Managed investment trusts – overview

What you need to know about managed investment trusts (MITs) and attribution managed investment trusts (AMITs).

Overview

A managed investment trust is a trust in which members of the public collectively invest in passive income activities

Eligibility requirements

Outlines the requirements a trust must meet to qualify as an MIT.

Attribution managed investment trusts

An eligible MIT may elect into the attribution MIT (AMIT) regime.

Withholding rules

MITs and AMITs must withhold income tax when making certain payments to a non-resident member.

Repeal of Division 6B

Following a Board of Taxation recommendation, Division 6B of

Arm's length income rule for MITs

The arm's length income rule removes the incentive to shift profits by engaging in non-arm's length activity.

20% tracing rule in Division 6C

Under the new system for MITs, modifications were been made to the '20% tracing rule' in Division 6C of the ITAA 1936.

Consequences for public trading trusts

As a result of the 2016 amendments to Division 6C, some trusts cease to be taxed as corporate tax entities.

CGT event E4

When a CGT Event E4 occurs and how it affects a unit holders' cost base and potential capital gains.

Application and transitional provisions for the new tax system for MITs

Application and transitional provisions that were put in place to allow for the changes not made at the commencement.

How we apply the law

Our Law Companion Rulings describe how we will apply new laws once they are enacted

Our compliance approach

A summary of our compliance approach in 3 key areas affected by the new rules for MITs.

Managed investment trust – flagged tax risks

Learn about the tax risks we have identified for managed investment trusts (MITs).

QC 47436

Overview

A managed investment trust is a trust in which members of the public collectively invest in passive income activities

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Passive income activities can include investment in shares, property or fixed interest assets. A trust qualifies as a MIT if it meets certain requirements for the income year it is in operation.

MITs (and their members) are generally taxed under the trust provisions in Division 6 of the *Income Tax Assessment Act 1936* (ITAA 1936). Under these provisions, beneficiaries are generally taxed on their share of the net income of a trust or the trustee is taxed on their behalf, based on the 'present entitlement' of beneficiaries to trust income.

Changes to taxation of MITs

On 5 May 2016, the government enacted changes to the taxation of MITs. Eligible MITs were able to apply the new rules for an income year starting on or after 1 July 2015. Once a MIT elected in, the trust provisions in Division 6 no longer applied to the MIT. MITs that elected into the new regime became attribution managed investment trusts (AMITs) and are generally taxed under Division 276 of the *Income Tax Assessment Act 1997 (ITAA 1997).*

The new tax system also introduced changes for MITs generally, including amendments to the rules around withholding and non-arm's

length income.

Changes to taxation of unit trusts

In addition, the law includes changes to the tax treatment of certain corporate unit trusts and public trading trusts due to the repeal of Division 6B of the ITAA 1936 and changes to the 20% tracing rule in Division 6C of the ITAA 1936.

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Eligibility requirements

Outlines the requirements a trust must meet to qualify as an MIT.

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A managed investment trust (MIT) is a publicly-held and commercially-operated collective investment trust that invests in primarily passive income activities. A trust qualifies as a MIT if all of the following apply for the income year in which it operates:

- The trustee is an Australian resident, or the central management and control of the trust is in Australia.
- The trust does not carry on or control an active trading business.
- The trust is a managed investment scheme.
- The trust meets the widely held requirement.
- The trust meets the closely held restriction.
- The trust is operated or managed by an appropriately regulated entity.

If temporary circumstances beyond the control of the trustee exist, the trust may continue to be treated as a MIT where it is fair and reasonable to do so. These requirements apply to all MITs, regardless of whether they opt into the attribution regime as AMITs.

Why there are eligibility requirements

The eligibility requirements are designed to ensure that a MIT is a genuine collective investment vehicle, and to limit the ability of foreign residents to adopt trust structures to access concessional withholding tax rates.

Under the MIT withholding tax regime, foreign investors are eligible for a reduced rate of withholding tax on fund payments from MITs if they are a resident of a country with which Australia has an effective exchange of information treaty.

The 'Australian management' requirement in the MIT definition is designed to enhance the competitiveness of the Australian managed funds industry.

The MIT definition has changed over time:

- in 2016, the definition was relocated and minor changes made
- in 2010, changes were made including to the scope of trusts and the widely held requirements
- prior to 2010

Managed investment schemes

The term 'managed investment scheme' (MIS) is defined in Section 9 of the *Corporations Act 2001* (Corporations Act). Management investment schemes are regulated by the Australian Securities & Investments Commission (ASIC).

Widely held requirement

The 'widely held' requirements differ depending on whether the MIT is:

- a registered MIS that is a retail trust
- a registered MIS that is a wholesale trust
- an unregistered MIS that is a wholesale trust.

Registered MIS that is a retail trust

A registered MIS that is a retail trust is widely held if any of the following are met:

- is listed on an approved securities exchange in Australia
- has at least 50 members
- has one or more specified widely held entities that together hold more than 25% of the participation interests in the trust and no other type of single entity holds more that 60% of the participation interests.

Registered MIS that is a wholesale trust

A registered MIS that is a wholesale trust is widely held if it has either:

- at least 25 members
- one or more specified widely held entities that together hold more than 25% of the participation interests in the trust and no other type of single entity holds more that 60% of the participation interests.

Unregistered MIS that is a wholesale trust

An unregistered MIS that is a wholesale trust is widely held if it has at least 25 members.

Specified widely held entities

Specified widely held entities include a:

- foreign collective investment trust with at least 50 members
- life insurance company or foreign life insurance company
- complying super fund, complying approved deposit fund or foreign super fund with at least 50 members
- limited partnership, if at least 95% of its membership interests are directly or indirectly held by specified widely held entities and the remaining membership interests are beneficially owned by a general partner that manages the limited partnership
- directly or indirectly wholly-owned subsidiary of a specified widely held entity.

Participation interests

'Participation interest' refers to the greater percentage held by the entity of the:

- interests (by value) in the trust
- control of rights attaching to membership interests
- rights to distributions from the trust.

Closely held restriction

There are restrictions on the extent to which a trust can be 'closely held'. The closely held restrictions differ depending on whether the MIT is a:

- a registered MIS that is a retail trust
- an MIS that is a wholesale trust

Specified widely held entities and trusts in a chain of trusts are treated as not having an interest in the trust for the purpose of the closely held rules.

Registered MIS that is a retail trust

To meet the closely held restriction, a registered MIS that is a retail trust must **not** have:

- 20 or fewer persons holding 75% or more of the participation interests or
- one foreign resident individual holding 10% or more of the participation interests.

MIS that is a wholesale trust

To meet the closely held restriction, a registered or unregistered MIS that is a wholesale trust must **not** have:

- 10 or fewer persons holding 75% or more of the participation interests or
- one foreign resident individual holding 10% or more of the participation interests.

Appropriately regulated entity

The trust must be registered under section 601EB of the *Corporations Act* or, if a wholesale trust, under section 275-15 of the

ITAA 1997.

