

# EXPOSURE DRAFT

EXPOSURE DRAFT
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Inserts for  
**Treasury Laws Amendment Bill 2024:  
Build to rent developments**

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**Commencement information**

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<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
<b>Provisions</b>	<b>Commencement</b>	<b>Date/Details</b>

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1. Schedule #	At the same time as the <i>Capital Works (Build to Rent Misuse Tax) Act 2024</i> commences.  However, the provisions do not commence at all if that Act does not commence.	
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## Schedule #—Build to rent developments

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### *Income Tax Assessment Act 1936*

3

#### **1 Subsection 170(10AA) (after table item 15)**

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5           Insert:

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17	The cell, of the table in section 43-145, dealing with *active build to rent development areas	Deductions for capital works relating to build to rent developments
	Section 43-237	

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19	Division 44	Build to rent development misuse tax
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### *Income Tax Assessment Act 1997*

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#### **2 Section 12-5 (table item headed “buildings”)**

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9           Before:

10

income producing buildings, capital allowances ..... Division 43

11

12           insert:

13

build to rent development misuse tax, no deduction for .. 26-99C

#### **3 After section 26-99B**

14

15           Insert:

16

#### **26-99C Build to rent development misuse tax cannot be deducted**

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You cannot deduct under this Act an amount of \*build to rent development misuse tax that you pay.

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#### **4 Section 43-145 (table item dealing with Time period 1: After 30/6/97)**

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21           After:

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You use the part of \*your area for the \*purpose of producing assessable income, and that part is used by any entity:

- (a) wholly or mainly for \*industrial activities; or
- (b) to provide meal rooms, rest rooms, first aid rooms, change rooms or similar facilities that are wholly or mainly for use by:
  - (i) workers employed wholly or mainly to undertake the work directly involved in carrying out industrial activities; or
  - (ii) the immediate supervisors of those workers; or
- (c) wholly or mainly as office accommodation for the immediate supervisors of those workers.

1                   insert:  
2

You use the part of \*your area for the \*purpose of producing assessable income and:

- (a) that part is, or is part of, an \*active build to rent development area (the *eligible development*); and
- (b) if the \*build to rent compliance period for each of the \*dwellings in the eligible development has ended—you are the only entity that has used the eligible development, or any part of the eligible development, for the purpose of producing assessable income while it has been an active build to rent development.

This is use in the *4% build to rent manner*.

3                   **5 At the end of Subdivision 43-D**  
4                   Add:

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## 43-151 Meaning of active build to rent development area

- 1
- 2 (1) An *active build to rent development area* is a part of a building
- 3 comprising any of the following:
- 4 (a) the \*dwellings of an \*active build to rent development;
- 5 (b) any \*common areas for those dwellings.
- 6 (2) An *active build to rent development* is a \*build to rent
- 7 development that has:
- 8 (a) \*commenced to be an active build to rent development (see
- 9 subsections 43-152(1) and (2)); and
- 10 (b) not \*ceased to be an active build to rent development (see
- 11 subsection 43-152(6)).
- 12 (3) A *common area* for \*dwellings of a \*build to rent development is
- 13 an area, facility or amenity:
- 14 (a) intended for use for the purposes of those dwellings; or
- 15 (b) intended for use for the purposes of those dwellings and any
- 16 other dwellings in the same building.

## 43-152 Build to rent developments

### *Commencement*

- 17
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- 19 (1) On and after the first day a building has 50 or more \*dwellings that
- 20 satisfy subsection (3), those dwellings are a *build to rent*
- 21 *development*, of the building, that *commences* to be an \*active
- 22 build to rent development on that day.
- 23 (2) Also, on and after the first day (if any):
- 24 (a) after the most recent instance of a \*build to rent development
- 25 of a building \*commencing to be an \*active build to rent
- 26 development; and
- 27 (b) on which the building has 50 or more \*dwellings that:
- 28 (i) satisfy subsection (3); and
- 29 (ii) were not part of a build to rent development
- 30 immediately before that day;
- 31 those dwellings are a *build to rent development*, of the building,
- 32 that *commences* to be an active build to rent development on that
- 33 day unless an active build to rent development \*expands under
- 34 subsection (5) on that day to include the dwellings.

