

EXPOSURE DRAFT

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Inserts for
**Treasury Laws Amendment (Measures
for a later sitting) Bill 2017: Fintech and
venture capital amendments**

Commencement information

Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
1. Schedule #	The first 1 January, 1 April, 1 July or 1 October to occur after the day this Act receives the Royal Assent.	

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Schedule #—Fintech and venture capital

Part 1—Venture capital investments

Income Tax Assessment Act 1997

1 Subsection 118-408(2) (at the end of the definition of valuation year capital gain)

Add:

Work out the capital gain based on what the *capital proceeds would have been, and on other matters relating to the amount of the gain being determined on a reasonable basis, if the CGT event resulting in the gain had happened at the end of that period.

2 At the end of subsection 118-425(3)

Add:

Note 4: Certain ineligible activities mentioned in subsection (13) are not ineligible activities in relation to a company that is a company to which section 118-426 applies.

3 After subsection 118-425(13)

Insert:

(13A) However, the activities mentioned in paragraph (13)(b) or (c) are not ineligible activities at a particular time in relation to a company that is a company to which section 118-426 applies at that time.

4 After section 118-425

Insert:

118-426 Early stage companies

(1) This section applies to the company, in which the investment referred to in subsection 118-425(1) is made, at a particular time (the *test time*) in an income year (the *current year*) if:

(a) the company was:

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

(ii) incorporated in Australia within the last 6 income years (the latest being the current year), and across the last 3

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- 1 of those income years before the current year the
2 company and its *100% subsidiaries (if any) incurred
3 total expenses of \$1 million or less; or
4 (iii) registered in the *Australian Business Register within
5 the last 3 income years (the latest being the current
6 year); and
7 (b) the company and its 100% subsidiaries (if any) incurred total
8 expenses of \$1 million or less in the income year before the
9 current year; and
10 (c) the company and its 100% subsidiaries (if any) had a total
11 assessable income of \$200,000 or less in the income year
12 before the current year; and
13 (d) at the test time, none of the company's *equity interests are
14 listed for quotation in the official list of any stock exchange
15 in Australia or a foreign country; and
16 (e) at the test time, the company is not *connected with, or an
17 *affiliate of, an entity that does not satisfy at least 2 of the
18 requirements mentioned in subsection 118-425(3) (applying
19 that subsection to the entity as if it were a company); and
20 (f) at the test time, the company is not a foreign company
21 (within the meaning of the *Corporations Act 2001*).
- 22 (2) For the purposes of paragraph (1)(c), disregard any Accelerating
23 Commercialisation Grant under the program administered by the
24 Commonwealth known as the Entrepreneurs' Programme.
- 25 (3) This section does not apply to the company if, before the test time,
26 the company engaged in an activity of a kind prescribed by
27 regulations made for the purposes of this subsection.

28 **5 Subparagraph 118-428(1)(c)(ii)**

29 After "other", insert "pre-owned".

30 **6 Application of amendments**

- 31 (1) The amendment made by item 1 of this Part applies in relation to CGT
32 events happening on or after 1 July 2018.
- 33 (2) The amendments made by items 2 to 5 of this Part apply in relation to
34 investments made on or after 1 July 2018.

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1 **Part 2—Early stage investor tax offsets**

2 *Income Tax Assessment Act 1997*

3 **7 Subsection 61-770(3)**

4 Repeal the subsection, substitute:

- 5 (3) If, under the terms and conditions under which the trust or
6 partnership operates, the *member would be entitled to a fixed
7 proportion of any *capital gain from a *disposal:
8 (a) relating to the trust or partnership; and
9 (b) of investments made as a result of the contributions that gave
10 rise to the notional tax offset; and
11 (c) happening at the end of the income year to which the notional
12 tax offset relates;
13 the percentage determined under subsection (2) must be equivalent
14 to that fixed proportion, and a determination of any other
15 percentage has no effect.

