

# **THE BOARD OF TAXATION**

2008-09 ANNUAL REPORT

DECEMBER 2009

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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 Warburton, 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;
- 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 2008-09

## Overview

During 2008-09, the Board reported to the Government on:

- a review of the foreign source income anti-tax-deferral regimes. The report was submitted to the Government in September 2008; and
- a review of the legal framework of the administration of the GST. The report was submitted to the Government in December 2008.

The Board also made significant progress to near completion on a review of the tax arrangements applying to managed investment funds that operate as managed investment trusts.

The Board also received three new references from the Government:

- a review of the application of GST to cross-border transactions, to report in February 2010;
- a post-implementation review of the provisions relating to the alienation of personal services income, to report in October 2009; and
- a post-implementation review of certain aspects of the consolidation regime, to report in late 2010.

In addition, 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 11 occasions during 2008-09, as shown in Table 1, with varying locations. The Board is looking to extend its outreach further in 2009-10, with another meeting to be held in a regional centre. Details of Board members' attendance at meetings are provided at Appendix C.

**Table 1: Board of Taxation meetings, 2008-09**

Date	Location
4 July 2008	Canberra
15 August 2008	Darwin
12 September 2008	Sydney
2 October 2008	Canberra
7 November 2008	Melbourne
11 December 2008	Sydney
5 February 2009	Sydney
5 March 2009	Brisbane
8 April 2009	Melbourne
15 May 2009	Canberra
11 June 2009	Sydney

In addition, the Board conducts its projects by appointing a Working Group of its members to oversee the process. A list of Working Groups for 2008-09 and their membership is provided at Appendix D. Each of these Working Groups met on numerous occasions during 2008-09 and engaged in extensive consultation in relation to the projects. These consultations are outlined in general terms in Appendix E.

## Review of anti-tax-deferral regimes

On 10 October 2006 the then Government announced that it had asked the Board of Taxation to undertake a review of the anti-tax-deferral regimes – the controlled foreign company, foreign investment fund, transferor trust and deemed present entitlement regimes.

During 2008-09, the Board completed its review of the anti-tax-deferral regimes and provided its report to the Government in September 2008. The Board's report was released by the then Assistant Treasurer on 12 May 2009.

In framing its recommendations the Board consulted extensively with industry and tax practitioners. The Board's key findings are to retain and modernise the controlled foreign company (CFC) provisions, repeal the foreign investment fund (FIF) provisions and the deemed present entitlement rules, and to amend the transferor trust rules to enhance their effectiveness and improve their integrity.

## Review of the legal framework for the administration of the GST

On 11 June 2008 the then Assistant Treasurer announced that he had asked the Board of Taxation to undertake a review of the legal framework for the administration of the GST.

The Board made extensive progress on this review during 2008-09. On 18 July 2008, the Board released its issues paper on the review in order to facilitate public consultation.

The Board held extensive consultation with stakeholders in August 2008. Consultation meetings were held in Sydney, Brisbane, Melbourne, Darwin and Perth. The purpose of these consultation meetings was to enable interested stakeholders to clarify the review's terms of reference and its scope and to promote stakeholder discussion on matters raised in the issues paper and any other relevant topics. In addition, the Board invited submissions to the review.

The Board completed its review of the legal framework for the administration of the GST and provided its report to the Government in December 2008. The Board's report was released by the then Assistant Treasurer on 12 May 2009.

While overall the Board found that the GST is operating effectively, there are some aspects of the tax that impose unnecessarily high compliance costs on taxpayers. The Board put forward 46 recommendations, 41 of which were supported by Government.

## 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.

During 2008-09 the Board made substantial progress on this review. On 29 October 2008, the Board released its discussion paper on the review of the tax arrangements applying to managed investment trusts. In developing the discussion paper the Board conducted targeted consultations with key stakeholders.

To assist in the review process, the Board conducted public consultation meetings in November 2008. Consultation meetings were held on 12 November 2008 in Melbourne and 13 November 2008 in Sydney. The consultation meetings were attended by representatives from taxation professional bodies, major law and accounting firms, various major corporations and business associations. In addition, the Board invited submissions to the review.

