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Commonwealth of Australia

HOUSE OF REPRESENTATIVES

As passed by both Houses

Tax Laws Amendment (Tax Incentives for Innovation) Bill 2016

No. , 2016

A Bill for an Act to amend the law relating to taxation, and for related purposes

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A Bill for an Act to amend the law relating to taxation, and for related purposes

The Parliament of Australia enacts:

1 Short title

This Act may be cited as the *Tax Laws Amendment (Tax Incentives for Innovation) Act 2016*.

2 Commencement

(1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Commencement information		
Column 1	**Column 2**	**Column 3**
Provisions	**Commencement**	**Date/Details**
1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table	The day this Act receives the Royal Assent.	
2. Schedule 1	The later of: (a) the day this Act receives the Royal Assent; and (b) 1 July 2016.	
3. Schedule 2, Parts 1 to 8	At the same time as the provisions covered by table item 2.	
4. Schedule 2, item 73	The later of: (a) the same time as the provisions covered by table item 2; and (b) immediately after the commencement of Schedule 4 to the *Tax Laws Amendment (New Tax System for Managed Investment Trusts) Act 2016*. However, this item does not commence at all if the event mentioned in paragraph (b) does not occur.	
5. Schedule 2, item 74	At the same time as the provisions covered by table item 2.	
6. Schedule 2, item 75	At the same time as the provisions covered by table item 2. However, this item does not commence at all if the provisions covered by table item 2 do not commence before the commencement of Schedule 4 to the *Tax Laws Amendment (New Tax System for Managed Investment Trusts) Act 2016*.	
7. Schedule 2, item 76	The later of: (a) the day this Act receives the Royal Assent; and (b) 1 July 2016.	
8. Schedule 2,	At the same time as the provisions covered	

Commencement information		
Column 1	**Column 2**	**Column 3**
Provisions	**Commencement**	**Date/Details**
Part 10	by table item 2.	

Note: This table relates only to the provisions of this Act as originally enacted. It will not be amended to deal with any later amendments of this Act.

(2) Any information in column 3 of the table is not part of this Act. Information may be inserted in this column, or information in it may be edited, in any published version of this Act.

3 Schedules

Legislation that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

Schedule 1—Tax incentives for early stage investors

Part 1—Main amendments

Income Tax Assessment Act 1997

1 After Division 355

Insert:

Division 360—Early stage investors in innovation companies

Table of Subdivisions

360-A Tax incentives for early stage investors in innovation companies

Subdivision 360-A—Tax incentives for early stage investors in innovation companies

Guide to Subdivision 360-A

360-5 What this Subdivision is about

> You may be entitled to a tax offset if you are, or a trust or partnership of which you are a member is, issued with certain kinds of equity interests in a small Australian company with high-growth potential that is engaging in innovative activities.
>
> A modified CGT treatment may also apply to those equity interests.

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Operative provisions

360-10 Object of this Subdivision

The object of this Subdivision is to encourage new investment in small Australian innovation companies with high-growth potential by providing qualifying investors with a tax offset and a modified CGT treatment.

360-15 Entitlement to the tax offset

General case

(1) You are entitled to a *tax offset for an income year if:

(a) you are none of the following:

(i) a trust or a partnership;

(ii) a *widely held company or a *100% subsidiary of a widely held company; and

(b) at a particular time during the income year, a company issues you with *equity interests that are *shares in the company; and

(c) subsection 360-40(1) (about early stage innovation companies) applies to the company immediately after that time; and

(d) neither you nor the company is an *affiliate of each other at that time; and

(e) the issue of those shares is not an *acquisition of *ESS interests under an *employee share scheme; and

(f) immediately after that time, you do not hold more than 30% of the equity interests in the company or in an entity *connected with the company.

Members of trusts or partnerships

(2) A *member of a trust or partnership at the end of an income year is entitled to a *tax offset for the income year if the trust or partnership would be entitled to a tax offset, under subsection (1), for the income year if the trust or partnership were an individual.

Trustees

(3) A trustee of a trust is entitled to a *tax offset for an income year if:

(a) the trustee would be entitled to a tax offset, under subsection (1), for the income year if the trustee were an individual; and

(b) the trustee is liable to be assessed or has been assessed, and is liable to pay *tax, on a share of, or all or a part of, the trust's *net income under section 98, 99 or 99A of the *Income Tax Assessment Act 1936* for the income year.

360-20 Limited entitlement for certain kinds of investors

(1) You do not satisfy paragraph 360-15(1)(b) if:

(a) for each offer resulting in *equity interests that are *shares in the company being issued to you during the income year, none of subsections 708(8), (10) or (11) of the *Corporations Act 2001* removed the need for a disclosure document; and

(b) a total of more than $50,000 was paid for the issue to you of the shares resulting from all of those offers.

(2) For the purposes of this section, assume that Chapter 6D of the *Corporations Act 2001* applies to those offers.

360-25 Amount of the tax offset—general case

(1) If subsection 360-15(1) applies, the amount of the *tax offset is 20% of the total amount paid for the *shares to which paragraph 360-15(1)(b) applies.

Note: If subsection 360-15(1) applies for shares issued to you at several times during the income year, then this subsection uses the total amount paid for all of those shares.

(2) However, reduce this amount to the extent necessary to ensure that the sum of the following does not exceed $200,000:

(a) the sum of the *tax offsets under this Subdivision for the income year for which you and your *affiliates (if any) are entitled;

(b) the sum of the tax offsets under this Subdivision that you and your affiliates (if any) carry forward to the income year.

360-30 Amount of the tax offset—members of trusts or partnerships

(1) If subsection 360-15(2) applies, the amount of the *member's *tax offset for the income year is as follows:

Determined share of notional tax offset × Notional tax offset amount

where:

determined share of notional tax offset is the percentage determined under subsection (2) for the *member.

notional tax offset amount is what would, under section 360-25, have been the amount of the trust's or partnership's *tax offset (the ***notional tax offset***) if the trust or partnership had been an individual.

(2) The trustee or partnership may determine the percentage of the notional tax offset that is the *member's share of the notional tax offset.

(3) If the *member would be entitled to a fixed proportion of any *capital gain from a *disposal were the disposal to happen in relation to the trust or partnership at the end of the income year, then:

(a) the percentage determined under subsection (2) must be equivalent to that fixed proportion; and

(b) a determination of any other percentage has no effect.

(4) The trustee or partnership must give the *member written notice of the determination. The notice:

(a) must enable the member to work out the amount of the member's *tax offset by including enough information to enable the member to work out the member's share of the notional tax offset; and

(b) must be given to the member within 3 months after the end of the income year, or within such further time as the Commissioner allows.

(5) The sum of all the percentages determined under subsection (2) in relation to the *members of the trust or partnership must not exceed 100%.

360-35 Amount of the tax offset—trustees

If subsection 360-15(3) applies, the amount of the *tax offset is the difference between:

(a) what would, under section 360-25, have been the amount of the tax offset to which the trustee would have been entitled if the trustee had been an individual; and

(b) if *members of the trust are entitled to tax offsets under subsection 360-15(2) arising from the same *shares to which the trustee's entitlement arises under subsection 360-15(3)—the sum of the amounts, under section 360-30, of those tax offsets.

360-40 Early stage innovation companies

(1) This subsection applies to a company at a particular time (the ***test time***) in an income year (the ***current year***) if:

(a) the company was:

(i) incorporated in Australia within the last 3 income years (the latest being the current year); or

(ii) incorporated in Australia within the last 6 income years (the latest being the current year), and across the last 3 of those income years it and its *100% subsidiaries (if any) incurred total expenses of $1 million or less; or

(iii) registered in the *Australian Business Register within the last 3 income years (the latest being the current year); and

(b) the company and its 100% subsidiaries (if any) incurred total expenses of $1 million or less in the income year before the current year; and

(c) the company and its 100% subsidiaries (if any) had a total assessable income of $200,000 or less in the income year before the current year; and

(d) at the test time, none of the company's *equity interests are listed for quotation in the official list of any stock exchange in Australia or a foreign country; and

(e) at the test time, the company has at least 100 points under section 360-45, or:

(i) the company is genuinely focussed on developing for commercialisation one or more new, or significantly improved, products, processes, services or marketing or organisational methods; and

(ii) the business relating to those products, processes, services or methods has a high growth potential; and

(iii) the company can demonstrate that it has the potential to be able to successfully scale that business; and

(iv) the company can demonstrate that it has the potential to be able to address a broader than local market, including global markets, through that business; and

(v) the company can demonstrate that it has the potential to be able to have competitive advantages for that business.

