



Australian Government

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

Digital Games Tax Offset (DGTO) Guidelines

July 2023

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Contents

Contents	3
DGTO - Incentive for the Development of Digital Games in Australia	5
1. Introduction	5
1.1 Overview of the DGTO	6
1.1.1 Provisional Certification	6
1.1.2 Final Certification	6
1.1.3 Tax Secrecy and Confidentiality	7
2. DGTO Eligibility	7
2.1 Eligible Applicants	7
2.1.1 The Company	7
2.1.2 Primarily Responsible Company	8
2.1.3 Company Must Own or Control the Rights	9
2.1.4 Head Company can be Applicant Company	9
2.2 Certificate Types, Eligible Games and Release	10
2.2.1 Types of Certificates	10
2.2.2 Eligible Games	10
2.2.3 Release	13
2.3 Development Expenditure, QADE and Thresholds	14
2.3.1 Development Expenditure	14
2.3.2 Qualifying Australian Development Expenditure (QADE)	15
2.3.3 Currency Exchange	16
2.3.4 Expenditure Threshold	16
2.4 Access to Other Government Incentives	16
2.4.1 Access to other Australian Government Expenditure Programs	16
2.4.2 Access to other Australian Government Tax Offsets	17
2.4.3 Access to State and Territory Programs	17
2.4.4 Access to Foreign Government Programs	18
3. Application and Process	18
3.1 Provisional Certificates	18
3.1.1 Provisional Application Form	18
3.1.2 Eligibility	18
3.1.3 Assessment	18
3.1.4 Notification	19
3.2 Final Certification	19
3.2.1 Application Form	19
3.2.2 Tax Declaration	20
3.2.3 Consideration by the Advisory Board	20
3.2.4 Advice from an Independent Expert	20

3.2.5 Advisory Board Advice to Minister	21
3.2.6 Notification	21
3.2.7 Submission to the Australian Taxation Office	21
3.2.8 Statement of Reasons and Appeal of Decision	21
3.2.9 Revocation of a Certificate	21
3.2.10 Copy of the Completed Game	22

4. Contacts **22**

5. Acronyms and Abbreviations **23**

DGTO - Incentive for the Development of Digital Games in Australia

1. Introduction

The Australian Government recognises the value of digital games. Storytelling through interactive media is culturally significant, and digital games are an artform comprising creative vision and digital and technical skill. The Digital Games Tax Offset (DGTO) forms part of the Government's National Cultural Policy — Revive: A Place for Every Story, A Story for Every Place. The DGTO supports the ambitions of Pillar 5: Engaging the Audience of the National Cultural Policy. As one of the fastest growing creative industries, a thriving domestic digital games sector will: engage audiences, both domestically and abroad, in a greater range of Australian games; recognise the centrality of the artist by providing a meaningful and diverse career path for Australian creatives; support the growth of industry and employment opportunities in cities, suburbs and the regions; and promote Australian stories and Australian talent, at home and abroad.

Through Revive, the Government is also providing \$12 million over four years to Screen Australia to increase investment to support digital games developers and small and medium independent games studios. Together, the DGTO and Screen Australia funding are a complementary and integrated plan to support Australia's digital games sector, and represent unprecedented support for the industry

To learn more about what the Australian Government is doing to support Australian digital games and creative industries, download [Revive: A Place for Every Story, a Story for Every Place](#).

The DGTO aims to promote the growth of the digital games industry in Australia by providing a financial incentive for the development of digital games in Australia. It is aimed at strengthening the Australian digital games industry, expanding employment opportunities for digital and creative talent, and enhancing the industry's ecosystem making Australia an attractive destination for foreign investment.

The legislation which governs the DGTO is [Division 378 of the Income Tax Assessment Act 1997](#) (ITAA97). These guidelines (Guidelines) should be read in conjunction with the ITAA97, the Income Tax Assessment Act 1936, and the [Income Tax Assessment \(Digital Games Tax Offset\) Rules 2023](#) (the Rules) made pursuant to section 378-100 of the ITAA97, other relevant laws, and the Explanatory Memorandum. These legislative instruments are all available from the Australian Government Federal Register of Legislation at <http://www.legislation.gov.au>.

These Guidelines have been prepared to assist with applications for certification for the DGTO.

These Guidelines are not a legal document. You are encouraged to:

- seek professional advice when preparing an application, for example from your accountant, tax adviser and/or lawyer; and
- consult relevant aspects of the tax law particularly Division 378 of the ITAA97, and the DGTO Rules.

If there is an inconsistency between these Guidelines and the ITAA97 or the DGTO Rules, the provisions in the ITAA97 and the DGTO Rules prevail.

These Guidelines should also be read in conjunction with the DGTO Glossary and the Application Form. Current versions of all documents are available at: <https://www.arts.gov.au/what-we-do/screen/digital-games>.

In these Guidelines, unless the contrary intention appears, all references to dollars are references to Australian dollars.

For queries, please contact the Office for the Arts on: digitalgames@arts.gov.au or 02 6271 1006.

1.1 Overview of the DGTO

The DGTO is applied at a fixed rate of 30 per cent of an eligible company's qualifying Australian development expenditure (QADE) on an eligible game incurred on or after 1 July 2022.

In order to access the DGTO, an applicant company must obtain a certificate from the Minister for the Arts (the Minister) or their delegate. These Guidelines outline the required processes for obtaining a certificate.

A certificate will be issued by the Minister where a game meets the relevant requirements set out in Division 378 of the ITAA97. The Minister will also formally determine a game's QADE and record the QADE amount on the certificate.

Where a certificate is issued, the applicant company can claim the DGTO in its income tax return for the relevant income year. The relevant year will depend on which type of certificate has been applied for under the DGTO (the different certificates are detailed below at Part 2.2.1).

