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24 April 2024

Director
Corporate Tax Policy Unit
Corporate and International Tax Division
Treasury
Langton Cres
PARKES ACT 2600

By Email: *btr@treasury.gov.au*

Dear Director

BUILD-TO-RENT TAX CONCESSIONS

1. Thank you for the opportunity to provide comments to Treasury in relation to the exposure draft legislation ("**ED**") and draft explanatory memorandum ("**EM**") relating to the proposed build-to-rent ("**BTR**") income tax concessions for developments commenced after 9 May 2023.

2. Pitcher Partners specialises in advising taxpayers in what is commonly referred to as the middle market. We service many taxpayers (including property developers and managed funds) that would be impacted by the form that the build-to-rent concessions take.

Significant policy concerns

3. We have serious concerns with the policy setting of the proposed legislation. At a high level, we believe that few taxpayers are likely to avail themselves of the build-to-rent tax concessions in their current form due to the current policy settings, primarily being:

   3.1. the affordable dwelling requirements;

   3.2. the lack of any concessional MIT withholding rate in respect of capital gains;

   3.3. the limitation of concessional MIT withholding rates beyond the 15-year compliance period; and

   3.4. potential exposure to the punitive Build to Rent Misuse Tax for any breaches that occur during the 15-year compliance period.

4. We do not believe that the proposed package provides enough incentives or concessions to encourage an Australian-owned developer that predominantly use domestic funding to undertake BTR projects. That is, we do not believe that an

accelerated capital works deduction of 1.5 % a year over 25 years provides an appropriate IRR incentive to undertake a BTR development project, especially given the significant risk associated with the punitive proposed Build to Rent Misuse Tax and the adjustment required to rental returns for the affordable dwelling component.

5. Furthermore, we do not believe that a 15% reduced withholding tax on the rental income (alone) provides a significant enough concession for foreign investors. Generally speaking, depreciation and other capital works deductions can result in low amounts of taxable income in the early years of a BTR project. Furthermore, the thin capitalisation provisions can also defer interest deductions to later years, which may result in reduced taxable income in those later years. The lack of a 15% reduced MIT withholding tax rate on the ultimate capital gain from the dwelling could provide little tax incentive for those funds that are "negatively geared" for a substantial part of the compliance period.

6. We understand that Treasury are not responsible for the policy settings. However, unless appropriately balanced incentives are provided to ensure that both domestic and foreign funded BTR projects are viable, we do not believe that there would be a significant take-up of BTR projects (over and above those that would otherwise be undertaken irrespective of the incentives proposed to be provided).

7. Unless the Government re-considers these key policy settings, we believe that the provisions will not achieve the goal of attracting significant additional investment in BTR developments in Australia.

Technical issues

8. We understand that Treasury have limited scope to address the policy considerations above. Assuming that no changes are made to such policy issues, we have also outlined various technical improvements that we believe should be made to the ED to ensure the rules work in an appropriate way that achieves the Government's policy outcomes and that there is sufficient clarity for taxpayer seeking to apply the rules. We include in the **Appendix** a list of issues we have identified in the ED and propose various recommendations and suggest areas that require further clarification.

If you would like to discuss any aspect of this submission, please contact either Leo Gouzenfiter on (03) 8612 9674 or me on (03) 8610 5170.

Yours sincerely

A M KOKKINOS
Executive Director

Appendix – List of Issues in April 2024 BTR Concessions Exposure Draft

Item	**ITAA / TAA Provision**	**Issue**	**Categorisation**	**Priority**
1	170(10AA)	<u>Period of review for section 43-145</u> It is not clear why an unlimited period of review ("POR") is required. The BTR Misuse Tax effectively recaptures all benefits claimed improperly and is only due after a Notice of Assessment is issued, which can be issued at any time. This is effectively an unlimited POR already. The proposed unlimited POR merely allows the Commissioner unlimited time to deny deductions for improperly claiming Div 43 deductions at 4% <u>after</u> the development ceases to be an "active BTR development". Refer to example in the EM. There is nothing unique about improperly claiming this kind of deduction as compared to any other kind, and should not be a reason for an unlimited POR. The Commissioner's 4-year period should be appropriate. Most of the items in s 170(10AA) provide for an unlimited POR because later events have retrospective consequences (e.g. paying interest withholding tax late may enliven earlier year deductions, settlement of a sale of a CGT asset resulting in a capital gain happening in an earlier contract year, etc). From the moment the BTR ceases to be active, the Div 43 deductions should only be claimable at 2.5%. There is no retrospective element that warrants an unlimited POR. This also is contrary to the policy of the 2004 Review of Aspects of Income Tax Self-Assessment and sets a bad precedent. In any case, as above, there is no reason why the Commissioner should have an unlimited POR to amend assessments of BTR Misuse Tax. The period of review would not even commence until an assessment is first made (which could be made at any time after the development ceases to be "active"). By including the assessment of BTR Misuse Tax as an assessment: under s 6(1) then this should achieve this outcome.	Policy / Technical	Medium

