



THE TAX INSTITUTE

14 February 2012

Mr Keith James
Deputy Chairman
The Board of Taxation
c/ The Treasury
Langton Crescent
CANBERRA ACT 2600

By email: taxboard@treasury.gov.au

Dear Keith,

Consultation on the Establishment of the Tax Studies Institute

The Tax Institute is pleased to have the opportunity to make a submission to The Board of Taxation in relation to the establishment of the Tax Studies Institute (“**TSI**”) announced by the Deputy Prime Minister and Treasurer, the Hon Wayne Swan MP, in his Closing Remarks to the Tax Forum on 5 October 2011.

The Tax Institute is of the view that the establishment of a centre for research excellence, to conduct research into the tax and transfer system and support more evidence based policy development, would be widely beneficial to the tax and transfer system as a whole.

In this regard, The Tax Institute takes this opportunity to provide guidance to the Board of Taxation to assist it to make a recommendation to Treasury with respect to the design and establishment of the TSI.

The Tax Institute’s Experience – The Australian Tax Research Foundation

On 16 October 1973, The Australian Tax Research Foundation (“**ATRF**”) was established. The ATRF was established as an Australian public company limited by guarantee. The main aim of the ATRF is to research taxation at all levels of government with a view to arriving at systems which are simple, fair and efficient. In this regard, the ATRF commissions expert and impartial research into all aspects of the taxation systems in Australia which are of relevance to the Federal, State and Territory governments and the community at large.

The ATRF was initially established with a governing board, drawn from leading members of industry, commerce, the universities and the profession, with the Chairman being a pre-eminent figure. Past chairmen of the ATRF have included Sir Hermann Black, the Rt Hon. Sir Harry T Gibbs and the Hon. L J Priestley. In addition, the ATRF had a research advisory board which advised the governing board on research to be undertaken by the ATRF under the supervision of a Research Director. Due to a decline in the activity of the ATRF, both boards have since been merged into one governing board.

In its prime, the ATRF published a number of publications, including books and papers, held conferences and conducted research into the taxation system at both a Federal and State/Territory level. A conscious effort was made to ensure the ATRF engaged in a diverse range of research. We enclose at Appendix A a copy of the Catalogue of Publications produced by the ATRF which evidences this.

During the course of its life, the ATRF has received much support, both financial and in the conduct of its research and publication activities, from both the profession and professional bodies, including various universities, professional membership bodies, government departments and tax professionals.

Initially, the ATRF received seed funding from its founding members who included CPA Australia, the Institute of Chartered Accountants in Australia, the Law Council of Australia and the Taxation Institute of Australia (as it then was). Both the Tax Institute and the Law Council of Australia maintained significant control of the ATRF in proportion to the size of their financial contributions to the ATRF. Administration of the ATRF was eventually migrated across to the Tax Institute as most of the seed funders eventually withdrew their support from the ATRF.

The Tax Institute is currently actively responsible for the operation of the ATRF. Most recently, the ATRF ran “The Great Tax Debate: Constructing Tomorrow’s Tax System ” on 31 August 2011 in conjunction with the Tax Institute as a precursor to the Federal Government’s Tax Forum held on 4 and 5 October 2011.

The Tax Institute’s experience with the ATRF has shown that there was much benefit in having a high profile chairman involved with the Foundation, which assisted to attract both participation in and funding for the ATRF from a broad range of stakeholders. It is unclear what has led to the decline in support for the ATRF. However, it may be that the priorities of the original seed funders changed with how they planned to apply their own limited funds and the pursuit of premium tax research became a lesser priority to them.

Another Example

The Grattan Institute was formed on November 2008 responding to the need for an independent “think-tank” focused on Australian domestic public policy. We refer to this Institute as another example of a centre of excellence more recently established. We refer to the following link for your reference (http://www.grattan.edu.au/about_us.html).

Suggested design and establishment of the TSI

Given the Tax Institute’s positive experience with operating a premium tax research body similar in nature to the proposed body that Treasury intends to establish as the TSI, the Tax Institute recommends to the Board of Taxation the following in the way of suggested design and form of establishment for the TSI.

