



Game Development Sector Rebate – Design Features

CONSULTATION DOCUMENT – JUNE 2023

Ministry of Business, Innovation and Employment (MBIE) **Hīkina Whakatutuki – Lifting to make successful**

MBIE develops and delivers policy, services, advice and regulation to support economic growth and the prosperity and wellbeing of New Zealanders.

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Ministerial Foreword

The Government's Game Development Sector Rebate is an exciting and future-oriented part of our Budget 2023 package. This consultation will help us get the details right to support the ongoing growth of this vibrant sector.

New Zealand's game development sector is a small but fast-growing part of our wider tech sector, bringing in over \$400 million in revenue in 2022, according to the New Zealand Game Developers Association's (NZGDA) latest survey. Our firms enjoy international success and around 96% of the sector's output is exported.

As a creator of weightless exports and high-skill, high-wage jobs, the game development sector aligns with the Government's vision for a low-emissions, high-wage economy, and can help to lift our productivity and wealth. The sector's skills and innovative activities are transferable to other industries, helping to position New Zealand for a digital future.

Our young people can follow exciting career paths in the game development sector, including in regional areas, and the sector has an increasingly diverse workforce. At the intersection of creativity and technology, game development also provides a new channel to express New Zealand's unique cultural identity. Studios are creating inspiring games featuring te reo Māori and stories steeped in te ao Māori, bringing our vibrant history into the digital realm on the world stage.

Over the past few years, the Government has been working closely alongside the game development sector, as one of the focus areas in the Digital Technologies Industry Transformation Plan, to better understand how to support this important sector. This consultation is another step in this process, to get feedback from the sector on the detailed design of the new scheme and to set us up for success.

The Game Development Sector Rebate aims to help build the Aotearoa New Zealand we want for the future – one that is high-skill, innovative, resilient, and sustainable. I'm looking forward to seeing the next stages of the scheme progress and to realise our ambitions for this promising sector.

Nāku iti nei
Hon Ginny Andersen
Minister for the Digital Economy and
Communications



How to have your say

We want to hear your views on how the proposed detailed design features of the Game Development Sector Rebate could be improved to help make the scheme efficient and effective for the game development sector and government.

SUBMISSION PROCESS

The Ministry of Business, Innovation and Employment (MBIE) is seeking written submissions on the issues raised in this document **by 11.59pm (NZT) on 6 July 2023**.

This document includes a number of questions to guide submissions. Your submission may respond to any or all of these questions. We also encourage your input on any other relevant issues. There are multiple ways to make a submission.

HOW TO MAKE YOUR SUBMISSION

You may either:

- send your submission as a Microsoft Word document or in an email to DIGITALPOLICYTEAM@mbie.govt.nz

- mail your submission to:

Digital Policy

Ministry of Business, Innovation and Employment

PO Box 1473 Wellington 6140

If you have any questions about the submissions process, please direct these to DIGITALPOLICYTEAM@mbie.govt.nz

USE AND SHARING OF INFORMATION

We will use the information you provide in submissions to inform the MBIE policy development process and any related advice to government. We may contact you directly if we want to clarify any matters you raise.

Submissions remain subject to requests under the Official Information Act 1982. Please clearly indicate in the cover letter or email accompanying your submission if you have any objection to the release of any information in the submission, and which parts you consider should be withheld, together with the reasons for withholding the information. MBIE will take such objections into account and will consult with submitters when responding to requests under the Official Information Act 1982.

The Privacy Act 2020 applies to submissions. Any personal information you supply to MBIE in the course of making a submission will be used only for the purpose of assisting in the development of policy advice in relation to this scheme. Please clearly indicate in the cover letter or email accompanying your submission if you do not wish your name, or any other personal information, to be included in any summary of submissions that MBIE may publish.

Introduction

Growth in digital technology sectors like game development supports the Government's vision for a high-wage, low-emissions economy. It can help bolster efforts to increase the diversity and resilience of New Zealand's economic activity, build export revenues and create higher value jobs for New Zealanders.