16 **8 After subparagraph 360-15(1)(a)(i)**

17 Insert:

- 18 (ia) an *ESVCLP;

19 **9 Paragraph 360-15(1)(f)**

20 Repeal the paragraph, substitute:

- 21 (f) immediately after the issue of those shares, you do not hold
22 equity interests in the company, or in an entity *connected
23 with the company, that carry the right to:
24 (i) receive more than 30% of any distribution of income by
25 the company or the entity; or
26 (ii) receive more than 30% of any distribution of capital by
27 the company or the entity; or
28 (iii) exercise, or control the exercise of, more than 30% of
29 the total voting power in the company or the entity.

30 **10 Subsection 360-15(2)**

31 Repeal the subsection, substitute:

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1 (2) A *member of a trust or partnership (other than a partnership that is
2 an *ESVCLP) at the end of an income year is entitled to a *tax
3 offset for the income year if:

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

7 (b) the member is not a *widely held company or a *100%
8 subsidiary of a widely held company.

9 **11 Subsection 360-25(1)**

10 Repeal the subsection, substitute:

11 (1) If subsection 360-15(1) applies, the amount of your *tax offset is
12 20% of the sum of the following:

13 (a) an amount equal to any money received, or entitled to be
14 received, by the company referred to in
15 paragraph 360-15(1)(b) for the issue to you of the *shares as
16 described in that paragraph;

17 (b) an amount equal to the *market value of any *non-cash
18 benefit received, or entitled to be received, by the company
19 referred to in paragraph 360-15(1)(b) for the issue to you of
20 the shares as described in that paragraph, as at the time the
21 shares were issued to you.

22 **12 After subsection 360-30(1)**

23 Insert:

24 (1A) However, reduce the amount worked out under subsection (1) to
25 the extent necessary to ensure that the sum of the following does
26 not exceed \$200,000:

27 (a) the sum of the *tax offsets under this Subdivision for the
28 income year for which the member and the member's
29 *affiliates (if any) are entitled;

30 (b) the sum of the tax offsets under this Subdivision that the
31 member and the member's affiliates (if any) carry forward to
32 the income year.

33 **13 Subsection 360-30(3)**

34 Repeal the subsection, substitute:

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1 (3) If, under the terms and conditions under which the trust or
2 partnership operates, the *member would be entitled to a fixed
3 proportion of any *capital gain from a *disposal:
4 (a) relating to the trust or partnership; and
5 (b) of the *shares that gave rise to the notional tax offset; and
6 (c) happening at the end of the income year to which the notional
7 tax offset relates;
8 the percentage determined under subsection (2) must be equivalent
9 to that fixed proportion, and a determination of any other
10 percentage has no effect.

11 **14 Subparagraph 360-40(1)(a)(ii)**

12 After “those income years”, insert “before the current year”.

13 **15 At the end of subsection 360-40(1)**

14 Add:

15 ; and (f) at the test time, the company is not a foreign company
16 (within the meaning of the *Corporations Act 2001*).

17 Note: For the purposes of paragraph (e), one way a company can
18 demonstrate something is by engaging the services of another entity.

19 **16 Application of amendments**

20 The amendments made by this Part apply to the 2018-19 income year
21 and later income years.

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1 **Part 3—Managed investment trusts**

2 *Income Tax Assessment Act 1997*

3 **17 Subsection 275-10(4A)**

4 Omit “a *VCLP or an *ESVCLP”, substitute “a *VCLP, an *ESVCLP or
5 an *AFOF”.

6 **18 Paragraph 275-10(4A)(a)**

7 Omit “VCLP or ESVCLP”, substitute “VCLP, ESVCLP or AFOF”.

8 **19 Application of amendments**

9 The amendments made by this Part apply in relation to income years
10 commencing on or after 1 July 2018.

EXPOSURE DRAFT

1 **Part 4—Public trading trusts**

2 *Income Tax Assessment Act 1936*

3 **20 At the end of section 102R**

4 Add:

5 (5) In determining whether a unit trust is a public trading trust under
6 this section, disregard any interest that the trust has that is
7 disregarded under subsection 275-10(4A) of the *Income Tax*
8 *Assessment Act 1997*.

9 **21 Application of amendment**

10 The amendment made by this Part applies in relation to years of income
11 commencing on or after 1 July 2016.