

Corporate Collective Investment Vehicles

Regulation Impact Statement
The Commonwealth Treasury

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Executive Summary

Corporate Collective Investment Vehicles (CCIV) are a type of corporate structure for funds management treated as a trust for tax law purposes. The key policy objective of developing the CCIV framework has been to increase the competitiveness of Australia's managed fund industry through the introduction of internationally recognisable investment products.

Background

In the 2016-17 Budget, as part of the Ten Year Enterprise Tax Plan, the Government announced its intention to introduce a regulatory framework for a CCIV regime. This decision was informed by Recommendation 3.3¹ of the 2009 *Australia as a Financial Centre: Building on our Strengths* report (the Johnson Report) and the subsequent 2011 Board of Taxation (BoT) *Review of Tax Arrangements Applying to Collective Investment Vehicles* (BoT Review)².

In summary, these reports recommended that a collective investment vehicle regime be introduced, to encourage foreign investment and increase exports of Australian financial services. The CCIV regime broadly aims to implement the recommendations made by these reports and will ensure that Australia's financial sector keeps pace with the modernisation of financial products. The development of Australia's CCIV regime has been informed by considering similar regimes in other jurisdictions (such as the United Kingdom and Singapore) along with elements of Australia's current funds management industry. This has resulted in a new type of corporate structure for funds management that is both innovative and can be incorporated into Australia's robust corporate and regulatory landscape.

Following the original Budget announcement in 2016, significant work was undertaken on developing the CCIVs regime, including several rounds of draft legislation and public consultation. However, the project was paused due to competing priorities including the Government's response to the Financial Services Royal Commission, and emergency measures for bushfire relief and the COVID-19 pandemic.

In the 2021-22 Budget, the Government announced a revised start date for the regime of 1 July 2022.

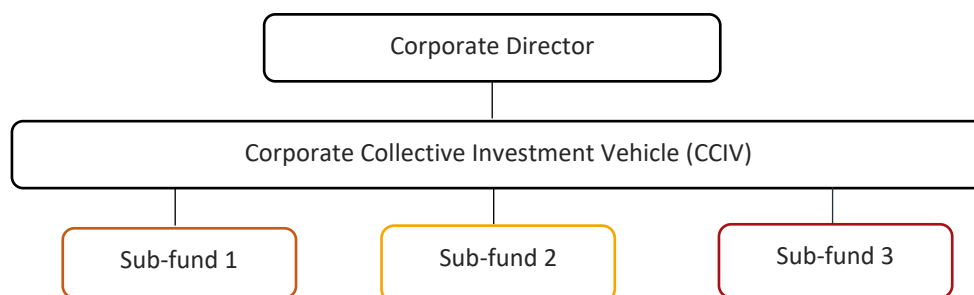
Policy Overview

A CCIV is a new form of collective investment vehicle that uses a corporate structure while providing flow-through taxation. It is designed to be an alternative to the common trust-based managed investment scheme. A CCIV is a company, limited by shares, with its assets and liabilities segregated into sub-funds. It has as its corporate director a company with an Australian financial services licence (AFSL) authorising it to operate the business and conduct the affairs of the CCIV. A CCIV does not have any employees or officers other than the corporate director.

¹ <https://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id:%22media/pressrel/EJOW6%22>

² [Board of Tax, 2011, Review of Tax Arrangements applying to collective vehicles
https://taxboard.gov.au/consultation/taxation-treatment-of-collective-investment-vehicles](https://taxboard.gov.au/consultation/taxation-treatment-of-collective-investment-vehicles)

Figure 1 – A CCIV with three sub-funds



A CCIV will have at least one sub-fund, in an umbrella-like structure (see Figure 1). A CCIV may be either retail or wholesale. Retail CCIVs are subject to a regulatory framework that encompasses additional regulatory protections necessary for retail investors. Wholesale CCIVs are subject to a more limited regulatory framework, reflecting the nature of the investors and capacity to negotiate bespoke arrangements with fund providers.

In the proposed option (Option 3, discussed in Chapters three and four), the CCIV tax framework leverages the existing trust taxation framework and the existing attribution flow-through regime (i.e. the new tax system for managed investment trusts (MITs), otherwise known as the attribution MIT (AMIT) regime), rather than by creating a new bespoke tax regime (proposed in Option 2, discussed in Chapters three and four). The policy objective is that the general tax treatment of CCIVs and their members align with the existing tax treatment of AMITs (and their members).

Legislation overview

To enact the proposed CCIV regime, amendments and new additions will be made to corporations and taxation legislation and regulations.

Treasury have been working closely with the Australian Securities and Investment Commission (ASIC) and the Australian Taxation Office (ATO) on the legislation amendments and additions. To ensure adequate time for the regulators and industry to prepare for the proposed start date of 1 July 2022, legislation is planned for introduction in the Spring sitting 2021. The 2021 revised Bill also updates the draft CCIV regime for legislative updates and minor technical updates that are a result of legal landscape modernisation since the last iteration.

Stakeholder consultation

Treasury has consulted extensively on the CCIV regime. The draft legislation has been exposed to the public on six occasions totalling 20 weeks across four years and can be viewed at www.treasury.gov.au/consultation, along with publicly available submissions. The CCIV regime has attracted significant interest and engagement from law firms, accounting firms, fund managers, peak bodies in the financial services, property management and fund management areas, and overseas jurisdictions. The Treasury are grateful for the engagement and enthusiasm many stakeholders have shown for the proposed regime. We appreciate the time and industry expertise that went into the submissions and consultations over many years.

As a result, stakeholder views have strongly influenced the 2021 draft legislation. More explanation of these changes is found in chapters three, four and five of this paper.

Options

Chapters three and four of this paper outline further detail behind the three options available to government. Option 3 is the preferred option.

1. Status Quo – no change to current legislation
2. CCIV with mandatory independent depository for retail CCIVs and bespoke CCIV tax regime
3. CCIV with optional depository and streamlined tax regime leveraging existing tax infrastructure and concepts

Conclusion

Stakeholder feedback from the 2019 consultation process on Option 2 indicated that the mandatory depository and bespoke tax regime would introduce unnecessary complexity and uncertainty.

Option 3, which was proposed in the 2021 public consultation period and is the preferred option, garnered significantly more support from stakeholders. Option 3 has been identified as the most beneficial as the additional flexibility under this approach will likely lead to a greater uptake of the regime. In addition, this option has the lower regulatory cost making it more attractive to potential CCIV providers.

Key Terms

| | |
|-------------------------|---|
| AFSL | Australian Financial Services Licence |
| AIV | Attribution Investment Vehicle |
| AMIT | Attributed Managed Investment Trust |
| ARFP | Asia Region Funds Passport |
| ASIC | Australian Securities and Investment Commission |
| ATO | Australian Taxation Office |
| BoT | Board of Taxation |
| BoT Review | <i>Review of Tax Arrangements Applying to Collective Investment Vehicles (2011)</i> |
| CCIV | Corporate Collective Investment Vehicle |
| CGT | Capital gains tax |
| Corporations Act | <i>Corporations Act 2001</i> |
| EOI | Effective exchange of tax information |
| FTE | Full time equivalent |
| IMR | Investment Manager Regime |
| Johnson Report | <i>Financial Centre: Building on our Strengths Report (2009)</i> |
| MIS | Managed Investment Scheme |
| MIT | Managed Investment Trust |
| OEIC | United Kingdom Open Ended Investment Company |
| OFC | Hong Kong Open-ended Fund Company |
| PDS | Product Disclosure Statement |
| Regulations | <i>Corporations Regulations 2001</i> |
| RBE | Regulatory burden estimate |
| UCITS | Undertakings for the Collective Investment in Transferable Securities |
| VCC | Singapore Variable Capital Company |

Background

In November 2009, the Australian Financial Centre Forum released the Johnson Report. The Johnson Report made several policy recommendations aimed at increasing Australia's cross-border trade in financial services and improving the competitiveness and efficiency of the financial sector.

