



# Venture Capital Act 2002

## Act No. 137 of 2002 as amended

This compilation was prepared on 11 April 2005  
taking into account amendments up to Act No. 41 of 2005

The text of any of those amendments not in force  
on that date is appended in the Notes section

The operation of amendments that have been incorporated may be  
affected by application provisions that are set out in the Notes section

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# An Act relating to venture capital investments, and for related purposes

## Part 1—Preliminary

### Division 1—Preliminary

#### Table of sections

1-1	Short title
1-5	Commencement
1-10	Interpretation
1-15	Identifying defined terms

#### 1-1 Short title *[see Note 1]*

This Act may be cited as the *Venture Capital Act 2002*.

#### 1-5 Commencement *[see Note 1]*

This Act commences on the day on which it receives the Royal Assent.

#### 1-10 Interpretation

- (1) An expression has the same meaning in this Act as in the *Income Tax Assessment Act 1997*.
- (2) Division 950 of the *Income Tax Assessment Act 1997* (which contains rules for interpreting that Act) applies to this Act as if the provisions of this Act were provisions of the *Income Tax Assessment Act 1997*.

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\*To find definitions of asterisked terms, see the Dictionary in the *Income Tax Assessment Act 1997*, starting at section 995-1 of that Act.

### **1-15 Identifying defined terms**

- (1) Many of the terms in this Act are defined in the Dictionary, starting at section 995-1, to the *Income Tax Assessment Act 1997*.
- (2) Most of the terms that are defined in that Dictionary are identified by an asterisk appearing at the start of the term: as in \*PDF Board. The footnote with the asterisk contains a signpost to that Dictionary.
- (3) An asterisk usually identifies the first occurrence of a term in a section (if not divided into subsections), subsection or definition. Later occurrences of the term in the same provision are not usually asterisked.
- (4) Terms are not asterisked in headings, notes, examples, explanatory tables, guides, outline provisions or diagrams.
- (5) If a term is not identified by an asterisk, disregard that fact in deciding whether or not to apply to that term a definition or other interpretation provision.

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\*To find definitions of asterisked terms, see the Dictionary in the *Income Tax Assessment Act 1997*, starting at section 995-1 of that Act.

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## **Division 3—A guide to this Act**

### **3-1 What this Act is about**

This Act provides for some administrative measures that are needed for the operation of:

- (a) the capital gains tax exemption relating to venture capital under Subdivision 118-F of the *Income Tax Assessment Act 1997* (and the related provisions about similar income gains and losses); and
- (b) the “flow-through” treatment, under Division 5 of Part III of the *Income Tax Assessment Act 1936*, of the income of limited partnerships that are used as vehicles for making venture capital investments.

Note: The PDF Board is responsible for the operation of these measures. The *Pooled Development Funds Act 1992* provides for the establishment and operation of the PDF Board.

### **3-5 Registration of venture capital limited partnerships and Australian venture capital funds of funds (Part 2)**

Part 2 provides for:

- (a) the registration requirements for venture capital limited partnerships and Australian venture capital funds of funds; and
- (b) applications for registration; and
- (c) registration of limited partnerships by the PDF Board, including conditional registration; and
- (d) the obligations imposed on general partners of partnerships that are registered; and
- (e) revocation of registration.

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\*To find definitions of asterisked terms, see the Dictionary in the *Income Tax Assessment Act 1997*, starting at section 995-1 of that Act.

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**Part 1** Preliminary

**Division 3** A guide to this Act

Section 3-10

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**3-10 Registration of eligible venture capital investors (Part 3)**

Part 3 provides for registration of entities as eligible venture capital investors, their obligations while registered, and revocation of registration.

**3-15 Determinations by the PDF Board concerning certain investments (Part 4)**

Part 4 provides for the PDF Board to make determinations that are relevant to whether certain investments can be eligible venture capital investments.

**3-20 Review of decisions (Part 5)**

Part 5 provides for review of the PDF Board's decisions under this Act.

**3-25 Miscellaneous (Part 6)**

Part 6 deals with miscellaneous matters.

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\*To find definitions of asterisked terms, see the Dictionary in the *Income Tax Assessment Act 1997*, starting at section 995-1 of that Act.

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## **Part 2—Registration of venture capital limited partnerships and Australian venture capital funds of funds**

### **Division 7—A guide to this Part**

#### **7-1 What this Part is about**

The PDF Board can register limited partnerships as venture capital limited partnerships or Australian venture capital funds of funds.

Registration is one of the requirements before investments of venture capital through a limited partnership can attract the operation of:

- the capital gains tax exemption relating to venture capital under Subdivision 118-F of the *Income Tax Assessment Act 1997* (and the related provisions about similar income gains and losses); and
- the “flow-through” treatment, under Division 5 of Part III of the *Income Tax Assessment Act 1936*, of the income of limited partnerships.

Broadly speaking, the PDF Board will register a limited partnership under Division 13 if an application meets the requirements of Division 11, unless the PDF Board is satisfied that the partnership does not meet the applicable registration requirements of Division 9.

Conditional registration is an option if an application does not meet the requirements of Division 11.

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\*To find definitions of asterisked terms, see the Dictionary in the *Income Tax Assessment Act 1997*, starting at section 995-1 of that Act.

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**Part 2** Registration of venture capital limited partnerships and Australian venture capital funds of funds

**Division 7** A guide to this Part

**Section 7-1**

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Note: Conditional registration becomes important if full registration is achieved. Registration is then backdated to the time of conditional registration. However, this only backdates the “flow-through” treatment of the partnership income. The other tax consequences operate from the time of unconditional registration.

The PDF Board can revoke a registration under Division 17.

Broadly speaking, the grounds for revocation are:

- failure to meet the applicable registration requirements of Division 9; and
- failure to provide information as required under Division 15.

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\*To find definitions of asterisked terms, see the Dictionary in the *Income Tax Assessment Act 1997*, starting at section 995-1 of that Act.