(2) For the purposes of paragraph (1)(c), disregard any Accelerating Commercialisation Grant under the program administered by the Commonwealth known as the Entrepreneurs' Programme.

(3) Subparagraphs (1)(e)(i) to (v) cannot be satisfied for:

(a) a product, process, service or method; or

(b) an improvement to a product, process, service or method;

that is of a kind prescribed by regulations made for the purposes of this subsection.

(4) Subsection (1) does not apply to a company if, before the test time, the company engaged in an activity of a kind prescribed by regulations made for the purposes of this subsection.

360-45 100 point innovation test

(1) At a particular time (the ***test time***) in an income year (the ***current year***), a company has the points mentioned in an item of the following table if that item applies to the company at that time.

Innovation points potentially available at that time in the current year		
	Column 1	**Column 2**
Item	**Points**	**Innovation criteria**
1	75	At least 50% of the company's total expenses for the previous income year is expenditure that the company can notionally deduct for that income year under section 355-205 (about R&D expenditure).
2	75	The company has received an Accelerating Commercialisation Grant under the program administered by the Commonwealth known as the Entrepreneurs' Programme.
3	50	At least 15%, but less than 50%, of the company's total expenses for the previous income year is expenditure that the company can notionally deduct for that income year under section 355-205 (about R&D expenditure).
4	50	(a) the company has completed or is undertaking an accelerator program that: (i) provides time-limited support for entrepreneurs with start-up businesses; and (ii) is provided to entrepreneurs that are selected in an open, independent and competitive manner; and (b) the entity providing that program has been providing that, or other accelerator programs for entrepreneurs, for at least 6 months; and (c) such programs have been completed by at least one cohort of entrepreneurs.
5	50	(a) a total of at least $50,000 has been paid for *equity interests that are *shares in the company; and (b) the company issued those shares to one or more entities that: (i) were not *associates of the company immediately before the issue of those shares; and (ii) did not *acquire those shares primarily to assist another entity become entitled to a *tax offset (or a modified CGT treatment) under this Subdivision; and

Innovation points potentially available at that time in the current year		
	Column 1	**Column 2**
Item	**Points**	**Innovation criteria**
		(c) the company issued those shares at least one day before the test time.
6	50	(a) the company has rights (including equitable rights) under a *Commonwealth law as: (i) the patentee, or a licensee, of a standard patent; or (ii) the owner, or a licensee, of a plant breeder's right; granted in Australia within the last 5 years (ending at the test time); or (b) the company has equivalent rights under a *foreign law.
7	25	Unless item 6 applies to the company at the test time: (a) the company has rights (including equitable rights) under a *Commonwealth law as: (i) the patentee, or a licensee, of an innovation patent granted and certified in Australia; or (ii) the owner, or a licensee, of a registered design registered in Australia; within the last 5 years (ending at the test time); or (b) the company has equivalent rights under a *foreign law.
8	25	The company has a written agreement with: (a) an institution or body listed in Schedule 1 to the *Higher Education Funding Act 1988* (about institutions or bodies eligible for special research assistance); or (b) an entity registered under section 29A of the *Industry Research and Development Act 1986* (about research service providers); to co-develop and commercialise a new, or significantly improved, product, process, service or marketing or organisational method.

(2) At the test time, the company also has the points prescribed by regulations made for the purposes of this subsection if the prescribed innovation criteria for those points apply to the company at that time.

360-50 Modified CGT treatment

(1) This section applies if the issuing of a *share to an entity gives rise to an entitlement to a *tax offset under this Subdivision.

Note: This section applies to any share that gives rise to the entitlement, regardless of whether subsection 360-25(2) reduces the amount of the tax offset.

(2) The entity is taken to hold the *share on capital account.

(3) The entity must disregard any *capital loss it makes from any *CGT event happening in relation to the *share if:

(a) the entity has continuously held the share since its issue; and

(b) the CGT event happens before the tenth anniversary of the issue of the share.

(4) The entity may disregard any *capital gain it makes from any *CGT event happening in relation to the *share if:

(a) the entity has continuously held the share since its issue; and

(b) the CGT event happens on or after the first anniversary, but before the tenth anniversary, of the issue of the share.

(5) If the entity has continuously held the *share since its issue, the *first element of its *cost base and *reduced cost base becomes, on the tenth anniversary of its issue, its *market value on that anniversary.

360-55 Modified CGT treatment—partnerships

(1) The purpose of this section is to ensure that the modifications made by section 360-50 apply to each partner in a partnership in a case where the partnership is the entity that is issued with the *share mentioned in subsection 360-50(1).

(2) In such a case, subsections 360-50(2) to (4) apply as if:

(a) the first reference in those subsections to the entity were a reference to each partner in the partnership; and

(b) the first reference in those subsections to the *share were a reference to the partner's interest in the share.

Note: The references to the entity and the share in the paragraphs of subsections 360-50(3) and (4) continue to apply unchanged.

(3) In such a case, treat subsection 360-50(5) as if it read as follows:

"If the partnership has continuously held the *share since its issue, on the tenth anniversary of its issue:

(a) the *first element of the *cost base for a partner's interest in the share becomes so much of the share's *market value on that anniversary as is calculated by reference to the partnership agreement, or partnership law if there is no agreement; and

(b) the *first element of the *reduced cost base is worked out similarly.".

360-60 Modified CGT treatment—not affected by certain roll-overs

(1) The purpose of this section is to ensure that the modifications made by section 360-50 are not affected merely because of one or more *same-asset roll-overs or *replacement-asset roll-overs (other than roll-overs under Division 122 or Subdivision 124-M).

(2) If, apart from those roll-overs, the entity (the ***original entity***) mentioned in subsection 360-50(1) would continue to hold the *share (the ***original share***) mentioned in that subsection, then subsections 360-50(2) to (5) apply as if:

(a) the following asset were the original share:

(i) if the last roll-over is a *same-asset roll-over—the asset for the roll-over;

(ii) if the last roll-over is a *replacement-asset roll-over—the replacement asset for the roll-over; and

Note: The asset for subparagraph (i) will be the original share unless a replacement-asset roll-over happened beforehand.

(b) that asset was issued when the original share was issued; and

(c) the entity that *acquired that asset for the roll-over had continuously held that asset since the original share was issued; and

(d) that entity were the original entity; and

(e) in a case where that entity is a partnership—paragraphs (a) to (d) modify subsections 360-50(2) to (5) as they apply with the modifications in section 360-55; and

(f) in a case where that entity is not a partnership but the entity that owned the original asset for the roll-over is—

paragraphs (a) to (d) modify subsections 360-50(2) to (5) as they apply without the modifications in section 360-55.

Note: A roll-over under Division 122 (about wholly-owned companies) or Subdivision 124-M (about scrip for scrip roll-overs) will stop the modified CGT treatment under section 360-50 from continuing to apply.

360-65 Separate modified CGT treatment for roll-overs about wholly-owned companies or scrip for scrip roll-overs

(1) If:

(a) a *share mentioned in subsection 360-50(1) has been continuously held by the entity mentioned in that subsection; and

(b) then:

(i) the share, or interests in the share, are *disposed of in a way that gives rise to a trigger event (see section 122-15 or 122-125) for a roll-over under Division 122; or

(ii) the share becomes the original interest (see paragraph 124-780(1)(a)) for a roll-over under Subdivision 124-M; and

(c) the roll-over happens on or after the first anniversary, but before the tenth anniversary, of the issue of the share;

the *first element of the *cost base and *reduced cost base of the share just before the roll-over is taken to be its *market value at that time.

Note: This subsection is a separate modified CGT treatment, and not a continuation of the modifications made by section 360-50.

