

THE BOARD OF TAXATION

2010-11 ANNUAL REPORT

DECEMBER 2011

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INQUIRIES

Inquiries regarding this report may be directed to:

**Board of Taxation Secretariat
c/- The Treasury
Langton Crescent
PARKES ACT 2600**

**Telephone: 02 6263 4366
Facsimile: 02 6263 4471
Email: taxboard@treasury.gov.au**

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, Chris Jordan 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 2010-11

Overview

During 2010-11, the Board reported to the Government on:

- a review of the Tax Issues Entry System. The report was submitted to the Government in October 2010;
- an interim review of trust taxation issues that should be addressed for the 30 June 2011 tax year. Advice was submitted to the Government in January 2011;
- a review of the consolidation rights to future income and residual tax cost setting rules. The report was submitted to the Government in May 2011;
- a review of the taxation treatment of Islamic finance products. The report was submitted to the Government in June 2011; and
- a review of the Venture Capital Limited Partnership regime (as part of a broader review of tax arrangements applying to collective investment vehicles). The report was submitted to the Government in June 2011.

The Board continued progress on its review of tax arrangements applying to collective investment vehicles and its post-implementation review of certain aspects of the consolidation regime.

The Board also commenced a post-implementation review of the Tax Design Review Panel recommendations.

The Board continued 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.

In February 2011, Mr Richard Warburton AO retired as Chairman of the Board. Mr Warburton has been Chairman for over 10 years since the Board's establishment in September 2000.

Under his leadership, the Board's reputation and standing has grown significantly so that the Board is now regarded as a key participant in Australia's tax system, with a firm commitment to acting in the national interest and to the integrity and functioning of the tax system for all Australians.

Over the past 10 years the Board has delivered 18 reports on a wide cross section of tax issues with an overwhelming majority of its recommendations being accepted and implemented by successive governments.

Mr Chris Jordan AO was appointed as Chairman of the Board in June 2011. Mr Jordan has been a member of the Board since its establishment and was Deputy Chairman since January 2005.

Meetings

The Board met as a whole on 10 occasions during 2010-11, as shown in Table 1, at varying locations. The Board is looking to extend its outreach further in 2011-12. Details of Board members' attendance at meetings are provided at Appendix C.

Table 1: Board of Taxation meetings, 2010-11

Date	Location
20 August 2010	Sydney
17 September 2010	Canberra
15 October 2010	Brisbane
8 November 2010	Melbourne
8 December 2010	Sydney
11 February 2011	Canberra
11 March 2011	Sydney
8 April 2011	Canberra
12 May 2011	Canberra
10 June 2011	Sydney

The Board conducts its projects by appointing a Working Group comprising members of the Board, Advisory Panel members, consultants, and officers from the Treasury and the Australian Taxation Office to oversee the process.

A list of Working Groups for 2010-11 and their membership is provided at Appendix D. Each of these Working Groups met on numerous occasions during 2010-11 and engaged in intensive consultation in relation to the projects. These consultations are outlined in general terms in Appendix E.

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.

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. The Board also asked Mr Michael Hay, a member of the Advisory Panel, to be a member of the Board's working group. In addition, the Board engaged two consultants (Mr Peter Riley and Mr Michael Evans) to assist the Board with the review and with the promotion of TIES.

The Board requested written submissions by 31 May 2010, and received four submissions. In addition, the Board held an initial round of consultations with stakeholders to receive their feedback on TIES. Meetings were held with tax partners of five accounting and legal advisory firms and with representatives from two professional bodies.

The Board submitted its report to the Government on its review of the operation of TIES in October 2010. The report set out a number of findings and made seven recommendations to improve the operation of TIES.

Advice on the interim review of trust taxation issues that should be addressed for the 30 June 2011 tax year

On 16 December 2010, the Assistant Treasurer and Minister for Financial Services & Superannuation announced a review to update and rewrite the trust income tax provisions in Division 6 of Part III of the *Income Tax Assessment Act 1936*. This was particularly in response to uncertainties in the operation of the trust tax provisions arising from the High Court decision in *Commissioner of Taxation v Bamford*.

