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UKIE Access to Finance Guide – Proposed Updated Guide

Introduction

Accessing finance is a constant challenge for any business in the UK, and the video games industry is no different.

However, now more than ever, there is funding available in a variety of forms if you know where to look. In many ways, in the past few years the games sector has never had it so good, although it is not immune to the boom and bust of the wider business cycle (as we have seen more recently).

This guide provides an overview of the key sources of finance, how to best make use of it and what to expect from those providing it – the 'quid pro quo'.

The guide covers the most common types of funding: public sector funding, private sector grants, tax reliefs, debt finance, equity investment, and more.

Before we dive into more detail on these, first: a few headline thoughts on the business of raising finance.

Taking on funding from external sources can be a great way of supercharging the growth of your business, although, depending on the type and provider of funding, there may be strings attached and there will be a number of issues to consider. It is important to consider what type of funding may be most appropriate for your business, given the stage it is at and what you plan to do.

For example, many larger equity investors will not be prepared to invest in a very early stage business that does not yet have at least a testable product, e.g. a vertical slice. Things may be different if you have a decent track record from previous studios or other games businesses, but equity investors may expect you to 'bootstrap' to a certain extent before they consider investing, such as self-funding through work for hire etc. This may have the advantage of creating more value in the business before issuing equity thus minimising dilution of the percentage of the company you will retain post-investment. Other funders, such a project finance or debt providers, may require a financial track record or some form of valuable security before they agree to lend.

Therefore, businesses at a very early stage will need to be creative when it comes to funding. You may find angel investors are willing to invest, particularly if you can qualify for SEIS / EIS. Alternatively, grant funding can be invaluable: provided you qualify and are selected, your business can benefit from what is effectively 'free' or 'inexpensive' cash, which may be enough to get to the stage where other sources of investment, e.g. angels or venture capital, become available. However, you may not be lucky enough to receive a grant or perhaps the funding is not enough. In this case, it may be that personal savings, family & friends and work-for-hire is what is needed to carry you through to the next level. In fact, many funders will approve of the significant personal commitment this requires as it shows them you are prepared to have your own investment in the business, whether financial or in kind: what they call 'skin in the game'.

Even if you do have interest from equity investors at an early stage, you should always think carefully before giving away equity in the business: the later on in the life cycle, and the more valuable your business, the less equity you will need to give away to investors and the more of your own company you can keep (in both senses).

We hope this guide is helpful, not just as a directory of possible sources of funding, but also as a handbook of hints and tips to refer to when you're in the midst of it all.

The information in this section has been provided by Harbottle and Lewis, a Ukie Partner Member, as at February 2023. Contact the membership team if you have any follow-up questions for them.

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Contents

This guide has been prepared by Ukie Partner member, Harbottle & Lewis. This document is intended to be used as an introductory guide only, is not an exhaustive review of the subject matter and does not constitute legal advice from Harbottle & Lewis.

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Public Funding

Public funding for games is available from a number of sources, some national, some regional and some for more specific types of content. A selection of the key sources is as follows:

- UK Games Fund
- Creative UK
- Start-Up Loans
- Innovate UK
- Global Screen Fund
- Northern Ireland Screen fund
- Scottish Enterprise
- Various English/Welsh regionally-focused funding

There are no doubt many other potential sources of funding that may not be specifically games-focused but for which you may qualify. New grants are created from time to time to support specific areas e.g. Immerse UK was established in 2016 when it became clear that immersive technologies would benefit from more focused efforts at research and development.

Businesses that take advantage of any government funding should note that some of these may constitute state aid and so may have an impact on and limit the availability of other state aid such as VGTR and R&D tax relief. Specialist advice should be taken at the time.

UK Games Fund

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What is the UK Games Fund?

The UK Games Fund is a not-for-profit £4 million fund set up in 2015 that provides grants to studios to be applied towards the development of a specific game project.

How can the UK Games Fund help your studio?

The UK Games Fund is able to provide grants of up to £30,000 to established UK-based companies and solo developers with a game development project in two phases. An initial phase of funding of up to £12,000 will then lead to an opportunity to pitch for up to £18,000 of additional support.

Since 2015, the Fund has run ten rounds of funding and has received thousands of applications from across the UK.

Round 10 has now closed, but watch this space for Round 11: the Department for Culture, Media & Sport confirmed funding for the UK Games Fund until 2025

How can your studio become eligible?

In past rounds, eligible applicants have been required to meet the following criteria:

- Applications will only be accepted from registered UK-based companies and solo developers that have been established for more than 12 months.
- Companies must have fewer than 50 employees.
- The scale of development will be such that our support and grant will represent no more than 50% of the total costs of the project once it has been released.
- Your project must not include gambling elements or mechanisms which could be perceived as such, or any content that we deem to be potentially reputationally damaging (solely at our discretion).
- Games associated with emergent business models with little evidence of success are unlikely to be funded until that evidence base can be demonstrated. For more context, see our news article here.
- Your project should be a digital game suitable for demonstration at a public consumer event (should you be invited).
- Your project can already be in development, although we don't support projects that have already fully launched, and do not fund work carried out prior to the grant being offered.
- Projects following an open-development model with a live build available in a pre-release form will still be considered (but typically we don't fund pure DLC development for a title already launched).

In addition, applicants should consider the following as a baseline regarding suitability for funding:

- You will have completed some early concept work and have either a proof-of-concept demo or other visual pre-production work, so that you can show your project in the best light with your pitch video.
- You will have a clear idea of what your unique selling point or other market differentiator is – being able to communicate this clearly will help build confidence in your project.

- You will have a development team, either as paid staff or contractors, that is either in place or is ready to come on board quickly if you are successful – being able to describe the specific attributes of your team helps to prove your overall development capability.

- Your team should normally have some past experience of professional game development.

- You should have done your research and have a clear idea of what the next steps are beyond the grant – who you will approach to fund the remainder of the project, how you will handle publishing, etc.

- You should be able to describe the future of your business, how the grant will provide a positive impact on your sustainability and growth as a studio, and what your vision is beyond this individual project.

How do you apply?

Please check the UK Games Fund website for details of how to apply as and when rounds of funding are open.

What are the main terms of a grant?

Provided all grant conditions are met during and after the project, the funding received will not have to be repaid. However, all executive directors of funded entities will be expected (but not required) to make a public pledge to re-invest an unstated proportion of any significant returns in talent / IP development for the UK games ecosystem. All funded entities will be expected to volunteer to make staff available to support UK games talent development projects as mentors and judges.

The UK Games Fund does not require any ownership of intellectual property or equity stake as part of any grant.

Tranzfuser

The UK Games Fund team is also responsible for Tranzfuser, an innovative talent development programme for graduates, that includes funding awards of £5,000 for successful applicants. More information can be found here.

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Creative UK

What is Creative UK?

Creative UK is a not-for-profit organisation that provides support for and investment in the UK's creative industries.

Creative UK's stated aim is to invest in talented people and their creative ideas – not only in the games industry but also in the TV, film and digital media industries.

How can Creative UK help your business?

Growth Programmes

Creative UK has a variety of initiatives open at any one time, some of which are aimed specifically at games businesses. Often these will involve selecting a small number of developers, publishers or other businesses and providing a programme of workshops, masterclasses and workshops, like the Games Scale Up programme.

They also run Creative Enterprise: Evolve, a nine-month long programme that prepares screen businesses for growth capital. Currently this is only available for businesses based in England outside of London.

More information on relevant initiatives and programmes can be found here.

Creative Growth Finance Debt Fund

Creative UK also directly provides debt finance to businesses within the creative industries (including video games) via the Creative Growth Finance Debt Fund, a fund established in partnership with Triodos Bank UK.

