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General Manager
Indirect Tax Division
The Treasury
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PARKES ACT 2600

24 February 2012

Attention: Mr Rob Dalla-Costa

Dear Sir

A New Tax System (Goods and Services Tax) Amendment Regulations 2012 - Exposure Draft

Ernst & Young welcomes the opportunity to make this submission to Treasury in response to the release of the Exposure Draft of the *A New Tax System (Goods and Services Tax) Amendments Regulations 2012* (hereafter referred to as "the Exposure Draft") on 13 January 2012. In preparing this submission we have canvassed the views of a significant number of our clients within the superannuation and wealth management industry.

Our submission is restricted specifically to the proposed inclusion of Item 32 in subregulation 70-5.02(2) of the *A New Tax System (Goods and Services Tax) Regulations 1999* ("GST Regulations"), affecting reduced input tax credit ("RITC") entitlements for the acquisition of trustee and responsible entity ("RE") services. These are specifically covered in Items 7, 8 and 9 of Schedule 1 to the Exposure Draft.

In our view, the proposed reform of RITC entitlements for the acquisition of trustee and RE services as contemplated in the Exposure Draft represents the most significant GST change to affect the superannuation and wealth management sectors since the introduction of GST. This is due to the breadth of its application, potential flow-on impact upon existing commercial agreements, pricing structures, product disclosure requirements, administrative processes and operating systems for both trustees/REs and funds.

This submission therefore seeks to address those issues which we consider to be significant policy matters requiring clarification and address a number of other matters where the provisions in the Exposure Draft and their intended operation remain uncertain. We have also included other suggested refinements where we consider the operation of the provisions could be enhanced to better serve the policy objectives that have been expressed in the Explanatory Memorandum ("EM") to the Exposure Draft.

In summary our recommendations are outlined below:

- **Recommendation 1:** As the proposed Item 32 will apply more broadly than merely "protecting the GST base", it should be reconsidered from a policy perspective and better targeted to address the bundling issue given the expected impact the change could have on many trustees/REs that have not restructured their affairs since the introduction of GST and therefore have not bundled additional expenditure within their fee structures.

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- **Recommendation 2:** We recommend that the requirement for the trustee/RE to be separately registered for GST be deleted.

- **Recommendation 3:** The language used in Item 32 to be amended to make it clear that it applies to both Trustees and Responsible Entity arrangements.

- **Recommendation 4:** That the Exposure Draft and EM be amended to make it clear that from a policy perspective apportionment of Trustee/RE fees can be undertaken purely by way of an accounting exercise without the need for changes to other contractual documentation, invoicing arrangements, etc.

- **Recommendation 5:** That the Exposure Draft be amended to make it clear as to whether the proposed changes are intended to apply to entities such as securitisation trusts.

- **Recommendation 6:** That paragraph (b) of Item 32 and subregulation 70-5.02(4) are re-drafted to expressly state that the 55% RITC rate only applies to the extent an acquisition is covered by Item 32.

- **Recommendation 7:** That the EM to the Exposure Draft includes further specific examples of acceptable approaches that can be adopted to apportion trustee and RE fees.

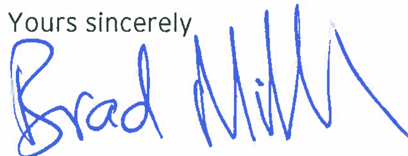
- **Recommendation 8:** That paragraph (b) of Item 32 of the Exposure Draft is re-drafted to preserve the existing 75% RITC entitlement for all services that currently qualify as RCAs to ensure the measures are specifically targeted at the issue of bundling trustee / RE services do not unnecessarily apply more broadly.

- **Recommendation 9:** That the proposed commencement date be deferred by 12 months to allow adequate time for taxpayers to assess the impact of the change and make necessary changes to the systems, published documentation, etc to comply with the new GST Regulations.

Our detailed comments and recommendations are included in Appendix 1 below. Once you have had an opportunity to consider the detailed comments attached and appreciate the significance of this proposed change to the industry, we believe you will appreciate the need to defer the commencement of these changes for 12 months.

