

# TPB Information Sheet

## TPB(I) 37/2022

Relevant tax (financial) advice experience for tax agents with a tax (financial) advice services condition

### 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 in the *Tax Agent Services Act 2009* (TASA) and the *Tax Agent Services Regulations 2022* (TASR).

In addition, please note that the principles 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

On 1 April 2022, the TPB updated this TPB(I) to replace references from the repealed *Tax Agent Services Regulations 2009* to *Tax Agent Services Regulations 2022*.

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## Introduction

1. The eligibility requirements for registration as a tax agent are contained in section 20-5 of the *Tax Agent Services Act 2009* (TASA). Under section 20-5 of the TASA, the Board must be satisfied that the individual meets the requirements prescribed by the Tax Agent Services Regulations 2022 (TASR) (including, but not limited to, requirements relating to qualifications and experience) in respect of registration as a registered tax agent.
2. From 1 January 2022, individuals will be able to seek registration (including renewal of registration) as a tax agent with a tax (financial) advice services condition under the eligibility Items 207 to 210 in Division 1 of Part 2 of Schedule 2 of the TASR depending on their qualifications and experience.
3. For example, an individual applicant may rely on eligibility Item 207 where that individual has been engaged in the equivalent of 12 months of full-time **relevant tax (financial) advice experience** in the preceding five years.<sup>1</sup>
4. The purpose of this Tax Practitioners Board (TPB) Information Sheet TPB(I) is to assist individuals to understand the TPB's approach to the meaning of 'relevant tax (financial) advice experience' for the purpose of registration as a tax agent with a tax (financial) advice services condition.

## Relevant tax (financial) advice experience

### Legislative background

5. 'Relevant tax (financial) advice experience' is defined in Item 212 of Part 2 of Schedule 2 of the TASR to mean work by an individual:
  - a. as a registered tax (financial) adviser within the meaning of the TASA as in force immediately before 1 January 2022
  - b. as a tax agent registered under the Act, or under Part VIIA of the *Income Tax Assessment Act 1936* (ITAA) as in force immediately before 1 March 2010
  - c. under the supervision and control of a registered tax (financial) adviser within the meaning of the TASA as in force immediately before 1 January 2022
  - d. under the supervision and control of a tax agent registered under the Act, or under Part VIIA of the ITAA as in force immediately before 1 March 2010
  - e. as a qualified tax relevant provider
  - f. under the supervision and control of a qualified tax relevant provider; or
  - g. of another kind approved by the Board;

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<sup>1</sup> The precise amount of relevant tax (financial) advice experience and preceding number of years required will vary depending on which of the Items in Part 2 of Schedule 2 of the TASR the individual is seeking to rely on for the purpose of meeting the qualifications and experience requirement.

that included substantial involvement in one or more of the types of tax (financial) advice services described in section 90-15 of the TASA, or substantial involvement in a particular area of taxation law to which one or more of those types of tax (financial) advice services relate.

6. There is no definitive listing of the types of experience that will constitute relevant tax (financial) advice experience, recognising that there is significant variation in the types and descriptions of work undertaken by individuals in the financial services profession. For example, the experience that a para planner accrues may constitute relevant tax (financial) advice experience where the para planner is involved in the provision of a tax (financial) advice service. On the other hand, a para planner who merely assists a representative, by undertaking background research, would not necessarily be able to count that experience towards meeting the relevant tax (financial) advice experience requirement.
7. Ultimately, whether an individual satisfies the relevant tax (financial) advice experience requirement is a question of fact to be determined by the TPB on a case-by-case basis having regard to the individual's circumstances and the extent to which they are involved in the provision of a tax (financial) advice service<sup>2</sup>.

### (a) Meaning of work 'as a registered tax (financial) adviser'

8. Relevant tax (financial) advice experience includes providing the service of a registered tax (financial) adviser within the meaning of the TASA as in force immediately before 1 January 2022.

### (b) Meaning of work 'as a registered tax agent'

9. A registered tax agent means an individual registered as a tax agent under the TASA, or the ITAA as in force immediately before 1 March 2010.
10. Recognising that tax (financial) advice services are a subset of tax agent services, this element allows the TPB to count relevant tax (financial) advice experience accrued as a tax agent, including before 1 July 2014. This will be particularly useful for those individuals providing tax (financial) advice services who registered as a tax agent prior to 1 July 2014 despite the then carve out for certain Australian financial services (AFS) licensees and their authorised representatives from the tax agent services regime.<sup>3</sup>

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<sup>2</sup> For more information on the meaning of 'tax (financial) advice service', see [TPB\(l\) 20/2014 What is a tax \(financial\) advice service?](#)

<sup>3</sup> See sub-section 26(2) of the TASA.