The key features of the loans on offer are as follows:

- 100% virtual application process
- Loans of £100,000 – £1,000,000
- Capital repayment holiday of 6 months
- Fixed interest rates from 7% – 15%
- Repayment terms up to 4 years
- Initial decision to progress within 3 days
- 5% management fee will be charged on payment of the loan

Eligibility requirements are as follows:

- Your company must be registered in the United Kingdom
- You must operate within the creative industries (by this we mean; Film, TV, Media, Immersive and Video Games, Advertising & Marketing, Digital & Creative Tech, Creative Software Solutions, Fashion, Architecture, Music, Publishing)
- Your most recent annual turnover must have been at least £300,000

- You must have at least one year of accounts filed at Companies House

For more information, click here. To make an expression of interest, click here.

Tax Credit Loans

Creative UK also provide loans secured on future R&D and VGTR tax credit payments. For more information on these loans, please refer to the section of this Guide on Video Games Tax Relief Loans.

For more information on Creative UK's tax credit loans, please click here.

Equity Investments

Creative UK also makes equity investments in businesses. Since 2012 it has invested over £20 million in over 350 creative businesses with an average investment size of £67,000.

Currently Creative UK has a £2 million pot to invest in creative businesses based in the North of Tyne Combined Authority Area via a mix of loans and equity.

For more information, click here.

Start Up Loans

Start-up loans are personal loans designed to help new businesses begin trading, available to individuals looking to start or grow a business (i.e. not limited to the games or creative industries in the UK). They are provided by the Start Up Loans Company, which is funded and backed by the UK Government. Since 2012, Start Up Loans have been provided for over 55,000 business ideas.

The key features are as follows:

- Borrow up to £25,000
- Not borrowed by your business, but by you personally
- £25,000 per founder available (up to a maximum of £100,000 per business)
- Fixed interest rate of 6% per year
- Finance available for up to 5 years
- The loan is unsecured, so there is no need to put forward any assets for security or guarantors to support an application
- No application or early repayment fee
- Free support and guidance on offer to help with your business plan
- Successful applicants also receive up to 12 months of free mentoring

To be eligible, you must:

- be resident in the UK
- be at least 18 years old
- have or plan to start a UK-based business that has been trading for less than 2 years

More details can be found here.

Innovate UK

What is Innovate UK?

Innovate UK is part of UK Research and Innovation, a non-departmental public body funded by the UK Government, that provides grants to companies for R&I-based projects.

Since 2007, it has invested approximately £2.5 billion across more than 11,000 projects.

Out of a total fund for investment for 2016-2017 of £561 million, entities can apply for funding of between £25,000 and £1,000,000 (depending on the specifics of the individual funding stream). More information on Innovate UK can be found here.

What does Innovate UK support?

Innovate UK aims to invest in early stage innovation projects with high potential as well as focusing on sectors it has identified as priorities. The priority areas identified in 2019 were (a) artificial intelligence (AI) and the data economy, (b) ageing society, health and nutrition, (c) clean growth and infrastructure and (d) mobility, manufacturing and materials.

What funding is available?

Innovate UK provides a mix of grants and loans.

Grants are available to businesses of any size and in any sector, with regular competitions offering between £25,000 and £2 million run for projects with high commercial potential.

Certain of the competitions on offer involve loans rather than outright grants.

The current open competitions and programmes can be found here.

Innovate UK currently has no specific video game funding programme, but certain of the competitions launched from time to time may be useful to video games businesses, so it is worth checking the Innovate UK website regularly.

How do you apply?

Applicant need to submit a detailed application form. Each application form has specific rules regarding length and content. Once submitted the application will be evaluated and funding granted on that basis only. More information about the application process can be found here.

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Global Screen Fund

What is the Global Screen Fund?

Aimed at boosting the international competitiveness of UK screen content the Global Screen Fund is designed to boost international development, production, distribution, and promotional opportunities for the UK's independent screen sector and is constructed to help develop and produce projects with international appeal, support the worldwide distribution of UK content, and encourage collaboration with international partners. The Global Screen Fund targets support across the screen sector, including film, TV, documentary, animation and interactive narrative games content. It was launched as an alternative to the European Union's Creative Europe MEDIA programme, which ceased to be available to UK companies after 31 December 2020 due to Brexit.

The Global Screen Fund allocates funding across three strands:

- International Distribution - support for sales and distribution of one or more UK feature films (drama, documentary, animation) in international territories.

- International Business Development – financial support for business strategies that drive international growth and IP development for companies working in film, TV (animation, drama and documentary) and interactive narrative gaming

- International Co-production: support for UK companies to be partners in international productions, sharing IP and revenue on TV (animation and documentary) and film projects with audience potential

Whilst the fund is mainly aimed at the film and television sectors, there are aspects that are relevant to interactive entertainment businesses.

How to apply?

Please click here for more information.

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Northern Ireland Screen fund

What is Northern Ireland Screen

Northern Ireland Screen is the national screen agency for Northern Ireland and it is committed to maximising the economic, cultural and educational value of the screen industries for the benefit of Northern Ireland. With its funding for the video games industry, Northern Ireland Screen aims to develop the digital content sector through the support of Northern Irish talent working in gaming, e-learning, web and mobile. More information on Northern Ireland Screen can be found here.

What funding is available to the video games industry?

Northern Ireland's two main funding streams are:

- **Project Development Funding** which is available for development of video game projects for international markets and distribution. Northern Ireland Screen will invest (via a recoupable loan) (1) 90% of the budget for projects with a budget of up to £10,000; (2) 75% of the budget for projects with a budget of between £10,000 and £20,000 and (3) 50% of the budget for projects over £20,000 up to a maximum of £100,000.

- **Project Production Funding** which is available to companies working in the video games sector to assist in completing budgets on productions which are almost fully financed. Northern Ireland Screen can invest (via a recoupable loan) a maximum of £500,000 up to a ceiling of 25% of the overall project budget.

Eligibility requirements

Project Development Funding is available to independent production companies based in Northern Ireland and European production companies which have an office and staff based in Northern Ireland.

Project Production Funding is available to all legally incorporated companies who: (1) can fulfil the British Cultural Test (more information on this can be found here); (2) have 65% of their funding already in place; and (3) can demonstrate their project has clear possibilities for commercial exploitation (such as having an experienced publisher attached to the project).

How do you apply?

Initially, projects are encouraged to email Northern Ireland Screen Fund to discuss the proposed project. Information on contact details and what further details may be required can be found here.

Scottish Enterprise

This is by far the most substantial government funding for video game studios in Scotland. Scottish Enterprise runs a variety of programmes for companies that want to set up in Scotland. The most applicable for video game studios are:

- the regional selective assistance program (which can award up to 35% of an entity's operating costs);
- the R&D grant which funds research and development;
- SMART, which provides funding to novel research and development projects in two stages (feasibility studies for early stage developments and R&D project grants for later stage developments); and
- Scottish seed fund (run by the Scottish Investment Bank) which awards funding to early-stage Scottish start-ups.

Examples of studios that have received Scottish Enterprise funding include: (1) Rockstar North (who received R&D grant funding), (2) Blazing Griffin (who received matched seed funding from the Scottish Investment Bank); and (3) Axis Studios (who received funding through the regional selective assistance program). More information on these funding streams can be found on the Scottish Enterprise website here.

Various English/Welsh regionally-focused funding

Depending on where it is based, your video games businesses may be eligible to receive funding from bodies that focus on boosting the economy in their region, such as Screen Yorkshire and S4C in Wales. It is always worth checking, according to where you are based, if there is any regional funding that you may be able to benefit from.

