



# Tax Agent Services Act 2009

No. 13, 2009

An Act to establish the Tax Practitioners Board and to provide for the registration of tax agents and BAS agents, and for related purposes

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Tax Agent Services Act 2009

No. 13, 2009

An Act to establish the Tax Practitioners Board and to provide for the registration of tax agents and BAS agents, and for related purposes

[Assented to 26 March 2009]

The Parliament of Australia enacts:

Part 1—Introduction

Division 1—Preliminary

Table of sections

- 1-1 Short title
- 1-5 Commencement
- 1-10 Extension of Act to external Territories
- 1-15 General administration of Act

1-1 Short title

This Act may be cited as the Tax Agent Services Act 2009.

1-5 Commencement

(1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Commencement information		
Column 1	Column 2	Column 3
Provision(s)	Commencement	Date/Details
1. Part 1 and anything in this Act not elsewhere covered by this table	The day on which this Act receives the Royal Assent.	26 March 2009
2. Parts 2 to 5	A single day to be fixed by Proclamation.  A Proclamation must not specify a day that occurs before the day on which the Tax Agent Services (Transitional Provisions and Consequential Amendments) Act 2009 receives the	1 March 2010  (see F2009L04314)

Royal Assent.

However, if any of the provision(s) do not commence within the period of 9 months beginning on the day on which the Tax Agent Services (Transitional Provisions and Consequential Amendments) Act 2009 receives the Royal Assent, they commence on the first day after the end of that period. If the provision(s) commence in this way, the Minister must announce by notice in the Gazette the day on which the provision(s) commenced.

3. Sections 60-1 to 60-90	The day on which this Act receives the Royal Assent.	26 March 2009
4. Sections 60-95 to 70-20	At the same time as the provision(s) covered by table item 2.	1 March 2010
5. Sections 70-25 to 70-45	The day on which this Act receives the Royal Assent.	26 March 2009
6. Sections 70-50 and 70-55	At the same time as the provision(s) covered by table item 2.	1 March 2010
7. Part 8	The day on which this Act receives the Royal Assent.	26 March 2009

Note: This table relates only to the provisions of this Act as originally passed by both Houses of the Parliament and assented to. It will not be expanded to deal with provisions inserted in this Act after assent.

(2) Column 3 of the table contains additional information that is not part of this Act. Information in this column may be added to or edited in any published version of this Act.

#### 1-10 Extension of Act to external Territories

This Act extends to every external Territory.

#### 1-15 General administration of Act

The Board has the general administration of this Act.



## Division 2—Overview of this Act

### Table of Subdivisions

2-A Objects

2-B Guide

### Subdivision 2-A—Objects

#### Table of sections

2-5 Object

2-5 Object

The object of this Act 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 Board to register tax agents and BAS agents; and
- (b) introducing a \*Code of Professional Conduct for \*registered tax agents and BAS agents; and
- (c) providing for sanctions to discipline registered tax agents and BAS agents.

### Subdivision 2-B—Guide

#### Table of sections

2-10 General guide to each Part

2-10 General guide to each Part

(1) You need to be registered to provide \*tax agent services for a fee or to engage in other conduct connected with providing such services. Part 2 sets out the requirements for registration.

(2) Once registered, you must comply with several requirements, in particular, the \*Code of Professional Conduct. The Code is set out in Part 3.

(3) Part 4 sets out the circumstances in which your registration can be terminated.

(4) Part 5 provides for civil penalties aimed at ensuring your compliance with this Act.

(5) Part 6 establishes the Tax Practitioners Board and sets out the Board's functions and powers. The Board may investigate breaches of this Act and has certain reporting obligations.

(6) Part 7 contains miscellaneous provisions, mainly administrative and machinery provisions relating to the operation of this Act.

(7) Part 8 contains the Dictionary, which sets out a list of most of the terms that are defined in this Act. It also sets out the meanings of some important concepts and rules on how to interpret this Act.

