

24 October 2012

Committee Secretary
Parliamentary Joint Committee on Corporations and Financial Services
Parliament House
PO Box 6100
CANBERRA ACT 2600

Dear Sir/Madam,

**RE: INQUIRY INTO THE TAX LAWS AMENDMENT
(CLEAN BUILDING MANAGED INVESTMENT TRUST) BILL 2012**

Thank you for the opportunity to provide comment on the Tax Laws Amendment (Clean Building Managed Investment Trust) Bill 2012. The Green Building Council of Australia (GBCA) supports the intention of legislation that encourages foreign investment in greener buildings by offering a lower withholding tax rate for investment in buildings that achieve at least a 5 Star Green Star rating or 5.5 Star NABERS Energy rating.

The GBCA commends the amendments made to the Bill following the recent consultation period, such as allowing the inclusion of income from assets which are incidental to the clean building and adjustments to the definition for commencement of building construction. However, we believe that there are still certain elements of the Bill that may create barriers rather than incentives for investment of this nature and may lead to the policy intent not being fully realised and/or unintended perverse outcomes for green buildings and emissions reductions overall.

About the GBCA

The GBCA is Australia's leading authority on green buildings and communities, established in 2002 to develop a sustainable property industry in Australia and drive the adoption of green building practices. The GBCA promotes green building programs, technologies, design practices and processes, and operates Australia's only national voluntary comprehensive environmental rating system for buildings – Green Star.

The GBCA has more than 850 member organisations, including government departments, which work together to support the Council and its activities. The GBCA is also a founding member of the World Green Building Council (WorldGBC), which was established to provide a federated 'union' of national green building councils with a common goal to support the sustainable transformation of the global property industry; there are now 92 such councils worldwide.

The Green Star rating tools

Green Star is a national, voluntary tool that encourages, recognises and rewards best practice and innovation. The first Green Star rating tool was released in 2003 in response to market demand for a rating tool that would evaluate the environmental design and construction of buildings as well as establishing a common language for green buildings.

There are currently nine Green Star rating tools which address a range of building types and more than 510 projects have achieved Green Star certification across Australia, with a further 500 projects registered. The Green Star rating system is designed to take an holistic approach within each class and building sector, addressing nine categories in total: Management, Indoor Environment Quality (IEQ), Energy, Water, Materials, Land Use and Ecology, Emissions, Innovation and Transport.

Comments on the Clean Building Managed Investment Trust (MIT) legislation

1. The meaning of *clean building MIT*

The original draft legislation did not allow for any type of income to 'taint' the MIT. The GCBA supports the changes made to the Bill which now allows that clean building MIT fund payments may consist of income and capital gains from clean buildings and assets that are 'reasonably incidental' to those buildings. Assets that could be considered 'reasonably incidental' include car parking facilities, telecommunications infrastructure attached to the building and advertising infrastructure.

Income and capital gains from any other land or building that do not meet the definition of a clean building for the purposes of this legislation still cannot be included in a clean building MIT. The GBCA notes that establishing and maintaining clean building MITs that meet all of the prescribed requirements may add unnecessary complexity and expense which could act as a barrier to investment. The GBCA urges Government to consider options such as tracing provisions, commonly in use under Australia's tax law, as a solution for ensuring that the correct tax arrangements applied are applied only to eligible income streams within an MIT vehicle.

2. The meaning of *clean building*

The Bill provides a number of eligibility requirements to define what will be considered a 'clean' building.

a) Commencement

The draft legislation originally stated that construction will be considered to have commenced at the point when ground is broken for the purpose of excavating to establish the building's foundations. The GBCA supports the change to the Bill that now states that a building will be taken to have commenced construction when the works on the lowest level of the building begins. This allows for previous site preparation and remedial works to have taken place as well as instances where a new building is constructed on top of an existing structure such as a car parking facility, public infrastructure (e.g. train stations), building or previous foundations.

