



STATUTORY INSTRUMENTS.

S.I. No. 593 of 2022



DIGITAL GAMES REGULATIONS 2022

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DIGITAL GAMES REGULATIONS 2022

The Revenue Commissioners, in exercise of the powers conferred on them by section 481A of the Taxes Consolidation Act 1997 (No. 39 of 1997), with the consent of the Minister for Finance, and with the consent of the Minister for Tourism, Culture, Arts, Gaeltacht, Sport and Media in relation to the matters to be considered regarding the issue of certification under section 481A(4) and section 481A(9), hereby make the following regulations:

PART 1

General

Citation and commencement

1. (1) These Regulations may be cited as the Digital Games Regulations 2022.

(2) These Regulations come into operation on 22 November 2022 as respects applications made on or after that date by a digital games development company for an interim or final certificate under section 481A of the Act of 1997 in respect of digital games developed on or after that date.

Interpretation

2. In these Regulations, except where the context otherwise requires –

“Act of 1997” means the Taxes Consolidation Act 1997 (No. 39 of 1997);

“compliance report” means a compliance report as provided for in section 481A(16)(e) of the Act of 1997;

“connected persons” means connected persons as provided for in section 10 of the Act of 1997;

“consumable items and software” means materials and software specific and key to the design, production and testing of the qualifying digital game;

“development budget” means the expenditure that was wholly, exclusively and necessarily incurred by the digital games development company on the design, production and testing stages of the development of the qualifying digital game excluding the design of the initial concept for the digital game, and in debugging the completed digital game or carrying out any maintenance in connection with the digital game;

“sub-contractor payment” means a payment made by a digital games development company to a third party in respect of subcontracting of part of the development of the digital game where

- (i) the expenditure in respect of the subcontracted development would fall within the definition of qualifying

expenditure as provided for in Part 6 had that development been carried out directly by the digital games development company, and

- (ii) subcontracting is limited to part only of the development of the digital game and does not include the management and general administration of the development of the digital game, and the digital games development company retains the sole responsibility in relation to the development of the digital game.

PART 2

Application to the Minister for Tourism, Culture, Arts, Gaeltacht, Sport and Media for certification

Application for interim certification

3. (1) An application for an interim certificate under section 481A(2)(a) of the Act of 1997 shall be made in writing to the Minister by a digital games development company in relation to a digital game that is to be developed by the company.

(2) The Minister shall set out the manner and format of an application for a certificate under this regulation, the information that shall accompany such an application in accordance with Schedule 1 to these regulations, and the order and manner that information shall be set out in.

(3) A certificate shall not be issued by the Minister under section 481A(4) of the Act of 1997 in relation to a digital game unless the Minister is satisfied that —

- (a) the digital game as proposed is likely to be an eligible digital game when completed,
 - (b) the development of the digital game will contribute to the promotion and expression of Irish and European culture by reference to the matters set out in section 481A(5)(b) of the Act of 1997 (referred to as ‘the Culture test’), and
 - (c) the digital games development company will provide quality employment in the development of the digital game.
- (4) In issuing an interim certificate the Minister shall set out:
- (a) that the certificate is an interim certificate,
 - (b) that the digital game is to be treated as an interim digital game for the purposes of section 481A of the Act of 1997,
 - (c) the conditions attaching to the interim certificate in accordance with section 481A(6) of the Act of 1997 including in relation to—

- (i) employment which shall be met by the digital games development company in the development of the digital game,
 - (ii) the maximum aid intensity having regard to the Communication from the Commission (2013/C 332/01)¹, and
 - (iii) the requirements to be met in relation to the acknowledgement in the opening titles and/or closing credits of the digital game, and
- (d) the expiry date of the interim certificate.

Application for final certification

4. (1) An application for a final certificate under section 481A(2)(b) of the Act of 1997 shall be made in writing to the Minister by a digital games development company in relation to a digital game that has been developed and completed by the company.

