
TREASURY LAWS AMENDMENT (CORPORATE COLLECTIVE INVESTMENT
VEHICLE) BILL 2017: TAX TREATMENT

EXPOSURE DRAFT EXPLANATORY MATERIALS

Glossary

The following abbreviations and acronyms are used throughout this explanatory memorandum.

<i>Abbreviation/Acronym</i>	<i>Definition</i>
ACCIV	attribution corporate collective investment vehicle
AIV	attribution investment vehicle
AIVMA statement	AIV member annual statement
AMIT	attribution managed investment trust
AMMA statement	AMIT Member Annual Statement
CGT	Capital Gains Tax
CIV	collective investment vehicle
CCIV	corporate collective investment vehicle
Commissioner	Commissioner of Taxation
Corporations Act	<i>Corporations Act 2001</i>
CCIV Regulatory Exposure Draft Bill	Treasury Laws Amendment (Corporate Collective Investment Vehicle) Bill 2017 - exposure draft released on 25 August 2017
DIR	dividend, interest and royalties
ITAA 1936	<i>Income Tax Assessment Act 1936</i>
ITAA 1997	<i>Income Tax Assessment Act 1997</i>
MIS	managed investment scheme
MIT	managed investment trust
PAYG	Pay As You Go
TAA 1953	<i>Taxation Administration Act 1953</i>

Chapter 1

Tax treatment of corporate collective investment vehicles

Outline of chapter

1.1 Schedule # to this exposure draft Bill amends the ITAA 1997 and the TAA 1953 to specify the tax treatment for a company that is a CCIV. This tax treatment broadly aligns with the way AMITs are currently taxed.

1.2 The amendments ensure that CCIVs are taxed on a ‘character flow-through’ basis. Amounts of assessable income, exempt income, non-assessable non-exempt income and tax offsets received by the CCIV having a particular character will be attributed to members. Those amounts will retain that character and be taxed in the hands of each member.

1.3 All legislative references in this Chapter are to the ITAA 1997 unless otherwise stated.

Context of amendments

Introduction of the CCIV

1.4 In the 2016-17 Budget, as part of the Ten Year Enterprise Tax Plan, the Government announced that it would introduce tax and regulatory frameworks for two new types of CIVs: the CCIV and the limited partnership CIV.

1.5 CIVs are intended to engage in primarily passive investment activities and comply with similar eligibility criteria as MITs, such as being widely held and provide investors with tax outcomes that are generally equivalent to the tax outcomes that would have applied if they had invested directly.

1.6 The new CCIV regime will broaden the suite of investment vehicles available to Australian fund managers. It has been designed to be an internationally recognisable investment vehicle that can be marketed to foreign investors, including through the Asia Region Funds Passport.

1.7 On 25 August 2017, the Government released an exposure draft of the CCIV Regulatory Exposure Draft Bill and explanatory materials. The CCIV Regulatory Exposure Draft Bill and explanatory materials set out the core features of the regulatory framework and the context for the new CCIV regime.

1.8 This exposure draft Bill and draft explanatory materials outline the tax regime for the CCIV and should be read in conjunction with the CCIV Regulatory Exposure Draft Bill and accompanying explanatory materials.

1.9 The Government also released an exposure draft of the Corporations Amendment (Asia Region Funds Passport) Bill 2017 and accompanying explanatory materials.

1.10 Consultation on both the CCIV Regulatory Exposure Draft Bill and the Asia Region Funds Passport Exposure Draft Bill closed on 21 September 2017.

Attribution managed investment trusts

1.11 In 2016, the Government introduced the new tax system for AMITs. This new tax system applied the attribution or ‘character flow-through’ taxation model to AMITs to ensure that amounts derived or received by the AMIT are attributed to members and retain their character for income tax purposes.

1.12 On 19 July 2017, the Minister for Revenue and Financial Services issued a media release outlining a number of clarifications to the AMIT tax framework to ensure that it operates as intended. These AMIT amendments address some technical issues with the practical operation of the AMIT regime and clarify the operation of the income tax law. These amendments will be progressed in parallel with the finalisation of the CCIV tax framework.

Summary of new law

1.13 Schedule # to this exposure draft Bill amends the ITAA 1997 and the TAA 1953 to specify the tax treatment for a company that is a CCIV. This tax treatment broadly aligns with the way AMITs are currently taxed.

1.14 Broadly, a CCIV is a company that is registered under the Corporations Act that satisfies certain regulatory requirements.

1.15 A CCIV that satisfies the requirements to be an ACCIV has access to an attribution or ‘character flow-through’ model of taxation. A CCIV will be an ACCIV if:

- the entity is a CCIV at all times during the income year;
- each sub-fund of the entity satisfies the widely-held requirements and closely-held restrictions in relation to the income year (or the alternative test);
- the entity, through one or more of its sub-funds or otherwise, satisfies the trading business restrictions; and
- either:
 - the corporate director has elected to apply the ACCIV regime for the income year; or
 - the entity was an ACCIV for an earlier income year.

1.16 However, if, due to temporary circumstances that are outside the control of the corporate director, the CCIV fails the ACCIV requirements, the CCIV can continue to be treated as an ACCIV in relation to the income year if it is fair and reasonable to do so.

1.17 Under the attribution model, an ACCIV has the following benefits:

- for income tax purposes, the ACCIV is able to attribute amounts of assessable income, exempt income, non-assessable non-exempt income and tax offsets to members on a fair and reasonable basis;
- if the ACCIV discovers a variance between the amounts actually attributed to members for an income year, and the amounts that should have been attributed, the ACCIV can reconcile the variance in the income year that is discovered by using the ‘unders’ and ‘overs’ regime; and
- where certain criteria are met, an ACCIV with separate classes of membership interests may elect to treat those classes as separate ACCIVs for the purposes of Division 276.

1.18 In addition, the amendments:

- make the ACCIV liable to pay tax in certain circumstances;

- ensure that the PAYG withholding provisions and the withholding tax liability provisions apply appropriately to ACCIVs and their members, including members that are custodians;
- provide ACCIVs access to deemed capital account treatment; and
- establish CGT event M1 for AIVs (which apply to both AMITs and ACCIVs) to ensure that shifts in the value of a membership interest in the AIV over the income year due to attribution and distribution will be reflected in adjustments to the cost base of the membership interest.

1.19 Eligible AMITs that choose to transition into an ACCIV will be provided roll-over relief on a 'like for like' basis to ensure that members of those entities are not disadvantaged by the restructure.

1.20 A CCIV that fails to satisfy the ACCIV criteria is subject to taxation at the corporate rate. Further, it cannot distribute franking credits to members as it is not a franking entity.

1.21 The amendments also provide benefits to members of an ACCIV by:

- applying a 'character flow-through' model to ensure that amounts derived or received by the ACCIV that are attributed to members retain the character they had in the hands of the ACCIV for income tax purposes;
- applying an 'unders' and 'overs' regime to reconcile variances, rather than requiring members to amend assessments for earlier income years; and
- reducing double taxation that might otherwise arise by allowing members to make annual upward and downward adjustments to the cost bases of their shares in the ACCIV.

1.22 Amounts derived or received by the ACCIV that are attributed to members retain their original character and therefore will not be treated as a dividend. Where the ACCIV holds assets that are shares which pay franked dividends, both the dividend and franking credit will flow through the ACCIV to the member.

