

Tax Policy Formulation in Australia

Rob Heferen, Nicole Mitchell and Ian Amalo¹

This paper (with subsequent minor editing changes) was submitted to the Canadian Tax Foundation Tax Policy Roundtable held in Ottawa on 20 June 2013.

¹ The authors are from Revenue Group, the Australian Treasury. This paper benefited from comments and suggestions provided by Gerry Antioch, Graeme Davis and Andre Moore.

Introduction

Just as Australia's political system is a unique mix of elements, some drawn from other countries and others developed domestically, our tax system has a unique character. Australia's representative democratic system is key to that character² and informs the development and assessment of tax reform ideas.

In this regard, tax policy making is different to monetary policy making in Australia. There is no tax entity independent of Government that plays a role similar to that played by the Reserve Bank of Australia in setting monetary policy. In contemporary Australia, tax policy is an increasingly contested policy debate. Tax debates often concern trade-offs between different values and priorities and so tax policy making appropriately sits with elected officials.

Successive governments have introduced a range of innovative institutions and practices aimed at improving the quality of tax policy making in Australia, including greater involvement of the private sector, extensive consultations and accountability mechanisms.

This paper focuses solely on tax policy making by the Australian Government. This is not to suggest that an examination of tax policy formulation by the Australian states and territories would be unwarranted. The Australian states, territories and local governments levy a range of taxes in their own right (accounting for around 20 per cent of total tax revenue) and have undertaken important reviews and reforms in recent years. In the interests of brevity, however, the ensuing discussion will focus on the Commonwealth level.

Section 1: Stages in Tax Policy Formulation

1a Development stage

Under Australia's parliamentary system, government is formed by the party with control of the House of Representatives (the lower house or the 'house of government'). Ministers are appointed from both the House of Representatives and the Senate (the upper house or 'house of review') to form the executive government, with policy decisions made by Cabinet (see section 1b for a discussion of the Senate's role as a house of review). Ministerial responsibility for tax policy lies with the Treasurer, who also has a range of other Ministerial responsibilities, including for economic, fiscal and monetary policy. The Treasurer is supported by the other Treasury portfolio ministers.

² Australia is a federation, with three levels of government - the federal Australian Government (or the Commonwealth Government), the governments of the six states and two territories, and around 700 local government authorities. One of two major political groups usually forms government, federally and in the states - the Australian Labor Party (the centre-left party), and the Coalition, which is a formal grouping of the Liberal Party and its minor partner, the National Party (the centre-right parties).

Ultimately, the power to make tax laws rests with the Parliament. It is rare in Australia for the government to have a majority in the Senate and so legislation often needs the support of senators from the opposition or minor parties to become law.

Under Australia's cabinet system of government, the Cabinet (which is comprised of senior ministers) is the key decision-making body of government. While Cabinet's make-up and internal processes are subject to the Prime Minister's prerogative, and the shape and arrangements have changed over time, a core feature is that all major policy proposals are considered by Cabinet.

Tax policy development is a highly contested space. Reform, research, and policy options are generated by a multitude of sources, including electoral parties, Senate inquiries, academics, think tanks, lobby groups, tax representatives and the media. Governments have recognised this increasingly contested policy environment by ensuring the Treasury undertakes greater policy consultation, including early 'non-transactional' engagement, to be in a position to provide more comprehensive advice.³ The (former) Government also commissioned a comprehensive tax review and established an independent tax studies institute to improve the quality of public debate on tax reform. Section 4 outlines recent improvements in tax policy consultation processes. As the Department that serves the Treasurer, Treasury is the most influential public sector advising body on tax, but of course its influence varies according to the precise nature of each issue.

Other processes for generating ideas, information gathering and identifying solutions within government are discussed in detail in Section 2, which steps through the roles played by Treasury and the Australian Taxation Office (ATO), highlights recent efforts to improve communication between the two agencies, and discusses Australia's history of tax reviews.

