

A Guide to Business Incentives for Interactive Entertainment Production in Canada

by Sean F. Kane

In the past decade Canada has become one of the most popular locations for television and film shoots. One of the major driving factors is that the various Canadian jurisdictions offer some of the most favorable business incentives for media production. Many of these same media incentives are also applicable to the development and production of video game and interactive media. While the nature and applicability requirements of these benefits differ, they are quite significant. The increase in video game sales and the industry's general resistance to the economic downturn has resulted in the video game industry flocking to the various Canadian provinces in hopes of cashing in on these incentives.

Understanding the nature and requirements of the programs offered in Canada is valuable to both established game companies and new development teams. When deciding where to base a new development team or calculating available monies for game production, it is vital to know what incentive programs may be available in the specific location. With that in mind, this article intends to give readers an overview of the various terms and requirements of the programs offered in Canada.

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THE CANADA MEDIA FUND

Mimicking the success that Canadian motion picture incentives have had in convincing filmmakers to locate their productions in Canada in order to lower costs, Canada has remained ahead of the curve by enacting similar benefits, both at the national and provincial levels, to attract developers in the video game industry. The Canada Media Fund was established to support Canadian companies developing interactive content for sale in the international marketplace by increasing the capacity for corporate growth of Canadian businesses and the development of skilled and creative Canadian talent within the interactive content industry. The Canada Media Fund is a public-private partnership between the Canadian cable and satellite distributors and the federal government. The Canada Media Fund includes two funding streams: i) the Experimental Stream, which supports the creation of interactive content and software applications; and ii) the Convergent Stream, which supports the creation of television shows and related digital media content.

The Experimental Funding program of the Canada Media Fund offers funding to interactive, digital media and software development companies in the form of an equity investment. An eligible game developer may receive as much as three-quarters of the total eligible costs of an approved video game project up to a maximum of \$1,000,000, whichever is less. To be eligible for the Experimental Fund a Canadian company must own and be involved in the production both significantly and meaningfully. Moreover, at least 75% of the production's eligible costs must be expended in Canada. A developer will be denied access to the Experimental Funding program if the game for which funding is being sought contains excessive violence, sexual violence or exploitation, or elements which are obscene, indecent, libelous, child pornography, or unlawful according to the applicable criminal code.

The Convergent Funding program of the Canada Media Fund offers grant funding for projects involving both a television component and a digital media component. An eligible production may receive funding up to half of the total eligible costs (or 60% if in the French language) and an additional \$200,000 for the television component, and half of the total eligible costs and up to an additional \$50,000 for the digital media component. To be eligible for the Convergent Fund the productions must be by a Canadian company and not contain excessive violence, sexual violence or exploitation, or elements which are obscene, indecent, libelous, child pornography, or unlawful according to the applicable criminal code. Moreover, at least 75% of the production's eligible costs must be expended in Canada.

For further information

Telefilm Canada requests that persons seeking information regarding eligibility for the benefits of the Canada Media Fund speak with the contact person for their specific region. Regional contacts and their information are available at the following website:

http://www.cmf-fmc.ca/downloads/create/Application_Exp2010-11.pdf

Further information regarding Canada's Experimental Funding program is available at:

http://www.cmf-fmc.ca/index.php?option=com_content&view=article&id=110&page_mode=create&Itemid=110

Further information regarding Canada's Convergent Funding program is available at: http://www.cmf-fmc.ca/index.php?option=com_content&view=article&id=90&page_mode=create&Itemid=82

BELL BROADCAST AND NEW MEDIA FUND

Canadian game developers producing certain types of games may also be eligible for grants offered by the Bell Broadcast and New Media Fund ("Bell Fund"). The Bell Fund is a non-government, not-for-profit organization which is sponsored by several large contributors from the Canadian broadcasting industry and charged with the mission of advancing the Canadian broadcast system. In furtherance of this purpose, the Bell Fund offers grants that support the creation and deployment of new media projects (including online games) associated with television programs. The Bell Fund offers grants covering up to 75% of the costs associated with the development and production of new media projects associated with Canadian television programs. Grants from the Bell Fund for the development and design of new media projects are capped at \$50,000 and grants for the production of said projects are capped at \$250,000.

