

Exposure Draft TPB Information Sheet TPB(I) D49/2022

What is a fee or other reward?

Tax Practitioners Board exposure draft

The Tax Practitioners Board (TPB) has released this draft Information Sheet (TPB(I) D49/2022) as an exposure draft and invites comments and submissions in relation to the information contained in it within 42 days. The closing date for submissions is 12 September 2022. The TPB will then consider any submissions before settling its position, undertaking any further consultation required and finalising the TPB(I).

Written submissions should be made via email at tpbsubmissions@tpb.gov.au or by mail to:

Tax Practitioners Board

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Disclaimer

This document is in draft form, and when finalised, will be intended as information only. While it seeks to provide practical assistance and explanation, it does not exhaust, prescribe or limit the scope of the TPB's powers in the *Tax Agent Services Act 2009* (TASA) or the *Tax Agent Services Regulations 2022* (TASR).

In addition, please note that the principles, explanations and examples in this draft TPB(I) do not constitute legal advice and do not create additional rights or legal obligations beyond those that are contained in the TASA or which may exist at law. Please refer to the TASA for the precise content of the legislative requirements.

Document history

This draft information sheet was issued on 1 August 2022 and is based on the TASA as at 7 February 2022 (latest version available at the time of publication).

Issued: 1 August 2022

Introduction

1. Entities that provide tax agent services¹ or BAS services² for a fee or other reward must be registered with the Tax Practitioners Board (TPB).
2. Entities that provide tax (financial) advice services³ for a fee or other reward must be either a qualified tax relevant provider with the Australian Securities Investments Commission (ASIC), or a tax agent registered with the TPB.
3. The TPB has prepared this draft Information Sheet (TPB(I)) to assist entities to determine what constitutes a fee or other reward.
4. Whether a particular tax agent service, BAS service, or tax (financial) advice service is provided for a fee or other reward is a question of fact. This means that each situation will need to be considered on a case-by-case basis having regard to the facts and circumstances.

Fee or other reward

Legislative background

5. Unregistered entities that provide a tax agent service, BAS service or tax (financial) advice service for a fee or other reward will contravene a civil penalty provision in the *Tax Agent Services Act 2009* (TASA).
6. Subsection 50-5(1) of the TASA provides that you contravene this subsection if:
 - (a) you provide a service that you know, or ought reasonably to know, is a tax agent service; and
 - (b) the tax agent service is not a BAS service or a tax (financial) advice service; and
 - (c) you charge or receive a fee or other reward for providing the tax agent service; and
 - (d) you are not a registered tax agent; and
 - (e) if you provide the tax agent service as a legal service – either:
 - (i) you are prohibited, under a State law or Territory law that regulates legal practice and the provision of legal services, from providing that tax agent service; or
 - (ii) subject to subsection (3) the service consists of preparing or lodging a return or a statement in the nature of a return.

¹ For more information on the meaning of 'tax agent service' see [TPB\(I\) D48/2022 What is a tax agent service?](#)

² For more information on the meaning of 'BAS service' see [TPB\(I\) D47/2022 What is a BAS service?](#)

³ For more information on the meaning of 'tax (financial) advice service' see [TPB\(I\) 20/2014 What is a tax \(financial\) advice service?](#)

7. Subsection 50-5(2) of the TASA provides that you contravene this subsection if:
- (a) you provide a service that you know, or ought reasonably to know, is a BAS service; and
 - (b) you charge or receive a fee or other reward for providing the BAS service; and
 - (c) you are not a registered tax agent or BAS agent; and
 - (d) if you provide the tax agent service as a legal service – either:
 - (iii) you are prohibited, under a State law or Territory law that regulates legal practice and the provision of legal services, from providing that BAS service; or
 - (iv) subject to subsection (4) the service consists of preparing or lodging a return or a statement in the nature of a return.
8. Section 50-17 of the TASA provides that you contravene this section if:
- (a) either:
 - (i) you provide a service that you know, or ought reasonably to know, is a tax (financial) advice service; or
 - (j) a service that you know, or ought reasonably to know, is a tax (financial) advice service is provided on your behalf by another person; and
 - (b) the tax (financial) advice service is not a BAS service; and
 - (c) either:
 - (i) you charge or receive a fee or other reward for providing the tax (financial) advice service; or
 - (ii) the other person charges or receives a fee or other reward for providing the tax (financial) advice service on your behalf; and
 - (d) you are not a registered tax agent or a qualified tax relevant provider; and
 - (e) in the case of the tax (financial) advice service provided on your behalf by another person—that other person is not a registered tax agent or a qualified tax relevant provider; and
 - (f) in the case of you providing the tax (financial) advice service as a legal service—you are prohibited, under a State law or Territory law that regulates legal practice and the provision of legal services, from providing that tax (financial) advice service.
9. The civil penalty amount for contravening either of the above provisions is:
- (a) for an individual – 250 penalty units
 - (b) for a body corporate – 1,250 penalty units⁴