QC 82261

Withholding rules

MITs and AMITs must withhold income tax when making certain payments to a non-resident member.

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The tax withheld is a final tax on the non-resident's Australian earnings and will usually match the amount of the taxpayer's subsequent tax liability on the income.

The rate of tax to be withheld from payments to non-resident members will vary according to whether the member is a resident of a country that has a tax treaty or exchange of information agreement with Australia, and whether the amount is either:

- a payment of dividends, interest and royalties (DIR)
- a 'fund payment'.

A member is generally subject to withholding where their residential address or the place of payment is outside of Australia.

- Stapled structures
- MIT withholding tax refund or top-up payment

Withholding for MITs

The withholding obligations for a MIT or an AMIT depend on whether or not it is a withholding MIT.

Withholding for AMITs

How aspects of the attribution regime for MITs affect the withholding requirements for AMITs.

Withholding on fund payments for MITs

Withholding MITs and custodians may be required to withhold an amount from a fund payment.

Withholding on dividend, interest and royalty payments for MITs

A MIT or AMIT must withhold from unfranked dividends, interest and royalty payments to foreign resident members.

Applying the new withholding rules from 1 July 2015

Information for to trustees of qualifying MITs that choose to apply the MIT rules that were enacted on 5 May 2016.

Implications of MIT withholding for foreign residents

Withholding tax on selected payments from Australian MITs and AMITs is a final tax imposed on foreign residents.

QC 82278

Withholding for MITs

The withholding obligations for a MIT or an AMIT depend on whether or not it is a withholding MIT.

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When a trust is or is not a withholding MIT

A trust is a withholding MIT, in relation to an income year, if:

- it is a MIT (subject to certain exceptions), or would be a MIT, in relation to the income year except for either
  - temporary circumstances outside of its control
  - the trustee of the trust does not make a fund payment in relation to the income year but meets the MIT requirements on the first and last day of the income year
- a substantial proportion of the investment management activities are carried out in Australia throughout the income year for assets that are
  - situated in Australia at any time in the income year
  - taxable Australian property at any time in the income year
  - Australian stock exchange listed shares, units or interests.

An AMIT that only makes deemed payments to members can be a withholding MIT.

If a MIT or an AMIT is **not** a withholding MIT, then both:

- the trustee will be taxed in the place of the non-resident member on Australian sourced income and capital gains
- the member will generally be entitled to a credit against their tax liability for the tax paid by the trustee.

Dividend, interest and royalty withholding (DIR) may still apply, even if the MIT (or AMIT) is not a withholding MIT.

If a MIT is **not** a withholding MIT, it must include beneficiary and income details in the trust income tax return for any amounts to which a non-resident beneficiary is presently entitled.

An AMIT that is **not** a withholding MIT must include member and income details in the AMIT income tax return for any amounts attributed to non-residents.

NANE treatment

Any amount subject to withholding tax on fund payments or DIR is non-assessable non-exempt (NANE) income for the recipient. This ensures the withholding tax is a final tax for most foreign investors in MITs.

However, if you're an Australian resident and you receive an amount directly or indirectly which has been subject to MIT withholding, the amount will not be NANE, and the income will continue to be subject to tax at your marginal tax rate.

Notice requirements

If you are an Australian resident, any payments you receive from a MIT or AMIT are **not** subject to the MIT withholding rules. However, a MIT or AMIT must notify you if any such payment is a fund payment (from a withholding MIT) or DIR payment (from an AMIT) and state the amount that **would have been** subject to withholding if you were a non-resident. The MIT or AMIT can notify you directly or make the payment details available for at least five years on a website you can access.

The notice requirement applies for actual and deemed payments. The notice must identify the part of the actual and deemed payment from which withholding would have been required, and the income year it relates to.

If the payment is made to an Australian resident through a custodian, the custodian is also required to provide notice in the same way as the MIT or AMIT.

Payment summaries

If you have had tax withheld from the payments you receive from a MIT or an AMIT, the withholding MIT must provide you with a payment statement at the end of the income year that specifies:

- the name of the payer
- your name
- your tax file number (TFN) or Australian business number (ABN) (if provided)
- the total of the withholding payments it covers, and the total of the amounts withheld by the payer from those withholding payments

- the income year it relates to.

Reporting withholding to us

A withholding MIT must report to us the amounts withheld, by lodging an annual investment income report (AIIR).

See also:

AMIT reporting requirements

Penalty for failing to withhold

If the MIT (or AMIT) trustee fails to withhold from a payment to its non-resident members, the trustee will be liable for a penalty equal to the amount that was required to be withheld.

QC 82279

Withholding for AMITs

How aspects of the attribution regime for MITs affect the withholding requirements for AMITs.

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Deemed payments

Under the attribution method for AMITs, the amount attributed to you may not be the same as the amount you receive in cash. An AMIT that is a withholding MIT will make a deemed payment of dividends, interest and royalties (DIR) payment or deemed AMIT fund payment to you when the AMIT issues you with an AMIT member annual statement (AMMA statement). The amount of the deemed payment may be zero.

The amounts attributed to you of a character relating to assessable income, as shown in the AMMA statement, are effectively your share of the AMIT's income and the total amount may be subject to

withholding to the extent that those amounts have not already been distributed and subject to withholding before the issue of the AMMA statement. This may be a greater or lesser amount than you receive in actual cash payments.

The amount of the deemed payment is broadly the difference between the amounts attributed to you of a character relating to assessable income as shown in the AMMA statement and any actual payments (pre-AMMA actual payments) made to you as cash payments or present entitlements.

The trustee:

- first works out the total deemed payments at the fund level (that is, the total of all the amounts of a character relating to assessable income attributed to all the members, less the total of all pre-AMMA actual payments that are AMIT DIR payments and fund payments)
- determines the amount of the deemed payment referable to each member on a fair and reasonable basis.

Deemed payments are effectively subject to the same withholding requirements as actual payments. The trustee may need to pay an amount or amounts to us in respect of the deemed payment. Where an amount is payable, the amount is equal to what it would have been required to withhold from the deemed payment if it were an actual payment. For more information, see AMIT reporting requirements.

Pre-AMMA actual payments

A trustee is likely to make actual cash payments to you during the income year. Cash payments made to you during the income year, before you're provided with an AMMA statement are called 'pre-AMMA actual payments'.

If you're a foreign member, when a trustee makes an actual DIR or fund payment to you, the trustee must withhold from the payment and remit the amount withheld to the ATO.

If there are no actual payments before the AMMA statement is issued, the amount of the deemed DIR or fund payment is determined by reference to your 'determined member components' of the relevant characters, as disclosed in the AMMA statement.

Post-AMMA actual payments

Any payment attributed to you at the same time or after the AMMA statement is issued is not treated as an AMIT DIR or fund payment if it relates to a 'determined member component' already included in your AMMA statement (and therefore relates to a deemed payment).

