

COMMONWEALTH OF AUSTRALIA

Tax Agent Services (a course in Australian taxation law that is approved by the Board for tax agents) Instrument 2020

Explanatory Statement

General outline of this Instrument

1. This legislative Instrument (the **Legislative Instrument**) is made under subsection 60-15(d) of the *Tax Agent Services Act 2009 (Act)*.
2. The Legislative Instrument declares, for the purpose of registration as a tax agent under Division 1 of Part 2 of Schedule 2 to the *Tax Agent Services Regulations 2009 (Regulations)*, the requirements for a course in Australian taxation law that is approved by the Board.
3. The Legislative Instrument is a legislative Instrument for the purposes of the *Legislation Act 2003 (LA 2003)*.
4. Under subsection 33(3) of the *Acts Interpretation Act 1901*, where an Act confers a power to make, grant or issue any Instrument of a legislative or administrative character (including rules, regulations or by-laws), the power shall be construed as including a power exercisable in the like manner and subject to the like conditions (if any) to repeal, rescind, revoke, amend, or vary any such Instrument.

Commencement and application of this Instrument

5. The Legislative Instrument commences on the day after it is registered on the Federal Register of Legislation.
6. The application of the Legislative Instrument applies to individuals seeking registration as a tax agent.

What is this Instrument about?

7. The Legislative Instrument declares, for the purposes of Division 1 of Part 2 of Schedule 2 to the Regulations, the following requirements for a course in Australian taxation law that is approved by the Board:
 - (a) course duration;
 - (b) course topics;
 - (c) course education level;
 - (d) course providers;
 - (e) assessment requirements; and
 - (f) course currency.

What is the effect of this Instrument?

8. The effect of the Legislative Instrument is to set out the requirements of a course in Australian taxation law that is approved by the Board for individuals seeking registration as a tax agent under the Act and the Regulations.
9. In particular, the Legislative Instrument will assist relevant institutions, professional associations, potential registrants, renewing tax agents and the wider community to understand the qualification requirements for registration as a tax agent.

Compliance cost impacts

10. No negative regulatory compliance costs or practical impacts are expected, as there are no changes to the requirements as previously set out in TPB Proposed Guideline TPB(PG) 03/2010 *Course in Australian taxation law that is approved by the Board.*

Background

11. Under the Act, an entity must register as a tax agent if they provide a tax agent service for a fee or other reward (section 50-5 of the Act).
12. Part 2 of Schedule 2 to the Regulations sets out the eligibility requirements for registration as an individual tax agent. These requirements differ, depending on the type and level of qualifications and amount of work experience completed by the individual.
13. To be eligible to register as a tax agent, an individual must have successfully completed specified educational courses, which include a course in Australian taxation law that is approved by the Board, in instances where they:
 - (a) have been awarded a degree or post-graduate award from an Australian tertiary institution, or a degree or award that is approved by the Board from an equivalent institution, in the discipline of accountancy (item 201 in Division 1 of Part 2 of Schedule 2 to the Regulations);
 - (b) have been awarded a diploma or higher award from a registered training organisation or equivalent institution in the discipline of accountancy (item 203 in Division 1 of Part 2 of Schedule 2 to the Regulations);
 - (c) have the academic qualifications required to be an Australian legal practitioner (item 204 in Division 1 of Part 2 of Schedule 2 to the Regulations); or
 - (d) have been engaged in the equivalent of eight years of full-time, relevant experience in the previous 10 years (item 205 in Division 1 of Part 2 of Schedule 2 to the Regulations).
14. An individual may also be required to have successfully completed a course in Australian taxation law that is approved by the Board, in a circumstance where, in addition to meeting other requirements:
 - (a) they have been awarded a degree or post-graduate award from an Australian tertiary institution, or a degree or award that is approved by the Board from an equivalent institution, in a discipline other than accountancy that is relevant to the tax agent services to which the application relates; and
 - (b) the Board considers such course relevant to the tax agent services to which the application relates (item 202 in Division 1 of Part 2 of Schedule 2 to the Regulations).
15. The explanatory statement to the Regulations explains that the purpose of item 202 is to enable the Board to determine whether an individual who wishes to provide 'specialist' tax agent services and holds a relevant 'specialist' qualification is required to have completed an

approved course in Australian taxation law. In exercising this discretion, the Board may have regard to such matters as whether their principal qualification already requires them to have completed such course and, recognising the Board's ability to impose conditions on their registration limiting their provision of tax agent services to the relevant area of taxation law, whether the course would be necessary or assist them to competently provide services in that area.

