



ASSISTANT TREASURER

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**PRESS
RELEASE**

NEW TAX SYSTEM FOR MANAGED INVESTMENT TRUSTS

The Assistant Treasurer, Senator Nick Sherry has today announced the Rudd Government will put in place a new tax system for Managed Investment Trusts (MITs) for commencement on 1 July 2011.

The \$120 million overhaul includes a dedicated new tax regime for MITs that will remove longstanding investor uncertainty in the interaction of Australian tax and trust law.

In doing so, the Rudd Government will also significantly simplify the administration of the Australian managed funds sector to support Australian jobs and the investment returns of millions of Australian investors.

The reforms announced today are the Rudd Government's response to the Board of Taxation's (Board) report into the tax arrangements applying to MITs, which the Assistant Treasurer also released today.

"Managed investment trusts form a very important part of our economic architecture in Australia," said the Assistant Treasurer.

"Many millions of Australians are investors in MITs, either directly or indirectly through their retirement savings."

"As such, much turns on the tax treatment of MITs and we feel that the current tax rules are complex, uncertain and unsustainable in the modern economy," the Assistant Treasurer said.

"I know from wide-ranging discussions across Australia that industry feels the same way."

"The range of uncertainties at the moment is unacceptable. Just one example is that trust law and tax law can produce different outcomes, even in such basic areas as what investment return is due to be paid and then what is taxable in the hands of investors."

"Under the current present entitlement system, trust beneficiaries may be taxable on amounts, such as capital gains, that they are not entitled to receive and trustees may be taxed on capital gains that they have already distributed to investors."

"It's for these compelling reasons that the Rudd Government is today announcing a package of reforms that are the most ambitious yet seen."

"They amount to a complete re-write of how MITs are taxed – a new system for MITs."

The key features of the new MIT tax system are:

- the provision of an elective “attribution” system of taxation to replace the present entitlement system – the concept of what trust income means was the subject of a High Court decision in recent weeks that failed to provide judicial clarity;
 - this new attribution system will provide that investors will be taxed only on the income that the trustee allocates to them on a fair and reasonable basis, consistent with their entitlements under the trust deed or the trust’s constituent documents.
- establishing the ability to deal with “over or under” distributions within a five per cent cap so that trusts are not required to reissue statements and investors are not required to revisit tax returns;
- removing double taxation; and
- abolishing Division 6B of the *Income Tax Assessment Act 1936* which relates to corporate unit trusts and which the Board found redundant.

The new arrangements will commence on 1 July 2011. In establishing the new MIT tax system, the Government is accepting 38 of the Board’s 48 recommendations.

The Government will undertake further sector and community consultation on the details and supporting legislation for the new tax system for MITs in coming months.

“The outcome of the changes will be increased investment, more Australian jobs in financial services and a more efficient and profitable funds management industry,” the Assistant Treasurer said.

“These changes will also directly benefit almost every single Australian who, although they may not be fully aware of it, have extensive investments in MIT structures through their super funds, and that’s in addition to the approximately 630,000 individual Australian taxpayers who received a distribution from a MIT in 2008.”

“The changes will also support our work to enhance Australian as a financial services hub.”

“This fulfils an election commitment - even before coming to government, in August 2007, we announced that a Labor Government’s first reference to the Board of Taxation would be a review of the tax arrangements applying to managed funds,” the Assistant Treasurer said.

As part of the initial response to the Board’s report, the Rudd Government has already introduced into Parliament an extended form of its 2009-10 Budget measure to allow a 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.

“Today’s important announcements complete the Rudd Government’s response to the Board’s work and substantially builds on the capital election measure currently before Parliament,” the Assistant Treasurer said.

The Board’s recommendations and the Government’s full responses are attached.

“We have decided to defer consideration of a small number of recommendations of the Board to consult with industry to further assess their benefits, relative to the potential cost to revenue,” said the Assistant Treasurer.

The full BOT report is available at www.taxboard.gov.au

SYDNEY

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ATTACHMENT A

KEY FEATURES BACKGROUND DESCRIPTION

Elective attribution model

The provision of an elective “attribution” system of taxation for qualifying MITs (those with clearly defined rights) to replace the present entitlement to income system – the present arrangement, under which trust beneficiaries may be taxable on amounts that they are not entitled to receive and trustees may be taxed on capital gains that they have already distributed to investors, was the subject of a High Court decision in recent weeks that failed to provide judicial clarity for certain trusts.

