

# NZGDA

NEW ZEALAND  
GAME DEVELOPERS  
ASSOCIATION



## GAME DEVELOPMENT SECTOR REBATE DESIGN FEATURES SUBMISSION

SUBMISSION BY TE ROPU WAIHANGA KEMU O AOTEAROA  
THE NEW ZEALAND GAME DEVELOPERS ASSOCIATION

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### About this draft submission

This is a draft submission prepared by the NZGDA so that members can give us feedback on it or consider the issues in their own submissions. Remember to make your own submission too. [Submissions due are Thursday 6 July.](#)

Tell us what you think. Email [info@nzgda.com](mailto:info@nzgda.com) or comment in the #gdsr channel in [nsgamedev.slack.com](https://nsgamedev.slack.com).

## About the NZ Game Developers Association

The New Zealand Game Developers Association (NZGDA) or Te Rōpū Waihanha Kēmu O Aotearoa is an incorporated not-for-profit industry association founded in 2001. It represents New Zealand creators of interactive content and promotes the business, craft and art of creating interactive content.

Our members include students, hobbyists, individuals, startups, indie studios and established games studios. They create video games, apps, augmented reality, virtual reality, board games, location-based experiences, educational games, serious games and more. Our members cover all the artistic, technical and commercial roles involved in interactive development.

The Association runs several programmes including the New Zealand Game Developers Conference, a Screen Sector Convergence Day, a Student Day, the Kiwi Game Starter startup programme, industry surveys, diversity scholarships and supports monthly meetups in four cities.

For more information see [www.nzgda.com](http://www.nzgda.com) or email [info@nzgda.com](mailto:info@nzgda.com).

## Introduction

Firstly, the NZ Game Developers Association wishes to thank the New Zealand Government for introducing the Game Development Sector Rebate (GDSR).

New Zealand's digital economy has experienced significant growth over the last 10 years and game development will be a key player in its promising future. Fueled by advanced technological infrastructure, a skilled workforce, a supportive regulatory environment, and a commitment to improving outcomes for Māori and Pasifika, the country has emerged as a vibrant hub for digital innovation.

The Government's commitment to investing in the digital economy, including game development, has been instrumental. Initiatives like the New Zealand Centre for Digital Excellence (NZ CODE) and the Game Development Sector Rebate (GDSR) offer vital financial support and resources to local game developers, promoting entrepreneurship and the exploration of new ideas.

In partnership with other initiatives included in the Digital Technologies Industry Transformation Plan, such as the New Zealand Tech Story, New Zealand's reputation as a hub for game development will continue to grow internationally, opening up opportunities for collaboration with global partners and expansion into larger markets. In addition, our robust educational institutions also provide specialised programmes in game design and development, ensuring the creation of a sustainable, skilled talent pool for years to come.

With a supportive ecosystem and favorable prospects, game development in New Zealand holds significant potential for global recognition and economic prosperity for all who call Aotearoa home.

## Feedback on the Rebate's Key Features

### We applaud the minimum eligible claim of \$250,000.

- This minimum allows reasonably small teams to access the rebate and to leverage it when seeking funding or private investment.
- While the rebate is not intended to provide startup or development funding, it complements the NZ Centre of Digital Excellence's (NZ CODE) grants for early stage game businesses.
- This is lower than the AUD\$500,000 minimum required for the Australian Digital Games Tax Offset (DGTO), making New Zealand a more attractive location for early-stage and growing games businesses. As key creators of IP and future large employers, it is important to retain startups in New Zealand.
- This is the same as the rebate available to visual effects businesses via the NZ Screen Production Rebate, who employ the same people as the game development sector. This provides a level playing field with local screen sector productions.

### Increase the rebate payment cap to \$4m per annum.

- The proposed \$3m cap does not cover the sector's status quo and size of existing businesses, and therefore may inadvertently encourage the industry to shrink.
- A \$3m cap restricts the ability of some existing studios to fully utilise the rebate to respond to Australian competition or to offer competitive salary adjustments. These studios may still consider having a portion of their team in Australia because not all their employees or activities would be covered. They may receive an equivalent of only a 15% rebate for their total workforce. This applies especially to our largest employers, meaning a large number of roles could still be at risk.
- There are currently two studios who employ more than 150 developers, who are likely to exceed the \$3m claim cap. (Assuming \$100,000 of eligible expenditure per employee, a team of 150 full time equivalent developers could have \$15m of eligible expenditure and a \$3m rebate claim.)
- A \$4m cap would cover the current activities of all existing studios as of 1 April 2023, without capping current economic activity.
- We estimate that the annual \$40m GDSR budget is unlikely to be exceeded in its first two years and a \$4m cap would not blow the budget.
- A \$4m cap would still provide a reasonable limitation, based on current actual business sizes, to avoid oversubscribing the rebate in future.

