Tax Laws Amendment (2007 Measures No. 2) Act 2007

No. 78, 2007

An Act to amend the law relating to taxation, and for related purposes

Note: An electronic version of this Act is available in ComLaw (http://www.comlaw.gov.au/)

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Tax Laws Amendment (2007 Measures No. 2) Act 2007

No. 78, 2007

An Act to amend the law relating to taxation, and for related purposes

[*Assented to 21 June 2007*]

The Parliament of Australia enacts:

1 Short title

This Act may be cited as the *Tax Laws Amendment (2007 Measures No. 2) Act 2007*.

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**
Provision(s)	**Commencement**	**Date/Details**
1. Sections 1 to 4 and anything in this Act not elsewhere covered by this table	The day on which this Act receives the Royal Assent.	21 June 2007
2. Schedules 1 to 6	The day on which this Act receives the Royal Assent.	21 June 2007
3. Schedule 7, item 1	The day on which this Act receives the Royal Assent.	21 June 2007
4. Schedule 7, items 2 to 14	1 July 2005.	1 July 2005
5. Schedule 7, items 15 and 16	The day on which this Act receives the Royal Assent.	21 June 2007
6. Schedule 8, Parts 1 to 4	The day on which this Act receives the Royal Assent.	21 June 2007
7. Schedule 8, Part 5	Immediately after the commencement of the *Venture Capital Act 2002*.	19 December 2002

Note: This table relates only to the provisions of this Act as originally passed by both Houses of the Parliament and assented to. It will not be expanded to deal with provisions inserted in this Act after assent.

(2) Column 3 of the table contains additional information that is not part of this Act. Information in this column may be added to or edited in any published version of this Act.

3 Schedule(s)

Each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule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.

4 Amendment of assessments

Section 170 of the *Income Tax Assessment Act 1936* does not prevent the amendment of an assessment if:

(a) the assessment was made before the commencement of this section; and

(b) the amendment is made within 4 years after that commencement; and

(c) the amendment is made for the purpose of giving effect to Schedule 1.

Schedule 1—Effective life provisions

Income Tax Assessment Act 1997

1 Subsection 40-95(7) (table items 11, 12 and 13)

Repeal the items.

2 Subsection 40-95(8)

After "*IRU", insert "or a *mining, quarrying or prospecting right".

3 At the end of section 40-95

Add:

Exception: mining, quarrying or prospecting rights

(10) The ***effective life*** of a *mining, quarrying or prospecting right is the period you work out yourself by estimating the period (in years, including fractions of years) set out in column 3 of this table:

Item	For this asset:	Estimate the period until the end of:
1	A *mining, quarrying or prospecting right relating to *mining operations (except obtaining *petroleum or quarry materials)	The life of the mine or proposed mine to which the right relates or, if there is more than one, the life of the mine that has the longest estimated life
2	A *mining, quarrying or prospecting right relating to *mining operations to obtain *petroleum	The life of the petroleum field or proposed petroleum field to which the right relates
3	A *mining, quarrying or prospecting right relating to *mining operations to obtain quarry materials	The life of the quarry or proposed quarry to which the right relates or, if there is more than one, the life of the quarry that has the longest estimated life

(11) You work out the period in subsection (10):

(a) as from the *start time of the *mining, quarrying or prospecting right; and

(b) by reference only to the period of time over which the reserves, reasonably estimated using an appropriate accepted industry practice, are expected to be extracted from the mine, petroleum field or quarry.

4 Subsection 40-105(4)

Repeal the subsection, substitute:

(4) This section does not apply to the following intangible *depreciating assets:

(a) assets to which an item in the table in subsection 40-95(7) applies;

(b) *mining, quarrying or prospecting rights.

5 After subsection 40-110(3)

Insert:

(3A) Subsections (1), (2) and (3) do not apply to a *depreciating asset that is a *mining, quarrying or prospecting right.

(3B) You may choose to recalculate the *effective life of a *mining, quarrying or prospecting right from a later income year if the effective life you have been using is no longer accurate because of changed circumstances relating to an existing or proposed mine, petroleum field or quarry to which that right relates.

6 Subsection 40-110(4)

Repeal the subsection, substitute:

(4) A recalculation under this section must be done using:

(a) if paragraph (b) does not apply—section 40-105 (about self-assessing effective life); or

(b) if the *depreciating asset is a *mining, quarrying or prospecting right—subsections 40-95(10) and (11).

7 Application

The amendments made by this Schedule apply to assessments for the income year in which 1 July 2001 occurred and later income years.

Schedule 2—Taxation of boating activities

Part 1—Main amendments

Income Tax Assessment Act 1997

1 After section 26-45

Insert:

26-47 Non-business boating activities

Object

(1) The object of this section is to improve the integrity of the taxation system by preventing deductions from boating activities that are not carried on as a *business being offset against other assessable income.

Rule

(2) This Act applies to you as if so much of the amounts relating to using or *holding boats that you could otherwise deduct for an income year as exceeds your assessable income from using or holding boats for that year:

(a) were not deductible for that income year; and

(b) were an amount (a ***quarantined amount***) relating to using or holding boats that you can deduct for the next income year.

Note: A quarantined amount may be reduced under subsection (5) (for boat capital gains), reduced under subsection (7) (where you deduct part of a quarantined amount under subsection (6) for boat business profits), reduced under subsection (8) (about exempt income) or affected by subsection (10) (about bankruptcy).

Example: Ian does not use his boat in a business. In Year 1, Ian would be able to claim $100,000 in deductions for the boat (but for this subsection), including interest, depreciation and running costs. He earns only $40,000 of income from the boat. He can only deduct $40,000. He carries the remaining $60,000 forward to Year 2 (the quarantined amount).

In Year 2, Ian has $95,000 of expenses and $30,000 of income for the boat. He can deduct $30,000. The quarantined amount is now $125,000: the quarantined amount from Year 1 plus the excess of expenses over income from Year 2.

In Year 3, Ian has $60,000 of expenses and $150,000 of income from the boat. The expenses from Year 3 plus the quarantined amount is $185,000. Therefore, Ian claims a deduction of $150,000 and carries forward $35,000 to Year 4.

Exception: business use

(3) The rule in subsection (2) does not apply to amounts that are attributable to one or more of the following:

(a) *holding a boat as your *trading stock;

(b) using a boat (or holding it) mainly for letting it on hire in the ordinary course of a *business that you *carry on;

(c) using a boat (or holding it) mainly for transporting the public or goods for payment in the ordinary course of a business that you carry on;

(d) using a boat for a purpose that is essential to the efficient conduct of a business that you carry on.

Note: Even if this exception applies to you, you may still have to quarantine losses under Division 35 (deferral of losses from non-commercial business activities).

Exception: fringe benefits

(4) The rule in subsection (2) does not apply to so much of an amount you incur in *providing a *fringe benefit.

Modification if you have boat capital gains

(5) You reduce a quarantined amount you have for an income year by so much of that amount as is applied under section 118-80 to reduce a *capital gain you have for the year in relation to a boat. You make this reduction before you deduct an amount under subsection (6).

Deduction if you have boat business profits

(6) You can deduct all or part of your remaining quarantined amount for an income year if your assessable income for the year from activities of a kind referred to in subsection (3) exceeds your deductions for the year relating to those activities. The amount you can deduct is the lesser of that excess and that remaining quarantined amount.

(7) You reduce your quarantined amount for the year by the amount you deduct. You make this reduction before a reduction under subsection (8).

Modification if you have exempt income

(8) You reduce any remaining quarantined amount you have for an income year by so much of your *net exempt income as is not applied for that income year under section 35-15 (about non-commercial business activities) or section 36-10 or 36-15 (about tax losses).

Modification if you become bankrupt

(9) The modification in subsection (10) has effect if:
  (a) in an income year (the ***current year***) you become bankrupt or are released from a debt by the operation of an Act relating to bankruptcy; or
  (b) you became bankrupt before the current year and:
    (i) the bankruptcy is annulled in the current year under section 74 of the *Bankruptcy Act 1966* because your creditors have accepted a proposal for a composition or scheme of arrangement; and
    (ii) under the composition or scheme of arrangement, you have been, will be or may be released from some or all of the debts from which you would have been released if you had instead been discharged from the bankruptcy.

(10) This Act applies to you as if any amount that:
  (a) is a quarantined amount for you for the current year or was a quarantined amount for you for an earlier year; and
  (b) has not been applied under section 118-80 and that you have not yet deducted;

were not an amount relating to using or holding boats that you can deduct for the current year or a later year.

2 At the end of section 110-38

Add:

(5) Expenditure does *not* form part of any element of the ***cost base*** to the extent that section 26-47 prevents it being deducted.

Note: Section 26-47 denies deductions for the excess of boat expenditure over boat income.

3 After subsection 110-55(9D)

Insert:

(9E) Expenditure does *not* form part of the ***reduced cost base*** to the extent that section 26-47 prevents it being deducted.

Note: Section 26-47 denies deductions for the excess of boat expenditure over boat income.

4 At the end of Subdivision 118-A

Add:

Boat capital gains

118-80 Reduction of boat capital gain

A *capital gain you make from a *CGT event happening in relation to a boat for an income year is reduced by an amount that is a quarantined amount for you for the income year under subsection 26-47(2).

Note: Section 26-47 denies deductions for the excess of boat expenditure over boat income.

Part 2—Consequential amendments

A New Tax System (Goods and Services Tax) Act 1999

5 Paragraph 69-5(3)(e)

Omit “or boat”.

Income Tax Assessment Act 1997

6 Section 12-5 (table item relating to boats)

Repeal the item, substitute:

boats

deferral of deductions 26-47

7 Section 26-50 (heading)

Repeal the heading, substitute:

26-50 Expenses for a leisure facility

8 Paragraph 26-50(1)(a)

Omit “or boat”.

9 Paragraphs 26-50(1)(b) to (g)

Omit “*leisure facility or boat”, substitute “leisure facility”.

10 Subsection 26-50(1)

Omit “, (5), (6)”.

11 Subsections 26-50(5) and (6)

Repeal the subsections.

12 Subsection 26-50(7)

Omit “or boat” (first occurring).

13 Subsection 26-50(7)

Omit “or (5)”.

14 Paragraph 26-50(7)(a)

Omit “or boat”.

15 Subsection 40-25(3) (heading)

Repeal the heading, substitute:

Further reduction: leisure facilities

16 Subsection 40-25(3)

Omit “or a boat”.

17 Subsection 40-25(4)

Repeal the subsection, substitute:

(4) That reduction is the part of the *leisure facility’s decline in value that is attributable to your use of it, or your having it *installed ready for use, at a time when:

(a) its use did not constitute a *fringe benefit; or

(b) you did not use it or *hold it for use as mentioned in paragraph 26-50(3)(b) (about using it in the course of your business or for your employees).

