

# EXPOSURE DRAFT

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Inserts for  
**Treasury Laws Amendment (Corporate  
Collective Investment Vehicle) Bill 2021:  
(Tax treatment)**

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**Commencement information**

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Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
1. Schedule 4	1 July 2022.	1 July 2022

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## Schedule 4—Amendments of taxation laws

### *Income Tax Assessment Act 1997*

#### **1 At the end of Division 195**

Add:

#### **Subdivision 195-C—Corporate collective investment vehicles**

#### **Guide to Subdivision 195-C**

#### **195-100 What this Subdivision is about**

The business, assets and liabilities of each sub-fund of a CCIV are taken to constitute the trust estate of a separate trust, of which the CCIV is the trustee and the members of the sub-fund are the beneficiaries.

This Subdivision includes additional rules to facilitate the CCIV, and the sub-fund and its members, being taxed on this basis.

This includes modified rules for determining whether a trust is a managed investment trust or an attribution managed investment trust.

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##### **Operative provisions**

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## Operative provisions

### 195-105 Effect of this Subdivision

- (1) This Subdivision has effect for the purposes of all \*taxation laws, to the exclusion of those laws as they would otherwise apply in relation to \*CCIVs and their members (in their capacity as such).

Note: Subsection (3) excludes some taxation laws from this subsection.

- (2) Without limiting the generality of subsection (1), the purposes referred to in that subsection include how \*taxation laws apply in relation to other entities, in so far as that application is affected by the application of those laws in relation to \*CCIVs and their members (in their capacity as such).

Note: For example, in applying subsection 318(1) of the *Income Tax Assessment Act 1936* to determine whether a CCIV is an associate of a natural person for the purposes of a provision affecting the income tax payable by that person, paragraph 318(1)(d) of that Act (providing for when a trustee of a trust is an associate of the natural person) would apply to the exclusion of paragraph 318(1)(e) of that Act (providing for when a company is an associate of the natural person).

- (3) Subsections (1) and (2) do not apply to the following \*taxation laws:

- (a) the *Foreign Acquisitions and Takeovers Act 1975*;
- (b) legislative instruments made under that Act.

### 195-110 Each sub-fund of a CCIV is taken to be a separate trust

- (1) For each \*sub-fund of a \*CCIV, the business, \*assets and \*liabilities of the sub-fund are taken to constitute the trust estate of a separate trust, of which the CCIV is the trustee and the \*members of the sub-fund are the beneficiaries.

- (2) A trust that is taken to exist because of the application of subsection (1) to a \*sub-fund of a \*CCIV is a ***CCIV sub-fund trust***.

Note: The combined effect of this section and subsections 960-100(2) and (3) is that a CCIV is a different entity in its capacity as trustee of each of its CCIV sub-fund trusts.

Because of subsection 195-105(1), the tax treatment of the CCIV in those capacities excludes the tax treatment that would otherwise apply to the CCIV as a company. Also, the tax treatment of members of the CCIV is based on them being treated as beneficiaries of their respective CCIV sub-fund trusts, to the exclusion of the tax treatment that would otherwise apply to them as members of a company.

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1 Example 1: CCIV A has only one sub-fund (sub-fund A). CCIV B has only one  
2 sub-fund (sub-fund B).

3 CCIV A holds shares in CCIV B. The shares are referable to sub-fund  
4 B. They are assets of sub-fund A.

5 In its capacity as trustee of the CCIV sub-fund trust for sub-fund A,  
6 CCIV A is a beneficiary of the CCIV sub-fund trust for sub-fund B.

7 Example 2: A CCIV has 2 sub-funds: sub-fund A and sub-fund B.

8 As permitted by section 1231PA of the *Corporations Act 2001*, the  
9 CCIV acquires, in respect of sub-fund A, shares that are referable to  
10 sub-fund B. The shares are assets of sub-fund A.

11 In its capacity as trustee of the CCIV sub-fund trust for sub-fund A,  
12 the CCIV is a beneficiary of the CCIV sub-fund trust for sub-fund B.

## 13 195-115 A CCIV sub-fund trust is a unit trust

- 14 (1) A \*CCIV sub-fund trust is taken to be a unit trust.

15 Note: One consequence of this subsection is that a CCIV sub-fund trust can  
16 be a public unit trust if it meets the other tests in section 102P of the  
17 *Income Tax Assessment Act 1936*.

- 18 (2) The \*shares that are \*referable to the \*sub-fund are taken to be the  
19 units in the trust.

- 20 (3) The rights, obligations and other characteristics attaching to a unit  
21 in the trust are taken to be the same, as nearly as practicable, as the  
22 rights, obligations and other characteristics attaching to the share  
23 that is taken to be that unit.