This new attribution system will provide that investors will be taxed only on the taxable income that the trustee allocates to them on a fair and reasonable basis, consistent with the investor’s entitlements and rights under the trust’s constituent documents.

Qualifying MITs will be deemed to be fixed trusts for various taxation law purposes.

Key benefits: The attribution model will sweep away the inconsistent interaction of Australia’s tax law with our trust law, which relies on centuries of development and precedent. It means taxpayers will, for the first time, have absolute certainty in the tax that will be imposed.

Under and over distributions reform

Establishing a carry-over facility to allow MITs to deal with “over or under” distributions within a five per cent cap.

Key benefits: For the first time, where adjustments fall within the five per cent range, that is they amount to no more than five per cent less or more than the amount outlined in the issued statement, the 630,000 individual taxpayers who receive trust income will not have to re-do their tax returns to reflect their revised distribution from the trust.

This is a significant simplification of the Australian tax law.

In addition, the trust will not be required to re-issue their investor statements to the same 630,000 Australian investors.

Removal of double taxation

Removing double taxation by allowing upward cost base adjustments to the CGT cost base of an investor’s interest in the trust.

Key benefits: double taxation can arise where the taxable income of a MIT differs from the amount distributed to beneficiaries.

The trust distributions can exceed the net income of the trust due to either timing or other reasons. This is a reasonably wide problem and its effect is often hidden from trust beneficiaries because it is “net within the trust”.

The operation of these anomalies is being clarified to remove double taxation.

Abolishing Division 6B

Abolishing the corporate unit trust provisions in Division 6B of the *Income Tax Assessment Act 1936* which the Board found redundant since the introduction of the capital gains tax and replacing it with an arm's length rule in the public trading trust provisions in Division 6C.

Key benefits: This repeal removes complicated and uncertain provisions which no longer have application. Its ongoing inclusion in the tax law led to confusion in the minds of investors and potential investors, both in Australia and internationally. This repeal will boost certainty.

ATTACHMENT B

GOVERNMENT RESPONSE TO RECOMMENDATIONS CONTAINED IN BOARD OF TAXATION REPORT

RECOMMENDATIONS OF THE BOARD OF TAXATION	GOVERNMENT RESPONSE
<u>CHAPTER 2: A SEPARATE TAXATION REGIME FOR MITs</u>	
<p>Recommendation 1</p> <p>The Board recommends that:</p> <ul style="list-style-type: none"> • there be a specific taxation regime for qualifying MITs to be known as Regime MITs. • in order to be considered a Regime MIT an MIT must: <ul style="list-style-type: none"> – satisfy a ‘widely held’ requirement; – be ‘engaged in primarily passive investment;’ and – satisfy a ‘clearly defined rights’ requirement. – 	<p>The Government agrees to this recommendation and will consult the managed fund industry on the implementation and design details.</p>
<p>Recommendation 2</p> <p>The Board recommends that an MIT will be considered ‘widely held’ if it:</p> <ul style="list-style-type: none"> • satisfies the definition in Subdivision 12-H of Schedule 1 to the TAA; • is a wholesale trust which has 50 or more members directly (or indirectly, for example, through a trust or superannuation fund) and that wholesale trust is subject to a suitable regulatory regime; for example, it is operated or managed by the holder of an Australian Financial Services Licence (subject to regulation under the <i>Corporations Act 2001</i>); or • is a wholesale trust which is wholly-owned directly or indirectly by one or more trusts which satisfy the definition in Subdivision 12-H or by a wholesale trust, as above. 	<p>The Government agrees to this recommendation. The Government has broadly adopted the Board’s definition of ‘widely held’ for the purpose of the deemed capital account rules for MITs, which was announced in the 2009-10 Budget.</p>
<p>Recommendation 3</p> <p>The Board recommends that a trust will satisfy the ‘clearly defined entitlements’ requirement if the beneficiaries’ rights to income (including the character</p>	<p>The Government agrees to this recommendation. The Government will include a ‘clearly defined entitlements’ eligibility</p>

