



# **Proposed TPB Guideline**

## **TPB(PG) 03/2010**

### **Course in Australian taxation law that is approved by the Board**

This document is a Tax Practitioners Board (Board) proposed guideline (TPB(PG)) that the Board intends to issue as a Board guideline (TPB(G)) under paragraph 60-15(d) of the *Tax Agent Services Act 2009*, but on which the formal drafting and Parliamentary tabling processes have not yet been undertaken.

The Board intends to follow this TPB(PG) until such time as the TPB(G) is formally made. However, being proposed guidelines, the Board may be prepared to consider alternative outcomes to the TPB(PG) in special circumstances.

Once this TPB(PG) becomes a TPB(G), it will be a legislative instrument that binds both the Board and those to whom it applies. The purpose of the TPB(G) will be to assist the Board in achieving its functions, which includes the administration of the system for the registration of tax agents and BAS agents.

#### **Document History**

The Board released this TPB(PG) in the form of an information sheet as an exposure draft on 14 April 2010. The Board invited comments and submissions in relation to the information contained in it. The closing date for submissions was 18 June 2010. The Board considered submissions made and on 16 December 2010 published the following TPB(PG), subject to the following amendments:

- On 3 October 2012, the Board inserted paragraph 8 to define the scope of the TPB(PG); and
- On 3 October 2012, the Board amended paragraphs 18 and 39 to include 'other registered higher education institutions' as another category of course provider that can provide a course in Australian taxation law that is approved by the Board.

**Issued:** 16 December 2010

**Last updated:** 3 October 2012

# TPB(PG) regarding ‘a course in Australian taxation law that is approved by the Board’

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This TPB(PG) sets out the views of the Tax Practitioners Board (Board) in relation to the meaning of ‘a course in Australian taxation law that is approved by the Board’ for the purpose of Items 201(c), 203(b), 204(a)(iii) and 205(a)(ii) of Part 2 of Schedule 2 to the *Tax Agent Services Regulations 2009* (TASR). This TPB(PG) includes information relating to the following aspects of a course: topics and learning outcomes, duration, course providers, education level, manner of delivery, assessment and currency.

The information draws on advice given to the Board in February, August and November 2010 by Professors Michael Dirkis and Michael Walpole.

The purpose of this information is to assist relevant institutions, professional associations, potential registrants and the wider community to understand the factors that provide the basis for the Board’s approach to the educational eligibility requirements for registration as a tax agent.

The Board has adopted the views expressed in this TPB(PG).

The Board has published a separate document outlining its approval process for courses which are covered by Schedule 2 to the TASR – see *TPB(I) 07/2011 Approval process for course providers* available at [www.tpb.gov.au](http://www.tpb.gov.au).

## Introduction

1. As the *Tax Agent Services Act 2009* (TASA) is designed to ‘... ensure that tax agent services are provided to the public in accordance with appropriate standards of professional and ethical conduct’ (see section 2-5 of the TASA) it is both necessary and desirable, in certain respects, to increase the expectation of the thoroughness of education and training that a registered tax agent should have when compared with the expectations under the registration rules applying before the commencement of the TASA.
2. The Board recognises that a balance must be struck between what is reasonably achievable within the modern educational and professional paradigm and assuring the public of high professional standards. In doing so, regard has been had to the educational qualifications, and the types of providers of training and education recognised within the Australian Qualifications Framework (AQF) (see <http://www.aqf.edu.au/>).

## Course in Australian taxation law

### ***Background***

3. The Board is of the view that the new registration process is designed to assure the public of a necessary basic standard of tax education on the part of tax practitioners. Thus, in the Board's view, a 'course' in Australian taxation law must be of sufficient breadth to equip a registered tax agent to advise the public on the diverse range of tax issues.
4. To become a registered tax agent, an applicant must meet certain eligibility criteria, including the requirements prescribed by the TASR. In certain cases, one such prescribed requirement is that an applicant seeking registration must have successfully completed a course in Australian taxation law that is approved by the Board.
5. An individual must have successfully completed 'a course in Australian taxation law that is approved by the Board' if they are seeking registration under the following:
  - Tertiary qualification in accounting (Item 201(c) of Part 2 of Schedule 2 to the TASR);
  - Diploma or higher award in accountancy (Item 203(b) of Part 2 of Schedule 2 to the TASR);
  - Tertiary qualifications in law (Item 204(a)(iii) of Part 2 of Schedule 2 to the TASR);
  - Work experience (Item 205(a)(ii) of Part 2 of Schedule 2 to the TASR).
6. An individual may, if the Board considers it relevant to the tax agent services to which the application relates, have to have successfully completed 'a course in Australian taxation law that is approved by the Board' if they are seeking registration under the following:
  - Tertiary qualifications in another discipline – specialists (Item 202(b)(iii) of Part 2 of Schedule 2 to the TASR).
7. An individual is not required to have successfully completed 'a course in Australian taxation law that is approved by the Board' if they are seeking registration under the following:
  - Membership of professional association (Item 206 of Part 2 of Schedule 2 to the TASR).
8. This TPB(PG) deals only with the requirements for 'a course in Australian taxation law that is approved by the Board' as referred to in items 201(c), 203(b), 204(a)(iii) and 205(a)(ii) of Part 2 of Schedule 2 to the TASR. For information on the requirements for 'a course in Australian taxation law that is approved by the Board' for the purposes of item 202(b)(iii), refer to *TPB(I) 14/2012 Tertiary qualifications in a discipline other than accountancy for tax agents*, available at [www.tpb.gov.au](http://www.tpb.gov.au).

