22 April 2024

Director
Corporate Tax Policy Unit
Corporate and International Tax Division
Treasury, Langton Crescent
Parkes ACT 2600
Delivered by email: btr@treasury.gov.au

Dear Director

RE: Exposure Draft Legislation - *Treasury Laws Amendment Bill 2024: Build to rent developments*

We are writing in response to the *Treasury Laws Amendment Bill 2024: Build to rent developments* (**Exposure Draft Legislation**) as released by Government on 9 April 2024. We support the Government's continued focus on policy measures to address housing constraints in the Australian market and welcome continued dialogue through industry consultation on this legislative release addressing Build-To-Rent (**BTR**). To this end, we strongly believe there are aspects of the Exposure Draft Legislation that can be improved to support BTR development in Australia and ensure the policy objective of these measures align with the expectations of private institutional investors.

OMERS is one of Canada's largest pension funds with ~C$120 billion in net assets with investments held globally in a range of public and private assets. The investments are held for the benefit of 550,000 members servicing over 1,000 employer plans principally throughout the Ontario provincial area. Oxford Properties is the specialist real estate arm of OMERS. It is part of the OMERS family but operates as a distinct operation and brand. It is a global market leader in real estate investments and holds a range of real estate portfolios in every major jurisdiction across the globe.

Oxford Properties currently has a significant investment exposure to Australia including one of the largest BTR portfolios currently under construction. This is in addition to investments in office, residential and industrial assets which bring the Oxford Properties investment in Australia to ~A$3B.

Caisse de dépôt et placement du Québec (CDPQ) is an institutional investor, managing funds primarily for Quebec's public and para public sector pension and insurance plans. CDPQ's overall portfolio includes high-quality assets of all classes which reflects our strategy to create long-term value for our Depositors. We are one of the largest institutional fund managers in North America, with net assets of ~A$470 billion. Our investments span across constructive capital, private equity, equity markets, private credit, infrastructure, and real estate.

Ivanhoe Cambridge, the real estate subsidiary of CDPQ, develops and invests in high-quality real estate properties. Through subsidiaries and partnerships, Ivanhoe Cambridge holds real estate interests in Australia student accommodation, industrial and logistics, office and residential assets, with value amounting to ~A$2.7B.

The Ontario Teachers' Pension Plan (OTPP) is Canada's largest single-profession pension plan. With C$247.5B in net assets under management, we invest to pay the pensions of 340,000 active, former and retired teachers in the province of Ontario. OTPP has several billion dollars invested in Australia across financial services, health care, infrastructure and real estate, including ~A$500M committed to the BTR sector with multiple existing development projects.

Given the collective size of the Oxford Properties, Ivanhoe Cambridge and OTPP investment allocation to Australia, we are concerned that amendments being proposed in the Exposure Draft Legislation will not deliver on the proposition of encouraging more foreign capital into BTR projects. We outline below our key concerns.

Limitation to 15 years and 15% withholding tax rate on rental income only

The Exposure Draft Legislation limits the ability for rental income from eligible BTR developments to be subject to 15% withholding tax for a 15-year period only. This was not part of the Government announcements on BTR concessions made in the May 2023 Federal Budget and is a surprising addition.

House affordability is an issue that affects the population through inter-generational time horizons. BTR policy that is short term in tenure will not address long term housing affordability issues. The 15-year allowance for the 15% withholding tax concession falls far short of consistent and stable long-term policy. Furthermore, the amendments create disparity in the tax system whereby capital gains generated on BTR assets are taxed at 30% as compared to 15% for other property asset classes, which will result in capital being deployed away from BTR assets.

Property development is a capital intensive and upfront costly investment. It requires a significant investment of capital to support the build out of large-scale developments with multi-year time frames. In many instances, once practical completion is reached and the tenancy process closed, projects will not be generating stable income for up to a decade into the project life. The restriction of a 15-year period will practically mean that income generated from an eligible BTR development will only attract 15% withholding tax for a period far less than 15 years. The value accretion from a 15% withholding tax will be minor and unlikely to attract the foreign capital the Government requires.

We strongly recommend that the Government amend the Exposure Draft Legislation to remove that 15-year limitation and allow the 15% withholding tax to be made permanent and to apply the same capital gains treatment for BTR assets.

Construction commencement

The Exposure Draft Legislation limits the application of increased capital works deductions and 15% withholding tax to BTR developments where the construction commenced after 7.30pm (AEST) 9 May 2023. Despite the nascency of the Australian BTR market, due to the experience of Oxford Properties, Ivanhoe Cambridge and OTPP internationally, we as a group of foreign investors have been early movers into the Australian BTR market.