## Division 3—Explanation of the use of defined terms

### Table of sections

3-5 When defined terms are identified

3-10 When defined terms are not identified

3-5 When defined terms are identified

(1) Many of the terms used in this Act are defined in the Dictionary, starting at section 995-1, to the Income Tax Assessment Act 1997. However, some terms used in this Act are only defined in this Act.

Note: Expressions in the Income Tax Assessment Act 1997 (other than the expression “this Act”) have the same meaning in this Act as well, see subsection 90-1(2).

(2) Most defined terms in this Act and the Income Tax Assessment Act 1997 are identified by an asterisk at the start of the term: as in “\*BAS service”.

3-10 When defined terms are not identified

(1) Once a defined term has been identified by an asterisk, later occurrences of the term in the same subsection are not usually asterisked.

(2) Terms are not asterisked in the \*Guides, headings or notes contained in this Act.

(3) The term “Board” is not identified with an asterisk.

(4) If a term used in the Income Tax Assessment Act 1997 is used in this Act and the term is not identified with an asterisk in that Act, the term is not identified with an asterisk in this Act.

Note: For expressions in the Income Tax Assessment Act 1997 that are not identified with an asterisk, see subsection 2-15(3) of that Act.

## Part 2—Registration

### Division 20—Registration

#### Table of Subdivisions

20-A Eligibility for registration

20-B Applying for registration

20-C Renewing registration

#### Guide to this Division

20-1 What this Division is about

You must be registered to provide tax agent services for a fee or to engage in other conduct connected with providing such

services. You will be eligible for registration if you are a fit and proper person and have appropriate qualifications and experience.

If you are eligible and apply to the Tax Practitioners Board for registration as a registered tax agent or BAS agent, you will be registered for a period of at least 3 years. Your registration may be subject to conditions. You may seek to vary these conditions.

Certain events, mainly relating to criminal convictions and bankruptcy, may affect your continued registration.

You may also apply to have your registration renewed.

#### Subdivision 20-A—Eligibility for registration

##### Table of sections

- 20-5 Eligibility for registration as registered tax agent or BAS agent
- 20-10 Regulations may prescribe system regarding professional associations
- 20-15 Criteria for determining whether an individual is a fit and proper person
- 20-5 Eligibility for registration as registered tax agent or BAS agent

##### Individuals

(1) An individual, aged 18 years or more, is eligible for registration as a \*registered tax agent or BAS agent if the Board is satisfied that:

(a) the individual is a fit and proper person; and

(b) the individual meets the requirements prescribed by the regulations (including, but not limited to, requirements relating to qualifications and experience) in respect of registration as a registered tax agent or BAS agent.

Note 1: An individual in the capacity of trustee of a trust can be registered: see section 70-15.

Note 2: Subsection (4) provides for an exception to paragraph (1)(b) for pre-1988 tax agents and nominees.

##### Partnerships

(2) A partnership is eligible for registration as a \*registered tax agent or BAS agent if the Board is satisfied that:

(a) each partner who is an individual is:

(i) aged 18 years or more; and

(ii) a fit and proper person; and

(b) if a company is a partner:

(i) each director of the company is a fit and proper person; and

(ii) the company is not under external administration; and

(iii) the company has not been convicted of a \*serious taxation offence or an offence involving fraud or dishonesty during the previous 5 years; and

(c) the partnership has:

(i) in the case of registration as a \*registered tax agent—a sufficient number of individuals, being registered tax agents, to provide \*tax agent services to a competent standard, and to carry out supervisory arrangements; or

(ii) in the case of registration as a \*registered BAS agent—a sufficient number of individuals, being registered tax agents or BAS agents, to provide \*BAS services to a competent standard, and to carry out supervisory arrangements.

