



## **Income Tax Assessment (Digital Games Tax Offset) Rules 2023**

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I, Tony Burke, Minister for the Arts, make the following rules.

Dated 4 July 2023.

TONY BURKE  
MINISTER FOR THE ARTS

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# Contents

<b>Part 1—Preliminary</b>	<b>1</b>
1 Name.....	1
2 Commencement .....	1
3 Authority.....	1
4 Definitions .....	1
<b>Part 2—Certificates for digital games tax offset</b>	<b>3</b>
5 Definition for Part 2.....	3
6 Form of application for certificate .....	3
7 Amendment or withdrawal of application for certificate .....	3
8 Board to consider application for certificate if requested.....	3
9 Request for additional information .....	5
10 Board to advise Arts Minister .....	5
11 Amendment of certificate.....	6
<b>Part 3—Provisional certificates for digital games tax offset</b>	<b>7</b>
12 Definition for Part 3.....	7
13 Application for provisional certificate .....	7
14 Form of application for provisional certificate.....	7
15 Amendment or withdrawal of application for provisional certificate.....	8
16 Board to consider application for provisional certificate .....	8
17 Board may request additional information.....	9
18 Refusal to issue provisional certificate.....	9
19 Notice of refusal to issue provisional certificate .....	10
20 Content of provisional certificate.....	10
<b>Part 4—Digital Games Tax Offset Advisory Board</b>	<b>11</b>
21 Establishment of the Board.....	11
22 Functions of the Board.....	11
23 Membership of the Board .....	11
24 Leave of absence.....	12
25 Acting Appointment.....	12
26 Resignation of members .....	12
27 Termination of members .....	12
28 Duty of confidentiality .....	13
29 Disclosure of interests.....	13
30 Meetings of the Board.....	13
31 Quorum.....	14
32 Conduct of meetings .....	14
33 Powers, functions and decisions without meetings .....	14
<b>Schedule 1—Information and documents required for an application for certificate</b>	<b>15</b>
<b>Part A—Information to be included in an application for a certificate</b>	<b>15</b>
<b>Division 1—Information about the applicant</b>	<b>15</b>
<b>Division 2—Information about the digital game</b>	<b>17</b>
<b>Division 3—Financial information</b>	<b>18</b>
Part B—Documents to be attached to an application for a certificate	19

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<b>Schedule 2—Information and documents required for an application for provisional certificate</b>	<b>20</b>
<b>Part A—Information to be included in an application for a provisional certificate</b>	<b>20</b>
<b>Division 1—Information about the applicant</b>	<b>20</b>
<b>Division 2—Information about the digital game</b>	<b>21</b>
Part B—Documents to be attached to an application for a certificate	22

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## Part 1—Preliminary

### 1 Name

This instrument is the *Income Tax Assessment (Digital Games Tax Offset) Rules 2023*.

### 2 Commencement

- (1) Each provision of this instrument specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Commencement information		
Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
1. The whole of this instrument	The later of: (a) immediately after the commencement of Schedule 1 to the <i>Treasury Laws Amendment (2022 Measures No. 4) Act 2023</i> ; and (b) the day after this instrument is registered.	

Note: This table relates only to the provisions of this instrument as originally made. It will not be amended to deal with any later amendments of this instrument.

- (2) Any information in column 3 of the table is not part of this instrument. Information may be inserted in this column, or information in it may be edited, in any published version of this instrument.

### 3 Authority

This instrument is made under sections 378-100 and 378-105 of the *Income Tax Assessment Act 1997*.

Note: Section 4 of the *Acts Interpretation Act 1901* allows for the exercise of new powers between enactment and commencement of the relevant Act which confers the new powers.

### 4 Definitions

Note: A number of expressions used in this instrument are defined in the Act, including the following:

- (a) Arts Minister;
- (b) Arts Secretary;
- (c) digital game;
- (d) digital games tax offset;
- (e) head company;
- (f) qualifying Australian development expenditure.

- (1) In this instrument:

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*Act* means the *Income Tax Assessment Act 1997*.

*Arts Department* means the Department administered by the Arts Minister.

*Board* means the Digital Games Tax Offset Advisory Board established under section 21.

*certificate* means a completion certificate, a porting certificate, or an ongoing development certificate, issued by the Arts Minister under section 378-25 of the Act.

*independent expert* means a person who, in the Board's opinion:

- (a) has recent, relevant experience in development, business or financial management in the digital games sector; and
- (b) is independent of the applicant company or head company in relation to whom they are asked, under subsection 8(2) or 16(2) of this instrument, to provide a written report.