Private Sector Grants / Funding

In addition to Government-sponsored sources of funding, the private sector has produced certain funds and grants to support the games industry, such as:

- Epic MegaGrants
- Astra Games

This is a growing source of finance in the industry: either successful companies or founders who've 'been there, done that' wanting to encourage particular types of games, development on a particular engine or another specialism. No doubt these will multiply, so watch this space.

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Epic MegaGrants

Epic Games has a $100 million fund to support game developers, enterprise professionals, media and entertainment creators, students, educators, and tool developers doing amazing things with Unreal Engine or enhancing open-source capabilities for the 3D graphics community. This is generally only available for projects that use Epic's Unreal Engine, although if you are looking to port across a project built in another engine or toolset to Unreal Engine, then you may be eligible to apply.

In addition, if you want to develop a project that enhances open source 3D content creation, whether or not it integrates with or relates to Unreal Engine, you may also be eligible.

Key features of the grants are as follows:

- Grants range from $5,000 to $500,000 and cover game development, architecture projects, film production, academic uses and software tool development.

- Grants up to $25,000 will be paid in a single tranche; amounts over $25,000 will be paid in instalments.

- You retain all IP rights.

- No repayment of funds is required.

For more information click here, and to apply click here.

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Astra Games

Astra Games provide a variety of funding, including grants, project finance and equity investments. They are focused on what they call “thinking games”, defined as “cognitively challenging games whose systems and mechanics spark curiosity”.

They offer grants of up to $45,000 for development of “thinking games” projects on an annual basis. Check out their website here for information on how and when to apply.

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Tax Relief

Video Games Tax Relief

What is Video Games Tax Relief (VGTR)?

VGTR is a valuable incentive that allows video games studios to claim a cash repayment or tax relief from the Government after they have spent money on developing a video game. It is one of a number of Creative Sector Tax Reliefs in the UK.

How can VGTR help your studio?

VGTR can provide valuable finance for your studio. Potentially, it can also help you to unlock other finance – there are lenders out there that will provide debt to your business using future VGTR receipts as security.

What is the value of the VGTR?

The value of the VGTR for a video game wholly developed in the UK or the European Economic Area (EEA) is 20% of qualifying spend.

Qualifying spend means, in short, spend on designing, producing and testing the game (including DLC and other post-release spend), excluding debugging and maintenance costs and the costs of designing the initial concept. As a simple example, if a game has qualifying spend of £1m which is entirely spent in the EEA, the value of the relief will be £200,000, being 20% of £1m.

If the video game is partly developed outside the UK/EEA, slightly different rules apply. These are too detailed for this summary, but feel free to contact us if you need further details.

Maximising the value of the VGTR

It is important and worthwhile to take advice from an expert on how to maximise the value of the VGTR for your game. With the help of experienced advisers who understand the fine details of the VGTR rules and have experience of dealing with HMRC (whose rules are not always written down!), you may be able to obtain a meaningful increase in the value of your VGTR claim.

When can your studio claim the VGTR?

You do not have to wait until the game is completed before making a claim for VGTR; you can make interim claims for VGTR during development of the game, which can assist with cashflow.

How does your studio/game qualify for VGTR?

The following main criteria need to be met:

- You must use a company to claim the VGTR (individuals, partnerships and Limited Liability Partnerships (LLPs) cannot make claims). The company is called a 'video games development company' or 'VGDC'.

- The VGDC must be subject to UK corporation tax.

- The VGDC must be directly involved in the production of the video game. It must:
    - be responsible for the design, production and testing of the game;

  - be actively involved in the decision making during this process; and
  - directly pay and contract for the goods and services relating to the game.
- There can only be one VGDC per game. There are various factors to consider in deciding whether to use an existing trading entity to claim the relief for all of your studio's games or to set up a special purpose vehicle for each separate game. In many cases it is preferable to have a special purpose vehicle.
- The VGTR can be claimed for all forms of video games, including VR, mobile and tablet games and other formats which are yet to be developed.
- The video game must pass a Cultural Test. The test is points based, and a video game only requires 16 out of a possible 31 points in order to pass. This is a relatively low threshold and means that many games can pass. The test is administered by the British Film Institute (BFI), who are very helpful in providing guidance and assistance. Further details about the Cultural Test are set out below.
- The video game must be intended for supply to the general public.
- The video game should not fall foul of any of the agreed exclusions, which include games made with a primary purpose of advertising or gambling or games that contain any pornographic or other extreme material.

Is there a limit on qualifying spend?

No, there is no limit on how much qualifying spend can be incurred. This means that the VGTR is available however high the qualifying spend.

Is there a minimum spend threshold?

No, there is no minimum spend threshold. This means that games companies developing low budget games can qualify for the VGTR.

Can the VGDC sub-contract to other companies?

Yes, the VGDC can sub-contract work, subject to a cap of £1 million of sub-contracting costs.

The subcontracting limit will not apply to every payment made by the VGDC to a third party. For example it is unlikely to apply to a licence payment made to another company for the use of software.

However, the limit applies where a part of the design, production or testing of the game is outsourced to a third party or where a third party produces content that is discernible in the released version of the game. HMRC provide examples of content that would be considered discernible in a game, including:

- Lip-synching of voice content by a third party.
- Outsourcing of background design.

If your game may have sub-contracting costs of over £1 million, you should take advice from an accountant who is experienced in relation to VGTR.

Is there a minimum amount of qualifying spend that needs to be EEA spend in order for a game to qualify for the relief?

Yes, at least 25% of the qualifying spend on the game must be spend incurred within the EEA.

How does the relief interact with the R&D tax relief and other state aids?

The VGTR cannot be claimed in respect of any expenditure that can qualify (or has already qualified) for R&D relief.

However, with the right advice and structuring from experts, there may be ways for studios to take advantage of both VGTR and R&D tax relief.

Businesses that have taken advantage of any Covid-19 funding, e.g. the Coronavirus Business Interruption Loan Scheme, should note that many of these support schemes constitute state aid and so may have an impact on the availability of other state aid such as VGTR and R&D tax relief.

Where can I find out more?

Feel free to contact Mark Phillips or Kostya Lobov for any further details about VGTR.

Also, HMRC has issued helpful guidance on VGTR, which is found here.

The BFI's website page and guidance notes on the Cultural Test are found here and here.

Potential changes

On 17th November 2022, HM Treasury published a consultation on changes affecting the five tax reliefs schemes for film, HETV, video games, animation and children's TV. The proposed changes include merging reliefs, removing the eligibility of European expenditure from VGTR and replacing this with a requirement for expenditure to be 'used or consumed' in the UK, subcontracting only within the UK should be permitted

We will be monitoring developments.

The Cultural Test

The test is broken down into four sections:

Cultural content: 16 points available

This measures the British or European content of the video game. Points are awarded for:

- the setting of the video game in the UK or the EEA (or an undetermined location, such as a fictional world);
- the lead characters being British or EEA citizens or residents (or characters from an undetermined location);
- the video game being based on a British or European subject matter; and
- the dialogue being mainly in the English language (or one of the UK's six indigenous minority languages).

Cultural contribution: 4 points available

This section measures the British cultural impact of the video game. Points are awarded for those elements of the game which demonstrate British creativity, British heritage or cultural diversity.

Cultural hubs: 3 points available

This section measures the use of the UK's video game development facilities. Points are awarded for the use of UK facilities for concept development, storyboarding, programming, design, music recording, audio production or voice recording.

Personnel: 8 points available

This section measures the use of personnel with creative input into the video game. Points will be awarded for the use of UK or EEA citizens or residents in key video game development roles including the project leaders, scriptwriters, composers, artists, programmers, and designers.

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R&D Tax Relief

What is Research & Development (R&D) tax relief?

