

Identification and possible repeal of the inoperative
provisions of the 1936 and 1997 Income Tax
Assessment Acts

A Report to the Treasurer

The Board of Taxation

October 2005

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EXECUTIVE SUMMARY

The Board has identified a substantial number of inoperative provisions in the *Income Tax Assessment Act 1936* and the *Income Tax Assessment Act 1997*. These provisions could be repealed without changing the effect of the law.

Board stakeholders, including tax practitioners and the two main tax publishers, support the Board's work in this area which is aimed at 'uncluttering' and improving the ease of use of the income tax law, contributing to the reduction of complexity and compliance costs.

Appendix 2 to this report identifies an estimated 2,135 pages of inoperative provisions in the Attorney-General's Department's Scaleplus version of the 1936 and 1997 Acts (overwhelmingly located in the 1936 Act) that could be repealed subject to the Government's legislative processes and the outcome of any public consultation on the provisions that the Government considers appropriate.

- This represents around 44 per cent of the Scaleplus version of the 1936 Act and 28 per cent of the same version of the two Acts combined.

A number of the provisions identified in Appendix 2 will require consideration by the Government of possible legislative amendments to facilitate repeal, or of consequential amendments as a result of repeal.

The two main tax publishers have advised that they would move repealed provisions from their annual publications to a less frequently published hard copy or on-line archive volume.

The Board has undertaken a rigorous process to ensure, as far as possible, that operative provisions are not incorrectly repealed with unintended consequences for taxpayers or the revenue. This process has involved:

- contracting a highly qualified expert, Mr Tom Reid, to identify probable inoperative provisions in the two Acts;
- contracting the Australian Taxation Studies Program (Atax), which is part of the Law Faculty of The University of New South Wales, to:
 - check that there would be no unintended consequences if the inoperative provisions identified by Mr Reid were repealed; and
 - check cross references in other Commonwealth legislation (including regulations) to the inoperative provisions to ensure they do not cause the inoperative provisions to have continuing effect;

- contracting SoftLaw Corporation Limited (now RuleBurst Limited) to identify these cross references using proprietary software;
- subsequent consideration by Atax and Mr Reid to agree a view on provisions that would be suitable for repeal and those that should be retained; and
- appointing a Reference Group of high level experts to undertake sample checking of some of Atax's results and provide advice on selected issues.

Despite the Board's processes, it remains possible that the repeal of some provisions could lead to unintended consequences, essentially reflecting the complexity of current law that has built up over many years. There may therefore be benefit in the Government undertaking further processes – for example public consultation – to reduce as far as possible the risk of such unintended consequences.

The Board notes that section 8 of the *Acts Interpretation Act 1901* preserves the past operation of repealed legislative provisions. The Board also recommends in this report the development of appropriate savings provisions to enable the application of a repealed provision to be restored, if necessary, to address any unintended consequences, and to ensure that repeal of an inoperative provision would not affect the operation of a provision of any Act that depends on the repealed provision.

- Specific savings provisions could also be considered during the legislative development phase if the Government decides to proceed with repeal.

The *ex officio* members of the Board – the Secretary to the Treasury, Dr Ken Henry, the Taxation Commissioner, Mr Michael Carmody AO, and the First Parliamentary Counsel, Mr Peter Quiggin – reserved their final views on the issues canvassed in this report for advice to the Government.

Recommendations

Recommendation 1

The Board has identified an estimated 2,135 pages of inoperative provisions of the Attorney-General's Department's Scaleplus version of the 1936 and 1997 Income Tax Assessment Acts. These provisions are listed at Appendix 2 to this report.

The Board recommends that these provisions be repealed and the tax publishers be asked to move repealed provisions of the two Acts from their annual publications into less frequently published hard copy or on-line archive volumes.

Recommendation 2

The Board recommends that, prior to repeal, appropriate checking and legislative development be undertaken as part of the Government's usual legislative process.

Recommendation 3

The Board recommends that the Government also consider undertaking a process of public consultation on an exposure draft Bill to repeal the identified inoperative provisions.

