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| **EXPOSURE DRAFT** |

Inserts for

Treasury Laws Amendment (Measures for Consultation) Bill 2022: Digital games tax offset

| Commencement information | | |
| --- | --- | --- |
| Column 1 | Column 2 | Column 3 |
| Provisions | Commencement | Date/Details |
| 1. Schedule ? | The first 1 January, 1 April, 1 July or 1 October to occur after the day this Act receives the Royal Assent. |  |

Schedule 2—Digital games tax offset

Income Tax Assessment Act 1997

1 Section 67‑23 (after table item 20)

Insert:

|  |  |  |
| --- | --- | --- |
| 21 | digital games | the \*tax offsets available under Division 378 |

2 After Division 376 of Part 3‑45 of Chapter 3

Insert:

Division 378—Digital games (tax offset for Australian expenditure on digital games)

Table of Subdivisions

378‑A Guide to Division 378

378‑B Tax offset for Australian expenditure in developing digital games

378‑C Qualifying Australian development expenditure

378‑D Certificates for digital games and other matters

Subdivision 378‑A—Guide to Division 378

378‑1 What this Division is about

Companies may be entitled to a refundable tax offset of 30% of qualifying Australian development expenditure incurred in completing or porting a digital game, or carrying on ongoing development of digital games in an income year.

This offset is designed to support the growth of the digital games industry in Australia by providing concessional tax treatment for Australian expenditure.

Table of sections

378‑2 Key features of the tax offset for Australian expenditure on digital games

378‑5 Structure of this Division

378‑2 Key features of the tax offset for Australian expenditure on digital games

(1) The digital games tax offset is a refundable tax offset of an amount that is 30% of a company’s qualifying Australian development expenditure on:

(a) completing a new digital game; and

(b) porting a completed digital game to a new platform; and

(c) ongoing development of completed digital games during an income year.

(2) One of the requirements for entitlement to the digital games tax offset is that the company must be issued with a completion certificate, a porting certificate, or an ongoing development certificate, which state the amount of qualifying Australian development expenditure on which the offset will be determined.

(3) The offset is claimed by a company in its income tax return.

378‑5 Structure of this Division

Subdivision 378‑B—Tax offset for Australian expenditure in developing digital games

Table of sections

378‑10 Companies entitled to refundable tax offset for Australian expenditure incurred in developing digital games

378‑15 Amount of digital games tax offset

378‑20 Minister must issue certificate for the digital games tax offset

378‑25 Minister to determine a company’s qualifying Australian development expenditure for the digital games tax offset

378‑10 Company entitled to refundable tax offset for Australian expenditure incurred in developing digital games

A company is entitled to a \*tax offset under this section (the ***digital games tax offset***) for an income year if:

(a) the \*Arts Minister has issued one or more certificates to the company for the income year under section 378‑20 (certificate for the digital games tax offset); and

(b) the company claims the offset in its \*income tax return for the income year; and

(c) the company:

(i) is an Australian resident that has an \*ABN; or

(ii) is a foreign resident but does have a \*permanent establishment in Australia and does have an ABN;

when the company lodges the income tax return and when the tax offset is due to be credited to the company.

The claim referred to in paragraph (b) is irrevocable.

Note: The digital games tax offset is a refundable tax offset: see section 67‑23.

378‑15 Amount of digital games tax offset

(1) The amount of the digital games tax offset for a company for an income year is:

(a) unless paragraph (b) applies—30% of the total of the company’s \*qualifying Australian development expenditure for the income year, as determined by the \*Arts Minister under section 378‑25; or

(b) if the amount worked out under paragraph (a) exceeds $20,000,000—$20,000,000.

(2) Despite subsection (1), if 30% of the total amount of \*qualifying Australian development expenditure for the income year, as determined by the \*Arts Minister under section 378‑25, of:

(a) the company; and

(b) each other company (each of which is a ***related*** ***company***) that is \*connected with or is an \*affiliate of the company;

exceeds $20,000,000, then the amount of the digital games tax offset for the company for the income year is the amount worked out under subsection (3) or (5) of this section (as applicable).

