Global Tax Alert

Australian Taxation Office releases draft views on new nonconcessional MIT income rules from 1 July 2019

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On 26 June 2019, the Australian Taxation Office (ATO) released a draft law companion ruling LCR 2019/D2 (the ruling) which provides the Commissioner's preliminary views on the new non-concessional managed investment trust (MIT) income foreign resident withholding tax rules that will apply to income years commencing on or after 1 July 2019.

The new "non-concessional" designation is for certain types of MIT income including:

- ▶ MIT cross-staple arrangement income
- ▶ MIT trading trust income
- ► MIT agricultural income
- ▶ MIT residential housing income

Affected fund payments will be subject to MIT withholding tax at 30%, subject to transitional rules and exemptions (which differ according to MIT income type). The rules introduce potential significant tax policy, operations and systems changes for affected businesses.

The 62-page draft ruling covers the key aspects of the measures, with a focus on MIT cross-staple arrangement income, providing guidance on:

- ▶ When an amount is derived, received or made by a MIT
- ▶ The meaning of "cross-staple arrangement"



- ► The scope of application to cross-staple arrangement income
- ► The meaning of the terms "facility" and "economic infrastructure facility," relevant for cross-staple arrangement transitional periods and exemptions
- ► Integrity rules related to economic infrastructure facilities where income from land investments is derived
- ▶ The meaning of:
 - MIT trading trust income
 - MIT residential housing income
 - MIT agricultural income

► Transitional periods available for non-stapled nonconcessional income amounts

There are 13 examples of the Commissioner's interpretation in practice, particularly in relation to cross-staple arrangements, and the associated transitional rules and exemptions.

Once finalized the ruling is proposed to apply to 2019/20 and later income years fund payments made from 1 July 2019, in line with the enacted measures.

Comments on the draft ruling are due by 9 August 2019.

A more detailed Tax Alert will be forthcoming.

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