



ACIS Administration Amendment Act 2000

No. 149, 2000

**An Act to amend the *ACIS Administration Act 1999*,
and for related purposes**

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An Act to amend the *ACIS Administration Act 1999*, and for related purposes

[Assented to 21 December 2000]

The Parliament of Australia enacts:

1 Short title

This Act may be cited as the *ACIS Administration Amendment Act 2000*.

2 Commencement

This Act commences on the day on which it receives the Royal Assent.

3 Schedule(s)

Each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

Schedule 1—Amendment of the ACIS Administration Act 1999

Part 1—General amendments

1 Subsection 6(1)

Insert:

allowable, in relation to plant and equipment or research and development, is defined in section 6A.

2 Subsection 6(1) (definition of *approved plant and equipment*)

Repeal the definition, substitute:

approved plant and equipment is defined in section 6A.

3 Subsection 6(1) (definition of *approved research and development*)

Repeal the definition, substitute:

approved research and development is defined in section 6A.

4 Subsection 6(1) (definition of *automotive machine tooling*)

Repeal the definition.

5 Subsection 6(1)

Insert:

automotive tooling means tooling of a kind declared by the regulations to be automotive tooling for the purposes of this Act.

6 Subsection 6(1)

Insert:

for the MVP's own use, in relation to type B investment and type C investment, has the meaning provided for in the regulations, if regulations have been made under subsection (4).

Note: Subsection (4) provides for regulations to be made stating when automotive components (other than engines or engine components),

automotive machine tools or automotive tooling produced by an MVP or automotive services provided by an MVP are taken to be produced or provided for the MVP's own use.

7 Subsection 6(1)

Insert:

investment undertaken by a participant has a meaning affected by:

- (a) regulations, if regulations have been made under subsection (5); and
- (b) section 6C and any regulations made under section 6C.

8 Subsection 6(1)

Insert:

maximum claimable value, in relation to allowable plant and equipment or allowable research and development of a kind, is defined in section 6A.

9 Subsection 6(1) (at the end of the definition of *type A investment*)

Add:

- Note 1: See regulations made under subsection (5) for when particular investment undertaken by an MVP is treated as having occurred.
- Note 2: See section 6C for when investment undertaken by a person can be treated as investment undertaken by another person who is an MVP.

10 Subsection 6(1) (at the end of the definition of *type B investment*)

Add:

- Note 1: See regulations made under subsection (5) for when particular investment undertaken by an MVP is treated as having occurred.
- Note 2: See section 6C for when investment undertaken by a person can be treated as investment undertaken by another person who is an MVP.

11 Subsection 6(1) (at the end of the definition of *type C investment*)

Add:

- Note 1: See regulations made under subsection (5) for when particular investment undertaken by an MVP is treated as having occurred.

Note 2: See section 6C for when investment undertaken by a person can be treated as investment undertaken by another person who is an MVP.

12 Subsection 6(1) (at the end of the definition of *type D investment*)

Add:

Note 1: See regulations made under subsection (5) for when particular investment undertaken by an ACP is treated as having occurred.

Note 2: See section 6C for when investment undertaken by a person can be treated as investment undertaken by another person who is an ACP.

13 Subsection 6(1) (at the end of the definition of *type E investment*)

Add:

Note 1: See regulations made under subsection (5) for when particular investment undertaken by an ACP is treated as having occurred.

Note 2: See section 6C for when investment undertaken by a person can be treated as investment undertaken by another person who is an ACP.

14 Subsection 6(1) (definition of *type F investment*)

Omit “that is used to produce automotive machine tools or automotive machine tooling.”, substitute:

that:

(a) is used to produce automotive machine tools or automotive tooling; or

(b) is used to facilitate the provision of automotive services.

15 Subsection 6(1) (at the end of the definition of *type F investment*)

Add:

Note 1: See regulations made under subsection (5) for when particular investment undertaken by an AMTP is treated as having occurred.

Note 2: See section 6C for when investment undertaken by a person can be treated as investment undertaken by another person who is an AMTP.

16 Subsection 6(1) (definition of *type G investment*)

Omit “directed at the production of the automotive machine tools or automotive machine tooling.”, substitute:

directed:

- (a) at the production of the automotive machine tools or automotive tooling; or
- (b) at facilitating the provision of automotive services.