During the course of the review, the Board provided a progress interim advice to the Government. On 12 May 2009, the then Assistant Treasurer announced that the Government would implement the Board of Taxation's interim advice on the taxation of managed funds to provide deemed capital account treatment for gains and losses made on disposal of investment assets by managed investment trusts (MITs), subject to appropriate integrity rules.

After considering the views of all stakeholders the Board will prepare its report and provide its recommendations to Government in the first quarter of 2009-10.

## 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.

During the Board's previous review of the legal framework for the administration of the GST, a large number of issues were raised in public consultations and submissions concerning non-residents and cross-border transactions. As part of that review, the Board recommended that the Government may wish to consider a review of the application of the GST to cross-border transactions with a view to simplifying and reducing the number of non-residents in the system.

The review includes, but is not limited to, the consideration of:

- the impact of the current cross-border provisions on the international competitiveness of Australian enterprises;
- the extent to which non-residents should be drawn into the operation of the GST;
- the role of resident agents acting for non-residents and whether there is scope to broaden it; and
- ways to simplify and reduce compliance and administrative costs associated with cross-border transactions.

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

During 2008-09, the Board has made progress on this review. Submissions will be sought from stakeholders on the issues raised on a discussion paper expected to be released in the first-quarter of 2009-10. The Board will also undertake consultation in the first-quarter of 2009-10. After considering the views of all stakeholders the Board is to provide a final report to the Government by the end of February 2010.

## Post implementation reviews

The Board is also undertaking two post implementation reviews. The Board's intention in undertaking the post-implementation review is not to reopen debates about the merits of the policy intent of this measure. The intention instead is to gauge how effective the legislation has been in delivering the policy intent.

## 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 Board has appointed a working group of its members comprising Keith James (Chairman), Peter Quiggin, Curt Rendall and Richard Warburton to oversee this review.

On 16 June 2009, the Board announced it was inviting submissions to the review. The Board has made considerable progress on this report in a short amount of time. After considering the views of all stakeholders the Board will provide a final report to the Government by the end of October 2009.

## 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 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 has appointed a working group of its members comprising Richard Warburton (Chairman) and Keith James to oversee this review.

The Board expects to release a discussion paper in the second-quarter of 2009-10. In conjunction with the release of the discussion paper the Board will invite public submissions to the review and conduct public consultation meetings.

After considering the views of all stakeholders the Board expects to provide a final report to the Government in late 2010.

## Tax Issues Entry System

On 22 August 2008, the Assistant Treasurer announced that the government had accepted the recommendations of the Tax Design Review Panel including:

- **Recommendation 17 – Adopt the Board of Taxation’s 2007 TIES recommendation**

The Government should pilot the Tax Issues Entry System (TIES) to identify legislative and administrative issues relating to the care and maintenance of the tax system. The Board of Taxation should review the operation of the system after 12 months.

- **Recommendation 18 – Board of Taxation to advise on TIES priorities**

The Government should ask the Board of Taxation to consult with the community and provide advice to the Government on how issues identified through TIES should be prioritised. The Board's advice to the Minister should be made public.

The TIES initiative is jointly managed by the Australian Taxation Office and the Department of the Treasury. To assist in this process, a TIES Working Group has been formed consisting of Keith James (Chairman), Gordon Cooper (Cooper & Co. Chartered Accountants), Teresa Dyson (Blake Dawson), Michael Hay (Pitcher Partners) and Ken Spence (Greenwoods & Freehills).

The initial mandate of the TIES Working Group was to advise on the priority of issues lodged through the TIES forum. However, this role has been expanded in practice through contribution of comments on the validity of issues raised, its significance to taxpayers generally and possible approaches to legislative amendment.

To date, 69 issues have been raised through the TIES forum. The TIES website contains a full list of the issues raised through the TIES forum, including a brief description of the issue, status of the issue and comments in relation to progression of the issue. Of the 69 issues raised, 20 are listed as finalised with a number of these issues considered to be outside the scope of the TIES forum. Numerous issues are either in the preliminary assessment stage, or Treasury is

considering the legislative measures required to adequately address the issue raised.

## Consultation

During 2008-09 the Board continued with its ongoing role in monitoring the processes of community consultation on the development of new tax legislation. To facilitate this oversight role, the Board receives a report from Treasury on consultation on announced tax measures three times a year. In addition, the Board's monitoring role included receiving detailed presentations from Treasury on specific consultations.

