OFFICIAL:SENSITIVE (WHEN COMPLETE)



# Assessment of an investment under s118‑425 or s118‑427 of the Income Tax Assessment Act 1997

## Purpose of this form

This form is a tool for Industry Innovation and Science Australia (IISA), the Innovation Investment Committee (IIC) and the Department of Industry, Science and Resources (the department) to help assess whether your investment qualifies as an eligible venture capital investment (EVCI) under s118‑425 or s118‑427 of the [Income Tax Assessment Act 1997 (Cth) (ITAA 1997)](https://classic.austlii.edu.au/au/legis/cth/consol_act/itaa1997240/index.html).

Under s9‑1(1)(e) and s9‑3(1)(f) of the [Venture Capital Act 2002 (Cth) (VC Act)](https://classic.austlii.edu.au/au/legis/cth/consol_act/vca2002174/) each investment a partnership holds must be an EVCI or an investment that would have been an EVCI but for ss118‑425(2) and (6) or ss118‑427(3) and (7) of the ITAA 1997.

If your partnership is an early stage venture capital limited partnership (ESVCLP), your investment must also meet the requirements under s118‑428 of the ITAA 1997.

You should not rely on this form as legal or tax advice or as a replacement for independent legal or tax advice from a suitable professional. It is up to you to seek independent professional advice and conduct your own due diligence.

## Accessibility and privacy

We are committed to providing websites that are accessible to everyone. This is a requirement under the Disability Discrimination Act 1992 (Cth). If you have difficulty accessing our documents or experience any accessibility or usability issues with this form, email venturecapital@industry.gov.au.

This form will collect personal information and will be treated in accordance with the department’s privacy policy. Details are at [industry.gov.au/privacy](http://industry.gov.au/privacy).

## Using this form

You should read this form along with the [Early Stage Venture Capital Limited Partnership (ESVCLP)](https://business.gov.au/-/media/grants-and-programs/esvclp/early-stage-venture-capital-limited-partnerships-customer-information-guide-pdf.pdf?sc_lang=en&hash=76AF2139460CE4C737D28758BBA41ED6), [Venture Capital Limited Partnership (VCLP)](https://business.gov.au/-/media/grants-and-programs/vclp/venture-capital-limited-partnerships-customer-information-guide-pdf.pdf?sc_lang=en&hash=D7C60904357A876BCBDCFEE70DD0B890) and Australian Venture Capital Fund of Funds (AFOF) Customer Information Guides.

Each question relates to a specific requirement under s118‑425 or s118‑427 of the ITAA 1997. Section references are included.

To minimise delays and follow‑up requests, please:

* answer every question unless the form tells you to skip ahead
* provide all the supporting documents when prompted by this form.

You should expect the department to follow up with you for clarification and further information.

## Terminology in this form

* ‘The EVCI’ or ‘the investment’ means the specific investment you are submitting for assessment as an EVCI.
* ‘The investee’ means the investee company / unit trust.
* ‘The partnership’ means the limited partnership registered, or applying for registration, under the VC Act.

See [s995‑1](https://classic.austlii.edu.au/au/legis/cth/consol_act/itaa1997240/s995.1.html) of the ITAA 1997 for explanations of other terms.

## Supporting evidence

### Provide with this form

Documents you will need to provide to the department when submitting this form or soon afterwards:

* If you acquired convertible notes as part of the investment – a copy of the convertible note agreement
* If the investee is part of a consolidated or consolidatable group under ss118‑425(12) or ss118‑427(12) of the ITAA 1997 – evidence showing consolidation or a copy of the corporate structure diagram
* If you are relying on the fintech exemption under ss118‑425(13A) or ss118‑427(14A) of the ITAA 1997 – evidence that the investment qualifies for the exemption

### Provide only on request

 Examples of documents the department may request during the assessment process:

* Purchase agreements
* Evidence of the investee’s business activities in the form of audited or unaudited financial statements or a business plan
* Evidence of the total value of assets of the investee, which could be:
	+ an audited financial statement or opinion from the investee’s auditor stating the total value of assets of the investee and of any other entity connected with the investee, or
	+ a statutory declaration from the director/trustee stating the market value of the investee on the date of the investment
* Evidence of compliance with the location test and predominant activity test, such as letters from a director/trustee of the investee (e.g. deidentified employee lists)

## Need help?

You can find out more about the venture capital programs online at <https://business.gov.au/grants-and-programs/venture-capital>.