The Australian Taxation Office (ATO) will provide a refund of a tax offset where the amount exceeds the amount of any income tax liabilities owed by the applicant company. The ATO will not usually review either the requirements for the issue of a certificate or the determined amount of QADE. However, if the ATO, in the course of its assessment of an applicant's tax return, finds evidence of fraud or serious misrepresentation, the ATO will advise the Minister, who may then revoke or amend the certificate.

1.1.1 Provisional Certification

You can apply for a provisional certificate for a game before or during development. A provisional certificate provides an indication of whether the game is likely to be eligible for the DGTO, based on the information provided at that stage.

Applying for a provisional certificate is entirely an optional exercise, and is not required as part of the process for final certification. All details of a final application will be assessed based on the information presented at the final certificate stage. A decision not to issue a provisional certificate for a project does not prevent an applicant from applying for a final certificate in relation to that game.

By the same token, a provisional certificate is not a guarantee that the Minister will issue a final certificate for the DGTO and does not prevent a decision by the Minister to refuse to issue a certificate.

There is no requirement that a provisional certificate and a final certificate for the same game are issued to the same entity. For example, a company may take over the development and complete a game for which a previous company had a provisional certificate.

1.1.2 Final Certification

In order to claim the DGTO as a tax offset, you must be issued with a certificate by the Minister or their delegate. A certificate will be issued if the game meets the requirements set out in Division 378 of the ITAA97.

The eligibility criteria, detailed in these Guidelines, are:

- the applicant is an eligible entity;
- the digital game/s applied for is/are eligible;
- the game has been completed or ported in the relevant income year, or ongoing development has occurred in the income year, depending on the relevant type of certificate sought; and
- the QADE meets the relevant threshold for the type of certificate being sought.

The certificate will state the applicant company name, the title of the game/s, the amount of QADE and the relevant income year in which the offset can be claimed. The applicant can then claim the DGTO in its tax return for that income year. The ATO will credit the DGTO against any existing income tax liabilities of the company and refund the remainder.

1.1.3 Tax Secrecy and Confidentiality

The information provided by applicants under the Division 378 of the ITAA97 is protected by Division 355 of Schedule 1 to the Taxation Administration Act 1953 (Confidentiality of taxpayer information). All information provided to the Department in regard to an application will be held on a confidential basis and dealt with as protected information in accordance with Division 355.

Information will only be provided to the ATO, the Digital Games Tax Offset Advisory Board and an independent third-party consultant as required. In some circumstances, to allow administration of the overlap between other tax offsets, some information may be exchanged between the Department and other Australian Government departments or agencies, but only to the extent permissible under law.

All bodies that are privy to confidential information will be bound by Australian Government confidentiality provisions which treat all such information as sensitive and, where appropriate, will be subject to contractual duties of confidentiality and, if applicable, the laws dealing with protected information in Division 355 of Schedule 1 to the Taxation Administration Act 1953.

The Department may be legally required to release information provided by applicants in certain circumstances, for example, under the Freedom of Information Act 1982. In processing a request under that Act, the Department may, depending on the circumstances of the request, consult the relevant applicant before a decision on the release of documents containing commercial information is made.

2. DGTO Eligibility

2.1 Eligible Applicants

2.1.1 The Company

To be eligible for the DGTO, an applicant must be a company with an active Australian Business Number (ABN).

The company must be:

- an Australian tax resident; or
- a foreign tax resident but with a permanent establishment in Australia.

For clarity, to be eligible, the game development work must be undertaken by and through the permanent establishment in Australia, rather than through the foreign head office.

The criteria must be met when:

- QADE is incurred;
- the company lodges its income tax return; and
- the DGTO is due to be credited.

If the applicant company did not meet these requirements for any periods of development, then the relevant expenditure during these periods is not considered to be QADE.

Australian Tax Resident

A company is defined as being resident in Australia for tax purposes under subsection 6(1) of the Income Tax Assessment Act 1936 (ITAA36) if:

- it is incorporated in Australia; or
- if not incorporated in Australia, it carries on business in Australia and either:

- its central management and control are in Australia; or
- its voting power is controlled by shareholders who are residents of Australia.

Taxation Ruling TR 2017/D2 provides the ATO’s interpretation of residency where the company is not incorporated in Australia (as at the date of publication of these Guidelines).

Permanent Establishment in Australia

The term ‘permanent establishment’ is also defined in subsection 6(1) of the ITAA36 which refers to ‘a place at or through which [a] person carries on any business’. The ITAA36 includes examples of a permanent establishment. Taxation Ruling TR 2002/5 (including the amendments created by TR2002/5A—Addendum) provides the ATO’s interpretation of the meaning of the phrase ‘a place at or through which [a] person carries on any business’ in the definition of ‘permanent establishment’. The ruling provides guidance to a non-resident who carries on business in Australia as to whether they have a place for the purposes of the definition of ‘permanent establishment’. You should be aware of whether the relevant requirements are modified by any tax treaty between Australia and another country. Tax treaties can be found on the Treasury’s website: <https://treasury.gov.au/tax-treaties/income-tax-treaties>.

In Australia, taxpayers are responsible for ensuring that they appropriately apply taxation laws to their particular circumstances. You should seek professional tax advice and consult the ATO’s website for current guidance.

2.1.2 Primarily Responsible Company

The applicant company must be the company that is primarily responsible for undertaking the activities necessary for the development of the game in Australia. This is the company that itself undertakes the development of the game, for example through the engagement, direction and supervision of employees and independent contractors.

For the purposes of the DGTO, a reference to a ‘game’ includes an original game in its entirety, a port of a game, or a component part of a broader game (for example, a discrete package of work which will form part of a larger game, delivered to a third-party international developer through a work-for-hire arrangement).

The requirement that the applicant company is primarily responsible for the actual development of the game has the practical effect that only one company is eligible for a certificate in relation to development activity on an eligible game at a particular time. This means that only one company can apply per completion certificate, porting certificate, or ongoing development certificate for the relevant income year.

This company can be either an ongoing company or a special purpose vehicle (SPV). Information on company structures is best sought from your professional services advisers. The Department does not provide advice on company structures beyond eligibility requirements.

