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TREASURY LAWS AMENDMENT (CORPORATE COLLECTIVE INVESTMENT  
VEHICLE) BILL 2021: TAX TREATMENT

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EXPOSURE DRAFT EXPLANATORY MATERIALS



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# Glossary

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

<i>Abbreviation</i>	<i>Definition</i>
ABN	Australian business number
AMIT	attribution managed investment trust
CCIV	corporate collective investment vehicle
CGT	capital gains tax
Commissioner	Commissioner of Taxation
Corporations Act	<i>Corporations Act 2001</i>
Regulatory Exposure Draft Bill	Treasury Laws Amendment (Corporate Collective Investment Vehicle) Bill 2021: Regulatory framework — Exposure Draft
GST	goods and services tax
GST Act	<i>A New Tax System (Goods and Services Tax) Act 1999</i>
ITAA 1936	<i>Income Tax Assessment Act 1936</i>
ITAA 1997	<i>Income Tax Assessment Act 1997</i>
MIT	managed investment trust
TAA 1953	<i>Taxation Administration Act 1953</i>
TFN	tax file number



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# **Chapter 1**

## ***Tax treatment of corporate collective investment vehicles***

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### **Outline of chapter**

1.1 This Exposure Draft Bill amends the taxation law to specify the tax treatment for the newly established CCIV. The amendments give effect to the core CCIV tax framework with the objective that the general tax treatment of CCIVs and their members align with the existing tax treatment of AMITs (and their members).

1.2 The CCIV tax framework achieves this objective by leveraging the existing trusts taxation framework and the existing attribution flow-through regime (i.e. the new tax system for MITs, or the AMIT regime), rather than by creating a new bespoke tax regime.

1.3 Where the CCIV meets the AMIT eligibility criteria in respect of a sub-fund, then the CCIV will be able to attribute amounts of assessable income, exempt income, non-assessable non-exempt income, and tax offsets derived or received by the CCIV that have a particular character to members. Those amounts will retain that character and be recognised (and taxed) in the hands of each member.

1.4 Where a CCIV does not satisfy the AMIT eligibility criteria in respect of a sub-fund for a particular tax year, then the CCIV tax treatment will generally default to the general trusts taxation framework for that year.

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

### **Context of amendments**

#### **Introduction to the CCIV**

1.6 The CCIV is a new form of collective investment vehicle, intended to broaden the suite of investment vehicles available to Australian fund managers. The key policy objective is to increase the competitiveness of Australia's managed fund industry through the introduction of an internationally recognisable investment structure.

1.7 A CCIV is a company used for collective investment. Investors may pool their funds in a CCIV and have them managed by a professional funds manager.

1.8 The CCIV is intended to be a viable alternative to an AMIT. The CCIV tax regime has been designed to align with the existing AMIT regime, such that the tax outcomes for an investor in a CCIV sub-fund are intended to be the same as an investor in an AMIT.

1.9 To achieve this outcome, the CCIV tax regime uses the same attribution flow-through tax regime that applies to AMITs. To gain access to the AMIT regime, sub-funds of a CCIV are subject to the AMIT eligibility criteria. In this regard, sub-funds of a CCIV can generally be considered an attribution investment vehicle for tax purposes.

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

## **Summary of new law**

1.11 This Exposure Draft Bill amends the taxation law to create a new Subdivision 195-C which sets out the tax treatment for a CCIV.

1.12 The CCIV is a company registered under the Corporations Act. However, under Subdivision 195-C, the deeming principle deems a trust relationship to exist between a CCIV, the business, assets and liabilities referable to a sub-fund, and the relevant class of members, for the purposes of all taxation laws (unless specifically excluded).

1.13 This has the effect that:

- the assets, liabilities and business referable to a sub-fund are treated as separate trusts (to be known as a ‘CCIV sub-fund trust’);
- the CCIV is treated as the trustee of the CCIV sub-fund trust; and
- the members of the CCIV are treated as beneficiaries of the CCIV sub-fund trust.

1.14 As a result of this deeming principle, the taxation laws apply to the CCIV as trustee, the CCIV sub-fund trust and its beneficiaries, rather than to the CCIV as a company and its shareholders.

1.15 Where a CCIV sub-fund trust meets the AMIT eligibility criteria, it is taxed as an AMIT under the attribution flow-through tax regime in Division 276. The Exposure Draft Bill amends the AMIT



eligibility criteria to enable a CCIV sub-fund trust to meet the relevant criteria.

