Tax Policy Formulation in Australia

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INTRODUCTION

Just as Australia’s political system is a unique mix of elements, some drawn from other countries and others developed domestically, its tax system also has a unique character. Australia’s representative democratic system¹ is key to that character and informs the development and assessment of tax reform ideas.

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¹ 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
In this regard, tax policy making is different from 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 tradeoffs 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 percent 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 federal (or commonwealth) level.

**STAGES IN TAX POLICY FORMULATION**

**Development Stage**

Under Australia’s parliamentary system, the 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 “the house of review”) to form the executive government, with policy decisions being made by Cabinet. (The Senate’s role as a house of review is discussed in a separate section below.) Ministerial responsibility for tax policy lies with the treasurer, who also has ministerial responsibility for economic, fiscal, and monetary policy (among other matters). The treasurer is supported by the other Treasury portfolio ministers. 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 system of government, the Cabinet (which is made up of senior ministers) is the key decision-making body of government. While the Cabinet’s makeup 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.

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around 700 local government authorities. One of two major political groups usually forms the 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).
Governments have recognized this increasingly contested policy environment by ensuring that the Treasury undertakes greater policy consultation, including early “non-transactional” engagement, in order to be in a position to provide more comprehensive advice. In recent years, the then Rudd government also commissioned a comprehensive tax review (the Henry review), and has established an independent tax studies institute at the Australian National University to improve the quality of public debate on tax reform. Governments have also made recent improvements in tax policy consultation processes (discussed later in this paper). As the department that serves the treasurer, the Treasury is the most influential public-sector advising body on tax, though its influence varies, of course, according to the precise nature of each issue.

Other processes for generating ideas, gathering information, and identifying solutions within government are discussed below, in the section describing the respective roles of the Treasury and the Australian Taxation Office (ATO) in formulating tax policy. That discussion highlights recent efforts to improve communication between the two agencies and outlines Australia’s history of tax reviews. The Australian government requires that a regulation impact analysis be undertaken by responsible departments to inform all decisions, including tax policy changes, that are likely to have a non-trivial regulatory impact on business or not-for-profit organizations. 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 the requirement that they be proposed by the treasurer. In practice, the great bulk of tax policy is developed and 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, the 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 subcommittee of Cabinet with delegated authority to make decisions. By tradition, the budget for the next financial year is delivered by the treasurer to 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

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more complex proposals prior to a final decision, to ensure that 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 in securing the passage of bills through Parliament. In short, the Treasury has a central role in ensuring that legislative products match their policy intent.

**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 that authorize 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 upward in recent decades.

**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 regulations 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 6 of those reviews covering the post-implementation phase.

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4 Commonwealth of Australia Constitution Act.

GOVERNMENT DEPARTMENTS WITH A ROLE IN TAX POLICY FORMULATION

The Treasury’s role in developing tax legislation has been outlined above. The Treasury also has primary responsibility for advising on tax policy; more specifically, the Treasury formulates and provides advice to government on policy options, produces regulation impact statements, and prepares official costings, which together with the overall revenue forecasts underpin the government’s 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.”6 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 the law once enacted.

Tax Policy Reviews

Australia has a rich history of tax policy reviews. The report of the Taxation Review Committee (the Asprey review) released in 19757 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 the adequacy of revenue to fund 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 Board of Taxation’s review of international taxation arrangements in 2002-38 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 Henry review,9 was conducted over 18 months in 2008 and 2009. The Henry review added

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8 Australia, Board of Taxation, Review of International Taxation Arrangements (Canberra: Board of Taxation, February 2003).
9 Supra note 3.
the design principles of policy consistency and sustainability to the principles identified by the Asprey review. Essentially, the requirement for consistency ensures that tax and transfer policy are internally consistent, while the requirement for sustainability ensures that 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 how the review will be released and what policy changes (if any) 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.

**RESOURCE ALLOCATION IN THE TREASURY**

Within the 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 tax legislation through Parliament.

Revenue Group accounts for over 20 percent of Treasury staff members, and nearly a sixth of the group’s staff are engaged in preparing tax legislation. The group is headed by an executive director and structured into seven divisions, with almost half of the staff employed at the junior (Australian public service, or APS) level (see table 1).

Following a review in 2012 of 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 the 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. Thus, 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.

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. The 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, more broadly, throughout the world. The Big Four accounting firms derive between 20 and 30 percent of their global revenues from the provision of taxation services, and around 20 percent of their workforce is employed in taxation—proportions that have remained generally stable over the past few years. Information on the websites of these firms suggests that similar allocations apply to their Australian operations.

