

# **THE BOARD OF TAXATION**

2011 — 2012 ANNUAL REPORT

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## INQUIRIES

Inquiries regarding this report may be directed to:

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

Telephone: 02 6263 4366  
Facsimile: 02 6263 4471  
Email: [taxboard@treasury.gov.au](mailto:taxboard@treasury.gov.au).



## INTRODUCTION

The Board of Taxation is a non-statutory advisory body charged with contributing a business and broader community perspective to improving the design of taxation laws and their operation.

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

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

### The Board's mission

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

### The Board's functions

The Board provides advice to the Treasurer on:

- the quality and effectiveness of tax legislation and the processes for its development, including the processes of community consultation and other aspects of tax design;
- improvements to the general integrity and functioning of the taxation system;
- 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 2011-12

## Overview

During 2011-12, the Board reported to the Government on:

- a review of the taxation arrangements applying to collective investment vehicles;
- a post-implementation review of the Tax Design Review Panel's recommendations; and
- a post-implementation review into certain aspects of the consolidation regime – stage one.

The Board also provided advice to the Treasury on:

- the Board's views regarding the prioritisation of issues to be addressed in the Government's review of the taxation of trusts; and
- desirable ways forward in relation to the design and establishment of the Tax Studies Institute.

The Board continued progress on stage two of its post-implementation review into certain aspects of the consolidation regime.

During 2011-12, the Board received the following two new references from the Government:

- a review of the tax arrangements applying to permanent establishments; and
- a post-implementation review of Division 7A of Part III of the *Income Tax Assessment Act 1936*.

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

## Meetings

The Board met as a whole on 10 occasions during 2011-12, as shown in Table 1, at varying locations. Details of Board members' attendance at meetings are provided at Appendix C.

**Table 1: Board of Taxation meetings, 2011-12**

Date	Location
8 July 2011	Brisbane
11 August 2011	Sydney
9 September 2011	Melbourne
13 October 2011	Perth
4 November 2011	Melbourne
9 December 2011	Sydney
10 February 2012	Sydney
9 March 2012	Canberra
11 May 2012	Canberra
8 June 2012	Melbourne

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

In 2011-12, in addition to reporting to the Government on the reviews it undertakes, the Board was also requested, on occasion, to deliver other types of outputs. For instance, the Board was asked:

- on two occasions to deliver its advice or views on a particular matter to the Treasury (to support it in its role in providing advice to portfolio ministers to assist in formulating, implementing and explaining government decisions on taxation and retirement income arrangements); and
- on two occasions to deliver its advice or views under an announced review to the Government earlier than originally agreed, or to provide interim views ahead of finalising a particular report.

The Board has continued to adopt its working group model to achieve delivery of all requested outputs. It is worthwhile noting that any changes in approach

that result in shorter delivery deadlines may result in reduced time available for consultation.

A list of working groups for 2011-12, and the Board members appointed to each working group, is provided at Appendix D. Each of these working groups met on numerous occasions during 2011-12 and engaged in intensive consultation in relation to the projects. These consultations are outlined in general terms in Appendix E. All projects undertaken in 2011-12 are also outlined in further detail below.

## Review of the taxation treatment of collective investment vehicles

On 11 May 2010, the then Assistant Treasurer and the Minister for Financial Services, Superannuation and Corporate Law announced that the Government would ask the Board to review the tax treatment of collective investment vehicles, having regard to the new managed investment trust tax framework and including whether a broader range of tax flow-through vehicles should be permitted. As part of the review, the Board was also asked to examine the treatment of Venture Capital Limited Partnership vehicles.

This review arose from the report of the Australian Financial Centre Forum, *Australia as a Financial Centre – Building on our Strengths*,<sup>1</sup> which recommended ‘that the Treasurer request the Board of Taxation to review the scope for providing a broader range of tax flow-through collective investment vehicles’ (Recommendation 3.3).

The Board was also asked to examine and report on the design of an investment manager regime (IMR) for investments by foreign residents managed in Australia. The proposal for an IMR arose from Recommendation 3.1 of the Australian Financial Centre Forum report.

The Board appointed a working group of its members comprising Mr John Emerson AM (Chair), Mr Chris Jordan AO, Ms Annabelle Chaplain and Mrs Teresa Dyson to oversee this review. Mr Richard Warburton AO (former Chairman of the Board) was also a member of the working group until his retirement from the Board in February 2011.