Recommendation 4

The Board recommends that the Government consider developing appropriate savings provisions to enable the application of a repealed provision to be restored, if necessary, to address any unintended consequences, and to ensure that repeal of an inoperative provision would not affect the operation of a provision of any Act that depends on the repealed provision.

CHAPTER 1: BACKGROUND

1.1 As indicated in its 2002-03 and 2003-04 annual reports, the Board has been undertaking work to develop options for Ministers aimed at rationalising the 1936 and 1997 Income Tax Assessment Acts.

1.2 The Board's purpose is to see whether there is a relatively straightforward option to reduce the volume of tax legislation and improve its ease of use for taxpayers, their advisers, and those involved in tax administration. This could also provide a better platform for amendments to be made in the normal course.

1.3 The work had its origin in the Board's earlier consideration of the Tax Value Method¹ and, in particular, the idea of exploring with key stakeholders the scope for making improvements to the current income tax law in a context of merging the two present Acts.

1.4 The Board has examined a number of merger options in consultation with tax practitioners and other stakeholders, including the two main commercial publishers of tax legislation. It has also had the benefit of advice from members of its Advisory Panel.

1.5 At this stage, however, the Board does not consider that there is a broad consensus among stakeholders on the form any such merger could take. The Board recognises that any such recommendation would need the support of tax practitioners, who would be the main beneficiaries of any change in this area, but who also would bear any transitional costs.

1.6 As part of this work, the Board engaged a consultant in 2004 to identify the inoperative provisions of the two Acts. It became evident that, even in the absence of a merger, there was potential for substantial savings in the volume of published income tax legislation if the inoperative provisions of the two Acts could be identified and repealed.²

1.7 These provisions are nearly all located in the 1936 Act, reflecting a drafting philosophy and practice of cutting off rather than repealing inoperative provisions.³ The small number of inoperative provisions in the 1997 Act reflects the current drafting approach which is to repeal, rather than cut off, no longer operative provisions.

1 'Evaluation of the Tax Value Method', A Report to the Treasurer and Minister for Revenue and Assistant Treasurer, July 2002, available on the Board's website at www.taxboard.gov.au.

2 The extent of these savings relies significantly on decisions of the tax publishers to move repealed provisions into less frequently published archive volumes. Their current practice is to retain repealed provisions in the body of their published volumes for a number of years, albeit in a smaller font size. This issue is discussed in Chapter 3.

3 A provision is 'cut off' where it is not removed from the legislation but an amendment stops it applying, for example, after a particular time or income year. This drafting practice facilitated access to cut off provisions that had some residual operation, although at the expense of cluttering the law with inoperative material.

1.8 Board stakeholders, including tax practitioners and the main tax publishers, support the identification, repeal and separate publication of identified inoperative provisions. They would see this as a significant enhancement in terms of 'uncluttering' and improving the ease of use of the law by reducing the volume of annually printed income tax legislation and making navigation of electronic versions of the Acts easier.

- Currently, it can be difficult for a user to determine whether a provision produced by an electronic search is operative or inoperative.

1.9 The Board considers that the repeal and separate publication of the inoperative provisions would also contribute to the reduction of complexity and compliance costs of the tax law.

CHAPTER 2: BOARD'S PROCESS

2.1 A Working Group of the Board was established in 2003 to consider possible rationalisation of the income tax legislation. From 2004, this Working Group managed the project on identifying the inoperative provisions of the 1936 and 1997 Income Tax Assessment Acts. It comprises Mr Chris Jordan AO (Chairman), Mr Peter Quiggin, and Mr Richard Warburton AO, and is assisted by the Board's Secretariat.

- The Board's membership and Charter are shown at Appendix 1.

2.2 The Board's starting point was that, if it were to recommend repeal of the inoperative provisions of the two Acts, this recommendation would need to be based on a rigorous process giving confidence that operative provisions would not be incorrectly repealed with unintended consequences for taxpayers or the revenue. This approach has governed the Board's work and the contract specifications of Board consultancies for the project.

