Guide to calculating the exceptions from the Australian location test

Venture Capital Programs

## What is the foreign investment location test?

The location test applies when an Australian based early stage venture capital limited partnership (ESVCLP) or venture capital limited partnership (VCLP) invests in a company located outside of Australia. To ensure that Australian partnerships are supporting the Australian economy and businesses, [s118-425(2)](https://www.legislation.gov.au/Details/C2022C00307/Html/Volume_3#_Toc115960828) and [s118-427(3)](https://www.legislation.gov.au/Details/C2023C00094/Html/Volume_3#_Toc115960829) of the *Income Tax Assessment Act 1997* (ITAA 1997) states that investee companies must be Australian residents at the time of investment and have more than 50 per cent of their employees and assets situated in Australia.

*Note:* *If the investment is an initial investment, at least 50 per cent of investee company employees and assets must remain situated in Australia for 12 months* under *s118-425(2)(b)(ii)* *of the ITAA 1997*.

## Exceptions to the location test

[Section 118-425(12A)](https://www.legislation.gov.au/Details/C2023C00094/Html/Volume_3#_Toc115960828) of the *ITAA 1997* allows partnerships to invest up to 20 per cent of their total committed capital into foreign companies.

The threshold is calculated by adding the value of a new investment to the *cumulative value* of all other investments which are revalued *at the time* of the new investment, divided by the total committed capital *at the time* of the new investment.

## Definition of committed capital

Under [s118-445](https://www.legislation.gov.au/Details/C2023C00094/Html/Volume_3#_Toc115960835) of the *ITAA 1997*, a partner’s committed capital in a partnership is the sum of the amounts that the partner may, under the partnership agreement establishing the partnership, become obliged to contribute to the partnership.

It does not matter whether:

1. the partner contributes all of those amounts; or
2. any amounts contributed are subsequently returned to the partner; or
3. the contributions give rise to [equity interests](http://www8.austlii.edu.au/cgi-bin/viewdoc/au/legis/cth/consol_act/itaa1997240/s995.1.html#equity_interest) or [debt interests](http://www8.austlii.edu.au/cgi-bin/viewdoc/au/legis/cth/consol_act/itaa1997240/s995.1.html#debt_interest) in the [partnership](http://www8.austlii.edu.au/cgi-bin/viewdoc/au/legis/cth/consol_act/itaa1997240/s995.1.html#partnership), or both.

## Calculating the valuation of prior investments

The value of earlier investments at the time of a new investment may be different to their value at the time they were initially made. Only investments made that meet [*s118-425(2)*](https://www.legislation.gov.au/Details/C2023C00094/Html/Volume_3#_Toc115960828) as a result of [*s118-425(12A)*](https://www.legislation.gov.au/Details/C2023C00094/Html/Volume_3#_Toc115960828) at the time they were made, will count towards the 20 per cent foreign investment cap.

The Table 1 overleaf provides a structure to help with these calculations:

Table | Example calculation table for foreign investment test

| **Investment number** | **Investee company name/ Country** | **Investment date** | **Committed capital at time of investment** | **Value of investment** | **Calculation of committed capital**  | **Foreign investment threshold test** |
| --- | --- | --- | --- | --- | --- | --- |
| # |  |  |  |  |  |  |
|  |  |  |  |  |  |  |
| # |  |  |  |  |  |  |
|  |  |  |  |  |  |  |
| *Total foreign investment* |  |  |  |  |  |

## How to assess your foreign investment thresholds:

Using the calculation table:

1. Fill table out with all foreign investments, ensuring that it records:
	1. investee company’s name;
	2. the date of the investment;
	3. the partnership’s committed capital at the time of investment; and
	4. value of the investment.
2. For subsequent foreign investments, each **prior** investment needs to be revalued at the time of the new investment and added to the table.
3. In a ‘total’ row, record:
	1. The sum of the **new** investment and the **revalued** investments
	2. Divide the **total value of the investment** by the **total committed capital at the time of the new investment**.
	3. Convert to a percentage. The total proportion should remain under 20 per cent.

### Example 1

#### Follow-on investment where a company relocates internationally

PinkPig Fund, LP’s committed capital is **$10 million**.20 per cent of the partnership’s committed capital is **$2 million**.This means the partnership’s foreign investments must not exceed **$2 million**.

* When the partnership first invested **$1 million** in ‘Party Central (AU)’, the investee company was considered an Australian company. Therefore, the first investment is not restricted by the 20 per cent threshold.
* 12 months after the initial investment, ‘Party Central’ moved overseas and became a foreign investee company under the name ‘Party Central (USA)’. PinkPig Fund, LP continued to make a second investment of **$1.5 million** into the now foreign investee company.
* The initial investment, ‘Party Central (AU)’, had tripled in value at the time of the second investment, making the combined total of investments 1 and 2, $4,500,000. Although the total value of the partnership’s investments as a proportion of its committed capital equals 45 per cent, both investments are considered eligible as the first investment isn’t a foreign investment, and thus not included in the calculation of the threshold.
* The total value of the partnership’s foreign investments is **$1.5 million**, and only 15 per cent of the partnership’s committed capital.

Both investments made by the partnership are eligible investments.

The following table records **every** investment made by PinkPig Fund, LP (the partnership).

Table 2 PinkPig Fund, LP Investments – First Foreign Investment

*Note: There is only one foreign investment in PinkPig, LP’s portfolio*

### Example 2

#### Investing in an additional foreign company

As discussed in the previous example, investments 1 and 2 are eligible investments.

* After initially investing into ‘Party Central (AU)’ and ‘Party Central (USA)’, the partnership decided to make a second foreign investment. **$700,000** was invested into ‘Clean Foodz Inc.’, a foreign investee company.
* At the time of this investment, the partnership’s committed capital was **$11 million**. 20 per cent of the partnership’s committed capital is **$2.2 million**.This means the partnership’s foreign investments must not exceed **$2.2 million**.
* As seen below, the ‘Party Central (USA) investment was revalued as **$2 million** at the time of investment 3. This brings the total value of foreign investments to **$2.7 million** and the partnership’s committed capital to **25 per cent**.
* Therefore, the partnership’s investment into ‘Clean Foodz Inc.’ is **ineligible**, as it exceeds the 20 per cent threshold by **5 per cent**.

The following table records **every** investment made by PinkPig Fund, LP (the partnership). ***Bold italic text*** denotes key changes.

Table 3 PinkPig Fund, LP Investments – Second Foreign Investment

*Note: Previous investments should always be revalued at the time of a new investment*

### Example 3

#### Multiple investments calculated cumulatively

At the time of Yeti Fund, LP’s **final** investment (Vegetation Table Inc.), its committed capital was **$20 million**. 20 per cent of the partnership’s committed capital is **$4 million**. This means the partnership’s foreign investments must not exceed **$4 million**.

* As seen below, investments 1 and 3 are eligible foreign investments because the total value of their investments (including the revalued investments) do not exceed the 20 per cent threshold.
* Investment 5, Vegetation Table Inc., exceeds this threshold, as the total value of investment is **$4.2 million**, ultimately **$200,000** over the 20 per cent threshold of the partnership’s committed capital.

The following table records **every** investment made by Yeti Fund, LP (the partnership). ***Bold, italic and Underlined text*** denotes key changes.

Table 4 PinkPig Fund, LP Investments

*Note: The investment made into* ***Vegetation Table Inc.*** *is considered an* ***ineligible*** *investment, as the* ***new*** *and* ***revalued*** *investments push the partnership’s total investment value over the 20 per cent threshold by 1 per cent.*