Lend Lease

3 February 2015

Committee Secretary
Senate Economics References Committee
PO Box 6100
Parliament House
Canberra ACT 2600

Dear Committee Secretary

Submission: Inquiry into Corporate Tax Avoidance and Minimisation

We refer to the Committee's invitation to the Lend Lease Group (Lend Lease) to make a submission to the Senate Inquiry into Corporate Tax Avoidance and Minimisation (the Inquiry).

Lend Lease is an Australian headquartered group which undertakes global property and infrastructure activities. The principle activities of Lend Lease include designing, developing, constructing, funding, owning, co-investing in and managing property and infrastructure assets.

Lend Lease has approximately 13,200 employees globally. Operating in Australia for over 50 years, Lend Lease is currently delivering some of the largest and most iconic urban regeneration projects, including Barangaroo South and Darling Harbour Live in Sydney, Victoria Harbour in Melbourne and Brisbane Showgrounds in Queensland, as well as major social infrastructure projects such as the Sunshine Coast University Hospital and New Bendigo Hospital.

In 2014, approximately 75%[1] of Lend Lease's earnings were derived in Australia, with the balance being sourced from our regional businesses in Europe, Asia and the Americas. In 2005, the proportion from Australia was 40%. Given the physical nature of much of Lend Lease's business, tax will generally be paid in the jurisdiction in which the profits are earned.

Lend Lease, like many Australian property industry participants, is structured as a stapled entity such that the shares in Lend Lease Corporation Limited and the units in Lend Lease Trust (LLT) are traded as a single security on the Australian Stock Exchange. The Property Council of Australia (PCA), of which Lend Lease is a member, is making a submission to the Inquiry which explains stapled structures and the tax implications arising from a stapled structure[2]. Accordingly, to avoid repetition, we refer the Committee to the PCA submission.

[1] Financial year ended 30 June 2014, calculated after excluding the impact of the sale of Lend Lease's interest in the Bluewater Shopping Centre in the UK.
[2] For completeness it is noted that Lend Lease had input into the PCA's submission through Lend Lease's involvement in the tax committee of the PCA.

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This submission will focus on providing the Inquiry with specific insight into:

(1) The global effective tax rate (ETR) of Lend Lease;
(2) Lend Lease's approach to tax; and
(3) Lend Lease's views on tax reform.

1. Effective Tax Rate (ETR)

Lend Lease's average global ETR was 21.2%[3] for the 10 year period ended 30 June 2013. Factors causing Lend Lease's ETR to vary from the prevailing Australian corporate tax rate of 30% are outlined below.

a) The interplay of accounting standards with tax law

The interplay of accounting standards and tax law can impact an organisation's ETR and, depending on the circumstances, may increase or reduce the ETR.

The Australian accounting standards (Accounting Standard AASB 112 *Income Taxes*) contain rules which stipulate when the value of unused tax losses and future tax deductions may be recognised as a deferred tax asset (DTA) in the financial statements. The rules require that it be 'probable' that a future taxable profit will be available against which the tax loss or future tax deductions may be utilised, before a DTA can be recognised in the accounts for the value of the future tax benefit[4]. This accounting rule has particular significance for the property industry which can be susceptible to global economic cycles. At times the value of tax losses and future tax deductions may not be recognised for accounting purposes, increasing the calculated ETR for the period. However, these tax benefits may be able to be recognised when the profit outlook improves, at which time the calculated ETR will decrease.

A significant part of the difference between Lend Lease's 10 year average ETR of 21.2% and the Australian corporate tax rate of 30% relates to the application of the measurement and recognition criteria for DTA's in AASB 112.

b) Legislated tax incentives and exemptions

Legislated tax incentives and tax exemptions reflect the policy of the Government of the day.

In Australia, an example of a legislated tax incentive is the research and development (R&D) tax offset which provides tax savings for expenditure on eligible R&D activities and accordingly reduces the ETR. Lend Lease prides itself on its construction practices and continually strives to improve the sustainability of its developments, often researching and testing new materials and methods of building. As Lend Lease engages in eligible R&D activities, it is entitled to claim the R&D tax incentive which reduces its ETR.

Legislated tax exemptions exist which also reduce Lend Lease's ETR. Examples of this are the substantial shareholder exemption in the UK and, in Australia, the exemption for dividends received on certain foreign shareholdings.

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[3] KPMG agreed the mathematical accuracy of the average ETR (of 21.2%) for the consolidated 10 year period from 2004 to 2013 in accordance with AASB 112 *Income Tax*, paragraph 86. The Tax Justice Network (TJN) and United Voice Union report entitled *Who Pays for our Common Wealth? Tax Practices of the ASX 200* showed Lend Lease as having an average global ETR of 15%. The difference between the TJN and the Lend Lease calculated rate is explained in Appendix A.

[4] AASB 112 paragraphs 24 and 34-37.

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c) The blending of global tax rates

Foreign sourced property income is generally taxed in the jurisdiction where the income is generated. Lend Lease has active businesses offshore and as such Lend Lease's average ETR reflects the tax rates applicable to income sourced in foreign jurisdictions, which can be lower than the Australian corporate tax rate of 30% (eg: Singapore 17% and UK 21%[5]). Lend Lease also has businesses in the USA and Japan which have corporate tax rates in excess of 30%. Accordingly, Lend Lease's ETR is unlikely to ever be 30%.

