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| **EXPOSURE DRAFT** |

Inserts for

Treasury Laws Amendment Bill 2024: Build to rent developments

| Commencement information | | |
| --- | --- | --- |
| Column 1 | Column 2 | Column 3 |
| Provisions | Commencement | Date/Details |
| 1. Schedule # | At the same time as the *Capital Works (Build to Rent Misuse Tax) Act 2024* commences.  However, the provisions do not commence at all if that Act does not commence. |  |

Schedule #—Build to rent developments

Income Tax Assessment Act 1936

1 Subsection 170(10AA) (after table item 15)

Insert:

|  |  |  |
| --- | --- | --- |
| 17 | The cell, of the table in section 43‑145, dealing with \*active build to rent development areas  Section 43‑237 | Deductions for capital works relating to build to rent developments |
| 19 | Division 44 | Build to rent development misuse tax |

Income Tax Assessment Act 1997

2 Section 12‑5 (table item headed “buildings”)

Before:

|  |  |
| --- | --- |
| income producing buildings, capital allowances | Division 43 |

insert:

|  |  |
| --- | --- |
| build to rent development misuse tax, no deduction for | 26‑99C |

3 After section 26‑99B

Insert:

26‑99C Build to rent development misuse tax cannot be deducted

You cannot deduct under this Act an amount of \*build to rent development misuse tax that you pay.

4 Section 43‑145 (table item dealing with Time period 1: After 30/6/97)

After:

|  |  |  |
| --- | --- | --- |
|  |  | You use the part of \*your area for the \*purpose of producing assessable income, and that part is used by any entity:  (a) wholly or mainly for \*industrial activities; or  (b) to provide meal rooms, rest rooms, first aid rooms, change rooms or similar facilities that are wholly or mainly for use by:  (i) workers employed wholly or mainly to undertake the work directly involved in carrying out industrial activities; or  (ii) the immediate supervisors of those workers; or  (c) wholly or mainly as office accommodation for the immediate supervisors of those workers. |

insert:

|  |  |  |
| --- | --- | --- |
|  |  | You use the part of \*your area for the \*purpose of producing assessable income and:  (a) that part is, or is part of, an \*active build to rent development area (the ***eligible development***); and  (b) if the \*build to rent compliance period for each of the \*dwellings in the eligible development has ended—you are the only entity that has used the eligible development, or any part of the eligible development, for the purpose of producing assessable income while it has been an active build to rent development.  This is use in the ***4% build to rent manner***. |

5 At the end of Subdivision 43‑D

Add:

43‑151 Meaning of active build to rent development area

(1) An ***active build to rent development area*** is a part of a building comprising any of the following:

(a) the \*dwellings of an \*active build to rent development;

(b) any \*common areas for those dwellings.

(2) An ***active build to rent development*** is a \*build to rent development that has:

(a) \*commenced to be an active build to rent development (see subsections 43‑152(1) and (2)); and

(b) not \*ceased to be an active build to rent development (see subsection 43‑152(6)).

(3) A ***common area*** for \*dwellings of a \*build to rent development is an area, facility or amenity:

(a) intended for use for the purposes of those dwellings; or

(b) intended for use for the purposes of those dwellings and any other dwellings in the same building.

43‑152 Build to rent developments

Commencement

(1) On and after the first day a building has 50 or more \*dwellings that satisfy subsection (3), those dwellings are a ***build to rent development***, of the building, that ***commences*** to be an \*active build to rent development on that day.

(2) Also, on and after the first day (if any):

(a) after the most recent instance of a \*build to rent development of a building \*commencing to be an \*active build to rent development; and

(b) on which the building has 50 or more \*dwellings that:

(i) satisfy subsection (3); and

(ii) were not part of a build to rent development immediately before that day;

those dwellings are a ***build to rent development***, of the building, that ***commences*** to be an active build to rent development on that day unless an active build to rent development \*expands under subsection (5) on that day to include the dwellings.

(3) For the purposes of subsections (1) and (2), \*dwellings of a building satisfy this subsection at a particular time if at that time:

(a) each of the dwellings is:

(i) available to the public to be tenanted by way of lease for a period of 3 years or more; or

(ii) being tenanted by way of lease as a result of being made available to the public to be tenanted by way of lease for a period of 3 years or more; or

(iii) temporarily unable to satisfy subparagraphs (i) and (ii) because of construction of an extension, alteration or improvement to the dwelling or building, or the making of repairs to the dwelling or building; and

(b) all of the dwellings are:

(i) \*residential premises; and

(ii) \*taxable Australian real property; and

(iii) not \*commercial residential premises; and

(c) all of the dwellings and \*common areas for the dwellings are owned by a single entity; and

(d) for 10% or more of the dwellings (the ***affordable dwellings***):

(i) rent payable under any lease offered to the public for the dwelling is 74.9% or less of the market rate; and

(ii) any requirements determined under subsection (4) are met; and

(e) each of the dwellings that is not an affordable dwelling is the same size and has the same amenities as at least one of the affordable dwellings.