Item	ITAA / TAA Provision	Issue	Categorisation	Priority
1	170(10AA)	Period of review for Division 44 It is not clear why an unlimited POR is necessary to give effect to new Division 44. Section 170 provides for amendments to “assessments”. Assessment is defined in s 6(1) and includes various items (e.g. taxable income, liability for trustees on the net income of a PTT, amounts taxed to trustees of AMITs etc). Unless an extra paragraph is included in s 6(1) to cover the BTR Misuse Tax then it is not clear if an unlimited POR to give effect to Division 44 achieves anything as section 170 may only be capable to applying to things that are assessments as defined.	Policy / Technical	Medium
3	26-99C	Is there supposed to be a section 26-99A and 26-99B? It would be easier to use section 26-115 rather than squeezing in new sections in between existing ones.	Technical	Low
5	43-152(1)-(2)	The definitions of “build to rent development” and “active build to rent development” are difficult to distinguish. Subsection 43-152(1) seems to try to define both in the same sentence. It is not clear whether a group of dwellings be a “build to rent development” at a time before it commences to be an “active build to rent development”? If they cannot be, it is not clear what is the purpose of having two different concepts?	Technical	Low
5	43-152(1)-(2)	Election not to be an active build to rent development An entity may complete a development that may otherwise satisfy all the requirements to be considered an active BTR development. However, it does not wish to claim the capital works or MIT withholding concessions due to the potential exposure of BTR Misuse Tax (e.g. if it wishes to sell part of the development before 15 years).	Policy	Low

Item	ITAA / TAA Provision	Issue	Categorisation	Priority
		Entities should be able to make a choice to treat their development as not being an active BTR development and forgo those concessions.		
5	43-152(3)(a)(i)	Time of commencement of active BTR development Does the "available to the public test" require the dwelling to be available to be occupied on that day or is it sufficient if it is advertised as available for rent on that day even though the dwelling has not been completed? This may determine the commencement of the "active BTR development". The day of commencement will determine the 15-year compliance period during which certain fund payments will be taxed at the concessional rate. For example, 40 properties are being tenanted with another 20 being advertised as available for rent in 3 months' time. Are there 60 dwellings that satisfy s 43-152(3) at this time or only 40 dwellings? This should be clarified in the legislation or EM.	Technical	Low
5	43-152(3)(a)(iii) and (d)-(e)	Affordable dwelling temporarily off the market If an affordable dwelling is off the market and being improved/repaired, then this may cause the development to cease being an active development and trigger adverse consequences under the BTR Misuse Tax. While s 43-152(3)(a)(iii) allows such properties to satisfy the requirement in (a), the owner may have been relying on that property to ensure that the affordable dwelling requirements are met. For example, that dwelling was necessary to ensure the 10% rule or "one of every kind" rule is satisfied. If that property is off the market while the improvements or repairs are being undertaken, then it may not be possible to satisfy these tests. The owner may not simply be able to find another	Technical	High

Item	ITAA / TAA Provision	Issue	Categorisation	Priority
		dwelling and offer it at a discount to market rates as all other dwellings may be fully tenanted. Simply changing the lease of an existing tenancy may not work either as the tenants would need to satisfy the means testing requirements. This may mean that the owner may be required to advertise the property for lease at a 25%+ discount while the property is being repaired. But even then, it is not clear whether this would this satisfy the requirement in s 43-152(3)(d)(i)? This should be clarified or alternatively there should be a "temporarily unable to satisfy" rule in paragraph 43-152(3)(d) as well as paragraph 43-152(3)(a) where affordable dwellings are temporarily not available for lease to the public.		
5	43-152(4)	<u>Income requirements</u> It is not clear how the ongoing income requirements to be managed? If a tenant increases their income does this mean the dwelling may no longer qualify as an affordable dwelling? Does the owner have to evict the tenant at that time or at the end of the lease and offer that affordable dwelling to eligible tenants in order to continue to meet the requirements if the loss of that dwelling's status as an affordable dwelling may cause it to breach the 10% rule.	Policy	High
5	43-152(1)-(2)	<u>Clarify how the rules operate for multi-stage developments</u> It may be that 50+ dwellings are completed and rented out while additional construction is still ongoing and before the building is complete (e.g. additional floors are still being constructed). It is not clear whether the building commences to be an active BTR development before construction of the building and s 43-30 is satisfied. The legislation EM should explain whether a development can commence to be active where tenants move into the building but before final construction of the building is complete. For non-vertical developments that rely on the same/adjacent land extension in s 43-152(8) it may be that section 43-30 satisfied when each of the dwellings is complete with the 2.5% write-	Technical	High

