

1 Background

The purpose of this guide is to provide a guide as to the potential New Zealand (NZ) and Australian income taxation consequences for a NZ Investor who has invested in a **Centro MCS Syndicate**.

The information contained in this guide relates only to NZ Investors who:

- are individuals;
- are residents of New Zealand for New Zealand income taxation purposes; and
- are not residents of Australia for Australian income tax purposes.

The information contained in this guide is a general outline for NZ investors and is based on the income tax legislation, rulings and case law in existence as at the date of this guide. In the event that such legislation, rulings or case law changes over time, the position taken may be affected. Further, this guide is not intended to provide an exhaustive or definitive statement as to all the possible taxation outcomes for NZ Investors.

Taxation is a complex area of law and taxation consequences for a NZ Investor may differ from those detailed in this guide depending on the NZ Investor's particular circumstances. Accordingly, NZ Investors should not rely on this guide as a substitute for professional advice. We recommend investors seek independent professional tax advice particular to their circumstances.

2 General NZ income tax treatment of Centro MCS Syndicates for NZ individual investors

2.1 Classification

The investments in the Centro MCS Syndicates are likely to be characterised as investments in unit trusts and accordingly deemed to be investment in a company for NZ income tax purposes.

The investors will therefore be considered to be shareholders for NZ tax purposes.

Further, we do not anticipate any NZ resident being taxed under the Controlled Foreign Company (CFC) rules.

2.2 Interest income received on notes issued by US REIT

The notes issued by the US REIT under Centro MCS Syndicate 35, 36 and 38 will be financial arrangements for NZ income tax purposes.

The interest received will be taxable in NZ to the NZ resident investors under the financial arrangement rules. For individual investors, where the absolute value of income and expenditure in any income year from financial arrangements is NZ\$100,000 or less or the absolute value of all financial arrangements held is NZ\$1 million or less, and the difference between the cash and accrual recognition is NZ\$40,000 or less, a cash basis of income recognition can be used.

Where these limits are breached or the taxpayer elects to apply the financial arrangement rules, the income or expenditure for tax purposes in the period will reflect the interest accruing over the period and any unrealised foreign exchange gains or losses (an election can be filed to allow taxation of unrealised foreign exchange gains or losses on an expected value basis).

On maturity of the notes, a 'wash up' calculation will be required resulting in any previously untaxed interest or exchange gains or losses being brought to tax.

Any tax withheld from the interest paid directly to the NZ resident investor will be creditable to the extent of the NZ tax liability on the income.

2.3 NZ Income tax treatment of distributions made by Centro MCS Syndicates

2.3.1 Income tax treatment - Foreign Investment Fund (FIF)

An investment in a foreign company (including a foreign unit trust) will generally be a FIF under NZ tax legislation and subject to a specific taxation regime.

Assessable income is calculated under the FIF rules using one of six calculation methods. The most common calculation method applied is the fair dividend rate method (FDR). Under FDR, assessable income is calculated as 5% of the market value of the FIF interest at the start of the taxpayer's income year (generally 1 April).

As an alternative, individuals (and some trusts), may choose to apply the comparative value method which calculates assessable income based on the actual returns (dividends and capital appreciation. Note that any loss is reduced to nil under this method).

Further calculation alternatives are also available in limited circumstances as follows:

- the cost method, being 5% of cost (applies where the holding is in a grey list country entity (includes Australia), less than 10% is held and the FDR method cannot be applied due to an inability to determine the market value of the investment at the start of the income year);
- the deemed rate of return method being book value at a prescribed rate currently 10.87% (applies to persons with total FIF holdings with a value of less than NZ\$250,000, holding more than 10% and where the comparative value or accounting profits methods cannot be used);
- the accounting profits method being the net after tax accounting profit (available if more than 10% interest is held and the FIF is listed on a recognised exchange or offered widely to the public in one or more countries); and
- the branch equivalent method (available only where sufficient information is held).

Calculation of amount included in income and subsequent sale of units under FDR Method

As the FDR method is the most common method applied, we have set out below some further comments in relation to the FDR method.

As noted above, under the FDR method, assessable income is calculated as 5% of the market value of the FIF interest at the start of the taxpayer's income year (generally 1 April).

Foreign tax credits will generally be available to credit against assessable income arising under FDR where tax has been withheld from distributions by Centro MCS Syndicates to the NZ investors to the extent NZ tax arises. A foreign tax credit is not available for underlying foreign taxes incurred by Centro MCS Syndicates.

