



Equity Trustees Limited
ABN 46 004 031 298
AFSL 240975
Level 1, 575 Bourke Street
Melbourne Victoria 3000
GPO Box 2307
Melbourne Victoria 3001
Telephone 1300 133 472
Facsimile (61 3) 8623 5200
Email enquiry@eqt.com.au
Website eqt.com.au

5 October 2017

**Alpha Australian Small Companies Fund (ARSN 124 204 084) (“Fund”)
Adoption of the Attribution Managed Investment Trust (“AMIT”) regime for the Fund
Notice under section 601GCB of the Corporations Act**

Dear investor,

This notice is provided to you by Equity Trustees Limited (ACN 004 031 298) (“RE”) in its capacity as responsible entity of the Fund under section 601GCB of the Corporations Act in ASIC Instrument 2016/489 (“**Class Order**”) to inform the members of the Fund that the RE has modified the constitution of the Fund (“**Constitution**”) to enable the Fund to be operated under the new “AMIT Regime”.

The new AMIT Regime

The Tax Laws Amendment (New Tax System for Managed Investment Trusts) Act 2016, together with additional supplemental legislation (“the **AMIT Regime**”), became law on 5 May 2016. The RE modified the Constitution on 11 July 2017 so that the Fund can be effectively operated under this new tax regime from 1 July 2017.

In principle, the key difference between the old tax regime which applied to the Fund (Division 6 of the Income Tax Assessment Act 1936) and the new AMIT Regime is that under the AMIT Regime members are taxed on the taxable income that is allocated or “attributed” to members by the RE. The new AMIT Regime effectively requires the RE to undertake this allocation or attribution on a fair and reasonable basis. This is in contrast to the old tax regime under Division 6, which provides for members to be subject to tax to the extent, proportionately, that each member is “presently entitled” to the income of the Fund according to trust law principles.

Modifications to the Fund’s Constitution

The modifications made to the Constitution (“**Modifications**”), and the reasons for the Modifications and their effect, are summarised below and in the attached table.

The Modifications allow the RE to elect to apply the new AMIT Regime to the Fund and to facilitate the RE to be able to operate the Fund in a manner permitted by the AMIT Regime.

As the Modifications allow the RE to operate the Fund in a manner permitted by the new AMIT Regime, there may be the following potential benefits for members:

- a removal of the potential for double taxation that may arise for members where there are mismatches between the amount distributed and the taxable income of the Fund. This is achieved through the provision of appropriate cost base adjustments where distributions are greater or less than the amount on which the member is assessed for tax purposes;
- greater certainty regarding the quantum and character of any amounts distributed or otherwise passed through to its Members and how they are treated for tax purposes;
- greater certainty regarding certain aspects of the tax treatment of the Fund as a whole, including the status of the Fund as a “fixed trust”; and
- where applicable, the ability for the RE to elect for each class of units in the Fund to be treated as a separate trust for the purposes of undertaking the attribution of tax liabilities to members.

However:

- the AMIT Regime has only been recently made law, so it is possible there may be some uncertainty regarding its operation in the initial years; and
- as the Modifications provide the RE with additional duties and powers, the Modifications include protections for the RE and the Fund in relation to the RE exercising its new powers in relation to the AMIT Regime and also when it deals with members' objections to the RE's attribution of taxable income to them.

How to contact us

You are not required to respond to this notice, however should you have any questions regarding the Modifications please contact the RE on (03) 8623 5000. Please also note that the RE also previously published a very similar notice of the Modifications to the Constitution on its website in accordance with section 601GCA(3) of the Corporations Act.

