

# **Advanced Income Tax Law**

# Chapter 9

## Tax Agents

# Regulatory Framework

- ☐ Tax Agent Services Act 2009
- ☐ Tax Agent Services Regulations 2009
- ☐ Tax Practitioners Board (TPB)

# Regulatory Framework

## Tax Agent Services Act 2009

Key features of the Tax Agent Services Act 2009 are:

- Establishment of a national Tax Practitioners Board (TPB).
- The registration and regulation of Business Activity Statement (BAS) service providers as BAS Agents. The minimum educational requirements and relevant experience tests will be less demanding than for registration as a tax agent.
- A legislated Code of Professional Conduct that defines and governs the professional and ethical standards of all registered tax practitioners.

# Regulatory Framework

## Tax Agent Services Act 2009

- A wider and more flexible range of disciplinary sanctions which may be imposed by the TPB.
- Civil penalties and injunctions to replace the existing criminal penalties for certain misconduct by tax agents and unauthorised entities.

# Regulatory Framework

## Tax Agent Services Regulations 2009

Key elements of the Regulations include:

- the qualification and relevant work experience requirements for registration as a tax agent and a Business Activity Statement (BAS) agent.
- the requirements for recognition as a recognised professional association and a recognised BAS agent.
- the application fees for registration as a tax agent or BAS agent.

# Regulatory Framework

## Tax Practitioners Board (TPB)

Key functions of the TPB include:

- Administering the system of registration of tax agents and BAS agents.
- Investigating applications for registration and conduct which may breach the Code of Conduct.
- Imposing administrative sanctions for non-compliance.

# Tax Agent Registration

## Initial registration

An individual, company or partnership wishing to be registered as a tax agent must apply to the TPB.

Registration comes into force on the day that it is granted for a period of three years, unless it is terminated, suspended, surrendered or the agent dies.



# Tax Agent Registration

## Individual applicants

An individual applicant must satisfy the TPB that:

- they are a *fit and proper persons* to perform tax agent services and to transact tax related business on behalf of the taxpayer, and
- meet the relevant experience and education requirements.

# Tax Agent Registration

## Partnership applications

A partnership is eligible for registration if:

- each partner is a “fit and proper person” standard.
- the partnership has sufficient registered tax agents to provide and supervise tax agent services to a competent standard.
- no partner is an undischarged bankrupt.

# Tax Agent Registration

## Company applicants

A company is eligible for tax agent registration if:

- each director is a “fit and proper person”.
- the company is not under external administration.
- the company has sufficient registered tax agents to provide and supervise tax agent services to a competent standard.

# Tax Agent Registration

## Re-registration

Tax agents must apply for re-registration every 3 years.

Re-registration requirements are generally the same as for initial registration.

# Qualifications and Relevant Experience Requirements

The *Tax Agent Services Regulations 2009* set out minimum requirements for registration as a tax agent with regard to:

Academic qualifications

and

Relevant experience

# Academic Qualifications

The applicant must have successfully completed the academic requirements for the award of degree, diploma or other qualification from:

- an Australian tertiary institution, or
- An Australian registered training organisation (e.g. TAFE), or
- have qualified for admission to legal practice.

and completed a course which the TPB certifies to represent a course of study in accountancy.

Note that a pass in Australian taxation law and commercial law or its equivalents is required.

# Relevant Experience

In order to be a fit and proper person, an individual applicant must also satisfy the *relevant experience* requirements.

*Relevant experience* is experience as a salary and wage employee under an employer's supervision.

It does not include self-employment or sub-contracting experience.

The employment must be exercised under the control and supervision of a registered tax agent.

# Relevant Experience

The Tax Agent Services Regulations 2009 require that the applicant's work experience must include a *substantial involvement* in one or more of the following types of *tax agent services*:

- A BAS service; or,
- preparing or lodging an approved form about a taxpayer's liabilities, obligations or entitlements 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,
- dealing with the Commissioner on behalf of a taxpayer in relation to a taxation law.

*Substantial involvement* is taken as the applicant's major duty while employed.



# Ethics and Professional Responsibility

## Code of Professional Conduct

The core principles of the Code of Professional Conduct for registered tax agents are organised into 5 categories:

- Honesty and integrity
- Independence
- Confidentiality
- Competence
- Proper administration of tax law, following the direction of the TPB

# **Ethics and Professional Responsibility**

## **Continuing Professional Education (CPE)**

A key part of the Code of Professional Conduct is for tax and BAS agents to maintain their knowledge and skills relevant to the tax agent and BAS services they provide.

