1 May 2009

Dr Ken Henry AC,
Chair (Secretary to the Treasury)
AFTS Secretariat
The Treasury
Langton Crescent
PARKES ACT 2600

By email: AFTSubmissions@treasury.gov.au

Dear Dr Henry

Federal Review into Australia's Future Tax System

Thank you for the opportunity to provide a further submission to the review into Australia's Future Tax System.

The Property Council of Australia is the peak body representing the interests of owners and investors in Australia's $320bn property investment sector.

We strongly support reform that will ensure a simple, clear, efficient, fair, and competitive tax system.

This is essential to relieve unwarranted pressure on an overburdened property sector and improve our global competitiveness.

Our attached submission outlines the property industry's recommendations for critical root and branch reform of Australia's tax system at the international, federal and state level.

Also attached is our earlier submission dated 17 October 2008.

We would be pleased to expand on any issues we have raised in the submissions.

In the interim, please do not hesitate to contact me on 0407 463 842.

Yours faithfully,

Peter Verwer
Chief Executive
Property Council of Australia

LEVEL 1, 11 BARRACK STREET, SYDNEY NSW 2000
PH 02 9033-1900 - FAX 02 9033-1966
Email info@nat.propertyoz.com.au - www.propertyoz.com.au

Australia's Future Tax System Review: Submission

Property Council of Australia
May, 2009

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Executive Summary

This submission maps out the Property Council's key strategies for reforming Australia's tax system. The Property Council supports tax reforms that:

Reform principles

- ensure the tax system is simple, clear, efficient, fair and competitive;
- promote a robust and stable revenue base;
- eliminate inefficient taxes levied by the Commonwealth, State, Territory and local Governments; and
- provide an agreed timetable for actioning meaningful tax reform outcomes.

International sphere

- deliver a simple, elective Managed Investment Trusts regime that expands the scope of allowable investment activities;
- exempt unit trusts that have foreign property income from the Foreign Investment Fund Rules and the Controlled Foreign Corporations Rules;
- allow trusts and stapled groups to apply thin capitalisation rules on a consolidated basis and exclude foreign partnerships, trust estates and foreign hybrids from the rules;
- allow non-portfolio foreign dividend income to be deducted from a trusts thin capitalisation average debt calculation; and
- extend capital gains tax exemptions to foreign direct property investors to the same extent other investment categories.

Federal sphere

- simplify the GST rules;
- simplify the capital allowance regime;
- commit to the retention of the current negative gearing and capital gains tax regimes;
- deliver tax incentives, such as green depreciation aimed at specific public policy outcomes;
- commit to a new system for allocating the GST revenues between States and Territories.

State, territory, and local government sphere

- rationalise and harmonise the property tax framework across jurisdictions;
- replace developer levies with alternative funding such as government borrowing, PPPs, BIDs or Tax Increment Financing;
- replace car parking levies with better targeted incentives to reduce traffic congestion;
- capitalise the cost of delivery of fire services levies on an equitable basis; and
- ensure that utilities provided to non-residential property are charged on a user-pays basis only.

The Property Council also endorses submissions lodged by the Business Coalition for Tax Reform, of which it is a member.

Recommendations

In this submission, the Property Council offers proposals for tax reform divided into the following headings:

INTERNATIONAL TAXES

1. **Modernise Managed Investment Trusts**
2. **Improve Tax Treaty Benefits for A-REITs**
3. **Modernise Attribution Rules**
4. **Reform Thin Capitalisation Rules**
5. **Provide CGT Relief for Trusts and Foreign Investors**

FEDERAL TAXES

6. **Maintain Negative Gearing**
7. **Maintain the Existing CGT Regime**
8. **Simplify Capital Allowances**
9. **Simplify the GST Rules**
10. **Introduce Green Tax Incentives**

STATE, TERRITORY AND LOCAL TAXES

11. **Reform Inefficient State Taxes**
12. **Reform Developer Levies**
13. **Harmonise State Tax Provisions**
14. **Reform Property Rates, Levies & Charges**

1.	**Modernise Managed Investment Trusts:**
First:	Establish a dedicated MIT tax regime in Australian law. Include REITs within this regime. Exclude discretionary trusts.
Second:	Retain the classic features of a collective investment vehicles system, such as flow through status, tax deferred income and CGT concessions.
Third:	Allow MITs to undertake all forms of investment in property while retaining tax flow through status. Allow MITs to control taxable companies.
Fourth:	Clearly define ineligible investment activities, thereby enabling the scrapping of complicated and outmoded `active/passive' rules.
Fifth:	Create a statutory rule that gains or losses on disposals by MITs are taxed as capital rather than income, in line with current practice.
Sixth:	Allow fund trustees to effectively manage capital by retaining a portion of earned income. Modernise attribution rules to better serve the long-term interests of collective investors.
Seventh:	Enable Australian MITs to provide their unit holders with the treaty benefits applicable to inbound income that are generally lost to the ordinary Australians who invest in REITs.
Eigth:	Offer elective access to the proposed MIT regime to any entity that is widely-held, either directly or on a trace through basis.
Ninth:	Deem sovereign wealth funds to be widely held as they represent the collective wealth of nations.
Tenth:	Retain the current Division 6 as a fall back regime for trusts that do not qualify (or elect not to enter) the MIT regime.

2.	**Improve Tax Treaty Benefits for A-REITs:**
First:	Support the development of Australia as a managed funds hub with a competitive, flexible tax treaty policy.
Second:	Establish a zero percent interest withholding tax rate for all debt raisings other than related-party debt.
Third:	Resolve that a foreign investor in an A-REIT is not deemed to be taxable in Australia.
Fourth:	Apply treaty dividend articles to A-REIT distributions.

Fifth: Eliminate double taxation where portfolio investment gains on disposals of "land rich" entities are taxed by country of residence - ensure they are not also subject to capital gains in Australia.

Sixth: Enable Australian MITs to provide their unit holders with the treaty benefits applicable to inbound income that are generally lost to the ordinary Australians who invest in A-REITs.

Seventh: Commit to ongoing reduction of withholding tax rates.

Eighth: Prioritise tax treaty negotiations and regular reviews for countries that are major sources of inbound and targets/destinations for outbound Australian investment (commencing with USA, UK, New Zealand, Germany, France, and Japan).

Ninth: Convene a tax treaty negotiation advisory group, that included representatives from business/sectorial groups, to support Treasury in Australian tax reform and OECD forums.

Tenth: Enact tracing provisions to "look through" widely held A-REITs in foreign jurisdictions that impose higher withholding tax rates on non-portfolio distributions.

Eleventh: Remove unnecessary "source rules" from tax treaties.

3. Modernise Attribution Rules:

First: Exclude property income from the CFC and FIF rules.

Second: Expand the listed country exemptions in the FIF rules to include foreign entities in CFC listed countries.

Third: Extend the FIF exemption for complying super funds to Australian unit trusts controlled by super funds.

Fourth: Extend the listed public company exemption to listed public unit trusts.

Fifth: Modernise FIF exemptions to include widely held unit trusts and not just companies, and activities such as property acquisitions, asset management, and development.

Sixth: Implement the following technical amendments to the attribution rules:

a) allow functional currency elections for trusts;

b) ensure property entities do not pay tax on unrealised gains under the attribution regimes;

c) allow Australian entities with interests in foreign trusts or foreign hybrids to elect to apply existing trust and partnership provisions instead of the attribution rules;

d) apply similar rules for branch equivalent calculations under the attribution rules for foreign flow through entities and foreign branches;

e) use the tax rules in each listed country as the basis for branch equivalent calculations;

f) use adjusted Australian tax law as the basis for branch equivalent calculations regarding unlisted countries.

4. Reform Thin Capitalisation Rules:

First: Align the treatment for trusts and companies under thin capitalisation calculations.

Second: Allow wholly-owned trust groups to apply thin capitalisation rules on a consolidated basis.

Third: Allow stapled groups to apply thin capitalisation rules on a consolidated basis.

Fourth: Ensure thin capitalisation provisions do not apply to partnerships formed in foreign jurisdictions, non-resident trust estates and foreign hybrid entities.

5. Provide CGT Relief for Trusts and Foreign Investors:

First: Maintain trust cloning provisions or provide a dedicated rollover relief provision for unit trusts.

Second: Extend CGT exemptions to foreign direct property investors.

6. Maintain Negative Gearing:

First: Maintain the current negative gearing regime.

7. Maintain the Existing CGT Regime:

First: Maintain the current CGT regime.

8. Simplify Capital Allowances:

First: Introduce an economic life capital allowances regime, except in cases where there is a definable public policy basis to accelerate rates.

Second: Create simple, scaleable, capital allowances rules:

a) treat complete systems as one asset;

b) pool similar assets to reduce complexity; and

c) band similar assets under average depreciation.

Third: Eliminate low value asset pools that have asset write offs under $1,000.

Fourth: Use common multiplying factors to calculate market values.

Fifth: Clearly draw the line between land, buildings, fixtures and fittings (Division 40 and Division 43).

Sixth: Establish clear guidelines for immediate first-year asset write-off.

Seventh: Clearly draw the line between deductible repairs and capital improvements.

9. Simplify the GST Rules:

First: Commission a special review to simplify and improve the operation of the margin scheme.

Second: Amend the GST Act so that margin scheme valuations cannot be challenged by the ATO where:

a) the valuation made by a professional valuer in accordance with accepted valuation principles;

b) the valuer complied with the specific requirements set out in the relevant margin scheme valuation determination;

c) there has been no evidence of fraud or negligence on the part of the valuer or collusion on the part of the taxpayer; and

d) the value attributed is not so extravagantly large or inadequately small, to indicate it may not be a professional valuation.

Third: Clarify the rules for Division 129 adjustments.

Fourth: Amend Division 135 Going Concern and Farmland provisions to ensure adjustments under the division are consistent with:

a) other GST adjustment provisions (such as Division 129); and

2) GST provisions that result in taxpayers not being able to claim full GST credits (such as Division 11).

Fifth: Revise the financial acquisitions thresholds as follows:

a) exclude acquisitions made in the course of the commencement or termination of an enterprise from the definition of "financial acquisition";

b) extend the current exclusion for borrowings to any activity associated with raising equity capital;

c) amend the period for test for exceeding the threshold to six months retrospectively and six months prospectively; and,

d) increase such thresholds to 25% or $100,000.

Sixth: Replace the "General Interest Charge" provisions with "Shortfall Income Charge" provisions for GST purposes.

Seventh: Align the 'five year' period in section 40-75 to the "five adjustment periods" in Division 129 to simplify the interaction between the two provisions.

Eighth: Identify "Commercial Residential Premises" using a test is based only on physical characteristics of the premises (which also determines the "use").

Tenth: The "consideration" associated with the purchase of a retirement village should include items that:

a) are agreed between the vendor and purchaser;

b) exhibit a nexus with the taxable supply of the premises; and

c) are supplied for value.

