

THE BOARD OF TAXATION

2004-05 ANNUAL REPORT

OCTOBER 2005

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INTRODUCTION

The Board of Taxation is a non-statutory advisory body charged with contributing a business and broader community perspective to improving the design of taxation laws and their operation. The Treasurer has placed particular emphasis on the Board's role in monitoring the process of community consultation on tax matters.

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

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

The Board's mission

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

The Board's functions

The Board provides advice to the Treasurer on:

- the quality and effectiveness of tax legislation and the processes for its development, including the processes of community consultation and other aspects of tax design;
- improvements to the general integrity and functioning of the taxation system;
- 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 2004-05

Overview

During 2004-05, the Board reported to the Government on a post-implementation review of the quality and effectiveness of the non-commercial losses provisions in Division 35 of the *Income Tax Assessment Act 1997*. The report was released, together with the Government's response, on 27 April 2005 and is available on the Board's website: www.taxboard.gov.au.

The Board also made significant progress on two other projects:

- a post-implementation review of the quality and effectiveness of the small business capital gains tax concessions in Division 152 of the *Income Tax Assessment Act 1997*; and
- the identification, for possible repeal, of the inoperative provisions of the two Income Tax Assessment Acts.

In addition, the Board continued its monitoring of the processes of community consultation in the development of tax legislation, and continued its own consultations with stakeholders from the business sector, tax practitioner groups and the wider community on issues coming within the Board's Charter.

The Board also commenced a review of tax consultation processes, in conjunction with Treasury, aimed at identifying any improvements to Australia's tax consultation system.

Meetings

The Board met on nine occasions during 2004-05, as shown in the following table. Details of Board members' attendance at meetings are provided at Appendix C.

Table 1: Board of Taxation meetings, 2004-05

Date	Location
1 July 2004	Sydney
13 August 2004	Sydney
10 September 2004	Sydney
12 November 2004	Melbourne
8 December 2004	Sydney
4 February 2005	Canberra
3 March 2005	Sydney
7 April 2005	Canberra
17 May 2005	Melbourne

Post-implementation review of the quality and effectiveness of the non-commercial losses legislation

The Board's report to the Government on its post-implementation review of the non-commercial losses legislation in Division 35 of the *Income Tax Assessment Act 1997* was released on 27 April 2005, in conjunction with the Government's response to the report.

The Board's report found that the intent of the legislation was delivered in a manner that was easily understood without any substantive unintended consequences or significant compliance burdens on the community. The Australian Taxation Office's (ATO) implementation strategy was a significant factor in the smooth implementation of this legislation. The Government advised that it had accepted four of the Board's five recommendations.

The Board's report and recommendations, together with the Government's response to the report and submissions made to the review, are available on the Board's website www.taxboard.gov.au.

Post-implementation review of the quality and effectiveness of the small business capital gains tax (CGT) concessions

On 3 December 2004 the Board announced that it would undertake a post-implementation review of the small business CGT concessions in Division 152 of the *Income Tax Assessment Act 1997* to determine whether the legislation gives effect to the Government's policy intent. The Board established a Working Group comprising

Mr Curt Rendall (Chairman), Mr Keith James, Ms Jane Schwager and Mr Richard Warburton, AO to oversee this review.

In undertaking the review the Board focused on the extent to which the legislation:

- gives effect to the Government's policy intent, with compliance and administration costs commensurate with those foreshadowed in the Regulation Impact Statement for the measure;
- is expressed in a clear, simple, comprehensible and workable manner;
- avoids unintended consequences of a substantive nature;
- takes account of actual taxpayer circumstances and commercial practices;
- is consistent with other tax legislation; and
- provides certainty.

The legislation applies to CGT events that occur after 11.45am, by legal time in the Australian Capital Territory, on 21 September 1999. The legislation is designed to streamline and simplify the small business CGT concessions and to provide further concessions in relation to retirement from carrying on business by disregarding certain capital gains made by small business entities from the disposal of active assets.