<p>of income) and capital are clearly established at all times in the trust's 'constituent documents'. The rights should only be able to be changed by a change in the trust's 'constituent documents'.</p> <p>The Board also recommends that provisions akin to the Corporations Act requirements in sections 601FC and 601GC which specify the circumstances under which the constitution may be amended and prescribe rules the trustee must follow when dealing with beneficiaries, should be incorporated within the taxation legislation applying to Regime MITs.</p>	<p>requirement in conjunction with the proposed attribution model (refer Recommendation 19).</p>
<p>Recommendation 4</p> <p>The Board recommends that there be no requirement that the rights in a trust be uniform in order to be a Regime MIT.</p>	<p>The Government agrees to this recommendation.</p>
<p>Recommendation 5</p> <p>The Board recommends that Investor Directed Portfolio Services (IDPS) and similar 'bare trust' type arrangements not qualify as Regime MITs.</p>	<p>The Government agrees to this recommendation.</p>
<p>Recommendation 6</p> <p>The Board recommends that there should be no separate Real Estate Investment Trust (REIT) regime.</p>	<p>The Government agrees to this recommendation.</p>
<p><u>CHAPTER 3: DEFINING PRIMARILY PASSIVE INVESTMENTS</u></p>	
<p>Recommendation 7</p> <p>The Board recommends that complying superannuation entities and tax exempt entities which are entitled to a refund of franking credits should be excluded from the rule by which, when one or more persons or bodies exempt from income tax own 20 per cent or more of the beneficial interest in a non-widely held trust, it causes the fund to be taken as a public unit trust.</p> <p>The rule should remain applicable only to tax exempt entities that are not entitled to a refund of franking credits.</p>	<p>The Government agrees to this recommendation.</p>
<p>Recommendation 8</p> <p>The Board recommends that MITs be considered to be undertaking primarily passive investment if they carry on an eligible investment business (EIB) as defined.</p>	<p>The Government does not agree to redefine eligible investment business at this time. The Government will further examine the benefits of this</p>

<p>An MIT will be treated as carrying on an EIB if at least 90 per cent of its gross revenue is income from passive investments.</p> <p>For the purpose of this EIB test, passive investment means:</p> <ul style="list-style-type: none"> • investment in real property (and movable property incidental to the investment in real property) to derive rent income and/or other passive (or non-trading) income. Passive (or non-trading) income includes: <ul style="list-style-type: none"> – income from the provision of services incidental to the earning of rent from the investment in real property. For example, parking fees, utilities, and common security services provided in rental properties to lessees; and – income from licenses and other rights to use real property, (other than hotel room and similar accommodation, such as serviced apartments) that is not associated with the sale or provision of facilities, goods or services; • investing and/or trading in: <ul style="list-style-type: none"> – financial instruments that arise under financial arrangements (but, subject to the existing carve-outs as per the 2008 interim amendments to Division 6C, for example, car leases); and/or – shares in a company and units in a unit trust. 	<p>recommendation, relative to its cost to revenue.</p>
<p>Recommendation 9</p> <p>The Board supports retaining the control test in its current form with the addition of an exception for a single wholly-owned taxable subsidiary.</p> <p>The Board recommends that trust taxation be retained if an MIT owns directly, or through a chain of entities, 100 per-cent of the ownership interests in a single taxable subsidiary company.</p> <p>The Board recommends that consideration be given by a post-implementation review to allowing MITs to have any number of taxable wholly-owned subsidiaries engaging in active business.</p>	<p>The Government agrees to retain the existing control test in Division 6C, but does not agree to the suggested modifications at this time. The Government will further examine the benefits of the recommended modifications, relative to their cost to revenue.</p>
<p>Recommendation 10</p> <p>The Board recommends that arm's length rules should apply to transactions between common interests or related interests of an MIT, including but not limited to subsidiaries and stapled entities.</p>	<p>The Government agrees to this recommendation.</p>

