

Receive the Credit You Deserve!

Make the most of the
Ontario Interactive Digital Media Tax Credit (OIDMTC)

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Ontario

Ontario Media Development
Corporation

The Business of Gaming Future Topics

- Funding Your Game
 - Ottawa Game Fund, Banking, Financing Tax Credits
- Gamification
 - What concepts are sneaking into other industries
- Video Game Law
 - What are the legal issues that impact the video game industry
- Considerations of Doing Business Internationally
 - Corporate structure, obligations, shareholder planning

Looking for ideas for future sessions to make this group as valuable to you as possible.

ONTARIO

ONTARIO MEDIA DEVELOPMENT CORPORATION

Ontario Interactive Digital Media Tax Credit

Ottawa International Game Conference
September 17, 2013

We've got it going



Disclaimer:



Note: This slide deck is a general guide and may not be relied upon in order to determine eligibility for the amount of an anticipated tax credit. Please consult the OIDMTC legislation and regulations for further details.

OIDMTC



Overview:

The Ontario Interactive Digital Media Tax Credit (OIDMTC) is a **refundable tax credit** co-administered by the Ontario Media Development Corporation (OMDC) and the Canada Revenue Agency (CRA).

An OIDMTC credit is calculated as **40% of qualifying expenditures**, incurred by qualifying corporations that develop and market their own interactive digital media products.

For qualifying corporations that develop specified products under a fee-for-service arrangement, the tax credit rate is **35%**.

Eligible Applicants

Qualifying Corporations

- Canadian corporation (must be incorporated in Canada but can be Canadian or foreign-controlled)
- Must have a permanent establishment in Ontario where the product is developed
- Must not be controlled directly/indirectly by a corporation that is exempt from tax

Definition of an IDM Product



- 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:
 - i) text
 - ii) sound
 - iii) 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.
- **Must not be primarily promotional.**

Non-Specified Products



- Must be an interactive digital media product
- 90% or more of the product must be developed in Ontario by the applicant
- **Must be developed for sale or licensing to arm's-length parties, not developed under a fee-for-service arrangement**
- Not used primarily for interpersonal communication
- Not used primarily for promotion of the applicant or the applicant's products or services
- **Must not be primarily promotional.**

Specified Products



- Must be an interactive digital media product.
- 90% or more of the product must be developed in Ontario by the applicant.
- **Product is developed by the applicant under the terms of an agreement with an arm's length purchaser corporation.**
- Product must be for sale or license to one or more people who deal at arm's-length with the purchaser.
- Must not be used primarily to present/promote the qualifying corporation or the purchaser corporation, or to promote/sell their products and services.
- **Must not be primarily promotional.**
- **The development of the product must have been completed after March 23, 2006.**



Developed By

The applicant must demonstrate that they developed 90% or more of the product

- Copyright ownership does not determine who developed the product.
- Hours spent on certain tasks do not determine who developed the product.
- Amounts paid for services rendered does not determine who developed the product.

Some useful documents to have on hand are:

- Labour schedules that detail who did what, when, and where.
- Gantt Chart or detailed schedule of development activities & timeline.
- Invoices from arm's length contractors that describe the work performed.
- Background history of the development of the product, i.e. who was involved and how.



Developed By

What OMDC looks for to determine 90% developed by:

- Detailed description and schedule of development that outlines all tasks required to create the product (Who Did What, Where, & When?).
- Includes the tasks to create content and technology that make up the product.
- Any tasks undertaken by a contractor corporation with more than one employee or shareholder, will be examined to determine if it is less than 10% of the work required to complete the product.
- Applicant may license pre-existing content or technology to incorporate into their product and this will not affect 90% developed by requirement.

Qualifying Expenditures



- Eligible labour expenditures **AND**
- Eligible marketing and distribution expenditures (for non-specified only)

Less any government assistance

Eligible Labour

- ❑ **100% of Qualifying Wage Amount**
(salaries and wages of employees)
- ❑ **100% of Qualifying Remuneration Amount**
(arm's-length freelance labour)

Note that CRA is using a “Look Through Approach”, which reduces the remuneration paid to multi-employee/multi-shareholder corporations by 35%, to isolate labour and take into account any overhead or profit margins.

Eligible Labour

- Can claim labour expenditures for the 37 month period prior to the end of the month in which the product was completed.

(e.g. for a product completed June 21, 2013, the applicant can claim labour expenditures going back in time 37 months from June 30, 2013)
- Labour must be directly attributable to the development of the eligible product.
- Paid to Ontario residents.
- Must be paid no later than 60 days after the end of the taxation year.
- Can NOT be labour incurred in carrying out Scientific Research and Experimental Development (SR&ED) claimed activities.

Arm's-Length Remuneration Issues



Eligible Remuneration must be Arm's-Length

See the definition of “arm’s length” in Appendix 6 of Guideline Package

Amounts Paid to the following are not eligible:

- Employees of a related corporation
- Controlling shareholders
- Applicant reimbursement to a parent corporation for labour of the parent’s employees

Marketing & Distribution



Only Non-Specified Products can include the following Marketing & Distribution Qualifying Expenditures:

- Up to a maximum of \$100,000 of such expenditures per eligible non-specified product.
- Costs incurred in the 24-month period prior to the completion of the non-specified product, and in the 12-months following the completion of the product.
- Must be directly attributable to advertising or promoting the eligible product or distributing the product to potential customers.
- Only 50% of meals & entertainment costs are allowed.
- Cannot be for costs to procure ad sales.