(2) If:

(a) an asset mentioned in paragraph 360-60(2)(a) for a roll-over has been continuously held by the entity that *acquired that asset for that roll-over; and

(b) then:

(i) that asset, or interests in that asset, are *disposed of in a way that gives rise to a trigger event (see section 122-15 or 122-125) for a roll-over under Division 122; or

(ii) that asset becomes the original interest (see paragraph 124-780(1)(a)) for a roll-over under Subdivision 124-M; and

(c) the later roll-over happens on or after the first anniversary, but before the tenth anniversary, of the issue of the original share (see subsection 360-60(2) for the earlier roll-over;

the *first element of the *cost base and *reduced cost base of that asset just before the later roll-over is taken to be its *market value at that time.

Note: This subsection is a separate modified CGT treatment, and not a continuation of the modifications made by section 360-50.

Part 2—Other amendments

Income Tax Assessment Act 1936

2 Subsection 177A(1)

Insert:

innovation tax offset means a tax offset allowed under:

(a) Subdivision 61-P (about early stage venture capital limited partnerships) of the *Income Tax Assessment Act 1997*; or

(b) Subdivision 360-A (about early stage investors in innovation companies) of that Act.

3 After paragraph 177C(1)(bb)

Insert:

(bbaa) an innovation tax offset being allowable to the taxpayer where the whole or a part of that innovation tax offset would not have been allowable, or might reasonably be expected not to have been allowable, to the taxpayer if the scheme had not been entered into or carried out; or

4 After paragraph 177C(1)(f)

Insert:

(faa) in a case where paragraph (bbaa) applies—the amount of the whole of the innovation tax offset or of the part of the innovation tax offset, as the case may be, referred to in that paragraph; and

5 At the end of subsection 177C(2)

Add:

; or (e) an innovation tax offset being allowable to the taxpayer the whole or a part of which would not have been, or might reasonably be expected not to have been, allowable to the taxpayer if the scheme had not been entered into or carried out, where:

(i) the allowance of the innovation tax offset to the taxpayer is attributable to the making of a declaration, agreement, election, selection or choice, the giving of a

notice or the exercise of an option by any person, being a declaration, agreement, election, selection, choice, notice or option expressly provided for by this Act; and

(ii) the scheme was not entered into or carried out by any person for the purpose of creating any circumstance or state of affairs the existence of which is necessary to enable the declaration, agreement, election, selection, choice, notice or option to be made, given or exercised, as the case may be.

6 Subsection 177C(3)

Omit "or (d)(i)", substitute ", (d)(i) or (e)(i)".

7 After paragraph 177C(3)(ca)

Insert:

(caa) the allowance of an innovation tax offset to a taxpayer; or

8 After paragraph 177C(3)(g)

Insert:

(ga) the innovation tax offset would not have been allowable; or

9 After paragraph 177CB(1)(d)

Insert:

(daa) the whole or a part of an innovation tax offset not being allowable to the taxpayer;

10 After paragraph 177F(1)(d)

Insert:

(da) in the case of a tax benefit that is referable to an innovation tax offset, or a part of an innovation tax offset, being allowable to the taxpayer—determine that the whole or a part of the innovation tax offset, or the part of the innovation tax offset, as the case may be, is not to be allowable to the taxpayer; or

11 After paragraph 177F(3)(d)

Insert:

(da) if, in the opinion of the Commissioner:

(i) an amount would have been allowed, or would be allowable, to the relevant taxpayer as an innovation tax offset if the scheme had not been entered into or carried out, being an amount that was not allowed or would not, apart from this subsection, be allowable, as the case may be, as an innovation tax offset to the relevant taxpayer; and

(ii) it is fair and reasonable that the amount, or a part of the amount, should be allowable as an innovation tax offset to the relevant taxpayer;

determine that that amount or that part, as the case may be, should have been allowed or is allowable, as the case may be, as an innovation tax offset to the relevant taxpayer; or

Income Tax Assessment Act 1997

12 Section 13-1 (before table item headed "inter-corporate dividends")

Insert:

innovation companies

certain shares issued to early stage investors ..... Subdivision 360-A

13 Subsection 63-10(1) (before table item 35)

Insert:

33	*Tax offset under Subdivision 360-A (about early stage investors in innovation companies)	You may carry it forward to a later income year (under Division 65)

14 Section 112-97 (at the end of the table)

Add:

37	The issuing of a share gives rise to an entitlement to a tax offset under Subdivision 360-A	First element of cost base and reduced cost base	Sections 360-50, 360-55, 360-60 and 360-65

Taxation Administration Act 1953

15 Section 45-340 in Schedule 1 (method statement, step 1, after paragraph (g))

Insert:

(ga)	Subdivision 360-A of the *Income Tax Assessment Act 1997* (the tax offset for early stage investors in innovation companies); or

16 Section 45-375 in Schedule 1 (method statement, step 1, after paragraph (f))

Insert:

(fa)	Subdivision 360-A of the *Income Tax Assessment Act 1997* (the tax offset for early stage investors in innovation companies); or

17 Section 396-55 in Schedule 1 (at the end of the table)

Add:

10	a company	the issuing by the company of a *share that could give rise to an entitlement to a *tax offset (or a modified CGT treatment) under Subdivision 360-A of the *Income Tax Assessment Act 1997*

18 Paragraph 396-60(1)(a) in Schedule 1

Repeal the paragraph, substitute:

(a) must relate to:

(i) the identification, collection or recovery of a possible *tax-related liability; or

(ii) the identification of a possible reduction of a possible tax-related liability;

of a party to the transaction (disregarding any exemption under a *taxation law that may apply to those parties); and

Part 3—Application of amendments

19 Application of amendments

The amendments made by this Schedule apply in relation to equity interests issued on or after the commencement of this Schedule.

Schedule 2—Venture capital investment

Part 1—Tax offset for ESVCLP investments

Income Tax Assessment Act 1997

1 Section 13-1 (after table item headed "dividends")

Insert:

early stage venture capital limited partnerships

contributions to ESVCLPs..... Subdivision 61-P

2 At the end of Division 61

Add:

Subdivision 61-P—ESVCLP tax offset

Guide to Subdivision 61-P

61-750 What this Subdivision is about

> A limited partner in an ESVCLP may be entitled to a tax offset for investing in the ESVCLP.

Table of sections

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61-775 Amount of the ESVCLP tax offset—trustees

Operative provisions

61-755 Object of this Subdivision

The object of this Subdivision is to encourage new investment in early stage venture capital by providing investors with a *tax offset to reduce the effective cost of such investments.

61-760 Who is entitled to the ESVCLP tax offset

General case

(1) A *limited partner of an *ESVCLP is entitled to a *tax offset for an income year if:

(a) the partner contributes to the ESVCLP during the income year; and

(b) the partner is not a trust or partnership.

Members of trusts or partnerships

(2) A *member of a trust or partnership is entitled to a *tax offset for an income year if the trust or partnership would be entitled to a tax offset, under this section, for the income year if it were an individual.

Trustees

(3) A trustee of a trust is entitled to a *tax offset for an income year if:

(a) the trust would be entitled to a tax offset, under this section, for the income year if it were an individual; and

(b) in a case where the trustee has determined percentages under subsection 61-770(2) in relation to the *members of the trust—the sum of those percentages is not 100%; and

(c) the trustee is liable to be assessed or has been assessed, and is liable to pay *tax, on a share of, or all or a part of, the trust's *net income under section 98, 99 or 99A of the *Income Tax Assessment Act 1936* for that income year.

61-765 Amount of the ESVCLP tax offset—general case

(1) If subsection 61-760(1) applies, the amount of the *tax offset for the income year is 10% of the lesser of:

(a) the sum of the amounts the partner contributes to the *ESVCLP during the income year, reduced by any amounts excluded under subsection (2); and

(b) the amount (the ***investment related amount***) worked out under subsection (3).