In relation to funds management, the Johnson Report recommended the development of the Asia Region Funds Passport (ARFP), as well as consideration of a broader range of tax flow-through collective investment vehicles.

The ARFP will provide a multilateral framework which allows eligible funds to be marketed across member countries, with limited extra regulatory requirements. The ARFP is intended to support the development of an Asia-wide managed funds industry through improved market access and regulatory harmonisation. The Government implemented legislative changes for the ARFP regime in mid-2018, and the program commenced in February 2019 (after Japan and Thailand enacted their respective legislative changes).

The Johnson Report also identified Australia's need for a collective investment vehicle that provides flow-through tax treatment, maintains investor protection, and is more internationally recognisable than the Managed Investment Scheme (MIS) - Australia's current trust-based investment vehicle. In order to address this gap, the report recommended the BoT review the scope for providing a broader range of collective investment vehicles that would be subject to flow-through taxation.

The then Government accepted this recommendation and the subsequent the BoT Review was released in December 2011. The BoT Review recommended the creation of new collective investment vehicles that provide tax neutral outcomes for investors. The BoT Review also recommended that arrangements in offshore jurisdictions, such as Ireland and Luxembourg, inform the design of the new collective investment vehicles.

In the 2016-17 Budget, as part of the Ten Year Enterprise Tax Plan, the Government announced it would introduce tax and regulatory frameworks for a CCIV. Significant work was undertaken on developing the CCIVs regime, including several rounds of draft legislation and public consultation. However, the project was paused due to competing priorities including the Government's response to the Financial Services Royal Commission, and emergency measures for bushfire relief and the COVID-19 pandemic.

In the 2021-22 Budget, the Government announced a revised start date for the regime of 1 July 2022 following consultation on the final design and specification of the regulatory framework, before making a final decision.

1. What is the problem you are trying to solve?

Australia's funds management sector is one of the largest and most sophisticated in the world, but it is largely domestically focused. Only around 3.2 per cent of the \$4.31 trillion in total funds under management in Australia is managed on behalf of non-resident investors³.

The Johnson Report found that Australia's managed funds sector could become more competitive if it offered a funds management vehicle that is commonly used overseas.

In Australia, funds management products are generally offered through trust structures (see box below – 'What is a MIT'). For example, public unit retail trusts, real estate investment trusts and cash management trusts. A 2021 Deloitte Access Economics report found there are more than 300 competitors in the industry, with more than 3,800 funds on offer⁴.

Trusts are generally taxed on a flow-through basis. This means that the income is generally only taxed in the hands of the ultimate beneficiary at the investor's tax rate, for example, a dividend which is then taxed in the hands of the individual who made the investment. The entity itself generally is not taxed. Investors place a high-value on flow-through taxation as income and gains from an underlying investment generally retain their tax characteristics that 'flow-through' to investors.

Furthermore, even amongst common law countries, the Australian model is unique. Traditionally, investment trusts have a manager and a trustee. Australia merged these functions into a single 'responsible entity' in the late 1990s. This feature of Australia's trust-based investment vehicles may further add to the perception that foreign investors are not familiar with Australian trusts.

Regulatory barriers also inhibit the import of funds management products from other jurisdictions. In order to offer a tax-effective unlisted product to investors, foreign fund managers are generally required to adopt a managed investment trust structure which may not be compatible with the structures they are required to adopt in their home jurisdiction. The cost of running two structures impedes the ability for these funds to offer their products in Australia. Thus, global regulatory alignment can lower the barriers to entry for new fund managers seeking to operate in Australia. Over time, it should also make substituted compliance processes simpler for Australian fund managers seeking to offer products overseas.

Promoting the import of funds management products and removing unnecessary barriers would provide multi-faceted benefits for the Australian economy. It would introduce competition into the Australian market. Australian investors would have greater product choice, including better exposure to overseas asset classes. This could assist in addressing the home bias that Australian investors have towards Australian equities. Domestic fund managers would also, in turn, be able to offer an investment vehicle familiar to overseas markets and investors – increasing their investor pool and economies of scale.

³ ABS 5655.0 (table 1) as at June 2021 <<https://www.abs.gov.au/statistics/economy/finance/managed-funds-australia/jun-2021>>

⁴ Deloitte Access Economics 'Competition in funds management' prepared for the Australian Securities and Investments Commission, September 2021, available at [Report REP 702 Competition in funds management \(asic.gov.au\)](https://www.asic.gov.au/Report-REP-702-Competition-in-funds-management)

Another aspect of international competitiveness is the level of protection afforded to investors by the proposed regulatory regime. Australia's consumer protections for managed fund investors differ from those used overseas and are therefore not familiar to foreign investors. Providing a statutory consumer protection mechanism that is recognisable to foreign retail investors allows for harmonisation of investor protections without detracting from the current domestic standards. This is dealt with in further detail below.

What is a MIT?

A MIT is a type of trust that is widely held and invests collectively in passive income activities, such as shares, property or fixed interest assets. The MIT regime provides foreign residents with a concessional rate of withholding tax on fund distributions where the investor is a resident of a country with which Australia has an effective exchange of information (EOI) agreement. Australia's default withholding tax rate for MIT fund payments (distributions of Australian source net income other than dividends, interest and royalties) to foreign residents is 30 per cent. However, the withholding tax rate is reduced to 15 per cent, generally, for MIT fund payments to residents of countries with which Australia has an effective EOI. Domestic residents that invest via a MIT receive flow-through tax status and are taxed at their marginal tax rate.

2. Why is Government action needed?

As outlined above and in the Johnson Report and BoT Review, there are tax and regulatory barriers to Australian fund managers, incoming fund managers and foreign financial services providers adopting fund structures commonly in use overseas. The extensive work undertaken has built that business case. In order to act on these recommendations, legislative reform is required.

Changes to corporations legislation and regulations are required to create a new type of investment vehicle and ensure that there are appropriate investor protection and disclosure obligations. Changes to taxation law and regulations will also be required to give effect to the new tax framework supporting the CCIV.

The consumer protections required under the new regime also require legislative backing to ensure they are robust and standardised. The standardisation and harmonisation of certain industry practices will make it easier for foreign financial services providers to enter the Australian market and provide additional competition without eroding investor protections.

Aligning Australia's regulatory framework with well-developed international regimes can lower the barriers to entry for new fund managers seeking to operate in Australia. This can increase competition and allow Australian consumers greater product choice, including exposure to new asset classes.

This reform will enhance the international competitiveness of the Australian managed funds industry by allowing fund managers to offer investment products using vehicles that are commonly in use overseas. This will also maximise the effectiveness of related Government initiatives aimed at increasing access to overseas markets, including the ARFP.

The legislation also contributes to the more general objective of global regulatory alignment. The introduction of the CCIV helps to create a cohesive regional managed funds industry and facilitate more efficient participation in the global marketplace. This proposal presents complex challenges, both in terms of the legislation required to enact, manage and regulate, and in the operational aspect of ensuring that the structure is attractive, sustainable and robust. The proposal to have a corporate structure with flow-through taxation is novel in Australia and has presented challenges in drafting of the law. We have relied heavily on stakeholders for their views and input, which has assisted greatly in understanding how the law will be translated in practice, and to achieving a commercially viable CCIV regime.

