



# **Venture Capital Act 2002**

## **Act No. 137 of 2002 as amended**

This compilation was prepared on 4 October 2007  
taking into account amendments up to Act No. 164 of 2007

The text of any of those amendments not in force  
on that date is appended in the Notes section

The operation of amendments that have been incorporated may be  
affected by application provisions that are set out in the Notes section

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# **An Act relating to venture capital investments, and for related purposes**

## **Part 1—Preliminary**

### **Division 1—Preliminary**

#### **Table of sections**

1-1	Short title
1-5	Commencement
1-10	Interpretation
1-15	Identifying defined terms

#### **1-1 Short title** [see Note 1]

This Act may be cited as the *Venture Capital Act 2002*.

#### **1-5 Commencement** [see Note 1]

This Act commences on the day on which it receives the Royal Assent.

#### **1-10 Interpretation**

- (1) An expression has the same meaning in this Act as in the *Income Tax Assessment Act 1997*.
- (2) Division 950 of the *Income Tax Assessment Act 1997* (which contains rules for interpreting that Act) applies to this Act as if the provisions of this Act were provisions of the *Income Tax Assessment Act 1997*.

#### **1-15 Identifying defined terms**

- (1) Many of the terms in this Act are defined in the Dictionary, starting at section 995-1, to the *Income Tax Assessment Act 1997*.

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\*To find definitions of asterisked terms, see the Dictionary in the *Income Tax Assessment Act 1997*, starting at section 995-1 of that Act.

Section 1-15

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- (2) Most of the terms that are defined in that Dictionary are identified by an asterisk appearing at the start of the term: as in \*Innovation Australia. The footnote with the asterisk contains a signpost to that Dictionary.
- (3) An asterisk usually identifies the first occurrence of a term in a section (if not divided into subsections), subsection or definition. Later occurrences of the term in the same provision are not usually asterisked.
- (4) Terms are not asterisked in headings, notes, examples, explanatory tables, guides, outline provisions or diagrams.
- (5) If a term is not identified by an asterisk, disregard that fact in deciding whether or not to apply to that term a definition or other interpretation provision.

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\*To find definitions of asterisked terms, see the Dictionary in the *Income Tax Assessment Act 1997*, starting at section 995-1 of that Act.

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## **Division 3—A guide to this Act**

### **3-1 What this Act is about**

This Act provides for some administrative measures that are needed for the operation of:

- (a) the capital gains tax exemption relating to venture capital under Subdivision 118-F of the *Income Tax Assessment Act 1997* (and the related provisions about similar income gains and losses); and
- (b) the “flow-through” treatment, under Division 5 of Part III of the *Income Tax Assessment Act 1936*, of the income of limited partnerships that are used as vehicles for making venture capital investments.

Note: Innovation Australia is responsible for the operation of these measures. The *Industry Research and Development Act 1986* provides for the establishment and operation of Innovation Australia.

### **3-5 Registration of limited partnerships (Part 2)**

Part 2 provides for:

- (a) the registration requirements for venture capital limited partnerships, early stage venture capital limited partnerships and Australian venture capital funds of funds; and
- (b) applications for registration; and
- (c) registration of limited partnerships by Innovation Australia, including conditional registration; and
- (d) the obligations imposed on general partners of partnerships that are registered; and
- (e) revocation of registration.

### **3-10 Registration of eligible venture capital investors (Part 3)**

Part 3 provides for registration of entities as eligible venture capital investors, their obligations while registered, and revocation of registration.

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\*To find definitions of asterisked terms, see the Dictionary in the *Income Tax Assessment Act 1997*, starting at section 995-1 of that Act.

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**3-15 Determinations by Innovation Australia concerning certain investments (Part 4)**

Part 4 provides for Innovation Australia to make determinations that are relevant to whether certain investments can be eligible venture capital investments.

**3-20 Review of decisions (Part 5)**

Part 5 provides for review of Innovation Australia's decisions under this Act.

**3-25 Miscellaneous (Part 6)**

Part 6 deals with miscellaneous matters.

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\*To find definitions of asterisked terms, see the Dictionary in the *Income Tax Assessment Act 1997*, starting at section 995-1 of that Act.

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## **Part 2—Registration of limited partnerships**

### **Division 7—A guide to this Part**

#### **7-1 What this Part is about**

Innovation Australia can register limited partnerships as venture capital limited partnerships, early stage venture capital limited partnerships or Australian venture capital funds of funds.

Registration is one of the requirements before investments of venture capital through a limited partnership can attract the operation of:

- the capital gains tax exemption relating to venture capital under Subdivision 118-F of the *Income Tax Assessment Act 1997* (and the related provisions about similar income gains and losses); and
- the income tax exemption under section 51-52 of the *Income Tax Assessment Act 1997* (if the partnership is an early stage venture capital limited partnership); and
- the “flow-through” treatment, under Division 5 of Part III of the *Income Tax Assessment Act 1936*, of the income of limited partnerships.

Broadly speaking, Innovation Australia will register a limited partnership under Division 13 if an application meets the requirements of Division 11, unless Innovation Australia is satisfied that the partnership does not meet the applicable registration requirements of Division 9.

Conditional registration is an option if an application does not meet the requirements of Division 11.

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\*To find definitions of asterisked terms, see the Dictionary in the *Income Tax Assessment Act 1997*, starting at section 995-1 of that Act.

**Part 2** Registration of limited partnerships

**Division 7** A guide to this Part

Section 7-1

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Note: Conditional registration becomes important if full registration is achieved. Registration is then backdated at least to the time of conditional registration.

Innovation Australia can revoke a registration under Division 17. Broadly speaking, the grounds for revocation are:

- failure to meet the applicable registration requirements of Division 9; and
- failure to provide information as required under Division 15.

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\*To find definitions of asterisked terms, see the Dictionary in the *Income Tax Assessment Act 1997*, starting at section 995-1 of that Act.

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## Division 9—Registration requirements

### Table of sections

9-1	Registration requirements of VCLPs
9-3	Registration requirements of ESVCLPs
9-4	Allowing a partner's committed capital to exceed the 30% limit
9-5	Registration requirements of AFOFs
9-10	Meaning of <i>permitted loan</i>

### 9-1 Registration requirements of VCLPs

- (1) The *registration requirements of a VCLP*, in relation to a \*limited partnership, are that:
- (a) the partnership was established by or under a law in force in, or in any part of:
    - (i) Australia; or
    - (ii) a foreign country in respect of which a double tax agreement (as defined in Part X of the *Income Tax Assessment Act 1936*) is in force that is an agreement of a kind referred to in subparagraph (b)(i), (ia), (ii), (iii), (iv) or (v) of that definition; and
  - (b) all of the partners who are \*general partners are residents of a country referred to in paragraph (a); and
  - (c) under the partnership agreement the partnership is to remain in existence for a period of not less than 5 years and not more than 15 years; and
  - (d) the partnership's \*committed capital is at least \$10 million; and
  - (e) each investment that the partnership holds is:
    - (i) an \*eligible venture capital investment; or
    - (ii) an investment in a company, in which the partnership owns one or more eligible venture capital investments, that would have been an eligible venture capital investment but for subsections 118-425(2) and (6) of the *Income Tax Assessment Act 1997*; or

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\*To find definitions of asterisked terms, see the Dictionary in the *Income Tax Assessment Act 1997*, starting at section 995-1 of that Act.

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Section 9-3

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- (iii) an investment in a unit trust, in which the partnership owns one or more eligible venture capital investments, that would have been an eligible venture capital investment but for subsections 118-427(3) and (7) of the *Income Tax Assessment Act 1997*; and
  - (f) the partnership only carries on activities that are related to making \*eligible venture capital investments, investments to which subparagraph (e)(ii) applies or investments to which subparagraph (e)(iii) applies; and
  - (g) every \*debt interest that the partnership owns is, and continues to be, a \*permitted loan.
- (2) The requirements in paragraphs (1)(e), (f) and (g) are ***investment registration requirements***.

### 9-3 Registration requirements of ESVCLPs

- (1) The ***registration requirements of an ESVCLP***, in relation to a \*limited partnership, are that:
- (a) the partnership was established by or under a law in force in, or in any part of:
    - (i) Australia; or
    - (ii) a foreign country in respect of which a double tax agreement (as defined in Part X of the *Income Tax Assessment Act 1936*) is in force that is an agreement of a kind referred to in subparagraph (b)(i), (ia), (ii), (iii), (iv) or (v) of that definition; and
  - (b) all of the partners who are \*general partners are residents of a country referred to in paragraph (a); and
  - (c) under the partnership agreement the partnership is to remain in existence for a period of not less than 5 years and not more than 15 years; and
  - (d) the partnership's \*committed capital:
    - (i) is at least \$10 million; and
    - (ii) does not exceed \$100 million; and
  - (e) none of the partners 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

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\*To find definitions of asterisked terms, see the Dictionary in the *Income Tax Assessment Act 1997*, starting at section 995-1 of that Act.

