



Welcome to Accountants Minute. I'm Peter Towers, Managing Director of ESS BIZTOOLS.

Special Edition

The Innovation Company legislation presents accountants great opportunities

The Federal Government has finalised the legislation for the two new company-type entities that will operate from 1st July 2016. The legislation for both new company entities is currently in the Senate.

The new entities are:

- Crowd-sourced Funding Companies
- Early Stage Innovation Companies (ESIC)

I believe that there are some tremendous opportunities for accountants to be active participants in the preparation and mentoring for clients so that they can form companies that will have a great chance of raising share capital for investors.

The crowd-sourced funding companies' requirements are:

- Has to be a public company, therefore will have 3 directors.
- The maximum capital that can be raised in 12 months is \$5M.
- The maximum retail investment is \$10,000.
- There's no limit for a sophisticated investor.
- The asset value for the company must be under \$5M.

The legislation introduces an intermediary, an organisation which has an Australian Financial Services Licence (AFSL) who will be the organisation that promotes the investment opportunities that are available in a particular company and will also be the entity that collects the investors' funds and holds them until such time as the amount of capital that's targeted has been raised or the capital raising period has ended. It's worth noting that the maximum capital raising period is 3 months.

The government has relaxed some of the rules that pertain to a public company for these crowd-sourced funding entities for the first 5 years so there's no requirement for an Annual General Meeting to be held. There's also no requirement for an auditor to be appointed if the capital raised is less than \$1M. The annual reports don't have to be sent to shareholders, they can be available on the website.

The ESIC are also a very interesting vehicle. The general rules are:

- The company must have been formed in the last 3 years. It could have been formed 6 years ago, however there are some additional tests relative to the expenditure that the company has to review.
- The annual expenditure has to be under \$1M in the previous 12 months.
- The annual assessable income has to be under \$200,000. Assessable income doesn't include any grant monies received under the Accelerating Commercialisation Grant.

Every company has to satisfy the 100-point innovation test that relates to items such as:

- R&D expenditure
- participation in the Accelerating Commercialisation Grant program
- a member of an Accelerator Program
- if the company has already raised \$50,000 from arms-length investors
- if the company has any patents or plant patents registered in the last 5 years
- if the company has any innovation patents or registered designs lodged in the last 5 years

These items only relate to companies that are already established. The government has also made allowances for brand new start-ups that might have an idea for a product, process or service. The legislation is saying that, if the company is genuinely focused on developing for commercialisation, one or more new or significantly improved products, process, service, marketing or organisational methods, that company can be admitted. We believe the best way to do that will be for the company to have one or two experts to sign off that the new company has, in fact, a genuine new product, process or service or something that's of significant improvement.

Retail investors can invest up to \$50,000 in these companies. Originally, the government had not made any provision for retail investors. I believe this is a good change. There's also no limit for what a sophisticated investor can contribute.

Capital Gains Tax (CGT) exemptions are available for investments in the ESIC, if the shares are held for longer than one year and less than 10 years, there's no CGT. Originally, the government had proposed that the one-year figure would, in fact, be 3 years, however that has been changed as part of the House of Representatives' process.

However, as there's no CGT applicable, there's no capital losses that are deductible for income tax purposes in the period up to 10 years.

For investments in approved ESICs, investors can obtain a 20% tax rebate on the amount of their investment in the company, to a maximum rebate of \$200,000 per annum.

It's worth looking at the key aspects of getting investment ready because this would be part of the process that businesses have to go through. This is where accountants can really add value to your clients.

Businesses need to be able to articulate their objectives. They will need business plans, budgets and cashflow forecasts. They will need to have identified their business' vision which will include their exit strategy (this might be an initial public offer or some other type of exit strategy).

They will need to be able to summarise their Intellectual Property (IP) ownership and the security they have for that IP, details of any patents that the business has, how are they valuing their shares and what amount of shares are going to be issued.

Businesses will need to identify:

- who are the directors and their CVs
- who's the Company Secretary
- who are the accountants
- who's going to be appointed the CEO

Businesses will need to prepare themselves for an investment pitch.

There's a significant amount of work that accountancy businesses can perform to assist your clients to avail themselves of this tremendous opportunities to raise capital in a completely different format to what has previously been available in Australia.

To celebrate this, we're conducting a special webinar on Thursday 21st April 2016 at 12pm AEST, which will feature the following guest presenters:

- Representatives of Business Angel Groups
- Representative of Founders Forum
- Managing Director of Bistorque

Bistorque is a company that has a pool of experts (over 80) who would be able to issue the certification that some companies are going to require to be accepted by ASIC as an ESIC-eligible company because they will be companies who are brand new on the development of new product, process or service and will require some external verification that they do have a genuine product or they're making significant changes to an existing product.

[Click here](#) to register to attend, free of charge.

If you have any questions, please don't hesitate to contact me.

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