

TPB Information Sheet

TPB(I) 35/2020

Recognised professional associations – Exercise of the TPB’s discretion regarding specific requirements for recognition under the Tax Agent Services Regulations 2009

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) or the Tax Agent Services Regulations 2009 (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.

Document history

This information sheet is based on the TASA as at 15 March 2017 and the TASR as at 18 September 2018 (latest versions available at time of publication).

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Introduction

1. This Information Sheet (TPB(I)) has been prepared by the Tax Practitioners Board (TPB) to provide guidance to professional associations in relation to the TPB’s interpretation and application of the following discretions under the Tax Agent Services Regulations 2009 (TASR):
 - (a) Items 108, 209 and 309 in Schedule 1 to the TASR (regarding the number of voting members)
 - (b) Items 109, 210 and 310 in Schedule 1 to the TASR (regarding the qualification / experience requirements for voting members).
2. In particular, this TPB(I) provides guidance on the above requirements as they apply to:
 - (a) professional associations that are seeking recognition with the TPB as a recognised tax agent association (RTAA), recognised BAS agent association (RBAA), and / or recognised tax (financial) adviser association (RTFAA);¹ and
 - (b) those already recognised professional associations, for the purpose of maintaining their recognition under the TASR.

Background

3. Professional associations may be accredited by the TPB as an RTAA, RBAA, and / or RTFAA if they meet certain prescribed requirements as set out in Schedule 1 to the TASR. This recognition does not give an association the ability to provide tax agent services for a fee, but rather, provides an additional pathway for individuals (who are voting members of a TPB recognised professional association) to seek registration with the TPB.²

¹ For the purposes of this Information Sheet, RTAAs, RBAAAs and RTFAAs are collectively referred to as recognised professional associations.

² See page 3 of the Explanatory Statement to the TASR. This also aligns with the objects of the *Tax Agent Services Act 2009* and the role of the TPB to ensure that every entity that should be registered is registered, and to ensure the services provided by registered tax practitioners to the public are provided in accordance with appropriate standards of professional and ethical conduct.

4. In determining whether to recognise a professional association as an RTAA, RBAA and / or RTFAA, the TPB must be satisfied that the prescribed requirements outlined in Schedule 1 to the TASR have been met.³ This ensures that only those professional associations that enforce high educational, ethical and professional requirements (relevant to taxation) on their members can be recognised by the TPB as recognised professional associations.⁴ Further, the requirements are designed to ensure that only truly professional and well-run associations are capable of recognition,⁵ thereby strengthening the integrity of the registered tax practitioner profession.⁶
5. Where an association meets all of the prescribed requirements for recognition contained in Schedule 1 to the TASR, the TPB must recognise the association as a recognised professional association.⁷
6. If an association meets all of the prescribed requirements set out in Schedule 1 to the TASR other than those in relation to the number of voting members⁸ and the qualification / experience requirements for voting members⁹ (see [Appendix A](#) for relevant legislative extracts), the TPB may exercise its discretion to accredit or continue to recognise an association if it considers it appropriate.¹⁰ However, if the TPB seeks to exercise its discretion, the TPB must have regard to the purposes of the *Tax Agent Services Act 2009* (TASA), and the role of recognised professional associations under the TASR.¹¹
7. The purpose 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.¹² Relevantly, the underlying policy objective of the TASA is to:
 - (a) improve consistency in registration and to regulate the provision of tax agent services in an appropriate, but flexible, way
 - (b) enhance the protection of consumers of tax agent services
 - (c) strengthen the integrity of the tax system and the tax industry.¹³

In particular, the purpose of the TPB's accreditation system for recognising professional associations is to recognise professional qualifications and experience that are relevant to the registration of individuals as registered tax practitioners, and thereby create an additional pathway for individuals to seek registration with the TPB.¹⁴ TPB accreditation provides recognised professional associations with the opportunity to market themselves with a view to increasing their membership numbers, and an incentive to offer a variety of services that may benefit members who are registered tax practitioners.¹⁵

³ The continued accreditation of recognised professional associations is monitored through an [annual declaration](#) process that requires the recognised professional association to satisfy the TPB that the association continues to meet the ongoing requirements set out in Schedule 1 to the TASR.

