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Australia's property industry
Creating for Generations

24 September 2021

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Dear Lachlan

Corporate Collective Investment Vehicles - Regulatory and Tax Frameworks

The Property Council welcomes the opportunity to provide comments on the exposure draft legislation (the ED) implementing the tax and regulatory components of the Corporate Collective Investment Vehicle (CCIV) regime and related explanatory materials (the EM).

We welcome the Government's commitment to enhancing flexibility and choice for Australian fund managers through the introduction of a CCIV regime and aligning it with the robust and successful managed investment trust (MIT) tax framework. The MIT and attribution MIT (AMIT) regimes are a vital cornerstone of Australia's property sector, facilitating global and domestic capital investment into office buildings, industrial precincts, retail centres and other types of property assets across our cities and regions.

Our submission highlights the critical issues that must be resolved to ensure both the CCIV and AMIT regimes operates as intended and are viable and attractive for fund managers and investors. Given the complexity of creating a new regime and the four-week duration for this consultation, there may be further issues that have yet to be identified particularly in relation to how the CCIV interacts with other legal or regulatory frameworks at the federal, state and local government levels.

Australia's ability to continue to attract capital investment will be vital to our COVID-economic recovery, and all policy levers should be geared towards setting Australia up for success.

Welcome changes from prior drafts

We welcome and support the positive changes that have been made to the tax and regulatory frameworks from earlier consultations on the CCIV regime in 2018 and 2019, which will enhance the viability and attractiveness of the CCIV as an alternate vehicle for fund managers and investors.

The ED takes on board industry feedback from earlier consultations and importantly seeks to alleviate risks of double taxation for investors in circumstances that may be beyond the control of the CCIV sub-fund (i.e. failure of the widely held test). The CCIV regulatory framework has also been improved, with the removal of provisions mandating a depository for retail CCIVs, allowing cross-investments between sub-funds, and providing the possibility of listing for sub-funds.

We also welcome the commitment to maintaining the current AMIT unders and overs penalty regime – which were the result of a robust consultation between Treasury, ATO and industry – and not introducing adverse changes that would have penalised those AMITs that had irrevocably elected into these rules.

Key outstanding issues to address as part of the CCIV legislation

We recognise that the introduction of the CCIV regime is a significant development, particularly for regulatory purposes as CCIVs are a new entity for Corporations Act purposes, combining company law and managed investment scheme (MIS) concepts. From a tax perspective, the decision to align the CCIV tax treatment with the existing AMIT regime ensures the framework is easier to understand and implement.

There are two critical issues that must be addressed before the 1 July 2022 start date of the regime:

- Ensure CCIVs and AMITs have the same access to CGT rollovers for business reorganisations as companies, MITs and unit trusts; and
- Enable two or more sub-funds of a CCIV to jointly invest in real estate as tenants in common.

Each of these issues is examined further below, along with our recommended solutions.

Aside from the two important issues identified above, there are other important amendments or clarifications required to the CCIV regime.

Additional regulatory issues include:

- Allowing CCIVs to make capital distributions (including return of capital and buy-backs) and self-acquisitions without the restrictions that apply to companies.
- Aligning the treatment of wholesale CCIVs with wholesale unregistered MIS, in particular ensuring that corporate directors should not have to be a public company and there should not be restrictions on contracting out statutory duties and the Corporations Act meeting requirements.
- Aligning the treatment of retail CCIVs with retail registered MIS, including ensuring there are no restrictions on retail CCIVs being part of a listed stapled group, providing greater clarity on ASIC’s powers to modify constitutions, aligning governance rules for external directors and aligning compliance plan requirements and incorporation.
- Extending PDS exemptions normally applicable to MIS to CCIVs.
- Creating greater consistency between definition of ‘asset of a sub-fund’ and ‘scheme property of a registered scheme’.

Additional income tax issues include:

- Ensuring the Division 6 fallback operates appropriately and effectively where a CCIV fails the widely held test, in particular allowing the deemed present entitlement rules to be satisfied provided distributions are paid up to 3 months after year-end.
- Clarifying how debt-like investments/interests are treated and whether there are differences between the definition of 'member' and 'member interest' for debt-like interest.

