

THE BOARD OF TAXATION

2009-10 ANNUAL REPORT

NOVEMBER 2010

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INTRODUCTION

The Board of Taxation is a non-statutory advisory body charged with contributing a business and broader community perspective to improving the design of taxation laws and their operation.

The Board comprises ten members, seven of whom, including the Chairman, Richard F E Warburton AO, have been appointed from the non-government sector. There are three ex officio members — the Secretary to the Australian Treasury, the Commissioner of Taxation and the First Parliamentary Counsel. Further details on the membership of the Board are at Appendix A. The Board is supported by a small secretariat located in the Treasury.

The operations of the Board are governed by its Charter, including the Mission and Functions shown below. The Charter is reproduced in full at Appendix B.

The Board's mission

Recognising the Government's responsibility for determining taxation policy and the statutory roles of the Commissioner of Taxation and the Inspector-General of Taxation, the Board's mission is to contribute a business and broader community perspective to improving the design of taxation laws and their operation.

The Board's functions

The Board provides advice to 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;

Introduction

- 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.

ACTIVITIES OF THE BOARD IN 2009-10

Overview

During 2009-10, the Board reported to the Government on:

- a review of the tax arrangements applying to managed investment trusts. The report was submitted to the Government in August 2009;
- a post-implementation review into the alienation of personal services income rules. The report was submitted to the Government in October 2009;
- a review into elements of the taxation of employee share schemes. The report was submitted to the Government in February 2010; and
- a review of the application of the goods and services tax (GST) to cross-border transactions. The report was submitted to the Government in February 2010.

The Board also made significant progress on the post-implementation review of certain aspects of the consolidation regime.

The Board received two new references from the Government during 2009-10:

- a review of the taxation treatment of Islamic finance, banking and insurance products, to report by end of June 2011; and
- a review of the taxation treatment of collective investment vehicles, to report by end of December 2011.

In addition the Board commenced a review of the operation of the Tax Issues Entry System (TIES).

The Board continued its monitoring of the processes of community consultation in the development of tax legislation, and continued its own

consultations with stakeholders from the business sector, tax practitioner groups and the wider community on issues coming within the Board's Charter.

Meetings

The Board met as a whole on 10 occasions during 2009-10, as shown in Table 1, with varying locations. The Board is looking to extend its outreach further in 2010-11. Details of Board members' attendance at meetings are provided at Appendix C.

Table 1: Board of Taxation meetings, 2009-10

Date	Location
13 August 2009	Canberra
9 September 2009	Parramatta, Sydney
9 October 2009	Melbourne
13 November 2009	Hobart
10 December 2009	Sydney
9 February 2010	Canberra
5 March 2010	Sydney
15 April 2010	Melbourne
14 May 2010	Canberra
18 June 2010	Sydney

The Board conducts its projects by appointing a Working Group of its members, Advisory Panel members, and consultants to oversee the process. A list of Working Groups for 2009-10 and their membership is provided at Appendix D. Each of these Working Groups met on numerous occasions during 2009-10 and engaged in intensive consultation in relation to the projects. These consultations are outlined in general terms in Appendix E.

Review of the tax arrangements applying to managed investment trusts

On 22 February 2008 the then Assistant Treasurer announced that he had asked the Board of Taxation to undertake a review of the tax arrangements applying to managed funds that operate as managed investment trusts.

The Board appointed a Working Group of its members comprising Mr John Emerson AM (Chair), Mr Keith James, Mr Chris Jordan AO and Mr Richard Warburton AO to oversee this review.

During 2009-10 the Board completed its review and provided its report to the Government in August 2009.

The Board made 48 recommendations which seek to improve certainty and reduce compliance costs for the managed funds industry and assist the industry's international competitiveness.

The Board's report was released by the then Assistant Treasurer on 7 May 2010.

Post-implementation review into the alienation of personal services income rules

On 3 June 2009, the then Assistant Treasurer announced that the Board would undertake a post-implementation review of the provisions relating to the alienation of personal services income.

The aim of the post-implementation review was not to re-open debate about the merits of the policy intent of this measure, but rather to gauge how effective the legislation has been in delivering that policy intent.

The Board appointed a working group of its members comprising Mr Keith James (Chair), Mr Peter Quiggin PSM and Mr Curt Rendall to oversee this post-implementation review.

The Board completed its review and provided its report to the Government in October 2009.

The Board's key findings were that the alienation of personal services income rules have gone some way to achieving their intention of improving integrity and equity in the tax system. However the extent of improvement in the integrity and equity in the tax system provided by the rules is, in the Board's view, inadequate and hence advanced options for further improvements as outlined in the report.

The Board's report was released by the then Assistant Treasurer on 16 December 2009.

Review into elements of the taxation of employee share schemes

On 1 July 2009, the then Assistant Treasurer released a Policy Statement setting out the final taxation treatment of shares and rights acquired under employee share schemes, with the policy to be applied from that date. The Statement incorporated a request that the Board of Taxation undertake a review into elements of the taxation of employee share scheme arrangements.

On 24 July 2009, the then Assistant Treasurer announced the terms of reference for the Board's review. The Board was asked to examine:

- how best to determine the market value of employee share scheme securities; and
- whether shares and rights under an employee share scheme that are provided by start-up, research and development and speculative-type companies should be subject to separate tax deferral arrangements outside of those proposed by the Policy Statement.