Comparison of key features of new law and current law

<i>New law</i>	<i>Current law</i>
<p>Generally, a company will qualify as an ACCIV if:</p> <ul style="list-style-type: none"> • the company is a CCIV at all times during the income year; • each sub-fund of the company satisfies the widely held requirements and closely held restrictions; • the company (through one or more of its sub-funds or otherwise) satisfies the trading business restrictions; and • either: <ul style="list-style-type: none"> – the corporate director has elected to apply the ACCIV regime for the income year; or – the company was an ACCIV for an earlier income year. 	No equivalent.
<p>A CCIV that fails to meet the requirements to be an ACCIV due to temporary circumstances that are outside the control of the corporate director can continue to be treated as an ACCIV if it is fair and reasonable to do so.</p>	No equivalent.
<p>An ACCIV is able to attribute amounts of assessable income, exempt income, non-assessable non-exempt income, tax offsets and credits to members on a fair and reasonable basis in accordance with their interests.</p>	<p>A company is liable to pay tax on its taxable income at the corporate tax rate. Profits distributed to members are taxed as dividends. Under the company imputation system, the company has the option of passing to those members credit for income tax paid by the company. This is done by franking the distribution.</p>
<p>An ‘unders’ and ‘overs’ regime allows an ACCIV to reconcile variances between the amounts actually attributed to members for an income year and the amounts that should have been attributed in the income year.</p>	No equivalent.

Assets transferred between sub-funds of an ACCIV will be recognised for certain tax purposes.	No equivalent.
A corporate director of an ACCIV that has multiple classes of membership interests can make a choice that each of those classes be treated as a separate ACCIV under certain circumstances.	No equivalent.
An eligible ACCIV can make a capital account treatment election.	No equivalent.
A new CGT event M1 applies to both AMITs and ACCIVs.	No equivalent.
ACCIVs are not entitled to a discount capital gain. However, the amount retains its character as a discount capital gain for the purposes of attribution to its members.	Companies are not entitled to a discount capital gain.
An ACCIV is liable to pay tax in some circumstances.	A company is liable to pay tax on its taxable income at the corporate tax rate.
An ACCIV is required to pay withholding tax on amounts attributed to foreign residents in some circumstances.	A company is required to pay withholding tax on dividends paid to foreign residents in some circumstances.
CCIVs which fail to satisfy the ACCIV criteria will be subject taxation at the corporate rate and cannot distribute franking credits.	No equivalent.
The corporate director of an ACCIV or the trustee of an AMIT will be liable to an administrative penalty if it has an 'under' or an 'over' for the base year which resulted from intentional disregard, recklessness or failure to take reasonable care.	No equivalent.
CGT roll-over relief will apply to AMITs that transition to an ACCIV.	CGT roll-over relief is available for unit trusts that convert to a company structure.

Detailed explanation of new law

What is a CCIV?

1.23 Broadly, a CCIV is a newly incorporated company registered under the Corporations Act that is limited by shares and satisfies certain regulatory requirements, including having a single corporate director and at least one sub-fund at all times. The corporate director must be a public company that holds an Australian financial services licence authorising it to operate a CCIV. The CCIV is intended to be a primarily passive investment vehicle.

1.24 The CCIV has a legal personality. It is a single entity and a single taxpayer. The sub-funds of a CCIV do not have legal personality and are not separate income tax entities. The corporate director of the CCIV is required to allocate liabilities, including tax liabilities, which arise from the assets of a particular sub-fund to that sub-fund. Liabilities must be allocated in a manner that is fair and reasonable in all circumstances.

What is a sub-fund?

1.25 Broadly, a sub-fund is a segregated fund of assets to which a class or classes of shares in the CCIV are referable. The sub-fund does not have separate legal personality (see section 1141B and subsection 1141(3) of the CCIV Regulatory Exposure Draft Bill).

1.26 Each CCIV must have at least one sub-fund, but may have more than one sub-fund (see section 1141A of the CCIV Regulatory Exposure Draft Bill).

1.27 A person is a 'member of a sub-fund' if the person is a member of the CCIV and holds one or more shares referable to a particular sub-fund (see section 1141C of the CCIV Regulatory Exposure Draft Bill). In this regard, a member of a sub-fund does not directly hold shares in the sub-fund, rather, they hold shares in the CCIV and those shares are referable to a particular sub-fund.

1.28 The concept of a sub-fund allows managed funds to operate with an 'umbrella structure', such that investors in respect of a particular sub-fund of a CCIV are quarantined from the consequences of activities in respect of other sub-funds of the CCIV. This provides for the segregation of assets and liabilities between sub-funds. In this regard, a sub-fund is similar to an AMIT and each sub-fund is required to meet the eligibility rules as those applying to an AMIT.

1.29 The requirement for segregation of assets and liabilities is at the sub-fund level, not the share class level. Where multiple classes of shares within a sub-fund exist, a liability can be recovered from within a sub-fund, rather than limited only to assets attributed to a particular class of shares within that sub-fund.

Retail and wholesale CCIVs

1.30 A CCIV can be either a retail CCIV or a wholesale CCIV. A retail CCIV is subject to all the CCIV regulatory requirements whereas a wholesale CCIV is subject to fewer requirements due to the more sophisticated nature of investors in a wholesale CCIV.

1.31 A CCIV with both wholesale and retail clients will be a retail CCIV and therefore subject to all the CCIV regulatory requirements.

1.32 For example, only retail CCIVs are subject to the additional investor protections in the regulatory framework (see Chapter 7A, Part 3 of the Corporations Act).

1.33 Further, a retail CCIV is required to have a depositary. This requirement is optional for a wholesale CCIV. The depositary has a safekeeping role in respect of the assets of the CCIV and also some oversight functions in respect of the CCIV and the corporate director.

1.34 Broadly, these distinctions between a retail and wholesale CCIV reflect the MIS regime. However, unlike the MIS regime, all CCIVs (including wholesale CCIVs) are required to be registered under the Corporations Act.

Depositary

1.35 A retail CCIV is required to have a depositary while a wholesale CCIV may elect to have a depositary.

1.36 A depositary must be either a public company or a foreign company registered under Division 2 of Part 5B.2 of the Corporations Act, hold an Australian financial services licence authorising it to act as a depositary, and meet an independence requirement.

1.37 A depositary has three core duties: to hold the assets of the CCIV on trust for the CCIV, to execute the instructions of the corporate director in dealing with those assets, and to supervise the corporate director's conduct of certain activities (see sections 1164, 1164A and 1164B of the CCIV Regulatory Exposure Draft Bill).

1.38 The depositary may outsource the holding and administration of the CCIV assets to an overseas or local agent (a custodian). It cannot outsource its supervisory function.

1.39 A detailed explanation of the regulatory framework for CCIVs is contained in the exposure draft explanatory materials to the CCIV Regulatory Exposure Draft Bill.

The AIV regime

1.40 Schedule # to this Bill introduces a new concept to the tax law – an AIV. An AIV may be either:

- an AMIT (sections 276-10 to 276-15); or
- an ACCIV (sections 276-20 to 276-45).

[Schedule #, items 2 to 10, sections 276-1, 276-5 and 276-7]

1.41 The amendments apply the existing AMIT attribution or ‘character flow-through’ model to ACCIVs with modifications as required to take account of the corporate structure and CCIV model.

1.42 The amendments made by this exposure draft Bill do not alter the attribution taxation regime that currently applies to AMITs.

