



# **BREXIT:**

## **PRIORITIES FOR THE UK VIDEO GAMES INDUSTRY**

### **SUMMARY**

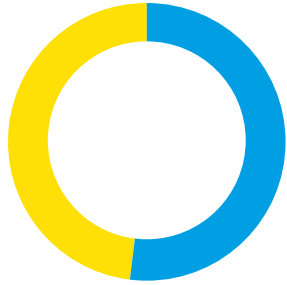
**JULY 2016**

**TIGA™**

**TIGA.ORG**

INTRODUCTION:

**THE UK HELD A  
REFERENDUM ON JUNE  
23RD 2016 TO DECIDE  
WHETHER TO REMAIN  
A MEMBER OF THE  
EUROPEAN UNION (EU).  
LEAVE WON BY 52 PER  
CENT TO 48 PER CENT.**



52% of the UK voted to leave the European Union

48% of the UK voted to stay in the European Union

The referendum turnout was almost 72 per cent, with more than 30 million people voting (the highest turnout since the 1992 general election).

Brexit has caused a political, economic and constitutional earthquake. Amidst the uncertainty one salient fact is now clear: the UK will determine a new relationship with the EU. The nature of this new arrangement will be important for businesses. This paper,

which draws upon expert legal advice from Weightmans LLP, sets out the UK video games industry's initial key priorities for Government, Parliament and policy makers to consider as they negotiate a new arrangement with the EU and set a new course for the UK.

This paper constitutes a summary of TIGA's proposals. To obtain a copy of the full report please contact Suzi Stephenson at TIGA [suzi@tiga.org](mailto:suzi@tiga.org)

ABOUT  
**TIGA**

**OUR CORE PURPOSE IS  
TO STRENGTHEN THE  
GAMES DEVELOPMENT  
AND DIGITAL  
PUBLISHING SECTOR.**

TIGA represents developers, digital publishers, service companies and education providers and is the trade association for the video games industry. Our core purpose is to strengthen the games development and digital publishing sector. We achieve this by campaigning for the industry in the corridors of power, championing the industry in the media and helping our members commercially.

TIGA is intent on building an enduring organisation which continually improves; a business that will make a significant impact on the games industry and so benefit our membership and the wider economy. Since 2010, TIGA has won 24 business awards, an achievement which reflects TIGA's drive for improvement and to meet best practice.

ABOUT  
**Weightmans**

Weightmans is a national law firm with extensive experience in the video gaming sector with particular expertise in relation to funding, acquisitions, disposals, development agreements and publishing agreements. We have been advising games businesses on these matters for some 20 years, ranging from start-ups to large developers and publishers.

Our Managing Partner, John Schorah, was previously the MD of a UK listed games publisher/developer and the Weightmans team, headed by Partner, Sean

Crotty, has vast experience in the video gaming sector.

Weightmans is recognised by the independent legal directories (Legal 500 and Chambers) for its experience in advising clients in the gaming sector.

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## THE UK VIDEO GAMES INDUSTRY

# THE UK VIDEO GAMES INDUSTRY IS IMPORTANT ECONOMICALLY AND CULTURALLY.

## SUMMARY

The UK video games industry is important economically and culturally. The UK video games sector is the largest in Europe. In 2014 the video games sector contributed £1.115 million to the UK's GDP and generated £471 million for HM Treasury in tax revenues. 30,741 work in the games industry/are in jobs indirectly supported by studios, including 10,869 in games development.<sup>1</sup>

### IN 2014

**£1.115million** contributed to the UK's GDP from the video games sector

**£471million** in HM Treasury tax revenues

**30,741** people work in the games industry/are in jobs indirectly supported by studios

**10,869** work in games development

Games development is a knowledge industry par excellence. The sector sustains highly skilled, graduate employment. A typical games development studio will have 80 per cent of staff qualified to degree level or above and many studios provide on-going training.

**The industry is export focused: 95 per cent of UK games development studios export at least some of their games. The sector makes intensive use of technology and many studios invest in R&D.**

Some of the best performing games IP globally is generated in the UK. Notable examples include the Grand Theft Auto franchise, developed by Rockstar. Other UK studios have produced major games franchises such as Batman and Lego, as well as individual world-class titles such as RuneScape (developed by Jagex), the Sniper Elite series (developed by Rebellion) and Worms (developed by Team 17).