The Assistant Treasurer also announced that the Board of Taxation would prepare advice outlining any trust taxation issues that needed to be addressed for the 30 June 2011 tax year.

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

The Board submitted its advice to the Government on its interim review of trust taxation issues in January 2011.

Review of the consolidation rights to future income and residual tax cost setting rules

On 30 March 2011, the Assistant Treasurer and Minister for Financial Services & Superannuation announced that the Board of Taxation would undertake a review of the consolidation rights to future income and residual tax cost setting rules with a view to clarifying the scope of their operation and to proposing changes if necessary. The Board was asked to provide a final report to the Government by 31 May 2011.

The Board invited written submissions from stakeholders by 20 April 2011, and received 23 submissions.

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

The Board completed its review of the consolidation rights to future income and residual tax cost setting rules and provided its report to the Government on 31 May 2011.

The Board report set out four recommendations for changes to be made to the prospective operation of the rights to future income and residual tax cost setting rules in a way that clarifies their scope of operation. The report also set out a number of options regarding changes that could be made to the retrospective operation of these rules.

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

On 26 April 2010, the then Assistant Treasurer and the Minister for Financial Services, Superannuation and Corporate Law 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 regard to their economic substance' (Recommendation 3.6).

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;

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

- 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 was to 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 appointed a working group of its members comprising Ms Annabelle Chaplain (Chair), Mr Keith James, Mr Curt Rendall and Ms Elizabeth Jameson to oversee this review. Mr Richard Warburton AO (former Chairman of the Board) was also a member of the working group until his retirement in February 2011. In addition, the Board formed an Expert Panel comprising eight Islamic finance advisors chosen for their expertise.

The Board released a discussion paper in October 2010. In response, the Board received 15 submissions from stakeholders.

The Board submitted its report to the Government in June 2011. The report set out a number of findings and made nine recommendations to address impediments in Australia's taxation laws to the development and provision of Islamic finance products.

Review of the taxation treatment of collective investment vehicles

On 11 May 2010, the then Assistant Treasurer and the Minister for Financial Services, Superannuation and Corporate Law 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 was also asked to 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 was also asked 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 appointed a working group of its members comprising Mr John Emerson AM (Chair), Mr Chris Jordan AO and Ms Annabelle Chaplain to oversee this review. Mr Richard Warburton AO (former Chairman of the Board) was also a member of the working group until his retirement in February 2011.

The Board was asked to report to the Government by 31 December 2011.

During 2010-11, the Board made substantial progress on this review.

In December 2010, the Board released its discussion paper on the review of the tax arrangements applying to collective investment vehicles. It also held public consultation meetings in Melbourne and Sydney in February 2011. In response, the Board received 35 submissions from stakeholders.

In November 2010, the Government requested that the Board bring forward the reporting date on the Venture Capital Limited Partnership component of its review to 30 June 2011. The Board completed its review of the taxation arrangements under the Venture Capital Limited Partnership regime and submitted its report to the Government in June 2011.

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

In 2011, the Government also requested that the Board bring forward the reporting date on the Board's examination of the design of an IMR as it relates to foreign managed funds to September 2011.

Post-implementation review of the Tax Design Review Panel recommendations

On 22 August 2008, the then Assistant Treasurer and Minister for Competition Policy and Consumer Affairs released the Tax Design Review Panel's report *Better Tax Design and Implementation*.³ The report made 26 recommendations and all were accepted in principle by the Government when released.

Recommendation 26 of the Tax Design Review Panel's report, noted 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.

The then Assistant Treasurer wrote to the Board of Taxation in September 2008, requesting that the Board of Taxation conduct a review of the tax design review process, as recommended by the Tax Design Review Panel. The Board was asked to commence the review in late 2010 and to report to the Assistant Treasurer on whether there have been any improvements as a result of implementing the Panel's recommendations.

The Board appointed a Working Group of its members comprising Mr Peter Quiggin PSM (Chair), Mr Keith James and Ms Elizabeth Jameson to oversee the Board's review. In addition the Board asked Mr Neil Wilson, Chair of the Tax Design Review Panel, to be a member of the Board's working group.

