



Arrow Funds Management Limited

ACN 146 671 276

Level 25, 360 Collins Street Melbourne VIC 3000

29 May 2019

## **Announcement by Arrow Funds Management Limited (Arrow) as Responsible Entity of the Arrow Primary Infrastructure Fund**

### **Adoption of AMIT: Implementation of the Tax Laws Amendment (New Tax System for Managed Investment Trusts) Act 2015 Regime.**

#### **Background:**

In 2016 ASIC granted relief to allow Arrow and other responsible entities of registered managed investment schemes to make changes to their Constitutions, without holding a unitholder meeting, so they could implement the Tax Laws Amendment (New Tax System for Managed Investment Trusts) Act 2015, a new tax regime for managed investment trusts referred to as the AMIT regime.

Arrow intends to rely on the ASIC relief to make changes to Arrow Primary Infrastructure Fund's Constitution.

The proposed changes to the Fund Constitution will allow Arrow to elect into the new AMIT regime, which will provide greater flexibility for the Fund in the future, such as allow the Fund:

- to distribute income to different classes of unitholders. At the present time, the Fund has only one class of unit and the Fund's net income is allocated to each unitholder annually based on their proportionate share of the Fund;
- to attribute amounts of income to one class of unitholders on a different basis to another class of unitholders, provided that the treatment is fair and reasonable; and
- to use the "unders and overs" allowance provisions in the regime. For example, if there is a discrepancy between the amounts of taxable income attributed to unitholders for an income year and the amounts that should have been attributed, Arrow will be able to adjust for the discrepancy in the following tax year.

ASIC has asked all responsible entities that intend to implement the AMIT changes to publish a prominent notice on their website explaining that they intend to change the Constitution, summarise the reasons for this and the effect of the changes. The notice must also include a statement that the responsible entity will change the scheme's Constitution in the way it has identified unless it receives a request to call and hold a meeting from Unit Holders with at least 5% of the votes that could be cast on a special resolution.

#### **Reasons for the change:**

The purpose of the AMIT regime is to provide some flexibility when making distributions to unitholders. The current regime taxes unitholders on allocated tax amounts like discount capital gains, foreign sourced income, amounts that are subject to dividend, interest or royalty withholding tax and tax offsets and not necessarily on cash distributed or fund income. The new AMIT regime will allow Arrow to determine the way tax amounts are attributed to unitholders.

Arrow believes that it is in Unit Holders' interests for the Fund to elect to apply the new AMIT regime because:

- the AMIT regime is clear and certain about the tax amounts allocated to unitholders, in contrast to the alternative entitlement regime;
- allowing Arrow to reconcile "unders and overs" in the years in which they are discovered, as opposed to the alternative position which requires Arrow to amend previous years' tax returns and notify unitholders of the amendments will help the Fund and unitholders to prepare their tax returns efficiently and reduce any need to revisit old tax returns;
- the deemed fixed trust status and unitholders being treated as having vested and indefeasible interests in the income and capital of the new regime throughout the income year will generally make it easier to satisfy:
  - a) the trust loss rules requirements for carrying forward trust losses;
  - b) the franking credit rules which allow Arrow distribute franking credits; and
  - c) eligibility for CGT scrip-for-scrip rollover relief.
- Arrow will be able to develop different classes of Unit Holders with different rights within the Fund and allow it to take into account interest from investors.
- There will also be a fairer cost base adjustment for unitholders' interests, with both up and down adjustments, and the elimination of some of the uncertainties concerning the treatment of tax deferred distributions.

## Effect of the changes:

The following table sets out the effect of the changes to the Fund's Constitution and Tax Laws Amendment (New Tax System for Managed Investment Trusts) Act 2016 (and supporting legislation):

