

16 November 2020

Madalene Sarvos
Tax Practitioners Board
PO Box 9825,
PENRITH NSW 2740

By email: Madalene.Sarvos@tpb.gov.au

Dear Ms Sarvos,

Comments on Draft Tax Agent Services Instruments 2020

The Taxation Law Committee of the Business Law Section of the Law Council of Australia (the **Committee**) welcomes the opportunity to provide the following comments with regards to the Draft Tax Agent Services Instruments 2020.

Course in commercial law

Draft Instrument

Section 5: Course duration

1. This section currently reads: 'A course in commercial law must comprise of at least three tertiary level units.' This phrasing could be improved by a change to either 'must comprise at least three' or 'must be comprised of at least three'.

Section 6: Course topics

2. The phrasing of (1) that the course 'must include units from the following topics' suggests that all of the listed topics must be included in the course, but the Draft Explanatory Statement (**DES**) suggests that the course in commercial law must *draw from* that list of topics [see para 28-30], which is consistent with the earlier Discussion Paper. It should be made clear that the commercial law course must draw from this list, rather than that it must cover all topics in this list. Given that paragraph 34 of the DES states that the entire content of the course may be comprised of the core commercial law areas, there appears to be no requirement that additional topics are covered. [Compare the taxation law course instrument which, at s 6(1), prescribes the topics that the course *must cover*.]
3. Section 6(2) states that the course 'must wholly or substantially cover' the core commercial law areas, indicating the level of coverage of these areas. This could be read to suggest that the course must wholly or substantially cover, for example, the law of contracts but the DES [see para 32] suggests, rather, that the commercial law course is to be comprised of these subject areas wholly (that is,

only those areas are covered in the course) or substantially (that is, 2 of the 3 units are from these areas or the course is made up of these areas to a significant extent). The intended meaning here should be clarified.

4. Section 6(2)(c) refers to the law of 'entities' and then nominates partnerships, corporations and trusts. It would be preferable to adopt the language 'entities *and business structures*' as used in paras 42 and 43 of the DES given that some of these structures are not legal entities.

Draft Explanatory Statement

Background

5. Paragraph 13 as currently drafted suggests that individuals with legal qualifications are required to complete an approved course in commercial law. Item 204 of the current Regulations makes it clear that this is not the case. As a result, para (c) should be deleted. In the interests of certainty the following could be added to the end of para 13: 'An individual who has the academic qualifications required to be an Australian legal practitioner is not required to complete a course in commercial law approved by the Board (item 204 in Division 1 of Part 2 of Schedule 2 to the Regulations).'

Section 5: Course duration

6. Paragraph 23 refers to a 'standard' 12 to 14 week tertiary period and units of study that have 3 hours per week of lectures and tutorials. With the move by a number of large tertiary institutions to a trimester format (eg UNSW, UTS), it may be more meaningful to focus on total study hours and learning outcomes, rather than weeks.

Section 6: Course topics

7. Consistent with the comments made above at point 2, the phrase 'must be from' in paras 28 and 29 might more correctly be phrased 'must be *drawn* from'.

Course in taxation law

Draft Instrument

Section 5: Course duration

8. This section currently reads: 'A course in Australian taxation law must comprise of at least two tertiary level units.' This phrasing could be improved by a change to either 'must comprise at least two' or 'must be comprised of at least two'.

Section 6: Course topics

9. Consistent with the comment above at point 4, in section 6(1)(e) 'basic entities *and business structures* including partnerships...' would be preferable.

Section 5: Course duration

10. See point 6 above re focus on weeks.

Thank you again for the opportunity to provide comments. Should you wish to discuss further any aspects of the submission please do not hesitate to contact Clint Harding, Chair of the Committee (charding@abl.com.au or 02 9226 7236).

Yours faithfully

A handwritten signature in black ink, appearing to read "Greg Rodgers". The signature is written in a cursive style with a large initial "G".

Greg Rodgers
Chair, Business Law Section