11: Tax system governance

Overview

This chapter considers the governance arrangements Australia has in place to support the sound design, maintenance and administration of the tax system.

Key points

- Governance institutions and arrangements apply across the tax system, including at the policy design, legislative, administrative and appeals stages.
- In Australia, decisions on tax policy are made by the Government and the Parliament, with formal policy advice provided by the Treasury, in consultation with the ATO. Further advice is provided by many different groups, including tax practitioners, industry groups, think tanks, members of the public and the media.
- A range of possible reforms to tax system governance could be considered to increase certainty, improve consultation processes and enhance public understanding of tax policy and administration.

11.1: Why is tax system governance important?

Governance is important because it promotes sound decisions regarding the design, maintenance and administration of the tax system. Examining governance arrangements will clarify how decisions are currently made and how they could be made better.

Tax system governance encompasses the institutions that design, implement and govern the administration of the system, including parliamentary and executive bodies. It has important implications for the way the tax system evolves and how changes are announced and implemented. This chapter examines tax system governance at the federal level of government in Australia.



11.2: How is tax policy made in Australia?

Given the coercive nature of the taxation power of governments, making tax policy in Australia is closely tied to democratic processes. Unlike monetary policy, there is no entity independent of the Government and the Parliament that makes key decisions on tax policy. Instead, decisions are made by the Government and the Parliament.

While tax policy in Australia is proposed by government ministers and is enacted by the Parliament of the day in the form of Australia's tax and superannuation laws, and the ATO administers those laws, tax policy ideas are increasingly advocated and debated by the broader community. Policy positions are advanced by, among others, tax practitioners, industry groups, electoral parties, parliamentary inquiries, academics, think tanks, lobby groups, tax representatives, the OECD, the IMF and the media. Reviews of the tax system (for example, the reviews led by Asprey, Ralph and Henry)²⁴⁰ also play an important role in advancing policy ideas.

It is the Treasury's role to formulate and provide advice to the Treasurer and other portfolio ministers on tax policy. This includes the production of regulation impact statements (RIS) and official costings, which together with the overall revenue forecasts, underpin government budgets. All of these activities are undertaken in close conjunction with the ATO, the statutory authority responsible for the administration of Australia's tax and superannuation laws and the Australian Government's principal revenue collection agency.

Following government endorsement, tax policy changes require parliamentary approval to become law.

Is uncertainty in tax policy a problem?

A range of business groups have expressed concern about uncertainty in tax policy and the negative impact this has on business sentiment.²⁴¹ They draw attention to the rapid pace of change in tax policy and argue there are too many retrospective tax laws and too many announced tax policy decisions, not yet enacted by Parliament.²⁴²

Uncertainty may also partly stem from efforts by taxpayers to test the full extent of the tax law. In these circumstances, the courts have the role of interpreting the law to determine disputes between the Commissioner of Taxation and taxpayers, and the outcomes may not accord with the expectations of the parties.

²⁴² Chartered Accountants Australia and New Zealand 2012, Retrospective tax legislation, viewed 9 December 2014: www.charteredaccountants.com.au/News-Media/Charter/Charter-articles/Reporting/2012-03-Retrospective-Tax-Legislation.aspx.



²⁴⁰ Asprey, K (Chairman), Lloyd, J, Parsons, R and Wood, K 1975, *Taxation Review Committee — Full Report (The Asprey Review)*, AGPS, Canberra; Australian Government 1999, *Review of Business Taxation, A Tax System Redesigned (The Ralph Review)*, Australian Government, Canberra; and Australian Government 2010, *Australia's Future Taxation System Review*, (Henry Tax review), Australian Government, Canberra.

²⁴¹ Nasser, J (Chairman BHP Billiton) 2012, 'Australia — The Global Context' Address to Australian Institute of Company Directors, 16 May 2012, Sydney.

Is a lack of transparency and consultation a problem?

A related argument posits that limited transparency and consultation in the development of Australian tax policy results in poorer quality policy.

Concerns about uncertainty and insufficient transparency and consultation are neither entirely new nor confined to Australia (see Decision making processes in New Zealand and the United Kingdom in section 11.3).