Part 3—Application

18 Application

The amendments made by this Schedule apply to the first income year starting on or after the day on which this Act receives the Royal Assent and later income years.

Schedule 3—Research and development

Income Tax Assessment Act 1936

1 Subsections 73H(1) and (2)

Omit “72L”, substitute “73L”.

2 Subsection 73I(2)

Repeal the subsection, substitute:

(2) The choice must be made:

(a) in the company’s return of income for the tax offset year; or

(b) by notice in writing given to the Commissioner:

(i) for a year of income starting before the commencement of this subsection—before the end of the period that the Commissioner could amend an assessment for the company assuming such an assessment were made at that commencement; or

(ii) otherwise—before the end of the period that the Commissioner could amend an assessment for the company for the tax offset year.

3 After section 73I

Insert:

73IA Objections

(1) The Commissioner may give an eligible company a written notice specifying the amount of a tax offset allowable to the company under section 73I. The notice must specify that it was issued under this subsection and may contain such other information as the Commissioner thinks fit.

(2) If an eligible company is dissatisfied with the notice, the company may object in the manner set out in Part IVC of the *Taxation Administration Act 1953*.

4 Application

The amendment made by item 3 applies to years of income commencing on or after 1 July 2001.

5 Paragraph 73J(1)(b)

Repeal the paragraph, substitute:

(b) either:

(i) all or part of the amount that the company could, apart from subsection 73I(4), have deducted is contracted expenditure; or

(ii) its aggregate research and development amount for the tax offset year exceeds $20,000; and

6 Application

The amendment made by item 5 applies to expenditure incurred in years of income commencing on or after the day on which this Act receives the Royal Assent.

7 Paragraph 73J(1)(c)

Omit “taxpayers”, substitute “persons”.

8 Subsection 73J(1) (note)

Omit “taxpayers”, substitute “persons”.

9 Application

The amendment made by item 7 applies to the first year of income commencing after 9 May 2006 and later years.

10 Subsection 73P(2)

Insert:

commercial ready grant means a subsidy or grant that:

(a) is paid to an eligible company under the program known as the Commercial Ready program; and

(b) includes a component for activities of the company that are research and development activities, or would be, apart from subsection 73B(2BA); and

(c) is for a year of income in relation to which the company is not registered as mentioned in subsection 73B(10).

11 Application

The amendment made by item 10 applies to payments received on or after 6 May 2004.

12 Paragraphs 73Q(1)(a) and (b)

After “incremental expenditure”, insert “incurred during its group membership period”.

13 Subsection 73Q(3)

After “incremental expenditure”, insert “incurred during its group membership period”.

14 Application

The amendments made by items 12 and 13 apply to assessments for the year of income following the year of income in which this Act receives the Royal Assent and later years.

15 Subsection 73Q(3)

After “start grant”, insert “or a commercial ready grant”.

16 Application

The amendment made by item 15 applies to payments received on or after 6 May 2004.

17 Section 73S

Omit “or 73V”, substitute “, 73V or 73W”.

18 Application

The amendment made by item 17 applies to years of income commencing on or after 1 July 2001.

19 Subsection 73X(1)

Repeal the subsection, substitute:

(1) The premium amount is distributed between each group member (the ***increasing members***) that increased its incremental expenditure incurred during its group membership period for the Y_0 year of income over the average of its incremental expenditure incurred during its group membership period for the Y_{-1}, Y_{-2} and Y_{-3} years of income.

20 Application

The amendment made by item 19 applies to assessments for the year of income following the year of income in which this Act receives the Royal Assent and later years.

Income Tax Assessment Act 1997

21 Section 12-5 (at the end of the table item headed "research & development")

Add:

175% deduction ..... **73P to 73Z**

Taxation Administration Act 1953

22 After paragraph 14ZW(1)(bb)

Insert:

(bc) if the taxation objection is made under subsection 73IA(2) of the *Income Tax Assessment Act 1936*:

(i) if item 2 or 3 of the table in subsection 170(1) of that Act would apply to an assessment of the person for the tax offset year referred to in section 73I of that Act—2 years after notice of the amount (if any) of a tax offset allowable to the person under section 73I of that Act is given to the person; or

(ii) otherwise—4 years after the notice concerned is given to the person; or

Schedule 4—Donation of listed shares to deductible gift recipients

Income Tax Assessment Act 1997

1 Subsection 30-15(2) (table item 1, at the end of the column headed "Type of gift or contribution")

Add:

; or (e) *shares that you have acquired in a *listed public company if:

- the shares are listed for quotation in the official list of a stock exchange that is listed under the heading "Australia" in regulations made for the purposes of the definition of *approved stock exchange; and
- the *market value of the shares on the day you made the gift is $5,000 or less; and
- you acquire the shares at least 12 months before making the gift.

2 Subsection 30-15(2) (paragraph (b) in the cell at table item 1, column headed "How much you can deduct")

Omit "or property covered by paragraph (d)", substitute ", property covered by paragraph (d) or shares covered by paragraph (e)".

3 Subsection 30-15(2) (table item 1, at the end of the column headed "How much you can deduct")

Add:

; or (e) if the gift is shares described in paragraph (e) of the previous column— the market value of the shares on the day you made the gift.

4 Subsection 30-15(2) (table item 2, at the end of the column headed "Type of gift or contribution")

Add:

; or (e) *shares that you have acquired in a *listed public company if:

- the shares are listed for quotation in the official list of a stock exchange that is listed under the heading "Australia" in regulations made for the purposes of the definition of *approved stock exchange; and
- the *market value of the shares on the day you made the gift is $5,000 or less; and
- you acquire the shares at least 12 months before making the gift.

5 Subsection 30-15(2) (paragraph (b) in the cell at table item 2, column headed "How much you can deduct")

Omit "or property covered by paragraph (d)", substitute ", property covered by paragraph (d) or shares covered by paragraph (e)".

6 Subsection 30-15(2) (table item 2, at the end of the column headed "How much you can deduct")

Add:

; or (e) if the gift is shares

described in paragraph (e) of the previous column—the market value of the shares on the day you made the gift.

7 Subsection 30-15(2) (after paragraph (c) in the cell at table item 7, column headed "Type of gift or contribution")

Insert:

or (ca) *shares that you have acquired in a *listed public company if:

- the shares are listed for quotation in the official list of a stock exchange that is listed under the heading "Australia" in regulations made for the purposes of the definition of *approved stock exchange; and
- the market value of the shares on the day you made the contribution is more than $150 and less than or equal to $5,000; and
- you acquire the shares at least 12 months before making the contribution;

8 Subsection 30-15(2) (table item 7, at the end of the column headed "How much you can deduct")

Add:

; or (ca) if the contribution is shares described in paragraph (ca) of the previous column—the

market value of the shares on the day you made the contribution, reduced by the GST inclusive market value, on the day you made the contribution, of the right to attend, or participate in, the fund-raising event.

9 Subsection 30-15(2) (after paragraph (c) in the cell at table item 7, column headed "Special conditions")

Insert:

(ca) if the contribution is shares described in paragraph (ca) of the column headed "Type of gift or contribution"—the GST inclusive market value, on the day you made the contribution, of the right to attend, or participate in, the fund-raising event must not exceed the lesser of:

- 20% of the market value of the shares on the day you made the contribution; and
- $150; and

10 Application

The amendments made by this Schedule apply in relation to gifts and contributions made in an income year commencing on or after the day on which this Act receives the Royal Assent.

Schedule 5—Specifically listed deductible gift recipients

Income Tax Assessment Act 1997

1 Subsection 30-50(2) (table item 5.2.25)

Omit “27 August 2006”, substitute “28 August 2007”.

2 Section 30-65 (table item 7.2.4)

Omit “Voluntary Service to Indigenous Communities Foundation”, substitute “Indigenous Community Volunteers Limited”.

3 Subsection 30-80(2) (at the end of the table)

Add:

9.2.18	American Australian Association Limited	the gift must be made after 13 November 2006

4 Section 30-105 (at the end of the table)

Add:

13.2.12	Bunbury Diocese Cathedral Rebuilding Fund	the gift must be made after 18 December 2006 and before 19 December 2008

5 Subsection 30-315(2) (after table item 2AC)

Insert:

2AD	American Australian Association Limited	item 9.2.18

6 Subsection 30-315(2) (after table item 28A)

Insert:

28ABA	Bunbury Diocese Cathedral Rebuilding Fund	item 13.2.12

7 Subsection 30-315(2) (after table item 60)

Insert:

60A	Indigenous Community Volunteers Limited	item 7.2.4

8 Subsection 30-315(2) (table item 122A)

Repeal the item.

Tax Laws Amendment (Repeal of Inoperative Provisions) Act 2006

9 Item 12 of Schedule 3

Omit "**, 5.2.22 and 5.2.25**", substitute "**and 5.2.22**".

Schedule 6—Deductions for contributions relating to fund-raising events

Income Tax Assessment Act 1997

1 Subsection 30-15(2) (paragraphs (a) and (b) of table item 7, column headed "Type of gift or contribution")

Omit "$250", substitute "$150".

2 Subsection 30-15(2) (paragraph (a) of table item 7, column headed "Special conditions")

Omit "10%", substitute "20%".

3 Subsection 30-15(2) (paragraph (a) of table item 7, column headed "Special conditions")

Omit "$100", substitute "$150".

4 Subsection 30-15(2) (paragraph (b) of table item 7, column headed "Special conditions")

Omit "10%", substitute "20%".

5 Subsection 30-15(2) (paragraph (b) of table item 7, column headed "Special conditions")

Omit "$100", substitute "$150".

6 Subsection 30-15(2) (paragraph (c) of table item 7, column headed "Special conditions")

Omit "$100", substitute "$150".

7 Subsection 30-15(2) (paragraph (a) of table item 8, column headed "Type of gift or contribution")

Omit "$250", substitute "$150".

8 Subsection 30-15(2) (paragraph (a) of table item 8, column headed "Special conditions")

Omit "10%", substitute "20%".

9 Subsection 30-15(2) (paragraph (a) of table item 8, column headed "Special conditions")

Omit "$100", substitute "$150".

10 Application

The amendments made by this Schedule apply, and are taken to have applied, in relation to contributions made on or after 1 January 2007.

Schedule 7—Technical corrections

Income Tax Assessment Act 1936

1 Paragraph 272-100(d) in Schedule 2F

Omit "persons all of whose income is exempt from tax under section 23, or under Division 50 of the *Income Tax Assessment Act 1997*,", substitute "exempt entities".

Income Tax Assessment Act 1997

2 Paragraph 58-5(2)(a)

Omit "exempt entity", substitute "*exempt entity".