There are four small business CGT concessions:

- the small business 15 year exemption;
- the small business 50 per cent reduction;
- the small business retirement exemption; and
- the small business roll-over.

In undertaking this review the Board sought submissions from interested stakeholders, including members of the National Small Business Forum, taxation and accounting professional bodies and industry associations, and advertised the review on the Board of Taxation website. The Board also commissioned:

- a study from the Australian Taxation Studies Program (Atax) at the University of New South Wales, to evaluate the compliance and administration costs of the small business CGT concessions; and

Activities of the Board

- a study from Webb Martin Pty Ltd to assess the quality and effectiveness of the legislation.

The Board also sought information from the Treasury and the Australian Taxation Office on the development of the legislation and its implementation.

The Board submitted its report to the Treasurer in October 2005.

Identification and possible repeal of the inoperative provisions of the two Income Tax Assessment Acts

As noted in its 2003-04 Annual Report, the Board is considering whether there may be relatively straightforward options for reducing the volume of tax legislation and improving its ease of use for taxpayers, their advisers and those involved in tax administration.

In April 2004, the Board commissioned consultancy work by Mr Tom Reid which resulted in a list of provisions of the 1936 and 1997 Income Tax Assessment Acts that are thought to be inoperative (that is, the provision has no application, of its own force, to income years after a cut off year, or the provision cannot apply to income years after a particular income year because its operation is 'spent'). Mr Reid advised that the 'candidate inoperative provisions' he identified should be manually checked if the intention was to recommend repeal of those provisions.

In January 2005, the Board engaged Atax to advise whether there would be any unintended consequences if the candidate inoperative provisions identified by Mr Reid were repealed. Atax is also analysing cross-references in Commonwealth legislation (including regulations) to candidate inoperative provisions and the scope of definitions referring to these provisions to ensure they do not cause the inoperative provisions to have continuing effect.

SoftLaw Corporation Limited (now RuleBurst Limited) was engaged in February 2005 to identify these cross-references and definitions using proprietary software.

In June 2005, the Board appointed a Reference Group of experts¹ to provide the Board with high level advice and guidance on selected issues, including sample checking of the Atax work.

The work on the inoperative provisions has also benefited from input from external stakeholders, including the commercial publishers of tax legislation. It is aimed at ‘uncluttering’ and improving the useability of the existing stock of income tax legislation and is not about re-writing or simplifying the detailed provisions of the law.

The Board expects to provide recommendations to the Treasurer on this project in the second half of 2005.

Review of international consultation processes

During 2004-05, the Board commenced a review of international consultation processes, in conjunction with Treasury, with a view to identifying any improvements to the Australian system. The review follows the Treasurer’s agreement to Recommendation 7.1 in Treasury’s final report on the Review of Aspects of Income Tax Self Assessment.²

Consultation

During 2004-05 the Board continued with its ongoing role in monitoring the processes of community consultation on the development of new tax legislation. This included observing consultation on the development of legislation to implement stages 3 and 4 of the taxation of financial arrangements under the coherent principles design approach.

The Board undertakes a program of regular consultation with external stakeholders, including members of its Advisory Panel, on issues falling within its Charter. Formal consultation meetings held in 2004-05 are shown in Table 4 in Appendix D. Less formal consultation also occurs.

1 The Reference Group comprises: as Chairman, Mr Peter Quiggin, First Parliamentary Counsel, Office of Parliamentary Counsel and a member of the Board of Taxation; Mr Gordon Cooper, AM, Principal, Cooper & Co, Chartered Accountants, and a member of the Board’s Advisory Panel; Mr Greg Pinder, Senior Adviser, Tax Design Division, Department of the Treasury; Mr Tom Reid, Consultant to the Board of Taxation; Mr Tony Slater, QC, Barrister; and Professor Richard Vann, Challis Professor of Law, the University of Sydney and a member of the Board’s Advisory Panel.