In Australia, successive governments have sought to improve consultation arrangements. Since the early 2000s, there has been a significant increase in stakeholder consultation on tax issues. The vast bulk of this consultation occurs on specific policies after announcement, although regular general consultations are also undertaken. In addition, while tax policy decisions are classified until the Government makes a formal announcement, for example on Budget night, targeted and confidential consultations with stakeholders are undertaken on more complex proposals before a final decision is made so that the proposed policy meets its objectives. These consultation processes remain confidential following the budget process.²⁴³

Australian Government departments are also required to provide information in public RIS on how recommended regulatory changes, including taxation changes, will be implemented, monitored and reviewed. In addition, post-implementation reviews, initiated within one to two years of implementation, are required for all regulations that have a major economic impact or that initially proceeded without a compliant RIS. In addition, tax review bodies (for example, the Board of Taxation) add to the transparency of decision making by conducting specific post-implementation reviews as well as reviewing the activities of the ATO.

Discussion questions:

63. What changes could be made to provide greater certainty, transparency and accountability to tax policy development in Australia?

What are the tax review bodies in Australia?

Successive governments have introduced tax review institutions and practices aimed at improving the quality of tax policy. For example, the Board of Taxation was established in 2000 following the Ralph review to facilitate greater involvement of the private sector and the broader community in tax policy development. Table 11.1 lists the tax review bodies in Australia.

²⁴³ Heferen, R, Mitchell, N and Amalo, I 2013, 'Tax Policy Formulation in Australia', *Canadian Tax Journal*, vol. 61, issue 4, pages 1011-29.



Table 11.1 Federal tax review bodies in Australia

	Туре	Purpose
Board of Taxation www.taxboard.gov.au Established in 2000.	Non-statutory advisory body	The Board advises the Treasurer on improving the general integrity and function of the taxation system. It provides business and broader community perspectives.
Inspector-General of Taxation www.igt.gov.au/ Established in 2003.	Independent statutory agency	Identifies systemic issues in tax administration and reports to the Government with recommendations for improving tax administration. Will also handle tax complaints. Does not review tax policy.
Australian National Audit Office www.anao.gov.au Office of the Auditor-General established in 1901. The ANAO's audit independence and mandate were strengthened in 1997.	Independent statutory agency	Undertakes financial statement audits and performance audits examining the efficiency and administrative effectiveness of the ATO's administration of the tax system.
Parliamentary		
Parliamentary Budget Office www.aph.gov.au/About_Parliament/ Parliamentary_Departments/Parliament ary_Budget_Office Established in 2011.	Parliamentary department	Informs the Parliament by providing independent and non-partisan analysis of the budget cycle, fiscal policy and the financial implications of proposals.
Senate Standing Committee on Economics www.aph.gov.au/senate_economics	Committee of the Parliament of Australia	Investigate specific matters of policy, government administration and performance.
House of Representatives Tax and Revenue Committee www.aph.gov.au/Parliamentary_Business/ Committees/House/Tax_and_Revenue Established in 2013.	Standing Committee of the Parliament of Australia	May enquire into and report on any matter referred to it by either the House or a Minister. The Committee regularly hears public evidence from the Tax Commissioner on issues in the tax system and the ATO's performance.



Are current tax review arrangements effective?

In Australia, there are some concerns that tax review arrangements are not as effective as they could be. In particular, concerns have been raised about overlapping governance arrangements and scrutiny of administrative decisions.

Both the Australia's Future Tax System (Henry) review and the Commission of Audit²⁴⁴ identified overlaps between tax review bodies. In particular, both reviews highlighted overlap between the functions of the Taxation Ombudsman and the Inspector-General of Taxation. In the 2014-15 Budget, the Government announced that the tax complaint handling function of the Taxation Ombudsman will be transferred to the Inspector-General of Taxation.

A different type of concern relates to the degree of scrutiny of ATO decisions and the separation between the ATO's administrative and review/appeals functions. The ATO has introduced arrangements for the independent review of disputes between the ATO and large taxpayers in response to these concerns.

Discussion questions:

64. Are current tax review arrangements appropriate? How could they be improved?

11.3: Improving decision making

In addition to possible changes to existing governance institutions, there are a number of different reform options that might further improve decision making. These include reforms that have been adopted overseas to provide greater certainty and transparency for taxpayers, and reforms to introduce greater contestability by releasing more tax data and information about revenue costings.

