



Australian Writers' Guild

Submission to the Senate Economics Legislation Committee on the Treasury Laws Amendment (2022 Measures No. 4) Bill 2022

The Digital Games Tax Offset

23 January 2023

The Australian Writers' Guild (**AWG**) is the professional association representing writers for stage, screen, radio and online and has protected and promoted their creative and professional interests for 60 years. The Guild represents 2,500 performance writers in Australia and includes the creators of national and international works. Established by writers for writers, the AWG is a democratic organisation run by its members, who each year elect a National Executive Council and State Branch Committees. Our members work together to represent their fellow writers across the industry in a number of committees to negotiate for fair pay and conditions, advocate to government, and serve members' professional needs. This submission was written in consultation with the AWG Games Committee. We appreciate the opportunity to comment on the Digital Games Tax Offset.

BACKGROUND

In the Australian sector, the most critically acclaimed and commercially successful work is developed by small studios: teams comprised of fewer than twelve people. These small studios are usually wholly Australian-owned, as opposed to large developers that are generally owned by overseas companies and create Australian intellectual property for export. Small studios have produced work like *Florence*, *Untitled Goose Game*, *Unpacking* and *Cult of the Lamb* which have been met with critical acclaim and commercial success. Large developers, in contrast, are generally owned by overseas companies and they do not create Australian intellectual property.

The Digital Games Tax Offset (DGTO), introduced by the Morrison government, is an important first step to addressing the disparity between the games sector and other screen content. However, the Guild is sceptical that this new regime will actually assist Australian small studios which will generally **not** be able to meet the \$500,000 expenditure requirement proposed in the new legislation. The DGTO cannot replace, or must exist alongside of, a program of **sustainable** growth through small studio enterprise funding, improvements to education pathways, and incentives for workplace training.

EXECUTIVE SUMMARY

We recommend that government consider the following:

- (a) Lowering the qualifying expenditure from \$500,000 to \$250,000;
- (b) Incentivising professional development of emerging and mid-career local talent;
- (c) Incentivising accessibility features;
- (d) Incentivising the employment of Australian talent in key creative positions;
- (e) Clarifying whether Screen Australia funding grants and the DGTO are mutually exclusive;
- (f) Offering a more robust definition of “completed game”;
- (g) Creating fulsome and detailed public guidelines that inform the relevance test;
- (h) Prohibiting games with “loot boxes”, gambling/gambling simulation games, and games that engage in predatory design elements relating to in-app purchases from accessing the DGTO.

RECOMMENDATIONS

(a) Offset amounts

The \$500,000 minimum development expenditure requirement is a significant hurdle for a small Australian studio to meet, without taking on unnecessary risk or pressuring them to scale up even when it is not appropriate to do so. Recent critical and commercial success has been made by a number of studios, in Australia and internationally, with games between \$250,000 and \$500,000.

Recommendation: **The minimum development expenditure threshold should be lowered from \$500,000 to \$250,000.**

(b) Incentives to develop local talent and recruit Australians into key creative roles

The Australian industry is still a small one, and countries like the United Kingdom and Canada have industries that are ten times the size of the Australian industry. Sector growth must be a priority. The Interactive Games & Entertainment Association (IGEA) [recently noted](#) that “expanding [Australian] studios are facing the key hurdles of gaining access to mid to senior talent...and dedicated financial support”. Professional development of emerging and mid-career talent must be incentivised by the

legislation. With a worldwide shortage of experienced developers in key fields, predominantly software engineering, local mid-sized businesses are forced to compete with large, international companies for the same talent.

Recommendation: Professional development for junior and mid-career talent should expressly be included as a qualifying Australian development expenditure.

(c) Accessibility

The development of features and tools to aid in accessibility for deaf and disabled players should be expressly eligible for the offset.

Recommendation: The development of accessibility features should expressly be a qualifying Australian development expenditure.

(d) Australian talent in key roles

Business applying for the DGTO should be incentivised to employ Australians talent in key creative roles. This would be similar to the existing 'Significant Australian Content' test for the Producer Offset for film and television which places particular emphasis on the nationality of the writer, director, and producer of a project in the determination of whether the Producer Offset should apply. In a games context, this might take the form of a majority of Directors and Principals (i.e. over 50%) – including Creative Director, Principal Game Designer, Narrative Director and Art Director or equivalent – having an Australian nationality.

This consideration is essential to ensure that the Australian games sector benefits and grows from the offset and equip creators with the experience they need to work in large studios and start their own Australian businesses.

Recommendation: **Applicants should satisfy a test similar to the ‘Significant Australian Content’ test to access the DGTO: chiefly, that the key creatives involved in the project are Australian, or that a majority of staff in key departments are Australian.**

(e) Clarity on multiple sources of federal funding

The legislation does not appear to prevent a business accessing federal funding (through Screen Australia) and then the DGTO at a later date. Currently, direct funding is the only source of federal funding small studios will have access to. In order to access Screen Australia funding, a project’s budget must be less than \$500,000 but the legislation is silent on the situation where a game project’s budget grows in scale and budget and thus qualify for the DGTO while also accessing Screen Australia funding.

Recommendation: **The legislation should clarify whether a studio that has accessed Screen Australia funding can then, at a later date, access the DGTO.**

(f) Revise definition of a “completed game”

The current version of the legislation only requires that a game be “released to the public”. As self-distribution is quite easy and cheap, there appears to be no requirements on what state the game should be in when released. A more robust definition of completion would prevent potentially fraudulent activity. For example, a game could be in a completely unplayable state and announce that updates would be forthcoming without any intention to do so. A company might claim the maximum offset but the game that is eventually “released” might be in a such a poor quality or incomplete state. There are no robust requirements to ensure that declared expenditure has actually been spent on a project.

Recommendation:

- **A more robust definition of a game being “completed” is essential – further guidelines may elaborate on this.**
- **In the case of new games, applicants should supply reasonable evidence that claimed expenditure was in fact spent on the game applied for before a “certificate is issued”**

- **In the case of games being updated or live service games, applicants should supply reasonable evidence of changes from the original game to the released version before a “certificate” is issued**

(g) The Relevance Test

There “relevance test” set out in section 378-40(2) provides insufficient guidance to a Minister and the decision-making process is unnecessarily opaque. Without clear and transparent guidelines, this could represent a significant regulatory burden to businesses.

Recommendation: Clear and transparent public guidelines should inform the Minister’s decision under the relevance test.

(h) Gambling games and loot boxes

There is a growing call in Australia and overseas to regulate games that include ‘loot boxes’, gambling and gambling-like mechanics, and predatory design elements regarding in-app purchases.

Currently this legislation is silent on whether such potentially harmful games are able to access the DGTO. Screen Australia already prohibits certain game projects such as “gambling or gambling simulations” and “games which are substantially advertising or promotions” from accessing federal funding. The DGTO should be consistent with those requirements.

Recommendation: Prohibit games that include loot boxes’, gambling and gambling-like mechanics, and predatory design elements regarding in-app purchases from accessing the DGTO.