



TPB Information Sheet (TPB(I)) 01/2011

Letters of engagement

DISCLAIMER

This is a Tax Practitioners Board (TPB) Information Sheet (TPB(I)). It is intended to be for information only. It provides a brief overview of the TPB's position on the use of engagement letters by registered tax and BAS agents. 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, explanations and examples in this paper 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.

Document History

The TPB released this TPB(I) as an exposure draft on 14 September 2010. The TPB invited comments and submissions in relation to the information contained in it. The closing date for submissions was 29 October 2010. The TPB has considered the submissions made and now publishes the following TPB(I) based on the TASA, the *Tax Agent Services (Transitional Provisions and Consequential Amendments) Act 2009* and the *Tax Agent Services Regulations 2009 (TASR)* as at the issue date.

ISSUED: 11 April 2011



What is an engagement letter and what can it cover?

1. The agreement between a service provider and the client which sets out the agreed terms and conditions of the engagement, when presented in the form of a letter, is sometimes referred to as an 'engagement letter'.
2. For auditors, 'AUS 204 – Terms of Audit Engagements' establishes standards and contains guidance for auditors on agreeing and documenting the terms of the audit engagement with the client. The standard notes that:

It is in the interests of both the entity and the auditor that the terms of the audit engagement are agreed and documented, preferably before the commencement of the audit, to help to avoid uncertainty and misunderstandings with respect to the engagement. An engagement letter (or other written agreement) documents and confirms the auditor's acceptance of the appointment, the objective and scope of the audit, the extent of the auditor's responsibilities to the entity and the form of any reports.

3. It is the TPB's view that similar advantages to those that exist for auditors arise for an agent and client where the provision of tax agent services or BAS services is concerned.
4. An engagement letter is the starting point in the ongoing communication between a tax agent or BAS agent and the client about:
 - what is to be done
 - who will do it
 - how it will be done
 - when it is to be done
 - how much the work will cost.
5. A common understanding and communication between the agent and the client clarifies the responsibilities of the agent and the client and how the work is to be paid for. It can assist in avoiding disputes over fees and about the scope of work.

How are engagement letters relevant to tax and BAS agents?

6. The Explanatory Memorandum to the Tax Agent Services Bill 2009 (EM) makes a number of references to how engagement letters can be used and how they are relevant in the business of tax agents and BAS agents.
7. For example, the EM suggests that the taxation rights and obligations that are relevant to a tax or BAS agent could be outlined in the engagement letter between the agent and client. Advising a client of their rights and obligations under the taxation laws that are materially related to the tax agent services that a registered agent provides is one of the requirements under the Code of Professional Conduct (Code) in the *Tax Agent Services Act 2009* (TASA).



8. Engagement letters are not a specific requirement of the Code, but they can be of significant general assistance to the business of the agent in establishing a clear understanding of the elements of the engagement. Engagement letters should also set out the rights and obligations of both the agent and the client in relation to the work that the agent is engaged to do.
9. Having engagement letters with clients will not, taken alone, achieve an efficient, effective and ethical practice. Engagement letters are, however, a useful tool to assist in maintaining such a practice.
10. The TPB encourages the use of written agreements covering services as a means of avoiding uncertainty and misunderstandings and to assist in compliance with the Code.

Must agents have an engagement letter under the TASA?

11. There is no specific requirement under the TASA for an agent to have an engagement letter with their client. There are, however, other legal and professional standards and regulatory requirements under which letters of engagement may be necessary.
12. Examples include standards issued by the Accounting Professional and Ethical Standards Board (APES 305 Terms of Engagement) and the Auditing and Assurance Standards Board.
13. The aim of the TASA is to ensure that tax agent services are provided to the public in accordance with appropriate standards of professional and ethical conduct. The TPB considers that a written agreement between the agent and the client that sets out the terms and conditions of their arrangement is an advantage.
14. In particular, an engagement letter is likely to be a simple way to assist an agent to comply with their obligations under the Code and to define and limit the obligations of both parties, subject to the law.
15. The following principles of the Code, contained in section 30-10 of the TASA may be particularly relevant:
 - (3) if you receive money or other property from or on behalf of a client and you hold the money or other property on trust, you must account to your client for the money or other property
 - (4) you must act lawfully in the best interests of your client
 - (6) unless you have a legal duty to do so, you must not disclose any information relating to a client's affairs to a third party without your client's permission
 - (7) you must ensure that a tax agent service that you provide, or that is provided on your behalf, is provided competently
 - (8) you must maintain knowledge and skills relevant to the tax agent services that you provide
 - (9) you must take reasonable care in ascertaining a client's state of affairs, to the extent that ascertaining the state of those affairs is relevant to a statement you are making or a thing you are doing on behalf of the client



- (10) you must take reasonable care to ensure that taxation laws are applied correctly to the circumstances in relation to which you are providing advice to a client
- (12) you must advise your client of the client's rights and obligations under the taxation laws that are materially related to the tax agent services you provide.

16. For further information on the Code, please refer to Explanatory paper [TPB\(EP\) 01/2010 Code of Professional Conduct](#), available on the TPB's website at www.tpb.gov.au

What could an engagement letter contain?