Email venturecapital@industry.gov.au if you need help with this form.

## Questions

### Details

#### 1. Basic details

| 1.1 | Registered Name of the investee  | Click here to enter text. |
| --- | --- | --- |
| 1.2 | Date of the investment | Click or tap to enter a date. |
| 1.3 | Amount of the investment | Click here to enter text. |
| 1.4 | What the partnership received for the investment (e.g. number of shares or units) | Click here to enter text. |
| 1.5 | ABN (if applicable) | Click here to enter text. |
| 1.6 | ACN (if applicable) | Click here to enter text. |

#### 2. Investment type

Answer ‘yes’ or ‘no’ to each question. Only answer ‘yes’ once.

|  |  |  |
| --- | --- | --- |
| 2.1 | Do you submit that the investment is an EVCI?**OR** | Yes [ ]  No [ ]  |
| 2.2 | Do you submit that the investment:* is an investment in a company in which the partnership already had an EVCI (or EVCIs), and
* would have been an EVCI if not for ss118‑425(2) and (6) of the ITAA 1997?

**OR** | Yes [ ]  No [ ]  |
| 2.3 | Do you submit that the investment:* is an investment in a unit trust in which the partnership already had an EVCI (or EVCIs), and
* would have been an EVCI if not for ss118‑427(3) and (7) of the ITAA 1997?
 | Yes [ ]  No [ ]  |

Comment: If required, add information relevant to section 2 here

### Investment requirements

#### 3. Risk for the partnership

Paragraph 118‑425(1)(a) or paragraph 118‑427(1)(a) and s118‑430 of the ITAA 1997

|  |  |  |
| --- | --- | --- |
| 3.1 | Does the partnership consider that the investment is at risk? | Yes [ ]  No [ ]  |
| 3.2 | Is the investment recorded on the partnership’s asset register (or property register or investment register)? | Yes [ ]  No [ ]  |
| 3.3 | Does the partnership have a copy of the purchase agreement on file and available to provide to the department if requested? | Yes [ ]  No [ ]  |
| 3.4 | Does the partnership have any arrangement for maintaining the value of the investment (for example, hedging, insurance or derivatives)? | Yes [ ]  No [ ]  |
| 3.5 | Does the partnership have any arrangement for maintaining earnings or other return from owning the investment? | Yes [ ]  No [ ]  |

Comment: If required, add information relevant to section 3 here

#### 4. Nature of the acquired interest

Paragraph 118‑425(1)(b) or paragraph 118‑427(1)(b) of the ITAA 1997

|  |  |  |
| --- | --- | --- |
| 4.1 | Does the investment include an acquisition of any **share or unit** in the capital of the investee (including stock in trade)? | Yes [ ]  No [ ]  |
| 4.2 | Does the investment include an acquisition of **options** (including warrants) originally issued by the investee to acquire shares or units in the same investee? | Yes [ ]  No [ ]  |
| 4.3 | Does the investment include an acquisition of any **convertible notes** issued by the investee?(If the notes are also debt interests, see Annexure A of s82L of the ITAA 1936)If you answered yes to Q4.3, provide a copy of the convertible note agreement. | Yes [ ]  No [ ]  |

Comment: If required, add information relevant to section 4 here

#### 5. Capital structure of the partnership

Paragraph 118‑425(1)(d) or paragraph 118‑427(1)(d) of the ITAA 1997

|  |  |  |
| --- | --- | --- |
| 5.1 | What is the total dollar amount of all the partnership’s equity and debt interests (including this investment) in the investee? | Click here to enter text. |
| 5.2 | What is the total dollar amount of all the partnership’s equity and debt interests (including this investment) in any entities that are connected entities of the investee? | Click here to enter text. |
| 5.3 | What was the partnership’s committed capital balance at the time of this investment? | Click here to enter text. |