*provisional certificate* means a provisional certificate issued by the Board under section 16 of this instrument.

- (2) For the purposes of this instrument, if an applicant company (the *incoming company*) takes over the making of a digital game from another company (the *outgoing company*), any activities carried out, or arrangements made, by the outgoing company in relation to the digital game are taken to have been carried out or made by the incoming company in relation to the digital game.

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## Part 2—Certificates for digital games tax offset

Note: Under section 378-90 of the Act, applications may be made to the review of the following decisions made by the Arts Minister by the Administrative Appeals Tribunal:

- (a) a decision to refuse an application for a certificate, under section 378-25 of the Act;
- (b) a determination of the total of a company's qualifying Australian development expenditure, under section 378-30 of the Act;
- (c) a decision to revoke a certificate, under section 378-70 of the Act;
- (d) a decision to amend or refuse to amend a certificate, under section 378-75 of the Act.

### 5 Definition for Part 2

In this Part:

**applicant** means a company or a head company that is applying, or has applied, for a certificate for the digital games tax offset to be issued under section 378-25 of the Act and in accordance with this Part.

### 6 Form of application for certificate

An application for a certificate must:

- (a) be made to the Arts Minister in writing; and
- (b) include the information and documents specified in Schedule 1; and
- (c) be authorised by the applicant, or by a person authorised to do so on behalf of the applicant; and
- (d) be submitted electronically to the Arts Secretary, in the form notified on the Arts Department's website from time to time.

Note: An application is taken to be submitted to the Arts Secretary when the applicant is notified of its receipt.

### 7 Amendment or withdrawal of application for certificate

An applicant may:

- (a) make amendments to their application for a certificate; or
- (b) withdraw their application;

by notifying the Arts Secretary in writing, in the form notified on the Arts Department's website from time to time.

Note: Section 378-75 of the Act deals with making amendments to a certificate that has already been issued and time limits apply.

### 8 Board to consider application for certificate if requested

- (1) If the Arts Minister asks the Board to advise in relation to an application for a certificate, the Board must:
  - (a) consider the application; and
  - (b) advise the Arts Minister, as requested and in accordance with section 10.
- (2) For paragraph (1)(a), in considering the application, the Board:
  - (a) may seek information or advice from any person or source; and
  - (b) may take into account the knowledge and experience of its members; and

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- (c) may ask an independent expert to provide a written report to the Board about any matter that is relevant to whether a condition set out in subsection 378-25(7) of the Act has been met in relation to the application; and
- (d) must consider the following information:
- (i) the application and its accompanying information and documents;
  - (ii) any written report requested by the Board under paragraph (2)(c);
  - (iii) any comment or submission made by the applicant, in response to an opportunity given under subsection (4) or (5), that is provided within the period specified in subsection (6) or within the period as extended under subsection (8);
  - (iv) any additional information provided by the applicant in response to a request under subsection (8);
  - (v) any other information or advice obtained by the Board that it considers relevant.
- (3) A report under paragraph (2)(c) may also include advice about any of the following matters:
- (a) whether specific items claimed in the applicant's expenditure statement are reasonably attributable to the estimated qualifying Australian development expenditure on the digital game;
  - (b) whether the applicant is an appropriate entity to apply for the certificate in relation to a particular digital game;
  - (c) whether the digital game for which the applicant is applying for a certificate meets the criteria of a 'digital game' under section 378-20 of the Act.
- (4) If the Board intends to use information or advice from a third party to support advice to the Arts Minister, the Board must give the applicant an opportunity to make a written submission to the Board on the substance of that information or advice.
- (5) If the Board asks an independent expert to provide the Board with a written report under subsection (3), the Board must:
- (a) give a copy of the report to the applicant to whom it relates as soon as practicable; and
  - (b) give the applicant an opportunity to make a written submission to the Board in response to the report.
- (6) Subject to subsections (7) and (8), if the applicant is provided with an opportunity to comment or to make a written submission under subsection (4) or (5), the applicant has 28 days to do so from the day they are notified of the opportunity.
- (7) The applicant may ask the Board to extend the 28-day period referred to in subsection (6).
- (8) A request under subsection (7) must be made:
- (a) in writing; and
  - (b) within the 28-day period referred to in subsection (6).
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- (9) The Board may extend the period in which the applicant is to provide a comment or written submission.
  - (10) If an applicant does not provide a response within the 28-day period referred to in subsection (5), or any extended period under subsection (9), the Board may proceed to advise the Arts Minister.

