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Manager
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Dear Sir

Submission on the Consultation Paper – Fringe Benefits Tax Reform – Living-Away-From-Home Benefits released on 29 November 2011

Fluor welcomes the opportunity to make a submission in relation to the proposed reforms to the fringe benefits tax (FBT) treatment of Living Away From Home (LAFH) benefits as announced by the Government on 29 November 2011.

Fluor supports efforts to protect the Federal Government's revenue base but we consider the proposals are arbitrary, excessive and are expected to have a significant impact on Fluor's business and these impacts may not be the intended consequences of the proposed reforms. In this letter we have set out:

1. The importance of LAFH benefits to Fluor.
2. The impacts of the proposed changes on our business.
3. Proposed alternative approaches.
4. Proposed transitional arrangements.

1. The importance of LAFH benefits to Fluor

Fluor is in the business of executing complex engineering, procurement, construction and maintenance (EPCM) projects for commercial and government clients in remote and challenging locations around the world.

Fluor has a global workforce of over 42,000, with over 1,400 employees in Australia. These employees are based at client sites, project sites and in our 3 offices in Melbourne, Brisbane and Perth.

Fluor has played a key role in shaping the face of Australia for over 60 years through executing many infrastructure projects across the country.

An experienced, talented and highly specialised workforce is key to Fluor's ability to win and deliver projects that benefit the Australian economy. There is a well-documented shortage of suitably qualified and experienced engineers in both the global and local labour market, and for that reason Fluor's international mobility program is crucial to our sustained success in Australia.

Under Fluor's international mobility program, we tax equalise our expatriate employees. Therefore, Fluor as the employer assumes responsibility for the Income Tax and Fringe Benefits Tax (FBT) liabilities of our inbound expatriates. So, whilst these proposed LAFH changes for Temporary Residents will not affect the net pay of our inbound expatriates, they will have a very significant impact on our costs as an employer and/or on the costs of the projects we undertake.. The estimated cost to Fluor of these proposed changes is anticipated to exceed **A$5m p.a.** The impact of these cost increases on our business is explored below.

Fluor has a LAFH policy in place, which is implemented and governed by a knowledgeable team of Human Resources and International Mobility specialists. If Fluor has any concerns over the application of LAFH in a particular instance, we would seek the advice of our tax consultants or seek a private ruling. We believe that our approach to LAFH is compliant, controlled and reasonable and does not play a role in Treasury's perceived rorting of the LAFH system.

2. The impacts of the proposed LAFH changes on our business

The proposed changes set out in the LAFH Consultation Paper issued by Treasury in November 2011 could have a significant and detrimental impact on Fluor's business in Australia, and the contribution we are able to make to the Australian economy.

These impacts can be grouped into 5 key areas:

a) <u>Competitiveness</u>

On a global basis, Fluor has over 1910 expatriate employees. Of these, 95 are currently based in Australia.

If Flour is to compete successfully against overseas competitors for major engineering and infrastructure projects in Australia, it is essential that talented employees with the correct level of experience and specialisation are available to win and then deliver on those projects.

A current and relevant example is the FAST / BHP Billiton joint venture iron ore mega-project in Western Australia. The specialised and commercial skills required for running projects such as this are not readily available in Australia and the only way to continue delivering on this project is through utilising expatriate specialists. FAST is a ground-breaking project that has increased, and continues to increase, Fluor Australia's profitability as well as bringing opportunities for Australian employees to secure work and develop new skills and knowledge.

Australia is already a high labour cost location in which to do business. As it is, Australia's high wages and tax rates, increasing rent costs and the overall cost of living do not compare favourably with our regional competitors such as Philippines, India, Hong Kong, Singapore and mainland China. The proposed reform will add further cost pressures.

Effectively removing the LAFH concessions for Temporary Resident employees will significantly increase employment costs for expatriates, perhaps to an unsustainable level. Our industry sector operates on very tight profit margins and cost control is extremely important. Therefore, we may become uncompetitive when compared to non-Australian companies operating in our sectors, which can only be damaging for Australia during a challenging time for the global economy.

b) <u>Offshoring and redundancy</u>

Employment costs are at historically higher levels in our industry in Australia compared to other competing countries in the region. The proposed changes will add to this high cost base, thereby substantially increasing our cost of sourcing the right calibre of specialised and skilled foreign workers. To keep the cost lower for our clients we may have to reduce the remuneration or even retrench expatriations, which will clearly have a negative impact on sourcing the required quality and quantity of skills.

