



# INFORMATION SHEET

IS-L00609PW

## Registration as a tax agent during the transitional period

This document is intended as an overview of the arrangements for registration as a tax agent during the transitional period. This information sheet is intended to provide assistance. It is not a formal Board Guideline. This information sheet may be changed from time to time.

**NOTE:** In this fact sheet references to:

- '**New law**' means the *Tax Agent Services Act 2009*, the *Tax Agent Services Regulations 2009* and the *Tax Agent Services (Transitional Provisions and Consequential Amendments) Act 2009*; and
- '**Old law**' means Part VIIA of the *Income Tax Assessment Act 1936* and Part 9 of the *Income Tax Regulations 1936*.

### What is the new law?

- *Tax Agent Services Act 2009* (TASA)
  - The TASA is the main Act and establishes the Tax Practitioners Board (Board) and provides for the registration of tax agents and BAS agents.
- *Tax Agent Services Regulations 2009* (TASR)
  - Contains, amongst other things, the qualifications and relevant experience requirements for registration.
- *Tax Agent Services (Transitional Provisions and Consequential Amendments) Act 2009* (Transitional Act)
  - Deals with the consequential and transitional matters arising from the enactment of the TASA.

Previously, tax agents and nominees of tax agents were registered by their respective State Tax Agents' Board under Part VIIA of the *Income Tax Assessment Act 1936*. BAS agents were not required to be registered under this regime.

The Board replaces the old State-based Tax Agents' Boards.

There are transitional arrangements to allow for the registration of *certain* individuals and entities as tax agents under the new regulatory regime. These are explained in more detail below.



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## Who must register?

You must be registered as a tax agent to provide a “*tax agent service*” for a fee or other reward.

A “*tax agent service*” is any service that relates to:

- ascertaining or advising about the liabilities, obligations or entitlements of an entity under a taxation law; or
- representing an entity in their dealings with the Commissioner of Taxation; and

that is provided in circumstances where it is reasonable to expect that the entity will rely on it to satisfy liabilities or obligations under a taxation law or to claim entitlements under a taxation law.

“Taxation law” includes any Act of which the Commissioner of Taxation has general administration, or any regulations made under such an Act. It also includes the TASA and any regulations made under the TASA.

A list of indicative tax agent services can be found in *Appendix A* **attached** to this information sheet.

**NOTE:** ‘Tax agent services’ includes ‘BAS services’.

## What if you do not register?

You may contravene a civil penalty provision if you are unregistered and provide tax agent services for a fee or other reward.

You may also contravene a civil penalty provision if you are unregistered and you:

- advertise that you will provide tax agent services; or
- represent yourself as a registered tax agent.

Civil penalties of up to \$27,500 (250 penalty units) for an individual may apply under the civil penalty provisions of the TASA.



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## How do you register?

There are three ways in which you may obtain registration as a tax agent upon commencement of the new law:

- (i) Applying for tax agent registration under the TASA ;
- (ii) notifying the Board under the Transitional Act; or
- (iii) applying for tax agent registration under the Transitional Act.

An explanation of each of these methods of registration is provided below.

### **(i) Applying for tax agent registration under the TASA**

You may obtain registration as a tax agent by applying for registration under the TASA. You should use this method if you meet all of the requirements for registration prescribed by section 20-5 of the TASA.

For further information about the requirements for registration as a tax agent under section 20-5 of the TASA, please refer to the following information sheets available at [www.tpb.gov.au/TPB/tax\\_agents/Registration\\_information/](http://www.tpb.gov.au/TPB/tax_agents/Registration_information/)

- *Individual tax agent registration information sheet*
- *Partnership tax agent registration information sheet*
- *Company tax agent registration information sheet*

### **(ii) Notifying the Board under the Transitional Act**

Under the transitional arrangements of the new law, certain entities that were legally providing tax agent services immediately before commencement of the new law on 1 March 2010 may obtain registration as a tax agent by notifying the Board in the approved form.

The purpose of this arrangement is to ensure that those entities providing a service that they were not required to be registered for under the old law, but are required to register for under the new law are considered to be a registered tax agent after commencement of the new law.

## What are the requirements for registration?

You may obtain registration as a tax agent by notifying the Board under the Transitional Act if you meet all of the following requirements:

- you were, immediately before commencement of the new law, providing a 'tax agent service' within the meaning of the new law (other than a 'BAS service');
- you were not required to be registered as a tax agent under the old law; and



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- you notify the Board in the approved form, within 3 months of commencement of the new law, that you satisfy the above two requirements.

## How do you notify the Board in the approved form?

If you meet the requirements for registration set out above and you wish to obtain registration as a tax agent, you must notify the Board using the approved form within 3 months of commencement of the new law on 1 March 2010.

## What happens once you notify the Board in the approved form?

If you meet the requirements for registration set out above and you notify the Board in the approved form within the required timeframe, you will be taken to be a registered tax agent for a period of 2 years beginning immediately after commencement of the new law on 1 March 2010.

If you are taken to be a registered tax agent under this transitional arrangement, the Board may:

- impose conditions upon your registration; and/or
- require you to maintain professional indemnity insurance.

You will also be subject to the provisions of the new law, including the Code of Professional Conduct and civil penalty provisions.

If you wish to continue to be a registered tax agent after your initial 2 year period of registration expires, you will need to lodge an application for renewal of registration under the new law. In order to have your registration renewed, you will need to meet all of the relevant requirements set out in section 20-5 of the TASA.