Multiple Companies Involved in a Game

Where two or more companies are carrying out development activities on a game in Australia, which company is primarily responsible for its development becomes a matter of degree, and may be affected by agreements between co-developers.

Companies co-developing a game in circumstances where it may be unclear which is primarily responsible for the development of the game should clarify through mutual agreement which company is the correct applicant for the DGTO.

Noting that only one company can apply for an eligible game (per Completion Certificate or Porting Certificate) and ongoing development work on a game can only be claimed by one company per income year, failure for two or more parties to identify and agree on a primary developer as the applicant company for the DGTO may result in the offset not being available to any company involved in the work on that game.

Where multiple companies are in a consolidated group, a Multiple Entity Consolidated (MEC) group, or are otherwise related parties, they must coordinate their DGTO claims to ensure that their total claim is no more than \$20 million in an income year (see section 378-15).

Trusts

A trustee company is not an eligible applicant for a certificate for the DGTO.

Division 378 of the ITAA97 refers to a company in its own capacity, not in its capacity as a trustee company.

Expenditure by Prior Companies

If a company has taken over the development of the game from another company, then the new company is taken to have incurred the development expenditure of the previous company or companies.

Relevant legal agreements need to be provided to substantiate the claim, and the costs that relate to the previous company/ies need to be clearly substantiated and identified in the expenditure statements by the applicant.

Any costs incurred by the applicant company in the takeover of the development of the game (or company) are not eligible in the calculation of QADE.

For example, one company may initiate the development of a project and a second company completes the development. In this situation the first company's expenditure in developing the game can be considered as the development expenditure of the second. However, a fee paid by the second company to take over the development would not be considered QADE.

In addition, for expenditure of a prior company to be considered QADE under section 378-45 it must have been incurred by a company that met the requirements of the ITAA97 at the time it was incurred. For example, it must have been a company with an ABN. A company taking over the development of a game from a trustee company cannot rely on section 378-40, which deems expenditure incurred by an outgoing company to be expenditure by the incoming company, as trustee companies are not eligible.

2.1.3 Company Must Own or Control the Rights

The applicant company must own or control the rights to develop the game, or must have been engaged by another entity that owns or controls those rights (in the case where the application is by a head company of a group).

This can occur through:

- the game being an original game developed by the applicant company; or
- the applicant company being engaged to develop the game by the entity who owns or controls the rights to develop the game.

A company that carries out unauthorised development on a game is not an eligible company to apply for a certificate for the DGTO.

Relevant agreements and/or contracts need to be provided to demonstrate that the applicant company owns or controls the rights to develop the game.

2.1.4 Head Company can be Applicant Company

If the company that carried out the development activities is a member of a consolidated group or a MEC group (within the meaning of those terms in the ITAA97), then the head company of the group would apply for the certificate. This is because the head company would use the certificate in its income tax return.

Where a head company applies for a certificate, relevant documentation needs to be provided to demonstrate the relationship between the applicant company and the company that carried out the development activities.

2.2 Certificate Types, Eligible Games and Release

2.2.1 Types of Certificates

There are three different types of certificates for the DGTO. They are:

- **Completion Certificate:** a certificate for a digital game completed in the income year in respect of which the offset is claimed, with costs able to be incurred across one or more income years;
- **Porting Certificate:** a certificate for a digital game that has been ported in the income year in respect of which the offset is claimed, year, with costs able to be incurred across one or more income years; and
- **Ongoing Development Certificate:** a certificate in relation to ongoing development of one or more previously released digital game in the income year in respect of which the offset is claimed.

2.2.2 Eligible Games

An applicant company can only apply for the above certificates in respect of digital games that are eligible.

A digital game means a game which is made available for use over the internet and is in an electronic form that is capable of generating a display on a computer monitor, television screen, liquid crystal display, mobile device or similar medium that allows for the playing of an interactive game.

For the purposes of the DGTO and these Guidelines, an interactive game is a game where the sequence of events in the game is determined in response to the decisions, inputs and direct involvement of the player(s).

In effect, the actions of a player of a game must have a meaningful result on the outcome rather than that person merely being a spectator. Games where the user's only input is to press 'start', 'continue' or to control the direction of the viewing camera are unlikely to be eligible.

To be eligible, digital games must be primarily developed to be made available to the general public for entertainment or educational purposes.

Digital games come in all shapes and sizes, tell different stories and challenge audiences in new, unique and fun ways. A thriving digital games industry in Australia will support Pillar 2: A Place for Every Story of Revive, ensuring that modern game development reflects the breadth of our stories and the contribution of all Australians as the creators of culture

There are some types of digital games that are specifically ineligible for the DGTO:

- games that are a gambling service (within the meaning of the Interactive Gambling Act 2001) or are substantially comprised of gambling or gambling-like practices;
- games that have been refused, or contain elements that are likely to lead to the game being refused, classification under the Classification (Publications, Films and Computer Games) Act 1995;
- games that are primarily developed for industrial, corporate or institutional purposes; or
- games that are primarily developed to advertise or promote a product, entity or service.

The Game

The digital game consists of all the elements included in the common meaning of the term. That is, all electronic content (e.g. coding), audio content (sound effects and soundtrack) and non interactive elements (such as opening credit sequences and "cut scenes").

For the avoidance of doubt, in developing the game, underlying game technology including game engines, physics engines, lighting, anti-cheating controls, game-related payment system architecture, and user interfaces are also considered as part of the game.

Made Available for Use Over the Internet

Eligible games must be made available for use over the internet (such as through digital download or online subscription), including games which are played through the internet (such as streaming or browser-based games). A game that meets those criteria but also has a single player “offline” mode can still be an eligible game.

It does not matter if the game is also physically available (for example, for sale by disc through traditional retail outlets).

Developed to be Made Available to the General Public

Games that are not sold or otherwise made available to the general public are ineligible for the DGTO. For example, a game which will only be used as an in-house training tool is not an eligible game.