#### Companies

(3) A company is eligible for registration as a \*registered tax agent or BAS agent if the Board is satisfied that:

(a) each director of the company is a fit and proper person; and

(b) the company is not under external administration; and

(c) the company has not been convicted of a \*serious taxation offence or an offence involving fraud or dishonesty during the previous 5 years; and

(d) the company has:

(i) in the case of registration as a \*registered tax agent—a sufficient number of individuals, being registered tax agents, to provide \*tax agent services to a competent standard and to carry out supervisory arrangements; or

(ii) in the case of registration as a \*registered BAS agent—a sufficient number of individuals, being registered tax agents or BAS agents, to provide \*BAS services to a competent standard, and to carry out supervisory arrangements.

Note: A company in the capacity of trustee of a trust can be registered: see section 70-15.

#### Special rule about pre-1988 tax agents

(4) An individual is eligible for registration as a \*registered tax agent even if the Board is not satisfied that the individual satisfies the requirements mentioned in paragraph (1)(b) if:

(a) the individual was 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 the commencement of item 12 of Schedule 1 to the Tax Agent Services (Transitional Provisions and Consequential Amendments) Act 2009) at both of the following times:

(i) immediately before the commencement of this Act;

(ii) immediately before the commencement of section 39 of the Taxation Laws Amendment Act (No. 2) 1988;

and

(b) the individual is otherwise eligible for registration as a registered tax agent.

#### 20-10 Regulations may prescribe system regarding professional associations

The regulations may provide for a system to allow the Board to accredit professional associations for the purposes of recognising professional qualifications and experience that are relevant to the registration of individuals as \*registered tax

agents and BAS agents.

#### 20-15 Criteria for determining whether an individual is a fit and proper person

In deciding whether it is satisfied that an individual is a fit and proper person, the Board must have regard to:

(a) whether the individual is of good fame, integrity and character; and

(b) without limiting paragraph (a):

(i) whether an event described in section 20-45 has occurred during the previous 5 years; and

(ii) whether the individual had the status of an undischarged bankrupt at any time during the previous 5 years; and

(iii) whether the individual served a term of imprisonment, in whole or in part, at any time during the previous 5 years.

#### Subdivision 20-B—Applying for registration

##### Table of sections

20-20 Application for registration

20-25 Registration

20-30 Board to notify you of grant of registration

20-35 Commencement and duration of registration

20-40 Variation of conditions of registration

20-45 Certain events may affect your continued registration

#### 20-20 Application for registration

(1) You may apply to the Board for registration, including renewal of registration, as a \*registered tax agent or BAS agent.

(2) An application must be in a form approved by the Board and must be accompanied by:

(a) any documents that are required by the Board; and

(b) the prescribed application fee.

(3) The Board must give the application fee to the Commissioner, who receives the fee on behalf of the Commonwealth.

(4) If you withdraw your application:

(a) within 30 days after the day on which the application was made; and

(b) before the application has been granted or refused;

the Commissioner must refund the application fee to you.

## 20-25 Registration

### Grant of application for registration

(1) If you have applied to the Board for a type of registration, the Board must grant your application if you are eligible for registration of that type. Otherwise, the Board must reject your application.

(2) The Board must decide your application within 6 months of receiving it.

(3) If the Board does not decide your application within 6 months of receiving it, the Board is taken to have rejected your application. However, this does not apply if your application is for renewal of your registration.

Note: For renewals of registration, see section 20-50.

### Period of registration

(4) If the Board grants your application, the Board must also determine the period for which you are registered. The period must be for at least 3 years.

### Conditions of registration

(5) If the Board considers it appropriate to do so, the Board may impose one or more conditions to which your registration is subject.

(6) If a condition is imposed, it must relate to the subject area in respect of which you may provide \*tax agent services.

(7) In deciding whether to impose a condition, the Board must have regard to the requirements prescribed by regulations under paragraph 20-5(1)(b) in relation to:

(a) if you are an individual—your registration as a \*registered tax agent or BAS agent; and

(b) if you are a partnership or company—the registration of individuals who will provide \*tax agent services for you.