This high labour cost issue has already lead to many companies taking decisions to send work that had previously been undertaken by workers in Australia to countries with lower labour costs. This movement of jobs, both in support roles and in highly specialised roles such as engineering, will likely increase as a result of these proposed changes. Any changes to the LAFH regime will further accelerate this process, which could have a profound impact on skills transfer and the development of Australian talent in EPCM sectors.

In summary, a direct consequence of the proposed changes is that companies, including Fluor Australia, may consider reducing employment levels of local Australian hires as the business becomes less competitive and Australian roles are made redundant or moved offshore.

c) Skills shortage

Whilst Australia may be an expatriate destination of choice for lifestyle reasons, the reality is that remuneration plays a far more pivotal role in attracting individuals to take up an expatriate assignment. Combining an exceptionally high cost of living with a punitive tax regime for expatriates will compromise access to temporary skilled labour for highly specialised engineering projects. Likewise, the skills exchange which occurs through international mobility programs will be hindered under the proposed new regime.

d) Administrative burden and on-costs

Currently over 90% of the LAFHA benefits received by Fluor expatriates are processed via an offshore payroll in India as cash allowances. Moving to a substantiation regime will involve expenses to be processed by Accounts Payable (AP) – the current Australian AP / Finance team is not adequately equipped to handle this work load. The outcome is therefore likely to be an additional cost to the business of processing these changes.

Moving LAFH allowances from the FBT regime to the Income Tax regime will also raise concerns over effective compliance. Employers are often not aware of the tax residency status of expatriate employees, and this proposed change could prove very challenging to administer and, despite the intentions of the new LAFH regime, actually reduce compliance and increase rorting.

As well as the direct costs, there are a number of additional on-costs such as superannuation, Payroll Tax, Workers Compensation and the costs of administration and compliance reporting. Furthermore, there may well be significant legal and procurement costs as a result of renegotiating existing contracts with clients of Fluor to account for the increased employment costs.

Overall, these indirect costs have the capacity to add substantially to the projected direct FBT and Income Tax costs in excess of $5m p.a.

3. Proposed alternative approaches

Fluor fully supports the Government's intention to prevent rorting of the LAFH system. Nonetheless, if there is rorting of the LAFH rules then it is within the power of the Government to provide the ATO with sufficient resources to ensure compliance.

Fluor also believes that the stated aims of the proposed reforms could be achieved through a number of alternative approaches set out below:

a) Concessional tax treatment under the LAFH regime could be limited solely to those employees who are sponsored to work in Australia through a 457 visa. Given 457 visas are only issued where the duties are not currently able to be performed by an Australian worker, there should be no adverse impact on the Australian taxpayer. This approach would also eliminate LAFH claims in respect of "working holiday" visa holders, whom we understand the Government has identified as the principal source of tax avoidance.

b) A time limit could be placed on LAFH claims. Based on current practice and the duration of a 457 visa, 4 years could be an appropriate time limit for any expatriate claiming LAFH in Australia.

c) Currently there are no limits on LAFH claims in respect of reimbursed accommodation costs, and accommodation allowances need only be "reasonable". As an alternative approach, the Government could instead look to set a dollar or percentage limit on accommodation costs claimed as exempt under LAFH.

4. Proposed transitional arrangements

Should the Government press ahead with changes to the LAFH regime then, irrespective of the nature of the LAFH regime post-1 July 2012, transitional arrangements for existing recipients should be enacted.

Transitional rules will allow Australian employers to adapt their business models to any changes over a reasonable period of time, rather than with immediate effect on 1 July 2012. Such rules will depend on the nature of the LAFH regime post 1 July 2012, but should be considered for all expatriates already working in Australia on 457 visas at that date.

Fluor would welcome the opportunity to discuss this submission with Treasury. Please contact Steve Clancy on (03) 9094 5611 with any queries in relation to the contents of this submission.

Yours faithfully
FLUOR AUSTRALIA PTY LTD

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