



# Exposure Draft

## Proposed TPB Guideline

### TPB(PG) D04/2013

**Course in Australian taxation law that is approved by the Board  
for tax (financial product) advisers**

#### **Tax Practitioners Board Exposure Draft**

The Tax Practitioners Board (Board) has released this draft proposed guideline as an Exposure draft and invites comments and submissions in relation to the information contained in it within **60 days**. The closing date for submissions is **21 May 2013**. A summary of the proposal and the key issues in relation to which feedback is being sought is contained at Appendix A to the draft Exposure draft. The Board will consider any comments and submissions before settling its position, undertaking any further consultation required and finalising the proposed guideline.

Written submissions should be made by the closing date to the Secretary of the Board via email at [tpbsubmissions@tpb.gov.au](mailto:tpbsubmissions@tpb.gov.au) or by mail to:

Tax Practitioners Board  
PO Box 126  
HURSTVILLE BC NSW 1481

#### **DISCLAIMER**

This document is in draft form, and when finalised as a TPB(PG), will be intended to be issued as a Board guideline (TPB(G)) under paragraph 60-15(d) of the *Tax Agent Services Act 2009*. The formal drafting and Parliamentary tabling processes have not yet been undertaken.

The information in this draft proposed guideline does not constitute legal advice. It is also only at a preliminary stage. The Board's conclusions and views may change as a result of comments received or as other circumstances change.

#### **Document History**

This draft proposed guideline was issued on 22 March 2013 and is based on the *Tax Agent Services Act 2009*, the *Tax Agent Services (Transitional Provisions and Consequential Amendments) Act 2009* and the *Tax Agent Services Regulations 2009* as at 1 March 2013.

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

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This draft TPB(PG) sets out the preliminary 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 tax (financial product) advisers. The draft 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 preliminary views of the Board are based upon the draft legislation released by the Government on 8 February 2013 to create a regulatory framework for tax advice (financial product) services. The relevant Bill and Explanatory Memorandum are yet to be introduced into Parliament and therefore the contents of the Board’s draft TPB(PG) are subject to change. For more details about the draft legislation, go to [www.treasury.gov.au](http://www.treasury.gov.au).

The information in this draft TPB(PG) draws on advice given to the Board in October 2011, February and May 2012 and March 2013 by Professors Michael Dirkis and Michael Walpole and Mr Gordon Mackenzie.

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 (financial product) adviser with the Board.

The Board intends to adopt the views expressed in this draft TPB(PG) when finalised.

The Board has published a separate document outlining its approval process for courses which are covered by Schedule 2 to the *Tax Agent Services Regulations 2009* (TASR) – see *TPB(I) 07/2011 Approval process for course providers* available at [www.tpb.gov.au](http://www.tpb.gov.au).

## **Introduction**

1. 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 therefore both necessary and desirable, in certain respects, to increase the expectation of the thoroughness of education and training

that a registered tax (financial product) adviser should have when compared with the expectations under the regulatory regime of the *Corporations Act 2001* before 1 July 2013.<sup>1</sup>

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>).
3. The preliminary views of the Board about what a course in Australian taxation law for tax (financial product) advisers should be are based upon the draft legislation released by the Government on 8 February 2013 to create a regulatory framework for tax advice (financial product) services. The consultation process on the draft legislation closed on 8 March 2013. The relevant Bill and Explanatory Memorandum are yet to be introduced into Parliament. Therefore the contents of the Board's draft TPB(PG) are subject to change.
4. The Government has not yet finalised the amendments to the TASR as they will be contingent on the final form of the draft legislation. Nonetheless, to assist in this consultation process, the Government has prepared a short paper outlining the proposed changes to the TASR that would implement the new regime in full.
5. In particular, the proposed changes to the TASR provide that:
  - 5.1 The overarching requirement would be that the individual is either:
    - 5.1.1 a financial services licensee, as defined in Chapter 7 of the *Corporations Act 2001*; or
    - 5.1.2 a representative of a financial services licensee, as defined in paragraph 910A(a) of the *Corporations Act 2001*.
  - 5.2 To provide flexibility in situations where an individual has had a change of circumstances (such as becoming a representative of a different financial services licensee due to a change of employment), it would only be necessary for the individual to meet this requirement at some point during the preceding 30 day period.
  - 5.3 In addition, the individual would need to:

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<sup>1</sup> For more information regarding the extension of the exemption for financial advisers from the Tax Agent Services regime, refer to Media Release No 20 of 2012 issued by the Honorable David Bradbury MP on 30 April 2012.