### ***Topics & Learning outcomes***

9. The Board is of the view that a course in Australian taxation law should include the equivalent of two taxation law units covering at least the following key areas of taxation law:
- (a) the rules and principles of Australian tax law including an understanding of the legal environment in which these principles operate, including basics of the legal system, constitutional considerations, separation of powers;
  - (b) the key aspects of the income tax law covering concepts of residence and source, related elements (only) of international tax, assessable income, deductions, tax rebates/offsets and tax accounting;
  - (c) the key aspects of taxes that extend the ordinary income tax base including relevant principles and application of the capital gains tax and fringe benefits tax rules;
  - (d) goods and services tax;
  - (e) taxation of individuals and basic entities including partnerships, trusts and companies;
  - (f) taxation aspects of superannuation law;
  - (g) administrative aspects of the taxes identified above including returns, tax collection and withholding mechanisms, assessments, objections, rulings, penalties and audits;
  - (h) rules addressing specific and general anti tax avoidance; and
  - (i) ethical and professional responsibilities of tax agents including obligations under the TASA and TASR.
10. The learning outcomes in respect of a course in Australian taxation law are that the individual should be able to explain, critically evaluate and where appropriate apply the rules and principles attaching to each of the topics listed at paragraph 9 above.
11. As taxation law is ever evolving, in conjunction with these learning outcomes, individuals should demonstrate learning outcomes in the form of the skills to locate, research and apply changes to the law on all aspects material to the topics listed at paragraph 9 above. In addition, individuals should be able to identify, research and apply new laws on the new topics material to their professional practice in taxation. Without seeking to be over prescriptive, graduates should be able to demonstrate these skills in respect of:
- governmental tax policy documents (ie those issued by Reviews, Treasury, Board of Taxation etc);
  - explanatory materials in relation to legislation;
  - statutes;
  - court and Administrative Appeals Tribunal decisions; and
  - Commissioner of Taxation's interpretative guidance (eg, rulings, determinations etc).

12. It should be noted that the major reason for the proposed content divide between the requirements for a course in commercial law (see TPB(PG) 02/2010: Course in commercial law that is approved by the Board) and Australian taxation law is the enormous breadth of commercial law knowledge that a tax agent needs to possess and understand prior to the application of the taxation law. This arises as taxation law is a process for assigning an amount of tax to certain transactions and activities of persons and entities that give rise to receipts or gains. Thus, taxation law is an overlay of the existing legal system. Even in circumstances where it seeks to override the operation of commercial law and equity to enable particular receipts and gains to be brought to account, it does so only in the context of the operation of commercial law (for example, the corporate consolidation regime). Therefore, a fundamental understanding of the components of common law, equity and statute that comprise commercial law is crucial for a tax agent to provide the requisite level of advice required by the Code of Professional Conduct.

### ***Duration of course/s***

13. The Board notes that units of sufficient breadth and depth to cover the nine topics listed at paragraph 9 above are unlikely to fit within a single standard 12 to 14 week tertiary period consisting of lectures, tutorials, seminars and private study and research totalling 100 to 130 hours (see paragraph 16 below) made up of (usually) two hours of lectures and one hour of tutorials per week plus private study and research. In addition to the technical content of such units there will be an expectation that students will also learn skills to enable them to find the law and apply it to problems when they are in practice.
14. Accordingly, the Board takes the view that an applicant for registration will have completed a course that consists of at least two units at the appropriate tertiary level in order to address the depth and breadth requirements set out here. It is not expected that all the components of the course would necessarily be from the same provider, nor be completed at the same level in the tertiary sector. Many permutations may be possible. At the same time, it is not expected that two units studied at different levels or at different institutions but with extensive overlaps in content would satisfy this requirement. For example, an applicant who has completed two similar introductory units covering substantially the same material, but at different institutions, would not satisfy the requirement.
15. It is worthy to note that the list of topics and parts of topics that the Board prescribes here possibly extends beyond the content of current offerings at most tertiary providers. Therefore, the Board proposes to take a progressive approach to this requirement to ensure that individuals who have already commenced study in a course on the reasonable expectation that the course would be acceptable to fulfil the requirement for a course in Australian income tax law for the purpose of registration under the predecessor regime are

not disadvantaged if they apply for registration under the TASA. This also allows providers sufficient time to respond to this new list of prescribed course content.

