CORPORATE TAX
ASSOCIATION
of Australia Incorporated

19 December, 2008

The Board of Taxation
c/- The Treasury
Langton Crescent
CANBERRA ACT 2600

REVIEW OF THE TAX ARRANGEMENTS APPLYING TO MANAGED INVESTMENT TRUSTS

The Corporate Tax Association, which represents the taxation interests of more than 125 of Australia's largest companies, is pleased to provide some comments on the Board's October 2008 Discussion Paper on Managed Investment Trusts (MITs).

The CTA supports the premise underlying the government's announcement in February 2008 when the Board of Taxation was asked to undertake this review. The current taxation regime is no longer appropriate for the modern use of trusts as commercial vehicles – particularly as collective investment vehicles. If Australia is to achieve its objective of becoming the financial services hub of Asia, then it is essential that we have a taxation regime which better supports that aim.

Because the CTA has not had a history of detailed involvement in this area, we are happy to leave it to the more specialised groups to respond in greater detail to most of the specific questions posed in the Discussion Paper. The two main organisations in that space would be the Investment and Financial Services Association and the Property Council of Australia. In particular, we have had the opportunity to examine a working draft of the PCA's submission to the Discussion Paper, and we broadly support that submission.

We do have some additional comments to make by way of amplification to the PCA submission.

- *There should be a flow-through taxation regime for widely held qualifying MITs. However, the "primarily passive" condition put forward in Policy Principle 2 in the Discussion Paper (based on the alleged tax advantages of trusts) is, in our view, inappropriate*.

  As the PCA submission points out, the differences in the tax treatment of trusts and corporate structure cuts both ways, and in some respects (for instance, the deferral of tax for high marginal tax rate investors) the corporate structure can achieve a better tax outcome.

Ultimately, we think that Policy Principle 1 (achieving the same tax outcomes had investors made the relevant investment directly) would be seriously compromised by the strict application of Policy Principle 2, which would limit flow-through treatment and the passing on of CGT discounts only for primarily passive investments.

In terms of economic efficiency, we believe that avoiding the distortion of treating investors differently depending on whether they invest through MITs or directly far outweighs what we regard as the misconceived revenue concerns about flow-through taxation for non passive investment.

We believe the better view is to look at the investment in the MIT from the perspective of the individual or fund making the investment. Generally speaking, such investments have a long term perspective, and while there is obviously a level of turnover in units in the funds themselves as investors switch portfolios according to their risk preference or perhaps the relative performance of different fund managers, the underlying basis for making the investment, be it in equities or property, is long term from the perspective of the investors.

It is wrong, in our view to answer the question of whether the activity is passive or otherwise from the perspective of what happens within the fund. In any event, the active management of the funds invested by the MIT on behalf of its investors, with the resulting turnover this entails, is not necessarily inconsistent with the fund itself having a long term or "capital" approach to the investment process.

- *On the revenue/capital distinction (Chapter 7 of the Discussion Paper), we agree that going forward there should be a statutory rule similar to sec 295-85 (which applies to super funds) that provides for capital treatment ahead of ordinary income (or losses). Prior year assessments for investors should not be re-opened.*

  Going forward, it is essential that we avoid the uncertainty associated with the traditional fact and circumstance approach to the capital/revenue distinction, based on many decades of case law. That would be entirely the wrong model for encouraging the growth of this important part of Australia's financial system.

  We strongly support the PCA's contention that most property investments made by MITs would in any case be on capital account under general principles, as would many if not most of their equity investments. We do not support the notion that revenue treatment would be the normal benchmark under the existing law.

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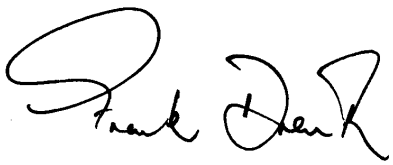
As for the past, we acknowledge that under traditional tax law principles there may be some basis for the ATO arguing that some gains (or losses) should be treated as being on revenue account for tax purposes. This has implications for the CGT discount, although in the current climate capital treatment could well be quarantining significant losses when they are realised. However, we do not see there is much to be gained by arguing whether this or that fund behaved aggressively or whether the Tax Office should have been across this issue earlier.

Political considerations aside, disturbing prior year assessments for individual investors would be an enormously complex and onerous task, as the activities of each fund would need to be looked at very closely on a year by year basis. Disputes would inevitably arise about the extent to which the particular investments were of a revenue or a capital nature, and such disputes would take many years to resolve.

In the CTA's submission re-opening prior years would be neither practical nor fair, given that (in our view) it is more appropriate to look at the investment from the perspective of the individual or fund making the investment in the MIT. That is the only way in which the overriding efficiency objective of Policy Principle 1 can be achieved. For all of these reasons, the government should provide certainty for both taxpayers and the ATO by ruling out prior year amendments.

Thank you for this opportunity to comment on these important issues. As we have said, MITs are not the Association's main area of interest, but there are some important principles in other submissions that we believe the Board and the government should consider very carefully.

Yours faithfully,



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