Constitution clause	Description of the Modification
Clauses 4.1A and 6.1A	<p>Application Price and Withdrawal Price where more than one Class of Units</p> <p>The modifications to clauses 4.1A and 6.1A provide for the determination of the Application Price and Withdrawal Price for Units in the Fund where there is more than one Class of Units. The amended clauses simplify the existing drafting, to provide for a calculation based upon Net Class Value, this new calculation more closely reflects the calculation that is made when the Fund consists of only one Class of Units.</p>
Clauses 7.20 – 7.21	<p>Redemption for sums owed to the RE</p> <p>New clause 7.21 and amended clause 7.20 permit the RE to deduct from the proceeds of a withdrawal or redeem a Member's Units (without a withdrawal request) to satisfy any amount of money due to it by the Member under clauses 11.9(h), 11.9(i) or 18.4.</p> <p>Together with clauses 11.9(h), 11.9(i) and 18.4, these modifications will provide a mechanism to facilitate the RE's indemnity for tax and associated costs, expenses or liabilities that relate to a particular Member.</p>
Clauses 8.4 – 8.6	<p>Class Assets and Class Liabilities</p> <p>The modifications to clauses 8.4 and 8.5 and new clause 8.6 clarify the RE's existing power under the Constitution to determine a liability of the Fund to be a "Class Liability", and provide the RE with a new power to determine an asset of the Fund to be "Class Asset". The designation of an asset or liability of the Fund as a "Class Asset" or "Class Liabilities" affects how the relevant asset or liability is treated for the purposes of determining the unit price and distribution entitlements of members of each class. In particular, the ability for the RE to designate an asset to be a "Class Asset" will generally provide for the value of the asset and the income of the asset to only accrue for the benefit of members of the relevant class.</p> <p>These modifications provide the RE with the specific power, if it determines that it is appropriate to do so, to create classes of units where particular assets are determined to be referable to a particular class. This will supplement the RE's existing general power to create classes.</p>
Clauses 9.1 and 9.2	<p>Definition of Distributable Income</p> <p>The modifications to clauses 9.1 and 9.2 extend the existing default definition of Distributable Income in the Constitution to cover where the Fund is an AMIT. Although the terms of the definition are modified, the new default definition of Distributable Income should, under the modification, remain based on the taxable income of the Fund as per the existing definition.</p> <p>The modifications also specifically provide for the RE to determine the Distributable Income of the Fund separately for each distribution period for each class of units in the Fund. This modification supplements the RE's new power to determine for different distribution periods to apply for different classes of units in the Fund (see comments regarding clauses 9.13 and 9.14 below).</p>
Clauses 9.3 – 9.6	<p>Deferral of distribution of Distributable Income</p> <p>New clauses 9.3 to 9.6 replace the RE's existing power under the Constitution to hold back Distributable Income that arises in an interim distribution period for distribution in the final distribution period as a specific power, to provide greater certainty with respect to how this power operates. New clauses 9.3 to 9.6 provide for this power to be a more general power to defer the distribution of particular amounts to Income to later distribution periods in the financial year, and specify the impact of the exercise of this power.</p>
Clauses 9.7 – 9.10	<p>Accumulation of Distributable Income</p> <p>New clauses 9.7 to 9.10 provide the RE with a power to accumulate Distributable Income for financial years that the Fund is an AMIT, and the consequences of this accumulation. New clauses 9.7 to 9.10 also provide the RE with a power to determine which Members will be attributed the tax liability associated with Distributable Income that is accumulated. These modifications provide the RE with the flexibility to not fully distribute all of the Distributable Income where the circumstances are appropriate. Under the AMIT Regime, Members should receive an upward cost base adjustment on their units in the event that this results in the taxable income attributed being greater than the Distributable Income distributed.</p>
Clause 9.12	<p>Present entitlement</p> <p>The modifications to renumbered clause 9.12 provide that Members are only presently entitled to all of the income of the Fund where the Fund is not an AMIT for the financial year. This is to reflect the accumulation power provided under new clauses 9.7 to 9.10 for financial years where the Fund is an AMIT.</p>