16. The Act allows the Board to issue, by Legislative Instrument under subsection 60-15(d) of the Act, guidelines to assist in achieving the functions of the Board, including its function to administer the system for the registration of registered tax agents.
17. The explanatory memorandum to the *Tax Laws Amendment Bill 2009* explains that the purpose of this power is to provide the Board with the power to do all things necessary or convenient to be done to enable it to perform its functions.

Legislative Instrument in detail

Section 1: Name of Instrument

18. Section 1 provides that the name of the Legislative Instrument is the *Tax Agent Services (a course in Australian taxation law that is approved by the Board for tax agents) Instrument 2020*.

Section 2: Commencement

19. Section 2 provides that the Legislative Instrument will commence on the day after it is registered in the Federal Register of Legislation.

Section 3: Authority

20. Section 3 sets out the legislative authority for making the Legislative Instrument: subsection 60-15(d) of the Act.

Section 4: Definitions

21. Section 4 is the definitions section. This section includes definitions for **AQF, other registered higher education provider, registered training organisation** and other terms used in the Instrument.

Section 5: Course duration

22. Section 5 provides that a course in Australian taxation law must comprise at least two tertiary level units.
23. Units of sufficient breadth and depth to cover the relevant topics listed at paragraph XX below are unlikely to fit within a single standard 12 to 14 week tertiary period consisting of lectures, tutorials, seminars, private study and research totalling 100 to 130 hours 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 should be an expectation that students will also learn skills to enable them to find the law and apply it to a client's circumstances when they are in practice.
24. Accordingly, it is expected that an applicant for registration as a tax agent will have completed a course that consists of at least two semester equivalent 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 exactly the same level within 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.

25. 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 22 above) is based on an assumption of this type of delivery. 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.
26. 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 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).

Section 6: Course topics

27. Section 6 details the topics that a course in Australian taxation law must cover.
28. Each of the topics in section 6 must be covered in at least one of the units comprising a course in Australian taxation law. Therefore, it is not necessary that *all* the topics in section 6 be covered in each of the units comprising a course in Australian taxation law.
29. 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 in section 6.
30. 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 in section 6. 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, individuals should be able to demonstrate these skills in respect of:
 - governmental tax policy documents (i.e. 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 (e.g., rulings, determinations etc.).
31. It should be noted that the major reason for the proposed content divide between the requirements for a course in commercial law 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.

Section 7: Course education level

32. Section 7 details the minimum required education level of a course in Australian taxation law that is approved by the Board.
33. The Australian Qualifications Framework (AQF), published by the Australian Qualifications Framework Council, sets a Diploma at the AQF level 5.
34. Subsection 7(1) provides that unless otherwise approved by the Board, a course in Australian taxation law that is approved by the Board must be at minimum diploma level, which meets the AQF recognised and accredited level 5 criteria.

Section 8: Course providers

35. Section 8 details that a course in Australian taxation law that is approved by the Board must be attained through study undertaken through one of the following education providers:
 - (a) a university;
 - (b) a registered training organisation;
 - (c) other registered higher education provider;
 - (d) another provider approved by the Board.
36. The Board may accept a course offered by another provider, provided that the course meets all other requirements set out in the Legislative Instrument and the provider meets the conditions and standards set by the Board in TPB Information Sheet *TPB(I) 07/2011 Approval process for course providers*, available at the Tax Practitioners Board website.

Section 9: Assessment requirements

37. Section 9 sets out the assessment requirements for a course in Australian taxation law that is approved by the Board.
38. 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:
 - a. tests
 - b. examinations (oral and written)
 - c. problem based assignments
 - d. essays and reports
 - e. computer based assessment tasks.

