

LCG 2015/4A1 - Addendum - Attribution Managed Investment Trusts: 'clearly defined rights'

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Addendum

Draft Law Companion Guideline

Attribution Managed Investment Trusts: ‘clearly defined rights’

This Addendum amends Draft Law Companion Guideline LCG 2015/D4 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/D4 is amended as follows:

1. Page status (all pages)

At the top of all pages; insert:

Page status: **legally binding**

2. First page header and all footers

Omit ‘Draft Law Companion Guideline LCG 2015/D4’; substitute ‘Law Companion Guideline LCG 2015/4’.

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:

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Your comments	14

Insert:

What this Guideline is about	1
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5. Paragraph 1

- (a) Omit all occurrences of 'draft' from paragraph (including heading).
- (b) Omit footnote 1; substitute:

¹ All legislative references in this Guideline are to the ITAA 1997, unless otherwise indicated.

6. Paragraph 3

Omit the first two sentences (not including 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:

7. Footnote 3

Omit the footnote; substitute:

³ Law Companion Guideline LCG 2015/7 *Attribution Managed Investment Trusts: attribution on a 'fair and reasonable' basis.*

8. Paragraph 6

- (a) From the second dot point omit the last ','; substitute '.'.
- (b) From the second dot point omit the last 'and'.
- (c) From the third dot point omit 'draft'.

9. Paragraph 8

- (a) Omit footnote 8; substitute:

⁸ Law Companion Guideline LCG 2015/5 *Attribution Managed Investment Trusts: choice to treat separate classes as separate MITs.*

- (b) After 'safe harbour,'; insert:

⁹ See paragraph 6 of this Guideline.

10. Paragraph 9

Omit 'the Bill'; substitute 'the Tax Laws Amendment (New Tax System for Managed Investment Trusts) Bill 2015'.

11. Paragraph 10

- (a) Omit the paragraph.

12. Paragraph 13

- (a) After '11)'; insert:

¹⁰ As a matter of practical administration – and noting that in light of the circumstances in which the power to amend the deed may be exercised, the trustee cannot easily modify members' rights to income and capital by changing the deed (see paragraph 9 of this Guideline).

- (b) Omit from the table rows E1 and I1.

(c) Insert into the table :

A3.	power to determine the distributable income of the trust	Note: This power goes to the calculation of the income of the trust and not to the rights that a member has to that income.
A4.	power to determine the trust components and attribute them to members as determined member components	Note: This power goes to the calculation of trust and determined member components for the purposes of Division 276 and not to the rights that a member has to income and capital.
B5.	power to determine that in the period in which a membership interest is issued, in respect of that interest the member can participate in any relevant distribution for that period either fully, pro-rata based on a 'days on issue basis', or not at all	Note: This power is acceptable only if, on or before the issue date of the relevant membership interests, the trustee determines which one of the alternative bases will apply and discloses that determination to potential investors.
E1.	power to issue membership interests to existing members or non-members at a discount to market value	<p>Example: The trustee may issue units at a discount provided the offer is to all unitholders on the same pro-rata basis.</p> <p>Example: The trustee may issue units at a discount when a trust has liquidity issues, is restructuring or as part of a profit reinvestment program.</p> <p>Note: If new units are issued at a substantial discount (including situations not covered by the above examples) which materially diminishes members' rights to income and/or capital (for example, in circumstances where the size of the discount is not justifiable on commercial grounds) the AMIT would cease to satisfy the clearly defined rights test from that time.</p>
E7.	power to consolidate or split units	Note: Acceptable provided done on the same basis for all units.
E8.	power to restrict the types of entities to whom units can be issued	Example: Units can only be issued to MIT eligible investors unless approval is obtained from current unitholders. This power may extend to deeming an issue in breach of restrictions that were in place at the time of issue to be void.

E9.	power to staple units in the trust to other securities	
F4.	power to redeem units of less than a marketable/minimum parcel	
I1.	power to amend a deed (unregistered schemes) where amendment is in accordance with the requirements in section 601GC of the Corporations Act	Note: Trust deeds usually provide a mechanism for amending the deed. Consistent with the position pertaining to registered schemes, the Commissioner accepts that the power to amend is consistent with clearly defined rights where any amendment that might materially affect a member's rights and interests adversely can be made only with the consent of at least 75% of the votes cast by members entitled to vote or by the trustee if the change will not adversely affect members' rights.

J: Transfers

J1.	power to refuse or delay the transfer of membership interests	Example: The transfer is not in accordance with requirements in the constitution.
J2.	power not to register a transfer where the transfer may have adverse consequences for members	Example: The trustee is not permitted to register a transfer if doing so would mean that the trust would no longer qualify as a MIT.

K: Other

K1.	power to deem a constitution to have a clause if required under the Corporations Law or ASX Listing Rules	
K2.	power to deem a constitution not to have a clause if not permitted under the Corporations Law or ASX Listing Rules	

(d) Insert after the table :

Commissioner of Taxation
5 May 2016

13. Paragraph 14

Omit the paragraph (including heading).

14. Legislative references

Insert:

Corporations Act 2001 601GC

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

15. Related Rulings/Determinations

Omit the references; substitute:

Related Rulings/Determinations	Law Companion Guideline LCG 2015/5 <i>Managed Investment Trusts: choice to treat separate classes as separate AMITs</i> Law Companion Guideline LCG 2015/7 <i>Managed Investment Trusts: attribution on a 'fair and reasonable' basis</i>
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16. ATO references

Omit the references.

This Addendum applies on and from 5 May 2016

Commissioner of Taxation

5 May 2016

ATO references

ATOlaw topic(s)

Income tax ~~ Trusts ~~ Other

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