



17 September 2014

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

Email: tpbsubmissions@tpb.gov.au

Dear Mr Taylor

Re. Courses in Australian taxation law and commercial law that are approved by the Board for tax (financial) advisers – TPB(PG) D04/2014 and TPB(PG) D05/2014

The Financial Planning Association of Australia (FPA) welcomes the opportunity to provide feedback to the Tax Practitioners Board (TPB) in relation to the Exposure Drafts TPB Guideline on courses in Australian taxation law and commercial law for tax (financial) advisers.

The following objectives have guided the FPA's response to the proposed requirements in the TPB Exposure Drafts. New competency requirements for financial planners must:

- be relevant to the provision of financial advice provided by financial planners;
- not restrict entry into the financial planning profession;
- be flexible so as to consider and be integrated with appropriate prior learning and continuing professional development of existing financial planners;
- cater for both existing financial planners and potential new entrants into the profession;
- deliver appropriate and meaningful learning outcomes in relation to the provision of financial advice provided by financial planners; and
- be integrated with and complement financial planner competency requirements under the Corporations Act, as set by the Australian Securities and Investments Commission (ASIC).

As the FPA has previously provided detailed feedback to the TPB and Treasury on the tax and commercial law course requirements for tax (financial) advisers, we will limit this submission to responding to the consultation questions and other matters needing further consideration. These include:

- Linking the learning outcomes to the provision of financial advice not financial products
- Mapping of courses for tax (financial) advisers on the TPB training register



- CPD and experience requirements for current courses

The FPA would welcome the opportunity to discuss the TPB's proposed guideline further. If you have any questions, please contact me on 02 9220 4500 or dante.degori@fpa.asn.au.

Yours sincerely

Dante De Gori
General Manager Policy and Conduct
Financial Planning Association of Australia¹

¹ The Financial Planning Association (FPA) represents more than 10,750 members and affiliates of whom 8,055 are practicing financial planners and more than 5,500 CFP professionals. The FPA has taken a leadership role in the financial planning profession in Australia and globally:

- Our first "policy pillar" is to act in the public interest at all times.
- We banned commissions and conflicted remuneration on investments and superannuation for our members in 2009 – years ahead of FOFA.
- We have an independent conduct review panel, Chaired by June Smith, dealing with investigations and complaints against our members for breaches of our professional rules.
- The first financial planning professional body in the world to have a full suite of professional regulations incorporating a set of ethical principles, practice standards and professional conduct rules that explain and underpin professional financial planning practices. This is being exported to 24 member countries and the 150,000 CFP practitioners that make up the FPSB globally.
- We have built a curriculum with 17 Australian Universities for degrees in financial planning. All new members of the FPA are required to hold, as a minimum, an approved undergraduate degree.
- CFP certification is the pre-eminent certification in financial planning globally. The educational requirements and standards to attain CFP standing are equal to other professional bodies, eg CPA Australia.
- We are recognised as a professional body by the Tax Practitioners Board



**Exposure Draft
Proposed TPB Guideline
TPB(PG) D04/2014 and
TPB(PG) D05/2014**

**FPA submission to:
Tax Practitioners Board**

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Common provisions

1. Course duration

TPB question: Do you agree that Board approved courses in Australian taxation law and Australian commercial law for tax (financial) advisers should be at least of 100 to 130 hours duration, equating to one tertiary level unit?

The FPA agrees with the proposed timeframe of 100 to 130 hours course duration. However, the use of the language of “one tertiary level unit” is inconsistent with a course duration of 100 to 130 hours. The FPA suggests the TPB use the language of “at least the equivalent of one unit of study at an AQF5 level”.

2. Providers of course/s

TPB Question: Do you agree that Board approved courses in Australian taxation law and Australian 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?

The FPA supports the TPB’s proposed policy on providers of course/s as set out in items 21 to 23.

However, the FPA is concerned about the impact on the TPB’s course provider and course approval requirements and checking process, of recent changes to the regulation of the Vocational Education and Training (VET) providers, as announced by the Minister for Industry Ian Macfarlane on 11 September 2014.

