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New taxation system for managed investment trusts

The *Tax Laws Amendment (New Tax System for Managed Investment Trusts) Act 2016* (the Act), which establishes a new tax system for managed investment trusts (MITs), received Royal Assent on 5 May 2016. The [Act](https://www.legislation.gov.au/Details/C2016A00053) (<https://www.legislation.gov.au/Details/C2016A00053>) is available from the [Federal Register of Legislation](https://www.legislation.gov.au/Home) (<https://www.legislation.gov.au/Home>).

The new rules apply from 1 July 2016. However, a trustee of a MIT can choose to apply the rules from 1 July 2015.

Trustees of MITs and other trusts treated as MITs will continue to be allowed to choose whether or not to apply the rules introduced in 2011 relating to the streaming of capital gains and franked distributions through trusts for the 2016-17 income year. This will ensure these [interim arrangements for MITs \(/General/New-legislation/In-detail/Other-topics/Trusts/Extension-of-managed-investment-trust-streaming-election/\)](#) continue to apply until the commencement of the new rules.

The new rules are intended to reduce complexity, increase certainty and minimise compliance costs for MITs and their investors.

The following information is intended to assist MIT trustees who may be considering making the choice to apply the new rules from the earlier start date.

2016 AMIT tax return lodgment

Changes to the 2016 return form design as a result of consultation have now been finalised and incorporated into the updated Standard business reporting (SBR) specifications - released 16 June 2016. Trustees that have chosen to apply the new rules from 1 July 2015 can lodge their AMIT tax return for the 2016 income year from 4 October 2016.

If you have any queries or concerns relating to the above, please contact us at new-mit-regime@ato.gov.au (<mailto:new-mit-regime@ato.gov.au>).

Law Companion Guidelines

We have developed Law Companion Guidelines (LCG) that describe how we will apply the new law.

For more information, refer to [Law Companion Guidelines \(/law/?anchor=Law/browse/Mode%3Dtype%26ImA%3Dfolder%26Node%3D11-1-0%26OpenNodes%3D11,11-1%26TOC%3D04%253AATO%2520Guidelines%253ABY%2520Type%253ALaw%2520Companion%2520Guidelines#Law/browse/Mode%3Dtype%26ImA%3Dfolder%26Node%3D11-1-0%26OpenNodes%3D11,11-1%26TOC%3D04%253AATO%2520Guidelines%253ABY%2520Type%253ALaw%2520Companion%2520Guidelines\)](#) in the ATO [Legal database \(/lcg\)](#).

Things you need to know

Your choice

If you are a MIT trustee, the new tax system allows you to choose to apply the new rules from 1 July 2015 - that is, before the law was enacted.

Where a choice to apply the new rules is made, the way a MIT's income tax return is prepared for that income year will be sufficient evidence of the making of the choice.

If you are considering making this choice, the [Act \(https://www.legislation.gov.au/Details/C2016A00053\)](https://www.legislation.gov.au/Details/C2016A00053) and [Explanatory Memorandum \(https://www.legislation.gov.au/Details/C2015B00222/Download\)](https://www.legislation.gov.au/Details/C2015B00222/Download) are available from the [Federal Register of Legislation \(https://www.legislation.gov.au/\)](https://www.legislation.gov.au/).

What if I do not make a choice?

If you do not make the choice to apply the new rules, the existing law continues to apply. You must continue to fulfil your existing obligations.

See also:

For more information on how to apply the new rules, refer to [Managed investment trusts - overview \(/general/trusts/in-detail/managed-investment-trusts/managed-investment-trusts---overview/\)](#)

Administrative treatment

Our commitment to you

We are committed to providing you with accurate, consistent and clear information to help you understand your rights and entitlements, and your obligations.

If you follow our information and it turns out to be incorrect, or it is misleading and you make a mistake as a result, we will take that into account when determining what action, if any, we should take.

Some of the information on this website applies to a specific income year. This is clearly marked. Make sure you have the information for the right year before making decisions based on that information.

If you feel that our information does not fully cover your circumstances, or you are unsure how it applies to you, contact us or seek professional advice.

How we treat law with retrospective effect

We do not have the authority to apply new law until it is enacted, including:

- collecting new, or higher, liabilities
- making amendments where liabilities may be reduced
- administering changes to penalties
- producing legislative instruments to support the operation of the law.

As there are various consequences for you if you choose to apply law with retrospective effect, we will consider your circumstances in administering the law once its operation commences.

