



## THE TAX INSTITUTE

24 May 2013

Mr Graeme Wilkinson  
Secretary of the Board  
Tax Practitioners Board  
PO Box 126  
HURSTVILLE BC NSW 1481

By email: [tpbsubmissions@tpb.gov.au](mailto:tpbsubmissions@tpb.gov.au)

Dear Mr Wilkinson,

### **Proposed TPB Guideline TPB(PG) D04/2013 - Exposure Draft**

The Tax Institute is pleased to have the opportunity to make a submission to the Tax Practitioners Board (**Board**) in relation to the *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 (Exposure Draft)*.

### **Summary**

Our submission below addresses the issues raised in the Exposure Draft. In particular, The Tax Institute is of the view that, in the interests of consumer protection, a person applying for registration as a tax (financial product) adviser<sup>1</sup> (**TFP Adviser**) should be required to obtain the same level of Australian taxation law education as a person applying for registration as a tax agent. Our detailed comments are noted below.

### **Discussion**

#### *Overview*

The Tax Institute is of the view that a person wishing to register as a TFP Adviser should be required to have the same level of tax law knowledge ordinarily expected for a person registering as a tax agent. This is based on the breadth and nature of what constitutes a “financial product<sup>2</sup>” and the breadth of tax knowledge required to provide

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<sup>1</sup> As defined in the *Creating a regulatory framework for tax (financial product) services – Exposure Draft* released by Treasury on 8 February 2013.

<sup>2</sup> As defined in the Corporations Act 2001

tax advice to a competent level in relation to financial products. It is not possible to categorically carve out certain parts of the tax law and state that a TFP Adviser would not be required to know these parts in order to give tax advice in relation to financial products to a competent standard.

In our view, a person registering as a TFP Adviser must complete the same course that a person registering as a tax agent is required to complete.

We acknowledge the Board's view in the Exposure Draft that "it would be unreasonable to expect [TFP Advisers] to have expertise that equals that of tax agents<sup>3</sup>". We note the Board makes the assumption that TFP Advisers will refer clients with unusual circumstances and high risks to obtain specialised independent tax advice. This relies on TFP Advisers having an understanding of which areas of tax law are so complex and beyond the scope of their ability that specialist independent tax advice will need to be sought<sup>4</sup>.

Given the difference between The Tax Institute's views and the views expressed by the Board in the Exposure Draft, we seek to find the best compromise between the two views as evidenced in our comments below which address the key issues raised by the Board.

#### *Key issues*

- (1) Do you agree that tax (financial product) advisers seeking registration under TASA should be required to undertake a course of study in Australian taxation law? If you do not agree, please give reasons.*

The Tax Institute is of the view that TFP Advisers seeking registration under the *Tax Agent Services Act 2009* (Cth) (**TASA**) should be required to undertake a course of study in Australian taxation law. The Exposure Draft provides that the new registration process is "designed to assure the public of a necessary basic standard of tax education on the part of TFP Advisers<sup>5</sup>". In our view, it is inappropriate to use the term "basic standard" as this suggests that only a low level of education is required. A person giving professional advice is or should be required to have a level of expertise, not a basic understanding of taxation law. We also note that the word "basic" has been used in TPB (PG) 30/2010 and disagree with its usage there<sup>6</sup>. Therefore, a course of study in Australian taxation law is critical to the registration process in assuring that persons who register with the Board have the requisite tax skills. This requirement is ultimately for the protection of consumers of tax advice provided by financial advisers.

By registering with the Board, TFP Advisers are holding themselves out to their current and future clients that they are capable of providing tax advice to an implied standard in

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<sup>3</sup> Refer to paragraph 13 of the Exposure Draft

<sup>4</sup> Refer to paragraph 12 of the Exposure Draft

<sup>5</sup> Refer to paragraph 6 of the Exposure Draft

<sup>6</sup> Refer to paragraph 3 of TPB (PG) 03/2010: *Course in Australian taxation law that is approved by the Board (Tax Agent Guideline)*

the course of giving advice in relation to financial products. The standard that these advisers are holding themselves out as having attained is set by the Board.

Given the extensive nature and breadth of tax advice a financial adviser may be called upon to provide to their clients in the course of providing tax advice, the standard to which the Board should uphold financial advisers should be very high. In this regard, TFP Advisers should be required to undertake an appropriate course of study in Australian taxation law (as approved by the Board) to ensure that they do in fact have the skills and capability that their registration indicates they have.

A financial adviser registering as a TFP Adviser cannot have the requisite tax law and knowledge skill set in the absence of undertaking formal study in this area. In addition, the main difference between a tax agent and a TFP Adviser is that a TFP Adviser is unable to represent a taxpayer in relation to their dealings with the Commissioner. However, as a TFP Adviser will be permitted to ascertain and advise their clients in relation to their tax liabilities, obligations and entitlements under the tax law, in our view, they require the same level of tax knowledge as a tax agent to properly execute these responsibilities.

For the reasons noted above, a person seeking registration under TASA as a TFP Adviser should be required to undertake a course of study in Australian taxation law and this course should approximate, if not equate to, the Australian taxation law course a tax agent is required to undertake.

*(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?*

In line with the Board's view<sup>7</sup>, The Tax Institute agrees that a course that a person applying to become a TFP Adviser is required to do should be sufficiently broad to equip a TFP Adviser to be able to advise their clients on a diverse range of tax issues.

