



**Australian Government**

**Department of Infrastructure,  
Transport, Regional Development,  
Communications and the Arts**

Senate Standing Committees on Economics  
PO Box 6100  
Parliament House  
Canberra ACT 2600  
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Dear Committee Secretary

I am pleased on behalf of the Department of Infrastructure, Transport, Regional Development, Communications and the Arts (the department) to make a submission to the Senate Economics Legislation Committee's inquiry into the *Treasury Laws Amendment (2022 Measures No. 4) Bill 2022* (the Bill).

The attached submission relates to Schedule 1 of the Bill, which introduces a refundable tax offset in relation to eligible expenditure incurred in the development of digital games. The department will be responsible for administering the proposed Digital Games Tax Offset (DGTO) in partnership with the Australian Tax Office.

The department thanks the Committee for this opportunity to make a submission to the inquiry, and would be pleased to provide any additional information as required.

  
Dr Stephen Arnott PSM  
Deputy Secretary  
Creative Economy & the Arts

17 January 2023

Encl: Submission to the Senate Economic Legislation Committee's Inquiry into Treasury Laws Amendment (2022 Measures No. 4) Bill 2022



## Australian Government

### Department of Infrastructure, Transport, Regional Development, Communications and the Arts

## Inquiry into Treasury Laws Amendment (2022 Measures No. 4) Bill 2022

### Submission to the Senate Economic Legislation Committee

This submission relates to Schedule 1 of the Bill: Digital games tax offset.

#### Australia's Digital Games Industry

Digital games and interactive entertainment is the largest creative sector in the world, and one of the fastest growing industries worldwide. The global digital games industry is worth approximately AU\$250 billion. In 2020-21, Australian game development studios generated \$226.5 million of income and employed 1,327 full time workers. While the Australian game development industry has a long history of performing at a high level within this global industry – with Australian-made games such as *Unpacking* and *Untitled Goose Game* topping sales charts, receiving major industry awards and enjoying international attention – Australia's game development industry is small in the global scheme. Both the UK and Canada have game development industries that are well over ten times larger than Australia's by almost any metric.

The digital games development sector is an area of economic growth for Australia. With the right Government settings to drive investment and generate employment and training opportunities, by 2030 Australia's digital games sector could generate \$1 billion annually and create 10,000 new highly skilled full-time jobs. The DGTO is a key policy and government intervention to support Australia's digital games industry to achieve this growth and success.

The creation of digital games is recognised as both a legitimate outlet for Australian cultural expression with widespread appeal; and an important and highly skilled sector for economic growth, capable of nurturing Australia's next generation of skilled and knowledge-based workers, with applications across a range of sectors including the arts and creative industries, healthcare, defence, urban planning and others.

#### Digital Games Tax Offset - Policy Development

On 23 November 2022, the Government introduced legislation to establish the DGTO. The policy intent of the program is to make Australia a more attractive and competitive destination for international digital games development, supporting investment and highly-skilled, transferable jobs.

To inform policy design, officials from the department and the Treasury have undertaken two formal consultation rounds with the games development sector. Those consulted included game developers and studios across Australia, international game development firms, and other industry stakeholders such as financiers, educational facilities, accountants and lawyers, and peak industry association the Interactive Games and Entertainment Association.

The DGTO was announced in the 2021-22 Budget and, following initial industry consultation, was expanded in the 2021-22 MYEFO to include post-release game development expenditure. This reflected the business model of modern game development as 'games as a service', premised on continuous development to hold audiences and attract new ones, as well as maintaining

functionality of games. Expansion of the DGTO to include ‘live ops’, as such work is known in the industry, was critical in this industry growth incentive realising its full potential.

Subsequently, an exposure draft bill and explanatory statement for the DGTO were open for public consultation from 21 March 2022 to 18 April 2022. This provided industry with more detail on the proposed operation, eligibility, inclusions and exclusions of the DGTO. Based on industry feedback and with regard to the policy intent of the program, a number of changes were made to strengthen the legislation, including: inclusion of a limited ‘safe harbour’ provision to enable salaries of employees who are also company directors to be claimed as eligible expenditure, without being affected by other related party expenditure exclusion integrity measures in the legislation; and the inclusion of a provision providing for a statutory review of the DGTO.