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1 Available on the Treasury website, [www.treasury.gov.au](http://www.treasury.gov.au).

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

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

In 2011, the Government also requested that the Board bring forward the reporting date on the Board's examination of the design of an IMR as it relates to foreign managed funds. The Board completed its review of an IMR as it relates to foreign managed funds and submitted its report to the Government in August 2011.

The Board made 12 recommendations in relation to the introduction of an IMR for foreign managed funds. The Board believes that the introduction of an IMR for foreign managed funds should assist in removing tax-related impediments to international investment into Australia by foreign managed funds and impediments to the use of Australian intermediaries by these funds.

On 31 August 2011, the Government requested the Board to provide comments on the expected costs and benefits of introducing the IMR for foreign managed funds, as recommended by the Board. Written advice was provided to the Government on 13 September 2011.

The Board subsequently completed its review of the taxation arrangements applying to collective investment vehicles and provided its report to the Government in December 2011.

## Post-implementation review of the Tax Design Review Panel recommendations

On 22 August 2008, the then Assistant Treasurer and Minister for Competition Policy and Consumer Affairs released the Tax Design Review Panel's report

*Better Tax Design and Implementation.*<sup>2</sup> The report made 26 recommendations and all were accepted in principle by the Government when released.

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

*The Government should ask the Board of Taxation to review the tax design process after two years and report to Government on the extent to which there are demonstrated improvements.*

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

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

The Board released its discussion paper in February 2011. It also held public consultation meetings in Melbourne and Sydney in March 2011. In response, the Board received 9 submissions from stakeholders, including the Treasury and Australian Taxation Office.

On 31 August 2011, the Government asked the Board to highlight potential areas for improvement to current tax policy design and implementation processes. The Board provided written advice outlining its early observations on five key areas to the Government on 16 September 2011.

The Board completed its post-implementation review of the Tax Design Review Panel recommendations and submitted its report to the Government in December 2011. The Board made 19 conclusions and recommendations. These included improvements in the timeliness of legislation, the quality and quantity of consultation, the involvement of the private sector and the design process.

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2 Available on the Treasury website, [www.treasury.gov.au](http://www.treasury.gov.au).

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

On 3 June 2009, the then Assistant Treasurer and Minister for Competition Policy and Consumer Affairs announced that the Board would undertake a post-implementation review of certain aspects of the consolidation regime.

The aspects of the consolidation regime that are subject to the review are:

- the operation of the single entity rule;
- the operation of the entry history rule in acquisition cases;
- the interaction between the consolidation provisions and other parts of the income tax law; and
- the effectiveness of the consolidation regime for small business groups.

The Board appointed a working group of its members comprising Mr Keith James (Chair), Mr Chris Jordan AO and Mr Curt Rendall to oversee this review. Mr Richard Warburton AO (former Chairman of the Board) was also a member and the Chair of the working group until his retirement from the Board in February 2011.

In March 2011, the Government requested the Board to undertake a review of the consolidation rights to future income and residual tax cost setting rules. The Board finalised this review and provided a report to the Government in May 2011. The Board's report recommended that the Government investigate two further aspects of the consolidation regime: the tax treatment of liabilities in the consolidation regime; and whether the tax cost setting amount of assets should be capped. On 25 November 2011, the Government requested that the Board include these two aspects in its consolidation post-implementation review.

The Board divided the consolidation post-implementation review into two stages. The first stage focused on the policy framework for the consolidation regime, the operation of the single entity rule, interactions between the consolidation regime and other parts of the income tax law, and the operation of the consolidation regime for small business corporate groups. The Board has completed its consideration of these issues and provided a final report to the Government in June 2012.

In the second stage of the consolidation post-implementation review, the Board is reviewing the tax treatment of liabilities and the capping of the tax cost setting amount of assets in the consolidation regime. The Board is also looking further into some issues that were raised in the first stage of the post-implementation review that remain outstanding, such as the treatment of deferred tax liabilities and the interaction between the consolidation regime and certain parts of the capital gains tax rules.

For stage two of the consolidation post-implementation review, the Board appointed a working group of its members comprising Mr Keith James (Chair), Mr Chris Jordan AO, Mrs Teresa Dyson and Mr Curt Rendall to oversee this review.

Depending on the issues raised during consultation, the Board expects to present its recommendations to Government for consideration by March/April 2013.

