

Swedish goats, Japanese hedgehogs
and Batman: How the BFI assess games
as “culturally British” for Video Games
Tax Relief.



Key findings:

Video Games Tax Relief (VGTR) has cost the taxpayer £324 million since it was introduced.

To access funding, developers are required to gain certification from the British Film Institute that their game is “culturally British”.

Research from TaxWatch demonstrates that the “cultural test” administered by the BFI is meaningless, with games able to gain taxpayer funded subsidies even if they are produced overseas, and regardless of their subject matter.

VGTR is essentially a tax loophole, with costs spiralling out of control.

Summary

Video Games Tax Relief (VGTR) has cost the UK taxpayer £324 million since the scheme was introduced in 2014. In the financial year 2018–2019, claims were made for a total of £103 million. The measure was initially due to run until March 2017, with a total budget of £115 million, and the cost was scheduled to be £35 million each year. Costs have gone far beyond what was originally intended. Now, the scheme has been extended to 2023, by which point it is expected to have cost well over half a billion pounds.

In order to benefit from the credits, games need to be certified as ‘Culturally British’. Games are certified based on a test conducted by the British Film Institute (BFI). As of the time of writing, 535 games have been granted the status, including Marvel Ultimate Alliance, Halo Wars 2, Mortal Kombat X, Tom Clancy's The Division, Lego Star Wars, and Sonic Forces – titles which on the face of it appear to have little to do with British culture. Though we cannot confirm that all the games on this long list are claiming relief, given the fact that they have gone through the trouble of applying for certification, it would be strange if they were not.

Given the large amounts of money being spent on Video Games Tax Relief, and the centrality of the cultural test in accessing the scheme, TaxWatch put in a Freedom of Information request to see how a few of the more ridiculous sounding titles were granted certification. However, the BFI has refused to disclose information relating to any games being certified as culturally British, believing it is not in the public interest to show how developers have claimed hundreds of millions of pounds in tax relief: a decision which we are appealing with the Information Commissioner's Office.

In the absence of any assistance from the BFI, TaxWatch has scored a selection of games against the BFI's own published criteria in order to understand more about how the BFI's cultural test works in practice. These games had all been certified as culturally British by the BFI.

What we found is that because of the way in which the test has been constructed, the BFI's cultural test is difficult to fail. Games developed anywhere in the European Economic Area, in the English language, and written by a British citizen, are able to claim that they are "culturally British", regardless of the game's content. There is no requirement for any reference to the United Kingdom in the game. A quarter of the points are awarded if the game is in an "undetermined" location and we don't know the main character's nationality – a criteria that even Sonic the Hedgehog, a blue hedgehog created by a Japanese games company, passes.

Although Video Games Tax Relief was supposedly set up to assist small developers produce games of cultural value that may not have been economically viable without the relief, our findings show that the majority of the money is going to big budget games that probably would have been made regardless of whether or not the VGTR existed. The result is that Video Games Tax Relief has become a tax loophole, providing large subsidies for large, multinational games companies.

How Video Games Tax Relief works

In order to gain certification as 'culturally British', a game must score a minimum of 16 out of 31 points on the BFI's cultural test, with a 'Golden Points Rule' in place which is supposed to ensure that the games are of cultural value, and don't qualify just from being made in the UK. However, even with this rule, TaxWatch's analysis of the test found that any game is still able to pass the test so long as it is:

- In the English language
- Developed in the European Economic Area by EEA citizens or residents

- Has a game script or narrative written by a British citizen, regardless of the underlying subject matter which the game is based on.

The BFI states that the Golden Points Rule exists to ensure that the certification puts sufficient emphasis on creative content, and not just the location of the developers. This test is key in allowing the subsidy to be lawful under EU rules.

