



Summary of submissions

GAME DEVELOPMENT SECTOR REBATE DESIGN FEATURES



**MINISTRY OF BUSINESS,
INNOVATION & EMPLOYMENT**
HĪKINA WHAKATUTUKI

Te Kāwanatanga o Aotearoa
New Zealand Government

Ministry of Business, Innovation and Employment (MBIE)

Hīkina Whakatutuki – Lifting to make successful

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Introduction

In mid-2023, the Ministry of Business, Innovation and Employment published a consultation document seeking feedback on proposed design features of the new Game Development Sector Rebate.

The Game Development Sector Rebate (GDSR) was announced as part of Budget 2023 to support the ongoing development and growth of New Zealand's game development sector. Following targeted consultation with representatives of the New Zealand Game Developers Association (NZGDA) and the Centre of Digital Excellence (CODE), MBIE opened a short period of public consultation (from 15 June to 6 July) regarding the detailed design of the scheme.

The consultation document set out the key features of the scheme, namely:

- Funding of \$40 million per annum for delivering and administering a rebate for the game development sector.
- Rebate rate of 20% on eligible expenditures of eligible firms.
- Per firm per annum cap on rebate of \$3 million.
- Minimum qualifying expenditure per annum of \$250,000.
- Effective start date of 1 April 2023.

It then presented proposals regarding the scheme's eligibility criteria (in particular, eligible businesses, eligible games and eligible expenditures), the application process, and scheme governance. It also posed a series of questions seeking feedback on other issues.

Twenty-one submissions were received during the public consultation, representing medium- and large-sized firms, smaller studios, individual game developers, stakeholders in adjacent sectors, and an international media and entertainment firm, as well as the NZGDA. This document provides a summary of feedback received.

MBIE thanks all those who provided submissions and shared their expertise and knowledge during the GDSR detailed design phase. These insights have helped shape the final design and will also provide valuable background for future scheme reviews.

Eligibility criteria

Submissions were supportive of the broad direction of the scheme's design and expressed appreciation for industry's involvement in the process. Suggestions on eligibility criteria aimed at better reflecting the sector's profile of activity and clarifying areas of uncertainty.

ELIGIBLE BUSINESSES

This section of the eligibility criteria generated comments related to two main issues:

"Primarily involved in developing digital games"

Multiple submissions argued against requiring businesses to be "primarily involved in developing digital games" (emphasis added) and the associated proposal for a firm to derive 75% of its income from such activity. In particular:

- Several submissions suggested creative businesses often need multiple revenue streams for viability and should be eligible for any game development activity they undertake as part of their wider business. Some argued this is especially important as firms grow their gaming capability and can strengthen the sector's resilience and diversity. Several also noted that this proposed eligibility criteria could be circumvented by forming a new company.

- Specifically on the “digital” aspect, one submission argued that businesses developing physical games should also be eligible for the scheme, given they contribute to the GDSR’s objectives via activity in game design, art production, software development and event management.

Submissions suggested that eligible game and eligible expenditure requirements provide a sufficient check that the rebate is being used for its intended purpose, without needing a further criterion. For example, from a practical perspective, one submission noted their staff complete timesheets and eligible expenditures can easily be tracked. Rather than making it a requirement, one suggestion was to pose a question in the application form, regarding the weight of digital game development in a business’ activities, as a useful guide for NZ On Air when assessing applications.

However, an opposing view was also put forward, with one submission noting that a threshold of annual gross revenues from game development activities would usefully preclude payroll companies claiming the rebate. This is notably in the case where such companies are disbursing remuneration to game development contract workers whose employers have no permanent establishment in New Zealand.

Clarifying eligibility of digital asset providers and contractors

Two submissions asked for clear inclusion of businesses creating assets for game development businesses (e.g. creators of 3D art content), as these entities face similar challenges to game development studios and contribute to the talent base of the game development sector. There was also one call to include firms providing relevant technical support.

One submission called for contractors to be explicitly mentioned in the eligible businesses section, suggesting businesses should not have to deliver all the eligible activities that make up an eligible game, though they should still adhere to the requirement that they may not claim expenditures for which another business has already claimed.

