



14 March 2011

Christine Barron
General Manager Tax System Division
The Treasury
Langton Crescent
PARKES ACT 2600

Dear Ms Barron

Designing a Tax System Advisory Board

The Australian Financial Markets Association (AFMA) represents the interests of participants in Australia's wholesale banking and financial markets. Our members include Australian and foreign banks, stockbrokers and investment banks, fund managers, energy traders and other specialised markets and industry service providers. AFMA welcomes the opportunity to comment on the proposals in Treasury's discussion paper on designing a Tax System Advisory Board (TSAB).

1. Background

The proposal for a TSAB follows from the Australia's Future Tax System Review's recommendation¹ and a commitment by the Government in August 2010 to establish a board to advise the Commissioner and the ATO Executive Committee:

- on the strategy, direction, culture, organisation, management, compliance planning, staff profile and information technology plans at the ATO; and
- by providing a new, direct and in-built voice for business and taxpayer communities in relation to ATO decision making and culture.

The Government has observed that Australia's tax system will face many new challenges over coming decades that will affect how tax policies are developed and how tax laws are administered and interpreted.

¹ The Australia's Futures Tax System Review recommendation 115 is: *A board should be established to advise the Commissioner of Taxation on the general organisation and management of the ATO. The board would not be a decision-making body and would have no role in interpreting the tax laws or examining individual taxpayer issues. The government would appoint members to the board.*

AFMA agrees that a properly constituted and resourced advisory board would contribute to a more open and transparent tax environment, thereby promoting greater trust and confidence in the operation of the tax system. We consider this to be a desirable progression in the development of the tax system for a number of reasons, including the changing nature of tax administration.

We believe there is considerable value in an effective industry consultation process and note the range of consultation forums that ATO currently operates. AFMA participates in several such consultation and liaison forums and has bilateral meetings with ATO. While these forums are helpful in promoting dialogue between ATO and taxpayers at the industry level and can help to resolve many issues; in our experience, they do not provide a mechanism through which all of the issues raised by industry participants can be dealt with effectively. Thus, we think an effective TSAB would be a useful and necessary adjunct to the current ATO dialogue with the industry.

2. Significant Aspects of the Operational Setting for a Tax System Advisory Board

The TSAB could assist ATO to achieve its aim of closer ongoing engagement with business taxpayers through 'real time' tax compliance arrangements. For instance, the management of tax administration and the conduct of compliance activities by ATO, in the context of the enhanced relationship that it seeks with business, will need to fully align with this objective at all levels of ATO's operations. The TASB could provide useful advice and guidance to ATO in formulating and implementing its strategy in this area.

Another aspect is the greater international integration of national economies and financial markets, which presents a more complex and challenging world for tax authorities who have to obtain the necessary information for a proper assessment of taxpayer liabilities. The ATO has responded to this development through a range of measures to promote greater tax cooperation between it and overseas tax authorities on both a bilateral and multilateral basis; for example, through joint audits and through international bodies like the Joint International Tax Shelter Information Centre (JITSIC)². This is a sensible and necessary approach by ATO to protect tax revenue. However, international cooperation by revenue authorities presents new challenges to ensure that the tax system works efficiently and that taxpayers are treated in a fair and reasonable manner.

The role of a TSAB is more important against this backdrop of ATO expanding its active cooperation with foreign revenue authorities. Given their bilateral and multilateral nature, oversight of these international arrangements is more difficult than purely domestic arrangements and transparency to date is limited. For example, while the Joint Committee of Public Accounts and Audit plays an important oversight role for ATO, it does not appear to be well placed to provide ongoing oversight and review of institutions and arrangements that involve international tax authorities.

² JITSIC is a cooperative arrangement with the revenue authorities of Canada, UK, USA, China and Japan to deter abusive tax schemes. It enhances cooperation and collaboration between the members in sharing of information, intelligence and risk assessments about abusive tax arrangements.

In this context, a TSAB could provide helpful advice and guidance to ATO on its strategy and the operational mechanisms it adopts to achieve the balance in arrangements that is necessary to sustain confidence in the fairness and efficiency of the Australian tax system as it integrates with overseas tax systems.

More generally, we have from time to time encountered situations where ATO's approach to taxpayers as a group and its technical capability in relation to industry affairs might benefit from advice from a TSAB. It could also be a useful mechanism to improve external review of ATO's administration of the tax law and, in particular, its approach to specific industries and markets. While a TSAB would not of itself have a direct role in the governance of ATO, its reports and activities would most likely assist oversight bodies, including Parliamentary committees.