For further information

The Bell Broadcast and New Media Fund can be contacted at the following:

Bell Broadcast and New Media Fund
2 Carlton St., Suite 1709
Toronto, Ontario M5B 1J3

Phone: 416-977-8154
Fax: 416-977-0694
E-mail: bellfund@ipf.ca

Further information and guidelines pertaining to the Development and Production Programs offered by the Bell Broadcast and New Media Fund are available at: <http://www.ipf.ca/Bell/English/guidelines.html>

BRITISH COLUMBIA

While British Columbia does not offer any cash rebates or production tax credits to the producers of video games and interactive media, the British Columbia Ministry of Economic Development demonstrates its commitment to stimulating investment in what it perceives to be a thriving sector of the economy by offering the New Media Venture Capital Program ("BC VC Program"). Under the BC VC Program, British Columbia residents or companies that purchase shares of eligible business corporations which are substantially engaged in the production of qualifying interactive media (including video games) within British Columbia may receive an income tax credit equal to 30% of the cost of said investments. For investments by individuals the tax credit is refundable but capped at \$65,000, for corporations the tax credit has no maximum but is not refundable.

For the investing individual or corporation to qualify for tax credits offered by the New Media Program the game development company receiving the investment must be comprised of 100 persons or fewer (including affiliates) and pay at least 75% of its wages to residents of British Columbia (or 50% if the game will be exported). To qualify as an interactive media product for the purposes of the New Media Program, a video game must educate, inform or entertain, and present information using at least two of text, sound or visual images. The game cannot be developed purely for internal corporate use nor be primarily used for interpersonal communication. Also, a video game will not qualify an investor in its developer's corporation for benefits under the New Media Program if it promotes hatred of an identifiable group, contains a significant amount of sex, violence, crime, horror or cruelty, or the administering authority feels that financial support would be against public policy.

For further information

The British Columbia Ministry of Economic Development can be contacted at the following:

Mailing Address:

The Ministry of Technology, Trade and Economic Development
PO BOX 9324 STN PROV GOVT
Victoria, British Columbia V8W 9N3

Honourable Ida Chong, *Minister*
PO BOX 9046 STN PROV GOVT
VICTORIA, British Columbia V8W 9E2

Telephone: 250-356-7411

Fax: 250-356-6376

Further information regarding British Columbia's New Media Venture Capital Program is available at:

<http://www.canadabusiness.ca/eng/summary/4962>

MANITOBA

Administered by Manitoba Science, Technology, Energy & Mines (“STEM”), Manitoba offers an Interactive Digital Media Tax Credit. The Manitoba Interactive Digital Media Tax Credit offers qualifying corporations a refundable tax credit equal to 40% of eligible labor expenditures during the period in which the corporation is developing and producing an eligible video game, up to a maximum credit of \$500,000. To receive an Eligibility Certificate for the Manitoba Tax Credit from STEM, a game development company must be incorporated in Canada with a permanent establishment in Manitoba and must pay at least 25% of the salaries and wages to employees who are residents of Manitoba during the project period. For purposes of the Manitoba Tax Credit a permanent establishment in Manitoba includes a place of business, significant production equipment, or an employee located in Manitoba with the authority to enter into contracts on behalf of the corporation.

Labor expenditures for purposes of calculating the amount of a corporation's tax credit include all salaries and wages paid to employees who are Manitoba residents during the project period, 65% of fees for Manitoban third-party labor incurred during the project period, and 20% of salaries, wages or fees paid to non-Manitoba residents. Also, as a requirement of receiving the Manitoba Tax Credit, the corporation agrees to be a part of New Media Manitoba's Skills Transfer Incentive, through which a Manitoba resident receives training during the project period by working alongside the hired non-resident. The product period for purposes of the Manitoba Tax Credit is the shorter of either the period between the commencement date and the completion date included on the corporation's Certificate of Eligibility or the two-year period ending on the completion date on the corporation's Certificate of Eligibility.