1.16 For income tax purposes, the attribution flow-through tax regime ensures that amounts derived or received by a CCIV sub-fund trust that are attributed to members retain the character they had in the hands of the trustee of the CCIV sub-fund trust.

1.17 The trustee of a CCIV sub-fund trust must attribute amounts of a particular character to members on a fair and reasonable basis in accordance with the members' rights attaching to their units in the CCIV sub-fund trust. An attribution CCIV sub-fund trust is deemed to have fixed trust status.

1.18 The attribution sub-fund trust is also able to use the 'unders' and 'overs' regime to reconcile variances, in the same way that an AMIT can.

1.19 Where a CCIV sub-fund trust fails to meet the AMIT eligibility criteria, the CCIV sub-fund trust will be taxed in accordance with general trust provisions, which is consistent with the current outcomes for AMITs. The Exposure Draft Bill provides for additional deeming rules to ensure that a CCIV sub-fund trust can operate in the existing general trust provisions.

## Comparison of key features of new law and current law

<i>New law</i>	<i>Current law</i>
<p>For taxation purposes, Subdivision 195-C introduces a deeming principle which deems a trust relationship to exist between a CCIV, the business assets and liabilities referable to a sub-fund and the relevant class of members.</p> <p>Each sub-fund is treated as a separate unit trust (known as the 'CCIV sub-fund trust') with the CCIV as trustee and members of the CCIV as beneficiaries of the CCIV sub-fund trust.</p> <p>Under the deeming principle, all taxation laws apply to the CCIV sub-fund trust (rather than the CCIV as a company) unless specifically excluded.</p> <p>For taxation purposes, as a consequence of the operation of the</p>	<p>No equivalent.</p>

<i>New law</i>	<i>Current law</i>
<p>deeming principle, which deems the CCIV sub-fund trusts to be separate entities, dealings between sub-funds of a CCIV are recognised.</p>	
<p>A CCIV sub-fund trust that satisfies the AMIT eligibility requirements in Division 276 will be treated as an AMIT for an income year.</p> <p>A CCIV sub-fund trust must satisfy all requirements in Division 276, subject to specified modifications which ensure that only relevant criteria apply when determining a CCIV sub-fund trust’s eligibility.</p> <p>A CCIV, by virtue of satisfying the regulatory requirements under the Corporations Act, will automatically meet the clearly defined interest test for AMITs in respect of units in a CCIV sub-fund trust.</p> <p>The requirement for a MIT to make an irrevocable choice to be an AMIT has been removed for a CCIV sub-fund trust.</p>	<p>No equivalent.</p>
<p>Under the AMIT attribution flow-through tax regime:</p> <ul style="list-style-type: none"> <li>• for income tax purposes, amounts derived or received by a CCIV sub-fund trust that are attributed to members retain the character they had in the hands of the trustee of the CCIV sub-fund trust;</li> <li>• the CCIV sub-fund trust is taken to be a fixed trust and members are taken to have a vested and indefeasible interest in a share of the income and capital of the trust; and</li> <li>• the CCIV sub-fund trust is able to use the ‘unders’ and ‘overs’ regime to reconcile variances.</li> </ul> <p>The withholding tax provisions apply to attribution CCIV sub-fund trusts and their members in the same way that they apply to AMITs, notwithstanding that the CCIV is a</p>	<p>No equivalent.</p>

<i>New law</i>	<i>Current law</i>
corporate entity and pays a legal form dividend.	
If a CCIV sub-fund trust fails to meet the AMIT eligibility criteria, it will be taxed in accordance with general trust provisions.	No equivalent.

## **Detailed explanation of new law**

### **What is a CCIV?**

1.20 Broadly, a CCIV is a company registered under the Corporations Act that is limited by shares. A CCIV must meet certain registration requirements, including that upon registration it has at least one sub-fund (with at least one member) and a single corporate director.

1.21 A CCIV is structured as an umbrella vehicle or fund incorporating one or more sub-funds. A CCIV generally does not have any company officers (other than the corporate director) or employees.

1.22 The corporate director must be a public company that holds an Australian financial services licence (AFSL) authorising it to operate the CCIV. A CCIV is a collective investment vehicle.

