

EXPOSURE DRAFT

EXPOSURE DRAFT

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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.	

EXPOSURE DRAFT

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

EXPOSURE DRAFT

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:

EXPOSURE DRAFT

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- 1 (i) is an Australian resident that has an *ABN; or
2 (ii) is a foreign resident but does have a *permanent
3 establishment in Australia and does have an ABN;
4 when the company lodges the income tax return and when
5 the tax offset is due to be credited to the company.

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

7 Note: The digital games tax offset is a refundable tax offset: see
8 section 67-23.

9 **378-15 Amount of digital games tax offset**

- 10 (1) The amount of the digital games tax offset for a company for an
11 income year is:
- 12 (a) unless paragraph (b) applies—30% of the total of the
13 company's *qualifying Australian development expenditure
14 for the income year, as determined by the *Arts Minister
15 under section 378-25; or
16 (b) if the amount worked out under paragraph (a) exceeds
17 \$20,000,000—\$20,000,000.
- 18 (2) Despite subsection (1), if 30% of the total amount of *qualifying
19 Australian development expenditure for the income year, as
20 determined by the *Arts Minister under section 378-25, of:
- 21 (a) the company; and
22 (b) each other company (each of which is a *related company*)
23 that is *connected with or is an *affiliate of the company;
24 exceeds \$20,000,000, then the amount of the digital games tax
25 offset for the company for the income year is the amount worked
26 out under subsection (3) or (5) of this section (as applicable).
- 27 (3) If:
- 28 (a) the company gives the Commissioner a notice in the
29 *approved form specifying an amount that is not more than
30 30% of the amount of the company's *qualifying Australian
31 development expenditure for the income year, as determined
32 by the *Arts Minister under section 378-25; and
33 (b) each related company mentioned in paragraph (2)(b) that has
34 an amount of qualifying Australian development expenditure
35 for the income year determined by the Arts Minister under
36 section 378-25 also gives the Commissioner a notice
37 specifying an amount that is not more than 30% of the

EXPOSURE DRAFT

1 amount determined by the Arts Minister for that related
2 company; and

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

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

9 Example: 30% of the qualifying Australian development expenditure of
10 connected companies, Jack Co and John Co, works out to \$15,000,000
11 each. Since the sum of these amounts exceeds \$20,000,000, the
12 companies must coordinate with one another to ensure that the amount
13 collectively claimed stays under the \$20,000,000 cap. It is agreed that
14 Jack Co will notify the Commissioner in respect of an amount
15 totalling \$10,000,000, and John Co will do the same. If both
16 companies provide notices to this effect, each will receive an offset of
17 \$10,000,000.

- 18 (4) A notice given under subsection (3):
19 (a) must be given at the same time as the company claims the
20 offset in its *income tax return for an income year; and
21 (b) is irrevocable.
- 22 (5) If subsection (3) does not apply, the amount of the company's
23 digital games tax offset for the income year is nil.

24 **378-20 Minister must issue certificates for the digital games tax** 25 **offset**

26 *Completion certificate*

- 27 (1) The *Arts Minister must issue a certificate (a ***completion***
28 ***certificate***) to a company for an income year in relation to a
29 *digital game if:
30 (a) the game is *completed in the income year; and
31 (b) the company has made an application for a completion
32 certificate in relation to the game; and
33 (c) the total of the company's *qualifying Australian
34 development expenditure incurred in completing the game is
35 at least \$500,000; and
36 (d) the Minister is satisfied that the conditions in subsections (7)
37 and (8) are met.
- 38 (2) A *digital game is ***completed*** on the earlier of:

EXPOSURE DRAFT

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- 1 (a) when the game is first released to the general public (other
2 than for testing purposes); or
3 (b) if the game is developed by a company under a contract
4 entered into at *arm's length with another entity—when the
5 company first provides a version of the game to the entity in
6 a state where it could reasonably be regarded as ready to be
7 released to the general public.

