



THE TAX INSTITUTE

THE MARK OF EXPERTISE

9 May 2014

Mr Ian Taylor
Chair
Tax Practitioners Board
PO Box 126
HURSTVILLE NSW BC 1481

By email: tpbsubmissions@tpb.gov.au

Dear Ian,

TPB Explanatory Paper TPB(EP) D5/2014: Proposed continuing professional education policy requirements for registered tax (financial) advisers – Exposure Draft

The Tax Institute welcomes the opportunity to make a submission to the Tax Practitioners Board (**Board**) in relation to the *TPB Explanatory Paper TPB(EP) D5/2014: Proposed continuing professional education policy requirements for registered tax (financial) advisers Exposure Draft (Exposure Draft)*.

An earlier draft of the Exposure Draft was subject to discussion at a consultation with members of the Board's Consultative Forum and various stakeholders and representatives from the financial planning/advisory industry held on 11 February 2014.

Overview

The primary responsibility of the Board is to register and regulate tax practitioners. In this regard, the Board should be primarily focused on ensuring all practitioners registered with it, including tax (financial) advisers, have sufficient tax-related knowledge and education to ensure they can competently undertake the provision of tax-related services for which they have been registered to undertake. Therefore, throughout the Exposure Draft, the Board should refer specifically to "tax-related" continuing professional education (**CPE**).

We acknowledge that financial advisers would have CPE requirements to maintain other professional registrations; however, this is separate to the CPE requirements

relevant to their registration with the Board. The Board should only recognise CPE that is predominantly tax-related.

In the absence of making this reference, the connection between CPE referred to in the Exposure Draft and ensuring tax (financial) advisers have sufficient specific tax-related knowledge is tenuous.

We note that in the Board's CPE guidance¹ for tax and BAS agents, the Board does not make specific reference to CPE being "tax-related", though it is obvious in this context that it should be. Given tax (financial) advisers have CPE requirements to meet from a variety of regulatory bodies, it is necessary for the guidance² the Board issues to specify the CPE it requires is to be tax-related. This should be referred to throughout the Exposure Draft. Please see for example the suggested amendments made to paragraph 23 below.

Key Issues

Below we address each of the key issues noted in Appendix A of the Exposure Draft following the numbering contained in Appendix A.

1. *Do you agree that tax (financial) advisers should be required to complete a minimum of 60 hours of relevant CPE per triennium? If you do not agree, please give reasons and also your views as to the number of hours that should be required.*

Tax (financial) advisers should be required to complete the same number of hours that a tax agent is required to meet, being 90 hours every three years. Both tax agents and tax (financial) advisers can provide the following services:

- a) Services relating to:
 - (i) ascertaining liabilities, obligations or entitlements of an entity that arise, or could arise, under a taxation law; or
 - (ii) advising an entity about liabilities, obligations or entitlements of the entity or another entity that arise, or could arise, under a taxation law; and
- b) the service is provided in circumstances where the entity can reasonably be expected to rely on the service for either or both of the following purposes:
 - (i) to satisfy liabilities or obligations that arise, or could arise, under a taxation law;

¹ *Explanatory Paper TPB (EP) 04/2012 Continuing professional education policy requirements for registered tax and BAS agents from 30 June 2013 (EP 04/2012)*

² Should the Board wish to maintain consistency between these guidance materials, then it could consider revising the CPE guidance material that applies to tax and BAS agents.

(ii) to claim entitlements that arise, or could arise, under a taxation law.

The only differences between the services that a tax agent can provide and the services a tax (financial) adviser can provide is that a tax agent can represent a taxpayer in their dealings with the Commissioner and a tax (financial) adviser cannot and the advice given by a tax (financial) adviser is given in the course of giving advice usually given by a financial services licensee.

The Board has reasoned that due to the narrower scope of services provided by a tax (financial) adviser as a sub-set of tax agent services, there should be lesser CPE requirements.

The reality is that the services provided by both tax agents and tax (financial) advisers in ascertaining liabilities, obligations or entitlements of an entity under a taxation law and providing advice in respect of these represent the majority of the work that tax agents undertake for which continuing education is required to ensure they keep up with the ever-changing taxation laws. The majority, if not all, of the CPE undertaken by a tax agent would relate to the provision of these services, rather than services involving representing a taxpayer in their dealings with the Commissioner.

As the Board has noted at paragraph 5 of the Exposure Draft, it is essential advisers maintain their knowledge and skills throughout their professional life, particularly where taxation laws constantly change. It is also imperative that a consumer of professional taxation advice can be assured that the provider has the requisite tax law knowledge to provide these services to a competent standard, whether the service is coming from a tax or BAS agent or a tax (financial) adviser.

In this regard, requiring a tax (financial) adviser to only complete 60 hours of CPE is in our view, not sufficient. Ideally, a tax (financial) adviser should also be required to complete 90 hours of CPE as is required of a tax agent.

'Relevant CPE' should relate to services permitted to be provided

Example 3 noted at page 8 of the Exposure Draft is not a useful example as in our view there is insufficient nexus between the CPE undertaken and the provision of tax (financial) advice services. The example used is similar to Example 5 in EP04/2012 which dealt with tax and BAS agents and in that context clearly implied the software referred to BAS preparation systems. In this context, there isn't a predominant, clear link to tax and, in particular, the services provided by a tax (financial) adviser.