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## Division 9—Registration requirements

### Table of sections

9-1	Registration requirements of VCLPs
9-5	Registration requirements of AFOFs
9-10	Meaning of <i>permitted loan</i>

### 9-1 Registration requirements of VCLPs

- (1) The *registration requirements of a VCLP*, in relation to a \*limited partnership, are that:
- (a) the partnership was established by or under a law in force in, or in any part of:
    - (i) Australia; or
    - (ii) Canada; or
    - (iii) France; or
    - (iv) Germany; or
    - (v) Japan; or
    - (vi) the United Kingdom; or
    - (vii) the United States of America; or
    - (viii) any other foreign country prescribed by the regulations; and
  - (b) all of the partners who are \*general partners are residents of a country referred to in paragraph (a); and
  - (c) under the partnership agreement the partnership is to remain in existence for a period of not less than 5 years and not more than 15 years; and
  - (d) the partnership's \*committed capital is at least \$20 million; and
  - (e) each investment that the partnership holds is either:
    - (i) an \*eligible venture capital investment; or
    - (ii) an investment in a company, in which the partnership owns one or more eligible venture capital investments,

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\*To find definitions of asterisked terms, see the Dictionary in the *Income Tax Assessment Act 1997*, starting at section 995-1 of that Act.

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Section 9-5

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that would have been an eligible venture capital investment but for subsections 118-425(2) and (6) of the *Income Tax Assessment Act 1997*; and

- (f) the partnership only carries on activities that are related to making \*eligible venture capital investments or investments to which subparagraph (e)(ii) applies; and
  - (g) every \*debt interest that the partnership owns is, and continues to be, a \*permitted loan.
- (2) The requirements in paragraphs (1)(e), (f) and (g) are ***investment registration requirements***.

**9-5 Registration requirements of AFOFs**

- (1) The ***registration requirements of an AFOF***, in relation to a \*limited partnership, are that:
- (a) the partnership is established by or under the law of a State or Territory; and
  - (b) all of the partners who are \*general partners are \*Australian residents; and
  - (c) under the partnership agreement, the partnership is to remain in existence for a period of not less than 5 years and not more than 20 years; and
  - (d) each investment that the partnership owns is:
    - (i) an investment in a \*VCLP; or
    - (ii) an \*eligible venture capital investment in a company in which a VCLP, of which the partnership is a partner, owns one or more eligible venture capital investments; or
    - (iii) an investment in a company referred to in subparagraph (ii) that would have been an eligible venture capital investment but for subsections 118-425(2) and (6) of the *Income Tax Assessment Act 1997*; and
  - (e) the partnership only carries on activities that are related to making eligible venture capital investments, investments to

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\*To find definitions of asterisked terms, see the Dictionary in the *Income Tax Assessment Act 1997*, starting at section 995-1 of that Act.

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which subparagraph (d)(iii) applies or investing in VCLPs;  
and

(f) every \*debt interest that the partnership owns is, and  
continues to be, a \*permitted loan.

(2) The requirements in paragraphs (1)(d), (e) and (f) are **investment  
registration requirements**.

### **9-10 Meaning of *permitted loan***

(1) A debt interest is a ***permitted loan*** if:

(a) it is a loan made to a \*company and the sum of:

(i) the \*equity interests that the partnership owns in the  
company; and

(ii) any debt interests that the partnership owns in the  
company that can be converted into equity interests in  
the company;

is at least 10% of the sum of:

(iii) all of the equity interests in the company; and

(iv) all of the debt interests in the company that can be  
converted into equity interests in the company;

and the company meets the requirements of subsections  
118-425(2) to (7) of the *Income Tax Assessment Act 1997* in  
relation to the investments referred to in subparagraphs (i)  
and (ii); or

(b) it is repaid within 6 months, or such longer period as the  
\*PDF Board allows under subsection (3).

(2) A \*general partner may apply to the \*PDF Board, in the \*form  
approved by the PDF Board, for the PDF Board to allow a longer  
period for the purposes of paragraph (1)(b).

(3) The \*PDF Board may, for the purposes of paragraph (1)(b), allow a  
longer period if the PDF Board is satisfied that:

(a) there are exceptional circumstances; and

(b) the extended period is no longer than reasonably necessary.

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\*To find definitions of asterisked terms, see the Dictionary in the *Income Tax  
Assessment Act 1997*, starting at section 995-1 of that Act.

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## **Division 11—Application for registration**

### **Table of sections**

11-1	Application for registration
11-5	Determination of further information to be included in application
11-10	Further information may be requested
11-15	Period within which application must be decided

### **11-1 Application for registration**

- (1) A \*general partner of a \*limited partnership may apply, in the \*form approved by the PDF Board, to the \*PDF Board for registration of the partnership as a \*VCLP or an \*AFOF under this Part.
- (2) An application must be in writing, and must include the following information:
  - (a) the name and residency status of, and the relevant qualifications and experience of, each \*general partner;
  - (b) the name, address and residency status of each \*limited partner;
  - (c) for each general partner that is a \*company—the address of the general partner’s registered office;
  - (d) for each general partner who is an individual—the general partner’s business address;
  - (e) the partnership’s business address;
  - (f) a copy of the partnership agreement, which must:
    - (i) require partners to contribute their \*committed capital as and when required under the agreement; and
    - (ii) prohibit the addition of new partners to the partnership except as provided for in the agreement; and
    - (iii) prohibit increases in the partnership’s committed capital except as provided for in the agreement; and

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\*To find definitions of asterisked terms, see the Dictionary in the *Income Tax Assessment Act 1997*, starting at section 995-1 of that Act.

