



## THE TAX INSTITUTE

THE MARK OF EXPERTISE

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25 September 2014

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

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

Dear Ms Holloway,

**Proposed Guideline TPB (PG) D04/2014: Course in Australian taxation 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) D04/2014: Course in Australian taxation 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. In particular, The Tax Institute is strongly of the view that, in the interests of consumer protection, a person applying for registration as a tax (financial) 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 on the key issues raised for discussion in the Exposure Draft are below.

### Key issues

*(1) Do you agree that a Board approved course in Australian taxation law for tax (financial) advisers should cover the topics listed in paragraphs 12 and 13 of this draft TPB(PG)? Are there any other topic areas you believe should be covered in the course?*

A course in Australian taxation law for tax (financial) advisers should be sufficiently broad to equip them to be able to advise their clients on a diverse range of tax issues.

Therefore, a tax (financial) adviser should be required to undertake the same tax law education as a tax agent.

At the bare minimum, the Board approved course in Australian taxation law for a tax (financial) adviser should cover the topics listed in paragraphs 12 and 13 of the Exposure Draft. However, we strongly suggest the Board consider including these additional topics in the course:

- A deeper understanding of goods and services tax than just a “basic awareness”;
- Additional CGT topics including market valuation rules;
- 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>1</sup>.

As well as the stated learning outcomes included at paragraphs 12 and 13 in the Exposure Draft, a tax (financial) adviser should also 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>2</sup>).

The Board states that as tax (financial) advisers are not registered tax agents, it would be unreasonable to expect them to have taxation law expertise equal to that of a tax agent<sup>3</sup>. We respectfully disagree, as there is little difference in the scope of advice that a tax agent and tax (financial) adviser can provide. 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.

A tax (financial) adviser should be required to undertake a course in Australian tax law that covers the same topics to the same depth and degree as is required for a tax agent. This will ensure that tax (financial) advisers have sufficient skills to advise on various tax consequences in the course of providing financial advice and to keep up with the frequent changes in tax law. They will also obtain the skills to identify tax

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<sup>1</sup> Paragraph 9(a) of the TPB (PG) 03/2010: *Course in Australian taxation law that is approved by the Board (Tax Agent Guideline)*

<sup>2</sup> Refer to paragraph 11 of the Tax Agent Guideline

<sup>3</sup> Refer to paragraph 17 of the Exposure Draft

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<sup>4</sup>.

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

As discussed above, The Tax Institute is of the view that tax (financial) 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 tax (financial) advisers is clearly not sufficient.

Generally, people 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 tax (financial) adviser should be required to attain the same level of Australian taxation law knowledge as a tax agent. This could only be achieved if a tax (financial) adviser is required to undertake the same number of hours of study as a tax agent.

*(3) Do you agree that a Board approved course in Australian taxation 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 Australian taxation 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 that it would be delivered by institutions capable of delivering quality education courses.

In relation to registered training organisations (**RTO**), 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<sup>5</sup> courses by RTOs<sup>6</sup>.

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<sup>4</sup> Refer to paragraph 16 of the Exposure Draft.

<sup>5</sup> This is Australian Securities and Investments Commission's course requirements for a person to register as a financial adviser.

<sup>6</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>)

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 (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 Australian taxation 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 Australian taxation 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?*

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.

#### *Additional Comments*

In the Exposure Draft, the Board has acknowledged that the basic training of a financial adviser attained under RG 146 lacks the comprehensive education on Australian tax law that a tax (financial) adviser requires to be able to properly advise clients (see paragraphs 5 to 7 of the Exposure Draft). In this regard, we expected that the Board would have made material changes to its tax law requirements for tax (financial) advisers, such as increasing the number of hours of tax law study required of a person wanting to register as a tax (financial) adviser from the amount set out in the First Draft.

While it is positive that the Board has recognised this deficiency in prior tax-related education gained by financial advisers, we do not believe that this deficiency will be satisfactorily rectified unless a tax (financial) adviser is required to undertake 200 to 260 hours of tax law study.

#### *Specific comments on drafting*

At paragraph 5, the second last sentence seems to be incomplete (starting with “In respect of other...”) and the sentence following does not seem to make sense in the

context of what we believe the Board is trying to say about the lack of prior tax-related learning for financial advisers. It would be useful if the Board could clarify this.

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