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Customer Information Guide

# VENTURE CAPITAL LIMITED PARTNERSHIPS (VCLPs)

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Prepared by AusIndustry – January 2019

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This guide will help with understanding the requirements of Venture Capital Limited Partnerships ([VCLPs](#)).

If seeking VCLP [registration](#), complete the [online application form](#) and lodge the supporting documents listed in [How to apply](#) on the [VCLP web page](#) with the application. [Innovation and Science Australia's](#) authorised delegate will decide on the application. For assistance with an application, [contact us](#) or email [venturecapital@industry.gov.au](mailto:venturecapital@industry.gov.au).

Some provisions of the *Venture Capital Act 2002*, which enables the VCLP program, refer to “in the form approved by Innovation Australia” (now Innovation and Science Australia). A [list](#) of those provisions and a description of the approved form for each is provided by Innovation and Science Australia.

Note: Terms shown in bold are first references to terms described in the [glossary](#) and link to that description.

## **1. VCLP overview**

The program aims to stimulate Australia’s venture capital sector by attracting foreign investors.

Fund managers planning to raise a venture capital fund of at least \$10 million (there is no upper limit) can apply to Innovation and Science Australia to register the partnership as a VCLP. A VCLP is entitled to flow-through tax treatment (it is not a taxing point). Its eligible foreign investors do not pay capital gains tax on their share of returns the VCLP makes from [eligible venture capital investments](#). Domestic investors can invest in a VCLP but are not entitled to the program’s tax concession. Returns to domestic investors are taxed in their hands and they may be allowed a deduction for any losses.

The program is enabled by the:

- *Venture Capital Act 2002* (VCA)
- *Income Tax Assessment Act 1936* and the *Income Tax Assessment Act 1997* (ITAA36 and ITAA97).

The program commenced in December 2002 with the passing of the VCA and amendments to the ITAA36 and ITAA97.

The program is jointly administered by the Department of Industry, Innovation and Science and the Australian Taxation Office (ATO).

## **2. Registration as a VCLP**

### **2.1 Innovation and Science Australia’s delegates**

Innovation and Science Australia has authorised the [Innovation Investment Committee](#) and senior executive staff of the department as delegates who can decide registration applications against the program legislation.

## 2.2 Eligibility criteria [Divisions 9, 11 and 13 VCA]

A partnership must meet the following criteria to be eligible for registration as a VCLP.

Eligibility criteria	VCA reference
<p>It must:</p> <ul style="list-style-type: none"> <li>• be a limited partnership*</li> <li>• be established in Australia or a country with which Australia has a <a href="#">double tax agreement</a></li> </ul> <p>* Limited partnerships are established under state and territory laws. Most states and territories allow for the establishment of an <a href="#">incorporated limited partnership</a> for the purpose of registering as a VCLP. A limited partnership must also meet the relevant criteria as defined in s995-1(1) of the ITAA97.</p>	<p>s9-1(1)</p> <p>s9-1(1)(a)(i) or (ii)</p>
<ul style="list-style-type: none"> <li>• have a partnership agreement that: <ul style="list-style-type: none"> <li>○ remains in existence for not less than five years and not more than 15 years*</li> <li>○ requires partners to contribute capital when required</li> <li>○ prohibits the addition of new partners except as provided for in the agreement</li> <li>○ prohibits increases in <a href="#">committed capital</a> except as provided for in the agreement</li> <li>○ confers on a <a href="#">general partner</a> the right to require partners to contribute their committed capital to the partnership</li> <li>○ includes a plan that outlines its intended investment activities</li> </ul> </li> </ul> <p>* From the date the partnership was registered as a limited partnership or an incorporated limited partnership.</p>	<p>s9-1(1)(c),</p> <p>s11-1(2)(f)</p>
<ul style="list-style-type: none"> <li>• have a general partner(s) that is a resident of either Australia or a country with which Australia has a double tax agreement</li> </ul>	<p>s9-1(1)(b)</p>
<ul style="list-style-type: none"> <li>• have at least \$10 million* committed capital</li> </ul> <p>* A partnership that does not satisfy this requirement may be eligible for <a href="#">conditional registration</a>. See <a href="#">section 2.5.1</a>.</p>	<p>s9-1(1)(d)</p>
<ul style="list-style-type: none"> <li>• not hold any investments that are not allowed by the VCA. The partnership can only hold <a href="#">debt interests</a> that are permitted loans</li> </ul>	<p>s9-1(1)(e) and (g)</p>

<b>Eligibility criteria</b>	<b>VCA reference</b>
<ul style="list-style-type: none"> <li>only carry on activities related to making investments allowed by the VCA.</li> </ul>	s9–1(1)(f)

### **2.3 Applying for registration [Division 11 VCA]**

Apply for VCLP registration using the [online application form](#). For assistance with an application, [contact us](#) or email [venturecapital@industry.gov.au](mailto:venturecapital@industry.gov.au).