2 See Treasury’s final report on the Review of Aspects of Income Tax Self Assessment, August 2004, which is available on the Treasury website, www.treasury.gov.au.

Activities of the Board

Advisory Panel

On 9 July 2002, the Board Chairman announced that the Board had established an Advisory Panel to assist it in the general performance of its role.

The Panel comprises 25 taxation professionals who have agreed to voluntarily assist the Board with its work. Panel members are appointed on the basis of their individual capabilities and expertise, and not as representatives of particular interests.

The Panel provides an additional source of advice to that provided by the business, professional and other community representative organisations with which the Board has developed close working relationships.

Membership of the Advisory Panel changes from time to time and is reviewed periodically by the Board. Following a review in late 2004, four members retired from the Panel (one being appointed to the Board of Taxation) and three new members were appointed. The Board wishes to record its appreciation for the contributions made by Panel members to the Board's work during 2004-05. Panel membership as at 30 June 2005 is set out in Appendix G.

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 three areas outlined below, in addition to any other taxation matters referred to the Board by the Treasurer.

Identification and possible repeal of the inoperative provisions of the two Income Tax Assessment Acts

As noted above, the Board expects to finalise its work on the inoperative provisions and provide a report to the Treasurer in the second half of 2005.

Consultation

Under its Charter, the Board provides advice to the Treasurer on the processes of community consultation in the development of tax legislation. In March 2002, the Board submitted a report to the Treasurer on 'Government Consultation with the Community on the Development of Taxation Legislation'.¹ Following that report, the Treasurer announced on 2 May 2002 the Government's in-principle position in relation to community consultation in the development of tax policy and legislation.

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

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.

During 2005-06, the Board will continue to undertake its ongoing role in monitoring the consultation process in the development of tax legislation, including consultation on the application of the coherent principles approach to the taxation of financial arrangements stages 3 and 4.

¹ Available on the Board's website: www.taxboard.gov.au.

The year ahead

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 international consultation processes

As noted above, the Board has commenced a review, in conjunction with Treasury, of international consultation processes, in conjunction with Treasury, with a view to identifying any improvements to the Australian system of tax consultation.

The review is consistent with the Board's Charter responsibilities and its previous and ongoing role in community consultation.

APPENDIX A: MEMBERSHIP OF THE BOARD

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

Initial appointments took effect from 14 September 2000 and ran for two years. During 2004-05, the six members whose terms expired in October 2004 had their terms extended until 14 January 2005 to allow time for the completion of appointment processes.

On 22 December 2004, the Treasurer announced two new appointments to the Board. Mr Eric Mayne and Mr Curt Rendall were appointed for two year terms ending on 14 January 2007, replacing Mr John Bronger and Mr Tony D'Aloisio who retired from the Board on 14 January 2005. The Treasurer thanked Mr Bronger and Mr D'Aloisio for their contributions to the Board of Taxation.

The Treasurer also announced that he had re-appointed Mr Brett Heading, Mr Chris Jordan and Mr Richard Warburton for three year terms ending on 14 January 2008, and Ms Jane Schwager for a two year term ending on 14 January 2007.

The members of the Board during 2004-05 were:

Chairman — Richard F E (Dick) Warburton, AO

Mr Warburton is currently Chairman of Caltex Australia Ltd. His other directorships include Citibank Pty Ltd, Tandou Ltd, Nufarm Ltd, Tabcorp Holdings Ltd and Note Printing Australia Ltd. He is also a Director on the Advisory Board of the Garvan Research Foundation. 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 and CEO of Du Pont Australia and New Zealand.

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

Deputy Chairman — Chris Jordan, AO

Mr Jordan is Chairman of KPMG's Partners in 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 and a

Appendix A: Membership of the Board

member of its Education Committee. Mr Jordan is a member of the Sydney Children's Hospital Foundation Board.