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- (iv) confer on a general partner the right to require partners to contribute their committed capital to the partnership;  
and
- (v) include a plan which outlines the partnership's future intended investment activities;
- (g) any documents that were issued inviting investment in the partnership;
- (h) the amount of each partner's committed capital in the partnership;
- (i) in relation to each limited partner claiming to be tax exempt in his or her country of residence—details of the facts that qualify the partner to be tax exempt in his or her country of residence;
- (j) if the application is an application for registration as a VCLP—a statement by a general partner as to whether the partnership meets the \*registration requirements of a VCLP;
- (k) if the application is an application for registration as an AFOF—a statement by a general partner as to whether the partnership meets the \*registration requirements of an AFOF;
- (l) such further information as the \*PDF Board determines under section 11-5.

Note: Part 7.4 of the *Criminal Code* creates offences for making false and misleading statements, giving false or misleading information and producing false or misleading documents.

### **11-5 Determination of further information to be included in application**

- (1) The \*PDF Board may, for the purposes of paragraph 11-1(2)(1), determine, by writing signed by the Chairperson of the PDF Board pursuant to a resolution of the PDF Board, that specified information is to be included in the application.
- (2) A determination under this section is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.

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\*To find definitions of asterisked terms, see the Dictionary in the *Income Tax Assessment Act 1997*, starting at section 995-1 of that Act.

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Section 11-10

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**11-10 Further information may be requested**

If the \*PDF Board needs further information to decide an application for registration under this Part, it may ask a \*general partner to provide further information.

**11-15 Period within which application must be decided**

- (1) Subject to this section, the \*PDF Board must decide an application for registration or conditional registration under this Part within 60 days after receiving it.
- (2) If the \*PDF Board thinks that it will take longer to decide the application, the PDF Board may extend, by up to 60 days, the period for deciding it.
- (3) An extension must be made by written notice given to a \*general partner within 60 days after the \*PDF Board receives the application.
- (4) If the \*PDF Board extends the period, the PDF Board must decide the application within the extended period.

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\*To find definitions of asterisked terms, see the Dictionary in the *Income Tax Assessment Act 1997*, starting at section 995-1 of that Act.

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## Division 13—Registration

### Table of sections

13-1	Registration
13-5	Conditional registration
13-10	When registration is in force

### 13-1 Registration

- (1) The \*PDF Board must register a partnership as a \*VCLP under this Part if:
- (a) a \*general partner has applied for registration as a VCLP; and
  - (b) the application meets the requirements under section 11-1;  
and
  - (c) any further information requested under section 11-10 has been provided; and
  - (d) a general partner has notified the PDF Board that the VCLP has sufficient funds to begin its investment program;
- unless the PDF Board is satisfied that the partnership:
- (e) does not meet the \*registration requirements of a VCLP; or
  - (f) has had a previous registration revoked under Division 17.
- (2) The \*PDF Board must register a partnership as an \*AFOF under this Part if:
- (a) a \*general partner has applied for registration as an AFOF;  
and
  - (b) the application meets the requirements under section 11-1;  
and
  - (c) any further information requested under section 11-10 has been provided; and
  - (d) a general partner has notified the PDF Board that the AFOF has sufficient funds to begin its investment program;
- unless the PDF Board is satisfied that the partnership:

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\*To find definitions of asterisked terms, see the Dictionary in the *Income Tax Assessment Act 1997*, starting at section 995-1 of that Act.

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**Section 13-5**

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- (e) does not meet the \*registration requirements of an AFOF; or
  - (f) has had a previous registration revoked under Division 17.
- (3) If the \*PDF Board decides to register the partnership as a \*VCLP or an \*AFOF under this Part, the PDF Board must notify a \*general partner of the partnership as soon as practicable after the decision is made.
- (4) If the \*PDF Board decides not to register the partnership as a \*VCLP or an \*AFOF under this Part, the PDF Board must:
- (a) notify a \*general partner of the partnership as soon as practicable after the decision is made; and
  - (b) provide reasons for the decision.
- (5) The \*PDF Board cannot register the partnership both as a \*VCLP and as an \*AFOF.

**13-5 Conditional registration**

- (1) The \*PDF Board may conditionally register the partnership as a \*VCLP if:
- (a) a \*general partner has applied for registration as a VCLP; and
  - (b) either:
    - (i) the application for registration does not meet the requirements under section 11-1; or
    - (ii) any further information requested under section 11-10 has not been provided;
- unless the PDF Board is satisfied that the partnership:
- (c) would not, if it was conditionally registered, meet the \*registration requirements of a VCLP within the period specified under subsection 13-10(3); or
  - (d) has had a previous registration revoked under Division 17.
- (2) The \*PDF Board may conditionally register the partnership as an \*AFOF if:
- (a) a \*general partner has applied for registration as an AFOF; and

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\*To find definitions of asterisked terms, see the Dictionary in the *Income Tax Assessment Act 1997*, starting at section 995-1 of that Act.

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- (b) either:
- (i) the application for registration does not meet the requirements under section 11-1; or
  - (ii) any further information requested under section 11-10 has not been provided;
- unless the PDF Board is satisfied that the partnership:
- (c) would not, if it was conditionally registered, meet the \*registration requirements of an AFOF within the period specified under subsection 13-10(3); or
  - (d) has had a previous registration revoked under Division 17.
- (3) Conditional registration under this section does not mean that the partnership is registered under this Part as a \*VCLP or an \*AFOF.

### **13-10 When registration is in force**

- (1) Registration of the partnership as a \*VCLP or an \*AFOF comes into force on the day on which registration under section 13-1 was granted.
- (2) However, if conditional registration of the partnership had been granted under section 13-5 and was in force on the day on which registration under section 13-1 was granted, registration of the partnership as a \*VCLP or an \*AFOF is taken to have come into force on:
  - (a) if, since its establishment, the partnership has only carried on activities related to becoming registered as a VCLP or an AFOF—the day on which it was established; or
  - (b) otherwise—the day on which the conditional registration was granted.
- (3) If a \*VCLP or an \*AFOF is not registered under section 13-1 within 24 months after the day on which the conditional registration of the partnership was granted under section 13-5, the conditional registration lapses.
- (4) Registration is taken to be in force until revoked under Division 17.