<b>Summary</b>	<b>VCA reference</b>
Complete and submit the <a href="#">online application form</a> .	s11–1(1)
<p>An application must include:</p> <ul style="list-style-type: none"> <li>a certificate of registration as a limited partnership or an incorporated limited partnership</li> <li>partners’ details</li> <li>a signed eligible partnership agreement</li> <li>partnership Information Memorandum or public offer documents</li> </ul>	s11–1(2)
The delegate can request additional information before deciding on an application for registration.	s11–10

### **2.4 Granting registration [Division 9, 11 and 13 VCA]**

The delegate will grant registration if they consider the application satisfies the legislative requirements. The delegate has 60 days after receiving a complete application to decide whether to grant registration and can extend that period by a further 60 days [s11–15].

A complete application is one that satisfies all the requirements of s11–1(2) of the VCA. If the application is incomplete, it will not be considered. The 60-day timeframe does not start until all information and documents are received. If the last day to decide an application – the 60th day – falls on a Saturday, Sunday or public holiday, the decision can be made on the next business day.

## **2.5 Registration**

### **2.5.1 Conditional registration [s13–5(1) VCA]**

A partnership that does not meet all the requirements under s9–1 of the VCA, such as not having at least \$10 million committed capital, may be granted conditional registration. A partnership that has been conditionally registered must present evidence to satisfy the delegate that it is likely to gain registration within 24 months. Conditional registration lapses after 24 months if a partnership does not meet the registration requirements.



A conditionally registered VCLP may, in certain circumstances, make investments. However, the VCLP must gain registration before it realises any gains, for the tax benefits to apply. To gain registration, a further complete application must be submitted that demonstrates the partnership meets all requirements for registration. An application for registration can be lodged at any time during the conditional registration period. However, it should be lodged no later than 60 days before the conditional registration lapses (that is, within 24 months after the conditional registration was granted).

If conditional registration of a VCLP lapses, it can reapply for registration. However, the application would need to address, to the delegate's satisfaction, those matters that prevented the partnership from gaining registration.

When advertising a conditionally registered VCLP, it is important to not misrepresent the VCLP as being registered. Any reference to 'registered' should clarify that the registration is conditional. The following statement may be used when advertising a VCLP: 'The VCLP is conditionally registered as a venture capital limited partnership and further conditions will need to be met before being registered as a VCLP'.

## 2.5.2 Registration [s13-1(1) VCA]

A partnership that meets the VCLP registration requirements can apply for registration at any time using the [online application form](#).

## 2.6 When registration is in force [s13-1, s13-5 and s13-10 VCA]

Generally, VCLP registration of a partnership comes into force on the day registration is granted (under s13-1). However, if a VCLP is conditionally registered (under s13-5) and then registration is granted, registration is taken to have come into effect:

- for the purposes of the ITAA97 (that is, the tax concession), on the day the partnership was granted conditional registration
- for the purposes of the ITAA36 (that is, the flow-through tax treatment):
  - if the partnership has only carried on activities related to becoming registered as an ESVCLP, on the day the partnership was established
  - otherwise, on the day on which conditional registration was granted.

Eligible foreign investors would become entitled to the tax concession when full registration is granted and would be eligible to claim the tax concession in the year the capital was contributed, via an amendment to their tax return.

## 2.7 Maintaining registration [Division 9 VCA]

VCLP registration is subject to a number of ongoing requirements. To maintain registration a VCLP must ensure it meets the:

- [investment registration requirements](#)
- other registration requirements
- reporting requirements.