(2) Where an interim certificate has been issued in relation to that digital game, the application for a final certificate shall be made in advance of the date on which that interim certificate expires and in all cases within 6 months of completion of the digital game.

(3) The Minister shall set out the manner and format of an application for a certificate under this regulation, the information that shall accompany such an application in accordance with Schedule 1 to these regulations, and the order and manner that information shall be set out in.

(4) A certificate shall not be issued by the Minister under section 481A(9) of the Act of 1997 in relation to a digital game unless the Minister is satisfied that —

- (a) the digital game is an eligible digital game,
 - (b) the development of the digital game has contributed to the promotion and expression of Irish and European culture by reference to the matters set out in section 481A(5)(b) (referred to as ‘the Culture test’), and
 - (c) where an interim certificate has been issued in respect of the digital game, the conditions specified in the interim certificate have been met.
- (5) In issuing a final certificate the Minister shall set out:
- (a) that the certificate is a final certificate,
 - (b) that the digital game is a qualifying digital game for the purposes of section 481A of the Act of 1997, and

¹ OJ No. C332, 15.11.2013, p.1

- (c) the conditions attaching to the final certificate in accordance with section 481A(11) of the Act of 1997 including in relation to—
 - (i) employment which shall be met by the digital games development company for the development of the digital game,
 - (ii) the maximum aid intensity having regard to the Communication from the Commission (2013/C 332/01)², and
 - (iii) the requirements to be met in relation to the acknowledgement in the opening titles and/or closing credits of the digital game.

PART 3

Records to be provided and maintained by a digital games development company

Records to demonstrate breakdown of expenditure

5. (1) The records which a digital games development company shall provide to the Revenue Commissioners in relation to an interim digital game when requested to do so shall include—

- (a) a breakdown of expenditure to show qualifying expenditure,
- (b) a breakdown of expenditure to show eligible expenditure, and
- (c) details of any transactions with connected persons.

(2) The records which a digital games development company must have available, prior to making a claim under section 481A(19) of the Act of 1997, should be prepared in the form set out in Schedule 2 and include:

- (a) vouched details of the eligible expenditure for the accounting period in respect of which the claim is made, and
- (b) vouched details of the qualifying expenditure for the accounting period in respect of which the claim is made.

(3) The records which a digital games development company shall provide to the Revenue Commissioners in relation to a qualifying digital game when requested to do so shall include—

- (a) a breakdown of expenditure to show qualifying expenditure,
- (b) a breakdown of expenditure to show eligible expenditure,
- (c) the development budget,
- (d) full development accounts, and
- (e) details of any transactions with connected persons.

² OJ No. C332, 15.11.2013, p.1

(4) The records which a digital games development company must have available prior to making a claim under section 481A (20) of the Act of 1997, should be prepared in the form set out in Schedule 3, and should include:

- (a) any records necessary to ascertain compliance with the conditions of the Minister's interim certificate, where issued, and the Minister's final certificate,
- (b) the books of first entry, including a cash receipts book, purchases day book, cheque payments book, creditors ledger and petty cash book,
- (c) trial balance, all ledgers and journals to which all transactions are posted,
- (d) the back-up documentation from which the books of first entry were completed, including —
 - (i) suppliers' invoices, credit notes, statements and delivery notes,
 - (ii) cheque stubs and petty cash vouchers, and
 - (iii) bank statements and correspondence including those items verifying lodgements into bank accounts and transfers out of such accounts;
- (e) linking documents, including documents drawn up in the making up of accounts and showing details of the calculations linking the records to the accounts.

(5) Nothing in these regulations restricts the level of documentation the Revenue Commissioners may require to determine compliance with section 481A of the Act of 1997.

Obligation to keep records

6. Notwithstanding any other provision of the Act of 1997 the Revenue Commissioners may request the records described in Regulation 5 at any time within a period of up to 6 years after the later of –

- (a) completion of the qualifying digital game, or
- (b) a claim under section 481A(20) of the Act of 1997.