The R&D tax relief aims to incentivise innovation and increase spending on R&D in industries such as the games industry through relief from corporation tax. It either allows qualifying expenditure to be deducted from taxable income or, in the case of loss making companies, a cash rebate to be claimed from HMRC.

For R&D tax relief to be available, the company must be undertaking development activities that seek to achieve an advancement in technology.

You can only claim R&D tax relief if you're a SME with:

- less than 500 staff
- a turnover of under €100 million or a balance sheet total under €86 million

How can R&D tax relief help your studio?

A profitable studio can deduct up to 230% of eligible costs from its taxable income and, therefore, significantly reduce its corporation tax bill. This represents an additional corporation tax deduction of 130%.

For loss making studios, a rebate in the form of a cash payment is available of up to 14.5% of qualifying expenditure.

R&D tax relief can generally only be claimed for expenditure within the last two accounting periods.

What activities can qualify for R&D tax relief?

For tax purposes, R&D takes place when a project seeks to achieve an advance in overall knowledge or capability in a field of science or technology.

It should be borne in mind that an activity that is eligible for R&D tax relief does not always need to result in a viable solution. Expenditure on activity that seeks a solution, but ultimately fails, can also form part of an R&D claim.

The criteria for qualifying costs and activities are purposely broad. HMRC stipulates that the important criterion is not 'what' is produced but 'how' it is produced. HMRC has confirmed, however, that no matter how original, a game storyline will not qualify as a scientific or technological advance, and therefore expenditure on the storyline will not qualify for R&D tax relief.

HMRC has provided the following example of the application of R&D tax relief in the context of the games industry:

> "*A company realised that each object on a game's screen had to be programmed in respect of its interaction with all the other objects. As the game became more complex, more objects were introduced and the amount of code required rose exponentially. The solution was to programme the properties of each object. When the objects interacted, a separate code was no longer required as the inherent properties produced the outcomes. The qualifying expenditure on developing this innovative code would qualify for R&D relief*."

Very small companies dealing in subcontracted work may qualify if the work undertaken is sufficiently innovative, even if the larger contractor's project does not qualify.

What costs will qualify?

Costs incurred in respect of direct and externally provided staff, subcontracted R&D, consumables, software, trials, prototyping and independent research costs may all qualify for R&D relief.

How does R&D tax relief interact with other reliefs and state aids?

Where small or medium-sized enterprise[1] R&D tax relief is claimed on a project, that project cannot claim Video Games Tax Relief (**VGTR**). This means that if a studio chooses to claim VGTR, the same expenditure on a project would not qualify for R&D tax relief.

However, with the right advice and structuring, there can be ways for studios to take advantage of both VGTR and R&D tax relief. This is a complicated area and we recommend you take legal and accountancy advice.

Businesses that have taken advantage of any Covid-19 funding, e.g. the Coronavirus Business Interruption Loan Scheme, should note that many of these support schemes constitute state aid and so may have an impact on the availability of other state aid such as VGTR and R&D tax relief.

How to claim the R&D tax relief

You can claim R&D relief by entering the total qualifying expenditure on the full Company Tax Return form, CT600. A further report should be attached to the return which demonstrates that the expenditure was incurred because the company has addressed a technological uncertainty and attempted to overcome it.

Many businesses are deterred from making a claim due to the intensive reporting procedure and potential for further investigation from HMRC. However, there are specialist R&D advisers who can assist with assessing whether a business undertakes qualifying R&D and with identifying potential expenditure to be included in the claim.

Where can I find out more?

HMRC provides further guidance here:
http://www.hmrc.gov.uk/gds/cird/attachments/rdsimpleguide.pdf

[1] A small or medium sized enterprise (SME) is a company with less than 500 employees with either: an annual turnover under €100 million or a balance sheet under €86 million. A company is not an SME if it's part of a larger enterprise that, when taken as a whole, would fail these tests. Relief under the Large Company Scheme is broadly based on the SME scheme, with a number of modifications. In particular, the cap on R&D relief for SMEs of €7.5 million does not apply to the Large Company Scheme on the basis that the relief is not regarded as state aid.

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Project Finance

__**Video Games Tax Relief Loans**__

What is a video games tax relief loan?

This is a loan provided by a bank or another lender secured by the proceeds of the Video Games Tax Relief (**VGTR**). In other words, the bank or lender lends the video game development company money in the knowledge that its loan should be repaid from the proceeds of the VGTR.

How can a VGTR loan help your studio?

A potential timing issue for your studio is that, under the VGTR rules, you will need to incur expenditure on your game __before__ you can claim VGTR, which means that the VGTR proceeds could arrive too late to be used towards that particular game expenditure. One solution to this issue is to obtain a VGTR loan. This allows your studio to access the value of the VGTR earlier than if you were to wait for payment by HMRC, so that it can help with your cashflow and should mean that you can use the proceeds of the loan towards the costs of your game. In addition, it may help you to unlock other finance, as third party investors may be incentivised to invest in your game if they can see that you have already raised around 20% of your game's finance from a bank or other financier.

What are the fees involved with a VGTR loan?

The bank or lender will charge interest and/or a fee for providing the loan. However, as the risk to the bank or lender is relatively low, the interest or fee should not be too high.

Typically there are also legal and accountancy fees involved with a VGTR loan, so it is important to assess the level of the total fees and make sure that the burden of incurring them is outweighed by the benefits of the loan.

How quickly can you put a VGTR loan in place?

Lenders tend to move quickly and typically a loan arrangement can be put in place (and the loan paid to you) within 1-3 weeks of the start of the process.

What information will you need to provide to the VGTR lender?

The requirements of lenders vary, but typically you will need at the very least:

- an Interim Certificate (a certificate granted by the British Film Institute that demonstrates that your game will pass the Cultural Test);

- an opinion or a letter from your accountant that sets out the anticipated VGTR proceeds; and

- certain information relating to the production and financing of the game, such as the composition of the finance for the game.

Is there anything else to consider?

Certain VGTR lenders may also be willing to provide other finance (in addition to a VGTR loan), such as a loan against a grant awarded by the UK Games Fund.

Where can I find out more?

7 February 2023

Feel free to contact Mark Phillips, Edward Lane or Kostya Lobov for further information about VGTR loans.

Project Finance

What is Project Finance?

Project finance is usually provided in the form of a loan to a special purpose company established to develop one game. The proceeds of the finance must be spent on the game. The finance is usually only recoupable by the project financier from the revenues arising from the game.

How can Project Finance help your studio?

Project Finance can be beneficial as it provides a cornerstone of the finance plan for your game, which apart from being valuable in itself, may help you to unlock other finance, as third party investors may be incentivised to invest if they can see that you already have a project financier willing to invest on the basis that the game has commercial potential.

Project financiers would typically allow your studio to retain the IP in your game (although note the third bullet point below under ***What information and security will you need to provide to the project financier?*** Below).

What are the fees/costs associated with Project Finance?

The project financier usually charges a fee from the budget of the game and/or a premium on its finance which is payable from the game's revenues. Typically there are also legal fees involved with obtaining Project Finance, and the project financier will usually expect its legal fees to be paid for from the budget of the game. In certain instances, the project financier may also request a revenue share from the game. You should take advice on any deal proposed by a project financier, as there is usually room for negotiation of the financial terms.

How easy is it to find Project Finance?

Project Finance is long-established and a very important source of finance in the feature film and television industries, but less so for the video games industry. However, there are financiers out there that are open to considering games projects.

In order to secure Project Finance, you will likely need to demonstrate the strong commercial potential of the project (e.g. through sales forecasts, your track record, examples of previous similar successful projects and any other relevant factors).

What information and security will you need to provide to the project financier?