In undertaking the review, the Board was asked to consider:

- whether the existing rules for valuing unlisted rights to acquire shares properly reflect market value;
- whether special rules are appropriate or necessary to determine the market value of employee share scheme shares and rights (listed and unlisted);
- whether there are suitable alternative mechanisms for determining market value;

- whether it is appropriate or necessary to provide separate deferral arrangements for employees of start-up, research and development and speculative-type companies receiving shares or rights under employee share schemes; and
- possible options to provide assistance to start-up, research and development and speculative-type companies.

The Board appointed a Working Group of its members comprising Mr Richard Warburton AO (Chair), Ms Annabelle Chaplain and Mr John Emerson AM to oversee this review.

The Board requested written submissions and to supplement the feedback obtained from submissions, the Board formed an Expert Panel of five tax professionals chosen for their expertise to assist the Board with technical and practical advice.

The Board completed its review and provided its report to the then Assistant Treasurer in February 2010.

The Board's report made five recommendations and included advice from the Australian Government Actuary into the valuation of unlisted rights.

The Board's report was released by the then Assistant Treasurer on 23 April 2010.

Review of the application of the GST to cross-border transactions

On 12 May 2009, the then Assistant Treasurer announced that he had asked the Board of Taxation to undertake a review of the application of GST to cross-border transactions, in particular the extent of non-resident participation.

The Board appointed a working group of its members comprising Mr Eric Mayne (Chair), Mr Curt Rendall and Mr Richard Warburton AO to oversee this review.

The Board released a discussion paper on 29 July 2009. In developing the discussion paper the Board consulted with members of its expert panel, comprising four GST taxation advisers chosen for their expertise.

The discussion paper:

- provided some background to how, and the framework under which, GST is applied to cross-border transactions;
- examined issues relating to the application of GST to cross-border transactions; and
- explored various options to improve the application of GST to cross-border transactions.

The Board requested written submissions and also held targeted consultation meetings with selected stakeholders. The purpose of these meetings was to clarify aspects of the submissions and to explore possible responses to issues raised in them.

The Board completed its review and provided its report to the then Assistant Treasurer in February 2010.

The Board made 14 recommendations which seek to simplify the design of the GST cross-border rules and improve the balance between ensuring Australia's GST system does not draw in non-residents unnecessarily and ensuring the existing GST tax base is maintained.

The Board's report was released by the then Assistant Treasurer on 11 May 2010.

Post-implementation review of certain aspects of the consolidation regime

On 3 June 2009, the then Assistant Treasurer announced that the Board would undertake a post-implementation review of certain aspects of the consolidation regime. The aim of the review is not to reopen debate about the merits of the policy intent of the measure, but rather to gauge how effective the legislation has been in delivering the policy intent.

The aspects of the consolidation regime that will be subject to the review are:

- the operation of the single entity rule;

- the operation of the entry history rule in acquisition cases; and
- the interaction between the consolidation provisions and other parts of the income tax law.

The Board appointed a working group of its members comprising Mr Richard Warburton AO (Chairman), Mr Chris Jordan AO (Deputy Chairman), Mr Keith James and Mr Curt Rendall to oversee this review.

During 2009-10, the Board has made considerable progress. On 9 December 2009, the Board released its discussion paper and invited submissions by 26 February 2010. A total of 11 submissions were received.

To assist the review process, the Board conducted consultation meetings on 1 February 2010 in Sydney and 3 February 2010 in Melbourne. The consultation meetings were attended by representatives of taxation professional bodies, major law and accounting firms, various major corporations and business associations.

After considering the views of all stakeholders the Board, expects to provide a final report to the Government in early 2011.

Review of the taxation treatment of Islamic finance, banking and insurance products

On 26 April 2010, the then Assistant Treasurer announced that the Board of Taxation would undertake a comprehensive review of Australia's tax laws to ensure that, wherever possible, they do not inhibit the expansion of Islamic finance, banking and insurance products.

This review arises from the report of the Australian Financial Centre Forum, *Australia as a Financial Centre – Building on our Strengths*¹ which recommended that the Board of Taxation undertake such a review 'in order to ensure that Islamic finance products have parity with conventional products, having regards to their economic substance' (Recommendation 3.6).

1 Available on the Treasury website, www.treasury.gov.au

Activities of the Board

On 18 May 2010, the then Assistant Treasurer announced the terms of reference for the Board's review. The Board has been asked to:

- identify impediments in current Australian tax laws (at the Commonwealth, State and Territory level) to the development and provision of Islamic financial products in Australia;
- examine the tax policy response to the development of Islamic financial products in other jurisdictions (including the United Kingdom, France, South Korea and relevant Asian jurisdictions); and
- make recommendations (for Commonwealth tax laws) and findings (for State and Territory tax laws) that will ensure, wherever possible, that Islamic financial products have parity of tax treatment with conventional products.

In conducting the review, the Board should have regard to the following principles as far as possible:

- the tax treatment of Islamic financial products should be based on their economic substance rather than their form; and
- where an Islamic financial product is economically equivalent to a conventional product, the tax treatment of the two products should be the same.

The Board has appointed a working group of its members comprising Ms Annabelle Chaplain (Chair), Mr Keith James, Ms Elizabeth Jameson and Mr Richard Warburton AO to oversee this review. In addition, the Board has formed an Expert Panel comprising nine Islamic finance advisers chosen for their expertise.