Note: For the purposes of paragraph (a), a lease is still offered to the public for a period of 3 years or more even if a prospective tenant subsequently requests and the lessor accepts a shorter lease.

(4) The Minister may, by legislative instrument, determine requirements relating to the income of the tenant or prospective tenant for the purposes of subparagraph (3)(d)(ii).

Expansion

(5) If a building has a \*build to rent development (the ***existing development***) that has \*commenced to be an \*active build to rent development, on the first day (if any) the building has \*dwellings (the ***new dwellings***) that:

(a) taken together with the dwellings of the existing development for which the \*build to rent compliance period has not ended, satisfy subsection (3); and

(b) are not already a part of a build to rent development;

the existing development ***expands*** to comprise:

(c) the dwellings of the existing development; and

(d) the new dwellings.

Cessation

(6) A \*build to rent development ***ceases*** to be an \*active build to rent development at the first time (if any) any \*dwellings of the active build to rent development for which the \*build to rent compliance period has not ended do not satisfy paragraphs (3)(a) to (e).

Build to rent compliance period

(7) The ***build to rent compliance period*** for a \*dwelling of an \*active build to rent development is the 15 years beginning on the day after the day on which:

(a) unless paragraph (b) applies—the development \*commences to be an active build to rent development; or

(b) if:

(i) the dwelling is not part of the development when it commences to be an active build to rent development; but

(ii) the development \*expands to include the dwelling;

the development expands to include the dwelling.

References to buildings

(8) For the purpose of this section and sections 43‑151 and 43‑153, references to a building include a reference to other buildings that are on the same or adjacent land.

43‑153 Notice of events during the build to rent compliance period

(1) If any of the following events happen in relation to a \*build to rent development, each entity to which subsection (3) applies must notify the Commissioner of the event:

(a) the development \*commences to be an \*active build to rent development;

(b) the development \*expands;

(c) the \*ownership interest in the development is acquired by another entity;

(d) the development \*ceases to be an active build to rent development.

(2) The notice must be:

(a) in the \*approved form; and

(b) given no later than 28 days after the event.

(3) This subsection applies to the following entities:

(a) the owner of the development at the time just before the event happens;

(b) if in the income year in which the event happens, an entity is required to notify the Commissioner under subsection 16‑150(4) in Schedule 1 to the *Taxation Administration Act 1953* of an amount relating to the development to which subsection 12‑450(5) in that Schedule applies—the entity.

6 After section 43‑235

Insert:

43‑237 Post‑26 February 1992 undeducted construction expenditure—modification for active build to rent developments that have ceased

(1) This section applies if:

(a) a part of \*your area was an \*active build to rent development area; and

(b) on a day (the ***cessation day***) in the income year or a prior income year, the \*active build to rent development of the active build to rent development area \*ceases to be an active build to rent development.

(2) Section 43‑235 applies to the part as if for each day in the use period:

(a) before the cessation day; and

(b) that the part was an \*active build to rent development;

you did not use the part in the \*4% manner.

7 After Division 43

Insert:

Division 44—Build to rent development misuse tax

Table of Subdivisions

Guide to Division 44

44‑A Object of this Division

44‑B Build to rent development misuse tax

44‑C When tax is payable

Guide to Division 44

44‑1 What this Division is about

This Division removes certain tax concessions for build to rent developments when they cease to be active build to rent developments.

Subdivision 44‑A—Object of this Division

Table of sections

Operative provisions

44‑5 Object of this Division

Operative provisions

44‑5 Object of this Division

The object of this Division is to remove certain tax concessions for \*build to rent developments when they \*cease to be \*active build to rent developments.

Subdivision 44‑B—Build to rent development misuse tax

Guide to Subdivision 44‑B

44‑10 What this Subdivision is about

You are liable to pay a tax if a build to rent development ceases to be an active build to rent development. The tax is on an amount (called a build to rent misuse amount) related to your past capital works deductions and withholding amounts for the active build to rent development.

