Innovative Business CGT Concessions

The Federal Government in its 2026-27 Federal Budget announced changes to negative gearing, CGT and other areas of tax law. To date part of the legislation to implement these changes has been enacted, however, significant parts remain in proposed or draft form.

One of the first parts of the enacted changes was to remove the 50% CGT discount for individuals, trusts and partnerships to be replaced by a cost base indexation model.

The proposed change for Innovative Business CGT Concession ("IBCC") assets (re)introduces a CGT discount of 50% for capital gains arising from IBCC assets for CGT events that occur on or after 1 July 2027. The change also means that the minimum tax on capital gains (30%) will also not apply to these gains.

Accessing the IBCC regime requires a taxpayer (individual or trust) to have elected to apply the discount rather than the cost-base indexation, noting foreign residents cannot generally use this regime.

1 So what are IBCC assets?

- Broadly, an IBCC asset must be an equity interest issued by a company when:
  - The company was an IBCC company;
  - That has been held at risk for at least three years.
- The equity interest cannot be acquired from an entity other than the IBCC company (apart from employee share trusts).

Consistent with the rules of eligible venture capital investments equity interests include:

- Shares in a company;
- Options to acquire shares in a company;
- Convertible notes that are not debt instruments. This can include SAFE (Simple Agreement for Future Equity) notes but this will depend on the legal character of the note.

2 So what are IBCC companies?

There are a number of criteria for a company to be classified as an IBCC. Broadly a company:

- Must:
  - Have been incorporated for less than 15 years;
  - Be based in Australia;
  - Satisfy the innovative company and predominant activity tests; and
  - Registered with the Industry Secretary and comply with annual reporting requirements; and
- Must not:

- Be controlled by another company that has been incorporated for 15 or more years; and
- Be listed or have aggregated turnover exceeding $50 million.

2.1 Innovative company and predominant activity tests

These tests require a company to have, as its predominant activity, an activity or activities that relate to the development for commercialisation of a genuinely innovative product, process service or method.

The requirements above are closely aligned to the existing Early-Stage Innovation Company ("ESIC") requirements.

2.2 Legislative Instrument

A legislative instrument has also been released which provides the conditions that need to be satisfied for the purposes of the innovation test. Whilst the instrument covers a lot of detail, the main components under this legislative instrument are that the company must satisfy either the R&D expenditure test or the IP commercialisation test.

- The R&D expenditure test requires that either:
  - At least 30% of the company's total expenditure is R&D expenditure; or
  - At least 15% of the company's total expenditure over the last three years is R&D expenditure.

The IP Commercialisation test requires that the company is:

- The legal or beneficial owner of, is the licensee of, or otherwise holds a legally enforceable right to commercialise relevant intellectual property that protects a relevant innovation of the company; and
- Actively developing, exploiting, licensing, or otherwise commercialising the relevant intellectual property.

Again, the requirements above are closely aligned to the existing ESIC requirements.

2.3 Disqualified Assets and timing issues

- Where a taxpayer holds an equity interest in a company that is an IBCC asset, the IBCC discount will not be available for the asset if it is a disqualified asset for the purpose of the IBCC discount.
- The disqualified asset test must be satisfied at the time of the CGT event for which the IBCC discount would apply. As such, the IBCC discount would not be available where after acquiring the IBCC equity interest the company has either:
- Both
  - Ceased to satisfy the predominant activity test; and
  - Did not previously satisfy the predominant activity test for at least 20 years; or
- The registration of the company has been cancelled or suspended.
- Where an IBCC company changes its activities or it fails to comply with annual reporting requirements, the equity interests in the company that are IBCC assets will become disqualified assets for the purposes of the IBCC discount.

2.4 Transitional rules for existing companies

- The IBCC discount is available for capital gains of eligible entities in relation to IBCC assets issued before 1 July 2027, as a result of CGT events occurring on or after 1 July 2027. The conditions essentially mirror those of post enactment companies as follows:

2.5 IBCC Asset – Transitional Rules

- Under the transitional rules, an IBCC asset must meet the same requirements for IBCC assets that are issued on or from 1 July 2027, with the exception that it can be issued before this date and at a time when the issuing company is not yet registered as an IBCC company. IBCC assets issued before 1 July 2027 must:
  - Be at risk;
  - Be shares / options to acquire shares in a company, or convertible notes that are not debt instruments;
  - Be issued directly by a company that is an IBCC company under the transitional rules; and
  - Satisfy a minimum holding period of three years.

2.6 IBCC Company – Transitional Rules

These requirements ensure that the IBCC discount is only available to existing investments in genuine Australian start-ups that were new, small and innovative and had growth potential before 1 July 2027. As such:

- Be based in Australia;
- Have aggregated turnover below $50m for the 2025 /26 income year;
- Not be listed on a stock exchange before 11 September 2026; and
- Have been incorporated for less than 15 years on 30 June 2027 (or controlled by such a company).