During 2009-10 the Board has made considerable progress in the short time since the announcement of the review. A discussion paper is expected to be released in the second-quarter of 2010-11 and the Board is to undertake public consultations thereafter. Submissions will be sought from stakeholders on the issues raised in the discussion paper.

After considering the views of all stakeholders the Board expects to provide a final report to the Government in June 2011.

Review of the taxation treatment of collective investment vehicles

On 11 May 2010, the then Assistant Treasurer announced that the Government would ask the Board of Taxation to review the tax treatment of collective investment vehicles (CIV), having regard to the new managed investment trust (MIT) tax framework and including whether a broader range of tax flow-through vehicles should be permitted. As part of the review, the Board will also examine the treatment of Venture Capital Limited Partnership vehicles.

This review arises from the report of the Australian Financial Centre Forum, *Australia as a Financial Centre – Building on our Strengths*² which recommended ‘that the Treasurer request the Board of Taxation to review the scope for providing a broader range of tax flow through collective investment vehicles’ (Recommendation 3.3).

The Board is also to examine and report on the design of an investment manager regime (IMR) for investments by foreign residents managed in Australia. The proposal for an IMR arose from Recommendation 3.1 of the Australian Financial Centre Forum report.

The Board has appointed a working group of its members comprising Mr John Emerson (Chair), Mr Chris Jordan, Ms Annabelle Chaplain and Mr Richard Warburton AO to oversee this review.

After considering the views of all stakeholders the Board expects to provide a final report to the Government by the end of 2011.

Review of the operation of the Tax Issues Entry System (TIES)

On 20 November 2008, the then Assistant Treasurer and Minister for Competition Policy and Consumer Affairs announced the launch of the Tax Issues Entry System (TIES) and that he had asked the Board to review the operation of TIES after 12 months.

2 Available on the Treasury website, www.treasury.gov.au

Activities of the Board

TIES is an Australian Government initiative jointly managed by the Australian Taxation Office and the Department of the Treasury. TIES provides an opportunity for stakeholders to raise issues relating to the care and maintenance of the Australian Government's tax and superannuation systems.

The Board commenced its review of TIES once TIES had been in operation for over 12 months. The Board appointed a Working Group of its members comprising Mr Keith James (Chair), Mr Richard Warburton AO and Mr Peter Quiggin PSM to oversee the Board's review. Additionally, the Board engaged two consultants (Mr Peter Riley and Mr Michael Evans) to assist the Board with the review.

The Board requested written submissions by 31 May 2010.

After considering the views of all stakeholders the Board expects to provide a final report to the Government in the second-quarter of 2010-2011.

Consultation

During 2009-10 the Board continued with its ongoing role of monitoring the processes of community consultation by Treasury on the development of new tax legislation.

The Board also undertakes a program of regular consultation with external stakeholders, including members of its Advisory Panel, on issues falling within its Charter. Formal consultation meetings held in 2009-10 are detailed in Table 5 at Appendix E.

Advisory Panel

In July 2002, the Board established an Advisory Panel to assist it in the general performance of its role. The Panel currently comprises 32 taxation specialists who have agreed to voluntarily assist the Board with its work. Panel members are appointed on the basis of their individual capabilities and expertise, and not as representatives of particular interests.

The Panel provides an additional source of advice to that provided by the business, professional and other community representative organisations with

which the Board has developed close working relationships. The Board met Advisory Panel members on a number of occasions during 2009-10 to discuss Board projects and general issues associated with the integrity and functioning of the tax system.

Membership of the Advisory Panel changes from time to time and is reviewed periodically by the Board. Following a review in early 2010, three members retired from the Panel and seven new members were appointed. The Board wishes to record its appreciation for the contributions made by Panel members to the Board's work during 2009-10. Panel membership as at 30 June 2010 is set out at Appendix H.

Other resources available to the Board

The Board draws on a range of resources when undertaking its reviews.

The review of managed investment trusts drew extensively on the input of several tax advisers and academics. This provided the Board with a resource with which to test its ideas as consideration of this review progressed. This review also benefited from the assistance of a dedicated team of Treasury officers who provided technical and policy input to the review. The Board also received assistance from Professor Richard Vann (The University of Sydney) in considering the technical issues raised by the review. Two members from the Board's Advisory Panel, Ms Teresa Dyson and Mr Ken Schurgott, were also asked to assist as members of the Working Group. The Board also benefited from comments and technical advice provided by an Expert Panel comprising eight taxation practitioners with significant experience in the area.

The post-implementation review of certain aspects of the consolidation regime is also drawing on dedicated resources from Treasury and ATO. In addition, the Board has benefited from an Expert Panel comprising four taxation advisors chosen for their expertise to assist with the review. The Board has also received assistance from Mr Geoff Lehmann in considering the technical issues raised by the review.

The Board of Taxation website

The Board of Taxation's website www.taxboard.gov.au provides general information on the Board, including its membership, the Board's Charter, contact details, Board press releases and Board reports to the Government.

During 2009-10, the format of the Board's website was rejuvenated, significantly improving the accessibility and appearance of the website.

THE YEAR AHEAD

The Board will continue to pursue its objectives as set out in its Charter, including issues relating to the general integrity and functioning of the tax system. Specifically, the Board intends to focus on the areas outlined below, in addition to any other matters referred to it by the Treasurer.

