



THE TAX INSTITUTE

THE MARK OF EXPERTISE

25 September 2014

Ms Rosemary Holloway
Secretary
Tax Practitioners Board
PO Box 126
HURSTVILLE NSW 1481

By email: tpbsubmissions@tpb.gov.au

Dear Ms Holloway,

Proposed Guideline TPB (PG) D05/2014: Course in commercial law that is approved by the Board for tax (financial) advisers

The Tax Institute welcomes the opportunity to make a submission to the Tax Practitioners Board (**Board**) in relation to the *Exposure Draft: Proposed Guideline TPB (PG) D05/2014: Course in commercial law that is approved by the Board for tax (financial) advisers (Exposure Draft)*.

Summary

Our submission below addresses the issues raised in the Exposure Draft and The Tax Institute's particular concerns with the proposed guideline. The Tax Institute is strongly of the view that tax (financial) advisers should be required to undertake as much study in commercial law as tax agents, including the same topic areas and number of hours of study. This is particularly necessary to address the deficiency in commercial law knowledge a person registering as a tax (financial) adviser is likely to have.

Discussion

Overview

The Board has set out the relevant requirements for a commercial law course to be undertaken by a tax (financial) adviser in the Exposure Draft. In paragraphs 5 to 7 of the Exposure Draft, the Board recognises the lack of commercial law knowledge required by the Australian Securities and Investments Commission's course requirements for a person to register as a financial adviser (**RG 146**) and in the

associated courses ordinarily undertaken to meet the RG 146 requirements. The Board has acknowledged that a tax (financial) adviser will require extensive commercial law knowledge. However, we believe the Board has not set a high enough benchmark to ensure that tax (financial) advisers do obtain a sufficient amount of commercial law knowledge to make up for the identified deficiency in prior learning (see comments below).

It appears that the Exposure Draft mirrors the exposure draft guideline that the Board has issued at the same time in relation to an Australian taxation course for tax (financial) advisers. We note that the Board makes several references throughout the Exposure Draft to “taxation law”, “tax impacts”, “tax system” and so forth that are not appropriate references in the context of this guideline, which is about commercial law requirements. We refer to paragraphs 3, 4, 32 and 35 as some examples of this and request that the Board review the Exposure Draft and rework these paragraphs (at least) to appropriately refer to commercial law instead.

At paragraph 3, the Board states that:

The registration process for tax (financial) advisers is designed to assure the public of a necessary basic standard of commercial law education.

This statement implies that all persons registering as a tax (financial) adviser will have the requisite commercial law knowledge. This is not in fact the case as commercial law is only required in three out of the four pathways to registration for a tax (financial) adviser. This statement is not correct and we recommend the following modification be made (edit in red):

In certain cases only, the registration process for tax (financial) advisers is designed to assure the public of a necessary basic standard of commercial law education.

We suggest that the Exposure Draft include useful information that has been included in such as a diagram similar to the one on page 4 of the Tax Agent Commercial Law Guide depicting the pathways to registration as a tax (financial) adviser.

Key Issues

(1) Do you agree that a Board approved course in commercial law for tax (financial) advisers should cover the topics listed in paragraph 12 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 view¹, a course in commercial law should be sufficiently broad to equip a tax (financial) adviser with a sufficient understanding of commercial law to ensure that the public can have confidence in the advice the adviser is providing.

¹ See paragraph 3 of the Exposure Draft

At a bare minimum, this course should cover the topics listed in paragraph 12 of the Exposure Draft. This should also include coverage of property law.

There is a much more extensive list of topics included in the *TPB(PG) 02/2010 Course in commercial law that is approved by the Board* which applies to tax agents (**Tax Agent Commercial Law Guide**) that a tax (financial) adviser should also be required to undertake. We strongly recommend that a commercial law course that a tax (financial) adviser is required to undertake should cover the following topic areas in particular:

- Introduction to the fundamental law of real and personal property transactions
- Non-tax legal aspects of superannuation
- Finance law
- Insurance law
- Competition and consumer law
- Bankruptcy and insolvency law².

In accordance with our comments below, a tax (financial) adviser would need to undertake more than one unit of study to cover the above-listed subject areas to a sufficient degree.

We acknowledge the Board's statement that, as tax (financial) advisers are not registered tax agents, it would be unreasonable to expect them to have commercial law expertise equal to that of a tax agent³. However, there is little difference in the scope of advice that a tax agent and tax (financial) adviser can provide, so we respectfully disagree with the Board's position. The only material distinction between the services provided by a tax agent and tax (financial) adviser is the ability to make representations to the Commissioner. The advice services each can provide are very similar, and therefore so are their educational needs.

We therefore request that the Board strongly consider expanding the commercial law requirements for tax (financial) advisers to encompass, at least, the topic areas listed above.

(2) Do you agree that a Board approved course in commercial law for tax (financial) advisers should be at least of 100 to 130 hours duration, equating to one tertiary level unit?

In the interests of consumer protection, a tax (financial) adviser should have the same level of commercial law knowledge as a tax agent. It is only then that the public can be assured that tax (financial) advisers will have the necessary basic standard of commercial law education – at least for tax (financial) advisers who register via one of the pathways to registration that require commercial law knowledge.

² Refer to paragraph 12 of the Tax Agent Commercial Law Guide for the full list of commercial law topic areas.

³ Refer to paragraph 20 of the Exposure Draft

For these reasons, we do not agree that an approved course in commercial law should be 100 – 130 hours. In our view, tax (financial) advisers should be required to do 300 – 390 hours of commercial law study (ie the equivalent of 3 tertiary level units) in line with tax agents.

(3) Do you agree that a Board approved course in commercial law for tax (financial) advisers should be attained through a university, registered training organisation, other registered higher education institution or another provider approved by the TPB?

A Board approved course in commercial law for tax (financial) advisers should be attained through one of the educational institutions noted above. This would ensure that the standard of delivery of the course would be at a sufficiently high level and would be delivered 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 that 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 RTOs⁴.

If RTOs are to provide commercial 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 (e.g. assignments, online tests or observations by their managers).

(4) Do you agree that the minimum education level required for a Board approved course in commercial law for tax (financial) 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.

(5) Do you agree that a Board approved course in commercial law for tax (financial) 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?

⁴ 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>)

A Board approved course in commercial 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.

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 that extends to the right.

Michael Flynn
President