



Tax Essentials

Australian game development incentives

October 2024 | Australia

Snapshot

In recent years Australia has been deliberately seeking to enhance its global competitiveness as a game development hub with combined Federal and State efforts. Building on an attractive location for major film productions and digital works, recent incentives are intended to both attract AAA game studios to Australia as well as further boost a thriving indie game development scene.

The flagship Federal incentive is the recently enacted Digital Games Tax Offset (DGTO) which provides eligible studios and development companies with a 30% refundable tax offset in respect of qualifying Australian development expenditure (QADE) in addition to a tax deduction.

Additionally, within each different State, eligible studios and companies can access State-specific digital games rebates and incentives, which range from a 10-15% rebate for qualifying expenditures or may qualify for other direct grant or equity funding opportunities.

That is, the relevant State incentives continue to be available notwithstanding the same expenditure being claimed under the DGTO. The dual incentives can give rise to benefits between 40% and 45% of qualifying expenditure for eligible studios and developers in addition to an income tax deduction. Such treatment puts Australia firmly on a par with the incentives offered in other countries currently dominating the global game development scene, including the US and Canada.

That said, given the complex nature and interactions between these programs, careful planning is needed to ensure that a claimant can effectively access and maximise the benefits available from these offset and incentives.



Digital Games Tax Offset

The Digital Games Tax Offset (DGTO) is closely based on the existing Federal film and screen offsets (such as the Producer Offset) and is primarily focused on capturing the associated labour costs.

Eligible games are generally those developed for public consumption, excluding games with gambling elements. The offset will be available for the completion of a new game, the porting of an existing game, and the ongoing development of an existing game:

- For the completion or porting activities, a DGTO claim for an individual game can span multiple income years to reach a minimum QADE threshold of AUD 500,000.
- For the ongoing development of an existing game, a DGTO claim for multiple games can be made for each relevant income year where the combined QADE exceeds the AUD 500,000 threshold.

The DGTO also allows studios who have taken on the continuation of development of a game from another studio to be able to claim qualifying expenditure.

Notably, the retrospectivity of the timing of a DGTO claim allows companies to capture expenditure including the original research conducted for the game, rather than being limited to the actual game development stage.

International and in-bound studios should note that the DGTO's eligibility conditions require claimants to be either Australian-resident companies or a foreign resident with an Australian permanent establishment (PE). Furthermore, it is the company that has the primary responsibility for developing the game in Australia which may claim the DGTO available in respect of that game - and the intellectual property (IP) for games may be held by offshore publishers.

The total tax offset for larger company groups is capped at AUD 20 million for each income year across a group of related entities with DGTO applications, requiring the disclosure of any related Australian entities also claiming the DGTO.

Finally, as with the film and screen offsets, there are two DGTO certificate streams being the provisional certificate and the final certificate. A provisional certificate is optional and can be applied for before or during game development. It will express an opinion on the likely eligibility of the game development activities and is non-binding on the regulator. However, these may still be useful for companies seeking to access advance external funding from

financing institutions and investors. Even where a provisional certificate has been obtained, companies will still need to apply for a final certificate after the development activities have concluded.



State-based game incentives

State-based incentives are obviously designed to attract studios to set up business in the respective states to drive the growth of the local game development scene, boosting skills and employment. Many State-based requirements and criteria for eligible entities and qualifying expenditure reflect those of the DGTO, with certain adjustments and differences depending on the relevant State's economic and industrial objectives.

The type and quantum of financial benefit available may differ, with Victoria, New South Wales (NSW), Queensland and South Australia (SA) each offering a rebate ranging between 10-15% of the total qualifying state expenditure for a full project. Western Australia (WA) offers a capped percentage rebate depending on the stage of the project, whilst Tasmania and the Northern Territory (NT) offer equity funding, or cash funding at certain stages of the project.

The State Screen bodies administering the incentives also evaluate applications on various criteria and the value-add they may bring to the State, such as the potential economic and cultural contribution of the game. The levels of benefit available will also be subject to the State budget allocated since they are effectively administered as State grants.

In practice, it is beneficial to apply for State-based incentives before the commencement of, or early in the project, since most only allow claims for qualifying expenditure after a certain point in time (e.g., after the application lodgement, as with the NSW Digital Games Rebate). Other application requirements include the preparation of detailed budgets, a game development plan or schedule, and funding streams where applicable. In most cases, the companies are required to provide evidence and information in respect of the actual expenditure incurred, evidence of the developed game and acknowledgements to the relevant State.

Other practical issues

It will be important to appreciate the nature and availability of different incentives with most State regulators considering game development on a case-by-case basis but the DGTO annually allowing tax offsets for onshore ongoing development work where conditions including the minimum spend threshold are satisfied for a given income year. The latter can be more beneficial in terms of certainty for large international studios working on in-market AAA games.

