

# UKIE response to the HM Treasury consultation on Digital Services Tax

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**ukie**

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### **Executive Summary:**

The Games and Interactive Entertainment industry is primarily engaged with the development, publishing and distribution of games and game content and as such it should be exempted from the scope of the Digital Services Tax. The current lack of clarity over the status of online games with regards to the Digital Services Tax risks causing uncertainty in the industry leading to a loss in investment, innovation and growth and consequently adverse impact on the current significant tax receipts paid by the industry to the UK Government. There is an additional risk that games companies may reduce the services and even the number of games offered to UK consumers, further undermining the current success of the sector.

### **About UK Interactive Entertainment (Ukie)**

1. Ukie is the trade body for the UK's games and interactive entertainment industry. It represents over 440 games businesses of all sizes from small start-ups to large multinational developers, publishers and service companies, working across online, mobile apps, consoles, PC, esports, virtual reality and augmented reality.
2. We aim to support, grow and promote member businesses and the wider UK games and interactive entertainment industry by optimising the economic, cultural, political and social environment needed for UK businesses to thrive. Our core goal is for the UK to be the best place in the world to make and play video games.

### **The UK Games Industry**

3. The government's latest economic figures<sup>1</sup> demonstrate the strength of the UK's games industry, showing that the sector grew 148.9% since 2010. The games industry figure was part of the bigger creative industries sector that broke the £100 billion mark for the first time, moving from £94.8bn in 2016 to £101.5bn in 2017, accounting for 5.5% of total UK gross value add (GVA).

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<sup>1</sup> <https://www.gov.uk/government/statistics/dcms-sectors-economic-estimates-2017-gva>

4. The growth shown in these latest government figures mirrors the conclusions from the Screen Business report<sup>2</sup> that Ukie contributed to. This study showed that UK development and publishing alone contributed over £1.35bn in direct GVA in 2016, with the overall games industry contributing £2.87bn in GVA. We are a highly skilled, highly productive sector whose contribution to the economy is significant. We have enjoyed this growth thanks to a supportive stable and proportionate regulatory framework.

### **Video Game market trends**

5. The video game industry is a distinctive ‘hybrid’ of the digital technology and creative content industries: our products and services blend the most captivating aspects of creative content, such as deep stories, compelling characters, and beautiful graphics and audio, with cutting-edge technology and innovative delivery and engagement models. The complexity of our business is too easily overlooked if it is viewed as simply another audio-visual or creative industry.
6. The video games industry is still relatively young but has grown faster than any other form of popular entertainment to reach annual global sales of over £100 billion in 2018. Global sales of UK-made games content – console games, PC games, mobile games and apps – exceed £2 bn per annum. 95% of games companies are exporters and 45% of UK games turnover is generated from overseas sales. The domestic market for games software and hardware is worth £4.99bn in sales revenue, netting the Government an approximate £1bn in VAT receipts alone.
7. At its core, our industry makes and delivers games and game experiences. These range from small mobile games by local independent studios to “triple A” games developed by multinational teams as large as 600 with development costs in the tens of millions or more.

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<sup>2</sup> <https://www.bfi.org.uk/sites/bfi.org.uk/files/downloads/screen-business-appendices-4-and-5-2018-10-08.pdf>

8. The interactive nature of our games has allowed the industry to develop a unique engagement with our consumers – game players – and we are able to provide tools and an environment for those players to deeply engage with each other through gameplay.. At the heart of the industry is professionally developed, world class game content which we provide to UK residents through a variety of models, including physical disks, downloads, and subscriptions, all of which are subject to VAT. Our games are interactive by their very nature and are built on communities, networks, and social engagement which enhance the game play experience but are always ancillary to the game itself. This should not mean they are subject to additional taxation in the form of the Digital Services Tax.
  
9. The government has stated that it does not intend to apply the Digital Services Tax to revenues generated from the direct sale of online content and that, *“in general, this principle should extend to online games and console games that allow users to play with/against other users on an online network.”* However, the government risks creating uncertainty by further stating that some online games *“share similar features to social media and online marketplace business models”* that benefit from *“sustained engagement of a large user base that is encouraged to build networks, communicate and enter into exchanges”*. The government further suggests that apportionment of revenue to *“in-scope business activity”* that will be subject to the Digital Services Tax might be appropriate for some online games.
  
