

TPB Information Sheet

TPB(I) 08/2011

Reports or other advice incorporating tax agent services provided by a third party

Disclaimer

This is a Tax Practitioners Board (TPB) Information Sheet (TPB(I)). It is intended to be for 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 provided in the *Tax Agent Services Act 2009* (TASA).

In addition, please note that the principles, explanation and examples in this 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

The TPB released this document as a final information sheet on 17 October 2011. On 29 October 2015 the TPB updated this TPB(I) to incorporate tax (financial) advisers. On 27 September 2016 the TPB updated this TPB(I) to incorporate a reference to the Tax Agent Services (Specified BAS Services) Instrument 2016.

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Introduction

1. This information sheet (TPB(I)) has been prepared by the Tax Practitioners Board (TPB) to provide information about the TPB's position on reports or other advice incorporating tax agent services provided by a third party.
2. In particular, this TPB(I) deals with the situation where an entity (the issuer), for a fee or other reward, provides a report or other advice containing tax-related information to a client and:
 - the tax-related component in the report or other advice is prepared/provided by a third party
 - the tax-related component in the report or other advice relates to ascertaining or advising on liabilities, entitlements or obligations of the client¹
 - the circumstances are such that the client is reasonably likely to rely on the advice of the third party.²
3. For instance, in the context of a due diligence report, the issuer of the due diligence report may outsource a component of the report to a third party. In particular, the issuer of the report may outsource the tax related component to a registered tax practitioner.

Background

4. The TPB administers a system for the registration of tax agents, BAS agents and tax (financial) advisers (known collectively as 'tax practitioners') under the *Tax Agent Services Act 2009* (TASA).
5. An entity must be registered as a tax agent, BAS agent or tax (financial) adviser if they provide a tax agent service, BAS service or tax (financial) advice service respectively for a fee or other reward.³
6. It is important to note that the fee does not necessarily have to be separately charged to the client. It can form part of a bundle of services offered to the client.
7. There is no separate or specific legislative provision relating to reports or other advice incorporating tax agent services and corresponding registration requirements.

¹ See subparagraphs 90-5(1)(a)(i) and (ii), 90-10(1)(a)(i) and (ii) and 90-15(1)(a)(i) and (ii) of the TASA.

² The relevant reliance must be for the purposes as set out in subparagraphs 90-5(1)(b)(i) and/or (ii), 90-10(1)(b)(i) and/or (ii) or 90-15(1)(b)(i) and/or (ii) of the TASA. For further information, see also paragraph 8 below.

³ A 'tax agent service' includes a 'BAS service' and 'tax (financial) advice service'.

Tax agent service

8. A 'tax agent service' is any service that relates to:
- ascertaining liabilities, obligations or entitlements of an entity that arise, or could arise, under a taxation law; or
 - advising an entity about liabilities, obligations or entitlements of the entity or another entity that arise, or could arise, under a taxation law; or
 - representing an entity in their dealings with the Commissioner of Taxation; and
- that is provided in circumstances where the entity can reasonably be expected to rely on the service for either or both of the following purposes:
- to satisfy liabilities or obligations that arise, or could arise, under a taxation law;
 - to claim entitlements, that arise or could arise under a taxation law.⁴
9. A BAS service is similarly defined, however is limited in scope to obligations, liabilities or entitlements that arise, or could arise, in relation to a *BAS provision*.⁵ A BAS service also includes any service which the TPB, by legislative instrument, specifies to be a BAS service.⁶
10. A tax (financial) advice service is, broadly, a tax agent service provided by an Australian financial services (AFS) licensee or a representative of an AFS licensee in the course of giving advice of a kind usually by an AFS licensee or a representative of an AFS licensee.⁷
11. Any decision about whether a service constitutes a tax agent service, BAS service or tax (financial) advice service requires consideration of all the facts and circumstances to determine if the service is provided in circumstances where the client can reasonably be expected to rely on that service for one or both of the purposes outlined in paragraph 8 above.

TPB's approach

12. Under section 50-5 of the TASA, an entity will contravene a civil penalty provision if they provide a tax agent service, BAS service or tax (financial) advice service for a fee or other reward whilst unregistered.
13. The issuer of a report or other advice will not contravene section 50-5 of the TASA in respect of the provision of the tax-related information if the arrangements between the client, the issuer and the tax practitioner are such that:
- the obligations of the issuer are to procure the tax-related advice from a tax practitioner
 - the tax practitioner will be responsible to the client in relation to that advice.

⁴ See section 90-5 of the TASA.

⁵ See section 90-10 of the TASA.

⁶ See subsection 90-10(1A) of the TASA and [Tax Agent Services \(Specified BAS Services\) Instrument 2016](#).

⁷ See section 90-15 of the TASA. For further information regarding the definition of a tax (financial) advice service, see *TPB(1) 20/2014: What is a tax (financial) advice service?* available on the TPB website at www.tpb.gov.au

14. The TPB will take this approach where, under the arrangements surrounding the issue of the report or other advice:
- the information constituting a tax agent service is to be, and is in fact, provided by a separate entity
 - the separate entity is a registered tax practitioner who is clearly identified in the report or other advice as the provider of the tax agent service
 - the tax practitioner is responsible to the client for the accuracy of the information that constitutes the tax agent service
 - the information that constitutes the tax agent service is clearly identified within the report or other advice.
15. In these circumstances, the TPB considers that the issuer of the report or other advice does not provide the tax agent service but merely arranges for the provision of a tax agent service to be made by a properly authorised and qualified entity who is responsible to the client for the tax agent service.
16. It will be a question of fact whether the issuer goes further to include other elements in the report that may constitute the provision of a tax agent service, in which case registration as a tax agent, BAS agent or tax (financial) adviser may be required under the TASA.

Need more information?

17. For further information about the tax agent services regime, please visit the TPB's website at www.tpb.gov.au.