39. Not every one of these need be present in an approved course. However, as set out in subsection 9(1), the assessments must represent a genuine test of relevant knowledge and skills and be subject to integrity to ensure the relevant person will have undertaken the assessment task(s) in questions.
40. The second requirement, as mentioned in subsection 9(2), is that a course in Australian taxation law must contain independently supervised assessment.
41. Objective assessment is a key aspect of the approval of courses for registration of applicants as tax agents. Applicants must have demonstrated their knowledge and skills in the relevant course or components by some means of an independent and objective assessment. Such assessment should be rigorous and have integrity.
42. The Board will not accept assessments that either lack rigour or that are too narrow in their focus. Such assessments 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 Australian taxation law.
43. Independent and objective assessment refers to assessment practices being conducted under the supervision of a course supervisor, lecturer or other such people. It does not include assessment practices being conducted under the supervision of a family member, friend or someone that has a close personal or professional relationship with the individual undertaking the assessment.
44. In addition, the independently supervised assessment(s) must constitute at least 40% of the overall grade of each of the units comprising a course in Australian law.

Recognised prior learning

45. 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.
46. 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.
47. Therefore, in summary the Board may accept recognised prior learning provided the prior learning has been formally assessed in accordance with section 9.

Section 10: Course currency

48. Section 10 details the requirements in relation to course currency and requires that a course in Australian taxation law must have been completed fewer than 10 years from the date a person makes an application for registration unless the person can demonstrate to the Board that they have continued to update their relevant skills through work experience and continuing professional education.
49. For the purposes of subsection 10(2):

- (a) the onus is on the applicant to satisfy the Board that they meet the requirements of the subsection; and
- (b) the Board will consider matters on a case by case basis.

Consultation

50. Consultation was carried out as follows:

- (a) On 10 June 2020, the draft Legislative Instrument and Explanatory Statement were provided to the TPB's Consultative Forum for out-of-session feedback.
- (b) On XX June 2020, the draft Legislative Instrument and Explanatory Statement were released for a 28-day public consultation period.

51. The current membership of the TPB's Consultative Forum has remained relatively stable since it commenced in 2010. As at 26 February 2020, forum membership includes representatives from the following:

- Association of Accounting Technicians (Australia) Limited
- Association of Chartered Certified Accountants
- Association of Financial Advisers
- Association of Independently Owned Financial Professionals
- Australian Bookkeepers Association Ltd
- Australian Institute of Quantity Surveyors
- Chartered Accountants Australia and New Zealand
- Certified Practising Accountants Australia
- Financial Services Institute of Australasia
- Financial Planning Association of Australia
- Institute of Certified Bookkeepers
- Institute of Chartered Accountants in England and Wales
- Institute of Public Accountants
- Law Council of Australia
- Law Society of New South Wales
- National Tax Agents' Association Ltd (NTAA+)
- Royal Institute of Chartered Surveyors Australasia
- SMSF Association
- South African Institute of Chartered Accountants
- Stockbrokers and Financial Advisers Association
- TAI Practitioners & Advisers Limited
- The Tax Institute

Statement of Compatibility with Human Rights

This Statement is prepared in accordance with Part 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

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The Legislative Instrument is compatible with the human rights and freedoms recognised or declared in the international Instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Overview

The Legislative Instrument declares, for the purposes of the eligibility requirements for registration as a tax agent contained in Division 1 of Part 2 of Schedule 2 to the *Tax Agent Services Regulations 2009*, the requirements for a course in Australian taxation law that is approved by the Board under items 201, 202 (if considered relevant to an application), 203, 204 and 205. Such requirements relate to:

- (a) course duration;
- (b) course topics;
- (c) course education level;
- (d) course providers;
- (e) assessment requirements; and
- (f) course currency.

On an assessment of the compatibility of this Instrument with the seven core international human rights treaties to which Australia is a party, it has been determined that this Instrument does not engage any of the applicable rights or freedoms because the Instrument is minor or machinery in nature.

Human rights implications

This Legislative Instrument does not engage any of the applicable rights or freedoms as it simply sets out the requirements of a course in Australian taxation law that is approved by the Tax Practitioners Board for individuals seeking registration as a tax agent under the *Tax Agent Services Act 2009* and the *Tax Agent Services Regulations 2009*. In particular, the Legislative Instrument will assist relevant institutions, professional associations, potential registrants, renewing tax agents and the wider community to understand the qualification requirements for registration as a tax agent.

Conclusion

The Legislative Instrument is compatible with human rights as it does not raise any human rights issues.