17 Subsection 6(1) (at the end of the definition of *type G investment*)

Add:

- Note 1: See regulations made under subsection (5) for when particular investment undertaken by an AMTP is treated as having occurred.
- Note 2: See section 6C for when investment undertaken by a person can be treated as investment undertaken by another person who is an AMTP.

18 Subsection 6(1) (at the end of the definition of *type H investment*)

Add:

- Note 1: See regulations made under subsection (5) for when particular investment undertaken by an ASP is treated as having occurred.
- Note 2: See section 6C for when investment undertaken by a person can be treated as investment undertaken by another person who is an ASP.

19 Subsection 6(1) (at the end of the definition of *type I investment*)

Add:

- Note 1: See regulations made under subsection (5) for when particular investment undertaken by an ASP is treated as having occurred.
- Note 2: See section 6C for when investment undertaken by a person can be treated as investment undertaken by another person who is an ASP.

20 At the end of section 6

Add:

*Regulations may provide for the meaning of **for the MVP's own use** in the definitions of **type B investment** and **type C investment***

- (4) For the purposes of the definition of **type B investment** and the definition of **type C investment**, the regulations may state the circumstances in which:
 - (a) automotive components (other than engines or engine components), automotive machine tools or automotive

tooling produced by an MVP are to be taken to be produced *for the MVP's own use*; and

- (b) automotive services provided by an MVP are to be taken to be provided *for the MVP's own use*.

Regulations may state when investment undertaken by a participant is taken to have occurred

- (5) The regulations may state:
- (a) at what point in time, and in what circumstances, particular investment undertaken by a participant is taken to have occurred for the purposes of this Act; and
 - (b) at what point of time investment determined under section 6C to be investment undertaken by a participant is taken to have occurred.

Note: See the definitions of each type of eligible investment.

21 After section 6

Insert:

6A Approved plant and equipment and approved research and development

Outline of what approved plant and equipment and approved research and development is

- (1) There are 2 aspects to approved plant and equipment or approved research and development:
- (a) firstly, the plant and equipment or research and development must be allowable plant and equipment or allowable research and development; and
 - (b) secondly, the allowable plant and equipment or allowable research and development is only allowed to a given value—the maximum claimable value in respect of that plant and equipment or research and development.

Meaning of defined terms relating to approved plant and equipment or approved research and development

- (2) In this Act:

allowable, in relation to plant and equipment or research and development, means plant and equipment or research and development of a kind declared by the regulations to be allowable.

approved plant and equipment means allowable plant and equipment of the maximum claimable value allowed.

approved research and development means allowable research and development of the maximum claimable value allowed.

maximum claimable value, in relation to allowable plant and equipment or allowable research and development of a kind, means a value in respect of the allowable plant and equipment or the allowable research and development either:

- (a) worked out using a particular method set out in the regulations in respect of that kind of allowable plant and equipment or allowable research and development; or
- (b) stated in the regulations in respect of that kind of allowable plant and equipment or allowable research and development.

Regulations may provide for certain matters relating to plant and equipment

- (3) The regulations may provide for:
 - (a) the kinds of plant and equipment that are allowable plant and equipment under this Act; and
 - (b) in respect of each kind of allowable plant and equipment, either:
 - (i) the method of calculating the maximum claimable value of that kind of allowable plant and equipment for the purposes of this Act; or
 - (ii) the amount that is to be the maximum claimable value in relation to that kind of allowable plant and equipment for the purposes of this Act.

Regulations may provide for certain matters relating to research and development

- (4) The regulations may provide for:
 - (a) the kinds of research and development that are allowable research and development under this Act; and

- (b) in respect of each kind of allowable research and development, either:
 - (i) the method of calculating the maximum claimable value of that kind of allowable research and development for the purposes of this Act; or
 - (ii) the amount that is to be the maximum claimable value in relation to that kind of allowable research and development for the purposes of this Act.

6B Plant and equipment sold by participant

If approved plant and equipment is sold by, or on behalf of, a participant, the investment in that plant and equipment is to be treated, for the purposes of the operation of sections 43, 44, 46, 48 and 50, with effect from the start of the quarter in which that sale took place, as if the investment had never occurred.

