Managed Funds Bulletin

Don't risk losing 15% withholding rate on fund payments

Time is running out to make a choice to apply transitional rules to access the MIT concessional withholding rate on certain distributions.

On 3 April 2019, Parliament passed legislation that will affect taxpayers operating in certain stapled structures. Specifically, from 1 July 2019, a higher withholding tax rate of 30% (previously 15%) may apply to managed investment trust ('MIT') fund payments made to foreign residents that are attributable to 'cross staple arrangement income'. Transitional relief may be available for funds in certain circumstances subject to the relevant entities making an appropriate choice to apply the transitional relief by 30 June 2019.

Will distributions by an MIT be affected by the new rules?

Fund payments made by an MIT to foreign residents on or after 1 July 2019, and which are in relation to the 2019-20 income year or later income years, will be subject to a higher withholding tax rate of 30% to the extent to which they are attributable to 'non-concessional MIT income'. Previously, a concessional withholding tax rate of 15% applied. These new rules are not specific to stapled structures only and can apply to any MIT that derives non-concessional MIT income.

Non-concessional MIT income refers to the following types of income:

- MIT cross staple arrangement income
- MIT trading trust income
- MIT agricultural income
- MIT residential housing income

Transitional relief is available for the income types listed above, subject to meeting certain criteria. However, to access transitional relief specifically in relation to MIT cross staple arrangement income, taxpayers must make a valid choice in an ATO-approved form to apply the transitional provisions. This form must be completed by 30 June 2019 and is due for lodgement to the ATO within 60 days of making the choice.

Compliance in focus

As 30 June approaches, it is an opportune time to turn attention to taxation and investor reporting obligations. Below are several key items managed funds should consider as part of this process.

Compliance considerations

Setting your timetable for distribution reviews	**Complying with the Attribution MIT ("AMIT") provisions**	**MIT compliance**	**Satisfying the public trading trust provisions**	**Other reporting obligations**

Setting your timetable for distribution reviews

Speak with your accountants, fund administrators and custodians to determine the date by which distribution statements will be provided to your investors. To the extent that the distribution components require a tax sign off, agree upon a timetable with your tax advisors to ensure the statements can be reviewed and completed by the required date.

Complying with the Attribution MIT ("AMIT") provisions

If you are applying the AMIT regime to your fund for the first time, ensure your systems and processes are sufficient to deal with the distribution process including reconciliations required to avoid the trustee being taxed/penalised on certain unreconciled amounts.

MIT compliance

If you operate an MIT, consider your fund's ability to continue satisfying the MIT requirements for the current year to access the MIT concessional withholding rates on certain distributions made to foreign investors, and the ability to maintain a valid capital account election where relevant.

Satisfying the public trading trust provisions

A unit trust that is a public unit trust can be taxed as a company where it carries on 'trading' activities. Even where a unit trust is not a public unit trust, the carrying on of trading activities may result in it ceasing to be a MIT, which may result in the capital account election ceasing to apply. Carefully review your income derived in the current year to determine whether a breach of the provisions may occur and what preventative measures (if any) you should be considering.

Other reporting obligations

Ensure you comply with the correct version of any annual investment income report to be submitted to the ATO. Common Reporting Standard and Foreign Account Tax Compliance Act documents must also be provided to the ATO by 31 July 2019. If you have not completed your due diligence procedures, ensure these are also completed in time for reporting.

Pitcher Partners can assist your fund in relation to the year-end distribution process and other accounting and tax reporting obligations. Get in touch today.

Key tax compliance timeline: Sep Qtr 2019

Report	Description	Due date
TFN report	June 2019 quarter TFN report	30 July
BAS	June 2019 quarter activity statement	28 July (25 August with concession)
	July 2019 activity statement	21 August
CRS/FATCA	2018 calendar year report due for lodgement	31 July
Distribution review	Review of 2019 income year distributions	Please contact us

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Next steps

If you manage or operate an MIT within a stapled structure, we strongly recommend that you consider the implications of the new legislation and whether a choice to apply the transitional relief is available and thus required to be made by 30 June 2019.

Contact Pitcher Partners for a broader discussion regarding how we can assist you in considering the applicability of the new rules to your fund.

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