1 June 2015

Tax White Paper Taskforce

Department of the Treasury

CANBERRA ACT 2601

**submission to the taxATION discussion paper**

Thank you for the opportunity to make a submission about the future of Australia’s tax system.

I propose to use this public submission to address a number of issues around the governance of Australia’s tax system.

The main points made in this submission are:

* The Board brings an independent business and community perspective to tax policy. Strong input from a Board that is involved in business and tax issues on a daily basis is critical to effective tax policy and administration.
* The Board plays a crucial role in promoting continuous improvement in tax policy and administration. This includes both high level policy matters, such as contributing to the Government’s tax white paper process, and helping the ATO to improve the way that it administers tax laws.
* The Board promotes consistency in tax policy and administration. Better tax policy and administration requires a strong link between policy makers, administrators and business. The Board brings together Treasury, the ATO and business to improve the way that the tax system serves the community.
* The Board has evolved and plays an important role in shaping a vision for Australia’s tax system. In the recent past the Board has often conducted technical reviews of aspects of tax law. In the future the Board will be providing more real-time advice to Government on contemporary issues.
* To maintain community confidence in the Board, its reports should be released within 3 months of being provided to Government.
* The Board does not consider that there is a need for an additional tax reform body.

**The role of the Board of Taxation**

Given that tax reform is a currently a high priority globally, a strong senior Board has an important role to play in the governance of the Australian tax system. 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 drives continuous improvement in the tax system by bringing significant business expertise to tax policy questions. The Board plays both a technical role, by considering complex tax policy issues and providing a view to Government over a longer timeframe, and a real time consultation role, by considering contemporary tax policy issues facing Government and providing advice as issues arise.

Establishment of the Board was a recommendation of the 1999 *Review of Business Taxation (Ralph Review)*. The Ralph Review observed that the formation of tax policy in Australia did not adequately reflect business and community views. The Board was established in 2000 to ensure that business and community views are adequately reflected in tax policy making. The Board’s acumen at playing that role has brought it great respect in the business community.

Tax policy is innately political – dealing with who should pay for the services provided by government. However, the Board’s independence allows it to have a vision for the tax system which endures beyond the political cycle allowing long‑term structural issues to be addressed in a non-partisan way.

*An independent business and community perspective on tax policy*

The Board’s independence is critical to its ability to provide effective advice to Government. The Board’s independence ensures that political considerations have a limited impact on the Board’s advice, and as a result the Board’s advice is sought and respected by successive Governments. The Board considers issues referred to it by the Government and can also initiate its own reviews or provide unsolicited advice to Government.

Treasury and the ATO have responsibility for advising the Government on tax policy and administering tax laws, respectively. Treasury and the ATO have become closer to the business community over past decades, including through improved consultation processes and more movement of staff and secondments between the private sector and the bureaucracy. Nevertheless, these institutions are not involved in business transactions on a day-to-day basis. The Board, by contrast, brings a depth of expertise and experience in business to the tax policy process.

The Board currently has members who have close links to key industry bodies including the G100, Business Council of Australia and Australian Council of Social Services. These members bring broad experience and expertise to the work of the Board. Furthermore, the Board maintains its own links with the business community, in part through monthly liaison meetings with business and professional bodies. It’s essential for the success of the Board that it continues to attract members who are representative of and respected by the community.

In addition to the strong personal links of Board members with industry bodies and the business community, the Board maintains a large advisory panel of experts on tax and business issues. The Board and the advisory panel has broad coverage of the tax profession and business community in Australia and globally.

The Board’s business acumen and extensive networks brings a unique perspective to tax policy in at least three ways.

First, intimate involvement in business means the Board can inform Government more readily of the practical impact of policy options, including instances where policy might have unintended consequences that would not be obvious to observers who do not participate in the relevant activities. In particular, the Board is in a better position to distinguish between legitimate concerns about unintended consequences and concerns raised to advance the self-interest of taxpayers. The Board is particularly well-placed to draw on its commercial experience and strong connections across the business and broader community to provide ‘real-time’ feedback on policy issues as they arise.

Second, the Board can engage with the business community as peers. The effectiveness of Board consultations is enhanced by both sides of the table sharing a common understanding of a wide range of underlying assumptions and business practices that are not readily conveyed to Government in full, but which can be critical background to providing effective policy advice to Government.

Finally, the Board brings a different emphasis to tax policy. Understandably, Treasury and the ATO often focus on revenue adequacy, equity and integrity issues. A business focus is often more on ensuring that tax policies do not discourage activity from occurring or create excessive compliance burdens on business. By contrast, bureaucrats are often not sufficiently sensitive to creating deterrents to business activity or investment, or increasing compliance costs for business.

