



# New Tax System for Australian Managed Investment Trusts

## Implications for Australia and Foreign Investors

The Treasury release of the Exposure Draft (ED) of the Tax Laws Amendment Bill 2015, the New Tax System for Managed Investment Trusts (MITs), will fundamentally change the way certain MITs are taxed. The government confirmed on 12 May 2015 that it would proceed with the implementation of the regime from 1 July 2015, with a choice of early adoption.

As MITs have become an increasingly popular investment vehicle for a range of Australian investments such as real estate, the changes will be relevant for both resident and non-resident investors as well as trustees.

### In a nutshell

The changes primarily deal with improvement of the existing law, particularly timing issues with respect to calculating taxable income of MITs. This is essentially for the benefit of both Australian and foreign investors in:

- Ascertaining their share in the taxable income of the MIT; and
- Ensuring the taxation consequences align with commercial reality.

The new rules deal with the timing differences between accounting and tax distributions and keeping track of cost base adjustments for Capital Gains Tax (CGT) purposes.

The changes will result in a fairer tax treatment for all MIT investors and will not affect the way cash distributions are made.

### In detail

The ED introduces a number of highly anticipated major changes. The proposed changes are in addition to the existing MIT measures which include the capital account election ('Ordinary' MIT) and the

Fund Payment withholding tax regime ('Withholding' MIT).

### Attribution MITs

The draft legislation introduces the concept of an Attribution Managed Investment Trust (AMIT). If a MIT qualifies to be an AMIT, it (and its members) will be eligible for the new tax system.

A trust will qualify as an AMIT if:

- The trust is a MIT; and
- The members of the trust have clearly defined interests as per the trust's constituent documents (the trust deed).

The members will have a clearly defined interest if:

- The amount attributable to each member can be worked out on a fair and reasonable basis; and
- The rights of each member to the income and capital of the trust cannot be materially diminished through the exercise of a power or right.

## Talk to one of our advisors

Please contact your local Crowe Horwath advisor to find out how we can assist you.

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## Key features of the new tax system for AMITs

There will be no change to the current MIT withholding tax rate (15% for residents in exchange of information countries, otherwise 30%);

Where a trust meets the AMIT eligibility conditions for the attribution regime the following rules apply:

- The trust is deemed to be a fixed trust for tax purposes;
- The income attribution mechanism, where trust components (including both taxable and non-taxable amounts and offsets) of an AMIT will be allocated or attributed to members on a fair and reasonable basis and attributed income will retain its tax characteristics in the hands of the members;
- Formal under / over distribution rules allow for errors in calculating taxable income to be rectified by making adjustments in the year they are discovered (with a gross up to reflect the shortfall interest charge if they are significant) rather than requiring distribution statements to be reissued

and amendments made to investor's tax returns;

- Cost base adjustment rules to increase (as well as decrease) the cost base of a member's units for CGT purposes where distributions differ to the taxable income attributed to the member, thereby avoiding double taxation;
- Certain debt-like instruments will be treated as debt interests, both for the trust and the unit holder;
- The ability to make an irrevocable election to treat income and assets attributable to a class of units as a separate AMIT;
- A special 'arm's length' rule which can result in a 49% rate of tax payable by the trustee on non-arm's length income earned by a MIT (interest income will not be subject to a non-arm's length income rule if it is within a specified safe harbour).

Our Crowe Horwath specialist Australian and German cross-border real estate transaction and investment teams are happy to assist in structuring the respective investment in Australian real estate and funds.

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