

Distinction in law



Specialist Accreditation

Taxation Law Assessment Criteria 2011



1. Introduction

The 2011 Taxation Law Specialist Accreditation Assessment Criteria are designed to assist practitioners interested in becoming accredited in taxation law to understand, apply and prepare for the assessment process.

These Assessment Criteria include the following:

1. Introduction
2. Important dates
3. Privacy
4. Eligibility criteria
5. Application information
6. Assessment information
7. Taxation Law Specialist Specific information
 - Core Areas (Schedule 1)
 - Exemption from Written Examination (Schedule 2)
 - Committee Members (Schedule 3)

Please note: The 2011 Taxation Law Specialist Accreditation Assessment Criteria should be read in conjunction with the Specialist Accreditation Handbook.

Enquiries

Please address all enquiries regarding Taxation Law Specialist Accreditation to:

Specialist Accreditation
Queensland Law Society
GPO Box 1785
Brisbane Qld 4001

tel: 07 3842 5929
fax: 07 3221 2279
email: specaccred@qls.com.au

2. Important dates

Wednesday 23 February 2011	Specialist Accreditation Information Evening Applications open
Monday 11 April 2011*	Applications close (by 4pm)
May 2010*	Candidates advised of acceptance into program
Saturday 30 July 2011*	Part 1: Written Examination held (am)
	Part 2: Take Home Assignment distributed
Monday 8 August 2011*	Part 2: Take Home Assignment due (by 4pm or sent by registered post postmarked no later than 4pm)
Thursday 11 August 2011	Part 3: Presentation to Peers (by appointment)
November 2011*	Candidates will be advised of results by mail

NB: The Taxation Law Specialist Accreditation Advisory Committee reserves the right to change any of these dates, but will give candidates notice of any change.

Late applications will only be accepted at the discretion of the Taxation Law Specialist Accreditation Advisory Committee.

3. Privacy

QLS is committed to protecting your privacy and the confidentiality and security of personal information provided by you to us. The information you provide us will be used to process your application and to contact you with further details of the program.

Further, it is a condition of application for accreditation that the applicant gives consent for the Professional Standards Department of the Law Society and the Legal Services Commission to provide to the Board and/or the Taxation Law Specialist Accreditation Advisory Committee any information, the release of which is not prohibited by statute.

Further details about the QLS's privacy policy, including the Privacy Statement, Plan and Code of Practice and the collection of personal information can be found on the Society's website at www.qls.com.au.

4. Eligibility Criteria

Please read in conjunction with the Specialist Accreditation Handbook.

To be eligible to apply for accreditation, an applicant must:

- be a member of the Queensland Law Society;
- hold a current practising certificate;
- have been engaged in full time legal work for at least five years following the date of their admission to practice;
- demonstrate substantial involvement (at least 25%) in this area of practice over the past three years;

An applicant who is not able to fully satisfy the criteria concerning:

- years of experience in practice; or
- level of involvement in the area of practice;

may be accepted into the program at the discretion of the Taxation Law Specialist Accreditation Advisory Committee.

Application for the exercise of this discretion must accompany the application for accreditation and must be made by letter addressed to the Taxation Law Specialist Accreditation Advisory Committee, outlining the applicant's case for the exercise of the Committee's discretion to accept the applicant as a candidate.

5. Application Information

5.1 Application closing date

Applications must be received by Queensland Law Society prior to 4pm on Monday 11 April 2011.

5.2 Form of Application

Applications must be made on the prescribed application form, which may be downloaded as part of the 'Specialist Accreditation Application Kit' from the Specialist Accreditation section of the Queensland Law Society website, at www.qls.com.au.

The form must be accompanied by the following documents:

1. a resume of work (see 5.4 below)
2. three references in support of the application (see 5.5 below)
3. the application fee of \$880.00 (including G.S.T.) payable to the Queensland Law Society Inc by credit card or cheque

5.3 Address for Submission of Application

Completed applications must be submitted via email, fax or post to:

Specialist Accreditation
Queensland Law Society
GPO Box 1785
Brisbane Qld 4001

tel: 07 3842 5929
fax: 07 3221 2279
email: specaccred@qls.com.au

5.4 Resume of Work

5.4.1 The purpose of the resume

- The purpose of the resume is to demonstrate the applicant's experience and capacity in the area of tax law.
- This element will be assessed by reference to the resume demonstrating the applicant's ability to prepare, conduct and represent clients to a high standard in tax law.
- The Resume of Work is an eligibility pre-requisite. **Applicants will not proceed to the examination stage unless the resume of work meets all criteria as outlined.**

- Where the Committee proposes to reject an application, the applicant may be given the opportunity to clarify aspects of the application before the application is denied.

