

# COMMONWEALTH OF AUSTRALIA

## *Tax Agent Services (a course in basic GST/BAS taxation principles that is approved by the Board) Instrument 2020*

### Explanatory Statement

#### *General outline of this Instrument*

1. This legislative Instrument (the **Legislative Instrument**) is made under subsection 60-15(d) of the *Tax Agent Services Act 2009 (Act)*.
2. The Legislative Instrument declares, for the purpose of registration as a BAS agent under Division 1 of Schedule 2 to the *Tax Agent Services Regulations 2009 (Regulations)*, the requirements for a course in basic GST/BAS taxation principles that is approved by the Board.
3. The Legislative Instrument is a legislative Instrument for the purposes of the *Legislation Act 2003 (LA 2003)*.
4. Under subsection 33(3) of the Acts Interpretation Act 1901, where an Act confers a power to make, grant or issue any Instrument of a legislative or administrative character (including rules, regulations or by-laws), the power shall be construed as including a power exercisable in the like manner and subject to the like conditions (if any) to repeal, rescind, revoke, amend, or vary any such Instrument.

#### *Commencement and application of this Instrument*

5. The Legislative Instrument commences on the day after it is registered on the Federal Register of Legislation.
6. The application of the Legislative Instrument applies to individuals seeking registration as a BAS agent.

#### *What is this Instrument about?*

7. The Legislative Instrument declares, for the purposes of Division 1 of Schedule 2 to the Regulations, the following requirements for a course in basic GST/BAS taxation principles that is approved by the Board:
  - (a) course duration;
  - (b) course topics;
  - (c) course education level;
  - (d) course providers;
  - (e) assessment requirements; and
  - (f) course currency.

*What is the effect of this Instrument?*

8. The effect of the Legislative Instrument is to set out the requirements of a course in basic GST/BAS taxation principles that is approved by the Board for individuals seeking registration as a BAS agent under the Act and the Regulations.
9. In particular, the Legislative Instrument will assist relevant institutions, professional associations, potential registrants, renewing BAS agents and the wider community to understand the qualification requirements for registration as a BAS agent.

*Compliance cost impacts*

10. No negative regulatory compliance costs or practical impacts are expected, as there are no changes to the requirements as previously set out in TPB Information Sheet TPB(I) 04/2011 *BAS Agent educational qualification requirements* and TPB Information sheet TPB(I) 05/2011 *Information regarding the assessment aspect and requirements of an approved course in basic GST/BAS taxation principles*.

*Background*

11. Under the Act, an entity must register as a BAS agent if they provide a BAS service for a fee or other reward (section 50-5 of the Act).
12. Part 1 of Schedule 2 to the Regulations sets the eligibility requirements for registration as a BAS agent. In particular, to be eligible to register as a BAS agent, an individual must have met the following education requirements:
  - (a) been awarded at least:
    - (i) a Certificate IV Bookkeeping or a Certificate IV Accounting; or
    - (ii) a Certificate IV Financial Services (Bookkeeping) or a Certificate IV Financial Services (Accounting);from a registered training organisation or equivalent institution; and
  - (b) successfully completed a course in basic GST/BAS taxation principles that is approved by the Board.
13. The Act allows the Board to issue, by Legislative Instrument under subsection 60-15(d) of the Act, guidelines to assist in achieving the functions of the Board, including its function to administer the system for the registration of registered BAS agents.
14. The explanatory memorandum to the *Tax Laws Amendment Bill 2009* explains that the purpose of this power is to provide the Board with the power to do all things necessary or convenient to be done to enable it to perform its functions.

*Legislative Instrument in detail*

**Section 1: Name of Instrument**

15. Section 1 provides that the name of the Legislative Instrument is the *Tax Agent Services (a course in basic GST/BAS taxation principles that is approved by the Board) Instrument 2020*.

### **Section 2: Commencement**

16. Section 2 provides that the Legislative Instrument will commence on the day after it is registered in the Federal Register of Legislation.