At the moment training providers are required to seek approval from the Australian Skills Quality Authority (ASQA) before they offer new courses or make changes to the courses they are already delivering. It is understood that under the Government’s changes, this will no longer be required; rather each high-performing training provider will be permitted to stand on its reputation². This could result in RTOs having even less checks required as to the capacity to deliver and the quality, or the size or duration of courses.

The FPA seeks clarification as to whether the TPB guidance on course approval for course providers includes adequate procedures for checking compliance with the tax and commercial law course requirements, particularly in relation to course content and duration. The FPA suggests such checks should be undertaken by the TPB and not left to the education provider. The FPA suggests RTOs be required to provide evidence of the extent/depth of learning of their course rather than leaving this to the supervision by AQSA.

² Government’s second tranche of VET reforms to deliver industry led and job ready skills and training, Media release, The Hon Ian Macfarlane MP, Minister for Industry, 11 September 2014



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3. Minimum education level

TPB question: Do you agree that the minimum education level required for Board approved courses in Australian taxation law and Australian commercial law for tax (financial) advisers should be Diploma, which meet Australian Qualifications Framework level 5 criteria?

The FPA supports the TPB's minimum education level required for Board approved courses in Australian taxation law and Australian commercial law for tax (financial) advisers of Diploma / AQF5.

However, the FPA is mindful that there is a current call for minimum education standards for providers of tier 1 personal advice to be raised to degree/AQF7 level, including by the FPA and many others in the profession. The Government is also considering the current education requirements under the Corporations Act for financial advice providers, through the Parliamentary Joint Committee on Corporations and Financial Services Inquiry into proposals to lift the professional, ethical and education standards in the financial services industry.

Should the Government decide to move in this direction any change to the minimum education standards for financial planners would need to be introduced with appropriate transition arrangements.

The FPA suggests there is a need to finalise the TPB course requirements for tax (financial) advisers now, and this should not be held up or determined by potential changes under the Corporations Act which may (or may not) eventuate for some time.

Therefore, the FPA recommends the TPB finalise its tax and commercial law course requirements for tax (financial) advisers with an education level of Diploma which meets the AQF5 level requirements. The TPB may consider reviewing this level in the future, should education standards for financial planners under the Corporations Act be changed, to ensure a consistent approach to education is applied.

4. Course assessment

TPB question: Do you agree that Board approved courses in Australian taxation law and Australian 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?

The FPA supports the requirement for a course in taxation law for planners to include a mix of objective assessment practices. The FPA notes the requirement that:

... the assessment should, to a significant degree (that is, at least 40%), be done under some form of independent supervision.



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For training organisations to register as RTOs they must include assessment that is Valid (relates to competency); Sufficient (the style and amount of evidence needed to demonstrate competence); and Authentic (the evidence supplied is the candidates own work). The FPA believes the TPB's proposed "independent supervision" requirement relates to the test for Authenticity.

The FPA notes the recent amendment to the course requirements for tax agents which now includes a requirement for at least 40% of the assessment to be done under some form of independent supervision.

The FPA is concerned that in the proposed tax and commercial law course requirements for tax (financial) advisers, this requirement appears to apply both prospectively and retrospectively. However, existing planners and those currently studying financial planning courses may not be able to meet a requirement to have assessment tasks independently supervised if it was not required when the course was taken. This is outside of the control of the planner and may render RPL of existing planners by some education providers inadmissible for the purposes of TPB registration.

The FPA recommends the TPB tax and commercial law course policy clearly state that the course assessment requirements do not apply to courses taken prior to the TPB requirements commencing.

5. How current should a course be?

The FPA notes item 38 in D05/2014 and item 35 in D04/2014 state:

...the TPB proposes to accept as approved courses of study in commercial/tax law:

1. where the component unit of study was completed fewer than 10 years from the date of the application for registration; or
2. where the component unit of study was completed more than 10 years from the date of the application for registration and the applicant can demonstrate an updating of those skills through work experience and continuing professional development.

The FPA seeks clarity as to which category a course that was completed 10 years ago would fall into. For example, would a course that was completed 10 years ago be accepted as meeting the course requirements in its own rights (as per option 1) or it only be accepted if the applicant could demonstrate an updating of those skills through work experience and continuing professional development (as per option 2)?