PART 4

Completion Requirements

Notification of completion of development and provision of copies

7. (1) A digital games development company shall notify the Minister in writing of the completion of development of a qualifying digital game within 6 months of the date of such completion in accordance with section 481A(16)(d).

(2) Subject to Regulation 8, a digital games development company shall, within 6 months of the completion of development of a qualifying digital game, provide copies of the digital game to the Minister in the format and manner as may be specified in the certificate issued by the Minister.

PART 5

Requirements relating to Compliance

Compliance report

8. (1) A digital games development company shall prepare a compliance report prior to making a claim under section 481(20) of the Act of 1997.

(2) The report shall –

- (a) contain a declaration in the form specified in Schedule 4, and
- (b) be accompanied by the matters set out in Schedule 5.

PART 6

Type of expenditure that may be qualifying expenditure on production of a qualifying digital game

9. “Qualifying expenditure” is expenditure incurred directly by the digital games development company on design, production and testing of a digital game excluding expenditure incurred—

- (a) in designing the initial concept for the digital game,
- (b) in debugging a completed digital game or carrying out any maintenance in connection with such a digital game, and
- (c) on sub-contractor payments exceeding €2,000,000,

and shall be limited to the following types of expenditure:

- (i) expenditure incurred on the costs of employees working on the design, production and testing of the qualifying digital game under a contract of employment with the digital games development company, provided that these costs are in line with both the company's usual policy on remuneration and industry rates, including actual salaries and pay related social insurance contributions and other statutory costs included in the remuneration and corresponding to the rate of actual work on the design, production and testing of the qualifying digital game,
- (ii) the capital costs of assets used for the development of the qualifying digital game, corresponding to the capital allowances arising during the design, production and testing of the qualifying digital game and the rate of actual use of those assets on the design, production and testing of the qualifying digital game,

- (iii) the costs of renting or leasing equipment for the development of the qualifying digital game, corresponding to the rate of actual use of such equipment on the design, production and testing of the qualifying digital game,
- (iv) costs of consumable items and software and copyrights and other intellectual property rights, provided that they are directly assigned to the design, production and testing of the qualifying digital game and corresponding to the rate of use during the design, production and testing of the qualifying digital game;
- (v) sub-contractor payments incurred in relation to the design, production and testing of the qualifying digital game, provided that they do not exceed €2,000,000.

PART 7

Requirements relating to Payment of Specified Amount

Bank accounts

10. (1) The digital games development company shall open a bank account in a banking institution based in the State from which all eligible expenditure is to be paid.

(2) The specified amount shall be paid to the digital games development company to a bank account in a banking institution in the State.

(3) The specified amount shall not be paid unless the digital games development company has been carrying on the trade referred to in paragraph (b) of the definition of digital games development company in section 481A(1) of the Act of 1997 for a period of 21 months prior to a claim under either section 481A(19) or section 481A(20) of the Act of 1997.

PART 8

Miscellaneous

Currency exchange rate

11. The currency rate of exchange for expenditure on the development of an interim or qualifying digital game, shall be calculated in accordance with section 79 of the Act of 1997 for the purposes of claims under section 481A(19) and section 481A(20) of that Act, as the case may be.

SCHEDULE 1**Information to support an application to the Minister for an interim certificate under section 481A(2)(a) of the Act of 1997**

- Tab 1 Completed application form
- Tab 2 Synopsis of the digital game
- Tab 3 Person Days Schedule
- Tab 4 Declaration that neither the applicant company nor the undertaking which it is part of is an undertaking in difficulty in accordance with section 481A(1) of the Act of 1997
- Tab 5 Declaration that the digital games development company is not the subject of outstanding recovery proceedings in accordance with section 481A(13) of the Act of 1997
- Tab 6 Undertaking that the digital games development company is in compliance with all employment law requirements/legislation and will continue to be in compliance throughout the development of the digital game

Information to support an application to the Minister for a final certificate under section 481A(2)(b) of the Act of 1997