On 16 February 2011, the Board released its discussion paper on the post-implementation review of recommendations made by the Tax Design Review Panel. It also held public consultation meetings in Melbourne and Sydney in March 2011. In response, the Board received nine submissions from stakeholders, including the Treasury and Australian Taxation Office.

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

The Board expects to provide a final report to the Government on the post-implementation review of the Tax Design Review Panel recommendations by the end of 2011.

Post-implementation review of certain aspects of the consolidation regime

On 3 June 2009, the then Assistant Treasurer and Minister for Competition Policy and Consumer Affairs 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 are 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 Keith James (Chair), Mr Chris Jordan AO and Mr Curt Rendall to oversee this review. Mr Richard Warburton AO (former Chairman of the Board) was also a member and the Chair of the working group until his retirement in February 2011.

In December 2009, the Board released its discussion paper and invited submissions by 26 February 2010. A total of 11 submissions were received.

During 2010-11, the Board made considerable progress on this review. In October 2010, the Board released a position paper to give stakeholders an opportunity to comment on the positions reached before the Board makes its final recommendations. An additional eight submissions were received in response.

The consolidation post-implementation review was put on hold from March to June 2011 as the Government requested the Board to undertake a review of the

consolidation rights to future income and residual tax cost setting rules. Following the Board's report to the Government on this review in May 2011 and further discussions held with the Government in June 2011, the Board has returned to the post-implementation review, taking into account further considerations arising from its review of the rights to future income and residual tax cost setting rules.

The Board expects to provide a final report to the Government on the consolidation post-implementation review in early 2012.

Consultation

During 2010-11 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 2010-11 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 34 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 2010-11 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 2010, one member retired

from the Panel and four new members were appointed in early 2011. In addition, one member, Mrs Teresa Dyson, retired from the Advisory Panel in June 2011 when she was appointed to the Board.

The Board wishes to record its appreciation for the contributions made by Panel members to the Board's work during 2010-11. Panel membership as at 30 June 2011 is set out at Appendix H.

Treasury and Australian Taxation Office involvement

The Board draws substantially on work done by officers of the Treasury and ATO when undertaking its reviews.

The Board wishes to record its appreciation for the extensive assistance provided by the Treasury and ATO officers involved in the Board's work during the 2010-11 year.

Assistance provided for the Board's reviews

Assistance for the Board's review of the operation of the Tax Issues Entry System was provided by:

- Mr Michael Hay, a member of the Advisory Panel, engaged as a member of the Board's working group;
- Mr Peter Riley and Mr Michael Evans, engaged as consultants to the review; and
- officers from Treasury and ATO.

Assistance for the Board's interim review of trust taxation issues for the 30 June 2011 tax year was provided by:

- an Expert Panel comprising four taxation advisors chosen for their expertise to assist with the review; and
- officers from the Treasury and the ATO.

Assistance for the Board's review of the consolidation rights to future income and residual tax cost setting rules was provided by:

- an Expert Panel comprising eight taxation advisors chosen for their expertise to assist with the review;
- Mr Andrew Mills from Greenwood & Freehills, engaged as a consultant to the review; and
- officers from the Treasury and the ATO.

Assistance for the Board's review of the taxation treatment of Islamic finance, banking and insurance products was provided by:

- an Expert Panel comprising eight taxation advisors chosen for their expertise to assist with the review; and
- officers from the Treasury and the ATO.

Assistance for the Board's review of the taxation treatment of collective investment vehicles has been provided by:

- an Expert Panel comprising five taxation advisors chosen for their expertise to assist with the review;
- Mr Richard Vann, engaged as a consultant to the review; and
- officers from the Treasury and the ATO.

Officers from AusIndustry and the Department of Innovation, Industry, Science and Research also provided assistance for the Venture Capital Limited Partnership component of this review, completed in June 2011.

Assistance for the Board's post-implementation review of certain aspects of the consolidation regime has been provided by:

- an Expert Panel comprising four taxation advisors chosen for their expertise to assist with the review;
- Mr Geoff Lehmann, engaged as a consultant to the review; and
- officers from the Treasury and the ATO.

