

## AVCAL Government and Regulatory Update - April 2017



### Since November 2016, AVCAL has:

- Worked closely with the LP community to deliver improved ASIC guidance around new super fund fee disclosure regulation (ASIC Regulatory Guide 97);
- Led industry efforts to improve the foreign investment framework, including pushing for a more efficient pre-approval process for low sensitivity transactions;
- Continued to highlight the importance of the R&D Tax Incentive to Government, cautioning against the introduction of a \$2m cap on the refundable component.
- Kicked-off work on two key reports outlining the economic impact of private equity and venture capital to the Australian economy.

### ASIC Regulatory Guide 97 – fee and cost disclosure by super funds

AVCAL has worked closely with LP members to develop an industry response to the implementation of ASIC Regulatory Guide 97 which deals with the disclosure of fees and costs by super funds and other managed investment products issued to retail clients. The aim is to develop a framework which would fairly represent the costs of private equity investment.

Following AVCAL advocacy, ASIC has agreed to clarify and/or amend aspects of its guidance that relate to the disclosure of private equity-related fees and costs, including accounting for carried interest and transaction costs. We expect the clarified guidance to be publicly released this month. The new disclosure regime will become operative from October 2017, following a deferral request from a number of industry bodies including AVCAL.

### Foreign investment framework – pre-approval model for low sensitivity investments

Over the last year, AVCAL has encouraged changes that would streamline the processing of Foreign Investment Review Board (FIRB) applications lodged by private equity firms and their portfolio companies. The aim is to move to a model whereby private equity funds that contain foreign government investors (including sovereign wealth funds and public pension funds) would have a program of low-sensitivity acquisitions approved at the outset of a fund or alternatively on an annual, rather than individual, investment basis. In March 2017, the Government released a Consultation Paper canvassing a very similar policy option. AVCAL has supported this proposal given the significant time, cost and efficiency improvements which it should deliver for members.

### Research & development tax incentive

AVCAL has continued its advocacy to the Government around the importance of Australia's R&D tax incentive program to many innovative local businesses. While supporting measures aimed at improving the sustainability of the program, AVCAL has not supported the Ferris-Fraser-Finkel Review's proposal to introduce a \$2m cap on the refundable component of the program, warning that it could drive high tech companies, such as in the life sciences area, off-shore. The Government's response to the FFF Review is expected on or before the Federal Budget (9 May 2017).

### Economic impact reports

In 2017, AVCAL will launch two new reports aimed at educating stakeholders about the contribution of our sector to the Australian economy. The first report, focused on the venture capital industry, is being prepared by AVCAL in partnership with the University of Sydney Business School, with a public launch expected in June 2017. Separately, we are working with Deloitte Access Economics to measure key economic indicators of the domestic private equity sector, including contribution

to employment, GDP and business innovation. This report will be launched in October 2017.

Both reports will be accompanied by targeted outreach to key stakeholders including politicians, media and the broader business community.

### **ATO – negative control and the application of Division 6C**

AVCAL is engaging with the ATO in response to its release of a draft framework setting out its position on the question of negative control within the context of Division 6C of the Income Tax Assessment Act 1936. Working closely with our members, AVCAL is seeking to present the ATO with a ‘safe harbour’ proposal that would ensure that common VC veto rights would not deem a managed investment trust (operating as a VC investment vehicle) be classified as a trading trust.

### **ESVCLP and VCLP changes**

In early 2017, AVCAL presented the Government with a package of measures aimed at further improving the Early Stage Venture Capital Limited Partnerships and Venture Capital Limited Partnerships framework. These measures would complement the changes which came into effect on 1 July 2016, and the March 2017 amendment which extends the CGT benefit to investors that invest via interposed trusts. AVCAL’s policy proposals include a number of changes to clarify the existing venture capital regime, and loosen unnecessary investment restrictions. We continue to engage with the Government on these issues.

### **Employee share schemes**

In March 2017, the Parliament passed legislation addressing the issue of disclosure for start-ups seeking to use an employee share scheme. Previously, ESS disclosure documents lodged with ASIC would generally have been made available to the public which could compromise commercially sensitive information. The amendment means that ESS disclosure documents lodged with ASIC are exempt from public inspection if certain criteria are met (consistent with previous tax reform passed in 2015). AVCAL was pleased to see the law pass having long-called for reform in this area.

In January 2017, as part of a broader Government review, AVCAL put forward a set of proposed reforms which would see a further liberalising of the ESS framework to allow more high growth companies to utilise it.

### **Federal Budget submission**

As part of the annual budget process, AVCAL has put forward a submission calling on the Government to address certain key issues facing the private equity and venture capital industry. These issues include: foreign investment reform, Australia’s research and development settings, and a new collective investment vehicle (limited partnership) framework.



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