- 5.3.1 have successfully completed a TPB approved course in Australian tax law for tax (financial product) advisers and engaged in the equivalent of two-years of full time relevant experience in the preceding five years; or
- 5.3.2 hold a degree or award that is approved by the TPB from an Australian tertiary institution, or an equivalent institution, in a discipline that is relevant to tax advice (financial product) services; have successfully completed a TPB approved course in Australian tax law for tax (financial product) advisers and engaged in the equivalent of 18-months of full time relevant experience in the preceding five years; or
- 5.3.3 have successfully completed a TPB approved course in Australian tax law for tax (financial product) advisers, be a voting member of a recognised tax (financial product) adviser association or a tax agent association and engaged in the equivalent of 12-months of full time relevant experience in the preceding five years.

## **Course in Australian taxation law for tax (financial product) advisers**

### ***Background***

- 6. The Board is of the preliminary 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 (financial product) advisers. Thus, in the Board's preliminary view, a 'course' in Australian taxation law should be of sufficient breadth to equip a tax (financial product) adviser to advise the public on the diverse range of tax issues (see paragraph 25 for further information on the meaning of 'course').
- 7. The tax system in Australia is very complex and the interaction of that system with the social security system adds to this complexity. Many financial decisions have a tax impact and some financial products and much financial advice derive at least some of their value from tax preferences. Virtually any personal financial planning advice will include considerations ranging (for example) from interest deductibility for tax purposes through to fringe benefits tax associated with salary packaging to limits on contributions to superannuation. Financial advice associated with business transactions tends to be even more complex.

8. To become a registered tax (financial product) adviser, 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.
9. This draft TPB(PG) deals only with the requirements for 'a course in Australian taxation law that is approved by the Board' for tax (financial product) advisers. For information on the requirements for 'a course in Australian taxation law that is approved by the Board' for tax agents, refer to *TPB(PG) 03/2010 Course in Australian taxation law that is approved by the Board* and *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***

10. The Board is of the preliminary view that a course in Australian taxation law for tax (financial product) advisers should include the equivalent of one taxation law unit covering at least the following key areas of taxation law:
  - (a) concepts of: income, deductions, tax offsets/rebates, residence, source including the principles of the taxation of negative gearing, home office expenses, holiday home expenses, fixed income investments and capital allowances;
  - (b) tax treatment of: individuals, partnerships, companies and trusts including treatment of imputation credits, deferred and tax free trust distributions;
  - (c) fringe benefits tax including the concept of salary packaging;
  - (d) capital gains tax (CGT) at a basic level such as CGT event A1 happening on disposal of an asset, the CGT discounts and the CGT consequences of death, including general awareness of the main residence exemption (and its application to holiday homes). The availability of CGT concessions for small business and of roll-overs. At times expert advice may need to be sought (or deep expertise acquired) on application of CGT rules to the client's circumstances;
  - (e) goods and services tax (GST) at a basic awareness level;
  - (f) tax administration: returns, assessments, amendments but not preparation of returns or communications on behalf of clients with the Australian Taxation Office;
  - (g) superannuation: wide key areas concerning taxation of contributions, fund earnings and benefits. At times expert advice may need to be sought on self managed superannuation funds (SMSFs) and more detailed topics;
  - (h) tax anti-avoidance provisions (especially those relating to promoter penalties); and
  - (i) ethical and professional responsibilities of tax (financial product) advisers including obligations under the TASA and TASR.

11. The learning outcomes in respect of a course in Australian taxation law are that the tax (financial product) adviser should be able to explain, critically evaluate and where appropriate apply the rules and principles attaching to each of the topics listed at paragraph 10 above, particularly in the context of financial products.
12. As taxation law is continually evolving, in conjunction with these learning outcomes, the Board is of the preliminary view that tax (financial product) advisers should also learn skills to enable them to have knowledge of the law and apply it to problems when they are giving advice in practice and so as to keep their knowledge up to date. Tax (financial product) advisers should understand the boundaries about clients acting on their tax advice. They should understand which tax areas are so complex as to need specialised independent tax advice.
13. The provision of financial and taxation advice has the potential to affect clients to a significant degree. This means that advisers may be expected to acquire a great depth of knowledge. It must be borne in mind, however, that tax (financial product) advisers are not tax advisers and it would be unreasonable to expect them to have expertise that equals that of tax agents. It should also be assumed that clients whose circumstances are unusual and whose risks are high should obtain specialised independent tax advice. It is expected that tax (financial product) advisers will not advise outside of their areas of competence and will refer clients for specialist taxation advice unless the tax (financial product) adviser has extended their own knowledge to a point where they are themselves competent in that specialised area.

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

14. The Board is of the preliminary view that the topics listed at paragraph 10 above should fit within a single standard 12 to 14 week tertiary period 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) totalling 100 to 130 hours.
15. Accordingly, the Board is of the preliminary view that the duration of the course in Australian taxation law should not be less than the equivalent of one quarter of a semester's full-time workload amounting to a total of 100 to 130 hours of study and tuition.
16. 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***

17. The Board is of the preliminary 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.
18. The Board is of the preliminary 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 22 to 24 for further information on assessment).
19. The Board may also choose to accept courses offered by other providers as 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 draft TPB(PG).