<b>Investment registration requirements [s17-1(1)]</b>	<b>VCA reference</b>
<p>Any of the following constitute a failure to meet the investment registration requirements:</p> <ul style="list-style-type: none"> <li>• a VCLP holds an investment that is not permitted under the legislation</li> </ul>	s9-1(1)(e)
<ul style="list-style-type: none"> <li>• a VCLP carries on activities other than those related to being a VCLP</li> </ul>	s9-1(f)
<ul style="list-style-type: none"> <li>• a VCLP holds a debt interest that is not a permitted loan.</li> </ul> <p>Note: If the delegate is satisfied that a VCLP has failed to meet an investment registration requirement, it will notify the VCLP in writing that it must remedy the failure. This must be within a reasonable period, but not exceeding six months. If the failure is not remedied within the stipulated period, the delegate must revoke the VCLP's registration. This is a reviewable decision under Division 29 VCA.</p>	s9-1(g) and s9-10
<b>Other registration requirements [s17-5(1)(a)]</b>	<b>VCA reference</b>
<p>Any of the following constitute a failure to meet the other registration requirements:</p> <ul style="list-style-type: none"> <li>• the VCLP is no longer a partnership that satisfies the eligibility requirements of the VCA</li> </ul>	s9-1(1)(a),(b),(c)
<ul style="list-style-type: none"> <li>• the VCLP has committed capital of less than \$10 million.</li> </ul> <p>Note: If the delegate is satisfied a VCLP has failed to meet one of the above requirements, it will advise the VCLP it has 60 days in which to remedy the contravention. A VCLP can apply to have this period extended by a further 60 days. If the contravention is not remedied within the period set by the delegate, registration must be revoked. A decision to revoke under this provision is reviewable under Division 29 of the VCA.</p>	s9-1(d)
<b>Reporting requirements [s17-10]</b>	<b>VCA reference</b>
<p>Any of the following constitute a failure to meet the requirements of Division 15, allowing the delegate to revoke registration:</p> <ul style="list-style-type: none"> <li>• not submitting quarterly return* within one month of the end of each quarter</li> </ul>	s15-10

<b>Reporting requirements [s17–10]</b>	<b>VCA reference</b>
<ul style="list-style-type: none"> <li>not submitting annual return* within three months of the end of the financial year</li> </ul>	s15–1
<ul style="list-style-type: none"> <li>not providing further information about investments or disposals notified under s15–10</li> </ul>	s15–15
<ul style="list-style-type: none"> <li>not providing information the delegate considers necessary for the purpose of administering the Act</li> </ul>	s15–20
<ul style="list-style-type: none"> <li>repeated breaches in relation to holding ineligible investments.</li> </ul> <p>*AusIndustry has a pro forma for each report that it will email to the general partner at the appropriate time.</p> <p>Note: If the delegate revokes registration under this section, that decision is reviewable under Division 29 of the VCA.</p>	s9–1(1)(e)

## **2.8 Revoking registration [Division 17 VCA]**

The delegate may revoke a VCLP’s registration:

- for failing an ‘investment registration requirement’ (see [section 2.7](#))
- for failing any ‘other registration requirements’ (see [section 2.7](#))
- at its discretion (see [section 2.7](#))
- at the fund manager’s request (see below).

Generally, if the delegate considers a VCLP does not meet the registration requirements, it must issue a notice advising the VCLP and inviting a response. If after considering the response the delegate is satisfied there is a contravention, the delegate will direct the VCLP to rectify the contravention within a period determined in accordance with the VCA. If the contravention is not remedied within the set period, the delegate must revoke the VCLP’s registration.

<b>Application by the fund manager</b>	<b>VCA reference</b>
An application for revocation may be lodged at any time and the delegate will revoke registration as soon as practicable.	s17–25

## **2.9 Review of a decision [Division 29 VCA]**

Division 29 sets out the delegate’s decisions that are reviewable. Under this Division, a VCLP may ask the delegate to review certain decisions. If the delegate confirms its

decision, the VCLP may then apply to the Administrative Appeals Tribunal to review the decision.

The following are reviewable under the VCA (not an exhaustive list). 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
- section 13–1, refusing to register a limited partnership as a VCLP
- section 13–5, refusing to register conditionally a limited partnership as a VCLP
- section 17–1, 17–5 or 17–10, revoking a registration under Part 2
- subsection 17–1(2), determining a period within which investment registration requirements must be met
- section 25–5, determining a shorter period or refusing to make such a determination (relates to the Australian nexus test for an investee [s118–425(2)(b) of the ITAA97])
- section 25–10, refusing to make a determination (relates to the Australian nexus test for a company [s118–425] or a unit trust [s118–427(3) of the ITAA97])
- section 25–15, refusing to make a determination (relates to a company’s primary activity [s118–425(3) and (13)] or a unit trust’s primary activity [s118–427(4) and (14) of the ITAA97]).