The Board 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 2008-09 are shown in Table 5 at Appendix E. During this period much of the Board's consultation has been focused on its reviews, rather than on more general issues associated with the integrity and functioning of the taxation system. Due to the large number of consultations undertaken on specific queries, the Board had less formal consultation with business and tax professionals.

## 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 28 taxation professionals 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 2008-09 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 late 2008, two members

retired from the Panel and three new members were appointed. The Board wishes to record its appreciation for the contributions made by Panel members to the Board's work during 2008-09. Panel membership as at 30 June 2009 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 the anti-tax-deferral regimes 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 three officers within Treasury which provided technical and policy input for the review.

The review of the legal framework for the administration of the GST was also assisted by dedicated resources from Treasury and ATO. Treasury provided assistance through a team of officers from its indirect tax division while the ATO assisted the Board with a team of officers from its Goods and Services Tax area, led by an Assistant Commissioner. In addition, the Board was able to draw on an Expert Panel which consisted of nine GST taxation advisors chosen for their expertise to assist with the review.

The review of the tax arrangements applying to managed funds that operate as managed investment trusts also received substantial assistance from teams of officers from Treasury and ATO. The Board also received assistance from Professor Richard Vann (The University of Sydney) in the consideration of technical issues. In addition, the Board asked two members from its Advisory Panel, Teresa Dyson and Ken Schurgott, to assist as members of the Working Group. The Board also benefited from comments and technical advice provided by of an Expert Panel comprising eight taxation practitioners with significant experience in the area.

## The Board of Taxation website

The Board of Taxation's website [www.taxboard.gov.au](http://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.



## 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 Treasurer on *Government Consultation with the Community on the Development of Taxation Legislation*<sup>1</sup>. Following this report, the 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 website ([www.treasury.gov.au](http://www.treasury.gov.au)).

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

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1 Available on the Board's website, [www.taxboard.gov.au](http://www.taxboard.gov.au).

## The year ahead

system. During 2009-10, the Board will continue to work with these participants to facilitate the implementation of the recommendations in the report.

The Board will also continue to undertake its ongoing role in monitoring the consultation process in the development of tax legislation. In particular, the Board will be focusing on the quality as well as the extent of consultation on tax proposals.

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.

## Review of managed investment trusts

The Board has made significant progress with the review of managed investment trusts.

The Board expects to finalise the report in the first quarter of 2009-10.

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

The Board expects to release a discussion paper in the first quarter of 2009-10 and to undertake public consultations. Submissions will be sought from stakeholders on the issues raised in the discussion paper.

After considering the views of all stakeholders the Board will provide a final report to the Government by the end of February 2010.

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

The Board has also made significant progress with the post-implementation review into the alienation of personal services income rules.

The Board expects to finalise the report by the end of October 2009.

## Post-implementation review of certain aspects of the consolidation regime

The Board expects to release a discussion paper in the second-quarter of 2009-10. In conjunction with the release of the discussion paper the Board will invite public submissions to the review and conduct public consultation meetings.

The Board expects to provide a final report to the Government in late 2010.

## Rationalisation of the two Income Tax Assessment Acts

As part of fulfilling its Charter, the Board has over the past six years been focusing 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 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 the anti-tax-deferral regimes

## The year ahead

and the managed investment trusts are all in the ITAA 1936. Any change to the law which may be made as the result of the Board's reviews 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.

## TIES

The Government accepted the Tax Design Review Panel's Report which contained a recommendation that the Board of Taxation should review the operation of the TIES system after 12 months.

The Board expects to conduct a review into the TIES system during 2009-2010.

## Events occurring after reporting date

Since the reporting date, five significant events have occurred:

- The Board was asked to undertake a review into elements of the taxation of employee share scheme arrangements and to provide its report to the Government by 28 February 2010;
- The Board released a discussion paper for its review of the application of GST to cross-border transactions on 29 July 2009. The Board invited submissions to the review to be received by 4 September 2009;
- The Board completed its review of managed investment trusts and provided its report to the Government on 25 August 2009;
- The Board completed its post-implementation review into the alienation of personal services income rules and provided its report to the Government on 30 October 2009; and
- The Board released a discussion paper for its post-implementation review into certain aspects of the consolidation regime on 9 December 2009. The Board invited submissions to the review to be received by 26 February 2010.