(2) The following amounts are excluded for the purposes of paragraph (1)(a) in relation to the income year:

(a) any parts of a contribution the partner made to the *ESVCLP that the ESVCLP is, or will become, obliged to repay to the partner, whether or not:

(i) the obligation arises during the income year; or

(ii) the obligation arises only when the partner requests repayment;

(b) any parts of a contribution the partner made to the ESVCLP that, during the income year, are repaid to the partner within 12 months after the contribution was made;

(c) any parts of a contribution the partner made to the ESVCLP to the extent that they comprise a commitment to provide money or property in the future.

(3) Work out the investment related amount as follows:

$$\text{Partner's share} \times \text{Sum of eligible venture capital investments}$$

where:

partner's share is the partner's share of the capital of the *ESVCLP at the end of the income year, expressed as a percentage of the entire capital of the ESVCLP.

sum of eligible venture capital investments is the sum of:

(a) all the amounts of the *eligible venture capital investments made by the *ESVCLP during the period starting at the start of the income year and ending 2 months after the end of the income year; and

(b) all the incidental costs, incurred during that period, of making those investments; and

(c) all the administrative expenses, incurred during that period, associated with those investments.

(4) For the purposes of paragraph (a) of the definition of ***sum of eligible venture capital investments*** in subsection (3), disregard the amounts of any *eligible venture capital investments that were taken into account in working out the amount of a *tax offset under this Subdivision for a preceding income year.

61-770 Amount of the ESVCLP tax offset—members of trusts or partnerships

(1) If subsection 61-760(2) applies, the amount of the *member's *tax offset for the income year is as follows:

Determined share of notional tax offset × Notional tax offset amount

where:

determined share of notional tax offset is the percentage determined under subsection (2) for the *member.

notional tax offset amount is what would, under section 61-765, have been the amount of the trust's or partnership's *tax offset (the ***notional tax offset***) if the trust or partnership had been an individual.

(2) The trustee or partnership may determine the percentage of the notional tax offset that is the *member's share of the notional tax offset.

(3) If, under the terms and conditions under which the trust or partnership operates, the *member would be entitled to a fixed proportion of any *capital gain from a *disposal, were the disposal to happen in relation to trust or partnership, of investments made as a result of contributions that gave rise to the notional tax offset:

(a) the percentage determined under subsection (2) must be equivalent to that fixed proportion at the end of the income year to which the notional tax offset relates; and

(b) a determination of any other percentage has no effect.

(4) The trustee or partnership must give the *member written notice of the determination. The notice:

(a) must enable the member to work out the amount of the member's *tax offset by including enough information to enable the member to work out the member's share of the notional tax offset; and

(b) must be given to the member within 3 months after the end of the income year, or within such further time as the Commissioner allows.

(5) The sum of all the percentages determined under subsection (2) in relation to the *members of the trust or partnership must not exceed 100%.

61-775 Amount of the ESVCLP tax offset—trustees

If subsection 61-760(3) applies, the amount of the *tax offset for the income year is the difference between:

(a) what would, under section 61-765, have been the amount of the tax offset to which the trust would have been entitled if it had been an individual; and

(b) if *members of the trust are entitled to tax offsets under subsection 61-760(2) arising from the same contributions from which the trustee's entitlement arises under subsection 61-760(3)—the sum of the amounts, under section 61-770, of those tax offsets.

3 Subsection 63-10(1) (after table item 30)

Insert:

32	ESVCLP *tax offset under Subdivision 61-P	You may carry it forward to a later income year (under Division 65)

4 Application of amendments

The amendments made by this Part apply in relation to contributions made on or after 1 July 2016 to an ESVCLP that became registered, under subsection 13-1(1A) of the *Venture Capital Act 2002*, on or after 7 December 2015 (whether or not it was conditionally registered, under subsection 13-5(1A) of that Act, before that day).

5 Contributions made to ESVCLPs in previous income years

Subdivision 61-P of the *Income Tax Assessment Act 1997* as added by this Part, and item 4 of this Part, apply in relation to the first income year starting on or after 1 July 2016 (the ***initial income year***) as if:

(a) any contribution that a limited partner of an ESVCLP made to the ESVCLP during an earlier income year were made during the initial income year; and

(b) any eligible venture capital investments made by the ESVCLP:

(i) during an earlier income year; and

(ii) after the first contribution made by the partner to the ESVCLP;

were made during the initial income year.

Part 2—ESVCLP fund size cap

Venture Capital Act 2002

6 Subparagraph 9-3(1)(d)(ii)

Omit "$100 million", substitute "$200 million".

7 Application of amendment

The amendment made by this Part applies in relation to registration of partnerships under the *Venture Capital Act 2002* as ESVCLPs on or after 1 July 2016 (including registrations arising from applications made before that day).

Part 3—Removing the ESVCLP divestiture registration requirement

Income Tax Assessment Act 1997

8 After subsection 51-54(1)

Insert:

(1A) An entity's share of any gain or profit made:

(a) by an *ESVCLP that is *unconditionally registered; and

(b) from the disposal or other realisation of an *eligible venture capital investment;

is exempt from income tax to the extent that, were that disposal or other realisation to be a *disposal of a *CGT asset, the equivalent *capital gain arising from the *CGT event would be disregarded because of a partial exemption from the CGT event under section 118-408.

9 Subparagraph 118-407(1)(d)(iv)

Omit ", and met the *divestiture registration requirement".

10 Subsection 118-407(1) (note)

Omit "Note", substitute "Note 1".

11 At the end of subsection 118-407(1)

Add:

Note 2: This section does not apply if you get a partial exemption in relation to a CGT event under section 118-408.

12 Subsection 118-407(5)

Repeal the subsection.

13 After section 118-407

Insert:

118-408 Partial exemption for some capital gains otherwise fully exempt under section 118-407

(1) Despite section 118-407, you get only a partial exemption for a *capital gain from a *CGT event relating to an *eligible venture capital investment if:

(a) apart from this section, all of your share in the capital gain from the CGT event relating to the investment would be disregarded under section 118-407; and

(b) at the end of an income year to which subsection (4) applies (a ***valuation year***), the sum of the values of:

(i) the assets of the company or unit trust in which the investment is made; and

(ii) the assets of each other entity that is a *connected entity of the company or unit trust;

exceeds $250 million; and

(c) the CGT event happens after:

(i) if there is only one valuation year—the end of the period of 6 months after the end of that valuation year; or

(ii) if there is more than one valuation year—the end of the period of 6 months after the end of the earliest of those valuation years.

(2) If subsection (1) applies, work out your *capital gain using the formula:

Normal capital gain – Valuation year capital gain

where:

normal capital gain is what your *capital gain from the *CGT event would be apart from section 118-407 and this section.

valuation year capital gain is the capital gain you would have made in relation to the *CGT event if the CGT event had happened:

(a) if there is only one valuation year—at the end of the period of 6 months after the end of that valuation year; or

(b) if there is more than one valuation year—at the end of the period of 6 months after the end of the earliest of those valuation years.

(3) Despite subsection (2), you are taken not to have a *capital gain, or a *capital loss, from the *CGT event if the amount worked out under the formula in that subsection would be less than zero.

(4) This subsection applies to any income year that:

(a) precedes the income year in which the *CGT event happens; but

(b) does not precede the income year in which the investment was made.

Note: There must always be at least one valuation year, because paragraph 118-407(1)(d) ensures the CGT event will not happen in the year the investment was made.

(5) Section 118-407 does not apply in relation to a *CGT event if this section applies in relation to the CGT event.

14 Subsection 995-1(1) (definition of *divestiture registration requirement*)

Repeal the definition.

Venture Capital Act 2002

15 Paragraph 9-3(1)(i)

Repeal the paragraph.

16 Subsections 9-3(3) and (6)

Repeal the subsections.

17 Section 17-3

Repeal the section.

18 Paragraph 17-5(1)(ab)

Repeal the paragraph, substitute:

(ab) a partnership registered as an *ESVCLP does not meet the *registration requirements of an ESVCLP that are not *investment registration requirements; or

19 Section 17-15

Omit “17-3,”.

20 Application of amendments

The amendments made by this Part apply in relation to the 2016-17 income year and later income years.

