



INFORMATION SHEET

IS-L02109PW

Civil penalties under the new Tax Agent Services regulatory regime

This document is intended as an overview of the civil penalty provisions under the new Tax Agent Services regulatory regime set out in the *Tax Agent Services Act 2009*. 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.

WHAT ARE CIVIL PENALTIES?

A civil penalty is a pecuniary penalty imposed by courts exercising a civil rather than criminal jurisdiction. State and Commonwealth government bodies can apply to the courts to have a pecuniary penalty imposed against an individual for breaching a civil penalty provision in some circumstances. Unlike criminal penalties, civil penalties do not include criminal convictions or imprisonment.

CAN CIVIL PENALTIES BE IMPOSED UNDER THE NEW TAX AGENT SERVICES LEGISLATION?

Yes, the *Tax Agent Services Act 2009* (TASA) contains civil penalty provisions.

WHAT ARE THE CIVIL PENALTY PROVISIONS UNDER THE NEW TAX AGENT SERVICES LEGISLATION?

There are a number of civil penalties under the TASA, which can be grouped into two categories:

- 1) conduct that is prohibited without registration; and
- 2) other civil penalties that relate to the conduct of entities registered as a tax agent or BAS agent under the TASA.

These are described in more detail below.

NOTE: Penalties for contravention of the civil penalty provisions are imposed in the form of penalty units. The current value of a penalty unit is \$110. Courts have power to impose penalties up to the value of the penalty units.

The penalty amounts listed in (1) and (2) below reflect the current penalty unit value. For example, one penalty unit = \$110, so 250 penalty units = \$27,500.



INFORMATION SHEET

IS-L02109PW

(1) Conduct that is prohibited without registration

An entity will contravene a civil penalty provision if it is unregistered and:

- (i) it receives a fee or other reward for providing a service which it knows, or should reasonably know, is a tax agent service or a BAS service.

PENALTY: \$27,500 (250 penalty units) for an individual and \$137,500 (1,250 penalty units) for a body corporate.

- (ii) advertises that it will provide a tax agent service or BAS service.

PENALTY: \$5,500 (50 penalty units) for an individual and \$27,500 (250 penalty units) for a body corporate.

- (iii) represents itself as a registered tax agent or BAS agent.

PENALTY: \$5,500 (50 penalty units) for an individual and \$27,500 (250 penalty units) for a body corporate.

Are there any exemptions to the civil penalty provisions listed in (1)?

Yes. The civil penalty provision listed in **1(i)** do not apply to an employee who is providing tax agent services or BAS services to their employer for a salary, wage or other benefit.

The civil penalty provisions listed in **1(i) and (ii)** also do not apply to:

- a customs broker licensed under Part XI of the *Customs Act 1901* if the BAS service they provide or advertise relates to imports or exports to which an indirect tax law applies
- legal practitioners that are lawfully providing the service under a State or Territory law regulating legal practice. However, legal practitioners wanting to prepare and/or lodge returns will need to register to avoid the civil penalty except where such services are provided in the course of acting for a trust or deceased estate as a trustee or legal personal representative.

(2) Other civil penalties

An entity will contravene a civil penalty provision if it is registered and:

- (i) makes a false or misleading statement. That is, it knowingly or recklessly, by inclusion or omission:
- makes a false or misleading statement to the Commissioner of Taxation;



INFORMATION SHEET

IS-L02109PW

- prepares a false or misleading statement which it should reasonably know is likely to be made to the Commissioner of Taxation;
- permits or directs someone to make or prepare a false or misleading statement to the Commissioner of Taxation.

PENALTY: \$27,500 (250 penalty units) for an individual and \$137,500 (1,250 penalty units) for a body corporate.

- (ii) employs or uses the services of deregistered entities. That is, the entity employs or uses the services of another entity to provide tax agent or BAS services on its behalf and it knows or should reasonably know:
- that the entity is not currently registered, but had its registration terminated less than one year earlier
 - that the registration was not terminated as a result of the entity surrendering its registration, becoming an undischarged bankrupt or going into external administration.

PENALTY: \$27,500 (250 penalty units) for an individual and \$137,500 (1,250 penalty units) for a body corporate.

- (iii) it signs a declaration or statement in relation to a taxpayer that is required or permitted by a taxation law or BAS provision which was not prepared by:
- the entity
 - another individual who is a registered agent
 - another individual who is working under the supervision and control of an individual who is a registered agent.

PENALTY: \$27,500 (250 penalty units) for an individual and \$137,500 (1,250 penalty units) for a partnership or company.

WHAT ARE THE CONSEQUENCES OF CONTRAVENING A CIVIL PENALTY PROVISION?

If an entity contravenes a civil penalty provision under the TASA, the Board may, within four years, apply to the Federal Court of Australia for an order that the entity pay a pecuniary (i.e. monetary) penalty.

If the Federal Court is satisfied that a civil penalty provision has been contravened, it can order an entity to pay the Commonwealth a pecuniary penalty it determines to be appropriate, being no more than the penalty stated in the relevant civil penalty provision.

Once the Federal Court orders that a pecuniary penalty be paid, the penalty is payable to the Commissioner of Taxation who receives it on behalf of the Commonwealth. The Commissioner is also entitled to enforce the order as if it were a judgment of the Federal Court.



Australian Government



TAX PRACTITIONERS BOARD

INFORMATION SHEET

IS-L02109PW

What are the consequences of contravening more than one civil penalty provision?

If more than one of the civil penalty provisions is contravened, proceedings may be commenced for any or all of the relevant civil penalty provisions, however only one pecuniary penalty will be imposed in respect of the same conduct.

What if I am a partner in a partnership?

If a partnership contravenes a civil penalty provision, each partner of the partnership, as it was at the time of the contravention, is taken to have contravened the civil penalty provision.

This is unless a partner proves, on the balance of probabilities, that they:

- did not engage in the conduct;
- did not aid, abet, counsel or procure the conduct; and
- were not in any way knowingly concerned in or a party to the conduct.

NEED MORE INFORMATION?

Further information will be released as it becomes available on the Board's website at www.tpb.gov.au.