The Australian Government requires that regulatory impact analysis be undertaken by responsible departments to inform all decisions, including tax policy changes, which are likely to have a regulatory impact on business or not-for-profit organisations, other than those with minor impacts. This analysis involves consideration of impacts, costs and benefits of proposed regulatory options and is provided to the relevant decision maker (for example Cabinet) along with the policy proposal, unless an exemption is granted by the Prime Minister for exceptional circumstances.

Tax proposals typically attract additional requirements, including that they are proposed by the Treasurer. In practice, the great bulk of tax policy is developed and

3 <http://www.treasury.gov.au/About-Treasury/OurDepartment/Strategic-Review-of-the-Treasury>.

evaluated during the annual Budget process, although significant policy measures are increasingly being introduced through the mid-year budget update process.

As outlined above, while the exact arrangements differ from government to government, it is fair to describe the budget process as an iterative one. Budget bids are first submitted to senior Ministers (typically the Prime Minister, Treasurer and the Minister for Finance and Administration) in October and costed proposals are considered by senior Ministers between February and April through the Expenditure Review Committee, a formal sub-committee of Cabinet with delegated authority to make decisions. By tradition, the Budget for the next financial year is delivered by the Treasurer to the Parliament on the second Tuesday of May.

It is worth noting here that while Budget decisions are classified until Budget night, targeted and confidential consultations with stakeholders are undertaken on more complex proposals prior to a final decision to ensure the proposed policy meets its objectives. These consultation processes remain confidential following the budget process.

Once a decision requiring legislative change is made, the Treasury is responsible for instructing legislative drafters in the Office of Parliamentary Counsel on tax matters, producing explanatory materials and regulation impact statements for tabling, conducting community consultation on tax policy, managing the legislation program, and assisting the Government to secure passage of bills through the Parliament. In short, the Treasury has a central role in ensuring that legislative products match their policy intent.

1b Legislative stage

For a tax bill to become an Act, it must be passed in the same form by the House of Representatives and the Senate and then assented to by the Governor-General. Section 53 of the Australian Constitution prevents bills which authorise the spending of money (appropriation bills) and bills imposing taxation from originating in the Senate, so all tax bills must originate in the House of Representatives.

Despite this constitutional restriction, the Senate's role in tax policy remains important. This is because the Senate performs a well-developed 'house of review' function through its committees, with tax policy considered by the Senate Standing Committee on Economics. Notwithstanding some fluctuations, the number of bills referred to Senate committees has trended upwards in recent decades.

1c Post-implementation review stage

As part of the regulation impact analysis, described above, departments are required to provide information on how the preferred regulatory option will be implemented,

monitored and reviewed. More formal post-implementation reviews, initiated within one to two years of implementation, are required for all regulation that initially proceeded without a compliant regulation impact statement.

In addition, specific post-implementation reviews on tax policy are conducted by the Board of Taxation. The Board of Taxation, which was established following the 1999 *Review of Business Taxation* (the Ralph Review), is a non-statutory advisory board charged with providing advice to Government from a business and broader community perspective on improving the design and operation of taxation laws. As part of its functions, the Board also conducts post-implementation reviews of legislation to assess their quality and effectiveness. Since its establishment in 2000, the Board of Taxation has conducted 29 reviews and consultations, with six of these reviews covering the post-implementation phase.

Section 2: Government departments with a role in tax policy formulation

Section 1 has already touched on the Treasury's role in developing tax legislation. More generally, the Treasury has primary responsibility for advising on tax policy. In advising on tax policy, the Treasury formulates and provides advice to government on options, produces regulation impact statements and prepares 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 taxation and superannuation laws and the Government's principal revenue collection agency.

In recognition of the importance of the relationship between the ATO and the Treasury, in September 2012 the Secretary to the Treasury and the former Commissioner of Taxation substantially redrafted the *Treasury and the Australian Taxation Office – Tax and Superannuation Protocol*.⁴ The Protocol aims to improve the working arrangements between the Treasury and the ATO. It is applied in the design of new policies and laws that form part of these systems, and in the administration of that law once enacted.