(3) If:

(a) the company gives the Commissioner a notice in the \*approved form specifying an amount that is not more than 30% of the amount of the company’s \*qualifying Australian development expenditure for the income year, as determined by the \*Arts Minister under section 378‑25; and

(b) each related company mentioned in paragraph (2)(b) that has an amount of qualifying Australian development expenditure for the income year determined by the Arts Minister under section 378‑25 also gives the Commissioner a notice specifying an amount that is not more than 30% of the amount determined by the Arts Minister for that related company; and

(c) the sum of each amount specified in notices given to the Commissioner by the company and related companies for the income year does not exceed $20,000,000;

then the amount of the company’s digital games tax offset for the income year is the amount specified in the notice given by the company as mentioned in paragraph (a) of this subsection.

Example: 30% of the qualifying Australian development expenditure of connected companies, Jack Co and John Co, works out to $15,000,000 each. Since the sum of these amounts exceeds $20,000,000, the companies must coordinate with one another to ensure that the amount collectively claimed stays under the $20,000,000 cap. It is agreed that Jack Co will notify the Commissioner in respect of an amount totalling $10,000,000, and John Co will do the same. If both companies provide notices to this effect, each will receive an offset of $10,000,000.

(4) A notice given under subsection (3):

(a) must be given at the same time as the company claims the offset in its \*income tax return for an income year; and

(b) is irrevocable.

(5) If subsection (3) does not apply, the amount of the company’s digital games tax offset for the income year is nil.

378‑20 Minister must issue certificates for the digital games tax offset

Completion certificate

(1) The \*Arts Minister must issue a certificate (a ***completion certificate***) to a company for an income year in relation to a \*digital game if:

(a) the game is \*completed in the income year; and

(b) the company has made an application for a completion certificate in relation to the game; and

(c) the total of the company’s \*qualifying Australian development expenditure incurred in completing the game is at least $500,000; and

(d) the Minister is satisfied that the conditions in subsections (7) and (8) are met.

(2) A \*digital game is ***completed*** on the earlier of:

(a) when the game is first released to the general public (other than for testing purposes); or

(b) if the game is developed by a company under a contract entered into at \*arm’s length with another entity—when the company first provides a version of the game to the entity in a state where it could reasonably be regarded as ready to be released to the general public.

Porting certificate

(3) The \*Arts Minister must issue a certificate (a ***porting certificate***) to a company for an income year in relation to a \*digital game if:

(a) the game is \*ported in the income year; and

(b) the company has made an application for a porting certificate in relation to the game; and

(c) the total of the company’s \*qualifying Australian development expenditure incurred in porting the game is at least $500,000; and

(d) the Minister is satisfied that the conditions in subsections (7) and (8) are met.

(4) A \*digital game that has been \*completed is ***ported*** on the earlier of:

(a) when the game is first made available to the general public (other than for testing purposes) on a new platform; or

(b) if the company developed the game under a contract entered into at \*arm’s length with another entity—when the company first provides a version of the game to the entity in a state where it could reasonably be regarded as ready to be made available to the general public on a new platform.

Ongoing development certificate

(5) The \*Arts Minister must issue a certificate (an ***ongoing development certificate***) to a company for an income year in relation to the \*ongoing development of one or more \*digital games if:

(a) ongoing development occurs in relation to the games in the income year; and

(b) the company has made an application for the ongoing development certificate; and

(c) the total of the company’s \*qualifying Australian development expenditure on the ongoing development of the games in the income year is at least $500,000; and

(d) the Minister is satisfied that the conditions in subsections (7) and (8) are met for each of the games.

(6) ***Ongoing development***, in relation to a \*digital game that has been \*completed, means activities undertaken to update, improve or maintain the game.

Type of digital game

(7) The conditions in this subsection are that:

(a) each \*digital game for which a certificate is issued is primarily developed to be made available to the general public for entertainment or educational purposes; and

(b) any of the following apply to each digital game for which a certificate is to be issued:

(i) the game is made available for use over the internet;

(ii) the game is primarily played through the internet;

(iii) the game operates only when a player is connected to the internet; and

(c) each digital game for which a certificate is issued is *not* any of the following:

(i) a game that is a gambling service (within the meaning of the *Interactive Gambling Act 2001*), or is substantially comprised of gambling or gambling‑like practices;

(ii) a game containing elements that are likely to lead to the game being refused classification under the *Classification (Publications, Films and Computer Games) Act 1995*;

(iii) a game that is primarily developed for industrial, corporate or institutional purposes;

(iv) a game that is primarily developed to advertise or promote a product, entity or service.

