# *LCR 2024/1EC - Compendium*

Australian Government
Australian Taxation Office

# Public advice and guidance compendium – LCR 2024/1

**Relying on this Compendium**

This Compendium of comments provides responses to comments received on draft Law Companion Ruling LCR 2023/D1 *The corporate collective investment vehicle regime*. It is not a publication that has been approved to allow you to rely on it for any purpose and is not intended to provide you with advice or guidance, nor does it set out the ATO's general administrative practice. Therefore, this Compendium does not provide protection from primary tax, penalties or interest for any taxpayer that purports to rely on any views expressed in it.

## Summary of issues raised and responses

All legislative references in this Compendium are to the *Income Tax Assessment Act 1997*, unless otherwise indicated.

| Issue number | Issue raised | ATO response |
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| 1 | The Ruling should be expanded to include the Commissioner's view with regards to the interaction of the deeming principle with Australia's tax treaties and related legislation. There are areas of uncertainty or unintended consequences which were raised in previous submissions to Treasury on the draft legislation. | The interaction of the deeming principle with Australia's tax treaties and related legislation is outside the scope of the Ruling.<br>We acknowledge there are uncertainties regarding the interaction of the deeming principle with Australia's tax treaties. This includes uncertainty as to whether a foreign tax authority could view the income that an offshore investor receives from a corporate collective investment vehicle (CCIV) sub-fund as a legal form dividend for treaty purposes. This is notwithstanding the intention for Australian tax purposes that distributions from a CCIV sub-fund are viewed as a trust distribution as stated in the Ruling and subject to either the attribution managed investment trust (AMIT) regime or the default Division 6 of Part III of the *Income Tax Assessment Act 1936* (ITAA 1936) regime. |
| 2 | Where a CCIV sub-fund trust qualifies for deemed treatment as an AMIT under the CCIV regime, the attribution model in Division 276 should apply. Accordingly, sections 195-123 (dealing with ascertainment of income of the trust estate), and 195-125 (dealing with when a beneficiary of a CCIV sub- | Footnote 44 has been inserted into the final Ruling to confirm the Commissioner's view that the attribution model is the primary taxing model for an AMIT CCIV sub-fund trust. |