Meaning of an ACCIV

1.43 A CCIV, registered under the Corporations Act, will be an ACCIV for an income year if:

- the entity is a CCIV at all times during the income year (when it is in existence);
- each sub-fund of the entity satisfies the widely-held requirements and closely-held restrictions in relation to the income year (or the alternative test);
- the entity (through one or more of its sub-funds or otherwise) satisfies the trading business restrictions; and
- either:
 - the corporate director has elected to apply the ACCIV regime for the income year; or

- the entity was an ACCIV for an earlier income year.

[Schedule #, item 1, section 276-20]

1.44 These amendments reflect the requirements for a MIT to be an AMIT, with modifications to reflect the sub-fund and corporate structure of a CCIV.

The entity is a CCIV at all times during the income year

1.45 An entity that registers as a CCIV under the Corporations Act must make an irrevocable election to be an ACCIV at the time it lodges its tax return. An entity must be a CCIV at all times when the entity is in existence during the income year to be able to access the ACCIV regime. If an entity registers as a CCIV and comes into existence part way through an income year, it can still satisfy this requirement. *[Schedule #, item 1, paragraph 276-20(1)(a) and subsections 276-20(3) and (4)]*

1.46 While the amendments do not preclude an existing AMIT from transitioning into an ACCIV during the income year, to the extent restructures of this nature arise, each entity will be required to submit tax returns to reflect its compliance obligations and tax treatment.

1.47 Further, if an entity that was a corporate entity for six months of the income year registers as a CCIV, it must apply company taxation for the part of the year it was a corporate taxpayer, and to the extent it is eligible, it may apply ACCIV tax treatment for the remainder of the income year.

Sub-fund requirements

1.48 Each sub-fund of the CCIV must meet the widely-held requirements and closely-held restrictions (or the alternative test). This reflects that each sub-fund is segregated and that the whole CCIV should be a genuine collective investment vehicle. If one sub-fund of the CCIV does not satisfy these requirements, the CCIV will not satisfy the ACCIV general test. *[Schedule #, item 1, paragraph 276-20(1)(b)]*

Widely-held requirements

1.49 The widely-held requirements that need to be satisfied by the sub-fund will depend on whether or not the sub-fund has wholesale membership.

1.50 A sub-fund must satisfy the relevant requirements at the time the first fund payment is made from the sub-fund for the income year. *[Schedule #, item 1, paragraph 276-20(2)(a)]*

1.51 The meaning of *fund payment* is set out in the Schedule 1 to the TAA 1953. The amendments extend the current definition of fund payment that applies to AMITs so that it applies to all AIVs. [*Schedule #, items 359 to 374, section 12A-110 in Schedule 1 to the TAA 1953*]

Widely-held requirements — wholesale membership

1.52 A sub-fund that has wholesale membership must satisfy certain requirements and have at least 25 members at the time the first fund payment is made from the sub-fund for the income year. [*Schedule #, item 1, paragraph 276-25(1)(b)*]

1.53 The wholesale membership requirements for the sub-fund are that:

- the total number of persons that had become a member of the sub-fund because a financial product or a financial service was provided to, or acquired by, the person as a retail client (within the meaning of sections 761G and 761GA of the Corporations Act) is equal to or less than 20; and
- these persons collectively must have a total sub-fund participation interest in the sub-fund of not more than 10 per cent.

[*Schedule #, item 1, subsection 276-25(2)*]

1.54 These requirements reflect the widely-held requirements under the AMIT regime for unregistered trusts with wholesale membership (see subparagraph 275-10(3)(e)(iii), sections 275-15 and 275-40), with modifications to remove inapplicable trust elements and apply the test to each sub-fund of the CCIV.

1.55 An entity has a *sub-fund participation interest* in the sub-fund if the entity, directly or indirectly:

- holds, or has the right to acquire, interests representing a percentage of the value of the interests in the sub-fund; or
- has the control of, or the ability to control, a percentage of the rights attaching to either or both of the following:
 - an interest, or set of interests, in the sub-fund;
 - each right to receive a distribution, or set of such rights, in relation to the sub-fund.

[*Schedule #, item 1, subsection 276-40(1)*]

1.56 The sub-fund participation interest that an entity has in a sub-fund is the greatest of the percentages mentioned in paragraphs 276-40(1)(a) and (b). *[Schedule #, item 1, subsection 276-40(2)]*

Widely-held requirements — no wholesale membership

1.57 If the sub-fund does not have wholesale membership, the sub-fund must meet either or both of the following requirements:

- the sub-fund has at least 50 members; and/or
- one or more of specified types of entities (those entities covered by subsection 275-20(4), including life insurance companies, complying superannuation funds with 50 members or more, and other investment entities) have a sub-fund participation interest of more than 25 per cent, and no other entity has a sub-fund participation interest of more than 60 per cent.

[Schedule #, item 1, paragraph 276-25(1)(a) and subsections 276-25(3) to (6)]

1.58 These requirements reflect the widely-held requirements under the AMIT regime for trusts without wholesale membership (see subparagraph 275-10(3)(e)(ii), subsection 275-20(2) and section 275-25), with modifications to remove inapplicable trust elements and apply the test to each sub-fund of the CCIV.

Members of a sub-fund of an entity

1.59 The amendments apply the existing AMIT provisions for determining the number of members of the trust (see subsections 275-20(3), (5), (7)) to CCIVs with modifications to remove inapplicable trust elements and apply the tests to each sub-fund of the CCIV. *[Schedule #, item 1, subsections 275-25(7) and (8)]*

Closely-held restrictions

1.60 The closely held restrictions for a sub-fund are met unless, at any time during the income year:

- for a sub-fund with wholesale membership — 10 or fewer persons have a total sub-fund participation interest in the sub-fund of 75 per cent or more;
- for a sub-fund without wholesale membership — 20 or fewer persons have a total sub-fund participation interest in the sub-fund of 75 per cent or more; or

- a foreign resident individual has a sub-fund participation interest in the sub-fund of 10 per cent or more.

[Schedule #, item 1, section 276-30]

1.61 These requirements reflect the closely-held restrictions under the AMIT regime for trusts (see paragraph 275-10(3)(f) and section 275-30), with modifications to apply the test to each sub-fund of the CCIV.

Alternative test to satisfying the widely-held requirements and closely-held restrictions

1.62 If the sub-fund has all members that qualify as ACCIVs, MITs, or other specified widely-held entities (including life insurance companies, foreign life insurance companies, complying superannuation funds, complying approved deposit funds, foreign superannuation funds and pooled superannuation trusts) for an income year, the relevant sub-fund is taken to satisfy the widely-held requirements and closely-held restrictions. *[Schedule #, item 1, paragraph 276-20(2)(b)]*

1.63 This requirement aligns with the AMIT regime alternative test for satisfying the widely-held requirements and closely-held restrictions (see paragraphs 276-10(1)(c) and 275-10(1)(b)) which provide that the requirements will be satisfied if the only members of the trust are specified types of widely-held entities or MITs.

Trading business restrictions

1.64 An entity must satisfy the trading business restrictions, that is, each of its sub-funds must not:

- carry on a trading business (within the meaning of Division 6C of Part III of the ITAA 1936); or
- control, or be able to control, directly or indirectly, the affairs or operations of another person in respect of the carrying on by that other person of a trading business.