The alternative, which will be explored in chapter three, is the status quo – being that the Government does not act on the reports and recommendations, and no change is made to the current investment options. This would present a missed opportunity for the Government to leverage off the international funds market and boost inbound investment.

3. What policy options are you considering?

3.1 Option 1 – Status Quo

Continue with a trust-based investment vehicle available to Australian based fund managers (status quo).

3.2 Option 2 – CCIV with mandatory independent depository for retail CCIVs and bespoke CCIV tax regime

This option was consulted on publicly in 2018 and 2019. It proposed to adopt a new CCIV, in line with the Government announcement, which would be informed by the Johnson Report and the subsequent BoT Review. This option includes a mandatory depository for retail CCIVs. Under this approach CCIVs would be prohibited from listing on a prescribed financial market and not able to undertake cross-investment between sub-funds of the same CCIV. Cross-investment is when one sub-fund invests in another sub-fund within the same CCIV, for example, sub-fund 1 purchasing a referable share in sub-fund 2, within the same CCIV.

Under this approach a bespoke tax regime was proposed to enable tax flow-through treatment. A CCIV was to be treated as if it were a separate company in relation to each sub-fund for the purposes of applying the taxation law. The CCIV would have to separately work out the income tax position for each CCIV sub-fund company, bear a separate tax liability for each CCIV sub-fund company, and administrative obligations and entitlements of the CCIV would apply separately to each CCIV sub-fund company. CCIV sub-funds would have been referred to as attribution sub-funds, reflecting the application of the existing attribution system of tax for CCIV sub-funds. That is, a CCIV sub-fund would be taxed like an AMIT and subject to the same eligibility criteria.

This approach would introduce a new concept of an attribution investment vehicle (AIV), and new capital gains tax event labels (for example, CGT event M1). The new AIV label would have resulted in a change to existing compliance processes, for example, changes to sub-fund distribution statements and potentially the underlying trust deeds.

While the tax outcomes (and eligibility criteria) would have been broadly aligned with the existing tax outcome for AMITs, if a sub-fund failed the attribution sub-fund requirements and was not eligible for safe harbour treatment, the sub-fund would be subject to taxation at the top corporate tax rate and could not frank distributions to members (as the CCIV was not a franking entity). These sub-funds (referred as an excluded sub-fund) would retain this corporate tax outcome for subsequent income years (i.e. it could not re-enter the attribution system), however a specific CGT roll-over relief mechanism would be available to facilitate the transfer of the assets of an excluded sub-fund of a CCIV to an ordinary company that is not a CCIV.

This bespoke framework would also have strengthened the administrative penalty regime to operators of AIVs (or the operator's agent), in relation to an AIV 'over' or 'under' resulting from failure to take reasonable care to comply with a taxation law. This would have aligned the AIV administrative penalty regime with other taxpayers.

Option 2 was consulted on publicly in 2018 and 2019 and the stakeholder feedback recorded⁵. The general view was that this option did not adequately balance investor protections and integrity concerns with commercial viability, and that the proposed structure would be unlikely to attract highly mobile capital. This feedback was taken into consideration when the next iteration of the exposure draft was prepared in 2021, which became Option 3.

What is a depositary?

A depositary is an independent third party with core functions of holding the assets of the CCIV and supervising the conduct of certain activities carried out in relation to the CCIV. Money or property acquired by a CCIV that has a depositary must be transferred to the depositary immediately after it is acquired. The depositary must hold the CCIV's money and property in a segregated manner and on trust for the CCIV. They may also delegate custody to another party, such as a custodian.

Currently in Australia, depositaries are not an established feature.

More information on depositaries in under Option 4.2.

3.3 Option 3 – CCIV with optional depositary and streamlined tax regime leveraging existing tax infrastructure and concepts

Option 3 was consulted on in 2021, informed by previous stakeholder feedback on Option 2. This option proposes to adopt a new CCIV, in line with the Government announcement, which would be informed by the Johnson Report and the subsequent 2011 BoT Review.

Option 3 uses some of the elements of Option 2, but with certain amendments informed by stakeholder consultation on Option 2 in 2018 and 2019. These changes are aimed at increasing the commercial viability of the regime and suggestions on alignment to the MIS regime while maintaining investor outcomes.

The key policy elements remain under both options, including: a corporate entity limited by shares, the requirement to have a licenced corporate director and the assets and liabilities of the CCIV being referable to a sub-fund.

Changes from Option 2 to Option 3 include flexibility to utilise a depositary or custodian (no longer mandatory for retail CCIVs), the ability to list a sub-fund on a prescribed financial market and the ability to undertake cross-investment, between sub-funds of the same CCIV. The ability to cross-invest will allow fund managers to pool assets in sub-funds and offer investment opportunities to these pooled assets with different levels of exposure or with different currencies, under the same CCIV. Under option 2, without this functionality, multiple CCIVs would need to be established to ensure the same outcome, similar to the existing MIS regime. Under cross-investment, there will be some limits on voting which will be outlined the Regulations.

⁵ https://treasury.gov.au/consultation?keyword=collective&sort_by=field_date_range&f%5B0%5D=consultation_date%3A2018

The attribution flow-through taxation arrangements would still apply to CCIVs, subject to meeting certain eligibility criteria. However, this option leverages existing tax infrastructure and concepts, rather than creating a bespoke tax framework. This means that the tax outcome for CCIV sub-funds aligns generally with current tax rules, including for sub-funds that do not satisfy the AMIT eligibility criteria (i.e. these sub-funds would be taxed under general trust provisions). This option provides a more comparable regime to the existing AMIT regime and more certainty and understanding in how the taxation law will operate. The Option 3 taxation proposal is more straightforward and simpler to apply.

There is significant regulatory burden savings in Option 3 compared to Option 2 from both the removal of the mandatory depositary and the adoption of the AMIT regime for taxation.

Consideration of options

For context, the Government committed to introducing the recommendations of the Johnson Report in the 2013 election campaign. The recommendation of the Johnson Report could be enacted by either Option 2 or Option 3.

Continuing with a trust-based investment vehicle (Option 1) would mean that Australian funds managers will continue to be restricted to offering investment products through MITs, which industry stakeholders advise are unfamiliar to many non-resident investors. In 2016, the Government introduced a new tax system for MITs (known as the AMIT regime) which improved the operation of the taxation law for MITs (that opted into this new regime) by increasing certainty, allowing greater flexibility and reducing compliance costs. This notwithstanding, industry have continued to advocate for a broader range of collective investment vehicles to be made available.

The key feature of the CCIV (Option 2 and 3) is that it would provide a recognisable investment vehicle for overseas investors and fund managers; that is, investment through a corporate structure. Investors purchase a share in a corporate entity and receive a return on the investment, which receives flow-through taxation. This is consistent with investing in other jurisdictions.

When consulted on, stakeholders had concerns with the commercial viability of Option 2, including the mandatory depositary which is not a current feature in the Australian investment market.

Option 3 addressed the major concerns raised in the Option 2 consultation, with stakeholders providing broad support for Option 3, with some suggestions for future improvement raised. These suggestions could be categorised as either technical (or mechanical) changes to ensure the CCIV framework and enabling legislation operates as intended, or broader policy changes that go beyond the immediate policy of establishing the CCIV framework.