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\*To find definitions of asterisked terms, see the Dictionary in the *Income Tax Assessment Act 1997*, starting at section 995-1 of that Act.

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## **Division 15—Obligations while registered**

### **Table of sections**

15-1	Annual return
15-5	Determination of further information to be included in returns
15-10	Quarterly returns
15-15	Further information may be requested
15-20	Other information may be requested

### **15-1 Annual return**

A \*general partner of a partnership registered under this Part as a \*VCLP or an \*AFOF must, within 3 months after the end of each \*financial year, give the \*PDF Board a written return that includes the following information:

- (a) the name and address of each partner, and that partner's residency status at the end of the financial year (including details of changes to that status during the year);
- (b) in relation to each partner claiming to be tax exempt—details of the facts that qualify the partner to be tax exempt in his or her country of residence;
- (c) details of:
  - (i) the amount of each partner's \*committed capital in the partnership; and
  - (ii) any acquisitions or disposals of a partner's \*equity interests in the partnership during the year including any consideration given or received for that acquisition or disposal;
- (d) details of any variation made to the partnership agreement during the year;
- (e) details of:
  - (i) investments the partnership made during that year; and
  - (ii) investments the partnership owns at the end of that year; and

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\*To find definitions of asterisked terms, see the Dictionary in the *Income Tax Assessment Act 1997*, starting at section 995-1 of that Act.

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- (iii) disposals of investments during that year including any profits derived or losses incurred from that disposal;
- (f) if the partnership is registered under this Part as a VCLP—a statement from a general partner as to whether the partnership met the \*registration requirements of a VCLP throughout the financial year;
- (g) if the partnership is registered under this Part as an AFOF—a statement from a general partner as to whether the partnership met the \*registration requirements of an AFOF throughout the financial year;
- (ga) for an investment in a company that the partnership held throughout the financial year—a statement from a general partner as to whether the company met the requirements of subsections 118-425(3), (4) and (5), and paragraph 118-425(11)(d), of the *Income Tax Assessment Act 1997* at all times during that year;
- (h) such further information as the PDF Board determines under section 15-5.

Note: Part 7.4 of the *Criminal Code* creates offences for making false or misleading statements, giving false or misleading information and producing false or misleading documents.

### **15-5 Determination of further information to be included in returns**

- (1) The \*PDF Board may, for the purposes of paragraph 15-1(h), determine, by writing signed by the Chairperson of the PDF Board pursuant to a resolution of the PDF Board, that specified information is to be included in returns.
- (2) A determination under this section is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.

### **15-10 Quarterly returns**

A \*general partner of a partnership registered under this Part as a \*VCLP or an \*AFOF must, within one month after the end of each \*quarter, give the \*PDF Board a written return that includes:

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\*To find definitions of asterisked terms, see the Dictionary in the *Income Tax Assessment Act 1997*, starting at section 995-1 of that Act.

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- (a) details of any investments it has made during the quarter, and the consideration given for those investments; and
- (b) details of any disposals of investments during the quarter, and any profit derived or loss incurred from those disposals (including details of how that profit or loss was calculated); and
- (c) for each investment in a company made during the quarter—a statement from a general partner as to whether the company met the requirements of subsections 118-425(3), (4) and (5), and paragraph 118-425(11)(d), of the *Income Tax Assessment Act 1997* at all times during the quarter after the investment was made; and
- (d) for each disposal of an investment in a company during the quarter—a statement from a general partner as to whether the company met those requirements at all times during the quarter up to the day of disposal.

**15-15 Further information may be requested**

The \*PDF Board may ask a \*general partner of the partnership to provide further information about the investments or disposals notified under section 15-10.

**15-20 Other information may be requested**

The \*PDF Board may ask a \*general partner of the partnership to provide the PDF Board with information that the PDF Board considers necessary for the purposes of administering this Act.

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\*To find definitions of asterisked terms, see the Dictionary in the *Income Tax Assessment Act 1997*, starting at section 995-1 of that Act.

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## Division 17—Revocation of registration

### Table of sections

17-1	Revoking registration for not meeting investment registration requirements etc.
17-5	Revoking registration for not meeting other registration requirements
17-10	Revocation at discretion of PDF Board
17-15	Notice of revocation
17-20	Date of effect of revocation
17-25	Revocation on application by partnership

### 17-1 Revoking registration for not meeting investment registration requirements etc.

- (1) If the \*PDF Board has reason to believe that:
  - (a) a partnership registered as a \*VCLP does not meet the \*investment registration requirements of a VCLP; or
  - (b) a partnership registered as an \*AFOF does not meet the \*investment registration requirements of an AFOF;it must notify a \*general partner of the partnership, in writing, that it will revoke the registration if it is satisfied that, at the end of the period determined under subsection (2), the partnership does not meet the investment registration requirements of a VCLP or an AFOF, as the case may be.
- (2) The \*PDF Board must, for the purposes of subsection (1), determine a period that:
  - (a) it is satisfied is a reasonable period; and
  - (b) does not exceed 6 months.
- (3) The notice must:
  - (a) state the matters that in the \*PDF Board's opinion, may constitute grounds for revocation; and

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\*To find definitions of asterisked terms, see the Dictionary in the *Income Tax Assessment Act 1997*, starting at section 995-1 of that Act.

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**Section 17-5**

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- (b) state the period, determined by the PDF Board under subsection (2), within which the \*investment registration requirements must be complied with; and
  - (c) state that the \*general partner may make written submissions to the PDF Board about the matters in the notice within that period.
- (4) A \*general partner may make submissions about the matters in the notice at any time during that period.
- (5) The \*PDF Board must revoke the registration if, after considering any submissions made under subsection (4), it is satisfied that, at the end of that period, the partnership does not meet the \*investment registration requirements of a VCLP or the \*investment registration requirements of an AFOF, as the case may be.
- (6) Subsection (5) does not apply if the registration is revoked under section 17-10 within that period.

