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MANAGED INVESTMENT TRUSTS — ELECTION TO ALLOW CAPITAL GAINS TAX TO BE THE PRIMARY CODE FOR DISPOSALS OF SHARES, UNITS AND REAL PROPERTY

SUMMARY OF CONSULTATION PROCESS

The Government announced on 12 May 2009 that it would allow Australian Managed Investment Trusts (MITs) that are not taxed like companies to make an irrevocable election to treat gains and losses on the disposal of certain assets (primarily shares, units and real property) on capital account for taxation purposes, subject to appropriate integrity rules.

This measure was included in Tax Laws Amendment (2010 Measures No. 1) Bill 2010, which was introduced into Parliament on 10 February 2010.

Consultation process

Consultation on a *discussion paper* was conducted between 1 June 2009 and 10 July 2009. Twenty-four submissions were received.

Consultation on the draft legislation was conducted between 10 December 2009 and 24 December 2009. Seventeen submissions were received.

Submissions can be viewed on the [Treasury website](#).

Summary of key issues

Submissions generally supported the measure as an effective way of reducing compliance costs and uncertainty.

The key issues

The main issues raised during consultation included extending the measure to other collective investment entities (including, Listed Investment Companies), expanding the scope of the MIT definition in Subdivision 12-H in Schedule 1 to the *Taxation Administration Act 1953*, and expanding the types of assets covered by the capital account election.

Response

Broadly, the definition of MIT for the purposes of the measure was expanded to include Australian regulated wholesale investment trusts, widely held investment trusts operated or managed under the *Corporations Act 2001* by state owned entities and trusts wholly owned by MITs.



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The list of eligible assets was expanded to include rights or options in respect of shares, units or real property and non-share equity (including put and call options and convertible notes over shares and units) that are equity interests. Certain assets, such as Division 230 financial arrangements and real property or an interest in real property that is held for development and/or re-sales at a profit, are excluded from the list of eligible assets.

Other minor legislative amendments were made to ensure that the legislation correctly reflects the Government's policy intention behind the measure.

Suggestions that were not adopted

The alignment of the definition of MIT in Subdivision 12-H in Schedule 1 to the *Taxation Administration Act 1953* with the definition used for this measure is being examined by Treasury.

The inclusion of Listed Investment Companies is outside the policy parameters of the measure. This issue will be examined, more broadly, as part of the response to the Board of Taxation's review of the tax arrangements applying to MITs.

Certain proposals made in submissions were also not adopted as they were not consistent with the policy intent of the measure.

Feedback

Feedback on the consultation process for this measure can be forwarded to consultation@treasury.gov.au. Alternatively, you can contact Raphael Cicchini on (02) 6263 3188.

Thank you to all participants in the consultation process.