



# TPB Information sheet TPB(I) 10/2011

## Required knowledge of the *Tax Agent Services Act 2009* including the Code of Professional Conduct

### DISCLAIMER

This is a Tax Practitioners Board (TPB) Information sheet (TPB(I)). It is intended to be for information only. It provides an overview of the TPB's position in relation to the circumstances in which an individual will be required to demonstrate knowledge of the *Tax Agent Services Act 2009* (TASA), including the Code of Professional Conduct (Code), for the purposes of registration as a tax agent, BAS agent or tax (financial) adviser. 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 TASA.

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 *Tax Agent Services Regulations 2009* (TASR), or which may exist at law. Please refer to the TASA and TASR for the precise content of the legislative requirements.

### Document history

The TPB released this document as a draft Information sheet in the form of an Exposure draft on 9 September 2011. The TPB invited comments and submissions in relation to the information in it. The closing date for submissions was 24 October 2011. The TPB considered the submissions made and on 15 December 2011 published this TPB(I), subject to the following amendments:

- on 8 December 2014, the TPB amended the TPB(I) to incorporate the knowledge requirements of the TASA, including the Code, for tax (financial) advisers.

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## Introduction

1. This Tax Practitioners Board Information Sheet (TPB(I)) sets out the views of the Tax Practitioners Board (Board) in relation to the circumstances in which an individual will be required to demonstrate knowledge of the *Tax Agent Services Act 2009* (TASA), including the Code of Professional Conduct (Code), for the purposes of registration as a tax agent, BAS agent or tax (financial) adviser. Further, this TPB(I) sets out the content requirements of the TPB in relation to being able to demonstrate such knowledge.
2. The information in this TPB(I) is particularly relevant for those individuals who are required to have completed Board approved courses in Australian taxation law (for tax agents and tax (financial) advisers) and basic GST/BAS taxation principles (for BAS agents).<sup>1</sup>
3. The information contained in this TPB(I) is intended to assist individuals in understanding the TPB's requirements in relation to required knowledge of the TASA, including the Code, and also to assist approved course providers in developing courses that meet the TPB's requirements.

## Structure and summary of this TPB(I)

4. In this TPB(I) you will find the following information:
  - background and scope about the tax agent services regime (paragraphs 5 to 9)
  - who is required to demonstrate knowledge of the TASA, including the Code, as it relates to:
    - tax and BAS agents registered as at 1 July 2013 (paragraphs 11 to 13)
    - all other applicants from 1 July 2013 (paragraphs 14 to 18)
  - the requirements of a unit in the TASA, including the Code (paragraphs 19 to 35).

## Background and scope

5. The legislative regime governing the provision of tax agent services, (which includes BAS services and tax (financial) advice services) is contained in the TASA.

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<sup>1</sup> See paragraph 10 of this TPB(I) for more information on who is required to demonstrate knowledge of the TASA, including the Code.



6. The object 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. This is to be achieved by, among other things:
  - (a) establishing a national Tax Practitioners Board to register tax agents, BAS agents and tax (financial) advisers
  - (b) introducing a Code of Professional Conduct for registered tax practitioners<sup>2</sup>
  - (c) providing the TPB with access to a graduated range of administrative sanctions for breaches of the Code.
7. Entities providing a tax agent service for a fee or other reward are generally required to be registered under the TASA.
8. To be eligible for registration, an entity must satisfy the TPB that it has met the registration requirements, which broadly consist of the following two elements:
  - (a) a fit and proper person requirement
  - (b) prescribed qualifications and experience requirements (for individuals), or the requirement to have a sufficient number of individuals who are registered (for companies and partnerships).<sup>3</sup>
9. Against this background, the TPB considers that an essential part of the qualifications requirement for registration as a tax agent, BAS agent or tax (financial) adviser is that individuals will need to be able to demonstrate their knowledge of the TASA, including the Code. Moreover, the TPB considers that knowledge of the TASA, including the Code, is an essential requirement for registered tax practitioners to be able to meet their statutory obligations in relation to the provision of tax agent services.

