



Australian Private Equity & Venture Capital Association Limited

7 March 2018

Senate Standing Committees on Economics
PO Box 6100
Parliament House
Canberra ACT 2600

Email: economics.sen@aph.gov.au

Dear Committee Members,

Re: Treasury Laws Amendment (2018 Measures No. 2) Bill 2018 [Provisions]

Thank you for providing the Australian Private Equity and Venture Capital Association Limited (AVCAL) with an opportunity to comment on the *Treasury Laws Amendment (2018 Measures No. 2) Bill 2018 [Provisions]*. AVCAL previously made submissions in response to the relevant exposure draft legislation in late 2017, and the comments presented in this submission reflect and re-iterate the views made in those previous submissions.

AVCAL represents the private equity (PE) and venture capital (VC) industry in Australia, which has a combined total of around \$30 billion in funds under management on behalf of domestic and overseas investors including Australian and offshore superannuation and pension funds, sovereign wealth funds, and family offices. VC and PE firms invest billions of dollars in early stage and established businesses spanning across almost every sector of our national economy. In the financial year ending 30 June 2017 alone, PE and VC invested around A\$3.6bn into Australian businesses.

A December 2017 study by Deloitte Access Economics provides some deeper insights into the economic contribution of PE including:

- In FY2016, PE-backed businesses contributed \$43 billion in total value added to the Australian economy – equal to 2.6% of Australian GDP;
- PE-backed businesses supported 327,000 FTE jobs (172,000 directly, and 155,000 indirectly);
- In FY2016, PE-backed businesses added almost 20,000 FTE jobs, accounting for 11% of total Australian employment growth in FY2016;
- PE-backed businesses typically delivered annual revenue growth of 20%, while boosting the size of their workforce by 24%;
- More than 85% of PE-backed businesses introduced some type of process or product innovation in FY2016, far greater than the average profile of non-PE backed businesses.

Much of the capital invested by these PE and VC funds is in smaller, high growth Australian companies, with a particular focus on commercialisation of research & development, and innovating and expanding established businesses.

1. Importance of an enabling FinTech policy environment

AVCAL supports efforts to create a policy environment conducive to the development of a thriving FinTech ecosystem in Australia. In our view, providing opportunities to grow this part of the economy should be a high priority, given that the financial services industry is one of the largest industry sectors in Australia, and contributes significantly to job creation and economic growth within the economy. The David Murray-led Financial System Inquiry also highlighted the importance of an efficient, stable and competitive financial system for our prosperity. Supporting innovative new market entrants is particularly important given that financial services has been

recognised by the World Economic Forum, amongst others, as a sector that is heavily exposed to digital disruption.¹

Accordingly, AVCAL supports initiatives such as the development of an enhanced regulatory sandbox. Such steps are critical, not only to ensure the financial services industry continues to make a major contribution to our economy, but also that in an increasingly global marketplace for ideas and capital Australia is able to compete effectively. A growth in FinTech businesses also has the potential to increase competition in the sector, with corresponding benefits for consumers in terms of cost, choice, as well product and service features.

Consequently, creating appropriate FinTech policy settings should be seen as a key element of the broader National Innovation & Science Agenda, aimed at developing a more sectorally diverse, knowledge driven Australian economy.

2. Key comments on the Bill

AVCAL supports the policy objectives of the Bill, namely the creation of an enhanced regulatory framework that would allow new and innovative FinTech products and services to be tested in Australia. Since December 2016, ASIC has provided for a testing mechanism, however we understand that there has been extremely limited market up-take thus far, at least in part due to overly restrictive conditions that deter resource-constrained, typically young firms, from utilising it.

Given the Australian FinTech sector is enjoying rapid growth – with a 2017 Deloitte report placing Sydney eighth on a list of 44 top global FinTech hubs – there is a tremendous opportunity for it to further develop. However, ensuring that Australia has an agile regulatory sandbox framework is essential so as to facilitate the ability of FinTech firms to take products to market in a carefully calibrated way which balances the need to foster innovation with legitimate consumer protection goals.

As a result of the amendments proposed in the Bill, eligible entities will be able to test services in relation to certain financial products without an Australian Financial Services License (AFSL) or Australian Credit Licence (ACL) under certain conditions set out in the Regulations. This is a well-considered approach, rather than requiring firms to proactively seek ASIC approval (instead mere notification of their reliance on the exemption). It will also be an improvement on the current law which does not specifically provide for *conditional* exemptions from the AFSL or ACL licensing conditions, thereby creating regulatory and legal uncertainty.

The above notwithstanding, the success of the proposed enhanced regulatory sandbox will depend on the relevant conditions being legally and commercially viable for market participants. If the conditions are too onerous, the sandbox is unlikely to be used (as appears to have been the case with respect to the existing model), thereby denying innovative FinTech firms the valuable opportunity to market test their products and services in a systematic, controlled manner.

3. Comments on minor tax technical amendments

AVCAL strongly supports the Government's proposed technical amendments to clarify certain aspects of the tax rules relating to ESVCLP and VCLP investment. We are pleased that a number of the issues that AVCAL has raised with Treasury over the course of 2017 have been appropriately addressed in the bill. This notwithstanding, we note that the current bill fails to address many of the other technical issues that industry had raised with Treasury and the Government.

For example, the current drafting of the bill appears to affirm that the ESIC tax offset amount that can be claimed through a partnership or trust is capped at \$200,000 annually – for example, if a trust has ten members with equal shares, only \$20,000 could be flowed-through to each of them per year. However, this does not appear consistent with our understanding of the policy intent – i.e. that the monetary cap should apply at an individual taxpayer level, and that there should be the same effect whether investment takes place directly or indirectly. Accordingly, we would recommend an amendment to make this intended outcome clear.

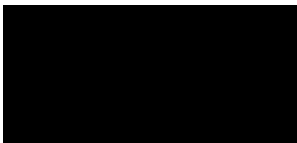
¹ *Future of Financial Services 2015*, World Economic Forum, June 2015

We hope that the amendments being made in the current Bill add further impetus towards the resolution of the other technical issues not dealt with in this Bill relating to ESVCLP and VCLP investment that continue to create uncertainty for the PE and VC industry.

4. Next steps

AVCAL would like to thank the Committee for consulting with stakeholders on the proposed legislation. In order to ensure that the intended policy objectives are achieved, it is vital that the framework is developed in close consultation with industry. AVCAL stands ready to work on this important initiative. If you would like to discuss any aspect of this submission further, please do not hesitate to contact me on [REDACTED]

Yours sincerely,



Yasser El-Ansary
Chief Executive