## **9 Request for additional information**

- (1) If, in the opinion of the Board, it requires additional information in order to provide advice to the Arts Minister about an application, the Board may request the applicant, in writing, to provide that information to the Board.
- (2) The request must specify:
  - (a) the information required by the Board (the *additional information*); and
  - (b) the period within which the additional information must be provided to the Board (the *notification period*).
- (3) The applicant may ask the Board to extend the notification period.
- (4) A request under subsection (3) must be made:
  - (a) in writing; and
  - (b) within the notification period specified under section (3).
- (5) The Board may extend the notification period.
- (6) If an applicant does not provide the additional information within the notification period, or within the notification period as extended under subsection (5), the Board may proceed to advise the Arts Minister, as requested and in accordance with section 10.

## **10 Board to advise Arts Minister**

- (1) For paragraph 8(1)(b), if the Arts Minister has asked the Board to advise about an application for a certificate, the Board must advise the Arts Minister, in writing:
  - (a) whether the Board is satisfied that the conditions set out in section 378-25 of the Act are met in relation to the application; and
  - (b) whether it considers that the Arts Minister should or should not issue a certificate to the applicant.
- (2) If the Board advises the Arts Minister:
  - (a) that it is not satisfied that a condition set out in section 378-25 of the Act is met in relation to an application; or
  - (b) that it considers that the Arts Minister should not issue a certificate to an applicant;the Board's written advice to the Arts Minister must include reasons for that advice.



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## 11 Amendment of certificate

Note: In accordance with this section and with section 378-75 of the Act, if a certificate has been issued to an applicant under section 378-25 of the Act, the applicant may request, within four years of the certificate being issued, that the certificate be amended. The Arts Minister may also, subject to section 378-75 of the Act, amend the certificate on their own initiative.

- (1) To request an amendment to a certificate issued to an applicant under section 378-25 of the Act, the applicant must:
  - (a) submit their request electronically to the Arts Minister, in the form notified on the Arts Department's website; and
  - (b) include in their request the following information:
    - (i) the aspects of the certificate to be amended;
    - (ii) the reason for requesting the amendment; and
    - (iii) full and complete supporting documentation relevant to the amendment request.
- (2) If the Arts Minister receives a request under subsection (1), the Arts Minister may:
  - (a) request further information from the applicant; or
  - (b) make a decision under section 378-75 of the Act to:
    - (i) amend the certificate; or
    - (ii) not amend the certificate.
- (3) The Arts Minister may ask the Board to advise about the amendment of an applicant's certificate.
- (4) If the Arts Minister has asked the Board to advise about the amendment of an applicant's certificate, the Board must advise the Arts Minister, in writing:
  - (a) whether the Board considers that the Arts Minister should or should not amend the certificate; and
  - (b) on any other matter on which the Arts Minister has asked the Board to advise.

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## Part 3—Provisional certificates for digital games tax offset

- Note: A provisional certificate for the digital games tax offset:
- (a) does not entitle an applicant to claim a tax offset under Division 378 of the Act;
  - (b) does not prevent a decision by the Arts Minister to refuse to grant a certificate under Division 378 of the Act; and
  - (c) is not a guarantee that the Arts Minister will issue a certificate to the applicant under section 378-25 of the Act.

### 12 Definition for Part 3

In this Part:

**applicant** means a company or a head company that is applying, or has applied, in accordance with this Part, for a provisional certificate for the digital games tax offset.

### 13 Application for provisional certificate

- (1) A company may apply to the Board for a provisional certificate in relation to a digital game if:
  - (a) the company:
    - (i) is an Australian resident; or
    - (ii) is a foreign resident that intends to establish a permanent establishment in Australia; or
    - (iii) is a foreign resident that has a permanent establishment in Australia and has an ABN; and
  - (b) the company is primarily responsible for undertaking activities necessary for the development of the digital game in Australia.
- (2) For the avoidance of doubt, an applicant may apply for a provisional certificate in relation to a digital game even if the Board has already issued a provisional certificate, or has refused to issue a provisional certificate, to the applicant in relation to that digital game.

Note: A company may apply for a provisional certificate under subsection 13(1) before the digital game is completed.

### 14 Form of application for provisional certificate

An application for a provisional certificate must:

- (a) be made in writing; and
- (b) be authorised by the applicant, or by a person authorised to do so on behalf of the applicant; and
- (c) be submitted electronically to the Arts Secretary, in the form notified on the Arts Department's website.