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- \*associates (other than associates to whom subsection (5) applies), exceeds 30% of the partnership's committed capital; and
- (f) each investment that the partnership holds is:
    - (i) an \*eligible venture capital investment; or
    - (ii) an investment in a company, in which the partnership owns one or more eligible venture capital investments, that would have been an eligible venture capital investment but for subsections 118-425(2) and (6) of the *Income Tax Assessment Act 1997*; or
    - (iii) an investment in a unit trust, in which the partnership owns one or more eligible venture capital investments, that would have been an eligible venture capital investment but for subsections 118-427(3) and (7) of the *Income Tax Assessment Act 1997*; and
  - (g) each investment that the partnership holds is in accordance with the partnership's \*approved investment plan; and
  - (h) the partnership acts in accordance with the partnership's approved investment plan; and
  - (i) the partnership does not hold any investment that breaches subsection (6); and
  - (j) the partnership only carries on activities that are related to making eligible venture capital investments, investments to which subparagraph (f)(ii) applies or investments to which subparagraph (f)(iii) applies; and
  - (k) every \*debt interest that the partnership owns is, and continues to be, a \*permitted loan.
- (2) The requirements in paragraphs (1)(e), (f), (g), (h), (j) and (k) are ***investment registration requirements***.
  - (3) The requirement in paragraph (1)(i) is the ***divestiture registration requirement***.
  - (4) Paragraph (1)(e) does not apply in relation to a particular partner's \*committed capital in the partnership if:

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\*To find definitions of asterisked terms, see the Dictionary in the *Income Tax Assessment Act 1997*, starting at section 995-1 of that Act.

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- (a) \*Innovation Australia allows, under section 9-4, the partner's committed capital in the partnership to exceed 30% of the partnership's committed capital; or
  - (b) subsection (5) applies to the partner.
- (5) 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*.
- (6) An investment in a company or unit trust breaches this subsection if, at the end of the partnership's preceding income year, the sum of the values of:
- (a) the assets of the company or unit trust; and
  - (b) the assets of each other entity that is a \*connected entity of the company or unit trust;
- exceed \$250 million.

**9-4 Allowing a partner's committed capital to exceed the 30% limit**

- (1) \*Innovation Australia may, on the application of a partner of a partnership, make a decision allowing the partner's committed capital in the partnership to exceed 30% of the partnership's committed capital.
- (2) The application must be in the \*form approved by Innovation Australia.
- (3) In considering whether to make such a decision, \*Innovation Australia must apply the principles specified under subsection (4).

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\*To find definitions of asterisked terms, see the Dictionary in the *Income Tax Assessment Act 1997*, starting at section 995-1 of that Act.

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- (4) \*Innovation Australia may, by legislative instrument, make principles about making decisions under this section.
- (5) If \*Innovation Australia makes a decision under this section, Innovation Australia must notify the \*general partner as soon as practicable after the decision is made.
- (6) If \*Innovation Australia refuses to make a decision allowing the partner's committed capital in the partnership to exceed 30% of the partnership's committed capital, Innovation Australia must:
  - (a) notify the \*general partner as soon as practicable after the refusal; and
  - (b) provide reasons for the refusal.

### **9-5 Registration requirements of AFOFs**

- (1) The *registration requirements of an AFOF*, in relation to a \*limited partnership, are that:
  - (a) the partnership is established by or under the law of a State or Territory; and
  - (b) all of the partners who are \*general partners are \*Australian residents; and
  - (c) under the partnership agreement, the partnership is to remain in existence for a period of not less than 5 years and not more than 20 years; and
  - (d) each investment that the partnership owns is:
    - (i) an investment in a \*VCLP or an \*ESVCLP; or
    - (ii) an \*eligible venture capital investment in a company or unit trust in which a VCLP or an ESVCLP, of which the partnership is a partner, owns one or more eligible venture capital investments; or
    - (iii) an investment in a company referred to in subparagraph (ii) that would have been an eligible venture capital investment but for subsections 118-425(2) and (6) of the *Income Tax Assessment Act 1997*; or
    - (iv) an investment in a unit trust referred to in subparagraph (ii) that would have been an eligible

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\*To find definitions of asterisked terms, see the Dictionary in the *Income Tax Assessment Act 1997*, starting at section 995-1 of that Act.

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Section 9-10

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venture capital investment but for subsections 118-427(3) and (7) of the *Income Tax Assessment Act 1997*; and

(e) the partnership only carries on activities that are related to making eligible venture capital investments, investments to which subparagraph (d)(iii) applies or investments to which subparagraph (d)(iv) applies, or investing in VCLPs or ESVCLPs; and

(f) every \*debt interest that the partnership owns is, and continues to be, a \*permitted loan.

(2) The requirements in paragraphs (1)(d), (e) and (f) are ***investment registration requirements***.

**9-10 Meaning of *permitted loan***

(1) A debt interest is a ***permitted loan*** if:

(a) it is a loan made to a \*company and the sum of:

(i) the \*equity interests that the partnership owns in the company; and

(ii) any debt interests that the partnership owns in the company that can be converted into equity interests in the company;

is at least 10% of the sum of:

(iii) all of the equity interests in the company; and

(iv) all of the debt interests in the company that can be converted into equity interests in the company;

and the company meets the requirements of subsections 118-425(2) to (7) of the *Income Tax Assessment Act 1997* in relation to the investments referred to in subparagraphs (i) and (ii); or

(aa) it is a loan made to a unit trust and the sum of:

(i) the \*equity interests that the partnership owns in the unit trust; and

(ii) any \*debt interests that the partnership owns in the unit trust that can be converted into equity interests in the unit trust;

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\*To find definitions of asterisked terms, see the Dictionary in the *Income Tax Assessment Act 1997*, starting at section 995-1 of that Act.

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is at least 10% of the sum of:

- (iii) all of the equity interests in the unit trust; and
- (iv) all of the debt interests in the unit trust that can be converted into equity interests in the unit trust;

and the unit trust meets the requirements of subsections 118-427(3) to (8) of the *Income Tax Assessment Act 1997* in relation to the investments referred to in subparagraphs (i) and (ii); or

- (b) it is repaid within 6 months, or such longer period as \*Innovation Australia allows under subsection (3).
- (2) A \*general partner may apply to \*Innovation Australia, in the \*form approved by Innovation Australia, for Innovation Australia to allow a longer period for the purposes of paragraph (1)(b).
  - (3) \*Innovation Australia may, for the purposes of paragraph (1)(b), allow a longer period if Innovation Australia is satisfied that:
    - (a) there are exceptional circumstances; and
    - (b) the extended period is no longer than reasonably necessary.

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\*To find definitions of asterisked terms, see the Dictionary in the *Income Tax Assessment Act 1997*, starting at section 995-1 of that Act.

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## Division 11—Application for registration

### Table of sections

11-1	Application for registration
11-5	Determination of further information to be included in application
11-10	Further information may be requested
11-15	Period within which application must be decided

### 11-1 Application for registration

- (1) A \*general partner of a \*limited partnership may apply, in the form approved by Innovation Australia, to \*Innovation Australia for registration of the partnership as a \*VCLP, an \*ESVCLP or an \*AFOF under this Part.
- (2) An application must be in writing, and must include the following information:
  - (a) the name and residency status of, and the relevant qualifications and experience of, each \*general partner;
  - (b) the name, address and residency status of each \*limited partner;
  - (c) for each general partner that is a \*company—the address of the general partner’s registered office;
  - (d) for each general partner who is an individual—the general partner’s business address;
  - (e) the partnership’s business address;
  - (f) a copy of the partnership agreement, which must:
    - (i) require partners to contribute their \*committed capital as and when required under the agreement; and
    - (ii) prohibit the addition of new partners to the partnership except as provided for in the agreement; and
    - (iii) prohibit increases in the partnership’s committed capital except as provided for in the agreement; and

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\*To find definitions of asterisked terms, see the Dictionary in the *Income Tax Assessment Act 1997*, starting at section 995-1 of that Act.

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- (iv) confer on a general partner the right to require partners to contribute their committed capital to the partnership; and
- (v) include a plan which outlines the partnership's future intended investment activities;
- (g) any documents that were issued inviting investment in the partnership;
- (h) the amount of each partner's committed capital in the partnership;
- (i) in relation to each limited partner claiming to be tax exempt in his or her country of residence—details of the facts that qualify the partner to be tax exempt in his or her country of residence;
- (j) if the application is an application for registration as a VCLP—a statement by a general partner as to whether the partnership meets the \*registration requirements of a VCLP;
- (ja) if the application is an application for registration as an \*ESVCLP—a statement by a general partner as to whether the partnership meets the \*registration requirements of an ESVCLP;
- (k) if the application is an application for registration as an AFOF—a statement by a general partner as to whether the partnership meets the \*registration requirements of an AFOF;
- (l) such further information as \*Innovation Australia determines under section 11-5.

Note: Part 7.4 of the *Criminal Code* creates offences for making false and misleading statements, giving false or misleading information and producing false or misleading documents.

### **11-5 Determination of further information to be included in application**

- (1) \*Innovation Australia may, for the purposes of paragraph 11-1(2)(l), determine, by writing signed by the Chairperson of Innovation Australia pursuant to a resolution of Innovation Australia, that specified information is to be included in the application.