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

John Bronger (retired January 2005)

Mr Bronger is the National President of the Pharmacy Guild of Australia and a practising pharmacist of Wetherill Park, New South Wales. Mr Bronger holds a number of key positions within and outside pharmacy. Among other appointments, he is Chairman of the Australian Association of Consultant Pharmacy, a member of the Australian Pharmaceutical Advisory Committee, a Board member of Gold Cross Products and Services Pty Ltd and Vice-President of the Sydney University Pharmacy Practice Foundation.

Mr Bronger was a member of the Board from its inception in September 2000 to 14 January 2005.

Michael Carmody, AO

Mr Carmody was appointed Commissioner of Taxation in January 1993 after 25 years experience in the Australian Taxation Office (ATO). He previously worked in the Policy and Legislative area and was involved in a wide range of tax reform legislative initiatives. In 1983 he was appointed as First Assistant Deputy Commissioner before moving to become Deputy Commissioner of the ATO in Parramatta. Mr Carmody was appointed Second Commissioner in 1986 and took responsibility for the ATO's Modernisation Program in 1987, before appointment to his current position.

Mr Carmody has been an *ex officio* member of the Board since its inception in September 2000.

Tony D'Aloisio (retired January 2005)

Mr D'Aloisio is the Managing Director and Chief Executive Officer of Australian Stock Exchange Limited. He was previously the Chief Executive Partner of Mallesons Stephen Jaques. His directorships include the Australian Charities Fund and the Business Council of Australia. He is a member of the International Legal Services Advisory Council and the Chairman of its Globalisation of Legal Services Committee.

Mr D'Aloisio was a member of the Board from August 2001 to 14 January 2005.

Appendix A: Membership of the Board

Brett Heading

Mr Heading is a Partner and Chairman of McCullough Robertson Lawyers. He is an experienced company director, and is presently Chairman of the listed company Chemgenex Pharmaceuticals Ltd and Chairman of the unlisted company Peanut Company of Australia Ltd. He has diverse personal agribusiness interests (including cattle, vineyard, lucerne and olive operations) and is Chairman of Clovely Estate Ltd. Mr Heading is also a member of the Takeovers Panel.

Mr Heading has been a member of the Board since its inception in September 2000.

Ken Henry

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

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

Keith James

Mr James is a partner at Hall & Wilcox Lawyers. He is a key figure in the tax advisory profession. His involvement has extended to Chairman of the Public Accountants Committee, Victorian President and National Councillor and Chairman of the Taxation Centre of Excellence for CPA Australia. Mr James was the accounting profession representative on the Commissioner of Taxation's Advisory Panel, the 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 Australian Taxation Office's large case audit program.

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

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

Appendix A: Membership of the Board

Eric Mayne (appointed January 2005)

Mr Mayne was appointed to the position of Group Executive Market Supervision at the Australian Stock Exchange in May 2005. Mr Mayne is a former Partner of Mallesons Stephen Jaques where he was responsible nationally for the firm's indirect taxation practice. His practice concentrated on the goods and services tax, customs and excise duty, anti dumping, energy credits, and pay-roll tax and indirect tax litigation. He has spoken at many public seminars on GST and customs duty and written extensively in these areas. Mr Mayne also was the National Managing Partner at Mallesons between 2000 and 2004.

Mr Mayne was a member of the GST Technical Committee which advised the Treasury and Australian Taxation Office on GST issues prior to and following the introduction of the GST on 1 July 2000. He also was an external member on the ATO GST Public Rulings Panel during the implementation period of the GST. He also advised the ATO on sales tax reform (including the simplification of the Sales Tax legislation in 1992).

Mr Mayne also is the Chair of the ASX Corporate Governance Council.

Mr Mayne was appointed to the Board for a two year term beginning on 15 January 2005.

Peter Quiggin - First Parliamentary Counsel

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

Mr Quiggin's seven year appointment as First Parliamentary Counsel started on 13 May 2004 and he replaced Ms Hilary Penfold, QC. He has been a drafter with the Office of Parliamentary Counsel for about 15 years and has drafted legislation covering a wide range of topics including taxation, native title and immigration.