4. What is the likely net benefit of each option?

Regulation options

4.1 Option 1 – Status Quo

Table 1: Regulatory burden estimate table – Status quo

| | |
|--|-----|
| Average annual regulatory costs (from business as usual) | \$0 |
| Average annual regulatory cost | \$0 |

If the status quo is maintained, Australian funds managers will continue using the MIT structure as the primary collective investment vehicle to attract foreign investment. Fund managers will not be able to use a vehicle that is internationally recognisable and with the flexibility of sub-funds.

If fund managers set up an investment fund in a company, it would be taxed as a corporation, meaning it would be subject to the corporate tax rate (generally 30 per cent), and would lose flow-through taxation. This structure (and tax rate) is generally less attractive to foreign investors with passive income investments. They could not adopt a sub-fund structure because any contractual segregation of assets would not bind third parties to the contract.

For Option 1, there would be no quantifiable benefit or loss, or net benefit as the status quo is maintained.

4.2 Option 2 – CCIV with mandatory depositary for retail CCIVs and bespoke CCIV tax regime

Increase in international competitiveness

The availability of a CCIV is expected to improve the international competitiveness of Australia's funds management industry. Australia will attract more foreign fund managers and foreign investors as they will recognise the corporate structure of the CCIV, and the flow-through taxation benefits. This will bring more foreign investment into Australia and will increase the competitiveness of Australia's managed funds industry by aligning Australia's legal funds structures with those found in the rest of the world. A commercially viable CCIV regime will see an increase in funds under management and reduce costs for both foreign and domestic investors through increased competition and economies of scale.

A greater degree of harmonisation between Australia's funds management vehicles and vehicles which are commonly used internationally is expected to lead to increased international competition within the industry. It is likely that there would be an increased interest from international financial service providers, who have achieved economies of scale elsewhere, and may now look at entering the market due to the attractiveness of the Australian market in light of the introduction of the CCIV regime.

The new vehicle will also maximise the effectiveness of related government initiatives aimed at increasing access to overseas markets, including the ARFP. The ARFP is an international trade arrangement to facilitate cross-border trade in funds management between member economies. Australian fund managers are able to export eligible Australian-domiciled funds into Japan, Korea, New Zealand and Thailand through the ARFP.

Asian investors are familiar with corporate vehicles since these are the most common cross-border funds sold in Asia. Hong Kong and Singapore have recently introduced similar investment vehicles, the Hong Kong Open-ended Fund Company (OFC) and the Singapore Variable Capital Company (VCC).

In Europe and the United Kingdom, the Undertakings for the Collective Investment in Transferable Securities (UCITS) is the corporate structured investment vehicle framework for funds management. The UCITS regime was introduced in 1985 and revised several times. There are more than 29,000 UCITS funds across the EU with over €8 trillion of assets under management⁶.

Introduction of a corporate based investment vehicle will support the Australian funds management sector to increase the proportion of funds managed on behalf of overseas investors. By growing beyond the domestic market and increasing the value of funds managed, Australian funds will be able to obtain global economies of scale which could be passed on to consumers in the form of lower costs.

Under this option, the CCIV regulatory framework utilises a company structure limited by shares but is modelled in general terms on the United Kingdom's Open Ended Investment Company (OEIC) regime so that it is recognisable to offshore investors and fund managers.

Regulation

As a company, a CCIV will generally be subject to the ordinary company rules under the *Corporations Act 2001* (Corporations Act) unless otherwise specified. However, features of the MIS regime have also been incorporated into the design of CCIVs to the extent that they are consistent with the policy objective. For example, a CCIV must have share capital but the CCIV can issue some or all of its shares as shares that are redeemable at the member's option. This feature is similar to a member's right to withdraw from a registered scheme. Further, while other types of companies are required to appoint natural person directors, a CCIV must have a single corporate director, which is consistent with the OEIC model and also similar to the responsible entity of a registered scheme.

The CCIV regulatory framework distinguishes between retail and wholesale CCIVs. It retains and expands the retail investor protections of a registered scheme while also replicating elements of the flexibility and lighter-touch regulatory approach applying to wholesale MISs. This reflects the fact that sophisticated investors are better able to negotiate bespoke contractual protections and assess investment risks than retail investors.

⁶ <https://www.esma.europa.eu/regulation/fund-management>

The new CCIV regime will also improve consumer protections for retail investors in these schemes. For example, it will require that retail CCIVs issue a Product Disclosure Statement (PDS). It should be noted that strong consumer protection standards in the UCITS regime have been one of the major catalysts for its success.

The CCIV regime will also improve the efficiency of the Australian funds management sector. By allowing each vehicle to have sub-funds with statutory segregation of assets and liabilities, funds can offer different investment strategies through a single vehicle. This will permit efficiencies in administration and costs (for example, the fund can enter a single investment management agreement rather than separate agreements for each sub-fund).

Moving to a corporate vehicle would address issues that have arisen as a result of the existing trust-based vehicle lacking a legal personality. In a trust-based vehicle, the manager must enter contracts on behalf of the vehicle and this adds a layer of complexity in operating the fund. The problems are most acute if the manager enters financial distress, typically leading a fund to also experience financial distress that it may otherwise have avoided. These problems are set out in a report issued by the former Corporations and Markets Advisory Committee⁷.

A company may be registered as a CCIV if it meets certain basic registration requirements, including that upon registration it will have at least one sub-fund (which must have at least one member). The registration requirements are broadly similar to those of other companies.

Under this option, a CCIV would be prohibited from owning shares in itself, and thereby not able to undertake investment strategies whereby one sub-fund could cross-invest into the assets of another sub-fund under the same CCIV.

The extent to which funds utilise the CCIV, rather than the existing trust structure, will be dependent on its commerciality, establishment costs, transaction costs and potential scalability benefits.

Adopting a CCIV will allow funds managers to use vehicles that are commonly in use overseas and derive greater economies of scale by pooling more domestic and international investors into a single vehicle. This should increase foreign investment, which will likely result in positive impacts to revenue over the longer term. Any change is likely to be gradual as it takes time for funds managers to develop scale and attract foreign investors. Following longstanding practice, revenue costings do not generally incorporate behavioural or second round effects, especially where these are uncertain.

The Depositary

Under this option, a retail CCIV must have a depositary. A wholesale CCIV may choose to have a depositary. If it so chooses, the wholesale CCIV is subject to the full regulatory requirements for depositaries.

The depositary must be a public company or a registered foreign company that holds an AFSL authorising it to act as a depositary for a CCIV. The depositary of a CCIV (and any entities performing depositary functions) must also meet the independence requirement.

The independence requirement involves a simple prohibition on the body that is (or proposes to be) the depositary, and any agents or persons engaged by the depositary to perform depositary functions, from also being an entity that directs investment decisions for the CCIV. This means that the depositary and any other entity performing depositary functions for the CCIV is legally separated from any entity that directs investment decisions for the CCIV.

⁷ Corporations and Markets Advisory Committee 'Managed Investment Schemes- Report 2012'
[http://www.camac.gov.au/camac/camac.nsf/byHeadline/PDFFinal+Reports+2012/\\$file/MIS_Report_July2012.pdf](http://www.camac.gov.au/camac/camac.nsf/byHeadline/PDFFinal+Reports+2012/$file/MIS_Report_July2012.pdf)

One of the depositary's core functions is to hold the assets of the CCIV. Another core function of the depositary is to supervise the conduct of certain activities carried out in relation to the CCIV.

The depositary is appointed either as part of the registration of the CCIV or by notice to ASIC. The process for changing depositary depends on the circumstances in which the depositary is being changed. As depositaries are not a key feature of the current fund management sector in Australia it would be subject to a new bespoke regulatory regime and associated guidance and information.

