



LCG 2015/D14 - Managed Investment Trusts: widely-held tests - wholly-owned entity of an Australian government agency

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 This document has changed over time. This is a consolidated version of the ruling which was published on *3 December 2015*



Managed Investment Trusts: widely-held tests – wholly-owned entity of an Australian government agency

Relying on this draft Guideline

This draft Law Companion Guideline describes how the Commissioner proposes to apply the law in [Tax Laws Amendment \(New Tax System for Managed Investment Trusts\) Bill 2015](#) when it comes into effect. If you rely on this draft Guideline in good faith before it is finalised, and the law is enacted as introduced, you will not have to pay any underpaid tax, penalties or interest in respect of matters it covers if it does not correctly state how a relevant provision applies to you.

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What this draft Guideline is about

1. This draft Guideline explains when an entity, established and wholly-owned by an Australian government agency (an 'Australian Government owned entity'), meets the conditions in paragraph 275-20(4)(i) of the *Income Tax Assessment Act 1997*¹ for the purpose of the managed investment trust (MIT) widely-held tests.

Date of effect

2. The predecessor of paragraph 275-20(4)(i) is paragraph 12-402(3)(h) of Schedule 1 to the *Taxation Administration Act 1953* (TAA 1953). It is proposed that this draft Guideline will be finalised as a public ruling, effective retrospectively for those who rely on it in good faith from the date of effect of paragraph 12-402(3)(h).

¹ All legislative references in this draft Guideline are to the *Income Tax Administration Act 1997* as proposed to be amended by the Tax Laws Amendment (New Tax System for Managed Investment Trusts) Bill 2015, unless context otherwise dictates.

Explanation

3. To qualify as a MIT under paragraph 275-10(1)(a), the trust must satisfy the relevant widely held test in paragraph 275-10(3)(e). As part of satisfying the relevant test, special provisions apply to entities that are on the safe harbour list of entities in subsection 275-20(4).

4. One of the entities on this list is an 'Australian Government owned entity' (see paragraph 275-20(4)(i), which is in the same terms as former paragraph 12-402(3)(h) of Schedule 1 to the TAA 1953). This draft Guideline sets out the Commissioner's interpretation of paragraph 275-20(4)(i). It also applies to paragraph 12-402(3)(h) of Schedule 1 to the TAA 1953.

Meaning of Australian Government owned entity

5. An entity is an Australian Government owned entity where:

- (i) the entity is established and wholly-owned by an Australian Government agency (defined as a Commonwealth, State or Territory, or an authority of a Commonwealth, State or Territory)², and
- (ii) the capital, and returns from the investment of that capital, are used for the primary purpose of meeting statutory government liabilities or obligations (such as superannuation liabilities and liabilities arising from compensation or work cover claims).³

6. The scope of this second requirement is broad:

- The concept of 'statutory government liabilities or obligations' covers the vast array of statutory liabilities and obligations the government agency (or its wholly-owned entity) may be required to meet.
- The requirement that capital and returns must be used for the 'primary purpose' of meeting these liabilities and obligations allows the capital and interest to be used for purposes incidental to meeting statutory government liabilities or obligations.
- While paragraph 275-20(4)(i) requires the capital and returns to be 'used' for meeting those liabilities and obligations, the 'use' could be directly by the entity itself, or indirectly by the Australian government agency. For example, the Commonwealth may establish an entity to fund compensation claims, so it will have statutory liabilities and obligations that it is required to satisfy directly. However, the returns and capital from the wholly-owned entity may also be used by the establishing agency to meet its broader liabilities and obligations.

² Section 995-1.

³ Paragraph 275-20(4)(i).

Your comments

7. You are invited to comment on this Draft Law Companion Guideline including the proposed date of effect. Please forward your comments to the contact officer by the due date.

Due date: Friday, 15th January 2016
Contact officer: David White
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Address: Australian Taxation Office
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References

ATOlaw topic(s)	Income tax ~~ Trusts ~~ Other
Legislative references	ITAA 1997 ITAA 1997 275-10(1)(a) ITAA 1997 275-10(3)(e) ITAA 1997 275-20(4) ITAA 1997 275-20(4)(i) ITAA 1997 995-1 TAA 1953 TAA 1953 Sch 1 12-402(3)(h)
Other references	Tax Laws Amendment (New Tax System for Managed Investment Trusts) Bill 2015 Explanatory Memorandum to Tax Laws Amendment (New Tax System for Managed Investment Trusts) Bill 2015
ATO references	