


# ***LCG 2015/9A1 - Addendum - Attribution Managed Investment Trusts: trustee shortfall taxation - section 276-420***

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# Addendum

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## Draft Law Companion Guideline

### Attribution Managed Investment Trusts: trustee shortfall taxation – section 276-420

This Addendum amends Draft Law Companion Guideline LCG 2015/D9 to finalise it following the *Tax Laws Amendment (New Tax System for Managed Investment Trusts) Act 2016* receiving royal assent on 5 May 2016.

#### LCG 2015/D9 is amended as follows:

##### 1. Page status (all pages)

At the top of all pages; insert:

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Page status: **legally binding**

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##### 2. First page header and all footers

Omit 'Draft Law Companion Guideline LCG 2015/D9'; substitute 'Law Companion Guideline LCG 2015/9'.

##### 3. Preamble

Omit the preamble; substitute:

#### **Relying on this Guideline**

This Guideline describes how the Commissioner will apply 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.

##### 4. Table of Contents

Omit:

What this draft Guideline is about	1
<i>Example 1: pooled assets</i>	20
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Insert:

What this Guideline is about	1
<i>Discovery of under affects deductibility of expenses</i>	15A
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## **5. Paragraph 1**

- (a) Omit 'draft' from the heading.
- (b) Omit footnote 1; substitute:

<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 of the *Income Tax Assessment Act 1997* (ITAA 1997). All legislative references in this Guideline are to the ITAA 1997 unless otherwise indicated.

## **6. Paragraph 4**

- (a) Omit 'draft'.
- (b) Omit footnote 3; substitute:

<sup>3</sup> Section 276-425 applies in a similar way to overs of offsets. To the extent that the two provisions use the same terminology, this Guideline can also be used as an indication of the Commissioner's approach to section 276-425.

## **7. Paragraph 5**

Omit the first two sentences (excluding the dot points); substitute:

This Guideline is a public ruling, effective for those who rely on it in good faith in respect of assessments for income years starting on or after:

## **8. Paragraph 7**

After 'if' in second dot point; insert 'it were'.

## **9. Paragraph 8**

- (a) After second sentence; insert:

<sup>3A</sup> Subsection 12(13) of the *Income Tax Rates Act 1986* (ITRA) and item 3C of the table to subsection 35(1) of the ITRA.

- (b) After third sentence; insert:

<sup>3B</sup> Subsections 276-420(4) and (5).

- (c) Omit 'draft'.

## **10. Paragraph 9**

- (a) After first sentence; insert:

<sup>4A</sup> Subsection 276-420(3).

- (b) After 'take; insert 'into account'.

- (c) Omit ' – into account'.

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## **11. Paragraph 10**

- (a) Omit 'under section 276-345,'.
- (b) After 'AMIT'; insert 'works out the amount of an under according to section 276-345. This typically occurs where the trustee'.

## **12. Paragraph 12**

Omit 'works'; substitute 'is to work'.

## **13. Paragraph 14**

- (a) After 'not' in the heading; insert 'necessarily'.
- (b) At the end of the paragraph; insert:

<sup>7A</sup> See also Law Companion Guideline LCG 2015/8 *Attribution Managed Investment Trusts: the rules for working out trust components – allocation of deductions*.

## **14. Paragraph 15**

After the paragraph; insert:

*Discovery of under may affect deductibility of expenses*

15A. The nature of an under may affect the deductibility of an expense. For example, if an amount which was treated as exempt income in a base year is treated as assessable income in a discovery year, this may result in an increase in allowable deductions. The additional deductions may be taken into consideration in working out the amount of the under.

## **15. Paragraph 16**

After the paragraph; insert:

16A. For the purpose of working out what the trustee should have known at the relevant discovery time, a position on the law or facts taken by the Commissioner will be taken to be a thing the trustee should have known at the time the Commissioner notifies the trustee of the confirmed position. This is generally when the Commissioner issues a final position paper. This means that if the Commissioner notifies the trustee of the confirmed position before the discovery time for an income year, and (for example) the Commissioner's position is affirmed by Independent Review after the discovery time, the trustee would be taken to have knowledge of the Commissioner's position before the relevant discovery time. If the position in the final position paper is subject to the ATO's Independent Review but that position is not ultimately affirmed by that Review, generally there will be no shortfall.

## **16. Paragraph 17**

Omit the paragraph; substitute:

17. The issue of shortfall taxation may arise where the Commissioner takes the view (on the basis of a view of the law or the facts in respect of a base year) that – in respect of a determined trust component of an income character – there should have been an under (or a greater under) worked out by the trustee in a particular discovery year.

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17A. The discovery year in this context is typically the first year in which the trustee could have recognised the under, based on what they should have known at the time, rather than the year in which a compliance review is undertaken. The discovery year may also be a later year.