- Tab 1 Completed application form
- Tab 2 Synopsis of the digital game
- Tab 3 Person Days Schedule
- Tab 4 Declaration that neither the applicant company nor the undertaking which it is part of is an undertaking in difficulty in accordance with section 481A(1) of the Act of 1997, or where an interim certificate was issued in relation to the digital game, updated declaration that neither the applicant company nor the undertaking which it is part of is an undertaking in difficulty in accordance with section 481A(1) of the Act of 1997
- Tab 5 Declaration that the digital games development company is not the subject of outstanding recovery proceedings in accordance with section 481A(13) of the Act of 1997, or where an interim certificate was issued in relation to the digital game, updated declaration that the digital games development company is not the subject of outstanding recovery proceedings in accordance with section 481A(13) of the Act of 1997

- Tab 6 Undertaking that the digital games development company is and has been in compliance with all employment law requirements/legislation during the development of the digital game
- Tab 7 Where an interim certificate was issued in relation to the digital game, confirmation/evidence that all conditions attaching to the interim certificate issued by the Minister have been complied with
- Tab 8 Confirmation that the digital game is an exempted work within the meaning of the Video Recordings Act 1989

SCHEDULE 2

Information required to support a claim for the interim digital games corporation tax credit under section 481A (19)

- Tab 1 A full copy of the application for an interim certificate as submitted to and approved by the Department of Tourism, Culture, Arts, Gaeltacht, Sport and Media and a copy of the certificate
- Tab 2 Vouched breakdown of expenditure to show
- (a) details of each element of qualifying expenditure and
 - (b) details of each element of eligible expenditure
- Tab 3 Details of relevant transactions with connected persons
- Tab 4 Writers' Agreements and Option Agreements and Intellectual Property agreements, where relevant
- Tab 5 Development, Financing and Distribution Agreement(s), where relevant
- Tab 6 Other relevant agreements and documentation
- Tab 7 Confirmation that no financial arrangements of a type referred to in section 481A(16) of the Act of 1997 exist or are proposed
- Tab 8 A diagram detailing all the parties involved, their respective responsibilities and the flow of funds between them
- Tab 9 Declaration that no relevant party to the claim has outstanding tax returns or liabilities
- Tab 10 Declaration of any issues that might impact on the conditions for relief under section 481A of the Act of 1997

- Tab 11 Confirmation that the declarations provided to the Minister in accordance with Tab 4 and Tab 5 of Schedule 1 in support the application to the Minister for an interim certificate under section 481A(2)(a) continue to be valid

SCHEDULE 3

Information required to support a claim for the digital games corporation tax credit under section 481A (20)

- Tab 1 A full copy of the application for a final certificate as submitted to and approved by the Department of Tourism, Culture, Arts, Gaeltacht, Sport and Media and a copy of the certificate
- Tab 2 Writers' Agreements and Option Agreements and Intellectual Property Agreements, where relevant
- Tab 3 Development, Financing and Distribution Agreement(s), where relevant
- Tab 4 Other relevant agreements and documentation
- Tab 5 Development Accounts to support the claim, including -
- (a) details of each element of qualifying expenditure,
 - (b) details of each element of the eligible expenditure amount, and
 - (c) the development budget
- Tab 6 A diagram detailing all the parties involved, their respective responsibilities and the flow of funds between them
- Tab 7 Details of all relevant transactions with connected persons
- Tab 8 Confirmation that no financial arrangements of a type referred to in section 481A(16) of the Act of 1997 exist or are proposed
- Tab 9 Declaration that no relevant party to the claim has outstanding tax returns or liabilities
- Tab 10 Compliance report declaration in the form detailed in Schedule 4
- Tab 11 Confirmation that the declarations provided to the Minister in accordance with Tab 4 and Tab 5 of Schedule 1 in support an application to the Minister for a final certificate under section 481A(2)(b) continue to be valid

SCHEDULE 4

Compliance report declaration

Digital games development company name:

Name of Digital Game:

Culture Certificate Number:

Interim (if applicable):

Final:

Declaration

I declare that to the best of my knowledge and belief the information given in this Report is correct, and that the conditions of relief applying to the company and the digital game are satisfied and in particular that:

The digital game was completed on: xx / xx/ xx

The name and address of the banking institution employed in relation to the administration of development expenditure incurred in the State or the European Economic Area (EEA) is: _____

All of the documentation and final signed, dated and witnessed versions of all agreements, required to be completed by the digital games development company in advance of a claim, have been completed and are available.

