Australian Government

Tax System Advisory Board
Consultation Panel

Report to the
Australian Government

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30 June 2011

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The Hon Bill Shorten MP
Assistant Treasurer
Parliament House
CANBERRA ACT 2600

Dear Assistant Treasurer

We are pleased to present you with our recommendations for the Government's proposed Tax System Advisory Board (the Advisory Board).

In late 2010, you asked us to provide you with advice by 30 June 2011 about the best way of proceeding with the Government's proposal to establish the Advisory Board. In forming our advice you asked us to consider the submissions that the Government received in response to its public consultation on the Advisory Board that was conducted between 21 January and 11 March 2011.

Our role was to consider how the Advisory Board could provide significant assistance to the Commissioner of Taxation in his endeavour to best position the Australian Taxation Office to adapt to, and meet, future challenges whilst both respecting the Commissioner's statutory independence to administer the tax, superannuation and Australian Business Register laws and also not affecting his existing accountabilities to Parliament.

We thank the organisations that made a submission to this consultation and for their willingness to also meet with us and share their views about the Advisory Board.

We also thank the Commissioner of Taxation, the Inspector-General of Taxation and change management experts David Balkin and Lisa McIntyre who each met with us to discuss their views.

We would also like to acknowledge our appreciation to the officials from the Canada Revenue Agency, the Internal Revenue Service and Her Majesty's Revenue and Customs for sharing their experiences with us.

Finally, our thanks to the Secretariat to this review; Martin Jacobs, Philip Akroyd and Suzanne Howarth who did an excellent job in a short time frame.

Yours sincerely

Jillian Segal AM

Richard Warburton AO LVO

Rob Heferen

Jennie Granger PSM

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Introduction

Background to the Tax System Advisory Board proposal

On 5 August 2010, the Government announced as an election commitment that, as part of its response to the Australia's Future Tax System (AFTS) Review, it would reshape the governance of the taxation system including by establishing a Tax System Advisory Board (the Advisory Board) to:

- advise the Commissioner of Taxation (Commissioner) and the Australian Taxation Office (ATO) Executive Committee on the strategy, direction, culture, organisation, management, compliance planning, staff profile and information technology plans at the ATO; and
- provide a new, direct and in-built voice for business and taxpayer communities in relation to ATO decision making and culture.

The Government also announced that it would undertake detailed consultation with the Australian community on the design of the Advisory Board.

Consultation with the Australian community

On 21 January 2011, the Assistant Treasurer announced the Government's consultation arrangements for the Advisory Board which included the formation of this Consultation Panel (the Panel) with the task of providing advice by 30 June 2011 about the best way of proceeding with the Advisory Board.

Attachment 1 provides a copy of the Assistant Treasurer's announcement.

At the same time, the Assistant Treasurer released a discussion paper outlining three alternative models for establishing the Advisory Board and invited submissions from the public by 11 March 2011.

The discussion paper outlined three key elements to consider when framing the design of the Advisory Board.

- The Advisory Board's role would be to advise the Commissioner on a range of organisational matters.
- The Advisory Board would not impinge on the Commissioner's statutory independence to administer the tax, superannuation and Australian Business Register (ABR) laws and would not affect his existing accountabilities to the Parliament. Consequently, the Advisory Board would not be involved in the interpretation of laws administered by the Commissioner, in compliance strategies nor in the affairs of individual taxpayers.
- The Advisory Board would be comprised of the Commissioner and non-Government members.

In addition, the paper identified two main issues within these design parameters.

- What structure should the Advisory Board have, including what governance arrangements should be put in place?
- What membership arrangements should the Advisory Board have?

The paper acknowledged that it would not be feasible to establish the Advisory Board as a separate Government agency reporting to Parliament due to its size and potential conflicts of interest for the Commissioner. Instead, the paper suggested three possible structures for the Advisory Board.

- A board established by legislation (statutory board) accountable to the Treasurer.
- A board established by charter (executive board) accountable to the Treasurer.
- A board established by the Commissioner (Commissioner's board) accountable to the Treasurer and the Commissioner.

The paper noted there would be a number of policy trade-offs between these different models. These trade-offs related to the proposed status of the Advisory Board, given its advisory only nature and the intention that it provides assistance to the Commissioner, and balancing the degree of operating flexibility, board accountabilities and the independence of non-Government members.

The paper also discussed issues relating to the expertise and experience of Board members, the process for their appointment and whether it would be necessary to regulate their conduct on the Advisory Board.

Submissions received

The Government received 10 public submissions and one confidential submission in response to this consultation. Public submissions were made by the following organisations:

- the Australian Financial Markets Association;
- the Business Council of Australia;
- the Commonwealth Ombudsman;
- CPA Australia;
- Ernst and Young;
- the Group of 100;
- the Taxation Committee of the Business Law Section of the Law Council of Australia;
- the Law Institute of Victoria;
- PricewaterhouseCoopers; and

- The Tax Institute.