Consultancy undertaken by Mr Tom Reid

2.3 In April 2004, the Board engaged Creating Coherence Pty Ltd, employing the services of Mr Tom Reid, to assist in defining the inoperative provisions of the 1936 and 1997 Acts and to identify these provisions. Mr Reid was previously Second Parliamentary Counsel, Office of Parliamentary Counsel.

2.4 Following discussions with Mr Reid and consultation with selected stakeholders, the Board agreed to adopt the following two part definition of an inoperative provision:

- Type 1: The provision has no application, of its own force, to income years after a cut off year.⁴
- Type 2: The provision cannot apply to income years after a particular income year because its operation is 'spent'.⁵

4 For example, section 48 of the 1936 Act provides as follows:

'48 Allowable deductions

- (1) In calculating the taxable income of a taxpayer, the total assessable income derived by him during the year of income shall be taken as a basis, and from it there shall be deducted all allowable deductions.
- (2) This section does not apply to the 1997-98 year of income or a later year of income.

Note: Section 4-15 of the *Income Tax Assessment Act 1997* sets out rules for working out an entity's taxable income for the 1997-98 year of income and later years of income.'

There are various ways in which a Type 1 provision may have application to the current income year otherwise than of its own force. The most typical case is likely to be where the provision contains a definition that is referenced by another provision that is still operative.

2.5 To simplify the identification task (at a likely very small cost in terms of inoperative provisions not identified), it was agreed that a section would not be regarded as inoperative if any of its sub-provisions fails these two tests – that is, if some but not all of its sub-provisions are inoperative.

2.6 It is recognised that the definition and methodology used will not have identified every provision that is inoperative or otherwise redundant. For example, in addition to the case noted in the preceding paragraph, it will not always be possible to identify provisions that lack explicit cut offs. There may also be provisions that do not strictly meet the definition of inoperative, even though they have been made redundant by later developments in the law or have an extremely limited application to taxpayers.

- However, Mr Reid is confident that a very high proportion of inoperative provisions (according to the agreed definition) has been identified.

2.7 The methodology employed by Mr Reid was to conduct electronic searches of the Scaleplus reprint, prepared by the Attorney-General's Department, of the two Income Tax

5 For example, section 67 of the 1936 Act provides as follows:

'67 Expenses of borrowing

(1AA) This section does not apply to expenditure incurred in the 1997-98 year of income or a later year of income.

Note: Section 25-25 (Borrowing expenses) of the *Income Tax Assessment Act 1997* deals with the deductibility of borrowing expenses.

(1A) This section has effect subject to Division 245 of Schedule 2C.

(1) Subject to this section, so much of the expenditure incurred by the taxpayer in borrowing money used by him for the purpose of producing assessable income as bears to the whole of that expenditure the same proportion as the part of the period for which the money was borrowed that is in the year of income bears to the whole of that period shall be an allowable deduction.

(2) Where the period for which the money was borrowed is not fixed, or exceeds 5 years, the period of 5 years from the date on which the money was borrowed shall, for the purposes of subsection (1), be deemed to be the period for which the money was borrowed.

(3) Where the total expenditure incurred in the year of income by the taxpayer in borrowing money used by him for the purpose of producing assessable income does not exceed \$100, the whole of that expenditure shall be an allowable deduction in the year of income.

(4) Where a taxpayer incurs expenditure in the year of income in borrowing money used by the taxpayer only partly for the purpose of producing assessable income, the taxpayer shall be deemed, for the purposes of the preceding provisions of this section, to have incurred only so much of that expenditure as, in the opinion of the Commissioner, is reasonable in the circumstances.'

It is clear from the cut off provision in subsection (1AA), and from the note, that this section does not apply to expenditure in the 1997-98 income year and later income years. However, because section 67 provides for expenditure to be deducted over a period of up to 5 years, it does not meet the test for being a Type 1 inoperative provision.

The latest possible income year to which section 67 can be relevant is 2001-02. From 2002-03 at the latest, the provision will be 'spent'.

Note that Type 2 provisions are inoperative in a formal sense from the time the cut off provision is enacted. However, in a practical sense they continue to be operative until they are 'spent'. This is because they have a direct application to working out a taxpayer's liability for the income years before they are 'spent'.