If you would like more information, refer to:

- [Administrative treatment of retrospective legislation \(/General/New-legislation/Administrative-treatment-of-retrospective-legislation/\)](#)
- [Taxpayers' charter - helping you to get things right \(/About-ATO/About-us/In-detail/Taxpayers-charter/Taxpayers-charter---helping-you-to-get-things-right/\)](#).

Applying the rules from 1 July 2015

This information is relevant to the circumstances where:

- a trustee of a qualifying MIT chooses to apply the new rules from 1 July 2015;
- the trustee is making interim payments (e.g. quarterly or half yearly) to non-resident unit holders/members, or to custodians or other entities who may be making interim payments to non-residents;
- at the time of making such interim payments the legislation had not yet been enacted; and

- the trustee relied on the latest publicly released exposure draft of the legislation or Bill to determine its withholding obligations in relation to those payments.

Note that any reference to a MIT trustee in the following guidance extends, where appropriate, to a custodian or other entity that may be required to withhold amounts from fund payments, or dividend, interest and royalty payments, to non-residents.

In the above scenario, the withholding obligations you determined in accordance with the most recent exposure draft or Bill may be different to your obligations under the enacted law.

Correcting in subsequent payments

In most cases, we would expect that a trustee of a MIT that anticipated the new rules and applied the withholding provisions in a reasonable way would, over the course of the income year, have withheld the correct amount of tax from fund payments and dividend, interest and royalty payments.

If you discover after the law is enacted that you have over or under withheld from an earlier payment in the 2015-16 income year you should adjust the amount you withhold from subsequent payments in the 2015-16 income year to account for the discrepancy.

Where no further payments are made in the income year such that no adjustments can be made, foreign resident members will need to apply for a refund if the amount of withholding tax paid to us is greater than their liability or make a top-up payment of MIT withholding tax if the amount paid to us is less than their liability.

Over-withholding

If you discover before 30 June 2016 that you have withheld more tax during the 2015-16 income year than you should have done, you must refund the extra amount you withheld to the member, even if you have already paid the amount to us. By discovering we mean either of the following:

- You become aware of the error by no later than 30 June 2016.
- Your member requests a refund by no later than 30 June 2016.

If you have already paid the amount to us and you will not be liable to pay us any further withholding amounts for the 2015-16 income year, you will need to lodge a revised activity statement to recover the amount over withheld. Revised activity statements are available from the Business Portal if you are a registered user or you can phone us on **13 28 66** to obtain a revised activity statement form.

If you discover after 30 June 2016 that you have withheld more tax than you should have done, **do not refund the amount to the member** – if you do we cannot refund the amount to you. Your member needs to make a refund application in writing to us.

For more information refer to [Refund of over-withheld withholding instructions and application \(/Business/International-tax-for-business/In-detail/Australian-income-of-foreign-residents/Refund-of-over-withheld-withholding--how-to-apply/\)](#).

Under-withholding

A payer who fails to withhold an amount, or under-withholds, will be subject to an administrative penalty equal to the amount that they did not withhold. We also impose a general interest charge (GIC) on payments made to us after the due date, even if the amount was reported to us on time.

If you applied the law in a reasonable way and after 30 June 2016 you discover you have withheld less tax during the 2015-16 income year than you should have done, you are liable to pay a penalty equal to the amount that you did not withhold. However, if you pay the penalty by 30 September 2016 we will remit any general interest charge that would ordinarily be imposed.

If you do not pay the penalty by 30 September 2016, you remain liable to pay the general interest charge.

We will not automatically remit the general interest charge. You can apply for the general interest charge to be remitted if you can show the remission is warranted.

When you pay the penalty, you are entitled to recover an amount equal to the penalty from your members. Your members are entitled to a credit equal to the penalty or general interest charge you have paid, as appropriate.

You should be aware that penalties may still be applied where you have made a false or misleading statement, or have been reckless, or intentionally disregarded the law.

The Commissioner's compliance approach

Our priority is to provide support and assistance to taxpayers wanting to comply with the law.

The Commissioner can only endorse taxpayers' self-assessing their tax obligations in the manner required by the law. To ensure the integrity of the tax system is maintained we undertake formal reviews and audits. Tax costs have a major impact on tax liability and are a key focus area in compliance reviews in the managed funds industry.

However, in allocating compliance resources, we apply overall risk management principles, which take into account all relevant circumstances.

On this basis, we welcome engagement with taxpayers, advisers and industry associations who wish to evaluate tax risk in relation to particular circumstances.

We summarise below our compliance approach in three key areas affected by the proposed new rules.