6C When investment undertaken by a person may be treated as investment undertaken by another person who is a participant

Outline of section

- (1) This section allows the Secretary, in limited circumstances, to treat investment undertaken by a person who may or may not be a participant (the *original investor*) as eligible investment undertaken by another person who is a participant (the *participant*). For investment to be treated in this way:
 - (a) the participant must apply, in an approved form, to the Secretary; and
 - (b) the Secretary must make a determination under subsection (3) that the circumstances of the relationship between the original investor and the participant fall within the kinds of circumstances set out in guidelines made under subsection (2); and
 - (c) the Secretary must make a determination of a kind referred to in subsection (4) or (5) in respect of the investment.

Guidelines dealing with the circumstances of the relationship between the original investor and the participant

- (2) The Minister may make guidelines setting out the circumstances in which the relationship between 2 persons are circumstances in which the Secretary may make a determination under subsection (3).

Secretary to first determine if original investor and participant's circumstances fall within guidelines

- (3) The Secretary must examine the circumstances of the relationship between the original investor and the participant. If, after examining the circumstances, the Secretary is satisfied that the circumstances fall within the circumstances set out in the guidelines made under subsection (2), the Secretary may make a determination to that effect. Only after making that determination may the Secretary make a determination under subsection (4) or (5), as appropriate.

Eligible investment undertaken by original investor when original investor was a participant

- (4) If:
- (a) the original investor was a participant at the time that the investment was undertaken; and
 - (b) the investment was eligible investment of a particular type; and
 - (c) the Secretary is satisfied that it is reasonable in all of the circumstances to allow the investment to be treated as eligible investment of that type undertaken by the participant;
- the Secretary may determine in writing that the eligible investment is taken to be eligible investment of that type undertaken by the participant. The determination has effect accordingly.

Original investor not a participant when investment made

- (5) If:
- (a) the original investor was not a participant at the time the investment was undertaken; and
 - (b) the Secretary is satisfied that:

- (i) if the investment had been undertaken by a participant, the investment would be eligible investment of a type specified by the Secretary; and
 - (ii) it is reasonable in all of the circumstances to allow the investment by the original investor to be treated as eligible investment undertaken by the participant;
- the Secretary may determine in writing that the investment is:
- (c) eligible investment of a type specified by the Secretary; and
 - (d) taken to be investment of that type undertaken by the participant. The determination has effect accordingly.

Minister may determine guidelines

- (6) The Minister may determine guidelines that are to be taken into account by the Secretary in making a decision under subsection (4) or (5).

Guidelines disallowable instruments

- (7) Guidelines made under subsections (2) and (6) are disallowable instruments within the meaning of section 46A of the *Acts Interpretation Act 1901*.

22 Sections 14 and 15

Repeal the sections, substitute:

14 Rules about the number of registrations a person may have under ACIS

A person may only have one current registration under ACIS

- (1) A person may only have one current registration under ACIS as either an MVP, ACP, AMTP or ASP.

Participant cannot be registered as a part of a group of related bodies corporate

- (2) If a participant is registered as an individual participant under ACIS, a group of related bodies corporate of which the participant is a member must not be registered as a participant while the participant is registered individually.

Rule for members of a group that is a participant

- (3) If a participant is a group of related bodies corporate, a member of that group must not be registered as an individual participant under ACIS while:
- (a) the member remains a member of the group; and
 - (b) the group is a participant.

Meaning of group of related bodies corporate

- (4) In this section, a reference to a **group of related bodies corporate** is a reference to a group of related bodies corporate within the meaning of sections 9 and 50 of the Corporations Law.

