PROPERTY COUNCIL of Australia

PROSPERITY | JOBS | STRONG COMMUNITIES

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Strengthening the foreign resident CGT Regime

Dear David

The Property Council of Australia (Property Council) appreciates the opportunity to consult with Treasury on the Government's Budget measure to *Strengthen Australia's Foreign Resident Capital Gains Tax (CGT) Regime* (regime).

The Property Council is the peak body for owners and investors in Australia's $670 billion property industry. We represent owners, fund managers, superannuation trusts, developers, and investors across all four quadrants of property investments: debt, equity, public and private.

The property industry is the country's second largest employer, representing a direct gross domestic product (GDP) contribution of $232 billion, or 10.6 per cent of total GDP, as well as 18.2 per cent of total tax revenues totalling $129.6 billion.

The regime's policy intent is to ensure foreign residents pay their fair share of tax in Australia and to provide greater certainty for foreign investors by better aligning our domestic legislation with international tax best practice. We support this. However, we hold reservations on the application of the amended regime.

The property industry is particularly sensitive to changes in the taxation of foreign capital. This is especially true given challenging economic conditions where access to local capital is limited. The proposed regime raises several concerns, in particular the value and frequency of transactions that take place across the spectrum asset classes within the real assets sector (which includes infrastructure).

Any regime which increases costs and delays creates barriers to entry or expansion in the property market, stymies potential deals and diminishes economic activity. More specifically, the proposed regime will add another roadblock to financing arrangements of sectors that are closely related to real estate.

Broadening the Tax Base

The proposed amendments to broaden the foreign resident CGT base will significantly affect foreign investment in energy, agriculture and infrastructure sectors. Although this will have limited direct impact on the property industry, the interrelated nature of asset classes may raise indirect impacts for the sector.

Mitigation of unintended consequences is key, and we defer further comments until the roll out is clear.

Extended testing period of the Principal Asset Test (PAT)

The proposed testing period for determining whether an asset is taxable under the CGT regime will be extended to include the 365 days before the disposal of the indirect Australian real property interests. This amendment seems logical.

ATO notification requirements

The proposed measures require non-resident investors to notify the Australian Taxation Office (ATO) of any transactions within a 28-day notice period, particularly those involving disposing of shares and other membership interests worth over $20 million. The vendor must submit this notification to the ATO in an approved form in advance of a set review period before the relevant CGT event or settlement (whichever is earlier).

These changes create practical challenges. A 28-day notice period is too long, let alone a 45- or 60-day notice period. Industry acknowledges that deals can both commence and complete within a 28-day period. The negative ramifications of a delay in both time and cost have significant consequences and deals being delayed by a 28-day ATO notice period is not practicable.

Indirect Australian Real Property

An ATO review period should not apply where the shares/units are not indirect Australian real property interests because the interest is not 10% or more at the time of the CGT event, or throughout any 12-month period in the prior 24 months. In this case the current declaration requirement should be sufficient. The exemption for interests of less than 10% is not relevant to the policy objective of broadening the CGT base for foreign residents to ensure assets with a close economic connection to Australian land and/or natural resources are appropriately captured within the tax law.

We look forward to working closely with Treasury and ATO to ensure the new regime is workable and practical, while making sure it does not interfere with the ordinary process of transactions.

The Property Council welcomes the opportunity to discuss this submission in more detail. Please contact Matthew Wales, Policy Manager at mwales@propertycouncil.com.au to arrange a meeting.

Yours faithfully

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