

Proposed Amendments to the General Regulation (O. Reg. 37/09) of the Taxation Act, 2007 regarding the Ontario Interactive Digital Media Tax Credit, the Ontario Film and Television Tax Credit and the Ontario Production Services Tax Credit

1. (1) The definition of “relevant assistance” in subsection 29 (4) of Ontario Regulation 37/09 is amended by striking out “and” at the end of clause (a), by adding “and” at the end of clause (b) and by adding the following clause:

- (c) assistance that is a payment from the 2015 Ontario Production Services and Computer Animation and Special Effects Transitional Fund administered by the Ontario Media Development Corporation.

(2) Section 29 of the Regulation is amended by adding the following subsection:

(5) For the purposes of the definition of “relevant assistance” in subsection (4), for taxation years that end after December 31, 2008, the definition of “assistance” in subsection 125.4 (1) of the Federal Act shall be read without reference to paragraph (a) of that definition.

2. Subsection 33 (4) of the Regulation is amended by adding the following paragraph:

- 5. The amount is not a payment from the 2015 Ontario Production Services, Computer Animation and Special Effects Transitional Fund administered by the Ontario Media Development Corporation.

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

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

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

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

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

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

- i. the product was developed for sale or licensing by the qualifying corporation to one or more persons dealing at arm's length with the qualifying corporation who have not previously entered into an arrangement with the qualifying corporation or a qualifying predecessor corporation for the development of the product,
- ii. the qualifying corporation's Ontario labour ratio in respect of the product is equal to or greater than 0.8, and
- iii. if the qualifying corporation applied for certification of the product under subsection 93 (10) of the Act on or after April 24, 2015, the qualifying corporation's Ontario wage ratio in respect of the product is equal to or greater than 0.25.

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

6. If, before April 24, 2015, the Ontario Media Development Corporation did not issue a certificate under subsection (10) to the qualifying corporation in respect of the product, or send a letter to notify the qualifying corporation that the product does not qualify for certification,
 - i. the qualifying corporation's Ontario labour ratio in respect of the product is equal to or greater than 0.8, and
 - ii. if the qualifying corporation applied for certification of the product under subsection 93 (10) of the Act on or after April 24, 2015, the qualifying corporation's Ontario wage ratio in respect of the product is equal to or greater than 0.25.

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

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

1. The product does not provide any content that is,
 - i. news, current events or public affairs programming,
 - ii. opinion, commentary or advice, or
 - iii. weather or market reports.
2. The product is not produced primarily for industrial, corporate or institutional purposes, including vocational training products or products that educate or inform employees.
3. The product is not primarily a reference material or otherwise designed to be used as a resource for finding information, such as a guide for equipment or software, a dictionary or a map.
4. The product does not aggregate content from various internet sources.
5. The product is not used to filter and organize specific content from the internet.
6. The product is not a search engine.
7. The product is not a blog.
8. The product is not primarily a database, including a real estate database or recipe database.
9. The product is not a website, except a website that primarily hosts any of the following:
 - i. One or more digital games.
 - ii. Content that is related to a film, television or internet production described in subsection (6) and that is hosted under a licence agreement in respect of a copyright that relates to the film or television production, but that is not a broadcast of all or part of the film or television production.

- iii. One or more virtual or augmented reality experiences.
 - iv. Content that is designed to educate users who are under 12 years of age.
10. The product is not a product the majority of the content of which is also available on a website, except a website that primarily hosts content described in subparagraphs 9 i to iv.
11. If the product is a specified product, the product is used by the purchaser referred to in paragraphs 2 and 3 of subsection 93 (15) of the Act to generate revenue through,
- i. the sale of the product,
 - ii. fees for the use of the product, including licence and subscription fees,
 - iii. in-product purchases,
 - iv. advertising, other than advertising of,
 - A. the qualifying corporation,
 - B. the purchaser referred to in paragraphs 2 and 3 of subsection 93 (15) of the Act,
 - C. a person that does not deal at arm's length with the qualifying corporation or the purchaser, or
 - D. products or services of the qualifying corporation, the purchaser or the person that does not deal at arm's length with the qualifying corporation or the purchaser, or
 - v. the sale or licence of another product developed by the qualifying corporation that can reasonably be considered an extension or upgrade of the product.
12. If the product is not a specified product, the product is used by the qualifying corporation to generate revenue through,
- i. the sale of the product,
 - ii. fees for the use of the product, including licence and subscription fees,
 - iii. in-product purchases,
 - iv. advertising, other than advertising of,