Assistance for the Board's post-implementation review of recommendations of the Tax Design Review Panel has been provided by:

- **Mr Neil Wilson, Chair of the Tax Design Review Panel, engaged as a member of the Board's working group; and**
- **officers from the Treasury and the ATO.**

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.

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*.⁴ 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 website.⁵

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*⁶, the Board recommended that it take a proactive approach to encouraging continuous improvement in the tax consultation system by liaising with stakeholders

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

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

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

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 2011-12, the Board will continue to work with these participants to facilitate the implementation of the recommendations in the report.

The Board's current post-implementation review of recommendations made by the Tax Design Review Panel reviews aspects of consultation and the tax design process more generally. The Board's final report on this review is expected to be provided to the Government by the end of 2011, and its recommendations should support continuous improvement in the tax consultation system.

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.

Review of the taxation treatment of collective investment vehicles

The Board expects to provide a final report on its review of the taxation treatment of collective investment vehicles by the end of 2011.

The Board has, as requested by the Government, provided an interim report on the design of an IMR for foreign managed funds by September 2011.

Post-implementation review of the Tax Design Review Panel recommendations

The Board expects to provide a final report on its review of recommendations made by the Tax Design Review Panel by the end of 2011.

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 2012.

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 2010-11 were:

Chairman — Richard F E (Dick) Warburton AO (retired February 2011)

Mr Warburton is currently Chairman of Westfield Retail Trust, Magellan Flagship Fund Ltd and Citigroup Pty Ltd. He is Chairman 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, David Jones Ltd, Tandou Ltd and former Chairman and CEO of Du Pont Australia and New Zealand.

Mr Warburton was Chairman of the Board since its inception in September 2000 to 28 February 2011.

Deputy Chairman / 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, a member of the Board of the Bell Shakespeare Company and a member of the Audit Risk Committee of the Art Gallery of NSW. 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 and Deputy Chairman since January 2005. Mr Jordan was appointed to the position of Chairman in June 2011.

Keith James (Deputy Chairman)

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.

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

Mr James was appointed to the Board in March 2004 and appointed to the position of Deputy Chairman in June 2011.

Annabelle Chaplain

Ms Chaplain is an experienced company director and currently serves as a non-executive director of Downer EDi Ltd and Coal and Allied Industries Ltd. She is Chairman of the Audit Committee of both companies.

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 was appointed to the Board in July 2009.

Michael D'Ascenzo AO

Mr D'Ascenzo holds degrees in economics and law from the Australian National University and is admitted to practice as a barrister and solicitor. Mr D'Ascenzo is a graduate of Harvard Business School Program for

Management Development; a member of the Australian Institute of Chartered Accountants; an Honorary Life Member of the Australian Society of Certified Practising Accountants; and an Honorary Fellow of the Association of Taxation and Management Accountants.

Mr D'Ascenzo is recognised internationally for his expertise in taxation and superannuation, and his demonstrated ability as a leader and innovator. He has worked with the International Monetary Fund; he continues to be involved in the work of the Study Group on Asian Tax Administration and Research, for which he was Secretary General in 2005; and he is a vice chair of the OECD's Forum on Tax Administration.

He is or has been a member of various public and private sector committees, such as the Board of Taxation.

In 2003 the Australian National University included Mr D'Ascenzo among its distinguished alumni. In 2008 he was awarded the Hill ATTA Medal by the Australasian Tax Teachers Association and in 2010 he received the International Tax Review Asia Editor's Choice award. In 2010 Mr D'Ascenzo was appointed an Officer of the Order of Australia for service to public administration, particularly through reform and innovative engagement with the taxation profession and other government agencies.

Mr D'Ascenzo was appointed to the position of Commissioner of Taxation and Registrar of the Australian Business Register on 1 January 2006. Prior to that he was appointed Second Commissioner of Taxation in 1998 and reappointed in 2005.

Teresa Dyson

Mrs Dyson is a taxation partner at Blake Dawson, advising on direct taxes across a broad range of sectors, particularly resources, infrastructure, financing, corporate and not-for-profit. Mrs Dyson is actively involved in the legal and tax professions and in 2011 was appointed the Chairman of the Law Council of Australia, Business Law Section, Taxation Subcommittee. She has participated in consultation and development of new laws and the administration of new laws through National Tax Liaison Group and Subgroup representation and is a member of the Resource Taxes Implementation Group. Mrs Dyson is a Board member and member of the Audit & Risk Management Committee of the SEQ Water Grid Manager.