## Input to the Government's review of the taxation of trusts

On 16 December 2010, the then Assistant Treasurer announced a public consultation process as a first step to updating the trust income tax provisions in Division 6 of Part III of the *Income Tax Assessment Act 1936*, and rewriting them into the *Income Tax Assessment Act 1997*. He noted that in developing an initial consultation paper the Treasury would draw heavily on the expertise of the private sector, particularly through the Tax Design Advisory Panel and the Board of Taxation.

In August 2011, to assist in the development of a consultation paper, the Treasury sought input from private sector experts (engaged under the auspices of the Tax Design Advisory Panel) to identify issues impacting on the effective operation of the trust income tax provisions, and possible solutions to address those issues.

The Board was asked to review the input provided by those private sector experts, and to consider whether it represented an accurate inventory of the priority issues that needed to be addressed in this review, and whether any further issues should be addressed.

A working group of Board members comprising Mrs Teresa Dyson (Chair), Mr John Emerson AM and Mr Curt Rendall oversaw this advice.

The Board submitted its advice to the Treasury on 23 September 2011.

## Consultation on the establishment of a Tax Studies Institute

On 5 October 2011, in his closing remarks to the Tax Forum, the Deputy Prime Minister and Treasurer announced that the Government would provide seed funding of around \$1 million per year (for three years) to establish a Tax Studies Institute. An extract of the announcement is provided below:

*We will contribute around \$1 million per year to create an independent Tax Studies Institute, as a centre for research excellence, linked to our universities. The institute will look at things like the design and simplification of the tax-transfer system. Because the tax system affects all Australians, the institute will accept tax deductible funding donations. And because the tax system affects all governments, I will welcome state government contributions.*

On 8 November 2011, the Treasury asked the Board to provide advice on desirable ways forward in relation to the design and establishment of the Tax Studies Institute.

A working group of Board members comprising Ms Elizabeth Jameson (Chair), Ms Annabelle Chaplain and Mr Keith James oversaw this advice.

The Board submitted its advice to the Treasury in February 2012. This advice included the Board's views on how to recruit resources for the institute (other than the Commonwealth's contribution); an appropriate governance structure for the institute; and how that structure might be put in place.

## Review of the tax arrangements applying to permanent establishments

On 24 March 2012, the Assistant Treasurer and Minister Assisting for Deregulation announced that the Board would undertake a review of tax arrangements applying to permanent establishments.

The Board has been asked to examine and report on the advantages and disadvantages of Australia adopting the functionally separate entity approach

to the determination of profits attributable to a permanent establishment in its tax treaty negotiations and in domestic law.

This review arises from the new Article 7 (Business Profits) and commentary approved by the OECD in its 2010 Model Tax Convention on Income and on Capital, which authorised an approach to the attribution of profits to permanent establishments that more clearly hypothesises the permanent establishment as a separate enterprise from the enterprise of which it is a part and applies usual transfer pricing principles, subject to the required functional analysis determining the recognition of relevant 'dealings' between the permanent establishment and the enterprise's other operations.

The review is to have regard to the broad principle that profits attributed to the Australian tax base should appropriately reflect economic activity undertaken in Australia. As far as practicable, the relevant rules should be aligned with and interpreted consistently with international standards.

As part of this review, the Board has also been asked to advise on the continued appropriateness of having a safe harbour for the interest rate that may be charged for the use of internal funds by foreign banks in their Australian branches, as a proxy for arm's length interest rates, and, if so, the suitability of the LIBOR (London Interbank Offered Rate) cap for that role.

A working group of Board members comprising Ms Annabelle Chaplain (Chair), Mr Chris Jordan AO, Mrs Teresa Dyson and Mr John Emerson AM is overseeing this review.

After considering the views of all stakeholders the Board expects to provide a final report to the Government by the end of April 2013.

## Post-implementation review of Division 7A of Part III of the *Income Tax Assessment Act 1936*

On 18 May 2012, the Assistant Treasurer and Minister Assisting for Deregulation announced that the Board would undertake a post-implementation review of Division 7A of Part III of the *Income Tax Assessment Act 1936*.

Division 7A contains integrity provisions designed to prevent shareholders (or their associates) of private companies from inappropriately accessing the

## Activities of the Board

profits of those companies in the form of payments, loans or debt forgiveness transactions.