If a project financier agrees to provide finance, its requirements will vary, but typically it would need:

- you to set up a special purpose vehicle so that the game assets are ring-fenced in that vehicle;

- extensive information about the budget, finance, production schedule, marketing plans and all other aspects of the production and exploitation of the game;

- to take security (in the form of a charge or similar) over the game assets, which means that if you fail to complete the game or are otherwise in material breach of your obligations, it would be able to take ownership of the game IP and assets (in practice this is rare); and

- its funding (plus any premium) to be recouped in full before your studio or any other financiers begin to receive any revenues from the game i.e. the project financier is normally repaid in first position.

As the requirements of project financiers can be complicated, it is important to seek legal advice.

Where can I find out more?

Feel free to contact Mark Phillips or Kostya Lobov for further information about Project Finance.

Publishers

Background

Historically, funding from publishers was by far the main source of finance for UK games studios. Today, it remains a crucial part of the funding ecosystem and is still the largest source of finance, even if many studios have become less reliant on publishers than in the past. This is due, in part, to the availability of new, alternative sources of finance and the emergence of self-publishing.

What can you expect from a publishing deal?

This really depends on the publisher involved, as there are many different types of publisher (traditional, mobile, online, indie etc.), and many different approaches taken to a publishing deal. You should always seek advice when entering into a publishing deal.

It also obviously depends on bargaining power.

At one end of the spectrum, if a large publisher with operations in a number of territories has approached your studio to develop a game based on IP owned by the publisher, it will likely fully fund the development of the game, usually providing its funding over the course of development upon your studio achieving certain milestones. In return, it may require your studio to transfer all IP in the game to the publisher or else seek to licence the game and the underlying IP across multiple formats (including even non-games exploitation, such as film, books or other media). It may agree to grant your studio a share of the revenues arising from the game sales, but often only after it has recouped its funding in full.

At the other end of the spectrum, if your studio has approached an indie publisher with a proposal to develop a game based on IP owned by your studio which is already partly developed and/or partly financed, and where less funding is required, the publisher may agree to much more 'pro studio' terms. This may mean that not only can you retain the IP in the game and but you may be able to limit the licence provided to the publisher to specific formats. More generally, you should be able to negotiate much more favourable financial and other terms.

As you might expect, there are a variety of positions between these two poles – perhaps the publisher will require an exclusive licence of the IP subject to certain terms, but you will retain ownership in the IP itself. What happens to the IP developed in the game is critical, and should be a key focus for you.

Publishers can also facilitate access to platform exclusivity deals, e.g. Xbox Game Pass, which could bring with them sizeable upfront payments. These payments can go a long way towards recouping the publisher's costs and therefore brings forward the milestone when you start receiving your revenue share. It's important to remember that some publishers can not only fund your game, they can also assist with marketing, localisation/translation etc and potentially open doors.

Considering terms in publishing deals

In between these two ends of the spectrum, there are many other deal types and variables that you might come across (and market standards change quickly), so it is important to take advice on the terms. The deal that you are able to negotiate will depend on various factors, including the clout of the parties involved, the importance of the project to the publisher, the deal precedents of the publisher, what else the publisher is offering other than finance (see below: *What other support can publishers offer?*) and how well you and your lawyers negotiate!

There are many key issues and pitfalls to watch out for. Some examples are:

- what rights (if any) should the publisher have in relation to DLC, 'games as a service', ports or sequels?
- are the revenue share / royalty definitions (and permitted deductions) market standard, fair and reasonable?
- what protections do you have if the publisher decides to cancel development halfway through the process?
- what rights do you have to end the agreement if the process is not working out as planned?
- what obligations does the publisher have to market the game and to make sure that it is fully exploited?
- how should the video games tax relief be treated?

These are just a few examples and there are many other issues to consider.

At what stage does a publisher become involved?

A publisher may consider becoming involved in your game at an early stage (e.g. before the start of full development) or it may come on board at a much later stage (e.g. when there is an alpha or beta version of the game available). At a later stage, the focus of the publisher may be more on providing assistance with marketing and distribution than development. In the current market, indie publishers tend to become involved later in the development process, and you should be aware that the timing of when a publishing deal is signed will affect a number of financial and other aspects of the deal.

How much funding does a publisher provide?

The amount of funding that a publisher may offer a studio can vary enormously from a few thousand to many millions of pounds.

Certain publishers will fund the full development, marketing and distribution of a game, others may only fund marketing or distribution. There are also deals where the publisher funds only part of the development and the studio or another financier provides the balance of the funding.

Many publishers are open to considering deals with start-ups as well as proven studios.

Will a publisher require you to transfer to it your intellectual property rights in the game?

It depends on the publisher and the deal you are entering into as to whether the publisher will require you to transfer the game's IP to the publisher. It has become more standard for publishers to allow studios to retain the game's IP, where the IP has been conceived and created by the studio, although as noted, the extent to which the publisher will be licensed rights to different types of exploitation will depend on several factors, in particular, the amount of funding or percentage of the budget.

What other support can publishers offer?

Other than providing finance, publishers may be able to provide your studio with a range of other support and services, for example:

- marketing and PR services
- distribution support
- QA and localisation
- development services
- analytics
- business development/agency services

The value of these services must be taken into account when evaluating a potential publishing deal. In the best circumstances, a publisher can become a valuable long-term partner for your studio.

Where can I find out more?

Feel free to contact Mark Phillips or Kostya Lobov for further information about publishing deals.

Ukie represents most of the main publishers in the UK. If you would like to speak to a publisher drop sam.collins@ukie.org.uk a line.

Equity Investment

Taking on equity investment – selling or issuing shares in your company to outside investors – is a milestone for any businesses. It brings a host of opportunities as well as challenges, and it comes in many different forms. This section of the guide will cover the most common forms as well as the all-important SEIS and EIS tax reliefs.

Before we dive into the detail, it is worth bearing a few overarching points in mind when seeking equity investment.

- **Equity is expensive** – the more you can grow your business via bootstrapping, debt or other means before taking in equity, the better. This is down to the fact that the more your business is worth, the less of the pie you will have to give away in exchange for equity investment.

- **Look beyond the money –** each type of equity investor will offer something different. An angel investor may not be able to write a very large cheque, but may have industry relationships that could be crucial to your studio's growth. Equally a venture capital investor may be able to offer strategic guidance and advice based on their numerous other investments, as well as cash. Don't be afraid to ask investors what else they are bringing to the table.

- **Don't scrimp on the term sheet –** it is crucial to ensure that there is a clear and reasonably detailed term sheet in place with any investor. It is better to hammer out all the points upfront rather than risk falling out weeks down the line when both you and the investor have spent time and money on negotiations. Always take advice before you sign a term sheet.

- **What strings are attached –** unlike many other forms of finance mentioned in this guide, taking on equity is likely to change how you operate your business day-to-day. The extent to which things change depends on the type of investor and how much equity you are giving away. It is important to be clear on what the investor is expecting in return for its investment – will it expect a board seat, some oversight over the development process, a veto on key decisions, access to information and/or general involvement in the business? Will it expect to realise an exit within a defined time period?

- **Get your ducks (and your docs) in a row –** an equity investment will involve a greater degree of scrutiny over your business than you will have been used to. Investors may require a due diligence exercise to be conducted. It is therefore a very good idea to make sure you have looked under the bonnet of your business well before you agree terms with an investor and tie up any loose ends. For example, are there contracts in place with key counterparties, contractors and employees (particularly ensuring that IP developed by these people is transferred to the your company), does the company own the right domain names and trademarks? If an issue comes up during a deal, this could delay or derail the process – or lead to the investor asking for better terms.

SEIS and EIS tax relief

What are SEIS and EIS?

