

# The Board of Taxation: its role and current activities

*The Board of Taxation was established by the Government in August 2000 to advise the Treasurer on the development and implementation of taxation legislation as well as the ongoing operation of the tax system. In announcing the creation of the Board, the Treasurer emphasised its role in facilitating full and effective community consultation in the implementation of tax policy decisions. This article explores the role of the Board and discusses the activities that it has been undertaking.*

## The Board's origins, membership and charter

The creation of a Board of Taxation was a recommendation of the Ralph Review of Business Taxation. In endorsing the concept, the Government determined that the Board should have a broader, tax system wide mandate, rather than just a business tax focus, and that it be a non-statutory, rather than statutory, organisation.

The call for a Board of Taxation arose from the perception among businesses and their advisers that their views on the development of tax laws and the operation of the tax system were not being effectively heard by Government, and that improved outcomes could be achieved through better communication with, and input from, the community.

The Board comprises ten members<sup>1</sup>. Seven members, including the Chairman, are drawn from the business and community sector. These members have been appointed for their capacity personally to contribute a broad range of relevant business, practitioner, and broader community knowledge and experience to the development of the tax system. Also on the Board, as *ex-officio* members, are the heads of the three key Government agencies responsible for tax policy, tax administration and legislation – the Secretary to the Treasury, the Commissioner of Taxation and the First Parliamentary Counsel.

---

<sup>1</sup> The current membership of the Board is Mr Richard Warburton (Chair), Mr Tony D'Aloisio, Mr John Bronger, Mr Michael Carmody (Commissioner of Taxation), Mr John Harvey, Mr Brett Heading, Dr Ken Henry (Secretary to the Treasury), Mr Chris Jordan, Ms Alison McClelland and Ms Hilary Penfold QC (First Parliamentary Counsel).

The Board is supported by a small Secretariat based in the Commonwealth Treasury, presently a team of five that consists of three Treasury personnel, including the Secretary to the Board, a secondee from the Australian Taxation Office and a private sector secondee from the tax accounting profession.

The Board of Taxation's mission, as stated in its Charter, is to:

'...contribute a business and broader community perspective to improving the design of taxation laws and their operation.'

In pursuing this mission, the Charter states that the Board must have regard to the fact that the Government is responsible for determining taxation policy and that the Commissioner of Taxation has statutory responsibilities for administering Australia's tax laws.

The Charter goes on specifically to provide that the Board shall advise the Treasurer on:

- the quality and effectiveness of tax legislation and the processes for its development, including the processes of community consultation and other aspects of tax design;
- improvements to the general integrity and functioning of the taxation system;
- research and other studies commissioned by the Board on topics approved or referred by the Treasurer; and
- other taxation matters referred to the Board by the Treasurer.

## **The Board's operations in practice**

In translating the Board's Charter to its actual operations, it is important to emphasise that the Board is an advisory body. The Board does not have responsibility, but nor is it accountable, for taxation policy, which of course remains with the Treasurer and the Government. Similarly, the Board has no authority or powers to direct the Commissioner of Taxation on how to run the Australian Tax Office. As noted, the Commissioner's role is a statutory one, for which he is accountable to the Parliament.

Evident from its Charter, nevertheless, is that the Board potentially has a wide-ranging role in advising the Treasurer on the development, implementation and on-going operation of Australia's tax laws.

## **Advice on tax legislation and its development**

As noted, the first of the Board's functions specified in its Charter is to advise the Treasurer on the 'quality and effectiveness of tax legislation and the processes for its development, including the processes of community consultation and other aspects of tax design.' In conjunction with the Mission Statement, this can be interpreted as giving the Board two key roles.

- First, to help facilitate, once a policy direction or intent has been determined by the Government, full and effective community consultation and other relevant input to the ensuing processes of legislative development and implementation.
- Second, to help facilitate and/or undertake evaluation of the 'quality and effectiveness' of the resulting legislative product and implementation procedures, etc.

The objective is to achieve better legislative and implementation outcomes, ensuring they correctly reflect the Government's policy intent, are compatible with commercial realities and the circumstances of individuals, minimise complexities and associated compliance costs, and avoiding unintended consequences.

As is the case with any board, the Board of Taxation's main focus in performing its role of facilitating community consultation is on seeking to ensure that the right processes and procedures are established and maintained to deliver the outcomes sought. It will continue to be the role of the relevant Government agencies, the Treasury, the ATO and the Office of Parliamentary Counsel, to manage these processes, with appropriate accountability to Government Ministers and the Parliament. Above all, the Board's role in this respect is to engender trust in the process among all parties concerned.

Similarly, the Board is considering processes that can be adopted to evaluate the quality and effectiveness of significant legislative measures after an appropriate period (say, two years) of experience with their operation. Here the emphasis will be on both identifying any needed changes to the legislation and related administrative arrangements, and on identifying issues that might inform the consideration of better legislative development and implementation processes in the future.