### Increase the rebate rate to 25%

- The 20% rebate rate still fails to compete directly with Australia's 30% Digital Games Tax Offset (and 10-15% grants available in several states), the United Kingdom's 33% Video Games Expenditure Credit or Quebec's 37.5% Tax Credit for the Production of Multimedia Titles, for example.
- The 20% rebate doesn't compete directly with the NZ Screen Production Rebate top rate of 25% for (some) international productions and 40% for domestic productions.
- We estimate that the annual \$40m GDSR budget is unlikely to be exceeded in its first two years (based on the industry employing 1070 full time developers as of 31 March 2022). If unclaimed funds from each year were carried over to later years, the total \$160m four-year budget allocation would likely not be exceeded.

## Proposed Design of Eligibility Criteria

In providing this feedback, the NZGDA Board has been guided by following goals:

- support both small and large, startup and established businesses
- include commonly accepted 'industry standard' activities, tools and processes
- encourage the creation of New Zealand-owned digital IP, while still supporting work-for-hire and outsourcing business models
- keep the rebate simple.

## Eligible Businesses

**Remove the requirement that “the business is primarily involved in developing digital games” including “derived less than 75% of its average annual gross income from such activity in the previous 3 financial years.”**

- Many of our members expressed concerns about the intent and practicality of this requirement.
- This discourages bootstrapping and self-funding, where businesses in a related field (eg, app development, digital media, architectural visualisation, simulation, EdTech) fund themselves with commercial clients before taking the entrepreneurial leap into game development. It also discourages internal innovation projects where larger firms have incubated gaming or serious games projects internally. Since early stage funding is limited, historically this has been a common pathway for many New Zealand game development businesses and should be encouraged.
- The Eligible Game and Eligible Activities requirements provide a sufficient check that the rebate is being used for the intended purpose.
- This requirement can easily be circumvented by establishing a new subsidiary business that focuses 100% on the game development activity.
- Both the 75% ratio and three year requirements are arbitrary and an imprecise test. We predict they would lead to many appeals or enquiries for the administrator.
- The wording was confusing whether businesses younger than three years, such as startups, were eligible.
- Rather than a requirement, a question similar to this in the application form could be a useful guide for NZ On Air when assessing applications.

**Clarify that subcontractors and outsourcing studios can be Eligible Businesses.**

- While the Eligible Activities section references contractors undertaking Eligible Activities, for clarity they should be mentioned in the Eligible Businesses section.
- Businesses should not have to deliver all of the Eligible Activities that make up an Eligible Game. However, each application should still meet all criteria such as the \$250,000 minimum, an Eligible Game and Eligible Activities.

## Eligible Games

**Add “web browser” as an Eligible Format.**

**Add “physical board games” as an Eligible Format.**

- The development of physical games utilises many of Eligible Activities. This includes artists, designers and developers performing the same tasks that they would in a studio making digital games.
- Physical games meet the definition of a game: content containing rules, mechanics, and player participation that changes the outcome.
- Physical games can generate creative IP that targets export markets, can scale and be licensed.
- Many digital game developers learn the critical foundations of interactive design through creating physical games.
- While the activities and materials related to manufacturing the physical components of the game (eg, printing and distribution) are not Eligible Activities, many physical game businesses have extensive digital business units that will utilise the same software and hardware tools that a digital game studio utilises.

**Remove the requirement that digital games “are made available for download or use over the internet.”**

- The requirement that they are “intended for general public release” is sufficient.
- Hybrid games and installation games are listed as Eligible Formats, and can be played in public (eg, in a public museum) but would not always be “made available” to be downloaded over the internet.
- This wording does not add value to the rebate’s administration or purpose.