5.4.2 General requirements of the resume

- The resume should be formal, concise and carefully presented. It should not exceed 4 pages (exclusive of any necessary attachments).
- The applicant should seek to address the specific requirements as set out below by reference where possible to the Tax Law Specialist Accreditation Performance Standards (outlined in this document).
- The resume should be set out as per the content requirements below, addressing each point.
- The applicant is required to use Microsoft Word format with 12pt font, 1.5 line spacing, with 2cm margins.

5.4.3 Specific content requirements of the resume

The resume should:

- state the applicant's date of admission to practice;
- give a broad description of the applicant's legal career since admission. It should outline the applicants experience in taxation law including the percentage of time spent in the practice of tax law over the last five years and, in particular, the last twelve months.
- describe the applicant's experience in the following areas over the past three years with at least three of the following:
 - capital gains tax;
 - other income tax;
 - stamp duty;
 - other revenue law; or
 - GST
- Provide a brief description (not exceeding 250 words per matter) of at least one, but no more than three, matters that the applicant has conducted in the last 12 months which involved some degree of complexity in law, procedure or fact. A short narrative of the circumstances and the issues involved and how the applicant dealt with them should be provided. No documents are required.

- list any lectures, seminars, workshops, continuing legal education courses or publications that the applicant has conducted or been involved in, relevant to their tax law practice, over the last 12 months. The nature of the applicant's involvement should be specified.

5.5 Referees

5.5.1 Applicants are required to nominate three referees who can attest to their competence and involvement in the area of Taxation Law. Applicants are urged to carefully consider the following criteria when selecting their referees:

- at least two referees are legal practitioners residing in Queensland;
- no more than one reference may be obtained from a member of another profession, provided that the referee has appropriate expertise in their field and that field has some relevance to the application;
- it is desirable that some of the referees have acted on the other side of a transaction or matter in which the applicant has been involved;
- none of the following is eligible to act as a referee:
 - partner, associate, employer, employee (i.e. another member of the applicant's firm), or relative of the applicant;
 - another applicant in the area of practice (cross-references are not acceptable);
 - Specialist Accreditation Board members or members of the Advisory Committee in the nominated area of practice;
 - Queensland Law Society staff; or
 - Queensland Law Society Council members.
- the Taxation Law Specialist Accreditation Advisory Committee reserves the right to seek additional references from referees and other people.

5.5.2 A Referee's Report form has been included in the Application Kit. The responsibility for distribution of referee reports lies with the applicant.

5.5.3 All three Referee's Report forms must be returned to QLS by the applicant or the referees by the closing date for applications (see 5.1 above). Applicants may not proceed to the examination stage until all three Referee's Report forms are received by Queensland Law Society.

6. Assessment Information

6.1 Assessment Stage

Once an application is accepted by the Taxation Law Specialist Accreditation Advisory Committee, an applicant becomes a 'candidate' and must successfully complete the prescribed assessment program set out in this section to be awarded specialist accreditation.

6.2 Assessment Tasks

The assessment program for specialist accreditation in taxation law is in three parts.

Part 1 Written Examination

OR successful completion of a recognised Masters Degree (Please see Annexure A attached to this document for details)

Part 2 Take Home Assignment

Part 3 Presentation to Peers

To gain accreditation, candidates must achieve a pass result in all three parts.

Candidates will be assessed on the law as it stands on the date of the assessment.

6.2.1 Written Examination

Date:	Saturday 30 July 2011
Venue:	Queensland Law Society Auditorium, Law Society House, 179 Ann Street, Brisbane
Time:	Approx. 8.30am to 12.00pm (exam will run for 3 hours with 30 mins reading time)

(3 hours plus thirty minutes for reading and planning)

The written examination will test knowledge across a wide range of topics likely to be encountered in tax practice. Questions in this exam will require extended answers. There will be EIGHT questions, of which candidates will be required to answer FIVE. The broad spread of topics is designed to cater for the fact that practitioners tend to work in different areas of tax. The time spent on questions should be appropriate to the marks available.