Issues raised by the submissions

Submissions generally welcomed the Government's proposal to establish an advisory board, although submissions were mixed as to the effectiveness of the proposals in the discussion paper. Many submissions called for the Government to establish an oversight board, rather than an advisory board as recommended by the AFTS Review and proposed in the discussion paper.

The independence of the Advisory Board and the role of the Chair was a consistent theme in many submissions. Most submissions expressed concern with the proposal for the Commissioner to chair the Advisory Board and some submissions expressed concern with the proposal for the Commissioner to appoint members.

Submissions tended to favour the broadening of the Advisory Board's functions beyond the suggestions in the AFTS Review and the discussion paper with the exception of matters relating to individual taxpayers. Several submissions also called for the Government to give further consideration to the Advisory Board's role in providing a 'voice for business and taxpayer communities in relation to ATO decision making and culture' as referenced in the Government's announcement of 5 August 2010.

Submissions were largely mixed as to whether the Government should adopt a legislative model or an executive model for the Advisory Board. Some submissions favoured the formality and certainty that comes with legislation whereas others preferred the flexibility of a non-legislative approach.

Many submissions recognised difficulties in measuring the effectiveness of the Advisory Board and ensuring sufficient accountability of the Advisory Board and Board members.

None of the submissions raised any substantive concerns about appointing business leaders to the Advisory Board, considering that there would be no perception that these individuals could exert undue influence on the Commissioner. However, most submissions came from groups representing or advising large business.

A few of the submissions differed as to the possible number of Board members, with suggestions ranging from six to nine.

Work of the Panel

In preparing this report, the Panel met with all of the organisations that made a submission to the Government's discussion paper.

The Panel also held discussions with representatives from the Canada Revenue Agency (CRA), the United States of America's Internal Revenue Service (IRS) and Her Majesty's Revenue and Customs (HMRC) about the boards used by these organisations. Whilst these discussions did provide many useful insights about the benefits external advisers could bring to revenue bodies and the Panel is grateful for the relevant officials making time to discuss their boards, the Panel notes that the CRA, the IRS and HMRC each has an oversight board and each of these boards was set up for a mix of reasons. Attachment 2 provides further information about these boards.

Given the Panel's terms of reference, the Panel did not consult with revenue bodies that do not have an advisory board or a management board. However, the Panel did review the recent publication from the Organisation for Economic Co-operation and Development (OECD) Forum of Tax Administration, 'Tax Administration in OECD and Selected Non-OECD Countries: Comparative Information Series (2010)'.[1] Of the 49 revenue bodies that participated in the survey for this report, only 10 had an advisory board or a management board interposed between the revenue body and the government.

The Panel also met with the Commissioner of Taxation, the Inspector-General of Taxation and change management experts David Balkin and Lisa McIntyre.

The work of the Panel has been ably supported by a small Treasury secretariat.

1 OECD, 'Tax administration in OECD and Selected Non-OECD Countries: Comparative Information Series 2010' (Information Series, No 4, OECD, 3 March 2011).

A Tax System Advisory Board that would fit within existing ATO governance arrangements

Treasury ministers are accountable to the Parliament for the ATO's performance under the principles of responsible government. However, the Commissioner has a statutory independence in administering the Commonwealth tax laws (as well as the superannuation and ABR laws). This has been a feature of the Australian tax system since 1915 when the Commissioner was conferred with the general power of administering the *Income Tax Assessment Act 1915*. There are strong equity and integrity arguments for this independence. In particular, it would be undesirable for political considerations, perceptions of political interference or vested interests to influence the administration of the tax laws.

The Commissioner reports to Treasury ministers, Parliamentary Committees and Parliament, as well as the States and Territories in relation to his administration of the GST. In addition, the Commissioner has accountabilities under the *Financial Management and Accountability Act 1997* for dealing with, and managing, public money and portfolio accountabilities to the Secretary to the Treasury. The Commissioner also has accountabilities under the *Public Service Act 1999* to the Australian Public Service Commission and the Merit Protection Commissioner as well as a range of other legal, regulatory and public sector governance requirements that do not exist in the private sector. The Panel also notes that a number of governance processes are moving towards whole of government processes that constrain individual agency decision making and that the ATO plays a leading role in whole-of-government activities and works closely with agencies and stakeholders in this regard.

In addition, the Commissioner is subject to regular and extensive external performance reviews and financial audits by the Australian National Audit Office, as well as scrutiny by the Commonwealth Ombudsman and, since 2003, an annual program of reviews by the Inspector-General of Taxation.