The Board has been asked to:

- examine whether Division 7A gives effect to this policy intent;
- examine whether there are any problems with the current operation of Division 7A, including its interaction with other areas of the tax law, that are producing unintended outcomes or disproportionate compliance and administration costs; and
- to the extent that there are problems, recommend options for resolving them so that, having regard to the policy intent of Division 7A and potential compliance and administration costs, the tax law operates effectively.

The Board has also been asked to examine the potential for broader reforms to Division 7A, including whether the provisions could be expressed in a clearer and simpler manner, whilst maintaining the integrity of the tax law and revenue neutral or near revenue neutral outcomes.

The Board has appointed a working group of its members comprising Mr Curt Rendell (Chair), Mr Keith James and Ms Elizabeth Jameson to oversee this review.

After considering the views of all stakeholders the Board expects to provide a final report to the Government by the end of June 2013.

## Consultation

The Board continues to perform its ongoing role of monitoring the processes of community consultation on the development of tax legislation.

The Board also undertakes a program of regular consultation with external stakeholders, including members of its Advisory Panel, on issues falling within its Charter. Formal consultation meetings held in 2011-12 are detailed in Table 5 at Appendix E.

## Advisory Panel

In July 2002, the Board established an Advisory Panel to assist it in the general performance of its role. The Panel currently comprises 32 taxation specialists who have agreed to voluntarily assist the Board with its work. Panel members are appointed on the basis of their individual capabilities and expertise, and not as representatives of particular interests.

The Panel provides an additional source of advice to that provided by the business, professional and other community representative organisations with which the Board has developed close working relationships. The Board met Advisory Panel members on a number of occasions during 2011-12 to discuss Board projects and general issues associated with the integrity and functioning of the tax system.

Membership of the Advisory Panel changes from time to time and is reviewed periodically by the Board. During 2011-12 four members retired from the Panel and two new members were appointed.

The Board wishes to record its appreciation for the contributions made by Panel members to the Board's work during 2011-12. Panel membership as at 30 June 2012 is set out at Appendix H.

## Treasury and Australian Taxation Office involvement

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

The Board wishes to record its appreciation for the extensive assistance provided by the Treasury and ATO officers involved in the Board's work during the 2011-12 year.

## Assistance provided for the Board's reviews

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

- an Expert Panel comprising five taxation advisors chosen for their expertise to assist with the review;
- Professor Richard Vann, engaged as a consultant to the review; and

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- officers from the Treasury and the ATO.

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

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

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

- an Expert Panel comprising six taxation advisors chosen for their expertise to assist with the review (between stage 1 and stage 2 of the review);
- Mr Geoff Lehmann, Mr Alexis Kokkinos and Mr Andrew Mills, engaged as consultants to the review (between stage 1 and stage 2 of the review); and
- officers from the Treasury and the ATO.

Assistance for the Board's review of the tax arrangements applying to permanent establishments is being provided by:

- an Expert Panel comprising four taxation advisors chosen for their expertise to assist with the review;
- Professor Richard Vann, Mr Satyajit Das and Mr Bob Jones, engaged as consultants to the review; and
- officers from the Treasury and the ATO.

Assistance for the Board's post-implementation review of Division 7A of Part III of the *Income Tax Assessment Act 1936* is being provided by:

- officers from the Treasury and the ATO (with an Expert Panel and consultants to be engaged in 2012-13).

## The Board of Taxation website

The Board of Taxation's website [www.taxboard.gov.au](http://www.taxboard.gov.au) provides general information on the Board, including its membership, the Board's Charter, contact details, Board press releases and Board reports to the Government.

## THE YEAR AHEAD

The Board will continue to pursue its objectives as set out in its Charter, including issues relating to the general integrity and functioning of the tax system. Specifically, the Board intends to focus on the areas outlined below, in addition to any other matters referred to it by the Treasurer.

### Consultation

Under its Charter, the Board provides advice to the Treasurer on the processes of community consultation in the development of tax legislation. In 2002, the Board submitted a report to the then Treasurer on *Government Consultation with the Community on the Development of Taxation Legislation*.<sup>3</sup> Following this report, the then Treasurer announced the Government's in-principle position in relation to community consultation in the development of tax policy and legislation.

The Board was asked to undertake an ongoing role in monitoring the consultation process. To assist the Board in this role, Treasury provides a regular report on the consultation strategy for each substantive tax proposal and the progress of that consultation. Treasury's consultation reports are published on the Treasury website.<sup>4</sup>

The Board also regularly seeks the views of stakeholders in the business sector, the tax profession and the wider community on the quality and effectiveness of the consultation processes.