The Seed Enterprise Investment Scheme (**SEIS**) and the Enterprise Investment Scheme (**EIS**) are government approved schemes which provide significant tax reliefs to UK tax-paying individuals who invest in early stage UK companies by subscribing for shares.

In a nutshell, investors are able to claim back a material portion of their investment into an SEIS / EIS qualifying company against their income tax bill. EIS investors benefit from a 30% tax deduction – this means that an investment of £10,000 would in fact cost them just £7,000. They can also benefit from 0% capital gains tax, if certain conditions are satisfied.

It can therefore be important (or even critical) for individual investors, such as angels, to be able to claim SEIS/EIS tax relief on their investment. Institutional investors (e.g. venture capital funds and trade investors) will not be able to benefit from these reliefs, although some venture capital funds have EIS funds (effectively pools of individuals) that can benefit.

SEIS and EIS each have a similar objective – to encourage investment in high-risk, early stage UK companies – and a similar outcome – tax relief for the investor – but differ in the companies they cover and the scale of the tax relief on offer. In general, SEIS is targeted at very early stage companies whereas EIS is targeted more at medium sized start-ups. They can, however, be used together as part of the same investment into the same company.

Although it is the individual investor that directly benefits from these tax reliefs, the company raising the investment will also benefit. This is because the tax reliefs reduce the cost for the investors to invest (as they effectively get a material portion of their investment back from HMRC), which makes the investment more attractive. This means, if your company qualifies for SEIS / EIS, you may find it easier to attract the investment in the first place and demand better terms from the investors.

More information on qualifying criteria is below.

How can SEIS and EIS help your studio?

For any young business in the games sector, SEIS and EIS are important to understand, as the reliefs they offer will often be a key incentive for a potential investor to provide early stage equity investment into your studio. Many investors will treat SEIS / EIS qualification as a condition of their investment.

If you plan to raise equity investment from individuals, it is therefore critical to have considered whether the reliefs will be available and possibly (if not ideally) received advance assurance from HMRC (see below).

Is the SEIS or EIS investor investing in a special purpose company?

Studios will often set up a special purpose company for each new game project, in particular due to the need to optimise the video games tax relief that may be available. As a practical point, it is important to consider whether the SEIS/EIS investor is investing in a special purpose company that you have established solely to develop and exploit one game, or a company that intends to develop numerous games. This is likely to have a material impact on the availability of tax relief and, accordingly, the deal that you reach with the investor.

If you are seeking SEIS or EIS finance for a special purpose company established to develop and exploit a single game then you should take specialist advice because there are some restrictions on the use of SEIS and EIS finance in this context.

The 'risk to capital' condition

As from 15 March 2018, the Seed Enterprise Investment Scheme (SEIS) and the Enterprise Investment Scheme (EIS) were subject to a new 'risk to capital' condition.

The 'risk to capital' condition has two limbs:

1. the company in which the investment is made must have the objective to **grow and develop** over the long term; and

2. the investment must carry a **significant risk** that the investor will lose more capital than they gain as a return (including any tax relief).

HMRC has published guidance (which includes various worked examples) to help companies and investors answer this question. The guidance is available here: https://www.gov.uk/hmrc-internal-manuals/venture-capital-schemes-manual/vcm8500, and the answers to the questions below summarise the key elements of it.

The general theme from the guidance is that HMRC is seeking to ensure that SEIS and EIS are only used to raise capital that is truly at risk (and not protected or secured by the investee company in any way). HMRC has said that it will take an holistic and (according to the guidance) "reasonable" view (taking into account sector/industry standard practice) in assessing whether the condition has been met.
The guidance makes clear that companies established for the sole purpose of developing and producing one specific project which will be completed within a fixed timeframe are unlikely to qualify. Instead, it expects a qualifying company to re-invest capital with a view to expanding its business (such as by increasing revenues, expanding its employee or customer base or building a brand) over a period beyond the EIS and SEIS minimum holding periods of 3 years.

For a games studio, this requirement is likely to translate into a development company that is raising money either for a slate of projects (and which does not intend to return funds to investors based on the performance of a game in a single format but re-invests any profits from a successful game into the development of sequels or new formats or other new projects) or a 'game as a service' where the studio's intention is to continually develop and evolve a single game over the long-term with a view to expanding its appeal and growing its revenue generation. We are not aware that the 'game as a service' model has been tested with HMRC following the introduction of the risk to capital condition, but applying HMRC's guidance provides sound arguments that such a model should not fall foul of the condition merely because it involves the development and exploitation of a single game, provided that profit from the game is re-invested in the continued development and improvement of the game. It is likely, however, that any business plan submitted to HMRC (as part of a submission for advance assurance that the studio will qualify for SEIS and/or EIS relief) would need to provide a contingency plan for any 'game as a service' that was not commercially successful and which did not therefore merit further investment. In such a case, the studio's business plan would need to contemplate investment in new projects (rather than winding up the company and distributing assets (after payment of any liabilities) to shareholders).

What are the other key points to know about SEIS and EIS?

A summary of the key points is as follows:

Main rules that apply to both SEIS and EIS

- SEIS and EIS are tax reliefs that benefit the individual investor – not the company receiving finance.

- Only eligible UK tax paying individuals can benefit from the relief. If you are seeking to raise finance from an individual investor that does not pay tax in the UK or a company or other legal entity, SEIS and EIS relief will not apply.

- SEIS and EIS reliefs will generally not be available to founders or management of the fundraising company.

- The investors' investment must take the form of full-risk ordinary shares (and not the form of debt, convertible debt or other structure).

- The business that is carried on by the fundraising company must "qualify" under the specific rules (e.g. a video game development company will generally qualify). This is the area that most often requires specialist advice.

- The relief is only available for investment into the company in return for the issue by the company of new shares and will not be available in respect of the purchase price paid on the purchase of existing shares sold by a person who has held those shares.

- The shares in the fundraising company that are subscribed for by the investor must be:

    - full risk ordinary shares; and

    - held for 3 years,

  or the reliefs will be not apply.

Main rules that apply specifically to SEIS

- The fundraising company must have 25 or fewer employees, gross assets of no more than £200,000 and must be no more than 2 years old.

- The maximum amount a company can raise under SEIS is £150,000 capped at £100,000 per individual investor per tax year.

- The investor can offset up to 50% of the investment against his/her income tax liability (e.g. for an investment of £100k the investor could offset £50k against its income tax liability, which means only £50k of the investment is at risk, assuming the investor has an income tax liability of at least £50k).

- No capital gains tax will apply to the sale of the shares in the company held for at least 3 years.

- The investor can set off any loss on its investment against its income tax liability.

Rules that apply specifically to EIS

- The fundraising company must have 250 or fewer employees, gross assets of no more than £15 million and must be no more than 7 years old.

- The maximum a company can raise under EIS is £5,000,000 capped at £1,000,000 per individual investor per tax year.

- The investor can offset up to 30% of its investment cost against its income tax liability (e.g. for an investment of £100k it could offset £30k against its income tax liability, which means only £70k of the investment is at risk, assuming that the investor has an income tax liability of at least £30k).

- No capital gains tax will apply to the sale of the shares in the company held for at least 3 years.

- The investor can set off any loss on its investment against its income tax liability.

Advance Assurance

HMRC operates an “Advance Assurance” process for companies seeking SEIS and EIS eligibility through which it will assess a company and business for SEIS or EIS eligibility and, if successful, provide an initial, non-binding, indicative certificate to the company. Although the certificate is of limited legal force, it is frequently requested by more sophisticated angel investors as a condition of their investment.