## 20-30 Board to notify you of grant of registration

### Notification of decision

(1) The Board must, within 30 days of its decision to grant or reject your application for registration, notify you in writing of:

(a) the decision; and

(b) if the Board rejects your application—the reasons for the decision; and

(c) if the Board grants your application—the following:

(i) the period of your registration;

(ii) any conditions to which your registration is subject.

However, failure to comply does not affect the validity of the Board's decision.

(2) The Board must also notify the Commissioner of the Board's decision.

#### Professional indemnity insurance

(3) If the Board grants your application, the Board may, by written notice, require you to maintain professional indemnity insurance as specified in the notice. The notice may be given to you at the same time as the notice referred to in subsection (1), or subsequently.

#### 20-35 Commencement and duration of registration

Your registration:

(a) commences:

(i) if it is a renewal of your registration—on the day after the day on which your previous registration expired;

or

(ii) in any other case—on the day specified in the notice given under subsection 20-30(1); and

(b) expires at the end of the period determined by the Board, unless it is terminated before that time.

Note: Registration may be terminated under Subdivision 30-B or 40-A.

#### 20-40 Variation of conditions of registration

(1) The Board may vary a condition to which your registration as a \*registered tax agent or BAS agent is subject if:

(a) you make an application for variation of the condition; and

(b) the Board is satisfied that it is appropriate to vary the condition.

(2) Your application must be:

(a) in a form approved by the Board; and

(b) accompanied by any information or documents that are required by the Board.

#### 20-45 Certain events may affect your continued registration

The following events may affect your continued registration as a \*registered tax agent or BAS agent:

(a) you are convicted of a \*serious taxation offence;

(b) you are convicted of an offence involving fraud or dishonesty;

(c) you are penalised for being a \*promoter of a \*tax exploitation scheme;

(d) you are 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;

(e) you become an undischarged bankrupt or go into external administration;

(f) you are sentenced to a term of imprisonment.

#### Subdivision 20-C—Renewing registration

##### Table of sections

20-50 Renewal of registration

20-50 Renewal of registration

(1) The Board may renew your registration under section 20-25 if you make an application for renewal:

(a) at least 30 days before the day on which your registration expires; or

(b) within such shorter period as the Board allows.

(2) Your registration is taken to continue until your application has been decided.

(3) You may apply for renewal of registration during a period when your registration is suspended under section 30-25.

#### Part 3—The Code of Professional Conduct

##### Division 30—The Code of Professional Conduct

##### Table of Subdivisions

30-A The Code of Professional Conduct

30-B Your liability for administrative sanctions

30-C Notifying a change of circumstances

##### Guide to this Division

30-1 What this Division is about

The Code of Professional Conduct regulates your personal and professional conduct as a registered tax agent or BAS agent.

If the Board investigates you and finds that you have failed to comply with the Code, the Board may give you a written caution, order you to take specified actions, or suspend or terminate your registration.

You must also notify the Board if certain circumstances change, including if you cease to meet the requirements for registration.

##### Subdivision 30-A—The Code of Professional Conduct

##### Table of sections

30-5 Application of the Code of Professional Conduct

30-10 The Code of Professional Conduct



### 30-5 Application of the Code of Professional Conduct

The \*Code of Professional Conduct applies to you if you are a \*registered tax agent or BAS agent.

### 30-10 The Code of Professional Conduct

#### Honesty and integrity

- (1) You must act honestly and with integrity.
- (2) You must comply with the \*taxation laws in the conduct of your personal affairs.
- (3) If:
  - (a) you receive money or other property from or on behalf of a client; and
  - (b) you hold the money or other property on trust;

you must account to your client for the money or other property.

#### Independence

- (4) You must act lawfully in the best interests of your client.
- (5) You must have in place adequate arrangements for the management of conflicts of interest that may arise in relation to the activities that you undertake in the capacity of a \*registered tax agent or BAS agent.

#### Confidentiality

(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.

#### Competence

- (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.