In its 2007 report, *Improving Australia's tax consultation system*,<sup>5</sup> the Board recommended that it take a proactive approach to encouraging continuous improvement in the tax consultation system by liaising with stakeholders about possible improvements to consultation arrangements consistent with the Government's framework. The report made a number of other recommendations directed at all participants in the tax consultation system.

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

4 Treasury's website is [www.treasury.gov.au](http://www.treasury.gov.au).

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

Further, the Board's post-implementation review of recommendations made by the Tax Design Review Panel reviewed aspects of consultation and the tax design process more generally. The Board submitted its final report on this review to the Government in December 2011. It included a number of recommendations regarding the timeliness of legislation, the quality and quantity of consultations, the involvement of the private sector and the design process.

In 2012-13, the Board will continue its ongoing role of monitoring the consultation process in the development of tax legislation in order to encourage continuous improvement.

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.

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

The Board expects to provide a final report on stage two of its post-implementation review into certain aspects of the consolidation regime by March/April 2013.

### **Review of the tax arrangements applying to permanent establishments**

The Board expects to provide a final report on its review of the tax arrangements applying to permanent establishments by the end of April 2013.

### **Post-implementation review of Division 7A of Part III of the *Income Tax Assessment Act 1936***

The Board expects to provide a final report on its review Division 7A of Part III of the *Income Tax Assessment Act 1936* by the end of June 2013.

## APPENDIX A: MEMBERSHIP OF THE BOARD

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

The members of the Board during 2011-12 are set out below:

### Chairman — Chris Jordan AO

Mr Jordan was previously Chairman of KPMG New South Wales and Partner in Charge of the New South Wales Tax and Legal Division of KPMG. During 2011-12, he was the Chairman of the Business Tax Working Group. He is the former Chairman of the New Tax System Advisory Board and the State Chairman of the New South Wales Division of the Taxation Institute of Australia. Mr Jordan is a member of the Sydney Children's Hospital Foundation, a member of the Board of the Bell Shakespeare Company and a member of the Audit Risk Committee of the Art Gallery of NSW. He was appointed by the NSW Government to the Games Advisory Committee of the Sydney 2009 World Masters Games.

Mr Jordan has been a member of the Board since its inception in September 2000, and was Deputy Chairman from January 2005, until his appointment to the position of Chairman in June 2011.

### Keith James (Deputy Chairman)

Mr James is a Partner at Hall & Wilcox Lawyers. He is a key figure in the tax advisory profession. His involvement has extended to Chairman of the Public Accountants Committee, Victorian President and National Councillor and Chairman of the Taxation Centre of Excellence for CPA Australia. Mr James was the accounting profession representative on the Commissioner of Taxation's Advisory Panel, his National Liaison Committee and the Advisory Committee on the Taxpayers Charter. He was joint Chairman of the working party on the national review of standards of the tax profession and a member

## Appendix A: Membership of the Board

of the steering committee of the Pappas Carter Report reviewing the Tax Office's large case audit program.

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

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

### Annabelle Chaplain

Ms Chaplain is an experienced company director and currently serves as a non-executive director of Downer EDi Ltd and PanAust Ltd.

Ms Chaplain has spent her executive career in the field of international banking and finance, holding management positions as Head of Public Sector Client Management at ABN AMRO for Australia and New Zealand, ABN AMRO's Divisional Director for Queensland, and Director Corporate and Project Finance at AIDC Limited.

Ms Chaplain was appointed to the Board in July 2009.

### Michael D'Ascenzo AO

Mr D'Ascenzo holds degrees in economics and law from the Australian National University and is admitted to practice as a barrister and solicitor. Mr D'Ascenzo is a graduate of Harvard Business School Program for Management Development; a member of the Australian Institute of Chartered Accountants; an Honorary Life Member of the Australian Society of Certified Practising Accountants; and an Honorary Fellow of the Association of Taxation and Management Accountants.

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

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

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

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

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

#### **Teresa Dyson**

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

Mrs Dyson was appointed to the Board in June 2011.

#### **John Emerson AM**

Mr Emerson has been a partner in Freehills, lawyers, since 1976 and is widely recognised as a specialist in the tax and other laws applicable to charities. He heads the firm's charity law practice.

He is the Freehills Melbourne Office Pro Bono Partner and a member of a number of legal and public sector committees active in the charity tax and pro bono areas.