Additional issues of interaction with other tax concepts include:

- Uncertainty regarding how the CCIV regime, including dividends and withholding taxes paid in Australia, will be treated in the home jurisdiction of foreign investors.
- Ensuring the GST regime operates appropriately for CCIV sub-funds, including clarity on whether CCIV sub-funds can form a GST group.
- Ensuring the state taxes regime operates appropriately for CCIV sub-funds, with appropriate recognition of each sub-fund as a separate entity and with the interaction with stamp duty, land tax and payroll tax regimes.

Further details on each of these matters are set out in the Appendix to this submission.

Access to CGT rollovers for CCIVs and AMITs

The core CCIV tax framework is intended to align the general tax treatment of CCIVs and their members with the existing tax treatment of AMITs and their members. This means our previously raised concerns about how the AMIT regime interacts with the CGT rollover provisions will continue to persist and extend to CCIVs, making both regimes less commercial attractive with no policy basis for this outcome.

The CGT rollover rules are designed to provide temporary relief to taxpayers in the event of various circumstances, such as business re-organisations or involuntary asset disposals. There are three CGT rollover provisions that are available for companies and trusts where CGT event E4 is capable of applying, being all unit trusts and MITs. These are the trust to company rollover provisions in Subdivision 124-N, the demerger provisions in Division 125 and the trust-to-trust rollover provisions in Subdivision 126-G.

The EM for the demerger provisions and the trust-to-trust rollover provisions are very clear that the policy intent for including the E4 requirement was to ensure discretionary trusts did not access the CGT rollovers.

By comparison, AMITs and CCIVs must have clearly defined rights and are then deemed to be fixed trusts. As such, these vehicles should have the same access to the CGT rollover provisions as companies, unit trusts and MITs. However, because AMITs and CCIVs are subject to CGT event E10, rather than CGT event E4, they are technically unable to access the CGT rollover provisions.

There is no policy rationale for denying AMITs and CCIVs access to the CGT rollovers, and this technical anomaly in the legislation has been a commercial impediment for some trusts to elect into the AMIT regime, and will equally become an impediment for the adoption of the CCIV regime.

This can be easily addressed by including in the CCIV legislative package consequential amendments to the CGT rollovers that currently have a pre-condition that CGT event E4 is capable of applying to all of the units and interests in a trust to also pick up CGT event E10. The amendments can include 'mirror trust' provisions to ensure the CGT rollovers do not inadvertently subvert the irrevocable nature of the AMIT election.

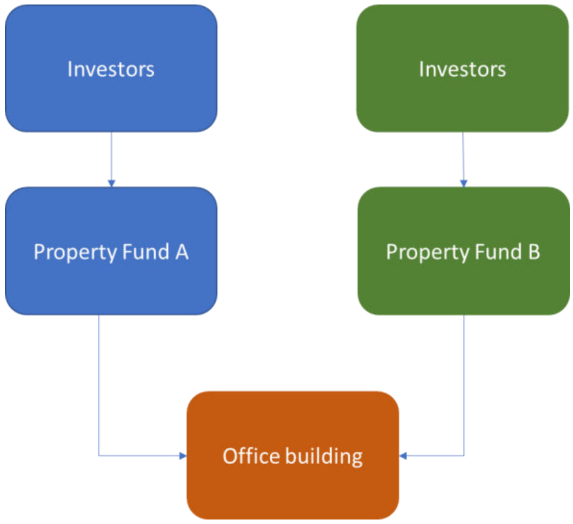
This is an oversight from the original AMIT bill and should be remedied as soon as possible to allow the broader tax regimes for both CCIVs and AMITs to operate as intended.

Ability to co-invest in real property as tenants in common

The Property Council previously raised concerns in the original CCIV consultation regarding restrictions on sub-funds from co-investing in a single asset, such as a commercial real estate asset.

Given the capital-intensive nature of commercial real estate, it is common for property funds to jointly own an asset as tenants in common. It can be preferable for these investments to be made directly by each fund, rather than through another interposed entity as this can give rise to different cost bases of the asset and the securities of the interposed entity.

A simple depiction of this asset ownership structure is as follows:



Under the current MIS rules, the one entity (ABC Co) could act as trustee for Property Fund A and as trustee for Property Fund B. ABC Co would be able to acquire 50% of the office building as trustee for Property Fund A, and 50% as trustee for Property Fund B.