Other comments

One submission proposed considering limiting the rebate to intellectual property (IP) held in New Zealand, firms with a majority of revenues booked in New Zealand (i.e. subject to New Zealand taxes), and studios with New Zealand-based beneficial ownership.

ELIGIBLE GAMES

This section of the eligibility criteria generated suggestions to sharpen and widen the definition of eligible games, calls to change the treatment of lootboxes, and queries on some aspects of excluded games.

Definition

Regarding the proposals around eligible games, submissions variously suggested to:

- Allow web browsers as an eligible format.
- Add physical board games as an eligible format.
- Remove the requirement for “general public release” as this could preclude a business from staging its audience strategy, and replace with “eligible public use”.
- Remove the requirement that games be “made available for download or use over the internet” as this could exclude location-based games (e.g. in a museum) that equally contribute to developing skills and intellectual property in the sector.

Submissions generally welcomed the inclusion of educational and serious games¹.

Exclusions

Lootboxes

Many submissions touched on the issue of lootboxes, which had been proposed to render a game ineligible for the GDSR. Multiple submissions argued that lootboxes do not typically comprise gambling-like practices and noted they are not considered gambling under the Gambling Act 2003. Some submissions agreed that game mechanics that are clearly gambling (i.e. allow real money winnings from random results) should be ineligible, with some referring to the practice of “skin gambling” seen overseas.

¹ Serious games have a purpose beyond entertainment, for instance education or health-related games.

Several submissions called for a clearer definition and proposed various wording options for this aspect, as follows:

- The proposed exclusion of “a gambling service or substantially comprised of gambling-like practices” covers this adequately.
- “A gambling service or substantially comprised of gambling” would avoid inadvertently including large portions of games not seen as gambling by regulators or consumers. Otherwise, need to clearly define what are “gambling-like practices”.
- The definition could be amended to mention lootboxes which can be transferred for real money, are visually similar to slot machines or other real-world gambling, or are necessary to succeed in-game. Guidance could be provided alongside this definition to make it clear these elements must be substantial parts of the game in order to be excluded from the scheme.

Other comments

Some submissions suggested providing more clarity on exclusions by:

- Further distinguishing between games for educational purposes and games designed for corporate training.
- Elaborating on what is intended by the exclusion of “gamified software primarily designed for another purpose”, with one submission suggesting to change the example to “e.g. gamified quizzes”.
- Giving guidance for businesses whose “serious game” could arguably “promote services” in the real world (e.g. a health game leading to use of healthcare services) and lead them to be potentially ineligible under the proposed criteria.
- Rewording “pornography” to “containing pornography”.

ELIGIBLE EXPENDITURE

This section of the eligibility criteria generated a rich set of feedback from the sector, including comments on the questions posed in the consultation document. The responses revealed a diversity of views on some items of expenditure, notably bonuses, hosting and servers, and royalties. The key feedback is grouped below.

Overarching definition

One submission suggested removing the words “and commercialising” from the broad proposal that eligible expenditure is “expenditure incurred by a business in, or in relation to, developing and commercialising digital games”. The inclusion of commercialising was argued to bring in advertising and distribution costs that could grow quickly and are not unique to the game development sector. The submission proposed that the inclusion of roles in marketing and community development, and live operations of an online game, as proposed in the specific inclusions, sufficiently covers relevant activities.

Specific inclusions

There was support for the proposed inclusion of a broad range of staff involved in game development. One submission suggested clarifying that below market-level remuneration is an eligible expenditure and providing more guidance on how to assess eligible expenditure for employees who have multiple roles. Other submissions suggested clarifying that independent contractors not paid through PAYE are eligible, since they are often set up as GST registered individuals or limited liability companies and pay tax on that basis.

Some submissions proposed changes to the inclusion list:

- Exclude expenditure on underlying game infrastructure such as game engines, game production software as a service, and game production hardware and software depreciation costs, as this may go to overseas corporations and could incite higher regional pricing for New Zealand studios.
- Include costs involved in obtaining trademarks for intellectual property (or indeed any IP) within New Zealand, to encourage the development and trademarking of IP locally.
- Provide additional wording around what is included (and excluded) for marketing costs.
- Remove the footnote defining R&D as there does not need to be a line drawn between R&D, prototyping and game development, and clarify that a business can still apply for the R&D Tax Incentive (RDTI) if they choose (but must not “double dip”).