Candidates will be expected to identify relevant issues and form sound preliminary views without the benefit of time to undertake more than a brief examination of basic references.

Assessment Criteria

Candidates will be assessed on their:

- ability to identify relevant issues from the materials provided;
- knowledge of relevant law, including significant recent decisions and rulings and skill in applying that knowledge in practice;
- knowledge of relevant procedural rules and principles;
- ability to provide practical and clear advice; and
- ability to provide sound commercial advice.

Examination Conditions

- The duration, including reading time, will be 3 hours and 30 minutes.
- The examination will be open book.
- Candidates may take into the examination room any books, notes or other written material. Portable computers may be used for reference purposes on a “read only” basis so long as their use does not disturb other candidates.
- Internet access is strictly prohibited.
- Mobile telephones are not permitted.
- Answers must be written in the answer booklets provided.
- Answers must be numbered correctly.
- Handwriting must be legible.
- Candidate numbers (not names) must be written on all answer books submitted.

After the examination

Following the written examination, candidates will receive the Take Home Assignment and the material for their Presentation to Peers.

6.2.2 Take Home Assignment

Distributed on:	Saturday 30 July 2011
Due:	Monday 8 August 2011 (by 4pm or sent by registered post postmarked no later than 4pm)

Candidates will be required to prepare a comprehensive and analytical written assignment in the prescribed format as advised on the assignment when distributed.

This format could be one of the following:

- Letter of Advice,
- Letter to the ATO,
- Response to an ATO position paper; or
- a Memo to Counsel.

Answers should include arguments on which your conclusions are based and supporting notes relevant to your opinions.

Candidates will have the choice of selecting one of two assignment questions.

Take-Home assignment conditions

Candidates may use the resources of their offices in completing this exercise. **However, consultation with any other person in completing the exercise is not permitted.**

Assessment criteria

Candidates will be assessed on their:

- ability to identify relevant issues from the materials provided;
- knowledge of relevant law, including significant recent decisions and rulings and skill in applying that knowledge in practice;
- knowledge of relevant procedural rules and principles;
- where applicable, ability to provide practical, clear and comprehensive advice; and
- where applicable, ability to provide sound commercial advice

6.2.3 Presentation to Peers

Date of Presentation:	Thursday 11 August 2011
Interview Time:	By appointment. Allow at least 1 hour in total (actual presentation/question and answer time is 30 minutes)
Venue:	Queensland Law Society Auditorium, Law Society House, 179 Ann Street, Brisbane

Candidates will be required to give a short presentation on a recent development in tax law as advised on the presentation notification.

Candidates will have 20 minutes to present to a panel of peers and 5 minutes to answer questions from the panel.

The recent development in tax law topic and presentation details will be distributed immediately following the written examination on Saturday 30 July 2011.

The presentation must include:

- an explanation of the new development and how it fits with existing law;
- the practical/planning implications;
- any uncertainties or risk issues; and
- any client opportunities.

A power point presentation is allowed.

A hard copy outline of the presentation (which may comprise of a print out of a power point presentation) must be given to the examiners at the end of the presentation for review purposes.

The presentation will be videotaped.

Assessment criteria

This exercise will test the following knowledge and skills:

- presentation and communication skills;
- explanation of the new development and how it fits with existing law;
- practical/planning implications; and
- uncertainties, risk issues and client opportunities.

Candidates may use the resources of their offices in completing this exercise. **However consultation with any other person in completing the exercise is not permitted. Candidates will be required to provide a signed statement to this effect.**

7. Taxation Law Specialist Specific Information

The following specific information about accreditation as a Taxation Law Specialist is set out in the Schedules to this document:

- Core Areas (Schedule 1)
- Exemption from Written Exam (Schedule 2)
- Committee Members (Schedule 3)

SCHEDULE 1

CORE AREAS

1 Core Areas

The following list should not be taken to be exhaustive but indicates the range of matters which could be addressed in the assessment program.

Candidates will be assessed on the law as it stands on the date of assessment. In addition to this, candidates are expected to have knowledge of announced changes which are relevant to the advice they would give.