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

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

Appendix A: Membership of the Board

Curt Rendall (appointed January 2005)

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

He was previously a member of the Dawson Review, Chairman of the Australian Government's Small Business Consultative Committee and Deputy Chairman of the New Tax System Advisory Board. 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. His most recent Government appointment has been as an Associate Commissioner of the Productivity Commission undertaking an enquiry into the relationships between participants in the smash repair industry.

Mr Rendall was appointed to the Board for a two year term beginning on 15 January 2005.

Jane Schwager

Ms Schwager is Chief Executive of Nonprofit Australia. She was previously Chief Executive Officer of the Benevolent Society, a major social enterprise driving social innovation, responsible for the 'Sydney Leadership' program and a wide range of community and residential programs for those in need. Prior to that, she was the Director-General of the NSW Ageing and Disability Department, and Executive Director of the NSW Social Policy Directorate where she was responsible for advising the NSW Government on its social policy agenda across government departments. She was a member of the 2000 Australian Government Social Welfare Reference Group responsible for the groundbreaking review of the Australian welfare system. Ms Schwager serves on a number of boards in the non-profit sector including Nonprofit Australia, Social Ventures Australia, Indigenous Festivals of Australia, Sydney Foundation for Medical Research and Our Community.com advisory council.

Ms Schwager has been a member of the Board since October 2002.

Secretary to the Board of Taxation

Bruce Paine

Mr Paine has held a number of senior executive positions in the Treasury. During the period 1994-2000 he filled various roles in the business taxation policy area of Treasury and was a Team Leader in the secretariat of the Ralph Review of Business Taxation. Mr Paine has been Secretary to the Board since February 2004.

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, 2004-05

Member	Number of meetings eligible to attend	Number of meetings attended
Mr Warburton (Chairman)	9	9
Mr Jordan (Deputy Chairman)	9	9
Mr Bronger (a)	5	3
Mr Carmody (b)	9	8
Mr D'Aloisio (c)	5	4
Mr Heading (d)	9	5
Dr Henry (b)	9	8
Mr James	9	9
Mr Mayne (e)	4	4
Mr Quiggin (b)	9	9
Mr Rendall (f)	4	4
Ms Schwager	9	6

(a) Mr Bronger retired from the Board on 14 January 2005.

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

(c) Mr D'Aloisio retired from the Board on 14 January 2005.

(d) Mr Heading was unable to attend the four meetings held in the first half of 2005 due to serious injuries sustained in a motor vehicle accident.

(e) Mr Mayne was appointed to the Board with effect from 15 January 2005.

(f) Mr Rendall was appointed to the Board with effect from 15 January 2005.

APPENDIX D: CONSULTATION BY THE BOARD

Table 3: Speeches and presentations, 2004-05

Date	Presentation	Event	Member
7 February 2005	Address on the role and current activities of the Board of Taxation	3 rd Annual Australian Taxation Summit, (Sydney)	Richard Warburton

Table 4: Meetings with external organisations, 2004-05

Date	Attendees
1 July 2004 Board of Taxation Meeting, Sydney	Mr David Vos AM, Inspector-General of Taxation National Tax & Accountants' Association Ltd National Institute of Accountants Taxpayers Australia
10 September 2004 Board of Taxation Meeting, Sydney	Sydney-based members of the Board's Advisory Panel: Mr Alf Capito Professor Chris Evans Mr Larry Magid
8 December 2004 Board's Consultation Meeting, Sydney	Australian Taxation Office Charities Consultative Committee
3 March 2005 Board of Taxation Meeting, Sydney	Sydney-based members of the Board's Advisory Panel: Ms Narelle Butler Mr Alf Capito Mr Gordon Cooper, AM Mr Greg Hayes Mr Tony Rumble Mr Ken Schurgott Professor Richard Vann
7 April 2005 Board of Taxation Meeting, Canberra	Australian Chamber of Commerce and Industry Council of Small Business Organisations of Australia National Farmers' Federation Small Business Coalition

