to December 31, 2010)

Instructions: Please complete all sections of this form.

_____ the "Corporation"
(name of production company)

Name: _____
S.I.N.: _____ **ON Driver's License #:** _____

Address: _____
(full address including postal code)

I hereby certify and confirm that:

2. I was subject to personal income tax in Ontario in the calendar year 2009 by virtue of being resident in Ontario on the 31st day of December, 2009 and my address at that time was:

same as above

(full address including postal code)

5. I understand that the Corporation will be relying on this declaration for its application for an Ontario Interactive Digital Media Tax Credit (OIDMTC) which is jointly administered by the Ontario Media Development Corporation (OMDC) and the Canada Revenue Agency and may be subject to government audit, and hereby warrant that the above-noted information is true and correct.

6. I understand that an OIDMTC is based on eligible Ontario labour expenditures incurred for product, and as such I hereby grant permission for the Corporation to supply to the Canada Revenue Agency information with respect to my position on the production including, but not limited to, the information contained in this form; the number of hours worked, any and all remuneration I received by the Corporation, and any other information necessary in order to determine that the remuneration I received for my work is an eligible labour expenditure as per Subsection 35(3) of the Ontario Regulations and any information necessary in order to verify that I am an Ontario-based individual¹.

7. The information obtained in connection with this Declaration/Consent is collected pursuant to section 93, 93.1, 93.2 of the *Taxation Act*. The above-referenced information shall be used for the purpose of processing the Corporation's application for an OIDMTC tax credit.

Signature of Declarant

Date

¹"Ontario-based individual" means, in relation to an eligible Ontario product, an individual who, by virtue of being an individual described in clause 2(a) of the *Income Tax Act*, is subject to tax under section 2 of that Act for the calendar year before the calendar year in which he or she rendered the services.

**ONTARIO INTERACTIVE DIGITAL MEDIA TAX CREDIT (OIDMTC)
TAX CREDIT DECLARATION OF RESIDENCY/ CONSENT FORM 2011**

**PLEASE COLLECT THIS FORM FOR ALL INDIVIDUALS BEING INCLUDED IN YOUR LABOUR EXPENDITURE CLAIM.
PLEASE RETAIN FOR YOUR RECORDS FOR PROOF OF RESIDENCY.**

(For services personally rendered between January 1, 2011 to December 31, 2011)

Instructions: Please complete all sections of this form.

_____ the "Corporation"
(name of production company)

Name: _____

S.I.N.: _____ **ON Driver's License #:** _____

Address: _____
(full address including postal code)

I hereby certify and confirm that:

3. I was subject to personal income tax in Ontario in the calendar year 2010 by virtue of being resident in Ontario on the 31st day of December, 2010 and my address at that time was:

same as above

(full address including postal code)

8. I understand that the Corporation will be relying on this declaration for its application for an Ontario Interactive Digital Media Tax Credit (OIDMTC) which is jointly administered by the Ontario Media Development Corporation (OMDC) and the Canada Revenue Agency and may be subject to government audit, and hereby warrant that the above-noted information is true and correct.

9. I understand that an OIDMTC is based on eligible Ontario labour expenditures incurred for product, and as such I hereby grant permission for the Corporation to supply to the Canada Revenue Agency information with respect to my position on the production including, but not limited to, the information contained in this form; the number of hours worked, any and all remuneration I received by the Corporation, and any other information necessary in order to determine that the remuneration I received for my work is an eligible labour expenditure as per Subsection 35(3) of the Ontario Regulations and any information necessary in order to verify that I am an Ontario-based individual¹.

10. The information obtained in connection with this Declaration/Consent is collected pursuant to section 93, 93.1, 93.2 of the *Taxation Act*. The above-referenced information shall be used for the purpose of processing the Corporation's application for an OIDMTC tax credit.

Signature of Declarant

Date

¹"Ontario-based individual" means, in relation to an eligible Ontario product, an individual who, by virtue of being an individual described in clause 2(a) of the *Income Tax Act*, is subject to tax under section 2 of that Act for the calendar year before the calendar year in which he or she rendered the services.

APPENDIX 4

ONTARIO INTERACTIVE DIGITAL MEDIA TAX CREDIT LEGISLATION

Section 93 of the Taxation Act, S.O. 2007, Chapter 34, Schedule U

Current to December 15, 2009

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. 2009, c. 34, Sched. U, s. 18 (1).

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. 2009, c. 34, Sched. U, s. 18 (1).