**17-5 Revoking registration for not meeting other registration requirements**

- (1) If the \*PDF Board has reason to believe that:
- (a) a partnership registered as a \*VCLP does not meet the \*registration requirements of a VCLP that are not \*investment registration requirements; or
  - (b) a partnership registered as an \*AFOF does not meet the \*registration requirements of an AFOF that are not \*investment registration requirements;
- it must notify a \*general partner of the partnership, in writing, that it will revoke the registration if it is satisfied that, in 60 days time, the partnership does not meet the registration requirements of a VCLP or an AFOF, as the case may be.
- (2) The notice must:
- (a) state the matters that, in the \*PDF Board's opinion, may constitute grounds for revocation; and

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\*To find definitions of asterisked terms, see the Dictionary in the *Income Tax Assessment Act 1997*, starting at section 995-1 of that Act.

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Section 17-10

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- (b) state that the \*general partner may apply for an extension of the 60 day period; and
  - (c) state that the general partner may make written submissions to the PDF Board about the matters in the notice within the 60 day period or that period as extended under subsection (4).
- (3) A \*general partner may apply to the \*PDF Board, in the \*form approved by the PDF Board, for an extension of the 60 day period.
- (4) The \*PDF Board may, for the purposes of paragraph (2)(c), extend, by up to 60 days, the period if it is satisfied that:
- (a) reasonable progress is being made towards meeting the requirements; and
  - (b) the requirements will be met within the extended period.
- (5) A \*general partner may make submissions about the matters in the notice at any time during:
- (a) the 60 day period; or
  - (b) if the period was extended under subsection (4)—that extended period.
- (6) The \*PDF Board must revoke the registration if, after considering any submissions made under subsection (5), it is satisfied that:
- (a) at the end of the 60 day period; or
  - (b) if the period was extended under subsection (4)—that extended period;
- the partnership does not meet the \*registration requirements of a VCLP or the \*registration requirements of an AFOF, as the case may be.

**17-10 Revocation at discretion of PDF Board**

- (1) Subject to subsection (2), the \*PDF Board may revoke a partnership's registration as a \*VCLP or an \*AFOF under this Part if the PDF Board is satisfied that the partnership has:
- (a) failed to lodge an annual return under section 15-1; or

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\*To find definitions of asterisked terms, see the Dictionary in the *Income Tax Assessment Act 1997*, starting at section 995-1 of that Act.

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**Section 17-15**

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- (b) failed to lodge a quarterly return under section 15-10; or
  - (c) failed to provide any further information requested under section 15-15; or
  - (d) failed to provide any information requested under section 15-20; or
  - (e) during a 12 month period, received more than one notice under section 17-1:
    - (i) that related to a failure to meet the registration requirement set out in paragraph 9-1(1)(e) or 9-5(1)(d) (whichever is applicable); and
    - (ii) in relation to which the partnership's registration has not been revoked.
- (2) The \*PDF Board must not revoke the partnership's registration unless the PDF Board:
- (a) by notice in writing given to a \*general partner of the partnership, allows the general partner at least 28 days after the notice is given in which to make written submissions to the PDF Board about the matters specified in the notice that, in the PDF Board's opinion, may constitute grounds for revocation; and
  - (b) considers any such submissions.

**17-15 Notice of revocation**

As soon as practicable after revoking a partnership's registration under section 17-1, 17-5 or 17-10, the \*PDF Board must give a \*general partner of the partnership a notice that advises of the revocation and sets out the PDF Board's reasons for deciding to revoke.

**17-20 Date of effect of revocation**

The revocation takes effect from the day on which the \*PDF Board decides to revoke registration.

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\*To find definitions of asterisked terms, see the Dictionary in the *Income Tax Assessment Act 1997*, starting at section 995-1 of that Act.

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**17-25 Revocation on application by partnership**

- (1) A \*general partner of a partnership registered under this Part as a \*VCLP or an \*AFOF may apply in writing to the \*PDF Board to have the registration revoked.
- (2) The \*PDF Board must revoke the registration as soon as practicable after receiving the application.
- (3) The revocation takes effect on the day on which notice of the revocation is given to a \*general partner of the partnership.

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\*To find definitions of asterisked terms, see the Dictionary in the *Income Tax Assessment Act 1997*, starting at section 995-1 of that Act.

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## **Part 3—Registration of eligible venture capital investors**

### **Division 21—Registration of eligible venture capital investors**

#### **Guide to Division 21**

##### **21-1 What this Division is about**

The PDF Board can register entities as eligible venture capital investors, and revoke their registration.

Registration is one of the requirements before investments of venture capital by an entity directly (rather than through a limited partnership) can attract the operation of section 118-415 of the *Income Tax Assessment Act 1997* (and the related provisions about similar income gains and losses).

Note: Section 118-415 of the *Income Tax Assessment Act 1997* gives to an individual investor an equivalent capital gains tax exemption to the one that the investor could have, under section 118-405 or 118-410 of that Act, from investing through a limited partnership registered under Part 2 of this Act.

#### **Table of sections**

##### **Operative provisions**

21-5	Registration as eligible venture capital investors
21-10	Period within which application must be decided
21-15	When registration is in force
21-20	Annual return by eligible entity
21-25	Revocation at discretion of PDF Board
21-30	Revocation on application

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\*To find definitions of asterisked terms, see the Dictionary in the *Income Tax Assessment Act 1997*, starting at section 995-1 of that Act.

