



# TPB Information Sheet

## TPB(I) 16/2012

### Do valuers need to register as tax agents?

#### **Disclaimer**

This is a Tax Practitioners Board (TPB) information sheet (TPB(I)). It is intended to be for information only. While this TPB(I) 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) and the *Tax Agent Services Regulations 2009* (TASR).

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, the TASR, or which may exist at law. Please refer to the TASA and the TASR for the precise content of the legislative requirements.

#### **Document history**

The TPB released this document as a final Information sheet on 19 October 2012.

On 13 October 2015, the TPB updated this TPB(I) to incorporate a reference to 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 assist entities that provide valuation services (valuers) to understand the operation of the tax agent services regime and whether or not they need to register with the TPB.
2. For the purpose of this TPB(I), the term ‘valuers’ will be used to describe a class of professionals providing a valuation of, among other things, certain assets or liabilities.

## Background

3. 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). This TPB(I) will focus on valuers in the context of registration as a tax agent, although the TPB recognises that valuers may also register as a BAS agent or tax (financial) adviser.
4. An entity must be registered as a tax agent if providing a ‘tax agent service’ for a fee or other reward.<sup>1</sup>
5. 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 by a valuer to their client.
6. There are no separate or specific legislative provisions relating to whether valuers need to be registered under the TASA.

## Tax agent service

7. 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

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<sup>1</sup> A ‘tax agent service’ includes a [‘BAS service’](#) and [‘tax \(financial\) advice service’](#). For further information on what constitutes a tax (financial) advice service, refer to [TPB\(I\) 20/2014: What is a tax \(financial\) advice service?](#) available at [www.tpb.gov.au](http://www.tpb.gov.au)



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.<sup>2</sup>

8. Any decision about whether a service constitutes a tax agent 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 7 above.

### Do valuers need to register with the TPB?

9. Generally, the TPB considers that where the service provided by a valuer consists only of providing a valuation of, among other things, certain assets or liabilities, and the valuer is not applying or interpreting the taxation laws to determine a client's tax position, then that **is not** a tax agent service.
10. The reason for this is because, while the valuation may be relevant to determining the quantum of a liability, obligations or entitlement under a taxation law, providing the valuation itself does not constitute ascertaining or advising about that liability, obligation or entitlement. It is the subsequent use of that valuation, by another entity, in applying the taxation laws that will constitute a tax agent service (see section 90-5 of the TASA).
11. If a valuer, in addition to the valuation service itself, provides services that involve applying or interpreting taxation laws, the valuer will be required to register as a tax agent.
12. [Appendix 1](#) includes examples of services commonly provided by valuers and whether they require registration with the TPB.

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<sup>2</sup> 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. A BAS service also includes any service which the TPB, by legislative instrument, specifies to be a BAS service – see subsection 90-10(1A) of the *Tax Agent Services Act 2009* and *Tax Agent Services (Specified BAS Services) Instrument 2016*.



### Registering with the TPB

13. If a valuer wishes to become registered as a tax agent, they will need to meet certain legislative requirements. For individual applicants, this includes being a fit and proper person and having appropriate qualifications and relevant experience. For partnership and company applicants, this includes the requirement to have a sufficient number of registered individuals to provide competent services and to carry out supervisory arrangements.
  
14. Further information about the registration requirements is available on the TPB's website at [www.tpb.gov.au](http://www.tpb.gov.au)



## APPENDIX 1 – Examples of service provided by valuers

### Example 1

Mike is a valuer who has been instructed to undertake a valuation to determine the market value of an investment property as at a particular date. The instructing party advises that the valuation report will be used to assist in determining capital gains tax issues associated with the investment property.

Mike is not applying or interpreting the taxation laws to determine that value, and therefore the advice is not a tax agent service.

### Example 2

Anna has been instructed by a developer to value a new single residential property inclusive of GST. Anna includes GST as part of the valuation. However, Anna does not need to register as a tax agent or BAS agent as the provision of such a service does not involve the interpretation and/or application of the taxation laws to ascertain a clients' tax position.