1.23 As a CCIV is a type of company, it has the legal capacity and powers of an individual and a body corporate, including the power to enter into contracts and issue and cancel shares in the company.

#### ***Legal status of a sub-fund***

1.24 The CCIV regulatory framework sets out the following legal attributes of a sub-fund (a sub-fund is all or part of the CCIV's business that is registered by ASIC as a sub-fund).

- The initial sub-fund (or sub-funds) are registered as part of the registration of the CCIV. There is a stand-alone process for sub-funds established post registration.
- All of the assets and liabilities making up the business of the CCIV must be allocated to a sub-fund.
- The assets and liabilities referable to a sub-fund are strictly segregated from the assets and liabilities referable to other sub-funds of the CCIV.

1.25 For the purpose of the Corporations Act, a sub-fund does not have legal personality (as outlined in the explanatory materials accompanying the CCIV regulatory framework). As a company with legal

personality, the CCIV is the legal entity who owns of all the assets, owes all the liabilities and carries on the business of each sub-fund.

***Members of a CCIV***

1.26 The CCIV regulatory framework provides that a person is a member of a sub-fund if the person is a member of a CCIV and holds one or more shares that are referable to that sub-fund.

1.27 Members have rights, obligations and other characteristics attaching to their shares in the CCIV that are referable to a sub-fund. Generally, this bundle of rights relate to voting and entitlements to dividend and capital distributions from the CCIV that are referable to the sub-fund.

**Deeming principle for tax law purposes**

1.28 The CCIV regulatory framework sets up the legal status of CCIVs and sub-funds. However, the tax policy outcome that is being sought is to ensure that members can achieve attribution and flow-through of income from a CCIV through the AMIT regime. Therefore, a deeming principle is established to create a statutory fiction to treat the CCIV and its members as having a trust relationship for the purpose of applying the tax laws. *[Schedule 4, item 1, section 195-100]*

1.29 Under Subdivision 195-C, the deeming principle deems a trust relationship to exist between a CCIV, the business, assets and liabilities referable to a sub-fund, and the relevant class of members, for the purposes of all taxation laws, unless specifically excluded.

1.30 This has the effect that:

- the assets, liabilities and business referable to a sub-fund are treated as separate trusts (known as a ‘CCIV sub-fund trust’);
- the CCIV is treated as the trustee of the CCIV sub-fund trust; and
- the members of the CCIV are treated as beneficiaries of the CCIV sub-fund trust.

*[Schedule 4, item 1, subsection 195-110(1)]*

1.31 This approach ensures that the CCIV tax regime achieves equivalent tax outcomes for members of a CCIV to that of members of existing AMITs.

***CCIV sub-fund trust***

1.32 The deeming principle is required because sub-funds do not have legal personality. It is necessary and appropriate for the tax laws to

apply at the sub-fund level so therefore, the statutory fiction requires recognising the sub-funds as separate entities for tax purposes.

1.33 This means that for all tax law purposes (unless specifically excluded), each sub-fund is taken to exist as a separate unit trust (known as a CCIV sub-fund trust). [*Schedule 4, item 1, subsections 195-110(2) and 195-115(1)*]

1.34 The deeming principle also supports the strict segregation of the assets and liabilities referable to a sub-fund that is required under the CCIV regulatory framework. For tax purposes, the CCIV sub-fund trust ensures that the assets, liabilities and business that is referable to a sub-fund is ring-fenced within the entity.

1.35 The assets, liabilities and business that is referable to a sub-fund will constitute a trust estate, which is essentially the trust property which is held on trust for the benefit of the relevant beneficiaries of the CCIV sub-fund trust.

1.36 A CCIV sub-fund trust is a trust under section 960-100 and is therefore a separate entity to the CCIV for the purposes of the tax law. This means that all of the relevant income tax laws and tax attributes apply to a CCIV sub-fund trust. This includes the requirements to have a separate ABN and a TFN in relation to each CCIV sub-fund trust. [*Schedule 4, item 1, subsection 195-110(2)*]

1.37 If a CCIV has multiple sub-funds, each sub-fund is deemed to be a separate and distinct CCIV sub-fund trust.

#### ***CCIV as trustee of the sub-fund trust***

1.38 The deeming principle treats the CCIV as the trustee of the CCIV sub-fund trust for the purposes of all taxation laws, unless specifically excluded.