Eleventh: Simplify the operation of Division 105 Mortgagee Sales.

Twelfth: Allow registered commercial or invoicing agents to be registered for GST purposes.

Thirteenth: Allow tax law partnerships to account for their income and expenses through each partner's own returns without lodging partnership returns.

Fourteenth: Simplify the adjustment note provisions.

Fifteenth: Increase the limits on all GST thresholds in the GST law in line with the scale and complexity of current business activities and provide a mechanism for periodic adjustment.

Sixteenth: Allow a joint venture elect to be treated as a joint venture for GST purposes where it is already a Joint Venture for accounting purposes under IFRS.

Seventeenth: Apply income tax self assessment style initiatives to the GST regime.

Eighteenth: Modernise the GST law by adopting the following specific technical amendments:

a) allow any eligible entity to join or leave a GST group at any time;

b) amend recipient credit tax invoice provisions (RTCI), to allow the RCTI agreement to be included in the relevant tax invoice;

c) expand on-line access to eliminate written communication;

d) remove the requirement to identify and report on barter transactions where no net revenue would be collected from the transaction; and

e) income tax self assessment style processes should be applied to the GST regime.

10. Introduce Green Tax incentives:

First: Introduce accelerated depreciation for buildings that retrofit (retro-green) to meet high environmental standards.

11. Reform State and Territory Taxes:

First: Australian governments to adopt the BCTR State Tax reform model for comprehensive business tax reform.

Second: Australian Governments should commit to a new round of business tax reform in consultation with industry, underpinned by a new inter-governmental agreement.

Third: The Council of Australian Governments (COAG) should:

a) set a timetable to eliminate inefficient business and property taxes with clear performance milestones;

b) commit to a root and branch modernisation of the business tax system;

c) commit to a new system for allocating the GST revenue between jurisdictions;

d) set a five year target to reduce Australian government reliance on indirect taxes;

e) commit all states and territories to undertake five yearly reviews of the indirect tax systems with the objective of reducing their reliance on high dead weight taxes and reducing compliance costs.

Fourth: The Australian Governments should then ratify a new Inter-governmental Agreement to give effect to COAG's tax reform program.

12. Reform Developer Levies:

First: Increase the use of government borrowing, PPPs, BIDs and tax increment financing to fund future infrastructure, in preference to inefficient funding strategies such as developer levies.

Second: Developer levies should be the funding option of last resort and abolished completely in the medium term.

Third: Developer levies should only be levied to capitalise public infrastructure directly related to the additional demand for public infrastructure created by a development project, after taking account of community-wide and intergenerational benefits that should be funded by the broader society.

Fourth: There should be a direct nexus between the incidence and size (in dollar terms) of a development levy and the specific public infrastructure the levy is capitalising.

Fifth: Development levies collected by government and statutory authorities should be audited on an annual basis and returned if not spent within two years.

Sixth: The Council of Australian Governments (COAG) should establish a formal framework for implementing the above reforms.

Seventh: The Council of Australian Governments (COAG) should commit to trial Tax Increment Financing in three pilot studies in each state and territory.

13. Harmonise State Tax Provisions:

First: The Council of Australian Governments (COAG) should adopt a standard set of property tax rules and definitions for:

a) stamp duty on property;

b) land tax and land rich provisions;

c) unit trust definitions and corporate reconstruction (including stamp duty relief for top hatting).

Second: State Governments should endorse and implement the Property Council Unit Trust Rationalisation model.

Third: State Governments should endorse and implement the Property Council Corporate Reconstruction model.

14. Reform Property Rates, Levies & Charges:

First: The Council of Australian Governments (COAG) should commit to a framework that ensures all Councils:

a) adopt an equitable and consistent rating base;

b) develop a consistent criteria and process for changing the rating base;

c) confirm the rating base has been established in accordance with the framework;

d) link any increase in local government rates to a reduction in development levies where they exist;

e) consult with industry and the community regarding changes in Council rates, charges or levies;

Second: The Council of Australian Governments (COAG) should commit to an annual review of Council rates, charges and levies to ensure the above framework is being followed.

Third: The Council of Australian Governments (COAG) should commit to the abolition of car parking congestion levies.

Fourth: The Council of Australian Governments (COAG) should commit to the abolition of fire services levies in favour of funding through consolidated revenue.

Fifth: The Council of Australian Governments (COAG) should commit to ensuring that utilities provided to non-residential property are charged on a user pays basis only, similar to households.

A Guide to Reading this Submission

This submission provides recommendations on the above **14 policy topics** grouped by **five broad themes**:

1. **Tax Reform Principles**
2. **International Taxes**
3. **Federal Taxes**
4. **State, Territory and Local Government Property Taxes**
5. **The Way Forward**

This submission focuses on policy issues with implications for reform of the Australian tax system.

In general, one to two pages of commentary and recommendations are provided for each topic.

The Property Council of Australia can provide more detail for each subject area, including policy submissions and extensive research reports prepared by Australia's leading independent consultants and academics.

We are keen to share these resources with the Australian Government.

1. Tax Reform Principles

The Property Council supports the Business Coalition for Tax Reform's (BCTR) ten Principles for Tax Reform.

The Property Council proposes that the design of Australia's future tax system should:

- result in a robust and stable revenue base.
- support Australia's international competitiveness and support a growing and vibrant business sector, and minimise the tax administration burden on all businesses.
- be consistent with broader government policy objectives in areas such as climate change, the emissions trading system, population policy, globalisation and technological change (to the maximum extent possible).
- endeavour to minimise distortionary effects on behaviour, including workforce participation, rates of saving, and engagement in entrepreneurial and commercial activities.
- be consistent with the traditional principles of equity, simplicity (or eliminating unnecessary complexity) and efficiency.
- be open and transparent regarding any necessary trade-offs in policy objectives.
- be flexible so that it can adapt to changing domestic and international circumstances.
- remove the most inefficient of taxes levied by the commonwealth, state, territory and local governments (to the maximum extent possible).
- address the imbalances between the spending and revenue raising for different levels of government in a simple, transparent way that provides sufficient certainty for each level of government.
- financially motivate States to make improvements/efficiencies in service delivery that will to ease administrative burdens, prevent duplication of effort for taxpayers and remove inefficient taxes.

LEVEL 1, 11 BARRACK STREET, SYDNEY NSW 2000
PH 02 9033-1900 - FAX 02 9033-1966
Email info@nat.propertyoz.com.au - www.propertyoz.com.au

2. International Tax Issues

This chapter addresses the broad international tax issues that are impacting Australia's international competitiveness and economic growth:

- Modernising Managed Investment Trusts;
- Tax Treaty Benefits for A-REITs
- Modernising Attribution Rules;
- Reforming Thin Capitalisation Rules;
- CGT relief for Trusts and Foreign Investors.

Each of the recommendations are aimed at levelling the playing field with our regional competitors.

The best way to facilitate Government's commitment to making Australia a financial services and funds management hub for the Asian Region, is to modernise the nation's international tax regime and the MIT and REIT rules.

2.1 Modernising Managed Investment Trusts

We support the Rudd Government's objective to transform Australia into an Asia Pacific financial services and funds management hub.

In February 2008, the Rudd Government announced the Board of Taxation review of tax arrangements for Managed Investment Trusts (BOT MIT Review).

The Board of Tax will make recommendations to Government in mid 2009 including reform of the Real Estate Investment Trust (REIT) rules to improve international competitiveness.

This reform is vital for ordinary Australians as well as the sector.

Australia has the second largest REIT market globally with approximately **70%** of all Australian core property securitised through listed and wholesale REITs.

The REIT market has traditionally been the vehicle for ordinary Australian's to invest in property directly or indirectly through managed funds and superannuation. It aims to give all Australian's the same investment opportunities as wealthy investors and corporations investing directly in property.

The Property Council supports Government's view that ordinary Australians who invest in property through MITs deserve the same treatment and opportunities as wealthy direct property owners.

Crucially however, unlike direct investors, MITs including REITs have restrictions that impede their ability to:

- earn income from property investment; and
- manage capital effectively.
-

The current rules were not designed as a regime to facilitate a modern industry. The legislation acts more as anti-avoidance regime that impedes the efficient and internationally competitive operation of managed property funds .

Many of today's commonplace property investment opportunities simply didn't exist when the REIT rules were first drafted.

Australia needs to modernise its MIT framework to foster the development of new property asset classes that deliver social dividends, such as affordable housing, retirement and aged care facilities.

Industry supports a simple, elective regime that is available to all MITs and expands the allowable investment activities.

The following ten recommendations will help achieve the Government's objectives:

Modernise Managed Investment Trusts

First:	Establish a dedicated MIT tax regime in Australian law. Include REITs within this regime. Exclude discretionary trusts.
Second:	Retain the classic features of a collective investment vehicles system, such as flow through status, tax deferred income and CGT concessions.
Third:	Allow MITs to undertake all forms of investment in property while retaining tax flow through status. Allow MITs to control taxable companies.
Fourth:	Clearly define ineligible investment activities, thereby enabling the scrapping of complicated and outmoded `active/passive' rules.
Fifth:	Create a statutory rule that gains or losses on disposals by MITs are taxed as capital rather than income, in line with current practice.
Sixth:	Allow fund trustees to effectively manage capital by retaining a portion of earned income. Modernise the attribution rules to better serve the long-term interests of collective investors.
Seventh:	Enable Australian MITs to provide their unit holders with the treaty benefits applicable to inbound income that are generally lost to the ordinary Australians who invest in REITs.
Eigth:	Offer elective access to the proposed MIT regime to any entity that is widely-held, either directly or on a trace through basis.
Ninth:	Deem sovereign wealth funds to be widely held as they represent the collective wealth of nations.
Tenth:	Retain the current Division 6 as a fall back regime for trusts that do not qualify (or elect not to enter) the MIT regime.

More detailed recommendations can be sourced from:

"Pre-Budget Submission: 2009-2010 Federal Budget", Property Council of Australia (January 2009).

Board of Taxation MIT Review Submission, Property Council of Australia (19 December 2008)

Board of Taxation MIT Review Interim Submission, Property Council of Australia (28 November 2008)

Division 6 Submission, Property Council of Australia (1 October 2008) **Confidential**

Tax Treaty Negotiation Submission, Property Council of Australia (26 March 2008)

OECD CIV Submission, Property Council of Australia (4 March 2009)

OECD CIV Submission, Property Council of Australia (23 February 2009)

Division 6 Submission, Property Council of Australia (13 February 2008)
Confidential

"Benchmarking Australia's Tax System: the International Context", Property Council of Australia (March 2006)

2.2 Tax Treaty Benefits for A-REITS

The Property Council of Australia strongly supports alignment of tax treaty negotiation policy with the Federal Governments commitment to maintain and improve Australia's position as a financial hub.

This work needs to be coordinated with the Board of Taxation review of managed investment funds.