3 Paragraph 58-5(4)(a)

Before "an *exempt entity", insert "the Commonwealth, a State, a Territory or".

4 Paragraph 58-5(4)(b)

Before "the exempt entity", insert "the Commonwealth, the State, the Territory or".

5 Paragraph 58-5(5)(a)

Before "the *exempt entity", insert "the Commonwealth, the State, the Territory or".

6 Subsection 58-10(1)

Before "the *exempt entity", insert "the Commonwealth, the State, the Territory or".

7 Paragraph 58-10(1)(a)

Repeal the paragraph, substitute:

(a) the asset was used by the Commonwealth, the State, the Territory or the exempt entity in carrying on a business and the purchaser or another entity uses the asset in carrying on the business; or

8 Paragraph 58-10(2)(a)

Repeal the paragraph, substitute:

(a) the asset was used by the Commonwealth, the State, the Territory or the *exempt entity in performing functions, or engaging in activities, that did not constitute the carrying on of a *business by the Commonwealth, the State, the Territory or the exempt entity and the asset is used by the purchaser or another entity in performing those functions or engaging in those activities as part of carrying on a business; or

9 Subparagraph 58-10(2)(b)(i)

Omit "person from the exempt entity or from an *associate of the exempt entity", substitute "entity from the Commonwealth, the State, the Territory or the exempt entity or from an *associate of the Commonwealth, the State, the Territory or the exempt entity".

10 Subparagraphs 58-10(2)(b)(ii) and (iii)

Omit "person" (wherever occurring), substitute "entity".

11 Paragraph 58-10(2)(c)

Omit "person acquired another asset from the exempt entity or from an associate of the exempt entity", substitute "entity acquired another asset from the Commonwealth, the State, the Territory or the exempt entity or from an associate of the Commonwealth, the State, the Territory or the exempt entity".

12 Paragraph 58-10(2)(c)

Before "the exempt entity" (last occurring), insert "the Commonwealth, the State, the Territory or".

13 Paragraph 58-85(1)(a)

Repeal the paragraph, substitute:

(a) a balance sheet, as at the end of an annual accounting period (the ***balance date***), that was prepared as part of the final accounts of the Commonwealth, a State, a Territory or an *exempt entity for that period showed the asset as an asset of the relevant entity and specified a value for it; and

14 Subsection 995-1(1) (definition of *exempt entity*)

Repeal the definition, substitute:

exempt entity means:

(a) an entity all of whose *ordinary income and *statutory income is exempt from income tax because of this Act or because of another *Commonwealth law, no matter what kind of ordinary income or statutory income the entity might have; or

(b) an *untaxable Commonwealth entity.

Note: See section 11-5 for a list of entities of the kind referred to in paragraph (a).

15 Transitional

Subsection 73J(2) of the *Income Tax Assessment Act 1936* has effect for an eligible company, as if the amendment made by item 14 of this Schedule had not been made, during the period:

(a) starting at the start of the year of income of the company in which 1 July 2005 occurred; and

(b) ending at the end of the company's year of income in which the day on which this Act receives the Royal Assent occurs.

16 Application: GST

For the purposes of subsection 69-5(4) of the *A New Tax System (Goods and Services Tax) Act 1999*, the amendment made by item 14 of this Schedule applies to net amounts for tax periods starting on or after the day on which this Act receives the Royal Assent.

Schedule 8—Venture capital

Part 1—Venture capital limited partnerships

Income Tax Assessment Act 1997

1 Section 118-400

After “companies” (first occurring), insert “and unit trusts”.

2 Paragraph 118-405(1)(c)

Repeal the paragraph, substitute:

(c) when the partnership made the investment, the partnership was a *venture capital limited partnership that was *unconditionally registered; and

3 Subparagraph 118-405(1)(d)(iv)

Omit “the registration”, substitute “the *registration”.

4 Subparagraph 118-405(1)(d)(iv)

Omit “investment”, substitute “*investment”.

5 Subsection 118-405(3) (heading)

Repeal the heading, substitute:

Effect of converting convertible notes etc.

6 At the end of section 118-405

Add:

(4) A partnership that acquired a unit in a unit trust by converting a *convertible note issued by or on behalf of the trustee of the unit trust is treated, for the purposes of subparagraph (1)(d)(ii), as having owned the unit from the time when it last acquired the convertible note.

(5) Subsection (3) or (4) applies whether or not the acquisition of the *convertible note, or convertible preference share, was an *eligible venture capital investment.

(6) A partnership that converts a *convertible note into a share or a unit is treated, for the purposes of subparagraph (1)(d)(ii), as continuing to own the convertible note until the partnership no longer owns the share or unit.

7 Paragraphs 118-410(1)(c) and (d)

Repeal the paragraphs, substitute:

(c) when the investment was made, the partnership was an *Australian venture capital fund of funds that was *unconditionally registered; and

(d) when the investment was made, the VCLP or ESVCLP was unconditionally registered; and

8 Subparagraph 118-410(1)(e)(ii)

Omit "the registration", substitute "the *registration".

9 Subparagraph 118-410(1)(e)(ii)

Omit "investment", substitute "*investment".

10 Subparagraph 118-410(1)(f)(iv)

Omit "the registration", substitute "the *registration".

11 Paragraph 118-410(2)(b)

After "company", insert ", or a unit trust,".

12 Paragraph 118-410(2)(c)

Repeal the paragraph, substitute:

(c) when the investment was made, the partnership was an *Australian venture capital fund of funds that was *unconditionally registered; and

13 Subparagraph 118-410(2)(e)(iv)

Omit "the registration", substitute "the *registration".

14 Subparagraph 118-410(2)(e)(iv)

Omit "investment", substitute "*investment".

15 Subsection 118-410(4) (heading)

Repeal the heading, substitute:

Effect of converting convertible notes etc.

16 At the end of section 118-410

Add:

(5) A partnership that acquired a unit in a unit trust by converting a *convertible note issued by or on behalf of the trustee of the unit trust is treated, for the purposes of subparagraphs (1)(f)(ii) and (2)(e)(ii), as having owned the unit from the time when it last acquired the convertible note.

(6) Subsection (4) or (5) applies whether or not the acquisition of the *convertible note, or convertible preference share, was an *eligible venture capital investment.

(7) A partnership that converts a *convertible note into a share or a unit is treated, for the purposes of subparagraphs (1)(f)(ii) and (2)(e)(ii), as continuing to own the convertible note until the partnership no longer owns the share or unit.

17 Subsection 118-415(3) (heading)

Repeal the heading, substitute:

Effect of converting convertible notes etc.

18 At the end of section 118-415

Add:

(4) An entity that acquired a unit in a unit trust by converting a *convertible note issued by or on behalf of the trustee of the unit trust is treated, for the purposes of subparagraph (1)(c)(ii), as having owned the unit from the time when it last acquired the convertible note.

(5) Subsection (3) or (4) applies whether or not the acquisition of the *convertible note, or convertible preference share, was an *eligible venture capital investment.

(6) An entity that converts a *convertible note into a share or a unit is treated, for the purposes of subparagraph (1)(c)(ii), as continuing to own the convertible note until the entity no longer owns the share or unit.

19 Paragraph 118-420(1)(c)

Omit "meets the requirements set out in subsection (6)", substitute "is a foreign resident who is not a *general partner of a *VCLP or an *ESVCLP and is neither a *tax-exempt foreign resident nor a *foreign venture capital fund of funds".

20 Paragraph 118-420(3)(b)

Repeal the paragraph, substitute:

(b) the entity is not a *general partner of a *VCLP or an *ESVCLP; and

21 Paragraph 118-420(4)(a)

Repeal the paragraph, substitute:

(a) the partnership was established in a foreign country; and

22 Paragraph 118-420(4)(b)

Omit "a resident of a country referred to in paragraph (a)", substitute "a foreign resident".

23 Paragraph 118-420(5)(b)

Repeal the paragraph, substitute:

(b) the entity was established in a foreign country; and

24 Paragraph 118-420(5)(c)

Omit "a resident of a country referred to in paragraph (b)", substitute "a foreign resident".

25 Subsection 118-420(6)

Repeal the subsection.

26 Section 118-425 (heading)

Repeal the heading, substitute:

118-425 Meaning of *eligible venture capital investment*—investments in companies

27 Paragraph 118-425(1)(b)

Omit "either".

28 Subparagraph 118-425(1)(b)(ii)

Omit "and", substitute "or".

29 At the end of paragraph 118-425(1)(b)

Add:

(iii) an acquisition of *convertible notes (other than convertible notes that are *debt interests) issued by a company; and

30 At the end of subsection 118-425(2)

Add:

Note: A company that fails to meet the requirements of this subsection can still be eligible in certain circumstances: see subsection (12A).

31 Subsection 118-425(5)

After "company must", insert ", at the end of, and at all times after the end of, the income year in which the investment is made,".

32 Paragraphs 118-425(5)(a) and (b)

Omit "a company auditor", substitute "an auditor".

33 Subsection 118-425(5) (note)

Repeal the note, substitute:

Note: This requirement is ongoing.

34 Subsection 118-425(9)

Omit "(including a *convertible note)".

35 Subsection 118-425(10) (heading)

Repeal the heading, substitute:

The value of an asset or investment

36 Subsection 118-425(10)

Omit "of an entity", substitute ", or an investment, of an entity at a particular time".

37 Subsection 118-425(10)

After “the asset”, insert “or investment”.

38 Subparagraph 118-425(11)(a)

After “options in”, insert “, or *convertible notes issued by,”.

39 Paragraph 118-425(11)(b)

After “another company”, insert “or a unit trust”.

40 Subparagraph 118-425(11)(c)(i)

Repeal the subparagraph, substitute:

(i) in acquiring shares or options in, or convertible notes issued by, the other company, or in acquiring units or options in, or convertible notes issued by or on behalf of the trustee of, the unit trust; or

(ia) in meeting incidental costs of any such acquisition; or

41 Subparagraph 118-425(11)(c)(iii)

After “other company”, insert “or unit trust”.

42 Paragraph 118-425(11)(d)

Repeal the paragraph, substitute:

(d) within that period of 6 months and after the end of that period:

(i) the other company meets the requirements of subsections (2) to (7); or

(ii) the unit trust meets the requirements of subsections 118-427(3) to (8);

as the case requires.

43 After subsection 118-425(12)

Insert:

Exception to requirements relating to location within Australia

(12A) A company is taken to meet the requirements of subsection (2) in relation to an investment made by an entity if the sum of:

(a) the value of the investment at the time the entity makes it; and

(b) the total value of all the other investments that the entity owns at that time that do not, or apart from this subsection would not, meet those requirements;

does not exceed 20% of the partnership's *committed capital.

Note: See subsection (10) for the value of investments.