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## Operative provisions

### 21-5 Registration as eligible venture capital investors

- (1) An \*entity may apply to the \*PDF Board, in the \*form approved by the PDF Board, for registration under this Part as an \*eligible venture capital investor.
- (2) An application must be given to the \*PDF Board within 30 days after the applicant enters into the contract to acquire its first \*eligible venture capital investment after the commencement of this Act.
- (3) An application must be in writing, and must include the following information:
  - (a) the applicant's current residency status;
  - (b) details of the facts that qualify the applicant as a \*tax-exempt foreign resident;
  - (c) the address of the applicant's registered office;
  - (d) the name and address of the first \*company in which the applicant has invested or proposes to invest and the industry in which the company operates;
  - (e) the amount of the investment and the date on which it was or is to be made;
  - (f) details of any other investments that the applicant holds in the company that are not \*eligible venture capital investments.
- (4) The \*PDF Board must register the applicant under this Part if the PDF Board is satisfied that the information has been provided.
- (5) If the \*PDF Board registers an applicant under this Part, the PDF Board must notify the applicant within 60 days after the application was made.
- (6) If the \*PDF Board does not register an applicant under this Part, the PDF Board must:

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\*To find definitions of asterisked terms, see the Dictionary in the *Income Tax Assessment Act 1997*, starting at section 995-1 of that Act.

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**Part 3** Registration of eligible venture capital investors

**Division 21** Registration of eligible venture capital investors

Section 21-10

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- (a) notify the applicant within 60 days after the application was made; and
- (b) provide reasons for the decision.

**21-10 Period within which application must be decided**

- (1) Subject to this section, the \*PDF Board must decide an application for registration under this Part within 60 days after receiving it.
- (2) If the \*PDF Board thinks that it will take longer to decide the application, the PDF Board may extend, by up to 60 days, the period for deciding it.
- (3) An extension must be made by written notice given to the applicant within 60 days after the \*PDF Board receives the application.
- (4) If the \*PDF Board extends the period, the PDF Board must decide the application within the extended period.

**21-15 When registration is in force**

- (1) Registration of an \*entity as an \*eligible venture capital investor is taken to have come into force on the day on which the first investment referred to in subsection 21-5(2) was made.
- (2) Registration is taken to be in force until revoked under section 21-25.

**21-20 Annual return by eligible entity**

- (1) An \*entity registered under this Part must, within 3 months after the end of each \*financial year, give the \*PDF Board a written return that includes the following information:
  - (a) the entity's residency status at the end of the financial year (including details of changes to that status during the year);
  - (b) the address of the entity's registered office (including details of changes to that address during the year);

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\*To find definitions of asterisked terms, see the Dictionary in the *Income Tax Assessment Act 1997*, starting at section 995-1 of that Act.

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- (c) details of the facts that qualify the entity to be tax exempt in its country of residence;
  - (d) details of the facts that qualify the entity as an \*eligible venture capital investor;
  - (e) details of:
    - (i) the \*eligible venture capital investments the entity made during that year; and
    - (ii) the eligible venture capital investments that the entity disposed of during that year; and
    - (iii) the eligible venture capital investments the entity holds at the end of that year; and
    - (iv) the disposals of eligible venture capital investments during that year including any profits derived or losses incurred from that disposal;
  - (f) the industries to which those investments relate;
  - (g) for each investment in a company that the entity held throughout that year—a statement as to whether the company met the requirements of subsections 118-425(3), (4) and (5), and paragraph 118-425(11)(d), of the *Income Tax Assessment Act 1997* at all times during that year;
  - (h) for each investment in a company that the entity made during that year—a statement as to whether the company met those requirements at all times during that year after the investment was made;
  - (i) for each investment in a company that the entity disposed of during that year—a statement as to whether the company met those requirements at all times during that year up to the day of disposal.
- (2) Information about a matter that a return must include because of paragraph (1)(a) or (b) is information about that matter as at the end of the financial year.

Note: Part 7.4 of the *Criminal Code* creates offences for making false and misleading statements, giving false or misleading information and producing false or misleading documents.

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\*To find definitions of asterisked terms, see the Dictionary in the *Income Tax Assessment Act 1997*, starting at section 995-1 of that Act.

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Section 21-25

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**21-25 Revocation at discretion of PDF Board**

- (1) Subject to this section, the \*PDF Board may revoke an \*entity's registration under this Part if the PDF Board is satisfied that the entity has failed to comply with section 21-20.
- (2) As soon as practicable after revoking an \*entity's registration under this Part, the \*PDF Board must give the entity a notice that advises of the revocation and sets out the PDF Board's reasons for deciding to revoke.
- (3) The \*PDF Board must not revoke a registration unless the PDF Board:
  - (a) by notice in writing given to the \*entity, allows the entity at least 14 days after the notice is given in which to make written submissions to the PDF Board about the matters specified in the notice that, in the PDF Board's opinion, may constitute grounds for revocation; and
  - (b) considers any such submissions.

**21-30 Revocation on application**

- (1) An \*entity registered under this Part may apply in writing to the \*PDF Board to have its registration revoked.
- (2) The \*PDF Board must revoke the registration as soon as practicable after receiving the application.
- (3) The revocation takes effect on the day on which notice of the revocation is given to the \*entity.

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\*To find definitions of asterisked terms, see the Dictionary in the *Income Tax Assessment Act 1997*, starting at section 995-1 of that Act.

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## **Part 4—Determinations by the PDF Board concerning certain investments**

### **Division 25—Determinations by the PDF Board concerning certain investments**

#### **Guide to Division 25**

##### **25-1 What this Division is about**

The PDF Board can make determinations having the effect of relaxing the requirements of paragraph 18-425(2)(b) of the *Income Tax Assessment Act 1997*.

Note: Paragraph 18-425(2)(b) of the *Income Tax Assessment Act 1997* is about how closely a company is connected with Australia. It is one of the requirements that a company must meet in order for investments in the company to be eligible venture capital investments. The capital gains tax exemption under Subdivision 118-F of that Act only applies in relation to eligible venture capital investments.

#### **Table of sections**

##### **Operative provisions**

25-5	PDF Board may determine a shorter period
25-10	PDF Board may determine that a requirement does not apply
25-15	PDF Board may determine that a requirement does not apply

#### **Operative provisions**

##### **25-5 PDF Board may determine a shorter period**

- (1) The \*PDF Board may, on the application of a \*general partner of a \*limited partnership registered as a \*VCLP or an \*AFOF, determine

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\*To find definitions of asterisked terms, see the Dictionary in the *Income Tax Assessment Act 1997*, starting at section 995-1 of that Act.