To support the Commissioner's administration of the tax laws, the ATO has developed extensive governance arrangements that include a broad range of internal management committees and external consultative forums. These arrangements fulfil a wide range of functions, including risk and assurance as well as assisting in the development of a strategic focus in relation to tax, superannuation and ABR administration issues.

The ATO has three senior ATO management committees; the Audit Committee, the People Committee and the National Consultative Forum. Both the Audit Committee and the People Committee have external members and advisers to provide the ATO with external perspectives and experience on relevant management issues. In addition, the ATO has an independent integrity adviser.

The ATO convenes around 50 external stakeholder consultative forums. These forums focus on different aspects of tax and superannuation administration and provide the Commissioner with the opportunity to consider and take into account different points of view in administering the relevant laws. For example the National Tax Liaison Group (NTLG) focuses on topics of strategic importance to the administration of the tax system. The key aim of NTLG members is to work towards achieving a tax system that is fair, efficient, effective and delivered in as simple and professional a way as possible. The ATO also has an ABR Advisory Board to enable the best possible outcome in advancing the uptake of the ABR as a whole-of-government service.

Furthermore, ATO tax law decision making is augmented by external members on its technical panels and the views of Senior Counsels or retired judges as special advisers or as panel members.

The ATO enjoys an international reputation as a world class tax administrator and plays a leading role in improving tax administration globally. It has been variously described as, ‘highly regarded amongst its peers around the world,’[2] and, ‘perceived as one of the leading tax agencies in the world.’[3] The AFTS Review noted that independent surveys continue to find that the majority of Australians have a high level of confidence in the ATO and that this was recognised by the Joint Committee of Public Accounts and Audit in its most recent report on tax administration from 2008.

Within the broader tax system, the Board of Taxation is a non-statutory body set up in 2000 that is charged with contributing a business and broader community perspective to improving the design of the tax laws and their operation.

In 2003, John Uhrig comprehensively examined and reported on improving the structures and the governance practices of Commonwealth statutory authorities and office holders, with particular attention paid to those that impact on the business community (the Uhrig Report). The Uhrig Report identified a lack of effective governance for several Commonwealth portfolio bodies due to several factors, such as unclear delegation boundaries, a lack of clarity in relationships between Ministers and their portfolio departments and a lack of accountability for the exercise of power.

Furthermore, the Uhrig Report found that the presence of an oversight board often obscured the accountability of a statutory authority to a Minister. In particular, the report noted that where a board has limited power to appoint or remove the chief executive, its ability to provide governance is reduced and its existence adds another layer of bureaucracy, potentially clouding accountabilities.

Given the nature of government, the circumstances in which a board could be given full power to act are rare and most likely to be limited to authorities that are of a commercial nature.

By contrast, the Uhrig Report found that the most effective governance arrangement for organisations that essentially deliver government services is an executive management model rather than an oversight board. Under this model one or more commissioners or a chief executive has a direct line of communication and responsibility to the Minister.

As outlined above, there are already a range of bodies that give the Australian community an opportunity to provide input on tax administration issues. A key issue for the Panel is designing an advisory board that does not merely add a layer of bureaucracy to the ATO by replicating the functions of existing forums, but adds significant value by providing a

2 Pravin Gordon, Minister of Finance, Republic of South Africa, and Former Commissioner of the South African Revenue Service, ‘ATO Centenary Message’ (Message delivered at the ATO Centenary, Canberra, 12 November 2010).

3 John Hasseldine, ‘Study into ‘Best Practice’ in Tax Administration’ (Consultancy Report for the National Audit Office (UK), 15 October 2007) page 5.

framework for continually providing insight into best practice in the administration of Australia’s tax system.

The Panel sees an advisory board, rather than an oversight board, as best fitting with the current structure of the ATO and its existing governance arrangements. An advisory board that provides non-binding advice to the Commissioner would not undermine existing accountability frameworks. Whilst the Commissioner will have his or her priorities, the Advisory Board could provide genuine, bona fide advice to be able to constructively expand the Commissioner’s priority set. In this context, the Advisory Board could best operate as a small set of trusted external advisers with whom the Commissioner could freely discuss a range of organisational issues and who could offer the benefit of their diverse experiences.

Although the Commissioner would not be compelled to accept the advice of Board members, the Panel envisages the Advisory Board adding value by providing persuasive and meaningful advice.

The Panel considers that the best way of implementing the Advisory Board would be for the Government to establish the Advisory Board by Charter as the status of the Advisory Board will depend more on the effectiveness of Board members rather than the formality of how it is established. For example, the Board of Taxation operates under a Charter (rather than legislation) and has become widely respected in the community.

The Advisory Board would need to be supported through the ATO providing background information to Board members about the ATO and public administration issues more generally so that all Board members could make a meaningful contribution at Board meetings. Board members could also discuss management reviews, organisational reviews and the results of external surveys in developing a set of best practice benchmarks.

