

Consultation Paper

Collective investment vehicle non-resident withholding taxes

1. Introduction

Perpetual Corporate Trust (PCT) welcomes the Federal Government's initiatives to further promote the development of an internationally competitive Australian funds management industry and thanks the Treasury for the opportunity to respond to the proposals outlined in the Consultation Paper.

Our submission represents the views of PCT only and addresses the issues inherent in Questions 9 through 11 of the Consultation Paper.

2. Context for our Submission

As a provider of independent Responsible Entity and Trustee Services to investment managers and institutional investors, our service offerings to clients (be they onshore investment managers or offshore institutional investors) are derived demand services and as such, we do not believe we can quantify at this stage the extent to which incremental demand for Australian managed fund services will be generated as a result of the proposed initiatives. Our aim in providing this submission is to highlight the key outcomes that we believe the Collective Investment Vehicle (CIV) framework and withholding tax (WHT) rules should aim to deliver, based on insights garnered through our experience and feedback received from our client base.

Moreover, we believe that clarity is required as to the purpose of introducing an Australian Corporate CIV, as there is significant focus on the role of the reforms as a key pillar supporting Australia's ability to maximise fund management exports through the ARFP. As noted in Minister O'Dwyer's Media Release, introduction of the new forms of CIVs will support participation in the ARFP; yet the regulatory framework, to be put into place must acknowledge that CIVs serve a purpose beyond facilitating the ARFP. In this context, we believe that the reforms should be targeted more broadly and that a Corporate CIV structure may be adopted by foreign wholesale institutional investors as an alternative to managed investment trusts.

3. Key Principles

From an outcomes perspective, we believe that the likelihood of generating incremental business for the Australian Funds Management industry will be maximised if the framework once implemented reflects the following key principles:

i. Neutrality across legal structures

We believe WHT should be consistent irrespective of whether a CIV is established as a company, trust or limited partnership – to differentiate based on structure reflects form over substance reform; effectively, if one structural type is afforded more favourable rates of WHT, this will translate in practice towards those tax preferred structures being adopted in preference to alternative forms and encouraging the transition of existing trust based structures to the tax preferred legal structure.

ii. Jurisdictional Neutrality

We support a framework that provides uniform and internationally competitive rates of WHT to foreign investors from all jurisdictions¹.

Whilst we can understand the desire for preferential treatment for jurisdictions that are part of the Asian Region Funds Passport (ARFP), we believe that this is appropriate only if the intention underlying the establishment of the CIV framework (including WHT provisions) is solely targeted at supporting Australia's participation in the ARFP. As already noted above, we believe the policy intent underlying the introduction of Corporate CIVs goes beyond the ARFP.

If the policy intention is broader than promoting the success of the ARFP, we believe that a 'most favoured region' rate of WHT for ARFP members may undermine the broader objective of promoting Australia as a regional financial services centre. For institutional investors looking to invest in Australia through CIV type structures, providing more favourable tax treatment to investors based in ARFP jurisdictions will encourage the establishment of intermediate structures in ARFP markets to access the concessional rates of WHT that would then become available. In doing so, we inadvertently encourage investors in jurisdictions that are non ARFP members to set up branch offices and entities in ARFP jurisdictions other than Australia, which undermines the broader policy intention of promoting Australia as a regional financial services hub.

iii. Neutrality across Asset Classes

We believe that WHT rates should be uniform across all asset classes, to avoid introducing further complexity; moreover, we question the merits of exclusion of real property assets from the scope of the proposed changes.

It is well acknowledged (and confirmed through the anecdotal feedback we receive from our institutional investors) that Australia's WHT regime as it applies to managed investment trusts is complicated. We believe that differentiation of WHT rates across asset classes that may be held in CIVs will add to this complexity.

We believe that a uniform and competitive rate of withholding tax should apply for foreign beneficiaries in all genuine collective investment vehicles, irrespective of the underlying asset class held in the vehicle, as to do otherwise is to impose additional compliance costs and complexity. Specifically, we question the policy position that carves out real property investments from the scope of WHT changes proposed. This will mean that foreign institutional investors will continue to prefer managed investment trust structures so that they can access the MIT WHT concessions², creating differentiation based on form over substance.

In removing real property assets from the scope of these proposals, there are some interesting questions to be considered as to the extent of look through that will be applied in ruling an investment in or out of scope for these changes. For example, to what extent will an indirect exposure to real property through a fund of fund type investment be considered 'in scope' or 'out of scope' for the preferred rate of WHT? If in scope, this creates a relatively straightforward way of ensuring that the investment is considered not a real property investment as all that is required is the imposition of an intermediate on shore structure to hold units in a property fund, which in

¹ With the qualification that there be an effective exchange of tax information arrangement between that jurisdiction and Australia

² Provided that they are resident in an effective exchange of tax information jurisdiction and that substantial investment management occurs in Australia

turn will then hold units interests (directly or indirectly) in real property. If out of scope, this potentially creates additional administration and compliance costs in fund of fund type structures where some of the underlying interests may (directly or indirectly) be real property.

Taking the UK as an example, not all OEICs are UCITs; and OEICs may be 'Property Authorised Investment Funds' (PAIFs). Instead of carving out real property as an asset class, the UK has instead created a regulatory framework designed to facilitate property based CIVs.

4. Conclusion

Based on the proposals that have been tabled in the Consultation Paper, PCT favours a modified version of Option 5C – one that includes **investments held across all asset classes in a genuine collective investment vehicle, irrespective of legal structure, irrespective of jurisdiction and irrespective of underlying asset class.**

Whilst we can appreciate the Government's desire to have an operational framework for Corporate Collective Investment Vehicles in place by 1 July 2017, we urge the Government not to rush the framework's development, recognising that there are complex policy matters and the perspectives of different stakeholder groups to be addressed. We believe that it is imperative that the optimal regulatory setting be established for *all* CIVs from the outset, to avoid uncertainty, arbitrage between legal structures and increased complexity and compliance costs.