For further information about renewal of registration as a tax agent, please refer to the *Renewal of registration as a tax agent information sheet* available at [www.tpb.gov.au/TPB/tax\\_agents/Registration\\_information/](http://www.tpb.gov.au/TPB/tax_agents/Registration_information/)



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## (iii) Applying for tax agent registration under the Transitional Act

Under the transitional arrangements for the new law, certain entities may apply for registration as a tax agent despite not meeting the qualifications and relevant experience requirements for registration.

This arrangement allows entities that were unregistered, but have been providing a tax agent service within a particular area of the taxation laws to a competent standard for a reasonable period, to apply to be transitioned into the new law under the TASA.

### What are the requirements for registration?

You are eligible for registration as a tax agent under this transitional arrangement if you meet all of the following requirements:

- (a) if you are an individual:
  - you are aged 18 years or more and you are a fit and proper person;
- (b) if you are a partnership:
  - each partner who is an individual is aged 18 years or more and is a fit and proper person; and
  - if a company is a partner, each director of the company is a fit and proper person, the company is not under external administration, and the company has not been convicted of a serious taxation offence or an offence involving fraud or dishonesty during the previous 5 years;
- (c) if you are a company:
  - each director of the company is a fit and proper person, the company is not under external administration, and the company has not been convicted of a serious taxation offence or an offence involving fraud or dishonesty during the previous 5 years;
- (d) immediately before commencement of the new law, you were providing a tax agent service within a particular area of the taxation laws;
- (e) you satisfy the Board that you have been providing that tax agent service to a competent standard for a reasonable period; and
- (f) you apply for registration in the approved form within 6 months of commencement of the new law.

For further information on the criteria for determining whether an individual is a 'fit and proper person', please refer to the *Fit and Proper Person information sheet* available at [www.tpb.gov.au/TPB/tax\\_agents/Registration\\_information/](http://www.tpb.gov.au/TPB/tax_agents/Registration_information/)



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## What happens if you meet the requirements?

If you meet all of the requirements for registration under the transitional arrangements, the Board will grant your application for registration as a tax agent for a period of 3 years.

If you are granted registration as a tax agent under this transitional arrangement, the Board may:

- impose conditions upon your registration; and/or
- require you to maintain professional indemnity insurance.

You will also be subject to the provisions of the new law, including the Code of Professional Conduct and civil penalty provisions.

If you wish to continue to be a registered tax agent after your initial period of registration expires, you will need to lodge an application for renewal of registration under the new law. In order to have your registration renewed, you will need to meet all of the relevant requirements set out in section 20-5 of the TASA. Registration after the initial transitional period of 3 years, will be for a period of at least 3 years.

For further information about renewal of registration as a tax agent, please refer to the *Renewal of registration as a tax agent information sheet* available at [www.tpb.gov.au/TPB/tax\\_agents/Registration\\_information/](http://www.tpb.gov.au/TPB/tax_agents/Registration_information/)

## Need more information?

Further information will be released as it becomes available on the Board's website at [www.tpb.gov.au](http://www.tpb.gov.au).



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## Appendix A – Examples of ‘tax agent services’

The following table includes a non-exhaustive list of the types of services which may constitute a tax agent service if provided for a fee or reward.

| Service   | Tax agent service | Not a tax agent service |
|---|-------------------|-------------------------|
| Preparing a return, notice, statement, application or other document about your client’s liabilities, obligations or entitlements under a taxation law                              | X                 |                         |
| Lodging a return, notice, statement, application or other document about your client’s liabilities, obligations or entitlements under a taxation law                                | X                 |                         |
| Advising your client on tax concessions for expenditure incurred on research and development activities where the service involves the application of taxation laws                 | X                 |                         |
| Assisting your client with tax concessions for expenditure incurred on research and development activities where the service involves the application of taxation laws              | X                 |                         |
| Preparing an objection under Part IVC of the TAA 1953 against an assessment, determination, notice or decision under a taxation law   | X                 |                         |
| Lodging an objection on behalf of your client under Part IVC of the TAA 1953 against an assessment, determination, notice or decision under a taxation law                          | X                 |                         |
| Contracting the services of a specialist to provide advice about an area of taxation law in which you have no expertise and cannot review for accuracy                              |                   | X                       |
| Applying to the Commissioner or the AAT for a review of, or instituting an appeal against, a decision on an objection under Part IVC of the <i>Taxation Administration Act 1953</i> | X                 |                         |
| Giving your client advice about a taxation law that they can reasonably be expected to rely upon to satisfy their taxation obligations  | X                 |                         |
| Dealing with the Commissioner on behalf of your client  | X                 |                         |



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| Service   | Tax agent service | Not a tax agent service |
|---|-------------------|-------------------------|
| Services provided by an auditor of a self managed superannuation fund under the <i>Superannuation Industry (Supervision) Act 1993</i>                             |                   | X                       |
| Providing general taxation advice to your client that does not involve the application or interpretation of a taxation law to the client's personal circumstances |                   | X                       |
| Installing computer accounting software without determining default GST codes tailored to the client  |                   | X                       |
| Installing computer accounting software and determining default GST codes tailored to the client  | X                 |                         |
| Coding tax invoices and transferring data onto a computer program for clients   | X                 |                         |
| Reconciling data entry to ascertain the figures to be included on a client's activity statement   | X                 |                         |
| Filling in the activity statement on behalf of an entity or instructing the entity which figures to include   | X                 |                         |
| General training in relation to the use of computerised accounting software   |                   | X                       |
| Preparing bank reconciliations  |                   | X                       |
| Entering data   |                   | X                       |
| Ascertaining the withholding obligations for the employees' of your clients. This includes the preparation of payment summaries                                   | X                 |                         |