Qualifying Digital Game Corporation

Qualifying Digital Game Corporation (s. 93.1)

- Company must carry on a business that includes the development of eligible digital games
- Incurs a minimum of \$1million in Ontario labour costs in a 36 month period on a digital game that is developed under an agreement with a purchaser corporation

Benefits:

- Company is not required to develop 90% or more of the game
- The digital game does not need to be completed
- The purchaser corporation does not need to be arm's length from the applicant company



Specialized Digital Game Corporation

Specialized Digital Game Corporation (s. 93.2)

Company must meet either A) or B):

A) 80% of the company's salaries and wages for services rendered in Ontario are directly attributable to the development of digital games;

OR

B) 90% of the company's gross revenues are directly attributable to the development of digital games;

AND

The company must incur a minimum of \$1million in eligible labour that is directly attributable to the development of eligible digital games in a taxation year.

Specialized Digital Game Corporation



Specialized Digital Game Corporation (s. 93.2)

Benefits:

- Company is not required to develop 90% or more of the game(s)
- The digital games do not need to be completed
- If there is a purchaser corporation, it does not need to be arm's length from the applicant company
- If the company qualifies as a Specialized Digital Game Corporation they can [apply to the OMDC on an annual basis](#)

Eligible Costs

Digital Game Corporations



For qualifying and specialized digital game corporations eligible costs include:

- **100% qualifying wages and salaries*** of employees for work rendered in Ontario that is directly attributable to the development of the digital game(s)
- **100% qualifying arm's length remuneration*** (non-employees) for services rendered in Ontario paid to individuals, personal services corporations for the services of the sole shareholder, partnerships for the services of one of the partners

For digital game corporations claiming under s.93.1 or s.93.2 qualifying remuneration does not include amounts paid to another taxable Canadian corporation for the services of their employees.

* *Eligible costs are incurred after March 26, 2009*

Digital Game Expenditures Recap



Qualifying Digital Game Corporation	Specialized Digital Game Corporation
<p>Labour expenditures:</p> <ul style="list-style-type: none">-salaries and wages (employees)- remuneration (contracted labour) arm's length-excludes remuneration paid to another taxable Canadian corporation for services of their employees-minimum \$1million in Ont labour incurred in 36 month period for a game that is developed under an agreement with a purchaser corporation- rate 35%	<p>Labour expenditures:</p> <ul style="list-style-type: none">-salaries and wages (employees)-remuneration (contracted labour) arm's length-excludes remuneration paid to another taxable Canadian corporation for services of their employees- minimum \$1 million in Ont labour incurred in one taxation year for a game or games developed in whole or in part by the applicant- rate 35%
<ul style="list-style-type: none">- claimed in tax year when applicant has incurred the minimum \$1million in eligible Ontario labour costs over a 36 month period	<ul style="list-style-type: none">-annual claim-Includes costs incurred in the one tax year

When To Apply



For non-specified & specified products (s. 93):

- Corporations apply to the OMDC for each taxation year that they complete products in.
- The OMDC reviews eligibility and issues a Certificate of Eligibility to the applicant for each taxation year, listing products that have been completed in that year, with an OIDMTC estimate for each of those products.
- A new version of a product is eligible for OIDMTC, if it is significantly different in the content, the underlying technology, or a combination of the two.
- New versions of website products are restricted to being claimed every two years.

Canada Revenue Agency Role



- The applicant corporation files its corporate tax return and the Certificate of Eligibility with the Canada Revenue Agency (CRA).
- If the corporation expects to receive a tax credit, the estimate should be entered on the appropriate T2 Schedule 560. This will alert the CRA that a Certificate of Eligibility may be forthcoming, if the product(s) are eligible.
- Any taxes owed will reduce the amount of OIDMTC refunded.
- If there are no taxes payable, the OIDMTC is fully refundable. A cheque is issued by CRA to the corporation.

General questions: CRA Toronto Office (416) 952-7349

www.cra-arc.gc.ca/formspubs/menu-eng.html

Contact Us



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Introduction to the interactions between OIDMTC and SR&ED

Purposes of the credits

■ OIDMTC

- For the creation of interactive digital media products, focused on content
- Ontario-based and therefore focus on the creation of eligible products in Ontario
- Provides some support for marketing and distribution under certain conditions

■ SR&ED

- For the creation of new knowledge or technology and resolving of scientific risks and obstacles
- Federal tax credit with provincial add-ons – a broader geographical coverage than OIDMTC
- Provides support for the pursuit of new or improved products, materials, processes through scientific experimentation

What qualifies in one might not qualify in another

Activity	OIDMTC	SR&ED
User Interface Design	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
Content Creation	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
Software Development (employees)	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
Software Development (subcontractors)	(Ontario only) <input checked="" type="checkbox"/>	(Canadian only) <input checked="" type="checkbox"/>
Testing	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
Marketing & Distribution	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
Materials	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
Overhead	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>

Keep in mind ...

- These are two different programs administered by different areas of government
 - Forms are different
 - Administration is different
 - Intent of the tax credits is different
- You cannot claim the same expenditure under both tax credits
- General statement: cash received from SR&ED claims sooner than OIDMTC claims
 - SR&ED is claim annually as part of corporate tax compliance activities
 - OIDMTC claims are included in corporate tax compliance activities only when a Certificate of Eligibility is received

Evaluate for both

Approaching the credits

- Evaluate your product development for both credits
 - Identify what expenditures, if any, could qualify under both programs
- Go with the credit that
 - Represents the best match with the tax credit criteria
 - Fits your tax planning and cash flow needs
- Plan for tax credit claims
 - Ideally track the necessary information as the work progresses
 - Don't wait until the end of the year to identify what work is eligible, who did it and where is the substantiating evidence

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THANK YOU!

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