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Tax Alert

Revised draft law for Australia's Corporate Collective Investment Vehicle regime

At a glance

- Treasury released revised draft law package for proposed CCIV reforms, for consultation
- Builds on the CCIV regulatory package released in January 2019
- Adjusts the 2019 CCIV taxation approach following submissions from EY and others
- Government announced in 2021 budget CCIV regime will be operational from 1 July 2022
- Submissions due 24 September 2021
- How EY can help

The Australian Treasury released updated drafts of tax and regulatory laws for the proposed Corporate Collective Investment Vehicle (CCIV) regime on 27 August 2021.

The long proposed CCIV regime is intended to provide Australian funds managers with an internationally recognisable collective investment vehicle with flow through tax treatment.

The CCIV is intended to attract foreign investors that are more familiar with corporate structures globally, rather than Australia's local managed investment trust (MIT) and attribution managed investment trust (AMIT) structures, to expand opportunities to export Australia's funds management expertise. The CCIV is also seen as critical to the success of the Asian Region Fund Passport (ARFP) which allows eligible funds to be marketed across ARFP member countries, with limited extra regulatory requirements.

The latest Treasury release of draft law builds on the regulatory package released in January 2019 and adjusts the 2019 approach for the taxation of CCIVs, in response to submissions from EY and others.

The Federal Government announced in the 2021 Budget that the regime will be operational from 1 July 2022.

EY welcomes the latest changes to the proposed CCIV tax rules which will make the regime far more workable than previous proposals. However, further adjustments should be considered to address previously identified issues and new issues which emerge from the draft.

Funds managers, custodians and administrators should carefully review the current packages of tax and regulatory law to provide any feedback to Treasury by the due date of 24 September 2021.

Funds managers will then want to start to plan for how CCIVs will be used and once the final law is clear to start to design CCIV products and to commence work on policies and systems to manage the regulatory and taxation requirements, alongside their MIT products.

CCIV tax proposals

The general tax treatment of CCIVs and their members will align with the existing tax treatment of AMITs and their members.

Improvements in this latest package of draft tax law compared to the 2019 draft include:

- Previous proposals to apply company taxation should a CCIV fail to meet the eligibility requirements (where a "temporary circumstances" exclusion does not apply), without the ability to frank the distribution resulting in double taxation, has been removed. The Division 6 general trust or Division 6C public trading trust tax rules will apply instead.
- Previous proposals to remove CGT discount at the CCIV level and imposition of a new penalty for attribution 'unders and overs' that result from a lack of reasonable care have been removed.
- The drafting approach has been streamlined - the previous draft separate CCIV regime (ASF as part of a new AIV regime) is replaced with a series of core rules and modifications to the Division 275 and 276 AMIT rules.

Tax issues that still require further consideration include:

- The requirement for CCIVs to satisfy widely held (including not to fail closely held) tests at the level of each CCIV sub-fund remain. This is inconsistent with the current widely held/closely held tests which apply to multi-class AMITs at the overall fund level. No similar tests apply to competing international vehicles such as Luxembourg SICAVs and Singapore Variable Capital Companies creating a competitive disadvantage for CCIVs.
- Complex and internationally uncompetitive rates of non-resident withholding tax on CCIV (and AMIT) distributions to foreign investors remain. Further, CCIVs that fail the widely held tests taxed as Division 6 trusts and are subject to non-resident withholding tax rates of between 30% and 45% on Australian sourced income.
- The 2019 proposals for tax relief where an AMIT is restructured into a CCIV entity is not included in this draft.

Other changes include that the CCIV will now test eligibility to deduct prior year loss using the trust loss rules rather than the company loss rules.

CCIV regulatory proposals

A CCIV is a company registered under the Corporations Act that that is limited by shares and which satisfies certain regulatory requirements. The new draft regulatory provisions build on the core regulatory framework and basic operational requirements for CCIVs set out in the 2019 ED package.

The removal of the requirement for an independent depository for retail CCIVs will address previous concerns around duplication of certain supervisory aspects of the corporate director's role and the practical difficulties of satisfying the proposed independence test. Instead CCIVs will have the flexibility to appoint a custodian.

In addition, the removal of the prohibition on cross investment between sub funds of CCIV is consistent with comparable overseas regimes. This will assist fund managers who wish to establish umbrella fund structures for cost efficiencies and economies of scale.

Another positive change is the ability for single sub-funds to be listed on financial markets.

We note that some of the proposed features of the CCIV framework apply to both retail and wholesale CCIVs imposing a greater regulatory oversight on wholesale CCIVs than the existing regime for wholesale managed investment schemes. This could create a regulatory arbitrage between wholesale MISs and CCIVs and could discourage fund managers from using the CCIV regime for wholesale funds.

How EY can help

Please contact your EY tax or law team for further assistance with your analysis, submissions or with planning to design and implement CCIV products.

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