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By email: [RGCI TaxTreatiesBranch@TREASURY.GOV.AU](mailto:RGCI TaxTreatiesBranch@TREASURY.GOV.AU)

Dear Natasha

### **Expanding Australia's tax treaty network – Key issues**

The Property Council welcomes the opportunity to continue providing industry feedback in relation to Treasury's consultation on expanding Australia's tax treaty network, and specifically on the key issues that have been identified as part of the latest round of consultations and submissions.

As noted in our previous submission to Treasury on expanding Australia's tax treaty network in October of this year, the Property Council supports the Government's initiative to expand the number of tax treaties in order to cover 80% of foreign investment in Australia and trillions of dollars in Australia's two-way trade and investment.

Identifying the key issues outlined in the latest Treasury paper is a step in the right direction to negotiating and finalising comprehensive tax treaties with other countries that can provide positive outcomes and tax certainty to investors and businesses.

#### **Definition of financial institution**

We acknowledge and support in particular the recommendation in Treasury's paper to modernise the definition of 'financial institution' to reflect the diversification of global debt markets and the growth of the non-bank lending sector.

In recent years, non-bank lending has grown in importance globally across the real estate sector and the world's financial system. According to the Financial Stability Board,<sup>1</sup> the non-bank financial intermediation (NBFI) sector – comprising mainly pension funds, insurance corporations and other financial intermediaries – has grown faster than the banking sector over the past decade. The financial assets of the NBFI sector amounted to US\$200.2 trillion in 2019, accounting for nearly half of the global financial system in 2019, up from 42% in 2008.

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<sup>1</sup> <https://www.fsb.org/2020/12/global-monitoring-report-on-non-bank-financial-intermediation-2020>

Australia is seeing an increasing appetite by global non-bank investors to lend to Australian corporates. However, in circumstances where non-bank investors are unable to benefit from the interest withholding tax exemption for financial institutions under the tax treaty frameworks, Australian corporates would either need to qualify for other interest withholding tax exemptions (such as the 128F public offer test) or be faced with potentially higher interest payments (due to gross up clauses) when seeking to access finance from these non-bank investors.

With the increasing presence of non-bank lenders in the local market, including those based offshore, our tax and regulatory settings should be updated to reflect the evolution of financial markets here and abroad. We believe that, in particular, broadening the definition of 'financial institution' for the purposes of the exemption from interest withholding tax should be considered by Treasury to improve how Australia's tax treaties function.

We agree with the recommendation that the definition of 'financial institution' be broadened to include any entity that substantially derives its income from activities that include providing debt finance and removing the two requirements identified in the key issues paper (i.e. requirement to be debt financed and requirement to be carrying on a business of providing finance).

Expanding the 'financial institution' definition would:

- deepen liquidity in debt markets in Australia, which should provide for improved market depth, pricing and efficiency;
- increase funding diversification benefits for Australian businesses that use debt capital; and
- help to increase investment flows at a critical time in our economic recovery.

Removing unnecessary roadblocks and giving businesses and investors tax certainty through modernised tax treaty rules will help to boost Australian businesses that are seeking to raise debt funding from financial providers that don't fit the current 'financial institution' definition.

If you would like to discuss any aspect of this submission further, please contact myself on 0400 356 140 and [bngo@propertycouncil.com.au](mailto:bngo@propertycouncil.com.au) or Kosta Sinelnikov on 0422 168 720 and [ksinelnikov@propertycouncil.com.au](mailto:ksinelnikov@propertycouncil.com.au).

Yours sincerely



**Belinda Ngo**  
**Executive Director – Capital Markets**