22 April 2024

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Director
Corporate Tax Policy Unit
Corporate and International Tax Division
Treasury
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Dear Director,

Subject: Build-to-rent tax concessions

Greystar welcomes the opportunity to comment on the *Treasury Laws Amendment Bill 2024: Build to rent developments* ("BTR Bill"), and the *Capital Works (Build to Rent Misuse Tax) Bill 2024,* together with Explanatory Materials (EM) and a Policy Fact Sheet which proposes to implement new build-to-rent (BTR) tax concessions for eligible BTR developments.

Greystar is a leading, fully integrated real estate company offering expertise in investment management, development, and management of rental housing properties globally. Headquartered in Charleston, South Carolina, Greystar manages and operates over US$300 billion of real estate in 249 markets globally with offices throughout the United States, United Kingdom, Europe, South America, and the Asia-Pacific region. Greystar is the largest BTR operator of apartments in the United States, managing more than 893,600 units/beds, and has a robust institutional investment management platform with approximately US$78 billion of assets under management, including over US$35 billion of assets under development.

Greystar has and continues to be at the forefront of the BTR sector in Australia. Greystar opened its Sydney office in 2017 with a view to bringing its international BTR experience to Australia. Since establishing a presence in Australia, Greystar has faced significant challenges in replicating its international success in Australia.

The challenges faced in Australia include material increases in land costs, construction costs and interest rates as well as increasingly protracted planning timeframes. Attracting institutional capital to fund developments is also critical. However, there has been a reluctance on the part of large institutional investors, in particular Australian super funds, to invest in BTR until there is a larger, more established BTR market. It is also difficult to attract international capital when most real estate classes are taxed at 15% (or 10% if green buildings). In light of all these challenges, Greystar welcomes any measure which will encourage capital investment in this asset class.

Greystar established the Greystar Australia Multi-Family Venture I Fund (GAMV) in 2019, to construct and hold ground-up BTR developments that are designed and developed as high quality, institutionally managed multifamily assets (range of size of apartments from studio to 3 bedroom). It currently has 3 projects in Melbourne in various stages of development, with a combined total cost of approximately $1.2bn which will deliver 1,764 rental apartments.

To expand its Asia Pacific platform, Greystar established the Greystar Equity Partners Asia Pacific I Fund (GEPA) in 2022. GEPA is a closed-end, discretionary fund focused on opportunities in the rental housing sector. GEPA is focused on BTR, student housing, and other residential related investment opportunities, primarily across Australia and Japan. Greystar's partners in GEPA consist of well-established institutional investors, including Middle East and Asia-based sovereign wealth funds and U.S. public pensions funds. GEPA has around $1.1bn USD of capital available to deploy. It currently has 1 BTR project in Sydney in early development, with a total cost of approximately $225m which will deliver 186 rental apartments. In all cases, Greystar will provide ongoing investment management and property management functions.

Greystar welcomes the proposed BTR concessions but more is required, including GST concessions and how to better incentivise affordable housing through federal partnership with local planning authorities. We have not addressed these matters in this submission but rather have focused on the subject of the measures being the MIT withholding tax rate. In that context we have set out detailed comments on the BTR Bill below.

1. Commencement of construction

Greystar is concerned that the start date in relation to the BTR development is unclear.

Item 16 of the BTR Bill indicates:

> *The amendments made by this Schedule apply to capital works begun.*
> *after 7:30 pm, by legal time in the Australian Capital Territory, on 9 May 2023.*

At 1.16 of the EM, it states “its construction must have commenced after 7:30pm (AEST) on 9 May 2023”. The BTR Bill does not define ‘capital works’ or clarify when construction is considered to commence.

Greystar understands the Government’s policy intent is to incentivise construction of BTR, but it is disappointing that Treasury has not expanded the concessions to apply to BTR construction projects that precede the 9 May 2023 date. This “bright line” approach creates a distortion between early and later entrants to the BTR sector, creating a significant disadvantage for such early entrants, who have taken on risk to help establish the BTR sector in Australia. Adopting such an approach unfairly excludes pre-9 May 2023 assets from ever being an active BTR development. It is not clear what adopting this approach intends to achieve but to us it could penalize Greystar who have been committed to the BTR sector in Australia since 2017.

Greystar encourages Treasury to allow for the BTR concession to be available for all eligible BTR developments regardless of when they were constructed. There are a limited number of projects that started before the proposed eligibility start date so there should be no material cost to revenue. Further, those groups that kicked off the BTR sector in Australia should not be penalised for the heavy lifting in establishing this new and important sector. Significantly, the exclusion of existing BTR assets will dilute investors’ confidence to support new sectors in Australia in the future.