The Board also has strong links with the ATO that allows it to maintain a strong understanding of the administrator’s perspective on tax policy, administration and enforcement issues. The Commissioner of Taxation is an *ex officio* member of the Board. The Board is provided with regular updates by the Commissioner on current developments within the ATO. Senior Executives from the ATO with direct responsibility for issues under consideration are appointed to the Board’s working groups. By spanning both the business and administrator perspectives, the Board can provide the Government with a holistic view on policy, administration and enforcement issues.

A number of recent activities of the Board exemplify the benefit of an independent body bringing a business and administrator’s perspective to tax policy issues. For example, section 974-80 of the *Income Tax Assessment Act 1997*, which is critical to determining whether tax deductions are available for interest payable on complex financing arrangements, had been a source of uncertainty for business for many years. This uncertainty was a potential deterrent for important investment in Australia, including infrastructure investment. In late 2014, the Board conducted a fast-tracked review of section 974-80 in response to concerns raised by the business community. The Board brought all of the parties to the table and brokered a solution that will provide more certainty for business whilst maintaining the integrity of the tax system.

Similarly, in 2014 the Board conducted a fast-tracked review of impediments facing small business and identified a number of practical issues that can be addressed to make it easier for small business to comply with their tax obligations. For example, the ATO adopted Board recommendations to clarify when a person is operating a business so that they can obtain an ABN, provide better guidance on when a person is a contractor rather than an employee and a range of changes to make it easier for small businesses to comply with this obligation.

*Promoting continuous improvement in the tax system*

The Board is the Treasurer’s Ministerial Advisory Council on deregulation for taxation issues. In this capacity, the Board has consulted the business community on ideas to improve the tax system. An example is potential simplification of Fringe Benefits Tax laws. The Board has identified an opportunity for simplification, developed preliminary reform options and is in the process of establishing a working group to further develop simplification ideas. The Board will play a continuing role in assisting the Government to continuously improve the tax system, including by presenting deregulatory options for inclusion in future repeal days.

The work that the Board has undertaken on tax simplification has highlighted that taxation laws have not kept pace with economic realities in many areas. This leads to tax requirements that do not fit well with modern business systems. Partial or incremental efforts to reduce complexity run into difficulty as the fundamental concepts are in many cases outdated. One such example is the application of the revenue–capital distinction, which traces back to trust law concepts over one hundred years old.

Another area that the Board considers as a priority area for simplification is exploring closer alignment of tax and accounting concepts. In many cases there is no clear rationale for the compliance costs that are required to maintain two similar but different regimes. While there are projects to improve the link, such as the ongoing TOFA deregulation project, the Board would like to see a more systemic re-assessment in the near future.

The Board notes that there has been extensive work undertaken in previous tax reform exercises, including as part of ‘Option 2’ in the Ralph Review, that ultimately was lost in the broader debate around the tax value method. There may be merit in exploring some of this work.

The Board suggests that the tax reform debate would benefit from a greater understanding of how business and the community implements tax reform. Often these issues are ‘after-thoughts’ and as a result significant avoidable costs are borne by business.

Finally, the Board notes that there may be significant simplification opportunities arising out of a review of long-standing transitional arrangements. The status of pre-CGT assets is one example of a transitional provision that is now some decades old.

*Facilitating consistency in tax policy and administration*

A simpler tax system will depend to a large extent on a shared vision across key participants, including the Treasury, the ATO and tax professionals. Much of the current complexity of the system can be attributed to inconsistent policy objectives, inconsistencies across policy and administration, and demands from business for more detailed law to deliver perceived certainty. The Board of Taxation is in a unique position to facilitate this shared vision.

Another limb to the Board’s Ministerial Advisory Council role is to provide an external review of the measures the ATO plans to use to assess its performance against the six key performance indicators in the Government’s Regulator Performance Framework. The Framework is intended to ensure regulators undertake their functions with minimum impact necessary to achieve regulatory objectives.

The Board has consulted stakeholders who experience first-hand the day to day interactions with the ATO. This input is critical to inform the Board in preparing its advice on the ATO’s measures. The framework is an important part of the deregulation agenda as it will encourage a culture of continuous improvement by regulators. The Board’s advice will inform Treasury when it is seeks the Government’s approval to the ATO performance measures in time for the first self-assessment period commencing on 1 July 2015.