Note: An application is taken to be submitted to the Arts Secretary when the applicant is notified of its receipt.

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## **15 Amendment or withdrawal of application for provisional certificate**

- (1) An application for a provisional certificate cannot be amended after being made.
- (2) Prior to a provisional certificate being issued by the Board to an applicant, the applicant may withdraw their application for the certificate by notifying the Arts Secretary in writing, in the form notified on the Arts Department's website.

## **16 Board to consider application for provisional certificate**

- (1) If an applicant applies to the Board for a provisional certificate, the Board must:
  - (a) consider the application; and
  - (b) issue or refuse to issue a provisional certificate.
- (2) For paragraph (1)(a), in considering the application, the Board:
  - (a) may seek information or advice from any person or source; and
  - (b) may take into account the knowledge and experience of its members; and
  - (c) may ask an independent expert to provide a written report to the Board about any matter that is relevant to whether a condition set out in subsection 378-25(7) of the Act would be met if the applicant were to apply for a certificate to be issued under section 378-25; and
  - (d) must consider the following information:
    - (i) the application and its accompanying information and documents;
    - (ii) any written report requested by the Board under paragraph 2(c);
    - (iii) any comment or submission made by the applicant, in response to an opportunity given under subsection (4) or (5), that is provided within the period specified in subsection (6) or within the period as extended under subsection (8);
    - (iv) any additional information provided by the applicant in response to a request under section 17;
    - (v) any other information or advice obtained by the Board that it considers relevant.
- (3) A report under paragraph 2(c) may also include advice about any of the following matters:
  - (a) whether the applicant is the appropriate entity to apply for the provisional certificate in relation to a particular digital game;
  - (b) whether the digital game for which the applicant is applying for a provisional certificate meets the criteria of 'digital game' under section 378-20 of the Act.
- (4) If the Board intends to use information or advice from a third party to inform its decision not to issue a provisional certificate to an applicant, the Board must give the applicant an opportunity to comment on the substance of that information or advice.
- (5) If the Board asks an independent expert to provide the Board with a written report under subsection (2), the Board must:
  - (a) give a copy of the report to the applicant to whom it relates as soon as practicable; and

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- (b) give the applicant an opportunity to make a written submission to the Board in response to the report.
  - (6) Subject to subsections (7) and (8), if the applicant is provided with an opportunity to comment or to make a written submission under subsection (4) or (5), the applicant has 28 days to do so from the day they are notified of the opportunity.
  - (7) The applicant may ask the Board to extend the 28-day period referred to in subsection (6) and the request must be made:
    - (a) in writing; and
    - (b) within the 28-day period referred to in subsection (6).
  - (8) The Board may extend the period in which the applicant is to provide a comment or written submission.
  - (9) If an applicant does not provide a response within the 28-day period referred to in subsection (6), or any extended period under subsection (8), the Board may proceed to issue or refuse to issue a provisional certificate.

## **17 Board may request additional information**

- (1) If, in the opinion of the Board, it requires additional information in order to decide whether or not to issue a provisional certificate, the Board may ask the applicant, in writing, to provide that information to the Board.
- (2) The request must specify:
  - (a) the information required by the Board (the *additional information*); and
  - (b) the period within which the additional information must be provided to the Board (the *notification period*).
- (3) The applicant may ask the Board to extend the notification period. The request must be made:
  - (a) in writing; and
  - (b) within the notification period specified under paragraph (2)(b).
- (4) The Board may extend the notification period.
- (5) If an applicant does not provide the additional information within the notification period, or within the notification period as extended under subsection (4), the Board may proceed to issue or refuse to issue a provisional certificate.

## **18 Refusal to issue provisional certificate**

The Board must refuse to issue a provisional certificate if the Board is not satisfied that the conditions set out in section 378-25 of the Act would be met, or be likely to be met, if the digital game were completed in accordance with the information supplied in the application.

Note: The Board may refuse to issue a provisional certificate on other grounds. For example, where the applicant does not provide additional information requested under section 17 of this instrument within the notification period, or extended notification period.

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## **19 Notice of refusal to issue provisional certificate**

- (1) If the Board decides not to issue a provisional certificate, the Board must give the applicant written notice of the decision.
- (2) The written notice must set out:
  - (a) if the Board was not satisfied that each relevant condition specified in section 378-25 of the Act would be met, or would likely be met, if the digital game were completed in accordance with the information supplied in the application; and
  - (b) any other grounds on which the Board made the decision to refuse to issue a provisional certificate.
- (3) The Board must give the written notice to the applicant no later than 28 days after the Board's decision not to issue the provisional certificate.