Australian Real Estate Investment Trusts compete for investments globally and increasingly seek capital from offshore investors.

Well formulated tax treaties are essential for facilitating cross border capital flows. Australia's tax treaty policy for AREITs should focus on facilitating an A-REIT:

- raising equity and debt capital from offshore investors; and
- investing in foreign assets.

Raising Capital

The Government's withholding tax reforms that were announced in June 08 will progressively reduce the withholding tax rate on distributions from Australian managed funds to foreign investors over a three year period from 30 per cent to 7.5 per cent.

This vastly improves an A-REITs ability to raise equity capital from foreign investors.

Crucially however, interest withholding tax on debt is **10%** although in some treaties, interest withholding tax has been reduced to 0% for certain bank and financial institutions. This should be more widely applicable to all debt except related party debt.

This will facilitate the raising of debt capital by A-REITs from investors in treaty countries.

A-REIT Investment Overseas

A-REITs also make substantial investments into offshore property through mostly interposed entities. It is critical for competitiveness that these A-REITs are able to access treaty benefits that apply to distributions or interest payments from these interposed entities.

To date, A-REITs have been unable to obtain treaty benefits otherwise available to corporations and individuals because trusts aren't a recognised treaty entity. The government needs to clarify with foreign jurisdictions that trusts can be considered residents of Australia under tax treaties and beneficially entitled to income.

Equally, some foreign jurisdictions seek to levy higher withholding taxes on distributions to non-portfolio investors. This critically affects direct A-REIT investment in foreign assets and needs to be addressed.

Importantly, Australian tax treaty policy remains too concerned with protecting Australian taxing powers, including cases where no source tax is levied under domestic law in Australia.

By creating taxing rights under treaty which are foregone in domestic law, Australia is creating a situation where the other country can tax Australian residents when Australia does not tax in the converse case. This is detrimental to Australia's national interests.

OECD Model Treaty

On 17 July 2008 the OECD Council approved changes to the model treaty taxing foreign portfolio investors in REITs at the dividend withholding rate.

This is a landmark decision which narrows a nation's unfettered attempts to tax real estate and provides REITs with treaty protection.

Under the OECD model treaty, foreign portfolio investors are now entitled to treaty withholding tax rates that apply between the country of origin for the REIT and the foreign investor's country of origin.

The OECD will look further into other areas of work including REIT-to-REIT investing and direct REIT investing in another country.

Currently the withholding tax applied to a REIT investing in another foreign REIT or to an investor in direct foreign property is at the discretion of the country where the income is sourced. At best, it is subject to a bi-lateral treaty, but very few treaties deal specifically with this issue. Around the globe, the treatment of these investments is ad hoc.

The Property Council has been closely involved in this OECD work.

Australia needs to be proactive in adopting the OECD approach and adapting its tax treaty policy to all REIT issues. Australia also needs to remain closely involved with the REIT issues still to be resolved by the OECD.

Australia has already been in the lead in various ways in tax treaty developments for REITs and should continue to be so.

Priority Jurisdictions

Countries for priority treat negotiations are those in which Australia has significant investment in commercial property and which are significant sources of investment in Australian commercial property and A-REITs.

These countries tend to coincide with common sources of capital inflows and outflows generally, and so the property industry will have similar priority countries as other sectors.

We recommend treaty negotiation and regular reviews for USA, UK, New Zealand, Germany, France, and Japan.

Treaty Negotiation Advisory Group

The negotiation process requires significant resources. We recommend that Treasury convene a tax treaty negotiation advisory group to support Australian tax reform and OECD forums.

This advisory group would provide Treasury with invaluable technical expertise, practical experience, additional resources, and an open consultation channel to accelerate the treaty negotiation process for the benefit of Australia.

The following recommendations for tax treaty reform will significantly improve our competitiveness:

Improve Tax Treaty Benefits for A-REITs:

First:	Support the development of Australia as a managed funds hub with a competitive, flexible tax treaty policy.
Second:	Establish a zero percent interest withholding tax rate for all debt raisings other than related-party debt.
Third:	Resolve that a foreign investor in an A-REIT is not deemed to be taxable in Australia.
Fourth:	Apply treaty dividend articles to A-REIT distributions.
Fifth:	Eliminate double taxation where portfolio investment gains on disposals of "land rich" entities are taxed by country of residence - ensure they are not also subject to capital gains in Australia.
Sixth:	Enable Australian MITs to provide their unit holders with the treaty benefits applicable to inbound income that are generally lost to the ordinary Australians who invest in A-REITs.
Seventh:	Commit to ongoing reduction of withholding tax rates.
Eighth:	Prioritise tax treaty negotiations and regular reviews for countries that are major sources of inbound and targets/destinations for outbound Australian investment (commencing with USA, UK, New Zealand, Germany, France, and Japan).
Ninth:	Convene a tax treaty negotiation advisory group, that included representatives from business/sectorial groups, to support Treasury in Australian tax reform and OECD forums.
Tenth:	Enact tracing provisions to "look through" widely held A-REITs in foreign jurisdictions that impose higher withholding tax rates on non-portfolio distributions.
Eleventh:	Remove unnecessary "source rules" from tax treaties.

More detailed recommendations can be sourced from:

OECD CIV Submission, Property Council of Australia (4 March 2009)

OECD CIV Submission, Property Council of Australia (23 February 2009)

"Pre-Budget Submission: 2009-2010 Federal Budget", Property Council of Australia (January 2009).

Tax Treaty Negotiation Submission, Property Council of Australia (26 March 2008)

2.3 Modernising Attribution Rules

The Government announced a Board of Taxation review to simplify, clarify and consolidate the attribution regimes in October 2006. The conclusions are yet to be announced.

The Australian property industry operates in a competitive international market and in order for Australia to become a funds management hub for the Asian region, legislative barriers to investment need to be removed.

There are significant opportunities for improving the investment environment for A-REITs by removing red tape and simplifying the attribution regimes.

Returns from Property Investment

Australia has the second largest REIT market globally with approximately **70%** of all Australian core property securitised through listed and wholesale REITs.

As a result, A-REITs are increasingly seeking investment in foreign assets but are impeded by the attribution regimes.

The attribution regimes are anti-avoidance measures broadly aimed at preventing entities from accumulating highly mobile income off shore to defer tax.

Where the attribution rules are triggered the taxpaying entity must pay tax under Australian laws (in addition to any tax paid in the foreign jurisdiction).

For property investment, the attribution regimes are not relevant anti-avoidance measures but significantly impede off-shore investment because returns from real estate income are caught under the Controlled Foreign Corporations rules (CFC) or the Foreign Investment Funds Rules (FIF).

Property is a highly immobile investment that is anchored geographically. Property investment in a particular jurisdiction is governed by the asset itself rather than the tax features of the particular jurisdiction.

The regime rules do not appropriately influence individual property investment decisions. Their compliance burden has become an undue impediment to offshore investment for the property industry.

There is a low risk of tax deferral from property income because that income is not mobile, and taxed in the country in which it is sourced.

Returns from real property investment, in particular rent, should not be caught by the CFC and FIF attribution regimes. This will help level the playing field for offshore property investment.

Attribution reforms being considered by the Board of Taxation will need to be coordinated with the outcomes of the Board of Taxation MIT review.

Modernise Attribution Rules:

First: Exclude property income from the CFC and FIF rules.

Second: Expand the listed country exemptions in the FIF rules to include foreign entities in CFC listed countries.

Third: Extend the FIF exemption for complying super funds to Australian unit trusts controlled by super funds.

Fourth: Extend the listed public company exemption to listed public unit trusts.

Fifth: Modernise FIF exemptions to include widely held unit trusts and not just companies, and activities such as property acquisitions, asset management, and development.

Sixth: Implement the following technical amendments to the attribution rules:

a) allow functional currency elections for trusts;

b) ensure property entities do not pay tax on unrealised gains under the attribution regimes;

c) allow Australian entities with interests in foreign trusts or foreign hybrids to elect to apply existing trust and partnership provisions instead of the attribution rules;

d) apply similar rules for branch equivalent calculations under the attribution rules for foreign flow through entities and foreign branches;

e) use the tax rules in each listed country as the basis for branch equivalent calculations;

f) use adjusted Australian tax law as the basis for branch equivalent calculations regarding unlisted countries.

More detailed recommendations can be sourced from:

"Pre-Budget Submission: 2009-2010 Federal Budget", Property Council of Australia (January 2009).

Attribution Regime Submission, Property Council of Australia (20 June 2008)

Functional Currency Submission, Property Council of Australia (18 December 2007)

"Benchmarking Australia's Tax System: the International Context",
Property Council of Australia (March 2006)

2.4 Reforming Thin Capitalisation Rules

Thin capitalisation provisions are designed to ensure that multinational entities do not allocate an excessive amount of debt to their Australian operations. Thin capilalisation provisions also prevent multinational entities taking advantage of the differential tax treatment of debt and equity to minimise their Australian tax.

The thin capitalisation provisions do this by limiting debt deductions where the debt exceeds an allowable amount. The provisions prevent the use of excessive debt to fund Australian operations.

Trusts with Offshore Assets

Unfortunately, thin capitalisation rules can unfairly treat trusts differently from companies.

In certain circumstances, the rules can deny debt deductions against assessable dividend income for a trust, but unlike a company, the dividend income is still assessable. This leaves the trust with a tax liability and no debt deductions.

A company in a similar situation would have access to an exemption under section 23AJ of the *Income Tax Assessment Act 1936* that deems the dividend non-assessable.

This is a significant problem for A-REITs using debt funding to invest in a controlled foreign entity.

The thin capitalisation calculations can potentially reduce the debt funding capacity of the trust to nil, denying interest deductions against taxable dividend income from the overseas investment.

The thin capitalisation rules apply inequitably to trusts with offshore investments.

The thin capitalisation rules should be aligned for companies and trusts to give similar outcomes.

Amendments are required to the calculation of the trust's permitted debt funding, to allow debt deductions where an outward investing trust is deriving non-portfolio foreign dividend income. This will ensure that the outcome for companies and trusts is aligned.

Trust Groups and Stapled Groups

Similarly trust groups and stapled groups are disadvantaged in thin capitalisation calculations because unlike companies they cannot consolidate their thin capitalisation calculation. They must instead work out individual calculations for each trust within a wholly owned group.

This burden should be removed to allow thin capitalisation calculations aligned to economic relationships for trusts and stapled groups.

Foreign Partnerships, Trust Estates and Foreign Hybrids

The Thin capitalisation provisions should also be streamlined to remove the unintended outcome that thin capitalisation provisions apply to a partnership in a foreign jurisdiction, non-resident trust estate or a foreign hybrid even though the thin capitalisation rules would be disregarded for a Controlled Foreign Corporation.

The thin capitalisation rules should not apply in any of these circumstances.