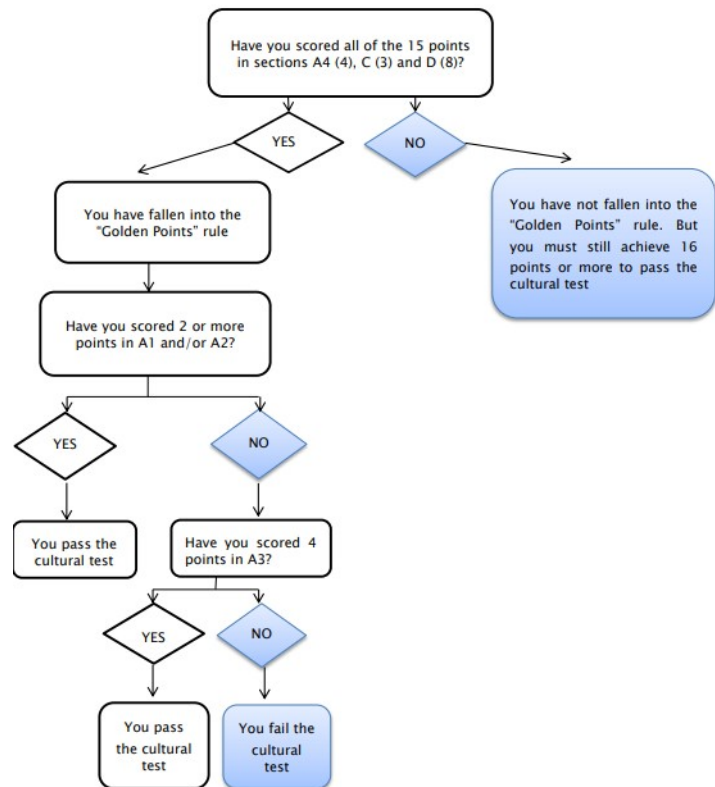
From our own scoring of games, we have seen that when games fall into the Golden Points Rule, they are often left having to score the full four points in section A3 – “*Video game based on British or EEA subject matter or underlying material*”.

The Cultural Test Guidance

Notes provided by the BFI state that four points will be awarded if the game depicts a British story, or relates to another EEA state. So far, this makes sense – and appears to encourage the inclusion of British cultural references within games. However, a game can also score these four points if:

*“the underlying material (e.g. book, story, film, game, television or animation programme, an original screenplay, script, or article) is written by a British/EEA Citizen or resident”*¹

What is not clear here is what exactly constitutes underlying material. Our research demonstrates that a game set in New York, inspired by an American comic, using



The golden points rule.

Looks very complicated. In practice it just means you need an EEA citizen involved in the writing of the game.

¹ <https://www.bfi.org.uk/sites/bfi.org.uk/files/downloads/bfi-british-film-certification-cultural-test-for-video-games-guidance-notes-2016-03.pdf>

American characters (e.g. Batman) could still be granted certification as “culturally British” if the script of the individual game is written by a British citizen.

There is a further “undetermined location rule”, wherein a game can score 3 points for it being set in an undetermined location, and 1 point if the main character is from an undetermined location. The rule states that in order to be eligible for these points, the game must also receive one point for being either based on British subject matter (i.e. written by a British citizen), representing British creativity, or, in the English language. The test is supposed to ensure British cultural value is included in games involving non-human characters or fantasy settings, but given that almost every game is in the English language, this rule is essentially meaningless.

The ease with which Video Games Tax Relief can be accessed has attracted the attention of tax advisers, who are marketing the scheme to developers. Some companies go as far as to boast that they have a “100% success record”.² One company has an FAQ on VGTR, with one question being “my game is not based in Britain, can I still qualify?”, and the answer stating “The “British” test is very wide and so many games will achieve enough points to be considered culturally British.”³

Once the BFI certifies a game as culturally British, developers can then apply to HMRC for tax relief. The value of the relief is 20% of the production cost of the game, deducted from the developer’s corporation tax bill, or given as a cash credit if the game is making a loss. In order to receive this relief, developers need a permanent establishment in the UK and to be within the UK Corporation Tax Charge.

Video Games Tax Relief and the Single Market

To comply with European Union internal market rules, the UK cannot simply give state aid to subsidise an already profitable sector. This would unfairly advantage the British gaming industry over that of other EU states. However, if the purpose of the tax relief is to protect British culture, then the scheme can be compliant with EU law.