## **20 Content of provisional certificate**

- (1) A provisional certificate must state if the Board is satisfied that the conditions set out in sections 378-20 and 378-25 of the Act would be met, or be likely to be met, if the digital game were completed in accordance with:
  - (a) the information supplied in the application; and
  - (b) the conditions (if any) specified by the Board in the provisional certificate.
- (2) A provisional certificate must also state that it:
  - (a) does not entitle an applicant to claim a tax offset under Division 378 of the Act; and
  - (b) does not prevent a decision by the Arts Minister to refuse to grant a certificate under Division 378 of the Act; and
  - (c) is not a guarantee that the Arts Minister will issue a certificate to the applicant under section 378-25 of the Act.

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## Part 4—Digital Games Tax Offset Advisory Board

### 21 Establishment of the Board

The Digital Games Tax Offset Advisory Board is established.

### 22 Functions of the Board

The Board is to perform the functions specified in paragraph 378-105(a) of the Act including the functions set out in this instrument.

Note: Paragraph 378-105(a) of the Act expressly gives the Board the following functions:

- (a) to consider applications under subsection 378-55(1) of the Act for certificates under section 378-25 of the Act;
- (b) to advise the Arts Minister on whether to issue certificates under section 378-25 of the Act;
- (c) to perform other functions in relation to the operation of Division 378 of the Act (including the operation of rules made under section 378-100 of the Act) as are specified in rules made under that section.

### 23 Membership of the Board

- (1) The Board consists of:
  - (a) a Chair; and
  - (b) two other members.
- (2) The Chair is the person who, from time to time, performs the duties of an SES employee position in the Arts Department:
  - (a) with responsibility for the Arts; and
  - (b) which is nominated by the Arts Secretary for the purposes of this subsection.
- (3) A member referred to in paragraph (1)(b) is to be appointed by the Arts Minister by written instrument for the period, not exceeding 3 years, specified in the instrument.
  - Note 1: An instrument appointing a member under this subsection is not a legislative instrument.
  - Note 2: A member may be re-appointed for more than one period, consecutively or non-consecutively, and there is no limit to the maximum cumulative duration for which a member may be appointed.
  - Note 3: Subsection 33(4) of the *Acts Interpretation Act 1901* provides that where an Act confers a power to make appointments to an office, the power shall be construed as including a power to appoint a person to act in the office for up to 12 months.
- (4) A member appointed under subsection (3) must be someone who, in the opinion of the Arts Minister, is, or has been, involved in the digital game development industry and has experience or expertise in digital game development activities, pipeline or budgets.
- (5) A member holds office on a part-time basis.

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## 24 Leave of absence

The Arts Minister may grant, on the terms and conditions (if any) the Arts Minister determines, a member leave to be absent from:

- (a) a meeting or meetings of the Board; or
- (b) performing the duties of the office.

## 25 Acting Appointment

- (1) The Arts Minister may appoint a person to act as a member:
  - (a) during a vacancy in the office of the member (whether or not an appointment has previously been made to the office); or
  - (b) during any period, or during all periods, when the member is absent from duty or from Australia, or is, for any reason, unable to perform the duties of the office.
- (2) Anything done by a person purporting to act under an appointment under subsection (1) is not invalid merely because:
  - (a) the occasion for the appointment had not arisen; or
  - (b) there was a defect or irregularity in connection with the appointment; or
  - (c) the appointment had ceased to have effect; or
  - (d) the occasion to act had not arisen or had ceased.

## 26 Resignation of members

A member may resign their appointment by giving written notice to the Arts Minister.

## 27 Termination of members

- (1) The terms and conditions of the appointment of a member include the conditions set out in this section.
- (2) The appointment of a member may be terminated by the Arts Minister for misbehaviour, or physical or mental incapacity.
- (3) Without limiting subsection (2), a member referred to in paragraph 23(1)(b) may be terminated if:
  - (a) the member fails, without reasonable excuse, to comply with section 28 (duty of confidentiality) or section 29 (disclosure of interests).
  - (b) the member:
    - (i) becomes bankrupt; or
    - (ii) applies to take the benefit of any law for the relief of bankrupt or insolvent debtors; or
    - (iii) compounds with their creditors; or
    - (iv) makes an assignment of their remuneration for the benefit of their creditors; or

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(c) the member is absent, except on a leave of absence granted under section 24, from performing the duties of the office for a continuous period of three months or longer.