That said, the DGTO's minimum spend threshold of AUD 500,000 may be only viable for large local or international game studios, with the State incentives providing a supplementary influence as to final location within Australia. Where the DGTO's spend threshold may be prohibitive for smaller studios and indie developers, each State's wide offerings of grants, such as travel grants and business accelerator grants, are likely to be the main drivers.

In terms of cash-flow timing, the DGTO, like other refundable tax offsets, will only result in a tax or cash incentive after lodgement of the relevant company income tax return. In contrast, State grants or rebates may be paid as upfront lump sums on reaching agreed milestones or paid as negotiated with the State.

For studios prioritising experimental innovation, with game development being accompanied by technology development, such as creating new game engines, game hardware, or software, the R&D Tax Incentive (RDTI) may be available. Depending on the tax profile of the claimant, the RDTI can give rise to a 43.5% or 48.5% refundable tax offset or a minimum 38.5% non-refundable tax offset in place of a standard tax deduction at 25% or 30%. Studios considering accessing this benefit must claim any costs only under one incentive with the RDTI and DGTO being mutually exclusive.

Strategy and planning considerations

Eligible companies seeking to maximise the tax benefits available from the plethora of games offsets and incentives available should consider the following:

- Prioritise applying for available tax credit incentives at the earliest opportunity, even before commencing the project. Provisional certificates may be worthwhile where external finance will be relied on.
- Review other applicable game development business grants and support available, key requirements and any specific timeframes for application.
- Contemporaneously document activities carried on during the project, and track the expenditure incurred on those activities, in particular salary and payments to personnel or contractors, license acquisitions and other significant purchases. Records should show timesheet splits where developers work on multiple games simultaneously.
- If accessing State incentives, actual spend must be tracked against the proposed application budget and the relevant State regulator informed of any projected significant deviances to ensure that the incentive agreements can be amended.
- Ensure that acquittal items are fulfilled on completion of any State related project as required by the State, and submitted to the relevant regulator. Payment arrangements may be reliant on this and can be discussed with the regulator on fulfillment.
- Evaluate whether any of its activities and expenditure may qualify for the RDTI - the RDTI and DGTO regimes are mutually exclusive, but some expenditures could be claimed as RDTI instead.
- On launch, make an application for a final DGTO certificate for the completion or porting of a game (as applicable). Relevant evidence on QADE incurred must be included in the application, with further evidence potentially requested during the subsequent assessment. Ensure that any RDTI expenditure is excluded from the DGTO claim.
- On issuance of a final DGTO certificate, include the DGTO details into the company income tax return for the relevant income year, or amend as necessary if already lodged.
- Consider applying for a DGTO for future ongoing development of newly or previously launched games for relevant income years, where satisfying the applicable DGTO requirements.



A detailed summary of the various Australian Federal and State gaming incentives can be found in the Appendix.

Appendix 1 – Summary of Australian Federal and State gaming incentives

| | Federal | State-based | | | | | | | |
|--------------------------------|---|--------------------------------|---|--|--|--|---|---|---|
| | | NSW | QLD | VIC | SA | WA | NT | TAS | TAS |
| Digital Games incentive | Digital Games Tax Offset (DGTO) | NSW Digital Games Rebate | Screen Queensland Digital Games Incentive | Victorian Screen Rebate (VSR) | SA Video Game Development Rebate (SA VGD Rebate) | Screenwest Digital Games Production Fund | Funding - Games Development | Funding - Games Development | Funding - Production Support |
| Benefit | 30% refundable tax offset, and capped at \$20,000,000 for an income year a group of related entities. | 10% of qualifying expenditure. | 15% of qualifying expenditure. | 15% (for majority VIC resident-owned company) or 10% (for all other applicants) of qualifying expenditure. | 10% of qualifying expenditure. | Pre-production: 60% of qualifying expenditure, up to \$25,000 per application Production: 70% of qualifying expenditure, up to \$100,000 Post-production: 60% of qualifying expenditure, up to \$25,000 Support is capped at \$150,000 over the life of a game and at \$200,000 per applicant per year. | Conceptual Development: \$10,000 Prototype: \$25,000 Vertical Slice / Early Access: \$40,000. | Conceptual development: \$20,000 per project Production and Release stage: \$50,000 per project. | For projects seeking <\$50,000 of support: \$30,000-\$50,000 For projects seeking >\$50,000 in support: equity investment. |
| Minimum spend threshold | Completion or Porting of game: \$500,000 per game over multiple income years. Ongoing development: \$500,000 combined games per income year. | \$500,000 per game | \$250,000 per game | \$500,000 per game | \$250,000 per game | n/a | n/a | n/a | Ratio of spend to support sought is: 3:1 |