There is no withholding obligation for a post-AMMA actual payment, as an amount will already have been paid to the ATO for the earlier 'deemed payment'.

Custodians

There are special modifications to the rules for custodians that have received payments from an AMIT.

You are a custodian if you are carrying on a business that consists predominantly of providing custodial or depository interests under an Australian financial services licence, or you are acting on behalf of an entity carrying on such a business. A foreign resident may invest in an AMIT through an intermediary such as a custodian.

If you are a custodian and you receive a deemed DIR payment or deemed fund payment from an AMIT, you must withhold an amount from any subsequent deemed payment you make to an entity whose address, or place for payment, is outside Australia. If you make a deemed DIR payment or deemed fund payment to an entity whose address, or place for payment, is outside Australia, you must pay the ATO an amount equal to what you would have had to withhold if the deemed payment was an actual payment.

If you make a subsequent deemed DIR payment or deemed fund payment to another entity that has a place of payment or address in Australia, you must notify or make information available to the recipient outlining certain details in relation to that payment.

If an AMIT makes a deemed payment to you that is not accompanied by a cash payment, or the cash payment is not sufficient to cover your obligation to pay an amount to the ATO for the deemed payment, you can recover the amount of any excess from the non-resident recipient against payments due to the recipient.

Other entities

‘Other entity’ refers to any entity – for example, a trust, partnership or individual that is not an AMIT or a custodian.

If an 'other entity' receives an amount of AMIT DIR payment of a fund payment that is not a deemed payment from an AMIT, they must withhold an amount from any related later payment to a recipient whose address, or place for payment, is outside Australia.

If an 'other entity' receives an AMIT DIR payment or a fund payment, and an Australian resident becomes entitled to the payment, the 'other entity' must meet notification requirements regarding the payment.

Foreign entities that are trustees

Under the 2016 changes to withholding rules for MITs, a fund payment made to a foreign resident by an AMIT, custodian or interposed trust is subject to MIT withholding tax. This is regardless of whether the foreign entity is receiving the payment in the capacity of a trustee. This change removes the need for the AMIT to determine the residency status of the ultimate beneficiary.

Should the income then flow back onshore to an Australian resident, the Australian resident will be taxed on that payment at appropriate marginal rates, with a relevant credit for the withholding tax applied.

TFN withholding for AMITs

Payments to non-residents

If you are a non-resident and an AMIT is required to withhold an amount for a payment or deemed payment to you, you are taken to have quoted a TFN in relation to your investment.

Payments to residents who haven't quoted their TFN

If you are an Australian resident who hasn't quoted your TFN and an AMIT makes a payment to you, the AMIT is required to withhold an amount under the TFN withholding provisions. The TFN withholding provisions will continue to apply to the total amount of any actual payments (except for a return of capital) it makes to you.

TFN withholding also applies to the following payments an AMIT makes to you:

- pre-AMMA actual payments (except for returns of capital)
- deemed payments except to the extent that the payment relates to a pre-AMMA actual payment that was already subject to the TFN withholding.

Example: working out the TFN withholding amount that an AMIT makes to you

An AMIT makes a pre-AMMA actual payment of $100 to its members and issues AMIT DIR payment notices indicating that the payment includes an AMIT interest payment of $80 in total. The AMIT then issues AMMA statements attributing interest of $80 and foreign source income of $20. A $20 deemed payment arises, as only AMIT DIR payments and fund payments are excluded from the deemed payment calculation.

Don, a resident member, holds a 10% interest in the fund, and has received a pre-AMMA actual payment of $10 and a deemed payment of $2 is referable to the member.

As the AMIT withheld an amount from the $10 pre-AMMA actual payment, the AMIT is not required to withhold an amount from the $2 deemed payment as this amount has already been subject to TFN withholding.

If TFN withholding tax has already been deducted from a pre-AMMA actual payment or deemed payment, TFN withholding does not apply to a post-AMMA actual payment to the extent it relates to the earlier pre-AMMA actual payment or deemed payment.

For both actual and deemed payments, the amount to which TFN withholding applies for AMITs takes into account the amount of the AMIT DIR payments and fund payments worked out under the method statements in subsections 12A-30(4) and 12A-110(5) of the *Taxation Administration Act 1953*.

Example: working out the amount to which TFN withholding applies

For an income year, an AMIT has two members: Anne, who is a non-resident and Yasmin, who is a resident, who each have a

50% interest in the AMIT. For the income year, the AMIT expects to receive interest of $200. At the end of each quarter of the income year, the AMIT makes a cash distribution of $20 to Anne and $20 to Yasmin.

For Anne, for each $20 cash distribution, the AMIT works out the amount of the AMIT interest payment to be $25 and the AMIT withholds an amount of interest withholding tax from $25.

For the purposes of applying the TFN withholding provisions to Yasmin, the $20 actual payment is also taken to be increased to $25 and therefore the TFN withholding applies to $25.

If the AMIT issues Yasmin an AMMA statement showing interest of $100, no deemed payment arises. Where the AMIT makes a post-AMMA actual payment of $20 ($100 less the $80 actual quarterly amounts paid during the year), the AMIT is not required to apply the TFN withholding to the post-AMMA actual payment as the correct amount of withholding has already occurred from the pre-AMMA actual payments.

After working out the amount to which TFN withholding applies according to the method statement, to work the amount to be withheld, the amount is multiplied by the withholding rate applicable for the income year in which the amount is income of the recipient.

We may issue more comprehensive guidance on the application of the TFN withholding provisions to AMITs to reflect our approach to the interpretation and administration of these laws.

QC 82280

Withholding on fund payments for MITs

Withholding MITs and custodians may be required to withhold an amount from a fund payment.

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Withholding MITs (whether a MIT or an AMIT) and custodians may be required to withhold an amount from a fund payment, or an amount reasonably attributable to such payment, where they make payment to a place outside Australia or the recipient has an address outside Australia.

Under the MIT withholding regime, fund payments to foreign members are subject to a final withholding tax of:

- 15% where the payment is made to a resident of a country that has an exchange of information agreement with Australia
- 30% where the payment is made to a resident of a country that does not have an exchange of information agreement with Australia.

The Taxation Administration Regulations 2017 has been amended and 54 countries have been added to the 'information exchange countries', with the date of effect 1 January 2019.

A fund payment made on or after 1 January 2019 to a recipient with an address or place of payment in one of these 54 countries will be subject to a withholding tax of 15% instead of 30%.

Definition of a fund payment

For MITs, a fund payment broadly consists of the net income of the MIT from Australian sources.

Fund payment excluded amounts are:

- dividends, interest and royalties on the basis that they are subject to withholding tax under separate provisions
- capital gains or capital losses from CGT events that happen in relation to CGT assets that are not taxable Australian property

In calculating a fund payment for a MIT, capital losses from CGT events that happen in relation to CGT assets that are not taxable Australian property are added back to the extent they are applied against capital gains from taxable Australian property.