24 Note: One consequence of this section is that if shares that are referable to  
25 the sub-fund are listed for quotation in the official list of a stock  
26 exchange, the units in the sub-fund trust that those shares are taken to  
27 be will likewise be taken to be listed in that official list.

28 Examples of provisions to which this is relevant are  
29 paragraph 275-20(2)(a) (widely-held requirement for managed  
30 investment trusts) of this Act and paragraph 102P(1)(a) of the *Income  
31 Tax Assessment Act 1936* (public unit trusts).

## 32 195-120 Beneficiary of a CCIV sub-fund trust has fixed entitlements 33 to shares of income and capital of the trust

- 34 (1) A \*beneficiary of a \*CCIV sub-fund trust is taken to have a *fixed*  
35 *entitlement* to a share of income of the trust that the trust derives  
36 from time to time. At a particular time, that share is equal to the  
37 percentage worked out using the formula:

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1 
$$\frac{\text{Beneficiary dividends}}{\text{Total dividends}} \times 100$$

2 where:

3 ***beneficiary dividends*** is the total of the \*dividends that the  
4 \*beneficiary has a right to receive because of \*shares that the  
5 beneficiary holds at that time and are \*referable to the \*sub-fund.

6 ***total dividends*** is the total of all \*dividends that are payable on all  
7 \*shares that are on issue at that time and are \*referable to the  
8 \*sub-fund.

9 (2) A \*beneficiary of a \*CCIV sub-fund trust is taken to have a ***fixed***  
10 ***entitlement*** to a share of the capital of the trust at a particular time  
11 equal to the percentage worked out using the formula:

12 
$$\frac{\text{Beneficiary capital distribution}}{\text{Total capital distribution}} \times 100$$

13 where:

14 ***beneficiary capital distribution*** is the amount of a distribution of  
15 paid-up capital (in the event of a return of capital) that the  
16 \*beneficiary has a right to receive because of \*shares that the  
17 beneficiary holds at that time and are \*referable to the \*sub-fund.

18 ***total capital distribution*** is the total distribution of paid-up capital  
19 (in that event) payable on all \*shares that are on issue at that time  
20 and are \*referable to the \*sub-fund.

21 (3) A fixed entitlement that exists because of this section is taken to be  
22 a fixed entitlement within the meaning given by sections 272-5,  
23 272-10, 272-15 and 272-40 in Schedule 2F to the *Income Tax*  
24 *Assessment Act 1936*.

25 Note: This is relevant to, for example, the definition of ***fixed entitlement*** in  
26 subsection 102UC(4) of the *Income Tax Assessment Act 1936*.

27 **195-125 Beneficiary of a CCIV sub-fund trust is presently entitled to**  
28 **trust income represented by dividend received**

29 (1) A \*beneficiary of a \*CCIV sub-fund trust is taken to be presently  
30 entitled to a share of particular income of the trust estate. That  
31 share consists of so much of each \*dividend (if any) that the \*CCIV  
32 has paid to the beneficiary as represents any of that income.

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Note: To the extent that amounts representing income of the trust have not been paid as a dividend, that income will be income to which no beneficiary is presently entitled. This can have consequences under section 99 or 99A of the *Income Tax Assessment Act 1936*.

- (2) A \*beneficiary of a \*CCIV sub-fund trust:
- (a) is taken to have an individual interest in a share of the exempt income of the trust estate from time to time; and
  - (b) is taken to have an individual interest in a share of the \*non-assessable non-exempt income of the trust estate from time to time.
- The share referred to in paragraph (a) or (b) of this subsection is the same as the share (of income that the trust derives from time to time) to which the beneficiary has a \*fixed entitlement under subsection 195-120(1).
- (3) Except as provided in this section, a \*beneficiary of a \*CCIV sub-fund trust is not taken to be presently entitled to a share of income of the trust estate, or to have an individual interest in a share of the exempt income, or \*non-assessable non-exempt income, of the trust estate.

## **195-130 Application of Division 275 (managed investment trusts) to a CCIV sub-fund trust**

- (1) This section sets out how to apply Division 275 to a trust that is a \*CCIV sub-fund trust.

*Determining whether the trust is a managed investment trust*

- (2) Section 275-10 has effect in relation to the trust as if the following paragraph were substituted for paragraph 275-10(3)(c):
- (c) at the time the payment is made, the \*sub-fund is being used for collective investment by pooling the contributions of the \*members of the sub-fund as consideration to acquire rights to benefits produced from those contributions; and
- (3) In applying section 275-10 to the trust, disregard the following provisions:
- (a) paragraph 275-10(3)(d);
  - (b) paragraph 275-10(3)(g).
- (4) Section 275-10 has effect in relation to the trust as if the following paragraph were substituted for paragraph 275-10(3)(e):
- (e) the trust satisfies, in relation to the income year:

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- 1 (i) if, at the time the payment is made, the trust is *not*  
2 covered by section 275-15—either or both of the  
3 widely-held requirements in subsections 275-20(2) and  
4 275-25(1); or  
5 (ii) if, at the time the payment is made, the trust is covered  
6 by section 275-15—the widely-held requirements in  
7 subsection 275-20(1); and

8 *Determining whether the trust is a trust with wholesale*  
9 *membership*

- 10 (5) In applying section 275-15 to the trust, disregard  
11 paragraph 275-15(a).