Assessment Acts and the *Taxation Administration Act 1953*. Every reference to a date was examined to see if it made the provision, where it occurred, fit the definition of inoperative. In addition, areas of the 1936 Act were 'manually' reviewed to identify provisions that have implicit cut offs. The CCH conversion tables were used as a double check on such provisions.

2.8 Mr Reid found that candidate inoperative provisions made up about half the 1936 Act and less than 2 per cent of the 1997 Act.⁶ Later work has shown that somewhat less of the 1936 Act is actually inoperative (see below).

2.9 Mr Reid advised that the 'candidate inoperative provisions' he identified should be checked manually if the intention was to repeal the inoperative provisions. He also advised that further checking should include the investigation of all cross-references to inoperative provisions to determine whether consequential amendments were needed (for example, where a still operative provision referenced a definition contained in a candidate inoperative provision).

Consultancies undertaken by Atax and SoftLaw

2.10 Consistent with Mr Reid's advice, in January 2005 the Board engaged Atax⁷ to advise whether there would be any unintended consequences if the candidate inoperative provisions identified by Mr Reid were repealed.

2.11 Atax also analysed cross-references in Commonwealth legislation (including regulations) to candidate inoperative provisions and the scope of definitions referring to these provisions to ensure they do not cause the candidate provisions to have continuing effect.

2.12 In February 2005, the Board engaged SoftLaw Corporation Limited⁸ (now RuleBurst Limited) to identify these cross-references and definitional links using proprietary software. The results of SoftLaw's work were provided to Atax to facilitate their analysis.

2.13 In addition, Atax examined amendments to tax legislation in the period March 2004 (the cut off used by Mr Reid) to June 2005 to determine whether these amendments resulted in any further candidate inoperative provisions. None was found.

2.14 Atax examined every provision classified by Mr Reid as a Type 1 or Type 2 candidate inoperative provision and took a view on whether it had any residual operation. Their methodology included:

6 Mr Reid also found that there were no candidate inoperative provisions in the *Taxation Administration Act 1953*.

7 The Atax team was led by Professor Robert Deutsch and also comprised Mr Maurice Cashmere, Mr Kalmen Datt, Mr Garry Payne, the late Mr John Raneri, and Mr Michael Binetter as a consultant to Atax.

8 Involved in the project were Ms Fiona Guy, Principal Legal Analyst, and Mr Andrew Barry, Lead Technical Research.

- (a) reading through the candidate inoperative provision in its entirety to see if there is any continuing operation of the provision apparent from either the manner in which its cut off was worded (if there is an explicit cut off) or any of its provisions themselves;
- (b) if the provision is part of a relatively succinct set of related provisions not all of which have been cut off, reading through the surrounding provisions to develop an understanding of the context in which the cut off provision operated and whether its continued presence may be necessary to the operation of any of the surrounding provisions;
- (c) if the inoperative provision has been re-written (that is, generally from the 1936 Act to the 1997 Act), identifying the relevant new provision or provisions. Consulting the provisions of the Transitional Provisions Act that correspond to those new provisions to firstly see if the transitional operation is itself continuing or has ceased (in terms of practical operation as opposed to merely being statutorily in force);
- (d) contemporaneously with step (c), if there is a continuing transitional operation, determining if the inoperative provision should be retained because it may need to be consulted to give effect to (legally) or understand that continuing operation;
- (e) if the inoperative provision has been re-written, regardless of whether there is a continuing transitional operation under the Transitional Provisions Act, consulting the re-written provisions to determine if there is any reference at all to the former law in them that would make retention of the inoperative provision desirable;
- (f) if a provision still in the legislation (that is, not repealed) has been rendered inoperative otherwise than as part of the Tax Law Improvement Project re-write process (whether by explicit cut off or implicitly), then instead of steps (c) to (e), undertaking the following steps:
 - if there is an explicit cut off, consult the relevant amending legislation that inserted the cut off to check if it contains any savings provisions not apparent on the face of the legislation (that is, provisions that have a continuing transitional operation);
 - refer to the explanatory material for the amending legislation in conjunction with it (if this is considered necessary to clarify any aspect); and
 - if the inoperative provision has been replaced by new provisions that cover substantially the same ground (whether in the 1936 Act or 1997 Act), then the substance of steps (c) to (e) should still be followed as part of examining the amending legislation (effectively in lieu of the Transitional Provisions Act) and the new provisions still consulted as per step (e);
- (g) if a cut off is only implicit, determining the reason for the implicit cut off and its validity; and