Appendix D: Consultation by the Board

Table 4: Meetings with external organisations, 2004-05 (continued)

Date	Attendees
17 May 2005 Board of Taxation Meeting, Melbourne	The Institute of Chartered Accountants in Australia CPA Australia National Institute of Accountants Melbourne arm of the Law Council of Australia Melbourne-based members of the Board's Advisory Panel: Mr Michael Clough Mr John Emerson, AM Mr Michael Hay Mr Emanuel Hiou Assoc. Professor Ann O'Connell Mr Ken Spence

Table 5: Board of Taxation press releases, 2004-05

Number	Title	Date
14	Post-implementation review of the non-commercial losses legislation	27 April 2005

APPENDIX E: 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 2004-05, the Board engaged eight consultancies for amounts over \$10,000, for a total value of \$638,535. The actual expenditure of these consultancies in 2004-05 was \$470,987. The consultancies are detailed in the following table.

Table 6: Consultancies over \$10,000 in 2004-05

Consultant	Project	Engaged Cost (\$)	Procurement Method ¹	Reason ²
Creating Coherence Pty Ltd	Board of Taxation Reference Group to advise on fully identifying the inoperative provisions of the <i>Income Tax Assessment Act 1936</i> and the <i>Income Tax Assessment Act 1997</i>	12,250	Direct engagement	(e)
Lixstar Pty Ltd	Board of Taxation Reference Group to advise on fully identifying the inoperative provisions of the <i>Income Tax Assessment Act 1936</i> and the <i>Income Tax Assessment Act 1997</i>	16,500	Direct engagement	(e)
Mr Anthony Slater, QC	Board of Taxation Reference Group to advise on fully identifying the inoperative provisions of the <i>Income Tax Assessment Act 1936</i> and the <i>Income Tax Assessment Act 1997</i>	30,800	Direct engagement	(e)
Professor Richard Vann	Board of Taxation Reference Group to advise on fully identifying the inoperative provisions of the <i>Income Tax Assessment Act 1936</i> and the <i>Income Tax Assessment Act 1997</i>	16,500	Direct engagement	(e)

Appendix E: Consultancies

Table 6: Consultancies over \$10,000 in 2004-05 (continued)

Consultant	Project	Engaged Cost (\$)	Procurement Method ¹	Reason ²
SoftLaw Corporation Limited	Identify all explicit cross references in Commonwealth legislation to candidate inoperative provisions of the <i>Income Tax Assessment Act 1936</i> and the <i>Income Tax Assessment Act 1997</i>	51,573	Direct engagement	(a), (e)
University of NSW	Fully identify the inoperative provisions of the <i>Income Tax Assessment Act 1936</i> and the <i>Income Tax Assessment Act 1997</i>	223,905	Select	(e)
University of NSW	Compliance cost of consultant for post implementation review of small business capital gains tax concessions	69,595	Direct engagement	(c)
Webb Martin Pty Ltd	Evaluation consultant for the post implementation review of small business capital gains tax concessions	217,412	Select	(c)
Total consultancies over \$10,000		638,535		

Note – All amounts are GST inclusive.

(1) 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 If a Consultancy is let for Advertising and Market Research that Consultancy will be reported in both the 'Consultancy' and 'Advertising and Market Research' categories.