Comment: If required, add information relevant to section 5 here

### Investee characteristics

#### 6. Legal entity

Paragraph 118‑425(1)(c) or paragraph 118‑427(1)(c) of the ITAA 1997

|  |  |  |
| --- | --- | --- |
| 6.1 | Is the investment an acquisition of shares or units in the investee in exchange for some or all of the shares in another company or units in another unit trust (i.e. scrip for scrip)? | Yes [ ]  No [ ]  |
| 6.2 | Did the partnership acquire all the shares or units owned by the investee? | Yes [ ]  No [ ]  |
| 6.3 | Does the investment involve a debt interest?(See s974‑20 of the ITAA 1997) | Yes [ ]  No [ ] If yes skip to Q14 |

Comment: If required, add information relevant to section 6 here

#### 7. Investee’s location

ss118‑425(2) or ss118‑427(3) of the ITAA 1997

|  |  |  |
| --- | --- | --- |
| 7.1 | At the date of the investment, was the investee an Australian resident? | Yes [ ]  No [ ]  |
| 7.2 | Does the partnership have other investments in the investee? | Yes [ ]  No [ ] If yes, skip to Q7.5 |
| 7.3 | Do you submit that for the whole 12 months after the investment date more than 50% of the people engaged (including employees, contractors and others engaged to perform services) by the investee to perform services did so primarily in Australia?Provide details in Annexure A (1)(a) | Yes [ ]  No [ ]  |
| 7.4 | Do you submit that for the whole of the 12 months after the investment more than 50% of the investee’s assets were located in Australia?Provide details in Annexure A (1)(b) | Yes [ ]  No [ ]  |
| 7.5 | Have you been granted an exemption under s25‑10(1) or (1A) of the VC Act from the location (people and assets) requirements? | Yes [ ]  No [ ]  |
| 7.6 | Have you been granted approval under s25‑5(1) or (1A) of the VC Act to use a shorter period than 12 months for assessing the location (people and assets) requirements? | Yes [ ]  No [ ]  |
| If you do have assets or employees based overseas, provide details in Annexure A |

Comment: If required, add information relevant to section 7 here

#### 8. Investee’s activities

ss118‑425(3) or ss118‑427(4) of the ITAA 1997

Note: The requirements of the activity test in ss118‑425(3) or ss118‑427(4) of the ITAA 1997 are ongoing.

|  |  |  |
| --- | --- | --- |
| 8.1 | Are more than 75% of the assets used by the investee and/or its controlled entities primarily used in eligible activities?Provide details in Annexure A (2)(b) | Yes [ ]  No [ ] If yes, don’t answer Q8.4, Q8.5 or Q8.6 |
| 8.2 | Are more than 75% of the employees (including contractors and agents) of the investee and its controlled entities primarily engaged to perform eligible activities?Provide details in Annexure A (2)(c) | Yes [ ]  No [ ] If yes, don’t answer Q8.4, Q8.5 or Q8.6 |
| 8.3 | Does more than 75% of the total income of the investee and each of its controlled entities come from eligible activities?Provide details in Annexure A (2)(d) | Yes [ ]  No [ ] If yes, don’t answer Q8.4, Q8.5 or Q8.6 |
| 8.4 | Are you relying on the ‘developing technology fintech exemption’ under paragraph 118‑425(13A)(a) and (b) or paragraph 118‑427(14A)(a) and (b) of the ITAA 1997? | Yes [ ]  No [ ]  |
| 8.5 | Are you relying on an exemption from a private finding that is in force from IISA of a substantially novel application of technologies under paragraph 118‑425(13A)(c) or paragraph 118‑427(14A)(c) of the ITAA 1997? | Yes [ ]  No [ ] If no, skip to Q9.1 |
| 8.6 | If you answered yes to Q8.5, provide the date of the private finding | Click here to enter text. |