Video games are increasingly embedded in UK culture and society. Games are a top entertainment medium, selling more at retail and via digital distribution in 2013 than video and over twice as much as music.<sup>2</sup> Games are played in 7 out of 10 households.<sup>3</sup> Video games are cultural, audio-visual products on a par with film, television and animation. They draw on artistic disciplines such as music and art, and sometimes involve narrative.

Video games also interact with other forms of media, for example, inspiring film, television and music.

The UK games development and digital publishing sector is a success story. The introduction of Games Tax Relief in 2014 – a measure which TIGA successfully campaigned for over seven years – will give the UK industry an important boost and enable it to compete on a more level international playing field against overseas competitors.

**DFC Intelligence estimates that the global video games market is worth: <sup>4</sup>**



Yet too many studios in the UK fail. 29 per cent of UK games companies that existed between 2008 and 2013 closed down.<sup>5</sup> If the sector is to achieve its full potential and make a significant contribution to UK employment and growth, then we need to do more. In particular, the UK needs to build an environment that is favourable to start-ups and the growth of more sustainable studios.

### 1. A FAVOURABLE TAX ENVIRONMENT



The UK needs a tax environment that will encourage businesses to locate and invest in the UK. The Government should bring forward the reduction in the rate of corporation tax to 17 per cent from 2020 to 2017. The Government should then consider further reductions after conducting a cost/benefit analysis to ensure that the UK has one of the most attractive corporation tax rates and tax regimes amongst the 34 OECD countries (Ireland has a rate of just 12.5 per cent).

Video Games Tax Relief and R&D Tax Relief have been crucial in enabling the UK video games industry to compete on a more level playing field against the UK's international competitors, particularly Canada. The UK Government should examine how to enhance these reliefs in order to attract external investment and to maintain the competitiveness of the sector. For example, the rate of GTR relief could be increased from 25 to 30 per cent and the cultural test could be reformed or dispensed with entirely. Similarly, the rate of R&D Tax Relief for qualifying expenditure for SMEs could be increased from 230 per cent to 250 or 300 per cent. (to equal or exceed the Relief offered in other countries). The government could also increase the cash credits available for SMEs in a loss making position from the current 33.35 per cent level.

### 2. ACCESS TO FINANCE



Difficulty accessing capital has consistently been the top factor holding back many games developers. Additionally, outside of the EU, the UK games industry will not be able to access schemes such as Creative Europe and Horizon 2020 programmes. In an uncertain economic environment, there may be a reduced appetite for investment. The UK already invests less than any other G7 country (according to the World Bank). The UK Government should promote policies that encourage investment, such as investment allowances, and maintain sector specific schemes such as the Video Games Prototype Fund. The Government should also consider introducing a Video Games Investment Fund to enable more studios to thrive and grow. The Government should also increase the amount of money that a company can raise via SEIS investment from £150,000 to £200,000.

### 3. ACCESS TO TALENT



The UK video games industry relies on a highly skilled workforce to compete. Approximately 15 per cent of the UK's games development workforce originates from other EU countries. UK games developers may struggle without access to this talent pool. TIGA believes that the existing rights of EU workers already present and working in the UK should be protected so that they can continue to live and work in the UK with the confidence and assurance that they are not going to be asked to leave

the UK at some stage. Additionally, the Government must clarify the status of EU workers who enter the UK following the EU referendum and prior to the UK's exit from the EU.

TIGA recognises that given the outcome of the referendum and also the position that the EU may take in any negotiations, it may be impossible to preserve free movement rights in their current form. In that case, the UK will need an effective and efficient migration system. This has three implications:

- The immigration cap that currently applies to sponsored workers would no longer be appropriate – it would need to be substantially increased in order to accommodate the needs of UK employers in the future<sup>6</sup>;
- Certain roles within the games sector may need to be added to the Shortage Occupation List where there is a specific skills shortage to ensure that employers can recruit the employees they need without undue delay. The additional roles include (but are not limited to): Game Analyst, Senior Game Artist, Senior Game Designer, Senior Producer, Engine Programmer and Machine Vision and Software Tools Engineers.
- Any new immigration system must minimise some of the costs and complexity of the current points based immigration system as it is likely that any replacement will need to deal with work permits on a far larger scale than it is used for at present. It is vital that any new arrangements are not onerous or complex and that industry is not held back by skills shortages.