While ABC Co is legally the owner of 100% of the office building, the separation of the asset between the two trusts is recognised and allowed under ASIC regulatory guide 133: see paragraphs 133.159 and RG 133.160 extracted below.

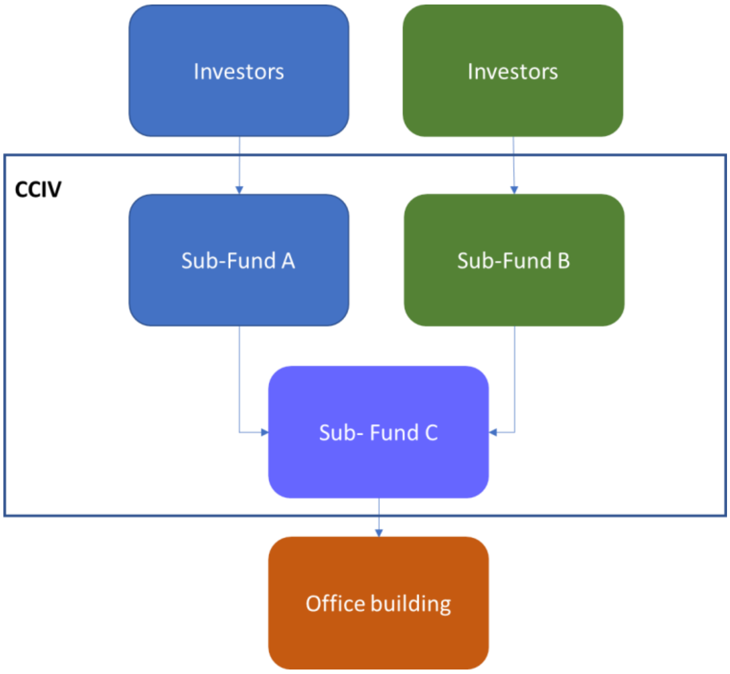
> ***RG 133.159*** *However, we consider that the obligation to hold assets separately arises only to the extent that this can be done. This may not be possible for real property (e.g. where disclosure of trusts in the land titles register may not be permitted) and certain other assets. In this case, we accept that real property can be registered in the name of the asset holder without breaching the requirements to hold the assets separately in:*
>
> *(a) s601FC(1)(i) for responsible entities of registered schemes;*
> *(b) [CO 13/1410] for licensed custody providers;*
> *(c) ASIC Corporations (Managed Discretionary Account Services) Instrument 2016/968 for MDA providers; or*
> *(d) [CO 13/763] for IDPS operators.*

RG 133.160 *In the case of a responsible entity, we consider the obligation to separate assets or scheme property extends to doing all that is practicable to achieve separation, given the nature of the property and its ownership. As such, we do not consider it necessary to give any relief from s601FC(1)(i) for assets that are real property. However, we expect compliance arrangements to particularly address the risks of this asset-holding arrangement.*

However, it is our understanding that under the ED, a CCIV with two sub-funds wishing to undertake a similar joint ownership interest in a real estate asset would not be able to do so due to section 1233S(3) of the draft regulatory framework bill:

The assets of 2 or more sub funds of a CCIV must not be applied jointly to acquire a single item of property of the CCIV.

Instead, the CCIV would need to rely on the cross-investment provisions and establish a third sub-fund to facilitate the investment (see illustration below).



This does not give rise to the same commercial outcomes available under the MIS framework and can create unintended tax consequences.

We understand and support the critical feature of the CCIV framework which is to ensure clear segregation of the assets and liabilities of each sub-fund to protect investors and creditors from cross-contamination in the event of insolvency.

We believe this core feature can be respected, while still allowing sub-funds under one CCIV to jointly acquire assets such as real property (whether through 'tenants in common' interests or otherwise), given the current recognition under the MIS framework.

To address this issue, we recommend that s. 1233S(3) is amended to adopt similar language to RG133 and mandate that assets of 2 or more sub funds of a CCIV must not be applied jointly to acquire a single item of property of the CCIV only when it is possible or practicable to do so. The relevant shares in such property would still need to be clearly identified as belonging to each sub-fund in the CCIVs allocation register to support the segregation of sub-fund assets.