Should you have any questions or would like to discuss our submission further please do not hesitate contact me directly on (03) 9655 2718.

Yours sincerely



Brad Miller
Partner - Indirect Tax

Att.

Appendix 1

Detailed comments

1. Policy issues

1.1. Intended policy objective

1.1.1. The Government's primary policy rationale underlying the proposed change is "*...protecting the GST base by reducing opportunities for businesses to inappropriately take advantage of the reduced input tax credit concessions by bundling services*"[1]. Although we note that in the EM to the Exposure Draft it states the purpose of the change is to "*...limit access to a RITC for bundled trustee and responsible entity services (trustee services)*"[2]. We understand this policy approach is to eliminate the perceived GST advantages obtained from 'bundling' a range of acquisitions within a single 'trustee fee' that may not have carried a RITC entitlement if they were acquired separately and directly by the trust, and to ensure neutrality in the RITC provisions[3].

1.1.2. We are of the view that the proposed changes (in their current form) go significantly further than what was intended to redress any advantage obtained by a minority of funds from 'bundled' or single trustee / RE fee arrangements. In our opinion this is acknowledged in the language in the EM, which has clearly not included the phrase "*protecting the GST base*", which was included in earlier announcements. It is our opinion that the proposed measures will go far beyond what was intended as part of the May 2010 announcements, as it will impact the overwhelming majority of investment funds with a RE or Trustee, and the majority of superannuation funds, many of which have not, in our experience, changed the way they have operated since prior to the original introduction of GST.

1.1.3. To provide further context to the above point, many in the wealth management industry determined the impact of GST upon their business at the time the GST was introduced (both the RE/Trustee and the funds for which they were responsible), and since then it has largely been a "set and forget" approach with regard to GST. In other words, they have not changed the nature of their activities to secure any additional GST benefits for those funds to which they are responsible. They have merely benefited from the 75% RITC regime that was originally established by the Government at the time to negate some of the GST costs to be incurred by the funds.

1.1.4. We consider the proposed Item 32 is a very blunt instrument in this regard as its application will be significantly greater than what is required to protect the GST base, and in fact is likely to significantly increase revenue over time, to the detriment to all investors and superannuation members.

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[1] See Budget Measures, Budget Paper No.2, 2010-11, 11 May 2010, page 26; and Media Release No.095, Assistant Treasurer Senator Nick Sherry, "Further Reduction in GST Compliance Costs for Business".

[2] Interestingly the effect of the Exposure Draft is to carve out a new RITC regime for such services and therefore technically there is still access to the RITC, just not the existing 75% RITC.

[3] See page 6 of the EM to the Exposure Draft.

1.2. Potential impact of proposed change

1.2.1. Whilst it is acknowledged that the current structure of Item 32 provides some up-side for certain funds (i.e. potentially being entitled to recover RITCs at 55% for other acquisitions that previously carried no entitlement), the majority of our clients expect to be adversely affected by the change. We consider this outcome to be especially relevant to RE services in particular as there appears to be a lack of recognition from a policy perspective that trustee services can differ from RE services. This is principally due to the commercial differences in the functions they perform for funds and where the incidence of 'bundling' has been far less prevalent in our experience.

1.2.2. Owing to the diverse range of fund and trustee/RE structures and fee arrangements that exist in the market, the direct financial impact of the proposed change (where it is expected to increase the overall irrecoverable GST expense for a fund) has generated significant uncertainty as to where the commercial risk associated with any increase in operating costs will fall. These considerations commence with determining whether the commercial risk through the increased GST cost is effectively borne by trustees/REs, or the funds themselves. This involves both referring to the Trust Deeds, as well as commercial considerations from the Trustee/RE's perspective. The next step involves consideration of the cascading pricing factors to determine the ultimate impact on fee structures (for example with retail funds that feed into wholesale funds and layered fund structures).

1.2.3. Further, we also understand that the proposed reduction in the RITC rate from 75% to 55% on the acquisition of trustee/RE services has the potential to affect strategic decisions relating to whether a fund should 'in-source' certain services currently being provided by third party trustees/REs. Ironically one of the key reasons the RITC regime was introduced was to remove the bias of "in-sourcing", which a number of our clients are now seriously considering as a direct result of these proposed changes.