17. For tax agents and BAS agents, agreement on the terms of an engagement could include reference to:

- the name and registration number of the tax or BAS agent that the client is appointing to perform the services. It is of advantage for the tax or BAS agent to identify the entity that, and/or the specific individuals who, will provide the tax agent service. This gives certainty to the client that the services will be performed by a person that is legally entitled to do so and is regulated under the TASA. Generally speaking, the TASA contains civil penalties for:
 - the provision of tax agent services if the entity that provides the services is not registered under the TASA
 - an unregistered person that advertises tax agent services or represents that he or she is registered under the TASA
 - the engagement of an unregistered person by another registered tax or BAS agent in certain circumstances.
- the identification of the client entities in relation to which the tax agent services are to be provided:
 - tax agent and BAS services include ascertaining and advising on liabilities, obligations or entitlements of an entity in circumstances where the entity can reasonably be expected to rely on the services; and
 - identification of the client entities for which services are to be provided clarifies the scope of the services as well as an understanding of the entities that may rely on the advice; and
 - by identifying the client entities or group, the agent will be deemed to have the client's permission to disclose confidential information to any member of that group, unless expressly prohibited from doing so by the client.
- a description of the work that is to be performed:
 - a clear agreement as to the scope of the work to be performed limits the risk of misunderstandings between the client and the tax or BAS agent about the work to be performed and assists in an understanding and agreement on the time frames, and respective responsibilities; and
 - it also assists in an understanding that the scope of the work to be performed is within the agent's competency and experience.



- the agent's and the client's responsibility under the engagement, for example:
 - the client's responsibility to make all relevant information available to the agent in a complete and timely manner
 - the client's responsibilities as taxpayers under the taxation laws and the consequence of errors and omissions from the information given to the taxation authorities
 - the agent's responsibility to provide the services in a competent and timely manner
 - the letter may provide that the agent may seek clarification of some matters where there is a need to do so, but that the agent will not audit the information provided by the client as the agent is satisfied that the client understands their record keeping obligations and is aware of the consequences of not keeping adequate records
 - the agent's responsibility to ensure that the taxation laws are complied with and that the agent may be liable for civil penalties for false and misleading statements made to the taxation authorities
 - the agent's responsibility to lodge in a timely manner.
- the form of any reports or other means of communication of results of the tax agent services to be performed
- an explanation as to the extent to which the tax agent services can be relied upon and the limitation on other persons relying on the advice or on calculations contained in the report or advice
- the confidential nature of the communications between the client and the agent and that the agent will not disclose information relating to the client's affairs to a third party without the client's permission (unless the agent has a legal duty to do so)
- any arrangements for retention of client's documents or of making copies of them for the purposes of providing the services under the agreement or to secure payment of fees
- the duty (under the TASA) of the agent to act lawfully in the best interest of the client and for the agent to act honestly and with integrity
- situations in which the law overrides the duty of the agent to the client, such as compliance with notices under sections 263 and 264 of the *Income Tax Assessment Act 1936*, withholding tax obligations and any other duties of the agent under the TASA (including the Code)
- adequate arrangements the agent has in place for the management of conflicts of interest that may arise in relation to the activities undertaken in the capacity of a registered tax or BAS agent
- the rights and obligations of the client under the taxation law. For example, if the agreement extends to the preparation and lodgement of taxation returns, the agreement could advise the client of the self-assessment system and of the rights of objection and appeals. The engagement letter might also be useful to describe the nature of the rulings system and that the client will be advised where the returns have been prepared in reliance on binding rulings issued by the Commissioner of Taxation (note however this may not be appropriate in all situations when considering factors such as the client and the costs involved in producing the extra information)



- the basis on which fees are to be calculated and charged, the frequency of billings and the time frame for payment. As disputes about fees often arise, the engagement letter can limit the capacity for misunderstandings and provide the client with clear expectations about the amount that the tax agent services are likely to cost
- how the agent will deal with any tax refund the agent receives on behalf of the client and whether the client consents to fees being deducted from a refund
- how the agent will deal with funds or other property held on trust for the client
- the details of any limitation of liability of the agent for work performed under the engagement and the legal basis for the limitation if it is a feature of the law of the jurisdiction in which the agent practises
- the client's responsibility to advise the agent of changes in any matter that is relevant to the tax agent's services that are provided
- the professional indemnity insurance arrangements the agent has in place.

Relationship between engagement letters and an agent's responsibilities under the Code and the TASA

18. Under principles 9 and 10 of the Code (set out in paragraph 15 above), agents are, in summary, required to take reasonable care in ascertaining a client's state of affairs and to ensure that taxation laws are applied correctly.
19. These obligations may be influenced by the terms of an engagement letter, but cannot be supplanted by such letters. That is, whether or not an agent has taken reasonable care of any kind will be a question of fact to be answered by the circumstances of a particular situation. Having an engagement letter will not of itself establish that reasonable care has been taken and these obligations cannot be transferred to the client.
20. The TPB is considering how these obligations, and the obligations of agents not to make false, misleading or incorrect statements under section 50-20 of the TASA in respect of signing declarations under section 50-30 of the TASA may interrelate with engagement letters. The TPB will issue further information on these topics as soon as practicable.

Need more information?

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