



24th February 2016
The Australian Government - The Treasury
Start-up Tax Incentive Consultation Submissions

Dear Sir/Madam

With regards requests for written submission to your paper entitled *Tax incentives for early stage investors* and dated February 2016 we respond below.

4.1 Are there any additional principles that should be included in defining an innovation company?

We feel that the proposal is fairly comprehensive and simply add that it should not be overly time consuming or pose a significant burden on innovation companies' limited resources lest the process of clarification itself becomes a main hurdle for innovation. We would also propose that the definition for "accelerator" programs may also be extended to include specified "start-up incubator" programs as well.

4.2 What gateway criteria would best define an eligible innovation company?

From our perspective we feel that if there had to be one single gateway criteria that it would be the selection into, and graduation from, an approved Accelerator or Incubator program. The rationale for this is that the existing ecosystem already acts as a good filter and regulator of meaningful innovation thus this would avoid overly bureaucratic processes and costs. In addition if this gateway and graduation from it was the primary eligibility test we believe corporate Australia and other interested parties would further invest to develop material hubs for innovation and education around start-ups thus fostering a broader expansion in the Innovation economy. We believe if this was the key gateway that many approved programs would evolve and the ecosystem would be materially enhanced. If a registration of programs existed the prospects of rorts should be materially decreased without the need for massive government intervention / departments.

4.3 Do these criteria meet the objective of attracting investment in innovation companies, without unnecessary regulatory burdens?

We believe our response in 4.2 is the best path to attracting investment without unnecessary regulatory burden but feel it would need to include an Approved and Registered Accelerator/ Incubator program similar to that in place for training in education (RTO's).

4.4 What integrity risks are associated with each of these criteria? How might these risks be mitigated?

We believe our proposal (4.2) would mitigate many integrity risks especially if the programs must be approved and registered. We feel that the more subjective and grey the criteria are the more open they become to rorts and inappropriate utilisation. If this proposed gateway criteria are strict and clear then there should be no need to combine multiple tests. The risk of introducing multiple tests is that it could become very restrictive and time consuming which would be a big negative. From the outset firms need to know that they can/ will qualify upon entering the program lest they waste valuable time and limited resources which is the main prohibition to active innovation. Similarly investors need to be clear about what investments are qualified and which are not.

4.5 Are investors open to a process that involves lodging a self assessment declaration prior to making investments, in order to assist with assessing take up and eligibility?

Potentially yes but the more onerous this is the less investment will flow. We feel it's up to the regulators to help clearly define the parameters for the companies so that the investor's choices and liabilities are limited to approved investments. Getting them to self assess may result in negative unintended consequences especially if the risk prevails that they may fall foul of the regulations if misled by promoters and others making claims. We feel the onus should not rest with investors.

4.6 In relation to a gateway requirement that is based on approved accelerator programs, which types of organisations, should be included and what qualifying criteria should be specified?

We would propose the introduction of a Registered Accelerator/Incubator program which we believe should have the following criteria:

- Are materially funded for a minimum of two/three years
- Have a process of induction and graduation for participants
- Have a defined curriculum and set of objectives
- Have appropriate staff and support mechanisms in place to foster innovation
- Have an agreed minimum number of participants per annum/ period
- Provide seed capital and introductions to capital to participants in the programs
- Do not charge for participation in their programs
- Do not force participants to utilise their paid goods or services as part of the program

4.7 Are there any other investment activities should be excluded?

We believe the list is fairly comprehensive but could be settled over the first 18 months to allow for any exceptions or oversights.

4.8 Is it appropriate for innovation companies to be restricted to companies that are Australian residents for tax purposes?

We believe Innovation companies should be restricted to companies that are incorporated in Australia and are paying tax, employing people and for all intents and purposes creating benefits for Australia. That said if we wish to foster global innovation and competition in this space we need to be open that this may change in subsequent years as start-ups / innovators evolve and we wouldn't wish to restrict the benefit of investors investing in growing global enterprises that started in Australia so long as some economic benefit (%revenue/ tax) remains in Australia.



5.1 Are there any specific requirements that should be included within the sophisticated investor test to ensure that innovation companies are benefiting from both financial and technical/commercial support?