<p>Recommendation 11</p> <p>The Board recommends that revised Division 6C rules should apply to all widely held MITs and other public unit trusts.</p>	<p>The Government notes that it has deferred consideration of related recommendations 8 and 9. The Government also notes that extending Division 6C to widely held MITs that are not public unit trusts has been achieved, in part, through the MIT deemed capital account measure, where the trust must not be a trading trust within the meaning of Division 6C in order for it to qualify for deemed capital treatment. None the less the Government will further examine the benefits of this recommendation, relative to its revenue impact.</p>
<p>Recommendation 12</p> <p>The Board recommends that if a widely held MIT or other public unit trust does not satisfy the eligible investment business test in Division 6C the whole of the trust's taxable income for the year will be assessable to the trustee at the corporate tax rate. The trust would be subject to company-like taxation and it would not qualify to have trust taxation in that year of income.</p>	<p>The Government agrees to this recommendation in relation to public unit trusts. The Government notes that it has not at this stage agreed that widely held MITs that are not public unit trusts be subject to Division 6C (refer recommendation 11).</p>
<p><u>CHAPTER 4: CAPITAL VERSUS REVENUE ACCOUNT TREATMENT OF GAINS AND LOSSES MADE ON DISPOSAL OF INVESTMENT ASSETS BY MITs</u></p>	
<p>Recommendation 13</p> <p>The Board recommends that widely held MITs as defined in Recommendation 2 that meet the proposed new eligible investment business rules be eligible to make the irrevocable election to apply the CGT regime to disposals of its eligible assets. Where an MIT does not elect to apply the CGT regime, proceeds from the disposals of its eligible assets will be deemed to be on revenue account.</p>	<p>The Government has already agreed to this recommendation in the context of implementation of the MIT deemed capital account measure.</p>
<p>Recommendation 14</p> <p>The Board recommends that:</p> <ul style="list-style-type: none"> • a rule in similar terms to the superannuation fund capital account rule be introduced for eligible MITs. The assets covered by the legislative rule would be similar to those covered by section 295-85 of the ITAA 1997; and 	<p>The Government has already considered this recommendation in the context of implementation of the MIT deemed capital account measure. The approach adopted in that legislation is broadly similar.</p>

<ul style="list-style-type: none"> • hedges should have the same taxation treatment as the underlying assets. 	
<p>Recommendation 15</p> <p>The Board recommends that no general carve-out from the application of the recommended capital treatment be applicable to private equity or hedge funds.</p>	<p>The Government has already agreed to this recommendation in the context of implementation of the MIT deemed capital account measure.</p>
<p>Recommendation 16</p> <p>The Board recommends that legislation be introduced to provide that any gains or losses made on the disposal of the units held by the manager of a private equity fund manager (or its employees or associates) entitling the holder to be paid ‘carried interests’ are treated on revenue account. The legislation should also provide that any distributions of ‘carried interest’ are to be treated as ordinary income of the unit holders.</p>	<p>The Government has already agreed to this recommendation in the context of implementation of the MIT deemed capital account measure.</p>
<p>Recommendation 17</p> <p>The Board recommends that consideration be given to extending any capital account treatment provided to eligible MITs to Listed Investment Companies (LICs).</p>	<p>The Government has decided to defer consideration of this issue to further examine the benefits of this recommendation, relative to its cost to revenue.</p>
<p>Recommendation 18</p> <p>The Board recommends that:</p> <ul style="list-style-type: none"> • A legislative prohibition on amending previous years’ assessments which relate to the characterisation of gains and losses made on the disposal of eligible MIT assets should be introduced as part of the new legislative rule. <ul style="list-style-type: none"> – The prohibition will apply to amendments by either the eligible MITs that elect capital treatment or by the Commissioner of Taxation. • Eligible MITs should not be able to elect that certain asset classes be treated on revenue account. 	<p>The Government has already agreed to this recommendation in the context of implementation of the MIT deemed capital account measure.</p>
<p><u>CHAPTER 5: DETERMINING TAX LIABILITIES</u></p>	
<p>Recommendation 19</p> <p>The Board recommends an attribution model for determining the tax liabilities for Regime MITs and</p>	<p>The Government agrees to this recommendation. MITs in the new MIT regime will be able to make an irrevocable election to</p>