Mrs Dyson was appointed to the Board in June 2011.

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 (retired March 2011)

Dr Henry was Secretary to the Australian Treasury from April 2001 to March 2011. 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 the position of Secretary.

As Secretary of the Treasury, Dr Henry was 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 was 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 was Alternate Governor (for Australia) of the International Monetary Fund.

Dr Henry was an ex officio member of the Board from April 2001 to March 2011.

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 Ms Jameson'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 was appointed to the Board in April 2010.

Martin Parkinson PSM

Dr Martin Parkinson PSM, Secretary to the Treasury. As Secretary he is Chair of the Standard Business Reporting Board and Chair of the Advisory Board of the Australian Office of Financial Management.

He is also a member of the Board of the Reserve Bank of Australia, the Board of Infrastructure Australia and the Council of Financial Regulators.

Dr Parkinson previously served as Secretary of the Department of Climate Change from its establishment on 3 December 2007. As Secretary of the Department of Climate Change (and, subsequently, the Department of Climate Change and Energy Efficiency), Dr Parkinson contributed to the development of Australia's climate change policies, led engagement with business and community groups, and established a new department with policy development, program design and management, service delivery and regulatory responsibilities.

Beginning in 2001, Dr Parkinson spent six years as Deputy Secretary in Treasury with responsibility for domestic and international macroeconomic issues. In 2007 he served as Deputy Secretary of the Climate Change Group in the Department of the Prime Minister and Cabinet with responsibility for leading and coordinating implementation of the emissions trading scheme and coordinating climate change policy.

Dr Parkinson was Australia's G-20, IMFC and Development Committee Deputy and Co-chair of the G-20 Deputies process in 2006. He has previously worked at the International Monetary Fund on the reform of international financial architecture and in the early 1990s served as Senior Adviser to Treasurer Dawkins. Since joining Treasury in 1980 he has also worked in a range of areas including taxation policy, labour market and structural reform, and macroeconomic policy and forecasting.

He holds a Ph.D from Princeton University, a M.Ec from the Australian National University and a B.Ec (Hons) from the University of Adelaide.

Dr Parkinson has been an ex officio member of the Board since March 2011.

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 initial seven year appointment as First Parliamentary Counsel started on 13 May 2004. He has since been reappointed for a further seven years, commencing on 14 May 2011. 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 is the President 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 Trade Practices Act Review (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

Brenda Berkeley (retired June 2011)

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 was Secretary to the Board from May 2010 to June 2011.

Roger Paul

Prior to his appointment as Secretary to the Board of Taxation in June 2011, Mr Paul was a Principal Adviser in the Business Tax Division of the Treasury.

Mr Paul has worked extensively in the corporate tax field and was a member of the Secretariat to the Ralph Review of Business Taxation. His experience includes leadership roles in the development of tax policy and legislation on debt/equity hybrids, foreign currency denominated financial instruments and derivatives. He has been a frequent speaker at seminars on these topics.

Reporting to the OECD Committee on Fiscal Affairs, Mr Paul was Chair of the Special Sessions on Innovative Financial Transactions and has been a presenter in OECD forums on the taxation of financial markets in the Asia-Pacific region.

He has co-authored course materials for a post-graduate corporate finance tax course, and has taught tax law on a part-time basis.

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, 2010-11

Member	Number of meetings eligible to attend	Number of meetings attended
Mr Warburton (Chairman)	6	5
Mr Jordan (Deputy Chair / Chairman)	10	9
Mr James (Deputy Chair)	10	9
Ms Chaplain	10	10
Mr D'Ascenzo ^(a)	10	10
Mrs Dyson	1	1
Mr Emerson	10	10
Dr Henry ^(a)	6	6
Ms Jameson	10	10
Dr Parkinson ^(a)	4	4
Mr Quiggin ^(a)	10	9
Mr Rendall	10	8