Comment: If required, add information relevant to section 8 here

#### 9. Investee’s investment in other entities

ss118‑425(4) or ss118‑427(5) of the ITAA 1997

|  |  |  |
| --- | --- | --- |
| 9.1 | Has the investee invested in any other entity? | Yes [ ]  No [ ] If no, skip to Q10.1 |
| 9.2 | Has the investee invested other than by depositing money with an authorised depository institution in Australia or with an authorised banking business in a foreign country? | Yes [ ]  No [ ] If no, skip to Q10.1 |
| 9.3 | Has the investee invested in any entity connected with the investee? (See s328‑125 of the ITAA 1997) | Yes [ ]  No [ ]  |
| 9.4 | Does the partnership control any entity the investee has invested in?(See s328‑125 of the ITAA 1997) | Yes [ ]  No [ ]  |
| 9.5 | Does each entity in which the investee has invested meet the location and activity tests for EVCI investment?(See ss118‑425(3) or ss118‑427(4), and ss118‑425(2) or ss118‑427(3) of the ITAA 1997) | Yes [ ]  No [ ]  |
| 9.6 | When did you last review whether this investee (and its investees meet the location and activity tests for EVCI investment?(See ss118‑425(3) or ss118‑427(4), and ss118‑425(2) or ss118‑427(3) of the ITAA 1997) | Click here to enter text. |
| 9.7 | Have you applied to the department under s25‑15 of the VC Act for a determination that the activities of any other entity in which the investee has invested are complementary to the activities of the investee? | Yes [ ]  No [ ] If no, skip to Q10.1 |
| 9.8 | If you answered yes to Q9.7, provide the date on which the department granted this determination | Click here to enter text. |

Comment: If required, add information relevant to section 9 here

#### 10. Investee’s legal capacity

ss118‑425(4A) or ss118‑427(5A) of the ITAA 1997

|  |  |  |
| --- | --- | --- |
| 10.1 | Has the investee, in the capacity of a trustee, used any of the amount invested in it by the partnership? | Yes [ ]  No [ ]  |
| 10.2 | When did you last verify this with the investee (Q10.1)? | Click here to enter text. |

Comment: If required, add information relevant to section 10 here

#### 11. Company’s auditor

ss118‑425(5) or ss118‑427(6) of the ITAA 1997

|  |  |  |
| --- | --- | --- |
| 11.1 | Is the company a large proprietary company as defined in the Corporations Act 2001 (Cth)? | Yes [ ]  No [ ]  |
| 11.2 | Does the company’s permitted entity value exceed $12,500,000 (AUD)? | Yes [ ]  No [ ]  |
| 11.3 | Does the company have a registered auditor appointed as its auditor at (or at any time after) the end of the income year in which the partnership made the investment? | Yes [ ]  No [ ]  |

Comment: If required, add information relevant to section 11 here

#### 12. Investee’s value

ss118‑425(6) or ss118‑427(7) of the ITAA 1997

|  |  |  |
| --- | --- | --- |
| 12.1 | What is the total value of the investee’s assets and all other entities connected with the investee? (refer to s118‑440 of the ITAA 1997 for further details) | Click here to enter text. |
| 12.2 | How did you calculate:1. The value in audited accounts
2. The value in an audited statement
3. The amount stated to be the market value in a statutory declaration of the directors (for a company) or the trustees (for a unit trust)
4. The market value

Note: The above methods are listed in order of priority. You must calculate the value of an investment according to the first method that is possible for that investment. | Click here to enter text. |

Comment: If required, add information relevant to section 12 here

#### 13. Investee’s access to capital markets

ss118‑425(7) or ss118‑427(8) of the ITAA 1997

|  |  |  |
| --- | --- | --- |
| 13.1 | Is the investee listed for quotation in the official list of a stock exchange in Australia or a foreign country? | Yes [ ]  No [ ] If no, skip to Q14.1 |
| 13.2 | When were the investee’s shares or units first listed on a stock exchange in Australia or a foreign country? | Click here to enter text. |

