

29 September 2010

Lisa Clifton
International Tax Framework Unit
International Tax and Treaties Division
The Treasury
Langton Crescent
PARKES ACT 2600

BY POST & EMAIL: MIT@treasury.gov.au

Dear Ms Clifton

TAX LAWS AMENDMENT (2010 MEASURES NO.3) ACT 2010

The Financial Services Council (FSC) welcomes the Royal Assent of the Tax Laws Amendment (2010 Measures No.3) Act 2010 (the Act) and commends the Parliament and Treasury on introducing greater legislative certainty for Managed Investment Trusts (MITs).

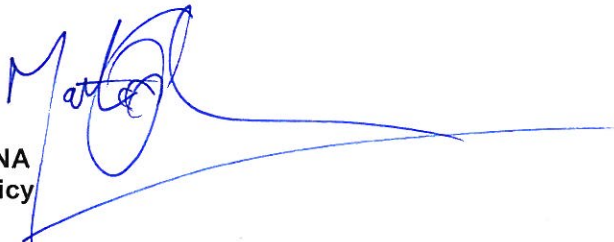
The FSC is the peak body representing the retail and wholesale funds management, superannuation and life insurance industries. The FSC has over 135 members who are responsible for investing over \$1 trillion on behalf of more than ten million Australians.

We submit that an IDPS (Investor Directed Portfolio Service) or platform should be included as a widely held entity under the Act. As a result, managed investment schemes which are predominately accessed through an IDPS (Investor Directed Portfolio Service) platform should also qualify as MITs under the Act.

This issue has been raised previously during earlier consultation rounds regarding this measure. It is our understanding that the then Assistant Treasurer was committed to resolving this issue.

If you have any questions regarding the FSC's submission please do not hesitate to contact Pravin Madhanagopal or myself on (02) 9299 3022.

Yours sincerely



MARTIN CODINA
Director of Policy

Tax Laws Amendment (2010 Measures No.3) Act 2010: Managed investment Trust (MIT)

Background

The FSC estimates that our members operate over 90% of all MITs by number and value that are offered in the Australian market.

However, FSC members have advised that uncertainty has been created for managed funds that are predominately held by IDPS platforms (including wrap accounts and master trusts).

Our submission suggests a way in which this situation could be remedied and effect given to the Government's policy intent of allowing a broad based CGT election for MITs that are widely held.

Inclusion of IDPS platforms (including wrap accounts and master trusts) as widely held entities

As mentioned in our previous submissions, there is still uncertainty as to whether a managed fund which has as a significant IDPS unitholder can meet the new s12-400 MIT requirements.

IDPS platforms are services for acquiring and holding investments that involve arrangements for the custody of assets and consolidated reporting (refer Appendix 1 for a more detailed explanation of the characteristics of an IDPS platform). They generally provide investors with a menu of investment options in underlying managed funds. An important feature of an IDPS is that the investor makes the investment decisions.

IDPS platforms are a well established and growing means of investing into managed funds. The importance of IDPS platforms as a source of funds for MITs continues to increase as investors become more sophisticated and technology advances.

Although an IDPS is a managed investment scheme (MIS) as defined by section 9 of the Corporations Law (refer to Appendix 1 for relevant extract) there remains considerable doubt whether it can comply with s12-402(3)(d) which requires it to be a MIT under the new definition. This is because technically an IDPS is not considered to be a single trust but rather a series of bare trusts for each investor. In other words, an IDPS with one thousand individual investors is not a MIT, but is instead one MIS consisting of one thousand bare trusts (one for each separate investor) which cannot strictly satisfy the widely held tests.

Therefore, notwithstanding that an IDPS is a widely held MIS, due to this technicality it is excluded from the types of MIS which can satisfy the requirements to be a MIT. Given the widely held nature of IDPSs and their widespread holding of MITs, we consider that IDPSs should be specified as another type of widely held entity in s12-402(3). This could be achieved by inserting the following into the law via the regulation making power:

12-402(3)(f) an Investor Directed Portfolio Service* which has at least 50 members who beneficially own interests in the Managed Investment Trust.

APPENDIX 1

IDPS definition

An IDPS is defined in ASIC Regulatory Guide 148 to be a managed investment scheme having the following features:

- a) Assets in which a client is to have an economic interest may be acquired or held by a custodian (which may or may not be the operator);
- b) The client has the sole discretion to decide what (but not necessarily when) assets will be acquired or disposed of, except in limited circumstances when:
 - i. There are any prior written directions to acquire or dispose of a particular asset in particular circumstances that the client has agreed not to vary (other than on the exercise of any discretion on the part of an operator); and
 - ii. The client has authorised the operator or another person to give directions on their behalf, for the purpose of the other person receiving or securing payment of moneys owing by the client to the person;
- c) Subject to any prior contrary directions in order to ensure payment of moneys for which the client is liable, a client may direct the operator to:
 - i. Take reasonable steps to transfer assets to or to the order of the client;
 - ii. Realise assets held on account for that client and pay the proceeds to or to the order of the client; or
 - iii. If the operator and the client agree, hold the proceeds under the IDPS, unless the assets cannot be transferred or realised under law or the terms of their issue;
- d) Any discretion of the holder of assets held through the IDPS may be exercised in accordance with the directions from time to time of the relevant client and not otherwise;
- e) Consolidated reporting about the client's interests in assets acquired through or held under the service will be provided; and
- f) The client has an understanding that they will derive benefits from participation in the IDPS consisting of:
 - i. Cost reductions by using assets contributed by a client or derived directly or indirectly from assets contributed by the client with assets contributed by other clients or derived directly or indirectly from assets contributed by other clients; or
 - ii. Access to investments that the client could not otherwise access directly.