



# Specialist Accreditation Application Guidelines 2011

---

*Tax Law*

---



## What is an Accredited Specialist?

A lawyer who is accredited as a specialist is recognised as having an enhanced skill level, as well as substantial involvement in established legal specialty areas. The Law Institute of Victoria requires such specialists to demonstrate superior knowledge, experience and proficiency in a particular area of law to ensure that recognition as an accredited specialist is meaningful and reliable.

## Eligibility for Accreditation

- Membership of the Law Institute of Victoria
- A current practising certificate
- At least five years experience in practice
- Substantial involvement in this area of practice over the past three years
- Three references in support of the application
- Successful completion of the prescribed assessment program

Candidates who do not meet the eligibility criteria may apply for an exemption from compliance in accordance with the Specialisation Scheme Rules (2010)

## IMPORTANT:

Details of the conditions for gaining specialist accreditation are contained in the Specialisation Scheme Rules which can be found at: <http://www.liv.asn.au/PDF/Accredited-Specialisation/SpecialisationSchemeRulesMasterCopy> . Specialisation Candidates are particularly advised to read the *Specialisation Scheme Rules* and familiarise themselves with the requirements for any applications for exemption or special consideration. The Rules are located under the Scheme Administration tab of the *Specialisation Scheme* link.

## Assessment

The assessment program for specialist accreditation in Tax Law is in three parts. To gain accreditation, a candidate must pass **each** part of the program. Candidates may, in any or all of the assessment program, be assessed on any or all of the **Assessment Topics** listed in **Schedule 4**

Part 1: Written Examination – See **Schedule 1**.

Candidates may seek exemption from the written examination in accordance with the provisions contained in Schedule 1

Part 2: Take Home Assignment – See **Schedule 2**

Part 3: Presentation to Peers of Take-home Assignment – See **Schedule 3**.

**Further details of the assessment program and procedures are contained in the Schedules attached to these Guidelines.**

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

## Supplementary Assessment

Candidates may be required to undertake additional assessment at the discretion of the Specialisation Board.

### **Exemption from Written Component**

Candidates may apply in advance for an exemption from the written examination if they have recently studied subjects relating to Tax Law in a postgraduate course at a tertiary institution. Any such exemption is entirely at the discretion of the Specialisation Board and will be assessed on a case by case basis.

Eligibility for the exemption is subject to the following conditions. 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
- contain knowledge that is of equivalent relevance to practice in the specialist accreditation exam

Any application for an exemption should be made at the time of lodging the application form, which is to be lodged no later than **4.00pm on Friday, 15 April 2011**.

### **Dual Accreditation with the TIA**

Candidates will have an opportunity to undergo a joint assessment with the Law Institute of Victoria (LIV) and the Tax Institute of Australia (TIA). The joint assessment includes participation in six complex case studies, a client advice assignment and an oral presentation of the client advice, integrating a late breaking fact.

Candidates wishing to undergo this assessment will need to meet the pre – requisite requirements of both the LIV and TIA. On successful completion of this program, candidates will become LIV Accredited Specialists in Tax, and will satisfy the educational requirements to gain Fellowship of the TIA (FTIA) status.

Candidates wishing to embark on the joint assessment will need to specify this when lodging the application form, which is to be lodged no later than **4.00pm on Friday, 15 April 2011**.

### **Timetable**

Monday 28 <sup>th</sup> February 2011	Accredited Specialisation Information Night
Friday 15 April 2011	Applications requesting Board discretion (for those who do not meet eligibility criteria) close, no later than 4pm
Friday 13 May 2011	All other Applications close and must be received by 4.00pm
Monday 30 <sup>th</sup> May 2011	Accredited Specialisation Examination Techniques evening
Saturday 30 July 2011	Part 1: Written Examination. Part 2: Take-home Assignment distributed
Monday 8 August 2011	Part 2: Take-home Assignment returned by 4pm
Thursday 11 August 2011	Part 3: Presentation to Peers of Take-home Assignment
Late October 2011	Candidates will be advised of results
Thursday 24 November 2011	Accredited Specialisation Conferral Dinner and Ceremony

**IMPORTANT: Candidates who wish to apply for special consideration in relation to their assessment tasks must do so in accordance with the Rules:**  
<http://www.liv.asn.au/PDF/Accredited-Specialisation/SpecialisationSchemeRulesMasterCopy>



### **Performance Standards**

Practitioners wishing to be accredited should be able to:

- (a) perform at a high standard which is expected of practitioners wishing to hold themselves out as specialists in the area.
- (b) display a high standard of knowledge of the law and procedure which underpins the performance of tasks in this area of practice; and

### **General Recommendations**

Candidates may find it of assistance in preparing for the assessment tasks to:

- (a) form a study group – to register your interest in forming a study group please contact Accredited Specialisation on 9607 9461
- (b) attend appropriate LIV CPD events in the area of specialisation
- (c) review previous examination papers and videos of simulated interviews. These are available at <http://www.liv.asn.au/Education---Events/Accredited-Specialisation>
- (d) read some or all of the Suggested Reading Material listed in **Schedule 5**

### **Legislation and other provisions**

Candidates should be familiar with the relevant parts of legislation relating to the selected topics for assessment, and the legislation listed in **Schedule 5**.