The effectiveness of the Advisory Board as a trusted advisory body to the Commissioner will depend on its relationship with the Commissioner and whether the Commissioner has confidence in Board members. The Commissioner’s relationship with the Advisory Board would be enhanced by including the Commissioner on the Advisory Board as a member to allow the Commissioner and other Board members to build professional trust and personal rapport. It would also allow the Commissioner to explore specific issues in detail with Board members and receive direct advice where appropriate.

More specifically, the Panel has considered two alternative ways to formally manage the Commissioner’s relationship with the Advisory Board.

- The Commissioner could be a member of the Advisory Board (with an independent Chair).
- The Commissioner could chair the Advisory Board.

As noted earlier, the Uhrig Report identified some challenges with respect to an independent chair of a public sector organisation where the key public accountabilities still rest with the chief executive (such as the Commissioner). For example, appointing an independent Chair to the Advisory Board could obscure the Commissioner’s existing accountabilities and, over time, could introduce an element of oversight into the Advisory Board. It is conceivable that this different locus of influence could again, over time, potentially lead to tensions between the Commissioner and the Chair which would not only diminish the Advisory Board’s advisory role but also be detrimental to the tax system's administration, given the Commissioner's independent statutory role.

Clarifying the Advisory Board's advisory relationship to the Commissioner could ameliorate this risk. This amelioration would ideally be achieved with clear terms of reference or statement of roles for the Board. It would also need to be made clear that should the relationship between the Chair and the Commissioner become unworkable then the Treasurer (or Assistant Treasurer, if the Treasurer delegates his responsibilities in relation to the Advisory Board), after discussions with the rest of the Advisory Board (including the Commissioner) may need to replace the Chair.

Ensuring Board members bring a diverse range of independent views would also assist in ameliorating this risk.

Alternatively, the Commissioner could chair the Advisory Board. However, the Panel does not view this as a viable alternative, particularly given the strong views of those who made submissions.

Recommendation 1

An advisory board (rather than an oversight board) would best fit within the statutory governance framework applying to the Commissioner and could potentially add worthwhile value to the administration of the tax system.

Assuming the Government agrees with the Panel's views that clarifying the terms of reference of an advisory board ameliorates the risk of the Board obscuring the Commissioner's accountabilities, then the Government should establish the Advisory Board by Charter with an independent Chair but with necessary checks and balances to preserve the Commissioner's independent statutory role.

A Tax System Advisory Board that would add value to these existing arrangements

The Panel considers that the Advisory Board would be well placed to challenge existing 'ways of thinking' and either endorse existing arrangements or suggest new approaches that would assist the ATO in adapting to future challenges and providing best practice tax administration.

The Panel envisages the Advisory Board providing strategic advice to the Commissioner about ATO internal organisational culture, dynamics, structure and processes as well as acting as an independent sounding board for the Commissioner. However, to be helpful, Board members would need to ensure that their advice takes into account the ATO's existing commitments, responsibilities and governance arrangements.

Specific organisational ATO matters that the Advisory Board could advise and provide strategic direction on include, but are not limited to:

- human resource strategies including overall staffing levels, recruitment strategies and the location of functions;
- the efficiency and effectiveness of internal processes (for forming policies, strategies and priorities);
- financial management;
- information and communication technology (ICT) strategy and plans;
- corporate risk management frameworks;
- organisational, including service, culture and performance drivers;
- change management practices; and
- communication practices and consultation processes.

The Advisory Board could also assist the Commissioner by advising on the ATO's engagement with the taxpaying community, including the appropriateness of its service standards and the effectiveness of its communication strategies. For example, the Advisory Board could discuss the Taxpayers' Charter and consider whether it is meeting community expectations. The Advisory Board could also advise on the ATO's broader consultation arrangements and whether there is scope for rationalising any of the existing committees and forums.

Recommendation 2

The most useful role of the Advisory Board would be to provide the Commissioner with an independent and external source of trusted advice and counsel on organisational issues to assist the Commissioner in best positioning the ATO to meet future challenges of administering the tax and superannuation systems.

The Government conducts community consultation on matters of tax policy and law design and, as previously noted, the ATO has extensive tax administration consultation arrangements for taxpayers and tax practitioners. Consequently the Panel does not envisage the Board discussing matters of tax policy or law design.

However, the Panel considers that matters relating to the ATO's tax administration processes (rather than tax administration products) are matters which Board members could provide useful, strategic advice to the Commissioner. For example, the Commissioner could explain the ATO's internal processes in administering the tax system to Board members and they could, if necessary, suggest improvements. Board members would not provide advice on matters of interpretation as this relates specifically to the Commissioner's statutory independent role.