Tax Policy Reviews

Australia has a rich history of tax policy reviews. The *Taxation Review Committee full report* (the Asprey review), released in 1975, was seminal and marked a watershed moment in the realm of tax policy reviews. Justice Ken Asprey's review shifted the emphasis away from tax policy motivated solely by revenue adequacy to fund

4 <http://www.ato.gov.au/General/New-legislation/In-detail/ATO---Treasury-protocols/ATO---Treasury-protocol/>.

growing public provision to a greater focus on improving the equity, efficiency and simplicity of the tax system.

A key theme of the Asprey Review was the need to broaden the tax base. Key reforms recommended by the Asprey Review were implemented over the next two decades, including capital gains tax and fringe benefits tax (in the late 1980s) and the goods and services tax (in 2000). Other reviews, including the 1999 Ralph Review and the 2002-03 *Review of International Taxation Arrangements* had more immediate policy impacts with reform packages announced alongside the review's public release or shortly thereafter.

More recently, a comprehensive review of the tax and transfer system, the *Australia's Future Tax System Review* (Henry Review), was conducted over 18 months in 2008 and 2009. The Henry Review added the design principles of policy consistency and sustainability to the principles identified by the Asprey review. The former requires that tax and transfer policy be internally consistent, while sustainability is about ensuring the tax system has the capacity to meet the changing revenue needs of government on a continuing basis without recourse to inefficient taxes.

Consistent with Australia's system of responsible government, tax reviews are provided to the relevant Minister. The Government decides on how to release the review and any policy decisions it wishes to make in response to the recommendations. While review panels do not make policy decisions, they do facilitate such decisions by identifying areas of concern in the tax system and promoting public discussion about tax reform.

Section 3: Resource allocation in Treasury

Within Treasury, Revenue Group formulates advice to the Government on taxation policy. The work of the group includes:

- analysis and the provision of advice to the relevant minister on tax and superannuation policy options and their economic and social impacts;
- the provision of revenue forecasts and costings of taxation policies;
- extensive policy-based and non-transactional consultations; and
- legislative support, including providing instruction to parliamentary counsel on the design of taxation laws and support for the passage of taxation legislation through Parliament.

Revenue Group accounts for over 20 per cent of Treasury staff members with nearly a sixth of Revenue Group staff engaged in preparing tax legislation. The group is

headed by an Executive Director and structured into seven divisions (Table 1), with almost half of the staff employed at the junior (that is, APS) levels.

Following a review last year into Revenue Group's capabilities, the Law Design Practice was established to better identify legislative priorities, and provide greater quality assurance of legislative products, as well as provide a clearer career pathway for specialist law design officers. Officers engaged in the Law Design Practice have legal qualifications and/or extensive experience in law design. In a similar vein, the overwhelming majority of officers engaged in Tax Analysis Division have specialist skills and are trained in economics and/or quantitative studies (mathematics, statistics or actuarial studies). Officers in the remaining divisions possess tertiary qualifications in law, economics, finance and/or statistics. As such Revenue Group employs both specialists and generalists, reflecting a need to strike a balance between both sets of skills. A few officers also have private sector experience.

Table 1: Staffing Resources in Revenue Group, Treasury^(a)

	Total Staff	SES	EL	APS
Tax System Division	19.87	2	5.27	12.6
Corporate and International Tax Division	30.4	5	11	14.4
Small Business Tax Division	17.88	0.8	6.8	10.28
Indirect, Philanthropy and Resource Tax Division	25.35	2	12.35	11
Personal and Retirement Income Division	31.55	3	14.64	13.91
Tax Analysis Division	45.47	3.6	19.87	22
Law Design Practice	30.25	1.73	12.52	16
Executive team	4.8	1	1	2.8
Revenue Group	205.57	19.13	83.45	102.99

(a) Full-time equivalent staff as at May 2013.

Note: SES=Senior Executive Service, EL=Executive Level, APS=Australian Public Service.