Consultation

Under its Charter, the Board provides advice to the Treasurer on the processes of community consultation in the development of tax legislation. In 2002, the Board submitted a report to the then Treasurer on *Government Consultation with the Community on the Development of Taxation Legislation*³. Following this report, the then Treasurer announced the Government's in-principle position in relation to community consultation in the development of tax policy and legislation.

The Board was asked to undertake an ongoing role in monitoring the consultation process. To assist the Board in this role, Treasury provides a regular report on the consultation strategy for each substantive tax proposal and the progress of that consultation. Treasury's consultation reports are published on the Treasury website⁴.

The Board also regularly seeks the views of stakeholders in the business sector, the tax profession and the wider community on the quality and effectiveness of the consultation processes.

In its 2007 report, *Improving Australia's tax consultation system*⁵, the Board recommended that it take a proactive approach to encouraging continuous improvement in the tax consultation system by liaising with stakeholders

3 Available on the Board's website, www.taxboard.gov.au

4 Treasury's website is www.treasury.gov.au

5 Available on the Board's website, www.taxboard.gov.au

The year ahead

about possible improvements to consultation arrangements consistent with the Government's framework. The report made a number of other recommendations directed at all participants in the tax consultation system. During 2010-11, the Board will continue to work with these participants to facilitate the implementation of the recommendations in the report.

The Board will also continue its ongoing role of monitoring the consultation process in the development of tax legislation.

In addition, the Board will maintain its own program of consultation with the business sector, tax practitioner groups and the wider community on issues falling within its Charter.

Post-implementation review of certain aspects of the consolidation regime

The Board has made significant progress with the post-implementation review of certain aspects of the consolidation regime.

The Board expects to provide a final report to the Government in early 2011.

Review of the operation of TIES

The Board is nearing completion of its review of TIES.

The Board expects to provide a final report to the Government in the second-quarter of 2010-11.

Review of the taxation treatment of Islamic finance products

After considering the view of all stakeholders on the discussion paper released on 13 October 2010, the Board will provide a final report to the Government by June 2011.

Review of the taxation treatment of collective investment vehicles

After considering the view of all stakeholders on the position paper released on 13 October 2010, the Board will provide a final report to the Government by the end of 2011.

Review of the Tax Design Review process

On 22 August 2008 the then Assistant Treasurer released the report of the Tax Design Review Panel, *Better Tax Design and Implementation*⁶. At the same time he announced the Government's response to the Panel's recommendations, accepting in principle all the recommendations in the report. Recommendation 26 of the report stated that;

The Government should ask the Board of Taxation to review the tax design process after two years and report to Government on the extent to which there are demonstrated improvements.

Subsequently, the then Assistant Treasurer wrote to the Board requesting that the Board conduct a review of the tax design review process as recommended by the Tax Design Review Panel, in late 2010, and to report to the Government on whether there have been any improvements as a result of implementing the Panel's recommendations.

The Board will commence this review in the second-quarter of 2010-11.

Rationalisation of the two Income Tax Assessment Acts

As part of fulfilling its Charter, over the past seven years the Board has focussed on processes for rationalising the two Income Tax Assessment Acts.

As the first step in that process, in 2005-06 the Board undertook a project to identify and recommend the repeal of inoperative provisions in both Acts. As well as uncluttering and making the income tax law easier to use, this was seen

6 The report can be found on Treasury's website, www.treasury.gov.au

The year ahead

as a way of more clearly identifying the scope of the task of integrating the operative provisions of the Acts.

In its report to the Government in October 2005, the Board identified an estimated 2,135 pages of inoperative provisions in the 1936 and 1997 Income Tax Assessment Acts (ITAA) and recommended that the Government repeal these provisions after appropriate checking and public consultation on the draft legislation.

In response to the Board's recommendations, the Government has repealed more than 4,100 pages from Australia's tax legislation. Building on the provisions originally identified as inoperative by the Board, the Government identified a further 500 pages of inoperative provisions in the income tax law and 1,500 pages of inoperative tax Acts (such as Sales Tax Acts).

The repeal of the inoperative provisions has been a significant step, but there are still two Income Tax Assessment Acts. The long term goal is to achieve a single Income Tax Assessment Act.

There are opportunities for further rationalisation of the Acts in a number of the Board's reviews. The provisions relating to managed investment trusts are in the ITAA 1936. Any change to the law which may be made as the result of the Board's review of these provisions offers an opportunity to move them into the ITAA 1997.

The Board remains focussed on ensuring that over a realistic timeframe Australia is able to achieve a single Income Tax Assessment Act. This will be a significant step in improving the design and operation of the tax laws and will assist taxpayers and their advisers in meeting their obligations under the law.

APPENDIX A: MEMBERSHIP OF THE BOARD

The Board of Taxation comprises up to ten members appointed by the Treasurer. A maximum of seven members are appointed in their personal capacity from within the business and wider community. The Secretary to the Australian Treasury, the Commissioner of Taxation and the First Parliamentary Counsel are ex officio members.

The members of the Board during 2009-10 were:

Chairman — Richard F E (Dick) Warburton AO

Mr Warburton is currently Chairman of Tandou Ltd and Magellan Flagship Fund Ltd and a director of Citigroup Ltd. He is Chairman of the LEK Advisory Board and of the Commonwealth Studies Conference. Mr Warburton is a former Board Member of the Reserve Bank of Australia, former Chairman of the NSW Olympic Business Roundtable, a past National President of the Australian Institute of Company Directors, and a former Chairman of Caltex Australia Ltd and former Chairman and CEO of Du Pont Australia and New Zealand.