If Treasury wants to retain an eligibility start date, we suggest that it would make sense to align it with the policy intent articulated in the Budget 2023-24 announcement that the BTR MIT withholding tax concession would apply to “newly constructed build-to-rent developments”. This is easily achievable either by following the requirements of Victoria and NSW in relation to their BTR tax concessions, which do not look to commencement of construction but rather, the dwellings having an occupancy date (i.e. when the dwellings are first suitable for occupancy as evidenced by an occupancy certificate) on or after 7.30pm on 9 May 2023. This would be consistent with the parameters that some States and Territories have set for BTR concessions, which also creates a level of national consistency on the parameters for BTR related concessions. Alternatively, eligibility should apply to assets with a certificate of practical completion on or after 7.30pm on 9 May 2023.

In Greystar's view this is still entirely within the policy intent articulated in the Budget 2023-24 announcement that the BTR MIT withholding tax concession would apply to "newly constructed build-to-rent developments"[1]. It also avoids unnecessary complexities that arise when determining when construction has "commenced".

2. Capital gains

As currently drafted, the MIT withholding concession only applies in respect of eligible rental income derived from a qualifying BTR development. It does not apply to capital gains derived from a BTR development. This is not consistent with the treatment of other asset classes under the MIT regime where offshore investors are able to obtain the same reduced withholding tax rate for rental income and capital gains.

In Greystar's view, this is wholly inconsistent with the policy intent stated in the EM to improve incentives for investors to invest in new BTR developments. As with all investment classes, investors will invest and seek an exit at some point in time. With BTR, as with other investment classes, such investments are held in MIT structures. The MIT requirements have built in integrity measures including that land must be held primarily for the purpose of deriving rent. As such it seems punitive to treat an exit from a BTR investment vehicle differently from other asset classes

In our case, the tax concessions of 15% withholding tax on rental income and 4% on capital works, conditional on providing 10% affordable housing, causes a dilution to net post-tax IRR by 30-40bps. However, when 15% withholding tax concessions are also applied on capital gains then net post-tax IRR increases by 70-80bps. Refer to Appendix A for detailed model metrics and assumptions.

We are not aware of any other policy reason to exclude capital gains from the MIT withholding concession. Restricting the MIT withholding concession will result in these proposed changes having a negligible effect on incentivizing offshore investors to invest in BTR projects.

3. Concession limited to 15 years

The concessional rate is only available for a 15-year period from post completion with other requirements met. Capping the concession at 15 years discourages open ended funds as it penalises incoming investors. A 15-year term is inconsistent with treatment of other asset classes and also discourages acquisition of stabilised assets by limiting the value of BTR assets for secondary buyers and consolidation of the sector through mergers and acquisitions. It also actively discourages the retention of any affordable housing component once the 15-year term ends.

BTR should be treated the same way as other passive real estate asset classes and we strongly consider the concession should be made available on an ongoing basis, subject to the 15-year holding requirement.

It is difficult to understand what the policy intent is behind this capping of the concession. We would welcome the opportunity to discuss the rational for this decision in more detail.

[1] Budget 2023-24 Budget Paper No.1

4. Affordable housing component

Greystar is highly supportive of affordable housing and it is ingrained as part of our ESG commitments, as well as those of our investors. We understand the importance of providing affordable housing to meet the needs of the communities where we invest. Greystar currently owns and manages over 2,500 affordable housing units in the US and over 2,700 affordable units across Europe. As the largest manager of rental housing globally, we have delivered these affordable homes as part of broader BTR developments, whilst providing our investors with acceptable returns. However, the current BTR Bill does not offer sufficient incentive to include a component of affordable housing as the returns to investors are dilutive due to the MIT withholding concession excluding the capital gain component (as detailed in the analysis in Appendix A).

In addition, Greystar's global experience indicates that in order to develop affordable housing at scale, an efficient tax structure needs to be coupled with planning incentives by way of increased density allowances, fast tracked approvals and local/State cost waivers or deferrals in exchange for including housing. Typically, this is most effectively handled at the local/State level where the ability to provide these incentives exists. This will require a cohesive approach across the Federal, State and Local Governments and should help exceed the stated affordable housing targets.