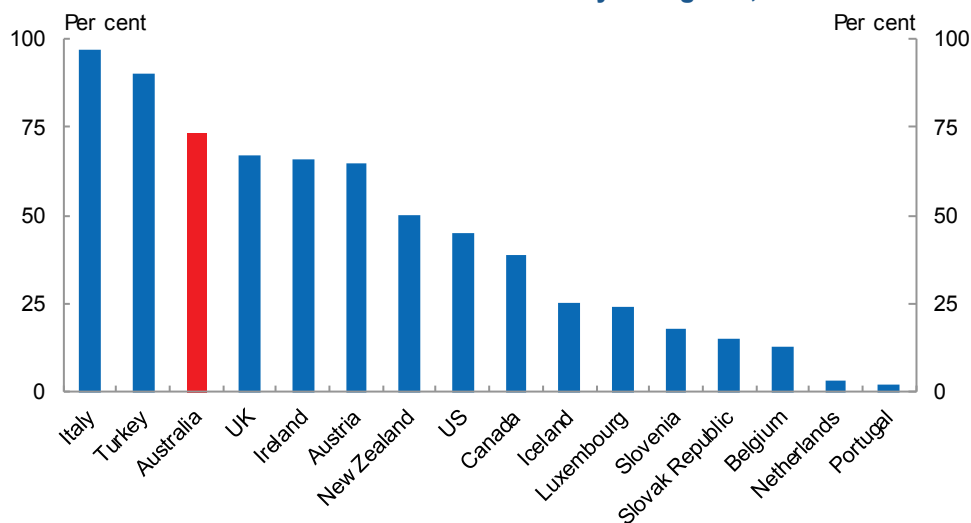
The Treasury has an active two-way secondment program with the ATO. This provides an opportunity for Treasury officers to gain direct experience of the administration of Australia's tax system and the implementation of tax policies, with the aim of enhancing an officer's overall skills in policy and legislative development. By the same token, ATO officers are routinely seconded to the Treasury to gain experience in tax policy development.

Revenue Group employs private sector consultants from time-to-time, most often to review existing processes or to provide technical assistance. Treasury has a program of temporary secondments from the private sector and also encourages such secondments in tax policy, particularly in the secretariat that the Treasury provides to the Board of Taxation. More generally, Revenue Group taps into the expertise of private sector tax specialists for specific projects on a paid consultancy basis.

Of course, it is not just government agencies that are devoting resources to the formulation of tax policy in Australia and the world more broadly. The 'Big Four' accounting firms derive between 20 and 30 per cent of their global revenues from the provision of taxation services and around 20 per cent of their workforce is employed in taxation – proportions that have remained broadly stable over the past few years. Based on their websites, similar magnitudes appear to apply to the Australian arms of these firms.

It is at least arguable that this extensive devotion of resources by the private sector results in more tax system complexity. While there is general confidence in the Australian tax system, a recent survey by Per Capita,⁵ which explored the public's attitude towards taxation and government expenditure, revealed that Australians find the tax system 'burdensome'. This finding seems consistent with the fact that over 70 per cent of Australian tax lodgers rely on tax agents to complete their personal tax returns – a proportion that has remained broadly unchanged over recent years. Among OECD countries, Australia has the 3rd highest rate of personal tax returns filed by tax agents (Chart 1).

Chart 1: Personal tax returns filed by tax agents, 2009



Source: OECD (2011) Tax Administration in OECD and Selected Non-OECD Countries: Comparative Information Series.

Section 4: Consultation

Until the early 2000s, tax policy consultations in Australia were infrequent and largely confined to administrative matters. Today, consultation forms an integral part of the tax design process, with a large number of measures subject to consultation in both the policy design and draft legislation phases.

5 http://www.percapita.org.au/_dbase_upl/2012TaxSurveyFinal.pdf.

Tax consultations serve a number of purposes and are subject to diverse influences. The major aims of consultation are:

- to act as a discovery process to provide valuable input on the most effective way to implement government policy, and to assist in minimising compliance and administration costs, as well as to avoid (to the extent possible) unintended consequences;
- to elucidate on the policy intent of proposed changes;
- to serve as a vehicle to formulate current and future tax policy, and
- to improve situational and strategic awareness to better inform Treasury thinking.

Both Treasury and the ATO have an active consultation program that focuses on the particular areas of responsibility of each agency. The ATO is a full participant in consultation arrangements undertaken by Treasury.