⁴ See pages 3-4 of the Explanatory Statement to the TASR.

⁵ See page 7 of the Explanatory Statement to the TASR.

⁶ See paragraph 6.25 of the Explanatory Memorandum to the Tax Agent Services Bill 2008.

⁷ Subregulations 4D(2), 5B(1) and 5H(1) of the TASR.

⁸ Items 108, 209 and 309 in Schedule 1 to the TASR.

⁹ Items 109, 210 and 310 in Schedule 1 to the TASR.

¹⁰ Subregulations 4D(3), 5B(2) and 5H(2) of the TASR. See also page 4 of the Explanatory Statement to the TASR.

¹¹ Subregulations 4D(4), 5B(3) and 5H(3) of the TASR. See also page 4 of the Explanatory Statement to the TASR.

¹² See section 2-5 of the TASA.

¹³ See paragraph 6.25 of the Explanatory Memorandum to the Tax Agent Services Bill 2008.

¹⁴ See section 20-10 of the TASA and page 3 of the Explanatory Statement to the TASR.

¹⁵ See paragraph 6.37 of the Explanatory Memorandum to the Tax Agent Services Bill 2008.

8. The role of recognised professional associations under the TASR is to be a truly professional and well-run association, having the ability to adequately oversee its members and ensure that the professional services provided by its members are provided to a high standard (which supports the object of the TASA).¹⁶ Recognised professional associations demonstrate this role by satisfying the prescribed requirements in Schedule 1 to the TASR.
9. The [Explanatory Statement to the TASR](#) sets out the underlying policy intent for providing the TPB with discretion, noting that:
 - (a) the discretion is designed to provide the TPB with greater flexibility in respect to its ability to recognise an association; and
 - (b) there may be circumstances where a well-governed and representative professional association which imposes high ethical and professional obligations on its members should be eligible for recognition by the TPB (notwithstanding that it lacks the requisite number of voting members or seeks to represent those with qualifications not traditionally related to the provision of tax agent services, BAS services, or tax (financial) advice services).¹⁷

The TPB's approach to Items 108, 209 and 309 in Schedule 1 to the TASR (number of voting members)

Legislative framework

10. Professional associations that seek accreditation or continued recognition with the TPB are required to meet the minimum requirements in Items 108 / 209 / 309 in Schedule 1 to the TASR as to the number of voting members and number of voting members who are registered with the TPB. In particular, Schedule 1 to the TASR requires that an association has:
 - (a) 1,000 voting members; and
 - (b) 500 of these voting members are:
 - registered tax agents of an RTAA;¹⁸
 - registered BAS agents of an RBAA;¹⁹ or
 - registered tax (financial) advisers of an RTFAA.²⁰
11. The Explanatory Statement to the TASR provides that the intent of this requirement is to ensure that the association is large enough to support its members and that it is representative of the relevant industry.²¹

¹⁶ See section 2-5 of the TASA and page 7 of the Explanatory Statement to the TASR.

¹⁷ See pages 4 and 5 of the Explanatory Statement to the TASR.

¹⁸ Item 108 in Schedule 1 to the TASR.

¹⁹ Item 209 in Schedule 1 to the TASR.

²⁰ Item 309 in Schedule 1 to the TASR.

²¹ See pages 6 and 8 of the Explanatory Statement to the TASR.