44 After section 118-425

Insert:

118-427 Meaning of *eligible venture capital investment*—investments in unit trusts

Requirements for an eligible venture capital investment

(1) An investment is an ***eligible venture capital investment*** if:

(a) it is *at risk; and

(b) it is either:

(i) an acquisition of units in a unit trust; or

(ii) an acquisition of options (including warrants) originally issued by or on behalf of the trustee of a unit trust to acquire units in the unit trust; or

(iii) an acquisition of *convertible notes (other than convertible notes that are *debt interests) issued by or on behalf of the trustee of a unit trust; and

(c) the unit trust meets the requirements of subsections (3) to (8); and

(d) the sum of:

(i) the total amount that the partnership has invested in all the *equity interests and *debt interests that the partnership owns in the unit trust; and

(ii) the total amount that the partnership has invested in all the equity interests and debt interests that the partnership owns in any entities that are *connected entities of the unit trust;

does not exceed 30% of the partnership's *committed capital.

Certain entities not treated as connected entities

(2) In applying subparagraph (1)(d)(ii), ignore an entity that is a *connected entity of the unit trust only because it is an *associate of

the unit trust because of an investment made in the entity by the partnership.

Location within Australia

(3) The unit trust:

(a) must, at the time the investment is made, carry on *business in Australia; and

(b) must, at that time, meet at least one of the following requirements:

(i) the central management and control of the unit trust is in Australia;

(ii) more than 50% of the beneficial interests in the income of the unit trust are held by Australian residents;

(iii) more than 50% of the beneficial interests in the property of the unit trust are held by Australian residents; and

(c) if at that time the entity making the investment does not own any other investments in the unit trust—must meet the following requirements:

(i) more than 50% of the people who are currently engaged by the trustee of the unit trust to perform services must perform those services primarily in Australia;

(ii) more than 50% of its assets (determined by value) must be situated in Australia;

during the whole of the period of 12 months, or such shorter period as the *Venture Capital Registration Board determines under section 25-5 of the *Venture Capital Act 2002*, starting from the time the investment is made.

However, subparagraph (c)(i) or (ii) does not apply to the unit trust if the Venture Capital Registration Board so determines under section 25-10 of the *Venture Capital Act 2002*.

Note: A company that fails to meet the requirements of this subsection can still be eligible in certain circumstances: see subsection (13).

Predominant activity

(4) The unit trust must satisfy at least 2 of these requirements:

(a) more than 75% of the unit trust's assets (determined by value) must be used primarily in activities that are not ineligible activities mentioned in subsection (14);

(b) more than 75% of the employees of the trustee of the unit trust must be engaged primarily in activities that are not ineligible activities mentioned in subsection (14);

(c) more than 75% of the unit trust's total assessable income, *exempt income and *non-assessable non-exempt income must come from activities that are not ineligible activities mentioned in subsection (14).

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

Note 2: See subsection (11) for the value of assets.

Note 3: A unit trust that fails to meet at least 2 of the requirements can still be eligible if the Venture Capital Registration Board determines that the unit trust's primary activity is not ineligible and the failure is temporary: see subsection (15).

Investment in other entities etc.

(5) The unit trust must not:

(a) invest, in another entity, any part of the amount invested, unless the other entity:

(i) is *connected with the unit trust (except another entity that is an *associate of the unit trust because of an investment made in the entity by the partnership); and

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

(b) in the capacity of a trustee, use any part of the amount invested.

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

Registered auditor

(6) The unit trust must, at the end of, and at all times after the end of, the income year in which the investment is made, have as its auditor:

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

(b) if the unit trust is no longer an Australian resident—a person registered as an auditor under a law in force in the country of which the unit trust is a resident.

Note: This requirement is ongoing.

Permitted entity value

(7) The unit trust must not, immediately before the investment is made, exceed the *permitted entity value.

Listing

(8) The unit trust must be a unit trust whose units:

(a) are, at the time the investment is made, not listed for quotation in the official list of a stock exchange in Australia or a foreign country; or

(b) are so listed at that time, but cease to be so listed at any time during the 12 months after the investment is made.

However, the unit trust is taken to meet the requirements of this subsection in relation to any investment made by an *ESVCLP (whether or not units in the unit trust are so listed).

Note: The additional requirements for ESVCLPs deal with listing in relation to initial investments by ESVCLPs in unit trusts: see paragraph 118-428(1)(a).

Scrip for scrip investments

(9) However, a unit trust is taken to meet the requirements of subsections (3) to (8) if:

(a) the investment is an acquisition of units in that unit trust in exchange for units in another unit trust; and

(b) at the time that the *VCLP, *ESVCLP, *AFOF or *eligible venture capital investor in question acquired the units being exchanged, the other unit trust meets the requirements of subsections (3) to (8), but not only because this subsection applies to the other unit trust; and

(c) the units in the other unit trust that are being exchanged are all of the units in the other unit trust that the entity making the investment owned at the time of the exchange.

Debt interests

(10) To avoid doubt, a *debt interest cannot be an *eligible venture capital investment.

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 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.

Application to groups

(12) If a group of entities:

(a) is treated as a *consolidated group because of a choice that a unit trust has made under section 713-130; or

(b) would be treated as a consolidated group because of such a choice:

(i) if a unit trust were to make such a choice; or

(ii) if a unit trust that is not a *corporate unit trust or a *public trading trust were such a trust and were to make such a choice;

this section applies in relation to the entities as if:

(c) the unit trust carried on, as the *head company of the consolidated group or consolidatable group, all of the activities that are carried on by the other members of the group; and

(d) the assets, employees and income of the other members of the group were assets, employees and income of the unit trust; and

(e) each of the other members of the group were parts of the unit trust rather than separate entities.

Exception to requirements relating to location within Australia

(13) A unit trust is taken to meet the requirements of subsection (3) in relation to an investment made by an entity if the sum of:

(a) the value of the investment at the time the entity makes it; and

(b) the total value of all the other investments that the entity owns at that time that do not, or apart from this subsection would not, meet those requirements;

does not exceed 20% of the partnership's *committed capital.

Note: See subsection (11) for the value of investments.

Ineligible activities

(14) These activities are ineligible activities:

(a) property development or land ownership;

(b) finance, to the extent that it is any of the following:

(i) banking;

(ii) providing capital to others;

(iii) leasing;

(iv) factoring;

(v) securitisation;

(c) insurance;

(d) construction (including extension, improvement or up-grading) or acquisition of infrastructure facilities (within the meaning of section 93L of the *Development Allowance Authority Act 1992*) or related facilities (within the meaning of section 93M of that Act), or both;

(e) making investments, whether made directly or indirectly, that are directed to deriving income in the nature of interest, rents, dividends, royalties or lease payments.

For the purposes of this subsection, activities that are ancillary or incidental to a particular activity are taken to form part of that activity.

Venture Capital Registration Board discretion

(15) A unit trust is taken to meet the requirements of subsection (4) even if it fails to satisfy at least 2 of the requirements in that subsection if the *Venture Capital Registration Board determines under section 25-15 of the *Venture Capital Act 2002* that:

(a) the unit trust's primary activity is not an ineligible activity mentioned in subsection (14); and

(b) the failure is temporary and did not exist at the time the investment referred to in subsection (1) was made and, if it has been disposed of, when it was disposed of.

Convertible notes

(16) To the extent that an investment by an entity consists of the acquisition of a unit in a unit trust by converting a *convertible note issued by or on behalf of the trustee of the unit trust, the investment is, for the purpose of determining whether the unit trust meets the requirements of subsections (3) to (8), taken to have been made at the time when the entity last acquired the convertible note.

(17) Subsection (16) applies whether or not the acquisition of the *convertible note was an *eligible venture capital investment.

45 Paragraph 118-430(a)

Omit "shares", substitute "investment".

46 Paragraph 118-430(b)

Omit "shares", substitute "investment, including (if the investment relates to a unit trust) the maintenance of any conferrals of present entitlement to income or capital of the unit trust or to any distributions of income or capital of the unit trust".

47 Paragraph 118-435(1)(b)

After "company", insert "or all the units in a unit trust".

48 Paragraph 118-435(1)(c)

After "company", insert "or unit trust".

49 At the end of paragraph 118-435(1)(d)

Add ", or the unit trust meets the requirements of subsections 118-427(3) to (8), as the case requires".

50 Paragraph 118-435(2)(b)

Repeal the paragraph, substitute:

(b) at any time within the period of 12 months after the day on which the first *eligible venture capital investment was made in the company:

(i) the other company ceases to be an Australian resident; or

(ii) the unit trust ceases to carry on *business in Australia;

as the case requires;

51 Paragraphs 118-435(2)(c) and (d)

After "company" (wherever occurring), insert "or unit trust".

52 Subsection 118-440(1) (note)

Repeal the note, substitute:

Note: The time the entity makes the investment is, for a share acquired by converting a convertible note or convertible preference share or for a unit in a unit trust acquired by converting a convertible note, the time when the entity last acquired the convertible note or convertible preference share: see subsections 118-425(15) and 118-427(16).

53 Subsection 995-1(1) (definition of *eligible venture capital investment*)

Omit "section 118-425", substitute "sections 118-425 and 118-427".

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54 Paragraph 9-1(1)(a)

Repeal the paragraph, substitute:

(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

55 Paragraph 9-1(1)(d)

Omit "$20 million", substitute "$10 million".

56 Paragraph 9-1(1)(e)

Omit "either".

57 Subparagraph 9-1(1)(e)(ii)

Omit "and" (last occurring), substitute "or".

58 At the end of paragraph 9-1(1)(e)

Add:

(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

59 Paragraph 9-1(1)(f)

Omit "or investments to which subparagraph (e)(ii) applies", substitute ", investments to which subparagraph (e)(ii) applies or investments to which subparagraph (e)(iii) applies".

60 Subparagraph 9-5(1)(d)(ii)

After "company", insert "or unit trust".

61 Subparagraph 9-5(1)(d)(iii)

Omit "and" (last occurring), substitute "or".

62 At the end of paragraph 9-5(1)(d)

Add:

(iv) an investment in a unit trust referred to in subparagraph (ii) 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

63 Paragraph 9-5(1)(e)

After "applies", insert "or investments to which subparagraph (d)(iv) applies,".

64 After paragraph 9-10(1)(a)

Insert:

(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;

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

65 Paragraph 15-1(ga)

Omit all the words from and including "whether", substitute:

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;

66 After paragraph 15-1(ga)

Insert:

(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;

67 Paragraph 15-10(c)

Omit all the words from and including "whether", substitute:

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

(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

68 Paragraph 15-10(d)

Omit all the words from and including "whether", substitute:

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

69 At the end of section 15-10

Insert:

(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.

70 Paragraph 21-5(3)(d)

After "*company", insert "or unit trust".