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6. Learning outcomes

In the learning outcomes provisions for both tax and commercial law course, the TPB states (item 14 – tax; item 17 commercial law):

The learning outcomes of a course in Australian taxation law (Australian commercial law) are that the tax (financial) adviser should be able to explain, critically evaluate and (where appropriate) apply the rules and principles attaching to each of the topics , particularly in the context of financial products.

The FPA is concerned that the learning outcomes are specifically linked to being achieved “in the context of financial products”.

Minimum education requirements to be able to provide financial advice to consumers, whether under the Corporations Act or the TASA, should be focused on the provision of personal financial advice, not on financial products. The skills needed to provide quality and appropriate financial advice that identifies and meets the needs of the client, are very different to knowledge in financial products. This should be reflected in the eligibility course requirements for tax (financial) advisers.

The FPA suggests it would be more appropriate for the learning outcomes to be achieved in the context of providing financial advice rather than tied to financial products and recommends the wording to item 14 (tax law) and item 17 (commercial law) be amended to either remove the words “...particularly in the context of financial products”, or replace this phrase with “particularly in the context of financial advice”.

Taxation law course topics

TPB question: 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?

The FPA supports a requirement that planners must have successfully completed a course which contains relevant taxation law topics at a level and depth appropriate to financial advice, as long as the study delivers knowledge and learning benefits applicable to the advice financial planners provide to clients.

However, the content of a unit of study in taxation law should be as tailored and specific to financial planning as possible and fit into the overall education of a financial planner.

The FPA provides the following comments and recommended changes to the topics proposed in section 12 and 13 of TPB(PG) D04/2014.



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12a) concepts of:

Feedback from FPA members indicates that generally financial planners would not assist clients with home office expenses and holiday home expenses, which are very specific tax areas. Rather, financial planners would more commonly assist clients with areas such as interest deduction on loans for investment purposes or deductibility of financial planning fees.

The FPA also notes and disagrees with the reference to holiday homes in d) CGT.

The FPA recommends the reference to home office expenses and holiday home expenses in 12a) and 12d) be removed.

12e) superannuation

While most of the wording in the topics list is about what people must know, the wording under 12e is behavioural. The FPA suggests the following wording to ensure it is more consistent with other course requirements:

e) superannuation: key areas concerning taxation of contributions, fund earnings and benefits.
An overview of self managed superannuation funds (SMSFs) and more detailed topics to be able to identify when expert advice is needed.

13. Basic awareness level

The FPA acknowledges the change made to TPB(PG) D04/2013 with the introduction of a new provision requiring a course to cover GST and tax administration “at a basic level”.

13a) GST

If GST is to be a course requirement, even at a basic awareness level, the FPA suggest the inclusion of areas such as the Reduced Input Tax Credit (RITC) or other GST related issues that appear on a client's statement that an adviser may need to explain to a client.



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Commercial law course topics

TPB question: 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?

The FPA acknowledges the changes the TPB has made to the commercial law course requirements against those proposed by Treasury in 2013. While the FPA is supportive of the topics proposed in paragraph 12, we seek clarification for the inclusion “aspects of the law of torts” in items 12.c) and 16.

The FPA suggests the areas of negligence, and misleading and deceptive conduct are key to the ethics training requirements covered under 12g) in the tax law course requirement. Such topics should be taught in the context of ethics training. Including tort law as a specific topic outside of ethics training creates a duplication.

Therefore the FPA recommends the tort law topic be removed from the commercial law course requirement.

TPB course register

The FPA seeks advice as to how the TPB would differentiate between the lists of subjects for tax agent and tax (financial) adviser on the TPB course register. The mix and match requirement for tax agents is two subjects, only one of which can be “introductory” as opposed to “advanced”; while the requirement for tax (financial) advisers is a single subject.

Tax law course register

The FPA recommends that tax (financial) advisers who have completed any course listed on the TPB course register for tax law within the 10 year timeframe identified by TPB, should satisfy the requirement (plus the extra component that applies since 1 July 2013).

Once the tax law course requirements for tax (financial) advisers are finalised, courses should be specifically listed on the separate register of Board approved courses for tax (financial) advisers.