8 *Porting certificate*

- 9 (3) The *Arts Minister must issue a certificate (a ***porting certificate***) to
10 a company for an income year in relation to a *digital game if:
11 (a) the game is *ported in the income year; and
12 (b) the company has made an application for a porting certificate
13 in relation to the game; and
14 (c) the total of the company's *qualifying Australian
15 development expenditure incurred in porting the game is at
16 least \$500,000; and
17 (d) the Minister is satisfied that the conditions in subsections (7)
18 and (8) are met.
- 19 (4) A *digital game that has been *completed is ***ported*** on the earlier
20 of:
21 (a) when the game is first made available to the general public
22 (other than for testing purposes) on a new platform; or
23 (b) if the company developed the game under a contract entered
24 into at *arm's length with another entity—when the company
25 first provides a version of the game to the entity in a state
26 where it could reasonably be regarded as ready to be made
27 available to the general public on a new platform.

28 *Ongoing development certificate*

- 29 (5) The *Arts Minister must issue a certificate (an ***ongoing***
30 ***development certificate***) to a company for an income year in
31 relation to the *ongoing development of one or more *digital games
32 if:
33 (a) ongoing development occurs in relation to the games in the
34 income year; and
35 (b) the company has made an application for the ongoing
36 development certificate; and

EXPOSURE DRAFT

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- 1 (c) the total of the company's *qualifying Australian
2 development expenditure on the ongoing development of the
3 games in the income year is at least \$500,000; and
4 (d) the Minister is satisfied that the conditions in subsections (7)
5 and (8) are met for each of the games.

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

9 *Type of digital game*

- 10 (7) The conditions in this subsection are that:
- 11 (a) each *digital game for which a certificate is issued is
12 primarily developed to be made available to the general
13 public for entertainment or educational purposes; and
14 (b) any of the following apply to each digital game for which a
15 certificate is to be issued:
- 16 (i) the game is made available for use over the internet;
17 (ii) the game is primarily played through the internet;
18 (iii) the game operates only when a player is connected to
19 the internet; and
- 20 (c) each digital game for which a certificate is issued is *not* any
21 of the following:
- 22 (i) a game that is a gambling service (within the meaning
23 of the *Interactive Gambling Act 2001*), or is
24 substantially comprised of gambling or gambling-like
25 practices;
26 (ii) a game containing elements that are likely to lead to the
27 game being refused classification under the
28 *Classification (Publications, Films and Computer
29 Games) Act 1995*;
30 (iii) a game that is primarily developed for industrial,
31 corporate or institutional purposes;
32 (iv) a game that is primarily developed to advertise or
33 promote a product, entity or service.

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

EXPOSURE DRAFT

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

4 *Condition relating to company*

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

7 (a) either:

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

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

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

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

18 **378-25 Minister to determine a company's qualifying Australian**
19 **development expenditure for the digital games tax offset**

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

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

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

34 (c) if the certificate is an ongoing development certificate—the
35 total of the company's qualifying Australian development
36 expenditure in respect of the *ongoing development of each
37 digital game in the income year;

38 for the purposes of the digital games tax offset.

EXPOSURE DRAFT

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- 1 (2) In making a determination under subsection (1), the *Arts Minister
2 must have regard to the matters in Subdivision 378-C.
- 3 (3) The *Arts Minister must give the company written notice of the
4 determination.
- 5 (4) A determination made under subsection (1) is not a legislative
6 instrument.

7 Subdivision 378-C—Qualifying Australian development 8 expenditure

9 Table of sections

10	378-30	Development expenditure
11	378-35	Qualifying Australian development expenditure
12	378-40	Expenditure incurred by prior companies in completing or porting a digital 13 game
14	378-45	Expenditure to be worked out excluding GST

15 378-30 Development expenditure

- 16 (1) A company's *development expenditure* on a *digital game is
17 expenditure that the company incurs in, or in relation to, the
18 development of the game.

19 *Specific inclusions*

- 20 (2) Without limiting subsection (1), the following expenditure of a
21 company in relation to a *digital game is (subject to subsection (3))
22 *development expenditure*:
- 23 (a) remuneration provided to employees and independent
24 contractors engaged by the company who carry out work in
25 connection with the development of the game, including the
26 following:
- 27 (i) software developers, programmers and engineers;
 - 28 (ii) user experience designers and testers;
 - 29 (iii) game designers;
 - 30 (iv) writers;
 - 31 (v) artists, animators and performers (for both voice and
32 motion capture);
 - 33 (vi) musicians (including composers) and sound designers;
 - 34 (vii) project managers;
 - 35 (viii) behaviour analysts;
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EXPOSURE DRAFT

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- 1 (ix) quality assurance testers;
2 (x) persons engaged to perform roles that are broadly
3 similar to those described in subparagraphs (i) to (ix);
4 (b) expenditure on research for the game;
5 (c) expenditure on prototyping for the game;
6 (e) expenditure on user testing, debugging and collecting user
7 data for the game;
8 (f) expenditure on updating the game;
9 (g) expenditure on obtaining or maintaining a classification
10 under the *Classification (Publications, Films and Computer*
11 *Games) Act 1995*;
12 (h) expenditure on adapting the game for use on particular
13 platforms.