### **3. Capital raising and partnership size**

#### **3.1 Minimum size [s9–1(d) VCA]**

To be eligible for VCLP registration, a partnership must have at least \$10 million in committed capital. There is no upper limit. This requirement is ongoing.

Note: Conditional registration can be granted to a partnership that has yet to raise capital (see [section 2.5](#)).

#### **3.2 Committed capital [s118–445 ITAA97]**

Section 118–445 of the ITAA97 defines committed capital. To maintain VCLP registration:

- a partnership must have at least \$10 million
- an investment cannot represent more than 30% of a VCLP’s committed capital (s118–425(1)(d) of the ITAA97).

#### **3.3 Australian Financial Services Licence (AFSL)**

Please visit the [ASIC website](#) to determine whether the proposed VCLP structure requires an AFSL under the *Corporations Act 2001*.

## **4. Regulation of VCLP activities and investments**

### **4.1 VCLP activities [s9-1(1)(f) VCA]**

A VCLP can only carry on the business of being a VCLP (that is, being a venture capital partnership) and can only hold investments as provided for under the VCA.

An investment must be either:

- an eligible venture capital investment
- permitted by s9-1(e)(ii) or (iii) of the VCA
- a debt interest that is a permitted loan.

### **4.2 Eligible investment [s118-425 or 427 ITAA97]**

VCLPs need to make eligible venture capital investments. An eligible venture capital investment is one that satisfies either the requirements of:

- investment in a company (s118-425), or
- investment in a unit trust (s118-427 of the ITAA97).

The requirements include restrictions on the investments that an investee entity can hold or acquire. Essentially, the investee entity can only invest in other entities provided that after the investment, the investee entity controls the other entity and the other entity broadly satisfies the requirements to be an eligible venture capital investment.

Following the investment, the investee entity must take into account the activities of the other entity when applying the [predominant activity](#) test for a six-month period from when the investment first occurs.

The eligible venture capital investment requirements have different timeframes. Some may apply at the time the investment is made, or for a certain period after the investment is made, or may be an ongoing requirement.

The following is an overview and should be read in conjunction with the relevant tax provisions.

Eligible investment	Requirements	ITAA97 reference
<p>An investment in a business that:</p> <ul style="list-style-type: none"> <li>• is located in Australia, including: <ul style="list-style-type: none"> <li>○ 50% of its assets</li> <li>○ 50% of its staff</li> </ul> </li> </ul>	<p>At the time of the investment and for at least 12 months after (The delegate can approve a variation. See <a href="#">section 4.2.6</a>)</p>	<p>s118-425(2), s118-427(3)</p>
<ul style="list-style-type: none"> <li>• is either a company or a unit trust</li> </ul>	<p>At the time of the investment and ongoing</p>	<p>s118-425(1)(b), s118-427(1)(b)</p>
<ul style="list-style-type: none"> <li>• has total assets of not more than \$250 million</li> </ul>	<p>At the time of the investment</p>	<p>s118-440(9)(b), s118-440</p>
<ul style="list-style-type: none"> <li>• has a registered auditor, where the entity's value is more than \$12.5 million</li> </ul>	<p>By the end of the year of the initial investment</p>	<p>s118-425(5), s118-427(6)</p>
<ul style="list-style-type: none"> <li>• has a predominant activity that is not: <ul style="list-style-type: none"> <li>○ property development or land ownership</li> <li>○ finance*</li> <li>○ insurance*</li> <li>○ construction, or</li> <li>○ making investments directed at deriving passive income*</li> </ul> </li> </ul> <p>*From 1 January 2019, none of the following activities are ineligible activities:</p> <ul style="list-style-type: none"> <li>• developing technology for use in relation to one of the activities referred to above marked with an asterisk (*) (these technologies are referred to as financial technology or 'fintech')</li> <li>• an activity ancillary or incidental to developing such technology, or</li> <li>• an activity that is the subject of a finding that it is a substantially novel application of technology in force at the time the investment was made.</li> </ul>	<p>At the time of the investment and ongoing  (The delegate has some discretion. See <a href="#">section 4.2.6</a>)</p>	<p>s118-425(3), s118-427(4)  s118-425(13), s118-427(14)  s118-425(13A) s118-427(14A)  s118-432</p>
<ul style="list-style-type: none"> <li>• does not invest the VCLP's investment in another entity unless it is <a href="#">'connected'</a> and</li> </ul>	<p>Ongoing</p>	<p>s118-425(4), s118-427(5)</p>