<p>their beneficiaries.</p> <p>The guiding principles of the model are:</p> <p>(a) a beneficiary is assessable on the amount of taxable income of the trust that the trustee allocates to the beneficiary;</p> <p>(b) the trustee must allocate the taxable income of the trust between beneficiaries on a fair and reasonable basis consistent with their rights under the trust's constituent documents and the duties of the trustee; and</p> <p>(c) the trustee will be taxed on any taxable income of the trust which the trustee fails to allocate to beneficiaries within three months of the end of the financial year (subject to the treatment of 'unders' outlined in Chapter 8).</p>	<p>apply an attribution model for determining the tax liabilities of their beneficiaries where the beneficiaries have clearly defined entitlements in the trust (refer Recommendation 3 above).</p>
<p>Recommendation 20</p> <p>The Board recommends that the Regime MIT Product Disclosure Statement or other disclosure documents be required to identify the possibility for the taxable income attributed to beneficiaries to exceed the cash distributed.</p>	<p>The Government supports this recommendation in principle and will consult with the managed funds industry further on the extent of disclosure that is appropriate.</p>
<p>Recommendation 21</p> <p>The Board recommends that:</p> <ul style="list-style-type: none"> • a specific integrity rule be designed to address the situation where streaming of tax benefits or value shifting arises from changes to an MIT's constituent documents during the year; • a specific integrity rule be designed to address the situation where the rights attaching to units in a Regime MIT are structured such that the taxable income of the trust is attributed to a tax exempt entity while other unit holders receive tax deferred or tax exempt distributions; and • a Post-implementation review of the new MIT regime be conducted after the legislation has been in operation for at least two years. The review should include, in particular, the attribution method of taxation. If specific integrity concerns are identified at this time, then it may be appropriate to introduce further targeted integrity rules. 	<p>The Government agrees to this recommendation and will consult on these rules as part of the process of developing the detailed design of the measure.</p> <p>The Government agrees to consider a post-implementation review after the MIT regime has been in operation for at least two years.</p>
<p>Recommendation 22</p> <p>The Board recommends that legislative rules be introduced which provide that where units issued by a Regime MIT meet the 'substantially equivalent to a loan' test in Division 207 of the ITAA 1997, they will</p>	<p>The Government has decided to defer consideration of this issue to further examine the benefits of this recommendation, relative to its cost to revenue.</p>

<p>not be subject to the general method for allocating the taxable income for Regime MITs. Instead, the amount accruing to these unit holders should be taxable to them as interest and these amounts should reduce the taxable income of the Regime MIT.</p>	
<p>Recommendation 23 Subject to recommendation 4, the Board recommends that:</p> <ul style="list-style-type: none"> • Regime MITs be able to make an irrevocable election to be subject to the proposed attribution method of taxation; • a Regime MIT must satisfy the qualifying criteria at all times; and • if an MIT fails to satisfy the qualifying criteria it should be able to maintain taxation treatment as a Regime MIT provided the failure was the result of inadvertent or minor circumstances and reasonable steps are being taken to rectify the failure in a reasonable time. 	<p>The Government agrees to this recommendation.</p>
<p><u>CHAPTER 6: CHARACTER RETENTION AND FLOW-THROUGH</u></p>	
<p>Recommendation 24 The Board recommends that in order to provide clarity and certainty for Regime MITs, the principle of character and source flow-through be legislated.</p>	<p>The Government agrees, in the context of developing a new MIT taxation regime, to legislate the degree to which character and source flow through to MIT investors.</p>
<p><u>CHAPTER 7: ADDRESSING DOUBLE TAXATION</u></p>	
<p>Recommendation 25 The Board recommends that:</p> <ul style="list-style-type: none"> • beneficiary-level cost base adjustments— remain with modification for Regime MITs; and • any legislative modification to the current approach to beneficiary-level cost base adjustments generally ensures that: <ul style="list-style-type: none"> – the non-assessable part of a Regime MIT distribution which is attributable to a permanent tax difference is not to be ‘clawed back’ on the sale of a beneficiary’s units except to the extent that the value of the permanent difference was already reflected in the calculation of the cost base 	<p>The Government agrees that beneficiary level cost base adjustments remain, as currently apply, in respect of non-revenue account unit holders.</p> <p>However, the Government does not agree to the non-assessable part of a MIT distribution which is attributable to a permanent tax difference not being ‘clawed back’ on the sale of a beneficiary’s units. The Government considers that whether a claw back arises</p>

