



interactive ontario

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## MODERNIZATION OF THE ONTARIO INTERACTIVE DIGITAL MEDIA TAX CREDIT (OIDMTC)

### PART 2 – INTERACTIVE ONTARIO RECOMMENDATIONS

[Interactive Ontario](#) (IO) and the [video game/interactive digital media \(IDM\) member companies](#) it represents, fully support the Ontario Government’s commitment to modernize the OIDMTC<sup>1</sup>. We share the government’s goals to increase Ontario’s competitiveness, attract investments, and offer great career opportunities in Ontario by creating jobs in the IDM sector.

IO’s [Advocacy Committee](#) in consultation with industry leaders submitted “[Interactive Ontario Recommendations - OIDMTC Red Tape and Modernization - Part 1 \(Nov 6 2023\)](#)” in November 2023, ie. Red Tape recommendations #1 and #2, and Modernization recommendation # 1 below. “[Interactive Ontario Recommendations - OIDMTC Red Tape and Modernization - Part 2 \(Dec 11 2023\)](#)” includes Red Tape recommendation #3, and Modernization recommendations #2 and #3 highlighted in blue below:

#### Red Tape Recommendations

1. Clarify the eligibility of remote work for all Ontario IDM labour.
2. Develop a service standard for OIDMTC processing time aligned with leading jurisdictions.
3. [Remove the 80/90 company test for annual filing \(93.2\).](#)

#### Modernization Recommendations

1. Support talent acquisition from other jurisdictions (change the residency requirement).
2. [Lower the Ontario labour threshold for annual filing \(93.2\) to \\$250K.](#)
3. [Modernize the 80/25 rule under Specified and Non-specified Products.](#)

The implementation of these recommendations, in combination with Ontario’s diverse and highly-educated workforce, will position the province as one of the best jurisdictions in the world to invest, scale up and grow IDM businesses.

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<sup>1</sup> 2022 Ontario Economic Outlook and Fiscal Review, p:149

## **PART 2 – RED TAPE RECOMMENDATION #3**

### **Red Tape Recommendation #3: Remove the 80/90 company test for annual filing (s. 93.2)**

#### ***Current Situation***

Qualifying corporations under section 93.2 must have either 80% of Ontario salaries and wages directly attributable to digital game development or 90% of annual gross revenues attributable to digital game development.

#### ***Why it Should be Addressed***

As companies grow, they often diversify their products and services to leverage market opportunities. In the video game sector, a company may start publishing games in addition to developing them. They may also offer software development services to other economic sectors since the techno-creative talent in the IDM sector has sought-after transferable skills.

The 80/90 rule prevents diversification and hence, forces companies to consider other jurisdictions for expanding their economic activities. It hinders local as well as foreign direct investments (FDIs) in Ontario, and the creation of additional high-paying jobs in the province.

Additionally, the verification of the 80/90 rule by Ontario Creates is laborious and is one of the primary reasons for the significant processing delays and unpredictability of OIDMTC payments. Long processing times and unpredictability negatively impact businesses, as explained in [Part 1 – Interactive Ontario Recommendations for the Modernization of the OIDMTC](#).

#### ***Solution: Remove the 80/90 company test for annual filing (s. 93.2)***

Interactive Ontario recommends removing the 80/90 rule from section 93.2 as it is outdated and now impedes growth and FDIs in Ontario. It also generates a considerable amount of red tape for companies and Ontario Creates, with a significant impact on processing times.

We share the Government of Ontario's objective to stimulate the development of bona fide video games in Ontario, and hence the creation of more video game jobs in the province. The s. 93.2 OIDMTC stream already ensures that it only applies to qualifying corporations operating businesses in the province, and to Ontario labour directly attributable to the development of eligible digital games. This makes the 80/90 rule redundant.

## **PART 2 – MODERNIZATION RECOMMENDATIONS #2 AND #3**

**Modernization Recommendation #2: Lower the Ontario labour threshold for annual filing (93.2) to \$250K.**

### ***Current Situation***

Interactive Ontario and its members are [grateful to the Ontario Government for lowering the Ontario labour threshold for annual filing from \\$1M to \\$500K in 2019](#).