Example 1: A slot machine simulator game would fail to satisfy the condition that the digital game must not be a gambling service or substantially comprise of gambling or gambling‑like practices, even if the game did not involve any real money or money equivalent. However, an adventure game in which a player may advance to a higher level by winning a game of poker could still meet this condition.

Example 2: An interactive corporate training program would fail to satisfy the condition that the digital game must not be primarily developed for corporate purposes.

Condition relating to company

(8) The conditions in this subsection are that the company that applies for a certificate in respect of a \*digital game:

(a) either:

(i) develops the game as an original game; or

(ii) if the game is a \*completed game—owns or controls the rights to develop the game, or has been engaged to develop the game by the entity who owns or controls the rights to develop the game; and

(b) is primarily responsible for undertaking activities necessary for the development of the digital game.

Note: The operation of paragraph (b) is affected by paragraph 378‑40(1)(d) (which deals with the situation where one company takes over the development of a digital game from another company).

378‑25 Minister to determine a company’s qualifying Australian development expenditure for the digital games tax offset

(1) If a company applies to the \*Arts Minister for the issue of a certificate for an income year under section 378‑20 (certificate for the digital games tax offset), the Minister must, as soon as practicable after receiving the application, determine in writing:

(a) if the certificate is for a \*digital game that is completed in the income year—the total of the company’s \*qualifying Australian development expenditure in respect of the \*completion of the digital game, whether incurred in that income year or in an earlier income year; or

(b) if the certificate is for a digital game that is ported in the income year—the total of the company’s qualifying Australian development expenditure in respect of the \*porting of the digital game, whether incurred in that income year or in an earlier income year; or

(c) if the certificate is an ongoing development certificate—the total of the company’s qualifying Australian development expenditure in respect of the \*ongoing development of each digital game in the income year;

for the purposes of the digital games tax offset.

(2) In making a determination under subsection (1), the \*Arts Minister must have regard to the matters in Subdivision 378‑C.

(3) The \*Arts Minister must give the company written notice of the determination.

(4) A determination made under subsection (1) is not a legislative instrument.

Subdivision 378‑C—Qualifying Australian development expenditure

Table of sections

378‑30 Development expenditure

378‑35 Qualifying Australian development expenditure

378‑40 Expenditure incurred by prior companies in completing or porting a digital game

378‑45 Expenditure to be worked out excluding GST

378‑30 Development expenditure

(1) A company’s ***development expenditure*** on a \*digital game is expenditure that the company incurs in, or in relation to, the development of the game.

Specific inclusions

(2) Without limiting subsection (1), the following expenditure of a company in relation to a \*digital game is (subject to subsection (3)) ***development expenditure***:

(a) remuneration provided to employees and independent contractors engaged by the company who carry out work in connection with the development of the game, including the following:

(i) software developers, programmers and engineers;

(ii) user experience designers and testers;

(iii) game designers;

(iv) writers;

(v) artists, animators and performers (for both voice and motion capture);

(vi) musicians (including composers) and sound designers;

(vii) project managers;

(viii) behaviour analysts;

(ix) quality assurance testers;

(x) persons engaged to perform roles that are broadly similar to those described in subparagraphs (i) to (ix);

(b) expenditure on research for the game;

(c) expenditure on prototyping for the game;

(e) expenditure on user testing, debugging and collecting user data for the game;

(f) expenditure on updating the game;

(g) expenditure on obtaining or maintaining a classification under the *Classification (Publications, Films and Computer Games) Act 1995*;

(h) expenditure on adapting the game for use on particular platforms.

