



Province of Alberta

INTERACTIVE DIGITAL MEDIA TAX CREDIT ACT

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INTERACTIVE DIGITAL MEDIA TAX CREDIT ACT

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Schedule

Definitions

1 In this Act,

- (a) “eligible activities”, in relation to an interactive digital media product, means eligible activities as defined by regulation;

- (b) “federal Act” means the *Income Tax Act* (Canada);
- (c) “Finance Minister” means the Minister determined under section 16 of the *Government Organization Act* as the Minister responsible for the *Alberta Corporate Tax Act*;
- (d) “interactive digital media product” means a product that
 - (i) consists of a combination of application files and data files, in a digital format, that are integrated and are intended to be operated together,
 - (ii) is designed primarily to educate, inform or entertain the user,
 - (iii) is capable of presenting information in at least 2 of the following forms:
 - (A) text;
 - (B) sound;
 - (C) images,
 - (iv) is intended to be used interactively by individuals, and
 - (v) is developed in Alberta,but does not include a prescribed product;
- (e) “labour plan” means a labour plan that meets the requirements of the regulations;
- (f) “Minister” means the Minister determined under section 16 of the *Government Organization Act* as the Minister responsible for this Act;
- (g) “permanent establishment” means a permanent establishment as defined in section 1(2) of the *Alberta Corporate Tax Act*;
- (h) “prescribed” means prescribed by regulation;
- (i) “salary and wages” means salary and wages as defined by regulation;
- (j) “tax credit certificate” means a tax credit certificate issued under section 5;

- (k) “taxation year” means a taxation year as defined in section 249 of the federal Act;
- (l) “under-represented employee” means an under-represented employee as defined by regulation.

Application for tax credit certificate

2(1) A corporation may apply to the Minister to receive a tax credit certificate under this Act for a taxation year by providing the following to the Minister:

- (a) an application in the form, and containing the information, required by the Minister;
- (b) a labour plan;
- (c) any other information or records required by the Minister.

(2) An application under this section must be made within the application period determined by the Minister.

(3) The Minister may establish different application periods for different classes of corporations based on the amount of eligible salary and wages of the corporations.

Conditional approval letter

3(1) If the Minister is satisfied on the basis of the information provided by a corporation under section 2 that the corporation will be eligible at the end of its taxation year to receive a tax credit certificate for that year, the Minister may issue a conditional approval letter to the corporation that shows the estimated tax credit for the taxation year, as determined by the formula set out in the Schedule, based on the corporation’s projected eligible salary and wages and designated assistance for that year.

(2) Subject to the regulations, the Minister may, on receipt of additional information by a corporation, issue a revised conditional approval letter to the corporation.

(3) If the Minister refuses to issue a conditional approval letter to a corporation, the Minister must promptly give notice to the corporation of the refusal and provide reasons for the Minister’s decision.

Eligibility for tax credit certificate

4(1) A corporation is eligible to receive a tax credit certificate under this Act for a taxation year if the corporation meets the following criteria:

- (a) the corporation has a permanent establishment in Alberta at any time in the taxation year;
- (b) the corporation is not exempt from tax in the taxation year under the *Alberta Corporate Tax Act* by virtue of section 35 of that Act;
- (c) either of the following applies:
 - (i) the corporation's eligible salary and wages, as determined under the Schedule for the taxation year, is equal to or greater than \$2 million;
 - (ii) the corporation's eligible salary and wages, as determined under the Schedule for the taxation year, is equal to or greater than \$50 000 and less than \$2 million and the corporation is substantially engaged in one or both of the following:
 - (A) the development of interactive digital media products;
 - (B) the provision of eligible activities to one or more recipient corporations that have permanent establishments in Alberta;
- (d) the corporation meets any other conditions or requirements set out in the regulations.

(2) If a corporation has a taxation year of less than 365 days,

- (a) the reference in subsection (1)(c)(i) and (ii) to \$2 million is to be read in respect of the corporation as a reference to the amount equal to that proportion of \$2 million that the number of days in the taxation year bears to 365, and
- (b) the reference in subsection (1)(c)(ii) to \$50 000 is to be read in respect of the corporation as a reference to the amount equal to that proportion of \$50 000 that the number of days in the taxation year bears to 365.