#### Other responsibilities

- (11) You must not knowingly obstruct the proper administration of the \*taxation laws.
- (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.
- (13) You must maintain the professional indemnity insurance that the Board requires you to maintain.

(14) You must respond to requests and directions from the Board in a timely, responsible and reasonable manner.

#### Subdivision 30-B—Your liability for administrative sanctions

##### Table of sections

30-15 Sanctions for failure to comply with the Code of Professional Conduct

30-20 Orders

30-25 Suspension

30-30 Termination

30-15 Sanctions for failure to comply with the Code of Professional Conduct

(1) This Subdivision applies if the Board is satisfied, after conducting an investigation under Subdivision 60-E, that you have failed to comply with the \*Code of Professional Conduct.

(2) The Board may do one or more of the following:

- (a) give you a written caution;
- (b) give you an order under section 30-20;
- (c) suspend your registration under section 30-25;
- (d) terminate your registration under section 30-30.

30-20 Orders

(1) The Board may make an order that requires you take one or more actions including, but not limited to, the following:

- (a) completing a course of education or training specified in the order;
- (b) providing \*tax agent services for which you are registered only under the supervision of a \*registered tax agent or BAS agent specified in the order;
- (c) providing only those tax agent services that are specified in the order.

(2) The Board must notify you in writing of the order. The order may specify the following, as appropriate:

- (a) the period of time within which you must complete the requirements specified in the order;
- (b) the period of time during which the order applies.

30-25 Suspension

(1) The Board may, by notice in writing, suspend your registration for a period determined by the Board.

Note: The Board must cause notice of its decision to be published in the Gazette: see section 60-140.

(2) You must not provide \*tax agent services during the period of suspension.

Note: If you provide tax agent services while suspended, you may contravene a civil penalty provision: see subsection (4) and Subdivision 50-A.

(3) If, when the Board suspends your registration under subsection (1), your registration is already suspended, suspension is for a further period that the Board determines is appropriate. The further period commences at the end of the period of suspension.

(4) While you are suspended, you are taken not to be a \*registered tax agent or BAS agent, except for the purposes of:

(a) Part 2 (Registration), Subdivision 30-C (Notifying a change of circumstances) and Part 4 (Termination of registration); and

(b) this Division.

### 30-30 Termination

The Board may terminate your registration.

Note: For notice and effect of termination, see Subdivision 40-B.

### Subdivision 30-C—Notifying a change of circumstances

#### Table of sections

30-35 Obligation to notify a change of circumstances

30-35 Obligation to notify a change of circumstances

#### Individuals

(1) If you are a \*registered tax agent or BAS agent and an individual, you must notify the Board in writing whenever:

(a) you cease to meet one of the \*tax practitioner registration requirements; or

(b) an event affecting your continued registration, as described in section 20-45, occurs.

#### Partnerships

(2) If you are a \*registered tax agent or BAS agent and a partnership, you must notify the Board in writing whenever:

(a) you cease to meet one of the \*tax practitioner registration requirements; or

(b) an event affecting your continued registration, as described in section 20-45, occurs in respect of:

(i) a partner in the partnership; or

(ii) a director of a company that is a partner in the partnership; or

(c) the composition of the partnership changes.

#### Companies

(3) If you are a \*registered tax agent or BAS agent and a company, you must notify the Board in writing whenever:

(a) you cease to meet one of the \*tax practitioner registration requirements; or

(b) an event affecting your continued registration, as described in section 20-45, occurs in respect of a director of the company; or

(c) an individual becomes, or ceases to be, a director of the company.

When notice must be given

(4) You must give the notice within 30 days of the day on which you become, or ought to have become, aware that the event occurred.

Note: A breach of this subsection is a breach of section 8C of the Taxation Administration Act 1953 and of subsection 30-10(2) of this Act.

