

10 August 2018

Notice in relation to Constitutional amendment for AMIT Regime

This notice is provided by One Managed Investment Funds Limited ABN 47 117 400 987 AFSL 297042 ("RE") as responsible entity of the Premier Global Select ARSN 097 566 160 ("Fund") under section 601GCB(2) of the Corporations Act 2001 as modified by ASIC Corporations (Attribution Managed Investment Trusts) Instrument 2016/489 ("Class Order") to inform members of the Fund ("Members") that the RE has amended the constitution for the Fund ("Constitution") to allow the Fund to be operated as an attribution managed investment trust under the new "AMIT Regime" (explained below).

The AMIT Regime

The Tax Laws Amendment (New Tax System for Managed Investment Trusts) Act 2016, together with additional supplemental legislation ("the AMIT Regime"), became law on 5 May 2016. The RE amended the Constitution on 10 August 2018 so that should the Fund in the future qualify to opt into this new tax regime, by falling within the definition of a managed investment trust ("MIT") the Fund can be effectively operated as an attribution managed investment trust under the AMIT Regime.

The key difference between the current tax regime which applies to the Fund (Division 6 of the Income Tax Assessment Act 1936) and the new AMIT Regime is that under the AMIT Regime, Members are taxed on the taxable income that is allocated or "attributed" to Members by the RE. The new AMIT Regime requires the RE to undertake this allocation or attribution on a fair and reasonable basis. This is in contrast to the current taxing regime under Division 6, which provides that a Member will be subject to tax to the extent that each Member is "presently entitled" to the income of the Fund according to trust law principles.

The RE amended the Constitution to allow the RE to elect to apply the new AMIT Regime to the Fund and to allow the RE to operate the Fund as an attribution managed investment trust in a manner permitted by the AMIT Regime, should the Fund qualify at some stage in the future, by an increase in the number of members of the Fund or changes to the definition of what constitutes a MIT. The modifications which were made to the Constitution are summarised in the table at Annexure 1.

Reasons for amending the Constitution

The RE believes that, by allowing a different tax regime to be adopted for the Fund, the amendments to the Constitution have the following potential benefits for Members:

- a removal of the potential for double taxation that may arise for Members where there are mismatches between the amount distributed and the taxable income of the Fund. This is achieved through the provision of appropriate cost base adjustments where distributions are greater or less than the amount on which the Member is assessed for tax purposes;
- greater certainty regarding the quantum and character of any amounts distributed or otherwise passed through to Members and the tax consequences of those amounts; and
- greater certainty regarding certain aspects of the tax treatment of the Fund, such as the Fund being deemed to be a "fixed trust" for income tax purposes.

The RE notes that the AMIT regime has only been recently enacted. As such, it is possible there may be some uncertainty regarding its operation in the initial years. It also notes that the Fund will only be able to opt in should it qualify as a MIT.

Annexure A

The amendments to the Constitution are summarised in the following table:

Amendment	Summary of the amendment
<i>New provisions in the body of the Constitution that relate to when the Fund is an AMIT for the relevant financial year</i>	
Clause heading	Effect
Definitions	The Constitution contains new definitions of words relating to the AMIT regime that are used in the new clauses.
Application of income and Distribution provisions	A new clause in the Constitution provides for the AMIT rules to be applied to the Fund Distributions in instances where OMIFL has elected to apply the AMIT regime. The AMIT rules will not impact on the quantum or frequency of Fund Distributions that will be made.
Election by OMIFL	A new clause in the Constitution provides discretion to elect into the provisions of the amended Constitution which facilitate the application of the AMIT Regime to the Fund. This is an empowering clause only: there is no obligation on OMIFL to make the election or to facilitate the Fund to qualify as an AMIT.
Impact of Schedule 1 if Fund is not an AMIT	A new clause clarifies that the exercise of powers by OMIFL will not be invalidated if OMIFL mistakenly regards the Fund to be an AMIT for a particular year.
<i>Schedule 1 - Provisions that apply generally</i>	
General Powers	Schedule 1 contains the operative provisions in relation to the AMIT regime. These provisions will apply where OMIFL has elected for the Fund to operate as an AMIT under the regime. There are general powers conferred on OMIFL to comply with the requirements of the AMIT regime and enable the Fund to be properly administered and operated under the regime, as well as maintaining equity among the members.
Specific Powers	In particular, Schedule 1 specifically permits OMIFL to: <ul style="list-style-type: none"> determine the net (tax) income of the Fund and attribute the net (tax) income to members on a fair and reasonable basis; make amended attributions of taxable and non-taxable characters to Members; issue AMIT Member Annual (AMMA) Statements to Members or amended AMMA Statements and determine their contents;
“Fair and reasonable” attribution	Schedule 1 expressly imposes the obligation on OMIFL to make the attribution of taxable and non-taxable characters on a fair and reasonable basis, as required by the AMIT regime. This includes that OMIFL must not make an attribution because of the tax characteristics of the member. Any attribution must also reflect the member’s present entitlement to the distributable income for the relevant period.
Member objection right	A new provision imposes certain procedural requirements for a member to exercise their right to object to an attribution of tax components to it under the AMIT regime and provides OMIFL with certain rights and powers in dealing with such objections. This includes, for example, the right to require the member to indemnify OMIFL for costs incurred in dealing with the objection.
Limitation of liability	A new provision is inserted that limits OMIFL’s liability with respect to the exercise of powers under the AMIT regime or under the Constitution in respect of the administration of the AMIT regime.
Indemnities for tax liabilities	A new provision is inserted that requires a member to indemnify OMIFL for any AMIT-related tax liabilities. It is not expected for the Fund to have any AMIT-related tax liability on the basis that all taxable and non-taxable characters will be attributed to members in accordance with the above “fair and reasonable” attribution requirement.

Amendment	Summary of the amendment
Recovery of tax liabilities	A new provision is inserted that provides OMIFL with the ability to recover amounts owing by a member to OMIFL in respect of AMIT-related tax liabilities by either deducting those amounts payable to a member or compulsorily redeeming units to facilitate their recovery.

If you have any questions or if you would like to discuss the Constitutional amendments or the AMIT Regime in more detail please feel free to contact the RE:

By phone: 02 8277 0000 between 8:30am and 5:00pm weekdays
By facsimile: 02 8580 5700
By email: premier@oneinvestment.com.au

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