Item	ITAA / TAA Provision	Issue	Categorisation	Priority
		off applicable and when the 50th is completed and rented, with the 4% capital works rate starting from that day. The completion of each of the 51st, 52nd, 53rd, etc, dwellings may then each become an “expansion” of the existing development under subsection (5) with a different commencement day for each dwelling thereafter as per subsection (2). This should be clarified with an EM example.		
5	43-152(1)-(2)	Do all dwellings in a building need to satisfy the requirements in s 43-152(3) for the development to commence to be active? It is not clear if the subsection (3) requirements (e.g. 50-dwellings, 3-year lease, single owner, 10% affordable dwellings, “one of every kind” affordable dwelling) must be met for each dwelling in a building. Example *A building is constructed that includes 5 types of dwellings in a 1,000-dwelling development being 500 x 1-bedroom, 300 x 2-bedroom, 100 x 3-bedroom, 90 x 4-bedroom, and 10 x large penthouses).* Can the developer allocate 50 out of the 500 lowest standard dwellings as affordable dwellings such that only those 500 are part of the active BTR development that can obtain the concessions? The developer would then forgo the concessions for the remaining 500. Alternatively, does the lack of any affordable dwellings in the building outside of the 1-bedroom dwelling taint the entire development and result in there being no active BTR development in respect of any of the dwellings? This is a critical issue. Depending on the how the provision is interpreted, this may prevent many developments from accessing the BTR concessions if they seek to include a small number of high-end apartments if the mere presence of a single such dwelling could cause all of the others to fail to meet the requirements (rather than resulting in the non-concessional capital works and MIT withholding rates in respect of that dwelling only). Even if a developer does offer such a	Technical and policy	High

Item	ITAA / TAA Provision	Issue	Categorisation	Priority
		dwelling at a 25%+ discount in order to meet the “one of every kind” requirement, it is extremely unlikely that any person or couple whose income allows them to meet the means testing requirements would be able to afford to lease out such a dwelling, even at the discounted rate. The developed may need to make a substantial loss on such a dwelling by providing a discount far greater than 25%. This issue will also determine: Whether a single development can be mixed use, with some commercial residential and some residential in nature. Whether a development can be a partial build-to-rent and a partial build-to-sell (i.e. some dwellings in the building are never offered for lease and become held by another entity). Whether certain dwellings in a development can be held in separate entities. For example, a developer may wish to establish a fund with respect to some but not all of the developments or may wish to acquire (in their own name) and treat one of the dwellings in the building as their main residence. If the view is taken that all of the dwellings in the building need to satisfy the requirements in subsection (3), then structuring to hold certain dwellings in a different entity (e.g. the luxury dwellings) will cause paragraph (3)(c) to be failed. <u>Correct interpretation is unclear</u> This issue appears to ultimately depend on how one is to interpret the phrase “each of the dwellings” and “all of the dwellings” in s 43-152(3). Is it referring to each/all of the dwellings in the building or each/all of the 50+ that are sought to be classified as an active BTR development? <u>Interpretation 1 – Some but not all of the dwellings need to satisfy the s 4-152(3) requirements</u> On a plain reading of the provision, it seems that once 50 dwellings satisfy the requirements in (3) then those 50 (or more) dwellings are taken to be an active BTR development from that point on. If there are other dwellings that don’t satisfy the requirements, then that should not mean that		