Hosting and servers

The consultation document suggested expenditure on online hosting and distribution of a game would be eligible expenditure, while expenditure on servers or the rights to access servers would not be eligible. There were a variety of views on the appropriate mix of eligibility. Various suggestions were to:

- Include servers, as they are a primary cost in game development, similar to game engines, game production SaaS and game production hardware depreciation costs.
- Include only “expenditure on internal hosting of the game” and exclude “expenditure on third-party servers or the right to access third-party servers”, so as to avoid allowing claims that comprise payments to large multinational providers.
- Include internal hosting of a game (e.g. for production, testing and compiling of games), as appears to already be indicated by the inclusion of “expenditure on game production software as a service, and game production hardware and software depreciation costs”.
- Exclude “expenditure on online hosting and distribution of the game” entirely, alongside the exclusion for server costs, with one submission noting these expenditures go to large overseas corporations and do not build capability in New Zealand.
- Exclude costs of server hosting.

Specific exclusions

Some submissions proposed changes to the exclusion list. A popular request was to allow expenditure on audits, statements of readiness and statutory declarations in relation to an application as eligible expenditure. One submission suggested including an allowance for up to 10% of staff costs from offshore talent, to enable veteran talent acquisition that supports general upskilling.

One submission argued for a flat overhead allowance (e.g. of 8%) and cautioned against providing higher reimbursement of overheads in the GDSR compared to other schemes such as the RDTI.

Bonuses

The proposed exclusion of bonuses generated a variety of views from submitters:

- Some argued that remuneration often includes performance and success-based bonuses and excluding these from eligibility would be a disadvantage, including in comparison to Australia. One submission suggested “excluding this would create barriers to entry for game development studios who look at offering sweat equity or profit sharing as an alternative to market level remuneration upfront”.
- Several agreed that excessive owner salaries should be excluded. In a similar vein, another warned that discretionary bonuses could be exploited or allow payments to shareholders and should be excluded.
- One suggestion was to limit the exclusion to “Expenditure on bonuses to employees who are directors or hold more than 5% shares in the studio”, to avoid owner remuneration being abused; another was to focus on shareholders claiming the GDSR on unreasonably high earnings.

Feedback on questions

Training

The consultation document asked for views on potential eligibility of expenditure on externally provided training. Submissions were generally in favour of this, though most specifically pointed to conference attendance as an example. Views on that point included:

- Participation in conferences is a pivotal training mechanism for the game industry and expenditures on conference attendance (excluding travel) should be eligible.
- Expenditure on training should be included and should include travel expenses to conferences, as this is a pivotal part of training in the games industry given its global nature.

However, there were opposing views, with one submission noting that training is already heavily subsidised through the Ministry of Education or, alternatively, provided by an overseas provider where it makes less sense to provide funding.

Royalties

The consultation document asked for views on potential eligibility of expenditure on royalties. Submissions presented mixed views on this, advocating from full inclusion to limited inclusion. Several submissions commented that there is a

variety of types of royalty and suggested the test should be whether the underlying expenditure is eligible rather than whether it is technically a royalty. Views included:

- Royalties should be included as eligible expenditure.
- Royalties are a key component of gaining access to global audiences. All distribution platforms will charge royalties to access their user base, so these expenses should be included to reduce barriers to entry.
- Expenditure on royalty or revenue sharing agreements should be covered under remuneration for eligible roles where it forms a key part of salary/contract negotiations.
- The scheme should preference including the up-front licensing fee rather than any unit royalties, as royalty costs can be expensive (in line with potential revenue increases gained in using the IP).
- Royalties are possible in various software licensing, publishing and partnership agreements. Some eligible expenditure (e.g. licensing NZ material) could be paid as royalties, and the license agreement for industry standard game engine software Unreal Engine includes royalties. However, royalty payments relative to distribution and marketing activities do not relate to game development and should not be included.
- Only royalties to New Zealand tax resident entities should be considered, and then, with care taken regarding what the royalty is for.