In 2013, the European Commission (EC) investigated the UK government’s proposal to introduce VGTR, and determined it to be compatible with the internal market rules. While the Commission was initially sceptical, the UK was able to argue that

² <https://www.myriadassociates.com/services/video-games-tax-relief/>

³ <https://www.ouryclark.com/site-assets/pdf/quick-guides/corporation-tax/Oury-Clark-Guide-to-Video-Games-Tax-Relief.pdf>

culturally British games were in decline, and that “culturally significant games may have production costs equal to global games but a significantly smaller market”. The logic was that the scheme would be limited to games that would not be attractive to an international audience. A further argument put forward by the UK was that “culturally British elements of game narratives are being eroded in an attempt to secure the global publishing deals needed to fund their development”. It is hard to see how successful franchises such as Halo, Mortal Kombat and GTA fit into this.

The EC stated that “the incentive objectives of the fund would be to make cultural products that are likely to be uneconomical, commercially viable, thereby promoting the production of new cultural products that would not have been made in the absence of the tax relief”. HMRC figures show that for the 2018–2019 financial year, 13% of Video Games Tax Relief claims were for more than £500,000 – accounting for 82% of the total. The majority of relief therefore was directed at high-budget productions, which would have been commercially viable regardless of whether or not they were to receive VGTR.

In order to ensure that the subsidy gained was adopted by the UK government and then approved by the European Commission, TIGA, a trade association for the UK games industry, lobbied both the UK government and the European Commission extensively. The association gave 203 media interviews on VGTR, and issued 162 press releases. TIGA claims to have persuaded a sceptical EU Commission in 2014, arguing that VGTR will not distort the EU’s internal market, and even helped design the ‘genuine cultural test’.

Our report demonstrates the dangers in allowing a lobby group too much influence in policy design.

TaxWatch scores

In the absence of any assistance from the BFI, we have scored five games ourselves to better understand how the cultural test works. We selected the games, initially sceptical that they could be certified as “culturally British”, but as the scoring went on, the results quickly showed that this is a very difficult test to fail. Regardless of where the game is set, the characters in it, or even where it is made, the games make the grade.

For the purposes of this report we have not looked at how much, if any, tax relief the games developers are receiving in every case we scored. However, the BFI

certification is a requirement of the Video Games Tax Relief scheme, and there is little point in gaining the certification from the BFI if the developers do not intend to apply for tax relief. In some cases, the main developer of the game may not be the company applying for tax relief because they themselves do not qualify for relief (for example if they were not based in the UK and have no UK establishment). Developers of parts of the game, or add-ons, could have submitted the game for certification in order to apply for relief themselves.

Grand Theft Auto V

Set in a fictitious representation of Los Angeles, with the main characters committing crimes including soliciting prostitutes and murder. Grossed over \$6bn in revenue. GTA V is developed by Rockstar North, a UK-based company, awarding it 11 points, features innovations in gameplay for a further 1 point, and as with all the games we looked at, is in the English language for another 4. The game falls into of the Golden Points Rule, but passes due to the fact that the creators of the game are all British citizens, giving it another 4 points.

Score 20/31

Tom Clancy's The Division

The Division demonstrates how the design of the cultural test allows games with no relation to British culture to pass, even if it is not made in the UK or by British citizens.

A number of criteria in the test relate to where the game is made. The points in this part of the test can be scored as long as the game is made in the European Economic Area, that is the whole of the EU plus Norway, Iceland and Lichtenstein.

This game is set in a near future New York City, with American characters fighting their way through Manhattan. It scores 12 points by virtue of being developed by Swedish company Massive Entertainment (8 points) and being in English (4 points). The remainder of the points we believe must have been awarded for the game being based on an underlying story by an EEA citizen, due to the fact that the game was written by a Swede. This is a highly questionable interpretation of the cultural test. The inspiration for the game was the fictional world established by the late American novelist Tom Clancy, hence the title. However, it appears that the game is able to score points for the actual plot being written by an EEA citizen.

Score 16/31

Goat Simulator



This game allows you to experience life as a goat, if goats had the ability to summon flying saucers and be crowned King of the Goats. Created as a joke by Swedish developer Coffee Stain Studios, the game demonstrates how the undetermined location rule can allow a game with absolutely no connection to the UK whatsoever to be granted culturally British certification. In our scoring, 8 points are awarded for staff being from the EEA, with a further 4 for the English language.

The fact that 'Goatville' is in an undetermined location, and that we don't know the nationality of the goat, awarded the game a further 4 points to take it over the line.