14A Rule about registrations under ACIS needing to further the purpose of the Act

- (1) This section applies to an applicant for registration under ACIS other than an applicant who has been given permission by the Minister under section 20 to apply for registration.
- (2) Even if an applicant to whom this section applies meets the requirements for registration under ACIS, the Secretary, under section 26, must not grant the application for registration unless the Secretary is satisfied that registering the applicant would further the purpose of the Act set out in section 3.
- (3) In this section, **requirements for registration under ACIS** means all of the registration requirements applicable to an applicant to whom this section applies including the requirements set out in:
- (a) if the applicant is applying for registration as an MVP—paragraph 16(1)(a) or (b); or
 - (b) if the applicant (not being a group of related companies that is treated as a single person in accordance with section 21) is applying for registration as an ACP—paragraph 17(1)(a) or (b); or
 - (c) if the applicant (being a group of related companies that is treated as a single person in accordance with section 21) is applying for registration as an ACP—paragraph 17(2)(a) or (b); or
 - (d) if the applicant is applying for registration as an AMTP—paragraph 18(1)(a) or (b); or

- (e) if the applicant is applying for registration as an ASP—
paragraph 19(1)(a) or (b).

14B Minister may make guidelines relating to registration for the purpose of the Act

- (1) The Minister may make guidelines to be taken into account by the Secretary when making a decision:
- (a) under paragraph 26(2)(g) to register an applicant; and
 - (b) under paragraph 110(5)(c) to deregister a participant.
- (2) Guidelines made under subsection (1) are disallowable instruments within the meaning of section 46A of the *Acts Interpretation Act 1901*.

15 Rule about the effect of further applications for registration on existing registrations

If:

- (a) a participant applies for another registration under ACIS; and
 - (b) the Secretary grants the later application;
- the original registration ceases to have effect immediately before the day on which the later application for registration is granted.

23 At the end of section 17

Add:

- (4) The regulations may provide for the meaning of *at least one kind of automotive component* for the purposes of this Act.

24 Subsection 23(3)

Repeal the subsection, substitute:

- (3) Without limiting paragraph (1)(c), an applicant for registration must include a business plan of the applicant, containing such particulars as are required by the form in respect of the period or periods specified in the form.
- (4) A period specified in the form in relation to a business plan may commence on or after 1 January 1999.

25 After paragraph 26(2)(f)

Insert:

and (g) that registering the applicant would, as required by section 14A, further the purpose of the Act set out in section 3;

26 Subsection 26(3)

Omit “to (f)”, substitute “to (g)”.

27 After paragraph 29(1)(a)

Insert:

(aa) any conviction of the person of an offence against the law of a foreign country;

28 After paragraph 29(2)(a)

Insert:

(aa) any conviction of the company of an offence against the law of a foreign country;

29 Paragraph 29(2)(b)

Omit “that decision”, substitute “the application for registration under ACIS”.

30 At the end of subsections 31(1) and (2)

Add:

Note: Regulations made under subsection 17(4) may provide for the meaning of *at least one kind of automotive component*.

31 Subsection 35(3)

Repeal the subsection.

32 Paragraphs 36(c) and (e)

Repeal the paragraphs.

33 Paragraphs 37(1)(b) and (d)

Repeal the paragraphs.

34 Paragraph 38(1)(b)

Repeal the paragraph.

35 Paragraph 38(1)(d)

Repeal the paragraph, substitute:

- (d) particulars of the sales value by the AMTP in that quarter of automotive services; and

36 Paragraphs 39(1)(b) and (d)

Repeal the paragraphs.

37 Subsection 42(1)

Omit “the end of 45 days following each quarter, work out the unmodulated uncapped production credit for each MVP”, substitute “an MVP provides a return to the Secretary in respect of a quarter, work out the unmodulated uncapped production credit for the MVP”.

38 Subsection 42(2)

Omit “the end of 45 days following the end of each quarter, work out the unmodulated capped production credit for each MVP”, substitute “an MVP provides a return to the Secretary in respect of a quarter, work out the unmodulated capped production credit for the MVP”.

39 Section 43

Omit “the end of 45 days following the end of each quarter, work out the unmodulated investment credit for each MVP”, substitute “an MVP provides a return to the Secretary in respect of a quarter, work out the unmodulated investment credit for the MVP”.

40 Sections 44 and 45

Omit “the end of 45 days following the end of each quarter, work out the unmodulated investment credit for each MVP”, substitute “an MVP provides a return to the Secretary in respect of a quarter, work out the unmodulated investment credit for the MVP”.

41 Sections 46 and 47

Omit “the end of 45 days following each quarter, work out the unmodulated investment credit for each ACP”, substitute “an ACP provides a return to the Secretary in respect of a quarter, work out the unmodulated investment credit for the ACP”.