10. Any or all of these features can be elements of a successful online game but are always ancillary features designed to enhance the core part of our industry – to create compelling, interactive games. To include online games within scope of the Digital Services Tax causes an uncertainty that risks stifling innovation, making game makers less inclined to create engaging experiences & that allow users to be creative. The government needs to make a clear-line rule that products and services that are primarily games or game content and which are subject to VAT are excluded from the Digital Services Tax.

## **Digital Services Tax**

11. Ukie are responding specifically to the element of the consultation referring to online games found at paragraph 3.30.

*The provision of online content – the government does not intend to apply the DST to revenues generated from the direct sale of online content (e.g. TV or music subscription services, online newspapers etc) where the business either owns the content or has acquired the right to distribute content. The government believes that this is similar in principle to the online sale of goods. The government believes that, in general, this principle should extend to online games, and console games that allow users to play with/against other users on an online network. However, there are online games that share similar features to social media and online marketplace business models e.g. those that benefit from the sustained engagement of a large user base that is encouraged to build networks, communicate and enter into exchanges. The government believes that there is a need to reflect further on how such online games should be characterised against the definitions above.*

12. Our response covers the extent to which online games can be said to come within the definitions contained within the consultation for provision of a social media platform or online marketplace and the “boundary” issues identified therein.

***Provision of a social media platform (3.14)***

*The government considers that the key elements in defining the provision of a social media platform would be:*

- *it is delivered through a website or an alternative internet-based application (e.g. a mobile application)*
- *the following functions are a central part of the business offering:*
  - *allows users to interact with other users*
  - *allows users to publish or share personal details, media content or other information*

- *allows users to join and create communities based on shared interests or objectives*
- *it generates revenue by monetising users' engagement with the platform and with other closely integrated functions.*

(3.47)

- *If a platform is principally designed to allow users to interact with each other, share content (their own or others'), and build networks, it is likely that the business would meet the definition of a social media platform, even if it displays some professional content as an auxiliary or incidental feature to this overall business activity.*
- *If the platform is principally designed to distribute professionally made content, with the owner of the platform making decisions on acquiring, producing and marketing such content, then it is less likely to fall in scope of the DST as a social media platform*

13. Online games enable user interaction, often through communities (e.g. multiplayer). Whilst users are in some cases able to publish or share “content or other information” within the games, for example in *Minecraft* where the online “realms” feature allows up to 10 friends to play, interact and collaborate, revenue generation through social engagement with other closely integrated functions is neither the motivating or dominant activity. This “user interaction” is principally to allow players to compete against or cooperate with other players.. Again, a fundamental tenet of how games are played and enjoyed.

14. The consultation goes on to state that the definition of a social media platform is intended to cover platforms that perform, amongst other things, “content sharing” and whose focus is on allowing users to “share media”. Again, whilst there are some online games where sharing of media occurs (for example in titles like *Minecraft* or *Cities: Skyline*) revenue generation primarily comes from commercial sales of the

game, subscription to content and in-game transactions to unlock additional game content and features.

15. Meanwhile, France and Germany have shifted from attempting to implement an EU-wide digital services tax to a narrower and more specific 'advertising services tax'. Additionally, the EU are focusing on coordination attempts with the OECD. In the coming months and years, especially with the UK's departure from the EU, it is important that the UK remains a competitive and modern place for both existing games companies and future start-ups.

#### **Case Study 1 – Console platform:**

- Sony have Friends and Community features, messaging and the ability to upload gameplay videos (Share) and other content to Life from PlayStation, and consumers can rate games they have bought, however this interaction is not monetised and is ancillary to the core game (para 3.47 and 3.48).
- In addition, PS+ gives players access to online multiplayer, discounted games and cloud storage. This is a service that enables people to play games with other players online. Online gameplay services do not focus on building shared communities in the way that traditional social media platforms do. Subscription services are a way of monetising the development of videogames.