Reform Thin Capitalisation Rules:

First:	Align the treatment for trusts and companies under thin capitalisation calculations.
Second:	Allow wholly-owned trust groups to apply thin capitalisation rules on a consolidated basis.
Third:	Allow stapled groups to apply thin capitalisation rules on a consolidated basis.
Fourth:	Ensure thin capitalisation provisions do not apply to partnerships formed in foreign jurisdictions, non-resident trust estates and foreign hybrid entities.

More detailed recommendations can be sourced from:

"Pre-Budget Submission: 2009-2010 Federal Budget", Property Council of Australia (January 2009).

Thin Capitalisation Submission, Property Council of Australia (21 December 2006) **CONFIDENTIAL**

NB: This submission outlines a number of other recommendations that have already been implemented.

2.5 *CGT Relief for Trusts and Foreign Investors*

CGT Relief for Trusts

There are currently no specific provisions that facilitate the transfer of assets between unit trusts under common ownership without CGT consequences.

To date, trusts have relied on the trust cloning provisions, sub-sections 104-55(5)(b) and 104-60(5)(b) as the only limited form of CGT relief available. This allows a trust to "clone" itself and transfer assets to the new cloned trust without incurring capital gains tax.

The ability to access roll-over relief, such as cloning, is commercially vital to unit trusts, particularly large listed trusts, widely held trusts and unit trust groups. It enables them to:

- facilitate commercially efficient internal restructures of unit trust groups; and

- ensure that CGT liabilities are determined by reference to the true economic gain on the sale of assets.

In the current economic environment, these activities will be used increasingly to restructure groups and move saleable assets into separate trusts.

The tax system needs to maintain the trust cloning provisions or provide a dedicated rollover relief provision for unit trusts.

CGT Relief for Foreign Direct Property Investors

Currently, foreign direct property investors are unable to sell their real property assets CGT free.

Alternatively, they can make a similar investment in non-land rich entities or up to a 10% investment in land rich entities including securities, property linked debt or businesses and sell them CGT free.

This creates a distortion in foreign investment and skews capital allocation towards other investment classes.

This is a systemic inefficiency that can be addressed by providing CGT relief for direct property investors from foreign jurisdictions similar to other investment classes and other jurisdictions.

This will increase the flow of foreign capital into Australia and the property industry.

Provide CGT Relief for Trusts and Foreign Investors:

First: Maintain trust cloning provisions or provide a dedicated rollover relief provision for unit trusts.

Second: Extend CGT exemptions to foreign direct property investors.

More detailed recommendations can be sourced from:

Trust Cloning Submission, Property Council of Australia (2 February 2009) **CONFIDENTIAL**

"Pre-Budget Submission: 2009-2010 Federal Budget", Property Council of Australia (January 2009).

Australian Financial Centres Forum Submission, Property Council of Australia (23 December 2008)

Trust Cloning Submission, Property Council of Australia (8 December 2008) **CONFIDENTIAL**

3. Federal Tax Issues

This chapter addresses important Federal tax issues:

- Maintaining the Negative Gearing Regime;
- Maintaining the existing CGT Regime;
- Simplifying Capital Allowances;
- Simplifying the GST rules;
- Introducing Green Tax Incentives;

Each of the recommendations are aimed to maintain or develop tax design features that will improve overall community, economic and environmental dividends.

3.1 Maintain Negative Gearing

Negative gearing allows investors to offset some of their investment financing costs against other earned income.

It helps overcome the high costs of investment and in the case of property, means that the taxpayer is not forced to source that money through higher rents.

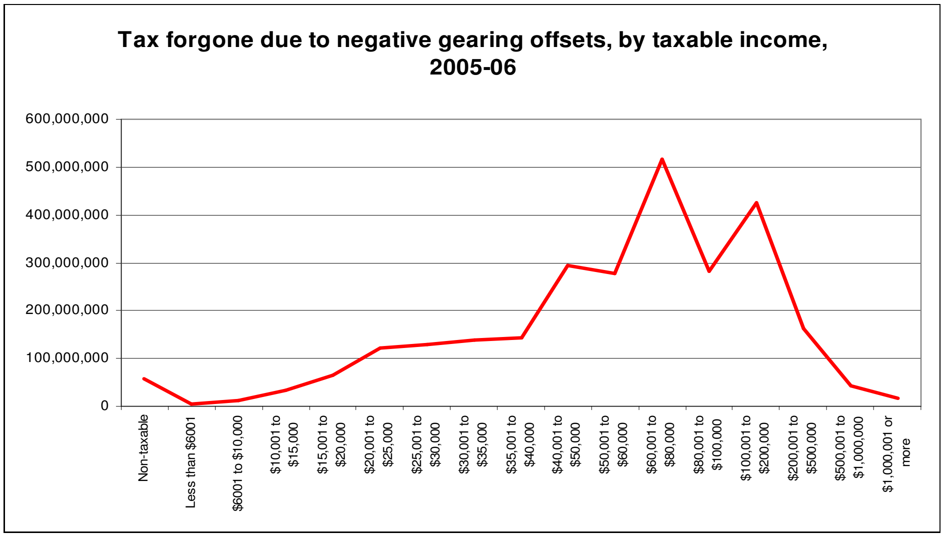
A negatively geared investment costs more in interest than it earns and requires the investor to use some of their income from other sources (eg other investments or salary), to pay the interest on money borrowed for the investment. The regime provides a tax deduction that helps make up part of the financing shortfall.

By far the biggest user of negative gearing is middle Australia trying to build wealth for retirement.

Negative gearing reduces the property tax burden of investors and provides a steady supply of accommodation to meet demand which improves affordability.

In the current economic climate with housing development approvals down, low rental vacancies and a housing affordability crisis, the negative gearing regime is essential to provide affordable rental accommodation and support middles Australia's retirement plans.

Around half of all negatively geared investment properties are owned and rented out by low and middle-income earners.



Source: ATO, Australasia Economics 2008

The cost to Government from negative gearing is a fraction of the $29 million paid in property taxes annually.

It is also crucial to note that negative gearing is available for a number of asset classes, not just property. Negative gearing allows taxpayers to unlock an important source of finance for investment in assets like property and shares.

Without negative gearing, many investors cannot finance investments. Restricting access to borrowings would distort the capital markets which depend on investors being able to allocate funds for investment.

For capital markets to operate efficiently, it is essential that investors can borrow against their investment returns as well as their income from wages or other sources. This ensures that capital is used in the most productive way available.

Equally, limiting the negative gearing regime to borrowings against investment returns, will effectively reduce the investors ability to offset their investment financing costs. This will decrease the supply of investment property and increase rents.

Any change to restrict negative gearing for property would have serious, long lasting impacts for the community and the economy.
It would:

- stifle the supply of rental accommodation and further stall development;
- push up house prices and rent across the board; and
- force investors to move out of property to other investments, distorting the investment decisions of a middle Australia.

Negative gearing is consistent with good public policy because an ideal income tax regime allows taxpayers to claim deductions for any interest expense from investments that generate taxable income.

Maintain Negative Gearing:	
First:	Maintain the current negative gearing regime.

More detailed information can sourced from:

"Estimates of Tax Forgone Due to Negative Gearing of Rental Properties by Individuals", Australasia Economics (October 2008)

"Australia's Future Tax System: Ending the Property Tax Squeeze – For the Review Panel for Australia's Future Tax System", Property Council of Australia (17 October 2008)

"Improving Australia's Tax System: Tackling the Growing Property Tax Burden – For the Ergas Review of Australia's taxation system", Property Council of Australia (July 2008)

"Benchmarking Australia's Tax System: the International Context", Property Council of Australia (March 2006)

"Negative Gearing", Ernst & Young (March 2006)

PROPERTY COUNCIL of Australia

3.2 Maintaining the Existing CGT regime

The capital gains tax regime and concessions allow property owners to sell their home CGT free and provide property investors with a CGT discount after 12 months.

The CGT regime and concessions are widely available to the majority of asset classes including shares.

The CGT regime does not favour any one asset class.

CGT concessions for property help to maintain an affordable supply of houses to the market. Removing the CGT concessions now would also run counter to the global trend to tax mobile capital and business income at lower rates than the top personal rate.

Removing CGT concessions for property would have serious, long lasting impacts for the community and the economy. It would:

- immediately jeopardise the savings of home owners;
- stifle the supply of rental accommodation and further stall development;
- push up rental in the medium to long term; and
- potentially force investors to move out of property to other investments and stop home owners selling.

Maintain the Existing CGT Regime:
First: Maintain the current CGT regime.

More information can be sourced from:

"Australia's Future Tax System Consultation Submission," Business Coalition for Tax Reform (forthcoming May 2009)

"Australia's Future Tax System: Ending the Property Tax Squeeze – For the Review Panel for Australia's Future Tax System", Property Council of Australia (17 October 2008)

"Improving Australia's Tax System: Tackling the Growing Property Tax Burden – For the Ergas Review of Australia's taxation system", Property Council of Australia (July 2008)

"Benchmarking Australia's Tax System: the International Context", Property Council of Australia (March 2006)

3.3 Simplifying Capital Allowances

The capital allowances regime is vital to encourage investment:

1) in crucial property and infrastructure projects.

2) to modernise and improve property facilities.

However, the capital allowances regime is extremely complex to administer.

Compliance reports can now take twice as long to complete than in 2000.

It costs industry and the Australian Tax Office millions of dollars in compliance and administration each year.

Simple reforms to reduce compliance costs and uncertainty

A number of simple reforms can be implemented to quickly reduce the compliance burden for industry and simplify government administration without significantly impacting revenue.

The Property Council proposal for capital allowance simplification aims to apply appropriate surrogate rules and simplify the legislation/rules.

The proposal will remove the complexity and cost associated with compliance and administration of the regime.

The simplification proposals outlined below will enhance and clarify the operation of the capital allowances regime and are largely revenue neutral.

The surrogate rules that are of greatest benefit for simplification reform relate to:

- Identifying a functional unit
- Reducing the number of assets on depreciation schedules by aggregation/ pooling
- Drawing a clearer line between land, buildings and depreciable assets
- Banding of assets to reduce the number of depreciated rates
- Working out the cost of depreciable assets
- Extending the write-off point of assets
- Determining when can you write off an asset
- Drawing the line between deductible repairs & capitalised improvements

Building economic life for global competitiveness

While the above recommendations will quickly improve the operation of the capital allowances regime, a more significant reform would create a simple and internationally competitive opt-in regime.

At present there are business concerns that in many cases an asset's effective life as defined under the current tax law (which includes business use in the secondary market) does not reflect the actual economic life of the asset.

The economic life of building investments was the subject of a Property Council study which determined the economic life (in years) of building structure, plant and fixtures for a range of asset classes.

