

**SENATE ECONOMICS COMMITTEE**  
**CORPORATE COLLECTIVE INVESTMENT VEHICLE FRAMEWORK AND**  
**OTHER MEASURES BILL 2021**

ANSWERS TO QUESTIONS ON NOTICE

**Agency:** Australian Taxation Office  
**Topic:** Appendix A - issues identified by Pitcher Partners submission  
**Senator:** Scarr

**Question:**

**CHAIR:** I can't hear him either, so there seems to be an issue there. I might just continue questions for five minutes until we can get him back. I might finish this line of questioning and then we'll go back to Senator Chisholm.

The second point they raise, and this is an issue that gets raised by a number of submitters, including the Financial Services Council and Pitcher Partners, is:

A second area for improvement is the requirement in the legislation that the amount to which beneficiaries must be presently entitled is based on accounting profits. This will be inconsistent with the way funds normally operate. The reliance on accounting profits can in some cases potentially produce inappropriate outcomes for members. We believe that a simple solution to the problem is to remove reliance on the concept of accounting profits and rely on the definition of income stated in the CCIV's constitution, which would align with the concept of trust income for a MIS.

Are you in a position to give any thoughts with respect to why it is that, at the moment, the amount to which beneficiaries must be presently entitled is based on accounting profits, as opposed to adopting the alternative approach proposed by King & Wood Mallesons?

**Mr Werbik:** Similarly, I think there is a clear policy choice being taken on the form of the legislation to look to accounting profits. As such, I think that would be more a matter for Treasury to opine upon.

**CHAIR:** This is the third point they raise:

It would also be beneficial to improve the tax rules that rely on the concept of a dividend, which is not the same as the MIS concept of a distribution.

So this concept of a dividend not being the same as the MIS concept of a distribution. Is that another policy issue?

**Mr Werbik:** I suspect it is. I saw in the FSC submission some mention of problems that the ATO would encounter with the dividend concept. I'm not aware of that being a particular issue for us. As I said, the legislation takes the approach that it is a legal form company. For all relevant purposes, we're going to switch that off and have a deeming provision that essentially requires the CCIV vis-a-vis its sub-funds and beneficiaries to be taxed as a trust, as an AMIT. To the extent that there are things that need to be clarified: we'd certainly take that on board in our public advice and guidance, subject to prioritisation.

**CHAIR:** There are a number of concerns raised in the submission from Pitcher Partners, including the topic we've just discussed. I will quote from paragraph 5 of their submission:

We attach at the Appendix a preliminary list of issues that we have identified. Most of these issues are in relation to applying the deeming rules in proposed Division 195 to the Income Tax Assessment Act 1997, which relate particularly to those CCIV sub-funds that do not meet (or are at risk of not meeting) the criteria to be taxed as an Attribution Managed Investment Trust.

In particular, our main concern is the use of "profits" as a proxy for the "income of a trust estate" for a non-AMIT sub-fund. We believe the use of this concept will be problematic from an ATO administration (as well as a taxpayer compliance) perspective. We believe that the difference between this term and taxable income will likely result in many cases where a CCIV sub-fund is taxed at 47%.

You can take this on notice, if you like, but do you have any initial response to that proposition?

**Mr Werbik:** The matter you raise there is where the CCIV and right of the sub-fund has failed. It may do so in circumstances where it may no longer be wildly held or it's no longer carrying on passive activities. That takes it out of the AMIT sphere of taxation and into division 6. As a general

proposition, the AMIT rules themselves were brought in to overcome many of the issues of a longstanding nature found in division 6 vis-a-vis general trust taxation. It's not a place where you would necessarily want to end up as a CCIV in right of the sub-fund. In terms of the specific issues that the submission appears to have raised I suspect that they are matters for Treasury, insofar as they are wanting changes to the law and that itself may involve some policy questions. But aside from that, we're happy to take that one on notice in terms of the granularity of the suggestions that are made. At first blush I think they go towards the question of how ought the world of division 6 taxation apply to a failed CCIV? We hope they won't be failing, of course. But, yes, I'm happy to take that one on notice.

**CHAIR:** Okay, if you could, Mr Werbik. They've attached a schedule of comments to the letter in relation to particular sections and raised queries. It's very extensive. Could you have a look at that schedule and to the extent that there are matters which don't broach on policy, if it is possible could you give any feedback in relation to the 23 items they raise? Even if it's short form along the lines of 'this is a policy question' or 'this is something ATO will look at in terms of developing guidance as we move forward,' that would be useful for the committee. Would it be possible, Mr Werbik, for you to take that on notice?

**Mr Werbik:** We can take that on notice, have a look at the list and provide a suitable response.

**CHAIR:** Thank you very much. I appreciate that. Senator Chisholm?

**Answer:**

1. The default tax settings for a CCIV sub-fund that fails the Attribution Management Investment Trust (AMIT) eligibility criteria, including the method for determining the income of the CCIV sub-fund by reference to accounting profits, is a policy choice. The Pitcher Partners' Submission identifies some implications of the approach from an interpretive and administrative perspective, and these will need to be worked through.

The ATO has established a CCIV Working Group to canvass industry perspectives around what support will be needed as we implement the new CCIV, including matters requiring public advice and guidance. The ATO will work with industry to consider the issues raised by stakeholders, including any interpretive questions raised about the deeming rules and their interaction with general trust taxation principles to a CCIV sub-fund. Further policy questions may be identified as a result of resolving these interpretive and administrative questions, such policy questions being a matter for Treasury.

2. The ATO has reviewed the list of issues in Appendix A of Submission 18 by Pitcher Partners. They raise a wide range of questions relating to questions of policy, interpretation, and the administration of the CCIV regime. The ATO will consider these issues in the course of determining what public advice and guidance will be needed to support an effective implementation of the CCIV regime.