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<tr><th>Issue number</th><th>Issue raised</th><th>ATO response</th></tr>
<tr><td></td><td>fund trust is presently entitled to trust income), are not relevant in such circumstances.</td><td></td></tr>
<tr><td>3</td><td>Example 2 in the draft Ruling may be suggestive that the Commissioner’s view is the deemed units in the CCIV have no rights to capital. This interpretation presents some difficulty in applying the deeming rule in subsection 195-120(2) for a beneficiary’s fixed entitlements to capital of the CCIV sub-fund trust.</td><td>Example 2 was not intended to convey that the deemed units have no rights to capital. The example has been amended to avoid any confusion.</td></tr>
<tr><td>4</td><td>Paragraphs 79 to 81 of the draft Ruling deal with the Commissioner’s view that the deeming principle does not extend to recognising notional transactions between CCIV sub-funds of the same CCIV, with the exception of cross-investment.<br><br>There are alternative views on this and it would be desirable to recognise the power of sub-funds to deal between each other.<br><br>A weakness in the structure of the current CCIV regime is that it does not address dealings between sub-funds. Legislative reform is recommended to provide a clear statutory foundation for this.</td><td>Apart from specific legislative recognition pertaining to cross-investment, any notional transactions said to occur between CCIV sub-funds cannot be recognised at law because they would purport to occur within the same legal entity. Further, there is no provision in the CCIV tax framework which provides specific tax recognition of an intra-entity dealing.<br><br>Any desired legal and tax recognition of intra-entity dealings within a CCIV is a matter of policy.</td></tr>
<tr><td>5</td><td>The default tax position, created by the terms of the legislation, results in there being a significant disincentive to adopt a CCIV rather than a traditional managed investment trust. In particular, 2 difficulties arise:<br>• Trust income is determined by reference to accounting profits. It may not be possible or practical for accounting profits to be distributed.<br>• The relevant elements of the distribution of the trust income for application of section 97 depend on the distribution being a tax law dividend. Such reference to a dividend is unnecessary.</td><td>No change has been made to the final Ruling. This appears to be the outcome provided for under the law.</td></tr>
<tr><td>6</td><td>It would be preferable if the Ruling indicated that the ATO would not apply the requirement of income to be determined by reference to accounting income of the funds strictly.</td><td>There does not appear to be any discretion afforded under the law for the Commissioner to adopt this approach.</td></tr>
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| | Rather, the income may be adjusted to reflect the particular circumstances of the funds. | |
| 7 | The Ruling should make it clear that in determining whether a relevant distribution creates a present entitlement, there does not need to be strict adherence to the dividend rules. | There does not appear to be any discretion afforded under the law for the Commissioner to adopt this approach. |
| 8 | Given the deeming provisions, in relation to the default tax position (Division 6 of Part III of the ITAA 1936), specific entitlement to capital gains and franked dividends should be capable of being created. It would be appropriate for the Ruling to provide confirmation of this. | We are unable to provide this confirmation. This is addressed in paragraphs 87 and 88 of the final Ruling. |
| 9 | A narrow construction of the relevant amounts for the purposes of capital returns has been adopted in paragraph 82 of the draft Ruling. The emphasis on regulatory contributed capital should not rely on the company law rules. | The scope of the company law capital reduction power is beyond the scope of the Ruling. However, as CCIVs are a legal form company, it is the company law power to return capital that is relevant for CCIVs. Any tax consequences would flow from this. |
| 10 | Section 195-125 relies on the concept of a CCIV sub-fund's 'profit', in part, to determine a deemed beneficiary's present entitlement to income. Clarification is sought on the Commissioner's view with regard to the scenario where a CCIV sub-fund has an accounting loss. | The scenario of a CCIV sub-fund trust having an accounting loss and a positive amount of net income was covered by paragraph 61 of the draft Ruling. Reference was made to the CCIV (as trustee) being assessable and liable to pay tax on all of the net income of the CCIV sub-fund trust. |
| 11 | The draft Ruling provides that in making acquisitions when acting on behalf of the CCIV for the benefit of a sub-fund trust, a corporate director will not be entitled to input tax credits as these are not deemed to be trustee services.<br>The corporate director of a CCIV is at a significant detriment compared to managed investment trusts despite the fundamental nature of the relationship between the deemed trustee and sub-fund being similar. These structures should attract similar GST treatment. A more general approach and purposive construction of the relevant rules should be adopted. | For the reasons given in the draft Ruling, we do not consider that the deeming principle extends to treating the CCIV as a trustee in the legal sense.<br>As a matter of statutory interpretation, deeming rules are generally construed strictly, however we accept that the CCIV deeming principle is intended to have a broad operation for tax purposes. Notwithstanding that broad operation for tax purposes, we do not consider the deeming goes so far as to create an actual trust relationship for general law purposes nor for the CCIV to be deemed a trustee at general law. In the context of table item 29 in subsection 70-5.02(1) of the *A New Tax System (Goods and Services Tax) Regulations 2019* we consider that reference to 'trustee … services' does not extend to services provided by entities that are not trustees at general law. |

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| | | Whether there should be equivalent treatment between corporate directors of CCIVs and trustees of MITs in this respect is a matter of policy. |
| 12 | When a CCIV sub-fund fails to meet the widely held criteria necessary for tax treatment as a CCIV, it will default to the tax rules applying to trusts under Division 6 of Part III of the ITAA 1936. A series of adverse differences can arise compared with a traditional managed investment scheme operated as a trust.<br>CCIVs and their sub-funds that fail to meet the widely held test should continue to be assessed using the rules applicable to AMITs. Alternatively, consideration may be given to retaining AMIT status, but with the benefit of withholding and capital gains tax concessions for AMITs not being made available. | The law does not appear to provide the Commissioner with any discretion to apply AMIT treatment to a CCIV sub-fund in the event that the widely held criteria is failed. The structure of the law contemplates that Division 6 of Part III of the ITAA 1936 would apply in such circumstances. |
| 13 | Some aspects of the CCIV regime do not compare favourably to other existing options, such as a managed investment scheme operated as a trust. Small disadvantages and differences that CCIVs and investors face compared to other forms of investment vehicle will prevent and limit adoption. The guidance in the Ruling should, to the greatest extent possible, ensure that CCIVs are not treated less favourably for tax purposes than other forms of investment vehicle. | The Ruling can only provide guidance on the actual CCIV regime provided at law. Tax equivalence with other investment vehicles is a matter of policy. |
| 14 | Adoption of the CCIV structure is limited, in part due to the lack of a transitional regime to convert existing investment structures into a CCIV regime. That is, there are no means by which current product offerings can be transitioned into the CCIV regime without significant legal complexity and cost, and without triggering punitive tax liabilities for investors.<br>Practically this means only new products can be launched in a CCIV. Transitional rules would encourage further uptake of CCIVs. | This is a matter of policy. |

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| 15 | There is significant uncertainty about how CCIV sub-funds are to be treated for the purposes of stamp duty. Specific legislation is required in each State of Territory to determine the status of CCIV sub-funds in relation to stamp duty. | This is a matter for State and Territory governments. |