However, the GBCA considers that this definition does not go far enough in including a range of buildings that could be considered to meet the intent of this policy and achieve significant environmental outcomes. For example, major building extensions that can be demonstrated as being distinct from the original building, such as a new wing added to an existing facility, or major retrofits.

The Green Star rating system's eligibility criteria include a 'Spatial Differentiation' criterion stating that a project must be 'clearly distinct'. In this way, a Green Star rating can provide a meaningful result, and send a clear message to the marketplace, about a distinct project. Only distinct projects are eligible for assessment under the Green Star rating tools for buildings; project components are not eligible. Shared building services (e.g. HVAC plant or water treatment) or amenities (e.g. waste rooms or bicycle facilities) do not affect the building's eligibility for Green Star assessment. The Green Star 'Guidelines for Interdependent Projects' provide more information on this issue, and can be provided for the purposes of this consultation.

Projects that meet this Eligibility Criterion include functionally autonomous buildings that are:

- Freestanding; or on top of public infrastructure (e.g. transport hubs); or connected to other buildings for secondary access only; or laterally adjacent to other functionally autonomous buildings; or buildings that are being extended
- Building extensions (eligible for a BUILDING EXTENSION Rating, e.g. Green Star - Education As Built BUILDING EXTENSION)
- Multiple building developments
- Whole fitouts.

In addition to this consideration of functionally autonomous buildings there are two options available for an assessment of a building extension:

1. The building extension and the initial building are rated as one building under the relevant Green Star tool
2. The building extension is rated separately and will receive a Green Star BUILDING EXTENSION rating if successful.

The Green Star rating achieved by the extension will only relate to and can only be marketed for the extension, as will be made evident on the Certificate and logo (i.e. Green Star - Office Design v3 BUILDING EXTENSION), and will not extend to the remainder of the building or any part thereof. The primary building does not need to have, or qualify for, a Green Star Certified Rating in order for the extension to be eligible.

In addition, a project can qualify for assessment as a building extension if it meets all of the following criteria:

- The extension has full, functional independence from the initial building;
- The extension has a distinct address or name, e.g. 'West Wing';
- The initial building's main function is not to service the extension;
- If the project scope includes work to the initial building, it only includes refurbishment or modification to the initial building's spaces/structures that support the extension. If the modifications affect primary spaces/structures in the initial building, the entire development will be deemed one building;
- There is a clearly defined 'Project site' used consistently throughout the submission;
 - i. for a vertical extension, the 'site' will be defined as the area occupied by the extension's footprint only;
 - ii. for a lateral extension, the 'site' will be defined as the area occupied by the extension's footprint plus adjacent area extending to the boundary of the site of the initial building;
- All services and incoming mains supplies are separated or sub-metered (or the entire system(s) must comply with the Credit Criteria); and
- Either of the following attributes is achieved:
 - i. It has a different street address from the initial building; OR
 - ii. It accounts for at least 20 per cent of the total GFA and is no smaller than 1,000m² Gross Floor Area (GFA).

The GBCA would recommend consideration of these eligibility requirements in order that building extensions can be included within this legislation. More details on these criteria are found at:

<http://www.gbca.org.au/green-star/certification/green-star-eligibility-criteria/2982.htm>

Additionally, the GBCA is aware of many examples of projects that initially had no commitment to achieve a Green Star or high-level NABERS Energy rating, but during the early stages of construction, a decision has been made by project stakeholders to aim for a rating. The clean building MIT could be a powerful incentive for projects in their early stages to consider how they might achieve better environmental outcomes and commit to a 5 or 6 Star Green Star rating or 5.5 star NABERS Energy rating, but under the current requirements, would not qualify for the tax concession if construction had commenced on the lowest level of the building prior to 1 July 2012.

Similarly, there are many examples of projects that have committed to a 4 Star Green Star rating at the design phase but which have improved their rating during construction, and achieved 5 or 6 Star Green Star ratings upon completion. Such projects would surely be classed as 'newly constructed energy-efficient buildings' and should be included within this legislation.