Section 25-10

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a shorter period during which a \*company must meet the requirements of paragraph 118-425(2)(b) of the *Income Tax Assessment Act 1997*.

- (2) The application must be in the \*form approved by the PDF Board.
- (3) In considering whether to make a determination, the \*PDF Board must apply the principles specified under subsection (4).
- (4) The \*PDF Board may make principles about making determinations under this section.
- (5) If the \*PDF Board determines a shorter period, the PDF Board must notify the \*general partner as soon as practicable after the determination is made.
- (6) If the \*PDF Board refuses to make a determination, the PDF Board must:
  - (a) notify the \*general partner as soon as practicable after the refusal; and
  - (b) provide reasons for the refusal.
- (7) Principles made under subsection (4) are disallowable instruments for the purposes of section 46A of the *Acts Interpretation Act 1901*.

**25-10 PDF Board may determine that a requirement does not apply**

- (1) The \*PDF Board may, on the application of a \*general partner of a partnership registered as a VCLP or an AFOF, determine that either or both of the following requirements do not apply to a \*company:
  - (a) the requirement referred to under subparagraph 118-425(2)(b)(i) of the *Income Tax Assessment Act 1997* that more than 50% of the people who are currently engaged by the company to perform services must perform those services primarily in Australia;
  - (b) the requirement referred to under subparagraph 118-425(2)(b)(ii) of that Act that more than 50% of its assets (determined by value) must be situated in Australia.

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\*To find definitions of asterisked terms, see the Dictionary in the *Income Tax Assessment Act 1997*, starting at section 995-1 of that Act.

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- (2) The application must be in the \*form approved by the PDF Board.
- (3) In considering whether to make a determination, the \*PDF Board must apply the principles specified under subsection (4).
- (4) The \*PDF Board may make principles about making determinations under this section.
- (5) If the \*PDF Board determines that a requirement does not apply, the PDF Board must notify the \*general partner as soon as practicable after the determination is made.
- (6) If the \*PDF Board refuses to make a determination, the PDF Board must:
  - (a) notify the \*general partner as soon as practicable after the refusal; and
  - (b) provide reasons for the refusal.
- (7) Principles made under subsection (4) are disallowable instruments for the purposes of section 46A of the *Acts Interpretation Act 1901*.

**25-15 PDF Board may determine that a requirement does not apply**

- (1) The \*PDF Board may, on the application of a \*general partner of a partnership registered as a \*VCLP or an \*AFOF, determine that:
  - (a) a company's primary activity is not an ineligible activity mentioned in subsection 118-425(13) of the *Income Tax Assessment Act 1997*; and
  - (b) the company's failure to satisfy at least 2 of the requirements in subsection 118-425(3) of that Act is temporary and did not exist at the time the relevant investment in the company was made and, if it has been disposed of, when it was disposed of.
- (2) The application must be in the \*form approved by the PDF Board.
- (3) In considering whether to make a determination, the \*PDF Board must apply the principles specified under subsection (4).
- (4) The \*PDF Board may make principles about making determinations under this section.

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\*To find definitions of asterisked terms, see the Dictionary in the *Income Tax Assessment Act 1997*, starting at section 995-1 of that Act.

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**Part 4** Determinations by the PDF Board concerning certain investments

**Division 25** Determinations by the PDF Board concerning certain investments

Section 25-15

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- (5) If the \*PDF Board makes a determination under subsection (1), the PDF Board must notify the \*general partner as soon as practicable after the determination is made.
- (6) If the \*PDF Board refuses to make a determination, the PDF Board must:
  - (a) notify the \*general partner as soon as practicable after the refusal; and
  - (b) provide reasons for the refusal.
- (7) Principles made under subsection (4) are disallowable instruments for the purposes of section 46A of the *Acts Interpretation Act 1901*.

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\*To find definitions of asterisked terms, see the Dictionary in the *Income Tax Assessment Act 1997*, starting at section 995-1 of that Act.

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## Part 5—Review of decisions

### Division 29—Review of decisions

#### Table of sections

29-1	Decisions reviewed
29-5	Notification of right to seek internal review
29-10	Internal review of decisions
29-15	Review of decisions by Administrative Appeals Tribunal

#### 29-1 Decisions reviewed

The following decisions of the \*PDF Board are reviewable under this Part:

- (a) decisions under subsection 9-10(3) allowing, or refusing to allow, a longer period for the purposes of paragraph 9-10(1)(b) for repayment of a \*permitted loan;
- (b) decisions under section 13-1 refusing to register a \*limited partnership as a \*VCLP or an \*AFOF under Part 2;
- (c) decisions under section 13-5 refusing to register conditionally a limited partnership as a VCLP or an AFOF;
- (d) decisions under section 17-1, 17-5 or 17-10 revoking a registration under Part 2;
- (e) decisions under subsection 17-1(2) determining a period within which \*investment registration requirements must be met;
- (f) decisions under section 21-5 refusing to register an entity as an \*eligible venture capital investor under Part 3;
- (g) decisions under section 21-25 revoking a registration under Part 3;
- (h) decisions under section 25-5 determining a shorter period, or refusing to make such a determination; or

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\*To find definitions of asterisked terms, see the Dictionary in the *Income Tax Assessment Act 1997*, starting at section 995-1 of that Act.

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Section 29-5

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- (i) decisions under section 25-10 or 25-15 refusing to make a determination.

**29-5 Notification of right to seek internal review**

- (1) A notice that:
  - (a) is given to the \*person affected by a decision that is reviewable under this Part; and
  - (b) advises that person of the decision;must include a statement to the effect that the person may, under section 29-10, request the \*PDF Board to reconsider the decision.
- (2) The person affected by the decision is the person who made the relevant application to the PDF Board.
- (3) A failure to comply with subsection (1) in relation to a decision reviewable under this Part does not affect the validity of the decision.