Mr Warburton has been Chairman of the Board since its inception in September 2000.

Deputy Chairman — Chris Jordan AO

Mr Jordan is Chairman of KPMG New South Wales and was previously Partner in Charge of the New South Wales Tax and Legal Division of KPMG. He is the former Chairman of the New Tax System Advisory Board and was also the State Chairman of the New South Wales Division of the Taxation Institute of Australia. Mr Jordan is a member of the Sydney Children's Hospital Foundation Board and is also a member of the Board of the Bell Shakespeare Company. He was appointed by the NSW Government to the Games Advisory Committee of the Sydney 2009 World Masters Games.

Appendix A: Membership of the Board

Mr Jordan has been a member of the Board since its inception in September 2000. He was appointed to the position of Deputy Chairman in January 2005.

Annabelle Chaplain

Ms Chaplain is an experienced company director and a Fellow of the Institute of Company Directors. Ms Chaplain is currently Chairman of Honeycombes Property Group, a director of Downer Edi Ltd and Canstar Cannex Pty Ltd and a number of other private companies. She is also a director of the Australian Youth Orchestra.

Ms Chaplain has spent her executive career in the field of international banking and finance, holding management positions as Head of Public Sector Client Management at ABN AMRO for Australia and New Zealand, ABN AMRO's Divisional Director for Queensland, and Director Corporate and Project Finance at AIDC Limited.

Ms Chaplain has been a member of the Board since July 2009.

Michael D'Ascenzo AO

Mr D'Ascenzo was appointed Commissioner of Taxation on 1 January 2006.

After joining the Tax Office in 1977, Mr D'Ascenzo worked in the area of tax avoidance schemes before moving on to head up recoupment tax, then international operations. He then introduced the large case program, auditing Australia's top 100 companies.

Mr D'Ascenzo led the improvements to the self-assessment system in 1992, and worked to raise the standard of tax technical decisions as Chief Tax Counsel. Before being appointed Commissioner, Mr D'Ascenzo was Second Commissioner since 1998 focusing on interpretation and implementation of tax laws, corporate planning, finance and governance. In 2010 Mr D'Ascenzo was appointed an Officer of the Order of Australia (AO) for service to public administration, particularly through reform and innovative engagement with the taxation profession and other government agencies.

Mr D'Ascenzo has been an ex officio member of the Board since January 2006

John Emerson AM

Mr Emerson has been a partner in Freehills, lawyers, since 1976 and is widely recognised as a specialist in the tax and other laws applicable to charities. He heads the firm's charity law practice.

He is the Freehills Melbourne Office Pro Bono Partner and a member of a number of legal and public sector committees active in the charity tax and pro bono areas.

Mr Emerson has been a member of the Board since January 2007.

Ken Henry AC

Dr Henry has been Secretary to the Australian Treasury since April 2001. Dr Henry's experience in taxation matters began when he joined Treasury as a member of the Treasury's Taxation Policy Division from 1984 to 1986. After fulfilling various positions both inside and outside Treasury, Dr Henry returned to the Treasury in January 1994 as head of the Taxation Policy Division. In August 1997 he was appointed Chairman of the Government's Taxation Task Force, responsible for providing advice to the Government on tax reform options. Dr Henry was then appointed to other executive roles before taking up his current position.

Dr Henry is Chair of the Standard Business Reporting Board, the Advisory Board of the Australian Office of Financial Management, the ANZSOG Research Committee and Joint-Chair of the Trans-Tasman Banking Council. Dr Henry chaired the 2009 Review into Australia's Future Tax System. He is a member of the Board of the Reserve Bank of Australia, the Board of Infrastructure Australia, the Australian Institute for Population Ageing Research (AIPAR) Leaders Forum, the Council of Financial Regulators, and the Defence Strategic Reform Advisory Board. Dr Henry is Alternate Governor (for Australia) of the International Monetary Fund.

Dr Henry has been an ex officio member of the Board since April 2001.

Keith James

Mr James is a Partner at Hall & Wilcox Lawyers. He is a key figure in the tax advisory profession. His involvement has extended to Chairman of the Public Accountants Committee, Victorian President and National Councillor and Chairman of the Taxation Centre of Excellence for CPA Australia. Mr James

Appendix A: Membership of the Board

was the accounting profession representative on the Commissioner of Taxation's Advisory Panel, his National Liaison Committee and the Advisory Committee on the Taxpayers Charter. He was joint Chairman of the working party on the national review of standards of the tax profession and a member of the steering committee of the Pappas Carter Report reviewing the Tax Office's large case audit program.

Mr James is an active public speaker within the industry and regularly has articles published in legal and accounting publications.

Mr James has been a member of the Board since March 2004.

Elizabeth Jameson

Ms Jameson is a corporate/commercial lawyer by background. After 15 years in legal practice, in 2002 she established Board Matters Pty Ltd, a corporate governance consultancy and associated legal practice, Board Matters Legal. Today Elizabeth's time is divided between her consulting work through Board Matters and a number of non-executive Directorships. She has held many board positions over the past two decades. These currently include directorships with BDO Group Holdings (Qld) Pty Ltd (as Chair), RACQ Ltd, FibreCycle Pty Ltd (as Chair) and Brisbane Girls' Grammar School (as Chair).