Specific exclusions

(3) Despite subsections (1) and (2), the following expenditure of a company in relation to a \*digital game is not ***development expenditure***:

(a) expenditure on subcontracting by the entity engaged to develop the game;

(b) expenditure on activities that are incidental to, but not directly attributable to, the development of the game (including expenditure on engaging social media managers, sales and marketing professionals, forum administrators and moderators);

(c) the company’s general business overheads;

(d) expenditure on, or in connection with, engaging the following employees or contractors:

(i) employees and contractors whose roles are not related to the development of the game (such as administrative employees);

(ii) employees and contractors who were not Australian residents at the time the expenditure was incurred;

(e) expenditure on travel, accommodation, catering, entertaining or hospitality;

(f) expenditure on marketing, advertising, publicity or promotion for the game or company;

(g) expenditure on computer hardware or servers, or the rights to access computer hardware or servers;

(h) expenditure on the use of land or premises;

(i) expenditure incurred to acquire copyright or a trade mark, or a licence in relation to copyright or a trade mark (other than in relation to engaging employees or contractors);

(j) expenditure incurred by way of, or in relation to, the financing of the game;

(k) expenditure incurred in relation to insurance, audit services, accounting services, human resources, recruitment services and legal services;

(l) any expenditure claimed for the purposes of another \*tax offset, including for the purposes of section 355‑100 (tax offsets for R&D);

(m) expenditure that gives rise to notional deductions for the purposes of section 355‑205 (deductions for R&D expenditure);

(n) expenditure incurred in relation to applying for the digital games tax offset, or any assistance programs administered by the Commonwealth or the States;

(o) expenditure incurred in relation to an entity that is not wholly independent from the company;

(p) expenditure incurred in connection with a transaction in which the company and another party to the transaction did not deal with each other at \*arm’s length;

(q) expenditure on distributing the game;

(r) expenditure on acquiring users for the game;

(s) expenditure on acquiring or licensing software;

(t) expenditure on obtaining permission to use the image, likeness or name of a person or entity, or obtaining an endorsement by a person or entity;

(u) expenditure on visas or work permits.

(4) To avoid doubt, the decline in the value of a \*depreciating asset is not ***development expenditure***.

378‑35 Qualifying Australian development expenditure

(1) A company’s ***qualifying Australian development expenditure*** on a \*digital game is the company’s \*development expenditure on the game to the extent to which the expenditure:

(a) satisfies the relevance test in subsection (2); and

(b) is incurred for, or is reasonably attributable to, goods and services provided or acquired in Australia.

(2) An item of a company’s \*development expenditure on a \*digital game satisfies the relevance test in this subsection:

(a) if the item of expenditure is substantially attributable to developing the game—in full; and

(b) if the item of expenditure is not substantially attributable to developing the game—to the extent that the expenditure is attributable to developing the game.

(3) For the purposes of a \*digital game in respect of which a completion certificate is applied for, the expenditure is not ***qualifying Australian development expenditure*** to the extent it is incurred after the earlier of the following:

(a) the day on which the game is \*completed;

(b) the day on which the company applies for a completion certificate in relation to the game;

(c) the day on which the game has been available to the public for the purposes of conducting testing for one year.

(4) For the purposes of a \*digital game in respect of which a porting certificate is applied for, the expenditure is not ***qualifying Australian development expenditure*** to the extent it is incurred after the earlier of the following:

(a) the day on which the game is \*ported;

(b) the day on which the company applies for a porting certificate in relation to the game.

(5) You cannot count the same expenditure as \*qualifying Australian development expenditure for the purposes of more than one certificate under section 378‑20.

Example: Expenditure on porting a digital game that is claimed as qualifying Australian development expenditure for the purposes of a porting certificate under subsection 378‑20(3) cannot be claimed for the purposes of an ongoing development certificate.

378‑40 Expenditure incurred by prior companies in completing or porting a digital game

Expenditure incurred by outgoing company attributed to incoming company

(1) For the purposes of this Division, if a company (the ***incoming company***) takes over the development of a \*digital game from another company (the ***outgoing company***):

(a) expenditure incurred by the outgoing company in relation to \*completing or \*porting the game is taken to have been incurred by the incoming company; and

(b) for the purposes of determining the extent to which that expenditure is \*qualifying Australian development expenditure of the incoming company, the incoming company is taken:

(i) to have been an Australian resident at any time when the outgoing company was an Australian resident; and

(ii) to have had a \*permanent establishment in Australia at any time when the outgoing company had a permanent establishment in Australia; and

(iii) to have had an \*ABN at any time when the outgoing company had an ABN; and

(c) expenditure that the incoming company incurs in order to be able to take over the development of the game is to be disregarded for the purposes of this Division; and

(d) any activities carried out by the outgoing company in relation to the game are taken, for the purposes of paragraph 378‑20(8)(b), to have been carried out by the incoming company in relation to the game.