Continued industry engagement to improve the CCIV regime

We note that in the short term, there may be greater take-up of the CCIV from general funds management participants rather than from property funds – this is due to many factors including the potential commercial opportunities arising under the Asian Region Funds Passport (which currently excludes property as an eligible asset class) and the significant state tax issues that have yet to be resolved.

We remain supportive of and keenly interested in the design and implementation of the CCIV regime to ensure that all types of investors and fund managers, including those that invest into property, can benefit from the CCIV regime once it comes into effect on 1 July 2022.

We would welcome leadership from the Federal Government in liaising with state counterparts to ensure greater understanding of the policy drivers for the CCIV and AMIT frameworks and create harmonisation of approaches across state and territories for CCIVs and AMITs.

If you would like to discuss any aspect of this submission further, please contact:

- Kosta Sinelnikov on 0422 168 720 and ksinelnikov@propertycouncil.com.au (for tax matters),
- Adele Lausberg on 0415 225 638 and alausberg@propertycouncil.com.au (for regulatory matters) or
- myself on 0400 356 140 and bngo@propertycouncil.com.au.

Yours sincerely

Belinda Ngo
Executive Director – Capital Markets

Appendix: CCIV issues list

Critical issues

Issue	Details	Recommendations/comments
Access to CGT rollovers for CCIVs and AMITs	AMITs and CCIVs are not eligible for CGT rollovers that reference 'CGT event E4' because they are subject to CGT event E10. These references exist in the trust to company rollover provisions in Subdivision 124-N, the demerger provisions in Division 125 and the trust-to-trust rollover provisions in Subdivision 126-G. This technical anomaly in the legislation has been a commercial impediment for some trusts to elect into the AMIT regime and will equally become an impediment for the adoption of the CCIV regime. There is no policy rationale for not aligning the treatment of AMITs and CCIVs (which have clearly defined rights and are deemed fixed trusts) with other unit trusts and MITs and companies that are able to rely on these CGT provisions.	Amend the CGT rollover provisions that reference E4 to also include E10. The amendments can include 'mirror trust' provisions to ensure the CGT rollovers do not inadvertently subvert the irrevocable nature of the AMIT election.
Ability to co-invest in assets as tenants in common	We understand that the CCIV is designed in such a way that each sub-fund's assets and liabilities will be ringfenced for the purposes of asset protection, insolvency, cross-contamination, etc. This is a critical concept to the successful workings of the CCIV regime. However, the proposed prohibition on sub-funds jointly owning an asset, set out in 1233S(3), would mean that ordinary commercial practices in the real estate industry would not be able to be effected in a CCIV framework. That is, the joint ownership of a real estate asset as tenants in common. The current MIS framework facilitates this through guidance in RG133 where the separation of the asset between two trusts is recognised and allowed.	We support the clarity provided in the legislative framework that sub-fund assets and liabilities will be segregated and ringfenced. We recommend that s. 1233S(3) is amended to adopt similar language to RG133 and mandate that assets of 2 or more sub funds of a CCIV must not be applied jointly to acquire a single item of property of the CCIV only when it is possible or practicable to do so.

Regulatory framework

Issue	Details	Recommendations/comments
General – ability to make distributions under the Corporations Act	There are clear legal differences between the capital and dividend requirements of 'companies' and 'trusts': • Companies generally can only pay dividends out of profits and cannot make capital distributions without certain steps being undertaken • Trusts are able to distribute capital or profits as per the terms of the trust deed or constitution We understand that the intent of the CCIV provisions is to 'turn off' the dividend related requirements for ordinary companies to facilitate ease of distributions for CCIVs and allow for returns of capital by way of capital distributions. This is because sub-funds are intended to be able to act as open-ended investment funds with variable capital and will allow redemptions and have capital that varies from time to time. However, the draft legislation includes extensive provisions regarding capital reductions, buy-backs and self-acquisition in addition to the provisions relating to the redemption of shares. This is quite different to both the existing framework for registered managed investment schemes and other jurisdictions like Singapore.	We support the approach taken as managed funds – whether in the form of an MIS or CCIV – must be able to have flexibility to distribute income or capital to their investors pursuant to the terms of their constitution. The capital reduction and self-acquisition rules should be generally disapplied to CCIVs, as they are not appropriate for open-ended investment funds.
Wholesale CCIVs – requirement for corporate director to be a public company	The ED requires a corporate director of a wholesale CCIV to be a public company with a specific AFSL. This is a more onerous level of requirement compared to a trustee of an unregistered MIS which only needs to have an AFSL covering financial product advice, dealing in financial products, and custodial or depository services.	Remove the requirement for the corporate director of a wholesale CCIV to be a public company.
Wholesale CCIVs –restrictions on contracting out statutory duties	The ED states that statutory duties imposed on the corporate director of a wholesale CCIV cannot be contracted out to another party.	Allow wholesale CCIVs and investors to set out the terms of how statutory duties will be