### **Section 3: Authority**

17. Section 3 sets out the legislative authority for making the Legislative Instrument: subsection 60-15(d) of the Act.

### **Section 4: Definitions**

18. Section 4 is the definitions section. This section includes definitions for **AQF, other registered higher education provider, registered training organisation** and other terms used in the Instrument.

### **Section 5: Course duration**

19. Section 5 provides that a course in basic GST/BAS taxation principles must comprise at least one tertiary level unit.
20. There is no hard and fast rule as to the required duration (in hours) of the unit(s) comprising a course in basic GST/BAS tax principles. Notwithstanding this, the unit(s) must be of sufficient breadth and depth to ensure that the topics in section 6 have been adequately covered.

### **Section 6: Course topics**

21. Section 6 details the topics that a course in basic GST/BAS taxation principles must cover.
22. As long as all the topics listed in section 6 are covered, it does not matter if they are covered through more than one component and include some duplication. Therefore the components may include some overlap as long as there is not a substantial duplication of content.
23. Obviously there can be no objection to a course in basic GST/BAS taxation principles covering other relevant areas of accounting or bookkeeping, in addition to those noted in section 6.

### **Application made before 1 March 2012**

24. The BAS unit 'FNSBKPG404A Carry out business activity and instalment activity statement tasks' contained in the Certificate IV Financial Services (Bookkeeping) and, in some cases, the Certificate IV Financial Services (Accounting) (which are part of the FNS04 Financial Services Training Package), will satisfy the topic requirements for a Board approved course in basic GST/BAS taxation principles.
25. The TPB will also accept applications from individuals who have completed updated versions of this unit, including as contained in the FNS10 Financial Services Training Package, which was released on 24 November 2010. Further details can be found on the training.gov.au website at [www.training.gov.au](http://www.training.gov.au).

### **New applications and renewals made from 1 March 2012**

26. From 1 March 2012, the following units, if successfully completed, from the Certificate IV Financial Services (Bookkeeping) and (Accounting) from the FNS10 Financial Services Training Package will together meet the topic requirements of a course in basic GST/BAS taxation principles:
- FNSBKG404A Carry out business activity and instalment activity statement tasks
  - FNSBKG405A Establish and maintain a payroll system.
27. For further information about these two units, including information about content, refer to the training.gov.au website at [www.training.gov.au](http://www.training.gov.au).
28. Applicants who gain registration between 1 March 2010 and 29 February 2012 and have only completed the BAS unit 'Carry out business activity and instalment activity statement tasks' (in either the FNS04 or FNS10 Financial Services Training Packages) will need to complete the additional BAS unit 'Establish and maintain a payroll system', or equivalent, in order to renew their registration on and after 1 March 2012.
29. From 1 March 2012, for the purposes of a course in basic GST/BAS taxation principles, the Board will continue to accept the following units in the FNS04 Financial Services Training Package so long as the individual can demonstrate knowledge of the Act, including the Code of Professional Conduct:
- FNSBKPG404A Carry out business activity and instalment activity statement task
  - FNSBKPG405A Establish and maintain a payroll system.
30. For further information on how to demonstrate knowledge of the Act, including the Code, refer to TPB(I) 10/2011: *Required knowledge of the Tax Agent Services Act 2009 including the Code of Professional Conduct*, available at [www.tpb.gov.au](http://www.tpb.gov.au).

### **Section 7: Course education level**

31. Section 7 details the minimum required education level of a course in basic GST/BAS taxation principles that is approved by the Board.
32. The Australian Qualifications Framework (AQF), published by the Australian Qualifications Framework Council, sets a Certificate IV at the AQF level 4.
33. Subsection 7(1) provides that unless otherwise approved by the Board, a course in basic GST/BAS taxation principles must be at minimum Certificate IV level, which meets the AQF recognised and accredited level 4 criteria.