The study then derived a single weighted average economic life for each property asset class:

	Economic Life (years)	Structure	Plant	Fittings
Commercial Office	**17**	27	19	7
Retail shopping centre	**17**	27	22	7
Hotel	**15**	27	21	7
Industrial	**20**	31	22	7

The above table demonstrates the potential for scalability in the regime – an entity could elect to determine capital allowances based on:

- the asset level weighted average economic life; or alternatively,
- the economic life to the structure, plant, and fittings components of the building.

Our members are concerned that the much faster tax amortisation rates offered by competitor countries across a range of capital assets can make a difference at the margin for some large capital intensive projects.

There is enough data available to show that the true economic life of structures, plant and fittings can be quantified.

The Property Council would commission a further study to update this economic life quantification to assist implementation of this regime.

The Property Council recommends that this economic life approach be included as an opt-in capital allowance regime, except in cases where there is a definable public policy basis to accelerate rates.

Simplify Capital Allowances:	
First:	Introduce an economic life capital allowances regime, except in cases where there is a definable public policy basis to accelerate rates.
Second:	Create simple, scaleable, capital allowances rules: a) treat complete systems as one asset; b) pool similar assets to reduce complexity; and c) band similar assets under average depreciation.
Third:	Eliminate low value asset pools that have asset write offs under $1,000.
Fourth:	Use common multiplying factors to calculate market values.
Fifth:	Clearly draw the line between land, buildings, fixtures and fittings (Division 40 and Division 43).
Sixth:	Establish clear guidelines for immediate first-year asset write-off.
Seventh:	Clearly draw the line between deductible repairs and capital improvements.

More detailed recommendations can be sourced from:

"Australia's Future Tax System: Ending the Property Tax Squeeze – For the Review Panel for Australia's Future Tax System", Property Council of Australia (17 October 2008)

Capital Allowances Simplification Submission, Property Council of Australia (21 December 2006) **CONFIDENTIAL**

3.5 Simplifying the GST Rules

The Property Council welcomed the Government's announcement of a Board of Taxation GST Review in June 2008.

The Government has committed to streamlining and improving the operation of the GST, reducing compliance costs, and removing anomalies.

The report is yet to be handed down.

Currently, the GST regime creates considerable cost and compliance burdens for taxpayers through:

- unnecessary administrative complexity;
- inconsistent provisions for dealing with GST issues; and
- unclear provisions that are difficult to interpret.

Many of the problems regarding complexity, inconsistency and clarity have been caused by attempts fix specific, perceived flaws in the system which create more issues or result in a "patch-work" of amendments.

GST reform must consider the impact of the changes across the whole GST regime to ensure that complexity is stripped out and replaced by simple, clear principles.

Simplifying the current GST provisions is the easiest way to improve administrative efficiency and reduce compliance costs. In particular, reform needs to include:

- simplifying the Margin Scheme;
- clarifying and streamlining the margin scheme valuation rules;
- clarifying the rules for Division 129 adjustments; and
- cleaning up nuisance issues that unnecessarily burden the industry.

Simplify the GST Rules:

First: Commission a special review to simplify and improve the operation of the margin scheme.

Second: Amend the GST Act so that margin scheme valuations cannot be challenged by the ATO where:

a) the valuation made by a professional valuer in accordance with accepted valuation principles;

	b)	the valuer complied with the specific requirements set out in the relevant margin scheme valuation determination;
	c)	there has been no evidence of fraud or negligence on the part of the valuer or collusion on the part of the taxpayer; and
	d)	the value attributed is not so extravagantly large or inadequately small, to indicate it may not be a professional valuation.

Third: Clarify the rules for Division 129 adjustments.

Fourth: Amend Division 135 Going Concern and Farmland provisions to ensure adjustments under the division are consistent with:

a) other GST adjustment provisions (such as Division 129); and

2) GST provisions that result in taxpayers not being able to claim full GST credits (such as Division 11).

Fifth: Revise the financial acquisitions thresholds as follows:

a) exclude acquisitions made in the course of the commencement or termination of an enterprise from the definition of "financial acquisition";

b) extend the current exclusion for borrowings to any activity associated with raising equity capital;

c) amend the period for test for exceeding the threshold to six months retrospectively and six months prospectively; and,

d) increase such thresholds to 25% or $100,000.

Sixth: Replace the "General Interest Charge" provisions with "Shortfall Income Charge" provisions for GST purposes.

Seventh: Align the 'five year' period in section 40-75 to the "five adjustment periods" in Division 129 to simplify the interaction between the two provisions.

Eighth: Identify "Commercial Residential Premises" using a test is based only on physical characteristics of the premises (which also determines the "use").

Tenth: The "consideration" associated with the purchase of a retirement village should include items that:

a) are agreed between the vendor and purchaser;

b) exhibit a nexus with the taxable supply of the premises; and

	c)	are supplied for value.
Eleventh:	Simplify the operation of Division 105 Mortgagee Sales.	
Twelfth:	Allow registered commercial or invoicing agents to be registered for GST purposes.	
Thirteenth:	Allow tax law partnerships to account for their income and expenses through each partner's own returns without lodging partnership returns.	
Fourteenth:	Simplify the adjustment note provisions.	
Fifteenth:	Increase the limits on all GST thresholds in the GST law in line with the scale and complexity of current business activities and provide a mechanism for periodic adjustment.	
Sixteenth:	Allow a joint venture elect to be treated as a joint venture for GST purposes where it is already a Joint Venture for accounting purposes under IFRS.	
Seventeenth:	Apply income tax self assessment style initiatives to the GST regime.	
Eighteenth:	Modernise the GST law by adopting the following specific technical amendments:	
	a)	allow any eligible entity to join or leave a GST group at any time;
	b)	amend recipient credit tax invoice provisions (RTCI), to allow the RCTI agreement to be included in the relevant tax invoice;
	c)	expand on-line access to eliminate written communication;
	d)	remove the requirement to identify and report on barter transactions where no net revenue would be collected from the transaction; and
	e)	income tax self assessment style processes should be applied to the GST regime.

More detailed recommendations can be sourced from:

GSTR 2000/20 Submission, Property Council of Australia (17 April 2009) **CONFIDENTIAL**

Board of Tax GST Review Submission, Property Council of Australia (15 September 2008)

Retirement Villages Submission, Property Council of Australia (29 September 2008) **CONFIDENTIAL**

Senate Inquiry Submission, Property Council of Australia (26 March 2008)

3.6 Introducing Green Tax Incentives

The Built Environment Offers a Ready Source of GHG Savings

Research conducted by the Australian Sustainable Built Environment Council (ASBEC)[1] showed that significant abatement can be achieved with properly targeted incentives.

Relying on the Carbon Pollution Reduction Scheme (CPRS) alone the building sector is expected to reduce emissions by around 8 Mt a year.

The ASBEC research demonstrates that with complementary measures and incentives, abatement of around 60 Mt per annum is achievable by 2030.

These figures are currently being revised on the basis of updated ABARE and government commissioned CPRS research.

The Opportunity

A strategic approach to building energy efficiency could:

- **halve electricity use in commercial building** stock by 2030 and 70% by 2050;
- reduce **GHG emissions by 30%** within two decades;
- **cut the cost of carbon abatement by 14%** or $30 per tonne by 2050;
- return **$38 billion** each year to the GDP compared to conventional GHG abatement programs by 2050;
- provide breathing space for the development of clean energy alternatives; and,
- help the country **reduce its carbon footprint faster** and with less fuss.

Eco-efficiency in the Built Environment

Energy efficiency does not provide the only opportunity for the built environment. A focus on eco-efficiency could deliver other significant sustainability dividends:

- new commercial buildings and their occupants could:
    - consume 60%-70% less water;

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[1] *The Second Plank – Building A Low Carbon Economy With Energy Efficient Buildings*, Centre for International Economics for ASBEC (August, 2008)

- generate 40% less waste; and,
- deliver higher indoor environmental quality;

- new dwellings and their occupants could halve their eco footprint compared to business as usual performance; and
- retrofitted existing commercial buildings could achieve at least half the efficiencies of new buildings over the next decade.

This involves the use of improved technology and intelligent building design.

Unfortunately there is a timing mismatch between the investment in eco-efficiency and lower energy cost to justify a major investment.

Australia has **330 million square metres** of existing commercial building stock and the fastest way to achieve substantial emissions cuts is to improve the energy efficiency of those buildings.

The government needs to provide the property industry with tax incentives to speed up the adoption of efficient technologies.

Accelerated 'green' depreciation would **fast track efforts to rebuild existing stock** to higher environmental standards.

Green depreciation would cost $2.3 billion over 10 years, starting with a $90 million annual outlay.

Independent research indicates the investment would save 203 Mt of carbon over the first decade. That equates to **removing 6.4 million cars from our roads** every year.[2]

What is Green Depreciation?

Green depreciation is accelerated depreciation for buildings that meet an environmental standard.

The standard, to be set by government, would be based on scientific and engineering advice.

Australian governments have traditionally used accelerated depreciation to stimulate the economy.

In the 1992 One Nation package, then Prime Minister Paul Keating introduced an accelerated depreciation scheme to stimulate the economy:

> *"The Government has decided to provide substantial acceleration of depreciation deductions for plant and equipment for tax purposes….The tax preference….will encourage [domestic plant and equipment] investment relative to alternatives, including foreign*

[2] *Green Depreciation: A Preliminary Analysis*, Centre for International Economics, (November, 2007)

investment abroad…The acceleration of depreciation for plant and equipment will be focussed particularly on assets with long lives."

Paul Keating, Prime Minister
One Nation, 26 February 1992, pp71-72

In the current economic climate, an accelerated depreciation scheme for green building retrofits will help to stimulate the economy and deliver sustainability dividends.

The Property Council proposes accelerated depreciation be used to stimulate a massive investment in improved environmental performance.

How Would Green Depreciation Work?

Green depreciation provides accelerated depreciation allowances for building investments that install specific energy efficient fittings, fixtures and fabric or raise the overall energy performance of the building to a predetermined standard.

Green depreciation relates to both:

- *Plant fixtures and fittings depreciation*, which are currently written off over their `effective life', as defined by the Australian Tax Office (ATO); and,
- *The building amortisation allowance*, which for income producing buildings is set at 4% for traveller accommodation and industrial premises, and 2.5% for other buildings types.

The Property Council proposes the re-instatement of the accelerated depreciation system that existed from 1992 to 1999.

Under this system, plant fixtures and fittings would be written-off at **two to three times the ATO's 'effective life' rates** (including current concessions).

These rates would supplement the rates currently set out in Division 40 of the tax act and various ATO rulings.

The Property Council also proposes the **doubling of the building amortisation allowances**, currently covered by Division 43. In other words:

- Traveller accommodation and industrial premises: 8%
- All other income producing buildings: 5%

It would play a key role in overcoming timing gap problems, allowing investors to defer tax payments in exchange for bringing forward energy efficiency and GHG reductions.

Accelerated depreciation would establish an important foundation for a Green New Deal program recently announced by a coalition including the ACF, the ACTU, ACOSS and the Property Council.