Table of sections

Liability for tax

44‑15 Liability for tax

Build to rent misuse amounts

44‑20 Build to rent misuse amounts

44‑25 Your build to rent capital works deduction amount

44‑30 Your build to rent withholding amount

Liability for tax

44‑15 Liability for tax

You are liable to pay \*build to rent development misuse tax for an income year if you have a \*build to rent misuse amount for the income year.

Note: The amount of tax is set out in the *Capital Works (Build to Rent Misuse Tax) Act 2024*.

Build to rent misuse amounts

44‑20 Build to rent misuse amounts

(1) You have a ***build to rent misuse amount*** for an income year, equal to the amount worked under subsection (2), if the amount worked out under that subsection is greater than nil.

(2) For the purposes of subsection (1), the amount is the sum of:

(a) the amount that is the sum of your \*build to rent capital works deduction amounts,worked out under section 44‑25, for each build to rent development that \*ceases to be an active build to rent development during the income year; and

(b) the amount that is 10 times the sum of your \*build to rent withholding amounts, worked out under section 44‑30, for each build to rent development that ceases to be an active build to rent development during the income year.

44‑25 Your build to rent capital works deduction amount

Your ***build to rent capital works deduction amount***, for a \*build to rent development that \*ceases to be an \*active build to rent development, is the amount worked out as follows:

Method statement

Step 1. Identify each income year in which, at any time during the year, the \*build to rent development was an \*active build to rent development.

Step 2. For each of those years:

(a) identify each \*construction expenditure area of capital works that are or include the \*active build to rent development area of the \*build to rent development at any time during the year; and

(b) calculate the amount worked out by the following formula for each construction expenditure area:



where:

***active build to rent part***, of \*your area of the \*construction expenditure area, is the part of your area that was the \*active build to rent development area, or part of the active build to rent development area at any time during the year.

***days used*** is the number of days in the income year that:

(a) you owned or were the lessee of the \*active build to rent part and used it in the \*4% build to rent manner; or

(b) you were the holder of the active build to rent part under a \*quasi ownership right over land granted by an \*exempt Australian government agency or an \*exempt foreign government agency, and used it in the 4% build to rent manner.

***portion of your construction expenditure*** is the portion of \*your construction expenditure that is attributable to the \*active build to rent part that you used in the \*4% build to rent manner.

Step 3. Reduce the Step 2 amount for each \*construction expenditure area, for each year, by the extent to which the \*active build to rent part was used only partly for the \*purpose of producing assessable income in the year.

Note: This Step applies if:

(a) part of your income from the active build to rent part is exempt income; or

(b) part of the active build to rent part was not used for the purpose of producing assessable income or was not available for that use; or

(c) the active build to rent part was not used for such a purpose during a part of the days used period.

Step 4. For each year, add up the amounts worked out under Step 3 for each \*construction expenditure area.

Step 5. Add up the Step 4 amounts for each year.

Step 6. Multiply the Step 5 amount by:

(a) in the case of a company (other than a company in the capacity of a trustee)—the \*corporate tax rate for the income year in which the \*build to rent development \*ceases to be an \*active build to rent development (the ***cessation year***); or

(b) in any other case—the maximum rate specified in the table in Part I of Schedule 7 to the *Income Tax Rates Act 1986* for the cessation year.

Step 7. Your ***build to rent capital works deduction amount*** is the Step 6 amount multiplied by 1.08.

Note: You can have more than one build to rent capital works deduction amount because there can be than more than one build to rent development for which you have construction expenditure.

44‑30 Your build to rent withholding amount

Your ***build to rent withholding amount***, for a \*build to rent development that \*ceases to be an \*active build to rent development, is the amount worked out as follows:

Method statement

Step 1. Identify each income year in which, at any time during the year, the \*build to rent development was an \*active build to rent development.

Step 2. For each of those years, add up the sum of any \*fund payments you make:

(a) to which subsection 12‑385(1) or 12A‑215(1) in Schedule 1 to the *Taxation Administration Act 1953* applies; and

(b) to the extent that the payments are attributable to a payment of rental income under a lease of a \*dwelling that is part of the active build to rent development.

Step 3. Add up the amounts worked out under Step 2 for each year.

Step 4. Your ***build to rent withholding amount*** is the Step 3 amount multiplied by 1.08.

Subdivision 44‑C—When tax is payable

Guide to Subdivision 44‑C

44‑35 What this Subdivision is about

This Subdivision has rules about payment of build to rent development misuse tax.

Table of sections

44‑40 When tax is payable—original assessments

44‑45 When tax is payable—amended assessments

44‑50 General interest charge

44‑40 When tax is payable—original assessments

Your \*assessed build to rent development misuse tax is due and payable at the end of 21 days after the Commissioner gives you notice of the assessment of the amount of the \*build to rent development misuse tax.