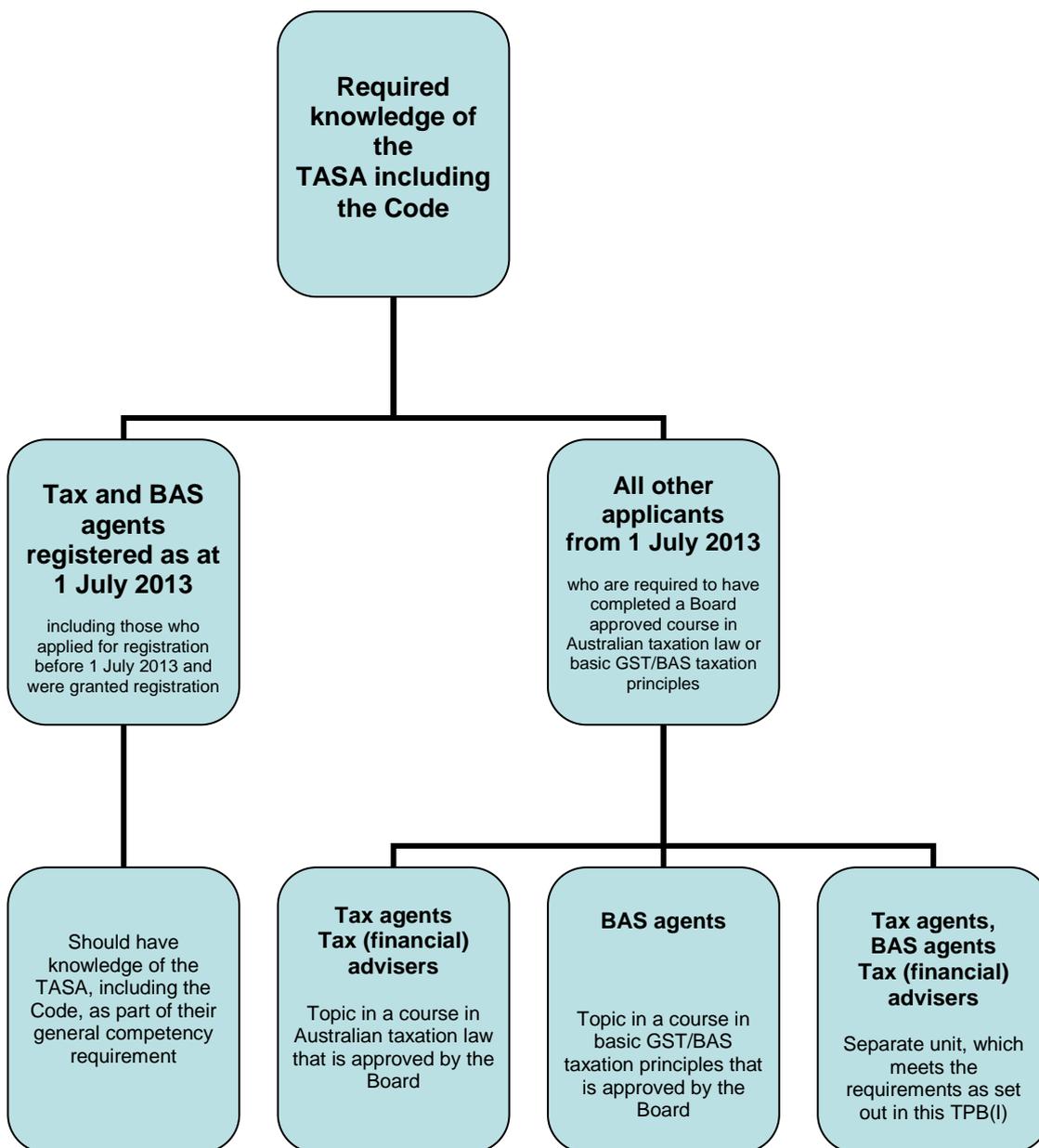
## Who is required to demonstrate knowledge of the TASA including the Code?

10. The TPB's approach regarding the circumstances in which an individual will be required to demonstrate knowledge of the TASA, including the Code, for the purposes of registration as a tax agent, BAS agent or tax (financial) adviser is summarised in the following diagram:

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<sup>2</sup> 'Registered tax practitioners' means registered tax agents, BAS agents and tax (financial) advisers.

<sup>3</sup> This is subject to transitional arrangements contained in the *Tax Laws Amendment (2013 Measures No. 3) Act 2013* which apply to entities seeking registration as a tax (financial) adviser.



### Tax and BAS agents registered as at 1 July 2013

11. The TPB is of the view that individuals registered as a tax agent or BAS agent as at 1 July 2013, including those who applied for registration before 1 July 2013 and were granted registration, are expected to comply with the TASA, including the Code, and therefore should have knowledge of the TASA, including the Code, as part of their general competency requirement.



12. The TPB expects that this knowledge will be able to be enhanced through continuing professional education (CPE)<sup>4</sup>.
13. The TPB notes that the TASA, including the Code, is one of the topic requirements comprising Board approved courses in Australian taxation law and basic GST/BAS taxation principles<sup>5</sup>.

