

9 August 2015

General Manager
Corporate and International Tax Division
The Treasury
Langton Crescent
PARKES ACT 2600

Dear Sir/Madam

RE : FOREIGN RESIDENT CAPITAL GAINS WITHHOLDING TAX

The Financial Services Council (FSC) represents Australia's retail and wholesale funds management businesses, superannuation funds, life insurers, financial advisory networks, licensed trustee companies and public trustees. The Council has over 125 members who are responsible for investing more than \$2.5 trillion on behalf of 11 million Australians. The pool of funds under management is larger than Australia's GDP and the capitalisation of the Australian Securities Exchange and is the third largest pool of managed funds in the world. The Financial Services Council promotes best practice for the financial services industry by setting mandatory Standards for its members and providing Guidance Notes to assist in operational efficiency.

The FSC is concerned about two possible inadvertent applications of the new rules in relation to Managed Investment Trusts. These are outlined in Appendix A.

Should you wish to discuss this submission further please do not hesitate to contact me on (02) 9299 3022.

Yours sincerely



CARLA HOORWEG
Senior Policy Manager – Investment, Global Markets & Tax

Appendix A

Priority of various withholding regimes

Where an Australian property trust sells taxable Australian real property it is unlikely that any purchaser will treat the vendor as a non-resident.

If the trust makes a taxable capital gain on the sale it will eventually seek to distribute that gain to its unitholders / beneficiaries. If these beneficiaries / unitholders include non-residents then it could be argued there is an obligation to withhold from the distribution under the new provisions.

It is intended that where another withholding tax regime applies that the new provisions do not apply. Paragraph 1.122 expressly covers the situation where a trustee has an obligation to withhold under section 98 of the Income Tax Assessment Act 1936.

For the avoidance of doubt it is suggested that the example in the Explanatory Memorandum be extended to the situation where the trust is a Managed Investment Trust and any withholding is covered by Subdivision 12H of the Taxation Administration Act.

We note the comments submitted by the Australian Bankers Association in relation to financiers exercising a power of sale over a property and support those comments.

Redemptions of holdings greater than 10%

Where a non-resident investor redeems units in an Australian property trust is it intended that the new provisions have application in circumstances where the Unitholder holds more than 10% of units on issue?

Proposed section 14- 200 refers to acquisitions of a CGT asset but does not seem to cover redemptions.

We submit that for Managed Investment Trusts, redemptions of units should be excluded transactions provided the Unitholder holds less than 20% of the total units on issue immediately prior to the redemption.