Part 4—CGT exemption for fixed and unit trust beneficiaries of partners in ESVCLPs

Income Tax Assessment Act 1997

21 After paragraph 104-71(3)(a)

Insert:

(aa) an amount that is not included in the assessable income of an *ESVCLP because of subsection 51-54(1) or (1A) of this Act; or

22 At the end of subsection 104-71(3)

Add:

; or (c) proceeds from a CGT event if:

(i) the CGT event relates to an *eligible venture capital investment; and

(ii) the share of a partner in an ESVCLP in a *capital gain or *capital loss from the CGT event is disregarded under section 118-407; or

(d) that part of the proceeds from a CGT event, relating to an eligible venture capital investment, for which there is a partial exemption under section 118-408.

23 Application of amendments

The amendments made by this Part apply in relation to payments made, in respect of a unit or interest in a trust, in an income year starting on or after 1 July 2016.

Part 5—Requirements for entities in which VCLPs, ESVCLPs and AFOFs invest

Income Tax Assessment Act 1997

24 Paragraphs 118-425(3)(a) to (c)

Repeal the paragraphs, substitute:

(a) more than 75% of the assets (determined by value) that are assets of either:

(i) the company; or

(ii) any entity controlled by the company in a way described in section 328-125 (a ***controlled entity***);

must be used primarily in activities that are not ineligible activities mentioned in subsection (13) of this section;

(b) more than 75% of the persons who are employees of either or both of the following:

(i) the company;

(ii) any one or more of its controlled entities;

must be engaged (as such employees) primarily in activities that are not ineligible activities mentioned in subsection (13) of this section;

(c) more than 75% of the total assessable income, *exempt income and *non-assessable non-exempt income of:

(i) the company; and

(ii) each of its controlled entities;

must come from activities that are not ineligible activities mentioned in subsection (13) of this section.

25 Subsection 118-425(3) (note 3)

Repeal the note, substitute:

Note 3: A company that fails to meet at least 2 of the requirements can still be eligible if:

(a) Innovation Australia determines that the company's primary activity is not ineligible and the failure is temporary: see subsection (14); or

(b) all amounts invested in the company are appropriately invested within the first 6 months: see subsection (14A).

Innovation Australia may also determine that the activities of a controlled entity of the company are to be disregarded in applying this section to the company: see subsection (14B).

26 Subsection 118-425(4)

Repeal the subsection, substitute:

Investment in other entities

(4) The company must not invest, in another entity, any part of the amount invested, unless:

(a) the other entity:

(i) is *connected with the company (but not because the other entity is an *associate of the company as a result of an investment made in the other entity by the partnership); and

(ii) meets the requirements of subsections (3) to (7); or

(b) the other entity:

(i) is, after the investment is made, controlled by the company in a way described in section 328-125; and

(ii) meets the requirements of subsections (2) to (7) of this section (other than subsection (3)).

However, this subsection does not prevent the company from depositing money with an *ADI, or with a body authorised by or under a law of a foreign country to carry on banking business in that country.

Note 1: This requirement is ongoing. It is not limited to the circumstances at the time the investment was made.

Note 2: The other entity can be taken to meet the requirements of subsection (2) if Innovation Australia determines that its activities are complementary to activities of the company or other controlled entities and that the company meets those requirements at the time of the investment: see subsection (14C).

Investment in the capacity of a trustee

(4A) The company must not, in the capacity of a trustee, use any part of the amount invested.

Note: This requirement is ongoing. It is not limited to the circumstances at the time the investment was made.

27 Subsection 118-425(11)

Repeal the subsection.

28 After subsection 118-425(14)

Insert:

Temporary exception to the requirements for predominant activity

(14A) A company is taken to meet the requirements of subsection (3) even if it fails to satisfy at least 2 of the requirements in that subsection if:

(a) the company's sole purpose is making one or more investments that are *eligible venture capital investments, or would be eligible venture capital investments apart from paragraph (1)(d); and

(b) during the 6 month period starting immediately before the first investment made by a *VCLP, *ESVCLP, *AFOF or *eligible venture capital investor, the company has used all of the amounts invested in it:

(i) to make investments of a kind referred to in paragraph (a); or

(ii) to engage in activities that are ancillary or incidental to making those investments.

However, this subsection applies to the company only for that 6 month period.

Activities disregarded in applying the predominant activity test

(14B) If *Innovation Australia determines under section 25-15 of the *Venture Capital Act 2002* that:

(a) the activities of the controlled entity of a company are complementary to one or more of the activities, of the company or its other controlled entities, that are not ineligible activities mentioned in subsection (13) of this section; and

(b) the activities that, taken together, constitute the principal activities of the company and all of its controlled entities are not ineligible activities mentioned in subsection (13) of this section; and

(c) in all the circumstances, it is appropriate that, for a period specified in the determination, the activities of the controlled

entity are disregarded when applying subsection (3) of this section to the company;

in applying subsection (3) of this section to the company, disregard, for the period specified in the determination, the activities of the controlled entity.

Other entity can be taken to meet requirements relating to location in Australia

(14C) In applying subsection (4) to a company in relation to its investment in another entity, the other entity is taken, for the purposes of subparagraph (4)(b)(ii), to meet the requirements of subsection (2) if *Innovation Australia determines under section 25-15 of the *Venture Capital Act 2002* that:

(a) the activities of the other entity are complementary to one or more of the activities of the company or its other controlled entities; and

(b) the company meets the requirements of subsection (2) of this section at the time the investment is made, or will meet those requirements at the time the investment is proposed to be made.

29 Subsection 118-425(16)

Repeal the subsection.

30 Paragraphs 118-427(4)(a) to (c)

Repeal the paragraphs, substitute:

(a) more than 75% of the assets (determined by value) that are assets of either:

(i) the unit trust; or

(ii) any entity controlled by the unit trust in a way described in section 328-125 (a ***controlled entity***);

must be used primarily in activities that are not ineligible activities mentioned in subsection (14) of this section;

(b) more than 75% of the persons who are employees of either or both of the following:

(i) the trustee of the unit trust;

(ii) any one or more of the unit trust's controlled entities;

must be engaged (as such employees) primarily in activities that are not ineligible activities mentioned in subsection (14) of this section;

(c) more than 75% of the total assessable income, *exempt income and *non-assessable non-exempt income of:

(i) the unit trust; and

(ii) each of its controlled entities;

must come from activities that are not ineligible activities mentioned in subsection (14) of this section.

31 At the end of subsection 118-427(4)

Add:

Note 4: Innovation Australia may also determine that the activities of a controlled entity of the unit trust are to be disregarded in applying this section to the unit trust: see subsection (15A).

32 Subsection 118-427(5)

Repeal the subsection, substitute:

Investment in other entities

(5) The unit trust must not invest, in another entity, any part of the amount invested, unless:

(a) the other entity:

(i) is *connected with the unit trust (but not because the other entity is an *associate of the unit trust as a result of an investment made in the other entity by the partnership); and

(ii) meets the requirements of subsections (4) to (8); or

(b) the other entity:

(i) is, after the investment is made, controlled by the unit trust in a way described in section 328-125; and

(ii) meets the requirements of subsections (3) to (8) of this section (other than subsection (4)).

However, this subsection does not prevent the unit trust from depositing money with an *ADI, or with a body authorised by or under a law of a foreign country to carry on banking business in that country.

Note 1: This requirement is ongoing. It is not limited to the circumstances at the time the investment was made.

Note 2: The other entity can be taken to meet the requirements of subsection (3) if Innovation Australia determines that its activities are complementary to activities of the unit trust or other controlled entities and that the unit trust meets those requirements at the time of the investment: see subsection (15B).

Investment in the capacity of a trustee

(5A) The unit trust must not, in the capacity of a trustee, use any part of the amount invested.

Note: This requirement is ongoing. It is not limited to the circumstances at the time the investment was made.

33 After subsection 118-427(15)

Insert:

Activities disregarded in applying the predominant activity test

(15A) If *Innovation Australia determines under section 25-15 of the *Venture Capital Act 2002* that:

(a) the activities of the controlled entity of a unit trust are complementary to one or more of the activities, of the unit trust or its other controlled entities, that are not ineligible activities mentioned in subsection (14) of this section; and

(b) the activities that, taken together, constitute the principal activities of the unit trust and all of its controlled entities are not ineligible activities mentioned in subsection (14) of this section; and

(c) in all the circumstances, it is appropriate that, for a period specified in the determination, the activities of the controlled entity are disregarded when applying subsection (4) of this section to the unit trust;

in applying subsection (4) of this section to the unit trust, disregard, for the period specified in the determination, the activities of the controlled entity.