For AMITs, fund payments are defined under section 12A-110 of the *Taxation Administration Act 1953* (TAA). The object of the definition is to ensure the total of fund payments made by the AMIT for an income year equals, as closely as possible, the total of both:

- its determined member component of an assessable income character, disregarding any excluded components
- each capital loss from a CGT asset that is not taxable Australian property to the extent that each capital loss has been applied against capital gains from taxable Australian property.

Excluded components include determined member components of the following characters:

- discount capital gains and non-discount capital gains from a CGT asset that is not taxable Australian property
- dividends, interest and royalties that are subject to, or exempted from, a requirement to withhold
- foreign source income.

A fund payment for an AMIT may be an actual payment or a deemed payment. The amount of the fund payment is worked out using the method statement in subsection 12A-110(5) of the TAA.

As part of the method statement, the trustee must work out the reasonable expectation of what the total determined member components will be for each assessable income character, based on the trustee's knowledge at the time the actual payment is made.

Withholding on fund payments for AMITs

The fund payment withholding requirements apply only to AMITs that are withholding MITs. Any withholding MITs that are not AMITs will continue to apply the withholding requirements under Subdivision 840-M of the *Income Tax Assessment Act 1997* (ITAA 1997) and Subdivision 12-H of the TAA.

The trustee of an AMIT that is not a withholding MIT will be taxed on attributed amounts on behalf of foreign residents, rather than coming under the MIT withholding regime. Dividend, interest and royalty withholding may still apply.

The withholding rules apply to both actual fund payments and deemed fund payments. The trustee must pay an amount to the ATO for deemed fund payments, equal to what it would be required to withhold from deemed fund payments if they were actual fund payments.

For more information, see:

- Law Companion Ruling LCR 2015/13 *Attribution Managed Investment Trusts: withholding in respect of 'fund payments'*
- Paying and reporting withheld amounts

QC 82281

Withholding on dividend, interest and royalty payments for MITs

A MIT or AMIT must withhold from unfranked dividends, interest and royalty payments to foreign resident members.

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Withholding rates and rules

Generally, the amounts withheld from a payment are:

- 10% for interest, regardless of whether a tax treaty is in place
- 15% for unfranked dividends and royalties where there is a tax treaty in place
- 30% for unfranked dividends and royalties where there is no tax treaty in place.

Fully franked dividends are not subject to withholding, as the underlying profits have already been taxed. Foreign residents are not entitled to claim any imputation credit attached to the dividend.

Partially franked dividends will require withholding to be applied to the unfranked portion.

The withholding requirements for dividends, interest and royalty (DIR) payments apply to all AMITs, not just those that are withholding MITs.

The withholding rules apply to:

- an AMIT dividend payment, defined in subsection 12A-30(4) of the *Tax Administration Act 1953* (TAA)

- an AMIT interest payment, defined in subsection 12A-35(4) of the TAA
- an AMIT royalty payment, defined in subsection 12A-40(4) of the TAA.

The amount of an AMIT dividend, interest or royalty payment is worked out according to the method statement in section 12A-30 of the TAA. The withholding rules apply to actual DIR payments and, for AMITs that are withholding MITs, the withholding rules will also apply to deemed DIR payments. For more information, see Determined member component

Definition of AMIT DIR payments

AMIT DIR method statement

AMIT DIR payment amounts need to be calculated according to the method statement in subsection 12A-30(4) of the TAA, with certain modifications required for determining interest and royalty payments.

The method statement is used to ensure the total of the AMIT DIR payments made by the trustee for the income year equals, as closely as possible, the total 'determined member components' of those characters for the income year.

The method statement is as follows:

1. Work out the amount reasonably expected to be the total of the 'determined member components' for the AMIT for the income year for dividends, interest or royalties that are generally subject to ordinary dividend, interest or royalty withholding.
2. The AMIT DIR amount for a particular payment is the amount from '1', as is reasonable having regard to the amounts of any earlier AMIT DIR payments made by the trustee for the income year, and the expected amounts of any later DIR payments the trustee expects to make for the income year.

AMIT dividend payment

The amount of an AMIT dividend payment is worked out by applying the method statement in subsection 12A-30(4) of the TAA. The amount of the AMIT dividend payment may be:

- the amount of the actual payment or deemed payment, or
- the amount of the actual payment or deemed payment, increased or reduced as a result of the method statement.

AMIT interest payment

An AMIT interest payment is an actual payment or a deemed payment the trustee makes in relation to an income year. The amount of the AMIT interest payment may be:

- the amount of the actual payment or deemed payment, or
- the amount of the actual payment or deemed payment, increased or reduced as a result of the method statement.

To work out the amount of an AMIT interest payment, an AMIT must apply the method statement in subsection 12A-30(4), as modified by subsection 12A-35(4).

AMIT royalty payment

An AMIT royalty payment is an actual payment or a deemed payment the trustee makes in relation to an income year. The amount of the AMIT royalty payment may be:

- the amount of the actual payment or deemed payment, or
- the amount of the actual payment or deemed payment, increased or reduced as a result of the method statement.

To work out the amount of an AMIT royalty payment, an AMIT must apply the method statement in subsection 12A-30(4), as modified by subsection 12A-40(4).

For more information, see:

- Law Companion Ruling LCR 2015/12 *Attribution Managed Investment Trusts: dividend, interest and royalty withholding*
- Withholding from interest paid to foreign residents
- Withholding from dividends paid to foreign residents
- Withholding from royalties paid to foreign residents
- Paying and reporting withheld amounts

QC 82282

Applying the new withholding rules from 1 July 2015

Information for to trustees of qualifying MITs that choose to apply the MIT rules that were enacted on 5 May 2016.

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This information is relevant to trustees of qualifying MITs that choose to apply the new MIT rules (enacted on 5 May 2016) from 1 July 2015, where:

- the trustee is making interim payments (for example, quarterly or half yearly) to non-resident unit holders/members, or to custodians or other entities who may be making interim payments to non-residents
- at the time of making such interim payments the legislation had not been enacted
- the trustee relied on the latest publicly released exposure draft of the legislation or Bill to determine its withholding obligations at the time of those payments.

Any reference to a MIT trustee in the following guidance extends to a custodian or other entity that may be required to withhold amounts from fund payments or dividend, interest and royalty (DIR) payments to non-residents.

The withholding obligations determined at the time of payment may be different to your obligations under the enacted law.

Correcting in subsequent payments

Generally, a trustee of a MIT, when anticipating the proposed rules, must apply the proposed withholding provisions in a reasonable way and, over the course of the income year, withhold the correct amount of tax from fund payments and DIR payments.

If you discovered after the law was enacted that you over- or under-withheld from an earlier payment in 2015–16, you should adjust the amount you withhold from subsequent payments in 2015–16 to account for the discrepancy.

Where no further payments are made in the income year, foreign resident members will need to either:

- apply for a refund if the amount of withholding tax paid to us is greater than their liability
- make a top-up payment of withholding tax if the amount paid to us is less than their liability.