- (h) identifying other provisions in either the taxation legislation or other legislation that may refer to the inoperative provisions by reference to the SoftLaw report. Read these provisions to determine if their continued operation is dependent on the existence of the inoperative provision or reference to it.

2.15 Atax agreed with Mr Reid that:

- approximately 1,620 pages of provisions of the two income tax Acts would be suitable for repeal;
- a further 290 pages would be suitable for repeal, although Atax highlighted particular issues in relation to these provisions.

2.16 Atax's examination concluded that around 480 pages of provisions identified by Mr Reid as candidate inoperative provisions have continuing operation and should not be recommended for repeal.

Subsequent consideration by Atax and Mr Reid

2.17 In May 2005, the Board engaged Mr Reid to examine and provide advice on the Atax work. In discussions between Atax and Mr Reid – and as a result of further work undertaken by Atax following input from the Reference Group (see below) – the above figures were modified as follows: approximately 1,545 pages suitable for repeal (consequential amendments to other legislation may be needed for some of these); around 590 pages able to be repealed following consideration of possible amendments to facilitate repeal; and about 300 pages not recommended for repeal.

2.18 Therefore, this phase of the work increased the total number of pages that Atax and Mr Reid consider would be suitable for repeal from around 1,910 to around 2,135.

Reference Group

2.19 In June 2005, the Board appointed a Reference Group of experts as a further safeguard that operative provisions would not be incorrectly repealed. The Reference Group provided the Board with high level advice and guidance on selected issues, including sample checking – rather than comprehensive checking – of the Atax work. The Reference Group comprised:

Chairman

- Mr Peter Quiggin, First Parliamentary Counsel, Office of Parliamentary Counsel, Canberra; member of the Board of Taxation; member of the Board's Working Group on the inoperatives project;

Members

- Mr Gordon Cooper, AM, Principal, Cooper & Co, Chartered Accountants, Sydney; member of the Board's Advisory Panel;

Board's process

- Mr Greg Pinder, Senior Adviser, Tax Design Division, Department of the Treasury, Canberra;
- Mr Tom Reid, Consultant to the Board of Taxation, Canberra;
- Mr Tony Slater, QC, Barrister, Sydney; and
- Professor Richard Vann, Challis Professor of Law, The University of Sydney; member of the Board's Advisory Panel.

2.20 The Reference Group examined a random sample of 1936 Act provisions – drawn from the estimated 1,620 pages of provisions referred to above – to provide additional assurance that the Atax methodology had produced sound results.

- One of these provisions was found to have continuing application, underlining the difficulties inherent in exercises of this kind and the risk that any legislative change, including repeal, may have unintended consequences.

2.21 The Reference Group also examined a list of provisions prepared by one of its private sector members. The member concerned had not examined these provisions in detail or identified particular problems with them. Rather, his practical experience indicated that there were signals for care in considering whether they would be suitable for repeal.

- This list of provisions will be provided to Treasury to assist with appropriate checking and legislative development that the Board recommends be undertaken as part of the Government's usual legislative process.

2.22 At the time this report was finalised, the Reference Group had not had the opportunity to examine a sample of the estimated 590 pages of provisions that Atax and Mr Reid agreed would be suitable for repeal subject to consideration, as part of the legislative process, of possible legislative amendments to facilitate repeal.

Possible unintended consequences

2.23 As noted above, it remains possible that the repeal of some provisions could lead to unintended consequences, essentially reflecting the complexity of current law that has built up over many years. There would therefore be benefit in the Government undertaking further processes – for example, as recommended in this report, appropriate checking and legislative development and public consultation – to reduce as far as possible the risk of such unintended consequences.