14 *Specific exclusions*

- 15 (3) Despite subsections (1) and (2), the following expenditure of a
16 company in relation to a *digital game is not ***development***
17 ***expenditure***:
18 (a) expenditure on subcontracting by the entity engaged to
19 develop the game;
20 (b) expenditure on activities that are incidental to, but not
21 directly attributable to, the development of the game
22 (including expenditure on engaging social media managers,
23 sales and marketing professionals, forum administrators and
24 moderators);
25 (c) the company's general business overheads;
26 (d) expenditure on, or in connection with, engaging the
27 following employees or contractors:
28 (i) employees and contractors whose roles are not related to
29 the development of the game (such as administrative
30 employees);
31 (ii) employees and contractors who were not Australian
32 residents at the time the expenditure was incurred;
33 (e) expenditure on travel, accommodation, catering, entertaining
34 or hospitality;
35 (f) expenditure on marketing, advertising, publicity or
36 promotion for the game or company;
37 (g) expenditure on computer hardware or servers, or the rights to
38 access computer hardware or servers;
39 (h) expenditure on the use of land or premises;
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EXPOSURE DRAFT

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- 1 (i) expenditure incurred to acquire copyright or a trade mark, or
2 a licence in relation to copyright or a trade mark (other than
3 in relation to engaging employees or contractors);
- 4 (j) expenditure incurred by way of, or in relation to, the
5 financing of the game;
- 6 (k) expenditure incurred in relation to insurance, audit services,
7 accounting services, human resources, recruitment services
8 and legal services;
- 9 (l) any expenditure claimed for the purposes of another *tax
10 offset, including for the purposes of section 355-100 (tax
11 offsets for R&D);
- 12 (m) expenditure that gives rise to notional deductions for the
13 purposes of section 355-205 (deductions for R&D
14 expenditure);
- 15 (n) expenditure incurred in relation to applying for the digital
16 games tax offset, or any assistance programs administered by
17 the Commonwealth or the States;
- 18 (o) expenditure incurred in relation to an entity that is not wholly
19 independent from the company;
- 20 (p) expenditure incurred in connection with a transaction in
21 which the company and another party to the transaction did
22 not deal with each other at *arm's length;
- 23 (q) expenditure on distributing the game;
- 24 (r) expenditure on acquiring users for the game;
- 25 (s) expenditure on acquiring or licensing software;
- 26 (t) expenditure on obtaining permission to use the image,
27 likeness or name of a person or entity, or obtaining an
28 endorsement by a person or entity;
- 29 (u) expenditure on visas or work permits.
- 30 (4) To avoid doubt, the decline in the value of a *depreciating asset is
31 not *development expenditure*.

32 **378-35 Qualifying Australian development expenditure**

- 33 (1) A company's *qualifying Australian development expenditure* on a
34 *digital game is the company's *development expenditure on the
35 game to the extent to which the expenditure:
- 36 (a) satisfies the relevance test in subsection (2); and
37 (b) is incurred for, or is reasonably attributable to, goods and
38 services provided or acquired in Australia.