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 that explored the public’s attitude toward taxation and government expenditure revealed that Australians find the tax system “burdensome.”10 This finding seems consistent with the fact that over

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TABLE 1  Staffing Resources in Revenue Group, Australian Treasury

<table>
<thead>
<tr>
<th>Division</th>
<th>Total division staff</th>
<th>SES</th>
<th>EL</th>
<th>APS</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Tax System Division</strong></td>
<td>19.87</td>
<td>2.00</td>
<td>5.27</td>
<td>12.60</td>
</tr>
<tr>
<td><strong>Corporate and International</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Tax Division</td>
<td>30.40</td>
<td>5.00</td>
<td>11.00</td>
<td>14.40</td>
</tr>
<tr>
<td>Small Business Tax Division</td>
<td>17.88</td>
<td>0.80</td>
<td>6.80</td>
<td>10.28</td>
</tr>
<tr>
<td>Indirect, Philanthropy and Resource Tax Division</td>
<td>25.35</td>
<td>2.00</td>
<td>12.35</td>
<td>11.00</td>
</tr>
<tr>
<td>Personal and Retirement</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Income Division</td>
<td>31.55</td>
<td>3.00</td>
<td>14.64</td>
<td>13.91</td>
</tr>
<tr>
<td>Tax Analysis Division</td>
<td>45.47</td>
<td>3.60</td>
<td>19.87</td>
<td>22.00</td>
</tr>
<tr>
<td>Law Design Practice</td>
<td>30.25</td>
<td>1.73</td>
<td>12.52</td>
<td>16.00</td>
</tr>
<tr>
<td>Executive team</td>
<td>4.80</td>
<td>1.00</td>
<td>1.00</td>
<td>2.80</td>
</tr>
<tr>
<td><strong>Total, Revenue Group</strong></td>
<td><strong>205.57</strong></td>
<td><strong>19.13</strong></td>
<td><strong>83.45</strong></td>
<td><strong>102.99</strong></td>
</tr>
</tbody>
</table>

a Full-time equivalent staff as at May 2013.

SES = senior executive service.

EL = executive level.

APS = Australian public service.

Source: Australian Treasury internal data.
70 percent of Australian tax lodgers rely on tax agents to complete their personal tax returns—a proportion that has remained broadly unchanged over recent years. According to data published by the Organisation for Economic Co-operation and Development (OECD), Australia has the third-highest rate among 16 OECD member countries for personal tax returns filed by tax agents (see figure 1).

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 being subject to consultation in both the policy design and draft legislation phases.

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 that will provide valuable input on the most effective way to implement government policy, and to assist in minimizing 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 the 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 the 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 characterized 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 \(3 \times 3\) matrix (table 2) depicts this graphically. The rows indicate the state of information that the Treasury and the ATO have about industry conditions, and the columns indicate stakeholders’ understanding of policy.

Cell A represents fairly routine, basic “care and maintenance” law changes. These may arise from Treasury/ATO law fix registers or from stakeholder consultations. Cell A 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 the Treasury and the ATO do not have a full or sufficient 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 at the time of writing), and when policy change spans overlapping regulatory domains.

### TABLE 2  Tax Consultation Characterization Matrix

<table>
<thead>
<tr>
<th>Stakeholders</th>
<th>Know</th>
<th>Don’t Know</th>
</tr>
</thead>
<tbody>
<tr>
<td>Know</td>
<td>A</td>
<td>B</td>
</tr>
<tr>
<td></td>
<td>Implementing well-understood policy in ordinary industry conditions</td>
<td>Implementing newish policy in ordinary industry conditions</td>
</tr>
<tr>
<td></td>
<td>e.g., basic care and maintenance; possibly deadlocked policy</td>
<td>e.g., complex care and maintenance; anti-avoidance</td>
</tr>
<tr>
<td></td>
<td><strong>Basic consultation effort</strong></td>
<td><strong>Above basic consultation effort</strong>; policy dissemination</td>
</tr>
<tr>
<td>Don’t know</td>
<td>C</td>
<td>D</td>
</tr>
<tr>
<td></td>
<td>Implementing well-understood policy in new or changing industry conditions; overlapping regulatory domains</td>
<td>Implementing newish policy in changing industry conditions; overlapping regulatory domains; new judicial doctrine</td>
</tr>
<tr>
<td></td>
<td>e.g., tax consolidation care and maintenance</td>
<td>e.g., resource rent tax, tax measures for carbon pricing</td>
</tr>
<tr>
<td></td>
<td><strong>Well above basic consultation effort</strong>; private-sector experts supplement Treasury’s knowledge base; layered consultation ensures integrity of consultation process</td>
<td><strong>Significant consultation effort</strong>; private-sector experts supplement Treasury’s knowledge base; layered consultation ensures integrity of consultation process, including drawing on international experience</td>
</tr>
</tbody>
</table>