GOAL OF THE REBATE SCHEME

The Game Development Sector Rebate (GDSR) aims to support the ongoing development and growth of New Zealand's game development sector. It seeks to catalyse growth and job creation in mid- to large-sized game development studios to strengthen the domestic sector.

The GDSR complements existing funding to the Centre of Digital Excellence (CODE), which helps smaller firms to grow and strengthen their activities in New Zealand. This whole-of-sector approach aims to create a pipeline of developers and a sustainable ecosystem of domestic firms that develops homegrown intellectual property and puts talent development at the forefront.

With many skills and innovations applicable to other digital technology sectors and beyond, growth in the game development sector can bring positive spillovers for the wider economy and support a broader strengthening of higher-value, lower-emission activity, in line with the Digital Technologies Industry Transformation Plan (ITP).

KEY FEATURES

The Government has provided funding of \$40 million per annum for delivering and administering a rebate for the game development sector.¹ It is a rebate on eligible expenditures of eligible firms, at a rate of 20%. A firm's rebate payment will be capped at \$3 million per annum and the minimum qualifying expenditure per annum is \$250,000.

The GDSR will be effective as of 1 April 2023. This means eligible firms can count eligible expenditures from this date.

MBIE has policy responsibility for the GDSR. The Government has announced that New Zealand On Air (NZ On Air) will be the delivery agency for the rebate. MBIE will review the GDSR after two years to gauge uptake and early impact. We will undertake another review at around the four-year mark to assess whether the scheme provides net benefits to New Zealand and whether modifications should be pursued.

AREAS REQUIRING FURTHER DESIGN

There are a range of other areas that require further elaboration for the scheme to be clear and function smoothly. The remainder of this document sets out proposals on eligibility criteria (for firms, game development activities, and expenditures), application processes and governance. The proposals are informed by other international schemes and initial ideas from the sector.

¹ Administration costs are included in the \$40 million funding envelope. These total up to \$1.263 million in 2023/24 and \$1.850 million in 2024/25 and subsequent years and are subtracted from the amount available for the rebate.

Proposed design of eligibility criteria

Eligibility criteria are a key tool for targeting the delivery of the GDSR to the right firms for the right activities. This will help the GDSR reach its goals and the game development sector to reach its potential. We want to hear your views on the following proposals and any other factors you feel are important to include in eligibility criteria.

ELIGIBLE BUSINESSES

A business may be eligible to apply for the GDSR if:

- the business is a New Zealand resident that has a New Zealand Company Number; or
- the business is a foreign resident that has a permanent establishment in New Zealand and a NZ Company Number

when the business makes its application and when the rebate is due to be credited to the business;

AND

- the business is primarily involved in developing digital games. For clarity, a business would not be primarily involved in developing digital games if it derived less than 75% of its average annual gross income from such activity in the previous 3 financial years.

Businesses that are unsure of their eligibility may submit a registration for the rebate (see next section on application process). The delivery agent (NZ On Air) would assess whether the business' activities are in the spirit of the rebate and support the ongoing development and growth of the sector.

ELIGIBLE GAMES

For the purposes of the GDSR, a digital game comprises content, game mechanics (rules) and code, and player participation that changes the outcome. It is in an electronic form that is capable of generating a display on a portable electronic device or a computer monitor, TV screen, liquid crystal display or similar medium. Eligible formats include virtual reality (VR), augmented reality (AR), mobile, tablet, console, hybrid, installation, PC and multiplatform games.

The GDSR will apply to eligible expenditure on digital games that are intended for general public release for entertainment or educational purposes (including serious games), and which are made available for download or use over the internet.