Expenditure previously attributed to outgoing company attributed to incoming company

(2) For the purposes of subsection (1):

(a) expenditure incurred by the outgoing company in relation to \*completing or \*porting the \*digital game includes expenditure that the outgoing company is itself taken to have incurred on the digital game because of the operation of subsection (1); and

(b) the outgoing company is taken:

(i) to have been an Australian resident at any time when the outgoing company is taken to have been an Australian resident because of the operation of subsection (1); and

(ii) to have had a \*permanent establishment in Australia at any time when the outgoing company is taken to have had a permanent establishment in Australia because of the operation of subsection (1); and

(iii) to have had an \*ABN at any time when the outgoing company is taken to have had an ABN because of the operation of subsection (1); and

(c) activities carried out by the outgoing company in relation to the digital game include activities that the outgoing company is taken to have carried out in relation to the digital game because of the operation of subsection (1).

Example: If Uncle Carty Ltd starts out developing a digital game and then Mr Grouble Ltd takes over the development of the digital game, Mr Grouble Ltd is taken to have incurred the expenditure that Uncle Carty Ltd incurred on the digital game. If Lousie Ltd subsequently takes over the development of the digital game from Mr Grouble Ltd, Lousie Ltd is taken to have incurred the expenditure that Mr Grouble Ltd incurred on the digital game (including the expenditure of Uncle Carty Ltd that is attributed to Mr Grouble Ltd).

378‑45 Expenditure to be worked out excluding GST

In determining an amount of expenditure for the purpose of this Division, the expenditure is taken to exclude \*GST.

Subdivision 378‑D—Certificates for digital games and other matters

Table of sections

378‑50 Company may apply for certificate

378‑55 Notice of refusal to issue certificate

378‑60 Issue of certificate

378‑65 Revocation of certificate

378‑70 Delegation by Arts Minister

378‑75 Notice of decision or determination

378‑80 Review of decisions by the Administrative Appeals Tribunal

378‑85 Minister may make rules about the digital games tax offset

378‑90 Amendment of certificate for the digital games tax offset

378‑95 Amendment of assessments

378‑100 Copy of digital game to be made available to the National Film and Sound Archive

378‑50 Single company or head company may apply for certificate

(1) If a company has incurred all of its \*qualifying Australian development expenditure on \*completing or \*porting a \*digital game, or on the \*ongoing development of digital games in an income year:

(a) the company; or

(b) if the company is a \*member of a \*consolidated group or a \*MEC group—the \*head company of the consolidated group or MEC group;

may apply to the \*Arts Minister for the issue of the applicable certificate under section 378‑20.

(2) An application under subsection (1) must:

(a) specify which certificate is sought; and

(b) specify whether the company is an Australian resident or a foreign resident with a \*permanent establishment in Australia; and

(c) contain sufficient detail to enable the \*Arts Minister to determine whether the company’s expenditure is \*qualifying Australian development expenditure; and

(d) be made in accordance with the rules determined by the Arts Minister under section 378‑225, so far as they relate to the requirements for applications.

378‑55 Notice of refusal to issue certificate

If the \*Arts Minister decides not to issue a certificate under section 378‑20 (certificate for the digital games tax offset), the Minister must give the applicant written notice of the decision (including reasons for the decision).

378‑60 Issue of certificate

(1) A certificate issued to a company under section 378‑20 (certificate for the digital games tax offset) must:

(a) be in writing; and

(b) specify the company’s \*ABN; and

(c) specify the date of issue of the certificate; and

(d) specify the total of the company’s \*qualifying Australian development expenditure, as determined by the \*Arts Minister under section 378‑25; and

(e) if the certificate is issued under subsection 378‑20(1) (completion certificate) or (3) (porting certificate)—specify:

(i) the name of the \*digital game to which the certificate relates; and

(ii) the income year in which the digital game was \*completed or \*ported (as applicable); and

(f) if the certificate is issued under subsection 378‑20(5) (ongoing development certificate)—specify:

(i) the name of the digital game, or digital games, to which the certificate relates; and

(ii) the income year for which the digital games tax offset is being sought.