Introduce Green Tax incentives:	
First:	Introduce accelerated depreciation for buildings that retrofit (retro-green) to meet high environmental standards.

More detailed recommendations can be sourced from:

"Pre-Budget Submission: 2009-2010 Federal Budget", Property Council of Australia (January 2009).

"Towards a Green New Deal: Economic stimulus and policy action for the double crunch", Australian Conservation Foundation, Australian Council of Social Services, The Climate Institute, Property Council of Australia, Australian Council of Trade Unions, Australian Green Infrastructure Council, Australian Institute of Superannuation Trustees (December, 2008)

"Australia's Future Tax System: Ending the Property Tax Squeeze – For the Review Panel for Australia's Future Tax System", Property Council of Australia (17 October 2008)

"The Second Plank – Building A Low Carbon Economy With Energy Efficient Buildings", Centre for International Economics for ASBEC (August, 2008)

"Green Depreciation: A Preliminary Analysis", Centre for International Economics (November, 2007)

"Capitalising on the Building Sector's Potential to Lessen the Cost of a Broad Based GHG Emissions Cut", Centre for International Economics (September, 2007)

4. State & Territory Property Taxes

This chapter addresses State & Territory Tax reform:

- State Taxes Reform Project;
- Developer Levies;
- State Taxes Harmonisation;
- Property Rates, Levies & Charges.

The recommendations focus on identifying inefficient and harmful taxes that need to be reformed or eliminated.

4.1 Reforming Inefficient State Taxes

The discussion paper provided by the Board of Tax – *Architecture of Australian Tax and Transfer System* and the recent consultation paper – highlight the archaic nature of the current tax framework.

For instance, 90% of all revenue is generated by ten taxes, with the balance collected from a further 115 taxes.

Australian business is weighed down by an inefficient and overly complex tax system.

A major effort is required to rationalise and modernise these taxes. The result will be a more productive, competitive economy that will probably lift medium term tax revenues.

A Plan for Modernising the Business Tax System

There is a critical over-reliance on property taxes which has grown since the introduction of the GST.

For example, conveyancing stamp duty revenues have increased 214% and land tax revenues 127% since 1998.

Commercial conveyancing duty is one of the most inefficient state taxes.

High taxes jeopardise housing affordability and expose state Governments to revenue volatility.

Inefficient state taxes such as stamp duties and property taxes are:

- volatile and unpredictable revenue sources;
- difficult and costly to manage;
- deadweight taxes that impede business efficiency and drag on the economy;
- unequally and unfairly applied;
- harmful to business competitiveness.

Inefficient state business taxes are holding back the economy.

We need a more productive economy to help pay off the necessary debt being incurred to stimulate the economy through the downturn.

Replacing inefficient business taxes with better revenue sources is a crucial step toward improving the economic health of the nation.

The BCTR has commissioned an independent broad-scale review of state business tax reform options which provide clear and practical alternatives for a new round of business tax reform.

BCTR research shows that:

- business and the community are substantially better off with more efficient taxes;
- reform is achievable now without changing the overall tax burden.

Successful reform needs:

- clear and achievable aims and outcomes;
- fixed timelines to achieve outcomes;
- a significant package of tax reforms for real change;
- Federal-State co-operation to establish efficient revenue sources.

Australian Governments should commit to a new round of real business tax reforms that is underpinned by a new inter-governmental agreement.

The BCTR has developed three reform packages that provide the greatest ongoing economic gain.

Importantly, each of the packages show that the states are better off in all cases if they remove a significant proportion of inefficient property taxes:

☑ **Package 1:** Improving growth by reducing conveyancing duty & removing insurance duties;

(0.6% higher GDP in the long term and $10 billion Federal funding).

☑ **Package 2**: Enhancing Competitiveness by removing commercial conveyancing duty, land tax and reducing payroll tax;

(0.4% higher GDP in the long term and $10 billion Federal funding).

☑ **Package 3:** Maximising State tax reform by removing conveyancing and insurance duties and reducing land tax.

(1.7% higher GDP in the long term and $17.2 billion State & Federal funding).

Each of these packages could be funded wholly or in part by a Federal and/or state broad based tax and is money well spent because:

- the packages deliver a large economic dividend per dollar of reform;
- the packages produce larger economic benefits than replacing lower cost Australia-wide taxes;
- the overall tax burden remains the same.

Reform State and Territory Taxes:

First: Australian governments to adopt the BCTR State Tax reform model for comprehensive business tax reform.

Second: Australian Governments should commit to a new round of business tax reform in consultation with industry, underpinned by a new inter-governmental agreement.

Third: The Council of Australian Governments (COAG) should:

a) set a timetable to eliminate inefficient business and property taxes with clear performance milestones;

b) commit to a root and branch modernisation of the business tax system;

c) commit to a new system for allocating the GST revenue between jurisdictions;

d) set a five year target to reduce Australian government reliance on indirect taxes;

e) commit all states and territories to undertake five yearly reviews of the indirect tax systems with the objective of reducing their reliance on high dead weight taxes and reducing compliance costs.

Fourth: The Australian Governments should then ratify a new Inter-governmental Agreement to give effect to COAG's tax reform program.

More Detailed information can be sourced from:

State Business Tax Reform – Seeding the Tax Reform Debate, Centre for International Economics, for the Business Coalition for Tax Reform (forthcoming May 2009)

"Pre-Budget Submission: 2009-2010 Federal Budget", Property Council of Australia (January 2009).

"Australia's Future Tax System: Ending the Property Tax Squeeze – For the Review Panel for Australia's Future Tax System", Property Council of Australia (17 October 2008)

"Improving Australia's Tax System: Tackling the Growing Property Tax Burden – For the Ergas Review of Australia's taxation system", Property Council of Australia (July 2008)

"The Property Tax Squeeze: Even the Pips re Screaming – For the Senate Committee on State Government Financial Management", Property Council of Australia (April 2008)

Tax Nation: Business Taxes and the Federal-State Divide, Business Council of Australia (2007)

"Benchmarking Australia's Tax System: the International Context", Property Council of Australia (March 2006)

Axing the Alcabala: a program for a 21st century state tax system, Access Economics (2004)

4.2 Developer Levies

State & Local Development Levies

Councils are increasingly using levies on new developments to supplement their income.

In the past 11 years state and local governments in New South Wales, Victoria and Queensland significantly increased their reliance on upfront development levies to fund infrastructure.

As noted in our previous submission, infrastructure charges for a typical new Sydney house rose from **$12,000** (in 1995) **to $68,000** (in 2006).

Similarly, infrastructure charges for a typical new Brisbane unit rose from **$2,000** (in 1995) **to $13,000** (in 2006).

There is no consistent policy approach to determine the size and use of development levies. They are used in an adhoc and opportunistic manner by state and local government without justifying the need or application of the funds raised.

For example in NSW alone:

- the Redfern Waterloo Authority uses a flat percentage levy;
- the North Sydney Railway Station imposes a $55per sq meter levy on additional floor space;
- the State Infrastructure Contribution in Growth Centres is a charge of $355,000 per ha (residential), and $150,000 per ha (industrial).

The levies are too high in many cases and restricting development activity.

This is creating further problems within major cities and across states.

Within Sydney there is an undersupply of more than 6,000 dwellings per annum compared with Government's growth targets.

Looking more broadly across New South Wales, in 2006 alone there was an undersupply of over 11,000 dwellings.

These levies are also eroding housing affordability.

As a result of escalating use of development levies to fund public infrastructure, individual households in Sydney pay up to $60,000 more in taxes than Melbourne households and over $50,000 more in taxes than Brisbane households.

It is also inequitable to charge widely used community infrastructure to a smaller group within society.

This is particularly stark considering development charges are levied on new homes in new developments that are largely bought by young families. Arguably, one of the groups who could least afford extra tax burdens.

Development levy revenue is dependent on building activity and this makes it a volatile and uncertain revenue stream.

Equally, the use of development levies for provision of services is inequitable because charges on developments are often used to fund unrelated capital works.

In some cases, local governments have stockpiled development levies that should be spent on infrastructure for the community. In 2007, the unspent section 94 local government levies topped $620 million dollars in Sydney alone.

The current approach to Development Levies violate core tax reform principles:

1) **Efficiency** – Development levies are distorting consumption decisions through their significant impact on affordability and development costs;

2) **Transparency** – It is difficult for business to understand and anticipate the levies because there is no consistent process for establishing these charges;

3) **Equity** – It is inequitable to charge widely used community infrastructure to a smaller group of property owners within society;

4) **Simplicity** – Development levies are applied inconsistently and add significantly to the confusion and complexity for property developers.

In line with good tax principles, an law there should be a direct nexus between the incidence and size (in dollar terms) of a development levy and the specific public infrastructure the levy is capitalizing.

In future further infrastructure development should be funded through strategic government borrowing or the use of alternative financing such as tax increment financing.

Tax Increment Financing

The Property Council supports the consideration of alternative funding arrangements to remove the need for developer levies.

Tax Increment Financing should be considered as a viable alternative that has operated in the United States since the 1950s.

TIF allows a government to forecast tax revenues from increases in property values and issue bonds regarding that future growth to fund infrastructure and renewal projects.

TIF is needed because governments have under-invested in infrastructure over the last two decades and now have to play catch-up to arrest the decline in infrastructure. This has resulted in:

- big increases in government infrastructure expenditure across all states;
- a return to the use of responsible government debt to fund long life infrastructure (especially in NSW);
- a focus on long term planning of infrastructure funding needs; and
- a return of the Commonwealth Government to city infrastructure policy.

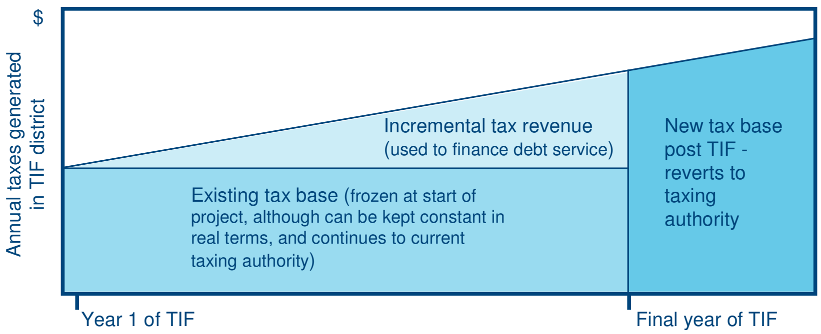
An alternative infrastructure funding method would lessen the need for governments to rely on development levies to fund infrastructure and better ensure infrastructure is delivered to support growth areas in a timely manner.