## 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 2008-09 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.

### Michael D'Ascenzo

Mr D'Ascenzo is recognised globally for his expertise and abilities as a leader and an innovator. He has been Commissioner of Taxation since 1 January 2006.

Since becoming Commissioner, he has championed corporate values that put taxpayers and the community at the centre of ATO thinking, with a view to reducing compliance costs and building community trust and confidence.

Prior to becoming Commissioner, Mr D'Ascenzo was Second Commissioner (Law) and Chief Tax Counsel concurrently, overseeing law interpretation, corporate planning, finance and governance. During his career he pioneered many advances in administration including improvements to Australia's self assessment system, making the tax system fairer and more certain.

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

### John Emerson AM

John 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 was appointed to the Board in January 2007.

### Brett Heading (retired April 2009)

Mr Heading is a Partner and Chairman of legal firm McCullough Robertson. He is a corporate lawyer advising on mergers and acquisitions, corporate governance and capital raising particularly for emerging companies. He is also an experienced company director, and is presently Chairman of ASX listed companies ChemGenex Pharmaceuticals Ltd and Trinity Ltd. He has diverse personal agribusiness interests in the South Burnett in Queensland (cattle, vineyard, lucerne and olive operations and the wine producer Clovelly Estate). Mr Heading is also a former member of the Takeovers Panel.

Mr Heading was a member of the Board since its inception in September 2000 to April 2009.

### 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 was appointed Chair of the Review into Australia's Future Tax System. He is also Chair of the Standard Business Reporting Board, Chair of the Advisory Board of the Australian Office of Financial Management, Chair of the ANZSOG Research Committee and Joint-Chair of the Trans-Tasman Banking Council. 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 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.

## Appendix A: Membership of the Board

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.

### Eric Mayne

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 five 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 has been a member of the Board since January 2005.

### 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 about 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

Ms Barron has held a number of senior positions in Treasury. She has experience across a wide range of areas of Treasury, taxation policy and macroeconomic policy. Her experience in tax policy includes personal tax, fringe benefits tax, not-for-profit issues and indirect tax. She is also currently General Manager of the Indirect Tax Division of Treasury.

Ms Barron was appointed Secretary to the Board in January 2008.



## 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, 2008-09**

Member	Number of meetings eligible to attend	Number of meetings attended
Mr Warburton (Chairman)	11	10
Mr Jordan (Deputy Chairman)	11	10
Mr D'Ascenzo <sup>(a)</sup>	11	11
Mr Emerson	11	11
Mr Heading	9	8
Dr Henry <sup>(a)</sup>	11	10
Mr James	11	10
Mr Mayne	11	11
Mr Quiggin <sup>(a)</sup>	11	10
Mr Rendall	11	11

(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, 2008-09**

<b>Review of anti-tax-deferral regimes</b>	<b>Review of managed investment trusts</b>	<b>Review of the legal framework for the administration of the GST</b>
Mr Jordan (Chairman)	Mr Emerson (Chairman)	Mr Mayne (Chairman)
Mr James	Mr James	Mr Jordan
Mr Warburton	Mr Jordan	Mr Rendall
	Mr Warburton	Mr Warburton
<b>Review of the application of GST to cross-border transactions</b>	<b>Post-implementation review into the alienation of personal services income rules</b>	<b>Post-implementation review into certain aspects of the consolidation regime</b>
Mr Mayne (Chairman)	Mr James (Chairman)	Mr Warburton (Chairman)
Mr Rendall	Mr Quiggin	Mr James
Mr Warburton	Mr Rendall	



## APPENDIX E: CONSULTATION BY THE BOARD

**Table 4: Speeches and presentations, 2008-09**

<b>Date</b>	<b>Presentation</b>	<b>Event</b>	<b>Member</b>
5 September 2008	Board of Taxation's Review of GST Framework	Tax Institute of Australia — National GST Intensive	Eric Mayne
13 October 2008	Board of Tax Review — the legal framework for the administration of the GST	Corporate Tax Association GST Conference	Eric Mayne
26 February 2009	Review of the tax arrangements applying to managed investment trusts	Financial Services Industry Partnership meeting	John Emerson
19 March 2009	Review of the tax arrangements applying to managed investment trusts	Economics, Savings and Tax Board Committee meeting, Investment & Financial Services Association	John Emerson
24 June 2009	The Board Of Taxation — its Role, Past Reviews and its Current Work Program	Group of 100	Chris Jordan