Item	ITAA / TAA Provision	Issue	Categorisation	Priority
		the 50+ that do satisfy the requirements cannot be considered to be an active BTR development consisting of those 50+. Rather, the non-complying dwellings do not qualify for the concessions. If this is correct, it raises other uncertainties. Example *A development is constructed containing 1,000 dwellings but only 80 satisfy the affordable dwelling requirements. All 1,000 are otherwise of the same kind and are all offered for lease to the public for at least 3 years.* Can 800 of the 1,000 dwellings be considered to be an active BTR development on the basis that 10% of 800 dwellings (including those 80) meet the affordable dwelling requirements? The concessions may then apply to 800 dwellings but not 200 dwellings. If this is correct, which 200 (of the 920 non-affordable dwellings) will not qualify for the concessions where they are otherwise indistinguishable from each other? Can the developer choose which part of the development is not to be treated as part of the active BTR development? Could the developer control this in the way they offer dwellings to the public? For example, make 800 available for rent to the public (including the 80 affordable dwellings) so that the development commences to be active from that day and then shortly thereafter offer the other 200 for lease in a way that causes neither an expansion nor cessation event to happen? Alternatively, as less than 10% of ALL the dwellings in the building meet the affordable dwelling requirements, none of the dwellings in the development can be considered to be part of an active BTR development and no concessions are available for any. <u>Interpretation 2 – All of the dwellings need to satisfy the s 43-152(3) requirements</u> Paragraph 1.26 of the draft EM states that the single owner requirement is to ensure the owner has control over the development and maintaining its eligibility for the 15-year period.		

Item	ITAA / TAA Provision	Issue	Categorisation	Priority
		However, just because the developer initially sells some part of the development or holds some dwellings in a different entity or does not offer some of the dwellings on 3-year lease terms does not mean that they cannot control the part of the development that does satisfy the subsection 43-152(3) requirements for the entire 15-year compliance period. Once there is a part of the building that commences to become an active BTR development (i.e. some but not all of the dwellings), then it is up to the owner to ensure compliance with the requirements for those dwellings in the active BTR development is maintained over 15-years (or else trigger the BTR Misuse Tax for all those dwellings), with no need to satisfy the requirements for the dwellings that never became part of the active BTR development. This is similar to the situation where there is an expansion of a development as there will be some dwellings for which the compliance period ends earlier than others whereby some dwellings no longer need to be held by the same entity or meet the relevant lease requirements. Further, if the view is that all dwellings in a building need to satisfy the requirements, then when taking a literal view of the of the adjacent land rule in subsection 43-152(8), the mere existence of a neighbouring building (in which there are any dwellings) would cause the development to be non-complying because not all of the dwellings in the building (and the other buildings on adjacent land) are owned by the same entity, meet the lease requirements, etc.		
5	43-152(1)-(2)	<u>Issues if there is an owners' corporation</u> If, as discussed above, there could be some dwellings sold-off or some dwellings not part of the active BTR development (which may be held by a separate entity), an owners' corporation may need to be established. Further, there may be different compliance periods for different dwellings if the development expands. The rules seem to permit the earlier dwellings to be sold with the development continuing on as an active BTR development in respect of the additional dwellings that were added in an expansion. However, if some dwellings are sold this would likely mean there is a need for there to be an owners' corporation in respect of common property.	Technical and policy	High

Item	ITAA / TAA Provision	Issue	Categorisation	Priority
		If the new owners own the common areas as tenants-in-common this would cause a failure of the single entity ownership requirements in respect of common property unless specific legislative provision is paid to deal with this scenario to allow for entities to be able to divest some of the dwellings following the end of the 15-year compliance period for those dwellings without triggering the BTR Misuse Tax for the dwellings added to the expanded development.		
5	43-152(3)(a)	The 3-year lease requirement may effectively extend the compliance period to 18 years where a dwelling is vacated close to the end of the 15-year compliance period. For example, a tenant may vacate 14 years and 11 months into the compliance period. The owner will be required to make that dwelling immediately available for a 3-year lease period or risk triggering BTR Misuse Tax that claws back 15 years of concessions. If the property was vacated a month later then this requirement would not exist. Where a property is vacated close to the end of the compliance period, the owner should be permitted to offer it for lease for a shorter period than 3 years. For example, this could be a minimum of 1 year if vacated within 12 months before the end of the compliance period or a minimum of 2 years if vacated within 24 months before the end of the compliance period.	Policy	Medium
5	43-152(3)(b)(ii)	We suggest it would be simpler to phrase this requirement as being that the dwelling be situated in Australia to ensure it only applies to domestic developments. This test does not raise any difficult questions of law (e.g. whether a dwelling itself taxable Australian real property is as it may be considered that the interest in land is the real property rather than the dwelling itself which is merely a physical structure or unit of accommodation as defined in s 118-115).	Technical	Low
5	43-125(3)(c)	<u>Clarify what is meant by ownership</u>	Technical	Medium