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\*To find definitions of asterisked terms, see the Dictionary in the *Income Tax Assessment Act 1997*, starting at section 995-1 of that Act.

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Section 11-10

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- (2) A determination under this section is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.

**11-10 Further information may be requested**

If \*Innovation Australia needs further information to decide an application for registration under this Part, it may ask a \*general partner to provide further information.

**11-15 Period within which application must be decided**

- (1) Subject to this section, \*Innovation Australia must decide an application for registration or conditional registration under this Part within 60 days after receiving it.
- (2) If \*Innovation Australia thinks that it will take longer to decide the application, Innovation Australia may extend, by up to 60 days, the period for deciding it.
- (3) An extension must be made by written notice given to a \*general partner within 60 days after \*Innovation Australia receives the application.
- (4) If \*Innovation Australia extends the period, Innovation Australia must decide the application within the extended period.

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\*To find definitions of asterisked terms, see the Dictionary in the *Income Tax Assessment Act 1997*, starting at section 995-1 of that Act.

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## Division 13—Registration

### Table of sections

13-1	Registration
13-5	Conditional registration
13-10	When registration is in force
13-15	An ESVCLP's approved investment plan
13-20	Deciding whether investment plans are appropriate

### 13-1 Registration

- (1) \*Innovation Australia must register a partnership as a \*VCLP under this Part if:
- (a) a \*general partner has applied for registration as a VCLP; and
  - (b) the application meets the requirements under section 11-1; and
  - (c) any further information requested under section 11-10 has been provided; and
  - (d) a general partner has notified Innovation Australia that the VCLP has sufficient funds to begin its investment program;
- unless Innovation Australia is satisfied that the partnership:
- (e) does not meet the \*registration requirements of a VCLP; or
  - (f) has had a previous registration revoked under Division 17.
- (1A) \*Innovation Australia must register a partnership as an \*ESVCLP under this Part if:
- (a) a \*general partner has applied for registration as an ESVCLP; and
  - (b) the application meets the requirements under section 11-1; and
  - (c) Innovation Australia is satisfied that the partnership's investment plan (as set out in the application or that plan as since approved by Innovation Australia is appropriate; and

Note: Section 13-20 deals with deciding whether an investment plan is appropriate.

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\*To find definitions of asterisked terms, see the Dictionary in the *Income Tax Assessment Act 1997*, starting at section 995-1 of that Act.

**Section 13-1**

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- (d) Innovation Australia is satisfied that the partnership has access to the skills and resources necessary to implement, and is reasonably likely to be able to implement, its investment plan; and
  - (e) any further information requested under section 11-10 has been provided; and
  - (f) a general partner has notified Innovation Australia that the ESVCLP has sufficient funds to begin its investment program;
- unless Innovation Australia is satisfied that the partnership:
- (g) does not meet the \*registration requirements of an ESVCLP; or
  - (h) has had a previous registration revoked under Division 17.
- (2) \*Innovation Australia must register a partnership as an \*AFOF under this Part if:
- (a) a \*general partner has applied for registration as an AFOF; and
  - (b) the application meets the requirements under section 11-1; and
  - (c) any further information requested under section 11-10 has been provided; and
  - (d) a general partner has notified Innovation Australia that the AFOF has sufficient funds to begin its investment program;
- unless Innovation Australia is satisfied that the partnership:
- (e) does not meet the \*registration requirements of an AFOF; or
  - (f) has had a previous registration revoked under Division 17.
- (3) If \*Innovation Australia decides to register the partnership as a \*VCLP, an \*ESVCLP or an \*AFOF under this Part, Innovation Australia must notify a \*general partner of the partnership as soon as practicable after the decision is made.
- (4) If \*Innovation Australia decides not to register the partnership as a \*VCLP, an \*ESVCLP or an \*AFOF under this Part, Innovation Australia must:
- (a) notify a \*general partner of the partnership as soon as practicable after the decision is made; and

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\*To find definitions of asterisked terms, see the Dictionary in the *Income Tax Assessment Act 1997*, starting at section 995-1 of that Act.

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- (b) provide reasons for the decision.
- (5) \*Innovation Australia cannot register the partnership:
  - (a) both as a \*VCLP and as an \*ESVCLP; or
  - (b) both as a VCLP and as an \*AFOF; or
  - (c) both as an ESVCLP and as an AFOF; or
  - (d) as a VCLP, as an ESVCLP and as an AFOF.

### **13-5 Conditional registration**

- (1) \*Innovation Australia may conditionally register the partnership as a \*VCLP if:
  - (a) a \*general partner has applied for registration as a VCLP; and
  - (b) either:
    - (i) the application for registration does not meet the requirements under section 11-1; or
    - (ii) any further information requested under section 11-10 has not been provided;unless Innovation Australia is satisfied that the partnership:
  - (c) would not, if it was conditionally registered, meet the \*registration requirements of a VCLP within the period specified under subsection 13-10(3); or
  - (d) has had a previous registration revoked under Division 17.
- (1A) \*Innovation Australia may conditionally register the partnership as an \*ESVCLP if:
  - (a) a \*general partner has applied for registration as an ESVCLP; and
  - (b) either:
    - (i) the application for registration does not meet the requirements under section 11-1; or
    - (ii) any further information requested under section 11-10 has not been provided;unless Innovation Australia is satisfied that the partnership:
  - (c) would not, if it was conditionally registered, meet the \*registration requirements of an ESVCLP within the period specified under subsection 13-10(3); or

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\*To find definitions of asterisked terms, see the Dictionary in the *Income Tax Assessment Act 1997*, starting at section 995-1 of that Act.

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**Section 13-10**

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- (d) has had a previous registration revoked under Division 17.
- (2) \*Innovation Australia may conditionally register the partnership as an \*AFOF if:
  - (a) a \*general partner has applied for registration as an AFOF; and
  - (b) either:
    - (i) the application for registration does not meet the requirements under section 11-1; or
    - (ii) any further information requested under section 11-10 has not been provided;unless Innovation Australia is satisfied that the partnership:
  - (c) would not, if it was conditionally registered, meet the \*registration requirements of an AFOF within the period specified under subsection 13-10(3); or
  - (d) has had a previous registration revoked under Division 17.
- (3) Conditional registration under this section does not mean that the partnership is registered under this Part as a \*VCLP, an \*ESVCLP or an \*AFOF.

**13-10 When registration is in force**

- (1) Registration of the partnership as a \*VCLP, an \*ESVCLP or an \*AFOF comes into force on the day on which registration under section 13-1 was granted.
- (2) However, if conditional registration of the partnership had been granted under section 13-5 and was in force on the day on which registration under section 13-1 was granted:
  - (a) for the purposes of this Act and the *Income Tax Assessment Act 1936*, registration of the partnership as a \*VCLP, an \*ESVCLP or an \*AFOF is taken to have come into force on:
    - (i) if, since its establishment, the partnership has only carried on activities related to becoming registered as a VCLP, an ESVCLP or an AFOF—the day on which it was established; or

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\*To find definitions of asterisked terms, see the Dictionary in the *Income Tax Assessment Act 1997*, starting at section 995-1 of that Act.

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- (ii) otherwise—the day on which the conditional registration was granted;  
and the partnership is taken, for the purposes of this Act and that Act, to have been \*unconditionally registered from the day; and
- (b) for the purposes of the *Income Tax Assessment Act 1997*:
  - (i) registration of the partnership as a VCLP, an ESVCLP or an AFOF is taken to have come into force on the day on which the conditional registration was granted; and
  - (ii) the partnership is taken to have been unconditionally registered from the day.
- (3) If a \*VCLP, an \*ESVCLP or an \*AFOF is not registered under section 13-1 within 24 months after the day on which the conditional registration of the partnership was granted under section 13-5, the conditional registration lapses.
- (4) Registration is taken to be in force until revoked under Division 17.

### **13-15 An ESVCLP's approved investment plan**

- (1) A notice under subsection 13-1(3) to the effect that \*Innovation Australia has decided to register a partnership as an \*ESVCLP must specify a document that sets out the investment plan in relation to which Innovation Australia is satisfied as mentioned in paragraph 13-1(1A)(c).
- (2) An \*ESVCLP's *approved investment plan* is:
  - (a) the investment plan set out in the document that the notice under subsection 13-1(3) specifies; or
  - (b) if that plan has been replaced under this section, that plan as so replaced.
- (3) A \*general partner of an \*ESVCLP may, by writing, request Innovation Australia to approve a new plan as a replacement for the ESVCLP's \*approved investment plan.
- (4) The request must state why the \*ESVCLP wants the replacement plan.

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\*To find definitions of asterisked terms, see the Dictionary in the *Income Tax Assessment Act 1997*, starting at section 995-1 of that Act.

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**Section 13-20**

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- (5) If \*Innovation Australia is satisfied that the replacement plan is appropriate, it must grant the request and approve the replacement plan.

Note: Section 13-20 deals with deciding whether a replacement plan is appropriate.