71 Paragraph 21-5(3)(d)

After "the company", insert "or unit trust".

72 Paragraph 21-5(3)(f)

After "company", insert "or unit trust".

73 Paragraph 21-20(1)(g)

Omit all the words from and including "whether", substitute:

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;

74 Paragraph 21-20(1)(h)

Omit all the words from and including "whether", substitute:

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 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;

75 Paragraph 21-20(1)(i)

Omit all the words from and including "whether", substitute:

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;

76 At the end of subsection 21-20(1)

Add:

(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.

77 Section 25-1

Omit "paragraph 18-425(2)(b)", substitute "paragraphs 118-425(2)(b) and 118-427(3)(c)".

78 Section 25-1 (note)

Repeal the note, substitute:

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.

79 After subsection 25-5(1)

Insert:

(1A) The *Venture Capital Registration Board 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*.

80 Subsection 25-5(2)

Omit "The application", substitute "An application under this section".

81 After subsection 25-10(1)

Insert:

(1A) The *Venture Capital Registration Board 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.

82 Subsection 25-10(2)

Omit "The application", substitute "An application under this section".

83 After subsection 25-15(1)

Insert:

(1A) The *Venture Capital Registration Board 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.

84 Subsection 25-15(2)

Omit "The application", substitute "An application under this section".

85 Application

The amendments of the *Income Tax Assessment Act 1997* made by this Part apply to assessments for the 2007-2008 year of income and later years of income.

Part 2—Early stage venture capital limited partnerships

Income Tax Assessment Act 1936

86 Subsection 6(1)

Insert:

> ***ESVCLP*** means an early stage venture capital limited partnership within the meaning of subsection 118-407(4) of the *Income Tax Assessment Act 1997*.

87 Subsections 18A(1) and (2)

After "VCLP", insert ", an ESVCLP".

Note: The heading to section 18A is altered by inserting ", **ESVCLPs**" after "**VCLPs**".

88 Paragraphs 92(2AA)(b) and 92A(1)(b)

After "VCLP", insert ", an ESVCLP".

89 Subsection 94D(2)

After "VCLP", insert ", an ESVCLP".

90 Subsection 94D(2) (note 1)

After "VCLP", insert ", an ESVCLP".

91 Subsection 94D(2) (note 2)

After "VCLPs", insert ", ESVCLPs".

92 Subsection 94D(2) (note 3)

After "VCLP", insert ", ESVCLP".

93 Paragraph 94D(3)(a)

Omit "either or both", substitute "one or more".

94 After subparagraph 94D(3)(a)(i)

Insert:

(ia) one or more ESVCLPs;

95 Subparagraph 128B(3)(h)(ii)

After “VCLP”, insert “, ESVCLP”.

Income Tax Assessment Act 1997

96 Subsection 4-10(2) (note 2)

After “VCLP”, insert “, an ESVCLP”.

97 Subsection 9-5(2) (note 2)

After “VCLP”, insert “, an ESVCLP”.

98 Section 11-15 (table item dealing with foreign investment)

Repeal the item.

99 Section 11-15 (after the table item dealing with United Nations)

Insert:

venture capital

eligible venture capital investments, gain or profit from realisation of 51-54

eligible venture capital investments by ESVCLPs, income derived from 51-52

venture capital equity, gain or profit from realisation of 51-55

100 Subsection 26-68(1) (heading)

Repeal the heading, substitute:

Partners in VCLPs and ESVCLPs

101 Paragraph 26-68(1)(a)

After “*VCLP”, insert “, or an *ESVCLP,”.

102 At the end of paragraph 26-68(1)(b)

Add “or 118-407”.

103 Subparagraph 26-68(2)(a)(ii)

After “*VCLP”, insert “, or an *ESVCLP,”.

104 Section 36-25 (table headed "*Tax losses of VCLPs, AFOFs and VCMPs*")

Omit the table, substitute:

Tax losses of VCLPs, ESVCLPs, AFOFs and VCMPs

Item	For the special rules about this situation ...	See:
1.	A limited partnership that has a tax loss becomes a VCLP, an ESVCLP, an AFOF or a VCMP: it cannot deduct the loss while it is a VCLP, an ESVCLP, an AFOF or a VCMP.	Subdivision 195-B

105 After section 51-50

Insert:

51-52 Income derived from eligible venture capital investments by ESVCLPs

General

(1) An entity's share of income derived from an *eligible venture capital investment is exempt from income tax if:
  (a) the entity is a partner in a *limited partnership; and
  (b) the partnership made the investment; and
  (c) the investment meets all of the *additional investment requirements for ESVCLPs for the investment; and
  (d) when the partnership made the investment, the partnership was an *early stage venture capital limited partnership that was *unconditionally registered; and
  (e) when the income was derived, the partnership:
    (i) owned the investment; and
    (ii) was an early stage venture capital limited partnership that was unconditionally registered.

Partners in AFOFs

(2) An entity's share of income derived from an *eligible venture capital investment is exempt from income tax if:

(a) the entity is a partner in an *AFOF; and
(b) the AFOF is a partner in a partnership that made the investment; and
(c) when the partnership made the investment, the partnership was an *early stage venture capital limited partnership that was *unconditionally registered; and
(d) the investment meets all of the *additional investment requirements for ESVCLPs for the investment; and
(e) when the income was derived, the partnership:
(i) owned the investment; and
(ii) was an early stage venture capital limited partnership that was unconditionally registered.

Residency requirements for general partners

(3) However, if the entity is a *general partner in the partnership, this section does not apply to the entity unless the entity is:
(a) an Australian resident; or
(b) a resident of 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.

(4) For the purposes of this section, the place of residence of a *general partner in a *limited partnership:
(a) that is a company or limited partnership; and
(b) that is not an Australian resident;
is the place in which the general partner has its central management and control.

Beneficiaries' shares of capital gains made by unit trusts

(5) For the purposes of this section, an entity's share of income derived from an *eligible venture capital investment that is an investment in a unit trust includes any present entitlement of the entity, as a beneficiary, to a share of an amount included in the assessable income of the unit trust under section 102-5.

Carried interests

(6) This section does not apply to an entity's share of income derived from an *eligible venture capital investment to the extent that the income is a payment of a *carried interest of a *general partner in an *ESVCLP or an *AFOF.

106 Subsection 51-54(1) (heading)

Repeal the heading, substitute:

Partners in VCLPs and ESVCLPs

107 Paragraph 51-54(1)(a)

After "*VCLP", insert ", or an *ESVCLP,".

108 At the end of paragraph 51-54(1)(b)

Add "or 118-407".

109 Subparagraph 51-54(2)(a)(ii)

After "*VCLP", insert ", or an *ESVCLP,".

110 Subsections 104-255(1) and (4)

After "*VCLP", insert ", an *ESVCLP".

111 Subsections 104-255(4) and (5)

After "VCLP", insert ", ESVCLP".

112 Paragraph 104-255(6)(a)

After "*VCLP", insert ", *ESVCLP".

113 Paragraph 104-255(6)(b)

After "VCLP", insert ", ESVCLP".

114 Paragraph 116-30(5)(a)

After "*VCLP", insert ", an *ESVCLP".

115 Subsection 118-21(1)

After "*VCLP", insert ", an *ESVCLP".

116 Section 118-400

Omit “Some foreign residents disregard”, substitute “You can ignore”.

117 Section 118-400

After “venture capital limited partnerships”, insert “ or early stage venture capital limited partnerships”.

118 At the end of section 118-400

Add:

> However, unless investments are made through early stage venture capital limited partnerships, you must be a foreign resident for this Subdivision to apply.

119 After section 118-405

Insert:

118-407 Exemption for certain venture capital investments through early stage venture capital limited partnerships

General

(1) All of your share in a *capital gain or a *capital loss from a *CGT event is disregarded if:

(a) you are a partner in a *limited partnership; and

(b) the CGT event relates to an investment that the partnership made that:

(i) is an *eligible venture capital investment; and

(ii) meets all of the *additional investment requirements for ESVCLPs for the investment; and

(c) when the partnership made the investment, the partnership was an *early stage venture capital limited partnership that was *unconditionally registered; and

(d) at the time of the CGT event, the partnership:

(i) owned the investment; and

(ii) had owned the investment for at least 12 months; and

(iii) was an early stage venture capital limited partnership that was unconditionally registered; and

(iv) in the case of a capital gain—met all of the *registration requirements of an ESVCLP that are not *investment registration requirements, and met the *divestiture registration requirement.

Note: The registration requirements of an ESVCLP are set out in section 9-3 of the *Venture Capital Act 2002*. It is important to understand that this is a separate requirement from registration under Part 2 of that Act (which effectively determines whether an entity is an ESVCLP).

It is technically possible to be registered under Part 2 of that Act without meeting the registration requirements of an ESVCLP, but you might still not be entitled to exemption under this section.

Residency requirements for general partners

(2) However, if you are a *general partner in the partnership, subsection (1) does not apply to you unless you are:

(a) an Australian resident; or

(b) a resident of 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.

(3) For the purposes of this section, the place of residence of a *general partner in a *limited partnership:

(a) that is a company or limited partnership; and

(b) that is not an Australian resident;

is the place in which the general partner has its central management and control.

Meaning of early stage venture capital limited partnership

(4) A *limited partnership is an ***early stage venture capital limited partnership*** at a particular time if, at that time, the partnership's registration as an early stage venture capital limited partnership under Part 2 of the *Venture Capital Act 2002* is, or is taken to have been, in force.

Note 1: For when the registration is, or is taken to have been, in force, see section 13-10 of the *Venture Capital Act 2002*.

Note 2: In this Act and the *Venture Capital Act 2002*, the term "early stage venture capital limited partnership" is usually abbreviated to "ESVCLP".

Temporary exemption from meeting the divestiture registration requirement

(5) A partnership is treated, for the purposes of subsection (1), as never having failed, during a particular income year of the partnership, to meet the *divestiture registration requirement in relation to a particular investment that the partnership holds, if:

(a) at the start of the income year, the partnership fails to meet the divestiture registration requirement in relation to that investment; and

(b) the partnership meets the divestiture registration requirement in relation to that investment:

(i) within the period of 6 months after the start of that income year; or

(ii) if that period is extended under subsection 17-3(3) of the *Venture Capital Act 2002*—within that period as so extended.

Effect of converting convertible notes etc.

(6) A partnership that acquired a *share in a company by converting a *convertible note, or a convertible preference share, issued by the company is treated, for the purposes of subparagraph (1)(d)(ii), as having owned the share from the time when it last acquired the convertible note or convertible preference share.

(7) A partnership that acquired a unit in a unit trust by converting a *convertible note issued by the trustee of the unit trust is treated, for the purposes of subparagraph (1)(d)(ii), as having owned the unit from the time when it last acquired the convertible note.

