

19 December 2008

via e-mail: taxboard@treasury.gov.au

Board of Taxation
C/- The Treasury
Langton Crescent
PARKES ACT 2600

Dear Sir/Madam,

Review of the tax arrangements applying to managed investment trusts

Warakirri Asset Management (Warakirri) is pleased to make a submission to this review by the Board of Taxation. Warakirri is a Melbourne based firm with \$3.7 billion of assets under management. Approximately 65% of these assets are managed through managed investment trust vehicles.

Warakirri strongly agrees with the five policy principles forming the terms of reference for this review. Any changes to taxation arrangements that arise from the review must adhere to these policy principles. Warakirri provides the following comments on certain aspects of the discussion paper:

Options for determining tax liabilities

Warakirri supports the trustee exemption model (Option 2) for the determination of tax liabilities. In wholesales funds management it is common for investors such as complying superannuation funds not to receive cash distributions and for their distributions to be reinvested. The investor would then meet their tax liability arising from the distribution reinvested from other sources. Warakirri does not favour forcing investors to receive cash distributions which may require the MIT to sell investments in unfavourable circumstances in order to meet a cash distribution requirement.

Warakirri supports the carry forward approach for dealing with 'unders' and 'overs' in correcting errors in calculating net income. However, Warakirri does not favour a de minimis rule which only relates to the net income of an MIT. In certain circumstances, the net income of an MIT with significant net assets may be low. Due to the level of assets held, an error relating to the assets held may be disproportionately large when compared to net income only. Warakirri would favour an approach which also takes the net asset value of the MIT into account in determining any de minimis rule.

Capital versus revenue account treatment of gains and losses made on disposal of investment assets by MITs.

Warakirri strongly believes that the assets of a MIT should be treated on capital account and that this should be confirmed by statutory rule. The Capital Gains Tax (CGT) provisions

should be the applicable code for calculating gains and losses for investments held by MITs. Statutory rules for MITs would provide certainty to current industry practice and is consistent with the policy principles of the review.

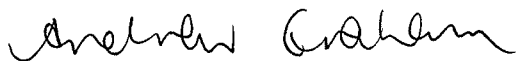
The treatment of gains on revenue account in an MIT may result in investors receiving a better after-tax result by investing directly rather than through a MIT, which is contrary to principle one of the review. In particular, complying superannuation funds hold their assets on capital account by statute. Warakirri strongly believes that superannuation funds should not be disadvantaged by investing through MITs.

Defining the scope of a MIT

Warakirri believes there should be a statutory definition of a 'widely held' trust which includes 'look through' treatment, such as the definition of a managed investment scheme under the Corporations Act. In wholesale funds management, investment funds may have a single, or few, complying superannuation fund investors, which in turn have thousands of members. The scope of a MIT should include wholesale funds, including those unregulated wholesale funds which are not captured by the Corporations Act. In accordance with policy principle one, complying superannuation fund investors should have access to the MIT regime regardless of the number of investors.

Warakirri thanks the Board of Taxation for the opportunity to present this submission to their review of the taxation arrangements applying to managed investment trusts.

Yours sincerely



Andrew Graham
Financial Controller