Games that are restricted to one or a very small number of locations such that they are not effectively available to the general public are also ineligible for the DGTO. For example, a game that is only able to be played in a specific shopping centre, zoo or museum is not considered to be available to the general public.

Similarly, a game that is incomplete and not released is not an eligible game. However, expenditure incurred in developing elements of the incomplete game (including underlying game technology) that ultimately forms part of an eligible game that is released to the general public may be claimable in relation to that new eligible game, provided there is sufficient documentation to reasonably (in the opinion of the Arts Minister) show that those elements were R&D, prototypes, or similar eligible expenditure in relation to the new eligible game.

Gambling Services or Games Comprising Gambling-like Practices

Gambling

A game that can be considered a “gambling service” under the Interactive Gambling Act 2001 (IGA2001) is ineligible for the DGTO.

The meaning of “gambling service” under IGA2001 includes a gambling service under the ordinary meaning of that expression, but also expressly includes each of the following kinds of services:

- (a) a service for the placing, making, receiving or acceptance of bets;
- (b) a service the sole or dominant purpose of which is to introduce individuals who wish to make or place bets to individuals who are willing to receive or accept those bets;
- (c) a service for the conduct of a lottery;
- (d) a service for the supply of lottery tickets;
- (e) a service for the conduct of a game where:
 - the game is played for money or anything else of value;
 - the game is a game of chance or of mixed chance and skill; and
 - a customer of the service gives or agrees to give consideration to play or enter the game.

Some of the terms above are further defined in the IGA2001. Advice on whether your game is a gambling service under IGA2001 is best sought from your legal advisers. The Department cannot provide advice on the interpretation of the IGA2001. However, as part of assessment of a DGTO application, the decision-maker may make further inquiries and seek further advice if there are concerns about whether a game is likely considered a gambling service under the IGA2001.

A game that is not a gambling service as defined in the IGA2001, but otherwise substantially comprises gambling or gambling-like practices, is also an ineligible game under the DGTO. Gambling-like practices could

include (but are not limited to) elements such as: betting and wager mechanisms, casino-style games, in-game gambling, and buying chance-based items. Whether or not a game substantially comprises gambling will depend on the composition of each game and will be assessed based on a case-by-case basis with regard to the prominence and extent of the gambling element(s) in the game. The following practical scenarios are provided as examples only and are not determinations:

- A slot machine simulator would likely be considered to substantially comprise gambling like practices, regardless of whether the game involved any real money or money equivalent (cryptocurrency).
- An adventure game in which a player was required to win a game of poker (a gambling-like activity) as part of the narrative to progress to a new level would be unlikely to be deemed ineligible.

Loot Boxes

A game that has reliance on, or gives prominence to, certain types of “loot box” mechanics is likely to be considered to be substantially comprising gambling or gambling-like practices and be an ineligible game.

For the purposes of this condition, a loot box is considered a mechanism which allows a player to directly or indirectly purchase with real currency or other items of real-world value (or with in-game currency which can be purchased with real currency or other items of real-world value) unknown virtual items determined by chance; and cash out, within the game, those items for real currency or other items of real-world value (whether directly or through transfer to another player). Items of real-world value could include cryptocurrencies or other financial assets.

Classification

A game which has been refused or is not likely to obtain an Australian classification is not an eligible game under the DGTO.

Digital games are classified in accordance with the Guidelines for the Classification of Computer Games 2012 (Classification Guidelines): <https://www.legislation.gov.au/Series/F2012L01934>

The Classification Guidelines specify the elements of a video game that may lead it to be refused classification.

Broadly speaking, these are:

- crime or violence: instruction or promotion of crime or violence; instruction in paedophile activity; depictions of child sexual abuse; high impact, excessively frequent or detailed violence; cruelty; actual sexual violence.
- sex: depictions of actual sexual activity; depictions of simulated sexual activity; gratuitous, exploitative or offensive depictions.
- drug use: instruction in the use of proscribed drugs; material promoting drug use; drug use relating to incentives or rewards; interactive drug use.

You should consult the Classification Guidelines for more detail.

If the game applied for has not yet received its classification, the application must identify any elements in the game that fall within the classifiable elements set out above. If, due to the presence of these or other elements in the game, as part of the processing an application, on the material before the Department, it is not satisfied that the game would likely achieve Australian classification, the applicant may be required to:

- provide additional information supporting the likely classification of the game, possibly including a written assessment of the game from an Authorised Assessor (a person trained by Australian Classification to assist with the assessment of video games); or
- arrange for a classification for the game to be obtained, before any certificate for the DGTO can be issued.

Games Promoting a Product, Entity or Service

Games that are released to the general public but have been primarily developed to advertise or promote a product, entity or service are also ineligible for the DGTO.

Some games will feature commercial tie-ins, licensed intellectual property or image rights. Whether such games are considered to have been primarily developed to advertise or promote a product, entity or service will be a matter of fact and degree. The fact that a game has no revenue generating stream (e.g. purchase price, subscription fees, in-app purchases or in game advertising) may contribute to an assessment that the game has been primarily developed to advertise or promote a product, entity or service. However, a revenue stream is not conclusive that a game has not primarily been developed for that purpose.

2.2.3 Release

Self-published Games

Where the applicant company also controls the release of the game, to be eligible for the DGTO under a Completion Certificate or a Porting Certificate, the digital game or port must be released to the general public (other than for testing purposes).

The release must be a genuine release to the public. For example, a release through a digital store or on a subscription service for digital games.

For clarity, a pre-order or limited pre-release is not considered a release to the general public. Similarly, simply making game files available to be downloaded is also not a genuine release.

The relevant income year for which the DGTO can be claimed by the applicant company for a Completion Certificate or a Porting Certificate is the income year in which the game or port was released to the general public (other than for testing purposes).

Where a game has been released to the general public for testing purposes (such as an Open Beta), then the game is deemed to be complete once a period of 12 months has elapsed.

The applicant company cannot claim QADE in respect of a Completion Certificate or Porting Certificate after actual or deemed date of release to the general public.