**29-10 Internal review of decisions**

- (1) If the \*person affected by a decision that is reviewable under this Part is dissatisfied with the decision, the person may, by notice in writing given to the \*PDF Board, request the PDF Board to reconsider the decision.
- (2) The request must not be made more than 21 days, or such longer period as the \*PDF Board approves, after the person receives from the PDF Board a notice advising of the decision.
- (3) The request must set out the person's reasons for making it.
- (4) On receipt of the request, the \*PDF Board must reconsider the decision and may confirm or revoke it, or vary it in such manner as the PDF Board thinks fit.
- (5) If the \*PDF Board does not confirm, vary or revoke the decision before the end of the period of 60 days after the day on which the

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\*To find definitions of asterisked terms, see the Dictionary in the *Income Tax Assessment Act 1997*, starting at section 995-1 of that Act.

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PDF Board receives the request, the PDF Board is taken, at the end of that period, to have confirmed the decision.

- (6) As soon as practicable after the \*PDF Board confirms, varies or revokes the decision, the PDF Board must give the person a written notice that:
- (a) advises of the confirmation, variation or revocation of the decision; and
  - (b) except in a case to which subsection (5) applies—advises of the PDF Board's reasons for confirming, varying or revoking the decision; and
  - (c) in the case of a confirmation or variation of the decision—advises the person that the person may apply to the Administrative Appeals Tribunal under the *Administrative Appeals Tribunal Act 1975* for review of the decision as confirmed or varied.
- (7) A failure to comply with subsection (6) in relation to the confirmation, variation or revocation of the decision does not affect the validity of the confirmation, variation or revocation.
- (8) For the purposes of subsections (4), (5), (6) and (7) and section 29-15, if the \*PDF Board revokes a decision and replaces it with another decision:
- (a) the PDF Board is taken to vary the first-mentioned decision and not to revoke it; and
  - (b) the other decision is taken to be the first-mentioned decision as varied.

### **29-15 Review of decisions by Administrative Appeals Tribunal**

- (1) Application may be made to the Administrative Appeals Tribunal for a reviewable decision of the \*PDF Board that has been confirmed or varied under section 29-10.
- (2) An application may only be made by \*the person affected by the decision.

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\*To find definitions of asterisked terms, see the Dictionary in the *Income Tax Assessment Act 1997*, starting at section 995-1 of that Act.

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## Part 6—Miscellaneous

### Division 33—Miscellaneous

#### Table of sections

33-1	Annual report
33-5	Meaning of <i>form approved by the PDF Board</i>
33-10	Regulations

#### 33-1 Annual report

- (1) The \*PDF Board must, as soon as practicable after the end of each \*financial year, prepare and give to the Minister a report of its operations during that year.
- (2) The \*PDF Board must include in the report:
  - (a) a list of the partnerships registered under Part 2 as at the end of the financial year; and
  - (b) a list of the \*partnerships that became registered under that Part during the \*financial year; and
  - (c) a list of the partnerships whose registration under that Part was revoked during the financial year.
- (3) The \*PDF Board must also include in the report:
  - (a) a list of the \*entities registered under Part 3 as at the end of the \*financial year; and
  - (b) a list of the entities that became registered under that Part during the financial year; and
  - (c) a list of the entities whose registration under that Part was revoked during the financial year.

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\*To find definitions of asterisked terms, see the Dictionary in the *Income Tax Assessment Act 1997*, starting at section 995-1 of that Act.

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### **33-5 Meaning of *form approved by the PDF Board***

A notice or application is in the *form approved by the PDF Board* if:

- (a) it is in the form approved by the \*PDF Board for that kind of notice or application; and
- (b) it contains a declaration signed by a person or persons as the form requires; and
- (c) it contains the information that the form requires, and any further information, statement or document as the PDF Board requires, whether in the form or otherwise; and
- (d) it is given in the manner that the PDF Board requires (which may include electronically).

### **33-10 Regulations**

The Governor-General may make regulations prescribing matters:

- (a) required or permitted by this Act to be prescribed; or
- (b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.

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\*To find definitions of asterisked terms, see the Dictionary in the *Income Tax Assessment Act 1997*, starting at section 995-1 of that Act.

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**Table of Acts****Notes to the *Venture Capital Act 2002*****Note 1**

The *Venture Capital Act 2002* as shown in this compilation comprises Act No. 137, 2002 amended as indicated in the Tables below.

For all relevant information pertaining to application, saving or transitional provisions *see* Table A.

**Table of Acts**

Act	Number and year	Date of Assent	Date of commencement	Application, saving or transitional provisions
<i>Venture Capital Act 2002</i>	137, 2002	19 Dec 2002	19 Dec 2002	
<i>Tax Laws Amendment (2004 Measures No. 3) Act 2004</i>	105, 2004	30 June 2004	Schedule 2: 1 Apr 2004 Remainder: Royal Assent	Sch. 1 (item 19)
<i>Tax Laws Amendment (2004 Measures No. 7) Act 2005</i>	41, 2005	1 Apr 2005	Schedule 10 (items 243, 276): Royal Assent	—

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**Table of Amendments**


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**Table of Amendments**

ad. = added or inserted   am. = amended   rep. = repealed   rs. = repealed and substituted

Provision affected	How affected
S. 15-1 .....	am. No. 105, 2004
S. 15-10 .....	am. No. 105, 2004
Link note to Guide.....	rep. No. 41 2005
S. 21-5 .....	am. No. 41 2005
S. 21-20 .....	am. No. 105, 2004
Link note to Guide.....	rep. No. 41 2005
S. 25-15 .....	ad. No. 105, 2004
S. 29-1 .....	am. No. 105, 2004

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**Table A**

**Table A**

**Application, saving or transitional provisions**

*Tax Laws Amendment (2004 Measures No. 3) Act 2004* (No. 105, 2004)

**Schedule 1**

**19 Application**

The amendments made by this Schedule apply, and are taken to have applied, to CGT events relating to investments made on or after 1 July 2002.