1.1 Administration

- Assessments
- Collections – PAYG
- Objections and Appeals
- Penalty tax and offences
- Rulings system and related ATO products
- Entities

1.2 Anti-avoidance: general and specific

- Alienation of income
- Demerger
- General anti-avoidance rules
- Tax planning
- Tax-effective structuring

1.3 Capital Gains

- Identification and calculation of gains and losses
- Cost base
- Roll-overs
- CGT small business concessions

1.4 Deductions

- Business and employment deductions
- Miscellaneous deductions
- Depreciation
- Building and other allowances
- Losses – company losses, trust losses, other losses
- Black hole expenditure
- Capital allowances

1.5 GST Issues

- Taxable supplies
- Input taxed supplies
- Supplies of going concerns
- GST Free supplies
- Margin scheme

1.6 Income

- Business income
- Person exertion income
- Capital-income dichotomy
- Source and derivation of income
- Tax accounting
- Trading stock
- Dividends, deemed dividends and imputation
- Income from isolated transactions
- Income from property transactions
- Income from security transactions
- Non-cash benefits and incentives
- Trust income

1.7 International Tax

- Residents
 - attribution
 - foreign tax credits
- Non residents
 - business profits/ permanent establishment

- source of income
- Double tax agreements
- Transfer pricing
- Thin capitalisation
- Treatment of trusts

1.8 Land Tax

1.9 Specialist topics

- Personal Services Income/ Personal Services Business
- Commercial debt forgiveness
- Share Value Shifting
- Debt Equity Rules

1.10 Stamp duty

- Dutiable property
- Land Rich Entities

1.11 Superannuation funds

- Concessional Contributions / Non Concessional Contributions
- Excess Contributions Tax
- Restrictions on borrowing and securities

1.12 Taxpayers

- Individuals
- Partnerships
- Companies and Associations
- Superannuation funds
- Minors
- Tax-exempt entities
- Consolidation groups

NOTE: The following topics **will not be tested**:

- Indirect taxes (**other than GST**);
- State taxes (**other than stamp duty and land tax**); and
- Non-tax-related superannuation.

Any matter relevant to practice in **Tax Law** may be examined, including the areas listed above. This list gives an indication of other matters which candidates might be asked to address. Candidates may be asked questions arising under any legislation, related regulations and other materials listed in this document. This is not intended to be an exhaustive list.

2 Legislation and Regulations

This is not necessarily an exhaustive list. Candidates will be examined on the law as it stands at the date of assessment.

- *Income Tax Assessment Act (Cth) 1936*
- *Income Tax Assessment Act (Cth) 1997*
- *Taxation Administration Act (Cth) 1953*
- *Fringe Benefits Tax Assessment Act (Cth) 1986*
- *International Tax Agreements Act (Cth) 1953*
- *A New Tax System (Goods & Services Tax) Act (Cth) 1999*
- *Duties Act (Qld) 2001*
- *Foreign Acquisitions and Takeovers Act (Cth) 1975*
- *Superannuation Industry (Supervision) Act (Cth) 1993*
- *Land Tax Act (Qld) 1915*
- Regulations made under the above Acts
- Other relevant legislation and regulations.

SCHEDULE 2

Exemption from Written Examination

Specialist accreditation in tax law demands a detailed knowledge of relevant law. Applicants who have demonstrated, by suitable training and objective assessment measures, that they have a detailed knowledge of relevant law are invited to apply in advance to Taxation Law Specialist Accreditation Advisory Committee for an exemption from the written examination.

Any such exemption is entirely at the discretion of the Advisory Committee and will be assessed on a case by case basis.

Applicants may be eligible for the exemption if they have recently studied subjects relating to tax law in a postgraduate course at a tertiary institution. The completed LLM units must:

- have been completed within the preceding five years of the date of application;
- assess knowledge that is equivalent in range to the knowledge assessed in the specialist accreditation exam;
- be at a level of complexity and standard of knowledge that is equivalent to that assessed in the specialist accreditation exam; and
- contain knowledge that is of equivalent relevance to practice in the specialist accreditation exam.

An application for exemption from the written examination should be made at the time of lodging the application form.

SCHEDULE 3

Queensland Law Society Taxation Law Specialist Accreditation Advisory Committee (current as at February 2011)

Mr D Cominos, Clayton Utz

Mr D Morrison, UQ - School of Law

Mr H Rigney. H M Rigney

NB: The above Committee work in collaboration with the Law Institute of Victoria's
Taxation Law Specialist Accreditation Advisory Committee.