

19 April 2022

**BY EMAIL**

Director  
Industry Tax Policy Unit  
Individuals and Indirect Tax Division  
Treasury  
Langton Cres  
Parkes ACT 2600

Dear Director

**INCOME TAX ASSESSMENT AMENDMENT (DIGITAL GAMES TAX OFFSET) BILL 2021: MEASURE FOR CONSULTATION**

1. The Australasian Performing Right Association and Australasian Mechanical Copyright Owners Society (APRA AMCOS) and the Australian Guild of Screen Composers (AGSC) is grateful for the opportunity to make a submission to Treasury in response to the Treasury Laws Amendment (Measures for Consultation) Bill 2022: Digital games tax offset (**Exposure Draft**) which seeks to introduce a tax offset aimed at promoting the growth of the digital games industry in Australia and attracting games development to Australia.
2. The Australian Government is familiar with the operations of APRA AMCOS. APRA AMCOS has been representing Australian songwriters, composers and publishers since 1926. With over 111,000 members across Australasia, our membership includes the very best and brightest of established and emerging musical talent at home and around the globe. We administer rights on their behalf, supporting songwriters, composers and publishers in an industry that is a flagship of Australian culture and creativity, generating billions of dollars each year for the Australian economy across live, broadcast, digital, screen and digital games platforms. We are affiliated with similar collective management organisations around the world. So when Australian and New Zealand songs and compositions are played overseas, Australian and New Zealand writers and publishers get paid. We also help music customers in Australia and New Zealand access music from the rest of the world. APRA AMCOS works regularly in partnership with governments at all levels to support the development and career paths in music through the cornerstones of live music, digital platforms, local venues, education and global exports.
3. The Australian Guild of Screen Composers (AGSC) are a community of professional screen composers who are dedicated to supporting emerging and established Australian screen composers in film, television, gaming or related industries. Its role is to advocate for, support, and increase recognition of Australian screen composers. We embrace inclusivity and diversity in our industry and welcome the new perspectives and potential it can bring to the art and craft of our practice. The AGSC has an active membership working in all facets of the screen industry, contributing a unique Australian voice to many of our much-loved and viewed screen productions, seen locally and internationally. The AGSC has partnered with other organisations such as APRA AMCOS, as well as advocated, lobbied and acted to increase opportunities for screen composers.

4. Australian songwriters, composers and sound designers for Digital Games already have attracted significant international attention and accolades with locally created breakout games that have had global success. These include *Hollow Knight* (SA), *Untitled Goose Game* (VIC), *Unpacking* (QLD), *Fruit Ninja* (QLD), *The Artful Escape* (VIC).
5. For the last five years APRA AMCOS has presented [High Score](#), a conference on composition and sound art for gaming, in partnership with the Victorian Government through Creative Victoria and as part of Melbourne International Games Week. High Score brings together both music creators and games developers to explore the important role that audio and sound plays in game design and experience and help develop the skills of local songwriters and composers in music development for Digital Games.
6. In 2021 *High Score* including a new program where selected APRA AMCOS member songwriters and composers worked under the guidance of experience curators and games composers to create new tracks to be included in locally produced games *Spin Rhythm XD* and with Melbourne-based game studio Super Spin Digital.
7. APRA AMCOS and the AGSC applaud the Australian Government for the development of a tax offset for digital games. Alongside music on streaming platforms, in screen content and in live presentation, Digital Games are a key industry where APRA AMCOS songwriters, composer and publisher members earn payment and royalties for music creation. The growth of the Digital Games sector in Australia from the introduction of an offset will have a direct impact on the livelihoods of songwriters and composers.
8. APRA AMCOS and the AGSC acknowledge that the legislation for the offset is “designed to support the growth of the digital games industry in Australia by providing concessional tax treatment for Australian expenditure.” We recognise the Australian Government has already extensively engaged with industry on the drafting of the legislation.
9. APRA AMCOS and the AGSC welcome the inclusion of “musicians (including composers) and sound designers” as qualifying Australian development expenditure. However, we suggest the drafting of the legislation states qualifying expenditure is for “songwriters, composers, musicians, sound designers and performers” which would be clearer and more comprehensive of music and sound production. The creation and use of music in a Digital Games are often overlooked by policy makers despite the importance of music and sound design to a successful game and the specialised jobs that are created from Digital Games development for composers, songwriters, musicians and sound designers. We thank Treasury for the inclusion of this critical part of games production.
10. APRA AMCOS has developed an ambition for [Australia to become a net exporter of music](#) in ten years. Both APRA AMCOS and the AGSC represent tens of thousands of songwriters, screen composers and publishers that generate valuable intellectual property for Australia. Crucially, this tax offset has the potential to further develop Australia as a key music market exporting to the traditional markets of North America and Europe as well as accelerating emerging markets of Latin America, Asia, the Middle East and Africa.
11. APRA AMCOS members already earn significant royalties for the communication of their music as part of Digital Game downloads in Europe and North America. The use of local composition and music in Digital Games developed as a result of this tax offset will be an integral part of Australia’s intellectual property portfolio and will provide further international opportunities for those artists.