Ms Jameson has been a member of the Board since April 2010.

Eric Mayne (retired April 2010)

Mr Mayne is the Chief Supervision Officer of ASX Markets Supervision at the Australian Securities Exchange. He also chairs the ASX Corporate Governance Council.

Mr Mayne is responsible for ASX's supervision of the Futures and Equities markets, including company disclosure, market surveillance and participant activity and compliance with ASX's Operating Rules.

Mr Mayne joined ASX in May 2005 after 35 years experience in government revenue regulation and law. During this time, he was a partner at the law firm Mallesons Stephen Jaques for nearly 16 years, including as the National Managing Partner for approximately 5 years. Mr Mayne has a Bachelor of Laws (Hons) and Graduate Diploma of Business (Accounting), and is a

member of the Financial Reporting Council and the Corporations Committee of The Law Council of Australia.

Mr Mayne was a member of the Board from January 2005 to April 2010.

Peter Quiggin PSM

Mr Quiggin is the First Parliamentary Counsel of the Office of Parliamentary Counsel, which is responsible for drafting all principal legislation for the Australian Government, including all principal taxation legislation.

Mr Quiggin's seven year appointment as First Parliamentary Counsel started on 13 May 2004. He has been a drafter with the Office of Parliamentary Counsel for over 20 years and has drafted legislation covering a wide range of topics including taxation, native title and immigration.

Mr Quiggin represents the Pacific region on the council of the Commonwealth Association of Legislative Counsel (CALC).

Prior to working at OPC, Mr Quiggin worked for a number of years with the Tax Office and the Administrative Appeals Tribunal.

Mr Quiggin has been an ex officio member of the Board since January 2004.

Curt Rendall

Mr Rendall is the Senior Partner of Rendall Kelly Chartered Accountants.

Mr Rendall is currently a member of the Standard Business Reporting Board and was previously a member of the Dawson Review, Chairman of the Federal Government's Small Business Consultative Committee, Deputy Chairman of the New Tax System Advisory Board and an Associate Commissioner of the Productivity Commission. He has also been Chairman of the Institute of Chartered Accountants Small and Medium Enterprises Committee as well as a Member of the Small Business Development Corporation of New South Wales.

Mr Rendall has been a member of the Board since January 2005.

Secretary to the Board of Taxation

Christine Barron (retired May 2010)

Ms Barron has held a number of senior positions in Treasury. Her experience in tax policy includes personal tax, fringe benefits tax, not-for-profit issues and indirect tax. Ms Barron was also Secretary to the Inquiry into the Definition of Charities and Related Organisations. She is currently General Manager of the Tax System Division of Treasury.

Ms Barron was Secretary to the Board from January 2008 to May 2010.

Brenda Berkeley

Ms Berkeley has held a number of senior positions in Treasury since 1996, including in securities market and corporate regulation and as Treasury's Tokyo representative from 1999 to 2003. Most recently she was the General Manager of Treasury's Tax Design Division with responsibility for managing the Treasury's tax legislation program. Her secretariat experience includes the provision of secretariat services to the Management Advisory Committee's review of the *Employment of People with Disability in the APS* in 2006. She is also currently the General Manager of the Indirect Tax Division of Treasury.

Ms Berkeley has been Secretary to the Board since May 2010.

APPENDIX B: THE BOARD'S CHARTER

Mission

Recognising the Government's responsibility for determining taxation policy and the statutory roles of the Commissioner of Taxation and the Inspector-General of Taxation, the Board's mission is to contribute a business and broader community perspective to improving the design of taxation laws and their operation.

Membership

The Board of Taxation will consist of up to ten members.

Up to seven members of the Board will be appointed by the Treasurer, for a term of up to three years, on the basis of their personal capacity. It is expected that these members will be appointed from within the business and wider community having regard to their ability to contribute at the highest level to the development of the tax system. The Chairman will be appointed by the Treasurer from among these members of the Board. If the Treasurer decides to appoint a Deputy Chairman, he or she will also be appointed from among these members of the Board. Members may be re-appointed.

The Secretary of the Department of the Treasury, the Commissioner of Taxation and the First Parliamentary Counsel will also be members of the Board. Each may be represented by a delegate.

Function

The Board will provide advice to 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.

Relationship to other boards and bodies

From time to time the Government or the Treasurer may establish other boards or bodies with set terms of reference to advise on particular aspects of the tax law. The Treasurer will advise the Board on a case-by-case basis of its responsibilities, if any, in respect of issues covered by other boards and bodies.

Report

The Chairman of the Board will report to the Treasurer, at least annually, on the operation of the Board during the year.

Secretariat

The Board will be supported by a secretariat provided by the Treasury, but may engage private sector consultants to assist it with its tasks.

Other

Members will meet regularly during the year as determined by the Board's work program and priorities.

Non-government members will receive daily sitting fees and allowances to cover travelling and other expenses, at rates in accordance with Remuneration Tribunal determinations for part-time public offices.

The Government will determine an annual budget allocation for the Board

APPENDIX C: ATTENDANCE AT BOARD MEETINGS

Table 2: Attendance at Board meetings, 2009-10

Member	Number of meetings eligible to attend	Number of meetings attended
Mr Warburton (Chairman)	10	9
Mr Jordan (Deputy Chairman)	10	9
Ms Chaplain	10	10
Mr D'Ascenzo ^(a)	10	10
Mr Emerson	10	10
Dr Henry ^(a)	10	10
Mr James	10	8
Ms Jameson	2	2
Mr Mayne	7	7
Mr Quiggin ^(a)	10	9
Mr Rendall	10	9

(a) The Board's Charter allows for ex officio members of the Board to be represented by a delegate at Board meetings.