1.2.4. Ultimately however, our clients expect that any sustained / ongoing increase in overall GST expense incurred by funds (without factoring in the immediate cost of implementing the change) will, in the main, be passed on to consumers through increased fees and reduced effective rates of return on funds under management. These consumers are ultimately individuals investing in funds (either directly or indirectly) and superannuation members. Given the crucial role played by taxpayers within this sector in building / preserving long term and retirement income, the majority of which have been operating consistently with the policy objective behind the RITC regime when it was originally introduced, we would question whether these practical outcomes were expressly contemplated by the Government and if it is aligned with the policy intention underlying the changes of *"protecting the GST base"*.

Recommendation 1: As the proposed Item 32 will apply more broadly than merely "protecting the GST base", it should be reconsidered from a policy perspective and better targeted to address the bundling issue given the expected impact the change could have on many trustees/REs that have not restructured their affairs since the introduction of GST and therefore have not bundled additional expenditure within their fee structures.

1.3. Scope of Item 32

1.3.1. In addition to clarifying the application from a policy perspective that the new Item is to apply to RE arrangements (see point below), we are unable to understand (from a policy perspective) why paragraph (a) of the proposed Item 32 is required at all. We understand that from a policy perspective part of the change around the introduction of Item 32 is to ensure neutrality in the operation of the RITC provisions and neutrality in taxation outcomes between different taxpayers engaged in the same commercial activity. In other words to have the same GST outcome where expenses are acquired through a trustee/RE as compared to where those expenses are acquired directly by the fund.

1.3.2. We submit that this policy objective is not achieved in all circumstances given the proposed restriction in the scope of the operation of Item 32 to trustees that are registered in their own capacity and are making taxable supplies to the recognised trust scheme. Whilst it is acknowledged that the issue of a fund's GST recovery on bundled trustee fees would only arise in circumstances where trustees/REs were making taxable supplies to funds, we note that the availability of the 55% RITC rate on other acquisitions made by a fund that are not currently eligible for RITCs (e.g. tax, legal etc) would not be available to a fund that had a trustee/RE that was not separately registered for GST. To the extent that the policy intention is to ensure neutrality in the operation of the RITC provisions and neutrality in taxation outcomes between different taxpayers engaged in the same commercial activity, we submit that this distinction is unnecessary and potentially distortive (acknowledging that unregistered trustees could voluntarily register for GST but would have additional reporting obligations).

Recommendation 2: We recommend that the requirement for the trustee/RE to be separately registered for GST be deleted.

1.3.3. In the instance our Recommendation 2 is not accepted, then this point on application of the proposed Item 32 is of relevance.

1.3.4. We note that the EM to the Exposure Draft implies that Item 32 will apply to RE services (by referring to both trustee and RE services as trustee services). However, the drafting of the Exposure Draft is restricted to trustees without any specific reference to REs.

1.3.5. In addition, while the proposed definition of "recognised trust scheme" includes entities that can only have a RE, as opposed to a trustee, we consider it should be made clear through the amendment to paragraph (a) of the proposed Item 32. In this regard paragraph (a) could read as follows:

> (a) the entity that acts in the capacity as trustee *or responsible entity* of the recognised trust scheme is carrying on, in its own capacity, an enterprise that includes making taxable supplies to the recognised trust scheme; and

Recommendation 3: The language used in Item 32 to be amended to make it clear that it applies to both Trustees and Responsible Entity arrangements.

1.3.6. Whilst we understand from our discussions with Treasury that the operation of Item 32 contemplates apportionment of trustee/RE fees between those components that attract the 75% RITC rate and the remaining component that would attract the 55% rate, we consider that the current language within both the Exposure Draft and the EM does not make this policy intention explicit and the uncertainty around this issue is compounded by the current drafting of Item 32. From a policy perspective it needs to be made clear what is required as a result of these proposed changes; do Trustees/REs need to revisit contractual arrangements, invoicing protocols, etc with the various funds, or is it simply an accounting exercise of apportionment required to comply with the new Item? Through our discussions with Treasury, we understand the latter (and our submission proceeds on this basis with further recommendations to achieve this), however we consider this needs to be made clear from a policy perspective.

