INFRASTRUCTURE PARTNERSHIPS AUSTRALIA

11 March 2019

Percy Bell
Senior Advisor
Financial System Division
The Treasury
Langton Crescent
Parkes ACT 2600

Dear Percy,

Re: Feedback on the Corporate Collective Investment Vehicle (Tax Framework)

Infrastructure Partnerships Australia welcomes the opportunity to provide the following comments on the exposure draft on the new tax framework for Corporate Collective Investment Vehicles (CCIVs).

High level comments

Infrastructure Partnerships Australia recognises that the proposed corporate collective investment vehicle ("CCIV") regime is an important reform recommended as part of a suite of measures in the Johnson Report to enhance the attractiveness and competitiveness of Australia's funds management sector. Infrastructure Partnerships Australia notes the Federal Government's stated purpose in introducing the regime is to facilitate a collective investment vehicle that provides flow-through tax treatment, maintains investor protection, and is more internationally recognisable than Australia's current trust-based collective investment vehicle.

Traditional investors in Australian infrastructure tend to be sophisticated and have generally become comfortable with making collective long-term investments through trusts – including managed investment trusts ("MIT") and attribution managed investment trusts ("AMIT"). In this regard, the infrastructure sector's concerns lie more with the current tax policy settings and administration around Australia's current collective investment regime rather than the legal form of the vehicle.

There are three major tax-related areas of concern arising from the exposure draft legislation. Firstly, we submit our concern regarding the denial of franking credits to sub-funds of CCIVs which fail certain eligibility requirements and are taxed as companies. Secondly, the removal of the capital gains tax ("CGT") discount for CCIVs, MITs and AMITs in respect of capital gains derived by these entities, and thirdly, the introduction of a new "lack of reasonable care" penalty for CCIVs and AMITs.

Unfortunately, it appears the proposed regime for the taxation of CCIVs may be even more complex and punitive in nature than the current MIT and AMIT regimes. These risks are likely to outweigh any potential benefits and discourage existing investments being rolled into CCIVS and new investments being established under the regime. Particularly in light of a myriad of other pressing tax policy issues requiring attention, Infrastructure Partnerships Australia is concerned that significant Treasury resources are being devoted to the development of a CCIV regime that is unlikely to provide any practical benefits without significant amendments.

The Treasury's efforts in broadening the range of collective investment vehicles are appreciated by industry. Of particular interest to industry is enabling collective investment vehicles based on a corporate vehicle that is readily recognisable internationally and linked to the Asia Region Funds Passport. Further, the multiclass corporate structure provides additional flexibility and enhanced offerings for Australian based fund managers.

Detailed comments

1. Revisit the disqualification of franked dividends

Infrastructure Partnerships Australia's key concern regarding the proposed CCIV tax regime is the denial of access to the imputation regime in the event any of a CCIV's sub funds fails the eligibility requirements of an attribution corporate sub fund (ASF) and becomes subject to the corporate income tax regime. By contrast, a MIT or AMIT in those circumstances is subject to tax broadly as a company but is able to pass on the benefit of the corporate income tax paid to investors in the form of franked dividends. The inability of the ASF to frank dividends results in some of the vehicle's profits being subject to double taxation. Infrastructure Partnerships Australia understands that the punitive impact is an intended policy setting to ensure that CCIV's are only used for their intended purpose. However, sophisticated infrastructure investors that have traditionally been comfortable with trust collective investment vehicles which do not expose investors to the risk of double taxation are unlikely to consider the CCIV an attractive option.

2 Removal of the CGT discount

Our key concern regarding the removal of the CGT discount for CCIVs, MITs and AMITs, is that Australian resident investors in these entities would be subject to tax that would otherwise not be payable if they held the investment directly. Firstly, in allocating deductible expenses against assessable income components, a CCIV/MIT/AMIT will be required to allocate deductions against gross capital gains instead of only the discount capital gains component. Secondly, in recouping prior year or current year revenue losses, a CCIV/MIT/AMIT will have to recognise, as assessable income, the gross amount of the capital gain rather than only the discount capital gain. Therefore, given the significant disadvantage which will arise for Australian resident investors, we would recommend that a CCIV be entitled to apply the CGT discount at the fund level, and that no changes are made to the MIT and AMIT regimes in this respect.

3 New "lack of reasonable care" penalty

As part of the broader amendments to the existing AMIT and new CCIV rules, we note the administrative penalty regime will be expanded to include a penalty for unders and overs resulting from a failure to take reasonable care to comply with a taxation law. This represents a significant shift in policy considering that such penalties were intentionally excluded when the AMIT regime was first introduced. In particular, the exclusion of such penalties formed part of the specific AMIT concessions targeted at unders and overs that reflected the practical difficulties and compliance costs funds faced in managing unders and overs. Thus, the introduction of such penalties could potentially create material costs and administrative burden on AMITs and CCIVs. Accordingly, we would recommend that such penalties be excluded.

4 Satisfying the requirements of an AMIT

Our concerns are further amplified by the fact that an ASF will lose tax flow-through treatment, and default to a company, where it fails any of the ASF requirements; whereas a MIT, AMIT or other unit trust, will only lose tax flow-through treatment where it fails the public unit trust and non-trading requirements such that it is considered a public trading trust under Division 6C of the *Income Tax Assessment Act 1936*.

Importantly, once a sub fund of a CCIV fails these requirements, the sub fund of a CCIV will be treated as a company for the remainder of its existence for tax purposes, with the added disadvantage of being unable to frank dividends (see above). In contrast, a MIT or AMIT that fails the public unit trust and non-trading requirements in one year can satisfy the rules in a subsequent year.

Therefore, not only are the implications of a sub fund of a CCIV failing the relevant eligibility test far more punitive than for a MIT, AMIT or a unit trust, those punitive outcomes will arise in a much wider range of circumstances.

The resulting company treatment, if the ASF qualification requirements are not satisfied, including the additional administration requirements imposed under Corporations Law in contrast to AMITs/MITs, means that larger wholesale sophisticated investors would not risk being locked into such a regime for 50-100 years, given the long-term nature of infrastructure projects.

5 CGT rollover

We note there would appear to be various practical and administrative challenges and costs associated with the proposed CGT rollover relief for AMITs that convert to a CCIV, and for the disposal of assets held by excluded sub-funds to an ordinary company; in particular, the potential application of state stamp duties under the transfer and landholder duties provisions. We understand you are engaged with various states on a potential state stamp duty waiver or similar relief and would appreciate your update and views on the likelihood of such a waiver or similar relief being made available in the foreseeable future.

Conclusion

For these reasons, Infrastructure Partnerships Australia submits that traditional infrastructure investors are unlikely to consider utilising the CCIV regime as currently proposed as it provides limited practical benefits over the existing MIT and AMIT regimes yet exposes the investor to significant additional tax risks. Infrastructure Partnerships Australia considers these risks will be particularly acute for long-term infrastructure investors who require an investment structure that provides predictable, balanced and certain taxation outcomes over often decades-long investment horizons.

If you have questions on any of the above, please contact Infrastructure Partnerships Australia's Policy Adviser, Peter Kim at Peter.Kim@infrastructure.org.au

Sincerely,

Adrian Dwyer

ADRIAN DWYER

Chief Executive Officer

Suite 3.03 Level 3, 95 Pitt Street, Sydney NSW 2000
PO Box R1771, Royal Exchange NSW 1225
T +61 2 9152 6000 **F** +61 2 9152 6005 **E** contact@infrastructure.org.au **www.infrastructure.org.au**