16. Many tertiary level units are delivered in semester (or term) length periods consisting of a series of lectures and tutorials spaced over a standard 12 to 14 week period. The suggested duration of 100 to 130 hours (mentioned at paragraph 13 above) is based on an assumption of this type of delivery, as was the former Tax Agents' Board Guideline of 120 hours' duration. Because of the need to include components in the course that require students to apply their knowledge and learn research skills, a significant part of the course may consist of private study and research.
17. Accordingly, the Board is of the view that the duration of the course in Australian taxation law should not be less than the equivalent of two tertiary level units in taxation law together amounting to a total of 200 to 260 hours of study and tuition made up of formal instruction (such as lectures), exercises in applying knowledge (such as tutorials) and private study (such as research, reading, and assignment preparation). It is noted, however that duration alone is not a definitive guide as to the quality of a course and from time to time the Board may have regard to other elements such as technical content, level of difficulty, nature of assessment etc, in order to come to a final view as to whether the requirements for approval of a course have been met.

### ***Providers of course/s***

18. The Board is of the view that a course in Australian taxation law should be attained through study of units with a university, registered training organisation (RTO) or other registered higher education institution, provided the units are offered as part of a qualification at the requisite level that has been recognised and accredited via the AQF.
19. The Board is of the view that, unless otherwise approved by the Board, the minimum education level required for an approved course in Australian taxation law is diploma, which meets AQF level 5 criteria. In all cases, the proposed course must satisfy the Board's requirements relating to assessment (see paragraphs 23 to 25 and 27 to 29 for further information on assessment).
20. The Board may also choose to accept courses offered by other providers so long as the provider meets the Board's conditions and standards as set out in its Information sheet *TPB(I) 07/2011 Approval process for course providers* and the course offered by the provider meets the requirements set out in this TPB(PG).

### ***Manner of delivery***

21. Although the suggested duration of 200 to 260 hours is based on an assumption of a traditional lecture/tutorial/self study model there is a diversity of delivery models available – which diversity has been supplemented by modern technological innovation permitting ‘distance’ or ‘flexible’ study involving engagement with teaching materials and teaching staff via interactive compact disc, video conference, internet etc. In any case, study by correspondence has been widely available for tertiary study and professional study for many years. Some courses may not require any attendance at lectures or seminars but may rely upon the students’ performance in assessment tasks such as a single final examination as a measure of the competence of the students.
22. Accordingly, the Board is of the view that a hard and fast rule on manner of delivery is not necessary. Provided that whatever manner is adopted in the course of study or its components involves an expectation that students will develop a thorough understanding of the tax law through technical content, its application and appropriate research, it is immaterial whether they are usually present in a room with the teacher or not. The outcomes of the course in Australian taxation law or its components should be discernible by reference to how the course/components of the course are assessed.

### ***Assessment***

23. The Board is of the view that some means of objective assessment is a key aspect of the approval of courses for registration of applicants as tax agents. The Board takes the view that applicants must have demonstrated their knowledge and skills in the relevant course or components by some means of independent and objective assessment. Such assessment should be rigorous and have integrity. Various forms of assessment may be employed. Ideally, because of different learning styles and what is appropriate for different aspects of a course, each course or component should employ a mix of assessment practices including:
- tests;
  - examinations (oral and written);
  - problem based assignments;
  - essays and reports; and
  - computer based assessment tasks.
24. Not every one of these needs to be present in an approved course.
25. The Board proposes not to accept assessments that either lack rigour or that are too narrow in their focus. Such assessment may be seen to be recognised as being one element

which is a contributor to overall determination of a student's performance in a course rather than being treated as the sole measure of their skills and knowledge in taxation law.

## **The meaning of 'course'**

### ***What is a course?***

26. A course consists of a series of components leading to an overall knowledge of an aspect of the law including taxation law or rules. Such components may take the form of small units designed for tuition or training of discrete aspects of the tax law. The Board notes that although coherence between the parts/units of the course is desirable, not all applicants will have completed a single coherent series of units delivered, for example, by one provider. Accordingly, the Board is of the view that provided the content set out in the list of topics at paragraph 9 is addressed and provided the material addressed is reasonably current the components need not be part of a coherent stream and may include some duplication and overlap with each other provided there is not a substantial duplication of content.