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- 1 (3) For the purposes of subsections (1) and (2), \*dwellings of a  
2 building satisfy this subsection at a particular time if at that time:  
3 (a) each of the dwellings is:  
4 (i) available to the public to be tenanted by way of lease for  
5 a period of 3 years or more; or  
6 (ii) being tenanted by way of lease as a result of being made  
7 available to the public to be tenanted by way of lease for  
8 a period of 3 years or more; or  
9 (iii) temporarily unable to satisfy subparagraphs (i) and (ii)  
10 because of construction of an extension, alteration or  
11 improvement to the dwelling or building, or the making  
12 of repairs to the dwelling or building; and  
13 (b) all of the dwellings are:  
14 (i) \*residential premises; and  
15 (ii) \*taxable Australian real property; and  
16 (iii) not \*commercial residential premises; and  
17 (c) all of the dwellings and \*common areas for the dwellings are  
18 owned by a single entity; and  
19 (d) for 10% or more of the dwellings (the *affordable dwellings*):  
20 (i) rent payable under any lease offered to the public for the  
21 dwelling is 74.9% or less of the market rate; and  
22 (ii) any requirements determined under subsection (4) are  
23 met; and  
24 (e) each of the dwellings that is not an affordable dwelling is the  
25 same size and has the same amenities as at least one of the  
26 affordable dwellings.

27 Note: For the purposes of paragraph (a), a lease is still offered to the public  
28 for a period of 3 years or more even if a prospective tenant  
29 subsequently requests and the lessor accepts a shorter lease.

- 30 (4) The Minister may, by legislative instrument, determine  
31 requirements relating to the income of the tenant or prospective  
32 tenant for the purposes of subparagraph (3)(d)(ii).

## 33 *Expansion*

- 34 (5) If a building has a \*build to rent development (the *existing*  
35 *development*) that has \*commenced to be an \*active build to rent  
36 development, on the first day (if any) the building has \*dwellings  
37 (the *new dwellings*) that:

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- 1 (a) taken together with the dwellings of the existing development  
2 for which the \*build to rent compliance period has not ended,  
3 satisfy subsection (3); and  
4 (b) are not already a part of a build to rent development;  
5 the existing development *expands* to comprise:  
6 (c) the dwellings of the existing development; and  
7 (d) the new dwellings.

8 *Cessation*

- 9 (6) A \*build to rent development *ceases* to be an \*active build to rent  
10 development at the first time (if any) any \*dwellings of the active  
11 build to rent development for which the \*build to rent compliance  
12 period has not ended do not satisfy paragraphs (3)(a) to (e).

13 *Build to rent compliance period*

- 14 (7) The *build to rent compliance period* for a \*dwelling of an \*active  
15 build to rent development is the 15 years beginning on the day after  
16 the day on which:  
17 (a) unless paragraph (b) applies—the development \*commences  
18 to be an active build to rent development; or  
19 (b) if:  
20 (i) the dwelling is not part of the development when it  
21 commences to be an active build to rent development;  
22 but  
23 (ii) the development \*expands to include the dwelling;  
24 the development expands to include the dwelling.

25 *References to buildings*

- 26 (8) For the purpose of this section and sections 43-151 and 43-153,  
27 references to a building include a reference to other buildings that  
28 are on the same or adjacent land.

29 **43-153 Notice of events during the build to rent compliance period**

- 30 (1) If any of the following events happen in relation to a \*build to rent  
31 development, each entity to which subsection (3) applies must  
32 notify the Commissioner of the event:  
33 (a) the development \*commences to be an \*active build to rent  
34 development;  
35 (b) the development \*expands;
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# EXPOSURE DRAFT

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- 1 (c) the \*ownership interest in the development is acquired by  
2 another entity;
- 3 (d) the development \*ceases to be an active build to rent  
4 development.
- 5 (2) The notice must be:
- 6 (a) in the \*approved form; and  
7 (b) given no later than 28 days after the event.
- 8 (3) This subsection applies to the following entities:
- 9 (a) the owner of the development at the time just before the  
10 event happens;
- 11 (b) if in the income year in which the event happens, an entity is  
12 required to notify the Commissioner under  
13 subsection 16-150(4) in Schedule 1 to the *Taxation*  
14 *Administration Act 1953* of an amount relating to the  
15 development to which subsection 12-450(5) in that Schedule  
16 applies—the entity.