Other entity can be taken to meet requirements relating to location in Australia

(15B) In applying subsection (5) to a unit trust in relation to its investment in another entity, the other entity is taken, for the purposes of subparagraph (5)(b)(ii), to meet the requirements of subsection (3) if *Innovation Australia determines under section 25-15 of the *Venture Capital Act 2002* that:

(a) the activities of the other entity are complementary to one or more of the activities of the unit trust or its other controlled entities; and

(b) the unit trust meets the requirements of subsection (3) of this section at the time the investment is made, or will meet those requirements at the time the investment is proposed to be made.

34 Subsection 118-435(1)

Omit "subsections 118-425(2), (3), (4) and (5)", substitute "subsections 118-425(2), (3), (4), (4A) and (5)".

Venture Capital Act 2002

35 Paragraph 15-1(ga)

Repeal the paragraph, substitute:

(ga) for an investment in a company that the partnership held throughout the financial year—a statement from a general partner as to whether the company met the requirements of subsections 118-425(3), (4), (4A) and (5) of the *Income Tax Assessment Act 1997* at all times during that year;

36 Paragraph 15-1(gb)

After "(5)", insert ", (5A)".

37 Paragraphs 15-10(c) and (d)

Repeal the paragraphs, substitute:

(c) for each investment in a company made during the quarter—a statement from a general partner as to whether the company met the requirements of subsections 118-425(3), (4), (4A) and (5) of the *Income Tax Assessment Act 1997* at all times during the quarter after the investment was made; and

(d) for each disposal of an investment in a company during the quarter—a statement from a general partner as to whether the company met the requirements of subsections 118-425(3), (4), (4A) and (5) of the *Income Tax Assessment Act 1997* at all times during the quarter up to the day of disposal; and

38 Paragraph 15-10(e)

After "(5)", insert ", (5A)".

39 Paragraphs 21-20(1)(g) to (i)

Repeal the paragraphs, substitute:

(g) for each investment in a company that the entity held throughout that year—a statement as to whether the company met the requirements of subsections 118-425(3), (4), (4A) and (5) of the *Income Tax Assessment Act 1997* at all times during that year;

(h) for each investment in a company that the entity made during that year—a statement as to whether the company met the requirements of subsections 118-425(3), (4), (4A) and (5) of the *Income Tax Assessment Act 1997* at all times during that year after the investment was made;

(i) for each investment in a company that the entity disposed of during that year—a statement as to whether the company met the requirements of subsections 118-425(3), (4), (4A) and (5) of the *Income Tax Assessment Act 1997* at all times during that year up to the day of disposal;

40 Paragraph 21-20(1)(j)

After "(5)", insert ", (5A)".

41 Section 25-15 (heading)

Repeal the heading, substitute:

25-15 Innovation Australia may determine matters relating to requirements for eligible venture capital investments

42 Subsections 25-15(1) and (1A)

Repeal the subsections, substitute:

(1) *Innovation Australia may, on the application of a *general partner of a partnership registered as a *VCLP, an *ESVCLP or an *AFOF, determine:

(a) the matters set out in paragraphs 118-425(14)(a) and (b) of the *Income Tax Assessment Act 1997*; or

(b) the matters set out in paragraphs 118-425(14B)(a), (b) and (c) of that Act; or

(c) the matters set out in paragraphs 118-425(14C)(a) and (b) of that Act; or

(d) the matters set out in paragraphs 118-427(15)(a) and (b) of that Act; or

(e) the matters set out in paragraphs 118-427(15A)(a), (b) and (c) of that Act; or

(f) the matters set out in paragraphs 118-427(15B)(a) and (b) of that Act.

Note: Determining these matters allows for the relaxation of some of the requirements for eligible venture capital investments under sections 118-425 and 118-427 of the *Income Tax Assessment Act 1997*.

(1A) In making a determination under paragraph (1)(b) or (e), *Innovation Australia must specify in the determination a period for the purposes of paragraph 118-425(14B)(c) or 118-427(15A)(c) of the *Income Tax Assessment Act 1997*, as the case requires.

43 After paragraph 29-1(i)

Insert:

; (j) decisions under subsection 25-15(1A) specifying a period;

44 Application of amendments

(1) The amendments of the *Income Tax Assessment Act 1997* made by this Part apply in relation to the 2016-17 income year and later income years.

(2) The amendments of sections 15-1 and 21-20 of the *Venture Capital Act 2002* made by this Part apply in relation to the first financial year to start on or after the commencement of this item, and in relation to later financial years.

(3) The amendments of section 15-10 of the *Venture Capital Act 2002* made by this Part apply in relation to the first quarter to start on or after the commencement of this item, and in relation to later quarters.

45 Pending applications under section 25-15 of the *Venture Capital Act 2002*

(1) Section 25-15 of the *Venture Capital Act 2002* as amended by this Part applies after the commencement of this item to applications made under subsection 25-15(1) of that Act that were pending immediately before that commencement as if they had been made under paragraph 25-15(1)(a) of that Act as so amended.

(2) Section 25-15 of the *Venture Capital Act 2002* as amended by this Part applies after the commencement of this item to applications made under subsection 25-15(1A) of that Act that were pending immediately before that commencement as if they had been made under paragraph 25-15(1)(d) of that Act as so amended.

Part 6—Foreign venture capital funds of funds

Income Tax Assessment Act 1997

46 After paragraph 118-420(1)(b)

Insert:

(ba) the partner is a *widely held foreign venture capital fund of funds; or

47 After subsection 118-420(5)

Insert:

(6) An entity is a ***widely held foreign venture capital fund of funds*** if:

(a) the entity is a *foreign venture capital fund of funds; and

(b) the entity is a *widely held entity; and

(c) *eligible venture capital partners (other than foreign venture capital fund of funds) ultimately hold the rights to at least 90% of the entity's income; and

(d) each other entity who:

(i) if the entity is a *limited partnership—is a *general partner of the partnership; or

(ii) otherwise—exercises day to day control of the entity;

is a *foreign resident.

48 Before paragraph 842-230(1)(a)

Insert:

(aa) a *widely held entity;

49 Subsection 842-230(2)

Omit "Without limiting subsection (1) of this section, an entity is an ***IMR widely held entity***", substitute "An entity is a ***widely held entity***".

50 Paragraph 842-235(6)(a)

Repeal the paragraph, substitute:

(a) paragraph 842-230(1)(a), (b) or (c); or

51 Subsection 995-1(1)

Insert:

widely held entity has the meaning given by subsection 842-230(2).

widely held foreign venture capital fund of funds has the meaning given by subsection 118-420(6).

Venture Capital Act 2002

52 At the end of subsection 9-3(5)

Add:

; or (e) a *widely held foreign venture capital fund of funds.

53 Application of amendments

The amendments of the *Income Tax Assessment Act 1997* made by this Part apply in relation to the 2016-17 income year and later income years.

Part 7—Rulings that activities are not ineligible activities

Income Tax Assessment Act 1997

54 At the end of subsections 118-425(13) and 118-427(14)

Add:

Note: Under Division 362 in Schedule 1 to the *Taxation Administration Act 1953*, Innovation Australia can make rulings that activities, or classes of activities, are not ineligible activities.

55 Subsection 995-1(1) (definition of *private ruling*)

Omit "section 359-5", substitute "sections 359-5 and 362-25".

56 Subsection 995-1(1) (definition of *public ruling*)

Omit "section 358-5", substitute "sections 358-5 and 362-5".

Taxation Administration Act 1953

57 Section 357-1 in Schedule 1

Omit "and 360", substitute ", 360 and 362".

58 At the end of section 357-1 in Schedule 1

Add:

Note: In limited circumstances, Innovation Australia can make rulings.