Constitution Clause	Effect of the Amendment
<p><i>Amend the Definitions section by:</i></p> <p>1. <i>Inserting before ASIC:</i>  <i>AMIT means the Tax Laws Amendment (New Tax System for Managed Investment Trusts) Act 2016 (and supporting legislation)</i></p> <p><i>AMIT Trust means a trust where the Responsible Entity has chosen to apply the attribution rules in Division 276 of the Income Tax Assessment Act 1936.</i></p> <p>2. <i>Inserting after ASIC:</i>  <i>ASIC Relief means the circumstances where ASIC grants relief or an exemption from, or a modification to, the provisions of the Corporations Act on conditions specified by ASIC, including where ASIC Relief is granted by class order.</i></p> <p>3. <i>Inserting after asset:</i>  <i>Attribution has the meaning given by AMIT.</i></p> <p>4. <i>Inserting after business day:</i>  <i>Corporations Act means the Corporations Act 2001 (Cth), and includes the Act as modified by any ASIC Exemption.</i></p> <p>5. <i>Inserting after special resolution:</i></p>	<p><i>Adds new definitions to include the new AMIT tax regime.</i></p>

<p><i>Tax Act means the Income Tax Assessment Act 1936 (Cth) and the Income Tax Assessment Act 1997 (Cth).</i></p>	
<p>6. Inserting after clause 135  <i>Clause 135A</i>  <i>Clauses 130 to 135 apply for each income year when the Trust is not an AMIT Responsible Entity.</i></p>	<p><i>Retains alternative regime up until Arrow makes AMI election.</i></p>
<p>7. Inserting after clause 147:  <i>Clause 147A</i>  <i>Without limiting clauses 139 to 146, the Responsible Entity or an Associate of the Responsible Entity, may pay, on behalf of the Trust, any or all costs and expenses incurred in connection with applying AMIT to Units or a class of Units in the Trust, including the production and distribution of any disclosure (AMIT Costs).</i></p>	<p><i>For the removal of doubt, allows Arrow to charge back AMIT costs to Fund.</i></p>
<p>8. Inserting after clause 47:  <i>Clause 47A</i>  <i>Without limiting the generality of clause 47, the Responsible Entity may take such action as is necessary for, or incidental to, to give effect to the operation of AMIT at its complete discretion and make such adjustment to the clauses in this Constitution as are necessary to apply the AMIT requirements, including but not limited to:</i>  <i>(a) notifying the Australian Taxation Office of its election to treat Units or a class of Units under AMIT;</i>  <i>(b) making Attributions to Unitholders, provided such Attributions do not affect the rights of each member to the income and capital of the Trust in such a way as to materially diminish their rights;</i>  <i>(c) applying the treatment under AMIT where taxable income is over or under the amount notified to investors;</i>  <i>(d) making adjustments to the cost base when the taxable distribution exceeds the cash distribution; and</i>  <i>(e) issuing member statements with such revisions as are necessary at its complete discretion.</i></p>	<p><i>For the removal of doubt, allows Arrow to make such adjustments as are necessary to give effect to the operation of AMIT.</i></p>
<p>9. Inserting after clause 138  <i>Clause 138A AMIT</i>  <i>138A.1 To the extent permitted by law, where the Responsible Entity elects to apply AMIT to Units or a class of Units, it may attribute income to Units or a class of Units at its discretion in accordance with the requirements of the law and apply the provisions of this clause and this Constitution so as to give effect to AMIT, making such adjustments as are necessary to implement AMIT including, but not limited to:</i>  <i>(a) retaining additional cash;</i>  <i>(b) allocating taxable income;</i>  <i>(c) determining where tax liabilities are to be allocated;</i>  <i>(d) determining that income is capital; and</i>  <i>(e) retaining cash to meet any tax liabilities whether for the Trust or Unitholders including disputed Attributions at its complete discretion; and</i>  <i>(f) reflect that the Responsible Entity has elected to apply the Attribution regime under AMIT to those Units or that class of Units.</i></p> <p><i>138A.2 The Responsible Entity may, in accordance with the Income Tax Assessment Act 1997 (the Tax Act), resolve to:</i>  <i>(a) make a choice with respect to the Trust to be an attribution managed investment trust (AMIT Trust) for the purposes of the Tax Act; and</i>  <i>(b) where the Responsible Entity has made a choice to be an AMIT Trust, make a choice to treat each class of Units in the Trust as being a separate attribution managed investment trust for the purposes of the Tax Act.</i></p> <p><i>138A.3 Notwithstanding the other provisions of this Constitution which relate to the income of the Trust and to distributions, where the Responsible Entity has resolved to make a choice to be an AMIT Trust, the provisions of this clause 138A apply with respect to an income year for which the choice was made and for each following income year during which the Trust is an AMIT trust for the purposes of the Tax Act.</i></p> <p><i>138A.4 Taxation of the Trust</i></p>	<p><i>Allows Arrow to make attributions contemplated by AMIT.</i></p>