2.24 In addition, the Board recommends that consideration be given to developing savings provisions, as discussed in paragraphs 2.30-2.32 below.

Section 8 of the Acts Interpretation Act

2.25 Section 8 of the *Acts Interpretation Act 1901* sets out the effect of repealing a provision of an Act. As part of his consultancy to the Board, Mr Reid provided advice on the application of this section.

2.26 In particular, he noted that, because of section 8, a repealing Act often does not need to include provisions to preserve the effect of the repealed provisions up until the time of repeal. Similarly, any investigation, legal proceeding or remedy in respect of a right or obligation created by a repealed provision can be continued to completion even after the time of repeal – although a repealed provision cannot itself create a new right or obligation after the time of repeal.

2.27 However, Mr Reid also pointed to circumstances where caution may need to be exercised in relying on section 8. In such circumstances, a savings provision may be desirable to preserve things section 8 for some reason does not cover or may not cover.

2.28 The Reference Group was asked whether they agreed with the interpretation of section 8 relied on by Mr Reid (and by Atax). They were also asked to consider any feasible alternative approaches which would most likely take the form of further savings provisions.

2.29 The Reference Group broadly agreed with Mr Reid's interpretation of section 8 of the Acts Interpretation Act.

Proposed savings provisions

2.30 The Reference Group also considered the need for an appropriate savings provision to provide additional assurance that repeal of an inoperative provision would not affect the operation of a provision of any Act that depends on the repealed provision. Such a provision would be in addition to any specific savings provisions and consequential amendments that may be developed as part of the legislative process.

2.31 The Board proposes that a savings provision along the following lines be considered for incorporation in a draft repeal Bill:

'Limited continued effect of repealed provisions

If the operation of a provision of any Act depends to any extent on a provision repealed by this Act, then, despite its repeal, the repealed provision continues to have effect for the purpose only of the operation of that other provision.'

2.32 In addition, the Board recommends that the Government consider developing a savings provision to enable the application of a repealed provision to be restored, if necessary, to address any unintended consequences.

- Such a provision could, for example, take the form of a regulation making power in the repeal legislation to enable a repealed provision to be given its original or more limited

effect. The Board notes, however, that such a use of delegated legislation would need to be acceptable to the Parliament.

CHAPTER 3: DISCUSSIONS WITH PUBLISHERS

3.1 Currently, the practice of the two main commercial tax publishers, CCH and Thomson ATP, is to incorporate repealed provisions as history notes in their published print volumes. Repealed provisions are retained in these volumes for a number of years (the period varying between the two publishers).

3.2 While history notes are published in a smaller font size than the operative law, they nevertheless occupy a substantial amount of space in the published volumes. There would be little savings in the volume of published legislation if the identified inoperative provisions were repealed but the publishers retained them, albeit in smaller font size, as part of their annually published volumes.

3.3 The Board consulted with CCH and Thomson ATP in the course of the project. They are very supportive of the work undertaken to identify the inoperative provisions and the idea of repealing them. They have advised that they would locate repealed provisions in a separate, less frequently published hard copy or on-line archive volume, thus realising substantial savings in the volume of annually published legislation.

3.4 The publishers are considering how frequently they would publish an archive volume. This would be a matter for commercial decision but options could include the annual publication of a hard copy archive volume, the first containing the results of the current project and subsequent volumes containing only the history notes (including any newly repealed provisions) generated in that year. It could also be decided to consolidate the annual volumes say every 4 or 5 years.

- The publishers' electronic volumes would continue to be updated within a short time of any legislative change.

3.5 The Board notes that the tax publishers – including those not consulted to date – will have an interest in the content and timing of any draft repeal Bill.

APPENDIX 1: MEMBERS AND CHARTER OF THE BOARD OF TAXATION, CONFLICT OF INTEREST DECLARATION

Members

The members of the Board of Taxation are:

Chairman

Mr Richard F.E. Warburton, AO

Deputy Chairman

Mr Chris Jordan, AO

Members

Mr Brett Heading

Mr Keith James

Mr Eric Mayne

Mr Curt Rendall

Ms Jane Schwager

Ex officio members

Mr Michael Carmody, AO (Commissioner of Taxation)

Dr Ken Henry (Secretary to the Treasury)

Mr Peter Quiggin (First Parliamentary Counsel)

Secretariat

Members of the Board's Secretariat who contributed to this report were Mr Bruce Paine (Secretary), Mr Mike Kooymans, Mr Vernon Joice and Ms Elaine Abery.