As anticipated, more SMEs choose to file annually rather than at the end of a project under the Specified and Non-Specified streams of the OIDMTC. It is especially important since the production cycle of video games can take as long as 3-4 years.

Filing annually allows companies to re-invest funds in labour more quickly, helping them hire and retain techno-creative talent. The latter is the core asset of video game studios. It also saves companies from having to bridge finance the OIDMTC at high interest rates.

### ***Why it Should be Addressed***

The Ontario video game ecosystem is entrepreneurial, with many small SMEs innovating and developing original IP. Many of them also provide development services to larger video game studios.

Allowing more small SMEs to file annually under s. 93.2 would help accelerate their growth for the reasons mentioned in the prior section.

### ***Solution: Lower the Ontario labour threshold for annual filing (s. 93.2) to \$250K***

Interactive Ontario shares the government goal to incentivize the production of bona fide video games in Ontario under s. 93.2.

Small studios of 3-4 people – hence the threshold of \$250K – produce bona fide video games in Ontario. Allowing them to file annually rather than at the end of their project would provide them with greater cash flow predictability, reduce their vulnerability to high interest rates and help accelerate their growth.

### **Modernization Recommendation #3: Modernize the 80/25 rule under Specified and Non-Specified Products.**

#### ***Current Situation***

The 80/25 rule was announced by the Ontario Government in its 2015-2016 budget. It requires that 80% of total development labour expenditures to create the product be for work performed in Ontario and paid as eligible salaries or wages and eligible remuneration to arms-length Ontario-based individuals or arms-length Ontario-based individuals providing services as a corporation with no employees. As well, 25% of the total development labour expenditures must be paid as eligible salaries or wages to Ontario-based employees of your company for work performed in Ontario.

#### ***Why it Should be Addressed***

The 25% rule is understood and well-accepted by the industry.

However, the 80% prevents companies from working with multi-shareholder or multi-employee companies – only 20% of labour can be provided by multi-shareholder or multi-employee companies. In other words, Company A cannot contract Company B for work if the labour provided by company B moves the needle over 20% of labour.

Therefore, the 80% rule forces companies to work with individual freelancers when they want to contract out work. Moreover, these individual freelancers cannot even be in a small multi-shareholder or multi-employee company. For example, Freelancer A who incorporated her company with her husband, would not be eligible labour under the 80% rule.

The 80% rule imposes a very inefficient way to do business by preventing companies from working with the talent they need. Hence, it affects productivity and stymies innovation.

It also creates an enormous amount of Red Tape for business owners as they have to make sure that all freelancers they plan to hire are not, and continue to not be, in multi-shareholder or multi-employee companies. They also have to continuously monitor the threshold to ensure that they don't unintentionally fall under 80%. The latter would mean that they suddenly become ineligible to the ODMTC and lose it for the entirety of their project, after working 2-4 years on it.

#### ***Solution: Remove the 80% test or lower it but allow companies to work with multi-shareholders and multi-employees***

We believe that the Government of Ontario did not realize in 2015 that the 80% rule would interfere with best business practices, negatively impact productivity, stymie innovation and generate unnecessary Red Tape for companies, as well as for Ontario Creates, that administers the ODMTC.

Assuming that the primary purpose for the 80% rule under the Non-Specified stream was to ensure that Ontario companies held the IP ownership of the product, this objective could be resolved by asking OIDMTC claimants to sign a document declaring their ownership of the IP.

Therefore, we are proposing to remove the 80% test to provide business owners with the opportunity to structure the project as efficiently as possible. Alternatively, the Government of Ontario could, for example, lower the 80% threshold to 51%, which would allow companies more flexibility to work with multi-shareholder and multi-employee under the new 51% threshold.

### ***Next Steps***

Interactive Ontario and its members are looking forward to working with the Government of Ontario on the six Red Tape and Modernisation recommendations submitted. Please advise on next steps.

Best regards,

Lucie Lalumière on behalf of the IO Advocacy Committee  
President and CEO  
Interactive Ontario