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

20. Although the suggested duration of 100 to 130 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 computer programs, 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.
21. Accordingly, the Board is of the preliminary 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 Board is of the preliminary view that 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***

22. The Board is of the preliminary view that some means of objective assessment is a key aspect of the approval of courses for registration of applicants as tax (financial product) advisers. The Board takes the preliminary 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.
23. The Board is of the preliminary view that not every one of these needs to be present in an approved course. 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.
24. The Board is of the preliminary view that the assessment should, to a significant degree (that is, at least 40%), be done under some form of independent supervision.

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

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

25. 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 preliminary view that provided the content set out in the list of topics at paragraph 10 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.

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

26. The Board is of the preliminary 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 (see paragraphs 22 to 24 for information on assessment).
27. 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?***

28. 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 the goods and services tax (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.
29. 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 is of the preliminary view 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 for tax (financial product) advisers.
30. 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.

31. 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.
32. The Board recognises that there may be applicants that fall outside these two broad guidelines. In these cases, the Board is of the preliminary view that a submission should be included with the application for registration, which the Board will consider on its merits.

## **Summary and conclusion**

33. The Board is of the preliminary view that a course in Australian taxation law should cover at least the following topics:
- (a) concepts of: income, deductions, tax offsets/rebates, residence, source including the principles of the taxation of negative gearing, home office expenses, holiday home expenses, fixed income investments and capital allowances;
  - (b) tax treatment of: individuals, partnerships, companies and trusts including treatment of imputation credits, deferred and tax free trust distributions;
  - (c) fringe benefits tax including the concept of salary packaging;
  - (d) capital gains tax (CGT) at a basic level such as CGT event A1 happening on disposal of an asset, the CGT discounts and the CGT consequences of death, including general awareness of the main residence exemption (and its application to holiday homes). The availability of CGT concessions for small business and of roll-overs. At times expert advice may need to be sought (or deep expertise acquired) on application of CGT rules to the client's circumstances;
  - (e) goods and services tax (GST) at a basic awareness level;
  - (f) tax administration: returns, assessments, amendments but not preparation of returns or communications on behalf of clients with the Australian Taxation Office;
  - (g) superannuation: wide key areas concerning taxation of contributions, fund earnings and benefits. At times expert advice may need to be sought on self managed superannuation funds (SMSFs) and more detailed topics;
  - (h) tax anti-avoidance provisions (especially those relating to promoter penalties); and
  - (i) ethical and professional responsibilities of tax (financial product) advisers including obligations under the TASA and TASR.

34. Further, the Board is of the preliminary view that a course in Australian taxation law should be of 100 to 130 hours duration. This would equate to one quarter of a semester's full-time workload.
35. In addition, the Board is of the preliminary view that a course in Australian taxation law should be attained through study of units at a university, RTO, other registered higher education institution or another provider approved by the Board.
36. The Board is of the preliminary view that, unless otherwise approved by the Board, the minimum education level required for an approved course in Australian taxation law should be Diploma, which meets AQF level 5 criteria.
37. Finally, the Board takes the preliminary view that all courses should be assessed to a significant degree (that is, at least 40%) under some form of independent supervision and in a manner demonstrating rigour and integrity.

## Appendix A

### Summary of proposal and key issues for your feedback

#### Proposal

The Board proposes to administer the requirements for registration as a tax (financial product) adviser under the *Tax Agent Services Act 2009* (TASA) from 1 July 2013, including the requirement, in certain circumstances, to complete a course in Australian taxation law that is approved by the Board.

#### Key issues for your feedback

- (1) Do you agree that tax (financial product) advisers seeking registration under the TASA should be required to undertake a course of study in Australian taxation law? If you do not agree, please give reasons.
- (2) Do you agree that a Board approved course in Australian taxation law for tax (financial product) advisers should cover the topics listed in paragraph 10 of this draft TPB(PG)? Are there any other topic areas you believe should be covered in the course?
- (3) Do you agree that a Board approved course in Australian taxation law for tax (financial product) advisers should be at least of 100 to 130 hours duration, equating to one quarter of a semester's full-time workload?
- (4) Do you agree that a Board approved course in Australian taxation law for tax (financial product) advisers should be attained through a university, registered training organisation, other registered higher education institution or another provider approved by the Board?
- (5) Do you agree that the minimum education level required for a Board approved course in Australian taxation law for tax (financial product) advisers should be Diploma, which meet Australian Qualifications Framework level 5 criteria?
- (6) Do you agree that a Board approved course in Australian taxation law for tax (financial product) advisers should be assessed to a significant degree (that is, at least 40%) under some form of independent supervision and in a manner demonstrating rigour and integrity?