The valuer is undertaking a market value of an asset at a particular time. Whether the client wishes to accept that valuation advice is a matter for the client, however, the valuer is not providing any tax advice.

### Example 3

George is a property professional who has advised a client that it may be more beneficial to adopt the margin scheme rather than the sale being fully taxable (1/11<sup>th</sup>). George may therefore appear to be advising an entity about the liabilities, obligations or entitlements of the entity that arise, or could arise, under a taxation law (i.e. GST law).

If George advises the client that they should apply the margin scheme, George may be providing a tax agent service and would be required to register. This is because the client is likely to rely on the advice on the margin scheme for the purpose of satisfying his liabilities or obligations under a taxation law.

If George advises the client that they should get advice on whether the margin scheme applies, George would not be providing a tax agent service and would not be required to register. This is because the client is unlikely to rely on the advice for the purpose of satisfying his liabilities or obligations under a taxation law.



#### Example 4

A tax consolidated entity, Company A, buys a business from Company B. On acquisition, Company A engages a valuer to revalue its non-building assets to market to bring the business into the consolidated group.

The deliverable product by the valuer will include a schedule of the assets acquired with a market value (tax cost) and estimated remaining life assigned to each asset. Whilst the valuation may be relevant to determining the quantum of a liability, obligations or entitlement under a taxation law, providing the valuation itself does not constitute ascertaining or advising about that liability, obligation or entitlement. It is the subsequent use of that valuation by another entity, in applying the taxation laws, which will constitute a tax agent service (see section 90-5 of the TASA).

#### Example 5

Client approaches a valuation firm to complete a Tax Depreciation Report/Schedule (TDS). The valuation firm undertakes the inspection of the property and compiles appropriate notes, etc, that are provided to a Quantity Surveyor (QS) who is engaged by the valuation firm to complete the tax depreciation report on the instructions of the valuer's client. The valuation firm invoices its client and pays the QS who is a contractor of the valuation firm. Typically the QS TDS report is completed on the QS firm letterhead (i.e. the client will receive an invoice on the Valuation Firm letterhead, however, the attached report will be on QS letterhead).

The valuation firm is not required to be registered under the TASA where:

- the depreciation schedule is prepared and provided by a quantity surveyor who is a separate entity
- the quantity surveyor is a registered tax or BAS agent who is clearly identified in the report or other advice of the valuer as the provider of the tax agent services (being the depreciation schedule)
- the quantity surveyor is responsible to the client for the accuracy of the information in the depreciation schedule
- the depreciation schedule is clearly identified within the report or other advice provided by the valuer.

For further information, refer to the TPB Information Sheet [TPB\(I\) 08/2011 Reports or other advice incorporating tax agent services provided by a third party](#) available on the TPB website at [www.tpb.gov.au](http://www.tpb.gov.au)



### Example 6

A Quantity Surveyor (QS) approaches a valuation firm to complete an inspection for the purpose of compiling notes to be used by the QS for the purpose of completing a Tax Depreciation Report/Schedule (TDS). The valuation firm undertakes the inspection of the property and compiles appropriate notes, etc, to be sent back to the Quantity Surveyor who completes the TDS for their client. Valuation firm invoices QS firm for inspection work and compiled notes.

- The individual valuer/valuation firm is not required to be registered under the TASA, as the services being provided are not tax agent services.
- The quantity surveyor firm is required to be registered under the TASA if the quantity surveyor is preparing tax depreciation reports for a fee or other reward.

### Example 7

Client approaches a valuation firm for the purpose of completing a Tax Depreciation Report/Schedule (TDS). Valuation firm undertakes the inspection of the property and compiles appropriate notes, etc, and completes the TDS for their client. The valuation firm will either have a valuer or Quantity Surveyor (QS) on staff with the expertise to undertake the assignment.

- The valuation firm is required to be registered under the TASA as the valuation firm is the relevant entity that is receiving a fee or other reward for the provision of tax agent services.
- The individual valuer or quantity surveyor is an employee of the valuation firm and therefore not required to be registered under the TASA.