In summary, Lend Lease's ETR is largely a function of different approaches taken by accounting standards and tax laws, legislated tax incentives and exemptions, differing corporate tax rates in offshore jurisdictions and, since 2013, the impact of earnings from LLT[6].

2. Lend Lease's Approach to Tax

Lend Lease is committed to strong corporate governance policies and practices which are fundamental to the long term success and prosperity of Lend Lease.

Lend Lease manages its tax affairs on a 'no surprises' basis and is committed to paying the correct amount of tax in all jurisdictions in which we operate. Lend Lease assesses the tax implications of all transactions before committing to the transaction and ensures that adequate processes are in place to meet all on-going tax and compliance obligations that arise from our operations. A primary focus of this approach is to seek to minimise the risk of a sustainable different view arising between Lend Lease and revenue authorities regarding the position adopted by Lend Lease which might attract additional taxation, penalties and costs associated with any resulting dispute which might arise.

Uncertainty may arise from ambiguity in the tax legislation. Such uncertainty does not correlate with the Lend Lease 'no surprises' approach to tax. It is for this reason that Lend Lease encourages the involvement of its senior executives in industry and Australian Taxation Office (ATO) consultation groups. Any input Lend Lease can provide as to practical difficulties arising from the application of Australian tax laws also helps Lend Lease ensure it is calculating and paying the correct amount of tax. Lend Lease therefore consistently commits resources to various forums[7].

In Australia, Lend Lease is currently under continuous monitoring by the ATO through the pre-lodgment compliance review (PCR) program. Lend Lease has responded to numerous requests from the ATO, through the PCR program and ATO client risk reviews, for information in relation to the income tax treatment of our operations since 1 July 2007. No adjustments were made by the ATO to Lend Lease's self-assessed tax position as a result of these reviews.

The ATO has rated Lend Lease a 'key taxpayer'[8] under its risk-differentiation framework and has acknowledged in writing Lend Lease's cooperative engagement with the ATO.

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[5] UK corporation tax rate for 2014 is 21%, reducing to 20% in 2015.
[6] Investors are assessed on their share of the net income for tax purposes of the trust rather than the trust itself being liable for tax.
[7] For example, the Corporate Tax Association, ATO's Large Business Liaison Group and PCA Tax Committee.
[8] A key taxpayer is a large taxpayer considered by the ATO to be less likely of non-compliance.

3. Tax Reform

In the context of this Inquiry we believe the interaction of the transfer pricing, controlled foreign company, thin capitalisation and general anti-avoidance (Part IVA) rules present a strong platform for corporate tax compliance in Australia.

Lend Lease acknowledges the global focus on base erosion and profit shifting and supports the OECD's efforts in this regard. Lend Lease believes that because of the tangible nature of the property industry, the policy of existing enacted Australian tax rules (including tax treaties with Australia) are adequate and within the monitoring capabilities of revenue authorities around the globe.

Lend Lease supports the proposed Tax Reform White Paper process and encourages a focus on the review and/or re-affirmation of the policies which will underpin the tax legislative framework for Australian based groups going forward. This process will hopefully achieve the necessary balance between supporting the revenue base and achieving a competitive environment.

In the attached appendices, we provide further explanation of Lend Lease's ETR calculation and comment on recent press regarding historical activities in Luxembourg.

Should you have any questions in relation to this submission, please do not hesitate to contact me.

Yours sincerely

Steve McCann
Group Chief Executive Officer and Managing Director
Lend Lease

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Appendix A

ETR Calculation

Methodology used in the Tax Justice Network (TJN) report

The TJN report showed Lend Lease's average ETR to be 15% for the 10 year period to 30 June 2013. The TJN calculated ETR differs to Lend Lease's statutory ETR of 21.2% in two key ways:

a) The ETR in the TJN report has been calculated using income tax paid (based on the cash flow statements) divided by pre-tax profit. The use of income tax paid in an ETR calculation differs from the ETR methodology outlined in Accounting Standard AASB 112. AASB 112 defines the ETR as income tax expense divided by accounting profit before tax. The use of income tax paid, rather than income tax expense results in the ETR being distorted by change in business mix, significant timing differences (which, broadly arise from differences between tax and accounting treatments) and by the application of available prior year tax losses which reduce tax payments.

b) The ETR in the TJN report was calculated based on Morningstar published financial data adjusted for abnormal items. Over the 10 year period Lend Lease's abnormal items resulted in significant accounting losses. The TJN methodology, by excluding the abnormal net losses, overstates Lend Lease's pre-tax profit thereby resulting in a lower ETR under this methodology.

Lend Lease has used the approach prescribed in AASB 112 to calculate the ETR of Lend Lease for discussion in this submission.

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Appendix B

Luxembourg Press

As reported in the press during November 2014, Lend Lease historically held investments in Luxembourg. These investments were initially established in the late 1990's and early 2000's. All investments in Luxembourg have, in the ordinary course of business, either been sold, wound up, or put into liquidation and Lend Lease has no active subsidiaries in that jurisdiction.

A number of press articles have implied Lend Lease shifted profits from Australia to Luxembourg. However, the assets involved were not located in Australia and the income from the assets was not connected with Australia. Australian profits were not shifted to Luxembourg.