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## Attribution Managed Investment Trusts: clearly defined rights on transition to the AMIT regime in 2017

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### Relying on this Guideline

This Practical Compliance Guideline sets out a practical administration approach to assist taxpayers in complying with relevant tax laws. Provided you follow this guideline in good faith, the Commissioner will administer the law in accordance with this approach.

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### What this Guideline is about

1. If a trust is a managed investment trust in relation to a relevant income year, the trustee may make a choice for the trust to be an attribution managed investment trust (AMIT)<sup>1</sup> if:

the rights to income and capital arising from each of the membership interests in the trust are clearly defined at all times when the trust is in existence in the income year.<sup>2</sup>

2. This Guideline sets out the ATO's compliance approach to the requirement in paragraph 276-10(1)(b) of the *Income Tax Assessment Act 1997* (ITAA 1997) that the relevant rights are clearly defined 'at all times [emphasis added] when the trust is in existence in the income year.'

### Date of effect

3. This Guideline applies to the income year commencing 1 July 2016.

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<sup>1</sup> An AMIT is a managed investment trust that has elected in to the attribution regime for the taxation of MITs contained in Division 276.

<sup>2</sup> Paragraph 276-10(1)(b) of the *Income Tax Assessment Act 1997*.

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## Compliance approach

4. *Tax Laws Amendment (New Tax System for Managed Investment Trusts) Act 2016* (the Act) created the new tax system for managed investment trusts by amending the ITAA 1997. The Act received Royal Assent on 5 May 2016.

5. The constituent documents of a trust may need to be modified (or repealed and replaced) in whole or in part to ensure the trust complies with the requirement that its members' rights to income and capital are clearly defined. If the trustee wishes to make the choice for the trust to be an AMIT for the income year commencing 1 July 2016, there is limited time available to modify or replace the trust's constituent documents prior to 1 July 2016. Accordingly, where the relevant modifications or replacement are made on or after 1 July 2016 and no later than 31 October 2016, the ATO will administer the law on the basis that the relevant rights were in existence 'at all times' in respect of the income year commencing 1 July 2016 where:

- for trust law purposes, the modifications or replacement apply from 1 July 2016, or
- the modifications or replacement do not apply from 1 July 2016, but for the purpose of applying the AMIT provisions<sup>3</sup>, in particular, the member components provisions in Subdivision 276-D of the ITAA 1997, the trustee does not exercise any powers which, had they not been modified or replaced, would have prevented the trust from satisfying the requirement that rights to income and capital are clearly defined. That is, the trustee acts in a manner that is consistent with the modifications or replacement having applied, for trust law purposes, from 1 July 2016.

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## Commissioner of Taxation

22 June 2016

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### References

ATOlaw topic(s)	Income tax ~~ Trusts ~~ Other
Legislative references	ITAA 1997 Div 276 ITAA 1997 Subdiv 276–D ITAA 1997 276-10(1)(b) Tax Laws Amendment (New Tax System for Managed Investment Trusts) Act 2016
Related Rulings/Determinations	LCG 2015/4
BSL	Tax Counsel Network

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<sup>3</sup> The AMIT provisions include the provisions amended by the Act to give effect to the new tax system for managed investment trusts, such as Division 12A – Distributions by AMITs (including deemed payments).