Whilst it is essential that Board members would need to be appropriately briefed, the Advisory Board would not need, nor should it have, access to confidential specific taxpayer information.

Recommendation 3

Tax policy, tax audits and the interpretation of tax laws (and decisions about the date of effect of any such interpretations) and their application to specific taxpayers or groups of taxpayers, would be beyond the remit of the Advisory Board.

A Tax System Advisory Board that would be effective

The Panel envisages that taxpayers and tax practitioners could raise a variety of tax related issues with Board members or the Advisory Board itself, including those relating to tax policy or the affairs of specific taxpayers. Given there are already existing arrangements and government bodies that can respond to these issues, Board members would not have a role in advising on these matters. Instead, Board members would be well placed to refer these issues to the appropriate forum. For example, Board members could indicate that tax policy issues (including tax administration policy) could be raised with the Government directly, through the Board of Taxation or through the Tax Issues Entry System (TIES). Also, any specific complaints about the ATO could be raised with the Commonwealth Ombudsman and any systemic tax administration issues could be raised with the Inspector-General of Taxation. The Panel also notes that the ATO also has an extensive network of consultative forums and administration and technical issues should be raised through these forums so they can be effectively tested. However, Board members may be able to synthesize from these specific issues any wider organisational issues that they may wish to raise with the Commissioner.

In this regard, the Panel envisages that, over time, Board members would naturally pass on what they are hearing in the broader community to the Commissioner noting, however, that this will be anecdotal. This could complement the information that the Commissioner might already receive through the ATO's existing consultative forums and whilst it may not contain the same level of specific and detailed perspectives that these existing consultative forums provide, it could feed into the strategic direction of the Advisory Board provided that there was objective validation of such views.

The Panel sees merit in the Advisory Board having informal, but open, communications with the Board of Taxation, the Inspector-General of Taxation, the Commonwealth Ombudsman and the Australian National Audit Office to gain a better understanding of their perceptions of the ATO. These communications would complement, rather than replace, the existing processes for formally managing the ATO's relationship with these bodies. For example the Audit Committee oversees the relationship with the ATO's external scrutineers and monitors the ATO's management of implementation of scrutineer recommendations.

In addition, the Advisory Board should meet with other key stakeholders such as members of the NTLG as appropriate.

The Panel also sees value in the Advisory Board having a role that assists the Commissioner deliver his communications to the broader community.

Recommendation 4

In addition to its remit (in recommendations 2 and 3), the Advisory Board could independently raise organisational issues with the Commissioner and the Advisory Board could engage with the broader taxpaying community as to how the ATO operates.

The Advisory Board should engage from time to time with key stakeholders, including the Board of Taxation, the Inspector-General of Taxation, the Commonwealth Ombudsman and the Australian National Audit Office and others.

To maximise the effectiveness of the Advisory Board in providing independent advice to the Commissioner, the Treasurer should be responsible for Board appointments and should appoint Board members on the basis of individual skills. The Treasurer should closely consult with the Commissioner in assessing a potential Chair and closely consult with the Commissioner and the Chair in assessing other potential Board members.

To ensure Board members have exposure to a wide range of external experiences, and to optimise the number of potential candidates interested in serving on the Advisory Board, Board members should be appointed on a part-time basis. Taking this into account, and the need for Board members to become familiar with the ATO's operations before being able to make a valuable contribution, the Panel suggests appointing Board members for three year terms. This appointment term would enable Board members to make a substantial contribution whilst ensuring the Commissioner continues to receive input from a variety of independent sources.

That being said, a three year term need not inhibit some Board members from making a greater contribution. Where appropriate, Board members could be reappointed for one additional term.

To ensure some continuity of Board membership on an ongoing basis, the Panel suggests staggering initial Board appointments with some Board members, for example, being appointed initially for two years and some for three years.

The Panel considers that the Advisory Board should formally determine the frequency and formality of meetings. However, as a guide, the Panel envisages the Advisory Board meeting about four to six times a year in addition to its meetings with stakeholders.

Recommendation 5

The Treasurer should be responsible for appointments to the Advisory Board and should appoint Board members on the basis of individual skills. The Treasurer should closely consult with the Commissioner in assessing a potential Chair and closely consult with the Commissioner and the Chair in assessing other potential Board members.

On an ongoing basis, Board members should be appointed on a part-time basis for three years, with the option of being reappointed for one additional term.

To be of assistance to the Commissioner, it is important that the Advisory Board has a diversity of backgrounds, skills and gender. The Panel considers that between four and six Board members (including the Commissioner) would provide sufficient diversity and facilitate the effective operation of the Advisory Board. Members should be appointed on the basis of individual skills and experience and not as representatives of particular organisations.