and meeting requirements	By comparison, the duties and requirements that apply to the trustee of an unregistered MIS are subject to the trust deed and commonly negotiated between the trustee and the wholesale client investors. Similarly, in relation to meetings the ED includes: a. requirement for a members' meeting and special resolution for the retirement or replacement of the corporate director (sections 1224T and 1224U). Currently, the constitutions of wholesale managed investment schemes usually set out the process for retirement and replacement of a trustee. A similar approach could be taken for wholesale CCIVs; b. provisions prescribing the process and requirements of meetings of a CCIV including the ability for members to request a meeting in Part 2G.4 (sections 1229A – 1229G). In the case of managed investment schemes, these requirements are usually applicable only to registered schemes. This additional level of restriction may create commercial barriers to the use of CCIVs in the wholesale market given the sophisticated nature of the investors and their ability to negotiate terms with the corporate director.	carried out and meetings called and conducted in the constitution.
Retail CCIVs – listing of stapled securities	Listed property funds are typically structured as either stapled securities or externally managed funds. A stapled security is one where two ownership interests are bound together, such that they cannot be bought or sold separately. Stapling allows one common ownership structure that caters for different operating models and different scales of activity across the whole spectrum of property – from development and funds management (in the corporate side) to long-term property ownership (in the trust side). It allows groups to leverage their experience and capital across the different property sectors and cycle. Under the CCIV framework, it could be possible that a property group would seek to staple a share in a CCIV with a share in a company in a similar manner to that described above.	Treasury should provide clarity that CCIVs can form part of a listed stapled group, and ensure any consequential amendments are made to other regulations to enable this outcome.

	Currently, the ASX listing rules allow different securities to be jointly quoted as a 'stapled security'. We have not identified any restrictions in the regulatory or tax framework that would prevent the listing of a corporate-CCIV stapled group (i.e. a company stapled to a CCIV) but would like to confirm that it's possible. This may also require a review of any provisions in the law that refer to 'stapled securities' or 'stapled groups' to be reviewed to ensure there are no consequential amendments required. For example, in 2020 a 'stapled real estate .. interest' was defined for the purposes of the stamping fee provisions (Regulation 7.7A.12B(2) in the *Corporations Regulation 2001*) which refers to interests in a company or managed investment scheme. It is not clear if the reference to company would appropriately pick up CCIVs for these purposes.	
Retail CCIVs – ASIC powers to modify constitutions	The ED provides broad powers to allow ASIC to direct the corporate director of a retail CCIV to modify the CCIV's constitution to either: a. comply with the minimum content requirements; or b. ensure that the constitution deals with certain matters in adequate detail. While we do not object to the need for constitutions to comply with minimum content requirements, we are concerned about the open-endedness of ASIC's discretion to determine what is 'adequate detail' and the potential retrospective application.	Treasury should provide additional guidance in the EM to clarify the scope and intent of these powers.
Retail CCIVs – governance rules about external directors and compliance committees	There is a discrepancy in the governance rules for a corporate director of a retail CCIV from those for a responsible entity of a registered MIS. The proposed section 1224G requires that at least half of the directors of the corporate director of a retail CCIV must be external directors. In contrast, the current rules for a responsible entity of registered MIS in section 601JA provide flexibility to the responsible entity to appoint an external compliance committee if less than half	Amend the proposed drafting of section 1224G to allow the corporate director of a retail CCIV to appoint an external compliance committee if less than half of the directors of the corporate director are external directors. This will