No we do not believe there should be such an imposition as it raises a further matter that then needs oversight and monitoring. Our experience is that Angel and Early stage investors willingly provide support of both financial and operational expertise to their investee companies.

5.2 Other than the sophisticated investor test contained in the Corporations Act 2001, are there alternative tests that can achieve these same objectives?

We believe the incentive for direct investments should be limited to investors who are wholesale / sophisticated investors as per Corporations law.

The only variable we see here is that many family, friends and associates of typical start-ups are early investors in innovation companies. As such we would propose an exemption exists for a retail investor to get a signed exemption if they wish to make such investments that acknowledges they are doing so at their own risk. We should not actively seek to negatively impact such investment as it is integral to the ecosystem but it may need some qualification so that it is not abused by third party promoters.

If broader audience of Retail investors are to benefit from the incentives then they should be doing so via an **approved innovation fund** that provides for an additional layer of verification and diversification to the investment pool so as to protect them from the inherent risks of investing in this space.

6.1 Is it appropriate for the offset to be available in the year of a cash call in the case of indirect investments through a qualifying innovation fund?

The tax offset should be available to investors in an innovation fund in the year the innovation fund actually invests in an eligible investment company. If the fund takes investors cash and doesn't invest it for whatever reason then no offset should apply. Investors could be advised of the tax offset claimable each year via an annual statement provided by the innovation fund manager.



6.2 What is the most appropriate corporate structure for an innovation fund? What registration requirements should exist?

An innovation fund could be either/or a registered or unregistered managed investment scheme under Corporations law that is investing in approved investments. Any requirement for an innovation fund to be a company is inconsistent with current laws and industry operations. As sure as this process needs to be easily and cost effective to facilitate for the innovators it also needs to be so for the fund managers or they simply will not be motivated to raise and invest funds. An open architecture and optionality around preferred structures will provide a broader base of outcomes and funding alternatives.

6.3 Should the incentive be limited to sophisticated investors in the case of investments through a qualifying innovation fund?

No we do not believe it should be however we refer to our earlier comments in 5.2

IF Retail investors are to benefit from the incentives then they should be doing so via an **approved innovation fund** that provides for an additional layer of verification and diversification to the investment pool so as to protect them from the inherent risks of investing in this space.

6.4 Should qualifying innovation funds be proprietary limited companies, unlisted public companies, or some other company governed by the Corporations Act 2001?

An innovation fund should be either/or a registered or unregistered managed investment scheme under Corporations law. Any requirement for an innovation fund to be a company is inconsistent with Corporations law. We refer to our comments in 6.2.

6.5 Should there be requirements placed on who can manage an innovation fund?

The manager of an innovation fund should hold an Australian Financial Services Licence (AFSL) or be an approved Authorised representative (AR) of an appropriate AFSL.

6.6 Is it appropriate to adopt an approval process similar to the UK Venture Capital Trusts and Australian Early Stage Venture Capital Limited Partnerships?

Rather than introduce an additional approval process the manager of an innovation fund should hold an AFSL or be an approved representative of an AFSL. There is already an approval process in place for who can hold an AFSL and a system and department for regulating them.

7.1 How will the Government maintain the integrity of Australia's tax system while providing the best possible support for innovative start-ups?

For direct investment this requires a clear definition and registration of approved start-up/innovation investments per our comments in 4.2 and 4.6. As active investors in the space as well as operators of funds in the space we firmly believe this action would maintain integrity whilst providing the best support, whilst keeping further bureaucracy and costs to the government to a minimum. Contemporaneously to that it should inspire corporates, educators and others to spawn more centres for innovation excellence across all areas of the community.

For indirect investments assuming managers of an innovation fund hold and AFSL, or are an AR of an AFSL, and can verify they too are investing in Approved Direct investments then the regime for integrity and regulation exists and is reinforced under current regimes.

7.2 How could integrity measures be designed to attract and secure investment at the right stage of innovation without creating unnecessary red tape for investors?

We refer to our comments in 5.2 and 7.1 above which we feel addresses this issue. If we can be of further assistance with regards this submission process or further elaborating on these matters please do not hesitate to contact us.

Best regards



Andrew Coppin

Director

Bardama Start-up Fund