Comment: If required, add information relevant to section 13 here

#### 14. Consolidated or consolidatable group

**ss118‑425(12) or ss118‑427(12) of the ITAA 1997**

Note: See [s995‑1](https://classic.austlii.edu.au/au/legis/cth/consol_act/itaa1997240/s995.1.html) of the ITAA 1997 for the definitions of ‘consolidated group’, ‘consolidatable group’, ‘head company’ and ‘subsidiary members’

|  |  |  |
| --- | --- | --- |
| 14.1 | Is the investee part of a consolidated group? If yes, provide documentary evidence | Yes [ ]  No [ ] If yes, skip to Q.15.1 |
| 14.2 | Is the investee part of a consolidatable group?If yes, provide a diagram of the corporate structure showing the ownership relationships between companies | Yes [ ]  No [ ]  |
| 14.3 | What is the head company of the consolidatable group? | Click here to enter text. |
| 14.4 | What are the subsidiary member(s) of the consolidatable group? | Click here to enter text. |

Comment: If required, add information relevant to section 14 here

#### 15. ESVCLP investments

|  |  |  |
| --- | --- | --- |
| 15.1 | Is the partnership an early stage venture capital limited partnership (ESVCLP)? | Yes [ ]  No [ ] If no, skip to Declaration |
| 15.2 | Are any shares or units in the investee listed for quotation in the official list of a stock exchange in Australia or a foreign country? | Yes [ ]  No [ ]  |
| 15.3 | Were any of the shares or units acquired in this investment allotted to an entity other than the partnership? | Yes [ ]  No [ ] If no, skip to Q15.6 |
| 15.4 | Were these shares or units (Q15.3) acquired from an underwriter or sub‑underwriter of the issue of the investment and still held by the underwriter or sub‑underwriter immediately before being acquired? | Yes [ ]  No [ ]  |
| 15.5 | Were these shares or units (Q15.3) offered for sale to a person for the purpose of being offered for sale and still held by that person immediately before being acquired? | Yes [ ]  No [ ]  |

##### Non-pre-owned shares

|  |  |  |
| --- | --- | --- |
| 15.6 | Has the partnership previously acquired non‑pre‑owned shares or units from the investee? | Yes [ ]  No [ ]  |
| 15.7 | Is the partnership acquiring non‑pre‑owned shares or units from the investee in connection with this investment? | Yes [ ]  No [ ]  |

##### Pre-owned shares

|  |  |  |
| --- | --- | --- |
| 15.8 | Has the partnership previously acquired pre‑owned shares or units from the investee? | Yes [ ]  No [ ] If no, skip to Q15.10 |
| 15.9 | What is the total value of all pre‑owned shares or units owned by the partnership at the time of this investment? | Click here to enter text. |
| 15.10 | Is the partnership acquiring non‑pre‑owned shares or units from the investee in connection with this investment? | Yes [ ]  No [ ] If no, skip to Declaration |
| 15.11 | What is the total value of the pre‑owned shares or units being acquired in this investee? | Click here to enter text. |
| 15.12 | What was the method used to value the pre‑owned shares or units being acquired? | Click here to enter text. |

Comment: If required, add information relevant to section 15 here

## Declaration

|  |  |
| --- | --- |
| **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.**I certify that I am permitted to act on behalf of the general partner and all information provided in this form is correct to the best of my knowledge.Checking the checkbox constitutes an electronic signature. | Yes [ ]  No [ ]  |
| Signature: Name:Title:Organisation: | Click or tap to enter a date. |

## Annexure A

Each item in this annexure asks for further information relating to questions in the form. Give information for each item unless the instructions say that it:

* only relates to a question that the form told you to skip
* only applies if you answered yes to a specific question in the form.

Type the information into the blank tables. Add rows as needed.

### (1) Investee’s location

This relates to Q7.3 and Q7.4.

