VADR

The Treasury
Langton Crescent
PARKES ACT 2600
AUSTRALIA

Submission: Digital Games Tax Offset
Submission by: John McRae, Managing Director, VADR MEDIA
Submitted: 18/4/2022

Introduction

VADR is an Australia and New Zealand based executive production firm that produces and promotes new media, sports and entertainment.

John McRae is a 20-year veteran of the events and broadcasting industry and has developed programming for free-to-air, cable, pay-per-view, OTT and online platforms. New Zealand Marketing Magazine has twice acknowledged his contribution to media and sport with awards in 2018 for 'Media Visionary of the Year' and in 2009 for 'TV Event of the Decade'. In 2022, he was awarded Life Member status by the New Zealand Esports Federation for his contribution to the development of esports in New Zealand.

His executive production company VADR entered gaming and esports in 2015, when it launched Let's Play Live [LPL] as part of its media portfolio and grew it into Australia and New Zealand's largest independent esports broadcaster and tournament platform. At the same time, VADR initiated and funded the establishment of the New Zealand Esports Federation with the mission of increasing the participation and profile of esports in New Zealand and its classification as a sport. This recognition was obtained in 2020 when the New Zealand government recognised the NZESF as the National Sporting Organisation for Esports in New Zealand. LPL was subsequently acquired by ASX and NZX listed SKYCITY Entertainment in 2020. Between 2015 - 2022 John was the elected New Zealand representative for the International Esports Federation and Co-Chair of the Oceania Esports Council.

Prior to his involvement in Esports, John was a founder and owner of pay-per-view companies; Duco Events and SKY Arena.

Overview

Firstly, we would like to congratulate the Australian government and IGEA on the work to date on the Digital Games Tax Offset. The following submission is focused on what we feel are gaps in the draft legislation not as a criticism of the intent or work to date.

We are speaking up as we have heard over the years that the current siloed funding model for the creative industry does not anticipate innovation in media formats. As a company, we view gaming and esports as the ACMA does "as part of the convergence of media", which is reflected by the technology we use to produce content and the laws we operate under.

Our current read of the Digital Games Tax Offset draft is that it rewards those with an overseas management and tax base and does not sufficiently encourage the developers with a local tax base to produce local IP or risk investing in infrastructure that is not supported by existing funding channels.

The draft legislation seemingly narrows the ambition for Australian businesses to be service providers and not creators of original IP. The legislation also disadvantages small to medium-sized companies that are headquartered in Australia and will likely lead to labour market distortions in an already tight labour market. The IGEA has addressed the majority of the concerns, so we will focus on the points that we feel require an additional voice.

We are making the following submission on the basis that we are planning to develop an esports focused game-as-a-service and that we are an industry participant who is involved in the staging of esports events and broadcasts.

Since we entered the gaming space we have been privileged to work with some fantastic IP, produce esports tournaments and create content under licence. When the Digital Games Tax Offset was announced, we were initially quite excited as we saw it as an opportunity to move up the value chain from licensee to licensor.

We had planned to open a Sydney-based dedicated esports and gaming-focused Virtual Production studio for our own use and the use of other developers. This would be our third studio, having already built two outside Australia in order to reduce our reliance on third-party providers and media outlets.

We believed it also meant that we would not have to relocate as investors had already commented on the resource cost in Australia versus other markets. However, with the legislation in its current form, we would only place a third of the planned FTE roles for the game and have put the studio plans for Australia on hold.

Hardware

From our perspective, the current draft seeks to build a railway by attracting and training the engine drivers but not building the train and railway lines. As a party that has operated across gaming, entertainment and sport, we are concerned that the legislation fails to recognise the role hardware plays in production.

We have been told that the feedback from members was that equipment was not high on the agenda.