[Schedule #, item 1, paragraph 276-20(1)(c) and subsection 276-35(1)]

1.65 A trading business is a business that does not wholly consist of 'eligible investment business' activities (as defined in section 102M of the ITAA 1936), that is, passive investment activities. The permitted activities include, for example, investing in land primarily for the purpose of deriving rent, and investing or trading in secured and unsecured loans, bonds and other securities and foreign exchange contracts.

1.66 However, an entity will not be taken to carry on a trading business during the income year if for that year:

- no more than two per cent of the entity's gross revenue was from excluded income; and
- no more than two per cent of the entity's gross revenue attributable to each sub-fund was income that was excluded income.

[Schedule #, item 1, subsection 276-35(2)]

1.67 This means that, for example, an entity (with multiple sub-funds) which derives two per cent of its gross revenue from excluded income through investment activities attributable to a single sub-fund will be taken to carry on a trading business through that sub-fund.

1.68 The trading business restrictions for CCIVs broadly align with the AMIT trading business restrictions (see paragraph 275-10(3)(b), subsections 275-10(4), (4A) and (5)) to ensure that the ACCIV vehicle is a passive investment vehicle.

Election to be treated as an ACCIV

1.69 The corporate director of the CCIV must make an election that the CCIV be treated as an ACCIV. This election is irrevocable and applies to all later income years. *[Schedule #, item 1, paragraph 276-20(1)(d) and subsection 276-20(3)]*

1.70 This requirement aligns with the AMIT requirement that the trustee must elect to apply the AMIT regime, which is irrevocable and applies to all later income years (see paragraph 276-10(1)(e) and subsection 276-10(2)).

Temporary circumstances test

1.71 An entity that fails to meet one of the ACCIV requirements under the general test may still be treated as an ACCIV if it satisfies the following requirements:

- the entity is a CCIV at all times during the income year (when it is in existence);
- there is a particular temporary circumstance that arose outside the control of the corporate director; and

- it is fair and reasonable to treat the CCIV as an ACCIV in relation to the income year having regard to a number of factors, including:
 - the nature of the circumstance;
 - actions taken to address the circumstance by the corporate director;
 - the speed with which such actions are taken;
 - the amount of tax that would otherwise be payable; and
 - any other relevant matter.

[Schedule #, item 1, subsection 276-20(4) and section 276-45]

1.72 This test reflects the MIT temporary circumstances test (see section 275-55).

Attribution model for ACCIVs

1.73 The amendments apply the existing AMIT attribution or ‘character flow-through’ model (see sections 276-75 to 276-820) to ACCIVs with modifications as required to take account of the corporate structure and CCIV model. *[Schedule #, items 12 to 237, sections 276-75 to 276-820]*

1.74 This is achieved by broadening the existing provisions that apply only to AMITs to all AIVs (as appropriate). For example, broadening the terminology to refer to:

- ‘AIV’ rather than ‘AMIT’;
- ‘operator’ rather than ‘trustee’;
- ‘determined AIV component’ rather than ‘determined trust component’; and
- ‘AIVMA statement’ rather than ‘AMMA statement’.

1.75 Under the ACCIV attribution model, the operator (corporate director) must:

- determine the overall amounts of particular characters of income for the ACCIV for an income year, that is:

- calculate the total amounts associated with the various activities of the ACCIV that are amounts of assessable income, exempt income, non-assessable non-exempt income and capital gains and losses — the *AIV component* of each particular character; and
- determine the amount of the components of particular characters and create a document recording those amounts — the *determined AIV component*; and
- attribute amounts with particular characters for that income year to members on a fair and reasonable basis in accordance with the constituent documents of the ACCIV — that is:
 - attribute the amount of an AIV component of a particular character to a member based on the member’s clearly defined interest in the ACCIV — the *member component*;
 - determine the amount of the member component of particular characters that is attributed to each member — the *determined member component*; and
 - issue an AIV member annual statement (AIVMA statement) to the member that records those amounts.

[Schedule #, items 53 to 100, sections 276-200 to 276-270]

1.76 The amount that is recognised by the member for income tax purposes in relation to their investment in an ACCIV is the determined member component, which is generally the amount shown on the AIVMA statement issued by the ACCIV. *[Schedule #, item 220, sections 276-450 to 276-460]*

1.77 The attribution model also provides flexibility for an ACCIV to reconcile any variance between the amounts actually attributed to members for an income year and the amounts that should have been attributed to members (for example as a result of incomplete information being available at the time of issuing the AIVMA statement) in the year the variance is discovered utilising an ‘unders’ and ‘overs’ regime. *[Schedule #, items 101 to 181, sections 276-300 to 276-350]*

1.78 In certain circumstances, the ACCIV will be liable to pay tax, for example, in relation to amounts of assessable income of the ACCIV that have not been attributed to members of that ACCIV in an income year. *[Schedule #, items 182 to 219, sections 276-400 to 276-425]*

1.79 The PAYG withholding provisions and withholding tax liability provisions also apply to ACCIVs and their members, including members who are custodians.

Depository treated as the same entity

1.80 Where an ACCIV has a depository, ordinarily a trust relationship for income tax purposes would arise because the depository holds the assets on trust for the ACCIV. To ensure the attribution model provides for ‘character flow-through’ of income, the amendments provide that Division 6 of the ITAA 1936 (about trust income) does not apply in relation to any trust estate that arises because of the relationship between an ACCIV and its depository. [*Schedule #, item 424, section 95AAE of the ITAA 1936*]

1.81 Where an ACCIV has a depository, the ACCIV and the depository (in that capacity) are taken to be the same entity for the purposes of applying the attribution regime — that is, working out the ACCIV’s tax position and AIV components. This treatment of the depository will operate where the depository is a resident or non-resident of Australia, where income derived by the depository on behalf of an ACCIV will be treated as being derived by the ACCIV as an Australian resident. [*Schedule #, item 91, subsection 276-260(5)*]

1.82 However, for the purposes of working out the ACCIV’s AIV component of a particular character for the income year, any payments made by the ACCIV to the depository (in relation to its capacity as the ACCIV’s depository) will be disregarded. This means that payments made by the ACCIV to the depository in its capacity as a depository (such as fees paid by the ACCIV for services rendered by the depository) will be recognised for tax purposes. [*Schedule #, item 91, paragraph 276-260(5)(e)*]

Consequences of transfer of assets between sub-funds

1.83 Assets of a sub-fund held by an ACCIV must be for the benefit of that sub-fund and held separately from other sub-funds. Assets cannot be applied to benefit another sub-fund (see section 1142C of the CCIV Regulatory Exposure Draft Bill). Therefore, where an ACCIV transfers an asset that is allocated to a particular sub-fund to another sub-fund, the asset is taken to have been disposed of, and reacquired by, the ACCIV for income tax purposes.

1.84 That is, in determining whether an amount is included in assessable income or is an allowable deduction in respect of the transfer of the asset, or whether a capital gain or capital loss arises in respect of the transfer, the ACCIV is taken to have:

- sold the asset immediately before the transfer for consideration equal to its market value; and
- purchased the asset again at the time of the transfer for consideration equal to its market value.

[Schedule #, item 1, section 276-46]

Classes of membership interests for an ACCIV

1.85 The amendments extend the existing provisions (see section 276-20) which apply to AMITs to AIVs to ensure that an ACCIV with separate membership interests (such as separate sub-funds or classes of shares) may elect to treat those separate classes of membership interests as separate ACCIVs for the purposes of Division 276, where certain criteria are met. *[Schedule #, item 11, section 276-48]*

1.86 These criteria include:

- the rights arising from each of the membership interests in a particular class must be the same as the rights arising from every other membership interest in that class;
- each of those membership interests in a particular class must be distinct from each of the membership interests in another class; and
- the operator of the AIV must have made a choice to apply the attribution regime separately to each class of membership interests.