Recommendation 4: That the Exposure Draft and EM be amended to make it clear that from a policy perspective apportionment of Trustee/RE fees can be undertaken purely by way of an accounting exercise without the need for changes to other contractual documentation, invoicing arrangements, etc.

1.3.7. The current definition of "recognised trust scheme" in the Exposure Draft includes a "managed investment scheme" ("MIS"), as defined in section 9 of the *Corporations Act 2001*. One of the difficulties associated with the reference to this definition is the types of entities which are caught as part of this definition. For example, a mortgage fund which has external investors should most likely be caught as a MIS, although a securitisation trust housing mortgages (for example) may not be caught. In fact, it is likely that some securitisation trusts may be required to be registered as a MIS, while others may not, depending upon how they are structured and established. As a result the reference to this definition can be unclear and result in different outcomes from the proposed Item 32 perspective, notwithstanding these entities may be engaged in the same business.

Recommendation 5: That the Exposure Draft be amended to make it clear as to whether the proposed changes are intended to apply to entities such as securitisation trusts.

2. Specific recommendations on current drafting of Item 32

Without prejudice to our comments above, to the extent that these proposed changes and/or the scope of Item 32 does not significantly change in its final form, we consider that the current drafting of Item 32 should be amended to provide greater certainty and reduce the administrative/compliance burden imposed on taxpayers by the introduction of the new Regulations.

2.1. Apportionment issues

2.1.1. As outlined above, we consider that the current drafting of Item 32 does not reflect our understanding of Treasury's intention with respect to allowing a fund to apportion trustee / RE fees. It is clear that the phrase "to the extent" needs to be incorporated within the proposed provisions.

2.1.2. In our view this issue should be addressed by the redrafting of paragraph (b) of Item 32 and subregulation 70-5.02(4) along the lines outlined below:

1. Inclusion of the words *"to the extent that"* to the start of paragraph (b) of Item 32 in subregulation 70-5.02(2) along the following lines:

> "32. Services acquired by a recognised trust scheme, to the extent the services are performed on or after 1 July 2012 and where:
> (a) the entity that acts in the capacity as trustee *or responsible entity* of the recognised trust scheme is carrying on, in its own capacity, an enterprise that includes making taxable supplies to the recognised trust scheme; and[4]
> (b) *to the extent that* the services acquired are not:
> (i) brokerage services..."

AND

2. Re-drafting subregulation 70-5.02(4) such that Item 32 would only apply to trustee / RE services along the following lines:
(4) "*To the extent that* an acquisition is of the kind ~~mentioned in~~ *covered by* item 32 of the table in subregulation (2) and the acquisition is covered by another item of the table in subregulation (2), the acquisition is taken to be specified as a reduced credit acquisition only *to the extent it is covered by* item 32 of the table."

Recommendation 6: That paragraph (b) of Item 32 and subregulation 70-5.02(4) are re-drafted to expressly state that the 55% RITC rate only applies to the extent an acquisition is covered by Item 32.

2.1.3. In addition to expressly providing for the apportionment of services covered by item 32, we recommend that the EM accompanying the final Regulations should also contain further examples of acceptable approaches that can be adopted to apportion trustee fees (and a separate example for RE fees) to provide some guidance on this aspect to both taxpayers and the ATO with respect to the interpretation of the new Regulations from a practical business perspective.

2.1.4. Any examples around approaches to apportionment in the EM may also take into consideration the practical difficulties for investment funds to attempt to break down the fees levied by a trustee or RE. In this regard the analysis is most likely to apply at the trustee/RE level and be undertaken at a global level. Although even at this level this could be difficult given the trustee/RE may outsource all, or part of the services it is required to provide to a fund for which it is the trustee/RE. In this regard a trustee/RE may undertake an analysis and apply it consistently across the portfolio funds of which it is responsible, rather than attempt to over engineer the process and consider the apportionment on a fund-by-fund basis. We suggest an example contemplating such an approach would also be appropriate to include within the EM.