Third Party Published Games

Where the applicant company has entered into an arrangement with a third party to release the game, the company is eligible for the DGTO under a Completion Certificate or a Porting Certificate when it first provides a version of the game to the third party in a state where it could reasonably be regarded as ready to be released to the general public.

The relevant income year that the DGTO can be claimed by the applicant company for a Completion Certificate or a Porting Certificate is the income year in which the game or port was released to the general public (other than for testing purposes). The applicant company cannot claim QADE in respect of a Completion Certificate or Porting Certificate for the game or port after this date.

For clarity, a pre-order or limited pre-release is not considered a release to the general public. Similarly, simply making game files available to be downloaded is also not a genuine release.

Ongoing Development

Ongoing Development Certificates relate to a game or games that have already been released.

Games that were released before 1 July 2022 can still be the subject of an application under the DGTO. However, only development expenditure incurred from 1 July 2022 for the game will be eligible. It is not a requirement that a game must have received completion or porting certificates under the DGTO to be eligible for ongoing development.

The relevant income year that the DGTO can be claimed by the applicant company is the income year in which the ongoing development occurred.

2.3 Development Expenditure, QADE and Thresholds

The DGTO is calculated as 30 per cent of your incurred QADE.

A number of criteria for qualifying for the DGTO and the basis for calculating the refund amount are established by the amount incurred by the applicant company on development activities in Australia, including for goods and services provided in Australia.

To work out your QADE, first determine your development expenditure through:

- Applying the 'general rule' (at section 378-35(1) of the ITAA97), whereby the company has to incur expenditure in relation to the development of the eligible game;
- Considering the 'specific inclusions' (at 378-35(2)), which provide certainty over certain roles and activities that are involved in game development;
- Exclude expenditure that is a 'specific exclusion' (as at 378-35(3)) and is therefore not QADE; and then
- Apply the 'integrity rule' provisions (at 378-35 (4), (5) and (6)) that also limit the amount or exclude expenditure.

Once this is done, the applicant then determines QADE by apportioning the development expenditure in relation to:

- Goods and Services provided in Australia, and excluded if provided overseas;
- Relevance, where if the item of expenditure is substantially attributable to developing the game, it can be claimed in full, else it can be apportioned and claimed to the extent it is attributable to developing an eligible game (otherwise it is excluded);
- Qualifying expenditure, where expenditure is ineligible if it is incurred after relevant times or previously claimed for the DGTO; and then
- Between eligible games, to ensure the expenditure is applied to the relevant certificate(s).

The DGTO Glossary provides detailed information on Development Expenditure and QADE under the ITAA97 in an A-Z format.

Applicants should refer to the DGTO Glossary for further advice on the treatment of specific types of expenditure.

2.3.1 Development Expenditure

A company's Development Expenditure is defined by section 378-35 of the ITAA97 as the expenditure incurred in, or in relation to, the development of the game. Development expenditure is only calculated to determine QADE.

The development of the game includes the research, prototyping, production, testing, debugging and updating of the game. Development Expenditure is focused on remuneration provided to employees and independent contractors engaged by the company in connection with the development of the game. Revive recognises that artistic and cultural work is a professional activity and that fair pay and conditions for arts and cultural workers are essential. It aims to improve the circumstances of artist and arts workers including through appropriate remuneration.

In respect of a Completion Certificate and Porting Certificate, an applicant company may claim Development Expenditure incurred in the income year for which the DGTO is sought and/or in earlier income years (i.e. over the life of the completed project).

In respect of an Ongoing Development Certificate, an applicant company may claim Development Expenditure incurred only in the relevant income year.

The amount of development expenditure does not include depreciation nor GST.

2.3.2 Qualifying Australian Development Expenditure (QADE)

QADE is defined by section 378-40 of the ITAA97 as the company's Development Expenditure on the game to the extent that it is incurred for, or is reasonably attributable to, goods and services provided in Australia.

For example, if a game is primarily developed in Australia but a small amount of the work is contracted offshore in respect of some art and localisation services, the total development expenditure would include that foreign expenditure while QADE would exclude that amount.

Applicants are encouraged to track expenditure relating to development activity as early as possible.

For Completion or Porting Certificates, QADE may be incurred in any year before and including the year in which QADE ceased to be incurred. QADE ceases to be incurred on the earlier of:

- the day after the game or port is first released to the general public;
- the day on which the applicant company applies for a Completion or Porting Certificate in relation to the game; or
- (in the case of Completion Certificates) the day on which the game has been available to the public for the purposes of conducting testing for one year.

For Ongoing Development Certificates, QADE ceases to be incurred at the end of the relevant income year for which the certificate is being sought.

For clarity, whilst QADE is used to calculate the amount of the DGTO, it may still be deducted in accordance with (and subject to) Division 8 of the ITAA 1997. Generally, this means that QADE remains deductible for company income tax purposes.

Apportionment

Applicants must apportion QADE in circumstances where:

- services have been provided which cover both qualifying and non-qualifying expenditure (for example, if an employee spends half of their time providing programming services for the game (an eligible expense) and half their time providing general office manager services (an ineligible expense); or
- services have been provided which cover multiple games (for example, if an employee provides a quarter of their time providing programming services for one game and three quarters of their time on another game);

However, to reduce administration costs, an applicant company does not need to apportion expenditure if it is substantially attributable to developing an eligible game (and is not ineligible expenditure). For example, an employee or independent contractor spends 90% of their time on activities that qualify as QADE, but also attends general administrative duties for the remainder, the company can claim 100% of the expenditure.