### **Applications**

Applications must be made on the prescribed application form.

### **Resume of Practice**

As evidence of substantial involvement, applicants must submit a resume of their professional activities relevant to practice in [Tax Law](#). The resume should give the Board an overall picture of the applicant's experience and expertise in [Tax Law](#), with an emphasis on involvement over the past three (3) years. It is not expected that a comprehensive *curriculum vitae* will be submitted.

No standard format is prescribed. However, applicants might find it helpful to use some or all of the following headings:

- broad description of current practice activities
- experience in specific areas of activity in [Tax Law](#)
- involvement with relevant professional organisations
- relevant publications and presentations
- academic qualifications
- other.

It is not necessary to repeat details provided on the application form.

**Please forward to the Law Institute:**

1. The completed application form
2. Three references
3. Resume of practice
4. Application fee of \$1,000.00 (including GST) payable to the Law Institute of Victoria.

**Applications close**

**By 4:00pm Friday 15<sup>th</sup> April:** for applicants wishing to apply for Board discretion because they do not meet the eligibility criteria.

**By 4:00pm Friday 13<sup>th</sup> May:** for all other applications.

The address for applications is:

*Accredited Specialisation  
Law Institute of Victoria  
GPO Box 263C                      OR      DX 350  
MELBOURNE VIC 3001                      MELBOURNE*

**Enquiries:** Telephone: 9607 9461  
Facsimile: 9607 9404  
Email: [special@liv.asn.au](mailto:special@liv.asn.au)

## SCHEDULE 1: Examination Assessment Component Part 1 – Written Examination

**Exam Date:** Saturday 30 July 2011  
9.30am – 1.00pm  
**Exam Venue:** Moonee Valley Racing Club, McPherson Street, Moonee Ponds.

### Overview

(3 hours *plus* 30 minutes for reading and planning)

This paper will test knowledge across a wide range of topics likely to be encountered in tax practice. Questions in this paper 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
- ability to provide sound commercial advice.

### Examination Conditions

- The written examination is an open book exam
- 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. Access to the Internet is strictly prohibited
- Mobile telephones are not permitted
- Questions must be answered in the booklets provided
- Answers must be numbered correctly
- Handwriting must be legible
- Each candidate will be issued with an examination number
- The names of candidates will not appear on any material submitted for assessment.

### After the examination

Following the written examination, candidates will receive the Take Home Assignment and Presentation to peers material

## **SCHEDULE 2: Examination Assessment Component Part 2 – Take Home Assignment**

**Distributed to candidates:** Saturday 30 July 2011 at the completion of the written examination

**Returned by candidates:** No later than 4pm on Monday 8 August 2011

### **Overview**

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
- where applicable, ability to provide sound commercial advice.

**The completed exercise must be lodged in person at the Law Institute or sent by registered post to arrive no later than 4.00 pm on Monday 8 August 2011**

### SCHEDULE 3: Examination Assessment Part 3 - Presentation to Peers

- Interview Date:** Thursday 11 August 2011
- Interview Time:** By appointment. Allow at least 1 hour in total. (Actual presentation/question and answer time is 30 minutes)
- Interview Venue:** Law Institute of Victoria, Level 2, 470 Bourke Street Melbourne

#### Overview

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

- 20 minutes presentation to panel of peers
- 5 minutes answering questions

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
- Any client opportunities

A powerpoint presentation is allowed.

A hard copy outline of the presentation (which may comprise of a print out of a powerpoint 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 (please note the weighting of each criteria):

- |  |     |
|--|-----|
| ▪ presentation and communication skills                                | 20% |
| ▪ explanation of the new development and how it fits with existing law | 30% |
| ▪ practical/planning implications                                      | 30% |
| ▪ uncertainties, risk issues and client opportunities                  | 20% |

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.

## SCHEDULE 4 - Topics for Assessment

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 knowledge of the law as it stands on the day of assessment, candidates are expected to have knowledge of announced changes which are relevant to the advice they would give.