The broad steps in establishing and operating a TIF are:

- a TIF authority is created and the TIF district is defined and established;
- a growth/renewal plan for this TIF district is created, including the infrastructure and development needs for the area and the costs of capital works;
- the existing property tax revenues in this TIF district are estimated and a growth forecast is made;
- the sponsoring government authority issues bonds to fund the infrastructure works for the area. These bonds may be general obligation bonds that are backed by the state, or infrastructure bonds which are tied to the future TIF revenue stream;
- these bonds are repaid from the incremental increase in property taxes above the pre-TIF base generated by the infrastructure and development plans for the district;
- at the end of the TIF period the total tax revenue for the area returns to the taxing authority.

The Property Council of Australia commissioned Pricewaterhouse Coopers (PwC) to advise how tax increment financing (TIF) could be applied in Australia.

The Basic TIF Model



PwC tested the viability of TIF in Australia in two case studies. It found that a TIF would repay 75% of a metro rail station and accompanying infrastructure upgrades in the Sydney suburb of Gladesville in 18 years, and 75% of the infrastructure costs of the Sydney south west growth centre in 19 years. While these case studies are NSW based, similar sites can be chosen across Australia to illustrate this point.

The benefits of tax increment financing are:

- it provides a market test and added rigour around infrastructure selection which enhances allocative efficiency;
- it provides an upfront and sustained commitment to specified infrastructure provision;
- it ensures the provision of infrastructure is appropriately timed;
- it provides a transparent approach to infrastructure selection and provision;
- it provides a transparent and equitable approach to the sharing of infrastructure costs;
- it avoids the deficiencies of the current development levies approach to infrastructure funding.

Business Improvement Districts (BID)

The Business Improvement District (BID) model is a powerful and flexible funding mechanism used extensively in the US, Canada and UK to improve the vitality and viability of commercial areas.

BIDs are organisations driven by collaborative governance vehicles that involve business, government and community organisations and provide. services to the business community. Stakeholders within a defined boundary vote to make a collective contribution towards the maintenance and promotion of the area.

The Property Council considers that establishing a BID model will be an important initiative that will help deliver local infrastructure and services required to facilitate the growth and revitalisation of town centres.

Ryde City Council is currently considering a BID at Macquarie Park, one of the fastest growing commercial centres in Australia.

Since 2005, total office space at Macquarie Park has grown by over 30%. A further 136,705 square metres is expected out to 2010. Such growth requires a massive investment in infrastructure and Ryde City Council has taken the bold step in trialling a BID. This important initiative should be used as a pilot to examine its applicability on a wider scale.

Reform Developer Levies:

First:	Increase the use of government borrowing, PPPs, BIDs and tax increment financing to fund future infrastructure, in preference to inefficient funding strategies such as developer levies.
Second:	Developer levies should be the funding option of last resort and abolished completely in the medium term.
Third:	Developer levies should only be levied to capitalise public infrastructure directly related to the additional demand for public infrastructure created by a development project, after taking account of community-wide and intergenerational benefits that should be funded by the broader society.
Fourth:	There should be a direct nexus between the incidence and size (in dollar terms) of a development levy and the specific public infrastructure the levy is capitalising.
Fifth:	Development levies collected by government and statutory authorities should be audited on an annual basis and returned if not spent within two years.
Sixth:	The Council of Australian Governments (COAG) should establish a formal framework for implementing the above reforms.
Seventh:	The Council of Australian Governments (COAG) should commit to trial Tax Increment Financing in three pilot studies in each state and territory.

More detailed recommendations can be sourced from:

"Pre-Budget Submission: 2009-2010 – SA State Budget, Property Council of Australia SA Division (February 2009).

"Pre-Budget Submission: 2009-2010 Federal Budget", Property Council of Australia (January 2009).

"Pre-Budget Submission: 2009-2010", Property Council of Australia VIC Division (January 2009).

"2009-10 Pre-Budget Submission", Property Council of Australia ACT Division (December 2008).

"New Thinking on Infrastructure Funding – Tax Increment Financing to fund public urban infrastructure in Australia" PricewaterhouseCoopers (November 2008).

"Tax Increment Financing to Fund Infrastructure in Australia", Property Council of Australia NSW Division (November 2008).

"Reforming Infrastructure Funding in NSW – A submission to the NSW Government's review of development levies", Property Council of Australia NSW Division (November 2008).

"Australia's Future Tax System: Ending the Property Tax Squeeze – For the Review Panel for Australia's Future Tax System", Property Council of Australia (17 October 2008)

"Ripe for Reform – A submission on the IPART Review of the Revenue Framework for Local Government", Property Council of Australia NSW Division (September 2008).

"Property – An Overtaxed Industry – A submission on the IPART Draft Report on the Review of State Taxation for the NSW Treasurer," Property Council of Australia NSW Division (July 2008).

"Improving Australia's Tax System: Tackling the Growing Property Tax Burden – For the Ergas Review of Australia's taxation system", Property Council of Australia (July 2008)

"State Planning Policy 3.6 Development Contributions for Infrastructure", Property Council of Australia WA Division (July 2008).

"National Housing Infrastructure Costs Study, Urbis JHD (November 2006)

"Benchmarking Australia's Tax System: the International Context", Property Council of Australia (March 2006)

*"Financing Public Infrastructure in Victoria – A comparison of approaches",*Allen Consulting Group (January 2004).

4.3 State Taxes Harmonisation

Stamp duty and land tax on property is collected by all states however, the definitions and provisions for stamp duty are different in each state.

Property owners who invest across Australia or from overseas incur substantial legal and administrative costs to comply with different complex state tax provisions.

It makes investment in some states unattractive and uncompetitive.

This inhibits capital investment in Australian property.

All state governments should adopt a standard set of property tax rules and definitions in relation to:

- stamp duty on property;
- land tax and land rich provisions; and
- unit trust definitions and corporate reconstruction exemptions including stamp duty relief to restructure under a head trust (top hatting).

The Property Council has begun harmonisation work on unit trust definitions and corporate reconstruction exemptions including stamp duty relief to restructure under a head trust related projects.

Unit Trust and Corporate Reconstruction Rationalisation

State land rich provisions impede investment opportunities and growth for businesses investing across multiple jurisdictions.

Unit trusts and groups incur high compliance, structuring and stamp duty costs because:

- there are inconsistent state provisions.
- it is hard to comply with some concession provisions.
- unit trusts are often treated differently from similar investments made by companies
- Federal Government CGT relief for restructuring (top Hatting) needs state stamp duty relief to work.

These technical difficulties mean that many REITs choose not to invest in particular Australian jurisdictions due to the onerous and restrictive stamp duty rules.

Similarly, foreign investors are often deterred from investing in Australian real estate because of the complex regulatory and taxation regime, as well as the high tax cost of investing in Australian real estate.

A rationalisation of the stamp duty rules is needed to remove red tape, exposure to double taxation, and to promote efficient movement of capital whilst ensuring that the current tax base is protected.

The Property Council of Australia has proposed:

- a model for the imposition of stamp duty on public and wholesale REIT vehicles; and
- a model for appropriate corporate reconstruction exemption relief.

The model's propose a uniform approach across all jurisdictions (subject to minor discrepancies on certain value thresholds), promotes the efficient movement of capital within the market and avoid imposition of double taxation.

The model has also been designed to ensure protection of the existing revenue base, but approaching the taxation of the REIT market in a fair and commercial manner. The models are based on existing provisions in a number of jurisdictions, and so does not represent a major departure from the regime which affects most REIT transactions in Australia

Interposed head trusts

State governments can:

- improve the international competitiveness of the property industry;
- significantly reduce industry compliance costs; and
- attract investment to their state,

by providing stamp duty relief to Australian Real Estate Investment Trusts (A-REITs) so they can restructure under a head trust (Top Hatting).

A-REITs are unable to takeover foreign assets using equity because they can't get foreign CGT concessions under their stapled structure. (i.e. a trust and a company "stapled" together as one entity).

This means they can't compete effectively in the international market place for prime foreign investments.

This is a significant disadvantage that will affect investment returns to Australian investors.

Top hatting allows stapled entities to interpose a head trust so that they can to acquire overseas vehicles using their own shares.

The federal government has already legislated to allow A-REITs to interpose a head trust, but the industry needs stamp duty relief in each major state to use this legislation.

Without stamp duty relief organisations face a second duty charge on their assets and will not be able to Top Hat.

The relief is revenue neutral for each state and a number of states have already announced stamp duty relief.

This will allow some A-REITs to Top Hat and encourage further investment in those states.

Unfortunately A-REITs that have portfolios across all states cannot Top Hat unless all major states provide relief.

The industry needs the states to provide stamp duty relief to improve domestic and international competitiveness.

Harmonise State Tax Provisions:

First: The Council of Australian Governments (COAG) should adopt a standard set of property tax rules and definitions for:

a) stamp duty on property;

b) land tax and land rich provisions;

c) unit trust definitions and corporate reconstruction (including stamp duty relief for top hatting).

Second: State Governments should endorse and implement the Property Council Unit Trust Rationalisation model.

Third: State Governments should endorse and implement the Property Council Corporate Reconstruction model.

More detailed recommendations can be sourced from:

"Australia's Future Tax System: Ending the Property Tax Squeeze – For the Review Panel for Australia's Future Tax System", Property Council of Australia (17 October 2008)

"Property – An Overtaxed Industry – A submission on the IPART Draft Report on the Review of State Taxation for the NSW Treasurer.," Property Council of Australia NSW Division (July 2008).

Unit Trust Rationalisation Model, Property Council of Australia (2007)

Corporate Reconstruction Model, Property Council of Australia (2007)

Unit Trust Rationalisation Model,Gap Analysis NSW, Property Council of Australia (2007)

Corporate Reconstruction Model, Gap Analysis NSW, Property Council of Australia (2007)

Unit Trust Rationalisation Model,Gap Analysis VIC, Property Council of Australia (2007)

Corporate Reconstruction Model, Gap Analysis VIC, Property Council of Australia (2007)

Unit Trust Rationalisation Model,Gap Analysis QLD, Property Council of Australia (2007)

Corporate Reconstruction Model, Gap Analysis QLD, Property Council of Australia (2007)

Unit Trust Rationalisation Model,Gap Analysis ACT, Property Council of Australia (2007)

Corporate Reconstruction Model, Gap Analysis ACT, Property Council of Australia (2007)

Unit Trust Rationalisation Model,Gap Analysis NT, Property Council of Australia (2007)

Corporate Reconstruction Model, Gap Analysis NT, Property Council of Australia (2007)

Unit Trust Rationalisation Model,Gap Analysis WA, Property Council of Australia (2007)

Corporate Reconstruction Model, Gap Analysis WA, Property Council of Australia (2007)

Unit Trust Rationalisation Model,Gap Analysis SA, Property Council of Australia (2007)

Corporate Reconstruction Model, Gap Analysis SA, Property Council of Australia (2007)

Unit Trust Rationalisation Model,Gap Analysis TAS, Property Council of Australia (2007)

Corporate Reconstruction Model, Gap Analysis TAS, Property Council of Australia (2007)

Interposing Head Trusts Briefing Note

Unit Trust Rationalisation and Corporate Reconstruction Model Impact Document (2007)

4.4 Reform property rates, levies & charges

Local Government Rates

Local Government rate revenue has increased **76%** since 1998.