At the bare minimum, the Board approved course in Australian taxation law for TFP Advisers should cover the topics listed in paragraph 10 of the Exposure Draft. However, we suggest some additional topics the Board should consider including in the course:

- Key international tax concepts such as residence and source and related elements;
- A deeper understanding of goods and services tax than just a "basic awareness";
- A broader understanding of CGT than stated in the Exposure Draft including deemed disposals, gifts and market valuation rules;

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<sup>7</sup> Paragraph 6 of the Exposure Draft

- A deeper understanding of taxation matters relating to superannuation including issues such as retirement savings;
- Employee share schemes;
- Tax implications with estate planning; and
- The rules and principles of Australian tax law including an understanding of the legal environment in which these principles operate<sup>8</sup>.

As well as the stated learning outcomes included at paragraph 11 in the Exposure Draft, we also believe that a TFP Adviser should be able to demonstrate skills to locate, research and apply information from the following:

- Governmental tax policy documents;
- Explanatory materials in relation to legislation;
- Statutes;
- Court and Administrative Appeals Tribunal decisions; and
- Commissioner of Taxation's interpretive guidance (eg Taxation Rulings and Determinations<sup>9</sup>;

Requiring the tax law study to incorporate all of these topics and learning outcomes will ensure that TFP Advisers have sufficient skills to advise on various tax consequences in the course of providing advice in relation to financial products and to keep up with the frequent changes in tax law. They will also obtain the skills to identify tax issues beyond the scope of their own skill set and know when to refer their client on to a tax specialist for more sophisticated tax advice.

*(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?*

As discussed above, The Tax Institute is of the view that TFP Advisers should have the same level of Australian taxation law knowledge as that required of a tax agent. Given that a tax agent is required to have undertaken 200 to 260 hours of study (that is, two tertiary level units) in Australian taxation law, to require only half this amount for TFP Advisers is clearly not sufficient.

Generally, persons registering as tax agents will have the advantage of accounting and commercial law knowledge underpinning their tax law knowledge and study and will still be required to have undertaken 200 to 260 hours of tax law study.

In the interests of consumer protection, persons applying to register as a TFP Adviser should be required to obtain the same level of Australian taxation law knowledge as a tax agent. This could only be achieved if a TFP Adviser is required to undertake the same number of hours of study as a tax agent.

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<sup>8</sup> Paragraph 9(a) of the Tax Agent Guideline

<sup>9</sup> Refer to paragraph 11 of the Tax Agent Guideline

- (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?*

A Board approved course in Australian taxation law for TFP Advisers should be attained through one of the educational institutions noted above. This will ensure the standard of delivery of the course will be at a sufficiently high level and by institutions capable of delivering quality education courses.

In relation to registered training organisations (**RTO**), we note that traditionally RTOs deliver competency-based education and recent experience in this sector indicates poor governance of RTOs has occurred. This has given rise to the Australian Securities & Investments Commission (**ASIC**) more closely scrutinising the delivery of RG 146 courses by RTOs<sup>10</sup>.

If RTOs are to provide Australian taxation law courses, it is imperative that RTOs deliver independently supervised examination or public exams from an independent registration examination body administered by ASIC or the Board as a university or other registered higher education institution would provide, rather than their traditional forms of assessment (eg assignments, online tests or observations by their managers).

- (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?*

The minimum education level required for a Board approved course in Australian taxation law should be Diploma level. This minimum level of education as an entry to Australian taxation law is appropriate, but an ongoing rigorous program of continuing professional education (**CPE**) in taxation law should also be imposed on TFP Advisers. Given the fact that a registered TFP Adviser is subject to the Code of Professional Conduct, we would expect that the Board will require an appropriate level of CPE in taxation law in due course. In our view, CPE requirements similar to those that apply to registered tax agents should be applied to TFP Advisers.

In the first instance, an understanding of TASA 2009 and the Code of Professional Conduct (TPB(I) 10/2011) should be a minimum requirement for TFP Advisers to complete before nominating to register.

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<sup>10</sup> Please refer to ASIC Media Release No. 11-75MR: *ASIC proposes new training and assessment framework for financial advisers* on 6 April 2011 (<http://www.asic.gov.au/asic/asic.nsf/byheadline/11-75MR+ASIC+proposes+new+training+and+assessment+framework+for+financial+advisers?openDocument>)

(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?*


A Board approved course in Australian taxation law should be assessed to a significant degree under independent supervision and in a manner demonstrating rigour and integrity. In particular, please see our comments above at (4) in relation to assessment practices within RTOs.

*Other comments on the Exposure Draft*

Reference is made to a TFP Adviser's experience throughout the Exposure Draft, particularly in the discussion around whether the Board can recognise prior learning attained through work experience to stand in place of or supplement the currency of a previous tax law course. It is difficult to see how a person wanting to register as a TFP Adviser will have attained relevant tax experience consistent with how relevant experience is defined in the context of the draft proposed changes to the *Tax Agent Services Regulations 2009*<sup>11</sup> and the requirements specified on the Board's website<sup>12</sup>.

If you would like to discuss any of the above, please contact either me or Tax Counsel, Stephanie Caredes, on 02 8223 0011.

Yours sincerely

A handwritten signature in black ink, appearing to read 'S. Westaway', with a long horizontal stroke above it.

Steve Westaway  
President

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<sup>11</sup> The proposed changes were issued by Treasury on 8 February 2013 and can be found here (<http://www.treasury.gov.au/ConsultationsandReviews/Submissions/2013/Creating-a-regulatory-framework-for-tax-advice>)

<sup>12</sup> Refer to

[http://www.tpb.gov.au/TPB/Qualifications\\_and\\_experience/0367\\_Relevant\\_experience\\_for\\_tax\\_agents.aspx](http://www.tpb.gov.au/TPB/Qualifications_and_experience/0367_Relevant_experience_for_tax_agents.aspx)