1.39 This is because under the regulatory framework, the CCIV is the legal owner of the assets, owes the liabilities and carries on the business referable to each of its sub-funds.

1.40 As trustee, the CCIV holds the property referable to a sub-fund on trust for the class of its members that have an interest in that sub-fund.

1.41 If a CCIV has multiple sub-funds, the CCIV is taken to be the trustee of each of the CCIV sub-fund trusts. As a result of this, the CCIV is treated as if it were a different tax entity in its capacity as trustee of each trust, with separate responsibility for the obligations of a trustee under the taxation law in respect of each CCIV sub-fund trust.

1.42 This supports the alignment of the CCIV tax regime with the segregation of sub-funds that is required under the regulatory framework.

***Members as beneficiaries of the sub-fund trust***

1.43 The deeming principle treats the members who hold shares in the CCIV that are referable to a sub-fund to be the beneficiaries of the CCIV sub-fund trust.

1.44 In addition, the deeming rule is extended to treat the member's shares that are referable to the sub-fund to be units in the CCIV sub-fund trust (which is taken to be a unit trust). [*Schedule 4, item 1, subsections 195-115(1) and (2)*]

1.45 The deeming rule also imports the rights, obligations and other characteristics attaching to the member's shares and attaches them to the member's units in the CCIV sub-fund trust. [*Schedule 4, item 1, subsection 195-115(3)*]

1.46 This treatment ensures that members of a CCIV that is referable to a sub-fund achieve the same outcome as members in an ordinary AMIT through the AMIT regime.

***Operation of the deeming rule for all taxation laws***

1.47 The deeming principle operates for the purposes of all taxation laws unless they are specifically carved out. This deeming applies to the exclusion of the taxation laws as they would otherwise apply to the CCIV and the members of the CCIV. [*Schedule 4, item 1, subsection 195-105(1)*]

1.48 This rule is intended to operate as a priority rule for the operation of Subdivision 195-C and the deeming principle for CCIVs. Under this rule, the deeming principle overrides how the existing taxation laws would ordinarily treat a CCIV (as a company) and its members (as shareholders in a company).

1.49 This rule ensures that the deemed trust relationship and tax status of the trustee, trust and beneficiaries is given effect throughout the operation of all tax laws, unless specifically excluded.

***Dealings with third parties***

1.50 The law requires that for tax purposes other entities (that is, third parties) dealing with the CCIV may be affected by the deeming principle. These entities may need to recognise the trust relationship between the CCIV entities (these being the CCIV sub-fund trust, CCIV trustee and member beneficiaries) under the taxation laws where it is necessary to do so. [*Schedule 4, item 1, subsection 195-105(2)*]

***Dealings between sub-funds***

1.51 The law recognises dealings between sub-funds in each of the following cases:

- where one or more CCIV sub-fund trusts are ‘sister’ sub-fund trusts who are all within the same CCIV and do not hold interests in their sister sub-fund trusts; or
- where one CCIV sub-fund trust holds an interest in another CCIV sub-fund trust that are all within the same CCIV (i.e. cross-investment); or
- where one CCIV sub-fund trust interacts with a CCIV sub-fund trust of a separate CCIV and does not hold an interest in that trust; or
- where one CCIV sub-fund trust holds an interest in another CCIV sub-fund trust that is part of a separate CCIV (i.e. cross-investment).

1.52 These dealings are recognised as a consequence of the deeming principle which treats sub-funds to be separate CCIV sub-fund trusts and therefore separate tax entities. All transactions between CCIV sub-fund trusts are recognised under the taxation laws as if they had occurred between separate tax entities.

1.53 For example, ‘internal’ dealings between sub-funds that are all within the same CCIV could occur under the regulatory framework. These activities would be allowable as a transfer of an asset between the relevant sub-fund asset registers.

1.54 However, there would be no legal transfer of ownership because if an asset that is referable to one sub-fund is re-allocated to another sub-fund, these dealings would all be occurring within the one CCIV.

1.55 Under the taxation laws and as part of the deeming principle, these internal dealings within the one CCIV are recognised for tax purposes as dealings between separate entities.

## **AMIT eligibility criteria**

1.56 Where a CCIV sub-fund trust meets the AMIT eligibility criteria, it will be treated as an AMIT under the Division 276 attribution flow-through tax regime and throughout the income tax law.