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. 2009, c. 34, Sched. U, s. 18 (1).

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. 2009, c. 34, Sched. U, s. 18 (1).

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. 2009, c. 34, Sched. U, s. 18 (1).

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. 2009, c. 34, Sched. U, s. 18 (1).

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. 2009, c. 34, Sched. U, s. 18 (1).

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. 2009, c. 34, Sched. U, s. 18 (1).

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. 2009, c. 34, Sched. U, s. 18 (1).

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. 2009, c. 34, Sched. U, s. 18 (1).

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. 2009, c. 34, Sched. U, s. 18 (1).

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. 2007, c. 11, Sched. A, s. 93 (5).

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). 2007, c. 11, Sched. A, s. 93 (6).

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. 2007, c. 11, Sched. A, s. 93 (7).

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. 2007, c. 11, Sched. A, s. 93 (8).

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. 2007, c. 11, Sched. A, s. 93 (9).

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. 2007, c. 11, Sched. A, s. 93 (10).

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. 2007, c. 11, Sched. A, s. 93 (11).

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. 2007, c. 11, Sched. A, s. 93 (12).

Same

(13) A certificate that is revoked is deemed never to have been issued. 2007, c. 11, Sched. A, s. 93 (13).

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 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”) 2007, c. 11, Sched. A, s. 93 (14); 2009, c. 34, Sched. U, s. 18 (2).

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. 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. 2007, c. 11, Sched. A, s. 93 (15).

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. 2007, c. 11, Sched. A, s. 93 (16).

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. 2007, c. 11, Sched. A, s. 93 (17).

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. 2007, c. 11, Sched. A, s. 93 (18).

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. 2009, c. 34, Sched. U, s. 18 (3).

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. 2009, c. 34, Sched. U, s. 19.

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. 2009, c. 34, Sched. U, s. 19.

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. 2009, c. 34, Sched. U, s. 19.

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. 2009, c. 34, Sched. U, s. 19.

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. 2009, c. 34, Sched. U, s. 19.

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. 2009, c. 34, Sched. U, s. 19.

Application for certificate

- (7) Subsections 93 (8) 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”. 2009, c. 34, Sched. U, s. 19.

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 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”) 2009, c. 34, Sched. U, s. 19.

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. 2009, c. 34, Sched. U, s. 19.

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. 2009, c. 34, Sched. U, s. 19.

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. 2009, c. 34, Sched. U, s. 19.

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. 2009, c. 34, Sched. U, s. 19.

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. 2009, c. 34, Sched. U, s. 19.

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. 2009, c. 34, Sched. U, s. 19.

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. 2009, c. 34, Sched. U, s. 19.

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. 2009, c. 34, Sched. U, s. 19.

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. 2009, c. 34, Sched. U, s. 19.

Same

(9) A certificate that is revoked is deemed never to have been issued. 2009, c. 34, Sched. U, s. 19.

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”) 2009, c. 34, Sched. U, s. 19.

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. 2009, c. 34, Sched. U, s. 19.

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 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. 2009, c. 34, Sched. U, s. 19.

APPENDIX 5

ONTARIO INTERACTIVE DIGITAL MEDIA TAX CREDIT REGULATION

ONTARIO REGULATION 37/09:

Amended by adding ONTARIO REGULATION 70/10

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. O. Reg. 37/09, s. 34 (1).

(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. O. Reg. 37/09, s. 34 (2).

(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. O. Reg. 37/09, s. 34 (3)
- (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. O. Reg. 37/09, s. 34 (4).

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. O. Reg. 37/09, s. 35 (3).

(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. O. Reg. 37/09, s. 35 (4).

(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. O. Reg. 37/09, s. 35 (5).

(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. O. Reg. 37/09, s. 35 (6).

(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. O. Reg. 37/09, s. 35 (7).

(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. O. Reg. 37/09, s. 35 (8).

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 6
OIDMTC 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 89(1) “Canadian corporation”: (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.

NOTE: Application provisions are not included in the consolidated text; see relevant amending Acts and regulations. SOR/78-772, s. 1; SOR/81-267, s. 1; SOR/86-390, s. 1; SOR/94-140, s. 1; SOR/94-686, ss. 4(F), 57(F), 79(F); 2009, c. 2, s. 91.

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 taxation 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 taxation year exceed \$5,000,000;
- (b) the corporation’s total revenue for the taxation 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 taxation 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; and
- (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) where paragraph (b) does not apply, 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,
- (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 or the taxpayer's business or property.