<b>Eligible investment</b>	<b>Requirements</b>	<b>ITAA97 reference</b>
satisfies a number of requirements		
<ul style="list-style-type: none"> <li>is not listed or will delist within 12 months.</li> </ul>	At the time of the investment and ongoing	s118-425(7)
<b>The investment must also be:</b>	<b>Requirements</b>	<b>ITAA97 reference</b>
<ul style="list-style-type: none"> <li><u><a href="#">at risk</a></u></li> </ul>	At the time of the investment and ongoing	s118-425(1)(a), s118-427(1)(a), s118-430
<ul style="list-style-type: none"> <li>shares or units, or options to acquire shares, units or convertible notes (that are not debt interests)</li> </ul>	At the time of the investment	s118-425(1), s118-427(1)
<ul style="list-style-type: none"> <li>one where the total amount invested is not more than 30% of the VCLP's committed capital</li> </ul>	At the time of the investment	s118-425(1)(d)
<ul style="list-style-type: none"> <li>held by the VCLP for at least 12 months</li> </ul>	At the time of the investment	s118-407(1)(d)(ii)
<ul style="list-style-type: none"> <li>made and disposed of while registered as a VCLP.</li> </ul>		s118-407(1)

The following can also qualify as eligible venture capital investments.

#### 4.2.1 Listed shares or units [s118-425(7) ITAA97]

A VCLP can acquire listed shares or units in a business only if the business is delisted within 12 months of purchase. After this, the investment becomes ineligible and the delegate can revoke the VCLP's registration if it continues to hold the investment.

If the VCLP acquires an eligible investment in a business that subsequently lists, the investment remains eligible and can be held by the VCLP.

#### 4.2.2 Convertible notes [s118-425(1)(b)(iii) and s118-425(9) and (15) ITAA97]

Convertible notes, other than convertible notes that are debt interests, qualify as an eligible venture capital investment. If the convertible note is a debt interest, it is not an eligible

venture capital investment. However, it may be acquired if it qualifies as a permitted loan under s9–10 of the VCA (see [section 4.4](#)).

A SAFE (simple agreement for future equity) note is a convertible security that allows the investor to buy shares in a future equity round. To be an eligible venture capital investment, a [SAFE note](#) must have the characteristics of a convertible note and not be a debt interest.

Note: Division 974 of the ITAA97 sets out the tests for determining whether an interest is debt or equity.

#### 4.2.3 Investments in foreign resident holding companies [s118–435 ITAA97]

Where an investee (holding) company meets the ‘permitted entity value’ and listing requirements, it will be treated as meeting the other eligible venture capital investment (EVCI) requirements (such as residency, activity and auditor requirements) if it:

- is a resident of Canada, France, Germany, Japan, the United Kingdom or the United States
- beneficially owns all the shares in an Australian resident company (subsidiary) or all of the units in a unit trust, which satisfies the requirements of an EVCI
- does not carry on any business, other than to support the primary activity of the subsidiary company or trust.

However, if the subsidiary company ceases to be an Australian resident, or the subsidiary trust ceases to carry on business in Australia at any time within 12 months after the day the first EVCI in the holding company was made, the investment in the holding company will cease to be an EVCI. Any further investments made in the company will not be eligible for exemption.

#### 4.2.4 Exception to location within Australia [s118–425(12A) and s118–427(13) ITAA97]

A VCLP can invest up to 20% of its committed capital in investments that would be eligible venture capital investments except for not meeting the Australian location test for companies [s118–425(2)] or unit trusts [s118–427(3)]. These investments are treated as eligible venture capital investments.

In calculating the 20%, the total value of all other investments the entity owns is to be based on their value at the time the entity makes the new investment. For example, Fund 1 wants to purchase a new foreign investment worth \$2 million. However, it has \$100 million committed capital and other purchases (from several years ago) that are now worth \$12 million and \$8 million, so the new purchase will take the VCLP over the 20% limit.