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, the Treasury should draw on contracted private-sector expertise. The Treasury should also undertake multilayered consultations that cover a range of interests affected by the policy measure, in order to manage the risk that certain vocal and possibly influential voices might otherwise unduly distort the stakeholder experience.

Cell D represents mutual lack of information. This situation could arise with respect to new taxes, or when a judicial decision throws open an established way of thinking about a tax issue. In both situations, the Treasury and the ATO should be learning together with stakeholders and should seek to be informed through multilayered 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 legislation in 2011 were conducted in two stages: first, the detailed policy design, led jointly by a government minister and a senior industry representative; and second, more detailed legislative implementation, led by the Treasury and involving a broader industry and practitioner group. This approach, in part, follows from the Treasury’s role in such consultations.
While the Treasury may often lead consultations, its role is to listen to participants, advise the government on the views of stakeholders, and provide policy advice. The 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 semi-annual 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 tradeoffs. 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 representatives. While this diversity might make it more difficult for groups to reach consensus on tax policy recommendations, it does expose sectoral interest arguments to appropriate scrutiny.

**THE ROLE OF TAX GOVERNANCE BODIES**

The tax system in Australia operates with a number of tax governance bodies (listed in 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 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 around 25 staff employed currently and 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 Tax and Transfer Policy Institute at the Australian National University was recently established to serve as a centre for excellence, collaborating with academics and institutions across Australia and overseas. The institute is expected to raise the quality of national debate on tax reform and the awareness of tax policy issues.

**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 ATO, as well as some of the more significant developments in governance and consultation arrangements in Australian tax policy formulation over the past decade. Underlying that discussion, Australia’s system of responsible government remains central: All tax policy decisions are made by the democratically elected government of the day, and not by bureaucratic, academic, or other elites.
### TABLE 3  Tax Governance Bodies in Australia

<table>
<thead>
<tr>
<th>Organization</th>
<th>Type</th>
<th>Purpose</th>
</tr>
</thead>
<tbody>
<tr>
<td>Australian Taxation Office</td>
<td>Independent statutory agency</td>
<td>The government’s principal revenue collection agency, and part of the treasurer’s portfolio. Administers the tax and superannuation laws.</td>
</tr>
<tr>
<td>Board of Taxation</td>
<td>Non-statutory advisory body</td>
<td>Advises the treasurer on improving the general integrity and function of the taxation system. Provides business and broader community perspectives. Established in 2000.</td>
</tr>
<tr>
<td>Taxation Ombudsman</td>
<td>Independent statutory agency</td>
<td>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.</td>
</tr>
<tr>
<td>Australian National Audit Office</td>
<td>Independent statutory agency</td>
<td>Undertakes financial statement audits and performance audits examining the economy, efficiency, and administrative effectiveness of the ATO’s administration of the tax system.</td>
</tr>
<tr>
<td>Tax Practitioners Board</td>
<td>Independent statutory board</td>
<td>Responsible for the registration and regulation of tax practitioners and for ensuring compliance with the Tax Agent Services Act 2009. Replaces six state-based tax agents’ boards.</td>
</tr>
<tr>
<td>Tax and Transfer Policy Institute</td>
<td>Independent research centre</td>
<td>Established in 2013 as an independent centre for excellence at the Australian National University.</td>
</tr>
<tr>
<td>Parliamentary</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Parliamentary Budget Office</td>
<td>Parliamentary department</td>
<td></td>
</tr>
<tr>
<td>Joint Committee of Public Accounts</td>
<td>Statutory committee in Parliament</td>
<td>Since 2007, has conducted public hearings with the ATO commissioner with respect to the administration of the tax system.</td>
</tr>
<tr>
<td>Senate Economics Committee</td>
<td>Statutory committee in Parliament</td>
<td>Investigates specific matters of policy, government administration, or performance.</td>
</tr>
</tbody>
</table>