**Table 5: Meetings with external organisations, 2008-09**

Date	Attendees
<p><b>4-5 June 2009</b> Post-review discussion meetings for the review of anti-tax deferral regimes, Sydney and Melbourne</p>	<ul style="list-style-type: none"> <li>• Taxation professional bodies</li> <li>• Major law and accounting firms</li> <li>• Various major corporations and business associations</li> <li>• Officials from the Treasury</li> </ul>
<p><b>28-29 May 2009</b> Post-review discussion meetings for the review of the taxation treatment of off-market share buybacks, Melbourne and Sydney</p>	<ul style="list-style-type: none"> <li>• Taxation professional bodies</li> <li>• Major law and accounting firms</li> <li>• Various major corporations and business associations</li> <li>• Officials from the Treasury and Australian Taxation Office</li> </ul>
<p><b>8 April 2009</b> Board of Taxation meeting, Melbourne</p>	<ul style="list-style-type: none"> <li>• Melbourne-based members of the Board's Advisory Panel</li> </ul>
<p><b>4-5 March 2009</b> Board of Taxation meeting, Brisbane</p>	<ul style="list-style-type: none"> <li>• Members of the Brisbane business and tax advising community</li> </ul>
<p><b>5 February 2009</b> Board of Taxation meeting, Sydney</p>	<ul style="list-style-type: none"> <li>• Sydney-based and Brisbane-based members of the Board's Advisory Panel</li> </ul>
<p><b>12-13 November 2008</b> Public consultation meetings for the review of managed investment trusts, Melbourne and Sydney</p>	<ul style="list-style-type: none"> <li>• Taxation professional bodies</li> <li>• Major law and accounting firms</li> <li>• Various major corporations and business associations</li> <li>• Officials from the Treasury and Australian Taxation Office</li> </ul>
<p><b>7 November 2008</b> Board of Taxation meeting, Melbourne</p>	<ul style="list-style-type: none"> <li>• Australian Council of Trade Unions</li> </ul>
<p><b>12 September 2008</b> Board of Taxation meeting, Sydney</p>	<ul style="list-style-type: none"> <li>• CPA Australia</li> <li>• Institute of Chartered Accountants in Australia</li> <li>• Taxation Institute of Australia</li> <li>• National Institute of Accountants</li> <li>• Law Council of Australia</li> </ul>
<p><b>4 August 2008 to 27 August 2008</b> Public consultation meetings for the review of the legal framework for the administration of the GST. Locations: Sydney, Brisbane, Melbourne, Darwin and Perth</p>	<ul style="list-style-type: none"> <li>• Taxation professional bodies</li> <li>• Law and accounting firms</li> <li>• Various corporations and business associations</li> <li>• Non-profit organisations</li> <li>• Officials from the Treasury and Australian Taxation Office</li> </ul>
<p><b>14 August 2008</b> Board of Taxation Meeting, Darwin</p>	<ul style="list-style-type: none"> <li>• Members of the Darwin business and tax advising community</li> </ul>

## 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 2008-09, the Board engaged three consultancies for an amount over \$10,000, for a total value of \$109,000. Details of these consultancies are in Table 6. The actual expenditure for these consultancies, consultancies completed in 2008-09 and for payments made to service providers in 2008-09 was \$99,085 (GST exclusive).

**Table 6: Consultancies over \$10,000 in 2008-09**

Consultant	Project	Engaged Cost (\$) <sup>1</sup>	Procurement Method <sup>2</sup>	Reason <sup>3</sup>
Richard Vann	Provision of consultancy services advising the Board of Taxation of its review of taxation arrangements applying to Managed Investment Trusts	69,000	Select	E
Blake Dawson (Teresa Dyson)	Provision of consultancy services advising the Board of Taxation of its review of taxation arrangements applying to Managed Investment Trusts	20,000	Select	E
SBN Lawyers (Ken Schurgott)	Provision of consultancy services advising the Board of Taxation of its review of taxation arrangements applying to Managed Investment Trusts	20,000	Select	E
<b>Total consultancies over \$10,000</b>		<b>109,000</b>		

Note — All amounts are GST inclusive.