Decision making processes in New Zealand and the United Kingdom

Both New Zealand and the United Kingdom have processes for developing tax policy in a staged and transparent way. In New Zealand, these processes are long-standing, widely supported by stakeholders and embedded. Reforms in the United Kingdom are less established, having been introduced in 2010.

In broad terms, governments in both countries commit to: setting out their revenue strategy before announcing any particular reforms; formal consultation with interested parties at each key stage of policy development; and to limiting any additional tax policy announcements

²⁴⁴ National Commission of Audit 2014, Towards Responsible Government, Australian Government, Canberra.



outside this process.²⁴⁵ In the United Kingdom, the government's performance against its consultation framework is monitored by the Tax Professionals Forum. In addition, the Office of Tax Simplification (see Box 11.1) supports the implementation of this relatively new approach to tax policy making by providing advice on ways to reduce complexity in the tax system (see Chapter 10 for further discussion of complexity in the Australian tax system).

Box 11.1: Office of Tax Simplification²⁴⁶

The Office of Tax Simplification, established in the United Kingdom in 2010, is an independent office of HM Treasury that provides advice to the Chancellor about addressing complexity in the tax system. The Office is led by a board of four members, including an independent Chair and Tax Director, supported by public and private sector secondees.

The Office publishes individual reports on its inquiries, which are presented to Parliament. Board members may be required to give evidence before Parliamentary committees on these reports.

Increased access to tax data and costings

Several academics, including Wales and Wales,²⁴⁷ point to confusion and debate around statistics commissioned and released by non-government bodies, particularly the selective release and publication of data. They argue this confusion could be avoided by publicly releasing more tax data. Others highlight the example of Denmark, which makes available de-identified data on individuals, families and companies, dating back decades, and the rich policy-relevant research that flows from this data.²⁴⁸

Releasing more information around revenue costings might also increase transparency and improve the quality of debate about tax issues. In this regard, since 2010, the United Kingdom has published one to two page costings for all new tax, tax credit and welfare policy decisions. These documents include: a description of the measure; the methodology and data sources used; a 'no change' (or static) costing; a post-behavioural change costing (which includes any behavioural changes resulting from the tax change); and an indication of the level of uncertainty surrounding the costing.²⁴⁹

²⁴⁹ HM Government 2014, *Budget 2014: policy costings*, United Kingdom Government, London, viewed 9 December 2014: www.gov.uk/government/uploads/system/uploads/attachment_data/file/295067/PU1638_policy_costings_bud_2014_with_correction_slip.pdf.



²⁴⁵ Inland Revenue Department of New Zealand, *How we develop tax policy*, viewed 14 November 2014: http://taxpolicy.ird.govt.nz/how-we-develop-tax-policy; and HM Treasury, and HM Revenue and Customs 2010, *Tax policy making: a new approach*, United Kingdom Government, London.

²⁴⁶ Office of Tax Simplification, *Homepage*, viewed 9 December 2014, www.gov.uk/government/organisations/office-of-tax-simplification.

²⁴⁷ Wales, C J and Wales, C P 2012, Structures, processes and governance in tax policy-making: an initial report, Oxford University Centre for Business Taxation, Oxford.

²⁴⁸ Card, D, Chetty, R, Feldstein, M, and Saez, E 2011, 'Expanding access to administrative data for research in the United States', in Schultze, C and Newlon, D eds, *Ten Years and Beyond: Economists Answer NSF's Call for Long-Term Research Agendas*, American Economic Association, Pittsburgh.

In Australia, recent reforms have generated greater transparency around tax data and costings. These include the release since 2009 of a 'reliability score', based on the reliability of data and underlying assumptions, for tax expenditures in the annual Tax Expenditure Statement. In addition, since 2009, the ATO has produced and released a confidentialised 1 per cent sample file containing individual tax return information. This has recently been broadened to a 2 per cent sample file containing a wider range of information.

The main downside of these reforms is their additional resourcing costs, which are ultimately borne by taxpayers. In addition, privacy concerns have inhibited the release of further data on the tax system.

Discussion questions:

- 65. Could the arrangements for developing tax policy in Australia be improved? If so, how?
- 66. Would the benefits of releasing more tax data and detail around costings outweigh the costs?