The GBCA believes that the commencement and eligibility requirements should be adjusted to allow for a reasonable range of scenarios as outlined above. We agree that it is important to preserve the integrity of the legislation and would welcome the opportunity to discuss the different ways in which a date relating to the project's construction can be included as an eligibility requirement for the purpose of this legislation.

b) Encouraging new buildings at the expense of retrofits

The GBCA believes that applying the tax concession only to new buildings may have the unintended consequence of discouraging the retrofit and refurbishment of existing buildings in favour of making way for new construction projects. The demolition of existing buildings will result in the loss of embodied energy, the waste of materials and resources, and is in conflict with government policy such as the National Strategy on Energy Efficiency where upgrading buildings to improve energy efficiency is one of four key themes around which the strategy is based.

Green Star ratings can be attained for retrofitted buildings, and there are many case studies of effective and energy-efficient refurbishments of heritage and existing buildings around Australia. In addition, GST law recognises a substantially retrofitted building as new. The GBCA believes that making the clean building MIT legislation more stringent than other tax law will create an unnecessary barrier and negatively impact the outcomes that this measure is trying to achieve. We would encourage the use of the same principles as used in GST law in recognising substantial retrofits as new buildings for the purposes of this MIT legislation.

3. Building use requirements

A building is deemed to satisfy the requirements if it is a commercial building that is used as an office building, a hotel, a shopping centre or a combination of any of these three.

The GBCA believes that in addition to the issues discussed in **1. The meaning of *clean building MIT***, limiting the eligibility to these three building types will mean that many significant investment opportunities will be lost.

Many offices, hotels and shopping centres include a range of other facilities and mixed uses that would render them ineligible under the draft legislation. For example, projects that include social and community amenities either voluntarily or as a requirement of development approval will be disqualified should those amenities generate any income that will contaminate the 'clean' MIT. Many office, shopping centre and hotel projects are required to include amenities such as community facilities and affordable housing that would render them ineligible under the draft legislation.

To meet the Green Star Space Use criterion, 80 per cent of a building's Gross Floor Area (GFA - measured to exclude internal car parks) must be comprised of space types stated as being able to be assessed by the particular Green Star rating tool; for example buildings with a minimum of 80 per cent of the building's GFA (measured to exclude internal car parks) comprised of BCA Class 5 are eligible to register for Green Star – Office certification. The GBCA would suggest that, in line with the Green Star Eligibility Criteria, the legislation be amended to include offices, hotels and shopping centres which can demonstrate that at least 80 per cent of their Gross Floor Area is comprised of the space type relevant for that use. The GBCA would be pleased to work with Government to help define the method of measurement or use existing certification processes in order to demonstrate eligibility.

4. Omission detected in the explanatory memorandum

In addition to the issues outlined above, the GBCA would like to note that it appears that the word 'not' has been omitted in section 1.28 of the Explanatory Memorandum as follows:

- 1.28 Therefore, buildings such as those built on top of previous foundations or on top of shared car parking facilities will **[not]** be considered to have commenced construction until works on the lowest level of the building commences.

The GBCA encourages Government to embrace industry feedback to ensure that this legislation will deliver on the policy intent as effectively as possible. The GBCA has previously noted concerns regarding the extent to which the 'scope' of this legislation was predetermined without the involvement of industry experts or proper analysis. However, we commend the Government on the changes made to the original draft legislation following consultation with industry and trust that industry concerns and feedback raised during this phase of consultation will be given all due consideration.

The GBCA together with its members, and with industry associations such as the Property Council of Australia, would like to work with the Australian Government to achieve the best outcomes for the Australian property and construction industry, the Australian economy, and our environment.

The GBCA welcomes the opportunity to provide further consultation on this matter, and supports the policy intention of the Clean Building Managed Investment Trust legislation. Please do not hesitate to contact me if there is any further information that you require.

Yours sincerely,

Robin Mellon
Executive Director – Advocacy and Business Operations