Further, as noted below, under the FDR method, gains derived from the disposal of a FIF are excluded from assessable income even where the FIF is held on revenue account (note this will not be the case where a sale occurs in the year of acquisition).

Market value at the start of the income year

Under the FDR and the comparative value methods the market value of the units would need to be established at the start of the income year. It is noted that Centro MCS Syndicates establish the market value of units as part of its annual and half yearly reporting to investors as at 30 June and 31 December each year of each period.

Most individual investors will have a 31 March income tax year. In this case, the legislation requires a market value to reflect the amount a willing purchaser would pay to acquire the investment in an arm's length acquisition at the time the value is being measured (i.e. 31 March). Given the long term nature of the investments held, it may be that the valuation published at 31 December or 30 June is representative of the value at 31 March. However, in adopting this approach, investors will need to be comfortable that the value as at the alternative valuation dates (i.e. 31 December or 30 June) reflects the market value at 31 March. Alternatively, the taxpayer may be required to apply the cost method.

Exemptions from the FIF regime

The following exemptions from the FIF rules are considered likely to be of relevance to individual Centro MCS Syndicate investors.

- Individuals holding otherwise non-exempt FIF interests with a cost of NZ\$50,000 or less fall outside the FIF regime (there is a very limited exemption for certain trusts also); and
- 10% or greater holdings in an Australian company including a unit trust (provided the investor is not a portfolio investment entity, unit trust, life insurer, superannuation fund or a group investment fund).

Where a taxpayer is not subject to the FIF regime, the general income calculation rules apply. Broadly this will mean:

- All cash distributed or vested absolutely for the NZ investors will be taxable at their marginal rate of income tax;
- Australian tax withheld will be creditable to the extent NZ income tax arises on the income; and
- On sale or other disposal of units, any gain or loss is taxable if the investment was held on revenue account, that is, the units were acquired with a dominant purpose of sale, as part of a profit making undertaking or scheme or by a person dealing in this type of property. Capital holdings do not result in assessable income on disposal.

2.3.2 Deductions available to the investors

Interest and other borrowing costs (e.g. fees for raising finance) incurred by the NZ investors in borrowing money to invest in Centro MCS Syndicates to derive assessable income will be deductible by the NZ investors provided the borrowings are directly attributable to the NZ resident investor.

2.4 NZ Income tax treatment on disposal of units

2.4.1 Sale of units in Australian unit trusts for FIF interests

Where the investment is taxed under the FIF regime, an additional tax liability will not arise on the sale, redemption, or other disposal of the investment.

2.4.2 Sale of units in Australian unit trusts for non-FIF interests

NZ does not have a capital gains tax regime. However, as can be seen above, a number of instances exist where the capital gain made on an investment will be subject to income tax.

As noted above, where the FIF regime is not applicable, any disposal gain or loss will be assessable / deductible if the asset was held on revenue account, that is, if the taxpayer carries on a business of dealing in such property, or the investment was acquired with the dominant purpose of sale (measured at the time of acquisition). Whilst the individual circumstances of the investors would need to be considered, it is noted that the offer documents reviewed envisage a reasonably long term investment in the units of between five and ten years, early disposition is not encouraged by the terms of these documents.

2.4.3 Unit Redemption for non-FIF interests

On redemption of a taxpayer's investment a foreign unlisted widely held trust, such as the Centro MCS Syndicates, (unless Centro chooses to provide information regarding the amount of available subscribed capital attributable to the units redeemed), the taxpayer is only taxable on the redemption to the extent it exceeds the amount they paid for the units.

2.5 Transitional Residence Exemption

If the NZ individual investor qualifies as a transitional resident, further relief is available.[^]

2.6 Sale of property held by the Centro MCS Syndicate trusts

The sale of property held by the Centro MCS Syndicate trusts will not result in taxable income for any individual NZ tax resident investors.

3 General Australian income tax treatment for New Zealand investors

We have set out below our comments in relation to the Australian income tax implications for NZ Investors.

There are essentially two circumstances in which NZ Investors, as non-residents of Australia, should be subject to Australian tax.

Firstly, the assessable income (for Australian income tax purposes) of the NZ Investors should include income from sources in Australia. NZ Investors should, however, be entitled to a deduction for deductible expenditure incurred in deriving this income for the purposes of determining the NZ Investor's taxable income.