EXPOSURE DRAFT

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- 1 (2) An item of a company's *development expenditure on a *digital
2 game satisfies the relevance test in this subsection:
3 (a) if the item of expenditure is substantially attributable to
4 developing the game—in full; and
5 (b) if the item of expenditure is not substantially attributable to
6 developing the game—to the extent that the expenditure is
7 attributable to developing the game.
- 8 (3) For the purposes of a *digital game in respect of which a
9 completion certificate is applied for, the expenditure is not
10 ***qualifying Australian development expenditure*** to the extent it is
11 incurred after the earlier of the following:
12 (a) the day on which the game is *completed;
13 (b) the day on which the company applies for a completion
14 certificate in relation to the game;
15 (c) the day on which the game has been available to the public
16 for the purposes of conducting testing for one year.
- 17 (4) For the purposes of a *digital game in respect of which a porting
18 certificate is applied for, the expenditure is not ***qualifying***
19 ***Australian development expenditure*** to the extent it is incurred
20 after the earlier of the following:
21 (a) the day on which the game is *ported;
22 (b) the day on which the company applies for a porting
23 certificate in relation to the game.
- 24 (5) You cannot count the same expenditure as *qualifying Australian
25 development expenditure for the purposes of more than one
26 certificate under section 378-20.
- 27 Example: Expenditure on porting a digital game that is claimed as qualifying
28 Australian development expenditure for the purposes of a porting
29 certificate under subsection 378-20(3) cannot be claimed for the
30 purposes of an ongoing development certificate.

31 **378-40 Expenditure incurred by prior companies in completing or** 32 **porting a digital game**

33 *Expenditure incurred by outgoing company attributed to incoming*
34 *company*

- 35 (1) For the purposes of this Division, if a company (the ***incoming***
36 ***company***) takes over the development of a *digital game from
37 another company (the ***outgoing company***):
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EXPOSURE DRAFT

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- 1 (a) expenditure incurred by the outgoing company in relation to
2 *completing or *porting the game is taken to have been
3 incurred by the incoming company; and
4 (b) for the purposes of determining the extent to which that
5 expenditure is *qualifying Australian development
6 expenditure of the incoming company, the incoming
7 company is taken:
8 (i) to have been an Australian resident at any time when the
9 outgoing company was an Australian resident; and
10 (ii) to have had a *permanent establishment in Australia at
11 any time when the outgoing company had a permanent
12 establishment in Australia; and
13 (iii) to have had an *ABN at any time when the outgoing
14 company had an ABN; and
15 (c) expenditure that the incoming company incurs in order to be
16 able to take over the development of the game is to be
17 disregarded for the purposes of this Division; and
18 (d) any activities carried out by the outgoing company in relation
19 to the game are taken, for the purposes of paragraph
20 378-20(8)(b), to have been carried out by the incoming
21 company in relation to the game.

22 *Expenditure previously attributed to outgoing company attributed*
23 *to incoming company*

- 24 (2) For the purposes of subsection (1):
25 (a) expenditure incurred by the outgoing company in relation to
26 *completing or *porting the *digital game includes
27 expenditure that the outgoing company is itself taken to have
28 incurred on the digital game because of the operation of
29 subsection (1); and
30 (b) the outgoing company is taken:
31 (i) to have been an Australian resident at any time when the
32 outgoing company is taken to have been an Australian
33 resident because of the operation of subsection (1); and
34 (ii) to have had a *permanent establishment in Australia at
35 any time when the outgoing company is taken to have
36 had a permanent establishment in Australia because of
37 the operation of subsection (1); and
38 (iii) to have had an *ABN at any time when the outgoing
39 company is taken to have had an ABN because of the
40 operation of subsection (1); and

EXPOSURE DRAFT

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

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

13 **378-45 Expenditure to be worked out excluding GST**

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

16 **Subdivision 378-D—Certificates for digital games and other** 17 **matters**

18 **Table of sections**

19 378-50 Company may apply for certificate
20 378-55 Notice of refusal to issue certificate
21 378-60 Issue of certificate
22 378-65 Revocation of certificate
23 378-70 Delegation by Arts Minister
24 378-75 Notice of decision or determination
25 378-80 Review of decisions by the Administrative Appeals Tribunal
26 378-85 Minister may make rules about the digital games tax offset
27 378-90 Amendment of certificate for the digital games tax offset
28 378-95 Amendment of assessments
29 378-100 Copy of digital game to be made available to the National Film and Sound
30 Archive

31 **378-50 Single company or head company may apply for certificate**

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

EXPOSURE DRAFT

1 (b) if the company is a *member of a *consolidated group or a
2 *MEC group—the *head company of the consolidated group
3 or MEC group;
4 may apply to the *Arts Minister for the issue of the applicable
5 certificate under section 378-20.