Note: For assessments of build to rent development misuse tax, see Division 155 in Schedule 1 to the *Taxation Administration Act 1953*.

44‑45 When tax is payable—amended assessments

If the Commissioner amends your assessment, any extra \*assessed build to rent development misuse tax resulting from the amendment is due and payable 21 days after the day the Commissioner gives you notice of the amended assessment.

44‑50 General interest charge

If an amount of \*assessed build to rent development misuse tax that you are liable to pay remains unpaid after the time by which it is due to be paid, you are liable to pay the \*general interest charge on the unpaid amount for each day in the period that:

(a) begins on the day on which the amount was due to be paid; and

(b) ends on the last day on which, at the end of the day, any of the following remains unpaid:

(i) the assessed build to rent development misuse tax;

(ii) general interest charge on any of the assessed build to rent development misuse tax.

Note: The general interest charge is worked out under Part IIA of the *Taxation Administration Act 1953*.

8 Subsection 995‑1(1)

Insert:

***4% build to rent manner*** has the meaning given by section 43‑145.

***active build to rent development*** has the meaning given by subsection 43‑151(2).

***active build to rent development area*** has the meaning given by subsection 43‑151(1).

***active build to rent part*** has the meaning given by section 44‑25.

***assessed build to rent development misuse tax*** means \*build to rent development misuse tax, as assessed under Schedule 1 to the *Taxation Administration Act 1953*.

***build to rent capital works deduction amount*** has the meaning given by section 44‑25.

***build to rent compliance period*** has the meaning given by subsection 43‑152(7).

***build to rent development*** has the meaning given by subsections 43‑152(1), (2) and (5).

***build to rent development misuse tax*** means tax imposed by the *Capital Works (Build to Rent Misuse Tax) Act 2024*.

***build to rent misuse amount*** has the meaning given by section 44‑20.

***build to rent withholding amount*** has the meaning given by section 44‑30.

***cease*** to be an \*active build to rent development has the meaning given by subsection 43‑152(6).

***commence*** to be an \*active build to rent development has the meaning given by subsections 43‑152(1) and (2).

***common area***, for \*dwellings of an \*active build to rent development, has the meaning given by subsection 43‑151(3).

***expand***, in relation to an \*active build to rent development, has the meaning given by subsection 43‑152(5).

Taxation Administration Act 1953

9 Subsection 8AAB(4) (after table item 12)

Insert:

|  |  |  |  |
| --- | --- | --- | --- |
| 12A | 44‑50 | *Income Tax Assessment Act 1997* | payment of assessed build to rent development misuse tax |

10 At the end of section 12‑450 in Schedule 1

Add:

Rental income from a build to rent development

(5) The amount is *not* ***MIT residential housing income*** of the \*managed investment trust under subsection (2) to the extent it is attributable to a payment of rental income under a lease of a \*dwelling:

(a) that is part of an \*active build to rent development; and

(b) for which the \*build to rent compliance period has not ended.

11 Subsection 16‑150(1) in Schedule 1

After “Commissioner” (first occurring), insert “, other than an amount to which subsection (4) applies,”.

12 At the end of section 16‑150 in Schedule 1

Add:

(4) If:

(a) an entity must pay an amount (even if it is a nil amount) to the Commissioner under subsection 16‑70(1) (about amounts withheld under Division 12); and

(b) subsection 12‑450(5) (about rental income from a build to rent development) applies to the amount;

the entity must notify the Commissioner of the amount:

(c) on or before the day provided in a determination under subsection (5) of this section; or

(d) if there is no such determination—on or before the day on which the amount is due to be paid (regardless of whether it is paid).

The notification must be in the \*approved form and lodged with the Commissioner.

(5) The Commissioner may, by legislative instrument, determine when the Commissioner must be notified for the purposes of paragraph (4)(c).

13 At the end of subsection 155‑5(2) in Schedule 1

Add:

; (o) an amount of \*build to rent development misuse tax.

14 At the end of subsection 155‑30(3) in Schedule 1

Add:

; (e) the \*build to rent development misuse tax payable by you for an income year.

15 Subsection 250‑10(2) in Schedule 1 (after table item 37AC)

Insert:

|  |  |  |  |
| --- | --- | --- | --- |
| 37AD | build to rent development misuse tax | 44‑40 and 44‑45 | *Income Tax Assessment Act 1997* |

16 Application of amendments

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.