The GDSR will not apply to expenditure on digital games that are:

- a gambling service or substantially comprised of gambling or gambling-like practices²;
- containing material that would be refused classification by Te Mana Whakaatu Classification Office;
- pornography;
- gamified software primarily designed for another purpose (e.g. gamified accounting software);
- linear content with no or limited interactivity (e.g. a 360 degree movie played on a VR headset);
- developed for industrial, corporate training or institutional purposes; or
- intended for commercial advertising purposes or to promote a product, entity or service.

² This includes lootboxes or similar game mechanics.

ELIGIBLE EXPENDITURE

For the purposes of the GDSR, eligible expenditure is expenditure incurred by a business in, or in relation to, developing and commercialising digital games. Such development may include post-launch content creation (i.e. game updates and downloadable content) and adaptation or porting of a game for use on particular platforms.

For clarity, specific inclusions are:

- market-level remuneration paid through the PAYE system and provided to employees and independent contractors who are domiciled in New Zealand who perform work or services directly for the business that are attributable to the development of digital games and which include the following types of functions and tasks:
 - **project management**;
 - **development**, including, for example, game design, software development and programming, engineering (including for audio, graphics, physics, software and backend and servers), prototyping, and product management;
 - **writing and story designing**, including, for example, narrative design, world building, character design, and cultural consulting (including on te ao Māori);
 - **production**, including, for example, artistic, creative and design direction, and production;
 - **art and design**, including, for example, drawing, painting, animation, performance (for music, voice and motion capture), song writing, composing, music and sound design;
 - **marketing and community development**, including, for example, go-to-market strategy, community management, influencer engagement, social media management and content creation, user acquisition management, and localising games for specific markets / languages;
 - **live operations of an online game**, including, for example, data science, business intelligence, metrics and analytics management, playtesting and build management / deployment;
 - **player research and game quality improvements**, including, for example, user experience design and testing, behaviour analysis, and quality assurance testing;
 - and other people performing similar tasks or functions to those listed above;
- expenditure on research³ for development of digital games;
- expenditure on prototyping;
- expenditure on underlying game infrastructure such as game engines;
- expenditure on user testing, debugging and collecting user data for digital games;
- expenditure on game production software as a service, and game production hardware and software depreciation costs;
- expenditure on online hosting and distribution of the game;
- expenditure on obtaining or maintaining a classification from Te Mana Whakaatu Classification Office;
- expenditure on licensing of NZ material (e.g. music) when material is NZ held copyright or created by a NZ supplier.

³ As an indicative guide for the purposes of the GDSR, research comprises creative and systematic work undertaken to increase the stock of knowledge and to devise new applications of available knowledge. It should be novel, creative, uncertain, systematic, and reproducible. See OECD (2015) Frascati Manual, “Concepts and definitions for identifying R&D”, <https://doi.org/10.1787/9789264239012-4-en>.

For clarity, specific exclusions are:

- expenditure on general business overheads such as:
 - insurance, human resources, legal services and auditing;
 - travel, accommodation, catering and hospitality;
 - visas or work permits;
 - expenses incurred in relation to the financing of the business;
- expenditure on bonuses to employees;
- expenditure on or in connection with employees and independent contractors whose roles are not directly related to game development, such as administrative employees, and sales professionals;
- expenditure on employees or independent contractors who are not domiciled in New Zealand at the time of the expenditure;
- expenditure on the use of land or premises;
- expenditure on servers, or the rights to access servers;
- other depreciation expenses.

Businesses may not claim expenditures for which another business has already claimed. For clarity, when contractors are engaged, any rebate claim should only be made at the top-most level, i.e. the owner of the project, not at the contractor level. Business may only claim expenditures incurred in the year for which an application is submitted.

At times businesses may receive Government funding from other sources. The GDSR does not apply to expenditures that were already funded directly or indirectly by other Government grants or subsidies (such as R&D grants, grants from CODE, etc).

In determining eligible expenditure, the expenditure is taken to exclude GST. For clarity, the initial \$250,000 expenditure (the minimum threshold) is considered to be claimable under the GDSR.