## **Advice on improvements to the integrity and operation of the tax system**

The second function of the Board noted earlier is to advise the Treasurer on 'improvements to the general integrity and operation of the Taxation system.' There are two key and related elements to the Board's strategy for formulating such advice to the Treasurer.

- Understanding stakeholders' main concerns and priorities for the tax system, including of an immediate and forward-looking nature.
- Undertaking research on issues, at the request or with the approval of the Treasurer – with the selection of issues to be researched in part informed by the above.

The critical issue for the Board is ensuring that it is effectively and continually apprised of the community's views on the operation of the tax system, including through:

- general submissions and representations to it;
- inquiries the Board may itself undertake; and
- being informed of the Government's own priorities and objectives.

It is a matter for the Board, of course, to determine the issues it may wish to pursue. Where the Board decides to take up an issue, the process generally requires that it be referred to the Treasurer in the first instance. It would then be for the Treasurer to decide whether or not it is a matter that should be considered further, and whether the Board should have any role in that process.

Clearly, there will be a significant element of judgement involved in deciding matters to be pursued by the Board. The overriding criterion, nevertheless, is whether, in its view, the Board is in a position to 'add value' to the consideration of an issue. In essence, this requires a judgement as to whether the Board can provide or facilitate better insights or emphasis to an issue than what would already be available to the Government.

An important implication to be drawn from this is that the Board should not be seen as some 'white knight,' willing to champion causes all and sundry with the Treasurer and the Government. The Board's starting point for any consideration of an issue is to ask, 'where or how can it add value?'

In continuously harnessing the community's views on tax matters, the Board also is well-placed to regularly advise the Treasurer of community concerns and priorities in respect of the ongoing operation and development of the tax system.

## **Activities of the Board**

### **Review of consultation arrangements**

The Board in its initial 12 months of operation has been focussing heavily on discerning possible best practice arrangements for gaining effective community input to the processes of tax law design, which it could recommend for adoption by the Government. As a key input to its consideration of this issue, the Board commissioned a report from KPMG Consulting. KPMG's report draws together ideas gleaned from, inter alia, a community survey of views about current consultative arrangements and suggestions for the future, analysis of processes employed in other comparable countries and from processes employed in developing other areas of law. On the basis of this report and other information, the Board currently is considering what recommendations to put to the Government on consultation arrangements.

### **Tax Value Method**

A further area of major focus by the Board has been on developing and evaluating the so-called 'Tax Value Method' (TVM) for calculating taxable incomes. This task was assigned to the Board by the Treasurer at the time of its establishment in August last year and arises from a recommendation of the Ralph Review of Business Taxation.

The Board's strategy for progressing this exercise is to develop a body of draft legislation and associated products sufficient to comprehensively demonstrate and test the idea, and at the same time to progressively commission and otherwise promote thorough testing and evaluation of it. A unique feature of this strategy is its transparency and the degree to which it allows for open input from key stakeholders and the community more generally. As such, and aside from whatever the ultimate judgement might be about the TVM's relative merits, the Board's strategy represents a fresh approach to a more open and inclusive tax design process.

## **Tax reform**

Increasingly, the Board also has become involved in aspects of the Government's tax reform agenda; proffering advice to the Treasurer, for example, on community concerns detected with some proposed initiatives. The Treasurer, moreover, has signaled a specific role for the Board in some areas, for example, in facilitating further consideration of the appropriate taxation treatment of trusts.

## **Consultation**

The Board has instituted, in conjunction with its regular monthly meetings, a program of meetings with key stakeholder representatives. These meetings are intended to give the Board some early indication of community concerns with, and priorities for, the tax system. So far it has met with representatives of the accounting profession, welfare groups and large and small business organisations. The meetings have become an integral part of Board meetings and are intended to give the Board some early indication of community concerns with, and priorities for, the tax system. They also provide the Board with an avenue for disseminating information about its activities.

Members of the Board have been very active in participating in conferences and seminars and in consulting through their networks on tax issues. Members and staff of the Board Secretariat also separately visited or hosted meetings with representatives of a number of organisations.

In October 2000, the Chairman of the Board accepted an invitation from the ATO to join the Sponsor's Group for the ATO's Integrated Tax Design (ITD) project. The ITD project was established in response to a further recommendation by the Review of Business Taxation that there be a continuation and further development of the integrated tax design processes that were employed during the Review. These processes were aimed at overhauling the essentially sequential working arrangements between the Treasury, the ATO and the Office of Parliamentary Counsel for the development of tax legislation and administrative systems into a far more integrated process that facilitated greater collaboration among themselves and with other stakeholders in the tax system.

Prospectively, the Board will be looking to further enhance its processes and channels for communicating with its community stakeholders to ensure that it remains fully and effectively informed and can access specialist knowledge on a timely basis.