Australian Institute of Superannuation Trustees

26 February 2016

Committee Secretary
Senate Standing Committees on Economics
PO Box 6100
Parliament House
CANBERRA ACT 2600

Email: economics.sen@aph.gov.au

Dear Dr Dermody

Re: Senate Economics Legislation Committee inquiry: Tax Laws Amendment (New Tax System for Managed Investment Trusts) Bill 2015 and related bills [Provisions]

In brief:
AIST welcomes this legislation to create a new taxation system for attribution managed investment trusts. We note that the benefits of these bills should be made available to larger funds who invest through mandates. AIST recommends that guidance be provided by the ATO with respect to unit pricing, as well as certainty enshrined in legislation to ensure that there is no resettlement of trusts as a result of amendments to trust deeds which would have CGT effects to investors. We also recommend that the commencement date be postponed to 1 July 2017 in order to allow for the proper implementation of the new rules.

This package of bills creates a series of tax changes which will create a new taxation system for certain managed investment trusts. AIST broadly welcomes these changes that will see a new level of transparency brought to investments in the new attribution managed investment trusts (AMIT). AIST is also pleased that the Bill would remove some of the disincentives of being an AMIT, and is backed through the ATO drafting and releasing 12 Law Companion Guidelines.

Our comments on this package of bills are largely general in nature, and relate to how the changes proposed in the bills are expected to impact superannuation funds. AIST's member funds vary in size, from large industry and public sector with tens of billions of dollars in funds under management (FUM), through to small corporate funds with hundreds of millions of FUM. We note that the changes to trusts referred to in this Bill mainly impact smaller funds, as larger funds generally invest via mandates. In particular, we note that members of superannuation funds may be more equitably served by the ability to better allocate "overs and unders".

Ground floor
215 Spring Street
Melbourne VIC 3000

P +61 3 8677 3800
F +61 3 8677 3801
T @aistbuzz

info@aist.asn.au
www.aist.asn.au

Trustees entering AMIT regime

We expect that the benefits of the new AMITs will take some time to be made manifest as investors and fund managers alike get experienced in their use. Trustees will need to consider issues such as any risks or benefits of entering the AMIT regime. In this regard, AIST strongly advocates that continued development of the ATO's Law Companion Guidelines is needed to assist with the reduction of any risks.

Accordingly, we urge legislators to see these as longer term options for investors. It may take years in some cases for the benefits of these structures to be made more obvious. We note with some recent reforms in financial structures there have been unreasonably short expectations as to when benefits might be realised and recommend that a patient approach be taken.

Guidance required for unit pricing (or alternatives)

AIST welcomes the detail provided in this Bill, especially with regards to questions raised from the case of *Colonial First State Investments Ltd v. Commissioner of Taxation [2011] FCA 16*. In this case, the question around CGT meant that someone exiting a trust may be subject to double taxation with respect to Capital Gains Tax (CGT), through proceeds from capital on top of a redemption of units in the trust.

However, we consider that this potentially creates considerable uncertainty with regards to tax, with the notion of unit prices as we currently know them now potentially not a reflection of an investor's capital exposure. AIST recommends that at the earliest opportunity, the ATO should confirm that the capital proceeds received by a unit holder will be adjusted where any capital proceeds are received as part of the redemption proceeds in order to avoid the risk of double taxation.

Resettlement of trusts and CGT

We refer to a number of determinations and rulings issued by the ATO in recent times, where the reconfiguration of trust rules results in a material change to the trust for the purposes of a CGT event.

We expect that for a large number of funds, it may potentially be in the best interests of their members for them to remain unitholders in trusts which change to become AMITs. Some clarification has been provided to the effect that changes to terms of a trust will not result in CGT consequences as per Taxation Determination TD 2012/21 where changes are made "pursuant to the valid exercise of powers contained in a trust's constituent documents" (paragraph 2.50, Explanatory Memorandum). However, we believe that this matter would be better handled if the law was amended to ensure certainty.

In any event, AIST hopes that:

- The reconfiguration of a trust deed to change a trust to an AMIT is appropriately telegraphed to all unitholders ahead of such an event occurring; and
- Appropriate profiling of unitholders is undertaken to ensure that investor expectations are appropriately met.

In particular we note that in recent months a market downturn may see superannuation funds start to accumulate capital losses. In a case like this, there is a real option that a fund may prefer to rebalance portfolios through the sale of assets rather than through the distribution of income, to ensure that capital losses can be utilised. A trust which changes to an AMIT may potentially remove the options available to a fund in this regard.

While draft Law Companion Guideline 2015/D7 deals with a number of examples where particular attributions of (for example) specific capital gains would be 'fair and reasonable', Trustees will need to consider how attributions may impact on members in the future. AIST reiterates our earlier comment that work should continue on reviewing and refining any ATO Law Companion Guidelines.

Commencement and transition dates

We note that the changes contained in these bills will require a significant investment in new technology in order to accommodate the levels of transparency required. This is needed to ensure that at any given point in time, investors can look through to the investments in their portfolio and the tax events associated with them.

However, we also note that the commencement date for AMITs is from 1 July 2016. Given the scale of the investment required by fund managers, custodians and in many cases, their investors in systems that will allow them to better utilise the new rules, we recommend that the start date be pushed back to the 1 July 2017. This will ensure that superannuation funds, and their service providers such as custodians, who utilise MITs which transition to AMITs during the transition period are better able to prepare for the new regime.

If you have any further questions regarding this submission, please contact Richard Webb, Policy & Regulatory Analyst on or at

Yours sincerely,

Tom Garcia
Chief Executive Officer

Australian Institute of Superannuation Trustees

The Australian Institute of Superannuation Trustees is a national not-for-profit organisation whose membership consists of the trustee directors and staff of industry, corporate and public-sector funds.

As the principal advocate and peak representative body for the $650 billion not-for-profit superannuation sector, AIST plays a key role in policy development and is a leading provider of research.

AIST provides professional training and support for trustees and fund staff to help them meet the challenges of managing superannuation funds and advancing the interests of their fund members. Each year, AIST hosts the Conference of Major Superannuation Funds (CMSF), in addition to numerous other industry conferences and events.

* * *

Ground floor
215 Spring Street
Melbourne VIC 3000

P +61 3 8677 3800
F +61 3 8677 3801
T @aistbuzz

info@aist.asn.au
www.aist.asn.au