### **Section 8: Course providers**

34. Section 8 details that a course in basic GST/BAS taxation principles that is approved by the Board must be attained through study undertaken through one of the following education providers:
- (a) a university;
  - (b) a registered training organisation;
  - (c) other registered higher education provider;
  - (d) another provider approved by the Board.

35. The Board may accept a course offered by another provider, provided that the course meets all other requirements set out in the Legislative Instrument and the provider meets the conditions and standards set by the Board in TPB Information Sheet TPB(I) 07/2011 *Approval process for course providers*, available at [the Tax Practitioners Board website](#).

**Section 9: Assessment requirements**

36. Section 9 sets out the assessment requirements for a course in basic GST/BAS taxation principles that is approved by the Board.
37. Various forms of assessment may be employed. Ideally because of different learning styles and what is appropriate for different aspects of a course, each course or component should employ a mix of assessment practices including:
- a. tests
  - b. examinations (oral and written)
  - c. problem based assignments
  - d. essays and reports
  - e. computer based assessment tasks.
38. Not every one of these need be present in an approved course. However, as set out in subsection 9(1), the assessments must represent a genuine test of relevant knowledge and skills and be subject to integrity to ensure the relevant person will have undertaken the assessment task(s) in questions.
39. The second requirement, as mentioned in subsection 9(2), is that a course in basic GST/BAS taxation principles must contain independently supervised assessment.
40. Objective assessment is a key aspect of the approval of courses for registration of applicants as tax agents. Applicants must have demonstrated their knowledge and skills in the relevant course or components by some means of an independent and objective assessment. Such assessment should be rigorous and have integrity.
41. The Board will not accept assessments that either lack rigour or that are too narrow in their focus. Such assessments may be seen to be recognised as being one element which is a contributor to overall determination of a student's performance in a course, rather than being treated as the sole measure of their skills and knowledge in commercial law.
42. Independent and objective assessment refers to assessment practices being conducted under the supervision of a course supervisor, lecturer or other such people. It does not include assessment practices being conducted under the supervision of a family member, friend or someone that has a close personal or professional relationship with the individual undertaking the assessment.
43. In addition, the independently supervised assessment(s) must constitute at least 40% of the overall grade of each of the units comprising a course in basic GST/BAS taxation principles.

**Recognised prior learning (RPL)**

44. Assessment of knowledge and competence is the best safeguard for the Board to ensure that it admits to registration only applicants who have the necessary technical qualifications to competently deal with taxpayers' affairs. The Board recognises that prior learning through

experience may be regarded as a proxy for content but it does not propose to accept evidence of prior learning in the workplace, which prior learning has not been formally assessed in some way.

45. In principle, prior learning through experience which has itself been formally assessed would not require further assessment. However, it is unlikely the Board will approve an application if all the education requirements were satisfied by prior learning through experience as the ability to keep up to date with changes requires the acquisition of essential learning skills (interpretative, analytical and cognitive skills) that come from the rigour associated with formal training courses.
46. Therefore, in summary the Board may accept recognised prior learning provided the prior learning has been formally assessed in accordance with section 9.
47. A formal challenge test, conducted under supervision, in which an applicant for registration is independently tested about their knowledge of basic GST/BAS taxation principles and about how to apply these in practice could be one way to meet the assessment requirements. Another could be a formal examination or formal assessment (although 'take-home' exams would not be accepted).
48. The Board has issued a Statement of Assurance form which can be used by applicants who have completed part, or all, of a relevant course through a process of RPL to evidence that the prior learning has been formally assessed in some way. This statement must be completed by an appropriately qualified officer (being someone who is in a position of sufficient authority) of the course provider.
49. Despite paragraphs 43 to 47 above, if the GST/BAS course qualification was gained before 1 October 2010, the Board will accept the qualification gained through RPL notwithstanding that it does not meet the Board's RPL requirements. This applies to:
  - all standard applications for registration as a BAS agent made before 1 March 2012
  - all standard applications for renewal of registration as a BAS agent, provided the applicant first became registered before 1 March 2012.