[4] Although as per our Recommendation 2 we believe this paragraph should be deleted.

2.1.5. Furthermore, and in relation to RE fees, it appears that the difference between a RE and an entity that is only a trustee has not been adequately recognised in the examples currently provided. In a number of cases the RE fee is only for asset / portfolio management services (covered by Item 23). There are many fund structures under which the RE only receives an asset management fee and a performance fee (i.e. there are no overhead costs of the RE that are recovered from the fund). In our view, given the substance and character of the services being provided by an RE, it would be impractical for a RE to artificially 'apportion' the fee between 'asset management services' covered by Item 23 and 'RE services' and covered by Item 32 in these circumstances.

Recommendation 7: That the EM to the Exposure Draft includes further specific examples of acceptable approaches that can be adopted to apportion trustee and RE fees.

2.2. Scope of exceptions in paragraph (b) of Item 32

2.2.1. The EM to the Exposure Draft states that the services excluded from the operation of Item 32 contained in paragraph (b) of the Exposure Draft, is intended "*To ensure that Item 32 properly targets the bundling issue only...*"[5]. Considered in conjunction with the other statements in the EM that the policy intention of Item 32 to ensure neutrality in the RITC provisions, we consider that the exclusions in paragraph (b) of Item 32 should be amended to preserve the 75% RITC entitlement for all services that currently qualify as RCAs.

2.2.2. In this regard we note that there are a number of trusts / superannuation funds that acquire, as part of trustee / RE services, other components that may qualify under other items which are currently not included within the exclusions within paragraph (b) of the proposed Item 32.

2.2.3. In particular, we consider that services that qualify for 75% RITCs under items 11, 12, 13, 14, 15, 17and 27 should be included in the list of services exempted from the application of Item 32 as we see no policy basis for their current exclusion. This is illustrated by way of example such as a mortgage fund[6] which originates loans and incurs brokerage fees[7] through its trustee. Under the current drafting of Item 32(b), the fund that would no longer be eligible to recover RITCs at the 75% rate and would be restricted to the 55% RITC rate where it had a separately registered trustee making taxable supplies to the fund. As these types of services are not excluded, then item 32 will override the specific provisions, through the application of regulation 70.5.02(4).

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[5] See page 6 of the EM to the Exposure Draft

[6] For the purpose of this example it is assumed the mortgage fund qualifies as a managed investment scheme. It is likely that some mortgage funds and securitisation trusts will not qualify as a managed investment scheme, while others will, and thus these amendments are required to maintain the status quo in this regard.

[7] Which are currently covered by items 11 and 27.

2.2.4. Interestingly, if the same scenario applied to a mortgage fund without a separately registered trustee, it would lead to the fund being entitled to recover RITCs at the 75% rate for the same acquisition merely as a consequence of having a different structure / capacity in which the acquisition is acquired by the fund. Whilst this issue would apply equally to other types of securitised trusts, using mortgage funds as an example, we note that these funds incur significant lending and debt recovery costs. These costs are incurred directly and are not relevant to the bundling issue and there should be no policy basis in our view for these services to be included in the scope of Item 32.

2.2.5. Similarly Item 33 of the Exposure Draft introduces a new category of services which qualify for 75% RITCs, which under the current drafting of Item 32(b), would only carry an entitlement to RITCs at the 55% rate if these services were acquired by funds that have separately registered trustees. We see no policy basis for this outcome and note that the current exclusion of Item 33 is notable given that the new paragraph (i) in Item 24 is currently included in paragraph (b)(iii) of Item 32.