(2) The \*Arts Minister must give the Commissioner notice of the issue of the certificate within 30 days after issuing the certificate.

(3) The notice under subsection (2) must specify:

(a) the company’s name; and

(b) the company’s address; and

(c) the total of the company’s \*qualifying Australian development expenditure on the \*digital games, as determined by the \*Arts Minister under section 378‑25; and

(d) other matters agreed to between the Arts Minister and the Commissioner.

378‑65 Revocation of certificate

(1) The \*Arts Minister may revoke a certificate issued to a company under section 378‑20 (certificate for the digital games tax offset) if the Minister is satisfied that:

(a) the issue of the certificate was based on inaccurate information; or

(b) the certificate was obtained by fraud or serious misrepresentation; or

(c) if the certificate is a completion certificate or a porting certificate issued under subsection 378‑20(1) or (3)—the total of the company’s \*qualifying Australian development expenditure on the \*digital game is less than $500,000; or

(d) if the certificate is an ongoing development certificate issued under subsection 378‑20(5) for an income year—the total of the company’s qualifying Australian development expenditure on the development of digital games in the income year is less than $500,000.

(2) If the \*Arts Minister revokes a certificate under subsection (1), the Minister must give written notice of the revocation to:

(a) the company to whom the certificate was issued, including reasons for the decision to revoke the certificate; and

(b) the Commissioner, within 30 days after the date of revocation.

(3) If a certificate is revoked under subsection (1), it is taken, for the purposes of this Division, never to have been issued.

Note: This means that if an assessment of a company’s income tax is issued on the basis that the company is entitled to the digital games tax offset and the certificate for the digital games tax offset is then revoked, the assessment will be amended to take account of the fact that the company was never entitled to the offset: see section 378‑235.

(4) Subsection (3) does not apply for the purposes of:

(a) the operation of this section or section 378‑215; or

(b) a review by a court or the \*AAT of the decision to revoke the certificate.

378‑70 Delegation by Arts Minister

(1) The \*Arts Minister may, in writing, delegate all or any of the Minister’s powers under this Division to:

(a) the \*Arts Secretary; or

(b) an SES employee, or acting SES employee, in the Department administered by the Arts Minister.

(2) In exercising powers under a delegation, the delegate must comply with any directions of the \*Arts Minister.

378‑75 Notice of decision or determination

(1) This section applies to a notice of a decision given under section 378‑195 (refusal to issue a certificate) or 378‑205 (revocation of a certificate), and to a notice of a determination given under section 378‑25 (determination of qualifying Australian development expenditure).

(2) The notice of the decision or determination is to include the statements set out in subsections (3) and (4).

(3) There must be a statement to the effect that, subject to the *Administrative Appeals Tribunal Act 1975*, an application may be made to the \*AAT, by (or on behalf of) any entity whose interests are affected by the decision or determination, for review of the decision or determination.

(4) There must also be a statement to the effect that a request may be made under section 28 of the *Administrative Appeals Tribunal Act 1975* by (or on behalf of) such an entity for a statement:

(a) setting out the findings on material questions of fact; and

(b) referring to the evidence or other material on which those findings were based; and

(c) giving the reasons for the decision or determination;

except where subsection 28(4) of that Act applies.

(5) If the \*Arts Minister fails to comply with subsection (3) or (4), that failure does not affect the validity of the decision or determination.

378‑80 Review of decisions by the Administrative Appeals Tribunal

Applications may be made to the \*AAT for review of:

(a) a decision made by the \*Arts Minister to refuse an application for a certificate under section 378‑20 (certificate for the digital games tax offset); or

(b) a decision made by the Arts Minister under section 378‑205 to revoke a certificate for the digital games tax offset; or

(c) a decision made by the Arts Minister under section 378‑30 to amend a certificate for the digital games tax offset; or

(d) a determination by the Arts Minister in relation to the total of a company’s \*qualifying Australian development expenditure under section 378‑25.