As part of this process, applicant companies typically submit their articles of association and, if relevant, shareholders’ agreement to HMRC and so it is important that companies take legal and tax advice in connection with these documents to ensure that they comply with the SEIS or EIS rules (as applicable).

Where can I find out more?

There is a plethora of online guides and resources relating to SEIS and EIS. We suggest looking at the HMRC advice as a starting point, which is available here and here.

The rules are complex so we suggest that you seek specialist advice if you wish to establish an EIS or SEIS.

Feel free to contact Mark Phillips or Edward Lane for further information about EIS or SEIS.

Business Angels

What are business angels?

The terms "business angels" or "angel investors" are normally used to describe high-net worth individuals who invest in early stage businesses. Over the past decade, encouraged by the significant tax reliefs available through SEIS and EIS, it has become increasingly common for early stage companies to seek their initial rounds of finance from business angels as well as from the well-trodden 'family and friends' route.

How can business angels help your studio?

The benefits for a company seeking finance from a business angel rather than a larger institutional investor such as a venture capital fund are several:

- You can normally obtain better terms from a business angel than from an institutional investor (such as a venture capital fund). This applies not just to the fundamental valuation of the company but also to any ancillary rights that may be requested from an investor (such as veto rights over certain decisions by the company or giving the investor a seat on the board).

- You may be able to find a business angel who acts as an advisor or mentor as well as an investor. Business angels invest in companies for a broad range of reasons and not all are driven purely by the financial return on their investment. There are many business angels therefore who enjoy advising growing businesses using their own professional experience and background. This advice, which is usually "free" (on top of the shares they receive in the company for the financial investment) can be invaluable to your studio – particularly at the early stage of its growth.

- Business angels can usually close their investment rounds quickly as, being private investors, they will not require the same internal approval process and paperwork as an institutional investor may have. The difference between a 1 month process and a 3 month process can have a major impact on a growing studio with tight cashflow.

How to find business angels?

The biggest issue with business angels is finding them! Traditionally business angels have invested in sectors other than games (such as technology and online services companies). For games companies therefore, a continuing challenge is to find angel investors who are active in the sector – especially when they rarely advertise themselves in public. The most effective way of finding business angels is to simply broaden your network as much as possible by attending industry-focussed events or conferences and seeking referrals from more seasoned players in the industry who may just refer you to the right contact.

Some business angels operate in "clubs" or "syndicates", e.g. the interactive entertainment-focused TGF (The Games Fund) and The Games Angels. The angels in these groups act together so a company is likely to be able to raise a larger amount in a single process. The downside however is that these groups can sometimes act as a mini-institution and therefore lose the speed, flexibility and 'softer' approach of a more typical angel. Your lawyer may be able to direct you to clubs or syndicates of angels.

What should you expect from the process of raising funds from a business angel?

With the recent boom in angel investment in the UK, investors have become much more sophisticated and therefore more discerning of potential companies looking to fundraise. This has had several knock-on consequences:

- Companies raising funds from angels should treat the process akin to raising funds from an institutional investor. In other words, companies should be as prepared as possible for their interactions with the angel investor as it is frequently a highly competitive environment. The companies who are successful at this stage are normally those who have spent time refining and finalising their business plan and pitch presentation.

- Sophisticated angels typically require enhanced legal protections and paperwork as part of their investment. Companies may therefore be presented by business angels with a legal term sheet which proposes a package of rights and obligations between the parties. Although usually not legally binding, you should never sign or agree to a term sheet without consulting legal advisers.

- On the flipside, you should consider what else you should expect from your investors aside from their cash – do they have a black book of industry contacts and so can open doors for you?

- Many UK angels now insist that companies they invest in are SEIS and/or EIS eligible. Companies should therefore be familiar with the SEIS and EIS reliefs and their eligibility status.

Where can I find out more?

Feel free to contact Mark Phillips or Edward Lane for further information about business angels.

Venture Capital and Private Equity

What is venture capital?

In its broadest sense, the term "venture capital" can mean any source of finance from investors seeking a return on their investment (including even angel investors). However, most people would understand the term to refer to institutional funds whose main business it is to invest money in a portfolio of early stage businesses with a view to realising an exit after a certain period (typically between three to six years) to achieve a return.

How can venture capital help your studio and what are the main considerations?

Bringing on a venture capital fund as an investor in your business has many risks and challenges, as well as opportunities. Here are some of the key things to think about.

- **Right timing** – a fund will typically look to invest at least £1 million in a business, although there are some specialist funds that will write smaller cheques for very early stage companies. With such a sum, a fund will usually only invest in a business that has a track record or some market data that verifies that the business is past the 'idea' stage. For games companies therefore, especially those that have only recently formed, there is little point approaching funds at the 'concept and design' stage and you should wait until you can show the fund tangible evidence of your progress in executing your idea (such as statistics on market traction, alpha/beta version etc.).

- **Business plan** – integral to your pitch to the fund will be a detailed business plan that the fund will expect you to have prepared containing comprehensive coverage of your financial figures including a breakdown of costs, revenues and cashflow for the business, use of the investment funds and expected further fundraisings required not just for the current year but three to five years into the future. You should expect the fund to very carefully scrutinise your numbers!

- **Term sheet** – a fund that is interested in investing in your business will likely provide you with a term sheet setting out a summary of the key commercial and legal points of the deal. Although usually non-binding, it is important that you take legal advice before signing as it can be difficult to renegotiate these points later in the process. The most important term in this will be the proposed valuation of your company which will inform the shareholding stake that the investor will take. Do not be afraid to negotiate any part of the term sheet (within reason) – investors will expect it and it would be odd if you did not question any part of it.

- **Due diligence** – once a term sheet is agreed, a fund will likely begin a process of asking a long list of detailed questions about your business in a process known as 'due diligence'. If you are new to the process, the number and repetitive nature of the questions can feel overwhelming at first. However, from the investor's perspective, it is trying to cover all its bases and flush out any areas of risk in the business. For this reason, some businesses seeking to raise money from venture capital funds perform a "house-keeping" exercise with external advisors in the run-up to the process. This way, you can resolve problems head-on and not on the back foot and facilitate a cleaner and therefore smoother due diligence exercise for the fund.

- **Take a step back…** - remember that bringing on a major investor into your company will require you to concede a certain amount of control over your company. You should try and pre-empt any sensitive issues at the term sheet stage and therefore discuss and agree a common approach with the investor so that there are no surprises further down the line. Getting rid of an unhappy shareholder is difficult so it is important for you to understand exactly how your arrangements will work with the investor going forwards. It is critical to understand the quid pro quo for the investor's cash – are you giving them any consent rights, and if so do these cover the day-to-day running of the business? Each type of investor will expect something different and so you should always take advice.

What is private equity?

'Private equity' is another term with many different meanings, however, in the investment context, the term is usually used to refer to 'private equity funds'. These funds differ from venture capital funds in that they normally buy established companies outright (or at least a majority shareholding) rather than investing in minority shareholdings. Growing games companies are therefore unlikely to cross paths with 'private equity funds' until they are much more established.

Private equity funds will tend to hold investments for a period of 3 – 5 years and so, like venture capital funds, be very focused on their exit. This may mean that a condition of their investment is that they can require you to sell at the same time as them.

Like venture capital funds, they will expect certain protections and control over key decisions (such as incurring high levels of debt or issuing more shares). However, they will not usually request oversight over day-to-day management of your business. Whilst they will usually seek to have a representative on the board of your company, they are there to monitor and generally not to instigate operational changes. However, the approach of each fund is different.

Where can I find out more?

Feel free to contact Mark Phillips or Edward Lane for further information about Venture Capital and Private Equity.

Accelerators/Incubators

What are accelerators?