(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, 2010-11

Post-implementation review into certain aspects of the consolidation regime	Review of the consolidation rights to future income and residual tax cost setting rules	Review of the taxation treatment of collective investment vehicles
Mr James (Chair)	Mr James (Chair)	Mr Emerson (Chair)
Mr Jordan	Mr Jordan	Ms Chaplain
Mr Rendall	Mr Rendall	Mr Jordan
Mr Warburton	Mr Warburton	Mr Warburton
Review of the taxation treatment of Islamic finance products	Review of TIES	Post-implementation review of the Tax Design Review Panel recommendations
Ms Chaplain (Chair)	Mr James (Chair)	Mr Quiggin (Chair)
Mr James	Mr Quiggin	Mr James
Ms Jameson	Mr Rendall	Ms Jameson
Mr Rendall	Mr Warburton	Mr Warburton
Mr Warburton		Mr Wilson (Chair of the Tax Design Review Panel)
Interim review of trust taxation issues for the 30 June 2011 tax year		
Mr Emerson (Chair)		
Mr James		
Mr Jordan		
Mr Warburton		

APPENDIX E: CONSULTATION BY THE BOARD

Table 4: Speeches and presentations, 2010-11

Date	Presentation	Event	Member
14 October 2010	The Future of Consolidations	Taxation Institute of Australia — 5 th Consolidation symposium	Mr James
23 October 2010	Overview of the Board of Taxation	Law Council of Australia — 2010 Taxation Workshop	Mr Warburton
4 April 2011	The Board of Taxation review of the taxation treatment of Islamic Finance- — parity of tax treatment	Islamic Finance Symposium, Griffith University	Ms Chaplain
9 May 2011	The Board of Taxation review of the taxation treatment of Islamic Finance- — parity of tax treatment	Islamic Finance News Roadshow 2011	Mr James

Table 5: Meetings with external organisations, 2010-11

Date	Attendees
20 August 2010 Board of Taxation meeting, Sydney	Sydney and Brisbane-based members of the Board's Advisory Panel
14-15 October 2010 Board of Taxation meeting, Brisbane	Members of the Queensland business and tax advising community
8 & 11 November 2010 Public consultation meetings for the review of the taxation treatment of Islamic finance, banking and insurance products, Melbourne and Sydney	Taxation professional bodies Major law and accounting firms Various major corporations and business associations Officials from ATO
2 & 4 February 2011 Public consultation meetings for the review of tax arrangements applying to collective investment vehicles, Melbourne and Sydney	Taxation professional bodies Major law and accounting firms Various major corporations and business associations

Appendix E: Consultation by the Board

Date	Attendees
4 & 10 March 2011 Public consultation meetings for the post-implementation review of the Tax Design Review Panel recommendations, Melbourne and Sydney	Taxation professional bodies Major law and accounting firms

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 2010-11, the Board engaged nine consultancies for an amount over \$10,000, for a total value of \$225,900 (GST inclusive). Details of these consultancies are in Table 6. The actual expenditure for these consultancies, consultancies completed in 2010-11 and for payments made to service providers in 2010-11 was \$126,339 (GST exclusive).

Table 6: Consultancies over \$10,000 in 2010-11

Consultant	Project	Engaged Cost (\$) ¹	Procurement Method ²	Reason ³
Greenwoods & Freehills (Mr Andrew Mills)	Provision of consultancy services to assist the Board of Taxation in its post-implementation report on the consolidation rights to future income and residual tax cost setting rules	75,900	Direct	E
Richard J Vann	Provision of consultancy services to assist the Board of Taxation in its review of the taxation treatment of collective investment vehicles	70,000	Direct	E
PricewaterhouseCoopers (Mr Neil Wilson)	Provision of assistance to the Board of Taxation in the post-implementation review of the Tax Design Review Panel recommendations	20,000	Direct	E
Bruce H Pascoe	Provision of advice to the Board of Taxation in relation to the Tax Issues Entry System	10,000	Direct	E
Greenwoods & Freehills (Mr Ken Spence)	Provision of advice to the Board of Taxation in relation to the Tax Issues Entry System	10,000	Direct	E