- 6 (2) An application under subsection (1) must:
- 7 (a) specify which certificate is sought; and
 - 8 (b) specify whether the company is an Australian resident or a
9 foreign resident with a *permanent establishment in
10 Australia; and
 - 11 (c) contain sufficient detail to enable the *Arts Minister to
12 determine whether the company's expenditure is *qualifying
13 Australian development expenditure; and
 - 14 (d) be made in accordance with the rules determined by the Arts
15 Minister under section 378-225, so far as they relate to the
16 requirements for applications.

17 **378-55 Notice of refusal to issue certificate**

18 If the *Arts Minister decides not to issue a certificate under section
19 378-20 (certificate for the digital games tax offset), the Minister
20 must give the applicant written notice of the decision (including
21 reasons for the decision).

22 **378-60 Issue of certificate**

- 23 (1) A certificate issued to a company under section 378-20 (certificate
24 for the digital games tax offset) must:
- 25 (a) be in writing; and
 - 26 (b) specify the company's *ABN; and
 - 27 (c) specify the date of issue of the certificate; and
 - 28 (d) specify the total of the company's *qualifying Australian
29 development expenditure, as determined by the *Arts
30 Minister under section 378-25; and
 - 31 (e) if the certificate is issued under subsection 378-20(1)
32 (completion certificate) or (3) (porting certificate)—specify:
 - 33 (i) the name of the *digital game to which the certificate
34 relates; and
 - 35 (ii) the income year in which the digital game was
36 *completed or *ported (as applicable); and

EXPOSURE DRAFT

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- 1 (f) if the certificate is issued under subsection 378-20(5)
2 (ongoing development certificate)—specify:
3 (i) the name of the digital game, or digital games, to which
4 the certificate relates; and
5 (ii) the income year for which the digital games tax offset is
6 being sought.
- 7 (2) The *Arts Minister must give the Commissioner notice of the issue
8 of the certificate within 30 days after issuing the certificate.
- 9 (3) The notice under subsection (2) must specify:
10 (a) the company's name; and
11 (b) the company's address; and
12 (c) the total of the company's *qualifying Australian
13 development expenditure on the *digital games, as
14 determined by the *Arts Minister under section 378-25; and
15 (d) other matters agreed to between the Arts Minister and the
16 Commissioner.

17 **378-65 Revocation of certificate**

- 18 (1) The *Arts Minister may revoke a certificate issued to a company
19 under section 378-20 (certificate for the digital games tax offset) if
20 the Minister is satisfied that:
21 (a) the issue of the certificate was based on inaccurate
22 information; or
23 (b) the certificate was obtained by fraud or serious
24 misrepresentation; or
25 (c) if the certificate is a completion certificate or a porting
26 certificate issued under subsection 378-20(1) or (3)—the
27 total of the company's *qualifying Australian development
28 expenditure on the *digital game is less than \$500,000; or
29 (d) if the certificate is an ongoing development certificate issued
30 under subsection 378-20(5) for an income year—the total of
31 the company's qualifying Australian development
32 expenditure on the development of digital games in the
33 income year is less than \$500,000.
- 34 (2) If the *Arts Minister revokes a certificate under subsection (1), the
35 Minister must give written notice of the revocation to:
36 (a) the company to whom the certificate was issued, including
37 reasons for the decision to revoke the certificate; and

EXPOSURE DRAFT

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

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

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

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

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

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

14 **378-70 Delegation by Arts Minister**

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

17 (a) the *Arts Secretary; or

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

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

22 **378-75 Notice of decision or determination**

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

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

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

EXPOSURE DRAFT

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- 1 (4) There must also be a statement to the effect that a request may be
2 made under section 28 of the *Administrative Appeals Tribunal Act*
3 *1975* by (or on behalf of) such an entity for a statement:
4 (a) setting out the findings on material questions of fact; and
5 (b) referring to the evidence or other material on which those
6 findings were based; and
7 (c) giving the reasons for the decision or determination;
8 except where subsection 28(4) of that Act applies.
- 9 (5) If the *Arts Minister fails to comply with subsection (3) or (4), that
10 failure does not affect the validity of the decision or determination.

11 **378-80 Review of decisions by the Administrative Appeals Tribunal**

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

- 13 (a) a decision made by the *Arts Minister to refuse an
14 application for a certificate under section 378-20 (certificate
15 for the digital games tax offset); or
16 (b) a decision made by the Arts Minister under section 378-205
17 to revoke a certificate for the digital games tax offset; or
18 (c) a decision made by the Arts Minister under section 378-30 to
19 amend a certificate for the digital games tax offset; or
20 (d) a determination by the Arts Minister in relation to the total of
21 a company's *qualifying Australian development expenditure
22 under section 378-25.