#### Persons

(a)(i) Provide a breakdown of the location of all people (employees, contractors and agents) engaged by the investee to provide services in the 12 months **before** the investment date

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| Employer legal entity | Service performed | Number of people engaged | Period engaged | Primary location |
|       |       |       |       |       |
|       |       |       |       |       |

(a)(ii) Provide a breakdown of the location of all people (employees, contractors and agents) engaged by the investee to provide services in the 12 months **after** the investment date

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| Employer legal entity | Service performed | Number of people engaged | Period engaged | Primary location |
|       |       |       |       |       |
|       |       |       |       |       |

#### Assets

(b)(i) Provide a breakdown of the location of all investee assets in the 12 months **before** the investment date

|  |  |  |  |
| --- | --- | --- | --- |
| Name of legal entities | Assets | Value of assets | Locations |
|       |       |       |       |
|       |       |       |       |

(b)(ii) Provide a breakdown of the location of all investee assets in the 12 months **after** the investment date

|  |  |  |  |
| --- | --- | --- | --- |
| Name of legal entities | Assets | Value of assets | Locations |
|       |       |       |       |
|       |       |       |       |

### (2) Investee’s activities

This relates to Q8.2, Q8.3 and Q8.4.

(a) Activity type

|  |  |  |
| --- | --- | --- |
| (i) | Does the investee undertake more than one type of activity? | Yes [ ]  No [ ]  |
| (ii) | Which [business industry code](https://www.ato.gov.au/calculators-and-tools/business-industry-code-tool-anzsic-coder) best characterises the investee’s activity? | Click here to enter text. |
| (iii) | Have you previously provided information (such as financial statements and business plan) to demonstrate the activities of the investee? | Yes [ ]  No [ ]  |

(b) Evidence that more than 75% of the assets (by value) of the investee or any entity controlled by the investee are used primarily in eligible activities

Provide a breakdown of assets for the investee and for each other entity. Type the information into the blank tables below (add rows as needed) or submit an itemised list as a separate document with this form.

Eligible

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
| Entity | Activity | Asset class | Value of asset class | Primary use of asset | Explanation of eligibility |
|       |       |       |       |       |       |
|       |       |       |       |       |       |

Ineligible

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
| Entity | Activity | Asset class | Value of asset class | Primary use of asset | Explanation of ineligibility |
|       |       |       |       |       |       |
|       |       |       |       |       |       |

(c) Evidence that more than 75% of the employees of the investee and/or any of its controlled entities are primarily engaged to perform eligible activities

Provide a breakdown of employees (including contractors and agents) for the investee and for each other entity.

Type the information into the blank tables below (add rows as needed) or submit an itemised list as a separate document with this form.

Eligible

|  |  |  |  |
| --- | --- | --- | --- |
| Employer legal entity | Job title | Primary activity of employee | Explanation of eligibility |
|       |       |       |       |
|       |       |       |       |

Ineligible

|  |  |  |  |
| --- | --- | --- | --- |
| Employer legal entity | Job title | Primary activity of employee | Explanation of ineligibility |
|       |       |       |       |
|       |       |       |       |

 (d) Evidence that more than 75% of the total assessable income, exempt income and non‑assessable non‑exempt income of the investee and each of its controlled entities comes from eligible activities

Provide a breakdown of income for the investee and for each other entity.

Type the information into the blank table (add rows as needed).

|  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- |
| Entity | Activity | Assessable income | Exempt income | Non‑assessable, non‑exempt income | Eligible (Yes/No) | Explanations of eligibility |
|       |       |       |       |       |       |       |
|       |       |       |       |       |       |       |

### (3) Fintech exemption (deeming)

Respond only if you answered ‘yes’ to Q8.5.

|  |  |  |
| --- | --- | --- |
| (a) | Do you submit that the company’s activity is developing technology for use in relation to finance, insurance or making investments for deriving passive income? | Yes [ ]  No [ ]  |
| (b) | Is the company’s activity/activities characterised as an activity that is ancillary or incidental to the activity of developing technology for the activities referred to above? | Yes [ ]  No [ ]  |
| (c) | Is the company’s activity the subject of an IISA finding in force under s118‑432 of the ITAA 1997? | Yes [ ]  No [ ]  |

Comment: Click here to provide further information about the company’s technological innovation.