#### **18. Paragraph 18**

Omit 'If'; substitute 'Subject to applicable time limits<sup>7B</sup>, if'.

#### **19. Paragraph 20**

- (a) Omit 'pooled assets' from the heading; substitute 'making a shortfall assessment'.
- (b) Omit 'Latitude East'; substitute 'Lunch'.

#### **20. Paragraphs 21 and 23**

Omit 'Latitude East'; substitute 'Lunch'.

#### **21. Paragraph 22**

At the end of the paragraph; insert:

This view is communicated to the trustee in a final position paper.

#### **22. Paragraph 25**

After 'current year'; insert '(2018-19)'.

Omit '2017-18 income year'; substitute '2017-18<sup>10</sup> or 2018-19<sup>11</sup> income years'.

<sup>10</sup> The Commissioner may issue an assessment before the discovery time for the 2018-19 income year that is, the time just before the trustee works out the determined trust component for the relevant character for 2018-19.

<sup>11</sup> An assessment for 2018-19 can only be issued after the 2018-19 discovery time.

#### **23. Paragraph 26**

Omit 'draft'.

#### **24. Paragraphs 27 and 28**

Omit the paragraph; substitute:

27. Two time limits are relevant to section 276-420 shortfalls: the 'limited discovery period'<sup>12</sup> for recognising unders and the time limit applicable to the replacement of AMMA statements<sup>13</sup>.

28. Broadly, under section 276-350, an AMIT does not have an under once the hypothetical amendment period has ended (the limited discovery period). The Commissioner will treat this time limit as also precluding the Commissioner from

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<sup>7B</sup> Section 276-350.

<sup>10</sup> The Commissioner may issue an assessment before the discovery time for the 2018-19 income year that is, the time just before the trustee works out the determined trust component for the relevant character for 2018-19.

<sup>11</sup> An assessment for 2018-19 can only be issued after the 2018-19 discovery time.

<sup>12</sup> Section 276-350.

<sup>13</sup> Subsection 276-460(3).

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making an assessment of tax payable under subsection 276-420(2) (a shortfall assessment) once the limited discovery period has ended.

28A. This treatment means the trustee and the Commissioner would be precluded from recognising an under or an increase in an under once the time limit has expired. The time limit is determined as if section 170 applied to the assessment the Commissioner is assumed to have made for the purpose of section 276-350. Therefore, there is no time limit if the Commissioner is of the opinion that there has been fraud or evasion. Furthermore, the provisions in subsection 170(7) would be available to extend the limited discovery period.

<sup>12</sup> Section 276-350.

<sup>13</sup> Subsection 276-460(3).

## 25. Paragraph 31

Omit the paragraph; substitute:

31. *On 20 September 2017, the trustee of an AMIT creates a document which states the amounts of the AMIT's trust components for 2017<sup>14</sup>. The limited discovery period for the 2017 base year is due to expire on 20 September 2021<sup>15</sup>.*

31A. *Based on what the trustee should have known at the discovery times<sup>16</sup> for the 2018, 2019 and 2020 discovery years, there was no under in any of these years. However, the Commissioner considers that, at the discovery time for 2021 (just before 15 September 2021<sup>17</sup>), there was an under in relation to the 2017 base year based on what the trustee should have known at that time. The trustee, however, does not recognise the under in its relevant determined trust component (documented as required by subsection 276-255(2) on 15 September 2021) for the 2021 discovery year. The Commissioner issues a shortfall assessment before 20 September 2021. The trustee lodges a return for the 2021 income year after 20 September 2021. Accordingly, the shortfall assessment is an original assessment.*

## 26. Paragraph 34

Omit '30 September'; substitute '20 September'.

## 27. Paragraph 35

After the paragraph; insert:

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5 May 2016

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<sup>14</sup> Subsection 276-255(2).

<sup>15</sup> The limited discovery period is a hypothetical amendment period. It is measured by assuming that the Commissioner made an assessment of the trust components on the day the document stating the trust components was created. The hypothetical amendment period will generally be 4 years from the day the document is created: section 276-350.

<sup>16</sup> The discovery time is the time just before the trustee works out the determined trust components for a discovery year: subsection 276-345(2).

<sup>17</sup> Unlike the date on which the limited discovery period ends (that is, 20 September 2021), the discovery time for 2021 is not linked to any earlier date.

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**28. Paragraph 36**

Omit the paragraph (including heading).

**29. Legislative references**

Insert:

ITAA 1997 Div 276

ITAA 1997 276-345(2)

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

**30. ATO references**

Omit the references.

This Addendum applies on and from 5 May 2016.

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**Commissioner of Taxation**

5 May 2016

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ATO references

ATOlaw topic(s)

Income tax ~~ Trusts ~~ Other

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