### ***Section 10: Course currency***

50. Section 10 details the requirements in relation to course currency and requires that a course in basic GST/BAS taxation principles must have been completed fewer than 10 years from the date a person makes an application for registration unless the person can demonstrate to the Board that they have continued to update their relevant skills through work experience and continuing professional education.
51. For the purposes of subsection 10(2):
  - (a) the onus is on the applicant to satisfy the Board that they meet the requirements of the subsection; and
  - (b) the Board will consider matters on a case by case basis.

### ***Consultation***

52. Consultation was carried out as follows:
  - a. On 10 June 2020, the draft Legislative Instrument and Explanatory Statement were provided to the TPB's Consultative Forum members for out-of-session feedback.

- b. On XX June 2020, the draft Legislative Instrument and Explanatory Statement were released for a 28-day public consultation period.

53. The current membership of the Board's Consultative Forum has remained relatively stable since it commenced in 2010. As at 26 February 2020 forum membership includes representatives from the following:

- (a) Association of Accounting Technicians (Australia) Limited
- (b) Association of Chartered Certified Accountants
- (c) Association of Financial Advisers
- (d) Association of Independently Owned Financial Professionals
- (e) Australian Bookkeepers Association Ltd
- (f) Australian Institute of Quantity Surveyors
- (g) Chartered Accountants Australia and New Zealand
- (h) Certified Practising Accountants Australia
- (i) Financial Services Institute of Australasia
- (j) Financial Planning Association of Australia
- (k) Institute of Certified Bookkeepers
- (l) Institute of Chartered Accountants in England and Wales
- (m) Institute of Public Accountants
- (n) Law Council of Australia
- (o) Law Society of New South Wales
- (p) National Tax Agents' Association Ltd (NTAA+)
- (q) Royal Institute of Chartered Surveyors Australasia
- (r) SMSF Association
- (s) South African Institute of Chartered Accountants
- (t) Stockbrokers and Financial Advisers Association
- (u) TAI Practitioners & Advisers Limited
- (v) The Tax Institute.

# Statement of Compatibility with Human Rights

This Statement is prepared in accordance with Part 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

## ***Tax Agent Services (a course in basic GST/BAS taxation principles that is approved by the Board) Instrument 2020***

The Legislative Instrument is compatible with the human rights and freedoms recognised or declared in the international Instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

### **Overview**

The Legislative Instrument declares, for the purposes of the eligibility requirements for registration as a BAS agent, as contained in Part 1 of Schedule 2 to the *Tax Agent Services Regulations 2009* (TAS Regulations 2009), the requirements for a course in basic GST/BAS taxation principles that is approved by the Board for the purposes of items 101(b) and 102(b) in Division 1 of Schedule 2 to the TAS Regulations 2009. Such requirements relate to:

- (a) course duration;
- (b) course topics;
- (c) course education level;
- (d) course providers;
- (e) assessment requirements; and
- (f) course currency.

On an assessment of the compatibility of this Instrument with the seven core international human rights treaties to which Australia is a party, it has been determined that this Instrument does not engage any of the applicable rights or freedoms because the Instrument is minor or machinery in nature.

### **Human rights implications**

This Legislative Instrument does not engage any of the applicable rights or freedoms as it simply sets out the requirements of a course in basic GST/BAS taxation principles that is approved by the Tax Practitioners Board for individuals seeking registration as a BAS agent under the *Tax Agent Services Act 2009* and the *Tax Agent Services Regulations 2009*. In particular, the Legislative Instrument will assist relevant institutions, professional associations, potential registrants, renewing BAS agents and the wider community to understand the qualification requirements for registration as a BAS agent.

### **Conclusion**

The Legislative Instrument is compatible with human rights as it does not raise any human rights issues.