### ***Does a course need a formal assessment component?***

27. The Board is of the view that there must be a formal assessment component in a course or in the components of a course. This assessment should be sufficient to assure the Board that there has been a test or examination to ensure relevant content and skills expected in a course have been learned by the applicant and that rigour has been employed in the testing of the knowledge and skills.

28. The Board does not propose to be prescriptive about the style and content of assessments, provided the assessments employed represent a genuine test of relevant knowledge and skills and subject to integrity to ensure the relevant applicant will have undertaken the assessment task/s in question.

29. The Board is of the view that the assessment should, to a significant degree (that is, at least 40%), be done under some form of independent supervision.

### ***Can a course be constituted solely by recognised prior learning?***

30. The Board is of the view that assessment of knowledge and competence is the best safeguard for the Board to ensure that it admits to registration only applicants who have the necessary technical qualifications to competently deal with taxpayers' affairs. The Board recognises that prior learning through experience may be regarded as a proxy for content but it does not propose to accept evidence of prior learning in the workplace, which prior learning has not been formally assessed in some way.
31. In principle, prior learning through experience which has itself been formally assessed would not require further assessment. However, it is unlikely the Board will approve an application if all the education requirements were satisfied by prior learning through experience as the ability to keep up to date with changes requires the acquisition of essential learning skills (interpretative, analytical and cognitive skills) that come from the rigour associated with formal training courses.

### ***How current should a course be?***

32. Taxation law changes rapidly and the introduction of new taxes to replace others can completely transform the knowledge base of the tax professional community. For example, the replacement of Sales Tax with GST and simultaneous modifications to the tax collection rules, stamp duty laws and other state taxes transformed aspects of the taxation law in the early 2000's. Similar upheavals were encountered when CGT was introduced and when self-assessment was introduced. Some aspects of taxation law change only incrementally as new cases emerge from the courts.
33. Therefore, a course of study can become out of date quickly. It is for these reasons that many universities and other course providers do not normally grant credit for units of study completed more than ten years prior to application. The Board considers that this standard should be *prima facie* adopted in respect of the recognition of units completed to satisfy the requirements of a course in Australian taxation law.
34. However, the Board notes that the age of the course has to be balanced with the knowledge and experience of the applicant. Well educated professionals will keep their knowledge and skills up to date and will be required to do so through continuing professional development requirements of professional associations. Given such a person's knowledge, a requirement to repeat their undergraduate studies after 20 years of practice would run counter to the policy intent of the legislation.
35. Therefore, the Board proposes to accept as approved courses of study in Australian taxation law:

- where the component unit of study was completed fewer than 10 years from the date of the application for registration; or
- where the component unit of study was completed more than 10 years from the date of the application for registration and the applicant can demonstrate an updating of those skills through work experience and continuing professional development.

36. The Board recognises that there may be applicants that fall outside these two broad guidelines. In these cases, a submission should be included with the application for registration, which the Board will consider on its merits.

## **Summary and conclusion**

37. The Board is of the view that a course in Australian taxation law should cover the following topics:

- (a) the rules and principles of Australian tax law including an understanding of the legal environment in which these principles operate, including basics of the legal system, constitutional considerations, separation of powers;
- (b) the key aspects of the income tax law covering concepts of residence and source, related elements (only) of international tax, assessable income, deductions, tax rebates/offsets and tax accounting;
- (c) the key aspects of taxes that extend the ordinary income tax base including relevant principles and application of the capital gains tax and fringe benefits tax rules;
- (d) goods and services tax;
- (e) taxation of individuals and basic entities including partnerships, trusts and companies;
- (f) taxation aspects of superannuation law;
- (g) administrative aspects of the taxes identified above including returns, tax collection and withholding mechanisms, assessments, objections, rulings, penalties and audits;
- (h) rules addressing specific and general anti tax avoidance; and
- (i) ethical and professional responsibilities of tax agents including obligations under the TASA and TASR.

38. Further, the Board is of the view that a course in Australian taxation law be of 200 to 260 hours duration. This would equate to two tertiary level units.

39. In addition, the Board is of the view that a course in Australian taxation law should be attained through study of units with a university, RTO, other registered higher education institution or another provider approved by the Board.
40. The Board is of the view that, unless otherwise approved by the Board, the minimum education level required for an approved course in Australian taxation law is Diploma, which meets AQF level 5 criteria.
41. Finally, the Board takes the view that all courses should be assessed to a significant degree under some form of independent supervision and in a manner demonstrating rigour and integrity.