## 6 After section 43-235

17 Insert:

### 43-237 Post-26 February 1992 undeducted construction expenditure—modification for active build to rent developments that have ceased

- 18
- 19
- 20
- 21
- 22 (1) This section applies if:
- 23 (a) a part of \*your area was an \*active build to rent development  
24 area; and
- 25 (b) on a day (the *cessation day*) in the income year or a prior  
26 income year, the \*active build to rent development of the  
27 active build to rent development area \*ceases to be an active  
28 build to rent development.
- 29 (2) Section 43-235 applies to the part as if for each day in the use  
30 period:
- 31 (a) before the cessation day; and  
32 (b) that the part was an \*active build to rent development;  
33 you did not use the part in the \*4% manner.

## 7 After Division 43

34 Insert:

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## 1 **Division 44—Build to rent development misuse tax**

### 2 **Table of Subdivisions**

3		Guide to Division 44
4	44-A	Object of this Division
5	44-B	Build to rent development misuse tax
6	44-C	When tax is payable

### 7 **Guide to Division 44**

#### 8 **44-1 What this Division is about**

9 This Division removes certain tax concessions for build to rent  
10 developments when they cease to be active build to rent  
11 developments.

### 12 **Subdivision 44-A—Object of this Division**

#### 13 **Table of sections**

14		<b>Operative provisions</b>
15	44-5	Object of this Division

#### 16 **Operative provisions**

##### 17 **44-5 Object of this Division**

18 The object of this Division is to remove certain tax concessions for  
19 \*build to rent developments when they \*cease to be \*active build to  
20 rent developments.

### 21 **Subdivision 44-B—Build to rent development misuse tax**

#### 22 **Guide to Subdivision 44-B**

##### 23 **44-10 What this Subdivision is about**

24 You are liable to pay a tax if a build to rent development ceases to  
25 be an active build to rent development. The tax is on an amount



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(called a build to rent misuse amount) related to your past capital works deductions and withholding amounts for the active build to rent development.

## Table of sections

### Liability for tax

44-15 Liability for tax

### Build to rent misuse amounts

44-20 Build to rent misuse amounts

44-25 Your build to rent capital works deduction amount

44-30 Your build to rent withholding amount

## Liability for tax

### 44-15 Liability for tax

You are liable to pay \*build to rent development misuse tax for an income year if you have a \*build to rent misuse amount for the income year.

Note: The amount of tax is set out in the *Capital Works (Build to Rent Misuse Tax) Act 2024*.

## Build to rent misuse amounts

### 44-20 Build to rent misuse amounts

- (1) You have a ***build to rent misuse amount*** for an income year, equal to the amount worked under subsection (2), if the amount worked out under that subsection is greater than nil.
- (2) For the purposes of subsection (1), the amount is the sum of:
  - (a) the amount that is the sum of your \*build to rent capital works deduction amounts, worked out under section 44-25, for each build to rent development that \*ceases to be an active build to rent development during the income year; and
  - (b) the amount that is 10 times the sum of your \*build to rent withholding amounts, worked out under section 44-30, for each build to rent development that ceases to be an active build to rent development during the income year.

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## 44-25 Your build to rent capital works deduction amount

Your *build to rent capital works deduction amount*, for a *build to rent development* that *ceases to be an active build to rent development*, is the amount worked out as follows:

### *Method statement*

Step 1. Identify each income year in which, at any time during the year, the *build to rent development* was an *active build to rent development*.

Step 2. For each of those years:

(a) identify each *construction expenditure area of capital works* that are or include the *active build to rent development area of the build to rent development* at any time during the year; and

(b) calculate the amount worked out by the following formula for each *construction expenditure area*:

$$\frac{\text{Portion of your construction expenditure} \times \text{Days used}}{\text{The number of days in the income year}}$$

where:

*active build to rent part*, of *your area of the construction expenditure area*, is the part of your area that was the *active build to rent development area*, or part of the *active build to rent development area* at any time during the year.