	of its directors are external. From the explanatory material, it is unclear why this governance framework cannot be provided for the corporate director for a retail CCIV. This inconsistency between the existing MIS and proposed CCIV regimes can impact the take up of the new CCIV structure.	ensure greater consistency between the governance rules for the MIS and CCIV regimes.
Retail CCIVs – compliance plans	Retail CCIVs will be required to have compliance plans, similar to registered MIS. However, the ED has adopted slightly different language and requirements for retail CCIVs compared to the current MIS requirements: • Content of the compliance plan – the language in proposed section 1227A differs to that of section 601HA and 601HG. There is no explanation provided in the EM for these differences which has the potential to create confusion for industry participants. • Incorporating by reference – proposed section 1227B allows for the compliance plan of a retail CCIV to incorporate by reference specified provisions of another CCIV. This is welcome and should be extended to also allow compliance plans of a registered MIS to be incorporated by reference by a retail CCIV. This reduces the administrative burden where a corporate director is responsible for a CCIV and a registered MIS, and could make it easier for fund managers to take up the CCIV regime in addition to their existing responsible entity structure. • Breach reporting requirements – proposed section 1227H requires auditors of compliance plans to report certain breaches to ASIC within 7 days. However, similar rules for MIS allow 28 days for reporting and the new breach reporting regime commencing on 1 October 2021 will provide corporate directors 30 days to report. This inconsistency between the CCIV and MIS regimes could create confusion for auditors and fund managers, and also be impractical given the overlay of the new breach reporting regime.	Amend section 1227A to be consistent with the existing section 601HA to ensure the content requirement for the compliance plan of a retail CCIV is consistent with that for a registered MIS. Amend section 1227B to allow the compliance plan of a retail CCIV to incorporate by reference to the compliance plan of a registered MIS (where the corporate director of the retail CCIV and the responsible entity of the MIS is the same entity). Amend section 1227H to be consistent with existing section 601HG allowing at least 28 days for the compliance plan auditor to notify ASIC of the prescribed contraventions.

PDS exemptions	A number of exemptions from the requirement to provide a PDS for MISs have not been applied to CCIVs, including: • where the investor has already received a PDS containing all the information the PDS would be required to contain (section 1012D(1)); • where the investor is an existing investor and already has all the required information (section 1012D(2)); • in respect of an offer made under a takeover bid (section 1012D(7)); • in respect of a rights issue (section 1012DAA(2)); and • in respect of indirect issues (section 1012DA). These situations may equally apply to CCIVs.	The same exemptions from the requirement to provide a PDS normally applicable to MISs should apply to CCIVs.
Definition of 'assets'	Proposed section 1233H contains the meaning of "assets of a sub-fund", but this definition is different to the definition of "scheme property of a registered scheme" contained in section 9 of the Corporations Act: ***Section 1233H*** ***Meaning of assets of a sub-fund*** 1. *Money or property forms part of the assets of a sub-fund to the extent the money or property was obtained by the application of assets of the sub-fund.* Note: Division 4 of this Part requires assets of a sub-fund to be applied only for purposes relating to the sub-fund. 2. *Subject to subsection (1), the assets of a sub-fund of a CCIV at a particular time are the following:* 1. *amounts paid up in consideration for the issue of shares that are referable to the sub-fund;* 2. *money deposited with or lent to the CCIV under debentures that are referable to the sub-fund;*	Amend section 1233H to ensure consistency between the definition of 'assets' of a sub-fund with the definition of scheme property of a registered MIS in section 9. Alternatively, articulate in the EM why different definitions are applied.