[Schedule #, item 11, subsection 276-48(1)]

1.87 Where membership interests of an ACCIV are divided into classes and the operator of the ACCIV makes an irrevocable election, the ACCIV may be able to apply the attribution regime separately to each class of those membership interests in the ACCIV for that income year and every subsequent income year. This means that each class will effectively be treated as a separate ACCIV with separate ACCIV assets for the purposes of the attribution regime. *[Schedule #, item 11, subsections 276-48(2), (4) and (5)]*

1.88 Accordingly, assessable income, exempt income, non-assessable non-exempt income, tax losses, net capital losses and other similar amounts derived by the ACCIV for an income year must be allocated between each class on a fair and reasonable basis. *[Schedule #, item 11, subsection 276-48(3)]*

1.89 To the extent that assets and expenditure relate solely to a particular class of membership interests, the assessable income and deductions relating to that class will need to be identified by reference to the assets supporting that class.

1.90 To the extent that assets and expenditure relate to more than one class of membership interests, the related assessable income and deductions must be allocated to each class on a fair and reasonable basis.

1.91 As outlined in the draft explanatory memorandum to the CCIV Regulatory Exposure Draft Bill (see 'Division 3 — Sub-funds, Subdivision B: Segregation of assets and liabilities), the corporate director of a CCIV is required to allocate liabilities of a CCIV to a particular sub-fund on a fair and reasonable basis.

1.92 To the extent a sub-fund comprises multiple classes of shares, assets can be moved between classes of the same sub-fund to meet the liabilities of that sub-fund class, without giving rise to a taxing event.

Capital gains tax — ACCIV

Discount capital gains calculation not applicable

1.93 Consistent with the operation of the CGT discount capital gains rules that apply to companies, ACCIVs are not entitled to discount capital gains that they make when working out their taxable income.

1.94 However, if an ACCIV receives an amount that meets the conditions to qualify for a discount capital gain, the amount will retain that tax character as it flows through the ACCIV to its members. If the member who receives the amount is entitled to discount capital gains, the member will be able to apply the discount to the capital gain when working out their taxable income.

Deemed capital account treatment

1.95 The amendments allow AIVs including an eligible ACCIV to choose deemed capital account treatment for certain assets of the ACCIV under new subdivision 276-JA.

1.96 The operator of the ACCIV can elect to apply the CGT provisions to gains and losses made on the disposal of certain assets held as passive investments, rather than on revenue account. The amendments broadly replicate the existing rules for MITs (under subdivision 275-B) for AIVs. [*Schedule #, item 262, sections 276-600 to 276-620*]

1.97 As with the AMIT rules, the election must be made in the first year that the CCIV qualifies as an ACCIV. This election is irrevocable. If the ACCIV does not make a capital account treatment election, it will be taxed on revenue account. *[Schedule #, item 262, sections 276-615 and 276-620]*

New CGT event M1 for annual cost base adjustments

1.98 The amendments introduce new CGT event M1 which will apply to all AIVs (including both ACCIVs and AMITs) and replaces CGT event E10 (which currently applies to only AMITs). This reflects the policy principle that there should be an adjustment to the cost base of a share that reflects the shift in value (upward and downward) of the share over the income year due to attribution and distribution.

1.99 This new CGT event broadly replicates CGT event E10. However, it adapts the provisions to account for the new ACCIV entity. For an AMIT, CGT event M1 will apply and operate in the same way as CGT event E10 did previously. *[Schedule #, item 250, sections 104-600 to 104-635]*

1.100 Where non-assessable payments from the ACCIV are received by members, CGT event M1 occurs at the time of the payment or when the entitlement to the payment arises. Adjustments will then need to be made to the cost base or reduced cost base of the shares (membership interest). *[Schedule #, item 250, sections 104-600 and 104-605]*

1.101 The operator (corporate director) of the ACCIV will calculate a 'cost base net amount', which will be specified in the AIVMA statement provided to members. This amount will be the balance of the member's cost base reduction amount and cost base increase amount which will then be applied to the cost base of the share. *[Schedule #, item 250, sections 104-610 to 104-620]*

1.102 Where the cost base reduction amount exceeds the cost base increase amount, the resulting cost base net amount reduces the cost base or reduced cost base of the share. If the net amount is greater than the cost base, the cost base of the shares will be reduced to nil. Any remaining excess will give rise to a capital gain as a result of CGT event M1. Further, where the cost base of the CGT asset was nil at the start of the income year, a capital gain will arise which is equal to the amount of the AIV cost base net amount for the income year. *[Schedule #, item 250, section 104-600]*

1.103 A number of other amendments have been made due to the replacement of CGT Event E10 with CGT event M1. For example, to ensure that CGT events E4 and G1 do not apply to AIVs. *[Schedule #, items 243 to 249, sections 70-10, 104-5, 104-70, 104-107A to 104-107H, and 104-135]*

Tax liabilities relating to ACCIVs

Withholding tax

1.104 The amendments expand the provisions that apply to withholding MITs by inserting the concept of a ‘withholding AIV’. A withholding AIV is either:

- an AMIT that is a withholding MIT; or
- a withholding ACCIV.

[Schedule #, item 389, section 12A-207 in Schedule 1 to the TAA 1953]

1.105 The amendments apply the withholding provisions under the AMIT attribution model to withholding AIVs, by inserting new terminology. For example ‘AIV DIR payment’ replaces ‘AMIT DIR payment’ and ‘AIVMA statement’ replaces ‘AMMA statement’. Further, the amendments make consequential adjustments (as required) to broaden the provisions to apply to withholding AIVs. *[Schedule #, items 263 to 412, subsection 128AF(1A) of the ITAA 1936, sections 840-800 to 840-815 of the ITAA 1997, and sections 12-375 to 12-395 and 12A-1 to 12A-220 in Schedule 1 to the TAA 1953]*

1.106 The definition of a ‘withholding ACCIV’ mirrors the definition of a withholding MIT, with appropriate adjustments for the ACCIV structure. That is, the test relating to the investment management activities that are carried out in Australia applies in relation to each sub-fund of the ACCIV. Each sub-fund must satisfy this test in order for the ACCIV to be a withholding ACCIV. *[Schedule #, item 291, section 12-384 in Schedule 1 to the TAA 1953]*

1.107 The circumstances in which a withholding tax liability arises for a withholding ACCIV and a member (and a custodian, as applicable) are the same as the existing circumstances that apply to the trustee of a withholding AMIT and a member (and a custodian, as applicable). These circumstances include:

- a payment of Australian sourced income (other than dividends, interest and royalties) if the payment is made to an entity whose address, or place for payment, is outside Australia (see Subdivision 12-H in Schedule 1 to the TAA 1953 and Subdivision 840-M of the ITAA 1997);
- a payment relating to dividends, interest or royalty made to a recipient whose address, or place for payment, is outside Australia (see Subdivision 12-F in Schedule 1 to the TAA 1953);

- a payment deemed to be made by giving a member an AIVMA statement (see Subdivision 12A-C in Schedule 1 to the TAA 1953).

1.108 The withholding provisions also continue to apply to a withholding MIT that is not an AMIT to ensure that such a MIT continues to have withholding obligations.