Onshore and offshore hosting and servers

Several submissions suggested an onshore vs offshore distinction regarding hosting and servers is not important. They noted that for an export-oriented sector with most of its user base offshore, onshore hosting would be a fraction of expenses in any case, as the best location for servers will largely be driven by the player base. One submission proposed that the scheme should encourage own hosting.

One submission noted that game developer tools should not be excluded based on their country of origin.

Application process

Submissions expressed general comfort with the overall application approach, though raised queries about cost and feasibility of some elements. The frequency of claims and payment was a common point of discussion.

REGISTRATION

There was general comfort with the proposal for a registration process, though one submission expressed the view that the process seemed “clunky”. Several noted the early registration process would give studios an early opportunity for clarity on spending eligibility and NZ On Air an opportunity to anticipate demand and issues. One submission appreciated the due diligence required to reduce fraud. At a practical level, one submission called for a timeframe within which NZ On Air will indicate whether a firm may submit an application.

However, one submission suggested that eligibility at project level should also be considered, to give more predictability and certainty in the rebate scheme. This submission argued that project eligibility would inform decisions to proceed (or not) with work and would also provide information about net costs associated with a project, which in turn may allow a studio to budget competitively in a global environment. It further argued such eligibility should be determined as early as possible and not necessarily on a once-a-year basis.

STATEMENT OF “READINESS”

Some submissions welcomed the statement of “readiness” as a way to process applications more quickly while providing some comfort that the numbers used in applications are correct.

However, submissions revealed some confusion about the statement of “readiness” process, particularly whether applications themselves still required auditing. Some noted that a 15-day application timeframe would not be long enough for an audit to occur, while others suggested an audit requirement would be a barrier to participation for many firms due to the cost (suggested to be \$20,000-30,000 for an accountant to undertake an audit).

There was also some uncertainty about how long an auditor may need to prepare a statement of “readiness”. Other suggestions included:

- Clarifying the eligibility criteria for an auditor and whether they must be independent of the business.
- Noting the cost of a statement of “readiness”.

APPLICATION

There were differing views about the time allowed for applications. Several suggested 15 days is tight but one acknowledged constraints on the delivery agent as well. One submitter was concerned that obtaining a statutory declaration could cause delays to applications if appropriate witnesses are not available locally, and others suggested to drop the statutory declaration requirement given that penalties for filing a false application are likely to be greater than those for making a false declaration.

A few issues were raised for clarification, including:

- The timeframe for payment of the rebate.
- Whether the scheme can accommodate firms with different balance dates (e.g. a January-December year).

Frequency of applications and claims

Several submissions commented on the annual application proposal. A number suggested that businesses should be able to make claims during the year (e.g. quarterly or even rolling basis) to make payments more timely and support the sector. Several pointed to the availability of this feature in other schemes such as Callaghan Innovation’s Growth Grant and the RDTI. Another suggested that retaining the annual basis of applications and payments could make additional projects less viable for businesses. Two submissions suggested that to avoid the incidence and overhead of smaller claims under a quarterly scheme, there could be a minimum claim threshold (e.g. \$1 million annual rebate).

Against this, one submission noted that an annual application process will ease administrative overhead.

As an alternative to more frequent payments, some submissions suggested facilitating studios’ borrowing against future rebates. One suggestion was to use payroll records to substantiate a one-off advance or loan (e.g. up to 75% of any expected claim), to support studios. One submission noted the RDTI gives precedence for this approach, with loans through the tax pooling system.

However, another submission considered that studios should not be so stretched that waiting for the rebate would impact solvency.

OTHER REQUIREMENTS

Submissions were supportive of acknowledging GDSR support where possible but cautioned that this is not always within a studio’s control. Some suggestions were to:

- Recommend but not require GDSR support to be acknowledged in game credits or loading screens.
- Include in game credits only and optional in loading screens (as some work for hire initiators would not allow this).
- If a game has credits, include an acknowledgement.
- Require GDSR support acknowledgement in credits but make optional on loading screens.
- Develop a logo for the scheme that clearly represents New Zealand, and include this in any physical packaging, initial load/splash screens, and possibly on initial or outro splash screens in promotional marketing.
- Acknowledge support in text strings in credits lists.