Appendix F: Consultancies

Consultant	Project	Engaged Cost (\$) ¹	Procurement Method ²	Reason ³
Michael B Evans	Provision of advice to the Board of Taxation in relation to the Tax Issues Entry System	10,000	Direct	E
Pitcher Partners (Michael Hay)	Provision of advice to the Board of Taxation in relation to the Tax Issues Entry System	10,000	Direct	E
Blake Dawson (Teresa Dyson)	Provision of advice to the Board of Taxation in relation to the Tax Issues Entry System	10,000	Direct	E
Jennifer J Batrouney SC	Provision of advice to the Board of Taxation in relation to the Tax Issues Entry System	10,000	Direct	E
Total consultancies over \$10,000		225,900		

Note — All amounts are GST inclusive.

(1) Cost of completed consultancies in 2010-11.

(i) Consultancy — Actual cost was \$138,973 (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

	2009-10	2010-11
	\$	\$
Revenue		
Funding from Government	1,953,000	1,900,000
Services provided free of charge	110,390	119,678
Revenue — Other		
Total revenue	2,063,390	2,019,678
Expenses		
<i>Employee expenses^(a)</i>		
Wages	393,092	390,556
Superannuation	85,528	81,396
Other employee expenses	146,377	181,419
Total employee expenses	624,997	653,371
<i>Other expenses</i>		
Travel	130,498	182,071
Conferences and training	22,885	24,026
Consultants and services provided by Contractors	97,550	126,339
Seconded Employees	110,000	200,258
Legal Services	0	1,194
Office supplies	2,837	3,351
Printing	73	0
Publications and subscriptions	3,313	2,317
Other supplier expenses ^(b)	106,308	110,311
Total operating expenses	473,465	649,867
Total expenses	1,098,462	1,303,238
Operating surplus	964,928	716,440

(a) The 2010-11 average staffing level of the Board secretariat was 2.3 compared with 2.6 in 2009-10. Of total employee expenses of \$653,371 in 2010-11, \$527,721 was attributed to the Secretariat. The balance of \$125,650 comprises payments to non-Government members of the Board (the total figure of \$119,547 shown in Table 8 'Fees paid to non-Government Board members, 2010-11' plus \$6,103 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 2010-11 this payment was \$100,000.

Table 8: Fees paid to non-government Board members, 2010-11^(a)

Member	\$
Mr Warburton (Chairman — retired February 2011)	23,884
Mr Jordan (Chairman)	13,173
Ms Chaplain	18,345
Mrs Dyson	-
Mr Emerson	20,720
Mr James	18,762
Ms Jameson	5,717
Mr Rendall	10,341
Total	110,942

(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 August 2010, daily fees increased from \$813 to \$847 for the Chairman and \$613 to \$641 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 2010-11.

APPENDIX H: MEMBERS OF THE BOARD'S ADVISORY PANEL

Table 9: Members of Advisory Panel as at 30 June 2011

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 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	Group Head of Tax, Lend Lease
Mr Michael Johnston	Chief Financial Officer, Consolidated Press Holdings Ltd
Mr Mark Joiner	Executive Director Finance, National Australia Bank
Mr Alexis Kokkinos	Executive Director, Pitcher Partners Advisors
Mr Adam Levin	Partner, Jackson McDonald Lawyers
Ms Arlene Macdonald	Barrister
Mr Larry Magid	Partner, Allens Arthur Robinson
Mr Andrew Mills	Director, Greenwoods & Freehills
Associate Professor Ann O'Connell	Faculty of Law, University of Melbourne
Mr Frank O'Loughlin	Barrister

Appendix H: Members of the Board's Advisory Panel

Panel Member:	Position, Organisation:
Ms Karen Payne	Partner, Minter Ellison
Professor Dale Pinto	School of Business Law and Taxation, Curtin University
Ms Tracey Rens	Partner, Deloitte Touche Tohmatsu
Mr Brian Richards	Partner, BDO Australia
Mr Ken Schurgott	Director, SBN Lawyers
Mr Ken Spence	Partner, Greenwoods & Freehills
Ms Judy Sullivan	Partner, Mallesons Stephen Jaques
Mr Mark West	Partner, McCullough Robertson
Mr Craig Yaxley	Partner, KPMG