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23 DEC 2008
Board of Taxation

QIC

19 December 2008

Managed Investment Trusts Review
The Board of Taxation
c/- The Treasury
Langton Crescent
CANBERRA ACT 2600

Dear Board members,

QIC submission

Review of the Taxation Arrangements Applying to Managed Investment Trusts ("MITR")

QIC Limited ("QIC") commends the Federal Government for commissioning MITR and thanks the Board of Taxation for the opportunity to make submissions in relation to the Review.

About QIC

QIC is one of Australia's largest institutional investment managers, managing approximately \$70 billion of funds for Australian and overseas investors. QIC is a Government-owned company ("GOC"), being wholly owned by the Queensland Government and QIC's pooled investment funds include the investments of Queensland Treasury's consolidated revenue as well as Queensland's largest public sector superannuation fund, QSuper. Since 30 September 2008, QIC has been a company GOC. Previously QIC was a statutory GOC. As such QIC is now registered with ASIC but QIC does not hold an Australian Financial Services Licence.

The majority of QIC's funds are managed within pooled trust vehicles which are currently taxed in accordance with the rules contained in Part III, Division 6 of the *Income Tax Assessment Act 1936*.

IFSA MITR submission

QIC has had the opportunity to review the submissions of IFSA in relation to the capital/revenue treatment of assets held in managed investment trusts ("MITs") and the proposed MITR regime generally. QIC supports the positions advocated in those submissions.

MITR submission – additional QIC comments

QIC would like to elaborate on several aspects of the IFSA submission which are of particular importance to QIC.

Chapter 11 – Definition of a MIT

QIC supports IFSA's recommendation that eligibility for MIT status be determined based on regulation under the Corporations Act, rather than a "widely held" test requiring identification of ultimate beneficial owners (investors) in the fund. The interfunding structure of some of our pooled funds, along with the levels of intermediation within the industry generally, limit our ability to satisfy many of the tests in the current tax legislation which assume knowledge of ultimate beneficial owners.

QIC also endorses IFSA's recommendation that the various definitions of a MIT throughout the tax legislation be standardised into one uniform MIT definition.

IFSA's proposed regulatory test would be formulated around whether or not a fund is operated by an Australian Financial Services Licensee. QIC's concern is that most of our pooled funds may not strictly qualify for MIT status without careful wording of this test to cover its circumstances. Specifically, as a GOC constituted by the *Queensland Investment Corporation Act*, QIC is bound by all of the provisions of the Corporations Act except for Chapters 6A-6D, 6CA and 7 because it represents the State of Queensland. As Chapter 7 deals with Australian Financial Services Licences, QIC cannot as a matter of law obtain a licence and currently operates most of its pooled funds without a licence. We have raised this matter with ASIC who agree that they are unable to issue QIC a licence, nor register its funds, on the basis of this legislative structure.

However, given our desire and those of our Government stakeholders and investors to maintain best practice and remain competitive, QIC operates as if it were a fully licensed entity. QIC has provided written undertakings to the Premier and Treasurer of Queensland committing to full compliance as if it were bound by an Australian Financial Services Licence. We have also conveyed the fact that we operate as if we were licensed to overseas-based financial regulators where QIC undertakes business (eg to the Irish Financial Regulator).

QIC has also raised this matter with Commonwealth Treasury in the context of the concessional withholding tax rules applying to MITs from 1 July 2008 as they have a similar licensing requirement which precludes most QIC funds from accessing the concessions.

For these reasons, we endorse IFSA's recommendation of a regulation/licensing-based MIT definition (as a primary test) with a special-purpose extension to cover QIC as a GOC precluded technically from being the holder of an Australian Financial Services Licence but in practice operating its unregistered funds within the licensing regime.

Chapter 7 – Capital versus revenue treatment of MITs

QIC concurs with IFSA's suggested approach to treat assets held within a MIT on capital account unless other statutory provisions (eg traditional securities, TOFA) apply. QIC shares IFSA's observation that this would bring much-needed clarity in codifying what generally accords with industry practice.

QIC notes that many of the investments of its largest superannuation fund investor currently receive capital account treatment notwithstanding that these investments are managed within pooled funds. If capital treatment was revoked from MITs, QIC's understanding is that this client would restructure out of QIC's funds into direct holdings to receive deemed capital account treatment that applies to superannuation fund assets held directly. This restructure would occur at a substantial one-off cost (around \$2.5 million in advisory fees, brokerage and stamp duty) to the members of this superannuation fund. Similar restructures by QIC's superannuation clients would significantly reduce the funds under management within some of QIC's funds and may threaten the viability of these funds.

Chapter 4 – Options for determining tax liabilities

QIC supports IFSA's suggestion that the present entitlement rules be abolished and replaced with an automatic allocation of tax liabilities to investors – "Option 2".

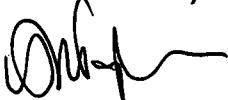
As an institutional fund manager, QIC is strongly opposed to any legislative requirement for the MIT to make an actual cash distribution each year as most investors do not require distributions to be paid in cash (this is more a feature of the retail market). A cash distribution requirement would raise funding issues for some of QIC's funds, particularly where the assets invested are illiquid (eg direct property), subject to lock up periods (eg some alternative/absolute return investments) or generate taxable income prior to trading of the asset (eg offshore assets which are non-exempt FIF or CFC interests).

QIC also advocates Option 2 to secure a MIT's ability to allocate a special distribution to a redeeming investor to prevent the redemption from causing a spike in tax liabilities of remaining investors. This is an important issue for institutional investors who seek a fair allocation of tax liabilities between investors in MITs.

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We trust the above assists with your consideration of these important issues. Should you require clarification of QIC's position in relation to MITR or have any other questions, please contact me.

Yours Sincerely



Doug McTaggart
Chief Executive, QIC