12. As noted above, the Explanatory Statement to the TASR recognises that there may be circumstances in which a well-governed and representative professional association, which imposes high ethical and professional obligations on its members, should be eligible for recognition by the TPB, notwithstanding that it lacks the requisite number of voting members.²² For instance, there may be limitations beyond the control of the professional association that prevent it from having the requisite numbers (for example, despite having Australian law related entry and eligibility requirements and ongoing continuing professional education and training support, law societies created by statute may be limited in each state and territory).²³

Considerations when exercising the TPB's discretion

13. In considering the appropriateness of exercising the TPB's discretion (on a case-by-case basis), the TPB will have regard to the Explanatory Statement to the TASR and the following non-exhaustive list of considerations (in addition to considering the purpose of the TASA and the role of recognised professional associations under the TASR):

- (a) the extent to which the association meets the requirements under Items 108 / 209 / 309 in Schedule 1 to the TASR, including (where relevant):
- whether the number of voting members (including voting members who are registered tax practitioners) has increased over time, as well as any reasons and projections provided in relation to the number of voting members
 - if and when the association will meet the minimum requirement
 - the period of time since the association was established and recognised, and whether the association was provided an appropriate opportunity to increase its voting membership base
- (b) purpose and utility of the association's recognition, including:
- whether the association is a well-governed and representative professional association which imposes and enforces high ethical and professional obligations on its members
 - the type of industry that the association represents and whether the association is representative of this industry, notwithstanding that it lacks the ability to meet the minimum number of voting members requirement (for example, a specialist association that represents registered tax practitioners with conditions imposed in relation to the tax agent services which they are permitted to provide, such as a quantity surveyor condition)
 - whether there are limitations beyond the control of the association that prevent it from having the requisite numbers (for example, geographical limitations on State-based law societies)

²² See page 5 of the Explanatory Statement to the TASR.

²³ See page 5 of the Explanatory Statement to the TASR.

- (c) consumer protection benefits and / or risks of continuing recognition, including:
- whether there are any registered tax practitioners relying on voting membership of the association to meet the eligibility requirements of registration, and what alternatives will they have if the association is not recognised by the TPB (including any mutual recognition / reciprocal voting membership arrangements with other recognised professional associations)
 - whether there is a risk to consumers if the association is no longer recognised / continues to be recognised
- (d) the accreditation type(s) of the recognised professional association (e.g. RTAA, RBAA and / or RTFAA) and whether there is any utility in having multiple recognitions with the TPB.

Continued exercise of the TPB's discretion

14. Where accreditation is granted in conjunction with the exercise of discretion in relation to Items 108 / 209 / 309 in Schedule 1 to the TASR, the TPB expects recognised professional associations to:
- (a) have appropriate processes in place to ascertain relevant information, with a degree of certainty, in relation to the number of voting members who are registered tax practitioners with the TPB
- (b) communicate and support relevant members as appropriate, including:
- providing appropriate resourcing and support to members
 - suggesting to members who are registered tax practitioners that they update their member profile information with the TPB to reflect their association affiliation
- (c) build up their presence to satisfy the requirements in Items 108 / 209 / 309 in Schedule 1 to the TASR within an appropriate period of time, subject to relevant considerations (including those noted above at paragraph 13 above). Where accreditation is granted to an international-based association, this is subject to the expectation that the association would build up its Australian presence, including providing appropriate resourcing and support to its Australian members, such as, continuing professional education relevant to the tax agent services they provide.
15. While the TPB has discretion to recognise an association if it otherwise meets the requirements for recognition with the TPB, in most cases, the TPB does not consider it appropriate to continue to exercise its discretion indefinitely.
16. Unless otherwise specified by the TPB, it is expected that associations would satisfy the requirements in Items 108 / 209 / 309 in Schedule 1 to the TASR within a reasonable period of time. A reasonable period of time is generally expected to be within:
- (a) two years of accreditation; or
- (b) twelve months of a relevant annual declaration decision letter issued by the TPB, where the association has been accredited for a period of two years or more.