All of the conditions contained in the final certificate and, where applicable, the interim certificate issued by the Minister to the digital games development company under section 481A of the Taxes Consolidation Act 1997, were complied with.

The digital games development company has maintained records in accordance with Part 3 of the Digital Games Regulations 2022 and section 481A of the Taxes Consolidation Act 1997.

The attachments listed in the schedule are available.

The digital games development company has existed for the purpose of carrying out the trade of developing digital games on a commercial basis since [date] and will continue to actively trade in developing digital games in accordance with section 481A(16)(f) for at least a further 12 months from the date of this declaration.

Signature: Date: //

Capacity: Secretary

SCHEDULE 5**Documents to include in a compliance report in relation to a qualifying digital game**

- Tab 1 Completed compliance report declaration
- Tab 2 Copies of the completed qualifying digital game in the formats as may be specified in the certificate issued by the Minister in relation to the digital game.
- Tab 3 A report by the digital games development company for the purposes of supporting the claim under section 481A (20) of the Act of 1997, which includes—
- (a) details of the amount of qualifying expenditure in accordance with Regulation 9 and itemised in accordance with the matters at (i) to (iv) of Regulation 9,
 - (b) details of the amount of eligible expenditure in accordance with Regulation 9 and itemised in accordance with the matters at (i) to (iv) of Regulation 9,
 - (c) details of the development budget,
 - (d) details of any outstanding creditors or any other amounts due by the digital games development company at the date of completion and at the date of the claim,
 - (e) in a case where a payment of an amount equal to at least 30 per cent of the specified amount was made by the digital games development company to any person or to a group of 2 or more persons, who are connected (within the meaning of section 10 of the Act of 1997) with each other, details of:
 - (i) the identity of that person or persons,
 - (ii) the nature of the goods, services or facilities provided by that person or persons to the digital games development company, and
 - (iii) the amount or amounts paid to that person or persons,
 - (f) details of any foreign currency rates used,
 - (g) details of any transactions with connected persons,
 - (h) the date upon which the completed qualifying digital game was first made available to the public or provided to the commissioning undertaking, and
 - (i) a statement that no significant relevant events have occurred since the date notified to the Minister, in

accordance with Regulation 7, which would alter, to any material extent, the figures on which the claim is based

- Tab 4 Details of the source of all amounts used to finance the entire development expenditure on the qualifying digital game
- Tab 5 Evidence of compliance with all conditions of the Minister's final certificate and where issued, the Minister's interim certificate, including in relation to employment

The Minister for Tourism, Culture, Arts, Gaeltacht, Sport and Media consents to the making of these Regulations, insofar as they relate to the matters to be considered regarding the issue of certificates under subsection (2) of section 481A.



GIVEN under my Official Seal,
21 November, 2022.

CATHERINE MARTIN,
Minister for Tourism, Culture, Arts, Gaeltacht, Sport and
Media.

The Minister for Finance consents to the making of these Regulations.



GIVEN under my Official Seal,
21 November, 2022.

PASCHAL DONOHOE,
Minister for Finance.



GIVEN under my Official Seal,
22 November, 2022.

NIALL CODY,
Revenue Commissioner.

BAILE ÁTHA CLIATH
ARNA FHOILSIÚ AG OIFIG AN tSOLÁTHAIR
Le ceannach díreach ó
FOILSEACHÁIN RIALTAIS,
BÓTHAR BHAILE UÍ BHEOLÁIN,
CILL MHAIGHNEANN,
BAILE ÁTHA CLIATH 8,
D08 XAO6

Tel: 046 942 3100
r-phost: publications@opw.ie

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