



Australian Government
The Treasury



Australian Government



iisa
Industry Innovation
and Science Australia

Venture Capital Tax Concessions Review

Consultation Paper

July 2021

Context

The venture capital sector is a growing and strong part of the Australian economy. During 2020 the domestic venture capital market held firm as a hub for innovation investments, with Australia-focused venture capital fund managers securing a record \$1.3bn in new commitments.¹

The Australian Government supports the development of the domestic venture capital sector through a range of programs. As part of the 2016 National Innovation and Science Agenda, the Government implemented reforms to some of these programs. One of these reforms enhanced the concessional treatment of the Early Stage Venture Capital Limited Partnership (ESVCLP) program to target this concession towards ventures at the early stages of the lifecycle of a developing startup. Five years on, now is the appropriate time to evaluate the impact of these tax concessions.

The Government announced a review of the venture capital tax concession programs (the Review) as part of the Government's Digital Economy Strategy in the 2021–22 budget.^{2,3} This Review will also meet the legislative requirement for an impact assessment to be conducted of the venture capital tax concession programs. The Review will be undertaken by Treasury and Industry Innovation and Science Australia (IISA).

The Government released the [Terms of Reference](#) (ToR) for the Review on 7 July 2021. The ToR includes a consultation phase as a means for stakeholders to offer views and provide evidence on the operation of in-scope concessions. The Review will consider the consultation findings alongside qualitative and quantitative data. All findings will be summarised in a report to be delivered to the Treasurer towards the end of 2021, and will be subsequently tabled in Parliament.

The programs in scope are the Venture Capital Limited Partnership (VCLP), Early Stage Venture Capital Limited Partnership (ESVCLP), and Australian Venture Capital Fund of Funds (AFOF). Investments made directly by foreign residents registered under Part 3 of the *Venture Capital Act 2002* are also within scope.

The intent of this consultation process is to gain input and insights from stakeholders on how these programs operate in practice. This will help to inform the Review as to whether the tax concessions are fit-for-purpose and support genuine early-stage Australian startups.

Treasury and IISA call for written submissions to this Review to be received by **11.59 pm AEST 3 September 2021**.

To guide submissions to the Review, a series of questions are provided on page 5. Further information on the submissions process is available on page 6.

¹ Australian Investment Council, '[Australian Private Capital Market Overview: A Preqin and Australian Investment Council Yearbook 2021](#)'.

² Prime Minister of Australia, '[A modern digital economy to secure Australia's future](#)', press release 6 May 2021.

³ Commonwealth of Australia, '[Digital Economy Strategy: Tax incentives](#)', 2021.

Background

Venture capital plays an important role in financing the launch, early development and expansion of innovative, high-growth-potential companies.⁴ The Australian Government has established a number of venture capital tax concession programs to develop venture capital management skills and experience in Australia. This is intended to help attract domestic and foreign venture capital investment and to help Australian startups gain access to capital.⁵

The VCLP and AFOF programs were introduced in 2002^{6,7} to facilitate investment, and particularly non-resident investment, in the Australian venture capital sector by supporting patient equity capital investments in relatively high-risk startup and expanding businesses. The ESVCLP program commenced in 2007, providing tax concessions for investing in early stage venture capital activities.⁸ Refer to **Box 1** for a high-level operational overview of the VCLP, ESVCLP and AFOF programs, and see later to understand the objectives of each of the programs.

Box 1: Summary of programs

The VCLP program was introduced in 2002 to facilitate non-resident investment in the Australian venture capital sector. The VCLP program provides incentives to support patient equity capital investments in relatively high-risk startup and expanding businesses. The VCLP program provides flow-through tax treatment for both resident and non-resident investors – meaning the limited partnership is not a taxing point but rather any taxation obligations ‘flow-through’ to the individual partners. Eligible foreign investors are exempt from income tax on profits, whereas Australian resident limited partner investors are taxed on a flow-through basis.

The ESVCLP program was introduced in 2007 to provide tax concessions for early-stage venture capital investment activities. The ESVCLP program provides flow-through tax treatment and tax exemptions for eligible investors (to both non-resident and resident investors) on their share of profits from eligible investments. Investors are also entitled to a non-refundable carry-forward tax offset of up to 10% on contributions made at any time in an ESVCLP that becomes unconditionally registered on and after 7 December 2015.

The AFOF program structure enables investors to invest in a portfolio of VCLPs and ESVCLPs. AFOFs can also make direct venture capital investments where an ESVCLP or VCLP is a partner. The AFOF structure provides further diversification opportunities for the fund and the investors; enables flexibility for the investors and the fund; and assists larger-sized venture capital funds to manage risk. Investors receive flow-through tax treatment in the AFOF program.

VCLPs, ESVCLPs and AFOFs must be registered under the *Venture Capital Act 2002* by the IISA Innovation Investment Committee (IIC). AusIndustry in the Department of Industry, Science, Energy and Resources (DISER) supports the IIC to register applicants. The ATO is responsible for determining investor compliance through individuals’ tax returns.

See the DISER venture capital [web page](#) or [business.gov.au](#) content to learn more about the operation of the venture capital tax concession programs and eligibility.