Ordinarily software is used to lodge tax returns (or assist to prepare BAS) which tax (financial) advisers are not permitted to do. Unless the software assists a tax (financial) adviser to prepare advice (for example, it works through the application of a particular tax concession), it is unlikely to offer anything that is actually relevant to the services a tax (financial) adviser is permitted to provide. The example should either be expanded to describe the tax nature of the software (e.g. it is a step-by-step tax flow chart application) or a different example should be used.

'Relevant CPE' should focus on tax law

Example 4 noted at page 9 of the Exposure Draft indicates that a tax (financial) adviser will be able to count courses that only contain a minimal amount of tax in them towards satisfying their CPE obligations.

In light of this example, The Tax Institute does not regard this example as appropriate guidance and is very concerned that tax (financial) advisers are unlikely to obtain anywhere near enough tax law knowledge sufficient to put them in a position to be able to competently advise their clients in relation to their liabilities, obligations and entitlements under the tax law. It is well known that tax law is very complex and ever changing and challenging enough for tax agents to keep up with it. It is likely to be even more challenging for someone who does not focus solely on tax to stay current with the changes in tax law.

In this regard, The Tax Institute strongly recommends the Board be very stringent in its guidance regarding what types of courses should be regarded as 'relevant CPE'. We would recommend that courses that should be regarded as acceptable CPE should be predominantly, if not solely, focused on tax law and in this context have at least 50% tax content. Per Example 4, 15 minutes out of 120 minutes (12.5%) does not in our view meet this benchmark. This will ensure that consumers can be confident that a registered tax (financial) adviser has obtained sufficient tax law knowledge and training to properly execute their responsibilities in advising a taxpayer about their tax law liabilities, obligations and entitlements.

In this regard, we recommend the following changes (made in bold) be made to the Exposure Draft:

*Paragraph 23 - The TPB considers relevant CPE to be the maintenance of contemporary and relevant knowledge and skills **in taxation law**. CPE completed by registered tax (financial) advisers should be relevant to the **tax aspects of the tax (financial) advice services they provide and the development of their relevant personal tax knowledge and tax skills**. The TPB does not intend to be prescriptive regarding particular topics for CPE activities which should be completed **except that they must be predominantly tax related**. Registered tax (financial) advisers should exercise their professional judgment in selecting relevant CPE activities to be completed.*

'Relevant CPE' should not relate to pre-requisites for registration

It is a requirement of registration that a registered tax agent, among other things, has undertaken a course in Australian taxation law, which includes understanding obligations under the *Tax Agent Services Act 2009* (Cth) (**TASA**). There is an expectation the same will be required of persons registering as tax (financial) advisers. In this regard, it is not appropriate to consider a course on the application of TASA, as

set out in example 5 on page 9 of the Exposure Draft, to be appropriate for CPE when this knowledge is most likely to be a pre-requisite for registration³.

2. *Do you agree that tax (financial) advisers should be required to complete a minimum of six hours of relevant CPE in any given year? If you do not agree, please give reasons and also your views as to the number of hours that should be required.*

The number of hours should be consistent with the number of hours required for tax agents.

3. *Do you agree that the TPB should accept the following activities for the purposes of CPE? Are there any additional activities that you consider should be accepted? [Activities have not been separately listed here.]*

As the activities listed in paragraph 28 of the Exposure Draft are consistent with those regarded as acceptable activities for registered tax and BAS agents, these activities are also acceptable forms of CPE for registered tax (financial) advisers.

However, in light of our opening remarks, it is our view that the Exposure Draft should specify that the CPE activities listed at paragraph 28 should all be related to tax.

4. *What transitional arrangements, if any, should there be in relation to the CPE renewal of registration requirement for tax (financial) advisers?*

Any transitional arrangements offered should be consistent with those that were offered to tax and BAS agents.

Other

Paragraph 14 is not clear in explaining to consumers what the effect of imposing CPE requirements on tax (financial) is for them. It is to assure consumers that persons registered as tax (financial) advisers have been approved by the Board as having sufficient skills to provide the tax services for which they have been registered to provide. Registration with the Board is a critical feature of this.

A person who is not registered is not permitted to provide tax (financial) advice services. Therefore, consumers should confirm that their tax (financial) service provider is registered with the Board, but should note an unregistered person who provides tax (financial) advice services is in breach of TASA.

³ Refer to Treasury's discussion paper "Proposed registration requirements for registered tax (financial) advisers" issued in June 2013.

The initial statement in paragraph 14 is useful. The Board should also make it clear to consumers that to have some assurance that the person providing them with tax (financial) advice services is competent to do so, they should ensure that person is registered with the Board before accepting their services.

If you would like to discuss any of the above, please contact either me or Tax Counsel, Stephanie Caredes, on 02 8223 0059.

Yours sincerely

A handwritten signature in black ink, appearing to read "M. Flynn", followed by a long, horizontal, slightly wavy line.

Michael Flynn
President