#### **All other applicants from 1 July 2013**

14. The TPB is of the view that, from 1 July 2013, **all other applicants** who are required to have completed a course in Australian taxation law that is approved by the Board, or a course in basic GST/BAS taxation principles that is approved by the Board, must have completed a course, which includes a component in the TASA, including the Code. Where the course does not include a component in the TASA, including the Code, the agent will be required to have completed a separate unit, which contains this component.
15. All other applicants, for the purposes of paragraph 14 includes:
  - a. in relation to tax and BAS agents: individuals seeking registration (excluding renewal of registration) from 1 July 2013
  - b. in relation to tax (financial) advisers: all individuals seeking registration (including renewal of registration) under the standard registration option.
16. Individuals who gain registration as a tax (financial) adviser under the transitional application option or notification option are still expected to have knowledge of the TASA, including the Code, as part of their general competency requirement, despite not being required to undertake formal education (in accordance with paragraphs 14 and 15) until they first renew their registration..
17. Paragraphs 19 to 35 of this TPB(I) sets out the TPB's views in relation to the requirements of a separate unit in the TASA, including the Code.
18. The TPB's policy as contained in this TPB(I) does not prejudice the Board's powers generally, including, but not limited to, the power under section 30-20 of the TASA to make an order requiring a registered tax practitioner to complete a course of education or training specified in the order.

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<sup>4</sup> For further information regarding the TPB's CPE policy for registered tax agents and BAS agents, refer to *TPB(EP) 04/2012 Continuing professional education policy requirements for registered tax agents and BAS agents from 30 June 2013*, available at [www.tpb.gov.au](http://www.tpb.gov.au)

<sup>5</sup> For further information regarding a Board approved course in Australian taxation law for tax agents, refer to the TPB's proposed guideline *TPB(PG) 03/2010 Course in Australian taxation law approved by the Board*. For further information regarding a Board approved course in Australian taxation law for tax (financial) advisers, refer to the TPB's proposed guideline *TPB(PG) 04/2014 Course in Australian taxation law approved by the Board for tax (financial) advisers*.

For further information regarding a Board approved course in basic GST/BAS taxation principles, refer to *TPB(I) 04/2011 BAS agent educational qualification requirements*. Copies of all these documents are available at [www.tpb.gov.au](http://www.tpb.gov.au)



## Unit requirements

### Approved course providers

19. The approach of the TPB is to rely on the existing regulatory and quality assurance frameworks applicable to universities, registered training organisations, other registered higher education institutions and other course providers approved by the Board in determining approved course providers for the purpose of providing Board approved courses<sup>6</sup>. Consistent with this approach, the TPB will rely on approved course providers to develop units that comply with the requirements of a unit in the TASA including the Code as set out in this TPB(I).

### Topics

20. A unit in the TASA, including the Code, should include the following topics:

- (a) The objects of the TASA.
- (b) Registration process and eligibility requirements under the TASA, including knowledge of:
  - i. the fit and proper person requirement<sup>7</sup>
  - ii. prescribed qualifications and experience requirements (for individuals), or the requirement to have a sufficient number of individuals who are registered to provide tax agent services to a competent standard and to carry out supervisory arrangements (for companies and partnerships)
  - iii. relevant transitional provisions<sup>8</sup>.
- (c) The Code of Professional Conduct<sup>9</sup> including the underlying content of the professional and ethical standards required of registered tax practitioners that are contained in the Code in section 30-10 of the TASA.

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<sup>6</sup> For further information regarding the TPB's approach to approved course providers for the purpose of Board approved courses, which are referred to in the *Tax Agent Services Regulations 2009* (TASR), refer to Information sheet *TPB(I) 07/2011 Approval process for course providers*, available at [www.tpb.gov.au](http://www.tpb.gov.au)

<sup>7</sup> See Explanatory paper *TPB(EP) 02/2010 Fit and proper person*, available at [www.tpb.gov.au](http://www.tpb.gov.au)

<sup>8</sup> For the purposes of registration as a tax (financial) adviser, relevant transitional provisions refers to Schedule 1, Part 3 of the *Tax Laws Amendment (2013 Measures No. 3) Act 2013*.

<sup>9</sup> See Explanatory paper *TPB(EP) 01/2010 Code of Professional Conduct*, available at [www.tpb.gov.au](http://www.tpb.gov.au)



- (d) Administrative sanctions that may be imposed for a breach of the Code, including:
  - i. written cautions from the Board
  - ii. orders from the Board requiring specified action to be taken (including requiring a registered tax practitioner to complete a course of training or requiring a registered tax practitioner to practise under supervision)
  - iii. suspension of registration
  - iv. termination of registration.
  
- (e) Civil penalty provisions, including:
  - i. contraventions that apply to the conduct of entities that are not registered:
    - a. providing tax agent services without being registered
    - b. advertising tax agent services without being registered
    - c. representing that you are a registered tax practitioner without being registered
  - ii. contraventions applicable to the conduct of registered tax practitioners:
    - a. making false or misleading statements
    - b. using deregistered entities
    - c. improperly signing a declaration or other statement.
  