- (6) If \*Innovation Australia approves the replacement plan, the ESVCLP's \*approved investment plan is replaced accordingly on the giving of the approval.
- (7) If \*Innovation Australia is not satisfied as mentioned in subsection (5), Innovation Australia must refuse the request.
- (8) \*Innovation Australia must give the \*general partner who made the request written notice of its decision on the request as soon as practicable after the decision is made.
- (9) If \*Innovation Australia's decision is to refuse the request, the notice must also include a statement of its reasons for its decision.
- (10) A failure to comply with subsection (8) or (9) does not affect the validity of the decision.

**13-20 Deciding whether investment plans are appropriate**

- (1) In deciding, for the purposes of paragraph 13-1(1A)(c) or subsection 13-15(5), whether it is satisfied that a partnership's investment plan, or a replacement for a partnership's \*approved investment plan, is appropriate, \*Innovation Australia must take into account the extent to which the partnership focuses on early stage venture capital, having regard to:
- (a) the stages of development of the entities in which the partnership proposes to invest; and
  - (b) the levels of cash flow of those entities; and
  - (c) the levels of technology of those entities; and
  - (d) the proportions of intellectual property to total assets of those entities; and
  - (e) the levels of risk and return of those entities; and
  - (f) the amount of tangible assets and collateral of those entities against which borrowings may be secured; and

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\*To find definitions of asterisked terms, see the Dictionary in the *Income Tax Assessment Act 1997*, starting at section 995-1 of that Act.

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- (g) the requirements of this Act relating to an \*ESVCLP making and holding investments; and
  - (h) whether the partnership's \*committed capital can only be used in relation to early stage venture capital, and whether it can be transferred to other entities; and
  - (i) whether the investment plan is connected with other plans for investment that, if combined with the investment plan, would lead to the partnership exceeding the limit on \*committed capital under subparagraph 9-3(1)(d)(ii); and
  - (j) any additional matters specified in guidelines made under subsection (2).
- (2) \*Innovation Australia may, by legislative instrument, make guidelines specifying additional matters that it must take into account in deciding, for the purposes of paragraph 13-1(1A)(c) or subsection 13-15(5), whether it is satisfied that:
- (a) a partnership's investment plan is appropriate; or
  - (b) a replacement for a partnership's \*approved investment plan is appropriate;
- as the case requires.
- (3) This section does not limit the matters that \*Innovation Australia may take into account in deciding, for the purposes of paragraph 13-1(1A)(c) or subsection 13-15(5), whether it is satisfied that:
- (a) a partnership's investment plan is appropriate; or
  - (b) a replacement for a partnership's \*approved investment plan is appropriate;
- as the case requires.

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\*To find definitions of asterisked terms, see the Dictionary in the *Income Tax Assessment Act 1997*, starting at section 995-1 of that Act.

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## Division 15—Obligations while registered

### Table of sections

15-1	Annual return
15-5	Determination of further information to be included in returns
15-10	Quarterly returns
15-15	Further information may be requested
15-17	Annual reports for ESVCLPs
15-20	Other information may be requested

### 15-1 Annual return

A \*general partner of a partnership registered under this Part as a \*VCLP, an \*ESVCLP or an \*AFOF must, within 3 months after the end of each \*financial year, give \*Innovation Australia a written return that includes the following information:

- (a) the name and address of each partner, and that partner's residency status at the end of the financial year (including details of changes to that status during the year);
- (b) in relation to each partner claiming to be tax exempt—details of the facts that qualify the partner to be tax exempt in his or her country of residence;
- (c) details of:
  - (i) the amount of each partner's \*committed capital in the partnership; and
  - (ii) any acquisitions or disposals of a partner's \*equity interests in the partnership during the year including any consideration given or received for that acquisition or disposal;
- (d) details of any variation made to the partnership agreement during the year;
- (e) details of:
  - (i) investments the partnership made during that year; and
  - (ii) investments the partnership owns at the end of that year; and

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\*To find definitions of asterisked terms, see the Dictionary in the *Income Tax Assessment Act 1997*, starting at section 995-1 of that Act.

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- (iii) disposals of investments during that year including any profits derived or losses incurred from that disposal;
- (f) if the partnership is registered under this Part as a VCLP—a statement from a general partner as to whether the partnership met the \*registration requirements of a VCLP throughout the financial year;
- (fa) if the partnership is registered under this Part as an ESVCLP—a statement from a general partner as to whether the partnership met the \*registration requirements of an ESVCLP throughout the financial year;
- (g) if the partnership is registered under this Part as an AFOF—a statement from a general partner as to whether the partnership met the \*registration requirements of an AFOF throughout the financial year;
- (ga) for an investment in a company that the partnership held throughout the financial year—a statement from a general partner as to whether:
  - (i) the company met the requirements of subsections 118-425(3), (4) and (5) of the *Income Tax Assessment Act 1997* at all times during that year; and
  - (ii) if subsection 118-425(11) of that Act applied to the company in relation to another company—the other company failed to meet the requirements of subparagraph 118-425(11)(d)(i) of that Act at any time during that year; and
  - (iii) if subsection 118-425(11) of that Act applied to the company in relation to a unit trust—the unit trust failed to meet the requirements of subparagraph 118-425(11)(d)(ii) of that Act at any time during that year;
- (gb) for an investment in a unit trust that the partnership held throughout the financial year—a statement from a general partner as to whether the unit trust met the requirements of subsections 118-427(4), (5) and (6) of the *Income Tax Assessment Act 1997* at all times during that year;
- (h) such further information as Innovation Australia determines under section 15-5.

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\*To find definitions of asterisked terms, see the Dictionary in the *Income Tax Assessment Act 1997*, starting at section 995-1 of that Act.

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Section 15-5

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Note: Part 7.4 of the *Criminal Code* creates offences for making false or misleading statements, giving false or misleading information and producing false or misleading documents.

**15-5 Determination of further information to be included in returns**

- (1) \*Innovation Australia may, for the purposes of paragraph 15-1(h), determine, by writing signed by the Chairperson of Innovation Australia pursuant to a resolution of the Venture Capital Registration Board, that specified information is to be included in returns.
- (2) A determination under this section is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.

**15-10 Quarterly returns**

A \*general partner of a partnership registered under this Part as a \*VCLP, an \*ESVCLP or an \*AFOF must, within one month after the end of each \*quarter, give \*Innovation Australia a written return that includes:

- (a) details of any investments it has made during the quarter, and the consideration given for those investments; and
- (b) details of any disposals of investments during the quarter, and any profit derived or loss incurred from those disposals (including details of how that profit or loss was calculated); and
- (c) for each investment in a company made during the quarter—a statement from a general partner as to whether:
  - (i) the company met the requirements of subsections 118-425(3), (4) and (5) of the *Income Tax Assessment Act 1997* at all times during the quarter after the investment was made; and
  - (ii) if subsection 118-425(11) of that Act applied to the company in relation to another company—the other company failed to meet the requirements of subparagraph 118-425(11)(d)(i) of that Act at any time during the quarter after the investment was made; and

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\*To find definitions of asterisked terms, see the Dictionary in the *Income Tax Assessment Act 1997*, starting at section 995-1 of that Act.

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- (iii) if subsection 118-425(11) of that Act applied to the company in relation to a unit trust—the unit trust failed to meet the requirements of subparagraph 118-425(11)(d)(ii) of that Act at any time 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:
  - (i) the company met the requirements of subsections 118-425(3), (4) and (5) of the *Income Tax Assessment Act 1997* at all times during the quarter up to the day of disposal; and
  - (ii) if subsection 118-425(11) of that Act applied to the company in relation to another company—the other company failed to meet the requirements of subparagraph 118-425(11)(d)(i) of that Act at any time during the quarter up to the day of disposal; and
  - (iii) if subsection 118-425(11) of that Act applied to the company in relation to a unit trust—the unit trust failed to meet the requirements of subparagraph 118-425(11)(d)(ii) of that Act at any time during the quarter up to the day of disposal; and
- (e) for each investment in a unit trust made during the quarter—a statement from a general partner as to whether the unit trust met the requirements of subsections 118-427(4), (5) and (6) of the *Income Tax Assessment Act 1997* at all times during the quarter after the investment was made; and
- (f) for each disposal of an investment in a unit trust during the quarter—a statement from a general partner as to whether the unit trust met those requirements at all times during the quarter up to the day of disposal.

### **15-15 Further information may be requested**

\*Innovation Australia may ask a \*general partner of the partnership to provide further information about the investments or disposals notified under section 15-10.

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\*To find definitions of asterisked terms, see the Dictionary in the *Income Tax Assessment Act 1997*, starting at section 995-1 of that Act.

Section 15-17

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**15-17 Annual reports for ESVCLPs**

- (1) A \*general partner of a partnership registered under this Part as an \*ESVCLP must, within 3 months after the end of each \*financial year give \*Innovation Australia a written report on the implementation of the partnership's \*approved investment plan during the financial year that:
  - (a) includes descriptions of any investments the partnership made during the year and any disposals of investments during the year; and
  - (b) meets the requirements of any guidelines issued under subsection (2).
- (2) \*Innovation Australia may, by legislative instrument, issue guidelines relating to reports under this section (including the publication of those reports).
- (3) \*Innovation Australia must publish reports it receives under subsection (1).
- (4) \*Innovation Australia may comply with its obligation under subsection (3) by including copies of those reports in its annual report under section 46 of the *Industry Research and Development Act 1986*.