378‑85 Minister may make rules about the digital games tax offset

The \*Arts Minister may, by legislative instrument, make rules specifying:

(a) how applications for certificates in relation to the digital games tax offset are to be made, including:

(i) the form in which applications are to be made; and

(ii) the information to be provided in applications; and

(iii) methods for verifying such information; and

(iv) procedures for providing, at the Minister’s request, additional information in support of an application; or

(b) the form and contents of certificates in relation to the digital games tax offset; or

(c) how amendments of certificates in relation to the digital games tax offset are to be made, including:

(i) the form in which the request for an amendment may be made; and

(ii) circumstances in which an amendment may be requested, or made on the Minister’s own initiative; and

(iii) the information to be provided in a request for an amendment; and

(iv) methods for verifying such information; and

(v) procedures for providing, at the Minister’s request, additional information in support of a request for an amendment.

378‑90 Amendment of certificate for the digital games tax offset

(1) The \*Arts Minister may amend a certificate issued under section 378‑20 (certificate for the digital games tax offset) if:

(a) the company to whom the certificate is issued requests, in writing, an amendment to the certificate; or

(b) the Minister decides to amend the certificate on his or her own initiative.

(2) In deciding whether to amend an exemption certificate under subsection (1), the \*Arts Minister:

(a) must have regard to the matters prescribed by the regulations; and

(b) may have regard to any other matter that the Minister considers relevant.

(3) If the \*Arts Minister amends a certificate under subsection (1), the Minister must give written notice of the amendment to:

(a) the company to whom the certificate was issued; and

(b) the Commissioner, within 30 days after the date of amendment.

(4) If the \*Arts Minister refuses to amend an exemption certificate upon a request by a company under paragraph (1)(a), the Minister must notify the company accordingly.

378‑95 Amendment of assessments

Section 170 of the *Income Tax Assessment Act 1936* does not prevent the amendment of an assessment for the purposes of giving effect to this Division for an income year if:

(a) a certificate issued to a company under section 378‑20 (certificate for the digital games tax offset) of this Act is either:

(i) amended under section 378‑230 of this Act; or

(ii) revoked under section 378‑205 of this Act;

after the time the company lodged its \*income tax return for an income year; and

(b) the amendment is made at any time during the period of 4 years starting immediately after the amendment or revocation of the certificate.

Note: Section 170 of the *Income Tax Assessment Act 1936* specifies the periods within which assessments may be amended.

378‑100 Copy of digital game to be made available to the National Film and Sound Archive of Australia

The company to whom a certificate is issued under section 378‑20 (certificate for the digital games tax offset) must make available to the National Film and Sound Archive of Australia:

(a) a copy of each \*digital game named in the certificate; and

(b) a copy of any materials provided to the public in connection with each of those game.

3 Section 995‑1 (definition of *completed*)

Repeal the definition, substitute:

***completed***:

(a) in relation to a \*film, has the meaning given by subsection 376‑55(2); and

(b) in relation to a \*digital game, has the meaning given by subsection 378‑20(2).

4 Section 995‑1 (definition of *development expenditure*)

Repeal the definition, substitute:

***development expenditure***:

(a) in relation to a \*film, means expenditure to the extent to which it is incurred in meeting the development costs for the film and includes expenditure to the extent to which it is incurred on any of the following:

(i) location surveys and other activities undertaken to assess locations for possible use in the film;

(ii) storyboarding for the film;

(iii) scriptwriting for the film;

(iv) research for the film;

(v) casting actors for the film;

(vi) developing a budget for the film;

(vii) developing a shooting schedule for the film; and

(b) in relation to a \*digital game, has the meaning given by section 378‑24.

5 Section 995‑1

Insert:

***digital game*** means a game in electronic form that is capable of generating a display on a computer monitor, television screen, liquid crystal display or similar medium that allows for the playing of an interactive game.

***ongoing development***, in relation to a \*digital game, has the meaning given by subsection 378‑20(6).

***ported***, in relation to a \*digital game, has the meaning given by subsection 378‑20(4).

***qualifying Australian development expenditure*** has the meaning given by section 378‑26.

6 Application provision

The amendments made by this Schedule apply in relation to expenditure incurred on or after 1 July 2022.