Item	ITAA / TAA Provision	Issue	Categorisation	Priority
		For tax purposes, a partnership could be the entity deriving the rental income from the development. However, at general law, the partners should be considered to be co-owners of the property. The modifications in section 106-5 may only apply for CGT purposes. For section 43-152 purposes, it is not clear whether a partnership can satisfy the single entity ownership requirements. Similarly, a trustee (whether a custodian/bare trustee or otherwise) could hold interests in the property in different capacities, as trustees of different trusts. At general law, there would however only be a single legal owner. We note the provision does not refer to beneficial ownership. We suggest further clarity is provided (e.g. this could be a note in the legislation) which explains that the provision can be satisfied by a partnership but should not be able to be satisfied if a trustee owns all of the dwellings with some owned in a different capacity than others.		
6	43-237	<u>The mechanism in section 43-237 is missing a CGT interaction resulting in double tax</u> For example, assume that on 1 July 2025 an entity's BTR development commences to be active it starts to claim $100m of capital works deductions at 4%. Cessation occurs ten years later on 1 July 2035 when a dwelling is leased advertised on 1-year rental terms and BTR Misuse tax is triggered. The entity claimed $40m of deductions (i.e. $4m each year for 10 years). The BTR Misuse Tax effectively claws back the tax on $15m of those deductions (at the applicable tax rate). Section 43-237 then requires the entity to assume it had always used the capital works at the 2.5% rate. That is, its undeducted construction expenditure is effectively reset to $75m, which it will claim at 2.5% (i.e. $2.5m a year over the next 30 years.	Technical	High

Item	ITAA / TAA Provision	Issue	Categorisation	Priority
		This effectively spreads the capital works over 40 years by allowing $40m over the first 10 years, clawing back the tax equivalent of $15m of deductions (ignoring the 8% factor) at the cessation time and allowing the remaining $75m deducted over the next 30 years. However, there is no obvious CGT interaction that restores the cost base back up by $15m at the cessation time. If the entity sold development after 10 years for $150m, the cost base of the property (assume no land component for simplicity… that is, the entire cost base is capital works) would have been reduced to $60m under s 110-45(2) due to $40m of capital works deductions claim under Division 43. The capital gain would be $90m while the economic gain was $50m. While the difference is explained by the $40m of capital works deductions, $15m of these were effectively clawed back. The capital gain should instead be $75m reflecting the $50m economic gain plus the $25m of net capital works deductions claimed (i.e. $40m actually claimed less $15m paid back in BTR Misuse Tax, ignoring the 8% uplift). Despite s 26-99C, the BTR Misuse Tax might be considered to be part of the cost of ownership and included in the third element of cost base. Even if this is so, it would not give the correct outcome as the amount of the Tax is tax effected. That is, it would be $100m x 45% (for a non-corporate) x 1.5% x 10 years = $6.75m (before the 1.08x uplift or $7.29m including the uplift). Even if this full amount of Misuse Tax (of $7.29m) were eligible to be included in the cost base, this is still far short of the necessary $15m correction that is required (and that s 43-237 provides for Div 43 purposes). Currently, this would result in the entity incurring cost base reductions of $115m in respect of $100m of capital works and effectively taxing that $15m twice (once through the Misuse Tax and again through the increased capital gain). The extra $15m could result in cost base reductions to any land component (i.e. it would not simply result in the cost base being depleted to nil). The correct outcome should involve:		

Item	ITAA / TAA Provision	Issue	Categorisation	Priority
		• Ensuring the BTR Misuse Tax cannot be included in cost base (e.g. by including a new subsection in s 110-38); and • Including section 43-237 equivalent for CGT cost base purposes rules to ensure the cost base is restored by the same amount the that undeducted construction expenditure is restored following a cessation event. This could be done by deeming the entity to never have deducted or been able to deduct 1.5% of the capital works in the period between the development commencement and cessation of the BTR Development to which those capital works relate.		
7	44-20(2)(b)	The formula to claw back withholding amounts is 'hardcoded' as being 10 times the BTR withholding amounts under s 44-30. When combined with the 1.5% tax rate, this effectively results in a tax equal to 15% of the fund payments that satisfy s 44-30 (before the 8% uplift). The hardcoding of "10 times" to achieve this may not accommodate for changes to the MIT withholding rates. For example, if the non-concessional rate is reduced to 25% in a future year, then the BTR Misuse Tax will be excessive as 15% would be clawed back, rather than 10%. Instead it should be 6.667 times the amount in s 44-30 that should be subject to the tax (i.e. 6.667 x 1.5% = 10%). There may be different withholding tax rates for different income years. Rather than "10 times" consider a mechanism that looks at the difference between the concessional and non-concessional rate for the year of the fund payment and divide this by 1.5.	Technical	Low
7	44-30	<u>BTR Misuse Tax does not cater for fund payments made to non-EOI countries</u>	Technical	High

