



Fintech – private finding application guidance

Issued March 2019

Purpose of the guidance:

This guidance provides an overview of how to apply for a private finding that a specified activity is a substantially novel application of one or more technologies under s118-432(2) of the *Income Tax Assessment Act 1997* (ITAA 97) (Private Finding).

Background

Under the financial technology (Fintech) amendments which came into effect on 1 January 2019, a company or unit trust may apply to Innovation and Science Australia (ISA) for a Private Finding.

The amendments provide that an activity of an investee is not an ineligible activity for the purpose of qualifying as an 'eligible venture capital investment' or EVCI if it is:

- developing technology for use in relation to finance, insurance or making investments
- an activity that is ancillary or incidental to the activity of developing technology referred to above, or
- covered by a finding from Innovation and Science Australia that it is a substantially novel application of technology.

The third exclusion is intended to permit early stage venture capital limited partnerships (ESVCLPs) and venture capital limited partnerships (VCLPs) to invest in entities that are engaged in substantially novel activities in relation to Fintech, even if these activities have moved from the development of technology to its application. In many cases this may occur when a business moves from market-testing to full commercialisation of a product.

ISA has delegated the power to make a Private Finding to a range of delegates including its Innovation Investment Committee and certain senior executives of the Department of Industry, Innovation and Science (the Delegate).

An activity covered by a Private Finding at the time an investment is made is excluded from being an ineligible activity because the activity is related to finance (to the extent it consists of banking, providing capital, leasing, factoring or securitisation), insurance or making investments for the purpose of deriving passive income.

A Private Finding applies for the period specified in the finding. In determining the appropriate period for a finding to apply, the Delegate will balance the need to periodically reassess the status of activities with the need for certainty and the importance of follow-on investments.

A Private Finding only affects the treatment of the activities it covers - not all activities of an entity that is the subject of a Private Finding are covered by the finding. To determine if an investment in the entity is an eligible venture capital investment, the activities covered by the finding must be considered together with all other activities of the entity, as well as all the other conditions set out in s118-425 or s118-427 of the ITAA 97.

A potential applicant for a Private Finding should therefore consider whether the other requirements of an eligible venture capital investment are met before deciding whether to apply.

The Delegate will consult with the Commissioner of Taxation when making a Private Finding but final responsibility for making Private Findings rests with the Delegate.

The Delegate will notify the applicant in writing of their decision.

A decision by the Delegate to make, or not to make, a Private Finding is subject to internal and AAT review in the same way as other administration decisions relating to venture capital tax concessions.

Substantially novel applications of technology

Technology is the practical application of science and engineering. It is not limited to physical devices and can include software.

To be substantially novel, an application of technology must be new or uncommon and must involve some degree of innovation. This means that many uses of new technology will be substantively novel applications, unless that use has become widespread. Applications of older technology may also be substantially novel, if the technology is used in a manner that is new or applied in a different way to general practice in the relevant industry sector.

Novelty does not require an application of technology to be unique or unprecedented. If multiple entities all adopt the same or similar new ways of using technology within a short period of time, each entity's activities may well represent a novel application of technology.

This could include, for example, entities developing similar new products or services before these products or services are widely available or commonly used in the relevant industry. It could also include the application of technology that is commonly used in one sector to another area where it has not previously been commonly used.

Substantially novel applications of technology can also involve, for example, a new product or service based on an application of new or existing technology that is not consistent with the general practice of the relevant industry sector.

How to apply for a Private Finding

An application for a Private Finding must be in the form approved by ISA, that is:

- for an application made by an entity which the Private Finding will cover (ie a company or unit trust) - in writing signed by the company or unit trust or its authorised representative
- for an application made by the general partner of an ESVCLP or VCLP - in writing signed by the general partner or its authorised representative, attaching evidence that the entity the Private Finding will cover has consented to the application being made on its behalf
- on appropriate letterhead
- include a statement of reasons supporting the application
- include the declaration set out below
- be provided electronically as a scanned copy of the signed original.

Declaration

I declare that:

- I am authorised by [company or unit trust] to make the application in this letter and to sign and submit this declaration on behalf of [company or unit trust].
- I am [whichever applies]

- an officer of [company or unit trust] with authority to complete this application
- an authorised officer of [general partner of ESVCLP/VCLP] that has written authorisation to act on behalf of [company or unit trust] in this matter.
- the information contained in this letter together with any statement attached is and any further information or documentation subsequently provided to the Commonwealth in relation to this application is or will be - to the best of my knowledge - correct and complete. I also understand that the provision of false or misleading information or the making of a false or misleading statement to the Commonwealth is a serious offence.
- I understand that I may be required to provide further information in support of this application.

Signed:

Position / authority to sign:

Date:

Statement of reasons

The statement of reasons should, in a way that an independent reader who has knowledge of the field but no knowledge of the activity can understand:

1. ANZSIC code
 - provide the ANZSIC code for the company or unit trust
2. Activity Description
 - describe the activity for which a Private Finding is sought, including the essentials of the application of technology and the nature of the technology (physical device, software etc)
 - indicate whether, and how, the application of technology relates to:
 - finance
 - insurance
 - making investments for the purposes of deriving passive income (interest, rents, dividends, royalties or lease payments)
 - detail how the specified activity is a substantially novel application of technology (including whether it is the application of new technology, the application of existing technology in a new, innovative way or adapted for a novel use such as a new product or service). Include any industry and/or expert advice in support of the activity being a substantially novel application of one or more technologies
 - set out what research has been done to establish that this is a novel application of technology, and provide details and results of that research, including:
 - which competitors or others (including nearest competitors) in Australia and overseas are applying this technology, and how they are applying it
 - how the application of the technology differs from general practice in the relevant industry sector and the way these competitors are applying this technology, if applicable

3. Level of commercialisation

- provide a comprehensive timeline for the activity, focussing on the past, current and future stages of the activity and the technology's development of the activity in each of those stages. The stages include:
 - development
 - testing
 - initial commercialisation
 - full commercialisation
- provide evidence that the application of technology has not yet reached full commercialisation stage, including:
 - the average revenue of the company or unit trust over the past two years, and (if different) the revenue attributable to the product or service applying the technology
 - the sales volume of the product or service applying the technology for each of the past two years
 - the number of customers of the company or unit trust for the product or service applying the technology
 - current and projected scale production of the product or service applying the technology
 - marketing activities and materials in markets where you have already sold the product or service applying the technology
 - any intellectual property protections in place in relation to the application of the technology

4. Time Period of Finding

- set out the period of time to month and year for which the Private Finding is requested to apply, including the reasons why this is an appropriate period
- set out how long the company or unit trust has used this application of the technology for the activity.

An application for a Private Finding should be emailed to venturecapital@industry.gov.au.

Decision

An applicant may be required to provide further information in support of the application, for consideration in the decision making process.

The Delegate will notify the applicant in writing of their decision.

A decision by the Delegate to make, or not to make, a Private Finding is subject to internal and AAT review. The decision letter will include a statement to this effect.