There was general support for attention to evaluation and impact assessment. One submission suggested government and industry should work closely to design fit-for-purpose data and insights to demonstrate the impact of the scheme and ensure this is funded on a sustainable basis. Another suggested that the scheme should be reviewed every six months during its first two years of operation to assess impact and adjust if needed. One submission urged close monitoring of wages in the sector compared to overseas and suggested the scheme needs to contribute to wages rather than filling profit gaps.

However, one submission also cautioned against any disclosure or publication of company-proprietary information.

CASES OF OVER-SUBSCRIPTION

Submissions acknowledged the fairness of a pro-rata allocation of funds in cases of over-subscription. They also noted that combined with the \$3 million cap, the fund would avoid being dominated by larger studios.

However, one submission also noted a pro-rata arrangement creates uncertainty and may cause issues for businesses if they have borrowed against their future rebate. There was interest in knowing the likelihood of over-subscription.

In the event of over-subscription, some submissions argued the scheme budget should be increased (or at least revisited), with several pointing to practices in screen support and other global programmes.

Scheme governance

Submissions were relatively silent on governance issues though acknowledging the importance of robust oversight.

One submission suggested continuing the inclusion of the Chairperson of NZGDA as a member of the Digital Technologies ITP Partnership Board. NZGDA noted they were happy to provide advice and assistance on technical matters in cases of reviews of decisions. Several submissions commented that any reviews of decisions must include people with specific game development industry knowledge.

Other views

In their remarks, several submissions drew linkages between game development and the wider creative sector. A number of submissions also called for revisiting the key features of the GDSR.

Submissions generally supported an approach to the scheme that is simple and clear and meets business needs. One submission noted that intellectual property creation, such as in the game sector, can make a vital contribution to diversifying the New Zealand economy. Another noted that the sector's transferable skills can contribute to the growth and productivity of other industries.

Some submissions suggested the GDSR should encourage cross-pollination and collaboration with other creative industries and people in Aotearoa, noting that this could enhance economic impact. One suggested that the scheme should be widened to cover related industries that provide relevant skills to the game development sector.

Several submitters provided views about the key features of the GDSR. One submission commented that the overall design of the scheme does not support start-ups but rather functions as a handout to large successful companies. Specific views on the rate, minimum qualifying expenditure, per firm cap, and overall cap, are listed below.

RATE

- Would rather see the base rate of 20% raised with a tighter definition, than to include a wider range of expenditures.
- The 20% rebate is lower than what is available in nearby labour markets like Australia and being more competitive could help international companies make the decision to establish in New Zealand, which provides new career opportunities and experiences.
- Raise the rate to 25%, as 20% still does not compete with international schemes nor with the screen production grant (SPG) top rate of 25% for some international productions and 40% for domestic productions.

MINIMUM QUALIFYING EXPENDITURE

- “We applaud the minimum eligible claim of \$250,000” as it allows reasonably small teams to access the rebate, complements CODE grants for early-stage firms, is lower than the Australian Digital Games Tax Offset, and is the same as available to visual effects businesses via the SPG.
- The \$250,000 minimum qualifying expenditure may exclude new businesses from gaining support to get going.
- The \$250,000 threshold may put the rebate within the income range of an individual contracting to offshore game companies, which would seem not to contribute to the goals of the scheme. This potential loophole may need to be closed.

PER FIRM CAP

- Increase the cap to \$4 million per annum, as the current \$3 million cap restricts the ability of some existing studios to fully utilise the rebate to respond to Australian competition or offer competitive salary adjustments. This adjustment would not “blow the budget” and would still provide a reasonable limitation to avoid over-subscribing the rebate in future.

OVERALL CAP

In line with comments regarding cases of over-subscription, there were arguments for removing the overall fund cap of \$40 million per annum, to align with uncapped approaches to the SPG and other global programmes.

Several submissions called for any underspend in early years of the scheme to be transferred to later years to minimise over-subscription as the sector grows.