17. However, a reasonable period of time will depend on a range of factors that will be considered by the TPB on a case-by-case basis, including the following non-exhaustive list of factors:
- (a) the period of time in which the association has been operating
 - (b) the nature of the association's membership base
 - (c) any progress the association has made towards meeting the requirement in Items 108 / 209 / 309 in Schedule 1 to the TASR
 - (d) the nature of the constraints impacting the association's ability to meet the requirements in Items 108 / 209 / 309 in Schedule 1 to the TASR
 - (e) the association's plan to meet the requirements in Items 108 / 209 / 309 in Schedule 1 to the TASR
 - (f) the level of support provided by the association to assist its members to meet their obligations under the TASA.
18. In the case of a specialist association (for example, an association that plays a specialised role for quantity surveyors), the TPB would not expect that such a specialist association would be able to satisfy the requirements in Items 108 / 209 / 309 in Schedule 1 to the TASR within a reasonable period of time.
19. Where the requirements in Items 108 / 209 / 309 in Schedule 1 to the TASR are still not satisfied within a reasonable period of time, the TPB will then consider whether it is appropriate to continue or terminate accreditation. In making a determination, the TPB will have regard to all relevant considerations, including the non-exhaustive list of considerations at paragraph 13 above and the following:
- (a) any relevant outcomes in conjunction with the annual declaration process
 - (b) the extent to which an association meets, or fails to meet, the requirements in Items 108 / 209 / 309 in Schedule 1 to the TASR
 - (c) the nature of the constraints impacting the association's ability to meet the requirements in Items 108 / 209 / 309 in Schedule 1 to the TASR
 - (d) the nature of the association's membership base and the extent to which an association represents tax and BAS agents and tax (financial) advisers, or specialised roles (such as quantity surveyors)
 - (e) level of support provided by the association to assist its members to meet their obligations under the TASA
 - (f) any exceptional circumstances.

The TPB's approach to Items 109, 210 and 310 in Schedule 1 to the TASR (qualification / experience requirements for voting members)

Legislative framework

20. Professional associations that seek accreditation or continued recognition with the TPB are required to meet the minimum requirements in Items 109, 210 and 310 in Schedule 1 to the TASR as to the qualification / experience requirements for voting members of recognised professional associations.
21. The Explanatory Statement to the TASR provides that the intent of this requirement is to reflect the qualifications that all registered tax practitioners must hold to seek registration with the TPB.²⁴
22. As noted above, the Explanatory Statement to the TASR recognises that there may be circumstances in which a well-governed and representative professional association, which imposes high ethical and professional obligations on its members, should be eligible for recognition by the TPB, notwithstanding that it seeks to represent those with qualifications not traditionally related to the provision of tax agent services, BAS services, or tax (financial) advice services.²⁵ There may be a number of legitimate reasons why an association is not able to comply with the qualifications / experience requirements. For example, certain specialist tax agent service providers may belong to established professional associations which represent members in a particular field, only a part of which are involved in the provision of tax agent services (for instance, quantity surveyors). It is not expected that professional associations would be set up to represent only tax practitioners.²⁶

Considerations when exercising the TPB's discretion

23. In considering the appropriateness of exercising the TPB's discretion (on a case-by-case basis), the TPB will have regard to the Explanatory Statement to the TASR and the following non-exhaustive list of considerations (in addition to the purpose of the TASA and the role of the recognised professional associations under the TASR):
 - (a) the extent to which the association meets the requirements in Items 109 / 210 / 310 in Schedule 1 to the TASR, including:
 - what other qualifications the association requires its members to hold
 - whether the association has a diverse professional membership base
 - whether it is feasible or practical for the association to meet the requirements in Items 109 / 210 / 310 in Schedule 1 to the TASR
 - (b) any amendments or proposed amendments to relevant association rules (in particular, any diminution of relevant association voting membership requirements, including qualifications requirements)

²⁴ See page 7 of the Explanatory Statement to the TASR.

²⁵ See page 5 of the Explanatory Statement to the TASR.