Mr Emerson has been a member of the Board since January 2007.

### Elizabeth Jameson

Ms Jameson is a corporate/commercial lawyer by background. After 15 years in legal practice, in 2002 she established Board Matters Pty Ltd, a corporate governance consultancy and associated legal practice, Board Matters Legal. Today Ms Jameson's time is divided between her consulting work through Board Matters and a number of non-executive Directorships. She has held many board positions over the past two decades. These currently include directorships with BDO Group Holdings (Qld) Pty Ltd (as Chair), RACQ Ltd, FibreCycle Pty Ltd (as Chair) and Brisbane Girls' Grammar School (as Chair).

Ms Jameson was appointed to the Board in April 2010.

### Martin Parkinson PSM

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

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

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

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

Dr Parkinson was Australia's G-20, IMFC and Development Committee Deputy and Co-chair of the G-20 Deputies process in 2006. He has previously worked at the International Monetary Fund on the reform of international financial architecture and in the early 1990s served as Senior Adviser to

Treasurer Dawkins. Since joining Treasury in 1980 he has also worked in a range of areas including taxation policy, labour market and structural reform, and macroeconomic policy and forecasting.

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

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

### **Peter Quiggin PSM**

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

Mr Quiggin's initial 7 year appointment as First Parliamentary Counsel started on 13 May 2004. He has since been reappointed for a further 7 years, commencing on 14 May 2011. He has been a drafter with the Office of Parliamentary Counsel for over 20 years and has drafted legislation covering a wide range of topics including taxation, native title and immigration.

Mr Quiggin is the President of the Commonwealth Association of Legislative Counsel (CALC).

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

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

### **Curt Rendall**

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

Mr Rendall is currently a member of the Standard Business Reporting Board and was previously a member of the Trade Practices Act Review (the Dawson Review), Chairman of the Federal Government's Small Business Consultative Committee, Deputy Chairman of the New Tax System Advisory Board and an Associate Commissioner of the Productivity Commission. He has also been Chairman of the Institute of Chartered Accountants Small and Medium Enterprises Committee as well as a Member of the Small Business Development Corporation of New South Wales.

Mr Rendall has been a member of the Board since January 2005.

## Secretary to the Board of Taxation

### Roger Paul

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

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

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

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

## APPENDIX B: THE BOARD'S CHARTER

### Mission

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

### Membership

The Board of Taxation will consist of up to ten members.

Up to seven members of the Board will be appointed by the Treasurer, for a term of up to three years, on the basis of their personal capacity. It is expected that these members will be appointed from within the business and wider community having regard to their ability to contribute at the highest level to the development of the tax system. The Chairman will be appointed by the Treasurer from among these members of the Board. If the Treasurer decides to appoint a Deputy Chairman, he or she will also be appointed from among these members of the Board. Members may be re-appointed.

The Secretary to 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 annual 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, 2011-12**

Member	Number of meetings eligible to attend	Number of meetings attended
Mr Jordan (Chairman)	10	10
Mr James (Deputy Chair)	10	9
Ms Chaplain	10	10
Mrs Dyson	10	8
Mr Emerson	10	9
Ms Jameson	10	10
Mr Rendall	10	10
Mr D'Ascenzo <sup>(a)</sup>	10	10
Dr Parkinson <sup>(a)</sup>	10	10
Mr Quiggin <sup>(a)</sup>	10	9

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



## APPENDIX D: BOARD WORKING GROUPS

**Table 3: Membership of Board Working Groups, 2011-12**

<b>Review of the taxation treatment of collective investment vehicles</b>	<b>Post-implementation review of the Tax Design Review Panel recommendations</b>	<b>Post-implementation review into certain aspects of the consolidation regime (Stage 1)</b>
Mr Emerson (Chair)	Mr Quiggin (Chair)	Mr James (Chair)
Ms Chaplain	Mr James	Mr Jordan
Mr Jordan	Ms Jameson	Mr Rendall
Mrs Dyson	Mr Wilson (chair of the Tax Design Review Panel)	
<b>Post-implementation review into certain aspects of the consolidation regime (Stage 2)</b>	<b>Advice on design and establishment of the Tax Studies Institute</b>	<b>Review of the tax arrangements applying to permanent establishments</b>
Mr James (Chair)	Ms Jameson (Chair)	Ms Chaplain (Chair)
Mr Jordan	Ms Chaplain	Mr Jordan
Mrs Dyson	Mr James	Mrs Dyson
Mr Rendall		Mr Emerson
<b>Post-implementation review of Division 7A of Part III of the <i>Income Tax Assessment Act 1936</i></b>	<b>Advice on the Government's review of the taxation of trusts</b>	
Mr Rendall (Chair)	Mrs Dyson (Chair)	
Mr James	Mr Emerson	
Ms Jameson	Mr Rendall	



