

Corporate and International Tax Division
The Treasury
Langton Crescent
PARKES ACT 2600

TREASURY LAWS AMENDMENT (MAKING SURE FOREIGN INVESTORS PAY THEIR FAIR SHARE OF TAX AND OTHER MEASURES) BILL 2018

The Community Housing Industry Association (CHIA) endorses the objectives of the Treasury Laws Amendment (Making Sure Foreign Investors Pay Their Fair Share of Tax and Other Measures) Bill 2018, viz, supporting the integrity of the Australian tax system by limiting access to tax concessions for foreign investors, and providing incentives for investors to increase the supply of affordable housing.

The primary benefit of the housing-related measures in this Bill will be to facilitate institutional investment in long-term residential rental housing. It will also offer individual investors a way to invest in residential property via MITs rather than by becoming landlords. If successful, this could see a change for the better in the way Australia's rental housing is financed and delivered. The challenge will remain of ensuring that any additional housing supply is affordable for people on low to moderate incomes. The additional Capital Gains Tax concessions in this Bill will help offset the gap between affordable rents received by investors and the cost of providing discounted rents. However, as the examples in the Explanatory Memorandum illustrate, the impact will be modest. Further subsidies will be required to resolve the financing gap between rental income and expenses if we are to make a serious impact on housing affordability for households on low and moderate incomes.

CHIA welcomes the Government's decision to enable Managed Investment Trusts to invest in residential property held primarily for rent, including dwelling units offered at market rents. We believe this will assist the nascent build-to-rent market in Australia to develop, thus providing a valuable addition to overall rental housing supply and expanding the range of housing options for renting households, even where the MIT does not deliver affordable rental housing.

While the measures in this Bill may make it easier for developers to include affordable rental housing within larger build-to-rent developments, CHIA considers that the additional Capital Gains Tax discount should be confined to MIT income derived from the affordable housing component of a development and not extended to properties offered at market

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rents. We note that the build-to-rent market will be focussed primarily on the higher end of the rental market where payments from tenants for rent and ancillary services will generate higher profit margins than those available to suppliers of affordable rental housing. Recent media reports that developers are targeting a 4.5 per cent return from build-to-rent products stand in sharp contrast to the modest returns achieved by providers of affordable rental housing (which is typically offered at a 20 – 25 per cent discount to market rent). On this basis, we argue that it is appropriate to direct this tax expenditure to increasing the supply of affordable rental housing, rather than overall housing supply.

CHIA supports the requirement that affordable housing be provided by a MIT for at least a 10-year period in order to attract the additional Capital Gains Tax discount. The 10-year period is consistent with the expectation that trust income will be derived primarily from passive income strategies and help position affordable rental housing as an asset class that offers stable, long-term returns.

Finally, we note that the effective operation of this measure requires the State and Territory governments to determine what is ‘affordable housing’, define eligible tenants and specify rent settings. As we noted in our 2017 submission¹ the definitions adopted differ across jurisdictions – and sometimes different approaches are used in different programs within a jurisdiction (see for example in New South Wales: ‘Eligibility, including income limits, can vary depending on the way a property was funded or developed, and who manages it.’).²

In the absence of a common set of legislated requirements, we suggest that jurisdictions be asked to agree common policy settings on key matters, to reduce complexity for potential tenants, investors and community housing organisations. A common approach would facilitate data-matching with the Australian Taxation Office, Centrelink and state governments, thus minimising the compliance burden on both community housing organisations and the ATO. The most obvious area of divergent policy and practice is how income is defined and income limits set, however there are other eligibility questions which should be resolved at the outset. For example, guidance is sought on whether residence or citizenship restrictions will be placed on prospective tenants, which would exclude refugees or overseas students.

¹ That submission related to *Treasury Laws Amendment (Reducing Pressure on Housing Affordability No. 2) Bill 2017* and the *Income Tax (Managed Investment Trust Withholding) Amendment Bill 2017*.

² <http://www.housing.nsw.gov.au/centre-for-affordable-housing/about-affordable-housing/who-are-very-lowto-moderate-income-earners>



Without a common approach to tenant eligibility, income assessment and limits, and the extent of rental discounts required, community housing organisations operating across multiple jurisdictions will face increased administrative complexity and operating costs. These cross-border organisations will need to develop differentiated staff training products, IT systems, tenant advice material and so on. While this affects a small number of larger providers at present, it represents an unnecessary cost which could be avoided by standard provisions set out in Commonwealth legislation or policy.

We ask that the negotiations with the State and territory governments on eligibility be expedited. Until this detail is settled, the concessional tax measures to boost affordable housing supply which are described in the Bill cannot be implemented.

Please do not hesitate to contact me by email to [REDACTED] if you require more information.

Yours sincerely

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8 August 2018