It is our expectation that further measures will be announced by Government in relation to affordable housing given the focus on this sector. Greystar looks forward to being an active participant in consultation on those proposals. Our preference would be to address affordable housing as one package, taking into account the Federal, State and Local Government objectives, concessions and requirements, rather than including another set of affordable housing requirements in this package which in isolation do little to incentivise the provision of affordable housing.

Having said that, we would like to highlight that the income test for eligible tenants is determined by the relevant Minister and is therefore outside the control of the BTR operator. It would be a significant risk for operators to have income bands that are determined arbitrarily or without sufficient notice. It is also extremely onerous to require operators to determine initial eligibility and then to continuously monitor eligible tenants' income levels to ensure no breach occurs, another factor completely outside the operator's control.

We strongly recommend Government undertakes targeted consultation as it has done with other measures to ensure that the concerns of industry are fully understood.

5. Ceasing to be an active BTR development

In the BTR Bill there is no restriction on selling the entity holding the BTR development project or the BTR development in its entirety prior to the expiry of the 15-year compliance period. However, if the BTR development ceases to be an active BTR development at any time in the 15-year period a BTR development misuse tax will be applied to claw back the tax benefits obtained to the date of cessation both through the reduced MIT withholding rates and the accelerated capital works deduction.

We acknowledge the policy intent as provided for in the EM for the application of the BTR development misuse tax to be a key integrity feature of the BTR scheme. However, what the purchaser does with a BTR asset is not within control of the vendor. As such we anticipate that it will create undue complexity and additional legal and administrative costs to apply the claw back from the start of the eligible BTR development rather than from the start of the new owner's ownership period of the eligible BTR development, leading to the requirement for extensive tax warranties and indemnities on a sale. Fund entities will also be required to remain on foot for the full 15-year period, "just in case" there is a claim by a new owner.

This can be resolved by restricting the claw back to the respective owner's ownership period.

6. Compliance

Entities who wish to apply the BTR concessions will have various notification obligations on both the owner of the BTR development and the trustee of a MIT who makes a relevant fund payment to which the reduced MIT withholding rate is applied during the year. Together with the monitoring requirements referred to above, this will be a significant compliance burden, leading to higher costs.

Breach of a condition by an "active BTR development" means that a development that ceases to qualify can no longer requalify for the concessions. It is concerning that there is no safe harbour nor any ability to rectify temporary non-compliance. In Greystar's view, this should not lead to a permanent exit from the BTR regime. It would seem appropriate to allow rectifications of non-compliance, either by including some form of safe harbour or allowing re-entry to the regime, for instance in the following accounting/fiscal year (similar to the UK REIT regime and the overarching MIT regime itself).

7. Conclusion and next steps

Should you wish to discuss any aspects of this letter or have any further questions please do not hesitate to contact Ms Elizabeth Lester (Greystar Senior Tax Director, APAC) on 02 7254 2921 or by email at liz.lester@greystar.com.

Thank you for your consideration on this important matter. Greystar is keen to work cooperatively with Government to increase housing supply and affordability.

Yours sincerely,

Adam Pillay
Executive Director
Greystar APAC

Appendix A

Key assumptions of model:

- 10% of total units designated as affordable housing with rents discounted at 25.1% to market.
- Affordable mix based on weighting of standard units.
- Affordable rent growth capped at 3% p.a.
- Provision of affordable housing for minimum 15 years
- MIT concession is granted in perpetuity.

Scenario:

- Base case – Market rents with 30% withholding tax on income and capital gains and no affordable housing allocation.
- Scenario 1 – Withholding tax of 15% on income only, 30% withholding tax on capital gains.
- Scenario 2 – Withholding tax of 15% on income and capital gains.

Melbourne	Base	Scenario 1	Scenario 2
Total Project Cost	$480m	$480m	$480m
Total Units	700	700	700
Affordable Units	-	70	70
Affordable Units %	0%	10%	10%
WHT on Capital Gains	30%	30%	15%
WHT on Income	30%	15%	15%
Capital Works Depreciation %	2.5%	4.0%	4.0%
Net IRR Variance to Base		-0.3%	+0.8%

Sydney	Base	Scenario 1	Scenario 2
Total Project Cost	$225m	$225m	$225m
Total Units	186	186	186
Affordable Units	-	19	19
Affordable Units %	0%	10%	10%
WHT on Capital Gains	30%	30%	15%
WHT on Income	30%	15%	15%
Capital Works Depreciation %	2.5%	4.0%	4.0%
Net IRR Variance to Base		-0.4%	+0.7%