

# Our thinking leads here

UPDATE

## ACCIV and AMIT twinning? Proposed ACCIV tax regime

25 Jan 2018 | TAX ([HTTPS://HALLANDWILCOX.COM.AU/EXPERTISE/TAX/](https://hallandwilcox.com.au/expertise/tax/)), FINANCIAL SERVICES ([HTTPS://HALLANDWILCOX.COM.AU/EXPERTISE/FINANCIAL-SERVICES/](https://hallandwilcox.com.au/expertise/financial-services/))



The release of the proposed tax rules for the new corporate collective investment vehicle (CCIV) is a welcome development for fund managers considering the structuring options for future funds or future conversion of existing funds into CCIVs.

There is a certain familiarity with the proposed tax regime for CCIVs. Unsurprising, given the regime substantially imports and adopts the managed investment trust (MIT) and attribution MIT (AMIT) regimes.

Although eagerly awaited and welcomed, some creases need to be ironed out before the new regime becomes the game changer the Australian funds management industry was banking on.

### Why is CCIV needed?

In August 2017, the Federal Government released a bill proposing the creation of a new type of collective investment vehicle – the CCIV – a company structure that has the flow-through benefits of a trust. The motivation for its introduction and the details of the CCIV regulatory requirements are discussed in detail in our earlier publication (<http://hallandwilcox.com.au/the-proposed-corporate-collective-investment-vehicle-regime/>).

In particular, the typical Australian managed funds vehicle – the unit trust – was thought to be less understood by foreign investors than corporate vehicles, limiting access to foreign capital for local fund managers.

The CCIV is a corporate managed funds vehicle similar to those popular in Europe and Asia. The CCIV (together with the proposed limited partnership collective investment vehicle – LPCIV) has been promoted as a way of increasing foreign investment into Australia and for Australian fund managers to:

- encourage Australian fund managers to promote and export their funds management expertise and services overseas and
- compete in international markets by offering products recognised by overseas investors – particularly under the Asia Region Funds Passport.

Finally in December 2017, the Federal Government released an exposure draft (<https://treasury.gov.au/consultation/c2017-t238960/>) outlining the proposed tax regime for CCIVs.

## Parallel operation with AMIT regime

The CCIV regime was intended to operate alongside the managed investment scheme / managed investment trust regimes, so that:

- CCIVs have eligibility criteria similar to MITs and
- investors have the ability to invest through a company structure, but with flow-through taxation (ie as if investors invested directly).

To achieve substantial tax alignment between the regimes, the exposure draft proposes a CCIV tax regime based on the MIT and AMIT regimes.

Effectively, the existing AMIT rules have been substantially adopted for eligible CCIVs (to be named attribution CCIVs or ACCIVs) and rewritten as the attribution investment vehicle (AIV) rules. An AIV will be defined as being an AMIT or an ACCIV.

## To elect or not to elect?

Electing into the new ACCIV tax regime is, in effect, mandatory if a CCIV structure is adopted. It is proposed that a CCIV not electing into the ACCIV regime (or failing to meet the ACCIV eligibility criteria) will be required to deregister as a CCIV.

A newly established CCIV will not automatically enter into the ACCIV regime. An election must be made by the corporate director (ie the CCIV equivalent of a responsible entity/trustee) for the regime to apply.

Consistent with the MIT and AMIT requirements, a CCIV can elect to become an ACCIV if:

- the entity is a CCIV at all times during the income year
- each CCIV sub-fund satisfies the widely-held requirements and closely-held restrictions
- the CCIV satisfies the trading business restrictions and
- the corporate director irrevocably elects to apply the ACCIV rules for the income year (or elected to do so in a prior year).

A temporary circumstances test, similar to that in the MIT regime, also exists in case the CCIV temporarily fails the ordinary requirements because of a circumstance outside the corporate director's control.

## A level tax playing field

ACCIVs are placed substantially on the same tax footing as AMITs under the proposed tax rules. Broadly:

- **Flow-through treatment:** ACCIVs will be afforded character flow-through treatment (including the ability for members to access the 50% CGT discount through a corporate vehicle).
- **Attribution taxation:** ACCIVs will not be taxable at the corporate tax rate. Rather, investors will be liable to pay tax on amounts of ACCIV income attributed to them as though directly earned by them (and not on distributions received). The determined member components will be the amounts disclosed on an AIV member annual (AIVMA) statement (which replaces the current AMMA statement).
- **Deemed capital account treatment:** ACCIVs will be able to irrevocably elect to apply deemed capital account treatment in relation to relevant assets, such as shares and real property.
- **Unders and overs regime:** where there is a difference between amounts actually attributed to members for an income year and the amounts that should have been attributed, ACCIVs will be able to employ the 'unders' and 'overs' regime.
- **Cost base uplifts:** members will be able to access upward adjustments to the cost base in their ACCIV interests where attributed amounts are more than actual distributions.
- **ACCIV taxation:** an ACCIV will itself be liable to income tax on the excess of assessable income derived by an ACCIV over amounts attributed to members and on non-arm's length income derived by the ACCIV.
- **Separate ACCIVs:** where eligible, an ACCIV with separate classes of membership interests (eg separate sub-funds or share classes) may treat each class as a separate ACCIV.
- **Withholding ACCIV:** where eligible, an ACCIV can become a withholding ACCIV such that its foreign investors can be taxed on a final withholding basis.

## The creases

A number of issues will need to be clarified through the exposure draft process. For example:

- **Falling out of the ACCIV regime:** where a CCIV falls outside of the ACCIV regime (such as where a sub-fund fails the widely-held test or trading business restrictions in a particular year), it will be taxed at the corporate rate but will not be able to distribute franking credits (unlike an AMIT which becomes a public trading trust and is taxed like a company). Is this policy disincentive going too far? What if one sub-fund of a multi-sub-fund ACCIV fails the eligibility criteria?
- **Widely-held test and closely-held restrictions:** the widely-held test and closely-held restrictions will apply to each sub-fund of an ACCIV – but do not necessarily apply to an AMIT class treated as a separate AMIT. What will be the effect of such an inconsistency if an AMIT class treated as a separate AMIT restructures into a sub-fund of an ACCIV? Will this negate some of the perceived benefits of restructuring from an AMIT to an ACCIV?
- **CGT rollovers:** allow for an AMIT to convert into a sub-fund of an ACCIV on a like-for-like basis whilst deferring any capital gain or capital loss made by the transferor on the conversion. But what happens to certain tax attributes – eg carry forward losses? What will be the stamp duty impacts?

## Next steps

Submissions on the tax exposure draft close on 2 February 2018.

Contact us to discuss how these new rules may affect the choice of structure for proposed funds or the potential conversion of your existing funds to CCIVs.

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