Over-withholding

If you discover, **prior to 1 July 2016**, that you withheld more tax during 2015–16 than you should have, you must refund the extra amount you withheld to the member, even if you have already paid the amount to us.

If you have already paid the amount to us and you will not be liable to pay us any further withholding amounts for 2015–16, you will need to lodge a revised activity statement to recover the amount over-withheld. Revised activity statements are available in Online services for business if you are a registered user, or by phoning us on **13 28 66**.

If you discover, **after 30 June 2016**, that you withheld more tax than you should have done, **do not** refund the amount to the member – if you do, we cannot refund the amount to you. Your member needs to make a refund application in writing to us.

Under-withholding

A payer who fails to withhold an amount, or under-withholds, will be subject to an administrative penalty equal to the amount that they did not withhold. We also impose a general interest charge (GIC) on payments made to us after the due date, even if the amount was reported to us on time.

If you applied the law in a reasonable way and after 30 June 2016 you discover you have withheld less tax during the 2015–16 than you should have done, you are liable to pay a penalty equal to the amount that you did not withhold. However, if you pay the penalty by 30 September 2016, we will remit any GIC that would ordinarily be imposed.

If you do not pay the penalty by 30 September 2016, you remain liable to pay the GIC.

We will not automatically remit the GIC. You can apply for the GIC to be remitted if you can show the remission is warranted.

When you pay the penalty, you are entitled to recover an amount equal to the penalty from your members. Your members are entitled to a credit equal to the penalty or GIC you have paid, as appropriate.

Penalties may apply where you have made a false or misleading statement, or have been reckless, or intentionally disregarded the law.

QC 82283

Implications of MIT withholding for foreign residents

Withholding tax on selected payments from Australian MITs and AMITs is a final tax imposed on foreign residents.

Last updated 24 July 2025

Withholding tax on MIT fund payments and dividend, interest or royalty (DIR) payments (including deemed payments) received from Australian MITs (and AMITs) is a final tax imposed on foreign residents. Payments (including deemed payments) received by a foreign resident that are subject to withholding tax are non-assessable non-exempt income for income tax purposes.

If you are a foreign resident, your liability for withholding tax will generally be met by the amount being withheld by the trustee of an Australian MIT, custodian or other entity. If your only Australian income is a fund payment or DIR payment from a MIT, you are not required to lodge an Australian tax return, as long as tax has been correctly withheld from your payment.

However, mismatches in withholding amounts can occur in certain situations, such as where the address of the recipient of the payment (such as a global custodian) is different from the address of the

ultimate foreign investor. As a result, the withholding tax paid to us could be greater (or less) than the foreign investor's actual withholding tax liability.

If the amount of withholding tax paid to us by the MIT is greater than your liability, you can apply for a refund of the overpaid amount. You will need to make a top-up payment of withholding tax if the amount paid to us is less than your liability.

For more information, see:

- Withholding on fund payments for MITs
- Withholding on dividend, interest and royalty payments for MITs
- MIT withholding tax refund or top-up payment

QC 82284

Repeal of Division 6B

Following a Board of Taxation recommendation, Division 6B of the ITAA 1936 was repealed.

Last updated 24 July 2025

Purpose of Division 6B

Division 6B was introduced in 1981, prior to the company imputation system and capital gains tax systems and applied to tax certain public unit trusts at the corporate tax rate. It was introduced to discourage the reorganisation of companies involving the transfer of assets or businesses into a resident public unit trust in which shareholders would take equity to access more beneficial trust tax treatment.

Generally, trusts (including MITs) can have tax advantages over companies. As examples, they may be able to distribute non-assessable tax-free and tax-deferred amounts, and the CGT discount is available to trusts but not companies. There is also opportunity to access tax rates lower than the 30% company tax rate, such as the 15% final MIT withholding tax rate for non-resident beneficiaries.

What is new

The repeal of Division 6B coincides with the introduction of a new arm's length income rule.

There have also been changes that affect the 20% tracing rule in Division 6C.

Consequences for some unit trusts

Before 1 July 2016, if Division 6B applied to a trust (an affected trust), the trust was taxed as a corporate tax entity. Generally, these trusts are described as a corporate unit trust.

As a result of the 2016 amendments to repeal Division 6B, affected trusts cease to be a corporate unit trust for income years starting on or after 1 July 2016.

Trustees of affected trusts need to consider how the trust is affected by the repeal and determine the impact on their registration requirements and tax obligations.

Some affected trusts will continue to be treated as a corporate tax entity. For example, if the trust is the head company of a consolidated group because it has made a choice under Subdivision 713-C of the ITAA 1997, the trust will continue to be treated as a company for income years commencing on or after 1 July 2016 despite the repeal of Division 6B. Similarly, some trusts that were corporate unit trusts under Division 6B may satisfy the requirements of a public trading trust and be taxed as a corporate tax entity under Division 6C.

For more information, see:

- Arm's length income rule for MITs
- 20% tracing rule in Division 6C
- Transitional rules for trusts that cease to be corporate unit trusts or public trading trusts

QC 82285

Arm's length income rule for MITs

The arm's length income rule removes the incentive to shift profits by engaging in non-arm's length activity.

Last updated 24 July 2025

The arm's length income rule was introduced in the context of the repeal of Division 6B of the *Income Tax Assessment Act 1936* (ITAA 1936: which taxed certain public unit trusts as corporate entities). This new rule removes the incentive to shift profits from an active business of a related party to a MIT by engaging in non-arm's length activity.

If we determine that a MIT has derived non-arm's length income, the trustee may be liable to pay income tax on that income at the standard corporate tax rate of 30%.

Non-arm's length income

Ordinary or statutory income is non-arm's length income of a MIT if:

- it is derived from a non-arm's length scheme
- the amount is more than the MIT might have been expected to receive if the parties had dealt with each other at arm's length.

An amount of non-arm's length income is the whole amount, not just the component in excess of the amount that would have been derived if the parties were dealing at arm's length. However, the trustee will only be liable to tax on the amount by which the non-arm's length income exceeds the amount that would have been expected if the parties had dealt with each other at arm's length.

Certain amounts are specifically excluded from being non-arm's length income:

- a distribution to a MIT from a corporate tax entity
- a distribution to a MIT from a trust that is not a party to the non-arm's length scheme
- a return to a MIT an entity pays or provides on a debt interest if the rate of the return does not exceed the benchmark rate of return or a rate of return equal to the shortfall interest charge

- some distributions from another trust that is a party to a non-arm’s length scheme, where the income distributed is **not** non-arm’s length income.

Non-arm's length scheme

A non-arm's length scheme is where parties are not dealing with each other at arm’s length and at least one of the parties to the non-arm’s length scheme is not a MIT for the income year.

This includes arrangements lacking the normal commercial distance between unrelated parties, where the financial outcomes of the arrangement are different to what they would be if the parties were not related or connected in some way.

