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Association of Building Societies and Credit Unions

Abacus
Australian Mutuals

1 December 2008

Managed Investment Trusts Review
The Board of Taxation
c/- The Treasury
Langton Crescent
CANBERRA ACT 2600

By electronic transmission to: taxboard@treasury.gov.au

Dear Board of Taxation

Submission to Managed Investment Trusts Review on Chapter 7 of the October 2008 Discussion Paper

Friendly societies have operated in Australia for over 160 years, and their collective membership totals some 1.6 million Australians. Friendly societies have traditionally been involved in encouraging and supporting self-help within the community – and were founded on the concepts of thrift, savings and the pooling or sharing of risks within a community.

A significant number of friendly societies are registered under the *Life Insurance Act 1995*, and they offer life insurance business as a means of discretionary medium to long-term savings. Currently, over one million ordinary Australians save and invest using friendly society products. These products are typically structured for “life-event” funding objectives and insurance contingencies – such as funding education, retirement accommodation, health and death.

Submission

In response to the Board’s request for feedback comments on Chapter 7 as soon as possible, we wish to make the following general points for consideration in your Panel’s recommendations to Government:

1. Establishment of a basic policy principle that all investment income of individuals should be taxed comparably, reflecting that the individual is the ultimate beneficiary of the income.

2. Accordingly, the income and asset profits of investments funds that relate to managed investment trusts, superannuation entities, Authorised Deposit-taking Institutions and life insurance policyholder statutory funds (including benefit funds of a friendly society) should be taxed consistently.

3. Current income tax law generally reflects such consistency in the case of ordinary income. However, in the case of the taxation of profits/gains and losses on investment assets (other than ‘revenue’ assets – such as traditional securities and trading stock), there is inconsistency.

a. Individuals, superannuation entities, many companies, partnerships and trusts (other than managed investment trusts): Profits/gains on ‘non-revenue’ investment assets are taxed on *capital account*.

b. Managed investment trusts: Interpretative differences exist on whether Profits/gains on ‘non-revenue’ investment assets are taxed on *capital account* or *revenue account*.

c. Life insurance funds: Profits/gains on ‘non-revenue’ investment assets are taxed on *revenue account*.

Where investment funds operate for the ultimate benefit of individuals (who invest in them), the above inconsistency is also inequitable – including, in the area of receiving (directly or indirectly) the benefit of a CGT discount on realised gains on capital assets held beyond 12 months.

Consistency and fairness would suggest either *capital account* or *revenue account* treatment for all, with CGT discount benefits where investors are individuals.

As the predominant approach is *capital account* treatment (which is also the statutory rule under section 295-85 of the *Income Tax Assessment Act 1997* – in the case of superannuation funds), consistent *capital account* treatment is recommended.

In submitting the above points, we acknowledge that the taxation of life insurance investment income and assets gains/losses may fall outside the scope of the Board’s review. However, we request this matter be considered and cited another example of inconsistent investment income tax treatment and impact on ultimate individual investors.

We have also made this point in our separate submission to the *Australia’s Future Tax System* review.

Comments on Issues/Questions

With reference to the listed issues/questions in the Discussion Paper, we wish to make the following comments:

	Issue / Question	**Our comment**
a	How the case law principles described in paragraphs 7.6 and 7.7 apply to and/or are applied by MITs and whether the principles are applied consistently across the different industry sectors.	The case law principles described highlight the interpretative conflict between the “carrying on of business” view, and the individuals for whom the investments and investments returns are being held.
b	Is the current requirement to distinguish between capital and revenue treatment on disposal of certain assets one that causes	To the extent systems software have to be modified or data manually adjusted for *revenue account* treatment (which is

	significant compliance costs to MITs and, if so, how.	generally the exception), on-going administrative and compliance costs are an issue.
c	What considerations would support a statutory rule treating gains and losses made on the disposal by MITs of certain investment assets (shares, units in unit trusts and real property) as being on capital account. Alternatively, what considerations would support a statutory rule treating gains and losses made on disposal of these assets by MITs as being on revenue account.	Applying a section 295-85 drafting approach (as currently applies to superannuation fund income) would seem to offer a good starting point. 'Revenue' asset carve-outs appear to be provided for – and the carve-out list could be expanded from time to time.
d	Whether MITs should be given an irrevocable election to have this treatment applied to them.	Yes, an election should be given in respect of MITs and other investments funds, where an election to apply *revenue account* treatment were to be adopted instead. This would also help make the regime compatible with TOFA.
e	If statutory capital or revenue account treatment were to apply to MITs, how could specific rules be structured.	Consider adopting a section 295-85-type approach.
f	Should statutory capital or revenue account treatment be extended to other collective investment vehicles (including LICs).	As mentioned above, consistency and fairness to ultimate individual investors would suggest so.
g	The desirability of a statutory rule treating MIT gains distributed to particular kinds of investors (for example, complying superannuation funds) as being on capital account.	This invites compliance complexities, apart from introducing new inconsistencies – which are encouraged to be removed.
h	Should different considerations apply for MITs that are Private Equity funds.	No, if the principles of consistency and fairness are to apply to ultimate investors.

We also wish to thank you for the opportunity to make this submission, and to participate in the consultation forum in Melbourne on 12 November 2008.

Abacus would like to nominate Mr Tony Jacob to assist with any queries or further discussions with the Board. Tony can be contacted at 0411 258 332 or tjacob@bigpond.net.au.

Yours sincerely

MARK DEGOTARDI
Head of Public Affairs