- Post balance date variances in members' entitlements – 'unders and overs'.
- Distributions in excess of beneficiaries' shares of net income – 'tax deferred distributions' (TDD).
- Annual Investment Income Report (AIIR) reporting requirements for AMITs

Post balance date variances in members' entitlements – unders and overs

Unders and overs arise where net income and tax offset entitlement amounts reported to unit holders understate or overstate the amounts correctly determined under the law.

The existing trust taxation rules in Division 6 of Part III of the *Income Tax Assessment Act 1936* make no provision for unders and overs adjustments where amounts of over reported or under reported net income relating to an earlier year are taken into account in a later year.

The new rules have specific provisions for dealing with the problems faced by MITs with under and over amounts.

For MITs applying the new rules from 1 July 2015 or 1 July 2016, the ATO will not generally apply compliance resources to specifically review prior year MIT under and over amounts.

For MITs not electing into the new rules from these dates, the ATO expects trustees to advise unitholders of their net income entitlements based on the trust taxation rules set out in Division 6. However, while the ATO reserves the right to focus on this issue in specific cases, it will not be treating unders and overs generally as a focus area in allocating compliance resources for income years ending before 1 July 2017.

From then on, we will be monitoring the treatment of unders and overs by trusts not electing into the new rules and allocating compliance resources based on overall risk management principles.

Distributions in excess of beneficiaries' shares of net income – tax deferred distributions

By tax deferred distributions, we are referring here to TDDs in the broad sense of amounts of trust distributions in excess of the amounts assessed to beneficiaries under specific provisions relating to the taxation of trusts.

The ATO will generally not apply compliance resources to seek to assess TDDs as ordinary income in the following situations:

- Where taxpayers hold interests in trusts as investments either on capital account, or subject to the CGT primary code rules applying to superannuation entities, MITs and the superannuation business of life insurance companies, and the taxpayers have consistently treated the TDDs as non-assessable amounts under the CGT cost base and reduced cost base rules
- Where taxpayers hold interests in trusts as revenue assets (not subject to CGT primary code rules), and have taken TDDs, including CGT concessional amounts, *fully* into account in working out revenue gains and losses on those interests.

Situations where the assessing of TDDs as ordinary income will be considered include (but are not necessarily limited to) the exceptions below:

- Situations of the type referred to in Taxation Ruling IT 2512, which deals with 'Financing unit trusts', and similar arrangements involving the use of a trust structure to raise finance where TDDs are received in lieu of interest or similar amounts that would normally form part of assessable income
- Situations of the type referred to in Taxation Ruling TR 2014/D1, which involves the use of trusts to make distributions to persons as a reward for the performance of services, whether as an employee or otherwise
- Arrangements where there may have been tax planning to maximise the extent to which trust distributions are characterised as TDDs.

The assessability of TDDs will also be considered in the following situations:

- Where TDDs relate to trust interests subject to the Taxation of Financial Arrangements (TOFA) regime, where they are treated as assessable income under TOFA rules
- Where TDDs relate to trust interests held as trading stock – in these situations a corresponding closing stock adjustment may also be appropriate in some situations when a cost basis is being used.

AIIR reporting requirements for AMITs

Based on industry feedback we recognise there may be difficulties in implementing the AIIR changes for AMITs that choose to apply the new rules from 1 July 2015, which includes flow on impacts for other MITs and custodians. In response to those impacts, in relation to the AIIR for 2015-16:

- We postponed finalisation of the proposed new reporting requirements for AMITs (previously in draft AIIR specifications v11.0 and v5.0 (PC spreadsheet format)) until the 2016-17 reporting period.
- Entities reporting trust distributions in 2015-16, including MITs who choose to apply the new MIT regime from 1 July 2015, will report using existing specifications (V10.0 and v4.0 (PC spreadsheet format)).

Refer to [Which specification should I use for my AIIR? \(/business/third-party-reporting/annual-investment-income-report/?anchor=Which_specification_should_I_use_for_my_AIIR_#Which_specification_should_I_use_for_my_AIIR_\)](#) for more information

More information

For more information on the new tax system for MITs, refer to:

- [Tax Laws Amendment \(New Tax System for Managed Investment Trusts\) Act 2016](#) (<https://www.legislation.gov.au/Details/C2016A00053>) and related Acts:
 - [Income Tax Rates Amendment \(Managed Investment Trusts\) Act 2016](#) – (<https://www.legislation.gov.au/Details/C2016A00049>)
 - [Medicare Levy Amendment \(Attribution Managed Investment Trusts\) Act 2016](#) – (<https://www.legislation.gov.au/Details/C2016A00050>)
 - [Income Tax \(Attribution Managed Investment Trusts—Offsets\) Act 2016](#) – (<https://www.legislation.gov.au/Details/C2016A00048>)