<p>of the units;</p> <ul style="list-style-type: none"> – tax deferred distributions attributable to temporary tax differences, such as unrealised capital gains, are not, other than to the extent they represent returns on ‘debt like’ units, taxable to a resident or non-resident beneficiary as ordinary income under section 6-5 of the ITAA 1997 but may be subject to an adjustment to the cost base of the beneficiary’s units; and – tax deferred distributions attributable to temporary tax differences that represent a return on a ‘debt-like’ unit are taxable to the beneficiary as interest and do not result in a cost base adjustment to the debt-like unit. 	<p>should be determined on a case by case basis, having regard to the policy objective of the tax measure which gives rise to the non-assessable part.</p> <p>The Government has also decided to defer consideration of the treatment of tax deferred distributions:</p> <ul style="list-style-type: none"> • attributable to temporary tax differences (in relation to revenue account unit holders); and • in respect of debt-like interests (see also Recommendation 22), <p>in order to further examine the benefits of these parts of the recommendations, relative to their cost to revenue.</p>
<p>Recommendation 26</p> <p>The Board recommends that the cost base/reduced cost base of a beneficiary’s units in a Regime MIT be adjusted in the following circumstances:</p> <ul style="list-style-type: none"> • where taxable income is attributed to a beneficiary, then the cost base of the beneficiary’s units should be increased by the amount attributed (adjusted upwards for certain CGT amounts that are currently disregarded under CGT event E4 such as the discount component of a capital gain, and downwards to reflect the value of certain tax offsets such as the gross-up component of a franking credit); and • where distributions are received, the cost base will be reduced by the amount of the distribution. 	<p>The Government agrees to this recommendation in principle, in so far as it relates to addressing the potential double taxation that may arise in certain circumstances, including for revenue account holders. The details will be developed in the context of implementation of the detailed design of a new MIT regime.</p>
<p>Recommendation 27</p> <p>The Board recommends that Regime MITs be required to supply beneficiaries with annual statements outlining:</p> <ul style="list-style-type: none"> • the amount of taxable income attributed to beneficiaries; • the required adjustments for certain amounts currently excluded under CGT event E4 and the value of certain tax offsets; and • distributions made during the income year; 	<p>The Government agrees to this recommendation. The new MIT regime will include appropriate tax reporting requirements.</p>

<p>for the purpose of the beneficiaries completing their current year income tax returns and determining the amount of their cost base adjustments on an annual basis.</p>	
<p>Recommendation 28</p> <p>The Board recommends that Regime MIT Product Disclosure Statements or other disclosure documents should be required to alert beneficiaries to the requirements to make yearly cost base adjustments and to maintain records of the adjustments.</p>	<p>The Government supports this recommendation in principle and will consult with the managed funds industry further on the extent of disclosure that is appropriate.</p>
<p>Recommendation 29</p> <p>To the extent that their gains and losses are not brought to account under Division 230 of the ITAA 1997, the Board recommends that revenue account holders, be required, as a general principle, to use the adjusted cost of the units in determining any revenue gain or loss on disposal of their units in Regime MITs.</p>	<p>The Government notes that this recommendation relates to recommendations 25 and 26. The Government will therefore further examine the benefits of this recommendation, relative to its cost to revenue.</p>
<p><u>CHAPTER 8: OPTIONS FOR DEALING WITH UNDERS AND OVERS</u></p>	
<p>Recommendation 30</p> <p>The Board recommends that:</p> <ul style="list-style-type: none"> • all ‘unders’ and ‘overs’, however arising, below a de minimis level of either 5 per cent of the net income of the Regime MIT for a year or a prescribed dollar value per unit be carried forward into the next income year following identification of the under or over. • For ‘unders’ and ‘overs’ below the de minimis no amount of interest or penalty would be payable by the trustee or the Commissioner. 	<p>The Government agrees to this recommendation.</p>
<p>Recommendation 31</p> <p>The Board recommends that for the purposes of applying the carry forward, the trustee may need to determine a separate under/over figure for:</p> <ul style="list-style-type: none"> • discounted capital gains; • other capital gains; • Australian source income; • foreign source income; • franking credits; and • foreign tax offsets. <p>To the extent that it would not prejudice beneficiaries of a particular class of units, the under/overs may be</p>	<p>The Government agrees to this recommendation.</p>

