

# AUSTRALIAN MANAGED INVESTMENT TRUSTS A BRIEF GUIDE FOR INVESTORS

One Investment Group is a leading provider of outsourced trustee services in Australia, acting as trustee for trusts with investments across various asset classes including real estate, infrastructure, debt and equity securities.

# MANAGED INVESTMENT TRUSTS

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## Background

The Managed Investment Trust (“MIT”) structure has been available in Australia since 2008. It was primarily designed to reduce withholding tax on distributions to foreign investors and provide increased certainty as to the tax treatment of an Australian trust for foreign investors. Whilst the original MIT concept was to encourage foreign investment into existing trusts, subsequent foreign investors have regularly established MITs to be used as their investment vehicles to acquire assets, directly or indirectly.

Today, the key benefit in establishing a MIT is to access the concessional withholding tax regime. Under the MIT withholding tax regime, foreign investors who are a resident of a country with which Australia has an effective Exchange of Information Agreement on taxation matters are eligible for a reduced rate of withholding tax on fund payments from a MIT. The rate of withholding tax depends on the residency of the investor.

Concessions are available for both foreign residents and Australian residents and allow:

- Foreign residents to access a reduced rate of withholding tax on most distributions (e.g. 15% and in some limited cases 10%)<sup>1</sup> rather than the normal 30% which would otherwise apply; and
- Australian residents to access the capital gains tax (“CGT”) discount on capital gain distributions.

<sup>1</sup> Depending on the residency of the investor.

## The MIT definition – General Requirements

Ensuring that a trust meets the MIT requirements involves a level of complexity and prior analysis. However, the definition of a MIT contains six general conditions that must be met by all trusts and some further conditions that vary for particular types of trust.

These conditions are:

### 1. Residency Test

All trusts must satisfy a **residency test**: either the trustee must be a resident of Australia or the central management and control of the trust must be located in Australia. This test must be met prior to or at the first time during an income year that the trust makes a distribution (or at an earlier time in that year).

### 2. Trade or Business

The trust must not be engaged in active **trade or business**. There are two ways that a trust might fail this test:

- First, a trust will fail this test if the trust carries on a trading business using the definition in Division 6C of the *Income Tax Assessment Act 1936*. The Division 6C test requires a trust to conduct only ‘eligible investment business’ – that is, invest in land primarily for the purpose of deriving rent, or invest or trade in certain kinds of securities. Where a trust earns income from activities other than eligible investment business, it conducts a trading business and will not be able to be a MIT under this test;
- Secondly, a trust will fail this test if it controls, or is able to control, the affairs or operations of another entity which earns income from activities other than eligible investment business.

### 3. Managed Investment Scheme

The trust must be a **managed investment scheme** as defined in the *Corporations Act* (commonly referred to in Australia as a “MIS”). The definition in the *Corporations Act* defines a MIS by reference to the pooling of funds to generate financial benefits for people who do not have day-to-day control over the operations of the trust.

### 4. Investment Management Activities

A substantial proportion of the **investment management activities** are carried out in Australia in respect of:

- the assets of the trust that are situated in Australia;
- the assets of the trust that are ‘taxable Australian property’; and
- the assets of the trust that are listed on an approved stock exchange in Australia.

## 5. Widely Held

The trust must be **widely-held** as defined, and not fall within the applicable **closely-held** exclusion. These two requirements differ according to whether the trust operates at a wholesale or retail level in the market. Typically, a MIT will be an unregistered wholesale trust. To satisfy the **widely-held** requirement the unregistered wholesale trust will need to have at least 25 actual or **Deemed Members**.

Deemed Members will be satisfied if the members are various kinds of Collective Investment Vehicles ("CIVs"). Types of approved CIVs are Life Insurance Companies, Superannuation Funds with more than 50 members, Pooled Superannuation Funds, Foreign Pension Funds, Sovereign Wealth Funds and entities owned by the Australian government.

To satisfy the **closely-held** exclusion, the fund must not have:

- 10 or fewer investors owning 75% or more of the assets; or
- 1 foreign individual owning 10% or more of the assets.

## 6. Licensing Test

For retail trusts, no specific licensing test is stipulated because the *Corporations Act* will supply requirements about the MIT being managed by the holder of an appropriate Australian Financial Services Licence. For wholesale trusts (whether registered or unregistered), the trust must be operated or managed either by an entity with an Australian Financial Services Licence that permits the provision of financial services to wholesale entities or by certain Crown entities (or entities specified by ASIC) that are not required to hold an Australian Financial Services Licence.

It is important to ensure that you seek professional tax and legal advice about your proposed structure for the MIT. One Investment Group works closely with leading tax advisory and legal firms in Australia and can provide referrals for advice.



# ABOUT ONE INVESTMENT GROUP

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One Investment Group was established to provide responsible entity and trustee services to external fund managers. One Investment Group currently owns and operates five entities with Australian Financial Services Licences. These entities are licensed to provide a range of financial services. In total, these entities have over 35 years' experience of acting in such roles. Each licensed entity's board has directors selected to cater for the respective trusts which that entity administers.

Since its establishment, One Investment Group has diversified into providing custody, fund administration, registry and taxation services. One Investment Group is now in a unique position in that it is able to provide a complete solution including Responsible Entity/Trustee, Custodian, Registrar and Fund Administrator. Alternatively, One Investment Group is able to provide a single service working alongside external service providers or the existing Responsible Entity/Trustee.



## HOW CAN ONE INVESTMENT GROUP HELP?

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One Investment Group can help you establish and manage a MIT. Working closely with your legal and tax advisors, we can help ensure that the structure of your MIT is both properly established and correctly managed on a go forward basis to ensure continuing compliance with the complex rules applying to MITs.

Our experience in managing MIT's has shown that there are two critical issues to satisfy in order to maintain ongoing MIT status and ensure investors access the benefits of reduced withholding tax.

***1. The Trustee must be an Australian resident or central management and control is in Australia***

As MIT clients are foreign investors, appointing One Investment Group as trustee of your MIT will satisfy this requirement without having to set up a costly local presence in Australia.

***2. A substantial proportion of the investment management activities, in respect of the Australian assets of the trust, must be carried out in Australia throughout the income year***

One Investment Group is able to provide investment management services and can be appointed as the local investment manager to provide investment management services to your trust. Alternatively, you could appoint a separate Australian licensed fund manager to carry out these activities.

# WANT TO KNOW MORE?

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