Some of the skills and backgrounds that Board members could collectively bring to the Advisory Board include, but are not limited to:

- extensive experience in the operation of large organisations (including multinationals);
- a thorough understanding of service delivery from the perspective of a corporate engaged in such a field or from a professional services background;
- a sound knowledge of change management; and
- an appreciation of public sector processes.

The Panel does not consider detailed tax knowledge or experience should be a prerequisite for Board members.

The Panel notes that, for example, non-executive directors of comparably large public companies are likely to offer many of these skills and are unlikely to be directly involved in the management of the organisation, which would assist in managing any conflicts of interest with the ATO. It is likely that non-executive directors would also appreciate the nature of their advisory role in the private sector, which would easily translate to their role on the Advisory Board. Previous heads of university business schools may also offer valuable insights.

More generally, Board members would need to manage any conflicts of interest they may have with the ATO. In practice, this is likely to mean that individuals with connections to organisations that have significant contracts with the ATO, or their competitors, would be unable to sit on the Advisory Board. Nevertheless, given the pervasiveness of issues between corporates and the ATO, the Panel believes Board members also sitting on the boards of corporates with issues with the ATO should not be a bar. Rather, consistent with good practice disclosure principles, these potential conflicts of interest should be disclosed.

The Panel considers that the appointment letters for Board members should deal with the usual requirements in relation to conflicts of interest declarations and matters of confidentiality.

The Remuneration Tribunal could set the remuneration of Board members. As a guide, this could be similar to members of the Board of Taxation.

Recommendation 6

Board members need to be a trusted set of advisers for the Commissioner who can offer a diverse range of expertise and experiences as well as different organisational perspectives. An initial appointment of between four and six Board members would provide this level of diversity.

To be effective, the Advisory Board will need to be supported by a sufficiently resourced Secretariat. A full-time ATO Senior Executive Service (SES) employee (this would be subject to job sizing in line with public sector requirements) could be seconded to head the Secretariat and be supported by other staff as appropriate. Consistent with the employee’s secondment to the Advisory Board, the Chair should be consulted in conducting their performance reviews. The Commissioner should consult the Chair in allocating the annual budget for the Advisory Board. The head of the Secretariat would be responsible for managing the Advisory Board's budget.

The Panel does not intend for a separate Secretariat to become a separate locus of influence but, rather, to ensure that there is a strong cooperation between the Secretariat and the ATO and that the Advisory Board is adequately supported. It will equally be important that the ATO work cooperatively with the Secretariat to provide relevant information and staff that are well connected to the ATO.

Recommendation 7

The Advisory Board would need to be supported by a sufficiently resourced Secretariat.

The Advisory Board needs to be accountable to the community about its work to maintain community confidence in the administration of the tax system. Whilst the Commissioner would be required to report on the Advisory Board in his annual report to Parliament, the Panel considers that the Advisory Board should also prepare a separate report to the Treasurer. This separate report could outline the work of the Advisory Board. It could also present the general topics discussed by the Advisory Board and the outcomes of those discussions.

Recommendation 8

In addition to the Commissioner's report to the Parliament, the Advisory Board should provide an annual report to the Treasurer about its activities.

A Tax System Advisory Board that would continue to add value into the future

The Advisory Board should regularly reassess its role against this broad framework to ensure it continues to be of assistance to the Commissioner and in that way adds value to the wider community. For these reasons, the Panel also sees merit in the Treasurer commissioning a post-implementation review of the Advisory Board, for example after it has been operating for three years, to assess its effectiveness and see if it should be ongoing or if any improvements could be made.

Recommendation 9

The Treasurer should commission a post-implementation review of the Advisory Board after three years.

List of Panel recommendations

Recommendation 1

An advisory board (rather than an oversight board) would best fit within the statutory governance framework applying to the Commissioner and could potentially add worthwhile value to the administration of the tax system.

Assuming the Government agrees with the Panel's views that clarifying the terms of reference of an advisory board ameliorates the risk of the Board obscuring the Commissioner's accountabilities, then the Government should establish the Advisory Board by Charter with an independent Chair but with necessary checks and balances to preserve the Commissioner's independent statutory role.

Recommendation 2

The most useful role of the Advisory Board would be to provide the Commissioner with an independent and external source of trusted advice and counsel on organisational issues to assist the Commissioner in best positioning the ATO to meet future challenges of administering the tax and superannuation systems.

Recommendation 3

Tax policy, tax audits and the interpretation of tax laws (and decisions about the date of effect of any such interpretations) and their application to specific taxpayers or groups of taxpayers, would be beyond the remit of the Advisory Board.

Recommendation 4

In addition to its remit (in recommendations 2 and 3), the Advisory Board could independently raise organisational issues with the Commissioner and the Advisory Board could engage with the broader taxpaying community as to how the ATO operates.