- (a) *Terms used in this clause that are not otherwise defined in this Constitution take their meaning from the Tax Act.*
- (b) *The attribution model of taxation as set out in Division 276 of the Tax Act applies to the Trust where the Responsible Entity has made a choice to be an AMIT Trust.*
- (c) *Subject to this clause and without limiting its other rights and powers provided for under this Constitution, the Responsible Entity may make any determination or choice, and may take any action which it can or is required to make or take under the Tax Act for the relevant income year, including, but not limited to:*
  - (i) *the determination of the taxable income of the Trust or each class of Units; and*
  - (ii) *the determination of the assets and liabilities attributable to a class of Units; and*
  - (iii) *the determination of the trust component and determined trust component of a particular character for the Trust or each class of Units, including the determination of the particular character of an item and the timing of its inclusion in a trust component and a determined trust component; and*
  - (iv) *the attribution of the determined trust component to determine the member component and determined member component of a particular character for each Unitholder of the Trust (including a former Unitholder of the Trust); and*
  - (v) *the making of alterations to the relevant trust components and determined trust components and the relevant member components and determined member components as a result of any unders or overs (those terms having the definitions attributed to them in Division 276 of the Tax Act (or any successor provisions)); and*
  - (vi) *the giving of an annual statement, within the period set out in the Tax Act, to each Unitholder (including a former Unitholder for the relevant income year) which includes information that reflects:*
    - (A) *the amount and character of each member component of the Unitholder (or of a former Unitholder); and*
    - (B) *any cost base adjustment in respect of the Units of the Unitholder (or of a former Unitholder); and*
    - (C) *the amendment of an annual statement that has been issued to a Unitholder (or a former Unitholder), and the basis upon which the annual statement issued is to be amended.*
- (d) *In making a determination or choice, or in taking an action, as contemplated by this clause 138A, the Responsible Entity must ensure that any determination, allocation or attribution is made on a fair and reasonable basis.*
- (e) *The Responsible Entity is entitled to attribute the determined trust component to determine the member component and the determined member component of a particular character in respect of an income year to be attributed to a Unitholder of the Trust, under this clause 138A, upon a redemption or withdrawal (or any other similar action) of Units by that Unitholder.*
- (f) *Notwithstanding any other provision of this Constitution, the Responsible Entity is entitled to determine the amount to be distributed to Unitholders for an income year.*
- (g) *Notwithstanding any other provision of this Constitution, if the Responsible Entity has given a statement to a Unitholder in accordance with Division 276 of the Tax Act (or any successor provisions), the Responsible Entity is not required to otherwise notify a Unitholder of their proportionate share of the Trust's income or capital, including income of the trust estate or net income calculated under Division 6 of the Income Tax Assessment Act 1936 (Cth) as if the choice in this clause had not been made.*
- (h) *Subject to the Corporations Act, the Responsible Entity is entitled to be indemnified out of the assets of the Trust for all AMIT costs incurred by the Responsible Entity in the proper performance of its duties including:*
  - (i) *any tax liabilities incurred by the Responsible Entity as a result of the application of this clause; or*

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| <p>(ii) <i>any liability that results from a Unitholder of the Trust (or a former Unitholder) making a claim against the Responsible Entity in relation to a tax liability of the Unitholder (or a former Unitholder) that results from the application of this clause, together with any other costs, expenses or liabilities incurred by the Responsible Entity as a result of incurring any such liability.</i></p> |  |
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**Opportunity to request a meeting:**

Unitholders have at least 7 days from the date of this notice to request a meeting. If Arrow does not receive a request from Unit Holders with at least 5% of the votes that could be cast on a special resolution by close of business on 6 June 2019, it will amend the constitution on the terms set out in the table above.

If anyone has any enquiries on the issues raised by this notice please do not hesitate to contact Andrew Ashbolt on (03) 9691 5447.

If you wish to request a meeting, please email your request to [aashbolt@arrowfunds.com.au](mailto:aashbolt@arrowfunds.com.au)

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