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Expansion of Australia's tax treaty network

The Property Council welcomes the opportunity to provide comments to Treasury's consultation on expanding Australia's tax treaty network. This submission is in response to the consultation launched by Treasury on 13 March 2024, inviting submissions supporting the expansion of Australia's tax treaty network with Brazil, New Zealand, South Korea, Sweden and Ukraine.

The Property Council of Australia is proud to represent Australia's largest industry, representing nearly 13 per cent of national GDP ($234.7bn), and contributing over 18 per cent of total tax revenue ($106.1bn) across all levels of government. We champion the industry that employs over 1.4 million Australians, more than any other industry, and shapes the future of our communities and cities. Property Council members invest in, design, build and manage places that matter to Australians: our homes, retirement villages, shopping centres, office buildings, industrial areas, education, research and health precincts, tourism and hospitality venues and more.

Capital investment has played and will continue to play a central role in the innovation, growth and expansion Australia's property landscape and represents a multi-billion-dollar contribution to the Australian economy each year. Our members are the standard-bearers of professional investment and rely on private equity and debt, venture capital, alongside institutional investors such as superannuation funds, sovereign wealth funds and family offices as well as leading financial, legal and operational advisers. Our members include both Australian domestic and offshore-financed firms who in turn invest capital on behalf of millions of Australian families and attract capital from overseas investors.

This submission focuses on the following aspects of Australia's tax treaty network:

- Australia's (future) tax treaty negotiation program, and
- Australia's tax treaty policy/practice.

Australia's Future Tax Treaties Program

Australia currently has various tax agreements in place with 47 economies around the world. In 2022, foreign economies had A$4.5 trillion invested in Australia, the top five comprising of;

1. United States of America $1,092.2B
2. United Kingdom $1,007.0B
3. Belgium $359.0B
4. Japan $257.4B
5. Singapore $148.6B

All five economies have some level of tax treaties in place, Treasury should ensure these treaties are regularly reviewed as to accommodate for the latest in tax regimes. Of the five economies mentioned as targets for Australia's tax treaty expansion, New Zealand and South Korea are the only two economies that are in the top 20 economies that invest in Australia.

Double taxation agreements (DTAs) are an important mechanism within the tax framework which enable greater flows of investment and trade between countries while providing tax integrity to government and certainty to business.

For future expansion the Property Council supports continuing to build stronger relationships with the largest investors into Australia. Newer features of Australia's tax system should also be included in any updated version of the Australia-US DTA, such as the Corporate Collective Investment Vehicle (CCIV) regime. With the Government's establishment of the CCIV regime and the intention of the CCIVs to be a conduit for foreign investors into Australia, now would be an opportune time to include the CCIV framework as part of an updated DTA with our largest overseas investor.

The examples above highlight the complexity of the current agreement which can lead to unequitable outcomes for Australian investors, and the need to address investor uncertainty by updating the Australia-US DTA at the right time.

Australia's Tax Treaty Policy

Signing agreements with economies to prevent double taxation and preventing tax avoidance is a significant milestone to attract investment. Australia is a capital importer, and the real estate industry heavily relies on foreign capital to partner with residential projects to help facilitate the much needed and government forecast supply. However, allowing surcharging by both federal and state treasury offices hinders feasibility of projects and overall activeness of the Australian investment landscape.

The Treasury Laws Amendment (Foreign Investment) Bill 2024 which amended the International Tax Agreements Act 1953 and the associated regulations to triple fees for acquiring established residential dwellings and double vacancy fees for foreign investors is a significant roadblock. Created at a time when the market is capital constrained, local funds/real estate investment trusts are unable to raise equity or debt and remain capital constrained, the superannuation funds are not investing as current benchmarking within Your Future, Your Super makes residential real estate risker than ever as it remains an out of index position and are instead investing heavily in overseas residential markets that are within their global residential benchmarks. The real estate industry's only option to raise capital is to look offshore (mainly Japan at this stage), and infill/redevelopment of existing property around major hubs now attracts triple fees and surcharging.

In the Mid-Year Economic and Fiscal Outlook in December 2023, the Treasurer announced the introduction of legislation "to clarify any uncertainty associated with the interaction between certain taxes, such as foreign investment fees and similar state and territory property taxes, and double tax agreements implemented domestically".

This amendment highlights treasury departments around the country that have been charging these inflated fees since they were introduced in 2015 have been doing so contrary to the law and now have protection to do so. Enshrining Australia as a less affordable and attractive place to invest and creating **sovereign risk**. This is now unfortunately a common terminology for foreign investors looking at Australia as a potential capital destination.

Recommendations

Recommendation #1: Repeal Treasury Laws Amendment (Foreign Investment) Bill 2024, to make Australia a more attractive location for investment, and work with State governments to remove surcharging on property in contravention with Australia's double taxation agreements.

Recommendation #2: The government's goal to ensure that Australia's tax treaty network will cover 80 per cent of foreign investment in Australia should be broadened to also ensure that Australia's tax treaty network will cover 80 per cent of Australian investment overseas.

Recommendation #3: The government explore options with the ABS to reduce the incidence of 'unspecified' country in the foreign investment into Australia and Australian investment overseas data it collects to something less than 5% of total investment in each case.

Recommendation #4: Australia's tax treaty negotiation program should aim to update tax treaties with countries that are in the Top 20 countries for foreign investment into Australia or the Top 20 countries for Australian investment overseas as an ongoing priority with the objective of avoiding such tax treaties becoming older than 20 years.

Conclusion

We remain committed to working with Treasury on Australia's tax treaty network expansion to make sure governments intention enhances investment into the new homes Australia needs. If you have any questions, please contact Matthew Wales, Policy Manager – Tax and Foreign Investment, at MWales@propertycouncil.com.au or on 0451 146 886.

Yours faithfully

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