REST
superannuation
Level 6, 50 Carrington Street
Sydney NSW 2000

Received
25 NOV 2008
Board of Taxation

18 November 2008

The Board of Taxation
C/- The Treasury
Langton Crescent
CANBERRA ACT 2600

Dear Sirs

Capital Versus Revenue Account Treatment of Gains and Losses made on Disposal of Investment Assets by Managed Investment Trusts (MITs)

The Retail Employees Superannuation Trust (REST) was established in 1988. Open to all Australians, REST is Australia's largest superannuation fund by membership, with over 1.7 million members and more than $14 billion of funds under management.

REST has reviewed the discussion paper: 'Review of the Tax Arrangements Applying to Managed Investment Trusts' issued by the Board of Taxation in October 2008, and makes the following submission in regard to the issues raised in Chapter 7: Capital Versus Revenue Account Treatment of Gains and Losses made on Disposal of Investment Assets by MITs. The issues addressed are from the viewpoint of a complying superannuation fund investor.

A complying superannuation fund holds its assets on capital account by statute, thereby entitling it to the capital gains tax concession where applicable. However many superannuation funds invest through MITs. If certain MITs are required to treat gains or losses on the sale of investments on revenue account rather than capital account, then the superfund investors would be worse off than investing directly in the underlying investments, since they would lose the capital gains tax concession. This is contrary to policy principle 1 which states "The tax treatment for trust beneficiaries who derive income from the trust should largely replicate the tax treatment for taxpayers as if they had derived the income directly."

This submission therefore recommends the consideration of the following proposals to ensure principle 1 is maintained for superannuation fund investors:

1. That all unit trusts which are wholly owned by complying superannuation funds be deemed to hold their assets on capital account. From a tax policy point of view this

Phone 02 9086 6330 **Fax** 02 9299 4618 **Web** www.rest.com.au

The Trustee company of Retail Employees Superannuation Trust (R1000016), ABN 62 653 671 394 is Retail Employees Superannuation Pty Limited, RSE L0000055, ABN 39 001 987 739, AFSL 240003. Registered office: Level 6, 50 Carrington Street, Sydney NSW 2000.

RS/TRUST/LH 24.4 08/08 ISS9

aligns with current policy on superannuation funds. This places superannuation funds who invest indirectly in the same position as those that invest directly. There is precedence for this approach already as the FIF exemption for superannuation funds also applies to unit trusts that are wholly owned by superannuation funds.

2. Where unit trusts are not wholly owned by superannuation funds, there should be a mechanism to allow superannuation fund investors to treat revenue gains received from the unit trusts as capital gains. This could be achieved by MITs continuing to track the gains and losses on the sale of equities as if on capital account, and disclosing this as separate components of the distribution, such that superannuation funds could treat them as capital gains, whilst other investors treat them as revenue gains. Since MITs are currently already tracking capital gains, there should be little additional administration cost incurred.

Yours faithfully

Damian Hill
Chief Executive Officer