Where the delegate has determined that the Australian location test does not apply to an investment in a particular company (see [section 4.2.5](#)), that investment does not count toward the 20% limit.

#### 4.2.5 The delegate’s discretionary powers [Division 25 VCA and s118–432 ITAA97]

The delegate can make determinations and relax some of the requirements that relate to an eligible venture capital investment, specifically sections 118–425(2)(b), (3), (13), (14)



s118–427(3)(c), (4), (14), (15) of the ITAA97. These provisions relate to how closely an investee must be connected with Australia for it to be an eligible investment and its predominant activity. Generally, an investee must undertake more than 50% of its operations in Australia at the time of an investment and for at least 12 months after. It must also have an eligible predominant activity. The delegate may, upon application by a VCLP, relax these requirements. An application must be made in the approved form, which is specified on the [VCLP web page](#).

The delegate can also make public or private findings that an activity related to finance, insurance or making investments is a substantially novel application of technology (s118–432 of the ITAA97). The effect of such a finding is that the activity is excluded from being an ineligible activity (s118–425(13A)(c) and 118–427(14A)(c)), permitting a VCLP to invest in businesses engaged in substantially novel activities relating to fintech where the other requirements of an eligible venture capital investment are satisfied. For more information or to seek guidance on applying for a private finding email [venturecapital@industry.gov.au](mailto:venturecapital@industry.gov.au).

#### 4.2.6 Scrip for scrip investments [s118–425(8) and s118–427(9) VCA]

Where shares in another company are acquired in exchange for shares that, at the time of disposal, were an eligible venture capital investment (that is, scrip for scrip exchange), the replacement shares will be treated as an eligible venture capital investment, even if the company does not satisfy the requirements. However, if the company in which the replacement shares are held does not satisfy the requirements for a venture capital investee company, any shares acquired from a further scrip for scrip sale will not be treated as an eligible venture capital investment.

The replacement shares acquired under a scrip for scrip sale will only qualify as an eligible venture capital investment if the VCLP disposes of all its shares in the original investee company in return for shares in the other company.

### 4.3 Investments permitted by s9–1(1)(e)(ii) or (iii) VCA

This provision allows a VCLP to make and hold follow-on investments in entities where it already holds an eligible venture capital investment, but that entity has grown beyond the \$250 million assets limit or no longer satisfies the Australian nexus test. Gains from these investments are taxed in the hands of investors.

### 4.4 Permitted loans [s9–10 VCA]

A VCLP can only hold a debt interest if it is a permitted loan as defined at s9–10 of the VCA. Generally, a VCLP can lend money to a company or unit trust once it holds an eligible venture capital investment in that entity and that investment is at least 10% of the investee.

A VCLP may also lend money to a business where it does not hold an investment if the loan is repaid within six months. If there are exceptional circumstances, the delegate may extend the repayment period [s9–10(1)(b), (2) and (3)].

Note: Division 974 of the ITAA97 sets out the tests for determining whether an interest is debt or equity.

## **5. Managing a VCLP**

### **5.1 General partner**

The general partner is responsible for managing the operation of a VCLP. Specifically, it is the body responsible for ensuring the VCLP holds only permitted investments and operates in accordance with the relevant legislation. The general partner should be a management team that consists of individuals with skills and experience relevant to managing a venture capital fund. The general partner should also have access to deal flow and capital.

### **5.2 Venture capital management partnerships [s94D(3) ITAA36]**

A venture capital management partnership (VCMP) is a limited partnership that:

- is a general partner of one or more:
  - VCLPs
  - Early Stage Venture Capital Limited Partnerships (ESVCLPs)
  - Australian Venture Capital Fund of Funds (AFOFs)
- only carries on activities that relate to being a general partner.

A limited partnership ceases to be a VCMP if it ceases to meet these requirements.

The general partner of a VCLP or a limited partner in a VCMP who becomes entitled to receive a payment of a 'carried interest' may have that payment taxed as a capital gain, which may be subject to concessional taxation. For the carried interest to qualify as a discount capital gain, the general partner must have entered into the partnership agreement under which the gain arose at least 12 months previously, and must meet the other requirements for the discount.

### **5.3 Reporting to the delegate [Division 15 VCA]**

A VCLP must report on its activities within one month of the end of each quarter. It must also provide an annual report within three months of the end of the financial year.