## APPENDIX E: CONSULTATION BY THE BOARD

**Table 4: Speeches and presentations, 2011-12**

Date	Presentation	Event	Member
3 August 2011	Tax Measures enhancing Australia's attractiveness as a destination in which to invest and do business (including the role of the Board of Taxation)	Financial Services Council Annual Conference (Gold Coast)	Mr Jordan
8 November 2011	Observations on the Board of Taxation's review of the taxation treatment of Islamic Finance	Financial Services Institute of Australasia — Outlook for Islamic Banking and Finance in Australia	Mr James
15 February 2012	The Board of Taxation's role in tax policy design & implementation	ATAX's 21 <sup>st</sup> celebration dinner	Mr Jordan
24 February 2012	Role of the Board of Taxation	Sydney Business Chamber's Legal Counsel Forum Boardroom Lunch	Mr Jordan
15 March 2012	Board of Taxation Update	Tax Studies Institute National Convention	Mr Jordan
18 April 2012	Tax Consolidation Post-Implementation Direction	The Tax Institute Function	Mr James
5 June 2012	Islamic Finance	2012 Australia Arab Business Forum	Mrs Dyson

**Table 5: Meetings with external organisations, 2011-12**

Date	Attendees
8 July 2011 Board meeting, Brisbane	Queensland Treasurer and Brisbane-based members of the Board's Advisory Panel
4 August 2011 Targeted consultation meetings to discuss the Board's post-implementation review of the Tax Design Review Panel's recommendations	Mr Quiggin, Mr James, Mr Wilson, Board of Taxation Secretariat, representatives from the Treasury and the Australian Taxation Office
7 October 2011 Targeted consultation meetings to discuss tax design issues relating to the Collective Investment Vehicles review	Mr Emerson, Mr Jordan, Board of Taxation Secretariat, staff from the Treasury and the Australian Taxation Office, and stakeholder representatives
22 November 2011 Discuss the tax design issues relating to the Collective Investment Vehicles review	Mr Emerson, Board of Taxation Secretariat, and Office of Parliamentary Counsel staff
8 December 2011 Targeted consultation meeting to discuss tax design issues relating to the Collective Investment Vehicles review	Mr Jordan, Mr Emerson, Mrs Dyson, Board of Taxation Secretariat and stakeholder representatives
8 December 2011, 16 and 27 January and 15 February 2012 Targeted consultation meetings to discuss the establishment of a Tax Studies Institute	Mr James, Board of Taxation Secretariat and stakeholder representatives
2 February 2012 Targeted consultation meeting to discuss the establishment of a Tax Studies Institute	Ms Jameson, Mr James, Board of Taxation Secretariat, and stakeholder representatives
9 March 2012 Board meeting, Canberra	Office of Parliamentary Counsel staff
11 May 2012 Board meeting, Canberra	Australian Taxation Office staff
8 June 2012 Board meeting, Melbourne	Melbourne-based members of the Board's Advisory Panel

## APPENDIX F: CONSULTANCIES

Consultants are engaged in accordance with Treasury's policies for the engagement of consultants and contractors. These policies, which are consistent with the Chief Executive Instructions and the Commonwealth Procurement Guidelines, are outlined in the Treasury Annual Report. During 2011-12, the Board engaged two consultancies for an amount over \$10,000, for a total value of \$101,042 (GST inclusive). The actual expenditure for these consultancies, consultancies completed in 2011-12 and for payments made to service providers in 2011-12, was \$136,100 (GST exclusive).