Public Listing on a trading exchange for retail CCIVs

An element of Option 2 is that public listing of a retail CCIV on a trading exchange is not permitted. This includes one or more sub-funds in a retail CCIV. This prohibition does not restrict a security in a CCIV from being quoted on a financial market or settled using financial market infrastructure, such as AQUA, subject to the rules of the relevant market. Feedback from stakeholders in the Option 2 consultation periods was that the inability to list on a public trading exchange was a negative and that the ability to list on a public trading exchange was essential to commercial viability. This approach has been revised in Option 3.

Taxation

This option proposes a bespoke tax regime, reflecting the hybrid nature of the CCIV (i.e. a corporate entity with flow-through tax). The alignment with the tax system for AMITs was intended to maintain the benefits of income character retention. Flow-through tax trust features of income character and source assist investors with accessing specific tax benefits, for example, foreign income tax offsets. It also assists non-residents via access to concessional final withholding taxes, and domestic investors to access capital gains discounts. These features can provide Australian based investment structures with a competitive advantage compared to foreign based investment structures that only distribute income as either a dividend or interest payment. Stakeholders support the preservation of flow-through taxation for the CCIV.

Under this approach, a CCIV would be treated as if it were a separate company in relation to each sub-fund for the purposes of applying the taxation law. The CCIV would have to separately work out the income tax position for each CCIV sub-fund company, bear a separate tax liability for each CCIV sub-fund company, and administrative obligations and entitlements of the CCIV will apply separately to each CCIV sub-fund company.

This approach introduces a new concept of an attribution investment vehicle (AIV), and new capital gains tax event labels (e.g CGT event M1). The new AIV label would have resulted in a change to existing compliance processes, for example, changes to sub-fund distribution statements and potentially the underlying trust deeds.

While the tax outcomes would have been broadly aligned with the existing tax outcome for AMITs, during consultation on this option, industry raised some issues with elements of the design which would have resulted in an investor in a CCIV being subject to a different outcome compared to an AMIT. For example, there were concerns that the default tax outcome for sub-funds that did not meet AMIT eligibility criteria was to tax them like a corporate tax entity on an ongoing basis, rather than self-assessing on an income-by-income basis as for existing AMITs. There were also some general concerns about whether this default tax setting, and the potential risk of the loss of flow-through taxation, would be attractive to foreign investors.

This option, and parts of this option, were consulted on in 2017, 2018 and 2019.

Valuing the benefits of Option 2

In relation to the quantifying the monetary value of what CCIVs will bring into the economy, this is difficult to estimate due to the number of variables involved, including the number of new entrants to the market, those that

are converting from another investment product into a CCIV, and the investment strategies chosen. There is a lack of data to quantify this question. Assets vary in terms of investment strategy, such as long term and short term holds and performance outcomes. The global funds management industry also needs to be taken into consideration, such as performance in other jurisdictions and the products available. This makes it challenging to accurately estimate a benefit to the Australian economy.

The tax regime under this option was intended to be broadly neutral with existing collective investment structures.

Overall regulatory impact for Option 2

Table 2: Regulatory burden estimate table – CCIV with mandatory depositary

| | |
|--|-------------|
| Implementation costs for new CCIVs (registrations and conversions (10 year average) | \$1,777,745 |
| Implementation costs for new depositaries (10 year average) | \$264,295 |
| Average annual regulatory cost | \$2,042,040 |

Please refer to Appendix A for an outline of the assumptions used.

4.3 Option 3 – CCIV with optional depositary and streamlined tax regime leveraging existing tax infrastructure and concepts

Under this option, the core regulatory settings are the same as under Option 2 but with some key alterations to improve the commercial viability of the CCIV regime.

These amendments include:

- flexibility for CCIVs to use a custodian or a depositary
- flexibility to list a retail CCIV with one sub-fund on a prescribed financial market in Australia
- flexibility to cross-invest between different sub-funds of a CCIV
- flow-through taxation, similar to the AMIT regime.

Optional depositary

Under Option 2, the CCIV regime included a requirement that all retail CCIVs must have an independent depositary and wholesale CCIVs had the option to utilise this feature. The depositary could engage other third parties to hold the CCIV's assets on its behalf (such as a custodian). There are multiple approaches for international regimes in requiring the use of custodians or depositaries. In addition, the current managed

investment scheme regime does not require a depository for the scheme. In practice, and under licensing arrangements, a custodian is often appointed for the scheme.

Under this option, changes have been made to align the requirements for a custodian or a depository in the CCIV regime to provide greater flexibility and are now also consistent with the current requirements for managed investment schemes in Australia. A CCIV may choose to appoint a depository or a custodian as a matter of commercial practice or in accordance with other regulatory requirements (such as any similar Australian financial services licensing arrangements for the corporate director of the CCIV).

This change ensures the Australian funds management industry has sufficient flexibility to align their commercial models to particular markets or investors, as required. It ensures equivalent investor protections and comparable levels of regulatory cost across both the MIS and CCIV regime. Under option 2, a new regulatory framework was established to regulate the operation of the independent depository. As under this approach a depository is not required, and if a CCIV was to utilise a depository this would not be a regulated requirement, rather a requirement on a commercial basis, the costing has not been included for this option.

Optional public listing on a prescribed financial market

The second significant change under this option is that retail CCIVs with only one sub-fund will be able to be listed on a prescribed financial market (such as listing platforms like the ASX).

Under Option 2, a CCIV (and sub-funds of a CCIV) were prohibited from being listed. This prohibition did not affect the ability to quote securities in a CCIV on other platforms (such as the ASX's AQUA platform for managed funds and structured products). In practice, these other platforms are restricted to CCIVs with liquid assets.

As suggested by stakeholders in previous consultation, a staged approach to the listing of CCIVs has been adopted under this option. This approach allows for the listing of retail CCIVs with one sub-fund on a prescribed financial market in Australia (such as the ASX) from 1 July 2022. This provides listed retail CCIVs with similar access to listing on a prescribed financial market as registered schemes. It also ensures CCIVs with illiquid assets can access platforms on the financial market, enhancing the commercial viability of the CCIV regime.

The ability to quote securities of a CCIV on other platforms (such as AQUA) is maintained and is not affected by the fact that listing of retail CCIVs is limited to CCIVs with one sub-fund. The listing of retail CCIVs with more than one sub-fund will be considered in the future. The regulatory impacts would likely be similar, if not less, as the listing of the first sub-fund.

Listed CCIVs are generally subject to the existing requirements for listed companies under the *Corporations Act*. Some modifications are made to ensure the CCIV regime appropriately aligns to the regime for managed investment schemes.

Optional Cross investment within the same CCIV

Under Option 3, sub-funds in the same CCIV may cross-invest subject to any requirements or restrictions set out in the *Corporations Regulations 2001* (the Regulations). This change has been made in response to feedback in previous consultation and to ensure the competitiveness of the Australian CCIV regime internationally. It will allow fund managers to pool assets within the one CCIV, under separate sub-funds. In Option 2, they would have been required to operate multiple CCIVs to give effect to the investment strategy.

To facilitate cross-investment, consistent with other international collective investment vehicles, a CCIV may acquire, in respect of one sub-fund, shares that are referable to another sub-fund of the CCIV. These shares are held as an asset for the first sub-fund. A CCIV also acquires rights as a member of the second sub-fund of the

CCIV. As a member, the CCIV is entitled to vote on resolutions at a meeting of the members of the second sub-fund, subject to any requirements in the Regulations. However, the CCIV cannot vote on resolutions at a meeting of the members of the whole CCIV to preserve the voting power of other members in the CCIV. The Regulations will outline any restrictions on the exercising of votes attached to cross-invested shares for sub-fund level resolutions.