(8) Subsection (6) or (7) applies whether or not the acquisition of the *convertible note, or convertible preference share, was an *eligible venture capital investment.

(9) A partnership that converts a *convertible note into a share or a unit is treated, for the purposes of subparagraph (1)(d)(ii), as continuing to own the convertible note until the partnership no longer owns the share or unit.

120 Subsection 118-410(1) (heading)

Repeal the heading, substitute:

Gains or losses as a partner in a VCLP or an ESVCLP

121 Paragraph 118-410(1)(b)

After "a *VCLP", insert ", or an *ESVCLP,".

122 Paragraph 118-410(1)(f)

After "the VCLP", insert "or ESVCLP".

123 Subparagraph 118-410(1)(f)(iv)

After "a VCLP", insert ", or all of the *registration requirements of an ESVCLP, (as the case requires)".

124 Paragraph 118-410(2)(b)

After "a *VCLP", insert ", or an *ESVCLP".

125 Paragraph 118-410(2)(d)

After "the VCLP", insert "or ESVCLP".

126 Paragraphs 118-420(4)(c) and (5)(d)

After "a *VCLP", insert "or an *ESVCLP".

127 At the end of subsection 118-425(7)

Add:

> However, the company is taken to meet the requirements of this subsection in relation to any investment made by an *ESVCLP (whether or not shares in the company are so listed).
>
> Note: The additional requirements for ESVCLPs deal with listing in relation to initial investments by ESVCLPs in companies: see paragraph 118-428(1)(a).

128 Paragraph 118-425(8)(b)

After "*VCLP", insert ", *ESVCLP".

129 Paragraph 118-425(11)(a)

After "*VCLP", insert ", an *ESVCLP".

130 Before section 118-430

Insert:

118-428 Additional investment requirements for ESVCLPs

(1) The ***additional investment requirements for ESVCLPs***, for an investment in a company or in a unit trust, are:

(a) if the entity making the investment does not, when the investment is made, own any other investment in the company or unit trust:

(i) *shares in the company; or

(ii) units in the unit trust;

are not, when the investment is made, listed for quotation in the official list of a stock exchange in Australia or a foreign country; and

(b) if the investment is *pre-owned when the investment is made:

(i) the entity already owns investments in the company or unit trust; or

(ii) the entity will, in connection with making the investment, make other investments in the company or unit trust, some or all of which are not pre-owned; and

(c) if the investment is pre-owned when the investment is made—the sum of:

(i) the value of the investment when the entity makes it; and

(ii) the total value of all the other investments that the entity owns at that time;

does not exceed 20% of the partnership's *committed capital.

Note: See subsection (3) for the value of investments.

(2) An investment is ***pre-owned*** if it was issued or allotted to an entity other than the entity that owns the investment. However, the investment is not pre-owned if it:

(a) was issued:

(i) to an underwriter or sub-underwriter of the issue of the investment; or

(ii) to a person for the purpose of being offered for sale; and

(b) was still held by the underwriter, sub-underwriter or person immediately before being acquired by the entity that now owns the investment.

(3) The value of an investment of an entity at a particular time for the purposes of this section is the value of the investment as shown in:

(a) the last audited accounts prepared for the entity for the purposes of the *Corporations Act 2001* that relates to a period ending less than 18 months before that time; or

(b) 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.

131 Subsection 118-440(1)

Omit "$250 million", substitute "the amount provided for under subsection (9)".

132 Subsections 118-440(3) and (5)

After "*VCLP", insert ", *ESVCLP".

133 Paragraph 118-440(5)(a)

After "VCLP", insert ", ESVCLP".

134 Paragraph 118-440(5)(b)

Omit "$250 million", substitute "the amount provided for under subsection (9)".

135 Paragraph 118-440(7)(a)

After "*VCLP", insert ", *ESVCLP".

136 Paragraph 118-440(7)(c)

Omit "$250 million", substitute "the amount provided for under subsection (9)".

137 Subsection 118-440(8)

After "*VCLP", insert ", *ESVCLP".

138 At the end of section 118-440

Add:

(9) The amount in relation to a proposed investment is:

(a) if an *ESVCLP is to make the proposed investment—$50 million; or

(b) in any other case—$250 million.

139 Section 195-60

After "venture capital limited partnerships" (wherever occurring), insert ", early stage venture capital limited partnerships".

140 Section 195-65 (heading)

Repeal the heading, substitute:

195-65 Tax losses cannot be transferred to a VCLP, an ESVCLP, an AFOF or a VCMP

141 Section 195-65

After "a *VCLP", insert ", an *ESVCLP".

142 Section 195-70 (heading)

Repeal the heading, substitute:

195-70 Previous tax losses can be deducted after ceasing to be a VCLP, an ESVCLP, an AFOF or a VCMP

143 Section 195-70

After "a *VCLP", insert ", an *ESVCLP".

144 Section 195-70

After "a VCLP", insert ", ESVCLP".

145 Subsection 995-1(1)

Insert:

> ***additional investment requirements for ESVCLPs*** has the meaning given by subsection 118-428(1).

146 Subsection 995-1(1)

Insert:

> ***approved investment plan***, of an *ESVCLP, has the meaning given by subsection 13-15(2) of the *Venture Capital Act 2002*.

147 Subsection 995-1(1) (paragraph (a) of the definition of *carried interest*)

After “a *VCLP”, insert “, an *ESVCLP”.

148 Subsection 995-1(1)

Insert:

> ***divestiture registration requirement***, in relation to an *ESVCLP, has the meaning given by subsection 9-3(3) of the *Venture Capital Act 2002*.

149 Subsection 995-1(1)

Insert:

> ***early stage venture capital limited partnership*** has the meaning given by subsection 118-407(4).

150 Subsection 995-1(1)

Insert:

> ***ESVCLP*** means an *early stage venture capital limited partnership.

151 Subsection 995-1(1) (note 2 at the end of the definition of *income year*)

After “a VCLP”, insert “, an ESVCLP”.

152 Subsection 995-1(1) (after paragraph (a) of the definition of *investment registration requirement*)

Insert:

(ab) in relation to an *ESVCLP—has the meaning given by subsection 9-3(2) of the *Venture Capital Act 2002*; and

153 Subsection 995-1(1) (paragraph (b) of the definition of *limited partnership*)

After “a *VCLP”, insert “, an *ESVCLP”.

154 Subsection 995-1(1)

Insert:

> ***pre-owned*** has the meaning given by subsection 118-428(2).

155 Subsection 995-1(1)

Insert:

> ***registration requirements of an ESVCLP*** has the meaning given by subsection 9-3(1) of the *Venture Capital Act 2002*.

156 Subsection 995-1(1) (definition of *unconditionally registered*)

After "*VCLP", insert ", *ESVCLP".

Pooled Development Funds Act 1992

157 Subsection 4(1)

Insert:

> ***ESVCLP*** means an early stage venture capital limited partnership within the meaning of subsection 118-407(4) of the *Income Tax Assessment Act 1997*.

158 Paragraph 6(3)(a)

After "VCLPs", insert ", ESVCLPs".

159 After paragraph 6(3)(a)

Insert:

(ab) approving ESVCLPs' investment plans, and their replacement plans, under Part 2 of that Act; and

160 Paragraph 72(1)(c)

After "VCLPs", insert ", ESVCLPs".

161 After paragraph 72(1)(c)

Insert:

(ca) the Board's powers to approve ESVCLPs' investment plans, and their replacement plans, under Part 2 of the *Venture Capital Act 2002*; and

162 Paragraph 73(1)(c)

After "VCLPs", insert ", ESVCLPs".

163 After paragraph 73(1)(c)

Insert:

(ca) the Board's powers to approve ESVCLPs' investment plans, and their replacement plans, under Part 2 of the *Venture Capital Act 2002*; and

164 Paragraph 74(2)(c)

After "VCLPs", insert ", ESVCLPs".

165 After paragraph 74(2)(c)

Insert:

(ca) approving ESVCLPs' investment plans, and their replacement plans, under Part 2 of the *Venture Capital Act 2002*; or

Venture Capital Act 2002

166 Section 3-5 (heading)

Repeal the heading, substitute:

3-5 Registration of limited partnerships (Part 2)

167 Paragraph 3-5(a)

After "partnerships", insert ", early stage venture capital limited partnerships".

168 Part 2 (heading)

Repeal the heading, substitute:

Part 2—Registration of limited partnerships

169 Section 7-1

After "venture capital limited partnerships", insert ", early stage venture capital limited partnerships".

170 Section 7-1

After "gains and losses); and", insert:

- 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

171 After section 9-1

Insert:

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 *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:

(a) the *Venture Capital Registration Board 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) The *Venture Capital Registration Board 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 the *Venture Capital Registration Board.

(3) In considering whether to make such a decision, the *Venture Capital Registration Board must apply the principles specified under subsection (4).

(4) The *Venture Capital Registration Board may, by legislative instrument, make principles about making decisions under this section.

(5) If the *Venture Capital Registration Board makes a decision under this section, the Venture Capital Registration Board must notify the *general partner as soon as practicable after the decision is made.

(6) If the *Venture Capital Registration Board refuses to make a decision allowing the partner's committed capital in the partnership to exceed 30% of the partnership's committed capital, the Venture Capital Registration Board must:

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

(b) provide reasons for the refusal.

172 Subparagraph 9-5(1)(d)(i)

After "*VCLP", insert "or an *ESVCLP".

173 Subparagraph 9-5(1)(d)(ii)

After "VCLP", insert "or an ESVCLP".

174 Paragraph 9-5(1)(e)

After "VCLPs", insert "or ESVCLPs".

175 Subsection 11-1(1)

After "*VCLP", insert ", an *ESVCLP".

176 After paragraph 11-1(2)(j)

Insert:

(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;

177 After subsection 13-1(1)

Insert:

(1A) The *Venture Capital Registration Board 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) the Venture Capital Registration Board is satisfied that the partnership's investment plan (as set out in the application or that plan as since approved by the Venture Capital Registration Board) is appropriate; and

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

(d) the Venture Capital Registration Board 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 the Venture Capital Registration Board that the ESVCLP has sufficient funds to begin its investment program;

unless the Venture Capital Registration Board 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.

178 Subsections 13-1(3) and (4)

After "*VCLP", insert ", an *ESVCLP".

179 Subsection 13-1(5)

Repeal the subsection, substitute:

(5) The *Venture Capital Registration Board 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.

180 After subsection 13-5(1)

Insert:

(1A) The *Venture Capital Registration Board 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 the Venture Capital Registration Board 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

(d) has had a previous registration revoked under Division 17.

181 Subsection 13-5(3)

After "*VCLP", insert ", an *ESVCLP".

182 Subsection 13-10(1)

After "*VCLP", insert ", an *ESVCLP".