(5) A termination under this section takes effect when the member is given written notice of the termination by the Arts Minister.

## **28 Duty of confidentiality**

- (1) Except in the performance of the functions of the Board, a member must not communicate, or use to gain an advantage for themselves, or someone else, information that is made known to the person in their capacity as a member.
- (2) The duty in subsection (1) continues after the person ceases to be a member for any reason.

## **29 Disclosure of interests**

- (1) A member (other than the Chair) who has an actual, potential or perceived conflict of interest in relation to a matter that is to be considered by the Board must disclose the nature of the conflict, in writing, to the Chair prior to the consideration of that matter.
- (2) If the Chair has an actual, potential or perceived conflict of interest in relation to a matter that is to be considered by the Board, the Chair must disclose the nature of the conflict, in writing, to the Arts Secretary prior to the consideration of that matter.
- (3) A disclosure under subsection (1) or (2) must be made as soon as possible after the relevant facts have come to the member's knowledge.
- (4) Unless the Chair or the Arts Secretary, as applicable, consents in writing, the member:
  - (a) must not be present during any deliberation by the Board on the matter; and
  - (b) must not vote on the matter or otherwise take part in any decision of the Board on the matter.
- (5) If consent is given in writing under subsection (4), the consent must be recorded.

## **30 Meetings of the Board**

- (1) The Chair may convene a meeting of the Board at any time.
- (2) A meeting of the Board must be presided over by:
  - (a) if the Chair is present—the Chair; or
  - (b) if the Chair is not present—another person who, from time to time, performs the duties of an SES employee in the Arts Department that is nominated for the purposes of this paragraph by the Arts Secretary.



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## 31 Quorum

- (1) Subject to subsection (2), at a meeting of the Board a quorum is constituted by the Chair plus at least one other member.
- (2) If two members of the Board are unable to participate in, or to continue to participate in, the performance of their duties as a result of the disclosure of an interest under section 29, the quorum necessary for a meeting of the Board is one.

Note: As a result of subsection 29(4) and section 31, the Board member who constitutes a quorum would be the only member entitled to vote in respect of the relevant matter.

## 32 Conduct of meetings

- (1) A question arising at a meeting of the Board is to be determined by a majority of members of the Board present and entitled to vote on that question.
- (2) The Chair has a deliberative vote and, if necessary, a casting vote.
- (3) The Board may regulate proceedings at its meetings as it considers appropriate. However, proceedings at a meeting must not be inconsistent with the provisions in this Part.

Note: Section 33B of the *Acts Interpretation Act 1901* provides for people to participate in meetings by various means of communication (for example, telephone or closed-circuit television).

- (4) Without limiting subsection (3), the Board may invite a person to attend a meeting for the purpose of advising or informing the Board on any matter.
- (5) A person invited to attend a meeting under subsection (4) must not communicate, or use to gain an advantage for himself or herself, or someone else, information that is made known to the person as a result of being so invited.
- (6) The Board must ensure that minutes of its meetings are kept.

## 33 Powers, functions and decisions without meetings

- (1) Subject to subsection (3), the Board may exercise any of its powers or carry out any of its functions without a Board meeting being held if a majority of the members agree to the exercise of the power or the performance of the function without a meeting.
- (2) If the Board exercises a power or carries out a function under subsection (1), the Board must ensure that a record of the agreement of the majority of members to exercise the power or perform the function without a meeting is kept.
- (3) The members of the Board may pass a resolution without a Board meeting being held if a majority of the members entitled to vote on the resolution provide a statement in writing that they are in favour of the resolution.
- (4) The resolution is taken to have passed when a majority of members entitled to vote on the resolution have each provided a statement in writing that they are in favour of the resolution.

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# Schedule 1—Information and documents required for an application for certificate

Note: See paragraph 6(b).