**15-20 Other information may be requested**

\*Innovation Australia may ask a \*general partner of the partnership to provide Innovation Australia with information that Innovation Australia considers necessary for the purposes of administering this Act.

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\*To find definitions of asterisked terms, see the Dictionary in the *Income Tax Assessment Act 1997*, starting at section 995-1 of that Act.

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## Division 17—Revocation of registration

### Table of sections

17-1	Revoking registration for not meeting investment registration requirements etc.
17-5	Revoking registration for not meeting other registration requirements
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17-15	Notice of revocation
17-20	Date of effect of revocation
17-25	Revocation on application by partnership

### 17-1 Revoking registration for not meeting investment registration requirements etc.

- (1) If \*Innovation Australia has reason to believe that:
  - (a) a partnership registered as a \*VCLP does not meet the \*investment registration requirements of a VCLP; or
  - (ab) a partnership registered as an \*ESVCLP does not meet the \*investment registration requirements of an ESVCLP; or
  - (b) a partnership registered as an \*AFOF does not meet the \*investment registration requirements of an AFOF;it must notify a \*general partner of the partnership, in writing, that it will revoke the registration if it is satisfied that, at the end of the period determined under subsection (2), the partnership does not meet the investment registration requirements of a VCLP, an ESVCLP or an AFOF, as the case may be.
- (2) \*Innovation Australia must, for the purposes of subsection (1), determine a period that:
  - (a) it is satisfied is a reasonable period; and
  - (b) does not exceed 6 months.
- (3) The notice must:

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\*To find definitions of asterisked terms, see the Dictionary in the *Income Tax Assessment Act 1997*, starting at section 995-1 of that Act.

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Section 17-3

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- (a) state the matters that in Innovation Australia's opinion, may constitute grounds for revocation; and
  - (b) state the period, determined by Innovation Australia under subsection (2), within which the \*investment registration requirements must be complied with; and
  - (c) state that the \*general partner may make written submissions to Innovation Australia about the matters in the notice within that period.
- (4) A \*general partner may make submissions about the matters in the notice at any time during that period.
- (5) \*Innovation Australia must revoke the registration if, after considering any submissions made under subsection (4), it is satisfied that, at the end of that period, the partnership does not meet the \*investment registration requirements of a VCLP, the \*investment registration requirements of an ESVCLP or the \*investment registration requirements of an AFOF, as the case may be.
- (6) Subsection (5) does not apply if the registration is revoked under section 17-10 within that period.

**17-3 Revoking registration of ESVCLPs for not meeting divestiture registration requirement**

- (1) \*Innovation Australia must revoke the registration of a partnership registered as an \*ESVCLP if Innovation Australia is satisfied that, in relation to a particular investment that the partnership holds, the partnership:
- (a) did not meet the \*divestiture registration requirement at the start of an income year of the partnership; and
  - (b) does not meet the \*divestiture registration requirement at the end of:
    - (i) the period of 6 months starting at the start of that income year; or
    - (ii) if that period is extended under subsection (3)—that period as so extended.

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\*To find definitions of asterisked terms, see the Dictionary in the *Income Tax Assessment Act 1997*, starting at section 995-1 of that Act.

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- (2) A \*general partner may, within the period referred to in subparagraph (1)(b)(i), apply to \*Innovation Australia, in the \*form approved by Innovation Australia, for an extension of that period.
- (3) \*Innovation Australia may extend, by up to 3 months, the period referred to in subparagraph (1)(b)(i) if Innovation Australia is satisfied, in accordance with any guidelines made under subsection (4), that there are special circumstances justifying the extension.
- (4) \*Innovation Australia may, by legislative instrument, make guidelines relating to the matters to be taken into account in considering whether to grant an extension.

### **17-5 Revoking registration for not meeting other registration requirements**

- (1) If \*Innovation Australia has reason to believe that:
  - (a) a partnership registered as a \*VCLP does not meet the \*registration requirements of a VCLP that are not \*investment registration requirements; or
  - (ab) a partnership registered as an \*ESVCLP does not meet the \*registration requirements of an ESVCLP that are not:
    - (i) \*investment registration requirements; or
    - (ii) the \*divestiture registration requirement; or
  - (b) a partnership registered as an \*AFOF does not meet the \*registration requirements of an AFOF that are not \*investment registration requirements;it must notify a \*general partner of the partnership, in writing, that it will revoke the registration if it is satisfied that, in 60 days time, the partnership does not meet the registration requirements of a VCLP, an ESVCLP or an AFOF, as the case may be.
- (2) The notice must:
  - (a) state the matters that, in \*Innovation Australia's opinion, may constitute grounds for revocation; and
  - (b) state that the \*general partner may apply for an extension of the 60 day period; and

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\*To find definitions of asterisked terms, see the Dictionary in the *Income Tax Assessment Act 1997*, starting at section 995-1 of that Act.

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**Section 17-10**

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- (c) state that the general partner may make written submissions to Innovation Australia about the matters in the notice within the 60 day period or that period as extended under subsection (4).
- (3) A \*general partner may apply to \*Innovation Australia, in the \*form approved by Innovation Australia, for an extension of the 60 day period.
- (4) \*Innovation Australia may, for the purposes of paragraph (2)(c), extend, by up to 60 days, the period if it is satisfied that:
  - (a) reasonable progress is being made towards meeting the requirements; and
  - (b) the requirements will be met within the extended period.
- (5) A \*general partner may make submissions about the matters in the notice at any time during:
  - (a) the 60 day period; or
  - (b) if the period was extended under subsection (4)—that extended period.
- (6) \*Innovation Australia must revoke the registration if, after considering any submissions made under subsection (5), it is satisfied that:
  - (a) at the end of the 60 day period; or
  - (b) if the period was extended under subsection (4)—that extended period;the partnership does not meet the \*registration requirements of a VCLP, the \*registration requirements of an ESVCLP or the \*registration requirements of an AFOF, as the case may be.

**17-10 Revocation at discretion of Innovation Australia**

- (1) Subject to subsection (2), \*Innovation Australia may revoke a partnership's registration as a \*VCLP, an \*ESVCLP or an \*AFOF under this Part if Innovation Australia is satisfied that the partnership has:
  - (a) failed to lodge an annual return under section 15-1; or
  - (b) failed to lodge a quarterly return under section 15-10; or

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\*To find definitions of asterisked terms, see the Dictionary in the *Income Tax Assessment Act 1997*, starting at section 995-1 of that Act.

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- (c) failed to provide any further information requested under section 15-15; or
  - (d) failed to provide any information requested under section 15-20; or
  - (e) during a 12 month period, received more than one notice under section 17-1:
    - (i) that related to a failure to meet the registration requirement set out in paragraph 9-1(1)(e), 9-3(1)(f) or 9-5(1)(d) (whichever is applicable); and
    - (ii) in relation to which the partnership's registration has not been revoked.
- (2) \*Innovation Australia must not revoke the partnership's registration unless Innovation Australia:
- (a) by notice in writing given to a \*general partner of the partnership, allows the general partner at least 28 days after the notice is given in which to make written submissions to Innovation Australia about the matters specified in the notice that, in Innovation Australia's opinion, may constitute grounds for revocation; and
  - (b) considers any such submissions.

### **17-15 Notice of revocation**

As soon as practicable after revoking a partnership's registration under section 17-1, 17-3, 17-5 or 17-10, \*Innovation Australia must give a \*general partner of the partnership a notice that advises of the revocation and sets out Innovation Australia's reasons for deciding to revoke.

### **17-20 Date of effect of revocation**

The revocation takes effect from the day on which \*Innovation Australia decides to revoke registration.

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\*To find definitions of asterisked terms, see the Dictionary in the *Income Tax Assessment Act 1997*, starting at section 995-1 of that Act.

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Section 17-25

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**17-25 Revocation on application by partnership**

- (1) A \*general partner of a partnership registered under this Part as a \*VCLP, an \*ESVCLP or an \*AFOF may apply in writing to \*Innovation Australia to have the registration revoked.
- (2) \*Innovation Australia must revoke the registration as soon as practicable after receiving the application.
- (3) The revocation takes effect on the day on which notice of the revocation is given to a \*general partner of the partnership.

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\*To find definitions of asterisked terms, see the Dictionary in the *Income Tax Assessment Act 1997*, starting at section 995-1 of that Act.

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## **Part 3—Registration of eligible venture capital investors**

### **Division 21—Registration of eligible venture capital investors**

#### **Guide to Division 21**

##### **21-1 What this Division is about**

Innovation Australia can register entities as eligible venture capital investors, and revoke their registration.

Registration is one of the requirements before investments of venture capital by an entity directly (rather than through a limited partnership) can attract the operation of section 118-415 of the *Income Tax Assessment Act 1997* (and the related provisions about similar income gains and losses).

Note: Section 118-415 of the *Income Tax Assessment Act 1997* gives to an individual investor an equivalent capital gains tax exemption to the one that the investor could have, under section 118-405 or 118-410 of that Act, from investing through a limited partnership registered under Part 2 of this Act.

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21-20	Annual return by eligible entity
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\*To find definitions of asterisked terms, see the Dictionary in the *Income Tax Assessment Act 1997*, starting at section 995-1 of that Act.