Governance structure

The Tax Institute recommends that a public company limited by guarantee be established as the structure for the TSI. This is generally the corporate structure that non-profit organisations of this nature adopt (eg, the ATRF, the Grattan Institute). This kind of corporate structure allows a separation between ownership and governance and provides for a centralised governing body within the institute. This structure would

allow members of the TSI, for example, to exercise voting power through an Annual General Meeting (or Extraordinary General Meeting if required) to ensure the independent board responsible for governing the institute acts appropriately.

We enclose a copy of the Memorandum and Articles of Association of the ATRF for Treasury's reference (please see Appendix B) and a copy of the company extract from the Australian Securities & Investments Commission website (Appendix C). We would consider that objects similar to those included in the Memorandum would be an appropriate guide for the objects of the TSI.

Two Boards

The Tax Institute recommends a "two board" structure be implemented for the governance of the TSI. This should include an advisory board which considers the research to be undertaken by the TSI and makes recommendations to a governing board, who in turn makes a final determination with regard to research undertaken based on the advisory board's recommendations.

The composition of the governing board should be drawn from a range of stakeholders including government, the profession, academia and business (both small and large). It should be representative of the key members of the TSI (in terms of both their level of interest and activity and perhaps their level of funding), but not solely reflect this, to ensure independence from the membership is maintained. This would also ensure diversity in the focus of the TSI, the nature of the research undertaken and the work product of the TSI. Thus, a balance of contribution to the TSI by both business and academia where the governing board ensures that the topics for research undertaken are relevant to all stakeholders should ensue.

If the composition of the board is to also reflect the financial contributions made by certain stakeholders (similar to the ATRF experience), the Board of Taxation should recommend to Treasury to be mindful of whether any perceived bias of the TSI towards certain stakeholders may arise.

In the context of the Grattan Institute, for example, the board of directors is appointed by a council of members, equally represented, whose advice is sought, but who do not influence or control the direction or publications of the institute. The TSI could employ a similar method of determining its board to ensure independence.

In comprising the governing board it is essential that it is a board that is diverse, respected, highly regarded and independent and therefore it would be imperative to have functions in place to ensure this occurs. This would ensure the TSI's position as a centre for research excellence that is held in high esteem by all relevant stakeholders.

Type of Research

Research undertaken by the TSI should include research into issues affecting different stakeholders as well as the broader national interest. Types of research undertaken could be focused purely on taxation law (involving all levels of government), focused on the policy behind the taxation law or focused on the compliance cost associated with applying the taxation law.

Care will need to be taken as to how the proposed research topics and their associated parameters are formulated. Academic involvement may be limited where the parameters of research topics are fettered in some way (eg parameters of the research

topic are too narrow). The use of commissioned research may also result in biased outcomes in respect of the research produced. One of the ATRF's aims was to ensure that commissioned research was both expert and impartial in its nature. If the TSI is to undertake commissioned research, the Tax Institute recommends a similar impartial approach be pursued.

Independence

It would be prudent of Treasury to ensure the TSI maintains its independence from government, the profession and academia and truly sits amongst these stakeholders as a body representative of them all and therefore the Board of Taxation should make recommendations to Treasury accordingly. This could be achieved by ensuring the governing board is comprised of representatives from all stakeholders. This would ensure, for example, long term research goals are not fettered by short term government goals and the TSI also remains accessible to business.

Putting the structure in place

To determine the membership of the TSI, The Tax Institute recommends the Board of Taxation recommend to Treasury to seek interest from the universities with premium tax study departments to evaluate their interest in becoming founding members of the TSI. It is suggested this would include the Federal, State and Territory governments, the universities with premium tax study departments, industry bodies, the profession and business.

Subsequent to determining the founding membership, a company limited by guarantee would need to be formed, various registrations sought and so forth.

From this pool, members for both the governing board and advisory board could be sourced.

To ensure the TSI is a body independent of government, the Tax Institute also considers that the TSI should be a non-statutory body.

Treasury should also consider choosing an appropriate location to locate the head office of the TSI and for conducting board meetings.. Should the TSI head office be located at a university, for example, there may be a perceived lack of independence of the TSI from that particular institution. Should the TSI head office be located at Treasury, there may be a perceived lack of independence of the TSI from Government. The development of such a perception is to be avoided. As an example, the offices of ATRF are located at the Tax Institute. Treasury would need to carefully consider this.