## Part A—Information to be included in an application for a certificate

### Division 1—Information about the applicant

- 1.1 Type of certificate for which the applicant is applying.  
Note: The three types of certificate under section 378-25 of the Act are a completion certificate, a porting certificate, and an ongoing development certificate.
- 1.2 Registered name of the applicant.
- 1.3 ABN of the applicant.
- 1.4 For an applicant that is part of a tax consolidated group or a Multiple Entity Consolidated (MEC) group—the name and ABN of the head company of the tax consolidated group or MEC group.
- 1.5 The State or Territory in which the applicant is incorporated.
- 1.6 Registered address of the applicant.
- 1.7 A statement as to the tax residency of the applicant, including:  
(a) where the company is an Australian resident—evidence the applicant is an Australian resident; and  
(b) where the company is a foreign resident—details of the applicant’s permanent establishment in Australia.
- 1.8 Names and addresses of the applicant company’s directors (including company secretary, as applicable)
- 1.9 Documentation that outlines all relevant related parties in connection with the development of the digital game:  
(a) where the applicant has connected companies or affiliated companies—a list of all companies likely to be ‘connected with’ or ‘affiliates of’ the applicant at the time of lodgement of the relevant tax return, highlighting any particular ‘related companies’ that may also intend to claim an amount under the Digital Games Tax Offset;  
(b) where the applicant has associates—  
(i) a list of all associates or potential associates with whom transactions have been undertaken relevant to qualifying Australian development expenditure; and

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(ii) for entities that the applicant has determined to not be associated (i.e. the potential associates), the applicant's justification for this characterisation.

Note: For the purposes of the Digital Games Tax Offset, there are two definitions concepts of 'relevant related parties', which separately relate to the \$20 million cap (section 378-15 of the Act) and calculating qualifying Australian development expenditure (section 378-35 of the Act).

1.10 Details of the contact person for the application, including all of the following:

- (a) full name;
- (b) position;
- (c) telephone or mobile;
- (d) business address;
- (e) email.

1.11 Confirmation that the applicant is the company primarily responsible for undertaking the activities necessary for the development of the digital game in Australia.

Note: The Arts Minister must be satisfied that the conditions in section 378-25 of the Act are met, and that the applicant is primarily responsible for undertaking activities necessary for the development of the game in Australia.

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## Division 2—Information about the digital game

### *General information*

- 2.1 Title of the digital game.
- 2.2 Platform/s of the digital game.
- 2.3 Genre of the digital game.
- 2.4 Synopsis of the digital game.
- 2.5 Specify the purpose for which the game was primarily developed.
- 2.6 Outline of any of the purposes for which the game was developed which relate to advertising or promoting a product, entity or service, or an industrial, corporate or institutional purpose.
- 2.7 Information on whether the digital game is, or will be, available over, or primarily accessed through, the internet, or if it only operates or will only operate when a user is connected to the internet.
- 2.8 Outline of any elements of the digital game that could result in the digital game being refused classification under the *Classification (Publications, Films and Computer Games) Act 1995*.
- 2.9 Outline of any elements of the digital game that could come within the definition of a gambling service within the meaning of section 4 of the *Interactive Gambling Act 2001*, or that otherwise are or will be substantially comprised of gambling or gambling-like practices.
- 2.10 If the type of certificate for which an applicant is applying is a completion certificate or a porting certificate—evidence of completion, including:
  - (a) details of how and where the digital game is available to the public;
  - (b) a copy of or access to a playable completed version of the digital game, if requested; and
  - (c) if the applicant developed the digital game under a contract entered into at arm's length—a copy of the arm's length contract.

### *Details of qualifying Australian development expenditure*

- 2.11 An outline of the qualifying Australian development expenditure undertaken by the applicant on the digital game in Australia.
- 2.12 Details and documentation related to any companies and persons relevant to qualifying Australian development expenditure transactions.
  - Note: This could include confirmation that any companies or persons were Australian residents for tax purposes; that eligible work was undertaken on an eligible game etc.

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## Division 3—Financial information

- 3.1 Estimated dates:
- (a) when qualifying Australian development expenditure on the digital game commenced; and
  - (b) when qualifying Australian development expenditure on the digital game ceased or will cease.
- 3.2 If applicable, a list with the amount(s) and type(s) of any Commonwealth, State or Territory grant or subsidy in relation to any development expenditure claimed as estimated qualifying Australian development expenditure for the digital game, specifying whether those subsidies are in relation to a program that is generally available to business or specific to the digital games sector.
- 3.3 An expenditure statement, including:
- (a) the applicant's estimated qualifying Australian development expenditure in Australian currency; and
  - (b) a description of each budget item for the digital game;
  - (c) in relation to expenditure between related parties (refer Schedule 1, Item 1.10) the identification of all specific transactions showing that they have been appropriately accounted for when calculating the qualifying Australian development expenditure; and
  - (d) details of the location/s in which each budget item for the digital game to be claimed as qualifying Australian development expenditure was incurred.
- 3.4 If applicable, a foreign currency statement, including:
- (a) each amount of the applicant's estimated qualifying Australian development expenditure that has been expended in a foreign currency, expressed in the relevant foreign currency; and
  - (b) each amount of the applicant's estimated qualifying Australian development expenditure in paragraph (a) translated into and expressed in Australian currency using the applicable special translation rule in section 960-50(6) of the Act; and
  - (c) the sum of each amount in paragraph (b), expressed in Australian currency.
- 3.5 Where the applicant has taken over the development of a digital game from another company (the *outgoing company*):
- (a) details of any qualifying Australian development expenditure claimed as a result of the applicant taking over development, for the purposes of section 378-45 of the Act; and
  - (b) details of the outgoing company.
- 3.6 Where the applicant is a foreign resident for the purposes of the Act, supporting documentation to evidence that all relevant expenditure has been incurred through a permanent establishment, including:
- (a) the estimated total amount of the expenditure; and
  - (b) the period or periods during which the expenditure was incurred; and