Accelerators are organisations that provide various forms of both financial and non-financial support to early stage businesses, with the aim of helping to "accelerate" the business and improve its chances of attracting investment at a later stage.

What forms of support do accelerators supply?

Accelerators sometimes provide equity funding (i.e. funding for shares) or grant funding and, often more importantly, non-financial assistance to companies. The main types of non-financial assistance that an accelerator can provide include: (1) the provision of subsidised office space; (2) software or hardware for the development of technology or IP; (3) marketing and advertising services; (4) introductions to other investors and people who may help further grow the business; and (5) mentoring support.

How can an accelerator help your studio or business?

An accelerator can help a studio or other business that is at the early stage of its development and needs advice on its future plans and any or all of the forms of support outlined above.

Accelerators that are known to have funded games businesses in the past include Techstars London, Seedcamp, Founders Factory, Entrepreneur First, Microsoft Ventures and Y Combinator. In addition, Creative England, Indie Lab and UKIE (partnered with Barclays) provides accelerator programmes for games companies with advice from experts and opportunities to pitch to investors on offer.

Please contact Mark Phillips or Edward Lane for more details.

How does an accelerator work?

Most accelerators operate rounds of scheduled events and support activities that run for a fixed duration (typically around three months) and so applicants will need to apply for their services in these set windows. Studios interested in applying to an accelerator should note that the terms of any cash injections are usually non-negotiable. A studio chosen to participate by an accelerator will usually work onsite at the accelerator's premises for the duration of the programme. This allows the entity to get the most benefit from the mentoring, support, introductions, lectures, and the other benefits the accelerator provides. Finally, normally the key factor in the selection process is down to the willingness of the founders to receive advice and adapt the business accordingly.

"Accelerators" and "Incubators"

Although the terms "accelerators" and "incubators" are often used interchangeably there are a few differences in how they operate and their aims. The main difference is that incubators may be run as non-profits designed to help start-ups find their footing through shared space and costs to help boost the local economy. Accelerators are run for profit by taking an equity stake in each company they host (although this can apply to some "incubators"). As well as this, accelerators are usually time limited programs, while incubators sometimes do not have any time limit on how long a company can continue to use the services.

Taking advice

As accelerators are generally and incubators can be profit-seeking businesses (and/or businesses looking to recoup their investment and make a return on their investment), care should be taken when reviewing and accepting a place on an accelerator to ensure that you are comfortable giving away the amount of equity the accelerator or incubator is asking for. It may be a good idea, depending on your budget, to seek legal advice to make sure you are protecting yourself properly.

Where can you find out more?

Feel free to contact Mark Phillips or Edward Lane if you need any further information on Accelerators.

Crowdfunding

What is crowdfunding?

Crowdfunding refers to the process of raising finance from the public typically through an online platform that will charge a commission based on the amount raised. Almost all types of crowdfunding involve the creator of a project (or the company seeking the finance) creating an online "campaign" page on the chosen platform which sets out details including a description of their project or business, how funds will be used, timing of when products (such as a game) will be completed and background on the individuals behind the project.

What are the main types of crowdfunding?

There are currently broadly three types of crowdfunding:

- **Donation-based crowdfunding** (e.g. *Kickstarter, indiegogo*) – this is the most popular form of crowdfunding where the individual providing the finance to the creator of a project is technically donating its money to the project by way of a gift. No contract is formed between the project creator and the project "backer". However, it has become almost standard for projects to offer rewards to their backers such that despite the legal position, the platforms generally offer a pre-order system where the backers only provide finance in the expectation of receiving their reward. For games studios, the rewards typically range from a downloadable version of the game itself to DLC, exclusive art books, posters or other physical merchandise to the chance for a backer to have something they submit incorporated into the game in some way (e.g. having an NPC named after them).

- **Equity crowdfunding** (e.g. *Crowdcube, Seedrs*) – in this form of crowdfunding, a company seeking to raise finance offers shares in itself to potential investors at a set price. This arrangement involves a much greater degree of formality and paperwork for all involved including investment agreements between the company and its investors, disclosure of business plans and budgets and long-form terms and conditions between all parties including the platform. Compared to donation-based crowdfunding, the audience is typically much more focussed on the financial development of the company and the chances of a sale of its shares to a third party at a higher valuation within a number of years.

- **Debt crowdfunding** (e.g. *Funding Circle*) – debt crowdfunding is similar to equity crowdfunding because the people providing the finance are looking for a return on their investment. In this case, as a loan, the company would be required to pay interest out to the investor over a defined period before repaying the loan at the end.

It is also worth mentioning Fig, which is a US based crowdfunding platform that focuses solely on video games. Fig combines rewards based crowdfunding with equity crowdfunding. Rather than investing in the studio, backers invest in a Fig entity and receive Fig shares that relate to a particular game title. The Fig entity then pays distributions based on Fig's right to the title's sales receipts under its licence agreement with the studio.

How can crowdfunding help your studio and what are the main considerations?

Crowdfunding poses particular issues to think about including the following:

- **Organisation and planning** – despite the informal looking nature of many platforms and campaigns, the reality is that the most successful fundraisings are achieved by the companies that invest the most time and energy planning and implementing their crowdfunding campaign and product. Many companies now plan their campaigns six months in advance and for a games company having something more than concept art or a design document is frequently required.

- **Marketing** – as a crowdfunding campaign relies on its exposure to an audience that needs to be brought to the webpage, an effective marketing strategy should form a critical part of the planning process. Discovery of the campaign through the online platform will invariably be limited so many companies now invest money advertising their campaign on relevant sites and affiliate links.

- **Public nature** – the online and open nature of the platforms means that although a successful fundraising can bring in positive publicity and attention, the details of a negative fundraising will be forever freely accessible on the internet. This "public trial" of your business or game idea raises the stakes of any fundraising campaign which can add, not insignificantly, to the stress of a crowdfunding process.

- **Managing your backers** – whichever type of platform you use, any backer of your project will become a stakeholder in your project. It is therefore important not to underestimate the importance of managing the relationship with your stakeholders both during the campaign and after.

- **Is your game suitable?** – certain games lend themselves more easily than others to crowdfunding. For example, a game that is based on established IP (e.g. a previously successful game, a film or a stage play) that has an existing fan base.

- **Pledge threshold** – on most crowdfunding platforms you are required to reach your specified threshold of pledges and, if you do not, you may not be able to receive any of the funding. For this reason the trust and confidence of would-be backers has taken a knock and it may be wise to consider whether you are likely to hit your investment target using this fundraising method

Where can I find out more?

Feel free to contact Mark Phillips or Edward Lane for further information about crowdfunding.

Specialist Finance Providers / Velocity Capital

What is velocity capital?

This is a type of funding that allows mobile game studios that have games generating revenues to borrow against those revenues in order to utilise the revenues they have earned before they are paid out by the App Store.

How can velocity capital benefit your studio?

Velocity capital is a cash flow tool which means you will only have to wait 7 days or less instead of 30 to 60 days to receive the revenues earned from your mobile game.

Certain providers also offer other services such as advice on a studio's user acquisition strategy, which may be an additional benefit.

How does it work?

As the typical App Store payment terms are 30 to 60 days, velocity capital providers will verify the revenue data produced by a mobile game and pay out to the owner of that game within a shorter period (usually within 7 days). The payment usually takes the form of a loan. The game revenues, once paid out by the App Store, will be used to repay the loan and any interest or coupon element.

What are the key terms of the funding?

Typically, the velocity capital provider will often charge a fixed fee of around 5% (this rate may vary) of the revenues to be paid by the App Store.

Useful Resources

There are a number of helpful online resources with information on potential sources of finance. Here are some that may be useful:

Fundamentally Games

Colin Macdonald's Games Opportunities Newsletter