183 Subsection 13-10(3)

After "*VCLP", insert ", an *ESVCLP".

184 At the end of Division 13

Add:

13-15 An ESVCLP's approved investment plan

(1) A notice under subsection 13-1(3) to the effect that the *Venture Capital Registration Board has decided to register a partnership as an *ESVCLP must specify a document that sets out the investment plan in relation to which the Venture Capital Registration Board 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 the *Venture Capital Registration Board 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.

(5) If the *Venture Capital Registration Board 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 the *Venture Capital Registration Board approves the replacement plan, the ESVCLP's *approved investment plan is replaced accordingly on the giving of the approval.

(7) If the *Venture Capital Registration Board is not satisfied as mentioned in subsection (5), the Board must refuse the request.

(8) The *Venture Capital Registration Board 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 the *Venture Capital Registration Board'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, the *Venture Capital Registration Board 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

(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) The *Venture Capital Registration Board 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 the *Venture Capital Registration Board 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.

185 Section 15-1

After "*VCLP", insert ", an *ESVCLP".

186 After paragraph 15-1(f)

Insert:

(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;

187 Section 15-10

After "*VCLP", insert ", an *ESVCLP".

188 After section 15-15

Insert:

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 the *Venture Capital Registration Board 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) The *Venture Capital Registration Board may, by legislative instrument, issue guidelines relating to reports under this section (including the publication of those reports).

(3) The *Venture Capital Registration Board must publish reports it receives under subsection (1).

(4) The *Venture Capital Registration Board may comply with its obligation under subsection (3) by including copies of those reports in its annual report under section 75 of the *Pooled Development Funds Act 1992*.

189 After paragraph 17-1(1)(a)

Insert:

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

190 Subsection 17-1(1)

After "VCLP" (last occurring), insert ", an ESVCLP".

191 Subsection 17-1(5)

After "VCLP", insert ", the *investment registration requirements of an ESVCLP".

192 After section 17-1

Insert:

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

(1) The *Venture Capital Registration Board must revoke the registration of a partnership registered as an *ESVCLP if the Venture Capital Registration Board 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.

(2) A *general partner may, within the period referred to in subparagraph (1)(b)(i), apply to the *Venture Capital Registration Board, in the *form approved by the Venture Capital Registration Board, for an extension of that period.

(3) The *Venture Capital Registration Board may extend, by up to 3 months, the period referred to in subparagraph (1)(b)(i) if the Venture Capital Registration Board is satisfied, in accordance with any guidelines made under subsection (4), that there are special circumstances justifying the extension.

(4) The *Venture Capital Registration Board may, by legislative instrument, make guidelines relating to the matters to be taken into account in considering whether to grant an extension.

193 After paragraph 17-5(1)(a)

Insert:

(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

194 Subsection 17-5(1)

Omit “VCLP or”, substitute “VCLP, an ESVCLP or”.

195 Subsection 17-5(6)

After "VCLP", insert ", the *registration requirements of an ESVCLP".

196 Subsection 17-10(1)

After "*VCLP", insert ", an *ESVCLP".

197 Subparagraph 17-10(1)(e)(i)

After "paragraph 9-1(1)(e)", insert ", 9-3(1)(f)".

198 Section 17-15

After "17-1,", insert "17-3,".

199 Subsections 17-25(1) and 25-5(1)

After "*VCLP", insert ", an *ESVCLP".

200 Subsection 25-10(1)

Omit "VCLP or an AFOF", substitute "*VCLP, an *ESVCLP or an *AFOF".

201 Subsection 25-15(1)

After "*VCLP", insert ", an *ESVCLP".

202 Before paragraph 29-1(a)

Insert:

(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;

203 Paragraph 29-1(b)

After "*VCLP", insert ", an *ESVCLP".

204 Paragraph 29-1(c)

After "VCLP", insert ", an ESVCLP".

205 Application

The amendments of the *Income Tax Assessment Act 1997* made by this Part apply to assessments for the 2007-2008 year of income and later years of income.

Part 3—The Venture Capital Registration Board

Income Tax Assessment Act 1997

206 Paragraph 118-425(2)(b)

Omit "*PDF Board", substitute "*Venture Capital Registration Board".

207 Subsection 118-425(2)

Omit "PDF Board", substitute "Venture Capital Registration Board".

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

Omit "PDF Board", substitute "Venture Capital Registration Board".

209 Subsection 118-425(14) (heading)

Repeal the heading, substitute:

Venture Capital Registration Board discretion

210 Subsection 118-425(14)

Omit "*PDF Board", substitute "*Venture Capital Registration Board".

211 Subsection 995-1(1) (definition of *form approved by the PDF Board*)

Repeal the definition.

212 Subsection 995-1(1)

Insert:

form approved by the Venture Capital Registration Board has the same meaning as in section 33-5 of the *Venture Capital Act 2002*.

213 Subsection 995-1(1) (definition of *PDF Board*)

Repeal the definition.

214 Subsection 995-1(1)

Insert:

Venture Capital Registration Board means the Venture Capital Registration Board continued in existence by section 5 of the *Pooled Development Funds Act 1992*.

Pooled Development Funds Act 1992

215 Subsection 4(1) (definition of *Board*)

Repeal the definition, substitute:

Board means the Venture Capital Registration Board continued in existence by section 5.

216 Part 2 (heading)

Repeal the heading, substitute:

Part 2—Establishment, functions and powers of the Venture Capital Registration Board

217 Section 5

Repeal the section, substitute:

5 Establishment

The PDF Registration Board that existed under this Act immediately before the commencement of this section continues in existence as the Venture Capital Registration Board.

Note: Section 25B of the *Acts Interpretation Act 1901* deals with the consequences of the change of name.

Venture Capital Act 2002

218 Subsection 1-15(2)

Omit "*PDF Board", substitute "*Venture Capital Registration Board".

219 Section 3-1 (note)

Omit "PDF Board" (wherever occurring), substitute "Venture Capital Registration Board".

220 Paragraph 3-5(c)

Omit “PDF Board”, substitute “Venture Capital Registration Board”.

221 Section 3-15 (heading)

Repeal the heading, substitute:

3-15 Determinations by the Venture Capital Registration Board concerning certain investments (Part 4)

222 Section 3-15

Omit “PDF Board”, substitute “Venture Capital Registration Board”.

223 Section 3-20

Omit “PDF Board’s”, substitute “Venture Capital Registration Board’s”.

224 Section 7-1

Omit “PDF Board” (wherever occurring), substitute “Venture Capital Registration Board”.

225 Paragraph 9-10(1)(b)

Omit “*PDF Board”, substitute “*Venture Capital Registration Board”.

226 Subsection 9-10(2)

Omit “*PDF Board”, substitute “*Venture Capital Registration Board”.

227 Subsection 9-10(2)

Omit “PDF Board” (wherever occurring), substitute “Venture Capital Registration Board”.

228 Subsection 9-10(3)

Omit “*PDF Board”, substitute “*Venture Capital Registration Board”.

229 Subsections 9-10(3) and 11-1(1)

Omit “PDF Board”, substitute “Venture Capital Registration Board”.

230 Subsection 11-1(1)

Omit “*PDF Board”, substitute “*Venture Capital Registration Board”.

231 Paragraph 11-1(2)(l)

Omit "*PDF Board", substitute "*Venture Capital Registration Board".

232 Subsection 11-5(1)

Omit "*PDF Board", substitute "*Venture Capital Registration Board".

233 Subsection 11-5(1)

Omit "PDF Board" (wherever occurring), substitute "Venture Capital Registration Board".

234 Section 11-10

Omit "*PDF Board", substitute "*Venture Capital Registration Board".

235 Subsections 11-15(1) and (2)

Omit "*PDF Board", substitute "*Venture Capital Registration Board".

236 Subsection 11-15(2)

Omit "PDF Board", substitute "Venture Capital Registration Board".

237 Subsections 11-15(3) and (4)

Omit "*PDF Board", substitute "*Venture Capital Registration Board".

238 Subsection 11-15(4)

Omit "PDF Board", substitute "Venture Capital Registration Board".

239 Subsection 13-1(1)

Omit "*PDF Board", substitute "*Venture Capital Registration Board".

240 Paragraph 13-1(1)(d)

Omit "PDF Board", substitute "Venture Capital Registration Board".

241 Subsection 13-1(1)

Omit "PDF Board" (last occurring), substitute "Venture Capital Registration Board".

242 Subsection 13-1(2)

Omit "*PDF Board", substitute "*Venture Capital Registration Board".

243 Paragraph 13-1(2)(d)

Omit “PDF Board”, substitute “Venture Capital Registration Board”.

244 Subsection 13-1(2)

Omit “PDF Board” (last occurring), substitute “Venture Capital Registration Board”.

245 Subsection 13-1(3)

Omit “*PDF Board”, substitute “*Venture Capital Registration Board”.

246 Subsection 13-1(3)

Omit “PDF Board”, substitute “Venture Capital Registration Board”.

247 Subsection 13-1(4)

Omit “*PDF Board”, substitute “*Venture Capital Registration Board”.

248 Subsection 13-1(4)

Omit “PDF Board”, substitute “Venture Capital Registration Board”.

249 Subsection 13-5(1)

Omit “*PDF Board”, substitute “*Venture Capital Registration Board”.

250 Subsection 13-5(1)

Omit “PDF Board”, substitute “Venture Capital Registration Board”.

251 Subsection 13-5(2)

Omit “*PDF Board”, substitute “*Venture Capital Registration Board”.

252 Subsection 13-5(2)

Omit “PDF Board”, substitute “Venture Capital Registration Board”.

253 Section 15-1

Omit “*PDF Board”, substitute “*Venture Capital Registration Board”.

254 Paragraph 15-1(h)

Omit “PDF Board”, substitute “Venture Capital Registration Board”.

255 Subsection 15-5(1)

Omit “*PDF Board”, substitute “*Venture Capital Registration Board”.

256 Subsection 15-5(1)

Omit “PDF Board” (wherever occurring), substitute “Venture Capital Registration Board”.

257 Sections 15-10, 15-15 and 15-20

Omit “*PDF Board”, substitute “*Venture Capital Registration Board”.

258 Section 15-20

Omit “PDF Board” (wherever occurring), substitute “Venture Capital Registration Board”.

259 Subsections 17-1(1) and (2)

Omit “*PDF Board”, substitute “*Venture Capital Registration Board”.

260 Paragraph 17-1(3)(a)

Omit “*PDF Board’s”, substitute “*Venture Capital Registration Board’s”.

261 Paragraphs 17-1(3)(b) and (c)

Omit “PDF Board”, substitute “Venture Capital Registration Board”.

262 Subsections 17-1(5) and 17-5(1)

Omit “*PDF Board”, substitute “*Venture Capital Registration Board”.