2.3.3 Currency Exchange

All Development Expenditure and QADE incurred in foreign currencies must be converted into Australian dollars. Conversion requires the average (daily or monthly – the applicant may choose) of the relevant exchange rates, using the start and end dates outlined below:

Certificate Type	Start date	End date – the earlier of:	
Completion Certificate	The date that development expenditure was first incurred in completing the game.	The date that development expenditure was last incurred in completing the game; OR	The date that the company submits an application for a Completion Certificate in relation to the game.
Porting Certificate	The date that development expenditure was first incurred in porting the game.	The date that development expenditure was last incurred in porting the game; OR	The date that the company submits an application for a Porting Certificate in relation to the game.
Ongoing Development Certificate	The date that development expenditure was first incurred on the ongoing development of the games in the income year.	The date that development expenditure was last incurred on the ongoing development of the game(s) in the income year; OR	The date that the company submits an application for an Ongoing Development Certificate in relation to the games in the income year.

Official published exchange rates are available from the Reserve Bank of Australia at www.rba.gov.au.

2.3.4 Expenditure Threshold

A game must incur QADE of at least \$AUD 500,000 (as determined by the Minister) to be eligible for a Completion, Porting or Ongoing Development Certificate for the DGTO:

- Completion Certificate – minimum of \$AUD 500,000 in QADE on a single title across one or more income years;
- Porting Certificate – minimum of \$AUD 500,000 in QADE on a single title (to one or more platforms) across one or more income years; or
- Ongoing Development Certificate – minimum of \$AUD 500,000 on one or more titles across a single income year.

The DGTO is based on expenditure incurred by the applicant company, not by any other party unless the company has taken over development of the game from another company (see these Guidelines and the DGTO Glossary for further information on expenditure by prior companies).

2.4 Access to Other Government Incentives

2.4.1 Access to other Australian Government Expenditure Programs

Funding from other Australian Government expenditure programs – for example, through Screen Australia – does not affect the company or game’s eligibility for the DGTO.

However, you cannot claim any expenditure funded directly or indirectly by a grant or subsidy from any Australian Government agency that is widely available to business. A program widely available to business

means economy-wide broad-based emergency payments, or other payments for policy purposes that are broadly available beyond the digital games industry, like trainee/vocational subsidies. This is because the payments under such broad-based programs would have been set at an amount without the 30 per cent additionality provided through the DGTO in mind. For certainty, the company can still receive such subsidies; however, they cannot be claimed as QADE for the DGTO.

Where a program has been targeted specifically for the digital games industry, then expenditure supported or funded by a grant or subsidy from any Australian Government agency is claimable as QADE for the DGTO.

Expenditure incurred in securing Australian Government incentives and support is not QADE, as it is administrative in nature.

Australian and sub-national government grants are generally treated as income for Australian tax purposes, unless specifically exempted.

2.4.2 Access to other Australian Government Tax Offsets

Expenditure under the DGTO and other Australian Government tax offsets is mutually exclusive. As a result, any expenditure claimed under a tax offset, such as:

- the Research & Development Tax Incentive; or
- the Producer Offset, PDV Offset or Location Offset; or
- previously claimed under the DGTO,

cannot also be claimed in respect of the DGTO. In the case of the R&D Tax Incentive, expenditure claimed under the DGTO is also not available for the R&D intensity test, even if not claimed under the R&D Tax Incentive directly.

The Department may confirm whether expenditure claimed for a game has also been claimed for another Australian Government tax offset by consulting with other relevant Government departments and agencies.

For clarity, expenditure may still be deducted in accordance with (and subject to) Division 8 of the ITAA 1997. Generally, this means that QADE remains deductible for company income tax purposes.

2.4.3 Access to State and Territory Programs

Various Australian states and territories provide targeted incentives to encourage digital game development in their jurisdictions. Accessing any state or territory incentive(s) does not affect the eligibility of the company or game for the DGTO.

However, QADE must only include expenditure that has been 'incurred', so if a state government incentive does not alter development expenditure, it does not affect your QADE. For example, if the state provides a payroll tax exemption, then there is no expenditure incurred and therefore it cannot be claimed.

Furthermore, you cannot claim any expenditure supported or funded by a grant or subsidy from any Australian state or territory government that is widely available to business (i.e. not specifically designed for the digital games industry). This is because the payments under such broad-based programs would have been set at an amount without the 30 per cent additionality provided through the DGTO in mind.

Expenditure incurred in securing state or territory government incentives and support is not QADE, as it is administrative in nature.

Applicants are responsible for ensuring that accessing the DGTO does not affect their eligibility for any state or territory government program. The Department does not provide advice on jurisdictional incentives, and you should contact the relevant state or territory directly.

2.4.4 Access to Foreign Government Programs

Nothing in the DGTO prevents a company from claiming QADE that was supported or funded by a loan, grant or subsidy provided by a foreign government.

3. Application and Process

Before applying for the DGTO, applicants are advised to read these Guidelines, the DGTO Glossary, the Application Form, the relevant provisions of the tax law including Division 378 of the ITAA97 and the DGTO Rules carefully.

Information that must be supplied when applying to the DGTO is provided for under the DGTO Rules.

Both Provisional and Final Certificate applications can be considered by the Digital Games Tax Offset Advisory Board (the Advisory Board). The Advisory Board's members are skilled professionals with experience in the Australian games industry. The Advisory Board is chaired by a senior official of the Department. The function and procedures of the Advisory Board are established by the ITAA97 and the DGTO Rules.

3.1 Provisional Certificates

A provisional certificate is a guide as to whether, based on the information and assurances provided by the applicant at that time, the game is likely to meet the legislative requirements for certification for the DGTO. The Advisory Board is responsible for issuing provisional certificates.

Applying for a provisional certificate is optional. An applicant for a certificate for the DGTO does not first have to obtain a provisional certificate. Businesses that lend against the DGTO or co-financiers of the game may request a provisional certificate before they start to contribute cashflow.

Because a provisional certificate is optional, there is no requirement that a provisional certificate and a final certificate for the DGTO be in respect of the same company. For example, a company may apply for a provisional certificate before it commences work on a game but ultimately another company may be set up to carry out the development of the game.

If you do wish to apply for a provisional certificate, you may apply before development commences or during development.

