



## ASSISTANT TREASURER

<http://assistant.treasurer.gov.au>

**PRESS  
RELEASE**

### **MAJOR REFORMS FINALISED TO TAX TREATMENT OF MANAGED INVESTMENT TRUSTS**

The Rudd Government has today introduced into Parliament the final, extended form of its 2009-10 Budget measure to allow a managed investment trust (MIT) to elect to have the capital gains tax regime as the primary code for taxing gains and losses on the disposal of key investments.

Following important consultations with the sector, the final form of the capital election reform is wider-reaching and more effective than the measure contained in the draft legislation.

In addition, the Assistant Treasurer, Senator Nick Sherry, has today announced further measures to complement this Bill through the expansion of the definition of a MIT in relation to the withholding tax rules in order to ensure closer alignment of the withholding tax definition with the extended definition of a MIT contained in the capital election reforms.

“The Rudd Government is committed to a robust, stable and certain tax regime for managed investment trusts,” said the Assistant Treasurer.

“That is why we commissioned the Board of Taxation to look at the whole regime applicable to MITs and announced an early commitment to legislate to allow MITs to make an irrevocable election to have their gains and losses on the disposal of key investments treated on capital account.”

“Today, with the introduction of this Bill we have delivered not just on that commitment, but we have gone much further.”

“This final Bill includes several improvements that expand and strengthen the measure and that will boost the attractiveness of Australia as a capital investment destination.”

The final form of the measure, included in *Tax Laws Amendment (No 1) Bill 2010*, and introduced into the Parliament today, includes:

- an expanded concept of a MIT for the purposes of the measure to ensure state operated trusts and wholesale trusts are also able to qualify for the concession and an allowance for unregistered wholesale schemes to be eligible MITs where they are managed or operated by an Australian financial services licensee (AFSL) or an authorised representative of an AFSL holder;
- an extension of the “widely held” concept for the purposes of the measure to Australian resident unit trusts where at least 75 per cent of the beneficial interest in the capital and income of the trust is held by eligible widely held entities listed in the existing definition of a MIT, such as life insurance companies and complying

superannuation funds and deposit funds and foreign superannuation funds with at least 50 members;

- the draft measure had required the unit trust to be wholly owned by one or more of these entities to be treated as an MIT;
- an inclusion of a “look through” mechanism in the form of a member tracing rule where units in an Australian resident unit trust are held by another trust, thereby treating members with a beneficial interest in the latter trust as members of the sub-trust for the purpose of the 50 member widely held rule;
  - the draft legislation did not include this provision but, as it is not unusual for investors participating in the wholesale investment market to be aggregators of many underlying investors through interposed funds, such as superannuation or pension funds, the inclusion of this tracing mechanism will widen access to the concession;
- a further extension of the definition of a MIT in the measure to allow individuals who are wholesale clients to be included in the 50 member rule;
- an extension of the scope of the “temporary circumstances rule” to cover situations where the trust may be closely held temporarily or where a trust does not meet the the MIT start-up ‘seeding’ period because of circumstances outside the control of the trustee;
- not treating a return of contributed capital as assessable income for the purposes of the tax treatment of carried interest units;
- an expansion of the specific asset types covered by the measure from shares, units and certain land investments to also include investments that are broadly identical to a share, that is equity interests in a company and shares in a foreign hybrid company; and
- a confirmation that where a MIT does not elect capital account treatment, disposals of shares and units will be deemed to be treated on revenue account.

“I have consulted widely with the sector and I believe we have a package of reforms here that will work to boost both tax certainty and investment flows,” said the Assistant Treasurer.

“I am greatly appreciative to the sector for their input.”

“The Government is still assessing the full Board of Taxation report on MITs and will respond to its other recommendations in due course.”

CANBERRA

10 February 2010

**Media Contact:** Joe Scavo 0413 800 757