59 At the end of section 357-5 in Schedule 1

Add:

(3) A further object of this Part is to provide a way for you to find out *Innovation Australia's view about whether activities are not ineligible activities for the purposes of applying capital gains tax provisions to venture capital investments.

Note: For rulings by Innovation Australia: see Division 362.

60 At the end of section 357-50 in Schedule 1

Add:

Note: Section 362-70 modifies how this Subdivision applies to rulings by Innovation Australia.

61 At the end of Part 5-5 in Schedule 1

Add:

Division 362—Rulings by Innovation Australia that activities are not ineligible activities

Guide to Division 362

362-1 What this Division is about

Innovation Australia may make public rulings and private rulings expressing its view on whether activities are not ineligible activities for the purposes of applying capital gains tax provisions to venture capital investments.

Note: An entity's involvement in ineligible activities can affect whether an investment is an eligible venture capital investment for the purpose of accessing a capital gains tax exemption under Subdivision 118-F of the *Income Tax Assessment Act 1997*.

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Public rulings by Innovation Australia

362-5 Innovation Australia may make public rulings on a specified class of activities

(1) *Innovation Australia may make a ruling that Innovation Australia considers that activities included in a specified class of activities:

(a) are not ineligible activities for the purposes of subsections 118-425(13) and 118-427(14) of the *Income Tax Assessment Act 1997*; or

(b) in specified circumstances, are not such ineligible activities;

if Innovation Australia is satisfied that the activities included in that class are not such ineligible activities, or are not in those circumstances such ineligible activities, as the case requires.

(2) Such a ruling is a ***public ruling*** if it:

(a) is published; and

(b) states that it is a public ruling.

(3) *Innovation Australia must publish notice of the making of a *public ruling in the Gazette.

Note: The validity of a ruling is not affected merely because a provision of this Part relating to the form of the ruling or the procedure for making it has not been complied with: see section 357-90.

362-10 Application of public rulings

A *public ruling under this Division applies from the time it is published or from such earlier or later time as is specified in the ruling.

362-15 When a public ruling ceases to apply

(1) A *public ruling under this Division may specify the time at which it ceases to apply.

(2) If a *public ruling under this Division does not do this, it applies until it is withdrawn.

362-20 Withdrawing public rulings

(1) *Innovation Australia must withdraw a *public ruling made under this Division, by publishing notice of the withdrawal, if:

(a) it is no longer satisfied of the matter about which it was required to be satisfied under subsection 362-5(1); or

(b) the ruling is inconsistent with a decision of a court.

(2) The withdrawal takes effect from the time specified in the notice. That time must not be before the time the notice is published.

(3) *Innovation Australia must publish notice of the withdrawal of the ruling in the Gazette.

Private rulings by Innovation Australia

362-25 Innovation Australia may make private rulings on a specified activity

(1) *Innovation Australia may, on application, make a ruling that Innovation Australia considers that a specified activity:

(a) is not an ineligible activity for the purposes of subsections 118-425(13) and 118-427(14) of the *Income Tax Assessment Act 1997*; or

(b) in specified circumstances, is not such an ineligible activity;

if Innovation Australia is satisfied that the activity is not such an ineligible activity, or is not in those circumstances such an ineligible activity, as the case requires.

(2) Such a ruling is a ***private ruling***.

Note: Decisions making such a ruling, and decisions refusing to make such a ruling, are reviewable under Part 5 of the *Venture Capital Act 2002*.

(3) In considering whether to make a *private ruling under this Division, *Innovation Australia must apply any principles made under subsection (4).

(4) *Innovation Australia may, by legislative instrument, make principles about making *private rulings under this Division.

(5) A failure to comply with subsection (3) does not affect the validity of the ruling.

362-30 Applying for a private ruling

A *general partner of a *limited partnership registered as a *VCLP, an *ESVCLP or an *AFOF may, in the *form approved by *Innovation Australia, apply to Innovation Australia for a *private ruling under this Division.

362-35 Innovation Australia must give notice of its decision

(1) If *Innovation Australia makes a *private ruling under this Division, Innovation Australia must notify the *general partner, and the Commissioner, as soon as practicable after the ruling is made.

(2) If *Innovation Australia refuses to make a *private ruling under this Division, Innovation Australia must:

(a) notify the *general partner as soon as practicable after the refusal; and

(b) provide reasons for the refusal.

362-40 Private rulings must contain certain details

(1) A *private ruling under this Division must state that it is a private ruling.

(2) A *private ruling under this Division must identify the entity to whom it applies and specify the activity to which it relates.

Note: Innovation Australia must tell the applicant which assumptions Innovation Australia made in making the ruling: see section 357-110.

362-45 Application of private rulings

A *private ruling under this Division applies from the time it is published or from such earlier or later time as is specified in the ruling.

362-50 Delays in making private rulings

(1) The applicant for a *private ruling under this Division may give *Innovation Australia a written notice requiring Innovation Australia to make the ruling if, at the end of 60 days after the application was made, Innovation Australia has neither:

(a) made the ruling; nor

(b) told the applicant that Innovation Australia has refused to make the ruling.

(2) The 60 day period mentioned in subsection (1) is extended in a circumstance applicable under the table by the extension period applicable to that circumstance. If 2 or more circumstances are applicable, ignore any overlap between the periods of extension.

Extending the 60 day period

Item	If *Innovation Australia, during the 60 day period:	The 60 day period is extended by the number of days in this period:
1	requests further information under section 357-105 (as that section applies because of section 362-70)	the period starting on the day the information was requested and ending on the day it is received by *Innovation Australia
2	tells the applicant about assumptions *Innovation Australia proposes to make under section 357-110 (as that section applies because of section 362-70)	the period starting on the day *Innovation Australia tells the applicant and ending on the day on which Innovation Australia receives the applicant's response about the assumptions
3	tells the applicant about information provided by a third party that *Innovation Australia proposes to take into account under section 357-120 (as that section applies because of section 362-70)	the period starting on the day *Innovation Australia tells the applicant and ending on the day on which Innovation Australia receives the applicant's response about the information

(3) If *Innovation Australia:

(a) does not make the ruling within 30 days of the notice under subsection (1) being given; and

(b) has not otherwise declined to make the ruling by the end of that period;

Innovation Australia is taken to have refused to make the ruling at the end of that period.

Note: Decisions refusing to make such a ruling are reviewable under Part 5 of the *Venture Capital Act 2002*.

362-55 When a private ruling ceases to apply

(1) A *private ruling under this Division may specify the time at which it ceases to apply.

(2) If a *private ruling under this Division does not do this, it applies until it is withdrawn.

362-60 Withdrawing private rulings

(1) *Innovation Australia must withdraw a *private ruling made under this Division if:

(a) it is no longer satisfied of the matter about which it was required to be satisfied under subsection 362-25(1); or

(b) the ruling is inconsistent with a decision of a court.

(2) *Innovation Australia must give notice of the withdrawal to a *general partner of the *limited partnership to which the ruling related.

General provisions

362-65 When rulings are binding on the Commissioner and Innovation Australia

(1) A ruling under this Division binds the Commissioner and *Innovation Australia in relation to an entity (whether or not the entity is aware of the ruling) if:

(a) the ruling applies to the entity; and

(b) the entity relies on the ruling by acting (or omitting to act) in accordance with the ruling.

(2) If the ruling is withdrawn under this Division, it continues to bind the Commissioner and *Innovation Australia in relation to the entity until the end of the income year following the income year in which it is withdrawn, but only to the extent that the ruling affected investments made before the withdrawal took effect.

362-70 Application of common rules under Subdivision 357-B

Despite section 357-50:

(a) section 357-60 does not apply in relation to a ruling under this Division; and

(b) sections 357-70, 357-85 and 357-95 apply, in relation to a ruling under this Division, to *Innovation Australia in the same way they apply to the Commissioner; and

(c) section 357-100 applies:

(i) in relation to a ruling under this Division as if a document referred to in paragraph 357-100(b) were required to be signed by a member of Innovation Australia, and not by a person referred to in that paragraph; and

(ii) in relation to a *private ruling under this Division in the same way it applies to a *public ruling; and

(d) sections 357-105 to 357-125 apply in relation to a ruling under this Division as if references in those sections to the Commissioner were references to Innovation Australia.