Given the pre-existence of the ATRF, a body very similar in nature to the proposed TSI, the Tax Institute would be pleased to assist the Board of Taxation to assist Treasury in any appropriate way to establish the TSI, including utilising the ATRF as a model for the TSI.

Recruiting resources to support the structure

Following on from the roundtable meeting that Treasury held on 14 December 2011, it was determined that the best option for obtaining resources for the TSI would be to affiliate the TSI with one or two universities. This may be achieved according to the membership determined for the TSI as noted above.

The Tax Institute understands that the Federal Government intends to provide seed funding of \$1 million per year for the first three years of operation of the TSI. However, it was determined at the roundtable meeting that this funding would be insufficient in meeting the funding needs of the proposed organisation. In this regard, it was considered that funding from both the private sector and State/Territory governments would also be needed. It is understood a commitment has already been made by both the New South Wales and Victorian Governments to support the TSI and we trust that this will translate into the provision of additional funding.

We note from the Grattan Institute's experience, that the founding members included the Australian Government, the State Government of Victoria, The University of Melbourne and BHP Billiton. A similar composition of founding members for the TSI from key stakeholders would be ideal.

The Tax Institute's experience with gaining funding from the private sector for the ATRF was challenging in that there was concern among potential financial contributors that research outcomes may not be aligned with a financial contributor's own objectives. The Tax Institute is of the view that the TSI may also encounter this type of challenge.

It is noted that the Federal Government has announced that it intends to provide the TSI with "deductible gift recipient" ("**DGR**") status, which would make sourcing funding for the TSI, particularly to garner contributions from the private sector, an even more attractive proposition.

The experience that the Tax Institute has had with the ATRF is that, even in the absence of the body having DGR status (which the ATRF has not ever had – please see the extract from the Australian Business Register website in respect of the ATRF in Appendix D), contribution to such a premium research organisation was still an attractive proposition despite the challenges noted above. Much support was received from universities and the profession alike in the form of membership as well as donations. However, endorsing the TSI as a DGR would ensure contributing funding to the TSI, particularly from the private sector, would be even more attractive.

In this regard, in the Tax Institute's view, it would be highly beneficial to ensure the TSI is endorsed as a DGR and recommends to the Board of Taxation that they impart this on Treasury.

Harnessing the output of the TSI

Treasury also needs to put in place a structure to ensure the research output of the TSI is actioned in an appropriate manner, for example, any policy reforms arising out of research conducted by the TSI are carried through to the next stages, such as implementation and legislative reform. This would ensure changes to the tax system stemming from the TSI's research would occur.

You would be aware that The Tax Institute has previously called for an independent body, such as a Tax Reform Commission ("**Commission**"), to be formed by Government. The Commission would have a membership base reflecting the potential impacts of reforms on community, individuals, businesses and federal, state and local governments. It would be tasked with taking the research emanating from the TSI and ensuring that it is then used in formulating options for reform for the Government.

The Commission would consult widely and have a clear remit to conduct modelling and provide advice to government on implementation options across a range of reform priorities. Specifically in relation to the TSI, it could, for example, conduct costings in respect of implementation in relation to certain outcomes arising from the research undertaken by the TSI.

As the Henry Review provides a solid platform from which research into various tax reform options could be devised, its vision should be developed into detailed, workable and affordable reform strategies that can then be implemented over an appropriate timeframe. The Commission would be a useful body to undertake this kind of work which would then feed directly into Government decision-making processes, so that tax reform remains a serious consideration with a clear roadmap for reaching a realistic reform destination.

As such, the Board of Taxation should also consider making a recommendation to Treasury in this regard.

If you would like to discuss this matter, please contact me or the Tax Institute's Senior Tax Counsel, Robert Jeremenko, on 02 8223 0011.

Yours sincerely

A handwritten signature in black ink that reads "Noel Rowland". The signature is written in a cursive style with a horizontal line underneath the name.

Noel Rowland
CEO

Appendices

Appendix A – Catalogue of Publications
Appendix B - Constitution
Appendix C – ASIC Extract
Appendix D – ABR Extract