While there is no limit on the number of projects for which an eligible corporation may apply for the Manitoba Tax Credit in a given year, the credit will not be available to game projects that will receive an Adults Only (AO) rating from the ESRB that include hate propaganda or child pornography, or contain content considered obscene according to the Canadian Criminal Code. Projects will also be excluded if they have a specific industrial, corporate or promotional focus, or public financial support would be contrary to public policy in the opinion of the Minister of STEM.

For further information

Manitoba Science, Technology, Energy & Mines (STEM) can be contacted at the following:

Manitoba Science, Technology, Energy & Mines
1030 – 259 Portage Avenue
Winnipeg, Manitoba CANADA R3B 3P4

Phone: 204-945-0723

Fax: 204-945-3977

Rod Higgins, Program Manager – Digital Media

Email: rod.higgins@gov.mb.ca

Further information on the Manitoba Interactive Digital Media Tax Credit offered by STEM is available at:
http://www.gov.mb.ca/stem/knowledge/idm_taxcredit.html

NOVA SCOTIA

With the Financial Measures Act of 2007, Nova Scotia established the Digital Media Tax Credit which offers a refundable tax allowance to developers of video games and other interactive digital media products within Nova Scotia. Administered by the Nova Scotia Department of Finance, the program offers eligible corporations a refundable tax credit equal to either 50% of their qualifying Nova Scotia labor costs or 25% of the corporation's total qualifying expenditures within the province, whichever is less. For Nova Scotia game developers located outside of the Halifax Regional Municipality there is also an additional bonus available of 10% of qualifying labor expenditures or 5% of total expenditures (depending on which of the above measures is being used to calculate the amount of the corporations tax credit) so long as at least half of the total salaries and wages for development of the game are being paid to employees working out of a non-Halifax office. At the discretion of the Nova Scotia Department of Finance, eligible corporations may also receive a credit of up to \$100,000 per interactive media product for marketing and distribution expenses incurred both within and outside of Nova Scotia.

Qualifying expenditures and labor costs include those payments made for work or services directly related to the interactive production. To be eligible for the tax credit a game developer must be incorporated in Canada (though not specifically in Nova Scotia) and have a "permanent establishment" within Nova Scotia. A permanent establishment is defined in this instance as a fixed place of business within Nova Scotia which includes assets and personnel, including at least person capable of entering into a contract on behalf of the corporation. A game production for which an eligible corporation is applying for the tax credit must not be pornographic, discriminatory, primarily used for advertising or promoting a company or organization, or be of such subject matter that its funding would be contrary to public policy in the opinion of the Nova Scotia Minister of Finance.

For further information

The Nova Scotia Department of Finance can be contacted at the following:

Department of Finance
1723 Hollis St.
Halifax NS B3J 1V9

Mailing Address

PO Box 187,
Halifax, NS B3J 2N3

Phone: 902-424-5554
Fax: 902-424-0635
FinanceWeb@gov.ns.ca

Philip Hatheway, Revenue Officer
Digital Media
Phone: 902-424-8369
Email: hathewp@gov.ns.ca

Further information on the Nova Scotia's Digital Media Tax Credit is available at the following web address:
<http://www.gov.ns.ca/finance/en/home/taxation/businesstax/corporateincometax/digitalmediataxcredit.aspx>

ONTARIO

The province of Ontario has more programs specifically designed to benefit developers of video games and other interactive media than any other Canadian province. Beginning with the Ontario Interactive Digital Media Tax Credit (“Ontario Tax Credit”), Ontario game development companies may be eligible for a refundable tax credit of 40% of qualifying labor costs and expenditures on marketing and distribution in connection with the production of an eligible digital media product. Game development companies providing development services to third parties for a fee may be eligible for a refundable tax credit of 35% of qualifying labor costs and expenditures in connection with the production of an eligible digital media product.