Income tax

1.109 Under the ACCIV attribution model, the ACCIV will be liable to tax:

- if a discrepancy occurs in attributing component amounts to members in some circumstances;
- on amounts attributed to a foreign resident member in some circumstances; and
- on non-arm's length income.

Discrepancy in component attribution

1.110 The amendments adjust the current provisions which apply to AMITs and ensure that the same principles and outcomes apply for AIVs. *[Schedule #, items 182 to 219, sections 276-400 to 276-425]*

1.111 That is:

- if the AIV is an ACCIV, the ACCIV is liable to tax; and
- if the AIV is an AMIT, the trustee of the AMIT is liable to tax.

1.112 It is appropriate to tax the ACCIV in these circumstances so that taxable income derived by the ACCIV for an income year does not escape taxation — that is, where the income is not attributed to members and taxed at the member level, it should generally be taxed at the ACCIV level.

1.113 The Commissioner may also remit, in whole or in part, an income tax liability that arises from these types of discrepancies, if the Commissioner is satisfied that the remission would not result in a detriment to the revenue (see section 276-430).

1.114 Under the ACCIV attribution model, the ACCIV may be liable to income tax where:

- a shortfall arises in the determined member component of a particular character that relates to assessable income;
- an excess arises in the determined member component of a particular character that relates to a tax offset;
- the determined member component of a particular character that relates to assessable income is less than the determined AIV component;
- ‘unders’ of a particular character that relate to assessable income are not properly carried forward; and
- ‘overs’ of a particular character that relate to a tax offset are not properly carried forward.

Amounts attributed to a foreign resident member

1.115 Under the AMIT attribution model, the trustee of an AMIT that is not a withholding MIT is liable for income tax on certain amounts attributed to a foreign resident member. The applicable rate depends on what type of entity the member is. If the member is not a trustee, they are entitled to receive a refundable tax offset for the amount of tax paid by the trustee of the AMIT.

1.116 The amendments expand this rule to apply to AIVs, that is, the ACCIV or the trustee of an AMIT is liable to income tax where certain amounts are attributed to a foreign resident member. *[Schedule #, items 37 to 47, sections 276-105 and 276-110]*

Non-arm’s length income

1.117 The amendments introduce an AIV specific arm’s length income rule which operates in the same way as the existing arm’s length income rule for MITs, including amounts specifically excluded from the rule (see Subdivision 275-L). The Commissioner may make a determination in writing that specifies an amount of non-arm’s length income for a specific AIV in relation to a specified income year. The ACCIV, or the trustee of the AMIT, is liable to pay tax on the non-arm’s length income. *[Schedule #, items 421 and 422, sections 276-437 to 276-443]*

1.118 An amount of non-arm’s length income is, broadly, an amount that is derived from a scheme where the parties were not dealing with each other at arm’s length in relation to the scheme, and the amount exceeds the amount that the entity might have been expected to derive if the parties had been dealing with each other at arm’s length. *[Schedule #, item 422, section 276-441]*

1.119 As a consequence of inserting the separate arm's length income rule that applies to AIVs (including both ACCIVs and AMITs), other amendments ensure that the current arm's length income rules continue to apply to MITs only. *[Schedule #, items 413 to 421, sections 275-600 to 275-615]*

Failure to meet the ACCIV criteria

1.120 A CCIV that does not satisfy the ACCIV criteria is subject to taxation at the corporate rate and is not able to distribute franking credits to its members as it is not a franking entity. The distributions to non-resident investors will be non-assessable non-exempt income. *[Schedule #, item 427, paragraph 202-15(ba)]*

1.121 This approach is consistent with the policy intent of the ACCIV regime, which is to introduce a tax framework for a more internationally recognisable primarily passive investment vehicle that provides flow-through taxation treatment and delivers tax neutral outcomes for investors in CIVs.

1.122 To the extent a CCIV fails to meet the ACCIV eligibility (i.e. it is not a flow-through vehicle), it is not appropriate to have a corporate entity (i.e. the CCIV) being taxed like a trust.

1.123 In this circumstance, the CCIV will be subject to taxation at the corporate tax rate. Denying the entity the ability to distribute franked dividends is intended to be a disincentive for funds registering as a CCIV, without ever having the intention of electing into the ACCIV tax regime. This aligns with the purpose of the regime to provide a framework for ACCIVs.

1.124 A CCIV must deregister from being a CCIV if it ultimately does not elect into the regime or fails to meet the eligibility requirements.

Roll-over relief for AMITs that transition to an ACCIV

1.125 AMITs that choose to transition to an ACCIV will have access to roll-over relief at both the entity level (for assets) and the investor level (for members' units). This is achieved by adapting the existing CGT roll-over provisions for trust restructures under subdivision 124-N for the purposes of AMITs and ACCIVs. *[Schedule #, items 251 to 253, sections 124-850 and paragraphs 124-855(1)(b) and (ba)]*

1.126 A CGT roll-over provides relief on certain capital gains events, to ensure that funds and investors do not incur an income tax liability at the time of transfer and defers tax consequences for members.

1.127 The roll-over relief will only apply on a ‘like for like’ basis which means that the shares in the ACCIV must be issued to members in proportion to their holdings of the extinguished units in the AMIT. This ensures that the tax status of members’ investments are retained. This includes the asset cost base, the acquisition date and the member’s tax history (including unrealised tax losses).

1.128 In general terms, the CGT roll-over is provided where:

- an AMIT disposes of all of its CGT assets to an ACCIV within the trust restructuring period;
- the ACCIV meets certain requirements;
- all interests in the AMIT are exchanged for interests in an ACCIV (through its sub-funds) in equivalent proportions; and
- both the AMIT and ACCIV choose to apply the roll-over relief.

1.129 It is also a condition of the roll-over that CGT event M1 (AIV – cost base reduction exceeds cost base) must be capable of applying to all of the interests in the AMIT. [*Schedule #, item 252, paragraph 124-855(1)(b)*]

1.130 The CGT roll-over is also available where two or more AMITs restructure into a single ACCIV, subject to the following additional requirements:

- if more than one AMIT restructures into a single ACCIV, each AMIT must not hold an interest in another AMIT that is also entering into the same restructure;
- a separate sub-fund must be created in the ACCIV for each separate AMIT that restructures into the ACCIV, which means that the assets within each separate AMIT must be the same as the assets in the sub-fund that relates to those separate AMITs; and
- the interests in each of the sub-funds must be owned by the same beneficiaries of the related AMIT in the same proportions.

[*Schedule #, item 254, subsection 124-855(2)*]

1.131 In this regard, there are limitations to applying the relief as the roll-over does not permit the combining of different pools of assets from multiple AMITs into the one sub-fund.

Disposal of trust assets

1.132 All of the CGT assets of the AMIT must be disposed of to the ACCIV during the trust restructuring period (see subsection 124-860(1)). This allows for a staggered transfer of the assets or a single transfer of all of the assets of the AMIT. However, assets that are specifically retained in the AMIT for the purposes of discharging existing or expected debts of the AMIT can be ignored.

The trust restructuring period

1.133 The trust restructuring period starts just before the first asset is disposed of to the ACCIV and ends at the time the last asset is disposed of under the restructure (see subsection 124-860(2)). Therefore the assets that must be disposed of are all the assets owned by the AMIT just before the disposal of the first asset to the ACCIV, including any assets acquired by the AMIT up to and until the last asset is disposed of to the ACCIV.