(2) 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 F: FINANCIAL STATEMENTS

Table 7: Revenue, expenses and operating result

	2003-04	2004-05
Expenses	\$	\$
<i>Employee expenses(a)</i>		
Wages	395,369	342,096
Superannuation	93,617	112,367
Other employee expenses	141,125	118,050
<i>Total employee expenses</i>	630,111	572,513
<i>Other expenses</i>		
Travel	82,985	49,192
Computers (non-asset)	359	
Office machines & furniture	6	91
Communications	0	
Freight and storage	0	
Conferences and training	3,740	3,842
Consultants and contracts	176,268	470,987
Legal services	2,190	
Office supplies	1,039	257
Advertising	9,649	
Printing	190	
Publications and subscriptions	2,014	1,464
Other supplier expenses	100,314	99,058
Depreciation and amortisation	4,700	
<i>Total operating expenses</i>	383,455	624,891
Total expenses	1,013,566	1,197,404
Revenue		
Funding from Government	2,000,000	2,000,000
Operating surplus	986,434	802,596

(a) The 2004-05 average staffing level of the Board secretariat was 4.0, compared with 4.7 in 2003-04. Of total employee expenses of \$572,513 in 2004-05, \$535,673 was attributed to the secretariat. The balance of \$36,840 comprises payments to non-Government members of the Board (the total figure of \$35,820 shown in Table 8 'Fees paid to non-Government Board members, 2004-05' plus \$1,020 in superannuation payments in respect of non-Government members who receive daily fees rather than having them paid to their employing organisations).

Appendix F: Financial statements

Table 8: Fees paid to non-Government Board members, 2004-05(a)

Member	\$
Mr Warburton (Chairman)	10,963
Mr Bronger	-2,395(b)
Mr D'Aloisio	958
Mr Heading	6,065
Mr James	7,655
Mr Jordan	5,029
Mr Mayne	2,012
Mr Rendall	2,012
Ms Schwager	3,521
Total	35,820

- (a) Members of the Board other than the three *ex officio* members receive daily fees for attending Board and Working Group meetings. In some cases these fees are paid to their employing organisations. With effect from 1 July 2004, daily fees were set at \$666 for the Chairman and \$503 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 2004-05.
- (b) This represents an accrual adjustment for prior years.

APPENDIX G: MEMBERS OF THE BOARD'S ADVISORY PANEL

Table 9: Members of Advisory Panel as at 30 June 2005

Panel Member:	Position, Organisation:
Associate Professor Stephen Barkoczy	Associate Professor, Business Law and Taxation, Monash University and Consultant, Blake Dawson Waldron
Ms Sarah Bernhardt	Tax Partner, Allens Arthur Robinson
Ms Narelle Butler	Barrister and Chartered Accountant
Mr Alf Capito	Partner, Ernst & Young Australia
Mr Michael Clough	Partner, Mallesons Stephen Jaques
Mr Gordon Cooper, AM	Principal, Cooper & Co
Mr John Emerson, AM	Partner, Freehills
Professor Chris Evans	Director, Australian Taxation Studies Program (ATAX), University of New South Wales
Mr Ian Farmer	Partner Tax Services, PricewaterhouseCoopers
Mr Richard Friend	Partner, Ernst & Young Australia
Mr John Gonsalves	National Tax Director, Ernst & Young Australia
Mr Michael Hay	Partner, Pitcher Partners
Mr Greg Hayes	Senior Partner, Hayes Knight
Mr Emanuel Hiou	Head of Group Taxation, National Australia Bank
Mr Paul Hooper	General Manager, Tax and Finance, Lend Lease Corporation Ltd
Mr Larry Magid	Partner, Allens Arthur Robinson
Ms Louise McBride	Director, Grant Samuel Corporate Finance
Professor Myles McGregor-Lowndes, OAM	Director, Centre of Philanthropy and Nonprofit Studies, Faculty of Business, Queensland University of Technology
Associate Professor Ann O'Connell	Faculty of Law, University of Melbourne and Special Counsel, Allens Arthur Robinson
Mr Brian Richards	Partner, BDO Kendalls
Dr Tony Rumble	Chief Executive Officer, SavingsFactory Ltd
Mr Ken Schurgott	Partner, Thomson Playford
Mr Ken Spence	Partner, Shaddick & Spence
Professor Richard Vann	Challis Professor of Law, University of Sydney
Mr Mark West	Partner, McCullough Robertson