As demonstrated by the following table, the tax law course requirements for tax agents are higher than those proposed for tax (financial) advisers. Therefore, the FPA recommends the Board accept that the tax law course requirement has been met if a tax (financial) adviser completes a course on either the course register for tax agents or the course register for tax (financial) advisers.



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Tax Agent 200-260 hours	Tax (financial) adviser 100-130 hours
the rules and principles of Australian tax law including an understanding of the legal environment in which these principles operate, including basics of the legal system, constitutional considerations, separation of powers;	
(b) the key aspects of the income tax law covering concepts of residence and source, related elements (only) of international tax, assessable income, deductions, tax rebates/offsets and tax accounting;	12a) concepts of: income, deductions, tax offsets/rebates, residence, source, including the principles of the taxation of negative gearing, home office expenses, holiday home expenses, fixed income investments, capital allowances and income protection
(c) the key aspects of taxes that extend the ordinary income tax base including relevant principles and application of the capital gains tax and fringe benefits tax rules;	12d) capital gains tax (CGT) including CGT event A1 happening on disposal of an asset, the CGT discounts, the CGT consequences of death (estate planning) and the main residence exemption (and its application to holiday homes), the availability of CGT concessions for small business, roll-overs, deemed disposals and gifts 12c) employee remuneration including fringe benefits tax and salary packaging
(d) goods and services tax;	basic awareness level: 13a) goods and services tax (GST)
(e) taxation of individuals and basic entities including partnerships, trusts and companies;	12b) tax treatment of: individuals, partnerships, companies and trusts including treatment of imputation credits, deferred and tax free trust distributions
(f) taxation aspects of superannuation law;	12 e) superannuation: key areas concerning taxation of contributions, fund earnings and benefits. At times expert advice may need to be sought on self managed superannuation funds (SMSFs) and more detailed topics
(g) administrative aspects of the taxes identified above including returns, tax collection and withholding mechanisms, assessments, objections, rulings, penalties and audits;	Basic awareness 13 b) tax administration including assessments, amendments and objections, but not preparation of returns or communications on behalf of clients with the Australian Taxation Office.
(h) rules addressing specific and general anti tax avoidance; and	f) tax anti-avoidance provisions (especially those relating to promoter penalties)
(i) ethical and professional responsibilities of tax agents including obligations under the TASA and TASR.	g) ethical and professional responsibilities of tax (financial) advisers including obligations under the TASA and TASR.



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Commercial law course register

The FPA also seeks clarity on how the TPB would apply its mix and match approach for tax (financial) adviser to meet the commercial law course requirements using existing subjects that would have been completed over the last 10 years.

The TPB proposes the following topic requirements to be covered in a Board approved commercial law course for tax (financial) advisers:

- Introductory contract law
- Fundamental legal structures
- Torts.

The FPA notes that in existing courses these topics may have been covered in separate components or within separate units of study, rather than within one course or unit of study.

The commercial law course requirements for tax agents state that the following topics must be covered in a minimum of 2 units of study:

- Australian legal systems and processes
- Contracts
- The law of entities (including partnerships, corporations and trusts) and business structures
- Property law.

The FPA is concerned as to how education providers, particularly universities, would respond to the course requirements for both tax agents and tax (financial) advisers. For example, there is concern that there may be reluctance to offer units of study in commercial law specifically for tax agents, as well as units of study specifically for tax (financial) advisers.

Because of the different commercial law course requirements for tax agents and tax (financial) advisers, some of the existing courses on the TPB's list may not be appropriate for tax (financial) advisers such as those covering the topic of property law.

Further, some existing courses may have content which is too narrow as a standalone course to satisfy the TPB's requirements for tax (financial) advisers, but may meet the requirements if permitted to be combined with components completed from another course.



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The FPA suggests guidance would be helpful to assist tax (financial) advisers to identify which courses the TPB would accept as meeting the commercial law course requirements for tax (financial) advisers, particularly in relation to meeting course requirements by separate completing components from multiple courses.

We would recommend that tax (financial) advisers who have completed *any* course listed as meeting the commercial law requirements for tax agents or tax (financial) advisers within the 10 year timeframe identified by TPB, should satisfy the requirement. Once the new commercial law course requirements for tax (financial) adviser are finalised, courses should be listed on the separate register of Board approved courses for tax (financial) advisers.