(3) Notwithstanding subsection (1), a corporation is not eligible to receive a tax credit certificate under this Act for a taxation year if

- (a) the corporation claims a scientific research and experimental development tax credit for the taxation year under Division 3 of Part 6 of the *Alberta Corporate Tax Act*, or
- (b) the corporation, at any time during the taxation year,
 - (i) is prescribed, under the federal Act, to be a labour-sponsored venture capital corporation for the purposes of section 127.4 of the federal Act,
 - (ii) is controlled directly or indirectly in any manner whatever by one or more corporations described in subclause (i), or
 - (iii) carries on a personal services business, as defined in subsection 125(7) of the federal Act.

Tax credit certificate

5(1) This section applies only in respect of a corporation that has been issued a conditional approval letter under section 3.

(2) A corporation referred to in subsection (1) must, within 90 days after the end of its taxation year, provide the following information to the Minister in the form and manner required by the Minister:

- (a) the total amount of the corporation's eligible salary and wages, as determined under the Schedule, for the taxation year;
- (b) the amount of designated assistance, as determined under the Schedule, that the corporation received during the taxation year;
- (c) any other information requested by the Minister.

(3) On receipt of the information and records and being satisfied that the corporation has complied with this Act and the regulations, the Minister must issue a tax credit certificate to the corporation for the taxation year that shows the amount of the tax credit.

(4) If the Minister refuses to issue a tax credit certificate to a corporation, the Minister must promptly give notice to the corporation of the refusal and provide reasons for the Minister's decision.

Amount of tax credit

6(1) The tax credit to be shown on a tax credit certificate issued to a corporation for a taxation year is equal to the amount determined by the formula set out in the Schedule.

(2) Notwithstanding subsection (1), the tax credit to be shown on a tax credit certificate issued to a corporation for a taxation year must not be greater than the estimated tax credit shown on the conditional approval letter issued to the corporation under section 3.

Diversity and inclusion program

7 Where a corporation that is eligible under section 5 to receive a tax credit certificate for a taxation year

- (a) employs at least one under-represented employee during a taxation year, and
- (b) has a diversity and inclusion policy that meets the requirements of the regulations,

for the purpose of calculating the tax credit for the taxation year, the amount of the corporation's eligible salary and wages paid to under-represented employees shall be increased by the gross-up factor determined in accordance with the regulations.

Revocation of conditional approval letter or tax credit certificate

8(1) The Minister may revoke a conditional approval letter or a tax credit certificate issued under this Act if any information provided by the corporation to obtain the conditional approval letter or the tax credit certificate is false or misleading or fails to disclose a material fact.

(2) A conditional approval letter or a tax credit certificate issued under this Act may be revoked by the Minister if the Minister considers that, at the time the conditional approval letter or the tax credit certificate was issued or at a subsequent time, the corporation was in contravention of this Act or the regulations or a condition that the Minister imposed or made under this Act.

(3) If the Minister revokes a conditional approval letter or a tax credit certificate, the Minister must promptly give notice to the corporation of the revocation and provide reasons for the Minister's decision.

(4) If the Minister revokes a tax credit certificate, the Minister must promptly give notice to the Finance Minister of the revocation.

Reconsideration of Minister's decision

9(1) If

- (a) the Minister
 - (i) gives notice to a corporation under section 3(3) that the Minister has refused to issue a conditional approval letter,
 - (ii) gives notice to a corporation under section 5(4) that the Minister has refused to issue a tax credit certificate, or
 - (iii) revokes a conditional approval letter or a tax credit certificate under section 8,

or

- (b) a corporation disagrees with the tax credit shown on a tax credit certificate,

the corporation may, within 30 days after being notified of the Minister's decision, request in writing that the Minister reconsider that decision and may, for that purpose, provide the grounds on which the request for reconsideration is made.

(2) On receipt of written representations pursuant to subsection (1), the Minister must reconsider the matter and may rescind, vary or confirm the previous decision.

(3) The Minister must promptly give notice to the corporation of the Minister's decision to rescind, vary or confirm the previous decision.

(4) If under this section the Minister decides to rescind or vary a previous decision to revoke a tax credit certificate, the Minister must promptly give notice to the Finance Minister of that decision.

Refusal of further applications

10 Notwithstanding anything to the contrary in this Act, the Minister may for any reason, including budgetary restrictions, refuse to accept from corporations or from a class of corporations further applications for tax credit certificates under this Act for any period.