	3. *shares acquired by the CCIV in respect of the sub-fund that are shares in the CCIV that are referable to another of the CCIV's sub-funds;* 4. *money or property of the CCIV not covered by paragraph (a), (b) or (c), to the extent the money or property, at the time it is acquired, relates solely to the business of the sub-fund;* 5. *if there is money or property of the CCIV not covered by paragraph (a), (b), (c) or (d) at the time it is acquired—the proportion (which may be nil) of the money or property that it is fair and reasonable, in the circumstances, to allocate to the sub-fund at that time.* ***Section 9 Dictionary*** ***scheme property of a registered scheme*** *means:* a. *contributions of money or money's worth to the scheme; and* b. *money that forms part of the scheme property under provisions of this Act or the ASIC Act; and* c. *money borrowed or raised by the responsible entity for the purposes of the scheme; and* d. *property acquired, directly or indirectly, with, or with the proceeds of, contributions or money referred to in paragraph (a), (b) or (c); and* e. *income and property derived, directly or indirectly, from contributions, money or property referred to in paragraph (a), (b), (c) or (d).* This difference in definitions can give rise to a disparity between the calculation of assets of a retail CCIV and that of a registered MIS. This could in turn have a consequential impact on other areas such as net tangible asset requirements for the corporate director or the responsible entity because the assets of the sub-fund/scheme property of a registered scheme are taken into account when calculating the net tangible asset requirement. The EM does not provide any explanation for this difference.	

Income tax framework

Issue	Details	Recommendations/comments
Eligibility and deeming rules for income tax purposes	By deeming eligible CCIV sub-funds to be MITs or AMITs, it is our understanding that for: • Division 6C – eligible CCIV sub-funds will be deemed to be a unit trust and have to determine whether the sub-fund is a public unit trust and whether it is carrying on a trading business. • Trust loss rules – eligible CCIV sub-funds will be deemed to be a unit trust with fixed entitlements. • s128F/s128FA – eligible CCIV sub-funds will be deemed to be a unit trust and have to determine whether the sub-fund is a public unit trust (under Division 6C) or a unit trust held by eligible unitholders. • Withholding tax rules – eligible CCIV sub-funds will need to be a MIT with investment manager in Australia to be deemed a "withholding MIT".	While the 'deeming' provisions should provide the right outcome for key issues such as loss rules and withholding tax provisions, with any form of 'deeming' there could be risks of uncertain interactions. The current version of the EM is helpful and we would recommend that any additional guidance produced by the ATO is equally clear in the intended 'deemed' treatment of CCIV sub-funds as MITs or AMITs (in the event there are future scenarios that arise where these is any uncertainty on how the deeming may interact with other provisions).
Division 6 tax treatment where CCIV fails AMIT eligibility	The treatment of a CCIV that fails the widely held test as a Division 6 trust, rather than a company where franking credits are denied, is a positive outcome. A CCIV may fail the widely held test or fail to meet the closely held restriction for reasons totally outside its control. For example, a CCIV that is a listed vehicle may fail to meet the closely held restriction due to a foreign investor taking a 11% interest in the CCIV on the public market.	CCIVs that fail the widely held test or fail to meet the closely held restriction should be allowed to satisfy the deemed present entitlement rules provided distributions are paid up to 3 months after year-end. In addition, Treasury should provide further examples in the EM on the Division 6 treatment and interaction

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	One of the challenging and impractical outcomes of the Division 6 fallback treatment relates to the deemed present entitlement rules which require distributions to be paid before year-end to have deemed present entitlement and not be subject to trustee tax. The ATO has previously provided concessions to allow trusts a period of time for distributions to occur post-year end and still meet the deemed present entitlement rules.	with deemed present entitlement, determination of income, and timing of entitlement to distribution.
Debt-like trust investments	It is not clear whether debt-like trust investments and interest provisions for AMITs will apply to CCIVs.	Treasury should clarify how debt-like investments/interests are treated and whether there are differences between the definition of 'member' and 'member interest' for debt-like interest.

Interaction with double tax agreements (DTAs)

Issue	**Details**	**Recommendations/comments**
Deeming of CCIV sub-funds as trusts for purposes of DTAs	CCIVs are taken to be trusts for purposes of DTAs, and amendments are proposed to be made to ensure that the deeming principle interacts appropriately with the priority rule contained in the *International Tax Agreements Act 1953*. While we understand this alignment with the income tax treatment, it may create uncertainty and complexity for foreign investors in how their home jurisdiction views the investment in CCIV, being a legal form company, and any dividend/interest income derived. For example, a CCIV is a company paying a legal form dividend which will be re-characterised as trust distribution on a deemed basis. This dividend may attract withholding tax of up to 30% under the MIT rules that does not benefit from a lower dividend withholding tax limit in the DTA. The following queries arise:	Treasury should provide further guidance to address the uncertainty regarding how the CCIV regime interacts with double tax agreements.