⁴ The value of one penalty unit from 1 July 2020 is \$222.

Meaning of ‘fee or reward’

10. The phrase ‘fee or other reward’ is not defined in the TASA. As a result, it takes on its ordinary meaning. However, the phrase ‘fee or other reward’ specifically excludes employees (who are not registered with the TPB) who provide tax agent services, BAS services or tax (financial) advice services on behalf of, or to, their employer(s) for a salary, wage or other benefit.⁵ Other benefits paid to employees which do not constitute a ‘fee or other reward’ include, but are not limited to, fringe benefits, commissions, bonuses and incentives.
11. Examples of whether certain transactions and arrangements constitute a fee or other reward are provided in the non-exhaustive list contained in:
 - **Appendix A to this TPB(I)** - Examples of whether certain transactions and arrangements constitute a fee or other reward, and
 - **Appendix B to this TPB(I)** - Examples of whether certain transactions and arrangements constitute a fee or other reward for a tax agent with a tax (financial) advice service condition.

Fee

12. The Macquarie Dictionary (2021) defines fee, among other things, as ‘A payment for services: *a doctor’s fee*’.
13. A service is taken to be provided for a fee even if the fee for the tax agent service, BAS service or tax (financial) advice service is bundled with other fees for other services.⁶

Other reward

14. The Macquarie Dictionary (2021) defines reward, among other things, as:
 - (a) something given or received in return or recompense for service, merit, hardship, etc.
 - (b) to recompense or requite (a person, etc.) for service, merit, achievement, etc.
15. The phrase ‘or other reward’ recognises situations where services are provided for a reward other than a financial reward, for example when bartering tax agent services or BAS services for goods or other services.⁷
16. Further, it also captures future benefits such as future business, sales or commission. For example, providing tax agent services, BAS services or tax (financial) advice services without charging a fee, as a means of attracting or retaining clients may constitute the provision of tax agent services, BAS services or tax (financial) advice services for a reward.⁸

⁵ See paragraphs 4.29 and 4.30 of the Explanatory Memorandum to the Tax Agent Services Bill 2008.

⁶ See paragraph 4.31 of the Explanatory Memorandum to the Tax Agent Services Bill 2008.

⁷ See paragraph 4.32 of the Explanatory Memorandum to the Tax Agent Services Bill 2008.

⁸ See paragraph 4.32 of the Explanatory Memorandum to the Tax Agent Services Bill 2008.

Appendix A

Examples of whether certain transactions and arrangements constitute a fee or other reward

The following table contains a non-exhaustive list of the types of transactions and arrangements that may constitute a fee or other reward.

Transaction/arrangement		Fee	Other reward
1	An employee representative who receives a salary or wage for providing a tax agent service or BAS service, on behalf of, or to, their employer who is a registered tax agent or BAS agent. ⁹	No	No
2	An entity provides a tax agent service or BAS service for a fixed amount.	Yes	No
3	An entity provides a tax agent service or BAS service for a time-based amount (for example, an hourly rate).	Yes	No
4	An entity provides a tax agent service or BAS service for an asset-based amount (for example, calculated as a percentage of the client's assets).	Yes	No
5	An entity provides a tax agent service or BAS service together with other services. The entity bundles the fees and charges a single amount to the client for all the services.	Yes	No
6	An entity provides a tax agent or BAS service for an amount, part or all of which is payable via a third party. For example, a BAS agent provides a BAS service and receives an amount that has been passed on by a tax agent (who may or may not retain a portion of that amount).	Yes	No
7	An entity provides a tax agent service or BAS service in exchange for other goods and/or services (non-dollar benefits). This may include, for example, a bottle of wine or use of a holiday home as recompense for the tax agent service provided.	No	Yes
8	An entity provides a tax agent service or BAS service in lieu of payment of an existing third-party debt, or for a future benefit.	No	Yes
9	An entity provides a tax agent service or BAS service for an amount that is calculated, or to be calculated in the future, based on certain conditions being satisfied or not satisfied.	Yes	No