Secondly, the NZ investors may be subject to tax at source under Australia's withholding tax rules in relation to distributions made to the investors from Australian resident unit trusts.

We have set out below our comments in relation the Australian income tax and withholding tax implications associated for a NZ Investor holding an investment in a Centro MCS Syndicate.

All of the Centro MCS Syndicates are structured as an investment in an Australian unit trust. As a non-resident of Australia, a NZ Investor may be subject to withholding tax on distributions from an Australian unit trust.

Australian withholding tax should apply to distributions at the applicable Australian non-resident tax rates. There are a variety of different types of withholding which may apply depending on the circumstances.

1. **Managed Investment Trust withholding tax** – As each of the Centro MCS Syndicates is a Managed Investment Trust (MIT), all distributions of Australian sourced net income, other than interest, dividends, royalties or exempt capital gains, should be subject to MIT withholding tax.

Broadly, a MIT is a trust that is:

- a. Listed; or
- b. Has at least 50 members; or
- c. Has a member included in a specific list of entities for tax purposes (such as complying superannuation funds).

In addition, to be a MIT a unit trust must also satisfy certain Corporate Law conditions (including being registered as a managed investment scheme).

MIT withholding is a tax at source and for the 2009 income year the rate of MIT withholding tax is 22.5%. This will reduce to 15% for 2010 and 7.5% for 2011 onwards. The amount of the payment subject to MIT withholding is treated as non-assessable non-exempt income for Australian income tax purposes. MIT withholding tax takes precedence to Tax File Number (TFN) withholding tax.

2. **Interest withholding tax** – Australian interest withholding tax will be applied to payments of interest by a Syndicate, irrespective of whether an Australian TFN has been provided to the Responsible Entity (RE). Interest withholding tax is a final tax and is applied to gross interest at the rate of 10%. Interest withholding tax takes precedence to TFN withholding tax.

[^] Transitional NZ residents, are new NZ tax residents, (or returning residents after a period of at least ten years non-residence). They are not taxable in regard to foreign sourced income, (including FIF income but excluding employment related income) for the first 4 years of residence unless they have elected not to apply the concession.

Annual Tax Return Guide – NZ Edition

This guide has been prepared to help New Zealand investors in Centro MCS Syndicates to complete their 2008-09 New Zealand income tax return.

What you will need:

You will need the following documentation to assist you to complete your 2009 income tax return:

1. A copy of your income tax return (IR 3) and income tax return guide (IR 3G).
2. A copy of the relevant return disclosure schedule in order to disclose the value of all your foreign investment fund (FIF) investments. Choose one of the following:
 - (a) Interest in a foreign Investment fund disclosure schedule (fair dividend rate method) – IR 447
 - (b) Interest in a foreign Investment fund disclosure schedule (comparative value method) – IR 448
 - (c) Interest in a foreign Investment fund disclosure schedule (cost method) – IR 449
3. Copy of the conversion of overseas income to New Zealand currency leaflet – 2009 IR 270
4. Your annual taxation statement – for the year ended 30 June 2009
5. Copy of the Centro MCS financial reports as at 30 June 2009 in which you were invested in as at 31 March 2009.

The first three publications listed above can be downloaded from the New Zealand Inland Revenue website at www.ird.govt.nz or by calling the New Zealand Inland Revenue on **0800 227 774**.

Important information:

- This guide assumes you are a New Zealand resident individual taxpayer with units in one or more Centro MCS Syndicate holding less than 10% of any Centro MCS Syndicate trust. This guide should not be used for other investment income, nor should it be used for other types of taxpayers such as a company, trust, partnership or superannuation fund.
- This guide assumes that you do not have any current year or carried forward ring-fenced FIF losses and that you acquired your units with the intention of holding them rather than as part of a business that trades in these types of investments.
- Your Annual Taxation Statement for the year ended 30 June 2009 summarises the distributions you received in respect of the 12 months ended 30 June 2009. This will provide your taxable income information if you fall outside the FIF regime.
- Unless you qualify for an exemption under the FIF rules, you will determine your FIF income under the FDR method. Please note that as an individual, you may apply the comparative value method and base your return on actual receipts and capital movements (note any loss so calculated would be reduced to zero).
- This guide assumes that the market values of all Centro MCS Syndicates at 1 April 2008 is equal to the published market value as at 31 December 2007 or 30 June 2008.