263 Paragraph 17-5(2)(a)

Omit “*PDF Board’s”, substitute “*Venture Capital Registration Board’s”.

264 Paragraph 17-5(2)(c)

Omit “PDF Board”, substitute “Venture Capital Registration Board”.

265 Subsection 17-5(3)

Omit “*PDF Board”, substitute “*Venture Capital Registration Board”.

266 Subsection 17-5(3)

Omit “PDF Board”, substitute “Venture Capital Registration Board”.

267 Subsections 17-5(4) and (6)

Omit "*PDF Board", substitute "*Venture Capital Registration Board".

268 Section 17-10 (heading)

Repeal the heading, substitute:

17-10 Revocation at discretion of Venture Capital Registration Board

269 Subsection 17-10(1)

Omit "*PDF Board", substitute "*Venture Capital Registration Board".

270 Subsection 17-10(1)

Omit "PDF Board", substitute "Venture Capital Registration Board".

271 Subsection 17-10(2)

Omit "*PDF Board", substitute "*Venture Capital Registration Board".

272 Subsection 17-10(2)

Omit "PDF Board", substitute "Venture Capital Registration Board".

273 Paragraph 17-10(2)(a)

Omit "PDF Board", substitute "Venture Capital Registration Board".

274 Paragraph 17-10(2)(a)

Omit "PDF Board's", substitute "Venture Capital Registration Board's".

275 Section 17-15

Omit "*PDF Board", substitute "*Venture Capital Registration Board".

276 Section 17-15

Omit "PDF Board's", substitute "Venture Capital Registration Board's".

277 Section 17-20

Omit "*PDF Board", substitute "*Venture Capital Registration Board".

278 Subsections 17-25(1) and (2)

Omit "*PDF Board", substitute "*Venture Capital Registration Board".

279 Section 21-1

Omit "PDF Board", substitute "Venture Capital Registration Board".

280 Subsection 21-5(1)

Omit "*PDF Board", substitute "*Venture Capital Registration Board".

281 Subsection 21-5(1)

Omit "PDF Board", substitute "Venture Capital Registration Board".

282 Subsections 21-5(2) and (4)

Omit "*PDF Board", substitute "*Venture Capital Registration Board".

283 Subsection 21-5(4)

Omit "PDF Board", substitute "Venture Capital Registration Board".

284 Subsection 21-5(5)

Omit "*PDF Board", substitute "*Venture Capital Registration Board".

285 Subsection 21-5(5)

Omit "PDF Board", substitute "Venture Capital Registration Board".

286 Subsection 21-5(6)

Omit "*PDF Board", substitute "*Venture Capital Registration Board".

287 Subsection 21-5(6)

Omit "PDF Board", substitute "Venture Capital Registration Board".

288 Subsections 21-10(1) and (2)

Omit "*PDF Board", substitute "*Venture Capital Registration Board".

289 Subsection 21-10(2)

Omit "PDF Board", substitute "Venture Capital Registration Board".

290 Subsections 21-10(3) and (4)

Omit "*PDF Board", substitute "*Venture Capital Registration Board".

291 Subsection 21-10(4)

Omit “PDF Board”, substitute “Venture Capital Registration Board”.

292 Subsection 21-20(1)

Omit “*PDF Board”, substitute “*Venture Capital Registration Board”.

293 Section 21-25 (heading)

Repeal the heading, substitute:

21-25 Revocation at discretion of Venture Capital Registration Board

294 Subsection 21-25(1)

Omit “*PDF Board”, substitute “*Venture Capital Registration Board”.

295 Subsection 21-25(1)

Omit “PDF Board”, substitute “Venture Capital Registration Board”.

296 Subsection 21-25(2)

Omit “*PDF Board”, substitute “*Venture Capital Registration Board”.

297 Subsection 21-25(2)

Omit “PDF Board’s”, substitute “Venture Capital Registration Board’s”.

298 Subsection 21-25(3)

Omit “*PDF Board”, substitute “*Venture Capital Registration Board”.

299 Subsection 21-25(3)

Omit “PDF Board”, substitute “Venture Capital Registration Board”.

300 Paragraph 21-25(3)(a)

Omit “PDF Board”, substitute “Venture Capital Registration Board”.

301 Paragraph 21-25(3)(a)

Omit “PDF Board’s”, substitute “Venture Capital Registration Board’s”.

302 Subsections 21-30(1) and (2)

Omit "*PDF Board", substitute "*Venture Capital Registration Board".

303 Part 4 (heading)

Repeal the heading, substitute:

Part 4—Determinations by the Venture Capital Registration Board concerning certain investments

304 Division 25 (heading)

Repeal the heading, substitute:

Division 25—Determinations by the Venture Capital Registration Board concerning certain investments

305 Section 25-1

Omit "PDF Board", substitute "Venture Capital Registration Board".

306 Section 25-5 (heading)

Repeal the heading, substitute:

25-5 Venture Capital Registration Board may determine a shorter period

307 Subsection 25-5(1)

Omit "*PDF Board", substitute "*Venture Capital Registration Board".

308 Subsection 25-5(2)

Omit "PDF Board", substitute "*Venture Capital Registration Board".

309 Subsections 25-5(3), (4) and (5)

Omit "*PDF Board", substitute "*Venture Capital Registration Board".

310 Subsection 25-5(5)

Omit "PDF Board", substitute "Venture Capital Registration Board".

311 Subsection 25-5(6)

Omit "*PDF Board", substitute "*Venture Capital Registration Board".

312 Subsection 25-5(6)

Omit "PDF Board", substitute "Venture Capital Registration Board".

313 Section 25-10 (heading)

Repeal the heading, substitute:

25-10 Venture Capital Registration Board may determine that a requirement does not apply

314 Subsection 25-10(1)

Omit "*PDF Board", substitute "*Venture Capital Registration Board".

315 Subsection 25-10(2)

Omit "PDF Board", substitute "*Venture Capital Registration Board".

316 Subsections 25-10(3), (4) and (5)

Omit "*PDF Board", substitute "*Venture Capital Registration Board".

317 Subsection 25-10(5)

Omit "PDF Board", substitute "Venture Capital Registration Board".

318 Subsection 25-10(6)

Omit "*PDF Board", substitute "*Venture Capital Registration Board".

319 Subsection 25-10(6)

Omit "PDF Board", substitute "Venture Capital Registration Board".

320 Section 25-15 (heading)

Repeal the heading, substitute:

25-15 Venture Capital Registration Board may determine that a requirement does not apply

321 Subsection 25-15(1)

Omit "*PDF Board", substitute "*Venture Capital Registration Board".

322 Subsection 25-15(2)

Omit “PDF Board”, substitute “Venture Capital Registration Board”.

323 Subsections 25-15(3), (4) and (5)

Omit “*PDF Board”, substitute “*Venture Capital Registration Board”.

324 Subsection 25-15(5)

Omit “PDF Board”, substitute “Venture Capital Registration Board”.

325 Subsection 25-15(6)

Omit “*PDF Board”, substitute “*Venture Capital Registration Board”.

326 Subsection 25-15(6)

Omit “PDF Board”, substitute “Venture Capital Registration Board”.

327 Section 29-1

Omit “*PDF Board”, substitute “*Venture Capital Registration Board”.

328 Subsection 29-5(1)

Omit “*PDF Board”, substitute “*Venture Capital Registration Board”.

329 Subsection 29-5(2)

Omit “PDF Board”, substitute “*Venture Capital Registration Board”.

330 Subsection 29-10(1)

Omit “*PDF Board”, substitute “*Venture Capital Registration Board”.

331 Subsection 29-10(1)

Omit “PDF Board”, substitute “Venture Capital Registration Board”.

332 Subsection 29-10(2)

Omit “*PDF Board”, substitute “*Venture Capital Registration Board”.

333 Subsection 29-10(2)

Omit “PDF Board”, substitute “Venture Capital Registration Board”.

334 Subsection 29-10(4)

Omit “*PDF Board”, substitute “*Venture Capital Registration Board”.

335 Subsection 29-10(4)

Omit "PDF Board", substitute "Venture Capital Registration Board".

336 Subsection 29-10(5)

Omit "*PDF Board", substitute "*Venture Capital Registration Board".

337 Subsection 29-10(5)

Omit "PDF Board" (wherever occurring), substitute "Venture Capital Registration Board".

338 Subsection 29-10(6)

Omit "*PDF Board", substitute "*Venture Capital Registration Board".

339 Subsection 29-10(6)

Omit "PDF Board", substitute "Venture Capital Registration Board".

340 Paragraph 29-10(6)(b)

Omit "PDF Board's", substitute "Venture Capital Registration Board's".

341 Subsection 29-10(8)

Omit "*PDF Board", substitute "*Venture Capital Registration Board".

342 Paragraph 29-10(8)(a)

Omit "PDF Board", substitute "Venture Capital Registration Board".

343 Subsections 29-15(1) and 33-1(1), (2) and (3)

Omit "*PDF Board", substitute "*Venture Capital Registration Board".

344 Section 33-5 (heading)

Repeal the heading, substitute:

33-5 Meaning of *form approved by the Venture Capital Registration Board*

345 Section 33-5

Omit "***PDF Board***", substitute "***Venture Capital Registration Board***".

346 Paragraph 33-5(a)

Omit "*PDF Board", substitute "*Venture Capital Registration Board".

347 Paragraphs 33-5(c) and (d)

Omit "PDF Board", substitute "Venture Capital Registration Board".

Part 4—Pooled development funds

Pooled Development Funds Act 1992

348 Subsection 4(1) (at the end of the definition of *registration application*)

Add "that was made before the day on which Part 4 of Schedule 8 to the *Tax Laws Amendment (2007 Measures No. 2) Act 2007* commenced".

349 After subsection 11(4)

Insert:

(4A) An application must not be made on or after the day on which Part 4 of Schedule 8 to the *Tax Laws Amendment (2007 Measures No. 2) Act 2007* commenced.

Part 5—Conditional registration

Income Tax Assessment Act 1997

350 Section 118-400 (note)

Omit "For this purpose, registration does not need to be unconditional.".

351 Subsection 995-1(1) (definition of *unconditionally registered*)

Omit all the words from and including "if", substitute:

if:

(a) its registration under the *Venture Capital Act 2002* is not based, or is no longer based, on its conditional registration under section 13-5 of that Act; or

(b) it is taken to be unconditionally registered under subsection 13-10(2) of that Act.

Venture Capital Act 2002

352 Section 7-1 (note)

Repeal the note, substitute:

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

353 Subsection 13-10(2)

Repeal the subsection, substitute:

(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

(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.

[*Minister's second reading speech made in—*
House of Representatives on 29 March 2007
Senate on 9 May 2007]

(55/07)