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Dear Jonathan

Tax Treatment of listed and unlisted portfolio investment entities

As requested, we outline the differences in the tax treatment of a listed and unlisted portfolio investment entity ("PIE").

Under the PIE regime there are two common types of PIE, a multi-rate PIE and a listed PIE. The majority of PIEs are unlisted entities and are multi-rate PIEs. However, Goodman Property Trust is a listed PIE. Although both types of entity are covered by the PIE rules, the tax rules applying to a listed PIE and a multi-rate are very different from both the entity's perspective and the investor's perspective.

1 Multi-rate PIE

A multi-rate PIE attributes its taxable income to each investor and then calculates tax based on the prescribed investor rate ("PIR") tax rate of each investor. Investors in multi-rate PIE are required to provide the entity with their PIR on an annual basis.

For New Zealand resident individual investors, if the investor has provided their correct PIR, the income attributed to the investor from the multi-rate PIE is treated as excluded income and does not need to be included in the investor's income tax return. New Zealand resident entity investors are generally required to elect a 0% PIR and must return the attributed PIE income in their tax returns. Non-residents have a PIR of 28% (unless the multi-rate PIE is a special class, called a Foreign Investment PIE).

Distributions received by an investor from a multi-rate PIE are not taxable to the investor. They are also treated as excluded income and do not need to be included in an investor's income tax return (irrespective of whether a correct PIR has been provided).

To ensure investors pay tax at their nominated PIR, a multi-rate PIE must either adjust the investor's investment holding for their share of PIE tax, or deduct this from any distributions made. This is called the "return adjustment" requirement for a multi-rate PIE.

2 Listed PIE

A listed PIE is taxed at the corporate tax rate, currently 28%. A listed PIE is not required to attribute its taxable income to each investor. As a result, investors are not required to provide a listed PIE with their PIR. A listed PIE is also not required to perform a return adjustment for investors.

Instead, when a listed PIE pays a distribution to its investors, it must be imputed to the full extent that imputation credits are available (as determined by the Directors). The imputation credits are generated as a result of the corporate tax paid by the listed PIE.

For a New Zealand resident individual investor, or a New Zealand resident trustee investor, the full distribution can be treated as excluded income by the investor and therefore does not need to be included in the investor's income tax return. However, a resident individual or trustee investor can choose to include the fully imputed component of the distribution in their income tax return and claim the imputation credits. This would enable an investor on a marginal tax rate of less than 28% (for instance 17.5%) to receive the benefit of the excess imputation credits to offset tax on other income.

Where the investor is a New Zealand resident company, the imputed component of any distribution must be included in their tax return.

For non-resident investors (holding less than 10 percent interests in a listed PIE), the imputed component is subject to non-resident withholding tax. However, a listed PIE can pay a supplementary dividend to effectively alleviate this tax impost.

The rules regarding the treatment of the distributions made by a listed PIE are contained in section CX 56C of the Income Tax Act 2007.

3 Application of PIE rules to Goodman Property Trust

Goodman Property Trust is a listed PIE. Therefore, the taxable income of Goodman Property Trust is taxed at the corporate tax rate of 28%. Generally, only a portion of each distribution paid by Goodman Property Trust will be fully imputed, with the balance of the amount paid not being imputed.

3.1 New Zealand resident individual and trustee investors

The distribution statements issued by Goodman Property Trust refer to the portion of the distribution that is not imputed as the excluded distribution. If the investor is a New Zealand resident individual or a New Zealand resident trustee, this amount should not be included in the investor's income tax return.

Where the distribution statement refers to the fully imputed component of a distribution, New Zealand resident individual investors and New Zealand resident trustee investors are not required to include this amount in their tax return but may choose to include this amount in their income tax return depending on their particular tax circumstances.

3.2 Other investors

Other investors (for instance New Zealand company investors) should also not include the excluded portion of the distribution in their income tax return. However New Zealand resident investors that are not individuals or trustees are required to include the fully imputed component of a distribution in their income tax return.

A non-resident investor will be subject to non-resident withholding tax on the fully imputed component of a distribution; however, Goodman Property Trust will typically pay a supplementary dividend to offset this withholding liability.

3.3 Investment income reporting

New investment income reporting rules were introduced by Inland Revenue and became mandatory from 1 April 2020. Under these rules, investment income is required to be reported to Inland Revenue by the payer. This means that details of investment income derived during an income year by a New Zealand tax resident will generally be recorded with Inland Revenue (and pre-populated on Inland Revenue's online portal - myIR). However, distributions paid by a Listed PIE are specifically excluded from this reporting requirement (as outlined in the Supplementary Order Paper No. 453 submitted by Inland Revenue as part of the Taxation (KiwiSaver, Student Loans, and Remedial Matters) Bill). Accordingly, any New Zealand tax resident investor that chooses, or is required, to include the fully imputed component of the distribution in their income tax return (as outlined above), will need to ensure that this income is included in their tax return, rather than relying on investment income that has been reported to Inland Revenue.

4 Disclaimers

These comments are made specifically in response to your request for advice on behalf of Goodman (NZ) Limited as manager of Goodman Property Trust. Accordingly, neither the firm nor any member or employee of the firm undertakes responsibility in any way whatsoever to any person or company other than Goodman (NZ) Limited for any errors or omissions in the advice given, however caused.

The comments in this letter are based on the information available to us and current tax law. Goodman (NZ) Limited should be aware that it is possible that the tax authorities may reach a conclusion different to those set out in this letter and that the tax implications may eventually be somewhat different to that we have contemplated in this advice. It is also possible that the law could change.

Yours sincerely

R.K. Piper

Rachel Piper
Partner