

## Article Information

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## Taxation Issues and Equity Crowdfunding in Australia

**The Government is soon to introduce a regulatory framework to facilitate equity crowdfunding. However, to date, there has been minimal focus on the taxation treatment of equity crowdfunding.**

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*It is hoped that the Government will prioritise the tax treatment of equity crowdfunding as part of the “national innovation agenda” however until the Government does so, it is important to be mindful of the Australian Taxation Office’s views on the application of the existing tax laws to equity crowdfunding.*

### The national innovation agenda

The Government views innovation as a driver of the economy into the future, with the Government now said to be working on a national innovation agenda.

As part of the national innovation agenda the Government is considering a proposal to abolish CGT on investments in private companies that are less than two years old and have annual revenue of less than \$1 million. The proposal is intended to encourage and promote start-ups. There has also been ongoing debate on CGT, GST and taxation on equity crowdfunding participants and intermediaries.

### The Australian Tax Office’s current views on crowdfunding

Until the Government introduces new legislation specific to equity crowdfunding, the tax legislation in its current form applies. Whilst the Australian Taxation Office (ATO) has not released any binding guidance on the application of the current tax legislation to equity crowdfunding, it has recently released fact sheets on its position on the income tax and goods and services tax (GST) treatment of crowdfunding. The income tax and GST consequences vary depending on the nature of the crowdfunding and the particular crowdfunding model.

By way of general overview:

- Money earned or received through crowdfunding (including if received in the form of a non-cash business benefit) may be taxable income and therefore assessable. Key questions for this purpose include whether you are “carrying on a business” and if it is a “profit making scheme”.
- If any amount is assessable income, then some of the costs related to gaining or producing that income may be allowable deductions.
- Transactions may be subject to GST. Relevant questions include whether you are carrying on an enterprise, what supplies (if any) are made, whether you are registered for GST or required to be registered, and whether the supplies are connected with Australia.
- There may be other tax consequences including assessable recoupment, capital gains tax and trading stock may be relevant.

### The ATO’s views on Equity Crowdfunding

With regards to equity crowdfunding specifically:

- The ATO does not provide any specific guidance on the income tax treatment, stating that it will update the income tax fact sheet for equity crowdfunding once the consultation on the appropriate legislative framework is concluded. Based on general taxation principles, funds received by a company undertaking equity crowdfunding (NewCo) from

investors for equity in NewCo will not constitute ordinary income and will be capital in nature.

- Profit distributions by NewCo to investors are likely to be dividends which are frankable. The taxation treatment of the dividends depends on whether they are franked, the residency of the investor (particularly as the investor may be offshore with no connection to the jurisdiction in which the crowd funding platform is based) and rates of withholding tax for non-resident investors. There may also be a CGT liability on disposal of the shares depending on residency of the investor and the nature of the underlying business of the NewCo.
- With regard to GST, typically the “supply of shares” to the investor for payment will be an input taxed financial supply that is not subject to GST, and the investor is not entitled to an input tax credit.
- The intermediary, being the crowdfunder providing the crowdfunding platform, generally makes a taxable supply of services to NewCo that is subject to GST. As the acquisition of services provided by the intermediary relates to the input taxed financial supplies of the shares, NewCo will only be entitled to an input tax credit for the “acquisition of the services”.

By way of comparison, the U.S. Internal Revenue Service has not released any formal public guidance on the tax implications of equity crowdfunding and the tax treatment of crowdfunding similarly varies depending on the nature of the crowdfunding arrangements. With regards to equity crowdfunding, it is similarly expected that for income tax purposes, funds will be treated as paid-in capital for NewCo, neither the investor nor NewCo will be subject to tax at the time of purchase, with the investor being liable to capital gains or losses when the shares are sold. Likewise in the United Kingdom, it is understood that an investor is liable to income tax for any return received on the shares, and liable to capital gains tax on any disposal.

We will continue to keep informed of developments in equity crowdfunding and its taxation treatment and provide updates of any significant developments.

For further information, please contact [David Cornwell](#).