12 *Determining whether the trust satisfies the widely-held*  
13 *requirements*

- 14 (6) In applying section 275-45 to the trust, disregard  
15 paragraph 275-45(1)(d).

## 16 **195-135 Application of Division 276 (AMITs) to a CCIV sub-fund** 17 **trust**

- 18 (1) This section sets out how to apply Division 276 to a trust that is a  
19 \*CCIV sub-fund trust.

20 *Determining whether the trust is an attribution managed*  
21 *investment trust (AMIT)*

- 22 (2) In applying section 276-10 to the trust, disregard the following  
23 provisions:  
24 (a) paragraph 276-10(1)(b);  
25 (b) paragraph 276-10(1)(e).

26 Note: The effect of disregarding paragraph 276-10(1)(e) is that the trustee of  
27 a \*CCIV sub-fund trust does not have a choice as to whether the trust  
28 is an AMIT.

## 29 **2 Subsection 703-20(2) (after table item 3)**

30 Insert:

- 4 A company The company is a \*CCIV at any time during the  
income year

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## 3 Subsection 703-20(2) (at the end of the table)

Add:

8 A trust The trust is a \*CCIV sub-fund trust

## 4 At the end of section 703-20

Add:

(3) Item 8 of the table in subsection (2) of this section has effect despite section 713-130 (which enables a public trading trust to form a consolidated group).

## 5 Subsection 995-1(1)

Insert:

*asset*, of a \*sub-fund of a \*CCIV, means any of the assets of the sub-fund, ascertained in accordance with Subdivision B of Division 3 of Part 8B.5 of the *Corporations Act 2001*.

*beneficiary*, of a \*CCIV sub-fund trust, means a \*member of the \*sub-fund who is taken because of subsection 195-110(1) to be a beneficiary of the trust.

*CCIV*: see *corporate collective investment vehicle*.

*CCIV sub-fund trust* has the meaning given by subsection 195-110(2).

*corporate collective investment vehicle* or *CCIV* has the same meaning as in the *Corporations Act 2001*.

## 6 Subsection 995-1(1) (definition of *fixed entitlement*)

Repeal the definition, substitute:

*fixed entitlement*:

(a) an entity has a *fixed entitlement* to a share of the income or capital of a company, partnership or trust if the entity has a fixed entitlement to that share within the meaning of Division 272 in Schedule 2F to the *Income Tax Assessment Act 1936*; and

(b) despite paragraph (a) of this definition, a \*beneficiary of a \*CCIV sub-fund trust is taken to have a *fixed entitlement* to a share of the income or capital of the trust as provided by section 195-120 of this Act.

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1 Note: Section 165-245 of this Act affects when an entity is taken to have  
2 held or had, directly or indirectly, a fixed entitlement to a share of  
3 income or capital of a company.

## 4 **7 Subsection 995-1(1)**

5 Insert:

6 **liability**, of a \*sub-fund of a \*CCIV, means any of the liabilities of  
7 the sub-fund, ascertained in accordance with Subdivision C of  
8 Division 3 of Part 8B.5 of the *Corporations Act 2001*.

## 9 **8 Subsection 995-1(1) (at the end of the definition of *member*)**

10 Add:

11 ; and (f) in relation to a \*sub-fund of a \*CCIV—means a person who  
12 is, under subsection 1222Q(3) of the *Corporations Act 2001*,  
13 a member of the sub-fund.

## 14 **9 Subsection 995-1(1)**

15 Insert:

16 **referable**: a \*share in a \*CCIV is **referable** to a \*sub-fund of the  
17 CCIV if it is so referable within the meaning of section 1231 of the  
18 *Corporations Act 2001*.

19 **sub-fund**, of a \*CCIV, has the meaning given by  
20 subsection 1222Q(1) of the *Corporations Act 2001*.

## 21 ***International Tax Agreements Act 1953***

### 22 **10 Subsection 4(2)**

23 Omit “Part IVA of the *Income Tax Assessment Act 1936*”, substitute  
24 “the provisions covered by subsection (3)”.

### 25 **11 At the end of section 4**

26 Add:

27 (3) This subsection covers the following provisions:

28 (a) Part IVA of the *Income Tax Assessment Act 1936*;

29 (b) Subdivision 195-C (Corporate collective investment  
30 vehicles) of the *Income Tax Assessment Act 1997*.