We assume this is either because:

1. Most major international studios either own or utilise Live Capture and Virtual Productions studios offshore
2. Parties were consulted prior to COVID and were not aware of what can be delivered with the rapid development in XR, Cloud and virtual production
3. The parties that were spoken to were not aware of the required investment to establish one and the incentives in other markets that are being offered to establish them
4. Hardware is viewed as a desktop computers rather than scalable infrastructure

We defined hardware as the tools required for Virtual Production, Volumetric and Motion capture. These tools are more commonly known for their role in film and TV, with the tools originating from the gaming industry. We consider hardware to cover servers, cameras, LED, lighting, tracking systems and AV equipment. LED will become increasingly used with live capture and the production of in-game and live media. The irony is that under the current draft of the Digital Games Tax Offset the tools used in the production of the Mortal Kombat would be claimable for the production of the movie but not the original game.

Investment in the hardware and maintenance of a Virtual Production studio is a seven-figure plus investment and requires a faster asset replacement schedule than a traditional media business.
COVID has seen the rapid growth of Virtual Production and the possibility to create live immersive experiences. If parties wish to develop these experiences they will need to invest in the equipment or have access to it. Access to these services for local developers will be prohibitively expensive without support.

Widening the criteria also allows providers from the event and film and TV who have existing infrastructure to be repurposed for use in gaming. In most instances, this equipment will not be available for the duration required and will need to be supplemented with additional resources. There are currently limited Virtual Production studios in Australia with most focused on large Hollywood productions.

Virtual Production is increasingly being used in the film and TV industry and provides both a threat and opportunity to current providers. Studios for film and TV are at near capacity in Australia and New Zealand leaving little room for gaming projects.

We would like to suggest either:

1. Hardware can be claimed
2. Or particular equipment can be claimed over a certain total value
3. Or qualifying for the Game Development Tax Offset automatically qualifies the applicant for claims for hardware hireage that would normally qualify for the Post, Digital and Visual Effects (PDV) if it was not a game

Competing on labour alone will discourage parties like ourselves from investing in the infrastructure required for a full development cycle but also leave the door open for other markets to fill the gap. As with other parties, it will make more sense for us to outsource these services offshore to remain competitive.

Esports excluded from government support

Gaming and Esports walk hand in hand but third-party operators face a challenging landscape in Australia. Third-party operators either licence the right to conduct tournaments from a publisher or act as a service delivery partner.

Riot Games and ESL have both recently closed their Sydney-based broadcast studios leaving no dedicated local gaming broadcast studios yet the consumer demand for esports has never been higher. COVID saw a rush of media groups and sports bodies seeking to leverage esports as a way to fill their schedules. However, the production costs involved were prohibitive for most parties, despite being able to operate during COVID, unlike Film and TV.

More stability and certainty have been achieved in New Zealand with esports being recognised as an official sport. In Australia, esports lack recognition as a sport but direct attachment to game development has penalised the industry.

Examples of this include:

1. The industry is bound by legislation such as the Broadcasting, Recorded Entertainment and Cinemas Award [MA000091] but is not entitled to the same support received by the film and television industry
2. Esports was explicitly excluded from the $220 million Restart Investment to Sustain and Expand (RISE) Fund
3. Screen Australia does not support esports as it is live content but supports scripted online content
4. Screen Australia does not support esports as it is perceived as a sport
5. Esports is not recognised as a sport but is treated as a sport by integrity bodies without the support to implement integrity measures

Regardless of the definition, esports did not receive any targeted support prior to or during COVID, and is also persona non-gratis in current discussions about support.

Independent Contractors

We ask that further clarity be given to what defines an independent contractor as it can confer different meanings to international audiences. Even without a tight labour market, businesses need to engage other businesses for specialist services, whether labour-hire companies or professional service firms. An example would be Blockchain development firms, Machine Learning and Computer vision specialists. These are areas in which certain firms have developed core competencies that can not be replicated.

END

We are raising the above issues, as we see the Digital Games Tax Offset as an overall positive step and see it as an opportunity to address some of the structural issues in the current funding model.

We recognise the significant employment opportunity that large international companies will bring. However, it shouldn't be at the cost of or discount the significant tax base that successful smaller firms can bring if headquartered here and given a head start.

We hope that the above is taken into consideration.

Regards,

John McRae
Managing Director
VADR MEDIA