



Senator the Hon Helen Coonan

Minister for Revenue and Assistant Treasurer

Media Release

Attachment

Holding companies

- An investment into a holding company will not fail the eligibility tests if:
 - it is made into a company (investee company) which meets the eligibility tests (other than the primary activity and investment in other entities tests);
 - the company is established for the sole purpose of investing in one other company (a target company) (this company may be the holding company of a group); and
 - within 6 months of the initial investment the investee company invests in a target company which meets the eligibility tests.
- An eligible investor will also be able to invest in the holding company of a group if the group is a consolidatable group (ie, essentially 100% wholly-owned) and the group satisfies the eligibility tests. In applying the tests the group will be treated as though it were a single company. The tests above will be applied as though the target company were the head company of a consolidated group. The 100% ownership is consistent with similar grouping provisions in the income tax law.
- The primary activity test is also to be supplemented with a 75% test. An investment will only be eligible if 75% of the company's activities (having regard to three criteria: total income, employees and assets) are eligible activities. The company or group will need to satisfy two out of the three criteria. If more than one of the criteria are failed, the PDF Board will be given a discretion to allow the investment to continue to be eligible as long as the Board is satisfied that the primary activity of the company or group is still eligible and the failure is only of a temporary nature and is not in place at the time of the initial investment or when the investment is sold.

Investments in spin-offs

- An investment will be eligible for the concession if the value of the assets of the target entity and any entities connected with that entity (ie., connected entities), but excluding entities that will not be connected after the investment is made, does not exceed \$250 million. Integrity rules will ensure that this change cannot be used to obtain concessional treatment for investments in established businesses with assets valued at more than \$250 million that have been split into smaller entities to qualify for the concession. An investment will not be eligible for the concession if:
 - the VCLP, AFOF or eligible investor invests in a company which, at any time in the previous 12 months was connected with a company in which the VCLP already holds an investment and the total value of the combined companies' assets exceeds \$250 million, unless the Commissioner of Taxation is satisfied that:
 - : the activities of the company are not the same as, or not an integral part of, or not a necessary support for the activities of the other company; and

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- : the acquisition of the investment is not part of a scheme to acquire an interest in all or a substantial part of the group of connected companies. The Commissioner will have to be satisfied that the companies were not being acquired separately in lieu of acquiring all or a substantial part of the group; or
- the VCLP, AFOF or eligible investor making an investment already holds an investment in a company or companies which was connected with the company in which the latest investment is being made; and
 - : the companies were connected more than 12 months prior to the latest investment; and
 - : the activities of the companies are the same, or were an integral part of, or a necessary support for, the activities of the other company; and
 - : the total value of the companies' assets exceeds \$250 million.

Other changes

The proposed amendments to remove minor impediments are:

- the connected entity rules for related entities will not take into account eligible venture capital investments by the same venture capital limited partnership or Australian venture capital fund of funds;
- the date for applying the eligibility test to an investment in shares acquired on the conversion of convertible notes will be the date on which the convertible notes were last acquired;
- the place of residence of a foreign venture capital fund of funds or a venture capital management partnership will be:
 - where the fund is a limited partnership or a venture capital management partnership - the country in which the general partner of the partnership has its central management and control; and
 - where the fund is a flow-through entity - the country in which the entity has its central management and control;
- a company that has ceased to be a resident of Australia will be able to have as its auditor a person registered in the country of residence of the company; and
- interest derived by a non-resident as a limited partner in a venture capital limited partnership or an Australian venture capital fund of funds will be subject to withholding tax, even if the partner is regarded as having a permanent establishment in Australia because of the investment.