Examination of records, documents and things

11(1) For the purposes of determining whether a corporation

- (a) is eligible to receive a tax credit certificate under this Act, or
- (b) is complying with this Act and the regulations,

the Minister may appoint a person to examine the records, documents and things of that corporation.

(2) At the request of the person appointed under subsection (1), the corporation, or any other person in possession of records, documents or things of the corporation, must provide the person appointed under subsection (1) with those records, documents and things, including electronic records and documents.

(3) An officer or employee of the corporation must

- (a) cooperate with and give all reasonable assistance to the person appointed under subsection (1) for the purpose of enabling that person to conduct the examination satisfactorily, and
- (b) answer questions pertaining to the records, documents and things and provide other assistance that the person requests.

(4) Without limiting the generality of subsections (1) and (2), the person conducting an examination under this section

- (a) is entitled to unrestricted access, without charge, to all records, documents and things related to the enforcement of this Act, and
- (b) may make copies of any records, documents or things to which the person is entitled to unrestricted access.

Investigation

12(1) In this section, “justice” means a justice of the peace or a judge of the Provincial Court.

(2) The Minister may by order

- (a) appoint a person as an investigator to make whatever investigation the Minister considers appropriate for the administration of this Act, and
- (b) determine the scope of the investigation.

(3) On the application of the Minister or the investigator appointed under subsection (2), and on being satisfied by information on oath that it is necessary and in the public interest for any purpose relating to an investigation under subsection (2), a justice may make an order authorizing the investigator

- (a) to enter into the premises or on the land of a person at any reasonable time for the purpose of carrying out an inspection or examination,
- (b) to require the production of any records, documents or things and to inspect or examine them, and
- (c) on giving a receipt, to remove any records, documents or things inspected or examined under clause (b) for the purpose of further inspecting or examining them and making copies of them.

(4) Unless the justice otherwise directs, an application for an order under subsection (3) may be

- (a) made without notice to any other person, and
- (b) heard in private.

(5) An inspection or examination under subsection (3) must be completed as soon as practicable and the records, documents or things must be promptly returned to the person who produced them.

(6) A person must not withhold, destroy, conceal or refuse to give any information or produce any record, document or thing reasonably required under this section by the investigator.

Powers of investigators

13(1) An investigator has the same power as is vested in the Court of Queen's Bench for the trial of civil actions

- (a) to summon and enforce the attendance of witnesses,
- (b) to compel witnesses to give evidence on oath or otherwise, and
- (c) to compel witnesses to produce records, documents and things.

(2) The failure or refusal of a person summoned as a witness under subsection (1) to attend, to answer questions or to produce records, documents or things that are in that person's custody or possession

makes that person, on application to the Court of Queen's Bench by the investigator, liable to be committed for contempt by the Court of Queen's Bench in the same manner as if that person were in breach of an order or judgment of that Court.

(3) Section 41 of the *Alberta Evidence Act* does not exempt a bank, as defined in that section, or any officer or employee of a bank from the operation of this section.

Appointment of experts

14(1) If the Minister appoints an investigator under section 12, the Minister may appoint persons having special technical or other knowledge or skills to assist and be responsible to the investigator.

(2) A person appointed under subsection (1) must

- (a) examine records, documents and things of the person or corporation whose affairs are being investigated, and
- (b) perform other duties,

as required by the investigator.

Investigator's report to Minister

15 An investigator must provide the Minister with

- (a) a full and complete report of the investigation, including all transcripts of evidence and material in the investigator's possession relating to the investigation, and
- (b) interim reports as requested by the Minister.

Extension of time

16 The Minister may extend, with or without conditions, the time limit for the doing of anything under this Act or the regulations and may grant the extension even if the time limit to be extended has expired.

Offences

17(1) A person who does any of the following commits an offence:

- (a) makes a statement in any record, evidence or information submitted or given under this Act or the regulations to the Minister, to a person working for or under the Minister or to an investigator that, at the time and in the circumstances under which the statement is made, is false or misleading

with respect to a material fact or omits a material fact the omission of which makes the statement false or misleading;

- (b) makes a statement in an application, report, return or other record required to be filed or furnished under this Act or the regulations that, at the time and in the circumstances under which the statement is made, is false or misleading with respect to a material fact or omits to state a material fact the omission of which makes the statement false or misleading;
- (c) withholds, destroys or conceals a record, document or thing referred to in section 11(2) after it has been requested by a person conducting an examination under that section;
- (d) contravenes section 11(3);
- (e) impedes an investigator from entering premises under section 12(3)(a);
- (f) contravenes section 12(6).

