

NEW TAX INCENTIVES FOR EARLY STAGE INVESTMENT

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INTRODUCTION

On 7 December 2015, the Federal Government released an Innovation Statement which included important tax concessions aimed at making early stage investment more attractive. The concessions are expected to commence from 1 July 2016.

The measures significantly expand existing concessions for early stage venture capital investment, as well as adding new measures which provide for accelerated depreciation and increased availability of tax losses.

Depending on the final form of the legislation, the incentives may be of particular interest to juniors and start-ups in the mining and minerals sector looking to attract early stage equity investment.

OUTLINE OF KEY TAX INCENTIVES

20% Tax Offset

A 20% non refundable tax offset will be available on investments of up to AUD200,000 per investor per year.

The investment must be in an unlisted Australian company undertaking eligible business (to be defined) which was incorporated less than three years prior to the investment being made, and which had expenditure and income of less than the threshold amount (AUD1 million of expenditure and AUD200,000 of income) in the previous income year.

The investment can be direct, or indirect (via a fund).

Because the offset is given to the investor, the attractiveness of the offset will not depend on whether the investee company is profitable.

CGT Exemption

In addition, a 10 year exemption will apply to capital gains tax (CGT) for such investments which have been held for at least three years.

After 10 years, any subsequent gain will be subject to CGT, but a market value cost base will be inherited at that time.

New Arrangements for ESVCLPs

A number of measures have been announced which will make investment in early stage venture capital limited partnerships (ESVCLPs) more attractive.

Under one such measure, ESVCLPs will no longer be required to divest themselves of investments in companies when the value of the company exceeds AUD250 million. Other measures provide a 10% tax offset on capital invested during the year, and increase the maximum permitted fund size from AUD100 million to AUD200 million.

Increasing Access to Company Losses

Companies seeking to utilise prior year tax losses are required to satisfy a continuity of ownership test, or failing that, a continuity of business test – broadly, the same business must continue to be carried on. The continuity of business test is to be relaxed, so that prior year tax losses can be recouped provided a predominantly similar business is carried on.

The new test may allow companies to invest in new lines of business which would not otherwise have been contemplated because of the risk of jeopardizing tax losses. Provided the new income generated is from similar sources and uses similar assets, it will be able to be sheltered by prior year losses.

Depreciation of Intangibles

From 1 July 2016, businesses will have the option to self assess the tax effective life of acquired intangible assets. By allowing a tax write off over a shorter effective life, investment in intangibles such as patented technology will become more attractive on an after-tax basis

NON-TAX MEASURES

The Innovation Statement also included non-tax measures, such as the establishment of government funds to undertake co-investment, changes to insolvency law, and changes to disclosure around employee share plans

NEXT STEPS

If you would like further information on the implications of this new regime, please contact either of the authors.

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