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- (c) whether, during the whole or a part of a period mentioned in paragraph (b), the applicant did not have a permanent establishment in Australia or an ABN and the applicable days in the relevant period.

## **Part B—Documents to be attached to an application for a certificate**

- 1.1 A declaration made in digital form by the applicant or an authorised representative, stating that:
- (a) the information contained in the application for the certificate; and
  - (b) each document attached to the application;
- is correct and true in every particular.
- 1.2 A declaration under clause 1.1 has the effect of a statement to a taxation officer for the purposes of the *Taxation Administration Act 1953*.

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## **Schedule 2—Information and documents required for an application for provisional certificate**

Note: See paragraph 14(b).

### **Part A—Information to be included in an application for a provisional certificate**

#### **Division 1—Information about the applicant**

- 1.1 Type of provisional certificate for which the applicant is applying.  
Note: The three types of certificate under section 378-25 of the Act are a completion certificate, a porting certificate, and an ongoing development certificate.
- 1.2 Registered name of the applicant.
- 1.3 ABN of the applicant.
- 1.4 For an applicant that is incorporated in a State or Territory—the State or Territory in which the company is incorporated.
- 1.5 For an applicant that is not incorporated in a State or Territory—the place in which the company is incorporated.
- 1.6 Registered address of the applicant.
- 1.7 For an applicant that is an Australian resident—evidence the applicant is an Australian resident.
- 1.8 For an applicant that is a foreign resident—details of the company’s permanent establishment in Australia.
- 1.9 Names and addresses of the applicant’s company directors.
- 1.10 For an applicant that is part of a tax consolidated group—the full name and ABN of the head company of the tax group.
- 1.11 Details of the contact person for the application, including all of the following:  
(a) full name;  
(b) position;  
(c) telephone or mobile;  
(d) business address;  
(e) email.
- 1.12 Confirmation that the applicant is the company primarily responsible for undertaking the activities necessary for the development of the digital game in Australia.

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## Division 2—Information about the digital game

- 2.1 Title of the digital game.
- 2.2 Platform/s of the digital game.
- 2.3 Genre of the digital game.
- 2.4 Synopsis of the digital game.
- 2.5 Specify the purpose for which the game was primarily developed.
- 2.6 Outline of any of the purposes for which the game was developed which relate to advertising or promoting a product, entity or service, or an industrial, corporate or institutional purpose.
- 2.7 Information on whether the digital game is, or will be, available over, or primarily accessed through, the internet, or if it only operates or will only operate when a user is connected to the internet.
- 2.8 Outline of any elements of the digital game that could result in the digital game being refused classification under the *Classification (Publications, Films and Computer Games) Act 1995*.
- 2.9 Outline of any elements of the digital game that could come within the definition of a gambling service within the meaning of section 4 of the *Interactive Gambling Act 2001*, or that otherwise are or will be substantially comprised of gambling or gambling-like practices.

### *Details of qualifying Australian development expenditure*

- 2.10 Estimated dates for when qualifying Australian development expenditure commenced and ceased/will cease to be incurred.
- 2.11 An outline of the qualifying Australian development expenditure intended to be incurred by the applicant on the digital game in Australia.
- 2.12 Confirmation that the applicant is the company primarily responsible for undertaking the activities necessary for the development of the digital game in Australia.



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## **Part B—Documents to be attached to an application for a certificate**

- 1.1 A declaration made in digital form by the applicant or an authorised representative, stating that:
- (a) the information contained in the application for the certificate; and
  - (b) each document attached to the application;
- is correct and true in every particular.
- 1.2 A declaration under clause 1.1 has the effect of a statement to a taxation officer for the purposes of the *Taxation Administration Act 1953*.