Commissioner's determination

The arm’s length income rule is an integrity rule that only applies if the Commissioner makes a determination:

- specifying an amount of non-arm’s length income, for a MIT for a specified income year
- where the amount of non-arm’s length income is reflected in either the trust components of an AMIT or the net income of a MIT.

The determination does not form part of an assessment but may be included with a notice of assessment. If you receive a determination you disagree with, you may lodge an objection.

Consequences of a determination

Once the determination is made, the amount of income exceeding an arm’s length amount (less any deductions relating only to that excess amount) will be taxed at the standard corporate tax rate of 30%.

To prevent double taxation for an AMIT the amount of non-arm’s length income is taxed at the corporate rate and taken to be an 'over' in the year of the determination.

For a MIT that is not an AMIT (Non-AMIT) the net income is reduced by the amount subject to trustee taxation at the corporate rate – for the income year to which the determination relates.

For example, the Commissioner of Taxation makes a determination on 31 August 2021 about a Non-AMIT's 2019 income year. The Non-AMIT is required to reduce its net income for the 2019 year by the amount of non-arm's length income the trustee was taxed on at the corporate rate.

Note: The determination does not necessarily mean the trust is a trading trust within the meaning of Division 6C.

Trustee can be subject to an administrative penalty

An administrative penalty is imposed on taxpayers entering into schemes to reduce their tax liabilities, including schemes to derive non-arm's length income.

The trustee of a MIT or AMIT is liable to an administrative penalty if we amend an assessment issued to the trustee for the income year and, as a result, the trustee is liable to pay an additional amount of income tax.

QC 82286

20% tracing rule in Division 6C

Under the new system for MITs, modifications were been made to the '20% tracing rule' in Division 6C of the ITAA 1936.

Last updated 24 July 2025

Under the new system for managed investment trusts (MITs), modifications have also been made to the '20% tracing rule' contained in Division 6C of the *Income Tax Assessment Act 1936*. Division 6C applies to a trust if it is both:

- a trading trust (broadly, a trust that carries on activities other than holding solely passive investments such as shares, property and fixed interest assets)

- a public unit trust.

If Division 6C applies to a trust, the trust will effectively be taxed as a company.

Previously, a trust could be treated as a public unit trust when one or more tax exempt entities or complying superannuation entities owned 20% or more of the beneficial interests in the trust (the 20% tracing rule).

Under the modifications to Division 6C, super funds and exempt entities – that are entitled to a refund of excess imputation credits – will now be exempt from the 20% tracing rule for public trading trusts.

As such, a trust will not be a public trading trust just because certain tax-exempt entities and complying superannuation entities hold more than 20% of interests in the trust.

QC 82287

Consequences for public trading trusts

As a result of the 2016 amendments to Division 6C, some trusts cease to be taxed as corporate tax entities.

Last updated 24 July 2025

Some trusts cease to be taxed as corporate tax entities for income years starting on or after 1 July 2016.

Trustees of affected trusts will need to consider the impact of these changes on their registration requirements and tax obligations.

If a trust has carried forward tax losses – incurred when it was a public trading trust – then these losses are still deductible by the trust after it ceases to be a public trading trust – provided it satisfies trust loss testing rules in Schedule 2F of the *Income Tax Assessment Act 1936*.

Some affected trusts will continue to be treated as a corporate tax entity. For example, if the trust is the head company of a consolidated

group because it has made a choice under Subdivision 713-C of the *Income Tax Assessment Act 1997*, the trust will continue to be treated as a company for income years starting on or after 1 July 2016 – despite amendments to Division 6C.

For more information, see:

- Repeal of Division 6B
- Arm's length income rule for MITs
- Transitional rules for trusts that cease to be corporate unit trusts or public trading trusts

QC 82288

CGT event E4

When a CGT Event E4 occurs and how it affects a unit holders' cost base and potential capital gains.

Last updated 24 July 2025

If you receive a non-assessable payment from a trust, CGT event E4 may occur and you may need to make cost base adjustments to your units or trust interest.

If the sum of the amounts of the non-assessable payments received in the income year in respect of the unit or interest is more than its cost base, you will make a capital gain equal to the excess amount and the cost base of the unit or interest are reduced to nil.

Where you receive a payment from a MIT, special rules modify the calculation of the non-assessable part. As a result, any capital loss reflected in the payment is not excluded from the non-assessable part of the payment.

CGT event E4 does not apply to an interest in an AMIT. However, CGT event E10 may apply.

QC 82290

Application and transitional provisions for the new tax system for MITs

Application and transitional provisions that were put in place to allow for the changes not made at the commencement.

Last updated 24 July 2025

With the introduction of the new tax system for managed investment trusts (MITs), there are a number of changes to the rules for MITs that will require time to implement. These do not necessarily take effect at the same time the MIT elects into the new AMIT regime. Application and transitional provisions have been put in place to allow for the changes not made at commencement.

Application provisions

The amendments to introduce a new tax system for MITs apply to income years starting on or after 1 July 2016. MITs will be able to make a choice to apply the new tax system for an income year that starts on or after 1 July 2015.

Extension of widely held requirements

The amendments, which extend the list of entities qualifying as specified widely held entities (for the purpose of the widely held requirements that must be satisfied for a trust to qualify as a MIT), apply from income years starting on or after 1 July 2014.

Division 6B and 6C

The amendments that repeal the corporate unit trust rules in Division 6B and modify the operation of the 20% tracing rule for public trading trusts in Division 6C apply to income years starting on or after 1 July 2016.

Transitional provisions

Application of the arm’s length income rule to existing arrangements

A transitional rule will apply if a MIT became a party to a non-arm’s length scheme before the date that the Bill was introduced into the House of Representatives on 3 December 2015.

In these circumstances, any income derived by the MIT before the start of the 2018–19 income year, will not be taxed as non-arm’s length income.

Transitional rules for unders and overs

Transitional rules will apply to existing MITs that enter into the new tax system with unders and overs relating to an earlier income year. The transitional rules apply when:

- a trust becomes an AMIT for the starting income year
- the trust existed in an earlier income year (the base year)
- the trust is an AMIT for the discovery year that is the starting income year (the first year the trust elects to become an AMIT) or a later income year.

The transitional rule applies if the AMIT has an under or over of a particular character in the discovery year in relation to a base year. For these purposes:

- the trust is taken to be an AMIT for the base year and for every income year between the base year and the starting income year
- if the trust sent distribution statements to members for an income year prior to the starting income year, the trust is taken to have sent AMMA statements to those members.

If the transitional rule applies, the under or over in relation to a base year is taken to be an under or over of the same character in the discovery year. In addition, where the under or over would have produced a particular effect under existing income tax law had it been discovered before the starting income year, then that other (pre-AMIT) particular effect is taken not to arise. That is, the discrepancy is dealt with solely by the unders and overs system.