In the normal course of events, consultation involves the public release of an initial discussion paper, followed by an exposure draft of legislation or regulation. From time to time, however, consultation is more targeted, either to a public audience or to a more confidential group. Consultation on some measures may include more than one approach.

In the case of confidential consultations, participants are required to sign an undertaking not to divulge details of the consultation. However, if participants wish to discuss a confidential consultation with someone who is not a party to the consultation they can request that this party also be given the opportunity to sign an undertaking and participate.

Participants in targeted consultations are generally chosen because they have expertise in the area or because they belong to a group that may be specifically affected by the legislation. Responses can be in the form of discussions at meetings or written submissions.

Public consultations are open to the general public, including individuals. Such consultations may be advertised in newspapers and posted on the Treasury website. For open public consultations, discussion (or policy) papers and/or exposure drafts of legislation are generally prepared and made available. Submissions are sought in response to these papers and these are also frequently made public on the website.

The nature of tax consultations can be characterised by the state of knowledge of a particular matter by the Treasury and the ATO on the one hand, and by stakeholders

on the other. The 3x3 matrix (Table 2) depicts this graphically. The rows indicate the state of information Treasury and the ATO have about industry conditions and the columns indicate stakeholders' understanding of policy.

Table 2: Tax Consultation Characterisation Matrix

		STAKEHOLDERS	
		KNOW	DON'T KNOW
TREASURY/ATO	KNOW	<p>A Implementing well-understood policy in ordinary industry conditions</p> <p>For example—Basic care and maintenance; possibly deadlocked policy</p> <p><i>Basic consultation effort</i></p>	<p>B Implementing newish policy in ordinary industry conditions</p> <p>For example—Complex care and maintenance; anti-avoidance</p> <p><i>Above basic consultation effort; policy dissemination</i></p>
	DON'T KNOW	<p>C Implementing well-understood policy in new or changing industry conditions; overlapping regulatory domains</p> <p>For example—Tax consolidation care and maintenance</p> <p><i>Well above basic consultation effort; private sector experts supplement Treasury's knowledge base; layered consultation ensure integrity of consultation process</i></p>	<p>D Implementing newish policy in changing industry conditions; overlapping regulatory domains; new judicial doctrine</p> <p>For example—Resource rent tax, tax measures for carbon pricing</p> <p><i>Significant consultation effort; private sector experts supplement Treasury's knowledge base; layered consultation ensures integrity of consultation process, including drawing on international experience</i></p>

Cell A represents fairly routine, basic 'care and maintenance' law changes. These may arise from Treasury's/ATO's law fix registers or from stakeholder consultations. It could also represent situations of policy deadlock; progress is possible only by compromise and not necessarily through further consultation.

Cell B reflects complex 'care and maintenance' law changes that may well reflect more fundamental problems in tax law. Tax avoidance issues could be present.

Cells C and D represent complex situations where Treasury and the ATO do not have a good enough appreciation of industry conditions. This will tend to occur at turning points in the economic cycle, during periods of structural change (as is the case now) and when policy change spans overlapping regulatory domains.

Cell C represents situations where stakeholders are better informed about certain tax practices, including those that seek to undermine the policy intent of a measure. In such situations Treasury should draw on contracted private sector expertise. Treasury should also undertake multi-layered consultations that cover a range of interests affected by the policy measure to manage the risk that certain vocal and possibly influential voices do not unduly distort the stakeholder experience.

Cell D represents mutual lack of information. This situation would apply particularly to new taxes or when a judicial decision throws open an established way of thinking about a tax issue. In both situations, Treasury and the ATO should be learning together with stakeholders and should seek to be informed through multi-layered consultations and international experience, as appropriate.

In practice, tax consultations often entail multiple stages and approaches. For example, consultations on the Minerals Resource Rent Tax (MRRT) legislation were conducted in two stages – the detailed policy design led jointly by a Government minister and a senior industry representative, the second (more detailed legislative implementation) led by Treasury and involving a broader industry and practitioner group. This is partly because, while Treasury may often lead consultations, its role in such consultations is to listen to participants, advise the government on the views of stakeholders and provide policy advice. Treasury does not take policy decisions – that is ultimately the role of Parliament.