Including any requirements or restrictions on cross-investment in the Regulations is consistent with the approach taken in other international jurisdictions and ensures the regime is responsive to the market as the CCIV regime becomes operational and matures over time. From establishment of the CCIV regime on 1 July 2022, a restriction on circular investment is proposed to be set out in the Regulations.

Further regulatory requirements are included in the draft law to ensure:

- the constitution of a retail CCIV makes adequate provision for cross-investment between its sub-funds
- the intention to cross-invest is appropriately addressed in any PDS related to securities in a retail CCIV.

These requirements ensure that members of a retail CCIV are appropriately informed about any intention to cross-invest within a CCIV. This has been considered in the regulatory burden costing. Given the contractual nature of the CCIV's constitution, members of a retail CCIV will obtain necessary protections if any of the requirements that have been included in the constitution are contravened.

Revised taxation approach – flow through taxation

The revised approach leverages the existing tax infrastructure, rather than creating a bespoke tax regime, to deliver flow through taxation to a corporate entity. Tax advisers will be familiar with the existing tax arrangements for trusts so the tax advice costs of using a CCIV should be reduced significantly under the revised approach. This approach has the added benefit of reducing the size of the operative legislation, helping to reduce the overall complexity of the CCIV tax law.

The CCIV tax framework operates via a deeming principle which deems a trust relationship for tax law purposes, between a CCIV, the business, assets and liabilities of a sub-fund and the relevant class of members for the purposes of all taxation laws. The overall effect of this is to:

- treat the assets, liabilities and business of each sub-fund as separate trusts (and separate entities); and
- treat the CCIV as trustee of the CCIV sub-fund trust; and
- treat the members of the CCIV as beneficiaries of the CCIV sub-fund trust.

This approach ensures that where the sub-fund meets the AMIT eligibility criteria it will be taxed as an AMIT under the attribution flow-through tax regime in the income tax law. Similarly, if a sub-fund does not meet the AMIT eligibility, it will be taxed under general trust provisions, consistent with current AMIT treatment. This has the added benefit of removing potential uncertainty as to whether the corporate tax system (such as franking/imputation) would apply to sub-funds, as the default tax outcome will be subject to existing trust provisions.

The taxation approach in Option 3, compared to Option 2, is a significant compliance burden saving as Option 3 leverages an existing taxation regime, while Option 2 created a bespoke system.

Valuing the benefits of Option 3

As with Option 2, in relation to the quantifying the monetary value of what CCIVs will bring into the economy, this is difficult to estimate due to the number of variables involved, including the number of new entrants to the market, those that are converting from another investment product into a CCIV, and the investment strategies chosen. Assets vary in terms of investment strategy, such as long term and short term holds and performance outcomes. The global funds management industry also needs to be taken into consideration, such as performance in other jurisdictions and the products available. This makes it challenging to pinpoint the monetary value and net benefits.

In relation to tax, this option aligns with existing tax treatment of AMITs by leveraging the existing trusts tax framework. This ensures the regime is easier to understand and implement, and the tax outcomes for stakeholders are clearer.

From stakeholder feedback, Option 3 was the strongly preferred approach as it is a more attractive proposition (based on the taxation mechanism, and the benefits of listing and cross investment), however the net benefit cannot be accurately quantified.

Overall regulatory impact for Option 3

Table 3: Regulatory burden estimate table – CCIV

| | |
|---|-------------|
| Implementation costs for new CCIV's (registrations and conversions (10 year average) | \$1,199,189 |
| Average annual regulatory cost | \$1,199,189 |

Please refer to Appendix A for an outline of the assumptions used.

Overall Regulatory burden estimate table – under option 3

| Average annual regulatory costs | | | | |
|---------------------------------|-------------|--------------|-------------------------|----------------------|
| Change in costs (\$ million) | Individuals | Business | Community organisations | Total change in cost |
| Total, by sector | \$0 | -\$1,199,189 | \$0 | -\$1,199,189 |

Ongoing costs of Option 2 and Option 3

The ongoing costs of operating a CCIV will not substantially differ to those of operating a MIS. In fact, a CCIV offers operational efficiencies, like sub-funds, that should see operational costs savings compared to MIS.

Costs to businesses

Introducing the CCIV under option 2 is expected to have an overall annual regulatory burden of \$2,042,040. Option 3 is expected to have an overall annual regulatory burden of \$1,199,189. The main differences between these two options are that Option 2 includes the mandatory depository and the bespoke taxation system.

Components of these costs are set out in Appendix 1. It does not include the ordinary costs of running a fund, nor the savings of operating a CCIV relative to operating a series of MITs or MISs.

CCIV framework

The ongoing costs of operating a CCIV will be very similar to the operation costs of a MIS. It is possible that the CCIV regime will offer savings to the fund managers through the use of sub-funds, rather than through multiple MITs under the one fund manager, however this is difficult to quantify until put into practice.

The compliance cost represents the cost of establishing and maintaining new funds if they prove to be attractive to the market. The greater the take up of the new CCIVs, therefore, the proportionally greater will be the compliance cost. The figure does not consider a compliance 'saving' from the compliance cost of the MIT that the new CCIV is replacing. However, that will be a factor considered by industry in determining whether to take up the new investment vehicles.

Treasury is working closely with industry stakeholders, regulators and administrators to ensure the new CCIVs will have a comparable cost across the system to the MIT regime, without compromising investor protection and other benefits when comparing the two regimes. The ATO and ASIC will, in line with current practice, work with industry to ensure their administrative and reporting systems are compatible and efficient. This includes preparing guidance, as required, to support taxpayer compliance.

Cumulative benefits with the Asia Region Funds Passport

The introduction of the CCIV is likely to create opportunities for the Australian funds management industry to improve the marketability and access to overseas investors and markets by Australian fund managers. This, in turn, will improve the economies of scale of domestic fund providers and the pool of potential investors they can offer their services to.

As noted above, one of the major benefits of the CCIV is its function to maximise the effectiveness of the ARFP. By reducing the barriers in this way, the ARFP may make offering Australian collective investment schemes overseas profitable where it otherwise may not have been.

Costs to individuals

Some individuals may choose to invest in retail CCIVs. When used at scale, it is anticipated that CCIVs will offer lower management fees compared to the current MIT scheme, due to the savings that can potentially occur using the sub-fund structure, as opposed to individuals AMITs. This would potentially see individual investors paying less management fees and thus receiving a greater return on their investment.

In relation to Option 2, it is likely that individual investors would be paying greater fees due to the costs involved in a depositary. The exact value is difficult to quantify due to the variables involved, although it could be considered low-cost change. Option 2 also has no capacity for public listing, and thus it would reduce the availability to individual investors.

Costs to community organisations and the broader community

There are no regulatory costs to community organisations or the broader community as a result of this regime from any of the options presented.

5. Who did you consult and how did you incorporate their feedback?

The development of CCIVs has a long history, and one that has been heavily influenced by consultation with stakeholders, and consideration of overseas models. This aims to ensure the CCIV regime is an attractive and competitive proposition and garners support with time. As the CCIV regime is optional, stakeholder support and buy-in is critical to uptake of the regime. Given this, Treasury listened closely to stakeholders' feedback and were guided by their expertise.