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| Income tax treatment of benefit | Tax offset | Rebate/grant | Rebate/grant | Rebate/grant | Rebate/grant | Rebate/grant | Rebate/grant | Conceptual development: non-recoupable grant Production and Release stage: recoupable grant. | Up to \$50k: non-recoupable grant >\$50k: equity investment (pro-rate with other investors). |

| Eligibility (for corporate entities) | | Companies with ABN. Can be local, interstate, or international developer, that is fully or partially based in NSW. | Companies with ABN. Can be local, interstate, or international developer, that is fully or partially based in QLD. | Companies with ABN. Can be international developer with office based in VIC. | Companies with ABN. Can be local, interstate, or international developer, that is fully or partially based in SA. | Companies with ABN. Must be based in WA and is majority-owned by a WA resident/s. | Companies with ABN. Must be based in NT and is majority-owned by a NT resident/s. | Companies with ABN. Must be based in TAS and is majority-owned by a TAS resident/s. Or cwompanies in a partnership with a TAS resident company. | Companies with ABN. Must be based in TAS and is majority-owned by a TAS resident/s. Or companies in a partnership with a TAS resident company. |
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| Eligible game development: | | | | | | | | | |
|---|-----|--|----|----|----|----|----|----|----|
| Gambling games | No | No | No | No | No | No | No | No | No |
| Games for internal training | No | No | No | No | No | No | No | No | No |
| Gamification or games for curriculum material | No | No | No | No | No | No | No | No | No |
| Games for advertising | No | No | No | No | No | No | No | No | No |
| Ongoing development of existing games | Yes | Case-by-case basis, depending on the nature of the project | | | | | | | |

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| Qualifying Expenditure | | | | | | | | | |
| Salaries and on-costs of game developers and other personnel contributing to game development | Yes^ | Yes | Yes | Yes | Yes | Yes | Yes | Yes | Yes |
| Salaries and on-costs of company personnel not directly contributing to game development (e.g. administrative personnel)* | No | No | No | Varies | Varies | Varies | Varies | Varies | Varies |
| Share-based benefits, bonuses dependent on game performance, deferred fees | No | No | No | No | No | No | No | No | No |
| External contractors** | Yes^^ | Yes | Yes | Yes | Yes | Yes | Yes | Yes | Yes |
| Marketing** | No | Yes | Yes | Yes | Yes | Yes | Yes | Yes | Yes |
| Legal and Accounting** | No | Yes | Yes | Yes | Yes | Yes | Yes | Yes | Yes |
| Acquisition/licensing of materials (e.g. music)** | No | Yes | Yes | Yes | Yes | Yes | No | Yes | Yes |
| Purchase of equipment** | No | No | Yes | No | No | No | No | case-by-case | case-by-case |

| | Federal | State-based | | | | | | | |
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| Digital Games incentive | Digital Games Tax Offset (DGTO) | NSW Digital Games Rebate | Screen Queensland Digital Games Incentive | Victorian Screen Rebate (VSR) | SA Video Game Development Rebate (SA VGD Rebate) | Screenwest Digital Games Production Fund | Funding - Games Development | Funding - Games Development | Funding - Production Support |
| Depreciation of equipment for game development | No | Yes | No | No | Yes | No | No | No | No |
| Company overheads (e.g. rent and utilities)** | No | Yes | Yes | Yes | Yes | Yes | Yes | Yes | Yes |
| Hosting** | No | No | Yes | Yes | No | No | TBC | TBC | TBC |
| Distribution** | No | No | No | Yes | No | Yes | TBC | TBC | TBC |
| Travel*** | No | No | No | Yes | Yes | Yes | Yes | TBC | TBC |

| | | | | | | | | | |
|----------------------------------|--|--|---------|---------|---------|---------|--|--|--|
| When do I apply for this? | Completion or Porting of game: after completion or porting of game is finished. Ongoing development: after each income year. | Ideally prior to commencement or early in the project. | | | | | | | |
| Deadline | None, but the timing to apply is limited to a company's allowable timeframe to amend its tax lodgement. | Rolling | Rolling | Rolling | Rolling | Rolling | Applications open via periodic rounds. | Applications open via periodic rounds. | Applications open via periodic rounds. |

The above information is based on current published guidelines and materials, which may be regularly updated by the respective regulator.

^ Excluding payroll tax.

^^ Excluding costs for work that had been subsequently sub-contracted out.

* Companies will need to evaluate the relationship of these personnel (if any) to the development of the game. Some States may allow a reasonable apportionment of these costs.

** Depending on the State, qualifying expenditure may be limited to where the contractor/supplier is based in the relevant State or capped to a specific percentage of the total qualifying expenditure.

*** Depending on the State, qualifying expenditure may be limited to inbound travel only or travel costs incurred within the State.

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