



LCG 2015/14 - Managed Investment Trusts: widely-held tests - wholly-owned entity of an Australian government agency

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Page status: **legally binding**

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

Relying on this Guideline

This Guideline describes how the Commissioner applies the law as amended by the *Tax Laws Amendment (New Tax System for Managed Investment Trusts) Act 2016*.

If you rely on this Guideline in good faith, 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 Guideline is about

1. This 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* (ITAA 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). This Guideline is 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 Guideline are to the ITAA 1997, unless otherwise indicated.

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 Guideline sets out the Commissioner's interpretation of paragraph 275-20(4)(i). It also applies to former 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.

Commissioner of Taxation

5 May 2016

² Section 995-1.

³ Paragraph 275-20(4)(i).

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) Tax Laws Amendment (New Tax System for Managed Investment Trusts) Act 2016