1.57 Broadly, a trust must satisfy the following criteria to be recognised as an AMIT under Division 276:

- the trust must be a MIT under Division 275 in relation to an income year. This broadly requires the following key criteria to be met:
  - the trust is an Australian resident during the income year or the central management and control of the trust was in Australia;

- the trust does not carry on or control a trading business in relation to an income year;
- the trust satisfies the widely held requirements and closely held restrictions in relation to the income year;
- the rights to the income and capital of the trust are clearly defined; and
- the trustee has made an irrevocable choice to be an AMIT in an income year.

1.58 The law alters the existing MIT and AMIT criteria in Divisions 275 and 276 in order to ensure that a CCIV sub-fund trust is capable of meeting the criteria and be treated as an AMIT. *[Schedule 4, item 1, subsections 195-130(1) and 195-135(1)]*

1.59 A CCIV sub-fund trust must satisfy all requirements for determining AMIT eligibility as specified in Divisions 275 and 276, subject to the following modifications.

- Generally, a trust is required to be a managed investment scheme (within the meaning of section 9 of the Corporations Act) to satisfy MIT and AMIT requirements. However, as a new collective investment vehicle, a CCIV and its sub-funds are required to be registered under Chapter 8B of the Corporations Act. Therefore, a CCIV sub-fund trust does not need to be a managed investment scheme. *[Schedule 4, item 1, subsections 195-130(3), (5) and (6)]*
- The law makes modifications in relation to the widely held requirements to essentially replicate the existing test but remove the managed investment scheme requirement. *[Schedule 4, item 1, subsection 195-130(4)]*
- In the absence of the managed investment scheme requirement, a new requirement has been created for a CCIV sub-fund trust. This requires that a sub-fund (in its legal capacity) must be used for collective investment by pooling contributions of members as consideration for a return on those investments. *[Schedule 4, item 1, subsection 195-130(2)]*

1.60 A CCIV, by virtue of satisfying the regulatory requirements under the Corporations Act, will have clearly defined rights. Therefore, when assessing AMIT eligibility for a CCIV sub-fund trust, paragraph 276-10(1)(b) (and therefore section 276-15) is disregarded. *[Schedule 4, item 1, paragraph 195-135(2)(a)]*

1.61 The AMIT rules allow for the trustee of a MIT to make an irrevocable choice to elect to be an AMIT. For the purposes of determining a CCIV sub-fund trust's eligibility to be an AMIT, this



irrevocable choice has been removed. [*Schedule 4, item 1, paragraph 195-135(2)(b)*]

1.62 This has been done to simplify the application of trust tax law regimes for a CCIV sub-fund trust such that it cannot be taxed as a MIT under Division 275 if it chooses not to be an AMIT.

1.63 Therefore, if a CCIV sub-fund trust meets the AMIT criteria, it does not have the option to choose whether to be an AMIT: it will automatically be treated as an AMIT for tax purposes.

### **CCIV key features when it is an attribution investment vehicle**

1.64 Under the attribution flow-through taxation model in Division 276, an attribution CCIV sub-fund trust (that is, when it meets the AMIT eligibility criteria and is therefore treated as an AMIT) has the following features:

- each attribution CCIV sub-fund trust is deemed to have fixed trust status, to ensure sub-fund members (i.e. the beneficiaries) have clear and defined rights to the income of the CCIV sub-fund trust; and
- for income tax purposes, the attribution CCIV sub-fund trust 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; and
- the attribution CCIV sub-fund trust can use the ‘unders’ and ‘overs’ regime to reconcile a variance between the amounts attributed to members of the CCIV sub-fund trust for an income year, and the amounts that should have been attributed in the same way as an AMIT can; and
- in circumstances where the amount of assessable income attributed to a member differs from the amount of money actually paid in an income year, adjust the CGT cost base of the member’s interest to ensure that assessable member income is only taxed once.

1.65 In addition:

- attribution CCIV sub-fund trusts can elect into the deemed capital account treatment; and
- the CCIV as trustee is responsible for the obligations of a trustee under the AMIT regime, and will be liable to pay income tax in certain circumstances.

1.66 The withholding tax provisions apply to attribution CCIV sub-fund trusts and their members in the same way that they apply to AMITs,

notwithstanding that the CCIV is a corporate entity and pays a legal form dividend.

