



Business
Coalition for
Tax
Reform



18 September 2009

Dr Ken Henry AC
Chair
Review Panel
Australia's Future Tax System
The Treasury
Langton Crescent
Parkes, ACT. 2600
AUSTRALIA

Dear Dr Henry

Establishment of an ATO Oversight Board

This is a joint letter from the Business Council of Australia (BCA), the Business Coalition for Tax Reform (BCTR), the Group of 100 (G100) and the Corporate Tax Association (CTA).

We write to you in the context of the Review of Australia's Future Tax System and would like to specifically raise the merits of establishing an Oversight Board for the Australian Taxation Office (ATO).

All four associations, (the BCA, the BCTR, the G100 and the CTA) have lodged submissions to the AFTS Review which favour consideration of reform to the ATO's governance arrangements and in particular the need for an ATO Oversight Board.

The purpose of this letter is to further emphasise the importance that our four associations place such an arrangement and outline some additional thoughts on the responsibilities that an ATO Oversight Board might take on.

The Australian Taxation Office is already a large and multi-faceted enterprise. To strengthen it further – and to ensure that it is better able to deal with the challenges that lie ahead - we consider that it would benefit from a public company governance model, suitably modified to take account of its public service responsibilities. Moreover, the size and multi-faceted nature of the ATO is likely to be further challenged in the event that its revenue raising responsibilities are extended to include state, territory and local government collections.

As you will be aware, the Internal Revenue Service in the United States has an Oversight Board, as created by the *IRS Restructuring and Reform Act of 1998*. We understand that this arrangement - intended to improve the IRS so that it better serves the public and meets the needs of taxpayers – has been a successful enhancement to the system, and believe that a similar arrangement could have a useful application in the Australian context.

We would see a new ATO Oversight Board as having both general oversight responsibilities and also a range of specific responsibilities.

- The ATO Oversight Board could have general responsibilities to oversee the ATO in its administration, management, conduct, direction, and supervision of the execution and application of Australian tax laws. It could also be required to ensure that the organisational structure and operation of the ATO allows it to carry out its mission.
- Specific responsibilities of the ATO Oversight board could include a requirement to review and approve the strategic plan of the ATO including its mission and objectives, and expected standards of performance. It could be required to review the operational functions of the ATO including its plans for modernising its operations, any outsourcing and plans for training and education. Similarly it could be required to review and approve the ATO's budget request prior to the submission of the request to the Government as part of established budget processes.

The ATO Oversight Board would not have responsibilities or any authority in relation to the development and formulation of tax policy, specific enforcement activities of the ATO, or involvement in procurement activities.

We also recognise the importance of ensuring that the Oversight Board does not add an additional layer of bureaucracy and simply duplicate existing advisory arrangements. Moreover, we do not envisage that the Oversight Board would have responsibility for appointing the Commissioner of Taxation – that properly is and should remain a function of the Government. We would suggest however that the Oversight Board could be consulted as to its views on the suitability of candidates being considered for the role of Commissioner of Taxation and likewise, consulted on the suitability of candidates for other senior roles within the Australian Taxation Office. One variant would be for the Oversight Board to recommend to the Government suitable candidates for appointment.

We believe that the establishment of an Oversight Board would provide the following important strategic benefits:

1. Source of commercial guidance and advice

A strong commercial source of guidance for the Commissioner on matters that would be relevant to him running what is one of the largest commercial undertakings in the country. In this context, we would see the Board being comprised of predominantly non-tax technical business men and women who would have skill sets in IT, human resources, risk management, and other commercial skills sets that would be of value in guiding the Commissioner and his management team.

2. Assistance and advice on framing the culture of the ATO

Assistance and advice to the Commissioner in framing the "culture of the ATO" including the mix of employees with public service background compared with a commercial background. Building on the specific responsibilities outlined above, the Oversight Board could have input in the setting of the key performance indicators of senior ATO personnel to ensure that the performance and reward structure is consistent with the key objectives set by Government for the ATO, including the objective and unbiased application of the Rule of Law; the absolute integrity of all aspects of Tax System administration; and dealing with the tension that often arises between the interpretation of black letter laws versus Government policy settings which typically seek to encourage both domestic and foreign investment in Australia.

3. Catering for State and Territory Stakeholders

All four associations have advocated the use of one national tax collection agency – namely the ATO – for the collection of state taxes in order to provide efficiencies; harmonisation with respect to legal interpretation; as well as consistency in compliance and administration. As a result, the Board could also provide oversight governance from a State perspective. The States, as very interested stakeholders in the effective administration of the law by the ATO in respect of State tax collections, would therefore have a means of representation (even if it was one member as representative for all States and Territories) for the interests of State and Territory Treasuries.

The Global Financial Crisis has demonstrated that the quality of institutions - in terms of transparency, independence, objectivity, professional expertise, and market connectivity – is one of the most critical determinants of a country's ability to withstand the contradictory forces at play in the market place.

In a complex global environment with sophisticated participants and products, the ATO must develop into a best-in-class organisation. The addition of a strong and much more supportive governance, culture and risk oversight framework for the ATO has the potential to make a significant contribution in this regard.

For this reason, the BCA, the BCTR, the G100 and the CTA strongly believe that the review of Australia's Future Tax System should include a consideration of the establishment of an Oversight Board for the ATO.

Should you have any comments or questions, please do not hesitate to contact any of the undersigned representatives.

Yours sincerely



Signed by the BCA



Signed by the BCTR



Signed by the G100



Signed by the CTA

Copy:

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