⁴ The Australian Bureau of Statistics defines venture capital as ‘high risk private equity capital for typically new, innovative or fast growing unlisted companies’. Venture capital covers seed, early stage and expansion stage investment, usually based on intellectual property, with prospects for rapid growth, and with a higher risk/higher return profile than later stage private equity investment. However, the lines between venture capital and other forms of private equity can be blurred, making accurate measurement of venture capital investment difficult. Australian Bureau of Statistics cat. no. 5678.0. ‘[Venture Capital and Later Stage Private Equity, Australia](#)’.

⁵ The Parliament of the Commonwealth of Australia (2016), [Tax Laws Amendment \(Tax Incentives for Innovation\) Bill 2016 – Explanatory Memorandum](#)

⁶ [Venture Capital Act 2002](#)

⁷ [Taxation Laws Amendment \(Venture Capital\) Act 2002](#)

⁸ [Tax Laws Amendment \(2007 Measures No. 2\) Act 2007](#)

Program objectives

The objectives of the VCLP, ESVCLP and AFOF programs, as articulated through explanatory memoranda, are outlined below and will be used to frame the Review. All three programs have two common objectives. These objectives are to:

- 1) increase levels of venture capital investment in Australia, and
- 2) enhance the development of skills and experience of venture capital fund managers.^{9,10}

However, the focus of each program differs. The primary focus of the VCLP program is to attract *foreign* investment to the Australian venture capital sector, while the ESVCLP program is focused on encouraging *early-stage* investments in startups and expanding enterprises with a view to commercialisation of the activity. The objective of the AFOF structure is to provide diversification and flexibility for the fund and its investors.

Additional broader program objectives have also been outlined in explanatory memoranda, including:

- a. Fostering a shift towards a culture of innovation and entrepreneurial risk-taking;
- b. Providing Australia with a world's best practice investment vehicle for venture capital;
- c. Making finance more readily available and cheaper for high risk expanding businesses; and
- d. Improving funding for promising projects across the economy and in industries beyond the technology sector.¹¹

⁹ [Tax Laws Amendment \(2007 Measures No. 2\) Bill 2007 Explanatory Memorandum](#)

¹⁰ [Tax Laws Amendment \(Tax Incentives for Innovation\) Bill 2016 Explanatory Memorandum](#)

¹¹ [Tax Laws Amendment \(2007 Measures No. 2\) Bill 2007 Explanatory Memorandum, Tax Laws Amendment \(Tax Incentives for Innovation\) Bill 2016 Explanatory Memorandum](#)

Consultation questions

Comment is invited on the following questions:

1. Have the VCLP, ESVCLP and AFOF programs met their objective to generate additional venture capital investment, including foreign venture capital investment in Australia?
 - a) If so, how and to what extent have these programs met the objective outlined above? Is there any readily available data, evidence or examples to support how these programs have incentivised additional investment?
 - b) If the objective has not been met, what are the key challenges or barriers that impact on the programs' ability to meet the above stated objective?
2. Have the VCLP, ESVCLP and AFOF programs met their objective to develop venture capital management skills and experience in the Australian venture capital sector?
 - a) If so, how and to what extent have these programs met the objective outlined above? Is there any readily available data, evidence or examples to support your views?
 - b) If the objective has not been met, what are the key challenges or barriers that impact on the programs' ability to meet the above stated objective?
3. Has the ESVCLP program provided additional venture capital for early stage startup and expanding businesses?
 - a) If so what has been the impact?
 - b) If not, what have been the barriers and challenges of the ESVCLP program that limit targeting investment in early stage businesses?
4. Has the VCLP program incentivised foreign investors into Australia's venture capital sector?
5. To what extent has the operation of the venture capital tax concessions impacted on investments made directly by foreign residents registered under Part 3 of the *Venture Capital Act 2002*?
6. To what extent do the programs achieve the broader program objectives as outlined in explanatory memoranda, to:
 - foster a shift towards a culture of innovation and entrepreneurial risk-taking?
 - provide Australia with a world's best practice investment vehicle for venture capital?
 - make finance more readily available and cheaper for high risk expanding businesses?
 - improve funding for promising projects across the economy and in industries beyond the technology sector?
7. Have there been any spillover benefits, costs or unintended consequences associated with the programs?
8. Are there any other matters within the scope of the ToR that should be considered in this Review?

Please provide evidence to support the views expressed, including data and specific examples where possible.

How to make a submission

Consistent with the requirement established under the *Income Tax Assessment Act 1997*, this consultation process provides an opportunity for all stakeholders to provide the Review with their input and insights regarding the venture capital tax concession programs.

Treasury and IISA call for written submissions to the Review by **11.59 pm AEST 3 September 2021**.

Written submissions may be lodged electronically or by post, however electronic lodgement is preferred.

Electronic submissions

Respondents have the choice to either answer questions via an online form, or to upload their submission as a Word document on the consultation [website](#). An *additional* PDF version of your submission may also be provided. If any other file formats are required to complete your submission please contact the Review via email.

If assistance is required to access or use the consultation website, or to provide any other feedback to the Review please contact consultation@iisa.gov.au.