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## **Operative provisions**

### **21-5 Registration as eligible venture capital investors**

- (1) An \*entity may apply to \*Innovation Australia, in the \*form approved by Innovation Australia, for registration under this Part as an \*eligible venture capital investor.
- (2) An application must be given to \*Innovation Australia within 30 days after the applicant enters into the contract to acquire its first \*eligible venture capital investment after the commencement of this Act.
- (3) An application must be in writing, and must include the following information:
  - (a) the applicant's current residency status;
  - (b) details of the facts that qualify the applicant as a \*tax-exempt foreign resident;
  - (c) the address of the applicant's registered office;
  - (d) the name and address of the first \*company or unit trust in which the applicant has invested or proposes to invest and the industry in which the company or unit trust operates;
  - (e) the amount of the investment and the date on which it was or is to be made;
  - (f) details of any other investments that the applicant holds in the company or unit trust that are not \*eligible venture capital investments.
- (4) \*Innovation Australia must register the applicant under this Part if Innovation Australia is satisfied that the information has been provided.
- (5) If \*Innovation Australia registers an applicant under this Part, Innovation Australia must notify the applicant within 60 days after the application was made.
- (6) If \*Innovation Australia does not register an applicant under this Part, Innovation Australia must:

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\*To find definitions of asterisked terms, see the Dictionary in the *Income Tax Assessment Act 1997*, starting at section 995-1 of that Act.

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- (a) notify the applicant within 60 days after the application was made; and
- (b) provide reasons for the decision.

### **21-10 Period within which application must be decided**

- (1) Subject to this section, \*Innovation Australia must decide an application for registration under this Part within 60 days after receiving it.
- (2) If \*Innovation Australia thinks that it will take longer to decide the application, Innovation Australia may extend, by up to 60 days, the period for deciding it.
- (3) An extension must be made by written notice given to the applicant within 60 days after \*Innovation Australia receives the application.
- (4) If \*Innovation Australia extends the period, Innovation Australia must decide the application within the extended period.

### **21-15 When registration is in force**

- (1) Registration of an \*entity as an \*eligible venture capital investor is taken to have come into force on the day on which the first investment referred to in subsection 21-5(2) was made.
- (2) Registration is taken to be in force until revoked under section 21-25.

### **21-20 Annual return by eligible entity**

- (1) An \*entity registered under this Part must, within 3 months after the end of each \*financial year, give \*Innovation Australia a written return that includes the following information:
  - (a) the entity's residency status at the end of the financial year (including details of changes to that status during the year);
  - (b) the address of the entity's registered office (including details of changes to that address during the year);
  - (c) details of the facts that qualify the entity to be tax exempt in its country of residence;

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\*To find definitions of asterisked terms, see the Dictionary in the *Income Tax Assessment Act 1997*, starting at section 995-1 of that Act.

Section 21-20

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- (d) details of the facts that qualify the entity as an \*eligible venture capital investor;
- (e) details of:
  - (i) the \*eligible venture capital investments the entity made during that year; and
  - (ii) the eligible venture capital investments that the entity disposed of during that year; and
  - (iii) the eligible venture capital investments the entity holds at the end of that year; and
  - (iv) the disposals of eligible venture capital investments during that year including any profits derived or losses incurred from that disposal;
- (f) the industries to which those investments relate;
- (g) for each investment in a company that the entity held throughout that year—a statement as to whether:
  - (i) the company met the requirements of subsections 118-425(3), (4) and (5) of the *Income Tax Assessment Act 1997* at all times during that year; and
  - (ii) if subsection 118-425(11) of that Act applied to the company in relation to another company—the other company failed to meet the requirements of subparagraph 118-425(11)(d)(i) of that Act at any time during that year; and
  - (iii) if subsection 118-425(11) of that Act applied to the company in relation to a unit trust—the unit trust failed to meet the requirements of subparagraph 118-425(11)(d)(ii) of that Act at any time during that year;
- (h) for each investment in a company that the entity made during that year—a statement as to whether:
  - (i) the company met the requirements of subsections 118-425(3), (4) and (5) of the *Income Tax Assessment Act 1997* at all times during that year after the investment was made; and
  - (ii) if subsection 118-425(11) of that Act applied to the company in relation to another company—the other company failed to meet the requirements of

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\*To find definitions of asterisked terms, see the Dictionary in the *Income Tax Assessment Act 1997*, starting at section 995-1 of that Act.

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- subparagraph 118-425(11)(d)(i) of that Act at any time during that year after the investment was made; and
- (iii) if subsection 118-425(11) of that Act applied to the company in relation to a unit trust—the unit trust failed to meet the requirements of subparagraph 118-425(11)(d)(ii) of that Act at any time 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:
    - (i) the company met the requirements of subsections 118-425(3), (4) and (5) of the *Income Tax Assessment Act 1997* at all times during that year up to the day of disposal; and
    - (ii) if subsection 118-425(11) of that Act applied to the company in relation to another company—the other company failed to meet the requirements of subparagraph 118-425(11)(d)(i) of that Act at any time during that year up to the day of disposal; and
    - (iii) if subsection 118-425(11) of that Act applied to the company in relation to a unit trust—the unit trust failed to meet the requirements of subparagraph 118-425(11)(d)(ii) of that Act at any time during that year up to the day of disposal;
  - (j) for each investment in a unit trust that the entity held throughout that year—a statement as to whether the unit trust met the requirements of subsections 118-427(4), (5) and (6) of the *Income Tax Assessment Act 1997* at all times during that year;
  - (k) for each investment in a unit trust that the entity made during that year—a statement as to whether the unit trust met those requirements at all times during that year after the investment was made;
  - (l) for each investment in a unit trust that the entity disposed of during that year—a statement as to whether the unit trust met those requirements at all times during that year up to the day of disposal.

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\*To find definitions of asterisked terms, see the Dictionary in the *Income Tax Assessment Act 1997*, starting at section 995-1 of that Act.

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**Part 3** Registration of eligible venture capital investors

**Division 21** Registration of eligible venture capital investors

Section 21-25

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- (2) Information about a matter that a return must include because of paragraph (1)(a) or (b) is information about that matter as at the end of the financial year.

Note: Part 7.4 of the *Criminal Code* creates offences for making false and misleading statements, giving false or misleading information and producing false or misleading documents.

**21-25 Revocation at discretion of Innovation Australia**

- (1) Subject to this section, \*Innovation Australia may revoke an \*entity's registration under this Part if Innovation Australia is satisfied that the entity has failed to comply with section 21-20.
- (2) As soon as practicable after revoking an \*entity's registration under this Part, \*Innovation Australia must give the entity a notice that advises of the revocation and sets out \*Innovation Australia's reasons for deciding to revoke.
- (3) \*Innovation Australia must not revoke a registration unless Innovation Australia:
- (a) by notice in writing given to the \*entity, allows the entity at least 14 days after the notice is given in which to make written submissions to Innovation Australia about the matters specified in the notice that, in \*Innovation Australia's opinion, may constitute grounds for revocation; and
  - (b) considers any such submissions.

**21-30 Revocation on application**

- (1) An \*entity registered under this Part may apply in writing to \*Innovation Australia to have its registration revoked.
- (2) \*Innovation Australia must revoke the registration as soon as practicable after receiving the application.
- (3) The revocation takes effect on the day on which notice of the revocation is given to the \*entity.

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\*To find definitions of asterisked terms, see the Dictionary in the *Income Tax Assessment Act 1997*, starting at section 995-1 of that Act.

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## **Part 4—Determinations by Innovation Australia concerning certain investments**

### **Division 25—Determinations by Innovation Australia concerning certain investments**

#### **Guide to Division 25**

##### **25-1 What this Division is about**

Innovation Australia can make determinations having the effect of relaxing the requirements of paragraphs 118-425(2)(b) and 118-427(3)(c) of the *Income Tax Assessment Act 1997*.

Note 1: Paragraph 118-425(2)(b) of the *Income Tax Assessment Act 1997* is about how closely a company is connected with Australia. Paragraph 118-427(3)(c) of that Act is about how closely a unit trust is connected with Australia. These paragraphs are one of the requirements that a company or unit trust must meet in order for investments in the company or unit trust to be eligible venture capital investments.

Note 2: The capital gains tax exemption under Subdivision 118-F of that Act only applies in relation to eligible venture capital investments.

#### **Table of sections**

##### **Operative provisions**

25-5	Innovation Australia may determine a shorter period
25-10	Innovation Australia may determine that a requirement does not apply
25-15	Innovation Australia may determine that a requirement does not apply

#### **Operative provisions**

##### **25-5 Innovation Australia may determine a shorter period**

- (1) \*Innovation Australia may, on the application of a \*general partner of a \*limited partnership registered as a \*VCLP, an \*ESVCLP or an

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\*To find definitions of asterisked terms, see the Dictionary in the *Income Tax Assessment Act 1997*, starting at section 995-1 of that Act.

Section 25-10

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\*AFOF, determine a shorter period during which a \*company must meet the requirements of paragraph 118-425(2)(b) of the *Income Tax Assessment Act 1997*.

