

19 September 2014

Tax Practitioners Board  
PO Box 126  
HURSTVILLE NSW 1481

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

Dear Sir/Madam,

**Re: Exposure Draft Proposed TPB Guideline TPB(PG) D04/2014 Course in Australian taxation law that is approved by the Board for tax (financial) advisers**

*The Australian Institute of Superannuation Trustees is a national not-for-profit organisation whose membership consists of the trustee directors and staff of industry, corporate and public-sector funds.*

*As the principal advocate and peak representative body for the \$600 billion not-for-profit superannuation sector, AIST plays a key role in policy development and is a leading provider of research.*

*AIST is a Registered Training Organisation and provides consulting services and support for trustees and fund staff to help them meet the challenges of managing superannuation funds and advancing the interests of their fund members. Each year, AIST hosts the Conference of Major Superannuation Funds (CMSF), in addition to numerous other industry conferences and events.*

AIST would like to thank the Board for the opportunity to respond to this exposure draft and the other, which considers the requirements for education in commercial law.

AIST supports higher standards for qualified financial advisers, and we point out that in most cases, registered tax (financial) advisers will be a subset of this group. We support a requirement for relevant bachelor-level degrees for financial advisers. AIST also supports a mandatory national exam for financial advisers, and that this should be independently assessed and supervised.

AIST notes that the vast majority of material required to be included in a taxation law subject are already included as part of two courses that a registered tax (financial) adviser will have completed: Minimum requirements under ASIC's *Regulatory Guide 146: Licensing: Training of financial product advisers* (RG 146), and the subject that deals with taxation planning as part of an Advanced Diploma of Financial Planning. We would like to see explicit provision made for this fragmentation in the final version of TPB(PG) D04/2014 and have explained one method of how this could be done below.

AIST supports the provision implied in paragraph 29 where a “course” is said to be a series of components that make up the requirements, where such requirements may be duplicated or overlap. AIST reminds the Board that overlap or duplication is generally considered to be both wasteful and inefficient, and should be minimised as much as possible. We therefore see that this focus on experience only in paragraphs 30 and 31 (the allowance for recognised prior learning (RPL)) is inappropriate, and does not actually address prior formal education.

We recommend that this section be enhanced with an additional paragraph that addresses formal learning undertaken as part of a related course, such as the diploma or advanced diploma of financial planning. Such a paragraph should include the likely content of courses that can be recognised towards the completion of all necessary items of taxation law. We consider that at a base minimum, these would include a statement that the requirements can be met by the following:

- All components addressed as part of basic RG 146 compliance;
- All components addressed as part of the subject ‘Taxation Planning’ (or its equivalent) as part of an Advanced Diploma of Financial Planning; and
- All remaining components that need to be completed.

Recognition of this as a formal pathway to completion of all necessary requirements addresses the certainty that, at the very least, RG 146 must have been completed by registrants. Additionally, it addresses the very strong likelihood that Taxation Planning will also have been completed.

Finally, the identification of this pathway allows for the creation of bridging courses which minimise any wasteful duplication, where such duplication is unnecessary.

#### **Key issues for feedback**

1. AIST supports the need for registered tax (financial) advisers to learn most of the areas described at paragraphs 12 and 13.

AIST supports the requirements as set out in paragraphs 12 and 13, however we are uncertain why ethical and professional responsibilities of registered tax (financial) advisers may be different in any way from those of ordinary registered tax agents.

We also believe that paragraphs 16 and 17 highlight an important issue which has not been addressed in paragraph 12, being the scope and limitations on services able to be provided by registered tax (financial) advisers. We recommend that an additional knowledge area be included which highlights these limitations, and provides training in when a registered tax (financial) adviser would need to recommend that a client consult with an ordinary registered tax agent.

We underline the importance of this as a ‘safe harbour’ requirement under the adviser best interest obligations as set out in section 961B(2)(d) of the *Corporations Act 2001*, where, a financial adviser must decline to provide advice, if such advice is unable to be provided based upon the subject matter sought.

2. We agree that this subject could be equivalent to one tertiary level unit.

Whilst we do not comment on the recommended number of hours that the Board is specifying for a single semester tertiary-level subject, we note that the normal subject load for a law or business/commerce degree course at university is four subjects per semester. If subjects undertaken are all similar loadings at 100-130 hours, this would mean that full time students are looking at 400-520 hours of study per semester. This seems somewhat large and raises the question of how much provision employers will need to make for employees who need to undertake these units in full.

We note that ordinary CPD accredited for the successful completion of relevant subjects undertaken at a tertiary level ranges from 24 to 60 hours of CPD, depending on the accrediting agency. This is a significantly smaller total of hours; however we also note that CPD generally includes instruction time, and not additional study, tuition or assessment and accompanying preparation time.

3. We agree that the requirements could be attained through this variety of providers.

As we noted above, AIST believes it possible that registrants may have gathered all necessary competencies from several different courses. Consequently, it may be a combination of different types of provider used by registrants in meeting all necessary educational requirements.

However, in addition, we believe that a statement needs to be provided with the requirement for a relevant degree. AIST supports the need for financial advisers to have a relevant degree at a bachelor’s degree level or higher. However, we note that the fields of law, business/commerce and other areas relevant to the practice of financial planning are large and consider it feasible that graduates with these degrees may not have necessarily completed a single subject that contains all required competencies.

On top of this, as we identified above, the need for financial advisers to undertake bridging qualifications to ‘fill in the gaps’. We are not aware of any valid arguments for such a bridging qualification to be provided to financial advisers through a university, particularly where a registrant already has a relevant degree.

4. AIST supports a minimum education level requirement for a Board-approved course in taxation law for registered tax (financial) advisers to be Diploma-level or higher (level 5 of the Australian Qualifications Framework).

AIST would further support the Board liaising further with the regulators of tertiary education providers to ensure that all required competencies are included in future versions of all relevant courses. This would ensure that bridging courses remain a temporary measure that can be phased out gradually.

AIST takes this opportunity to remind the Board that RG 146 is being revised by ASIC. We strongly recommend that as registered tax (financial) advisers will generally be a subset of appropriately trained financial advisers, the requirements of TPB(PG) D04/2014 must be compatible with RG 146 in all current and future versions.

5. AIST supports assessment of the proposed course in taxation law for tax (financial) advisers where independent supervision is required and in a manner demonstrating rigour and integrity.

AIST supports higher requirements for financial advisers, as explained above, however, although we support a “national exam” as well as the requirements that we have addressed in this submission, we see no reason why, as we also indicated with instruction on these requirements, such an exam may not also be conducted in parts.

As a Registered Training Organisation (RTO) AIST recognises that at the end of all tuition, the key question is whether a student is competent to provide a service, based upon the skills and/or knowledge that they have learned. There is no compelling argument as to why assessment of a number of knowledge areas needs to be conducted at the same time, unless it can be shown that they are closely related.

We strongly recommend that assessment and supervision of assessment be carried out independently. AIST points out that any nationally recognised education must be above reproach, and would welcome assessment that was 100% independent, pointing out that rigour and integrity may be impaired in instances where assessors have (or are perceived to have) a conflict, or potential conflict of interest. Although we note the presence in the industry of vertically integrated assessment providers, we question whether these arrangements are free of any such perceptions.

If you have any further questions regarding this submission, please contact Richard Webb, Policy & Regulatory Analyst on 03 8677 3835 or at [rwebb@aist.asn.au](mailto:rwebb@aist.asn.au).

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Tom Garcia', is written over a light blue horizontal line.

Tom Garcia  
**Chief Executive Officer**