Score 16/31

Batman Arkham Knight

Set in America and based on an American comic, where you play an American billionaire superhero that has a love/hate relationship with bats. Batman is developed by London-based Rocksteady Studios, for 11 points, and receives another 1 point for creativity in the gameplay. Again, being in English awards the game 4 points. The game then falls into the Golden Points Rule, but receives another 4 points for being based on a story by UK residents.

This game demonstrates how the part of the test relating to 'underlying subject matter' can be open to a broad interpretation. Most people would understand that the underlying subject matter of a Batman game to be in fact American.

Score 20/31.

Sonic Forces: Speed Battle

Sonic the Hedgehog is a 28-year-old Japanese franchise, following a blue hedgehog named Sonic in his quest to defeat a mad scientist that imprisons bunny rabbits.



As it is set in an undetermined location, and we don't know the nationality of our protagonist, Sonic, the game is awarded 4 points. The game was developed by UK-based Sega Hardlight, gaining it 8 points, and the soundtrack composed by the London Symphony Orchestra for a further 1 point. The English language scores the remaining 4 points. As with some of the other games we have looked at, were it not for the English language points, the game would not qualify.

Score 17/31.

For a tax relief established purportedly to further British culture, and help finance games that otherwise would not be made, it is hard to see how any of these games fit into that description. The test is almost meaningless in regards to promoting British culture. A full spreadsheet of our findings is available on the TaxWatch website.

Other games gaining 'culturally British' status

In addition to the games we scored against the BFI criteria, some of the other games gaining culturally British status by the BFI were as follows:

Gears of War: Ultimate Edition

Games in this multi-billion dollar Microsoft franchise follow American accented Delta Squad on planet Sera battling aliens.

Halo Wars 2

Another multi-billion dollar Microsoft franchise, set in space, involving American accented humans battling aliens.

Marvel Ultimate Alliance

Based on the American comic book universe created by Stan Lee, this game sees characters such as Captain America and Thor battling it out.

Forza Horizon 2

Part of the Forza racing games series, which has grossed over \$1bn. Does include Jaguar and Aston Martin cars.

The Lego Ninjago Movie

Published by the American company Warner Bros, and based on the Danish toy, this movie spin-off has players controlling a yellow man dressed as a ninja solving puzzles.

Mortal Kombat X

The tenth instalment in the series, this fighting game allows the player to tear the head off their opponent, showcasing it dangling and bloody with the spine still attached.

Donald Duck in Treasure Frenzy

Based on the character created by Walt Disney in 1934, this game features a duck collecting coins. Donald is not known to have frequented any British ponds.

Why it is important

Recent statistics reveal that £324 million has been claimed since the scheme's roll-out. Our report, *Gaming The System*, highlighted the fact that the developers of GTA V were able to claim £42 million in tax relief (19% of the total awarded 2015-2017), despite the fact that the game had grossed over \$6 billion in revenue. Rockstar North, GTA's developer, has already contacted the BFI to seek accreditation for the forthcoming GTA VI.

All of the VGTR claims are made as a direct result of passing the BFI's cultural test. Given the amount of public money involved in these claims, and the fact that many games are published by foreign studios, on subject matter that is not culturally British, it is imperative that the BFI is transparent in the decision making process. The public deserves to know how and why multi-billion dollar companies are receiving tax relief.

In 2014, following the European Commission's decision regarding VGTR, the then Chancellor George Osborne stated: *"This is a key industry of the future and I want*

Britain to be one of its biggest centres. 95% of UK video games companies in the UK are SMEs".⁴ Though the majority of claims being made may be smaller studios, most of the money is going to larger studios with significant budgets.

In order to comply with EU law, a government cannot subsidise an industry. The culture test was introduced to allow a subsidy to the UK games industry, supposedly by ensuring that games are of cultural value.

Our research appears to show that this is not the case, as it is a very easy test to pass – regardless of the content of the game. The fact that games from across Europe have been claiming this relief, despite often having nothing to do with British culture, shows that Video Games Tax Relief has in essence become a tax loophole which allows large studios to get free money. TaxWatch is calling for a comprehensive review of this relief before it spirals any further out of control.

The lead author on this report was Alex Dunnegan

The cover photo, *Brown Goat at Daytime*, is by Adrian Matei on [Unsplash](#)

⁴ <https://www.gov.uk/government/news/video-games-tax-relief-passes-final-hurdle>