The Advisory Board should engage from time to time with key stakeholders, including the Board of Taxation, the Inspector-General of Taxation, the Commonwealth Ombudsman and the Australian National Audit Office and others.

Recommendation 5

The Treasurer should be responsible for appointments to the Advisory Board and should appoint Board members on the basis of individual skills. The Treasurer should closely consult with the Commissioner in assessing a potential Chair and closely consult with the Commissioner and the Chair in assessing other potential Board members.

On an ongoing basis, Board members should be appointed on a part-time basis for three years, with the option of being reappointed for one additional term.

Recommendation 6

Board members need to be a trusted set of advisers for the Commissioner who can offer a diverse range of expertise and experiences as well as different organisational perspectives. An initial appointment of between four and six Board members would provide this level of diversity.

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The Advisory Board would need to be supported by a sufficiently resourced Secretariat.

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In addition to the Commissioner's report to the Parliament, the Advisory Board should provide an annual report to the Treasurer about its activities.

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The Treasurer should commission a post-implementation review of the Advisory Board after three years.

Attachment 1:
Copy of the Assistant Treasurer's announcement of the Tax System Advisory Board consultation arrangements

Consultation on the design of the Tax System Advisory Board

The Assistant Treasurer, the Hon Bill Shorten MP, today announced the consultation details for the Government's election commitment to establish a Tax System Advisory Board (the Board).

On 5 August 2010, the Government announced its intention to establish the Board to advise the Commissioner of Taxation and the Australian Taxation Office's (ATO's) Executive Committee on the general management and organisation of the ATO.

'Establishing the Board forms a key element of the Government's election commitment to reshape the governance of our tax system. The Board will allow the ATO to benefit from a wider range of perspectives and experiences in managing large complex organisations,' the Assistant Treasurer said.

In late 2010 the Government formed a panel consisting of David Parker (Treasury's Revenue Group Executive Director), Jennie Granger (ATO Second Commissioner), Richard Warburton (company director and Chair of the Board of Taxation) and Jillian Segal (company director and Deputy Chancellor of the University of New South Wales) to facilitate this consultation. This Consultation Panel will provide advice to the Government about the best way of proceeding with this commitment.

The next stage of this consultation process involves publicly releasing a discussion paper outlining different ways of establishing the Board and seeking submissions from the public. A critical issue will be maintaining the Commissioner's independence to administer the tax laws, whilst providing him with quality, relevant advice on organisational matters.

'The Board will give the community a strong voice in the administration of the tax system to improve its responsiveness, accountability and transparency. I therefore encourage the community to participate in this consultation.'

A copy of the discussion paper and information about how to make a submission is available on the Treasury website (www.treasury.gov.au). The closing date for submissions will be 11 March 2011.

The Consultation Panel will consider the submissions and provide its advice to the Government by 30 June 2011.

21 January 2011

Attachment 2:
Summaries of the Panel's discussions with officials from the Canada Revenue Agency, the Internal Revenue Service and Her Majesty's Revenue and Customs

The Canada Revenue Agency

The Canada Revenue Agency Act 1999 (CRA Act) establishes the Canada Revenue Agency (CRA) as a body corporate responsible for the administration and enforcement of the tax legislation. The CRA Act sets out the CRA's mandate, relationship with the Government and structure. Under the principles of responsible government, the Minister is responsible to Parliament for all CRA activities.

The Canadian Government established the CRA Board of Management in 1999 in the context of providing an alternative service delivery model to give the CRA more administrative flexibility, improve client experiences and to establish closer partnerships with the Provinces and Territories. As the CRA administers taxes on behalf of the Canadian Provinces, the Board provides the Provinces with a more direct influence over the CRA's operations by allowing each Province to nominate a specific Board member. The Board is accountable to Parliament, through the Minister, for the exercise of its oversight responsibilities conferred to it under the CRA Act.

The Board replaced other forms of external government oversight meaning that the CRA has a unique structure and operates more independently than other Canadian government agencies. For example, the CRA has some flexibility to carry over unspent funds.

Under the CRA Act, the 15 member Board is responsible for overseeing the organisation and administration of the CRA and the management of its resources, services, property, personnel and contracts. In addition, the Board has responsibility for developing the CRA's corporate business plan.

The CRA Act prohibits the Board from directing the Commissioner on the administration and enforcement of the tax legislation. In addition, the Board is unable to access personal information or confidential taxpayer information under the program legislation.

The Commissioner is responsible, as Chief Executive Officer, for the day-to-day management and direction of the CRA. The Commissioner is able to delegate these responsibilities within the organisation.

The CRA Act allows the Board to advise the Minister on matters that relate to the general administration and enforcement of the tax legislation.

