



Manager
Industry Tax Policy Unit, Individuals and Indirect Tax Division
The Treasury
Langton Crescent
PARKES ACT 2600

By email – digitalgames@treasury.gov.au

19 April 2022

Submission on the Exposure Draft Legislation (Digital Games Tax Offset)

Dear Sir/Madam

PricewaterhouseCoopers (**PwC**) appreciates the opportunity to provide commentary and feedback to the draft Treasury Exposure Draft Legislation (Digital Games Tax Offset) and Explanatory Materials (**EM**), as well as matters that are not contained in the Bill or EM, but are of concern.

We have attached our comments for your consideration.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Sophia Varelas', written in a cursive style.

Sophia Varelas
National Leader
R&D and Government Incentives



Introduction

PwC appreciates this opportunity to respond to the Bill and EM drafted by the Government and overall, encourages the implementation of the Digital Games Tax Offset (DGTO). As the Government is no doubt aware, digital gaming is a growing industry with the global gaming market set to reach \$256.97 billion by 2025¹ (the gaming market was worth around \$151 billion in 2019).

In the 2019 financial year, the Australian game development industry generated only \$143.5 million of revenue². PwC believes that the implementation of the DGTO will be beneficial to the Australian gaming industry and encourage more development to be undertaken in Australia. Furthermore, PwC would like to note the following statistics:

- More than 2.5 billion people worldwide play video games
- 91% of Australian households own at least one video game device
- eSports is growing in popularity around the world with an audience of approximately 456 million people

¹ <https://techjury.net/blog/gaming-industry-worth/#gref>

² <https://igea.net/2019/11/australian-video-game-development-industry-contributes-to-exports-and-job-opportunities/>



PwC Comments on the Draft DGTO Legislation

Administration of the DGTO

PwC believes that there should be a clear delineation of responsibilities for the administration of the program between the Australian Tax Office (ATO) and the Arts Minister (and his/her delegates). A key contributor to the effectiveness of the program will be the certainty provided to claimants through the submission process. At present it is not clear if the ATO will have powers to review a claimant's eligible qualifying Australian development after the lodgement of an Income Tax Return. In addition, there is no time limit for the Arts Minister to revoke a certificate. These factors increase the level of uncertainty a claimant is subjected to when applying for the DGTO. PwC recommends that the following be considered:

- A legislative time limit be introduced similar to the time limits applied to the amendment of an Income Tax Return being two years for small businesses and four years for large businesses.
- Producing extensive guidance material which clearly outlines the requirements of the program and what information is required for a successful submission such as, sample application forms, review processes and supporting documents that are required to be kept.
- A clear breakdown of responsibilities between the Arts Minister and the ATO be established to ensure that eligibility criteria, such as the eligibility of gaming development expenditure, are not reviewed separately by both regulators.

Based on the draft legislation and EM, for new game development and porting certificates, it appears that claimants can only obtain the DGTO benefit after the completion of the new game development or porting of the game. In the instance where this development is undertaken over a number of years there would be a large delay in the claimant receiving the DGTO benefit. In particular, PwC notes the following:

- It is not clear how the DGTO would flow through the income tax return when the expenditure has been incurred over multiple income years (e.g. does the claimant amend each income tax return or only the most recent income tax return).
- As outlined above, it is not certain how the interaction between the DGTO and the income tax return amendment periods will apply, especially where the first income year where a claimant undertakes new game development or porting development is outside of the amendment period.

As a result, PwC recommends that annual certification be considered for new game development and porting certificates with the benefit claimed in the company's annual income tax return. This methodology would remove any potential timing issues while providing additional financial support for the development of new games.

Game Developers Not Eligible

The DGTO is aimed at companies undertaking digital game development in the following three categories:

1. Completing a new digital game
2. Porting a completed digital game to a new platform, and
3. Ongoing development of completed digital games during an income year



In order for a digital game in the above three categories to be eligible for the DGTO, one of the following must apply:

1. The game is made available for use over the internet
2. The game is primarily played through the internet, or
3. The game operates only when a player is connected to the internet.

There are specific scenarios where game developers will be ineligible for the DGTO and PwC would like to request the government to reconsider the definition of a '*Type of Digital Game*' in subsection 378-20(7) of the ITAA 1997. In particular, companies such as Zero Latency who port games into a virtual reality environment, will not be eligible for the DGTO as they provide the game to the public in their own facility and utilise virtual reality equipment to allow players to play these games in an immersive, free-roam environment.

Due to the cost prohibitive nature of virtual reality equipment, consumers will not be able to purchase the equipment and hardware to play virtual reality games, in particular free roam virtual reality games, within the confines of their house. Therefore, to experience free-roam immersive virtual reality, the public will need to attend specific venues with specialised equipment that offer this type of gaming. It is PwC's view that this market segment could grow in popularity over the next decade, yet companies developing or porting games for this use will remain ineligible for the DGTO. As such, we would like to request that the government reconsiders the definition of '*Type of Digital Game*' to allow companies such as Zero Latency, who are ultimately developing or porting games for the wider public use, access to the DGTO.