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Proposed NSW Build-to-Rent tax concessions

A recent bill introduced into the NSW Parliament will, if passed, improve the tax settings for build-to-rent developments by offering land tax concessions and surcharge land tax and surcharge purchaser duty exemptions.

A Landcom Report issued in July 2019 concluded that build-to-rent developments in Australia were not feasible without changes in tax policy – see our previous article here. Although boosting the build-to-rent sector has been on the NSW Government's radar for some time, the COVID-19 pandemic has added some further urgency to the reforms. The NSW Government expects that the concessions and exemptions will '*provide more housing options, greater surety for renters, boost construction and support jobs during the COVID-19 recovery*' (**NSW Treasury**).

The State Revenue Legislation Amendment (COVID-19 Housing Response) Bill 2020 (**Bill**) was introduced to the Parliament of NSW on 29 July 2020.

Proposed Changes

Under the Bill, it is proposed that the *Duties Act 1997* (NSW), *Land Tax Act 1956* (NSW) and *Land Tax Management Act 1956* (NSW) are amended to provide:

- **Land tax concession** each year, for new build-to-rent projects until the end of the 2040 land tax year – the value of land will be reduced by 50% for the purpose of assessing land tax. If a development is part build-to-rent, the concession may apply proportionately to the build-to-rent component. The concession will apply to build-to-rent projects that commenced construction on or after 1 July 2020.
- **Exemption for, or refund of, surcharge land tax** for a foreign person that is an Australian corporation. Currently, foreign persons pay surcharge land tax at a rate of 2% on the taxable value of all residential land in New South Wales owned by that foreign person as at 31 December each year. The surcharge land tax exemption or refund will apply each year to land owned by the Australian corporation from midnight on 31 December 2020 to midnight on 31 December 2039.
- **Exemption for, or refund of, surcharge purchaser duty** for a foreign person that is an Australian corporation. Currently, foreign persons pay 8% surcharge purchaser duty on the value of any residential land transferred to the foreign person. The surcharge purchaser duty exemption or refund will apply to transfers entered into on or after 1 July 2020.

The exemption for, or refund of, surcharge land tax and surcharge purchaser duty will only apply if a foreign person that is an Australian corporation is eligible for the build-to-rent land tax concession.

Proposed guidelines for build-to-rent eligibility

It is proposed that the *Land Tax Management Act 1956* (NSW) will include a new concept of a build-to-rent property. The land tax and duty concessions will apply if the Chief Commissioner is satisfied that the property is a build-to-rent property in accordance with guidelines to be approved by the Treasurer. The guidelines may include:

- planning or development standards;
- minimum lease conditions;
- minimum scale of the building;

- nature of ownership and management of the building;
- circumstances in which an applicant must give undertakings not to subdivide the land or otherwise divide ownership; and
- other matters which the Treasurer determines is appropriate.

We understand that the NSW Treasury will be releasing the full eligibility criteria for build-to-rent projects for the industry in coming weeks.

Federal and local tax reform still needed

Although the changes in land tax are helpful, the Landcom Report notes that other tax reforms are needed to support the growth of the build-to-rent sector in Australia.

A key area for tax reform is Managed Investment Trust (**MIT**) tax concessions for passive income from build-to-rent product distributed to foreign investors. Since 2019, this income has been taxed at 30%.

A 15% concessional rate still applies to passive income derived from 'affordable rental housing', specialist disability accommodation and 'commercial residential premises' (such as hotels, boarding houses and student accommodation for schools).

It is difficult to see the rationale for the distinction between build-to-rent product and other forms of commercial residential premises. The *A New Tax System (Goods and Services Tax) Act 1999* (Cth) could be amended to include build-to-rent property as 'commercial residential premises'.

Other changes to tax settings to encourage growth in the sector could include changes to:

- GST so that input tax credits can be claimed on construction costs; and
- local government taxes.

Comparison with Victoria

Victoria introduced exemption to 'foreign purchaser additional duty' and 'absentee owner surcharge exemption' in 2018 and 2019, along with Vic Treasury build-to-rent eligibility guidelines. These changes have helped to generate more build-to-rent project activity in Victoria over the last two years. The NSW Treasury expects the changes proposed in the Bill will also boost activity in NSW.

The NSW Government has recognised there are taxation barriers to the build-to-rent market that prevents this asset class from growing in Australia. While the new land tax and duty discounts are a great start in fostering growth in the Australian build-to-rent market, there is still some way to go at a federal and local level.

Key Takeaways

- The NSW Government has introduced a Bill that provides concessional land tax treatment for build-to-rent properties.
- The Bill will, if passed provides for:
    - a new concept of 'build-to-rent' and for the NSW Treasurer to approve new guidelines to determine when a property is 'build-to-rent';
    - land tax concession by reducing assessable land value by 50% for each annual assessment until the 2040 land tax year; and
    - exemptions from and refunds of surcharge purchaser duty and surcharge land tax payable.