Charter

Mission

Recognising the Government's responsibility for determining taxation policy and the statutory roles of the Commissioner of Taxation and the Inspector-General of Taxation, the Board's mission is to contribute a business and broader community perspective to improving the design of taxation laws and their operation.

Membership

The Board of Taxation will consist of up to ten members.

Up to seven members of the Board will be appointed by the Treasurer, for a term of up to three years, on the basis of their personal capacity. It is expected that these members will be appointed from within the business and wider community having regard to their ability to contribute at the highest level to the development of the tax system. The Chairman will be appointed by the Treasurer from among these members of the Board. If the Treasurer decides to appoint a Deputy Chairman, he or she will also be appointed from among these members of the Board. Members may be re-appointed.

The Secretary to the Department of the Treasury, the Commissioner of Taxation and the First Parliamentary Counsel will also be members of the Board. Each may be represented by a delegate.

Function

The Board will provide advice to the Treasurer on:

- the quality and effectiveness of tax legislation and the processes for its development, including the processes of community consultation and other aspects of tax design;
- improvements to the general integrity and functioning of the taxation system;
- research and other studies commissioned by the Board on topics approved or referred by the Treasurer; and
- other taxation matters referred to the Board by the Treasurer.

Relationship to Other Boards and Bodies

From time to time the Government or the Treasurer may establish other boards or bodies with set terms of reference to advise on particular aspects of the tax law. The Treasurer will advise the Board on a case-by-case basis of its responsibilities, if any, in respect of issues covered by other boards and bodies.

Report

The Chairman of the Board will report to the Treasurer, at least annually, on the operation of the Board during the year.

Secretariat

The Board will be supported by a secretariat provided by the Treasury, but may engage private sector consultants to assist it with its tasks.

Other

Members will meet regularly during the year as determined by the Board's work programme and priorities.

Non-government members will receive daily sitting fees and allowances to cover travelling and other expenses, at rates in accordance with Remuneration Tribunal determinations for part-time public offices.

The Government will determine an annual budget allocation for the Board.

Conflict of interest declaration

All members of the Board are taxpayers in various capacities. Some members of the Board derive income from director's fees, company dividends, trust distributions or as a member of a partnership.

The Board's practice is to require members who have a material personal interest in a matter before the Board to disclose the interest to the Board and to absent themselves from the Board's discussion of the matter, including the making of a decision, unless otherwise determined by the Chairman (or if the Chairman has the interest, the other members of the Board).

The Board does not regard a member as having a material personal interest in a matter of tax policy that is before the Board merely because the member's personal interest may, in common with other taxpayers or members of the public, be affected by that tax policy or by any relevant Board recommendations.

APPENDIX 2: PROVISIONS OF THE 1936 AND 1997 INCOME TAX ASSESSMENT ACTS IDENTIFIED FOR POSSIBLE REPEAL

- 1936 Act provisions – page 23
- 1997 Act provisions – page 69

Explanation of Repeal Categories in the attached tables

The two main categories which relate to the conclusions Atax has reached as to possible repeal are as follows:

Repeal This is a provision which should be repealed and in respect of which there is no debate.

Repeal* This is a provision which in Atax’s view can be repealed but in relation to which Atax wishes to highlight a particular issue relating to the proposed repeal.

This category is further broken down into three sub-categories:

repeal*# Effectively no different to the straight repeal category. Included in repeal* category only because Atax has commented about some aspect, but there were no qualifications on repeal.

repeal* Some relatively minor work needs to be done to repeal, in most cases simply the insertion of an overall general savings provision or a simple cross-reference change.

repeal*** The position is not as straightforward but where, subject to various qualifications or consequential actions, the sections could still be repealed.