42 Sections 48 and 49

Omit “the end of 45 days following each quarter, work out the unmodulated investment credit for each AMTP”, substitute “an AMTP provides a return to the Secretary in respect of a quarter, work out the unmodulated investment credit for the AMTP”.

43 Sections 50 and 51

Omit “the end of 45 days following each quarter, work out the unmodulated investment credit for each ASP”, substitute “an ASP provides a return to the Secretary in respect of a quarter, work out the unmodulated investment credit for the ASP”.

44 Subsections 109(2), (3) and (4)

Repeal the subsections, substitute:

First update if participant registered in the first quarter of a year

- (2) If a participant’s registration takes effect in the first quarter of a year, the participant must provide the first update within the time allowed under subsection 35(1) for providing a third quarter return in respect of that year.

Note: Under subsection 35(1), a participant’s return for a quarter must be provided within 45 days, or such longer period as the Secretary allows, after the end of the quarter.

First update if participant registered after the first quarter of a year

- (3) If a participant’s registration takes effect after the first quarter of a year, the participant must provide the first update within the time allowed under subsection 35(1) for providing a third quarter return in respect of the year following the year of registration.

Later updates

- (4) After a first update has been provided, later updates must be provided by a participant in each year after the year in which the participant is required to provide a first update and before 2005. Each update must be provided within the time allowed under subsection 35(1) for providing a third quarter return in respect of that subsequent year.

Period update must cover

- (5) Each update must cover the period starting on 1 January of the year next following the date by which it is to be provided under this section and ending on 31 December 2005.

Meaning of terms used in this section

- (6) In this section:

first quarter means the period of 3 months commencing on 1 January of a year.

third quarter means the period of 3 months commencing on 1 July of a year.

45 Subsection 110(4)

Omit “for more than 6 months”.

46 At the end of subsection 110(5)

Add:

- ; and (c) where the participant was registered on the basis that the participant’s registration would further the purpose of the Act set out in section 3 (as required by section 14A)—the Secretary determines that the registration does not further the purpose of the Act.

47 Before paragraph 111(a)

Insert:

- (aa) a decision by the Secretary under subsection 6C(3) that the circumstances of a relationship between 2 persons do not fall within the circumstances set out in guidelines made under subsection 6C(2);
- (ab) a decision by the Secretary under subsection 6C(4) that it is not reasonable to allow the investment by an original investor to be treated as eligible investment by a participant;
- (ac) a decision by the Secretary under subparagraph 6C(5)(b)(i) that investment by an original investor, if undertaken by a participant, would not be eligible investment;

- (ad) a decision by the Secretary under subparagraph 6C(5)(b)(ii) that it is not reasonable to allow the investment by an original investor to be treated as eligible investment by a participant;

Part 2—Consequential amendments on change of term from “automotive machine tooling” to “automotive tooling”

48 Amendments

The specified provisions listed in this Part are amended by omitting “machine” from the term “automotive machine tooling”.

49 Subsection 6(1) (definition of *AMTP*)

50 Subsection 6(1) (definition of *AMTP*, *note*)

51 Subsection 6(1) (paragraph (c) of the definition of *production value*)

52 Subsection 6(1) (paragraph (b) of the definition of *type B investment*)

53 Subsection 6(1) (paragraph (b) of the definition of *type C investment*)

54 Subsection 6(1) (paragraph (a) of the definition of *type D investment*)

55 Subsection 6(1) (paragraph (a) of the definition of *type E investment*)

56 Subsection 7(6) (wherever occurring)

Note: The heading to subsection 7(6) is altered by omitting “*automotive machine tooling*” and substituting “*automotive tooling*”.

57 Subsection 18(1) (wherever occurring)

58 Subsection 32(1) (twice occurring)

59 Subparagraph 36(1)(d)(ii)

60 Subparagraph 37(1)(c)(i) (twice occurring)

Schedule 1 Amendment of the ACIS Administration Act 1999

Part 2 Consequential amendments on change of term from “automotive machine tooling” to “automotive tooling”

61 Paragraph 38(1)(c)

62 Subsection 38(2)

*[Minister’s second reading speech made in—
Senate on 6 September 2000
House of Representatives on 5 December 2000]*

(153/00)