Part 4—Termination of registration

Division 40—Termination of registration

Table of Subdivisions

40-A Grounds for terminating registration

40-B Notice and effect of termination

Guide to this Division

40-1 What this Division is about

Your registration may be terminated if an event occurs that affects your continued registration (see section 20-45), you cease to meet the tax practitioner registration requirements or you breach a condition of your registration. If your registration is terminated, the Board may also determine a period during which you may not apply for registration.

Subdivision 40-A—Grounds for terminating registration

Table of sections

40-5 Termination of registration—individuals

40-10 Termination of registration—partnerships

40-15 Termination of registration—companies

40-5 Termination of registration—individuals

(1) If you are a \*registered tax agent or BAS agent and an individual, the Board may terminate your registration if:

(a) an event affecting your continued registration, as described in section 20-45, occurs; or

(b) you cease to meet one of the \*tax practitioner registration requirements; or

(c) you breach a condition of your registration.

Note: The Board may also terminate your registration for breach of the Code of Professional Conduct: see Subdivision 30-B.

(2) The Board must terminate your registration if:

(a) you surrender your registration by notice in writing to the Board; or

(b) you die.

#### 40-10 Termination of registration—partnerships

(1) If you are a \*registered tax agent or BAS agent and a partnership, the Board may terminate your registration if:

(a) you cease to meet one of the \*tax practitioner registration requirements; or

(b) you breach a condition of your registration.

Note: The Board may also terminate your registration for breach of the Code of Professional Conduct: see Subdivision 30-B.

(2) The Board must terminate your registration if you surrender your registration by notice in writing to the Board.

(3) If an event affecting your continued registration, as described in section 20-45, occurs in respect of a partner in your partnership, then the Board may, by notice in writing, require you to remove the partner from your partnership within the period specified in the notice.

Note: A failure to comply with a notice given under this subsection is a breach of subsection 30-10(14).

(4) If an event affecting your continued registration, as described in section 20-45, occurs in respect of a director of a company that is a partner in your partnership, then the Board may, by notice in writing, require:

(a) you to remove the partner from your partnership; or

(b) the company to remove the director;

within the period specified in the notice.

Note: A failure to comply with a notice given under this subsection is a breach of subsection 30-10(14).

(5) In determining the period, the Board must have regard to:

(a) for the purpose of subsection (3) and paragraph (4)(a)—the requirements of any \*Australian law in relation to the removal of partners from partnerships; and

(b) for the purpose of paragraph (4)(b)—any requirement of the Corporations Act 2001 in relation to the removal of directors.

#### 40-15 Termination of registration—companies

(1) If you are a \*registered tax agent or BAS agent and a company, the Board may terminate your registration if:

- (a) an event affecting your continued registration, as described in section 20-45, occurs; or
- (b) you cease to meet one of the \*tax practitioner registration requirements; or
- (c) you breach a condition of your registration.

Note: The Board may also terminate your registration for breach of the Code of Professional Conduct: see Subdivision 30-B.

(2) The Board must terminate your registration if:

- (a) you surrender your registration by notice in writing to the Board; or
- (b) you cease to exist.

(3) If an event affecting your continued registration, as described in section 20-45, occurs in respect of a director of your company, then the Board may, by notice in writing, require you to remove the director from the board of directors within the period specified in the notice. In determining the period, the Board must have regard to any requirement of the Corporations Act 2001 in relation to the removal of directors.

Note: A failure to comply with a notice given under this subsection is a breach of subsection 30-10(14).

Subdivision 40-B—Notice and effect of termination

Table of sections

40-20 Notification of decision to terminate registration and when termination takes effect

40-25 Period during which you may not apply for registration

40-20 Notification of decision to terminate registration and when termination takes effect

(1) If the Board terminates your registration, the Board must, within 30 days of the decision to terminate your registration, notify you in writing of:

- (a) the decision and the reasons for the decision; and
- (b) any determination under section 40-25 of a period during which you are not eligible to apply for registration.

However, a failure to notify does not affect the validity of the Board's decision.

