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25/02/2016

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Dear Senators,

Tax Laws Amendment (New Tax System for Managed Investment Trusts) Bill 2015 and associated Bills

Thank you for the opportunity to provide this submission as part of the Senate Economics Legislation Committee's review into the attribution managed investment trust (AMIT) regime proposals and related measures in Tax Laws Amendment (New Tax System for Managed Investment Trusts) Bill 2015 and associated Bills.

We are writing to support the speedy passage of the Bills through Parliament in order to allow their adoption and implementation by managed funds, their administrators and other service providers in accordance with the highly anticipated scheduled application dates.

The AMIT regime and related proposals (including fixed trust status and changes to capital gains tax cost base adjustments) are in response to calls to reform the taxation of collective investment vehicles from the managed funds industry and professionals. They reflect the need for Australia to have world class asset management rules for managed investment trusts (MITs), and to provide a mechanism removed from the complexities of the Australian trust taxation rules in Division 6 of the 1936 income tax law. The Division 6 trust rules are designed to cover the affairs and operations of private trusts, family trusts, trusts for entrepreneurs as well as businesses, so their drafting and administration is heavily constrained, which has led to ongoing difficulties for MITs.

The AMIT measures have been under active development since 2010 and have had bipartisan support. The proposals follow the then Labor government's review by the Board of Taxation initiated by the then Assistant Treasurer Chris Bowen, acceptance of recommendations of the Board of Taxation announced by the then Assistant Treasurer Nick Sherry in May 2010, a Treasury discussion paper released in October 2010 by the then Assistant Treasurer and Minister for Financial Services and Superannuation, The Hon Bill Shorten MP, and acceptance of the need for reform under the current Government. The timetable for the commencement of these rules has been deferred a number of times from its original application date of income years commencing on or after 1 July 2011. The deferrals were necessary to allow for the law to be developed through a series of consultation stages.

Ernst & Young have been actively involved in this long running reform process and has provided input to Treasury through formal submissions, participation in workshops and also through our association with the industry bodies. The proposals have had both public consultation and lengthy private consultation stages. We recognise also the:

a) strong role of Treasury in moving the announcements through complex negotiation processes; and

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b) the readiness of the Australian Taxation Office (ATO) to proactively prepare guidance prior to the enactment of the law. We appreciate this proactive approach of the ATO whose role is critical in the success of an internationally competitive asset management sector for Australia.

We support tax reform for MITs and this package of optional AMIT measures (for eligible MITs) should be of overall significant benefit to the managed funds industry.

The underlying objective of the reforms was to reduce complexity and increase certainty concerning the taxation of Australian widely-held collective investment vehicles and their investors, and to implement reforms which should also minimise compliance costs for both. The objective of the reforms reflects the various industries that utilise widely held trust structures for the efficient conduct of their respective non-closely held businesses, including in the asset management and broader funds investment industries with asset sectors including equities, bonds and interest-bearing securities, property, infrastructure and private equity. The reforms also support long standing policy to support and develop Australia as an attractive location for foreign investment, including the advancement of the Australian managed funds and broader financial services sectors into a regional financial services hub.

The final drafting of the measures reflects a desire for the rules to have some flexibility in their application and are an overall improvement on the complex and potentially compliance onerous approach of earlier drafting.

Even with the excellent efforts of Treasury, the ATO and the industry sectors, it is inevitable that the Bill will require fine tuning. For example, we have already identified and raised some further issues with Treasury concerning drafting issues with the proposed CGT cost base uplift rules, which would need adjustment to the Bill or following the enactment of the Bill. This is not a criticism: it is inevitable with a major fundamental change like this law.

Given the significant changes in approach compared to the current rules for the taxation of trusts as well as the volume of changes, we anticipate that a number of new issues will be identified with the operation of the law once it is put into practice. However, the law is now substantially complete and has been the subject of lengthy consultation.

So we do not think the prospect of further, likely minor, changes should delay the Bills.

Rather, we recommend that the Government and the Senate should allow for such issues to be addressed through:

a) A passage of the Bills speedily so that they are enacted prior to the 1 July 2016 start date for many, and to ensure the law is enacted prior to the close of the first income year in relation to any trust which enters the AMIT rules from the optional early commencement from 1 July 2015;

b) A readiness to make further amendments to rectify urgent issues which might arise; and

c) A formal Treasury post-implementation review process. That process should be completed before the end of the first year of operation (i.e. by 30 June 2017) with any necessary amendments to be introduced as soon as possible to apply optionally from that year.

We reiterate that the fact that some adjustments might be needed following feedback based on the practical implementation of the rules, should not in itself delay the enactment and commencement of the rules as drafted. We therefore urge the Committee to recommend that the Bills proceed to be passed at the earliest opportunity, in the current parliamentary sitting.

Should you have any queries on this submission please do not hesitate to contact either Antoinette Elias on or Tony Stolarek on

Yours sincerely

Ernst & Young