AVCAL Government and Regulatory Update - August 2017

Highlights:

POLICY & ADVOCACY

INVESTOR ENGAGEMENT

- AVCAL helped achieve a fairer cost disclosure regime for super funds which invest in private equity and venture capital (ASIC Regulatory Guide 97);
- AVCAL secured a new foreign investment exemption certificate model – effective 1 July - which would permit a program of pre-approved low sensitivity transactions;
- AVCAL launched *The Venture Capital Effect*, a comprehensive research report which examines the current state of the venture capital sector in Australia.

Key regulatory, legal and tax issues:

Over recent months, AVCAL has advocated on a number of important regulatory, legal and tax issues on behalf of the industry, including:

1. ASIC Regulatory Guide 97 – fee and cost disclosure by super funds

AVCAL has worked closely with LP members to develop an industry response to the implementation of ASIC Regulatory Guide 97 which deals with the disclosure of fees and costs by super funds and other managed investment products issued to retail clients.

Following AVCAL advocacy, ASIC agreed to clarify and/or amend aspects of its guidance that relate to the disclosure of private equity/venture capital-related fees and costs, including accounting for carried interest and transaction costs. ASIC's updated guidance, released 22 June 2017, is available here. The result was a significant improvement on the previous guidance, and will allow private equity and venture capital to compete on a more level footing to other asset classes. FAQs 9-13 are of particular relevance. The new ASIC disclosure regime will become operative from October 2017.

2. Foreign investment framework – pre-approval model for low sensitivity investments

Over the last year, AVCAL has been working with the government to put in place regulatory changes that would streamline the processing of Foreign Investment Review Board (FIRB) applications lodged by private equity firms and their portfolio companies. The aim was to move to a model whereby private equity funds that count 'foreign government investors' (e.g. public pension funds) as part of their LP base would have a periodic program of low-sensitivity acquisitions pre-approved, rather than on an individual investment basis. The Government committed to implementing this new regime in its 9 May Federal Budget.

On 1 July 2017, the new exemption certificate regime became effective. It is envisaged that such applications would cover a period greater than 12 months, involve quarterly reporting to FIRB, and require up-front negotiation with FIRB on key investment parameters (e.g. maximum individual transaction value). Further detail is contained in FIRB's Guidance Note 26.

At a 19 July briefing to AVCAL members, Treasury encouraged potential applicants to engage with the FIRB secretariat prior to lodging any exemption certificate application. For further details see here.

3. Launch of *The Venture Capital Effect* research report

On 13 June 2017, AVCAL launched *The Venture Capital Effect* at an event at Parliament House, Canberra. Speaking at the event were Senator Arthur Sinodinos, Minister for Industry, Innovation and Science, and Ed Husic MP, Shadow Minister for the Digital Economy, and Shadow Minister for Employment Services, Workforce Participation and Future of Work.

The Venture Capital Effect highlighted the progress that the sector has made over recent years, while demonstrating the potential to grow it much further in line with our OECD peers. The report featured domestic and international data, as well as insights from industry leaders across the broader ecosystem and case-studies of market-leading VC-backed Australian businesses. The University of Sydney Business School also made a significant contribution to the report.

The report generated strong media coverage across mainstream, financial and start-up press.

4. Deloitte Access Economics – contribution of private equity to the Australian economy
AVCAL has engaged Deloitte Access Economics to undertake a refresh of the March 2013 economic contribution of private equity in Australia report. As you will recall, the report highlighted some key statistics that we have used in our policy and advocacy work, including the fact that PE-backed businesses, contribute around 4% to national GDP, and support, either directly or indirectly, over 500,000 jobs in Australia. The next edition of the report is expected to be finalised in October 2017.

5. Government review of business, innovation and talent visas
AVCAL has recently lodged a submission in response to the Department of Immigration and Border Protection's review of Australia's business, innovation and talent visas. In that submission, AVCAL highlighted the opportunity to increase the mandatory venture capital/growth private equity component of the Significant Investor Visa (SIV) from $500,000 to $1m per applicant, in order to help drive more investment into high growth businesses. The submission also acknowledged that the Venture Capital Visa and Entrepreneur Visa could be better structured so as to attract high quality talent to Australia.

6. ATO – negative control and the application of Division 6C
AVCAL is continuing to engage with the ATO in response to its release of a draft framework document setting out its position on the question of negative control within the context of Division 6C of the *Income Tax Assessment Act 1936*. Working closely with our members, AVCAL has presented the ATO with a 'safe harbour' proposal that seeks to ensure that common VC veto rights would not breach the managed investment trust rules.

7. ESVCLP and VCLP changes
AVCAL is continuing to engage with the Government on a package of proposed amendments aimed at further improving the Early Stage Venture Capital Limited Partnerships and Venture Capital Limited Partnerships framework. These measures would complement the changes that came into effect on 1 July 2016, and the March 2017 amendments which extend the CGT benefit to investors that invest via interposed trusts. AVCAL's policy proposals include a number of changes to clarify the existing venture capital regime, and loosen unnecessary investment restrictions.

8. Research & development tax incentive
AVCAL has continued to reinforce to the Government the importance of maintaining a strong high-value R&D tax incentive program. While supporting measures aimed at improving the sustainability of the program, AVCAL has recommended an alternative to the Ferris-Fraser-Finkel Review's proposal to introduce a $2m annual cap on the refundable component of the program. AVCAL's position is that were a cap to be introduced, the level should be set at $5m per annum as this would continue to allow R&D intensive companies to maintain a strong Australian presence.

Regards,

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