(2) If a corporation commits an offence under subsection (1), the corporation is liable to a fine of not more than \$100 000.

(3) If a corporation commits an offence under subsection (1), every director or officer of the corporation who authorized, permitted or acquiesced in the offence also commits an offence.

(4) If an individual commits an offence under subsection (1) or (3), the individual is liable to a fine of not more than \$50 000 or to imprisonment for a term of not more than one year, or to both the fine and imprisonment.

(5) A person does not commit an offence under this section in relation to a statement if the person did not know that the statement was false or misleading and, in the exercise of reasonable diligence, could not have known that the statement was false or misleading.

Limitation on prosecution

18 No prosecution for a contravention of this Act is to be commenced more than 2 years from the date when the facts on which the alleged contravention is based first come to the knowledge of the Minister.

Collection and sharing of information

19(1) The Minister may collect information, including personal information, directly or indirectly, for the purposes of this Act.

(2) The Minister may share information collected under this Act with the Minister responsible for the *Alberta Corporate Tax Act* for the purposes of administering that Act.

Regulations

20(1) The Lieutenant Governor in Council may make regulations

- (a) defining “eligible activities”, “salary and wages” and “under-represented employee”;
- (b) defining any word or expression used but not defined in this Act;
- (c) respecting the requirements of a labour plan;
- (d) respecting conditions and requirements that a corporation must meet to be eligible for a tax credit certificate;
- (e) respecting the requirements of a diversity and inclusion policy;
- (f) respecting the making of applications under this Act;
- (g) respecting the issuance of a revised conditional approval letter;
- (h) respecting the calculation of the gross-up factor for the purpose of section 7;
- (i) respecting the reconsideration of a decision by the Minister under section 9;
- (j) prescribing any matter that is to be prescribed under this Act;
- (k) respecting the collection, use and disclosure of information, including personal information, for the purpose of this Act;
- (l) respecting the issuance or revocation of a tax credit certificate under this Act;
- (m) respecting forms for the purpose of this Act;
- (n) respecting the manner and form of giving notices under this Act;
- (o) respecting any matter or thing the Lieutenant Governor in Council considers necessary or advisable to effectively carry out the intent and purpose of this Act.

(2) A regulation made under subsection (1) may be made effective with reference to a period occurring before the regulation is made.

21 *(This section makes consequential amendments to the Alberta Corporate Tax Act. The amendments have been incorporated into that Act.)*

Coming into force

22 This Act comes into force on Proclamation.

(NOTE: Proclaimed in force September 4, 2018.)

Schedule

Formula for Amount of Tax Credit

Amount of tax credit = 25% x (eligible salary and wages – designated assistance)

where

designated assistance is the total of

- (a) a prescribed amount to be included as designated assistance, and
- (b) all amounts that would be included under paragraph 12(1)(x) of the federal Act in computing the income of the corporation for the taxation year if that paragraph were read without reference to subparagraphs (v) to (vii) of that paragraph and that can reasonably be considered to be in respect of eligible salary and wages, but does not include
 - (i) a prescribed amount,
 - (ii) an amount deducted under section 26.93 of the *Alberta Corporate Tax Act*, or
 - (iii) an amount deducted under subsection 127(5) or (6) of the federal Act;

eligible salary and wages is the total salary and wages that

- (a) are directly attributable to eligible activities,
- (b) are incurred by the corporation in the taxation year on or after April 1, 2018,
- (c) are paid to an individual who was resident in Alberta at the end of December 31 of the year preceding the end of the taxation year for which a tax credit is claimed under the *Alberta Corporate Tax Act*, and
- (d) are

- (i) included in the cost to, or in the case of depreciable property the capital cost to, the corporation of a property in the taxation year under the *Alberta Corporate Tax Act* for the purposes of that Act, or
- (ii) deductible as an outlay or expense in determining the income of the corporation for the taxation year under Part 2 of the *Alberta Corporate Tax Act*.



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