2.2.6. In our view, consideration should be given to redrafting paragraph (b) of Item 32 to ensure that all existing RITC entitlements that currently exist, apart from those trustee / RE services covered by Item 24 and item 31, are preserved along the following lines:

> "32. Services acquired by a recognised trust scheme, to the extent the services are performed on or after 1 July 2012 and where:
>
> (a) the entity that acts in the capacity as trustee *or responsible entity* of the recognised trust scheme is carrying on, in its own capacity, an enterprise that includes making taxable supplies to the recognised trust scheme; and[8]
>
> (b) *to the extent that* the services acquired are not *covered by another item of the table in subregulation (2), other than:*
>
> *(i) a service of the kind mentioned in paragraph (c) or (d) of item 23; or*
>
> *(ii) a service of the kind mentioned in paragraph (h) of item 24, where that service relates to compliance with industry regulatory requirements that apply when:*
>
> *(A) acting as a trustee of a trust or superannuation fund; or*
>
> *(B) acting as a single responsible entity; or*
>
> *(iii) a service of the kind mentioned in Item 31*

2.2.7. The approach outlined above would in our view, better serve the stated policy purpose and not negate the current operation of a number of separate acquisitions, not related to trustee/RE services, for which a 75% RITC is available. The above is also preferable to ensuring neutrality in the RITC provisions as opposed to the current exception based approach to the drafting of this section, which would lead to unintended outcomes from a policy perspective.

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[8] Although as per our Recommendation 2 we believe this paragraph should be deleted.

Recommendation 8: That paragraph (b) of Item 32 of the Exposure Draft is re-drafted to preserve the existing 75% RITC entitlement for all services that currently qualify as RCAs to ensure the measures specifically targeted at the issue of bundling trustee / RE services does not unnecessarily apply more broadly.

3. Administrative burden associated with proposed changes

3.1. Implementation timeframe

3.1.1. From discussions with our clients, it is evident that the industry would need to commit significant time and resources to both assess the impact of the change and implement appropriate processes to comply with the new Regulations, placing already strained internal resources under increased pressure. The short implementation timeframe of a few months is a significant barrier in being able to comply with the changes from 1 July 2012. In this regard the Government has taken over 19 months to issue the Exposure Draft, and by the time the regulations are finalised, it is highly likely that the industry will have less than 3 months before those changes are implemented. This is a far from satisfactory timeframe within which our clients need to undertake a significant amount of work.

3.1.2. This is compounded by the fact that the wealth management industry is currently in the process of implementing significant changes as a result of the Future of Financial Advice (**FOFA**) reforms from 1 July 2012, which is the largest change to the industry since the Financial Services Reforms in 2004 (under which the government provided a two year transition period). In addition, the industry is in the process of changing their Public Disclosure Documents, which are required to move to the "8 page format" by no later than 22 June 2012.

3.1.3. The requirement for trustees/ REs and funds to change existing processes and systems to comply with the proposed GST Regulations should also be considered in the context of their obligations to comply with other regulatory obligations under the *Superannuation Industry (Supervision) Act 1993* ("SIS Act"), and the *Corporations Act 2001*. For example, under the SIS Act, a trustee of a superannuation fund has an obligation to act in the best interests of members. Where a trustee is unable to comply with these reforms from 1 July 2012, there is a risk that the superannuation trustee could be in breach of the SIS Act where it does not recover an appropriate amount of GST on taxable trustee services supplied to the superannuation fund.

3.1.4. While the Exposure Draft is likely to increase compliance costs as a result of trustees / REs and funds transitioning to the new requirements, this will be compounded given the tight timeframe within which the measures are proposed to be introduced. For example, it is likely that trustees/REs and the funds are unlikely to have the resources to dedicate to the project within the timeframe, relying more on external contractors/service providers. This will contribute to compliance costs, for which the parties will need to consider whether they pass-on to the funds, and therefore ultimately the investors.

3.2. Other considerations

3.2.1. **Assessing commercial risk and 'recognised trust scheme status'** - Funds and trustees / REs would typically need to engage their in-house legal/regulatory teams and/or engage external legal advisers to review trust deeds, fund investment and pricing policies and trustee/RE service and pricing arrangements in place to determine which entity (as between trustees/REs and the funds themselves) would bear the commercial risk associated with any increase in irrecoverable GST costs under their particular structures. Where there are multiple funds and layered fund structures, funds would also have to consider whether each of the particular trusts in the group structure are covered by the definition of a 'recognised trust scheme' and we note that there are some complexities with determining which trusts qualify as managed investment schemes under the definition of the term in section 9 of the *Corporations Act 2001*[9].