APPENDIX D: BOARD WORKING GROUPS

Table 3: Membership of Board Working Groups, 2009-10

Review of managed investment trusts	Review of the application of GST to cross-border transactions	Post-implementation review into the alienation of personal services income rules
Mr Emerson (Chair)	Mr Mayne (Chair)	Mr James (Chair)
Mr James	Mr Rendall	Mr Quiggin
Mr Jordan	Mr Warburton	Mr Rendall
Mr Warburton		
Ms Dyson		
Mr Schurgott		
Review into elements of the taxation of employee share schemes	Post-implementation review into certain aspects of the consolidation regime	Review of TIES
Mr Warburton (Chair)	Mr Warburton (Chair)	Mr James (Chair)
Ms Chaplain	Mr James	Mr Quiggin
Mr Emerson	Mr Jordan	Mr Rendall
	Mr Rendall	Mr Warburton
Review of the taxation treatment of Islamic finance products	Review of the taxation treatment of collective investment vehicles	
Ms Chaplain (Chair)	Mr Emerson (Chair)	
Mr James	Ms Chaplain	
Ms Jameson	Mr Jordan	
Mr Rendall	Mr Warburton	
Mr Warburton		

APPENDIX E: CONSULTATION BY THE BOARD

Table 4: Speeches and presentations, 2009-10

Date	Presentation	Event	Member
27 July 2009	Board of Taxation Review of GST administration	Indirect Tax Forum	Mr Mayne
4 February 2010	Overview of the Board of Taxation	Software Developers Consultative Group Meeting	Mr James
28 May 2010	The role of the Board of Taxation and its current work program	2010 NIA Tasmanian Congress	Mr Rendall
22 June 2010	Overview of the Board of Taxation	Property Council Market Leaders Summit 2010	Mr Warburton

Table 5: Meetings with external organisations, 2009-10

Date	Attendees
12-13 November 2009 Board of Taxation meeting, Hobart	Members of the Tasmanian business and tax advising community
1 and 3 February 2010 Public consultation meetings for the post-implementation review into certain aspects of the consolidation regime, Sydney and Melbourne	Taxation professional bodies Major law and accounting firms Various major corporations and business associations Officials from the Treasury and the ATO
15 April 2010 Board of Taxation meeting, Melbourne	Melbourne-based members of the Board's Advisory Panel
18 June 2010 Board of Taxation meeting, Sydney	Inspector-General of Taxation Sydney and Brisbane-based members of the Board's Advisory Panel

APPENDIX F: CONSULTANCIES

Consultants are engaged in accordance with Treasury's policies for the engagement of consultants and contractors. These policies, which are consistent with the Chief Executive Instructions and the Commonwealth Procurement Guidelines, are outlined in the Treasury Annual Report. During 2009-10, the Board engaged seven consultancies for an amount over \$10,000, for a total value of \$130,000. Details of these consultancies are in Table 6. The actual expenditure for these consultancies, consultancies completed in 2009-10 and for payments made to service providers in 2009-10 was \$97,550 (GST exclusive).

Table 6: Consultancies over \$10,000 in 2009-10

Consultant	Project	Engaged Cost (\$) ¹	Procurement Method ²	Reason ³
Geoff Lehmann	Provision of consultancy services advising the Board of Taxation of its post-implementation review of certain aspects of the consolidation regime	40,000	Select	E
Michael B Evans	Provision of consultancy services advising the Board of Taxation of its review and promotion of the Tax Issues Entry System	25,000	Select	E
Alandal Consulting Pty Ltd (Peter Riley)	Provision of consultancy services advising the Board of Taxation of its review and promotion of the Tax Issues Entry System	25,000	Select	E
Lixstar Pty Ltd (Gordon Cooper)	Provision of consultancy services to the Board in relation to the Tax Issues Entry System	10,000	Select	E
Pitcher Partners (Michael Hay)	Provision of consultancy services to the Board in relation to the Tax Issues Entry System	10,000	Select	E

Appendix F: Consultancies

Consultant	Project	Engaged Cost (\$) ¹	Procurement Method ²	Reason ³
Blake Dawson (Teresa Dyson)	Provision of consultancy services to the Board in relation to the Tax Issues Entry System	10,000	Select	E
Greenwoods & Freehills (Ken Spence)	Provision of consultancy services to the Board in relation to the Tax Issues Entry System	10,000	Select	E
Total consultancies over \$10,000		130,000		

Note — All amounts are GST inclusive.

(1) Cost of completed consultancies in 2009-10.

(i) Consultancy — Actual cost was \$107,305 (GST inclusive)

(2) Explanation of selection process terms:

(i) Direct engagement includes the engagement of: a consultant selected from a pre-qualified panel arrangement; a recognised and pre-eminent expert; a consultant who had previously undertaken closely related work for the department; or a consultant known to have the requisite skills where the value of the project did not justify the expense or delay associated with seeking tenders.

(ii) Select tenders are invited from a short list of competent suppliers. This category is applied where there is a known limited market for the services required, and when value for money would not be achieved through a full open tender process.