<p>netted off against each other to determine if the de minimis is satisfied.</p>	
<p>Recommendation 32</p> <p>The Board recommends that where an ‘under’ exceeds the set de minimis, the trustee may reissue distribution statements to beneficiaries and undertake a revised attribution of taxable income. If the trustee does not reissue distribution statements to beneficiaries or re-attribute within a certain timeframe, then the trustee will be assessed on the amount of tax shortfall at the top marginal tax rate.</p> <p>In accordance with the current section 99A, when the trustee distributes an amount of income which has been assessed to it at the top marginal rate, this amount will be non-assessable, non-exempt income of the beneficiary.</p>	<p>The Government agrees to this recommendation.</p>
<p>Recommendation 33</p> <p>It is recommended that where an ‘over’ exceeds the de minimis, then the Regime MIT trustee must reissue distribution and/or attribution statements to beneficiaries.</p>	<p>The Government agrees to this recommendation.</p>
<p>Recommendation 34</p> <p>The Board recommends that Product Disclosure Statements and other disclosure documents be required to indicate to beneficiaries the potential for Regime MITs to carry forward tax errors, reissue distribution statements or, in the case of ‘unders’ above the de minimis, be taxed at the trustee level.</p>	<p>The Government supports this recommendation in principle and will consult with the managed funds industry further on the extent of disclosure that is appropriate.</p>
<p><u>CHAPTER 9: INTERNATIONAL CONSIDERATIONS</u></p>	
<p>Recommendation 35</p> <p>The Board recommends:</p> <ul style="list-style-type: none"> • active participation by Treasury, the ATO and the Australian private sector in the current work being undertaken by the OECD on the granting of treaty benefits with respect to Collective Investment Vehicles (CIVs); • development by Treasury, in consultation with the ATO and the private sector, of draft treaty provisions, broadly based on proposals emerging from the OECD CIV work, that would specifically provide for the granting of treaty benefits to MITs that meet certain criteria 	<p>The Government agrees to this recommendation.</p>

<p>designed to address treaty shopping concerns; and</p> <ul style="list-style-type: none"> with respect to existing treaties, exploring by the ATO through the mutual agreement procedure of the extent to which treaty partners may provide treaty benefits at the MIT level. 	
<p>Recommendation 36</p> <p>The Board recommends:</p> <ul style="list-style-type: none"> active participation by Treasury, the ATO and the Australian private sector in the OECD CIV work with a view to developing draft treaty provisions and procedures to ensure that credits for foreign tax paid at source are flowed through to investors; for Australian resident investors in Australian MITs that derive foreign income under an attribution model, ensure that the foreign tax paid at source on their share of that income be subject to foreign income tax offsets in the hands of such investors; and for Australian residents with investments in foreign CIVs, ensure that to the extent that a foreign income tax offset is available under domestic law, it is available regardless of the form of the foreign CIV (provided it is economically equivalent to a flow-through vehicle), and draft treaty provisions be developed to provide the same outcome on a symmetrical basis. 	<p>The Government agrees to this recommendation but acknowledges the complexities of developing a treaty mechanism to ensure that credits for foreign tax paid at source are flowed through to investors.</p>
<p>Recommendation 37</p> <p>The Board recommends active participation by Treasury, the ATO and the Australian private sector in the OECD CIV work with a view to determining the viability of treaty provisions to provide more favourable treaty benefits where investors would be entitled to such benefits if they had invested directly.</p>	<p>The Government agrees to this recommendation.</p>
<p>Recommendation 38</p> <p>The Board recommends that:</p> <ul style="list-style-type: none"> the Australian preferred treaty position be to exclude source taxation of gains from disposal of portfolio interests in land-rich entities in future treaties; the Australian preferred treaty position be that the treaty treatment of portfolio gains on disposal be applicable where a widely held Australian MIT has a non-portfolio interest in a 	<p>The Government agrees in principle to this recommendation but notes that further consideration is required to address integrity issues.</p>