Note 1: The Board may terminate your registration under Subdivision 30-B or 40-A.

Note 2: The Board must cause notice of its decision to be published in the Gazette: see section 60-140.

(2) The termination takes effect on the day specified in the notice given under subsection (1). The day specified in the notice must be at least 28 days after the date of the notice.

(3) The Board must also notify the Commissioner of the Board's decision and the reasons for the decision.

40-25 Period during which you may not apply for registration

(1) If the Board terminates your registration, the Board may also determine a period, of not more than 5 years, during which you may not apply for registration.

(2) Subsection (1) does not apply if your registration was terminated because:

- (a) you surrendered your registration; or
- (b) you became an undischarged bankrupt; or
- (c) you went into external administration.

## Part 5—Civil penalties

### Division 50—Civil penalties

#### Table of Subdivisions

50-A Conduct that is prohibited without registration

50-B Other civil penalties

50-C Obtaining an order for a civil penalty

#### Guide to this Division

##### 50-1 What this Division is about

This Division contains civil penalty provisions. If you contravene a civil penalty provision, the Board may apply to the Federal Court for an order that you pay a pecuniary penalty.

You contravene a civil penalty provision if you are unregistered and provide tax agent services for a fee, advertise that you can provide tax agent services or represent yourself as registered.

You also contravene a civil penalty provision if you are registered and you make a false or misleading statement, employ or use the services of an entity whose registration has been terminated, or sign a declaration or statement that was prepared by an unregistered entity who was not working under the supervision or control of a registered tax agent or BAS agent.

##### Subdivision 50-A—Conduct that is prohibited without registration

#### Table of sections

50-5 Providing tax agent services if unregistered

50-10 Advertising tax agent services if unregistered

50-15 Representing that you are a registered tax agent or BAS agent if unregistered

50-5 Providing tax agent services if unregistered

(1) You contravene this subsection if:

(a) you provide a service that you know, or ought reasonably to know, is a \*tax agent service; and

(b) the tax agent service is not a \*BAS service; and

(c) you charge or receive a fee or other reward for providing the tax agent service; and

(d) you are not a \*registered tax agent; and

(e) if you provide the tax agent service as a legal service—either:

(i) you are prohibited, under a \*State law or \*Territory law that regulates legal practice and the provision of legal services, from providing that tax agent service; or

(ii) subject to subsection (3), the service consists of preparing, or lodging, a return or a statement in the nature of a return.

Civil penalty:

(a) for an individual—250 penalty units; and

(b) for a body corporate—1,250 penalty units.

Note: Subdivision 50-C of this Act and Subdivision 298-B of Schedule 1 to the Taxation Administration Act 1953 determine the procedure for obtaining a civil penalty order against you.

(2) You contravene this subsection if:

(a) you provide a service that you know, or ought reasonably to know, is a \*BAS service; and

(b) you charge or receive a fee or other reward for providing the BAS service; and

(c) you are not a \*registered tax agent or BAS agent; and

(d) if you provide the BAS service as a legal service—either:

(i) you are prohibited, under a \*State law or \*Territory law that regulates legal practice and the provision of legal services, from providing that BAS service; or

(ii) subject to subsection (4), the service consists of preparing, or lodging, a return or a statement in the nature of a return; and

(e) if the BAS service relates to imports or exports to which an \*indirect tax law applies—you are not a customs broker licensed under Part XI of the Customs Act 1901.

Civil penalty:

(a) for an individual—250 penalty units; and

(b) for a body corporate—1,250 penalty units.

Note: Subdivision 50-C of this Act and Subdivision 298-B of Schedule 1 to the Taxation Administration Act 1953 determine the procedure for obtaining a civil penalty order against you.



(3) Subparagraph (1)(e)(ii) does not apply if you provide the \*tax agent service as a legal service in the course of acting for a trust or deceased estate as trustee or \*legal personal representative.