The common denominator in all these local government rates and charges is that there is no consistency between local councils and few measures to prevent discretionary increases in charges.

For example development application fees can vary dramatically from one Council area to another and have no obvious consistent methodology. Within Queensland the Sunshine Coast Regional Council has considerable variation in its fees:

- A 21,640m2 town centre and 164 multi-unit dwellings in Sunshine Coast Regional Council attracts a fee of in excess of $500,000. Negotiation provided for a fee of $235,000.
- A 29 rural-residential subdivision in Sunshine Coast Regional Council attracts DA fees of $9,500.
- Any office building (impact assessable) above 3000m2 in GFA in Sunshine Coast Regional Council attracts DA fees of $45,000.
- Any warehouse building (impact assessable) above 3000m2 in GFA in Sunshine Coast Regional Council attracts DA fees of $7,600.

These fees can add significantly to the cost of development.

The lack of consistency within Councils also extends to the levying of rates. The Property Council is concerned with the lack of uniformity of rating methods applied across Councils within the states.

While Council rates are necessary to fund core services for properties such as rubbish collection and park maintenance, they are set on the basis of property values rather than the service supplied. This is inefficient and distorting, but it is made worse by the lack of a consistent method for determining those rates.

For example in South Australia there are five different methods for charging rates that can be adopted by each Council. Tasmania and Victoria also has several different methods applying across different Councils.

Depending on the jurisdiction, a Council may also use one of a number of methods for determining the value of the property including the site value (excluding structural improvements), capital value (including structural improvements or annual value (derived from rental income).

It is undesirable for Councils to rely heavily on rate revenue which is based on land values as it is an unstable and volatile revenue base that is inequitable.

The current approach to Council rates violates some core tax reform principles:

1) **Efficiency** – Local government taxes are currently distorting consumption decisions through their significant impact on affordability and development costs;

2) **Transparency** – It is difficult for business to understand and anticipate the impact of local taxes because there is no consistent process for establishing taxes and charges nor their increase;

3) **Equity** – Property unfairly bears 100% of the burden of local taxes which are used for serving the wider public;

4) **Simplicity** – The local taxing system and multiple rating options adds considerable complexity

To overcome these problems, the Council of Australian Governments (COAG) should commit to a framework that ensures all councils:

- adopt an equitable and consistent rating base;
- develop a consistent criteria and process for changing the rating base;
- confirm the rating base has been established in accordance with the framework;
- link any increase in local government rates to a reduction in development levies where they exist;
- consult with industry and the community regarding changes in Council rates, charges or levies.

Car Parking Congestion Levies

The Property Council has always supported investment in public transport infrastructure and measures to prevent congestion in our centres.

A number of states have imposed car parking congestion levies on property owners as a means to prevent congestion.

The object of the a car parking congestion levy is to discourage car use in business districts by imposing a levy on off-street commercial and office parking, using this revenue to finance public transport infrastructure. However, in Sydney for instance, the levy has increased six times since 1992 and to date here has been little evidence to suggest that it has actually reduced congestion.

A NSW Auditor-General's report in 2007 supported this finding and in addition noted that there was no criteria for allocating the funds available to improving public transport.

A car parking congestion levy is a revenue raising device and has nothing to do with congestion. It is simply another tax on property. It does not deter car travel across a CBD (generating congestion), nor is it influential in reducing the number of parking spaces built. Planning regulations govern those decisions.

It is a destination tax that does not significantly influence the decision to use motor vehicles especially in urban centres with insufficient alternative forms of transport.

A significant investment in the public transport system for major urban centres (such as Melbourne and Sydney) is necessary to reduce congestion and present a viable transport alternative. It is unlikely that the necessary infrastructure can be funded from a congestion tax and any meaningful improvements require government commitment to alternative infrastructure funding.

Similarly, where car parking levies encourage short term off street parking it can actually worsen congestion by increasing the turnover of cars over an extended period of the day.

Car parking congestion levies:

- unfairly target workers and businesses who are poorly serviced by public transport;
- does not effectively combat congestion as they tax the destination, not the vehicle; and
- inequitably charge property owners for a community wide problem that is not directly related to property.

Fire Services Levies

Fire services are a public good and should be funded in the broadest way possible, ideally through consolidated revenue.

The current fire services levies are applied on insurance premiums in certain states to cover the cost of rural and metropolitan fire brigades. This regime is unfair and inefficient.

This is an anachronistic approach that arose because fire brigades were originally funded by insurance companies. This has long since been the responsibility of government, but the levy has remained on insurance premiums.

The levy is inequitable as it only taxes those who take out property insurance premiums and works in favour of those who do not insure (or self insure) or under insure.

Equally, this approach is inefficient as it cannot tax the true users of the services who are a broader group than those with insurance.

The community consequences are significant. Within Melbourne alone, less than half of the fire incidents relate to buildings and the majority relate to residential incidents. The commercial property sector contributes a significant amount to fire services, but they are not the primary user and bear a disproportionate burden of the service cost.

Significantly, many of the houses lost in the recent Victorian bushfires were uninsured but fire services were (rightly) provided to all households in need.

The Property Council also does not support any move to a system involving a direct levy on property.

The most effective method for funding fire services is through consolidated revenue to ensure all citizens contribute to their mutual safety. This is consistent with other public services such as police and ambulance services.

Water and Utility Rates

In some states there is a differential system for charging utilities to residential and non-residential property owners. This is inefficient and inequitable.

Within South Australia for example the charge for residential water rates in involves:

- a small quarterly access charge; and
- a charge based on per kilolitre consumption.

For commercial property however, there is a complex charging scheme that involves:

- a charge based on per kilolitre consumption; and
- an annual supply charge based on property values.

The commercial annual supply charge can be over $100,000 for a property valued at $1,000,000.

The commercial supply charge is inequitable as commercial water rates are not directly indexed to usage. It is also unreasonable for low users to compensate for heavy consumers through the existing structure.

The Property Council advocates a simple pricing system for commercial water users, similar to what is levied on household users.

As a broader policy approach in all states, utilities provided to non-residential property should be charged on a user pays basis only, similar to households.

Reform Property Rates, Levies & Charges:

First: The Council of Australian Governments (COAG) should commit to a framework that ensures all Councils:

a) adopt an equitable and consistent rating base;

b) develop a consistent criteria and process for changing the rating base;

c) confirm the rating base has been established in accordance with the framework;

d) link any increase in local government rates to a reduction in development levies where they exist;

e) consult with industry and the community regarding changes in Council rates, charges or levies.

Second: The Council of Australian Governments (COAG) should commit to an annual review of Council rates, charges and levies to ensure the above framework is being followed.

Third: The Council of Australian Governments (COAG) should commit to the abolition of car parking congestion levies.

Fourth: The Council of Australian Governments (COAG) should commit to the abolition of fire services levies in favour of funding through consolidated revenue.

Fifth: The Council of Australian Governments (COAG) should commit to ensuring that utilities provided to non-residential property are charged on a user pays basis only, similar to households.

More detailed recommendations can be sourced from:

"Pre-Budget Submission: 2009-2010 – SA State Budget", Property Council of Australia SA Division (February 2009).

"Pre-Budget Submission: 2009-2010", Property Council of Australia VIC Division (January 2009).

"2009-10 Pre-Budget Submission", Property Council of Australia ACT Division (December 2008).

"Ripe for Reform – A submission on the IPART Review of the Revenue Framework for Local Government", Property Council of Australia NSW Division (September 2008).

"Property – An Overtaxed Industry – A submission on the IPART Draft Report on the Review of State Taxation for the NSW Treasurer", Property Council of Australia NSW Division (July 2008).

Letter to the Hon Michael Aird MLC Treasurer Tasmania from the Property Council of Australia TAS Division (13 May 2008).

"Tax & Competitive Advantage – The case for Tax Reform in South Australia 2006 and Beyond", Property Council of Australia SA Division (2006).

"VCEC Inquiry into Managing Congestion", Property Council of Australia VIC Division (6 December 2005).

The Way Forward

1. The Council of Australian Governments (COAG):

   a) set a timetable to eliminate stamp duty on commercial conveyances, based on agreed GST windfall triggers;

   b) commit to a root and branch modernisation of the business tax system with a timetable to phase out inefficient taxes and clear performance milestones.

   c) commit to a new system for dividing up the GST revenue between the States and Territories.

   d) set a five year target to reduce Australian government reliance on indirect taxes.

   e) commit all states and territories to undertake five yearly reviews of their indirect tax systems with the objective of reducing their reliance on high dead weight taxes and reducing compliance costs.

   f) commit to rationalising state tax provisions in relation to: stamp duty, land tax/land rich provisions, and unit trust definitions and corporate reconstruction including stamp duty relief for "top hatting".

   g) commit to replacing developer levies with government borrowing, PPPs, BIDs and Tax Increment Financing.

   h) commit to trialing tax increment financing in three pilot studies in each state and territory.

   i) commit to abolishing car parking congestion levies, and removing fire services levies in favour of funding through consolidated revenue.

   j) commit to a framework that ensures all Councils:

      i) adopt an equitable and consistent rating base;

      ii) develop a consistent criteria and process for changing the rating base;

      iii) confirm the rating base has been established in accordance with the framework;

iv) link any increase in local government rates to a reduction in development levies where they exist;

v) consult with industry and the community regarding changes in Council rates, charges or levies.

k) commit to an annual review of Council rates, charges and levies to ensure the above framework is being followed;

l) commit to ensuring utilities provided to non-residential property are charged on a user pays basis only, similar to households.

2. The Australian Governments ratify a new Inter-governmental Agreement to give effect to COAG's tax reform program.

3. Australia should retain its negative gearing and capital gains tax regimes.

4. Australia should simplify its capital allowance regime.

5. Australia should simplify its GST rules.

6. Australia should speed up the greening of the built environment by providing tax incentives including green depreciation.

7. Australia should modernise the managed investment trusts tax regime.

8. Australia should modernise its attribution rules.

9. Australia should reform its thin capitalisation rules.

10. Australia should grant CGT relief to foreign direct property investors.

Contact

Please contact the following about any aspect of this submission:

Peter Verwer
Chief Executive Officer
Property Council of Australia

t. 02 9033 1920
m. 0407 463 842
e. pverwer@propertyoz.com.au

Or

Roberto Fitzgerald
Executive Director, International & Capital Markets
Property Council of Australia

t 02 9033 1929
m 0411 549 248
e RFitzgerald@propertyoz.com.au

Or

Andrew Mihno
Deputy Executive Director, International & Capital Markets Property Council of Australia

t 02 9033 1944
m 0406 45 45 49
e AMihno@nsw.propertyoz.com.au