For a game developer to be eligible for the Ontario Tax Credit they must be a Canadian corporation that files an Ontario corporate tax return and develops an eligible video game out of a permanent office located in Ontario. To be an eligible digital media product, all or substantially all of a video game must have been developed in Ontario by an eligible corporation. For purposes of calculating the amount of the tax credit, qualifying labor expenditures include only wages and compensation paid to Ontario residents for labor directly attributable to game development (defined to include all stages of production from concept development through distribution). Qualifying expenditures for marketing and distribution include only those expenses for advertising or promoting the video game or distributing it to customers.

Tax credits however, are not the only benefits offered by the Ontario Media Development Corporation (“OMDC”) to assist video game developers. The Ontario Interactive Digital Media Fund (“Ontario Media Fund”) offers video game creators a non-refundable monetary contribution of up to 50% of the developers’ qualifying Ontario expenditures to produce a marketable video game product. The monetary contribution from the Ontario Media Fund is capped at \$150,000.

The eligibility requirements for the Ontario Media Fund overlap to a certain extent with those of the Ontario Tax Credit, with a few notable program-specific differences. Chief among these are the requirements for applying developers to demonstrate the necessary skill and expertise in the industry to take up the specific production stage for which they are receiving a contribution. Because the goal of these monetary incentives is not only to promote the development of video games in Ontario but also to protect Ontario developers from having to trade away control over their project and intellectual property in exchange for financing, these programs also require that the content of the game be proprietary to the game developer and that the developer be the originator of the project, with the ability to control the project both creatively and financially.

Other programs available to Ontario video game developers for post-release and general industry support include the OMDC Export Fund for the Interactive Digital Media Industry (“Ontario Export Fund”) and the Ontario Entertainment and Creative Cluster Partnership Fund (“Ontario Partnership Fund”). The Ontario Export Fund will cover as much as 50% of a game development company’s expenses (up to a maximum of \$12,000 per year) incurred through export development activities outside of Canada, including travel, registration, booth fees, and accommodations for attendance at industry events and sales trips to meet with identified export leads. The Ontario Partnership Fund on the other hand, provides funding for eligible events and projects directed at capacity-building, business innovation, skills development or marketing in creative content industries put together by partnerships between organizations involved with video games and other types of media. Funding under the Ontario Partnership Fund is capped at 70% of the total budget for an event or project, with a \$25,000 minimum for any funding requests made in an application for this program.

For further information

The Ontario Media Development Corporation can be contacted at the following:

Ontario Media Development Corporation
175 Bloor St. East, South Tower, Suite 501
Toronto, ON M4W 3R8

Phone: 416-314-6858
Fax: 416-314-6876
Email: taxcredits@omdc.on.ca

Kim Gibson, Program Consultant
Ontario Media Development Corporation
Phone: 416-642-6651
Email: kgibson@omdc.on.ca

Coordinator, Industry Initiatives
Phone: 416-642-6695
Email: programs@omdc.on.ca

Further information on the Ontario Interactive Digital Media Tax Credit is available at:
<http://www.omdc.on.ca/Page3400.aspx>

Further information on the Ontario Interactive Digital Media Fund is available at the following web address:
<http://www.omdc.on.ca/AssetFactory.aspx?did=5925>

Further information on the OMDC Export Fund for the Interactive Digital Media Industry is available at:
<http://www.omdc.on.ca/Page3223.aspx>

Further information on the Ontario Entertainment and Creative Cluster Partnership Fund is available at the following web address:
<http://www.omdc.on.ca/Page3231.aspx>

PRINCE EDWARD ISLAND

The interactive technologies sector was singled out in Prince Edward Island's Progressive Tax Rebate Program as one of only a handful of fields in which corporations would be eligible for the province's Innovation and Development Tax Credit. Including video game development within the definition of "interactive technologies," the Prince Edward Island Innovation and Development Tax Credit ("PEI Tax Credit") consists of a refundable tax credit equal to 35% of one and a half times the total of eligible salaries and wages paid over the first two years of an interactive technologies project. To receive the PEI Tax Credit an eligible corporation should apply for a preliminary certification from either Prince Edward Island Business Development or Technology PEI prior to beginning work on a project and then apply for a final certification on the earlier of either the actual completion date of the project or the completion date listed on the preliminary certificate.