QUESTIONS ON ELIGIBILITY CRITERIA:

- ✓ Do you agree with the criteria we have identified? Why, or why not? What would be better?
- ✓ Do you think any of the criteria unduly narrow or widen eligibility compared to the scheme's goals? Why, and how could it be improved?
- ✓ What are your views regarding potential eligibility of expenditure on externally provided training that is relevant to developing digital games?
- ✓ What are your views regarding potential eligibility of expenditure on royalties?
- ✓ What are your views regarding eligibility of onshore hosting and servers vs offshore hosting and servers?
- ✓ Do any of the criteria pose undue difficulties from an accounting or administrative point of view? Please elaborate, including any views on what might work better.
- ✓ Are there any additional criteria you think should be considered?

Proposals for the application process

The application process aims to minimise compliance costs and operate on a high trust model with the sector. We want to hear your views on the following proposals and any other factors you feel are important to include in the application process and requirements.

REGISTRATION

Prior to an application, businesses must register with the GDSR delivery agent, NZ On Air. Registration may take place throughout the eligibility period but should occur no later than 31 December in a given period (i.e. no later than three months before the close of the eligibility period). Businesses will be required to declare their type of business activity (previous, current and planned), including information on current and planned projects, and an estimate of qualifying expenditure.

The information provided will help NZ On Air assess a business' eligibility as being "primarily involved in developing digital games" and developing "eligible games". It will also support planning by NZ On Air.

On the basis of its assessment, NZ On Air will provide the business with an acknowledgement letter indicating whether the business may submit an application in respect of its activities. This letter is non-binding and does not give any guarantee the business will receive a rebate or the amount of that rebate.

Businesses will be asked to verify their registration each eligibility period.

STATEMENT OF "READINESS"

The GDSR has relatively tight timeframes for applications and processing of claims, which will take place in the April-June period each year. In case there is insufficient time for a business to provide an auditor's statement with their application to verify qualifying expenditures and their claim, we propose that the business provides a statement of "readiness".

Specifically, prior to an application, businesses must provide NZ On Air with an auditor's statement verifying that the business has robust processes in place to accurately establish its eligible expenditures and rebate claim in accordance with the GDSR's eligibility criteria. This statement of "readiness" will help businesses submit high-quality applications and assist in the integrity of the scheme.

APPLICATION

If a business has successfully registered and provided its statement of "readiness", it may submit an application. Applications are to cover eligible expenditures incurred during the period 1 April – 31 March (eligibility period) and must be submitted to NZ On Air within 15 working days following the end of the eligibility period. Application forms and detailed processes for submission, with guidance material, will be developed by NZ On Air. Businesses make one application per year and there is one rebate payment per year to successful applicants.

In their application, applicants must declare any other government grants or subsidies received during the eligibility period.

The application must be accompanied by a statutory declaration, in which the signatory declares the truth of the business' rebate application. The statutory declaration must be witnessed by a Justice of the Peace, solicitor or another person authorised to take a statutory declaration.⁴ It is a crime to make a false declaration.

NZ On Air will assess applications and may request further information or clarification from applicants. NZ On Air may seek its own expert advice on applications, e.g. related to accountancy, legal, or sector specificities. In particular, NZ On Air will undertake audits of applications as deemed necessary to ensure proper use of government funds.

OTHER REQUIREMENTS AND CONDITIONS FOR APPLICANTS

Businesses receiving payments under the GDSR must:

- acknowledge the support of the GDSR on relevant digital games where possible;
- contribute information as required for the compilation of a catalogue of projects supported by the rebate, curated by NZ On Air; and
- take part in any evaluation activities or other information gathering exercises led by NZ On Air or MBIE that are required to assess the GDSR's performance against its goals.

No rebate will be provided to businesses that ceased to be eligible businesses during the eligibility period.

No rebate will be provided to businesses for which insolvency proceedings have been requested or opened in relation to their assets.