362-75 Application of Divisions 358 and 359

(1) Division 358 does not apply in relation to a *public ruling under this Division, or in relation to the making of such a ruling.

(2) Division 359 does not apply in relation to a *private ruling under this Division, or in relation to the making of such a ruling.

Venture Capital Act 2002

62 At the end of section 29-1

Add:

; (k) decisions under section 362-25 in Schedule 1 to the *Taxation Administration Act 1953* making a *private ruling, or decisions refusing to make a private ruling under that section;

(l) decisions under section 362-60 in Schedule 1 to that Act withdrawing a private ruling.

63 Application of amendments

The amendments made by this Part apply in relation to the 2016-17 income year and later income years.

Part 8—Auditing requirements

Income Tax Assessment Act 1997

64 Subsection 118-425(5)

Repeal the subsection, substitute:

Registered auditor

(5) The company must have as its auditor a *registered auditor at all times (if any) referred to in subsection (5A) during which the company:

(a) is not a proprietary company within the meaning of the *Corporations Act 2001*; or

(b) is a large proprietary company within the meaning of that Act; or

(c) would exceed the *permitted entity value if the amount provided for under subsection 118-440(9) were $12.5 million.

Note: This requirement is ongoing.

(5A) The times are:

(a) the end of the income year in which the investment is made; and

(b) all times after the end of that income year.

65 After subsection 118-425(10)

Insert:

(10A) However, for the purposes of this section, the value of the asset or investment at that time is the value provided for by section 118-450 if:

(a) there are no such audited accounts; and

(b) the entity does not have an auditor at that time; and

(c) the entity is not required under subsection (5) of this section to have an auditor at that time.

66 Subsection 118-427(6)

Repeal the subsection, substitute:

Registered auditor

(6) The unit trust must have as its auditor a *registered auditor at all times (if any) referred to in subsection (6A) during which the unit trust:

(a) if it were a company:

(i) would not be a proprietary company within the meaning of the *Corporations Act 2001*; or

(ii) would be a large proprietary company within the meaning of that Act; or

(b) would exceed the *permitted entity value if the amount provided for under subsection 118-440(9) were $12.5 million.

Note: This requirement is ongoing.

(6A) The times are:

(a) the end of the income year in which the investment is made; and

(b) all times after the end of that income year.

67 Subsection 118-427(11)

Repeal the subsection, substitute:

The value of an asset or investment

(11) The value of an asset or investment of an entity at a particular time for the purposes of this section is:

(a) the value of the asset or investment as shown in a statement, prepared in accordance with the *accounting standards and audited by the entity's auditor, showing that value as at a time no longer than 12 months before that time; or

(b) the value provided for by section 118-450 if:

(i) the entity does not have an auditor at that time; and

(ii) the entity is not required under subsection (6) of this section to have an auditor at that time.

68 At the end of section 118-428

Add:

(4) However, for the purposes of this section, the value of the investment at that time is the value provided for by section 118-450 if:

(a) there are no such audited accounts; and

(b) the entity does not have an auditor at that time.

69 After subsection 118-440(2)

Insert:

(2A) However, for the purposes of this section, the total value of its assets at that time is the sum of the values of those assets provided for by section 118-450 if:

(a) there are no such audited accounts; and

(b) the entity does not have an auditor at that time; and

(c) the entity is not required under subsection 118-425(5) or 118-427(6) to have an auditor at that time.

70 At the end of Subdivision 118-F

Add:

118-450 Values of assets and investments of entities without auditors

(1) If, under a provision of this Subdivision, the value of an asset or investment at a particular time is the value provided for by this section, that value is:

(a) if paragraph (b) does not apply—its *market value at that time; or

(b) the amount stated to be its current market value, at that time or a time in the 12 months preceding that time, in a statutory declaration by:

(i) if the entity is a company—the directors of the company; or

(ii) if the entity is a unit trust—the trustees of the unit trust.

(2) Paragraph (1)(b) does not apply if the Commissioner reasonably believes that the amount stated in the statutory declaration to be the

*market value of the asset or investment at the relevant time is inaccurate.

71 Subsection 995-1(1)

Insert:

registered auditor, in relation to an entity, means:

(a) a person registered as an auditor under a law in force in a State or a Territory; or

(b) if the entity is not an Australian resident—a person registered as an auditor under a law in force in the country of which the entity is a resident.

72 Application of amendments

The amendments made by this Part apply in relation to the 2016-17 income year and later income years.

Part 9—Managed investment trusts

Income Tax Assessment Act 1997

73 After subsection 275-10(4)

Insert:

(4A) In determining whether a trust is covered by subsection (4), disregard any interest that the trust has in a *VCLP or an *ESVCLP unless:

(a) the trust is a *general partner of the VCLP or ESVCLP; or

(b) the trust has *committed capital in the partnership that, taken together with the sum of the amounts of committed capital in the partnership of any of that partner's *associates (other than associates to whom subsection (4B) applies), exceeds 30% of the partnership's committed capital.

(4B) This subsection applies to:

(a) an *ADI; or

(b) a *life insurance company; or

(c) a public authority:

(i) that is constituted by a law of a State or internal Territory; and

(ii) that carries on life insurance business within the meaning of section 11 of the *Life Insurance Act 1995*; or

(d) a widely-held complying superannuation fund within the meaning of section 4A of the *Pooled Development Funds Act 1992*; or

(e) a *widely held foreign venture capital fund of funds.

74 After subsection 275-100(1)

Insert:

(1A) Without limiting paragraph (1)(b), if:

(a) a *VCLP or an *ESVCLP owns a *CGT asset at the time referred to in that paragraph; and

(b) at that time, the *managed investment trust has an interest in the asset as a *limited partner of the VCLP or ESVCLP;

for the purposes of that paragraph, the managed investment trust is taken to own the asset to the extent of that interest.

Taxation Administration Act 1953

75 After subsection 12-400(2) in Schedule 1

Insert:

(2A) In determining whether a trust is covered by subsection (2), disregard any interest that the trust has in a *VCLP or an *ESVCLP unless:

(a) the trust is a *general partner of the VCLP or ESVCLP; or

(b) the trust has *committed capital in the partnership that, taken together with the sum of the amounts of committed capital in the partnership of any of that partner's *associates (other than associates to whom subsection (2B) applies), exceeds 30% of the partnership's committed capital.

(2B) This subsection applies to:

(a) an *ADI; or

(b) a *life insurance company; or

(c) a public authority:

(i) that is constituted by a law of a State or internal Territory; and

(ii) that carries on life insurance business within the meaning of section 11 of the *Life Insurance Act 1995*; or

(d) a widely-held complying superannuation fund within the meaning of section 4A of the *Pooled Development Funds Act 1992*; or

(e) a *widely held foreign venture capital fund of funds.

76 Application of amendments

The amendments made by this Part apply in relation to the 2016-17 income year and later income years.

Part 10—Conditional registration

Venture Capital Act 2002

77 Paragraph 13-5(1)(b)

Repeal the paragraph, substitute:

(b) one or more of the following applies:

(i) the application for registration does not meet the requirements under section 11-1;

(ii) any further information requested under section 11-10 has not been provided;

(iii) the partnership does not meet the *registration requirements of a VCLP;

78 Paragraph 13-5(1)(c)

Omit "*registration", substitute "registration".

79 Paragraph 13-5(1A)(b)

Repeal the paragraph, substitute:

(b) one or more of the following applies:

(i) the application for registration does not meet the requirements under section 11-1;

(ii) any further information requested under section 11-10 has not been provided;

(iii) the partnership does not meet the *registration requirements of an ESVCLP;

80 Paragraph 13-5(1A)(c)

Omit "*registration", substitute "registration".

81 Paragraph 13-5(2)(b)

Repeal the paragraph, substitute:

(b) one or more of the following applies:

(i) the application for registration does not meet the requirements under section 11-1;

(ii) any further information requested under section 11-10 has not been provided;

(iii) the partnership does not meet the *registration requirements of an AFOF;

82 Paragraph 13-5(2)(c)

Omit "*registration", substitute "registration".

(53/16)