*days used* is the number of days in the income year that:

(a) you owned or were the lessee of the *active build to rent part* and used it in the *4% build to rent manner*; or

(b) you were the holder of the *active build to rent part* under a *quasi ownership right over land* granted by an *exempt Australian government agency* or an

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\*exempt foreign government agency, and used it in the 4% build to rent manner.

*portion of your construction expenditure* is the portion of \*your construction expenditure that is attributable to the \*active build to rent part that you used in the \*4% build to rent manner.

Step 3. Reduce the Step 2 amount for each \*construction expenditure area, for each year, by the extent to which the \*active build to rent part was used only partly for the \*purpose of producing assessable income in the year.

Note: This Step applies if:

(a) part of your income from the active build to rent part is exempt income; or

(b) part of the active build to rent part was not used for the purpose of producing assessable income or was not available for that use; or

(c) the active build to rent part was not used for such a purpose during a part of the days used period.

Step 4. For each year, add up the amounts worked out under Step 3 for each \*construction expenditure area.

Step 5. Add up the Step 4 amounts for each year.

Step 6. Multiply the Step 5 amount by:

(a) in the case of a company (other than a company in the capacity of a trustee)—the \*corporate tax rate for the income year in which the \*build to rent development \*ceases to be an \*active build to rent development (the *cessation year*); or

(b) in any other case—the maximum rate specified in the table in Part I of Schedule 7 to the *Income Tax Rates Act 1986* for the cessation year.

Step 7. Your *build to rent capital works deduction amount* is the Step 6 amount multiplied by 1.08.

Note: You can have more than one build to rent capital works deduction amount because there can be than more than one build to rent development for which you have construction expenditure.

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## 1 44-30 Your build to rent withholding amount

2 Your *build to rent withholding amount*, for a \*build to rent  
3 development that \*ceases to be an \*active build to rent  
4 development, is the amount worked out as follows:

### 5 *Method statement*

6 Step 1. Identify each income year in which, at any time during  
7 the year, the \*build to rent development was an \*active  
8 build to rent development.

9 Step 2. For each of those years, add up the sum of any \*fund  
10 payments you make:

11 (a) to which subsection 12-385(1) or 12A-215(1) in  
12 Schedule 1 to the *Taxation Administration Act*  
13 1953 applies; and

14 (b) to the extent that the payments are attributable to a  
15 payment of rental income under a lease of a  
16 \*dwelling that is part of the active build to rent  
17 development.

18 Step 3. Add up the amounts worked out under Step 2 for each  
19 year.

20 Step 4. Your *build to rent withholding amount* is the Step 3  
21 amount multiplied by 1.08.

## 22 Subdivision 44-C—When tax is payable

### 23 Guide to Subdivision 44-C

#### 24 44-35 What this Subdivision is about

25 This Subdivision has rules about payment of build to rent  
26 development misuse tax.

#### 27 Table of sections

28	44-40	When tax is payable—original assessments
29	44-45	When tax is payable—amended assessments

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1 44-50 General interest charge

## 2 **44-40 When tax is payable—original assessments**

3 Your \*assessed build to rent development misuse tax is due and  
4 payable at the end of 21 days after the Commissioner gives you  
5 notice of the assessment of the amount of the \*build to rent  
6 development misuse tax.

7 Note: For assessments of build to rent development misuse tax, see  
8 Division 155 in Schedule 1 to the *Taxation Administration Act 1953*.

## 9 **44-45 When tax is payable—amended assessments**

10 If the Commissioner amends your assessment, any extra \*assessed  
11 build to rent development misuse tax resulting from the  
12 amendment is due and payable 21 days after the day the  
13 Commissioner gives you notice of the amended assessment.

## 14 **44-50 General interest charge**

15 If an amount of \*assessed build to rent development misuse tax that  
16 you are liable to pay remains unpaid after the time by which it is  
17 due to be paid, you are liable to pay the \*general interest charge on  
18 the unpaid amount for each day in the period that:

- 19 (a) begins on the day on which the amount was due to be paid;  
20 and  
21 (b) ends on the last day on which, at the end of the day, any of  
22 the following remains unpaid:  
23 (i) the assessed build to rent development misuse tax;  
24 (ii) general interest charge on any of the assessed build to  
25 rent development misuse tax.