Additional requirements of the ACCIV

1.134 The amendments adapt certain existing requirements for the transferee company (see subsections 124-860(3), (4) and (5)) to ACCIVs and applies certain tests to the sub-fund of the ACCIV. As a result, the ACCIV must satisfy the following requirements:

- it is not an entity that is exempt from income tax;
- it has never carried on any commercial activities;
- its sub-fund that relates to the restructuring AMIT has no CGT assets other than small amounts of cash, or rights under an arrangement that only facilitates the transfer of assets to the ACCIV from the AMIT; and
- it has no losses of any kind.

[Schedule #, item 256, subsection 124-860(5A)]

1.135 As distinct from other trusts that restructure into a company, the requirement that there are no CGT assets other than something nominal also applies to the trustee of the restructuring AMIT. *[Schedule #, item 255, subsection 124-860(5)]*

Proportional interest must be maintained

1.136 The requirement that entities own their interests in the same proportions ensures that a roll-over is only available where an entity's economic ownership in the assets of the AMIT remains unchanged on the completion of the restructuring of the AMIT into an ACCIV.

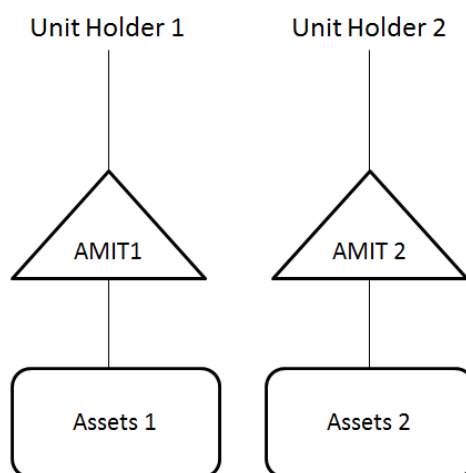
1.137 At the end of the trust restructuring period, each entity that owned interests in an AMIT must own replacement interests of the sub-fund in the ACCIV relating to that AMIT. Further, these replacement interests must be in the same proportion as the entity had owned those interests in that AMIT before the restructure occurred. [*Schedule #, item 257, paragraph 124-860(6)(a)*]

1.138 If more than one AMIT restructures into the same ACCIV, the interests in each of the AMITs must be owned by the same entities in the same proportions. For example, where two or more AMITs restructure into a single ACCIV, an entity with interests in a specific AMIT will own the same proportional interest in a new sub-fund of the ACCIV that relates to that specific AMIT.

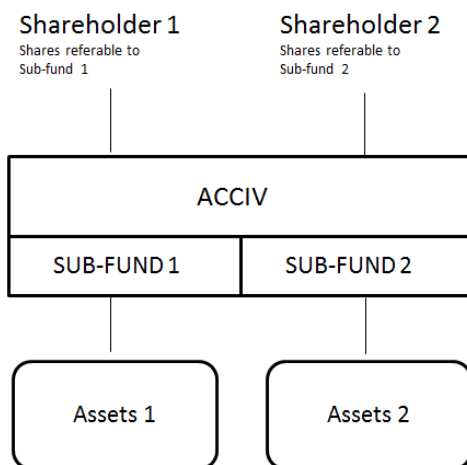
1.139 In addition, the market value of the interests in the sub-fund just after the trust restructuring period must be at least substantially the same as the market value of the interests in the AMIT just before the start of the trust restructuring period. [*Schedule #, item 258, paragraph 124-860(6)(b)*]

Example 1.1: Multiple AMITs restructuring into an ACCIV

Before restructure



After restructure



AMIT 1 (which owns Assets 1) and AMIT 2 (which owns Assets 2) both choose to restructure into an ACCIV.

At the end of the restructuring period:

- AMIT 1 (and its assets) form Sub-fund 1 of the new ACCIV; and
- AMIT 2 (and its assets) forms Sub-fund 2 of the new ACCIV.

Further, unit holders in AMIT 1 and AMIT 2 now own shares that are referable to Sub-fund 1 and Sub-fund 2 respectively.

Each entity that owned interests in AMIT 1 and AMIT 2 now own replacement interests in the sub-fund relating to the specific AMIT in the same proportion prior to the restructure.

Consequently, provided that other requirements are satisfied, roll-over relief is available to:

- AMIT 1;
- AMIT 2; and
- the entities that owned interests in AMIT 1 and AMIT 2.

Exception to proportionate interest tests

1.140 The existing exceptions to the proportionate interest tests (see subsection 124-860(7)) will also apply to ACCIVs. As the ACCIV may be a shelf company, a nominal number of shares may be owned by entities other than the entities with interests in the AMIT before the first asset is

disposed of to the ACCIV. It is also a requirement that the entities that own shares in the ACCIV just before the start of the trust restructuring period only own up to five shares collectively at that time.

1.141 Those shares initially issued in the shelf company may be ignored for the purposes of the proportionate interest tests where the market value of the shares owned in the ACCIV before the trust restructuring period is so insignificant that it would be reasonable to treat the other entities with interests in the AMIT as if they owned all the shares in the ACCIV.

Choosing the roll-over

1.142 Roll-over relief will only be available for the AMIT and the ACCIV if both the AMIT and the operator of the ACCIV (the corporate director) have elected to apply it. However, to the extent that the AMIT and the ACCIV both apply for roll-over relief, it will be mandatory on entities that own units or interests in the AMIT. This will minimise income risks that may arise from the selective treatment of roll-over relief (i.e. the crystallising of losses and rolling over of gains). [*Schedule #, items 259 to 261, sections 124-865 and subsection 124-870(2A)*]

1.143 In relation to non-resident entities that own units or interests in the AMIT, roll-over relief will only apply if the replacement interests in the ACCIV the non-resident entities receive in exchange are taxable Australian property. [*Schedule #, item 261, subsections 124-870(2A)*]

Consequences of the roll-over

1.144 The consequences of the roll-over for the AMIT (transferor) and ACCIV (transferee) in relation to disregarding capital gains and losses will be consistent with the existing operation of subsections 124-870 and 124-875 in Subdivision 124-N.

Administrative penalties for AIVs

1.145 Under the AMIT attribution model, the trustee of an AMIT is liable to an administrative penalty if it has an 'under' or an 'over' for the base year which resulted from intentional disregard or recklessness of the law by the trustee. The penalty amount that applies is based on the existing framework for administrative penalties that arise to an individual taxpayer in relation to their own income tax affairs (see Division 284 in Schedule 1 to the TAA 1953).

1.146 The amendments broaden out the administrative penalty regime so that it applies to operators of AIVs (or the operator's agent). It also inserts an administrative penalty for an AIV 'over' or 'under' resulting

from failure to take reasonable care to comply with a taxation law. This aligns the AIV administrative penalty regime with the general administrative penalty scale.

1.147 In the case of an ‘under’ of a character relating to assessable income, exempt income, non-assessable non-exempt income, or of an over of a character relating to a tax offset, the amount of the administrative penalty is:

- where the ‘under’ or ‘over’ resulted from *intentional disregard* of a taxation law (other than the Excise Acts, within the meaning of the *Excise Act 1901*) by the operator of the AIV or the operator’s agent — the highest marginal tax rate plus Medicare levy of the amount of the ‘under’ or ‘over’ multiplied by 75 per cent;
- where the ‘under’ or ‘over’ resulted from *recklessness* by the operator of the AIV or the operator’s agent as to the operation of a taxation law — the highest marginal tax rate plus Medicare levy of the amount of the ‘under’ or ‘over’ multiplied by 50 per cent;
- where the ‘under’ or ‘over’ resulted from *failure to take reasonable care* by the operator of the AIV or the operator’s agent — the highest marginal tax rate plus Medicare levy of the amount of the ‘under’ or ‘over’ multiplied by 25 per cent.