Postal submissions

Please send postal submissions to:

Attn: Office of Industry Innovation and Science Australia
Venture Capital Tax Concessions Review
Department of Industry, Science, Energy and Resources
GPO Box 2013, Canberra, ACT, 2601

Writing a submission

The best submissions:

- begin with a short introduction about yourself or the organisation you represent,
- are relevant and highlight your own perspectives,
- emphasise the key points and respond directly to the consultation questions so that they are clear,
- are concise, generally no longer than four to five pages,
- use examples and readily available data to support your perspectives, and
- only include documents that directly relate to your key points.

What happens to my submission?

Your submission will be read by persons at the Treasury, IISA and the Office of Industry Innovation and Science Australia. Staff at the Department of Industry, Science Energy and Resources, and other relevant individuals working on the Review to which you are contributing may also read your submission.

Treasury and IISA are committed to transparency in processes and seek to provide open access to information. For this reason, Treasury and IISA aim to publish submissions on their consultation [website](#) where it is appropriate to do so. Treasury and IISA reserve the right to edit submissions to remove defamatory material or, where appropriate, de-identify personal or sensitive information.

Treasury or IISA's publication of a submission is not an indication of their endorsement of any views or comments contained in that submission.

Treasury and IISA may take several weeks to consider, process, and publish your submission on the consultation website. If accepted, most submissions will be published with the name of the respondent. If your submission is published, the information in it, including your name, can be searched on the internet.

You cannot withdraw or alter your submission once published.

Confidentiality

Please note that for submissions made via the online form, only the name provided and answers to the consultation questions will be published. All other information will be kept confidential and used for analytical purposes only. You can also indicate that you would like your entire submission to remain in confidence.

If you choose to make your submission by uploading a document to the consultation website all information (including name and address details) contained in the submission will be made available to the public on the consultation website. However, you can indicate that you would like all or part of your submission to remain in confidence. Automatically generated confidentiality statements in emails do not suffice for this purpose.

If you want your uploaded submission to be kept confidential (and your name and contact details not to be published on the internet), you should:

- include the word 'confidential' clearly on the front of your submission and provide a reason for your request, and
- make sure that your name and contact details are on a separate page and not in the main part of your submission.

Confidential information may be placed in an attachment to the main part of your submission, with a request for Treasury and IISA to keep the attachment confidential.

Confidential submissions are only read by members of the Review team, and are not made available on the consultation website. De-identified summaries of these submissions will not be made public without the permission of the contributor. However, the substance of any submission may be communicated to the Minister. In most circumstances Treasury and IISA have an obligation to provide the Minister with information about who provided the submission if it is requested.

Please also note that any submission provided to the Review may be the subject of a request under the federal *Freedom of Information Act 1982*. (FOI Act). Any request for access to, or a copy of, a confidential submission is determined in accordance with the FOI Act, which provides that certain documents are exempt from release. One of the categories of exempt documents is those containing material obtained in confidence.

Copyright

Ownership of all submissions received by Treasury and IISA remains vested with the respective author(s) of the submission. However, in making a submission you grant a permanent, irrevocable, royalty-free licence to allow Treasury and IISA to use, reproduce, publish, adapt, perform or communicate to the public your submission, subject to any confidentiality obligations outlined above. This may include converting your submission into a different format to that submitted for the purposes of meeting relevant accessibility requirements. Derivatives of submission content may be included in other products related to the Review.

To the extent that your submission contains material that is owned by a third party, you warrant that you have obtained all necessary licences and consents required for the use of those materials (including for Treasury and IISA to use, reproduce, publish, perform or communicate to the public subject to any confidentiality obligations above), and have made arrangements for the payment of any royalties or other fees payable in respect of the use of such material.

Privacy

In the course of conducting the consultation process for this Review, personal information will be collected by Treasury and the Office of Industry Innovation and Science Australia (the latter on behalf of IISA).

The personal information collected will include the name and contact details of the author or contact person for a submission, the name of the organisation that person works for or represents (if applicable), and the comments or opinions that person provides in response to the consultation.

The personal information will be collected to enable contact to be made with the author/contact person to clarify any matter relating to a submission if necessary, and to assist with the analysis of submissions for the purposes of the Review.

The name and contact details of the author or contact person for submissions provided as a document upload, will be made public unless that information is requested to be kept confidential. In that case any personal information collected may only be disclosed to persons working on the Review in Treasury, IISA, the Office of Industry Innovation and Science Australia, the Department of Industry, Science, Energy and Resources, and, to the relevant Ministers and their staff if requested. Personal information may also be disclosed to [Converlens](#) who are providing the technology which enables the consultation process.

Treasury and IISA (or the Office of Industry Innovation and Science Australia on behalf of IISA) will not disclose personal information that has been requested to be kept confidential to any person or organisation apart from those mentioned above, unless authorised or required by law. For further information about the way Treasury and IISA handle personal information, see the Treasury [Privacy Policy](#), and the Department of Industry, Science, Energy and Resources [Privacy Policy](#) which IISA adheres to. Converlens adhere to the Australian Privacy Principles contained in the *Privacy Act 1988*, refer to their [Privacy Policy](#) for further information.