The TPB has developed a continuing professional education (CPE) policy to assist agents to meet their obligations under the Code.

# Ethics and Professional Responsibility

## Charging of Fees

Only registered tax agents (or a person exempted from registration) may charge a fee for providing tax agent services or transacting business for a taxpayer in any income tax matter.

# Ethics and Professional Responsibility

## Advertising

It is an offence for a person, other than a registered tax agent, to advertise that they will provide a tax agent service.

# Ethics and Professional Responsibility

## Supervision and Control

An offence is committed if a registered tax agent signs any document or declaration made in relation to a taxpayer that was prepared by an entity *other than* an individual working under the supervision and control of a registered tax agent.

# Ethics and Professional Responsibility

## Negligence

Tax agents may be sued at common law by clients for negligence or breach of contract to recover damages.

Tax agent negligence does not relieve the client of liability to pay any fine or penalty to the ATO.

# Ethics and Professional Responsibility

## Professional Indemnity Insurance (PII)

Tax agents are required to have adequate PII cover that meets the TPB's minimum requirements.

Adequate PII cover is cover that will satisfactorily indemnify an agent against civil liability that may arise in the agent's provision of tax services.

# “Safe Harbour” Protection

The ATO administers ‘safe harbour’ provisions set out in the *Taxation Administration Act 1953* (TAA). The TAA contains specific provisions that may provide a client who engages a registered tax agent with statutory protection from administrative penalties for tax returns incorrect due to error, or for late lodgement.

To obtain the benefits of "safe harbour" protection, the legislation requires the taxpayer to provide the registered tax agent with "all relevant taxation information" to enable accurate statements to be provided to the ATO.



# **“Safe Harbour” Protection**

## **Terms of Engagement letter**

A Terms of engagement letter (or more simply an engagement letter) is a form that sets out the terms, conditions and expectations between the taxpayer and their tax agent.

Although an engagement letter is not mandatory under the law, they are certainly a good idea in light of the safe harbour provisions of the TAS Act.

# **“Safe Harbour” Protection**

## **Tax Return Checklist**

The tax return (or interview or assignment) checklist is a series of questions to assist clients and tax practitioners complete tax returns efficiently and consistently and help identify relevant tax issues for special consideration.

# Tax Agent Lodgment Program

Tax agents are required to lodge client returns according to their tax agent Lodgment Program.

The Lodgment Program is structured to accommodate progressive lodgment of documents throughout the year and it is designed to enable tax agents to spread their work over an income year, and considers ATO revenue obligations, and government and community expectations.

# Tax Agent Lodgment Program

The concessional lodgment dates granted to tax agents for the 2018/19 income year are as follows:

Lodgment due date	Description
<b>31 October 2020</b>	Income tax return for all entities where one or more prior year income tax returns were outstanding as at 30 June 2020.
<b>15 January 2021</b>	Income tax return for taxable large/medium business taxpayers as per latest year lodged - all entities other than individuals.
<b>28 February 2021</b>	Income tax return for new registrant large/medium business taxpayers and SMSFs.
<b>15 May 2021</b>	Income tax return for all other entities not required earlier.

# Tax Agent Lodgment Program

## 85% on-time lodgment requirement

Since 1 July 2013, tax agents have been required to lodge 85% or more of their clients' current year returns by the lodgment program due date, or by the deferred due date if a deferral is granted.



# Termination of Registration

On-going registration may be terminated if a tax agent:

- is convicted of a serious taxation offence.
- is convicted of an offence involving fraud or dishonesty.
- is penalised for being a promoter of a tax exploitation scheme.

# Termination of Registration

On-going registration may be terminated if a tax agent:

- is penalised for implementing a scheme that has been promoted on the basis of conformity with a product ruling in a way that is materially different from that described in the product ruling.
- becomes an undischarged bankrupt or goes into external administration.
- is sentenced to a term of imprisonment.

# Right of Appeal Against TPB Decisions

An agent who has had their registration terminated may appeal against the decision to the Administrative Appeals Tribunal (AAT).

An agent who has had their application for registration (or re-registration) refused by the TPB may also appeal against the decision to the AAT.



# Online Services for Tax Agents

- Tax Agent Portal
- Practitioner Lodgment Service (PLS)
- Update Client Australian Business Number (ABN) details on the Australian Business Register (ABR)
- Access Electronic Forms