- A. the qualifying corporation,
 - B. a person that does not deal at arm's length with the qualifying corporation,
 - C. products or services of the qualifying corporation, or the person that does not deal at arm's length with the qualifying corporation, or
- v. the sale or licence of another product developed by the qualifying corporation that can reasonably be considered an extension or upgrade of the product.

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

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

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

$$A/B$$

in which,

- "A" is the sum of all expenditures of the qualifying corporation or qualifying predecessor corporation in respect of the product that satisfy the conditions set out in subsection (9).
- "B" is the sum of all expenditures in respect of the product that satisfy the conditions set out in subsection (11).

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

$$C/D$$

in which,

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

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

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

1. The expenditure is incurred during the 37-month period ending at the end of the month in which development of the eligible product is completed.
2. The expenditure satisfies the conditions set out in paragraphs 1, 2, 4, 5 and 6 of subsection 35 (4).
3. The expenditure is incurred,
 - i. on account of salaries or wages for the qualifying corporation or qualifying predecessor corporation’s employees, or
 - ii. on account of remuneration paid to,
 - A. an individual who is not an employee of the qualifying corporation or qualifying predecessor corporation, as the case may be, and who deal’s at arm’s length with that corporation, to the extent that the expenditure is attributable to services personally rendered by the individual if the individual provides the services as part of a sole proprietorship carried on by the individual and that does not have employees, or
 - B. a taxable Canadian corporation for services rendered personally by an individual,
 1. if all of the issued and outstanding shares of the capital stock of the taxable Canadian corporation (other than directors’ qualifying shares) are owned by the individual,
 2. if the individual deals at arm’s length with the qualifying corporation or qualifying predecessor corporation, as the case may be,
 3. if the taxable Canadian corporation’s primary activity is the provision of the individual’s services, and

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

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

1. The expenditure is incurred during the 37-month period ending at the end of the month in which development of the eligible product is completed.
2. The expenditure satisfies the conditions set out in paragraphs 1, 2, 4 and 5 of subsection 35 (4).
3. The expenditure is incurred on account of salaries or wages for the qualifying corporation or qualifying predecessor corporation’s employees.

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

1. The expenditure is incurred during the 37-month period ending at the end of the month in which development of the eligible product is completed.
2. The expenditure is directly attributable to the development of the eligible product.
3. The expenditure is incurred,
 - i. on account of salaries or wages, or
 - ii. on account of remuneration paid to an individual, corporation or partnership for services rendered.

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

9. If the expenditure was incurred after April 23, 2015 in respect of the product,
 - i. the primary purpose of the product is to entertain the user or to educate users under 12 years of age, and
 - ii. the product satisfies all of the conditions set out in subsection 34 (5).

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

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

- i. the primary purpose of the product is to entertain the user or to educate users under 12 years of age, and
- ii. the product satisfies all of the conditions set out in subsection 34 (5).

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

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

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

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

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

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

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

1. Their primary purpose is to educate, inform or entertain the user.
2. They achieve their primary purpose by presenting information in at least two of the following forms:

- i. text,
 - ii. sound,
 - iii. images.
3. They are intended to be used by individuals.
4. By interacting with them, the user can choose what information is to be presented and the form and sequence in which it is to be presented.

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

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

Commencement

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