## (c) Meaning of work ‘under the supervision and control of a registered tax (financial) adviser’

11. Relevant tax (financial) advice experience includes work by an individual under the supervision of a registered tax (financial) adviser within the meaning of the TASA as in force immediately before 1 January 2022.
12. The requirement for supervision and control includes an employer-employee relationship. It may also include services which are provided under a contract for service, depending on the circumstances.<sup>4</sup>

## (d) Meaning of work ‘under the supervision and control of a registered tax agent’

13. Relevant tax (financial) advice experience includes work by an individual under the supervision of a registered tax agent.
14. Again, recognising that tax (financial) advice services are a subset of tax agent services, this element allows the TPB to count relevant tax (financial) advice experience accrued under the supervision of an entity registered with the TPB as a tax agent.<sup>5</sup>
15. As outlined in paragraph 12 above, the requirement for supervision and control includes an employer-employee relationship. It may also include services which are provided under a contract for service, depending on the circumstances.<sup>6</sup>

## (e) Meaning of work ‘as a qualified tax relevant provider’

16. Relevant tax (financial) advice experience includes providing the service of a qualified tax relevant provider under the *Corporations Act 2001*.<sup>7</sup>

## (f) Meaning of work ‘under the supervision and control of a qualified tax relevant provider’

17. Relevant tax (financial) advice experience includes work by an individual under the supervision of a qualified tax relevant provider.

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<sup>4</sup> For more information on adequate supervisory arrangements, see [TPB\(I\) 36/2021: Supervisory arrangements under the Tax Agent Services Act 2009](#)

<sup>5</sup> An ‘entity’ for the purposes of this TPB(I) means an individual (including an individual in the capacity as trustee of a trust), partnership or company (including a company in the capacity as trustee of a trust).

<sup>6</sup> For more information on adequate supervisory arrangements, see [TPB\(I\) 36/2021: Supervisory arrangements under the Tax Agent Services Act 2009](#)

<sup>7</sup> See section 910A of the *Corporations Act 2001*.

18. As outlined in paragraph 12 above, the requirement for supervision and control includes an employer-employee relationship. It may also include services which are provided under a contract for service, depending on the circumstances.

### (g) Meaning of work 'of another kind approved by the Board'

19. The TPB has the discretion to recognise other types of experience which do not meet the above elements. This includes relevant tax (financial) advice experience that individuals gained prior to 1 July 2014.<sup>8</sup>
20. For the purpose of this element, for AFS licensees and authorised representatives, the TPB will count relevant tax (financial) advice experience accrued by these entities prior to 1 July 2014 that would have required the AFS licensee and/or authorised representative to register with the TPB as a tax agent but for the various carve outs that existed for these entities from 1 March 2010 to 30 June 2014.
21. The TPB will also count relevant tax (financial) advice experience accrued during the notification period (that is 1 July 2014 and 31 December 2015) by an AFS licensee or representative who is not registered with the TPB, provided the AFS licensee or representative uses or used the relevant disclaimer<sup>9</sup>. This recognises that AFS licensees and representatives can, in certain circumstances, continue to provide tax (financial) advice services for a fee or other reward up to 31 December 2015 without registering with the TPB as a tax (financial) adviser or tax agent.
22. The TPB may also count other relevant tax (financial) advice experience accrued by an individual, depending on the circumstances. In these cases, the onus will be on the individual to satisfy the TPB why it should count the relevant tax (financial) advice experience. In this regard, the individual will need to include a written submission with their application for registration outlining the relevant tax (financial) advice experience and the reasons why they believe it should be approved as 'relevant tax (financial) advice experience'.

### Meaning of 'substantial involvement'

23. The required work experience must have included substantial involvement in one or more of the types of tax (financial) advice services described in section 90-15 of the TASA, or substantial involvement in a particular area of taxation law to which one or more of those types of tax (financial) advice services relate.<sup>10</sup>

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<sup>8</sup> See Explanatory Statement to Select Legislative Instrument No. 115, 2014.

<sup>9</sup> For more information on the requirements of the relevant disclaimer, see sub-item 49(4) of the *Tax Laws Amendment (2013 Measures No. 3) Act 2013*.

<sup>10</sup> For more information on the meaning of 'tax (financial) advice service', see [TPB\(l\) 20/2014 What is a tax \(financial\) advice service?](#)

24. The TPB is of the view that 'substantial involvement' means ample or considerable involvement. It requires more than simply being involved from time to time in the provision of one or more types of tax (financial) advice services. By way of example, this could include regular and frequent involvement in the taxation aspects relating to statements of advice.
25. Given that the substantial involvement must be in one or more types of tax (financial) advice services, or substantial involvement in a particular area of taxation law, the TPB will not accept work done in providing financial services that does not involve, or relate to, providing tax advice.

## Amount of relevant tax (financial) advice experience required

26. The amount of relevant tax (financial) advice experience required will vary depending on which of the following four items in Part 2 of Schedule 2 of the TASR the individual is seeking to rely on for the purpose of meeting the qualifications and experience requirement:

Regulation Item	Qualification	Amount of relevant tax (financial) advice experience
207	Tertiary qualification	Equivalent of 12 months full-time in the preceding five years
208	Diploma or higher award	Equivalent of 18 months full-time in the preceding five years
209	Work experience	Equivalent of three years full-time in the preceding five years
210	Membership of professional association	Equivalent of six years full-time in the preceding eight years