- (1) Cost of completed consultancies in 2008-09.
  - i Consultancy — Actual cost was \$108,994
- (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**

	2007-08	2008-09
	\$	\$
<b>Revenue</b>		
Funding from Government	2,000,000	1,962,00
Services provided free of charge	30,008	115,657
Revenue — Other		
<b>Total revenue</b>	<b>2,030,008</b>	<b>2,077,657</b>
<b>Expenses</b>		
<i>Employee expenses<sup>(a)</sup></i>		
Wages	331,983	542,612
Superannuation	78,189	112,729
Other employee expenses	138,063	190,021
Total employee expenses	548,235	845,362
<i>Other expenses</i>		
Travel	127,680	250,247
Communications	161	0
Conferences and training	17,627	35,166
Consultants and contracts	22,182	99,085
Contractors and seconded employees	94,562	180,245
Office supplies	179	227
Printing	7,750	14,250
Publications and subscriptions	2,547	2,158
Other supplier expenses <sup>(b)</sup>	107,298	121,060
Total operating expenses	379,986	702,438
<b>Total expenses</b>	<b>928,221</b>	<b>1,547,800</b>
<b>Operating surplus</b>	<b>1,101,787</b>	<b>529,857</b>

(a) The 2008-09 average staffing level of the Board secretariat was 2.6 compared with 3.8 in 2007-08. Of total employee expenses of \$845,362 in 2008-09, \$720,131 was attributed to the Secretariat. The balance of \$125,231 comprises payments to non-Government members of the Board (the total figure of \$121,739 shown in Table 8 'Fees paid to non-Government Board members, 2008-09' plus \$3,492 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 2008-09 this payment was \$100,000.

**Table 8: Fees paid to non-government Board members, 2008-09<sup>(a)</sup>**

<b>Member</b>	<b>\$</b>
Mr Warburton (Chairman)	31,244
Mr Emerson	24,745
Mr Heading	4,751
Mr James	22,920
Mr Jordan	10,746
Mr Mayne	13,602
Mr Rendall	13,731
<b>Total</b>	<b>121,739</b>

(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 July 2008, daily fees were set at \$789 for the Chairman and \$597 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 2008-09.

## APPENDIX H: MEMBERS OF THE BOARD'S ADVISORY PANEL

**Table 9: Members of Advisory Panel as at 30 June 2009**

<b>Panel Member:</b>	<b>Position, Organisation:</b>
Mr Steve Baxter	Associate Director, Indirect Tax Consulting Group
Ms Sarah Bernhardt	Partner, Allens Arthur Robinson
Mr Christopher Branson QC	Barrister, Law Council of Australia
Mr Frank Brody	Partner, Mallesons Stephen Jaques
Ms Narelle Butler	Barrister and Chartered Accountant
Mr Alf Capito	Partner, Ernst & Young Australia
Mr Michael Clough	Partner, Mallesons Stephen Jaques
Mr Gordon Cooper AM	Principal, Cooper & Co.
Ms Teresa Dyson	Partner, Blake Dawson
Mr Michael Evans	Partner, KPMG
Mr Richard Friend	Principal, Balena Tassa Pty Ltd
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	Head of Group Taxation, National Australia Bank
Mr Paul Hooper	General Manager, Tax and Finance, Lend Lease Corporation Ltd
Mr Michael Johnston	Chief Financial Officer, Consolidated Press Holdings Limited
Mr Mark Joiner	Chief Financial Officer, National Australia Bank
Mr Larry Magid	Partner, Allens Arthur Robinson
Mr Andrew Mills	Director, Greenwoods & Freehills
Professor Myles McGregor-Lowndes OAM	Director, The Australian Centre of Philanthropy and Nonprofit Studies, Queensland University of Technology
Associate Professor Ann O'Connell	Faculty of Law, University of Melbourne and Special Counsel, Allens Arthur Robinson
Mr Frank O'Loughlin	Barrister
Mr Brian Richards	Partner, BDO Kendalls
Mr Ken Schurgott	Director, SBN Lawyers
Mr Ken Spence	Director, Greenwoods & Freehills
Mr Mark West	Partner, McCullough Robertson