## APPENDIX G: FINANCIAL STATEMENTS

**Table 7: Revenue, expenses and operating result**

	2010-11	2011-12
	\$	\$
<b>Revenue</b>		
Funding from Government	1,900,000	1,770,000
Services provided free of charge	119,678	131,400
Revenue — Other		
<b>Total revenue</b>	<b>2,019,678</b>	<b>1,901,400</b>
<b>Expenses</b>		
<i>Employee expenses<sup>(a)</sup></i>		
Wages	390,556	475,446
Superannuation	81,396	109,813
Other employee expenses	181,419	499,759
Total employee expenses	653,371	1,085,018
<i>Other expenses</i>		
Travel	182,071	209,410
Conferences and training	24,026	25,068
Consultants and services provided by Contractors	126,339	134,716
Seconded Employees	200,258	270,473
Legal Services	1,194	0
Office supplies	3,351	2,502
Printing	0	0
Publications and subscriptions	2,317	6,773
Other supplier expenses <sup>(b)</sup>	110,311	592
Total operating expenses	649,867	650,233
<b>Total expenses</b>	<b>1,303,238</b>	<b>1,735,251</b>
<b>Operating surplus</b>	<b>716,440</b>	<b>166,149</b>

(a) Of total employee expenses of \$1,085,018 in 2011-12, \$612,758 was attributed to the Secretariat. The 2011-12 average staffing level of the Secretariat was 3.9 compared with 2.3 in 2010-11. The balance of \$472,260 comprises payments to non-Government members of the Board.

**Table 8: Fees paid to non-government Board members, 2011-12<sup>(a)</sup>**

Member	\$
Mr Jordan (Chairman)	\$95,584
Mr James	\$77,338
Ms Chaplain	\$51,373
Mrs Dyson	\$47,792
Mr Emerson	\$47,792
Ms Jameson	\$54,779
Mr Rendall	\$52,727
<b>Total</b>	<b>\$427,386</b>

(a) Members of the Board other than the three ex officio members received daily fees for attending Board and Working Group meetings until 7 August 2011. In some cases these fees were paid to their employing organisations. With effect from 1 July 2011, the daily fees increased from \$847 to \$873 for the Chairman, and \$641 to \$661 for members. Fees at the same rates were paid where non-government members were 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 2011-12. With effect from 8 August 2011, payments of daily fees were replaced by the payment of an annual fee of \$100,000 for the Chairman, and \$50,000 for members.

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

**Table 9: Members of Advisory Panel as at 30 June 2012**

<b>Panel Member:</b>	<b>Position, Organisation:</b>
Mrs Jennifer Batrouney SC	Barrister
Mr Steve Baxter	Associate Director, Indirect Tax Consulting Group
Ms Sarah Bernhardt	Partner, Allens
Mr Christopher Branson QC	Barrister, Law Council of Australia
Mr Frank Brody	Partner, King & Wood Mallesons
Mr Alf Capito	Partner, Ernst & Young Australia
Ms Jenny Clarke	Partner, KPMG
Mr Michael Clough	Partner, King & Wood Mallesons
Mr Michael Evans	Chartered Accountant
Mr Michael Hay	Partner/Executive Director, Pitcher Partners Pty Ltd
Mr Greg Hayes	Senior Partner, Hayes Knight
Mr Michael Hennessey	Partner, Ernst & Young Australia
Mr Emanuel Hiou	Partner, Deloitte Touche Tohmatsu
Mr Paul Hooper	Group Head of Tax, Lend Lease
Mr Michael Johnston	Chief Financial Officer, Consolidated Press Holdings Ltd
Mr Mark Joiner	Executive Director Finance, National Australia Bank
Mr Alexis Kokkinos	Executive Director, Pitcher Partners Advisors Pty Ltd
Mr Adam Levin	Partner, Jackson McDonald Lawyers
Mr Larry Magid	Partner, Allens
Mr Andrew Mills	Director, Greenwoods & Freehills Pty Ltd
Professor Ann O'Connell	Faculty of Law, University of Melbourne
Mr Frank O'Loughlin	Barrister
Ms Karen Payne	Partner, Minter Ellison

Appendix H: Members of the Board's Advisory Panel

<b>Panel Member:</b>	<b>Position, Organisation:</b>
Professor Dale Pinto	School of Business Law and Taxation, Curtin University
Ms Tracey Rens	Partner, Deloitte Touche Tohmatsu
Mr Ken Schurgott	Director-Solicitor, Schurgott Noolan Pty Ltd
Mr Ken Spence	Special Counsel, Greenwoods & Freehills
Ms Judy Sullivan	Partner, King & Wood Mallesons
Mr Grant Wardell-Johnson	Tax Partner, KPMG
Mr Mark West	Partner, McCullough Robertson
Mr Ken Woo	Partner, PricewaterhouseCoopers
Mr Craig Yaxley	Partner, KPMG