1.67 The ‘character flow-through’ model ensures that amounts derived or received by the attribution CCIV sub-fund trust that are attributed to members retain the character they had in the hands of the attribution sub-fund trust for income tax purposes.

1.68 Therefore, amounts derived or received by the attribution CCIV sub-fund trust that are attributed to members will retain their original character and will not be treated as a dividend unless the amount had the character of a dividend when it was derived or received by the CCIV sub-fund trust.

1.69 This ensures that amounts attributed by an attribution CCIV sub-fund trust will not be treated as a distribution of a dividend for treaty purposes (unless the underlying character of the income is a dividend).

### **Outcomes for when a CCIV sub-fund trust fails to be an AMIT**

1.70 If an attribution CCIV sub-fund trust fails to meet the AMIT requirements under the general test due to temporary circumstances that are outside the control of the trust, it can continue to be treated as an AMIT in relation to the income year if it is fair and reasonable to do so.

1.71 In determining what is fair and reasonable, the trust must consider the factors listed in section 275-55.

1.72 This treatment is consistent with the application of the existing tax law to AMITs.

1.73 Outside of the temporary circumstances, if a CCIV sub-fund trust does not satisfy the AMIT eligibility requirements in a particular income year, it will be taxed as either:

- a Division 6 CCIV sub-fund trust under the general trust provisions in Division 6 of Part III of the ITAA 1936, unless the CCIV sub-fund trust fails the AMIT requirements by reason of being a trading trust under Division 6C of Part III of the ITAA 1936 in relation to the income year; or
- a Division 6C CCIV sub-fund trust (i.e. as a trading trust) under Division 6C of Part III of the ITAA 1936 if at any time in the income year it carries on or controls (directly or indirectly) a trading business.

1.74 This is consistent with the current treatment for existing AMITs. It clarifies that the corporate tax system does not apply to a CCIV in their legal form or to sub-funds of a CCIV.

***Deeming rule for a beneficiary's fixed entitlement to income and capital of the CCIV sub-fund trust***

1.75 The deeming rule sets out the method to determine a beneficiary's deemed fixed entitlement to a share of the income and capital of a CCIV sub-fund trust based on the percentage calculated in the statutory formula provided in the law. [*Schedule 4, item 1, subsections 195-120(1) to (3)*]

1.76 The formula provided relies on a number of legal form concepts which can be ascertained from the dividend rights and capital distribution rights relating to the beneficiary's (that is, in its legal capacity as a shareholder member) legal form shareholding in the CCIV which is referable to that particular sub-fund.

1.77 The formula caters for different classes of shares which can give rise to different rights. One example is ordinary shares as compared to preferential shares.

1.78 The deeming rule in conjunction with the statutory formula operates to ensure that the net income of the Division 6 CCIV sub-fund trust can be calculated.

***Deeming rule for when a beneficiary is presently entitled to income of a Division 6 CCIV sub-fund trust***

1.79 Because a CCIV is a legal form company that pays legal form dividends to members as shareholders, the deeming rule provides a mechanism for a beneficiary to be taken to be presently entitled to a share of particular income of the Division 6 CCIV sub-fund trust. [*Schedule 1, item 1, subsection 195-125(1)*]

1.80 This ensures that if the CCIV trustee distributes income to beneficiaries (by paying a legal form dividend to the shareholders), the beneficiaries are taken to be presently entitled to a share of income of the CCIV sub-fund trust in a particular income year for the purpose of Division 6 of Part III of the ITAA 1936.

1.81 In order to be presently entitled to a share of particular income of the CCIV sub-fund trust, the beneficiary's share of the income (if any) must consist of amounts that are represented by legal form dividends paid to the beneficiary (that is, to the member as a shareholder). [*Schedule 1, item 1, subsection 195-125(1)*]

1.82 A beneficiary's present entitlement to a share of particular income of a CCIV sub-fund trust needs to be considered by reference to the time when the CCIV pays the legal form dividends.

1.83 If there is income in the CCIV sub-fund trust in an income year, and a legal form dividend is paid to a member before or at year end out of that income, then under subsection 195-125(1) and Division 6, the

beneficiary will be deemed to be presently entitled to a share of income of the trust in relation to that income year.

1.84 Later year distributions of trust income from a CCIV sub-fund trust would be taken for trust purposes to be distributions of capital where sections 99 or 99A of Part III of the ITAA 1936 have applied because no beneficiary had been presently entitled to the income.