#### **Case Study 2- PC platform. Cities: Skylines:**

- Modding, via the addition of user-generated content such as buildings or vehicles, is supported in *Skylines* through the Steam Workshop. The creation of an active content-generating community was an explicit design goal. The game includes several pre-made terrains to build on, and also includes a map editor to allow users to create their own maps, including the use of real world geographic features. Mods are also available to affect core gameplay elements.

#### **Provision of an online marketplace (3.19)**

- *The government considers that the key elements in defining the provision of an online marketplace would be:*
  - *it is delivered through a website or an alternative internet-based application (e.g. a mobile application)*
  - *it allows users of the platform to advertise, list or sell goods and services to other users with the purpose of seeking to facilitate the exchange of goods or services*
  - *it generates revenue through the performance of this activity and the direct or indirect monetisation of users' engagement with the platform*
- *This definition would cover businesses that facilitate the formal exchange of goods, services or digital content between third-parties on a platform. For example, a business that takes a commission from matching third-party buyers and sellers of physical goods.*
- *It would also cover businesses that provide a platform for third-parties to list products and services, and communicate with prospective buyers, even if subsequent transactions are concluded away from the marketplace.*

16. Online games platforms can provide the facility for developers to publish their games for global distribution. The platform is acting as a publisher rather than a marketplace and developers are entering into a publishing contract with the platform. These platforms facilitate the sale of online content and as such must be considered in the context of those activities considered out of scope of the Digital Sales Tax.

### **Case Study – Platforms**

Sony determines which content to buy from games publishers at a wholesale price and then retails that content to the consumer on the PlayStation Store at a price determined by Sony. Sony controls the selection, marketing and retail pricing of that content on the PS Store. As such the PS Store does not “facilitate the formal exchange of...digital content between third-parties...” (para 3.20).

### **Boundary issues (3.47)**

- *Boundary between online content and a social media platform: If a platform is principally designed to allow users to interact with each other, share content (their own or others'), and build networks, it is likely that the business would meet the definition of a social media platform, even if it displays some professional content as an auxiliary or incidental feature to this overall business activity.*
- *If the platform is principally designed to distribute professionally made content, with **the owner of the platform making decisions on acquiring, producing and marketing such content**, then it is less likely to fall in scope of the DST as a social media platform.*
- *It is possible that a platform may be highly integrated and have features matching both business activities e.g. the provision of a social media platform and online content.*
- *In this case the business will need to **assess whether the distribution of online content is of an auxiliary or incidental nature**, or if on the facts it is clearly separable. If it is clearly separable, then the business will need to identify the revenues for each part on a just and reasonable basis.*

Games platforms are first and foremost designed to distribute industry developed games content. The primary emphasis is on the distribution of this content and the interaction of players with this content. Where interaction between players is developed around the game itself rather than peripheral to it and as such should not fall into the definition of within scope of the Digital Services Tax.

### **Case Study- Example Game X**

Game X is a AAA Console Game that players sign into the game with a user ID and create an in-game avatar. The game user ID is separate to the Platform User ID (for example

Playstation ID). However, users may choose to link the two. Game mode is chosen through a lobby area, a virtual room where players can interact with each other. However, players are identifiable only by way of their user ID. In the lobby area they can interact visually through text chat or headset. Players can choose a game mode and will either join a game with other randomly selected players or can choose to create a team or clan, who may frequently play together on a chosen game map (virtual environment).

**In terms of Personal data that the Games Publishing Company (“Game Publisher”)**

**collects, this is limited to the self-created user ID and geo-location through an IP address.**

Should a player choose to link their user ID with a social network then typically the data may also include age and gender. **The only other data the Game Publisher receives are**

**statistics relating to an individual’s Gameplay.** This enables the Game Publisher to collate statistics for publication of leader boards and help drive further game development).

Outside of the game itself, the Game Publisher operates a website community forum. This enables players to swap hints and tips with other players, report bugs and join teams and compare game-play statistics.

The infrastructure and scope of the game is intended to generate and maintain a large user-base with significant levels of continued engagement. The monetisation of this user base is obtained through the sale of digital content to the users, whether this is by way of an initial purchase price for the game or through further in-game transactions.

Essentially, both instances this is the provision of licensed software for end-consumer use.

The social elements of the game fall short of a social-network and therefore **the operation of such a game would not and should not fall within the proposed Digital Services Tax.**