#### 4. EXPORTS, TRADE AGREEMENTS AND TARIFFS:

We need to boost exports. The UK has a persistent current account deficit, exporting fewer goods and services than it imports. The overall current account deficit for 2015 amounted to £100.3 billion and was equivalent to 7 per cent of GDP in first quarter of 2016.

- Assuming that the UK does not become a member of the European Economic Area,<sup>7</sup> then the UK Government should negotiate a trade deal with the EU that to the greatest possible extent avoids quotas, tariffs and other barriers to trade.<sup>8</sup> Free trade in video games already exists and this should be maintained.
- After leaving the EU, the UK Government must negotiate trade deals with growing economies.
- Yet we will need to do more. Only one in five UK SMEs export compared to an EU average of one in four. The UK should examine how it can increase the proportion of SME exporters. The Government should examine the scope and potential for incentivising more businesses to export through the tax system. It should also ensure that the system of business support, including the provision of grants, financial support, information and advice, effectively supports exporters.



IP IS THE LIFEBLOOD OF THE VIDEO GAMES INDUSTRY AND THE IMPACT OF 'BREXIT' HERE COULD BE SIGNIFICANT. THERE ARE MANY COMMERCIAL CONSIDERATIONS.

#### 5. VAT



The UK Government should aim to negotiate an EU wide measure to exempt small businesses from significant EU VAT regulations as part of a Brexit agreement. EU regulations require a games company that sells games direct to consumers in the EU to account for VAT on those sales at the relevant Member State's VAT rate, rather than the VAT rate where the games business is based. To ensure compliance, companies either need to register for VAT in every EU Member State where supplies are made (up to 27 separate VAT registrations) or make use of an EU-wide accounting system known as the 'mini one stop shop' (MOSS). The UK should negotiate an EU wide simplification measure (i.e. a VAT threshold) to help small businesses.

**In the UK the VAT taxable turnover is more than £83,000 in a 12 month period; an EU wide VAT threshold set at £100,000 would be ideal, but even a threshold at £83,000 would help many small firms.**

Additionally, it is important that the UK continues to benefit from the existing Mini One Stop Shop (VAT MOSS) that allows UK businesses to account for VAT in relation to supplies of electronically supplied services to non-taxable persons in member states outside of the UK (in which they do not have a physical place of business), via a web portal set up by HMRC, rather than have to register in each member state to which supplies are made.

#### 6. INTELLECTUAL PROPERTY



IP is the lifeblood of the video games industry and the impact of 'Brexit' here could be significant. There are many commercial considerations. For example, the UK is part of both the Registered Community Design regime and the EU Trade Mark regime and also recognises the Unregistered EU Design Right. Such rights provide protection to rights holders across the EU Member States. Potentially such EU related rights might lose their validity in the UK. The implication being that those parties who originally held such EU rights may need to apply for UK trade mark and design rights to protect their rights in the UK. This may result in issues relating to existing development and publishing arrangements, IP licenses and security over IP rights. If necessary, the UK Government should consider introducing arrangements for the conversion or extension of a EU trademark or registered community design to cover the UK.

#### 7. DATA PROTECTION



The UK Government should consult with businesses about whether to require UK companies to comply with EU data protection laws post-Brexit. However, it will probably be in the UK's interest to adopt the General Data Protection Regulation (GDPR), or comply with the majority of it, to ensure that companies based in the UK doing business in the EU can continue to smoothly transfer information and data. Prior to the EU referendum, the EU had stated that the obligations imposed by the GDPR would take effect in the UK from May 2018. In principle, the UK

need not be bound by the GDPR and could adopt whatever data protection framework it deems fit. However, if the UK video games industry and other business sectors continue to use EEA personal data following Brexit, then it is likely that the UK will still need to abide by the GDPR. For practical reasons, therefore, it could be sensible for the UK to comply with the bulk of the GDPR.