3. TSAB Design Issues

The Government announced on 5 August 2010 that the TSAB would be similar to a strategic private-sector style board and would be made up of non-government members. The TSAB is to provide a new, direct and in-built voice for the business and taxpayer communities in relation to ATO decision-making and culture.

It is appropriate that the Commissioner should continue to be responsible and accountable for administering the relevant tax, superannuation and other laws and we believe this should be done in a manner consistent with maintenance of a fair and efficient tax system. We agree that the TSAB should not be involved in the interpretation of the law or in the affairs of individual taxpayers.

However, we have identified a number of areas for improvement to the proposed arrangements for a TSAB in the discussion paper that would increase its effectiveness in addressing the needs of taxpayers and in meeting the Government's objectives.

The discussion paper sends unclear messages on the role of the TSAB. It could be read to suggest that the role of the TSAB would be wholly internal to ATO and it has no purpose in relation to ATO's compliance processes. However, the management of conduct of compliance activities is one of the areas where, on the basis of our experience, we feel the TSAB could make a helpful contribution to the ongoing efficiency and effectiveness of ATO's administration of the tax system. In administering the tax law, the ATO must make decisions and choices that can have broad implications for taxpayers. The tax system, including ATO's administration of the tax laws, have real impacts on the economy and an effective TSAB could provide guidance and advice to ATO that would help it to understand the nature of these impacts and how it might conduct its operations to achieve its objectives at least cost to economic activity.

Against this backdrop, we think the TSAB should be authorised to advise the ATO on its approaches to compliance risks and the way the ATO might best operate in terms of tax system efficiency.

We agree that the TASB should provide advice in relation to internal ATO matters but we are not certain if it is intended that this should be read to include its operational relationship with other tax administrations, including those overseas authorities with which ATO has established institutionalised relationships. The terms of reference for the TSAB should include a statement that the scope of its advice does encompass the strategy and approach adopted by ATO in administering the law in this area.

The discussion paper proposes that the Tax Commissioner would chair the TSAB. We think the tax system would be better served by an independent Chair. While acknowledging the orientation of the ASX Corporate Governance Council's principles and recommendations is towards listed companies, we think its recommendations³ that the Chair of a board should be an independent director and that the roles of chair and chief executive officer should not be exercised by the same individual are relevant to the TSAB, which is intended to be a strategic private-sector style board. While the TSAB should not compromise the independence of the Commissioner in administering the law, neither should the design of the TSAB limit the potential of the TSAB to fulfil its advisory role to ATO.

In addition, we believe the TSAB should be provided with the authority to require ATO to provide the necessary resources at a level and in a manner that enables it to fulfil its role or alternatively the secretariat and other support services necessary for the TSAB to operate should be provided independently of ATO. We agree with the Government that the costs of the TSAB should be met from within the existing resources of the ATO.

We believe that the Government should appoint TSAB members. The TSAB would be less likely to be able to set its own agenda and achieve its full purpose if the Commissioner were to appoint its members (this is one of the options proposed in the discussion paper). In the absence of this approach, the TSAB would not have the desired level of independence and would in effect operate more like an internal committee of the ATO.

The TSAB should be structured in such a way that its members collectively have a proper understanding of, and competence to deal with, the issues it is presented with. This will leave it best placed to identify and prioritise issues and to promote enhanced performance by ATO. The discussion paper proposes limiting membership of the TSAB to senior business people who have had experience in managing large complex organisations from corporate, government or not-for-profit bodies. We believe it is appropriate to seek persons of this calibre and to seek people with experience in key industries, which should include financial services. However, the TSAB appointment criteria should not exclude the potential to appoint retired or current tax professionals of high standing in the industry, who meet all of the other checks in relation to ethical standards etc. Their experience would complement the expertise of the other board members who would be less likely to have an in depth working knowledge of the tax system.


³ Recommendation 2.2 and 2.3;

http://www.asx.com.au/documents/about/cg_principles_recommendations_with_2010_amendments.pdf

4. Concluding Comments

Thank you for the opportunity to provide feedback on the proposals in the discussion paper. We hope that our comments and suggestions are helpful to you in finalising the design of the TSAB. We would be happy to address any queries you may have in relation to our comments.

Yours sincerely

A handwritten signature in black ink, appearing to read "David Lynch". The signature is written in a cursive, slightly slanted style.

David Lynch
Head of Policy and Markets