For example, the Oxford Properties BTR portfolio consists of three projects across NSW and Victoria including Indi Sydney, Indi Footscray and Indi Southbank requiring approximately ~A$500M of investment capital. Indi Sydney is expected to complete in Q3 2024, while Indi Footscray and Indi Southbank will be completed in Q2 2025, which would add a total of 1,370 apartments to the rental market. Similarly, Ivanhoe Cambridge's investment of ~A$300M in Melbourne BTR assets, which are in various stages of development, will deliver 1,764 rental apartments.

Given the extensive and varied BTR portfolios held by Oxford Properties, Ivanhoe Cambridge and OTPP, we are disappointed that the Exposure Draft Legislation does not cover all BTR developments, rather only applying to go-forward BTR construction after 9 May 2023. Early-stage developments pioneered BTR development in Australia, providing a foundational footprint of skills, experience and know-how to enhance the sector. The exclusion of these projects from 15% withholding tax eligibility is an inequitable outcome that penalizes early investors in Australia's BTR sector. The disadvantageous segregation means return valuations for pre-9 May 2023 constructed assets will suffer creating economic disparity between a group of BTR investments at 15% and another group at 30%. Over time this tax policy creates an unfair bias against pre-9 May 2023 assets discouraging future investment or improvements to these developments. It risks the removal of these developments from the rental market which is likely to worsen rental supply.

We strongly recommend that the Government amend the Exposure Draft Legislation to allow all compliant BTR developments to be eligible for the 15% withholding tax concession and capital gains treatment regardless of when construction started as the objective of the measure is to ensure a healthy portfolio of BTR properties and therefore there will be a need to reinvest and maintain these properties over time.

Minimum affordable housing

We welcome the Government's continued focus on housing affordability and supporting the pipeline of housing supply. With this backdrop, we note that the Exposure Draft Legislation requires a minimum affordable housing limit for a development to be considered BTR.

Defining mandatory limits on the size of affordable housing based on discounted rental rates creates a challenging BTR development environment given the debt funding constraints in the current market. It is unclear how the market rent values are determined and how often this will be re-assessed as a base line to calculate the discounted rent for affordable dwellings. Without an agreement of what defines market rents to which the 25.1% discount would be applied, we cannot determine the impact to income and value if 10% of dwellings are offered as affordable housing. Any value accretion of a BTR project with a 15% withholding tax concession will be eroded by the proportion of affordable housing that is subject to below market rent yield.

The requirement for affordable apartments to be offered for all apartment types is punitive as developments do not offer the same number of each apartment type. For example, only a small number of three-bedroom apartments are typically developed in a single complex. Larger apartments will yield a higher rent such that it may not be fit for purpose of being made available as affordable housing for tenants within the eligible income thresholds.

We strongly recommend that the requirements be changed to a portfolio of apartments test rather than with respect to each type of BTR dwelling. This would offer developers greater flexibility to meet the requirements and incentivize BTR development.

The requirement that affordable dwellings must only be leased to tenants within certain income limits which must be tracked by the BTR developer creates an overtly onerous compliance burden. There are practical problems with using income limits based on Australian Bureau of Statistics' data due to the changing values of the annualized earnings, which may not be reflected in changes in individual tenant's income. In addition, BTR developers have no control over tenant's income increases, which may push their income over the threshold. A single tenant that breaches their income limit can put at risk the 15% withholding tax concession for the entire BTR development which is an unreasonable and punitive outcome. Further, there may be tenancy law issues arising if the tenant agrees a 3-year lease or more (another requirement under BTR) however, to keep BTR eligibility, that tenant needs to be removed if they are above the income threshold. This presents incongruous outcomes and very challenging situations for both BTR developers and for tenants.

We strongly recommend that the Government remove the rigidity of the affordable housing requirements. There needs to be more flexibility for developers to plan for large BTR construction projects without circumstances outside their control resulting in non-eligibility for the 15% withholding tax concession, otherwise investment capital will move to other asset classes.

****

We continue to have strong conviction in the Australian market as an attractive investment destination. However, there are aspects of the Exposure Draft Legislation that are not conducive to achieving the Government's ambition of encouraging more foreign capital into BTR development. Oxford Properties, Ivanhoe Cambridge and OTPP are providers of stable capital and are long term investors. As such, we encourage Government to consider this amendment as an opportunity to make the BTR 15% withholding tax a long-term policy objective.

We ask that you consider the matters we have raised above. Our representatives based in the Asia Pacific region would like to convene a meeting with you to provide you with contextual information and discuss these matters further.

Sincerely,

Liz Murphy
Chief Financial Officer, Oxford Properties

Elaine Buzzell
Global Head of Tax, OMERS

George Agethen
Co-Head Asia Pacific, Ivanhoe Cambridge

Steve Bossé
Vice President Finance and Tax, CDPQ

Jun Ando
Managing Director RE APAC, OTPP

Hersh Joshi
Head of Tax, OTPP