#### 8. HIGHER EDUCATION



UK higher education is a success story. The UK has 46 out of Europe's top 200 universities and the UK is second only to the USA in the market for overseas students. The UK video games industry depends upon higher education for skilled graduates. The Government should make up any short-fall in funding following the UK's departure from the EU (UK universities currently benefit from £836 million in EU research funding). The Government should also ensure that any new visa system governing migration from the EU does not impair the ability of UK universities to recruit either academic staff or students from the EU. 16 per cent of academics at UK universities and 5 per cent of students are from the EU.

#### 9. FISCAL POLICY



To cushion the UK from the shock of Brexit and to enhance the country's long term competitiveness, the Government should consider increasing investment in infrastructure, including transport and fibre optic broadband. The Government's ability to borrow has never been so cheap. Investment in infrastructure could boost

employment and potentially increase productivity.

#### 10. SKILLS AND TRAINING



The advent of Brexit increases the importance of developing a well-educated and highly skilled workforce. The Government could consider three actions.

Firstly, it could conduct a cost/benefit analysis of extending the life of the Skills Investment Fund. This has helped to maximise investment in skills in the creative industries.

Secondly, the Government could examine the case for the introduction of a pilot Training Tax Relief for small and medium-sized enterprises (SMEs). TTR would operate in a similar way to the existing R&D tax credits and would enable SMEs to offset expenditure on training, Continuous Professional Development (CPD) for staff and education outreach activities against corporation tax.

Thirdly, the Government should consider allowing the proceeds of the Apprenticeship Levy to be available to fund a variety of good quality courses and not solely apprenticeships. The UK has a plethora of different industries with different skills and different qualifications requirements. In the games development sector, the vast majority of training needs to be in the form of on-the-job training or short, bite sized courses. If the Government allows employers to have flexibility over how to spend the proceeds of the Apprenticeship Levy, then they will be able to choose the right training programme to benefit their employees and their businesses.



## ABOUT THE AUTHORS



Dr Richard Wilson is the CEO of TIGA, the trade association representing the video games industry in the UK and in Europe. TIGA represents approximately 250 organisations. The majority of TIGA members are independent video games developers and digital publishers and in-house publisher owned developers. TIGA also has games publishers, outsourcing companies, technology businesses, universities and colleges amongst its membership. At TIGA, Richard has successfully campaigned for the introduction of Video Games Tax Relief, more than tripled TIGA's membership numbers, delivered eight years of profitable growth, dramatically raised the profile of the industry in media and political circles and won 24 business awards and commendations.

Richard would like to thank the following personnel from Weightmans LLP for their advice and input into this report:

- **SEAN CROTTY**  
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## FOOTNOTES

1. Gibson, N., Gibson R., and Wilson, R, *Making Games in the UK Today 2015* (TIGA 2015).
2. Source: Entertainment Retailers Association, ERA 2013 Entertainment Monitor, January 2014.
3. Source: Mintel video and computer games survey, 2011.
4. <http://www.dfcint.com/wp/?p=358>
5. The death rate remains high. Over 10 per cent of all UK games businesses closed down in 2014. See Gibson, R., Gibson, N. and Wilson, R., *Making Games in the UK 2015* (TIGA, 2015).
6. The current cap for skilled people under Tier 2 of the Migrant Points Based System is approximately 20,700 people. Jobs generally need to be graduate level or above. Salary requirements are specific to each job but there is an overall minimum of £20,800. Many jobs have a higher minimum than this specified and the minimum is due to rise shortly.
7. Members of the European Economic Area, such as Norway, have to pay for access to the single market, are required to follow most EU rules and accept full freedom of movement, but have no vote or veto. Given the outcome of the EU referendum this model seems unlikely to have public or political support.
8. The EU has an average tariff wall of 3-4 per cent, a tariff on cars of 10 per cent and an average tariff on agricultural products of 18 per cent. See Marshall Paul, "British trade can flourish without the shackles of Brussels", Financial Times, June 27th 2016.

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