Early consultation

The CCIV proposition began in the Johnson report, followed by The Board of Taxation undertaking a comprehensive consultation process as part of its 2011 report. Additionally, the Government has undertaken confidential consultations with industry, consumer groups and academics. The first round of consultations occurred between October and December 2014. This consultation developed the high-level regulatory framework for the CCIV. This targeted consultation indicated strong industry demand for CCIVs. The CCIV framework was discussed as part of Tax White Paper Consultations during 2015.

Following the announcement in the 2016-17 Budget, a second round of confidential consultations occurred in October and November 2016 on a high-level framework. Industry representatives, consumer groups, academics and relevant agencies were invited to roundtables and to make submissions in response to a consultation paper. Once again these focussed on the technical aspects of the model design, with industry supporting a flow-through tax model aligned with the then recently enacted attribution method of tax (i.e. the new tax system for MITs) over other tax options canvassed, such as adapting the listed investment company model.

Core Framework – 2017 and 2018

The Government publicly consulted on an exposure draft of the core chapter for the CCIV regulatory framework from 25 August to 25 September 2017. This initial consultation was followed by a public consultation on an exposure draft for the proposed tax arrangements between 20 December 2017 and 2 February 2018. This consultation included face-to-face meetings with key industry representatives. In total, 14 submissions were received. The general industry feedback was that while the bespoke nature of the framework design gave rise to broad alignment with the existing AMIT tax outcomes, stakeholders ultimately questioned this framework. In particular, the tax features that departed from the AMIT rules (such as treating a sub-fund that failed to meet the AMIT eligibility criteria as a corporate) and that this may detract from the commerciality of the CCIV framework. A further round of consultation was conducted in October 2018, to finalise the technical elements of the CCIV tax framework. This round of consultation reflected stakeholder feedback by incorporating changes to elements of the core design, such as a proposed tax roll over relief mechanism for a failed sub-fund. Industry welcomed some of the refinements but had reservations about the bespoke tax design.

Exposure drafts and revisions – 2018, 2019 and 2021

The Government consulted on a revised exposure draft including the first tranche of consequential amendments to existing provisions in the Corporations Act for over 4 weeks beginning 13 June 2018 and concluding 18 July 2018. The consultation received 15 submissions. The second tranche of consultations was held from 19 July to 10 August. This consultation received 7 submissions. The Government consulted on a third tranche from 12 October to 26 October 2018. This consultation received 6 submissions. The Government consulted on the full draft legislation (regulatory and tax frameworks) from 17 January to 28 February 2019, receiving 9 submissions. This is Option 2.

Feedback from this round of consultation on Option 2 included:

- The mandatory depository is not necessary and would create undue complexity - there are no current depositories in the Australian market
- The taxation outcomes may not be on par with the MIS regime, and this may provide a disincentive to starting a CCIV
- Retail CCIVs need the option to list on a trading exchange to be commercially viable
- One sub-fund should be able to invest in another sub-fund for effective portfolio management.

After this consultation period, the legislation development was put on hold due to competing Government priorities. In Budget 2021-2022, the Government announced a start date for the CCIV regime of 1 July 2022, and the project was reactivated.

Feedback from the 2019 public consultation round was considered and utilised to inform the next iteration of the draft legislation which was exposed to the public for consultation from 27 August to 24 September 2021. This is Option 3. The changes to this draft reflected the 2019 public consultation feedback, including the removal of the mandatory depository, optional public listing and optional cross investment, and a change of approach to taxation. Ten submissions were received and a number of round table discussions were held with Treasury representatives and stakeholders.

Submissions were made from a range of stakeholders including industry peak bodies, accounting firms, legal firms and other associations. Feedback included the following:

- The revised taxation approach was well supported as a simpler solution
- The proposed approach of making the depository optional was well supported
- Cross investment in one sub-fund was welcomed
- The ability to publicly list one sub-fund on a trading exchange was welcomed to improve the commercial viability

As a result of the consultations, the Government has adopted a number of policies that will improve the functionality and efficiency of the CCIV, including:

- Removal of the mandatory depository for retail CCIVs and thus aligning the requirements for a custodian or a depository in the CCIV's regime with the current requirements for managed investment schemes in Australia

- Aligning the CCIV tax framework with existing arrangements for the taxation of trusts, including access to the AMIT tax regime where the relevant criteria are met. The intent is that the tax outcomes for an investor in a sub-fund of a CCIV be the same as an investor in an AMIT (rather than broadly aligned).

These changes are expected to lower costs, increase the flexibility in operating the scheme while continuing to protect consumers.

What stakeholders engaged in the process?

The CCIV regime has attracted significant interest and engagement from law firms, accounting firms, fund managers, peak bodies in the financial services, property management and fund management areas, and overseas jurisdictions. Treasury are grateful for the engagement and enthusiasm many stakeholders have shown for the proposed regime, and we appreciate the time and industry expertise that went into the submissions and consultations. The public submissions received across the years of consultation are available on at www.treasury.gov.au/consultation

Government Stakeholders

The ATO and ASIC have been consistently consulted and involved in the development of the legislation and had significant input into the final policy outcomes.

Previous consultation on Regulatory Impact

The development of the CCIV regime has taken several years. Over that time, there have been early versions of the RIS prepared for consultation and to inform decision making.

Early assessment RISs were assessed by the OBPR in 2016 and 2017 and another early version in 2021.

6. What is the best option from those you have considered?

Consistent with the Government's 2016-17 and 2021-22 Budget announcements, the preferred option is to introduce a new tax and regulatory framework for the CCIV. A new framework has broad support from stakeholders.

To summarise the options available, option 1 has no regulatory cost but it has no benefits to the Australian economy. Option 2 and 3 benefit the Australian economy by attracting foreign investors. Option 2 does not have support from stakeholders as a commercially viable option. Option 3 has stakeholder support. Given this, option 3 has been supported by Government as having the highest net benefits and thus the most viable option for a CCIV regime.

Option 3 provides greater flexibility for industry to utilise the CCIV structure in a commercially viable manner without decreasing the member protections for investors. The policy settings under option 3 of allowing cross-investment provides greater adaptability to different investment structures, meaning that fund managers can provide more investment options to investors without needing to operate multiple entities, but rather can establish additional sub-funds. Under option 2 cross-investment was only allowed at the CCIV-to-CCIV investment level, thus requiring the additional cost of operating an additional CCIV. Option 3 will improve the ability of fund managers to pool more investments, creating economies of scale and better returns and lower fees for investors.

The policy decisions to allow listing for a CCIV with a single sub-fund from 1 July 2022 will also make the CCIV structure more viable for those funds which aim to provide investment options for more illiquid asset types. In addition, the greater flexibility for CCIV operators to determine whether a depositary or custodian is utilised allows CCIVs to still access foreign jurisdictions which require a depositary or custodian. The flexibility also allows the operator to determine if the feature is not required for commercial reasons, such as to keep operating costs low, the operator can exercise that choice.

Additionally, complementary changes to the Corporations Act and related legislation are under review to ensure that existing regulatory frameworks are appropriately adapted to the CCIV regime, including areas such as whistle-blower protections, breach reporting, continuous disclosure, product intervention power, design and distribution obligations and corporate insolvency reforms.