²⁶ See page 5 of the Explanatory Statement to the TASR.

- (c) purpose and utility of the association's recognition, including:
- whether the association is a well-governed and representative professional association which imposes and enforces high ethical and professional obligations on its members
 - whether the association is a specialist association representing tax practitioners who are registered with conditions imposed in relation to the tax agent services they are permitted to provide (for example, quantity surveyors)
- (d) consumer protection benefits and / or risks of continuing recognition, including:
- whether there are any registered tax practitioners relying on voting membership of the association to meet the eligibility requirements of registration, and what alternatives will they have if the association is not recognised by the TPB (including any mutual recognition / reciprocal voting membership arrangements with other recognised professional associations)
 - whether there is a risk to consumers if the association is no longer recognised / continues to be recognised
- (e) the accreditation type(s) of the recognised professional association (e.g. RTAA, RBAA and / or RTFAA) and whether there is any utility in having multiple recognitions with the TPB.

Continued exercise of the TPB's discretion

24. The TPB notes that associations may be established for various purposes and that it will continue to exercise its discretion in Items 109 / 210 / 310 in Schedule 1 to the TASR as appropriate where a recognised professional association has diverse membership, subject to the non-exhaustive list of considerations at paragraph 23 above. The TPB further notes that it expects recognised professional associations to provide timely updates to the TPB in the event of any relevant changes to the association's membership requirements for voting members.

Further information

25. Further information about the ongoing requirements for recognition is contained in [Schedule 1 to the TASR](#).

Appendix A: Relevant extracts from Schedule 1 to the TASR

Schedule 1—Requirements to become a recognised association

Part 1—Recognised BAS agent association

- 108 The organisation has at least 1,000 voting members, of whom at least 500 are registered BAS agents.
- 109 Each voting member of the organisation has been awarded at least a Certificate IV Financial Services (Bookkeeping), or a Certificate IV Financial Services (Accounting), from:
- (a) a registered training organisation; or
 - (b) an equivalent institution.

Part 2—Recognised tax agent association

- 209 The organisation has at least 1,000 voting members, of whom at least 500 are registered tax agents.
- 210 Each voting member of the organisation is required to comply with at least 1 of the following requirements:
- (a) the member has been awarded a degree or a post-graduate award from:
 - (i) an Australian tertiary institution; or
 - (ii) an equivalent institution;in the discipline of accountancy;
 - (b) the member has been awarded a diploma or higher award from:
 - (i) a registered training organisation; or
 - (ii) an equivalent institution;in the discipline of accountancy;
 - (c) the member has the academic qualifications required to be an Australian legal practitioner;
 - (d) the member was:
 - (i) registered as a tax agent, or as a nominee, for the purposes of Part VIIA of the *Income Tax Assessment Act 1936* as in force immediately before this Schedule commences; and
 - (ii) a member of, and entitled to vote at meetings of, a recognised professional association within the meaning of section 251LA of the *Income Tax Assessment Act 1936* as in force immediately before this Schedule commences;
 - (e) the member has the equivalent of 8 years of full-time experience in providing tax agent services in the past 10 years.

Part 3—Recognised tax (financial) adviser association

- 309 The organisation has at least 1,000 voting members, of whom at least 500 are registered tax (financial) advisers.
- 310 Each voting member of the organisation is required to comply with at least 1 of the following requirements:
- (a) the member has been awarded a degree or a post-graduate award from:
 - (i) an Australian tertiary institution; or
 - (ii) an equivalent institution;in a relevant discipline (within the meaning of item 305 Schedule 2);
 - (b) the member has been awarded a diploma or higher award from:
 - (i) a registered training organisation; or
 - (ii) an equivalent institution;in a relevant discipline (within the meaning of item 305 Schedule 2);
 - (c) the member has the equivalent of 6 years of full-time experience in providing tax (financial) advice services in the past 8 years.