Being issued with a provisional certificate does not guarantee or entitle the applicant to a certificate for the DGTO. The provisional certificate expressly provides that an application for a final certificate for the DGTO can still be refused. A provisional certificate indicates eligibility and the extent to which elements of projected expenditure on a game may be counted towards QADE.

3.1.1 Provisional Application Form

The Provisional Application Form is available at: www.arts.gov.au.

3.1.2 Eligibility

In general, all the eligibility requirements for the DGTO, as described in these Guidelines, apply to the assessment of a provisional certificate. However, in some cases the information may be based on intentions or best estimates, such as the projected Development Expenditure and QADE.

3.1.3 Assessment

Applications can be considered by the Advisory Board.

The Department, on behalf of the Advisory Board or the Minister (as applicable), may contact you to confirm aspects of the application or request additional information to assist with the assessment of your application. The Advisory Board at its discretion may also ask an independent expert (referred to in these Guidelines as an independent game development consultant (IGDC)) to expert to provide a written report to the Board about any matter that is relevant to whether a condition set out in subsection 378-25(7) of the ITAA97 has been met.

3.1.4 Notification

In accordance with the DGTO Rules, the Advisory Board will issue you, or decline to issue you, with a provisional certificate.

An issued provisional certificate will state that, based on the information presented in the application, the proposed game will meet, or is likely to meet, the eligibility requirements in relation to the DGTO. The Advisory Board may also include conditions on the provisional certificate.

A game that holds a provisional certificate is not guaranteed of qualifying for the DGTO and must apply for final certification once the QADE has ceased to be incurred in order to claim the DGTO. The QADE projected by the applicant at the provisional stage does not bind a decision regarding eligibility for final certification as all details of a final application will be assessed based on the information presented at that time.

The Advisory Board may decide not to issue a provisional certificate if the game does not meet, or is unlikely to meet, the eligibility requirements under the ITAA97, or if the application does not include enough information to enable an assessment. If a certificate is not issued, the Advisory Board will provide written notice of the reasons. A decision not to issue a provisional certificate does not prevent a company from applying for a final certificate in relation to that game.

3.2 Final Certification

The Minister for the Arts is responsible for issuing final certificates.

3.2.1 Application Form

An application for a final certificate may be submitted at any time after the game has finished incurring QADE.

Application forms are available at: www.arts.gov.au.

Applicants should review these Guidelines, the DGTO Offset Glossary and the Application Form before the start of development to ensure that all required information is recorded, and can be provided in the formats required in the Application Form. Applicants are also encouraged to seek taxation and/or accounting advice from an accountant or tax adviser accredited in Australia with experience in the games industry before the start of development in Australia, to ensure that expenditure records are appropriately documented and the relevant information can be extracted from the systems used.

It is vital that all sections of the form are completed, and all relevant documents are attached. Applications will not be assessed until all information is received.

Applicants should be aware that for the assessment of a final application, a substantial amount of material is required to support your application. You will be required to attach a range of documentation including, for example, the establishment of the applicant company, rights agreements, employment agreements and contracts for services to verify claimed expenditure. Applicants may also be required to attach relevant tax information such as the company's relationships to other entities to determine related parties for the purposes of the rebate cap and QADE. The required documents are detailed in the Application Form and the DGTO Rules.

Please note, if as part of routine review, the ATO determines that the company's related parties are different to those identified through the DGTO using the same tests, the ATO determination is determinative and the applicant may be required to submit a revised DGTO application.

Under the DGTO Rules, the Advisory Board may request any additional information it deems necessary to provide advice to the Minister about an application. For instance, where a response is incomplete or unsubstantiated, the Advisory Board may require the applicant, at the applicant's own expense, to provide further information. This information must be provided within the requested time, although the applicant may write to the Advisory Board seeking an extension of time. If the required information is not provided, the assessment may be progressed without further information from the applicant.

3.2.2 Tax Declaration

The information provided in your application (and in any subsequent requests for additional information) will be used by the Department to administer the DGTO. The Taxation Administration Act 1953 imposes administrative penalties on any entity that makes a false or misleading statement, or takes positions that are not reasonably arguable, to the Commissioner of Taxation or another entity exercising powers or performing functions under a taxation law. When submitting information to support your application to the DGTO it will be deemed to be made as a tax declaration; any such statement could attract substantial penalties under taxation laws.

The Department cannot provide you with taxation advice; you should seek professional taxation advice to ensure that you comply with all relevant taxation laws.

3.2.3 Consideration by the Advisory Board

Once an application has been received by the Department it will be provided to the Advisory Board.

Further information may be requested from an applicant if such information is required to assist its assessment of the application.

3.2.4 Advice from an Independent Expert

The Board will typically seek the advice of one or more independent experts (referred to in these Guidelines as: independent game development consultants (IGDCs)) including the provision of an independent assessment of whether specific items claimed in an expenditure statement are development expenditure and QADE.

The Department engages a number of IGDCs to provide services to the Board. IGDCs are referred to as Independent Experts in the DGTO Rules. IGDCs are skilled professionals with experience in the Australian games industry.

You should expect the application to be provided to an IGDC. This assessment will be undertaken on a strictly sensitive basis and the IGDC will be subject to a contractual duty of confidentiality.

The IGDC or Department may contact you for additional information to substantiate the information in the application and the QADE claim. This information may be required to assist the IGDC's assessment and advice to the Advisory Board. The IGDC may seek information on the process and methodologies adopted by the applicant, for example to show that the amounts claimed are in accordance with the legislation.

Delays in providing information will result in an extended assessment period.

You will be given a copy of the IGDC report and will have the opportunity to make a written submission to the Advisory Board in response to the report. Comments are to be directed to the Advisory Board, through the Department (who provides secretariat support to the Board).

3.2.5 Advisory Board Advice to Minister

The Advisory Board will consider the application and provide the Minister with a written report against the requirements of the ITAA97.

The Minister or their delegate will consider the Advisory Board's report and make determinations as to whether to certify the game and the level of QADE.

