



interactive ontario

December 2, 2024

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

[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 OIDMTC¹. 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)*" and "*Interactive Ontario Recommendations - OIDMTC Red Tape and Modernization - Part 2 (Dec 11 2023)*," to the Ontario government. Since then, the eligibility of remote work for all Ontario labour was clarified, and Interactive Ontario has continued to engage with the Ministry in charge of the Interactive Digital Media (IDM) industry, on the following priorities.

Red Tape Recommendations (in blue are short-term priorities)

1. [Remove the 80/90 company test for annual filing \(93.2\).](#)
2. [Modernize the 80/25 rule under Specified and Non-specified Products.](#)
3. [Develop a service standard for OIDMTC processing time aligned with leading jurisdictions.](#)

Modernization Recommendations

4. Support talent acquisition from other jurisdictions (change the residency requirement).
5. Lower the Ontario labour threshold for annual filing (93.2) to \$250K.

¹ 2022 Ontario Economic Outlook and Fiscal Review, p:149

RED TAPE RECOMMENDATION #1: 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 revenue 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, it is our understanding that 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 Recommendation 3 below.

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 Foreign Direct Investments (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 restricts its scope to only apply 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.

RED TAPE RECOMMENDATION #2: Modernize the 80/25 rule under s.93 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.

Additionally, the industry has evolved over the last year and there are increasing business opportunities for IDM companies to partner on inter-provincial and international co-productions while sharing the ownership of the Project IP. The 80% rule precludes them from leveraging these opportunities in Ontario.

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 OI/MTC and lose eligibility for all Ontario labour costs incurred for the project over a period of up to thirty-seven (37) months, due to an unintentional labour expenditure.

Solution: Remove the 80% test or, at a minimum, lower it but allow companies to work with multi-shareholders and multi-employee companies

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 OIDMTC.

To address concerns about potential "double-dipping" of the OIDMTC by collaborating companies under the s.93 Non-Specified Products stream, appropriate mechanisms could be developed and implemented. These mechanisms would ensure that collaborative projects remain eligible while preventing multiple claims on the same expenditures. Such measures should balance administrative feasibility with the need to support co-productions and collaborations, ensuring that businesses can operate efficiently without compromising the integrity of the tax credit system.

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% or lower in the case of co-productions with shared ownership of the Project IP, and allow companies to work with multi-shareholder and multi-employee companies, as well as partner in co-productions with shared ownership of the Project IP, under the new threshold.

RED TAPE RECOMMENDATION #3: Service standard for OIDMTC processing time aligned with leading jurisdictions

Current Situation

Ontario Creates has endeavoured to reduce processing time since the onset of the pandemic. However, the OIDMTC processing time is still significantly higher than in other Canadian jurisdictions, with reported cases from reputable companies taking between 6 months to over one year to go through Ontario Creates. Add to this, the CRA processing of the files for additional months. All in all, the total OIDMTC processing time is generally lengthy and highly unpredictable.

Why it Should be Addressed

The unpredictability and length of the OIDMTC processing time impacts a company's ability to effectively manage cash flow, and hence their ability to maintain and create jobs in Ontario.

Solution: Development of Service Standard

Development of a service standard for Ontario Creates aligned with leading jurisdictions.

Such a service standard would also align with Ontario Creates' new 2023-2027 Strategic Plan committed to delivering exceptional customer experiences².

MODERNIZATION RECOMMENDATION #4: Support for talent acquisition from other jurisdictions (residency requirement)

Current Situation

The current OIDMTC Residency Requirement requires that eligible labour expenditures must be paid to individuals resident in Ontario on December 31st of the calendar year that precedes the calendar year in which the individual rendered the services. Consequently, companies that bring talent to Ontario from other jurisdictions cannot claim them until the year after they have established residency in Ontario. For example, a company hiring a Technical Director from another province or country who starts residing in Ontario and working for the company on January 1, 2023, cannot claim the compensation paid to that employee during 2023.

Why it Should be Addressed

Senior talent is essential to delivering and commercializing world-class IDM products, and cannot always be found in Ontario. Moreover, they are crucial in coaching and accelerating the development of more junior talent, providing opportunities to young graduates coming out of Ontario's post-secondary institutions.

Companies spend a considerable amount of money to recruit, relocate, and onboard immigrating talent (including bringing back expats into the province). These people are highly qualified and well paid, and hence are also highly valuable to the province's economy.

Solutions: Change the Residency Requirement

The IDM industry shares common goals with the government in wanting to attract highly skilled individuals contributing to the growth of the Ontario economy.

The current residency requirement negatively impacts the IDM sector. IO understands that this issue has also been raised to government by our peers in the Animation/VFX and Film/TV sectors. We align with our peers in encouraging the government to allow companies to claim immigrating labour from day 1 of their employment in Ontario.

² Ontario Creates, Powering Ontario's Creative Economy: Strategic Plan 2023-2027, p:24

MODERNIZATION RECOMMENDATIONS #5: Lower the Ontario labour threshold for annual filing (s.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 have chosen to file annually under the s.93.2 stream as opposed to at the completion of a project under the s.93 Specified and Non-Specified streams of the OIDMTC. It is especially important since the production cycle of video games can take up to 37 months, or in some cases, even longer to develop.

Filing annually under the s.93.2 stream 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.

Next Steps

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

We are looking forward to working with the Ontario Government on the next steps.

Best regards,

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