NOTE

The taxation of investment income can be complex. We recommend you seek professional taxation advice from your accountant or taxation adviser. This guide should not be relied on as taxation advice.

Steps to complete your New Zealand 2009 income tax return for your investments in the Centro MCS syndicates

STEP 1: Determine whether you qualify for a FIF exemption

You will qualify for a FIF exemption if the total cost of all your FIF investments (not just your Centro MCS Syndicate holdings) is NZ\$50,000 or less or if you hold a greater than 10% interest in a particular Centro MCS Syndicate. It is also noted a general exemption may apply if you are a transitional NZ tax resident (that is, the income year is within 4 years of your becoming NZ resident (including after a period of non-residence of 10 years or more).

If you qualify for exemption under the FIF rules, proceed to Step 8. If you do not qualify for an exemption, proceed to Step 2.

STEP 2: Determine your interest at start of the 2009 income year

Determine your interest (i.e., the total number of units held) in each of the FIFs at the start of the income year.

STEP 3: Determine the opening market value

Identify the final Net Asset Backing (NAB) unit valuations for each Centro MCS Syndicate you hold units in as at 1 April 2008 (note values published are as at 31 December 2007 and 30 June 2008) as published on our website. Determine the value of your holdings by multiplying this value by the number of units held on 1 April 2008.

STEP 4: Converting the opening market value to NZ\$

Convert the opening market value (disclosed in AU\$ - result of Step 3) to NZ\$ using the conversion table in IR 270.

STEP 5: Aggregate FIF income

Your FIF income, using the FDR method, is calculated by multiplying the investment value (result from Step 4) by 5%.

In regard to any units in a single Centro MCS Syndicate bought and sold during the 2009 income year, you will also need to include the 'quick-sale adjustment' (being the lower of 5% of the average acquisition cost in the period or the sale proceeds less the average acquisition costs in the period (no less than zero can result).

STEP 6: Complete the relevant interest in foreign investment fund disclosure schedule (being either form IR447, IR448 or IR449 referred to on Page 5 of this guide)

Complete the returns by disclosing, for each of your investments in a Centro MCS Syndicate as at 1 April 2008, the name of the syndicate, country of incorporation/tax resident (i.e. Australia) and the market value in NZ dollars as at 1 April 2008 (refer Step 4).

STEP 7: Disclose whether you have received overseas income

Select "Yes" for question 17 of your IR 3 return.

STEP 8: Enter the income / FIF income and US REIT in your tax return

If you qualify for an exemption from the FIF rules, enter the gross amount of cash distributions received or vested (i.e., the amounts distributed by the Centro MCS Syndicate before deduction of any taxes, excluding any capital gain amounts paid) as per your Annual Taxation Statement for the period in Box 17B.

If you do not qualify for exemption, and you are applying the FDR method, enter the amount calculated at Step 5 in Box 17B (total overseas income).

Include the interest income derived by you (under the financial arrangement rules) or the interest received by you including any “wash up” on maturity (provided you can use the cash basis) in respect of the US REIT investment (if applicable) in Box 17B (total overseas income).

STEP 9: Enter the amount of foreign tax paid relating to the overseas income

Enter the total of foreign tax paid (including all Australian tax withheld in respect of the Centro MCS Syndicates distributions) in Box 17A (total overseas tax paid). A credit for this foreign tax paid is limited to your New Zealand tax liability on this income.

Include the tax withheld from the US REIT interest paid directly to you in Box 17A to the extent of your NZ tax liability on the US REIT interest income.

STEP 10: Claiming interest and borrowing cost directly attributable to NZ resident investor

Select “Yes” for question 26 of your IR 3 return.

Enter the total of interest and borrowing costs which is directly attributable to you and incurred by you in acquiring your interest in MCS.

STEP 11: Disclosure of interest in foreign companies and unit trusts

Select “Yes” for question 38 of your IR 3 return.

Finally attach the disclosure schedule(s) (Step 6) for all your FIF investments to your income tax return.

Investor Services

Copies of Annual Tax Return Guides for all Centro managed funds are available on the Centro website.

Toll Free (AUS): 1800 802 400 (Toll Free Australia)

Toll Free (NZ): 0800 449 605

Telephone: +61 3 8847 1802

Facsimile: +61 3 8847 1868

Email: investor@centro.com.au

Website: centro.com.au