<b>TOPICS</b>	<b>SUB-TOPICS</b>
<b>Administration</b>	<ul style="list-style-type: none"> <li>▪ Assessments</li> <li>▪ Collection – PAYG</li> <li>▪ Entities</li> <li>▪ Objections and Appeals</li> <li>▪ Penalty tax and offences</li> <li>▪ Rulings system and related ATO products</li> </ul>
<b>Anti-avoidance: general and specific</b>	<ul style="list-style-type: none"> <li>▪ Alienation of income</li> <li>▪ Demerger</li> <li>▪ General anti-avoidance rules</li> <li>▪ Tax planning</li> <li>▪ Tax-effective structuring</li> </ul>
<b>Capital Gains</b>	<ul style="list-style-type: none"> <li>▪ CGT small business concessions</li> <li>▪ Cost base</li> <li>▪ Identification and calculation of gains and losses</li> <li>▪ Roll-overs</li> </ul>
<b>Deductions</b>	<ul style="list-style-type: none"> <li>▪ Black hole expenditure</li> <li>▪ Building and other allowances</li> <li>▪ Business and employment deductions</li> <li>▪ Capital allowances</li> <li>▪ Depreciation</li> <li>▪ Losses - company losses, trust losses, other losses</li> <li>▪ Miscellaneous deductions</li> </ul>
<b>Employment</b>	<ul style="list-style-type: none"> <li>▪ Employee share acquisition schemes</li> <li>▪ Fringe benefits tax</li> <li>▪ Retirement and employment termination payments</li> </ul>
<b>GST Issues</b>	<ul style="list-style-type: none"> <li>▪ GST Free supplies</li> <li>▪ Input taxed supplies</li> <li>▪ Margin scheme</li> <li>▪ Supplies of going concerns</li> <li>▪ Taxable supplies</li> </ul>
<b>Income</b>	<ul style="list-style-type: none"> <li>▪ Business Income</li> <li>▪ Capital-income dichotomy</li> <li>▪ Dividends, deemed dividends and imputation</li> <li>▪ Income from isolated transactions</li> <li>▪ Income from property transactions</li> <li>▪ Income from security transactions</li> <li>▪ Personal exertion income</li> <li>▪ Non-cash benefits and incentives</li> <li>▪ Source and derivation of income</li> <li>▪ Tax accounting</li> <li>▪ Trading stock</li> <li>▪ Trust income</li> </ul>

<b>International Tax</b>	<ul style="list-style-type: none"> <li>▪ Double tax agreements</li> <li>▪ Residents <ul style="list-style-type: none"> <li>- attribution</li> <li>- foreign tax credits</li> </ul> </li> <li>▪ Non residents <ul style="list-style-type: none"> <li>- business profits/ permanent establishment</li> <li>- source of income</li> </ul> </li> <li>▪ Thin capitalisation</li> <li>▪ Transfer pricing</li> </ul>
<b>Land Tax</b>	<ul style="list-style-type: none"> <li>▪ Treatment of trusts</li> <li>▪ Aggregation rules</li> </ul>
<b>Specialist topics</b>	<ul style="list-style-type: none"> <li>▪ Commercial debt forgiveness</li> <li>▪ Debt Equity Rules</li> <li>▪ Personal Services Income/ Personal Services Business</li> <li>▪ Share Value Shifting</li> </ul>
<b>Stamp Duty</b>	<ul style="list-style-type: none"> <li>▪ Dutiable property</li> <li>▪ Land Rich Entities</li> </ul>
<b>Superannuation funds</b>	<ul style="list-style-type: none"> <li>▪ Concessional Contributions/ Non Concessional Contributions</li> <li>▪ Excess Contributions Tax</li> <li>▪ Restrictions on borrowing and securities</li> </ul>
<b>Taxpayers</b>	<ul style="list-style-type: none"> <li>▪ Individuals</li> <li>▪ Partnerships</li> <li>▪ Companies and Associations</li> <li>▪ Superannuation funds</li> <li>▪ Minors</li> <li>▪ Tax-exempt entities</li> <li>▪ Consolidation groups</li> </ul>

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

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

**NB:** Any matter relevant to practice in **Tax Law** may be examined, including the areas listed above. The 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 these guidelines. This is not intended to be an exhaustive list.

## SCHEDULE 5: Related 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

### Legislation and Regulations

- *A New Tax System (Goods & Services Tax) Act (Cth) 1999*
- *Duties Act (Vic) 2000*
- *Foreign Acquisitions and Takeovers Act (Cth) 1975*
- *Fringe Benefits Tax Assessment Act (Cth) 1986*
- *Income Tax Assessment Act (Cth) 1936*
- *Income Tax Assessment Act (Cth) 1997*
- *International Tax Agreements Act (Cth) 1953*
- *Land Tax Act (Vic) 2005*
- *Land Tax Act (SA) 1936*
- *Stamp Duties Act (SA) 1923*
- *Superannuation Industry (Supervision) Act (Cth) 1993*
- *Taxation Administration Act (Cth) 1953*
- Regulations made under the above Acts
- Other relevant legislation and regulations