**Remove the footnote that “This includes lootboxes or similar game mechanics.”**

- This is a misleading example. In general, lootboxes do not clearly “substantially comprise ... gambling-like practices”.
- There are many varieties and implementations of consumable virtual items which can be redeemed to receive a selection of randomised items, commonly known as lootboxes. Many New Zealand-made video games and many popular video games feature similar virtual rewards, which we are happy to provide local examples of. Randomness is a common design feature in board games, card games and video games and is not inherently gambling.
- This example is inconsistent with other Government guidance. The Ministry of Health<sup>1</sup> and Department of Internal Affairs<sup>2</sup> consider that lootboxes do not meet the legal definition of gambling and cannot be regulated under the Gambling Act 2003.
- However, game mechanics that clearly are gambling (e.g. allow real money winnings from random results) should be ineligible. The current wording covers this.

**Reword “pornography” to “containing pornography.”**

**Change the example of gamified software to “(e.g. gamified quizzes)”.**

- This is a more relevant and common example.

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<sup>1</sup> Ministry of Health. 2022. Strategy to Prevent and Minimise Gambling Harm 2022/23 to 2024/25. Wellington: Ministry of Health.

<sup>2</sup> Department of Internal Affairs. 2019. Regulatory system information: Gambling. Wellington: Department of Internal Affairs.

## Eligible Expenditure

*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?*

**Remove the words “and commercialising” from the following requirement: “For the purposes of the GDSR, eligible expenditure is expenditure incurred by a business in, or in relation to, developing and commercialising digital games.”**

- The term “commercialising” suggests that advertising and distribution costs could be Eligible Activities. However, these costs can grow quickly and are not unique to the game development sector. Eligible Activities should focus on in-house development activities and tools.
- The inclusion of “marketing and community development” and “live operations of an online game” functions and tasks recognises that game development tasks include preparing games for commercial sale and live operation, but excludes external marketing and distribution activities.

**Clarify that independent contractors are not paid through the PAYE system and are eligible.**

- The current wording implies that independent contractors must be paid through the PAYE system, which is typically not the case. Independent contractors are often, but not always, GST registered individuals or limited liability companies.
- The intention should be that independent contractors pay the appropriate form of tax in New Zealand and are domiciled in New Zealand.

**Add the following to the list of specific inclusions, which are best practices to be encouraged or costs of the GDSR scheme itself:**

- Expenditure on protecting and registering Intellectual Property
- Expenditure on training
- Expenditure on Audits, Statement of Readiness and Statutory Declarations in relation to a GDSR application

**Remove the footnote containing a definition of Research & Development.**

- This wording would not add value to the rebate's administration or purpose.
- In this context, there does not need to be a line drawn between R&D, prototyping and game development, as all are Eligible Activities, so a precise definition is not required.
- However, a game business should still be able to separately apply for the R&D Tax Incentive (RDTI) if they chose, as long as they do not also claim the same activities for the GDSR. In this case they can comply with the RDTI's definitions and criteria of R&D. For example, a large studio capped at a \$3m GDSR claim could choose to apply for the RDTI for some activities as well.

**Include expenditure on non-discretionary bonuses to employees and independent contractors as part of their market-level remuneration. Exclude “expenditure on discretionary bonuses to employees.”**

- Employee bonuses should be encouraged. Non-discretionary bonuses for employees can be a part of a well-structured market-level remuneration package, included in employment or contractor agreements, paid via regular payroll systems including PAYE and other taxes.
- Discretionary bonuses, however, could be exploited or allow payments to shareholders and should be excluded.

***What are your views regarding eligibility of onshore hosting and servers vs offshore hosting and servers?***

- Due to the global nature of the game development industry and audiences, the on-shore or off-shore location of hosting is not material.
- However, hosting should be excluded when it is for distribution or marketing of the game.
- Industry standard game developer tools should not be excluded based on their country of origin.

**Remove “expenditure on online hosting and distribution of the game” to align with the exclusion of “expenditure on servers, or the rights to access servers.” Include game development tools but not marketing and distribution expenses.**

- Remove the inclusion of “expenditure on online hosting and distribution of the game” to avoid confusion.
- This is consistent with the statement that “For the purposes of the GDSR, eligible expenditure is expenditure incurred by a business in, or in relation to, developing ... digital games” but not the distribution or marketing of the game.
- Online services and tools (sometimes considered “hosted”) which are used by game developers (such as online tools, APIs, Developer Program Licenses) are already included under “expenditure on game production software as a service.”

***What are your views regarding potential eligibility of expenditure on externally provided training that is relevant to developing digital games?***

**Include costs related to externally provided training, including conference attendance.**

- Training and skills development should be encouraged. This will develop a long term capability for the New Zealand industry.
- Conference attendance is a significant training method within the game development industry and is critical for creating connections with the global game development community.
- Travel to international conferences should remain excluded.