Transitional rules for tax deferred and tax-free distributions

The transitional rules in relation to tax deferred and tax-free distributions will apply if the trustee of a trust made a payment to an entity on or after 1 July 2011 and before the income year in which the trust became an AMIT. The new cost-base adjustment rules will be used to work out the non-assessable part of the payment for CGT event E4 purposes. These sections do not, however, apply to payments already included as assessable income in the income tax return lodged for the income year the payment was made.

These transitional rules ensure that tax-deferred and tax-free distributions made by a MIT prior to the commencement of the new tax system will be taken into account under the capital gains tax regime, rather than being taxed as ordinary income. This does not apply where an entity has already included the distributions as assessable income in the income tax return lodged for the income year the payment was made.

Where the member holds their interests in the AMIT as a revenue asset, we will similarly treat tax-free and tax-deferred distributions as giving rise to an adjustment to the cost of the interests for the purpose of calculating the revenue gain or loss on disposal of the interests, rather than being assessable up front (where the distributions have not already been included in assessable income).

These transitional rules will benefit taxpayers and ensure that industry practice relating to the taxation treatment of tax-deferred and tax-free distributions is not disturbed.

For more information, see LCR 2015/11 *Attribution Managed Investment Trusts: annual cost base adjustments for units in an AMIT and associated transitional rules*

Transitional rules for trusts that cease to be corporate unit trusts or public trading trusts

If Division 6B or Division 6C applies to a trust, the trust is effectively taxed as a corporate tax entity. As a result, the trust is required to keep a franking account and can distribute franking credits to its members.

As a result of the 2016 amendments to repeal Division 6B and modify Division 6C, some trusts will cease to be taxed as corporate tax

entities. If a trust that ceases to be taxed as a corporate tax entity has a surplus in its franking account, a significant disadvantage may arise as the trust will no longer be able to pass franking credits on to its members.

To overcome this problem, transitional rules will apply if, as a result of these amendments, a trust ceases to be taxed as a corporate unit trust or a public trading trust.

There are two transitional rules:

1. Where an event that causes a franking credit or franking debit to arise happens between the trust ceasing to be a corporate unit trust or a public trading trust and 1 July 2019, and that event is, broadly, either the payment or refund of income tax for an income year starting before 1 July 2016, or the franking of a distribution, then the trust is taken to be a resident corporate tax entity at the time of the event for the purposes of determining franking credits or debits.
2. If the trust makes a distribution after it ceases to be a corporate unit trust or public trading trust and before 1 July 2019, and the trust's franking account is in surplus just before it makes the distribution, the trust will be taken to be a resident corporate tax entity at the time it makes the distribution.

Under these transitional rules, a trust that ceases to be taxed as a corporate tax entity as a result of these amendments will have until 30 June 2019 to use any surplus in its franking account, provided that the trust meets any imputation system integrity rules.

Other consequences for unit trusts

Trustees of trusts affected by the repeal of Division 6B and changes to Division 6C of the ITAA 1936 need to consider the impact of these changes on their registration requirements and tax obligations.

Some affected trusts continue to be treated as a corporate tax entity. For example, if the trust is the head company of a consolidated group because it has made a choice under Subdivision 713-C of the ITAA 1997, the trust will continue to be treated as a company for income years commencing after 1 July 2016, despite the amendments. Similarly, some trusts that were corporate unit trusts under Division 6B may satisfy the requirements of a public trading trust and be taxed as a corporate tax entity under Division 6C.

For trusts that continue being treated as a corporate tax entity, the trustee should update the entity type and description on any forms lodged with us to reflect any change.

Transitioning affected trusts

For the 2015–16 income year, an affected trust (a trust that ceases to be treated as a corporate tax entity for the income year starting on or after 1 July 2016) should lodge its company income tax return using its current company TFN and indicate that the return is its final return.

For the 2016–17 income year, the trust should apply for a new trust TFN and ABN.

For any income years commencing on or after 1 July 2016, if the trust already has an appropriate trust TFN and ABN, and it:

- is not taxed as a company, it can continue to use the trust TFN and ABN for that year
- becomes eligible to be taxed like company for a later income year, use the company TFN to lodge a company tax return for that year.

The trust can apply for a new TFN and ABN at any time at abr.gov.au including before the 2015–16 year company tax return is lodged. Make this application as soon as possible to allow the trust to meet its obligations from the start of the 2016–17 income year.

For more information, see:

- Repeal of Division 6B
- Arm's length income rule for MITs
- 20% tracing rule in Division 6C
- Work out which registrations you need

Extension of interim trust streaming provisions for MITs

The trust streaming rules allow MITs to choose whether to apply the rules to stream capital gains and franked dividends to beneficiaries, for the 2010–11 to 2013–14 income years.

The option to make a choice was intended to operate until the new tax system for MITs commenced.

However, as a result of the need to change business systems, some AMITs may not be immediately ready to make a choice to apply the new tax system.

As a result, the transitional rules will allow the trustee of a MIT to continue to be able to make a choice as to whether to apply the trust streaming provisions up to and including the 2016–17 income year. MITs that have previously made the election to apply the interim trust streaming provisions can continue to apply those provisions for 2014–15 to 2016–17. After the 2016–17 income year, the choice to apply the trust streaming provisions will no longer be available to MITs.

QC 82291

How we apply the law

Our Law Companion Rulings describe how we will apply new laws once they are enacted

Last updated 24 July 2025

If you rely on any of these guidelines in good faith, you will generally not be subject to underpaid tax, penalties or interest if the guideline does not correctly state how a relevant provision applies to you.

Once draft guidelines are finalised, they are binding advice. They express our interpretation of the laws we administer and our opinion of how a provision of tax law applies to taxpayers generally, rather than to specific circumstances of a particular taxpayer.

The rulings that relate to AMITs are:

- Law Companion Ruling LCR 2015/4 *Attribution Managed Investment Trusts: 'clearly defined rights'*
- Law Companion Ruling LCR 2015/5 *Attribution Managed Investment Trusts: choice to treat separate classes as separate AMITs*
- Law Companion Ruling LCR 2015/6 *Attribution Managed Investment Trusts: character flow through for AMITs*

- Law Companion Ruling LCR 2015/7 *Attribution Managed Investment Trusts: attribution on a 'fair and reasonable' basis*
- Law Companion Ruling LCR 2015/8 *Attribution Managed Investment Trusts: the rules for working out trust components – allocation of deductions*
- Law Companion Ruling LCR 2015/9 *Attribution Managed Investment Trusts: trustee shortfall taxation – section 276-420*
- Law Companion Ruling LCR 2015/10 *Attribution Managed Investment Trusts: administrative penalties for recklessness or intentional disregard of the tax law – section 288-115*
- Law Companion Ruling LCR 2015/11 *Attribution Managed Investment Trusts: annual cost base adjustments for units in an AMIT and associated transitional rules*
- Law Companion Ruling LCR 2015/12 *Attribution Managed Investment Trusts: dividend, interest and royalty withholding*
- Law Companion Ruling LCR 2015/13 *Attribution Managed Investment Trusts: withholding in respect of 'fund payments'*
- Law Companion Ruling LCR 2015/14 *Managed Investment Trusts: widely-held tests – wholly-owned entity of an Australian government agency*
- Law Companion Ruling LCR 2015/15 *Managed Investment Trusts: the non-arm's length income rule in sections 275-605, 275-610 and 275-615 of the Income Tax Assessment Act 1997*
- Law Companion Ruling LCR 2016/4 *Attribution Managed Investment Trusts: 'carry-forward trust component deficit'*

For more information, see:

- Law Companion Ruling LCR 2015/1 *Law Companion Guidelines: purpose, nature and role in ATO's public advice and guidance*
- Tax Laws Amendment (New Tax System for Managed Investment Trusts) Act 2016
- Income Tax Rates Amendment (Managed Investment Trusts) Act 2016
- Medicare Levy Amendment (Attribution Managed Investment Trusts) Act 2016

- Income Tax (Attribution Managed Investment Trusts – Offsets) Act 2016

QC 82292

Our compliance approach

A summary of our compliance approach in 3 key areas affected by the new rules for MITs.