3.2.6 Notification

The process of assessing the application, including consideration by the Advisory Board, may take approximately 16 weeks following receipt of all necessary attachments and information, after which the Minister will consider whether to issue a certificate. Failure to provide all relevant documents or additional information requested by the Advisory Board or the IGDC will result in the assessment process taking longer.

Where the Minister certifies a game for the DGTO, the applicant company will be notified in writing of this decision. A certificate and a determination of QADE will be issued.

Where the Minister refuses to issue a certificate the applicant company will be notified in writing of this decision (including reasons for the decision).

3.2.7 Submission to the Australian Taxation Office

Where a certificate is issued, the applicant company can claim the DGTO in its income tax return for the relevant income year identified on the certificate.

The DGTO is a refundable tax offset. As such, the ATO will provide a tax offset equivalent to 30 per cent of the determined QADE, or a tax refund to the extent that the DGTO amount exceeds the amount of existing income tax liabilities owed by the applicant company.

The ATO will not usually review either the requirements for the issue of a certificate or the determined amount of QADE. However, if the ATO – in the course of its assessment of an applicant's tax return – finds evidence of fraud or serious misrepresentation, the ATO will advise the Minister who may then revoke the certificate.

If the DGTO has already been paid by the ATO and a certificate is subsequently revoked, the ATO may commence recovery of the DGTO as a debt.

3.2.8 Statement of Reasons and Appeal of Decision

An applicant can request a statement of reasons for a decision by the Minister under section 28 of the Administrative Appeals Tribunal Act 1975 and may also seek review of the decision by the Administrative Appeals Tribunal. A statement of reasons or review of a decision may be sought in relation to:

- a decision not to issue a certificate (to refuse an application);
- a determination of the amount of QADE;
- a decision to amend a certificate; or
- a decision to revoke a certificate (see below).

3.2.9 Revocation of a Certificate

The Minister may revoke a certificate if satisfied of certain elements, including:

- the issue of the certificate was based on inaccurate information;
- the certificate was obtained by fraud or serious misrepresentation;

- if the certificate is a Completion Certificate or a Porting Certificate, the total QADE on the game is less than \$AUD 500,000; or
- if the certificate is an Ongoing Development Certificate, the total QADE on games is less than \$AUD 500,000 in the relevant income year.

The information provided to the Advisory Board (in an application or at its request) and any IGDC may be used for the purposes of the consideration of the revocation of a certificate.

In such circumstances, the Minister will notify the applicant company in writing of this decision (including reasons for the decision to revoke the certificate).

As noted above, a statement of reasons may be sought in relation to a decision to revoke a certificate. A review of the decision by administrative review process may also be sought by the applicant.

Revocation of a certificate may also take place if an applicant fails to provide the Minister with a copy of a completed game (outlined below).

3.2.10 Copy of the Completed Game

The applicant company to whom a final certificate is issued under the DGTO must make available to the National Film and Sound Archive of Australia (NFSA) a launch copy of the game in an accepted format (see www.classification.gov.au/for-industry/apply-for-classification/classify-computer-game) and any materials that accompanied the game when sold to the general public upon request. The applicant may also be requested to make available to the archive:

- Launch version of game delivered in an accepted format – see www.classification.gov.au/for-industry/apply-for-classification/classify-computer-game;
- At least 30 minutes of gameplay footage of the published version of the game supplied in the highest resolution format available, e.g. ProRes HQ 422 or better;
- Soundtrack delivered as uncompressed files;
- Physical game release materials if applicable, including collectors' editions, published soundtracks;
- Publicity material, e.g. trailers, dev diaries, production documentaries, high-resolution game and box art;
- Press kit;
- Game credits, and biographies of key production personnel, if not already included within the above press kit, to be supplied as PDF(s);
- Behind-the-scenes material, e.g. concept/storyboard art; and
- Additional promotional material or merchandise.

Should you have any concerns regarding providing a copy of the game to the NFSA, you should relate these concerns to the Department. The Department, acting on behalf of the Minister, will consider such concerns on a case by case basis.

The provision of materials to the NFSA will ensure continual expansion of the collection, preserving and celebrating the importance and cultural significance of Australian-made games. This requirement supports Pillar 4: Strong Cultural Infrastructure of Revive, which recognizes that contemporary collecting institutions must be supported to collect, exhibit, preserve, share and celebrate Australian stories.

4. Contacts

The Digital Games and Business Development Section of the Department can be contacted at:

Email: DigitalGames@arts.gov.au

Tel: +61 2 6271 1006

Web: www.arts.gov.au.

Screen Incentives Section

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

GPO Box 2154

Canberra ACT 2601

Australia

For information about taxation and the other obligations of companies commencing business in Australia, registering for an ABN, filing business activity statements and annual income tax returns, please consult the ATO website at www.ato.gov.au/businesses/.

Alternatively, the ATO enquiry line for businesses is: +61 132866 (or +61 137286 for tax agents).

5. Acronyms and Abbreviations

ABN—Australian Business Number

Advisory Board—the Games Certification Advisory Board

ATO—Australian Taxation Office

Classification Act—Classification (Publications, Films and Computer Games) Act 1995

Classification Guidelines - Guidelines for the Classification of Computer Games 2012

Department—the Department of Communications and the Arts

DGTO – the Digital Games Tax Offset

DGTO Rules – Income Tax Assessment (Digital Games Tax Offset) Rules 2023

Explanatory Memorandum to the Treasury Laws Amendment (2022 Measures No. 4) Act 2023, particularly in relation to Schedule 1 (Digital Games Tax Offset).

FBT—Fringe Benefits Tax

GST Act—A New Tax System (Goods and Services Tax) Act 1999

GST—Goods and Services Tax

IGDC—Independent Game Development Consultant(s)

ITAA36—Income Tax Assessment Act 1936

ITAA97—Income Tax Assessment Act 1997

Minister—the Minister for the Arts

QADE—Qualifying Australian Development Expenditure as defined in Section 378-40 of the ITAA97.