In addition to the well-developed program of consultations on announced measures, Revenue Group has in recent years conducted a program of biannual non-transactional consultations and has increased early stage pre-policy consultations with stakeholders. The Revenue Group stakeholder consultation program aims to supplement Treasury consultations on specific tax measures and to engage the taxpayer community in a wider conversation about strategic tax policy issues.

Similarly, the early stage consultations facilitate broader conversations about tax policy trade-offs. In the past two years, pre-policy consultations have been undertaken on the business tax system, base erosion and profit shifting and not-for-profit sector tax concessions. Each of these groups has been composed of a range of business, union and community sector representatives. While this diversity might make it more difficult for groups to reach consensus on tax policy recommendations, it does expose sectional interest arguments to appropriate scrutiny.

Section 5: Role of tax bodies

The tax system in Australia operates with a number of tax governance bodies (Table 3), each serving a perceived need. The ATO plays a central governance role as the Government's principal revenue collection agency and administrator of tax and superannuation laws.

The Parliamentary Budget Office is the latest independent governance body to become operational and will give Parliament the ability to better evaluate tax policy measures. The Parliamentary Budget Office is intended to inform the Parliament by providing independent and non-partisan analysis of the budget cycle, fiscal policy and the financial implications of proposals. It is relatively well-resourced (with currently

Tax Policy Formulation in Australia

around 25 staff employed, with the intention of employing between 30 and 35 permanent staff), has experienced policy officers among its ranks, and has access to Treasury data and models.

The 2013-14 Budget provided funding for a tax studies institute, as a centre for excellence collaborating with academics and institutions across Australia and overseas. Once operational, the Tax and Transfer Policy Institute is expected to raise the quality of national debate on tax reform and the awareness of taxation policy issues.

Table 3: Tax governance bodies in Australia

Organisation	Type	Purpose
The Australian Taxation Office	Independent statutory agency	The Government's principal revenue collection agency, and part of the Treasurer's portfolio. The ATO administers the tax and superannuation laws.
Board of Taxation	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. Established in 2000.
Inspector General of Taxation	Independent statutory agency	Identifies systemic issues in tax administration and reports to the Government with recommendations for improving tax administration. Does not review tax policy. Established in 2003.
Taxation Ombudsman	Independent statutory agency	Investigates complaints from taxpayers and tax professionals about the administrative actions of the ATO. Also uses information from complaints to identify potential systemic problems in tax administration. Established in 1995.
Australian National Audit Office	Independent statutory agency	Undertakes financial statement audits and performance audits examining the economy, efficiency and administrative effectiveness of the ATO's administration of the tax system.
Tax Practitioners Board	Independent statutory board	The Board is responsible for the registration and regulation of tax practitioners and for ensuring compliance with the <i>Tax Agent Services Act 2009</i> . Replaces six state based Tax Agents' Boards.
Tax and Transfer Policy Institute	Independent research centre	The institute will be established in 2013 as an independent centre for excellence at the Australian National University Crawford School of Public Policy.
Parliamentary		
Parliamentary Budget Office	Parliamentary department	Informs the Parliament by providing independent and non-partisan analysis of the budget cycle, fiscal policy and the financial implications of proposals. Established in 2011.
Joint Committee of Public Accounts and Audit	Statutory Committee in Parliament	Since 2007, JCPAA has conducted public hearings with the ATO Commissioner with respect to the administration of the tax system.
Senate Economics Committee	Statutory Committee in Parliament	Investigate specific matters of policy, government administration or performance.

Conclusion

The tax system is a fundamental part of Australia's social and economic infrastructure. This paper has outlined the role of key agencies, such as the Treasury and the Australian Taxation Office, as well as some of the more significant developments in governance and consultation arrangements in Australian tax policy formulation over the past decade. In all of that discussion, Australia's system of responsible government remains central. As such, tax policy decisions are always made by the democratically elected government of the day, and not by bureaucratic, academic or other elites.