⁹ For more information regarding the registration requirements for contractors vs employees see [TPB\(I\) 13/2012 Contractors](#).

Transaction/arrangement		Fee	Other reward
10	A contractor provides a tax agent or BAS service to a client on behalf of a registered tax agent for a fee. ¹⁰	Yes	No
11	An entity provides a tax agent service by completing the client's income tax return, with the client's consent, is paid for their tax agent service using the income tax refund amount.	Yes	No
12	An entity provides its clients with tax related products (including newsletters and magazines). The products include clear disclaimers that the tax practitioner is not providing taxation advice.	No	No
13	An entity provides an investor with an annual tax distribution statement as part of an overall investment product offering. The tax distribution statement is also accompanied by a tax guide to assist the investor in understanding how to complete an income tax return. The information guide makes it clear that the document does not constitute taxation advice.	No	No
14	An entity, as part of the process of preparing an SMSF's income tax return, engages an SMSF auditor to provide audit services. The audit fee is included in the overall fee charged to the SMSF. Once paid, the entity retains their fee and forwards the audit fee to the SMSF auditor for their services.	Yes	No
15	An individual provides a tax agent service or BAS service to a client on a pro bono basis.	No	No

¹⁰ For more information regarding contractors see [TPB\(l\) 13/2012 Contractors](#).

Appendix B

Examples of whether certain transactions and arrangements constitute a fee or other reward for a tax agent with a tax (financial) advice service condition

The following table contains a non-exhaustive list of the types of transactions and arrangements that may constitute a fee or other reward.

Transaction/arrangement		Fee	Other reward
1	An employee representative provides a tax (financial) advice service, on behalf of, or to, their employer who is a tax agent with a tax (financial) advice condition. ¹¹	No	No
2	An entity provides a tax (financial) advice service for a fixed amount.	Yes	No
3	An entity provides a tax (financial) advice service for a time based amount (for example, an hourly rate).	Yes	No
4	An entity provides a tax (financial) advice (in the form a statement of advice) together with other services. The entity bundles the fees and charges a single amount to the client for all services.	Yes	No
5	An entity provides a tax (financial) advice service (in the form of a statement of advice) together with other services. The entity bundles the fees and charges a single amount to the client for all the services.	Yes	No
6	An entity provides a tax (financial) advice service for an amount, part or all of which is payable via a third party. For example, an authorised representative provides a tax (financial) advice service and receives an amount that has been passed on by their Australian financial services licensee and/or corporate authorised representative (who may or may not retain a portion of that amount).	Yes	No
7	An entity provides a tax (financial) advice service in exchange for other goods and/or services (non-dollar benefits). This may include, for example, a bottle of wine or use of a holiday home as recompense for advice provided.	No	Yes
8	An entity provides a tax (financial) advice service in lieu of payment of an existing third party debt, or for a future benefit.	No	Yes
9	An entity provides a tax (financial) advice service for an amount that is calculated, or to be calculated in the future, based on certain conditions being satisfied or not satisfied.	Yes	No
10	An entity provides a tax (financial) advice service which consists of tax advice in relation to certain financial products. Upon receipt of this advice, the client invests in the financial products, which triggers a commission payable to the entity. ¹²	Yes	No

¹¹ For more information regarding the registration requirements for contractors vs employees see [TPB\(I\) 13/2012 Contractors](#).

¹² The TPB recognises that under the Future of Financial Advice reforms there is generally a prospective ban on conflicted remuneration structures including commissions and volume based payments.