(iii) Open tender.

(3) Justification of decision to use consultancy:

(a) Need for rapid access to latest technology and expertise in its application.

(b) Specialist in-house resources unavailable in time allowed.

(c) Need for an independent study or review.

(d) Need for a change agent or facilitator.

(e) Specialist skills or knowledge not available in-house.

APPENDIX G: FINANCIAL STATEMENTS

Table 7: Revenue, expenses and operating result

	2008-09	2009-10
	\$	\$
Revenue		
Funding from Government	1,962,000	1,953,000
Services provided free of charge	115,657	110,390
Revenue — Other		
Total revenue	2,077,657	2,063,390
Expenses		
<i>Employee expenses^(a)</i>		
Wages	542,612	393,092
Superannuation	112,729	85,528
Other employee expenses	190,021	146,377
Total employee expenses	845,362	624,997
<i>Other expenses</i>		
Travel	250,247	130,498
Communications	0	0
Conferences and training	35,166	22,885
Consultants and services provided by Contractors	137,187	97,550
Seconded Employees	142,143	110,000
Office supplies	227	2,837
Printing	14,250	73
Publications and subscriptions	2,158	3,313
Other supplier expenses ^(b)	121,060	106,308
Total operating expenses	702,438	473,465
Total expenses	1,547,800	1,098,462
Operating surplus	529,857	964,928

(a) The 2009-10 average staffing level of the Board secretariat was 2.6 compared with 2.6 in 2008-09. Of total employee expenses of \$624,997 in 2009-10, \$524,624 was attributed to the Secretariat. The balance of \$100,373 comprises payments to non-Government members of the Board (the total figure of \$97,353 shown in Table 8 'Fees paid to non-Government Board members, 2009-10' plus \$3,021 in superannuation payments in respect of non-Government members who receive daily fees rather than having them paid to their employing organisations).

(b) Other supplier expenses mainly consist of a payment made to Treasury for corporate support of the Board and the Secretariat. In 2009-10 this payment was \$100,000.

Table 8: Fees paid to non-government Board members, 2009-10^(a)

Member	\$
Mr Warburton (Chairman)	26,610
Ms Chaplain	9,306
Mr Emerson	22,792
Mr James	0
Ms Jameson	0
Mr Jordan	15,890
Mr Mayne	6,717
Mr Rendall	12,735
Total	94,050

(a) Members of the Board other than the three ex officio members receive daily fees for attending Board and Working Group meetings. In some cases these fees are paid to their employing organisations. With effect from 1 October 2009, daily fees increased from \$789 to \$813 for the Chairman and \$597 to \$613 for members. Fees at the same rates are paid where non-government members are engaged in business of the Board other than attendance at formal meetings — such as representing the Board in meetings with external bodies, giving presentations, or working on Board reports. Non-government members of the Board were engaged to differing degrees in these activities during 2009-10.

APPENDIX H: MEMBERS OF THE BOARD'S ADVISORY PANEL

Table 9: Members of Advisory Panel as at 30 June 2010

Panel Member:	Position, Organisation:
Ms Jennifer Batrouney SC	Barrister
Mr Steve Baxter	Associate Director, Indirect Tax Consulting Group
Mr Brad Beck	Partner, PricewaterhouseCoopers
Ms Sarah Bernhardt	Partner, Allens Arthur Robinson
Mr Christopher Branson QC	Barrister, Law Council of Australia
Mr Frank Brody	Partner, Mallesons Stephen Jaques
Mr Alf Capito	Partner, Ernst & Young Australia
Ms Jenny Clarke	Partner, KPMG
Mr Michael Clough	Partner, Mallesons Stephen Jaques
Mr Gordon Cooper AM	Principal, Cooper & Co.
Ms Teresa Dyson	Partner, Blake Dawson
Mr Michael Evans	Chartered Accountant
Mr Michael Hay	Partner/Executive Director, Pitcher Partners
Mr Greg Hayes	Senior Partner, Hayes Knight
Mr Matthew Hayes	Partner, Australian Tax Centre, KPMG
Mr Michael Hennessey	Partner, Ernst & Young Australia
Mr Emanuel Hiou	Partner, Deloitte Touche Tohmatsu
Mr Paul Hooper	General Manager, Lend Lease Corporation Ltd
Mr Michael Johnston	Chief Financial Officer, Consolidated Press Holdings Limited
Mr Mark Joiner	Chief Financial Officer, National Australia Bank
Mr Alexis Kokkinos	Director, Deloitte Touche Tohmatsu
Mr Larry Magid	Partner, Allens Arthur Robinson
Mr Andrew Mills	Director, Greenwoods & Freehills
Associate Professor Ann O'Connell	Faculty of Law, University of Melbourne and Special Counsel, Allens Arthur Robinson

Appendix H: Members of the Board's Advisory Panel

Panel Member:	Position, Organisation:
Mr Frank O'Loughlin	Barrister
Ms Karen Payne	Partner, Minter Ellison
Ms Tracey Rens	Partner, Deloitte Touche Tohmatsu
Mr Brian Richards	Partner, BDO Kendalls
Mr Ken Schurgott	Director, SBN Lawyers
Mr Ken Spence	Director, Greenwoods & Freehills
Ms Judy Sullivan	Partner, Mallesons Stephen Jaques
Mr Mark West	Partner, McCullough Robertson