Last updated 24 July 2025

Our priority is to provide support and assistance to taxpayers wanting to comply with the law. We welcome engagement with taxpayers, advisers and industry associations who wish to evaluate tax risk in relation to particular circumstances.

Post-balance date variances in member entitlements

'Unders' and 'overs' arise where net income and tax offset entitlement amounts reported to unit holders understate or overstate the amounts correctly determined under the law.

The existing trust income rules in Division 6 of the *Income Tax Assessment Act 1936* make no provision for unders and overs adjustments. That is, Division 6 does not provide for amounts of over- or under-reported net income for an earlier year to be taken into account in a later year.

The new MIT rules have specific provisions for dealing with unders and overs of amounts attributed to members, allowing AMITs (and their members) to bring those under and over amounts to account in a later income year.

For MITs that choose to apply the new AMIT rules from 1 July 2015 or 1 July 2016, we will not generally apply compliance resources to specifically review prior-year under and over amounts.

For MITs that do not elect into the new rules from these dates, we expect trustees to advise unit holders of their net income entitlements based on the trust taxation rules set out in Division 6. However, while we reserve the right to focus on this issue in specific cases, it will not be a focus area in allocating compliance resources for income years ending before 1 July 2017.

From 1 July 2017, we will be monitoring the treatment of unders and overs by trusts not electing into the new rules and allocating compliance resources based on overall risk management principles.

Distributions in excess of beneficiaries' shares of net income

Trust distributions in excess of the amounts assessed to beneficiaries are known as tax deferred distributions (TDDs).

Generally, we will not seek to assess TDDs as ordinary income where taxpayers hold interests in trusts as:

- investments, either on capital account, or subject to the CGT primary code rules applying to superannuation entities, MITs and the superannuation business of life insurance companies, and have consistently treated the TDDs as non-assessable amounts under the CGT cost base and reduced cost base rules
- revenue assets (not subject to CGT primary code rules), and have taken TDDs, including CGT concessional amounts, fully into account in working out revenue gains and losses on those interests.

Situations where the assessing of TDDs as ordinary income will be considered include (but are not necessarily limited to):

- the type referred to in Taxation Ruling IT 2512, which deals with 'Financing unit trusts', and similar arrangements involving the use of a trust structure to raise finance where TDDs are received in lieu of interest or similar amounts that would normally form part of assessable income
- the type referred to in Taxation Ruling TR 2014/D1, which involves the use of trusts to make distributions to persons as a reward for the performance of services, whether as an employee or otherwise
- arrangements where there may have been tax planning to maximise the extent to which trust distributions are characterised as TDDs.

The assessability of TDDs will also be considered where they relate to trust interests that are:

- subject to the taxation of financial arrangements (TOFA) regime and treated as assessable income under TOFA rules
- held as trading stock – in these situations a corresponding closing stock adjustment may also be appropriate in some situations when a cost basis is being used.

AIIR requirements for AMITs

Based on industry feedback, we recognise there may be difficulties in implementing the Annual investment income report changes for AMITs that choose to apply the new rules from 1 July 2015, including flow-on affects for other MITs and custodians.

In response to this feedback, we are postponing the finalisation of the new reporting requirements for AMITs until the 2016–17 reporting period.

Entities that are reporting trust distributions in 2015–16, including MITs who choose to apply the new MIT regime from 1 July 2015, will report using existing investment bodies specifications (V10.0 and v4.0 (PC spreadsheet format)).

QC 82293

Managed investment trust – flagged tax risks

Learn about the tax risks we have identified for managed investment trusts (MITs).

Last updated 17 April 2026

Restructures to access the MIT withholding regime

We have issued Taxpayer Alert TA 2025/1 *Managed investment trusts: restructures to access the managed investment trust withholding regime*. This alert identifies our concerns with certain restructures undertaken to access the concessional withholding tax rates. Consider TA 2025/1 for what could attract the application of the general anti-avoidance rules.

Clarifying tax arrangements for managed investment trusts

The Australian Government announced on 13 March 2025 that there will be amendments to the income tax laws to ensure certain investors can continue to access concessional withholding tax rates in Australia. The announcement indicates that those amendments are intended to apply to fund payments made from the date of the announcement. For more information, see The Hon Stephen Jones MP media release Clarifying tax arrangements for managed investment trustsExternal Link.

Administrative treatment

Taxpayers may rely on PS LA 2007/11 *Administrative treatment of taxpayers affected by announced but unenacted legislative measures which will apply retrospectively when enacted* and self-assess as a managed investment trust (MIT) prior to the law change being made. We will accept tax returns as lodged during the period up until the proposed law change is passed by parliament. Past year assessments will not be reviewed until the outcome of the proposed amendment is known.

After the new law is enacted, taxpayers will need to review their positions back to the 2024–25 income year. Those taxpayers who self-assessed as a MIT (consistent with the passed law change) and claimed the concessional MIT withholding rate do not need to do anything more.

If a trust self-assesses as a MIT under the media release, but once the amendments become law it becomes clear they were not eligible or the applicable withholding rate was higher, the tax will be greater (at least 15% more) and the assessment process may differ (trustee assessment rather than withholding).

These taxpayers will need to seek amendments. No tax shortfall penalties will be applied and any interest accrued will be remitted to the base interest rate up to the date of enactment of the law change. In addition, any interest in excess of the base rate accruing after the date of enactment will be remitted where taxpayers actively seek to amend assessments within a reasonable timeframe after enactment.

Announced measures that are not yet law will be subject to consideration by government. We can't provide advice on unenacted measures.

QC 103972

Our commitment to you

We are committed to providing you with accurate, consistent and clear information to help you understand your rights and entitlements and meet your obligations.

If you follow our information and it turns out to be incorrect, or it is misleading and you make a mistake as a result, we will take that into account when determining what action, if any, we should take.

Some of the information on this website applies to a specific financial year. This is clearly marked. Make sure you have the information for the right year before making decisions based on that information.

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