- 2015-16 Budget – [Budget Paper No.2 - Part 1: Revenue Measures \(PDF\), pages 23-24](http://budget.gov.au/2015-16/content/bp2/download/BP2_consolidated.pdf) (http://budget.gov.au/2015-16/content/bp2/download/BP2_consolidated.pdf).
- choice for MITs to apply the trust streaming provisions – [Interim changes to the taxation of trusts \(/General/Trusts/In-detail/Trust-tax-time-toolkit/\)](#)
- Mid-year Economic and Fiscal Outlook 2011–12. Papers available at the [2011–12 Budget Papers website](http://www.budget.gov.au/2011-12/content/myefo/html/index.htm) (<http://www.budget.gov.au/2011-12/content/myefo/html/index.htm>)
- Discussion paper [Managed Investment Trusts](http://archive.treasury.gov.au/contentitem.asp?NavId=037&ContentID=1878) (<http://archive.treasury.gov.au/contentitem.asp?NavId=037&ContentID=1878>) , issued 18 October 2010
- Board of Taxation recommendations – [Review of the tax arrangements applying to managed investment trusts](http://taxboard.gov.au/publications-and-media/media-release/review-of-the-tax-arrangements-applying-to-managed-investment-trusts/) (<http://taxboard.gov.au/publications-and-media/media-release/review-of-the-tax-arrangements-applying-to-managed-investment-trusts/>) , issued in October 2008.
- [Media release](http://kmo.ministers.treasury.gov.au/media-release/055-2016/) (<http://kmo.ministers.treasury.gov.au/media-release/055-2016/>) issued on 5 May 2016 by the Minister for Small Business Assistant Treasurer

For previous media announcements in relation to the new MIT regime, refer to:

- media release [no. 012/2014](http://mhc.ministers.treasury.gov.au/media-release/012-2014/) (<http://mhc.ministers.treasury.gov.au/media-release/012-2014/>) issued 13 May 2014 by the Assistant Treasurer
- media release [no. 017/2013](http://jbh.ministers.treasury.gov.au/media-release/017-2013/) (<http://jbh.ministers.treasury.gov.au/media-release/017-2013/>) issued 6 November 2013 by the Treasurer
- media release [no. 151/2013](http://ministers.treasury.gov.au/DisplayDocs.aspx?doc=pressreleases/2013/151.htm&pageID=003&min=djba&Year=&DocType=) (<http://ministers.treasury.gov.au/DisplayDocs.aspx?doc=pressreleases/2013/151.htm&pageID=003&min=djba&Year=&DocType=>) issued 5 August 2013 by the Assistant Treasurer
- media release [no. 080/2012](http://ministers.treasury.gov.au/DisplayDocs.aspx?doc=pressreleases/2012/080.htm&pageID=003&min=djba&Year=&DocType=) (<http://ministers.treasury.gov.au/DisplayDocs.aspx?doc=pressreleases/2012/080.htm&pageID=003&min=djba&Year=&DocType=>) issued 30 July 2012 by the Assistant Treasurer
- media release [no. 148/2011](http://ministers.treasury.gov.au/DisplayDocs.aspx?doc=pressreleases/2011/148.htm&pageID=003&min=wms&Year=2011&DocType=0) (<http://ministers.treasury.gov.au/DisplayDocs.aspx?doc=pressreleases/2011/148.htm&pageID=003&min=wms&Year=2011&DocType=0>) issued 29 November 2011 by the Treasurer
- media release [no. 050/2011](http://ministers.treasury.gov.au/DisplayDocs.aspx?doc=pressreleases/2011/050.htm&pageID=003&min=brs&Year=&DocType=0) (<http://ministers.treasury.gov.au/DisplayDocs.aspx?doc=pressreleases/2011/050.htm&pageID=003&min=brs&Year=&DocType=0>) issued 8 April 2011 by the Assistant Treasurer
- media release [no. 086/2010](http://ministers.treasury.gov.au/DisplayDocs.aspx?doc=pressreleases/2010/086.htm&pageID=&min=njsa&Year=&DocType=0) (<http://ministers.treasury.gov.au/DisplayDocs.aspx?doc=pressreleases/2010/086.htm&pageID=&min=njsa&Year=&DocType=0>) issued 7 May 2010 by the Assistant Treasurer.

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