	• Will the investor's home country characterise it as a dividend? What is the real impact of the Australian deeming on the treaty and their domestic outcomes? (Presumably, the Australian deeming can't change the domestic position in the foreign country.) • Does the foreign investor get foreign tax credits for all the different withholding taxes applied by Australia? (This is an issue for foreign investors that aren't pension funds or sovereign wealth funds i.e. those exempt from tax in Australia.) • Given the deeming is for the purposes of all taxation laws, does a foreign investor have a permanent establishment in relation to the deemed trust of which they are a beneficiary? • Does this become a jurisdiction-by-jurisdiction issue? Would hybrid mismatch rules be triggered?	

<u>Interaction with GST framework</u>

Issue	**Details**	**Recommendations/comments**
Deeming and references in GST Act	We understand that the deeming of a CCIV sub-fund as a trust should mean it is an entity as prescribed in the GST Act, and the ordinary GST eligibility rules will then follow to determine if it needs to be registered for GST purposes. However, without this clarity in the GST legislation itself, we are concerned this 'deeming' may not be clear on the face of the GST legislation.	Treasury should provide references to clarify how the deeming principle would apply for GST purposes, particularly in Division 184 of the GST Act (setting out the definition of 'entity') to relate to the income tax provisions.
Reduced input tax credits	One concern about the proposed deeming principle is whether a CCIV sub-fund qualifies as a recognised trust scheme for the purposes of claiming 55% RITCs under item 32 of the GST Regulations. This concern is due to two reasons:	Treasury should provide clarity on CCIV qualification as a recognised trust scheme for claiming 55% RITCs.

	• The definition of a 'recognised trust scheme' refers to an MIS, as defined in the Corporations Act. • The trustee/responsible entity of a 'recognised trust scheme' must also be carrying on, in its own capacity, an enterprise that includes making taxable supplies to the trust. We would query whether the CCIV, if deemed to be the trustee, is also deemed to carry on an enterprise and make taxable supplies to the CCIV sub-funds (which amongst other things would require the CCIV to be registered in its own right and charge fees to the CCIV sub-funds). If the CCIV sub-funds are precluded from being 'recognised trust schemes' because the deeming principle does not extend that far, then there would be a disparity between MITs (which in many cases would be eligible for 55% RITCs on relevant costs) and CCIV sub-funds (which would be precluded from claiming 55% RITCs).	
GST grouping	It appears more difficult (and perhaps not possible) for the CCIV sub-funds to form a GST group, compared to a 'true' MIS or trust structure. This is because presumably the CCIV sub-funds will be deemed 'sister' sub-funds, and there is no 'top-level' fund that holds units in the other 'sub-funds' – which is the typical trust structure that allows for GST grouping. A GST group also has joint and several liability for all GST liabilities of each group member, which may conflict with the need for segregation of assets and liabilities within each CCIV sub-fund.	Treasury should provide clarity on the ability of CCIV sub-funds to form a GST grouping, and how GST grouping rules regarding 'joint and several liability' would interact with separate legal liability provisions for CCIVs.

Interaction with state taxes

Issue	Details	Recommendations/comments
Treatment of CCIVs	For the property sector, it will be critical to resolve how state governments will view CCIVs and CCIV sub-funds for stamp duty, land tax, and payroll tax purposes, including: - Whether the state taxes will recognise CCIV sub-funds as separate entities, consistent with the Commonwealth regulatory and tax treatment – and if not, what this means for segregation of assets and liabilities for any state related matters. - Whether a CCIV is treated as a company or trust for stamp duty purposes, noting that companies and wholesale trusts have different thresholds for triggering stamp duty in Victoria and Queensland. - Whether CCIV sub-funds can form land tax and payroll groups.	It will be critical to ensure there is appropriate alignment of the treatment at federal and state government levels on how CCIVs and CCIV sub-funds are viewed to ensure the regime operates as intended and is commercially viable. We would welcome leadership by the Commonwealth to liaise with their state counterparts to progress these discussions. This would also be an opportunity to ensure both CCIVs and AMITs are automatically deemed to meet the wholesale investor/unit trust definitions in Victoria and Queensland.