



Australian Government



TAX PRACTITIONERS BOARD

# TPB Information Sheet

## TPB(I) 03/2011

### Agents conducting business in the capacity of trustee of a trust: registration considerations

#### **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 registration requirements for tax practitioners conducting business in the capacity of a trustee or a trust at the date of issue. 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 document as a final information sheet on 11 April 2011.

On 7 December 2016 the TPB updated this TPB(I) to further clarify the operation of the TASA to trust structures.

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## Application of the Tax Agent Services legislation to trusts

- 1 Businesses are sometimes conducted through a trust structure. This occurs when one or more trustees are appointed to hold and deal with trust property (in this case, the business) for the benefit of others. Trustees will commonly be individuals or companies.
- 2 Under the *Tax Agent Services Act 2009* (TASA), there is flexibility for a tax agent, BAS agent or tax (financial) adviser business to be conducted through a trust structure. In these circumstances, a registered individual or company needs to be a trustee of the trust.
- 3 The TASA applies to an **individual** registered in his or her capacity as a trustee of a trust in the same way as it applies to an individual registered in his or her own right.<sup>1</sup> Similarly, the TASA applies to a **company** registered in its capacity as a trustee in the same way as it applies to a company registered in its own right.<sup>2</sup>
- 4 Individual and company trustees can be registered under the TASA, however a trust cannot be registered as such, and tax agent services (including BAS services and tax (financial) advice services) can only be provided for a fee or other reward on behalf of the trust by one or more registered individual or company trustees.

## Registration of trustees

- 5 Where there are multiple trustees of a trust, only those trustees that are providing tax agent services for a fee or other reward on behalf of the trust are required to register. Any trustee seeking registration must be either an individual or a company.
- 6 If the trustee is an individual, the trustee will make an application for registration as an individual in its capacity as trustee of the trust. To gain registration, the trustee must meet the eligibility requirements applicable to individuals as set out in the TASA.<sup>3</sup>
- 7 If the trustee is a company, the trustee will make an application for registration as a company in its capacity as trustee for the trust. To gain registration, the trustee must meet the eligibility requirements applicable to companies as set out in the TASA.<sup>4</sup>
- 8 If there are multiple trustees of a trust jointly providing tax agent services for a fee or other reward, each trustee providing services must make an application for registration as an individual or a company (as the case may be) in its capacity as trustee for the

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<sup>1</sup> See paragraph 70-15(a) of the *Tax Agent Services Act 2009*.

<sup>2</sup> See paragraph 70-15(b) of the *Tax Agent Services Act 2009*.

<sup>3</sup> See subsection 20-5(1) of the *Tax Agent Services Act 2009*.

<sup>4</sup> See subsection 20-5(3) of the *Tax Agent Services Act 2009*.



trust. To gain registration, the entities must meet the eligibility requirements applicable to individuals or companies (as the case may be) as set out in the TASA.<sup>5</sup> For further information, see below under the heading '*Trusts in partnership*'.

- 9 It will be the responsibility of the registered trustee to ensure that tax agent services are provided to a competent standard and that the Code of Professional Conduct (Code) in the TASA is complied with.
- 10 Further information on the eligibility requirements for registration as an individual and company are available on the Board's website at [www.tpb.gov.au](http://www.tpb.gov.au).

Example 1

The James Family Trust wishes to carry on business as a registered tax agent. The James Family Trust has one trustee, being John James.

For the trust to gain registration, John James in his capacity as trustee of the trust must complete an application for registration as an individual tax agent.

Example 2

The Rex Bookkeeping Family Trust wishes to carry on business as a registered BAS agent. The Rex Bookkeeping Family Trust has one trustee, which is Rex Bookkeeping Pty Ltd.

Rex Bookkeeping Pty Ltd in its capacity as trustee of the trust will need to complete an application for registration as a company BAS agent.

Example 3

The Smith Financial Trust wishes to carry on business as a registered tax (financial) adviser. The Smith Financial Trust has six trustees, with only two trustees, Loretta Smith and Financial Guru Pty Ltd, intending to provide tax (financial) advice services on behalf of the Smith Financial Trust.

Loretta Smith in her capacity as trustee for the Smith Financial Trust will need to complete an application for registration as an individual tax (financial) adviser. Further, Financial Guru Pty Ltd in its capacity as trustee for the Smith Financial Trust will need to complete an application for registration as a company tax (financial) adviser. The four trustees that do not intend to provide tax (financial) advice services will not need to be registered.

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<sup>5</sup> See subsection 20-5(2) of the *Tax Agent Services Act 2009*.



## Trusts in partnership

- 11 Two or more trusts can commence an enterprise (such as a tax agent, BAS agent or tax (financial) adviser business) together and form a partnership. The partnership is between the trustees on behalf of their respective trusts. Accordingly, the partners, for the purposes of tax agent, BAS agent or tax (financial) adviser registration, are the individual or corporate trustees of the trusts.
- 12 For the purposes of registration under the TASA, a partnership can consist of:
- two or more individuals
  - two or more companies
  - two or more trustees of different trusts in their capacity as trustees<sup>6</sup>, or
  - a combination of individuals, companies and/or trustees.
- 13 Further information on the eligibility requirements for registration as a partnership is available on the Board's website at [www.tpb.gov.au](http://www.tpb.gov.au).

## Circumstances where trustees are not required to register

- 14 Generally, a trustee of a trust will be required to register if it intends to provide tax agent services (including BAS services and tax (financial) advice services) for a fee or other reward on behalf of the trust.
- 15 However, certain services are specifically exempt from being a tax agent service. This means that the relevant entity is not required to register to provide these exempt services.
- 16 Services that are exempt from being a tax agent service and do not require the entity to be registered to provide them include, but are not limited to:
- a) a service provided by a trustee of a trust (or a related entity of the trustee) to the trust in relation to the trust;<sup>7</sup>
  - b) a service provided by a trustee of a trust (or a related entity of the trustee) to a wholly owned or controlled entity of the trust in relation to the trust;<sup>8</sup> and
  - c) a service provided as a legal service in the course of acting for a trust or deceased estate as trustee or legal personal representative.<sup>9</sup>

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<sup>6</sup> Trustees of the same trust can only be registered as individuals or companies; however trustees of different trusts may register as a partnership if they intend to provide tax agent services (including BAS services and tax (financial) advice services) jointly as an enterprise.

<sup>7</sup> See regulation 13(1)(d) of the *Tax Agent Services Regulations 2009*.

<sup>8</sup> See regulation 13(1)(e) of the *Tax Agent Services Regulations 2009*.

<sup>9</sup> See subsections 50-5(3) and (4) of the *Tax Agent Services Act 2009*.