- (1A) \*Innovation Australia may, on the application of a \*general partner of a \*limited partnership registered as a \*VCLP, an \*ESVCLP or an \*AFOF, determine a shorter period during which a unit trust must meet the requirements of paragraph 118-427(3)(c) of the *Income Tax Assessment Act 1997*.
- (2) An application under this section must be in the \*form approved by Innovation Australia.
- (3) In considering whether to make a determination, \*Innovation Australia must apply the principles specified under subsection (4).
- (4) \*Innovation Australia may make principles about making determinations under this section.
- (5) If \*Innovation Australia determines a shorter period, \*Innovation Australia must notify the \*general partner as soon as practicable after the determination is made.
- (6) If \*Innovation Australia refuses to make a determination, Innovation Australia must:
- (a) notify the \*general partner as soon as practicable after the refusal; and
  - (b) provide reasons for the refusal.
- (7) Principles made under subsection (4) are disallowable instruments for the purposes of section 46A of the *Acts Interpretation Act 1901*.

**25-10 Innovation Australia may determine that a requirement does not apply**

- (1) \*Innovation Australia may, on the application of a \*general partner of a partnership registered as a \*VCLP, an \*ESVCLP or an \*AFOF, determine that either or both of the following requirements do not apply to a \*company:
- (a) the requirement referred to under subparagraph 118-425(2)(b)(i) of the *Income Tax Assessment Act 1997* that

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\*To find definitions of asterisked terms, see the Dictionary in the *Income Tax Assessment Act 1997*, starting at section 995-1 of that Act.

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- more than 50% of the people who are currently engaged by the company to perform services must perform those services primarily in Australia;
- (b) the requirement referred to under subparagraph 118-425(2)(b)(ii) of that Act that more than 50% of its assets (determined by value) must be situated in Australia.
- (1A) \*Innovation Australia may, on the application of a \*general partner of a partnership registered as a \*VCLP, an \*ESVCLP or an \*AFOF, determine that either or both of the following requirements do not apply to a unit trust:
- (a) the requirement referred to under subparagraph 118-427(3)(c)(i) of the *Income Tax Assessment Act 1997* that more than 50% of the people who are currently engaged by the unit trust to perform services must perform those services primarily in Australia;
- (b) the requirement referred to under subparagraph 118-427(3)(c)(ii) of that Act that more than 50% of its assets (determined by value) must be situated in Australia.
- (2) An application under this section must be in the form approved by Innovation Australia.
- (3) In considering whether to make a determination, \*Innovation Australia must apply the principles specified under subsection (4).
- (4) \*Innovation Australia may make principles about making determinations under this section.
- (5) If \*Innovation Australia determines that a requirement does not apply, Innovation Australia must notify the \*general partner as soon as practicable after the determination is made.
- (6) If \*Innovation Australia refuses to make a determination, Innovation Australia must:
- (a) notify the \*general partner as soon as practicable after the refusal; and
- (b) provide reasons for the refusal.

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\*To find definitions of asterisked terms, see the Dictionary in the *Income Tax Assessment Act 1997*, starting at section 995-1 of that Act.

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Section 25-15

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- (7) Principles made under subsection (4) are disallowable instruments for the purposes of section 46A of the *Acts Interpretation Act 1901*.

**25-15 Innovation Australia may determine that a requirement does not apply**

- (1) \*Innovation Australia may, on the application of a \*general partner of a partnership registered as a \*VCLP, an \*ESVCLP or an \*AFOF, determine that:
- (a) a company's primary activity is not an ineligible activity mentioned in subsection 118-425(13) of the *Income Tax Assessment Act 1997*; and
  - (b) the company's failure to satisfy at least 2 of the requirements in subsection 118-425(3) of that Act is temporary and did not exist at the time the relevant investment in the company was made and, if it has been disposed of, when it was disposed of.
- (1A) \*Innovation Australia may, on the application of a \*general partner of a partnership registered as a \*VCLP, an \*ESVCLP or an \*AFOF, determine that:
- (a) a unit trust's primary activity is not an ineligible activity mentioned in subsection 118-427(14) of the *Income Tax Assessment Act 1997*; and
  - (b) the unit trust's failure to satisfy at least 2 of the requirements in subsection 118-427(4) of that Act is temporary and did not exist at the time the relevant investment in the unit trust was made and, if it has been disposed of, when it was disposed of.
- (2) An application under this section must be in the \*form approved by Innovation Australia.
- (3) In considering whether to make a determination, \*Innovation Australia must apply the principles specified under subsection (4).
- (4) \*Innovation Australia may make principles about making determinations under this section.
- (5) If \*Innovation Australia makes a determination under subsection (1), Innovation Australia must notify the \*general partner as soon as practicable after the determination is made.

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\*To find definitions of asterisked terms, see the Dictionary in the *Income Tax Assessment Act 1997*, starting at section 995-1 of that Act.

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- (6) If \*Innovation Australia refuses to make a determination, Innovation Australia must:
  - (a) notify the \*general partner as soon as practicable after the refusal; and
  - (b) provide reasons for the refusal.
- (7) Principles made under subsection (4) are disallowable instruments for the purposes of section 46A of the *Acts Interpretation Act 1901*.

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\*To find definitions of asterisked terms, see the Dictionary in the *Income Tax Assessment Act 1997*, starting at section 995-1 of that Act.

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## **Part 5—Review of decisions**

### **Division 29—Review of decisions**

#### **Table of sections**

29-1	Decisions reviewed
29-5	Notification of right to seek internal review
29-10	Internal review of decisions
29-15	Review of decisions by Administrative Appeals Tribunal

#### **29-1 Decisions reviewed**

The following decisions of \*Innovation Australia are reviewable under this Part:

- (aa) decisions under section 9-4 refusing to allow a partner's \*committed capital in a partnership to exceed 30% of the partnership's committed capital;
- (a) decisions under subsection 9-10(3) allowing, or refusing to allow, a longer period for the purposes of paragraph 9-10(1)(b) for repayment of a \*permitted loan;
- (b) decisions under section 13-1 refusing to register a \*limited partnership as a \*VCLP, an \*ESVCLP or an \*AFOF under Part 2;
- (c) decisions under section 13-5 refusing to register conditionally a limited partnership as a VCLP, an ESVCLP or an AFOF;
- (d) decisions under section 17-1, 17-5 or 17-10 revoking a registration under Part 2;
- (e) decisions under subsection 17-1(2) determining a period within which \*investment registration requirements must be met;
- (f) decisions under section 21-5 refusing to register an entity as an \*eligible venture capital investor under Part 3;
- (g) decisions under section 21-25 revoking a registration under Part 3;

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\*To find definitions of asterisked terms, see the Dictionary in the *Income Tax Assessment Act 1997*, starting at section 995-1 of that Act.

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- (h) decisions under section 25-5 determining a shorter period, or refusing to make such a determination; or
- (i) decisions under section 25-10 or 25-15 refusing to make a determination.

### **29-5 Notification of right to seek internal review**

- (1) A notice that:
  - (a) is given to the \*person affected by a decision that is reviewable under this Part; and
  - (b) advises that person of the decision;must include a statement to the effect that the person may, under section 29-10, request \*Innovation Australia to reconsider the decision.
- (2) The person affected by the decision is the person who made the relevant application to \*Innovation Australia.
- (3) A failure to comply with subsection (1) in relation to a decision reviewable under this Part does not affect the validity of the decision.

### **29-10 Internal review of decisions**

- (1) If the \*person affected by a decision that is reviewable under this Part is dissatisfied with the decision, the person may, by notice in writing given to \*Innovation Australia, request Innovation Australia to reconsider the decision.
- (2) The request must not be made more than 21 days, or such longer period as \*Innovation Australia approves, after the person receives from Innovation Australia a notice advising of the decision.
- (3) The request must set out the person's reasons for making it.
- (4) On receipt of the request, \*Innovation Australia must reconsider the decision and may confirm or revoke it, or vary it in such manner as Innovation Australia thinks fit.

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\*To find definitions of asterisked terms, see the Dictionary in the *Income Tax Assessment Act 1997*, starting at section 995-1 of that Act.

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**Section 29-15**

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- (5) If \*Innovation Australia does not confirm, vary or revoke the decision before the end of the period of 60 days after the day on which Innovation Australia receives the request, Innovation Australia is taken, at the end of that period, to have confirmed the decision.
- (6) As soon as practicable after \*Innovation Australia confirms, varies or revokes the decision, Innovation Australia must give the person a written notice that:
  - (a) advises of the confirmation, variation or revocation of the decision; and
  - (b) except in a case to which subsection (5) applies—advises of Innovation Australia’s reasons for confirming, varying or revoking the decision; and
  - (c) in the case of a confirmation or variation of the decision—advises the person that the person may apply to the Administrative Appeals Tribunal under the *Administrative Appeals Tribunal Act 1975* for review of the decision as confirmed or varied.
- (7) A failure to comply with subsection (6) in relation to the confirmation, variation or revocation of the decision does not affect the validity of the confirmation, variation or revocation.
- (8) For the purposes of subsections (4), (5), (6) and (7) and section 29-15, if \*Innovation Australia revokes a decision and replaces it with another decision:
  - (a) Innovation Australia is taken to vary the first-mentioned decision and not to revoke it; and
  - (b) the other decision is taken to be the first-mentioned decision as varied.