<p>land rich foreign CIV; and</p> <ul style="list-style-type: none"> subject to Recommendation 37, the Australian preferred treaty position be that the investors in CIVs be able to obtain treaty benefits with respect to distributions/attributions of income from CIVs. 	
<p>Recommendation 39</p> <p>The Board recommends:</p> <ul style="list-style-type: none"> active participation by Treasury, the ATO and the Australian private sector in the current work being undertaken by the OECD on the granting of treaty benefits with respect to CIVs; and depending on progress on international agreement on the above objective, development by Treasury, in consultation with the ATO and the private sector, of draft treaty provisions to limit the scope for foreign income tax to be imposed where there are interposed intermediaries between the ultimate investor and the investment. 	<p>The Government notes this recommendation. The Government will give further consideration to the recommendation in light of any international developments on this issue.</p>
<p>Recommendation 40</p> <p>The Board does not recommend a corporate flow-through CIV regime at this stage, but that Australia ensures in future treaties that treaty language is flexible enough to accommodate both an MIT regime and a potential corporate flow-through CIV regime (and so provide for platform neutrality).</p>	<p>The Government notes the Board's recommendation. The Government will give further consideration of the benefits of a corporate CIV regime in the context of consideration of the report by the Australian Financial Centre Forum – <i>Australia as a Financial Centre; Building on our strategies</i>.</p>
<p>Recommendation 41</p> <p>The Board recommends that an integrity provision be introduced to ensure that non-resident investors do not benefit from the deferral of taxation liabilities where a Regime MIT accumulates rather than distributes income.</p>	<p>The Government agrees to this recommendation.</p>
<p><u>CHAPTER 10: DIVISION 6B OF THE <i>INCOME TAX ASSESSMENT ACT 1936</i></u></p>	
<p>Recommendation 42</p> <p>Division 6B should be abolished, provided an arms length rule is introduced as part of the EIB rules proposed under the new MIT regime.</p>	<p>The Government agrees to this recommendation.</p>

CHAPTER 11: OTHER ISSUES

Recommendation 43

The Board recommends that a trust which qualifies as a Regime MIT will be deemed to be a fixed trust for all other provisions of the taxation law.

The Government agrees to this recommendation in principle in respect of MITs that have clearly defined entitlements. The design details, including appropriate integrity rules, will be developed in the context of developing the new MIT regime.

Recommendation 44

It is recommended that a roll-over provision be introduced which provides that if the amendment of a MIT's constituent documents, in order to qualify as a Regime MIT results in a resettlement, no adverse taxation consequences will arise.

The Government will give this recommendation further consideration as part of the consultation on the implementation and design details of a MIT regime.

CHAPTER 12: OTHER WIDELY HELD TRUSTS

Recommendation 45

The Board recommends that other 'widely held' MITs and public unit trusts which are 'engaged in primarily passive investments' but do not satisfy the 'clearly defined rights' requirement should be able to benefit, as applicable, from the recommendations the Board has made on:

- the treatment of 'debt like' units (Chapter 5);
- character retention and flow-through (Chapter 6);
- addressing double taxation (Chapter 7); and
- international considerations (Chapter 9).

This recommendation relates to a number of other recommendations, some of which the Government will be considering further in due course. The Government will therefore give further consideration to this recommendation in the context of examining the other recommendations.

Recommendation 46

The Board recommends that the following recommendations should apply to other 'widely held' MITs which are 'engaged in primarily passive investments' but do not satisfy the 'clearly defined rights' requirement, namely:

- the treatment of gains and losses on disposal of investment assets by eligible MITs (Chapter 4); and
- options for dealing with 'unders' and 'overs' (Chapter 8).

The Government agrees to this recommendation and notes that it has already considered the first part of the recommendation in the context of implementation of the MIT deemed capital account measure.

<p>Recommendation 47</p> <p>The Board recommends that a general review of the fixed trust rules be undertaken with the aim of increasing certainty and reducing compliance costs for other unit trusts.</p>	<p>The Government agrees to this recommendation.</p>
<p><u>CHAPTER 13: IMPLICATIONS FOR OTHER TRUSTS</u></p>	
<p>Recommendation 48</p> <p>The Board recommends that:</p> <ul style="list-style-type: none"> • the existing Division 6 rules be the subject of a wider review to consider if some of the other Options for determining tax liabilities, such as the distribution model or the patch model, might usefully be applied to types of trusts that are not MITs; and • IDPS and similar bare trust type arrangements should be excluded from taxation under Division 6 generally. 	<p>The Government has decided to defer consideration of this recommendation.</p>