- (f) Board's power to apply to the Federal Court for an injunction.
  
- (g) Obligations to notify the TPB of a change of circumstances<sup>10</sup>.

21. Approved course providers must ensure that units in the TASA, including the Code, are regularly updated to take into account changes over time.

### Unit level and learning outcomes

- 22. The TPB's view is that an individual should have an appropriate level of knowledge of the topics listed at paragraph 20.
  
- 23. The appropriate level of knowledge for a registered BAS agent should be at a Certificate IV level, which is equivalent to a Level 4 as specified in the Australian Qualifications Framework (AQF)<sup>11</sup>. This means that individuals will have theoretical and practical knowledge and skills for specialised and/or skilled work and/or further learning.
  
- 24. For a registered tax agent or tax (financial) adviser, the appropriate level of knowledge should be at a Diploma level, which is equivalent to a Level 5 as specified in the AQF. This means that individuals will have specialised knowledge and skills for skilled/paraprofessional work and/or further learning.

<sup>10</sup> See section 30-35 of the *Tax Agent Services Act 2009*.

<sup>11</sup> See Australian Qualifications Framework 2011, available at [www.aqf.edu.au](http://www.aqf.edu.au)



25. Within this framework, the TPB considers that the criteria specified by the AQF in relation to the knowledge, skills and application of that knowledge and skills in relation to Level 4 (for BAS agents) and Level 5 (for tax agents and tax (financial) advisers) represents appropriate learning outcomes for the topics listed at paragraph 20.

### Structure of unit, mode of delivery and relationship to CPE

26. The topics specified in paragraph 20 should either form the basis of a standalone unit in the TASA, including the Code, or could be embedded in another course – for example, as part of a course in Australian taxation law that is approved by the Board or as part of a course in basic GST/BAS taxation principles that is approved by the Board.
27. The TPB is of the view that a hard-and-fast rule on the manner of delivery of a unit is not necessary. Provided that whatever manner is adopted in the unit involves an expectation that students will develop knowledge of the topics listed at paragraph 20 at the requisite level (see paragraphs 22 to 25), it is immaterial whether they are undertaking the unit in a face-to-face setting or via an online computer-based learning module or webinar, with an assessment at the end. The outcomes of the unit should be discernible by reference to how the unit is assessed.
28. Registered tax practitioners should ensure their knowledge of the TASA, including the Code, remains current. A registered tax practitioner should maintain the currency of their knowledge of the TASA, including the Code, by undertaking relevant CPE. The TPB considers that the completion of a unit, course or other study, which has been used for the purpose of gaining registration as a tax agent, BAS agent or tax (financial) adviser generally will not constitute a CPE activity<sup>12</sup>.

### Duration

29. A **standalone** unit in the TASA, including the Code, which covers the topics listed at paragraph 20 at the requisite depth and with an appropriate assessment, should be 3 hours, or half a day, in duration.
30. Similar requirements as to duration would apply to a unit in the TASA, including the Code, which is **embedded** in another course – for example, a course in Australian taxation law or a course in basic GST/BAS taxation principles that is approved by the Board.

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<sup>12</sup> For further information regarding the TPB's CPE policy for registered tax agents and BAS agents, refer to *TPB(EP) 04/2012 Continuing professional education policy requirements for registered tax agents and BAS agents from 30 June 2013*. For further information regarding the TPB's CPE policy for registered tax (financial) advisers, refer to *TPB(EP) 06/2014 Continuing professional education policy requirements for registered tax (financial) advisers*. Both of these documents are available at [www.tpb.gov.au](http://www.tpb.gov.au)



## Assessment

31. The TPB expects that knowledge of the unit requirements of the TASA, including the Code, is evidenced by appropriate assessment.
32. An appropriate assessment for a BAS agent should be at the Certificate IV level, which is equivalent to a Level 4 as specified in the AQF.
33. An appropriate assessment for a tax agent or tax (financial) adviser should be at the Diploma level, which is equivalent to a Level 5 as specified in the AQF.
34. The TPB accepts that certification style exams are generally on a pass/fail basis and the Board's view is that such an assessment framework may be appropriate for this unit. At the same time the TPB accepts that graduated results (pass, credit, distinction) may also be appropriate.
35. Assessments may occur by a variety of modes, including being conducted online, provided that suitable quality assurance mechanisms are in place to ensure the integrity of the examination process. For example, it is expected that a unit could be run as an online, computer-based module or webinar that applicants could undertake and then complete a form of assessment at the end of the module or webinar.

## More information

36. For more information on the requirements for registration as a tax agent, BAS agent or tax (financial) adviser, please visit the Board's website at [www.tpb.gov.au](http://www.tpb.gov.au)