26 Note: The general interest charge is worked out under Part IIA of the  
27 *Taxation Administration Act 1953*.

## 28 **8 Subsection 995-1(1)**

29 Insert:

30 ***4% build to rent manner*** has the meaning given by section 43-145.

31 ***active build to rent development*** has the meaning given by  
32 subsection 43-151(2).

33 ***active build to rent development area*** has the meaning given by  
34 subsection 43-151(1).

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- 1                    *active build to rent part* has the meaning given by section 44-25.
- 2                    *assessed build to rent development misuse tax* means \*build to
- 3                    rent development misuse tax, as assessed under Schedule 1 to the
- 4                    *Taxation Administration Act 1953*.
- 5                    *build to rent capital works deduction amount* has the meaning
- 6                    given by section 44-25.
- 7                    *build to rent compliance period* has the meaning given by
- 8                    subsection 43-152(7).
- 9                    *build to rent development* has the meaning given by subsections
- 10                   43-152(1), (2) and (5).
- 11                   *build to rent development misuse tax* means tax imposed by the
- 12                   *Capital Works (Build to Rent Misuse Tax) Act 2024*.
- 13                   *build to rent misuse amount* has the meaning given by section
- 14                   44-20.
- 15                   *build to rent withholding amount* has the meaning given by
- 16                   section 44-30.
- 17                   *cease* to be an \*active build to rent development has the meaning
- 18                   given by subsection 43-152(6).
- 19                   *commence* to be an \*active build to rent development has the
- 20                   meaning given by subsections 43-152(1) and (2).
- 21                   *common area*, for \*dwellings of an \*active build to rent
- 22                   development, has the meaning given by subsection 43-151(3).
- 23                   *expand*, in relation to an \*active build to rent development, has the
- 24                   meaning given by subsection 43-152(5).

## ***Taxation Administration Act 1953***

### **9 Subsection 8AAB(4) (after table item 12)**

Insert:

12A	44-50	<i>Income Tax Assessment Act 1997</i>	payment of assessed build to rent development misuse tax
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## 10 At the end of section 12-450 in Schedule 1

Add:

*Rental income from a build to rent development*

- (5) The amount is *not MIT residential housing income* of the \*managed investment trust under subsection (2) to the extent it is attributable to a payment of rental income under a lease of a \*dwelling:
- (a) that is part of an \*active build to rent development; and
  - (b) for which the \*build to rent compliance period has not ended.

## 11 Subsection 16-150(1) in Schedule 1

After “Commissioner” (first occurring), insert “, other than an amount to which subsection (4) applies,”.

## 12 At the end of section 16-150 in Schedule 1

Add:

(4) If:

- (a) an entity must pay an amount (even if it is a nil amount) to the Commissioner under subsection 16-70(1) (about amounts withheld under Division 12); and
- (b) subsection 12-450(5) (about rental income from a build to rent development) applies to the amount;

the entity must notify the Commissioner of the amount:

- (c) on or before the day provided in a determination under subsection (5) of this section; or
- (d) if there is no such determination—on or before the day on which the amount is due to be paid (regardless of whether it is paid).

The notification must be in the \*approved form and lodged with the Commissioner.

- (5) The Commissioner may, by legislative instrument, determine when the Commissioner must be notified for the purposes of paragraph (4)(c).

## 13 At the end of subsection 155-5(2) in Schedule 1

Add:

- ; (o) an amount of \*build to rent development misuse tax.

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1 **14 At the end of subsection 155-30(3) in Schedule 1**

2 Add:

3 ; (e) the \*build to rent development misuse tax payable by you for  
4 an income year.

5 **15 Subsection 250-10(2) in Schedule 1 (after table item 37AC)**

6 Insert:

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37AD	build to rent development misuse tax	44-40 and 44-45	<i>Income Tax Assessment Act 1997</i>
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8 **16 Application of amendments**

9 The amendments made by this Schedule apply to capital works begun  
10 after 7:30 pm, by legal time in the Australian Capital Territory, on  
11 9 May 2023.