Clauses 9.13 - 9.14	<p>Income Entitlements</p> <p>The modifications to renumbered clauses 9.13 and 9.14 allow different distribution periods to apply to different classes within the Fund. These modifications provide for members of each class to take the class' proportionate share of any undistributed and unaccumulated income of the Fund for the financial year to date at the end of each distribution period for that class. These modifications will supplement the RE's existing power to create classes.</p>
Clauses 9.20 to 9.22	<p>Attribution under AMIT Regime – basis for attribution</p> <p>New clauses 9.20 to 9.22 provide for the attribution of taxable income among Members in accordance with the AMIT Regime. The attribution methodology will be based on Members' proportional entitlements to Distributable Income and, in relation to amounts accumulated, the methodology to be provided for under new clauses 9.7 to 9.10 (see above).</p>
Clause 9.23	<p>Attribution under AMIT Regime – AMIT Class Election</p> <p>New clause 9.23 insert provisions that specify how the taxable income of the Fund will be attributed to Members where the RE elects for each class to be treated as a separate AMIT under the AMIT Regime. The methodology adopted requires the RE to quarantine the taxable income and expenses of each class to the Members of that class.</p>
Clause 9.24	<p>Attribution under AMIT Regime – Member objections and indemnities</p> <p>New clause 9.24 set out the terms on which Members will be able to exercise their rights to object to the RE's attribution of taxable income to them under the AMIT Regime, and confer specific powers on the RE to (i) take such actions as the RE considers appropriate to provide for the rights and interests of other Members to be protected; (ii) amend its attribution and take such actions as the RE determines necessary to give effect to the amended attribution and (iii) be indemnified by the Member against any costs incurred in relation to dealing with their objection. While the new clause places additional obligations on objecting Members, it provides the RE with powers to ensure that any such objections that may be made by a Member are dealt with in an efficient and effective manner, and to minimise the adverse impact of objections made by a particular Member on other Members. The indemnity from the objecting Members should benefit the other Members and the RE because the RE might otherwise be entitled to be indemnified from the Fund.</p>
Clause 9.25	<p>Unders / overs</p> <p>New clause 9.25 facilitates the exercise of the RE's powers in relation to unders and overs of the Fund, in the manner permitted by the AMIT Regime, and confirm that the exercise of the RE's powers in relation to unders and overs is subject to a similar limitation of liability as provided for generally under the Constitution.</p>
Clauses 9.30 and 11.10	<p>Extension of RE's limitation of liability</p> <p>New clauses 9.30 and 11.10 have been inserted to provide for the RE's liability to Members to be extended to where the RE is exercising powers under the AMIT Regime. This additional limitation of liability is being included as a reflection of the broad powers that are provided to the RE under the AMIT Regime, which could expose the RE or the Fund to unnecessary cost, liability and expense. Further, the AMIT Regime already provides Members with specific powers to object to the attribution of taxable income under the AMIT Regime (see above), and the RE's new limitation of liability is subject to limits under the Corporations Act and general trust law.</p>
Clauses 11.8 and 11.9	<p>AMIT powers</p> <p>New clauses 11.8 and 11.9 provide for the RE to have certain specific powers and rights in relation to the AMIT Regime, which are necessary or desirable for the RE to have in order to comply with and administer the Fund under the AMIT Regime. These powers also include the power to require a Member to provide an indemnity in respect of any tax incurred by the RE under the AMIT Regime. Although the terms of these powers are broad, most of these powers are already provided to the RE under the AMIT Regime itself. Including these powers in the Constitution provides greater certainty regarding their operation and ensures they are subject to the limitation of liability previously discussed.</p>
Clause 11.11	<p>Clearly Defined Rights</p> <p>New clause 11.11 specifically limits the powers, rights and discretions conferred on the RE to the extent necessary to ensure that the Fund satisfies the "clearly defined rights" requirement that is necessary for the Fund to be an AMIT. This clause has no effect provided the Fund remains a registered managed investment scheme. The RE has no intention of deregistering the Fund.</p>

Clauses 18.4 to 18.6	<p>RE's new indemnity for tax – AMIT</p> <p>New clauses 18.4 to 18.6 require each Member to indemnify the RE in relation to any tax and any other costs, expenses or liabilities incurred as a result of being liable to such tax, that may become payable by the RE under the AMIT Regime and that the RE determines relates to the Member. The new clauses will also confer powers on the RE to (i) prescribe terms and conditions which apply in the event that the RE is entitled to be indemnified by a Member; and (ii) undertake certain actions to satisfy that indemnity from amounts owing to the Member or from the Member's units. This indemnity seeks to protect the RE, the Fund and Members where the RE is exposed to tax and associated costs, expenses or liabilities that relate to a particular Member.</p>
Incidental Changes	<p>Additional modifications have been made to the Constitution that are incidental to the Fund being operated as a AMIT, for example:</p> <ul style="list-style-type: none"> • including specific definitions and amend existing definitions referable to the AMIT Regime and these modifications are in clause 25.1 of the Constitution; and • ensuring that clauses 6.1B, 8.3 and 21.4 and renumbered clauses 7.29, 9.11, 9.15, 9.16, 18.7 and 18.8 of the Constitution continue to operate as intended despite the proposed modifications.