Industry is universally supportive of the Games Offset, and welcomed the introduction of the Bill to Parliament: <https://igea.net/2022/11/australian-game-developers-celebrate-introduction-of-dgto-bill-into-parliament/>

#### Digital Games Tax Offset – Key Features and Eligibility

<b>Which business are eligible?</b>	<p>Eligible companies are ones that are Australian residents; or foreign residents with a permanent establishment in Australia.</p> <p>The applicant company in respect of a game must be the company that is primarily responsible for the actual development of the game in Australia; and either owns or controls the rights to develop the game, or has been engaged directly by the entity who owns or controls the rights to develop the game.</p>
<b>What is a digital game?</b>	<p>For the DGTO, an eligible digital game is one in electronic form that is capable of generating a display on a portable electronic device, computer monitor, television screen, liquid crystal or similar medium that allows the playing of an interactive game. An interactive game is not defined in the Act, but it is generally understood to be a game where the sequence of events is determined in response to the decisions, inputs and direct involvement of the player(s).</p> <p>An augmented reality or virtual reality application might be eligible for the DGTO if it meets the eligibility definition of a game.</p>
<b>What games are ineligible?</b>	<p>Some types of digital games are ineligible under the DGTO:</p> <ul style="list-style-type: none"> <li>• A game that is a gambling service or substantially comprises gambling or gambling-like practices.</li> <li>• A game that contains elements that are likely to lead to being refused an Australian classification</li> <li>• A game primarily developed for industrial, corporate or institutional purposes; or</li> <li>• A game primarily developed to advertise or promote a product, entity or service.</li> </ul>
<b>What are ‘gambling-like’ practices?</b>	<p>A game is not eligible for the DGTO if it is a gambling service (within the meaning of the <i>Interactive Gambling Act 2001</i>) or substantially comprises gambling or gambling like practices. Simulated gambling, such as a slot machine simulator [see example at clause 378-25(7)] that did not involve any real money, would be considered gambling-like for the purposes of the DGTO and would be ineligible.</p>

	<p>The explanatory memorandum accompanying the Bill clarifies that gambling-like also includes any loot boxes that allow a player to directly or indirectly purchase with real currency (or assets) unknown virtual items determined by randomisation or chance and allow, within the game, for those items to be transferred for real currency (or assets), or cashed out for real currency (or assets).</p> <p>The Arts Minister is empowered to provide further guidance on the practical application of this ‘substantially comprises gambling elements’ definition through further guidance material. This guidance material may provide additional details about the eligibility of games which utilise loot box mechanics. It is intended that DGTO Guidelines will be released promptly after the legislation comes into effect.</p>
<b>What expenditure qualifies?</b>	<p>Qualifying Australian development expenditure is development expenditure incurred for, or reasonably attributable to, goods and services provided or acquired in Australia on the development of the game.</p> <p>Qualifying expenditure <u>includes</u> costs directly related to the development of eligible games:</p> <ul style="list-style-type: none"> <li>• salary and wages for employees and contractors who directly work on the development of the game;</li> <li>• research costs</li> <li>• prototyping costs</li> <li>• testing and debugging costs</li> <li>• expenditure on updating and adapting the game; and</li> <li>• costs associated with classification</li> </ul> <p>Qualifying expenditure specifically <u>excludes</u> expenditure on:</p> <ul style="list-style-type: none"> <li>• any activities incidental to but not directly related to the development of the game;</li> <li>• travel and entertainment;</li> <li>• marketing or promotion of the game;</li> <li>• hardware;</li> <li>• financing;</li> <li>• distribution;</li> <li>• Copyright and licensing; and</li> <li>• Any related party transactions / transactions not undertaken at arm’s length (except for those that fall within the employee-director safe harbour)</li> </ul>
<b>What is the spend threshold and maximum offset amount?</b>	<p>The DGTO will be claimable for expenditure incurred from 1 July 2022, providing a 30 per cent refundable tax offset for eligible businesses that spend a minimum of \$500,000 on qualifying expenditure.</p> <p>Eligible business will be able to claim for new games or porting games to additional platforms, where a minimum of \$500,000 of qualifying expenditure has been incurred across financial years up to the game’s public release.</p> <p>Eligible businesses will also be able to make a single annual application for post-release work across its slate of eligible games, where a minimum of</p>

	<p>\$500,000 of qualifying expenditure has been incurred in the same income year.</p> <p>Eligible companies can claim a maximum offset of \$20 million per year (representing \$66.7 million of qualifying expenditure). This cap applies to a single company, but also applies to the cumulative offset to which a group of related companies would be entitled.</p>
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