The delegate will monitor compliance through examining relevant documents, including both quarterly and annual returns. The delegate may also ask for additional information they consider necessary for administering the program. Compliance assessments are also undertaken by the ATO, which receives copies of all VCLP reports submitted to the delegate. The ATO may undertake risk assessment activities to ensure compliance with the legislation it administers.

### **5.4 Statement of expectation**

An [Expectation and Compliance Statement](#) has been issued, which can be viewed on the [VCLP web page](#). The statement outlines what is expected from a VCLP.

## **6. Taxation [Sourced from the ATO]**

Specifically, the concession provides for:

- flow-through tax treatment for a VCLP
- an exemption for eligible venture capital partners from income tax on profits (capital or revenue), from the disposal by the VCLP of eligible venture capital investments.

Eligible venture capital partners are:

- ‘tax-exempt foreign residents’ of any foreign country (except a general partner of a VCLP or an ESVCLP)
- ‘foreign venture capital funds of funds’ established in any foreign country, and either a foreign resident or in which every general partner is a foreign resident, and
- taxable foreign residents of any foreign country (except a general partner of a VCLP or an ESVCLP) whose committed capital in the partnership is less than 10% of the partnership’s committed capital.

In relation to a disposal of an eligible venture capital investment, a share of revenue gains or profits is exempt from income tax, and there is no deduction for losses. Where there is a capital gains tax event, capital gains or losses are disregarded.

The general partner of a VCLP or a limited partner in a VCMP (see [section 5.2](#)) that becomes entitled to receive a payment of a ‘carried interest’ will have that payment taxed as a capital gain. For the carried interest to qualify as a discount capital gain, the general partner must have entered into the partnership agreement under which the gain arose at least 12 months previously, and must meet the other requirements for the discount.

## **7. Monitoring and sanctions**

### **7.1 Powers to direct**

If the delegate is satisfied that a VCLP has contravened the VCA, they must direct the VCLP to remedy the contravention within a period of time. The period will depend on the nature of the contravention (see [section 2.7](#)). The delegate must revoke the registration of a VCLP that fails to remedy a contravention.

### **7.2 Powers to monitor**

The delegate is required to monitor a VCLP’s activities to ensure they continue to operate in compliance with the relevant legislation and meet the registration requirements of a VCLP. This is generally undertaken through reviewing VCLP returns (quarterly and annual). Copies of these returns (and registration applications) are routinely provided to the ATO.

### **7.3 Annual report**

Innovation and Science Australia reports on the VCLP program in its annual report to the Minister for Industry, Innovation and Science.

## 8. Glossary of terms

<b>Term</b>	<b>Description</b>
<b>At risk</b>	Section 118–430 of the ITAA97
<b>Committed capital</b>	Section 118–445 of the ITAA97
<b>Conditional registration</b>	Registration granted under s13–5(1) of the VCA
<b>Connected</b>	Section 995–1 of the ITAA97
<b>Debt interest</b>	Division 974 of the ITAA97 sets out the tests for determining whether an interest is debt or equity
<b>Double tax agreement</b>	See the <a href="#">ATO</a>
<b>Eligible venture capital investment</b>	Sections 118–425 and 118–427 of the ITAA97
<b>General partner</b>	A fund manager responsible for identifying and making investments, and whose liability is not limited
<b>Incorporated limited partnership</b>	A separate legal entity that may sue or be sued in its firm name. These are special purpose, designed for use as venture capital partnerships under both the ESVCLP and VCLP programs
<b>Innovation and Science Australia</b>	A body established under the <i>Industry Research and Development Act 1986</i> (IR&D Act)
<b>Innovation Investment Committee</b>	A committee of Innovation and Science Australia appointed under the IR&D Act
<b>Investment registration requirements</b>	Section 9–1(2) of the VCA
<b>ITAA36 and ITAA97</b>	The <i>Income Tax Assessment Act 1936</i> and the <i>Income Tax Assessment Act 1997</i>
<b>Predominant activity</b>	Subsections 118–425(3) and 118–427(4) of the ITAA97
<b>Registration</b>	Registration under s13–1(1) of the VCA
<b>VCA</b>	The <i>Venture Capital Act 2002</i>
<b>VCLP</b>	Venture Capital Limited Partnership registered under Part 2 VCA

## **9. For more information**

For further information, visit the [VCLP web page](#) or contact AusIndustry on:

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**Phone:** 13 28 46