Two of the key Board responsibilities and reporting mechanisms are developing the CRA's annual corporate business plan which is subsequently published and evaluating (and publishing) the CRA's performance under the Board of Management Oversight Framework (BOMOF). The Board also annually assesses the Commissioner's performance for the areas under the Board's oversight.

A positive and collaborative relationship between the Commissioner and the Chair ensures the effectiveness of the Board and the resolution of different views. For example, the Commissioner and the Chair have regular informal 'catch ups' such as once a month or once every couple of weeks. The Board secretariat plays an important role in providing the Board with a gateway into the CRA.

The Board has developed and maintains a 'competency profile' (a combination of competencies, knowledge and experience) for its members. The competency profile is reviewed annually by the Board to maintain best governance practices. Identified competencies gaps can be addressed through upcoming appointments.

The Internal Revenue Service

The Internal Revenue Service (IRS) Oversight Board was created by the IRS Restructuring and Reform Act of 1998 which was enacted to improve the IRS so that it may better serve the public and meet the needs of taxpayers.

Specifically, the Board arose from recommendations of the report of the National Commission on Restructuring the IRS (June 1997) to provide 'experience, independence, and stability' to the IRS so that it may move forward in a cogent, focused direction. The goal of the National Commission's report was to recommend changes to restore the public's faith in the US tax system.

The Board is a nine-member independent body charged to oversee the IRS in its administration, management, conduct, direction, and supervision of the execution and application of the internal revenue laws. The Board also provides experience, independence, and stability to the IRS so that it may move forward in a cogent, focused direction.

The legislation also provides the Board with the following specific responsibilities:

- review and approve strategic plans of the IRS, including its mission and objectives and standards of performance in relation to annual and long-range strategic plans;
- review the operational functions of the IRS, including: plans for modernising the tax system; and plans for training and education;
- recommend to the President candidates for appointment as IRS Commissioner and recommend to the President the removal of the Commissioner;
- review the Commissioner's selection, evaluation, and compensation of IRS senior executives who have program management responsibility over significant functions of the IRS;
- review and approve the Commissioner's plans for any major reorganisation of the IRS;
- review and approve the budget request of the IRS prepared by the Commissioner and ensure that the budget request supports the annual and long-range strategic plans; and
- ensure the proper treatment of taxpayers by the employees of the IRS.

The legislation specifically prohibits the Oversight Board from:

- the development and formulation of Federal tax policy relating to existing or proposed internal revenue laws, related statutes, and tax conventions;
- specific law enforcement activities of the IRS, including specific compliance activities such as examinations, collection activities, and criminal investigations; and
- specific procurement activities of the IRS.

In practice, the Board sees its role as helping the Commissioner do their job better by providing advice. Board members do not have vested interests other than wanting to be helpful and this assists the Commissioner receiving advice from people who do not have 'an axe to grind'.

Her Majesty's Revenue and Customs

Her Majesty's Revenue and Customs (HMRC) is a non-ministerial department established by the Commissioners for Revenue and Customs Act 2005. The Queen appoints Commissioners of HMRC who have responsibility for handling individual taxpayers' affairs impartially.

A non-ministerial department is different from other government departments, which work under the direct day to day control of a Minister.

Ministers therefore have no involvement in taxpayers' cases.

The Commissioners are responsible for providing leadership to the Department and for managing its resources efficiently and effectively and for delivering the objectives and targets set by the Chancellor of the Exchequer.

The current HMRC Board was established in 2008 and consists of a non-executive Chairman plus five executive members and five non-executive members. The current Board has evolved from a process which began in the mid-1990s when the then UK tax administrator sought the appointment of senior business leaders to its Board. Since then, there have been various forms of Board, including a larger Board consisting of 19 members which was established following the merger of the Inland Revenue Department and Her Majesty's Customs and Excise in 2005.

Under HMRC's structure, the Chairman and the Board are responsible for the governance of HMRC, including setting the strategic direction and ensuring ethical standards of governance. The Chief Executive and the Executive Committee are responsible for running HMRC including its service delivery and expenditure.

The Board has the following specific responsibilities:

- developing and approving the communications strategy;
- developing and approving the culture and values objectives and strategies;
- approving the final sub-strategies of lines of business and functions;

- approving final business plans (including the annual financial plan);
- advising the Chief Executive on the appointment of senior executives; and
- participating in the appointment of and advising on the ongoing competence of Board members, Executive Committee members and other key appointments.

The selection of members is crucial to the Board's effectiveness. Non-executive directors in large public companies are likely to be of significant benefit as they are familiar with that role (and its relationships to management) and are likely to have acquired some tax knowledge — this means it may not be necessary to have members with specific tax expertise.

The external experience of non-executive directors has been beneficial, particularly in making the 'tax dollars go further'.