

PFA Masterclass

MIT withholding tax regime when structuring build-to-rent projects

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MIT withholding tax regime when structuring build-to-rent projects

- New measure announced in the May 2023 Budget
- Draft legislation introduced in June 2024
- New measures:
 - Provide a concessional withholding rate for distributions for foreign investors - 15% withholding compared with 30% withholding currently
 - Capital works deductions increased to 4% per annum
 - Operative from 1 July 2024

Existing regime for BTR and MITs

- MITs are vehicles for passive investment eg BTR
- Under the current MIT regime, income from residential property attracts:
 - a 30% withholding (as MIT residential housing income)
 - a 15% withholding for 'affordable housing'
- Limited attractiveness to create a residential property fund if foreign investor base is desirable

Features of the new concession

- Must be an 'active BTR'
 - Applies to construction that commences post-9 May 2023
 - 50 or more dwellings - new or renovated eg convert a warehouse to apartments
 - Must be residential accommodation only – no commercial property
 - Tenancies must be for a minimum of three years
 - Minimum 15 year rental period (one owner or successive owners)
 - 10% of the development must be earmarked for affordable tenancies (at a min 25% discount to market rent)

Features of the new concession

- Reduced withholding tax rates
 - Applies to distributions of 'fund payments' made to foreign investors
 - Fund payments:
 - net rent; and
 - capital gains from
 - the disposal of the BTR project or
 - the disposal of an indirect interest in the BTR
 - 15% rate for countries that have an information exchange agreement with Australia eg China, Singapore, US
- Reporting regime to ensure compliance with the rules

Features of the new concession

- Failure to comply will:
 - unwind the tax benefits previously claimed
 - give rise to a 'misuse tax' that:
 - is non-deductible; and
 - may be taxed to the trustee or unitholders (depending on the terms of the MIT's trust deed)
 - can be waived by the ATO



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Thank you!