[Schedule #, item 443, table item 3 in subsection 288-115(3) in Schedule 1 to the TAA 1953]

1.148 In the case of an ‘over’ of a character relating to assessable income, exempt income, non-assessable non-exempt income, or of an ‘under’ of a character relating to a tax offset, the amount of the administrative penalty is:

- where the ‘under’ or ‘over’ resulted from intentional disregard of a taxation law (other than the Excise Acts, within the meaning of the *Excise Act 1901*) by the operator of the AIV or the operator’s agent — the greater of:
 - the highest marginal tax rate plus Medicare levy of the amount of the ‘under’ or ‘over’ multiplied by 30 per cent;
 - or
 - 60 penalty units;

- where the ‘under’ or ‘over’ resulted from recklessness by the operator of the AIV or the operator’s agent as to the operation of a taxation law — the greater of:
 - the highest marginal tax rate plus Medicare levy of the amount of the ‘under’ or ‘over’ multiplied by 20 per cent; or
 - 40 penalty units;
- where the ‘under’ or ‘over’ resulted from *failure to take reasonable care* by the operator of the AIV or the operator’s agent — the greater of:
 - the highest marginal tax rate plus Medicare levy of the amount of the ‘under’ or ‘over’ multiplied by 10 per cent; or
 - 20 penalty units.

[Schedule #, items 433 and 434, table item 3 in subsection 288-115(3) and paragraph 288-115(4)(c) in Schedule 1 to the TAA 1953]

1.149 If multiple penalties apply to an ‘under’ or ‘over’, the penalty that produces the greatest penalty will apply. These penalties are consistent with other tax penalties outlined in the TAA 1953. *[Schedule #, item 435, subsection 288-115(7) in Schedule 1 to the TAA 1953]*

Consequential amendments

Amounts attributed by an ACCIV are not dividends

1.150 Amounts derived or received by an ACCIV that are attributed to members retain their original character and therefore will not be treated as a dividend from the ACCIV. This is also reflected for the purposes of applying Australia’s double tax agreements. *[Schedule #, items 436 and 446, subsection 6(1) of the ITAA 1936 and subsection 3(2B) of the International Tax Agreements Act 1953]*

1.151 Where the ACCIV holds assets that are shares which pay franked dividends, both the dividend and the franking credit will retain their character as they flow through the ACCIV to the member. *[Schedule #, item 436, subsection 6(1) of the ITAA 1936]*

Interaction with consolidation

1.152 The amendments ensure that a company that is a CCIV cannot be a member of a consolidated group. [Schedule #, item 430, table item 4 in subsection 703-20(2)]

Minor consequential amendments

1.153 Schedule # also makes a number of minor consequential amendments to the ITAA 1936, ITAA 1997 and the TAA 1953 to reflect the principal amendments, including updating guidance material. [Schedule #, items 238 to 242, 425 to 426, 428 to 429, 437 to 445 and 447 to 461, sections 128B, 128D, 170, 251S and 255(2A) of the ITAA 1936, sections 11-55, 13-1, 67-23, 112-46 and 276-80 of the ITAA 1997, sections 10-5, 12-5, 15-15, 16-153, 16-157, 16-170, 16-195, 18-10, 18-30, 18-65, 18-70, 286-75 and 288-115 in Schedule 1 to the TAA 1953]

1.154 Schedule # also updates the definitions in the ITAA 1936 and ITAA 1997. [Schedule #, items 423 and 465 to 486, definitions of ‘corporate collective investment vehicle’, ‘ACCIV’, ‘AIV’ and ‘assessment’ in subsection 6(1) of the ITAA 1936 and definitions of ‘ACCIV’, ‘AIV’, ‘AIV component’, ‘AIV component deficit’, ‘AIV cost base increase amount’, ‘AIV cost base net amount’, ‘AIV cost base reduction amount’, ‘AIV DIR payment’, ‘AIV dividend payment’, ‘AIV interest payment’, ‘AIVMA statement’, ‘AIV member annual statement’, ‘AIV royalty payment’, ‘attribution corporate collective investment vehicle’, ‘attribution investment vehicle’, ‘carry-forward AIV component deficit’, ‘corporate collective investment vehicle’, ‘corporate director’, ‘determined AIV component’, ‘depository’, ‘income tax law’, ‘investment vehicle withholding tax’, ‘member’, ‘non-arm’s length income’, ‘operator’, ‘post-AIVMA actual payment’, ‘pre-AIVMA actual payment’, ‘sub-fund’, ‘sub-fund participation interest’, ‘withholding ACCIV’, ‘withholding AIV’ and ‘withholding tax’ in subsection 995-1(1) of the ITAA 1997]

1.155 Schedule # also makes a number of minor consequential amendments to the Income Tax Rates Act 1986. [Schedule #, items 430 and 431, subsection 3(1) and paragraph 23(2)(a) of the Income Tax Rates Act 1986]

Changes in terminology

1.156 Table 1.1 outlines changes to terminology as a result of modifying the AMIT regime so that it applies to CCIVs.

Table 1.1: Changes in terminology

<i>Existing terminology</i>	<i>New terminology</i>	<i>Provision</i>
AMIT	AIV: refers to an AMIT or an ACCIV	Section 276-7
Trustee	Operator: refers to either the trustee of an AMIT or the	Section 276-7

	corporate director of an ACCIV	
Trust component	AIV component	Section 276-260
Determined trust component	Determined AIV component	Section 276-255
Member component	No change	Section 276-210
Determined member component	No change	Section 276-250
AMMA (AMIT member annual) statement	AIVMA (AIV member annual) statement	Subdivision 276-H
AMIT DIR payment	AIV DIR payment	Section 12A-25 in Schedule 1 to the TAA 1953
—	ACCIV	Section 276-20
—	CCIV	<i>Corporations Act 2001</i>
—	Sub-fund of a CCIV	<i>Corporations Act 2001</i>
—	Sub-fund participation interest	Section 276-40
AMIT cost base net amount	AIV cost base next amount	Section 104-107C
AMIT cost base reduction amount	AIV cost base reduction amount	Section 104-107D
AMIT cost base increase amount	AIV cost base increase amount	Section 104-107E

Application and transitional provisions

1.157 Schedule # to this Bill commences on the first day of the next quarter following the day of Royal Assent. *[Section 2]*

1.158 The amendments apply to assessments for income years starting on or after 1 July 2018. *[Schedule #, item 462]*

1.159 The amendments also update the relevant parts of the *Income Tax (Transitional Provisions) Act 1997*. *[Schedule #, item 463, subsection 275-605(2) of the Income Tax (Transitional Provisions) Act 1997]*

1.160 If a choice is made under section 276-20 of the ITAA 1997 before the repeal of that section by the *Treasury Laws Amendment (Corporate Collective Investment Vehicle) Act 2017 (the amending Act)*, the choice continues in effect after the repeal as if the choice had been made under section 276-48 of that Act as amended by the amending Act.

*[Schedule #, item 464, section 276-10 of the Income Tax (Transitional Provisions)
Act 1997]*