The names of businesses receiving funding under the GDSR may be published for transparency purposes, alongside the aggregate amount of rebate funding provided for the year.

IN CASES OF OVER-SUBSCRIPTION

There may be cases where eligible firms make applications that collectively over-subscribe the annual funding (\$40 million less scheme administration costs) available for the rebate. In such cases, NZ On Air will allocate funding on a pro-rata basis.

QUESTIONS ON APPLICATION PROCESS:

- ✓ Do you agree with having a registration process and statement of "readiness" prior to applications? Why, or why not? What are some alternatives?
- ✓ Do you agree with the proposals for the application process? Why, or why not? How could they be improved?
- ✓ What do you think is the most appropriate way for businesses to acknowledge GDSR support on relevant digital games?
- ✓ What are your views on the suitability of the other requirements and conditions for applicants?
- ✓ Do you think a pro-rata system of rebate payments is appropriate if the scheme is over-subscribed? Why, or why not? What would be better?

⁴ An example of this type of declaration can be viewed at: [Making a statutory declaration | New Zealand Government \(www.govt.nz\)](http://www.govt.nz)

Scheme governance

Governance of the GDSR aims to be light touch and use existing structures where possible, while retaining robust processes to ensure trust and credibility in the scheme and ensure proper use of public funds. We want to hear your views on the following initial proposals and any other factors you feel are important to consider.

MBIE has policy responsibility for the GDSR and NZ On Air will be the delivery agency. NZ On Air was chosen for its experience in administering large funds, its ability to draw on existing structures such as legal and auditing personnel, and its capacity to scale up quickly to deliver the rebate. Delivering the rebate through a creative sector entity also provides an opportunity to align economic development and cultural policy goals by supporting sustainable employment, and to support arts and media in the digital environment.

NZ On Air will receive and process applications, make rebate payments, and be the point of contact for businesses seeking rebate support. It will also assist in gathering information to inform reviews of the scheme and assessments of its effectiveness.

MBIE will work with NZ On Air to establish governance of the GDSR. The overall aim will be to provide oversight of the efficient and effective delivery of the GDSR, and to retain focus on the overarching goals of the scheme – that is, to catalyse growth and job creation in mid- to large-sized game development studios to strengthen the domestic sector, and ultimately to contribute to creating a pipeline of developers and a sustainable ecosystem of domestic firms that develops homegrown intellectual property and puts talent development at the forefront.

As game development forms part of the Government’s Digital Technologies ITP, we also propose the Digital Technologies ITP Partnership Board receive regular reporting on the implementation of the scheme (e.g. six-monthly, with the provision for more frequent updates initially). The Partnership Board plays a key role in overseeing the implementation of the ITP (where game development contributes to the export success pillar), steering the direction of future ITP priority areas, and providing strategic oversight and guidance for the ITP.

REVIEWS OF DECISIONS

It will be important to have clear processes for complaints and for reviews of decisions made about applications and rebate payments. These will be elaborated with NZ On Air. In the first instance, we suggest queries and complaints should be directed to NZ On Air. Where issues cannot be resolved, parties may seek further assistance from the Ombudsman.

FRAUDULENT CLAIMS

Fraudulent claims will be pursued under the relevant legislation and may incur penalties.

QUESTIONS ON SCHEME GOVERNANCE:

- ✓ What are your views on setting up good oversight of the GDSR?
- ✓ Do you agree with the proposals for reviewing decisions? Why, or why not? What would be better?

Next steps and timing

The feedback we receive in this consultation will help us develop the final design of the GDSR and inform related policy advice.

The deadline for feedback on this consultation process is **11.59pm (NZT) on 6 July 2023**.

Between September and October 2023 – publication of the finalised design features and more detailed information about the respective roles and responsibilities of MBIE and NZ On Air.

From October 2023 – NZ On Air will communicate deadlines for year 1 applications along with any more detailed guidelines or information it deems necessary.