1.85 Capital gains tax events may be relevant in assessing the income tax consequences of those distributions which for trust purposes would be taken to be paid out of the corpus of the CCIV sub-fund trust.

***Deeming rule for when a beneficiary has an interest in the exempt income or non-assessable non-exempt income of the CCIV sub-fund trust***

1.86 The deeming rule deems a beneficiary to have an individual interest in a share of the exempt income or non-assessable non-exempt income (that is, preferential income) of the CCIV sub-fund trust. [*Schedule 4, item 1, subsection 195-125(2)*]

1.87 The law makes it explicitly clear that a beneficiary of the CCIV sub-fund trust can only be presently entitled to a share of income or have an individual interest in a share of the exempt income or the non-assessable non-exempt income of the trust under Subdivision 195-C. [*Schedule 4, item 1, subsection 195-125(3)*]

1.88 This is intended to ensure that only these deeming rules in section 195-125 can operate to determine a beneficiary's present entitlement to, or individual interest in, the trust income of a CCIV sub-fund trust.

## **Interactions with other taxation laws**

1.89 The deeming principle has effect for the purposes of all taxation laws unless specifically excluded. Taxation laws are laws that the Commissioner has general administration of.

***Foreign Acquisitions and Takeovers Act 1975***

1.90 The deeming rule does not extend to the Commissioner's limited administration of the *Foreign Acquisitions and Takeovers Act 1975* and instruments made under this Act. [*Schedule 4, item 1, subsection 195-105(3)*]

1.91 This legislation operates under a dual administrative model. Recognition of the legal form of the CCIV as a company and the members as shareholders is necessary to ensure it continues to operate as intended.

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

1.92 The deeming principle has effect for the purposes of the *International Tax Agreements Act 1953*, including for any double taxation agreements that are given force of law by that Act.

1.93 The *International Tax Agreements Act 1953* is a taxation law for the purposes of the deeming principle.

1.94 The Exposure Draft Bill also includes amendments to ensure that the deeming principle interacts appropriately with the priority rule contained in the *International Tax Agreements Act 1953*. That priority rule prioritises the provisions of that Act over the ITAA 1997 and ITAA 1936 to the extent of an inconsistency.

1.95 The amendments clarify that the priority rule in the *International Tax Agreements Act 1953* is subject to the deeming principle. [*Schedule 4, items 10 and 11, subsections 4(2) and (3) of the International Tax Agreements Act 1953*]

1.96 This removes any ambiguity about the interaction between the two rules and ensures double taxation agreements apply to, or in respect of:

- the CCIV sub-fund trust;
- the CCIV as trustee; and
- the members of the CCIV as beneficiaries of each CCIV sub-fund trust

despite the legal form of a CCIV, its shareholders or any of the distributions made.

1.97 This means that a CCIV sub-fund trust and its beneficiaries are eligible for the same treatment, and are able to access the same benefits, as an AMIT under Australia's double taxation agreements.

### ***Tax consolidation regime in Division 703***

1.98 CCIV entities (both a legal form CCIV company and a deemed CCIV sub-fund trust) are specifically excluded from being a member of a consolidated group or consolidatable group under section 703-20. This is because the CCIV is a new collective investment vehicle that is not intended to engage in active trading businesses. [*Schedule 4, items 2 to 4, table item 4 and 8 in subsection 703-20(2) and subsection 703-20(3)*]

### ***A New Tax System (Goods and Services Tax) Act 1999***

1.99 The GST Act is a 'taxation law' for the purposes of the deeming provision. A CCIV sub-fund trust is an entity as prescribed in the GST Act.

1.100 To determine whether the CCIV is required to be registered for GST in relation to a particular CCIV sub-fund trust, the CCIV would need

to separately ascertain if that CCIV sub-fund trust is carrying on an enterprise and the GST turnover in relation to that CCIV sub-fund trust. Where more than one CCIV sub-fund trust is required to be registered for GST, the CCIV will register in relation to each relevant CCIV sub-fund trust.

## **Consequential amendments**

1.101 The Exposure Draft Bill inserts several new definitions in section 995-1 in relation to the CCIV and the relevant entities being recognised for tax laws under the deeming principle. [*Schedule 4, items 5 to 9, subsection 995-1(1)*]