***What are your views regarding potential eligibility of expenditure on royalties?***

**Consider whether expenditure is an Eligible Activity, rather than whether it is technically a royalty or not.**

- There are many different types of royalty both on revenues and expenditures and they are possible in various software licensing, publishing and partnership agreements.
- Some of the included Eligible Activities expenditure such as “licensing NZ material” and “expenditure on underlying game infrastructure such as game engines” can be paid as royalties. For example, the license agreement for industry standard game engine software Unreal Engine includes royalties for successful commercial games. This is a development cost. It is paid on the back-end instead of up front to de-risk the development for the studio.
- Many marketing and publishing deals include royalty payments, but these relate to distribution and marketing activities not game development. For example, a revenue share agreement with a publisher. They should not be eligible.

***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.***

- While there are administrative costs involved, they are reasonable given the benefits of the rebate.

***Are there any additional criteria you think should be considered?***

- No.

## Proposals for the 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?*

- The early registration process both gives studios, especially those with “edge cases”, an early opportunity for clarity on likely spending applicability and gives the delivery agency (NZ on Air) an early indication of demand and issues.

*Do you agree with the proposals for the application process? Why, or why not? How could they be improved?*

**Allow early claims of the rebate. We have two proposals.**

- The GDSR funds need to be made available in a timely manner.
- Many of our members expressed concerns about the impact the timing of the rebate would have on their businesses’ cash flow and investment plans, especially if claims cannot be made until 31 March 2024 and not paid until June 2024.
- Significant competition from overseas, including Australia, has affected the New Zealand game development sector for the last two years. If the rebate timing does not allow businesses to respond until next year, further jobs and investment may be lost in the meantime.
- We have two proposals for MBIE and the delivery agency to consider below. We believe the benefits to jobs and investment outweigh any additional administration costs.

**Proposal #1. Allow quarterly claims during the year as expenses are incurred.**

- This could make funds claimable on an actual basis as soon as within the next 60 days. This timeliness is critical to addressing the crisis.
- There could be a minimum claim threshold for this (eg, an estimated \$1m annual rebate, or some other eligibility criteria) to reduce the incidence and overhead of smaller claims.
- There is precedence for quarterly claims with the Callaghan Growth Grant scheme. In this instance a retention of 10% of claim is held until the final quarter of the tax year is claimed.
- Quarterly claims should continue consistently each year, to avoid the shortfall merely moving to the second year.
- This is our preferred option.

**Proposal #2. Allow a proportion of the annual expected claim to be paid out early.**

- Given that the claims are closely aligned with payroll, we suggest that payroll records be used to substantiate the scale of the claim expected for a full year.
- This could be made available as a one-off advance or loan. There is precedence for this approach with the RDTI being able to be claimed early via a loan through the tax pooling system.
- A recoupment mechanism could be included to recover funds paid out if the claim can't be substantiated at year end, or the Government could pay out only 75% of any expected claim to minimise the risk.

**What do you think is the most appropriate way for businesses to acknowledge GDSR support on relevant digital games?**

- GDSR support should be required in the game’s credits.
- Acknowledging GDSR support on loading screens should be optional.

**What are your views on the suitability of the other requirements and conditions for applicants?**

- These are suitable.



**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?**

**It would be better to increase the overall budget of the scheme.**

- This is easier and cheaper for the delivery partners to administer.
- This ensures that the scheme remains competitive and that studios can budget and invest with confidence.
- The registration process and statement of “readiness” prior to applications would provide the Government with advance notice of the budget being over-subscribed.
- Unclaimed funds from each year should be carried over to later years. This will minimise the risk of over-subscription in any later year.

## **Scheme governance**

**What are your views on setting up good oversight of the GDSR?**

- This is necessary to ensure a robust scheme that will meet the policy objectives.
- The Chairperson of the NZGDA is a member of the Digital Technologies ITP Partnership Board and this should continue.

**Do you agree with the proposals for reviewing decisions? Why, or why not? What would be better?**

- Yes in principle. The NZGDA would be pleased to provide advice and assistance in this process to clarify technical matters.
- We agree that issues in the first instance should be directed to NZ on Air, and that the Ombudsman should be part of the review process. However, it is important that this review process also includes people or organisations with game development industry specific knowledge.