12. It is well known that just like in screen content, music in Digital Games is integral to the visual aspect of a Digital Game experience. The creation of music for Digital Games, like screen content, is labour intensive requiring extensive time and often many individuals to create an entire composition and sound design for a game.
13. The opportunity for Australia to harness the potential of music creation through this tax offset will provide a vital income stream through the employment of composers and musicians and with the right intellectual property framework provide long-term income streams from royalties for the creators of this music.
14. Original music created for Digital Games can be extremely popular and are frequently released on audio streaming platforms including Apple Music, Deezer, Pandora, Qobuz, SoundCloud, Spotify, TIDAL and YouTube. [One of the case studies](#) in the commercial-in-confidence appendix refers specifically to music from a locally produced Digital Game being played millions of times across numerous platforms around the world. Apple Music has developed a [Video Games: The Greatest Themes](#) playlist that includes tracks from games such as *The Legend of Zelda*, *Minecraft*, *Assassin's Creed*, *Call of Duty* and *Final Fantasy X*. Many of these popular compositions are recorded with well known and established musicians and in some cases with symphony orchestras.
15. In some cases Digital Games provide soundtracks that can be selected by the player. *Grand Theft Auto* is one of the most well-known examples whereby players can access a diverse collection of radio stations for the player to choose and listen to whilst driving.
16. Sport games often license the use of music through sync deals. They are often released annually and capture the current zeitgeist of music. [Big Ant Studios](#), the local games developer behind *AO Tennis 2*, *Cricket 19* – the official game of the Ashes and *Big Bash*, often uses popular contemporary music for many of their games.
17. There is now also a growing popularity of streaming services being listened to through gaming consoles. In 2020 Spotify reported that in twelve months there had been a 34% increase in people who listened to Spotify Free through their game consoles with total monthly time spent listening to Spotify through their consoles growing even faster at 81% year-over-year.
18. Historically, "buy outs" of music for Digital Games have been common, both due to the tech-focussed nature of developers (where copyright in code is collectively owned by companies) and due to the fact that service agreements between developers and publishers, and publishers and platforms, often required 100% ownership of all game assets. As the industry develops, however, some studios are fostering new arrangements whereby songwriters, composers and music publishers are choosing to reserve certain rights in the music they contribute to Digital Games, which provides the potential for downstream royalty payments to music creators that are linked to the games' success.
19. APRA AMOCS commissioned Arts Law to create [template exclusive licensing agreements](#) which allow for composers to retain their copyright while still granting all of the necessary rights game developers need exclusively. As licensing becomes more common place and members see a better return, some composers are more likely to hold onto their rights.
20. We have included an appendix of commercial-in-confidence case-studies to assist Treasury to understand how the composition and creation of music and sound design for Digital Games in Australia currently operates and current examples of the remuneration and royalty flows for composers.

21. APRA AMCOS and the AGSC note that the use of copyright material is excluded in qualifying Australian development expenditure. We refer Treasury to [provisions contained in the Producer Offset](#) for Screen as published by Screen Australia that permits use of copyright material;
- (a) Expenditure incurred in acquiring Australian copyright in a pre-existing work, for use in a project, may be QAPE if the copyright is held by an individual or company that is an Australian resident ([see section 376-150\(1\)](#) item 2 of the ITAA).
  - (b) There are some limits on the amount of production expenditure that may be claimed as QAPE incurred in acquiring copyright in a pre-existing work ([see section 376-150\(3\)](#) of the ITAA).
22. APRA AMCOS and the AGSC urge Treasury to review the exclusion of copyright material as rebatable expenditure. We have attached a number of commercial-in-confidence examples of the ways APRA AMCOS members have been engaged as composers and sound designers for local Digital Games. In some instances a Digital Games composer may use or license copyright material as part of an original music score or composition for a Digital Game. We propose Treasury consider the inclusion of copyright material with a cap on the amount of expenditure. This would ensure consistency with the screen Producer Offset arrangements and ensure that small-to-medium local studios benefit fully from the offset.
23. APRA AMCOS and the AGSC believe that the threshold of \$500,000 for tax offset eligibility should be lowered to support and develop local small-to-medium studios in games production. This is particularly critical for the development of independent games, fostering skills and long-term sustainability of the sector.
24. APRA AMCOS and the AGSC support the recommendation contained in the Interactive Games & Entertainment Association (IGEA) submission to remove or redesign the exclusion of expenditure incurred “in relation to an entity that is not wholly independent from the company” or “in connection with a transaction in which the company and another party did not deal with each other at arm’s length” at 378-30(3). We also support the IGEA recommendation that the Explanatory Statement should specify that expenditure on workers with minor equity in a business, such as the salary of employees who hold equity in a business through employee share schemes and similar arrangements, will generally be considered QAPE. We believe that these recommendations will better support the development of local and independent Digital Games and refer Treasury to the IGEA submission.

**Thank you for the opportunity to respond to the Exposure Draft of the Digital Games Tax Offset.**

**If we can provide further information, or be of assistance in any other way, please do not hesitate to contact Nicholas Pickard, Executive Director Public Affairs and Government Relations at APRA AMCOS.**