**29-15 Review of decisions by Administrative Appeals Tribunal**

- (1) Application may be made to the Administrative Appeals Tribunal for a reviewable decision of \*Innovation Australia that has been confirmed or varied under section 29-10.
- (2) An application may only be made by \*the person affected by the decision.

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\*To find definitions of asterisked terms, see the Dictionary in the *Income Tax Assessment Act 1997*, starting at section 995-1 of that Act.

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## **Part 6—Miscellaneous**

### **Division 33—Miscellaneous**

#### **Table of sections**

33-5	Meaning of <i>form approved by Innovation Australia</i>
33-10	Regulations

#### **33-5 Meaning of *form approved by Innovation Australia***

A notice or application is in the *form approved by Innovation Australia* if:

- (a) it is in the form approved by \*Innovation Australia for that kind of notice or application; and
- (b) it contains a declaration signed by a person or persons as the form requires; and
- (c) it contains the information that the form requires, and any further information, statement or document as Innovation Australia requires, whether in the form or otherwise; and
- (d) it is given in the manner that Innovation Australia requires (which may include electronically).

#### **33-10 Regulations**

The Governor-General may make regulations prescribing matters:

- (a) required or permitted by this Act to be prescribed; or
- (b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.

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\*To find definitions of asterisked terms, see the Dictionary in the *Income Tax Assessment Act 1997*, starting at section 995-1 of that Act.

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**Table of Acts****Notes to the *Venture Capital Act 2002*****Note 1**

The *Venture Capital Act 2002* as shown in this compilation comprises Act No. 137, 2002 amended as indicated in the Tables below.

For all relevant information pertaining to application, saving or transitional provisions *see* Table A.

**Table of Acts**

Act	Number and year	Date of Assent	Date of commencement	Application, saving or transitional provisions
<i>Venture Capital Act 2002</i>	137, 2002	19 Dec 2002	19 Dec 2002	
<i>Tax Laws Amendment (2004 Measures No. 3) Act 2004</i>	105, 2004	30 June 2004	Schedule 2: 1 Apr 2004 Remainder: Royal Assent	Sch. 1 (item 19)
<i>Tax Laws Amendment (2004 Measures No. 7) Act 2005</i>	41, 2005	1 Apr 2005	Schedule 10 (items 243, 276): Royal Assent	—
<i>Tax Laws Amendment (2007 Measures No. 2) Act 2007</i>	78, 2007	21 June 2007	Schedule 8 (items 54–84, 166–204, 218–347): Royal Assent Schedule 8 (items 352, 353): 19 Dec 2002 (a)	—
<i>Tax Laws Amendment (2007 Measures No. 5) Act 2007</i>	164, 2007	25 Sept 2007	Schedule 12 (items 91–278): 27 Sept 2007 (see F2007L03842)	—

## Act Notes

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- (a) Subsection 2(1) (item 7) of the *Tax Laws Amendment (2007 Measures No. 2) Act 2007* provides as follows:
- (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.

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<b>Commencement information</b>		
<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
<b>Provision(s)</b>	<b>Commencement</b>	<b>Date/Details</b>
7. Schedule 8, Part 5	Immediately after the commencement of the <i>Venture Capital Act 2002</i> .	19 December 2002

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**Table of Amendments****Table of Amendments**

ad. = added or inserted   am. = amended   rep. = repealed   rs. = repealed and substituted

Provision affected	How affected
<b>Part 1</b>	
<b>Division 1</b>	
S. 1-15.....	am. Nos. 78 and 164, 2007
<b>Division 3</b>	
Note to s. 3-1.....	am. No. 78, 2007 rs. No. 164, 2007
Heading to s. 3-5.....	rs. No. 78, 2007
S. 3-5.....	am. Nos. 78 and 164, 2007
Heading to s. 3-15.....	rs. Nos. 78 and 164, 2007
S. 3-15.....	am. Nos. 78 and 164, 2007
S. 3-20.....	am. Nos. 78 and 164, 2007
<b>Part 2</b>	
Heading to Part 2.....	rs. No. 78, 2007
<b>Division 7</b>	
S. 7-1.....	am. Nos. 78 and 164, 2007
Note to s. 7-1.....	rs. No. 78, 2007
<b>Division 9</b>	
S. 9-1.....	am. No. 78, 2007
S. 9-3.....	ad. No. 78, 2007 am. No. 164, 2007
S. 9-4.....	ad. No. 78, 2007 am. No. 164, 2007
S. 9-5.....	am. No. 78, 2007
S. 9-10.....	am. Nos. 78 and 164, 2007
<b>Division 11</b>	
S. 11-1.....	am. Nos. 78 and 164, 2007
S. 11-5.....	am. Nos. 78 and 164, 2007
S. 11-10.....	am. Nos. 78 and 164, 2007
S. 11-15.....	am. Nos. 78 and 164, 2007
<b>Division 13</b>	
S. 13-1.....	am. Nos. 78 and 164, 2007
S. 13-5.....	am. Nos. 78 and 164, 2007
S. 13-10.....	am. No. 78, 2007
S. 13-15.....	ad. No. 78, 2007 am. No. 164, 2007
S. 13-20.....	ad. No. 78, 2007 am. No. 164, 2007
<b>Division 15</b>	
S. 15-1.....	am. No. 105, 2004; Nos. 78 and 164, 2007
S. 15-5.....	am. Nos. 78 and 164, 2007

**Table of Amendments**

ad. = added or inserted   am. = amended   rep. = repealed   rs. = repealed and substituted

Provision affected	How affected
S. 15-10.....	am. No. 105, 2004; Nos. 78 and 164, 2007
S. 15-15.....	am. Nos. 78 and 164, 2007
S. 15-17.....	ad. No. 78, 2007 am. No. 164, 2007
S. 15-20.....	am. Nos. 78 and 164, 2007
<b>Division 17</b>	
S. 17-1.....	am. Nos. 78 and 164, 2007
S. 17-3.....	ad. No. 78, 2007 am. No. 164, 2007
S. 17-5.....	am. Nos. 78 and 164, 2007
Heading to s. 17-10.....	rs. Nos. 78 and 164, 2007
S. 17-10.....	am. Nos. 78 and 164, 2007
S. 17-15.....	am. Nos. 78 and 164, 2007
S. 17-20.....	am. Nos. 78 and 164, 2007
S. 17-25.....	am. Nos. 78 and 164, 2007
<b>Part 3</b>	
<b>Division 21</b>	
S. 21-1.....	am. Nos. 78 and 164, 2007
Link note to Guide.....	rep. No. 41 2005
S. 21-5.....	am. No. 41 2005; Nos. 78 and 164, 2007
S. 21-10.....	am. Nos. 78 and 164, 2007
S. 21-20.....	am. No. 105, 2004; Nos. 78 and 164, 2007
Heading to s. 21-25.....	rs. Nos. 78 and 164, 2007
S. 21-25.....	am. Nos. 78 and 164, 2007
S. 21-30.....	am. Nos. 78 and 164, 2007
<b>Part 4</b>	
Heading to Part 4.....	rs. Nos. 78 and 164, 2007
<b>Division 25</b>	
Heading to Div. 25 of Part 4.....	rs. Nos. 78 and 164, 2007
S. 25-1.....	am. Nos. 78 and 164, 2007
Note to s. 25-1.....	rep. No. 78, 2007
Notes 1, 2 to s. 25-1.....	ad. No. 78, 2007
Link note to Guide.....	rep. No. 41 2005
Heading to s. 25-5.....	rs. Nos. 78 and 164, 2007
S. 25-5.....	am. Nos. 78 and 164, 2007
Heading to s. 25-10.....	rs. Nos. 78 and 164, 2007
S. 25-10.....	am. Nos. 78 and 164, 2007
Heading to s. 25-15.....	rs. Nos. 78 and 164, 2007
S. 25-15.....	ad. No. 105, 2004 am. Nos. 78 and 164, 2007
<b>Part 5</b>	
<b>Division 29</b>	
S. 29-1.....	am. No. 105, 2004; Nos. 78 and 164, 2007

**Table of Amendments**


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ad. = added or inserted   am. = amended   rep. = repealed   rs. = repealed and substituted

Provision affected	How affected
S. 29-5.....	am. Nos. 78 and 164, 2007
S. 29-10.....	am. Nos. 78 and 164, 2007
S. 29-15.....	am. Nos. 78 and 164, 2007
<b>Part 6</b>	
<b>Division 33</b>	
S. 33-1.....	am. No. 78, 2007 rep. No. 164, 2007
Heading to s. 33-5.....	rs. Nos. 78 and 164, 2007
S. 33-5.....	am. Nos. 78 and 164, 2007

**Table A**

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**Table A**

**Application, saving or transitional provisions**

*Tax Laws Amendment (2004 Measures No. 3) Act 2004* (No. 105, 2004)

**Schedule 1**

**19 Application**

The amendments made by this Schedule apply, and are taken to have applied, to CGT events relating to investments made on or after 1 July 2002.