For a project to qualify for the PEI Tax Credit it must be taken up by a corporation with a permanent establishment on Prince Edward Island and contribute to the development or commercialization of a new product, service or process in interactive technology for production or commercial sale primarily outside of the province. While projects are not required to include new intellectual property to qualify, projects which include new and unique intellectual property automatically meet the innovation requirement. For purposes of calculating the amount of the allowance offered under the PEI Tax Credit, eligible salaries and wages include all compensation paid to PEI residents spending at least 26 hours per week on work, supervision or direct support of an interactive technologies project. While there is no limit on salaries or wages paid to employees who deal at arm's length with the corporation, eligible wages or salaries earned by non-arm's-length employees (also known as "related parties" and including controlling shareholders and their familial relatives) are only eligible up to \$40,000 per year.

For further information

The following information can be used to contact the agencies which administer the Prince Edward Island Innovation and Development Tax Credit:

Prince Edward Island Business Development
94 Euston Street
Charlottetown, Prince Edward Island
Canada C1A 1W4

Mailing Address:
PO Box 910
Charlottetown, Prince Edward Island
Canada C1A 7L9

Phone: 902-368-6300
Toll-free: 1-800-563-3734
Fax: 902-368-6301
Email: business@gov.pe.ca

Technology PEI Inc.
94 Euston Street, 2nd Floor
Charlottetown, Prince Edward Island
Canada C1A 1W4

Mailing Address:

P.O. Box 340

Charlottetown, Prince Edward Island

C1A 7K7

Phone: 902-368-6300

Fax: 902-368-6301

E-mail: techpei@gov.pe.ca

Further information on the Prince Edward Island Innovation and Development Tax Credit can be found in the brochure downloadable at the following address:

http://www.gov.pe.ca/photos/original/ptrp_idtc_guide.pdf

QUÉBEC

For those video game developers seeking work, the Québec city of Montreal is home to development offices of several prominent video game publishers, including Eidos, EA and Ubisoft. For development companies with a Québec office, or that might be looking to establish one, Investissement Québec (a Crown corporation) offers a refundable tax credit of up to 30% of qualifying labor expenditures incurred by a developer on eligible production work in the creation of an interactive multimedia title. To be eligible for the Québec multimedia tax credit a corporation needs to be located in Québec and have been certified by Investissement Québec each year of the project as an eligible company that produces interactive multimedia titles, construed broadly to include games and other interactive media produced in an electronic medium either for commercial release or as a commissioned project.

Eligible production work is defined very broadly for purposes of the tax credit, including work undertaken anytime in the period beginning with the design phase of a new project, running through the perfection and bug-testing of the title and then extending for up to two years into the marketing of the final game. Qualifying labor expenditures on which the 30% tax credit will be calculated are likewise inclusive, contemplating salaries and wages paid to employees working in Quebec, as well as amounts paid to related sub-contractors for work done in Québec, and half of amounts paid to arm's-length contractors for work done in Québec. It should be noted that commissioned projects produced by eligible corporations for third-party companies can only receive a maximum tax credit of 26.25% of eligible expenditures. That said, however, interactive multimedia titles which include French-language versioning and are not produced pursuant to a commission are eligible for an additional 7.5% tax credit, increasing the maximum available tax credit for such projects to 37.5% on eligible Québec labor expenditures.

For further information

Investissement Québec
393, rue Saint-Jacques, bureau 500
Montréal (Québec) H2Y 1N9 CANADA

Phone: 514-873-4375
Toll-free: 866-870-0437
Fax: 514-873-5786
Email: infoiq@investquebec.com

Further information on the refundable tax credit offered by Investissement Québec is available at:
<http://www.investquebec.com/en/index.aspx?page=1652>

If you have any questions regarding this white paper, please contact the Pillsbury attorney with whom you regularly work or the author:

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