*A new direction for the Board*

The role of the Board has evolved over time. From its inception, the Board conducted reviews into systemic issues of critical importance to the tax system. For example, the Board was instrumental in the establishment of an Inspector-General of Taxation and recommended improvements to consultation on changes to the tax laws, both of which are now well-accepted features of the Australian tax system.

As the tax system has matured, so has the role of the Board. Over the past several years, the Board has brought its considerable expertise to in-depth reviews of particular parts of the tax law. More recently, the Board has shifted its focus to engaging with contemporary policy issues and advising Government on issues as they arise.

The Board’s consultation on business issues arising out of the tax white paper discussion paper is another example of the role that it plays in bringing a business and community perspective to contemporary tax policy issues. The Board has also provided advice to Government on its small business tax package and multinational tax avoidance package as it was developed for the 2015-16 Budget.

As the economy becomes more diverse and complex, the role that the Board plays in improving Australia’s tax laws will only become more important. The international agenda for tackling base erosion and profit shifting is one example of where we expect that the Board’s involvement will continue to be important for contributing a business and broader community perspective to our tax regime.

Changes in the community and the political environment have implications for how the Board can best contribute to and influence tax policy and administration. In a faster moving environment in‑depth reviews that can take several years are potentially less influential than real-time advice provided as issues arise. In the future the Board will be doing fewer in-depth reviews of narrow tax policy issues and more often it will be providing contemporaneous input on tax policy and administration issues as they arise.

**Board reports should be publically released when they are delivered to Government, or no more than 3 months later**

Board reports represent a significant investment of time and resources by business and community stakeholders often on a voluntary basis. As an advisory body to the Treasurer, the Board delivers its reports and advice to the Government for consideration and further action as considered appropriate.

In the last few years, it has increasingly been the case that Board reports are not publically released for a long period of time after the report is delivered (if at all). At the time of this submission there are currently 6 unreleased Board reports. This arises for a number of reasons. In particular, the Government has traditionally released its detailed response to the Board’s recommendations at the same time as the public release of the report and the development of the Government’s response can take some time.

Delays in the release of Board reports undermine business and community confidence in the Board and may inhibit future participation in Board processes.

Ideally, the Board’s reports would be released immediately when they are delivered to Government. Alternatively, if a view is taken that businesses would be subject to uncertainty about the Government’s position on Board recommendations if a report is released immediately without a Government response, the Board’s reports could be publically released no later than 3 months after delivery to Government. This could be achieved by an amendment to the Board’s Charter.

The Board is strongly of the view that this would significantly improve transparency, facilitate informed public discussion and contribute to the consultation process necessary for better quality tax policy development. The development of a Government response should not delay release as the report itself contributes to the public debate which can inform the development of the Government’s response. The research, consultation and considered approach in Board reports is a valuable resource that should not be withheld for extended periods of time to the detriment of informed public debate. As you know, reports from other independent bodies such as the Productivity Commission (PC) must be released a short time after they are received by the Government (for example, PC reports must be tabled in Parliament within 25 sitting days of their receipt by a Minister).

**An independent tax reform body**

One proposal that has featured in recent public discussion of tax reform is for the establishment of an independent tax reform body that would de-politicise the reform process and ensure the tax system is reviewed regularly and in an expert way.

This proposal is in part driven by a concern that debates on tax reform in Australia are often dominated by special interest groups and questions about the ‘winners’ and ‘losers’ from any particular policy change. It is evident that there are few credible voices, separate from the political fray, to argue for tax policy changes with broad public benefits, but with well-organised sectoral opposition.

The establishment of a tax reform body, with independence from Government, could potentially provide a credible voice in future tax reform debates to argue for changes to the tax system that may be unpopular with vocal sections of the community, but promise significant improvements to the living standards of Australians.

The Board does not support this proposal. In part, it is driven by the notion that there is one ‘correct’ approach to tax reform. Tax reform requires a careful balance of competing policy considerations – efficiency, equity, simplicity and revenue adequacy. The Board’s view is that the democratically elected Government is in the best position to make these judgments. The Board recognises the difficulty in building community consensus around significant reform, but notes that Australia has a strong track record of implementing difficult economic reform where the need for reform is clearly communicated to the electorate.

In the Board’s view there is a role for an expert body to provide a business and community perspective on issues, to inform policy decisions and to guide the implementation of policy decisions. The Board of Taxation, supported by a well-resourced and independent Secretariat, is well-positioned to play this role.

I trust this information is useful and I would be pleased to meet with you to discuss it in more detail.

Yours faithfully



Michael Andrew  
Chair  
Board of Taxation