Item	ITAA / TAA Provision	Issue	Categorisation	Priority
		The fund payments referred to in the formula include any to which s 12-385(1) or 12A-215(1) apply. Under s 12-385(1), a withholding MIT is required to withhold in relation to all fund payments to non-residents. Subsection (3) determines the rate of withholding. For recipients that are not in information exchange countries the rate is 30% regardless of whether the fund payments are NCMI or not. A 30% rate will therefore apply for residents of non-EOI countries even if the fund payments are attributable to rental income from an active BTR development. The amount of withholding for s 12A-215 deemed payments is identical to the amount in s 12-385 (refer to s 12A-215(2)(a)). The calculation in 44-30 does not distinguish between fund payments subject to 30% (non-EOI) countries and those subject to 15% tax (EOI countries). To the extent 30% withholding has been applied, this results in double tax (i.e. effectively 45%, or 46.2% when factoring the 8% uplift for the additional 15% arising under the BTR Misuse tax). The formula in section 44-30 should exclude fund payments that were subject to withholding at the rate in s 12-385(3)(b) (i.e. 30%).		
7	Division 44	<u>Exposure to BTR Misuse Tax should allow for optionality with respect to concessions</u> Some taxpayers may complete a build-to-rent project that qualifies as an active BTR development, but the taxpayer does not intend to maintain the requirements for 15+ years or does not wish to expose themselves of the adverse consequences from a failure to do so. Similarly, a developer may also add new dwellings to an existing active development but prefers not to treat those additional dwellings as part of the active development, they should be able to choose not to.	Policy	Low

Item	ITAA / TAA Provision	Issue	Categorisation	Priority
		Taxpayers should not be forced to be exposed to BTR Misuse Tax if they do not wish to avail themselves of the BTR concessions. Instead, there should be an option to choose for the development to never be taken to become an active BTR development and an option to not treat additional dwellings to be considered an expansion of an existing active BTR development so that no BTR Misuse Tax can ever apply in respect of those dwellings.		
10	12-450(5) in Sch 1	<u>Extension to fund payments attributable to CGT</u> The concessional MIT withholding rate should be extended to the capital gain made from the dwelling after the end of the compliance period. The concession only applies to the net rental income as currently drafted. It would seem that a clause similar to 12-450(4) of Sch 1 to TAA 1953, in respect of affordable housing, could be included to carve out the concessional rate for any capital gains on a BTR development that has been held for less than a certain number of years. As a minimum, a concessional rate should apply for capital gains if the dwelling satisfies all the active BTR requirements immediately before disposal (i.e. the owner continued to lease the property in the required way beyond 15 years).	Policy	High
10	12-450(5) in Sch 1	<u>Extension of concessional MIT rate beyond 15 years</u> Further, while the 15-year period is described as a “minimum” holding period, as the MIT withholding concession ends after 15 years for each dwelling, it also acts as a “maximum” period for obtaining concessional MIT withholding rates. The concessions should be extended beyond 15 years (as per the Div 43 concessions) and continue to apply while dwellings continue to satisfy the relevant requirements (e.g. 3-year lease terms, affordable quotas met, etc).	Policy	High

Item	ITAA / TAA Provision	Issue	Categorisation	Priority
		Para 12-450(5)(b) should be removed so that the exclusion from MIT residential housing income can continue to apply beyond the 15 years, so long as the income is attributable to rental income from a dwelling that is part of an active BTR development.		
10	12-450(5) in Sch 1	<u>Extension to any other income attributable to the common areas</u> The owner’s income from the development may include licence fees from tenants in respect of the use of common areas. This would not appear to satisfy the requirement that it be attributable to rental income under a lease of a dwelling. Even if all payments under a tenancy agreement are expressed as being “rent”, it may be arguable that some of the income is in fact attributable to use of the common areas and not the dwelling and therefore not eligible for the concessional MIT withholding rate. Income relating to common areas should be covered under this rule or clarified in the legislation or EM at the very least.	Policy	High