3.2.2. **Assessing / quantifying pricing impact** - under the proposed regulations, funds would have to quantify any change in overall GST recovery in absolute terms in order to make commercial decisions regarding the financial impact of the change in their particular circumstances. Assuming that apportionment of the trustee / RE fee is available, funds would also need determine their own apportionment rates based on their determination of the extent to which the trustee / RE fees relate to the acquisition of various services being provided by the trustee / RE. The determination and implementation of fair and reasonable apportionment methodologies involves significant work to be undertaken by funds, especially where for commercial reasons, the funds do not have access to trustee / RE cost structures or revenue breakdowns. This process would be required to be undertaken prior to a fund being able to fully assess the commercial / pricing impact of the changes and whether it results in a change to its management expense ratios ("MERs") which requires disclosure or amendment to public documentation. In this regard we wish to highlight that subsection 1017B(5) of the *Corporations Act 2001* requires that a notice is issued to each unitholder to notify a proposed change which may result in an increase in fees or charges and that this notice must be issued at least 30 days before the changes take effect.

3.2.3. In addition, we note that many retail funds that invest into wholesale funds face additional challenges in quantifying the impact of the change and determining whether any fee adjustments (and related disclosures) are required, until such time as the wholesale funds have disclosed their fee arrangements to the retail funds.

3.2.4. Finally, trustees/REs and funds would need to assess and make commercial decisions as to whether any net increase (or decrease) in costs is absorbed or effectively passed on to investors. These commercial decisions that need to be made by both funds and trustees can have significant impact on the competitive position of many funds in the current market where fee sensitivity and MERs are increasingly seen as drivers of investment decisions by consumers.

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[9] Also refer to Recommendation 5.

3.2.5. **Updating systems, public documentation and managing stakeholder communication** - funds would also need to review their product disclosure statements ("PDS") and other publicly available documentation to assess whether any amendment is required to be made to published MERs or if the publication makes any reference to GST, RITC rates or input tax credit recovery. To the extent that any change is required, each investor would need to be notified of the change and public documentation would need to be re-published to comply with other regulatory requirements, necessitating significant administrative effort.

3.2.6. As illustrated above, these changes will require funds and trustees/REs to undertake a significant amount of work internally (encompassing their administration, finance, reporting, legal, tax and commercial pricing teams) to adequately prepare for the introduction of the new Regulations. While some of the steps outlined above can be undertaken concurrently, a significant proportion of the work cannot be undertaken until the Regulations are released in their final form, making the proposed commencement date of 1 July 2012 very challenging to comply with for a large number of funds.

3.2.7. In addition, most IT systems utilised within the wealth management industry accommodate ITC/RITC claims at either 100%, 75% or 0%. To allow for a RITC rate of 55% will require a system build which requires months of lead time to complete.

3.2.8. We note that some of the alternatives considered such as merely using the 55% RITC rate as the default rate and making subsequent adjustments to GST recovery at a later date are not commercially feasible where they would cause replication of the processes outlined above and more importantly uncertainty in the fee structures offered by funds to their investors. Furthermore a fund needs to determine exactly what it is entitled to recover in terms of RITCs as it is only entitled to deduct, for income tax purposes, that component of GST it is not legally entitled to claim as an RITC. This must be determined as it impacts upon unit pricing, taxation, etc for the investor.

Recommendation 9 - That the proposed commencement date be deferred by 12 months to allow adequate time for taxpayers to assess the impact of the change and make necessary changes to systems, published documentation, etc to comply with the new GST Regulations.

3.2.9. In further support of the above recommendation we note that the ATO have indicated that they will not be providing interpretative guidance in relation to this issue until the regulations are finalised. This consideration, coupled with the length of time that it might take for the ATO to issue any public/private rulings on the issue, practically means that it will be very difficult for taxpayers to obtain certainty in relation to the interpretation of the new provisions prior to their implementation. In the event that our Recommendation 9 is not adopted, we would recommend that the ATO adopt a facilitative compliance approach for at least the first 12 months which would include waiving any GST liabilities, penalties and interest that may arise from 1 July 2012 where a taxpayer is making best efforts to comply with the law.