23 **378-85 Minister may make rules about the digital games tax offset**

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

- 26 (a) how applications for certificates in relation to the digital
27 games tax offset are to be made, including:
28 (i) the form in which applications are to be made; and
29 (ii) the information to be provided in applications; and
30 (iii) methods for verifying such information; and
31 (iv) procedures for providing, at the Minister's request,
32 additional information in support of an application; or
33 (b) the form and contents of certificates in relation to the digital
34 games tax offset; or
35 (c) how amendments of certificates in relation to the digital
36 games tax offset are to be made, including:

EXPOSURE DRAFT

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- 1 (i) the form in which the request for an amendment may be
2 made; and
3 (ii) circumstances in which an amendment may be
4 requested, or made on the Minister's own initiative; and
5 (iii) the information to be provided in a request for an
6 amendment; and
7 (iv) methods for verifying such information; and
8 (v) procedures for providing, at the Minister's request,
9 additional information in support of a request for an
10 amendment.

11 **378-90 Amendment of certificate for the digital games tax offset**

- 12 (1) The *Arts Minister may amend a certificate issued under section
13 378-20 (certificate for the digital games tax offset) if:
14 (a) the company to whom the certificate is issued requests, in
15 writing, an amendment to the certificate; or
16 (b) the Minister decides to amend the certificate on his or her
17 own initiative.
- 18 (2) In deciding whether to amend an exemption certificate under
19 subsection (1), the *Arts Minister:
20 (a) must have regard to the matters prescribed by the regulations;
21 and
22 (b) may have regard to any other matter that the Minister
23 considers relevant.
- 24 (3) If the *Arts Minister amends a certificate under subsection (1), the
25 Minister must give written notice of the amendment to:
26 (a) the company to whom the certificate was issued; and
27 (b) the Commissioner, within 30 days after the date of
28 amendment.
- 29 (4) If the *Arts Minister refuses to amend an exemption certificate
30 upon a request by a company under paragraph (1)(a), the Minister
31 must notify the company accordingly.

32 **378-95 Amendment of assessments**

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

EXPOSURE DRAFT

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- 1 (a) a certificate issued to a company under section 378-20
2 (certificate for the digital games tax offset) of this Act is
3 either:
4 (i) amended under section 378-230 of this Act; or
5 (ii) revoked under section 378-205 of this Act;
6 after the time the company lodged its *income tax return for
7 an income year; and
8 (b) the amendment is made at any time during the period of 4
9 years starting immediately after the amendment or revocation
10 of the certificate.

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

13 **378-100 Copy of digital game to be made available to the National** 14 **Film and Sound Archive of Australia**

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

- 18 (a) a copy of each *digital game named in the certificate; and
19 (b) a copy of any materials provided to the public in connection
20 with each of those game.

21 **3 Section 995-1 (definition of *completed*)**

22 Repeal the definition, substitute:

23 ***completed:***

- 24 (a) in relation to a *film, has the meaning given by
25 subsection 376-55(2); and
26 (b) in relation to a *digital game, has the meaning given by
27 subsection 378-20(2).

28 **4 Section 995-1 (definition of *development expenditure*)**

29 Repeal the definition, substitute:

30 ***development expenditure:***

- 31 (a) in relation to a *film, means expenditure to the extent to
32 which it is incurred in meeting the development costs for the
33 film and includes expenditure to the extent to which it is
34 incurred on any of the following:
35 (i) location surveys and other activities undertaken to
36 assess locations for possible use in the film;

EXPOSURE DRAFT

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- 1 (ii) storyboarding for the film;
2 (iii) scriptwriting for the film;
3 (iv) research for the film;
4 (v) casting actors for the film;
5 (vi) developing a budget for the film;
6 (vii) developing a shooting schedule for the film; and
7 (b) in relation to a *digital game, has the meaning given by
8 section 378-24.

9 **5 Section 995-1**

10 Insert:

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

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

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

19 *qualifying Australian development expenditure* has the meaning
20 given by section 378-26.

21 **6 Application provision**

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