



29 February 2016

General Manager
Law Design Practice
The Treasury
Langton Crescent
PARKES ACT 2600

Via Email: startuptaxincentive@treasury.gov.au

Attention: Jodie Wearne/Phil Akroyd

Dear Treasury,

Tax Incentives for Early Stage Investors

The Australian Financial Markets Association (AFMA) represents the interests of over 130 participants in Australia's wholesale banking and financial markets. Our members include Australian and foreign-owned banks, securities companies, treasury corporations, traders across a wide range of markets and industry service providers. Our members are the major providers of services to Australian businesses and retail investors who use the financial markets. In particular, our membership comprises institutions that may include entities that provide services to Australian consumers from outside Australia.

We have reviewed Treasury's consultation paper titled "Tax incentives for early stage investors" (**the Consultation Paper**) and have included some comments below. Given the significantly truncated consultation period and the likelihood of further consultation through the release of the Exposure Draft, our comments are restricted to matters particularly germane to AFMA members.

Definition of "Australian Innovation Company"

We note the various options canvassed in the Consultation Paper regarding the ways in which an "Australian Innovation Company" may be defined. Our primary concern is suggestion of exclusions for certain investment activities. It is not abundantly clear as to the basis for such exclusions, particularly given that innovation would not appear to be industry-specific. Moreover, the excerpt from the "excluded activities" applied in the UK's

Seed Enterprise Investment Scheme, as a potential model that could be adopted in Australia, is particularly concerning given the references to:

- Dealing in...commodities or futures in shares, securities or other financial instruments; and
- Banking, insurance, money-lending, debt factoring, hire purchase financing or other financial activities.

These exclusions are at odds with the Government's current innovation agenda and, as noted in the Consultation Paper, financial technology innovation. The various aspects of the spectrum of the fintech landscape, as detailed by Australia's leading fintech hub, Stone & Chalk, are noted as being:

- Payments;
- Peer to peer lending
- Crowd funding
- Automated advice;
- Capital markets; and
- Crypto-currencies.

Our view is that all of these would be within the exclusions set out in the Consultation Paper. Applying the exclusions as set out in the Consultation Paper would effectively preclude fintech from being eligible for the tax incentives. Accordingly, it is difficult to reconcile the proposed exclusion model with the policy intention to promote Australia's financial technology capability.

To the extent that the term "Australian Innovation Company" is defined appropriately, both in terms of the financial criteria that need to be adhered to and also the definition of "innovation," the term can be couched in sufficiently tight terms that the tax incentive is not able to be exploited through being directed towards existing technology. Hence, we would strongly caution against industry-specific exclusions, such as those set out in the UK model.

Indirect Investment via an Innovation Fund

AFMA notes and welcomes the ability for investors to be able to access the benefits associated with investing in an innovation company indirectly through an innovation fund. The ability for such indirect investment will allow for appropriate diversification from an individual investor's perspective and enhance the allocation of capital to the innovation sector.

Our only concern at this stage is the requirement that the innovation fund be a company. A consequence of this requirement is that, from a tax perspective, the innovation fund will not be fiscally transparent and hence will not be a "flow-through" for tax purposes. This seems to raise issues both with respect to the mechanics of the 20 per cent non-

refundable tax offset (i.e. how to attribute the acts of the innovation fund to the investor where it is a separate legal entity) and particularly the CGT exemption. On the latter point, while the innovation fund itself may benefit from the exemption in respect of the disposition of its investments in the innovation company, it is not clear that the investor would also receive the benefits of the exemption in respect of investments into the innovation fund.

We agree with the comment on page 8 of the Consultation Paper that the qualifying innovation fund be a flow-through vehicle and accordingly would advocate a trust or other collective investment vehicle which would more closely align, from a tax perspective, the investment in the innovation fund to a direct investment into an innovation company.

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We appreciate the opportunity to provide a submission on the Consultation Paper. Please contact me with any queries.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Rob Colquhoun', written in a cursive style.

Rob Colquhoun
Director, Policy