The proposed approach will require new legislation to give effect to the CCIV in domestic taxation and corporations law. It is proposed that the CCIV will provide tax alignment with the current AMIT regime, as CCIVs sub-funds will be subject to similar eligibility criteria that currently apply to AMITs (or general trust provisions otherwise, in line with existing tax outcomes). It is proposed that a CCIV will be required to have a sub-fund, and that each sub-fund will be deemed a separate entity for income tax purposes. Investment in a CCIV will be open to both resident and foreign investors. CCIVs will be eligible for flow through taxation similar to that available to AMITs (and other trusts if subject to general trust provisions), which means investors will generally be taxed as if they had undertaken the investments directly. Foreign resident investors will be subject to withholding taxation on income and capital gains distributed by the CCIV. A CCIV will submit a tax return in respect of each sub-fund, leveraging the current systems/approach used for AMITs (or general trust provisions). Industry stakeholders support this approach.

7. How will you implement and evaluate your chosen option?

Legislation is required to implement this proposal, through changes to the corporations and taxation legislation. In relation to implementation, the ATO would be responsible for administering the tax framework applying to CCIVs. ASIC would be responsible for administering the regulatory framework.

The implementation of the policy will require system updates and reviews of current practices for industry, as well as engagement with fund managers to ensure they are aware of the changes. The ASIC and ATO will monitor the functionality of the CCIV framework. Treasury will also consider feedback from stakeholders on the policy to ensure it is meeting set objectives. Treasury will also continue to work with the ATO to identify any integrity risks that may arise from the preferred option, and to the extent such risks are identified we would seek to progress consequential amendments to ensure the correct policy intent is consistent.

The success of the CCIV regime will be assessed against the adoption of the regime and the outcomes for investors who utilise the CCIV structure. At maturity of the CCIV regime it is expected that the funds under management would be similar to that of the current MIS regime. The policy aim of the regime is to increase levels of foreign investment in Australia, and therefore higher level of foreign investment through CCIVs would be expected than currently observed in the MIS regime. It would not be expected to see the same number of CCIVs and MISs, as the umbrella structure of the CCIV would mean more investment options can be provided (via the sub-funds) within the same structure. A more representative figure would be the total number of sub-funds as compared to MISs.

In relation to Government implementation, all CCIVs will be required to be registered with ASIC, and the ATO will be able to monitor the uptake of the structure to evaluate the effectiveness of the CCIV regime during the implementation period. Monitoring the levels of foreign capital being invested into Australia will also be an indicator of the success of the regime over time.

ASIC is planning to consult on and implement a number of regulatory measures to ensure the effective implementation and operation of the CCIV regime. Principally, ASIC will ensure regulatory harmonisation as necessary through new or amended legislative instruments and AFS licensing requirements.

ASIC may also need to introduce new regulatory guidance or amend existing regulatory guidance as a result of these measures. As a whole, these changes are likely to be minor and machinery in nature, should not alter the underlying policy of the CCIV regime and are designed to ensure regulatory parity between the MIS and CCIV regimes. Where appropriate and to the extent possible, ASIC intends to ensure regulatory parity between MISs and CCIVs and to extend the operation of certain legislative instruments to CCIVs that currently apply to other companies, to support the implementation of the CCIV regime.

In relation to the ATO, the ATO will look to mirror current taxpayer experiences with the MIS regime.

APPENDIX A: Estimated impact on funds management activities

Assumptions

While it is difficult to project the number of new CCIV's that will commence in the initial 10 years of the CCIV regime, stakeholders were consulted on this point and these calculations have taken into consideration experiences of other jurisdictions when they have created new similar investment vehicles. When asked, stakeholders found it difficult to suggest a number of possible registrations due to the number of variables involved. They did provide context that they expect the CCIV regime to garner support over time, once the product has been proven in the market.

The regulatory burden calculation across the options assumes that both CCIV and depositaries will be subject to one-off implementation costs related to:

- *Administration* - preparing new PDSs reflecting legislative change that inform consumers about new business structures and products offered.
- *Learning and education* - providing training to employees to meet the new regulatory requirements.
- *Compliance and legal* - the cost of creating new systems to ensure compliance with the new regulatory requirements.

CCIV – Option 2

| Activity | Examples of activity | Indicative cost per CCIV fund |
|---|---|---|
| Establishment administration - includes bespoke tax regime and depositary (years 1 and 2) | Creation of accounting system to account for bespoke tax regime | Anticipated to take 12 weeks FTE of work when CCIV is first established |
| Learning and education (years 1 and 2) | Training and educational modules to bring staff up to date with regulatory and tax changes | Anticipated to take 4 weeks FTE |
| Compliance and legal (years 1 and 2) | Oversight of fund's activities to ensure adherence to differing regulatory and legal requirements are met | Anticipated to take 8 weeks FTE of work when CCIV is established |
| Creation of new CCIVs in an established system (year 3 onwards) | Creating new CCIV's in an established system | Anticipated to take 4 weeks at FTE |

Depositary

| Activity | Examples of activity | Indicative cost per depositary |
|------------------------|---|--|
| Administration | Changes to internal systems and documents to reflect regulatory requirements | Anticipated to take 9 weeks FTE of work when a custodian first takes on the role of a CCIV depositary |
| Learning and education | Training and educational modules to bring staff up to date with regulatory changes | Anticipated to take 3 weeks FTE of work when a custodian first takes on the role of a CCIV depositary |
| Compliance and legal | Oversight of fund's activities to ensure adherence to differing regulatory and legal requirements are met | Anticipated to take 18 weeks FTE of work when a custodian first takes on the role of a CCIV depositary |

CCIV – Option 3

| Activity | Examples of activity | Indicative cost per CCIV fund |
|---|---|--|
| Establishment administration (years 1 and 2) | Preparation of CCIV documents such constitution | Anticipated to take 5 weeks FTE of work when CCIV is established |
| Learning and education (years 1 and 2) | Training and educational modules to bring staff up to date with regulatory and tax changes | Anticipated to take 2 weeks FTE |
| Compliance and legal (years 1 and 2) | Ongoing oversight of fund's activities to ensure adherence to differing regulatory and legal requirements are met | Anticipated to take 4 weeks FTE when CCIV is established |
| Creation of new CCIVs in an established system (year 3 onwards) | Creating new CCIV's in an established system | Anticipated to take 4 weeks at FTE |

APPENDIX B: Methodology and limitations to regulatory cost estimate

Industry data

Stakeholders were asked to estimate regulatory and taxation compliance costs as part of the Government's public consultation on the exposure draft in several of the rounds of consultation. These are included in the assumptions for Option 2.

In the 2021 consultation, Treasury approached stakeholders for their view of the regulatory and taxation compliance costs for Option 2 and 3. These are included in the assumptions.

Average labour costs

For option 2 and 3, a default hourly labour cost has been used based on Australian average weekly earnings, adjusted to include income tax. This value is scaled up using a multiplier of 1.75 to account for the non-wage labour on-costs (for example, payroll tax and superannuation) and overhead costs (for example, rent, telephone, electricity and information technology equipment expenses). This results in a scaled-up rate of \$73.05 per hour.

Limitations

The estimated regulatory burden is relevant to the extent that industry opts to take up the new investment vehicles. Therefore, it is assumed that future CCIVs, including both converting MISs and new CCIVs, have deemed the regulatory burden to be acceptable compared to the existing benefits on offer. Any current MIS has the option of retaining that structure and incurring no implementation costs.

In relation to the total costs and benefits, it is unable to be quantified due to the number of variables involved and data limitations. That being said, Australia will attract more foreign fund managers and foreign investors as they will recognise the corporate structure of the CCIV, and the flow through taxation benefits. This will bring more foreign investment into Australia and will increase the competitiveness of Australia's managed funds industry by aligning Australia's legal funds structures with those found in the rest of the world. It will open up Australia to international funds management and reduce costs for investors through increased competition and economies of scale.