(4) Subparagraph (2)(d)(ii) does not apply if you provide the \*BAS service as a legal service in the course of acting for a trust or deceased estate as trustee or \*legal personal representative.

(5) If you wish to rely on subsection (3) or (4) in civil penalty proceedings, you bear an evidential burden in relation to that matter.

#### 50-10 Advertising tax agent services if unregistered

(1) You contravene this subsection if:

(a) you advertise that you will provide a \*tax agent service; and

(b) the tax agent service is not a \*BAS service; and

(c) you are not a \*registered tax agent; and

(d) if the tax agent service would be provided as a legal service—either:

(i) you are prohibited, under a \*State law or \*Territory law that regulates legal practice and the provision of legal services, from providing that tax agent service; or

(ii) subject to subsection (3), the service would consist of preparing, or lodging, a return or a statement in the nature of a return; and

(e) if the tax agent service would be provided on a voluntary basis—you would not provide the service under a scheme approved by the Commissioner by notice published in the Gazette.

Civil penalty:

(a) for an individual—50 penalty units; and

(b) for a body corporate—250 penalty units.

Note: Subdivision 50-C of this Act and Subdivision 298-B of Schedule 1 to the Taxation Administration Act 1953 determine the procedure for obtaining a civil penalty order against you.

(2) You contravene this subsection if:

(a) you advertise that you will provide a \*BAS service; and

(b) you are not a \*registered tax agent or BAS agent; and

(c) if the BAS service would be provided as a legal service—either:

(i) you are prohibited, under a \*State law or \*Territory law that regulates legal practice and the provision of legal services, from providing that BAS service; or

(ii) subject to subsection (4), the service would consist of preparing, or lodging, a return or a statement in the nature of a return; and

(d) if the BAS service relates to imports or exports to which an \*indirect tax law applies—you are not a customs broker licensed under Part XI of the Customs Act 1901; and

(e) if the BAS service would be provided on a voluntary basis—you would not provide the service under a scheme approved by the Commissioner by notice published in the Gazette.

Civil penalty:

(a) for an individual—50 penalty units; and

(b) for a body corporate—250 penalty units.

Note: Subdivision 50-C of this Act and Subdivision 298-B of Schedule 1 to the Taxation Administration Act 1953 determine the procedure for obtaining a civil penalty order against you.

(3) Subparagraph (1)(d)(ii) does not apply if you would provide the \*tax agent service as a legal service in the course of acting for a trust or deceased estate as trustee or \*legal personal representative.

(4) Subparagraph (2)(c)(ii) does not apply if you would provide the \*BAS service as a legal service in the course of acting for a trust or deceased estate as trustee or \*legal personal representative.

(5) A notice under paragraph (1)(e) or (2)(e) is not a legislative instrument.

50-15 Representing that you are a registered tax agent or BAS agent if unregistered

You contravene this section if:

(a) you represent that you are a \*registered tax agent or BAS agent; and

(b) that representation is untrue.

Civil penalty:

(a) for an individual—50 penalty units; and

(b) for a body corporate—250 penalty units.

Note: Subdivision 50-C of this Act and Subdivision 298-B of Schedule 1 to the Taxation Administration Act 1953 determine the procedure for obtaining a civil penalty order against you.

Subdivision 50-B—Other civil penalties

Table of sections

50-20 Making false or misleading statements

50-25 Employing or using the services of deregistered entities

50-30 Signing of declarations etc.

50-20 Making false or misleading statements

You contravene this section if:

(a) you are a \*registered tax agent or BAS agent; and

(b) you:

(i) make a statement to the Commissioner; or

(ii) prepare a statement that you know, or ought reasonably to know, is likely to be made to the Commissioner by an entity; or

(iii) permit or direct an entity to do a thing mentioned in subparagraph (i) or (ii); and

(c) you know, or are reckless as to whether, the statement:

(i) is false, incorrect or misleading in a material particular; or

(ii) omits any matter or thing without which the statement is misleading in a material respect.

Civil penalty:

(a) for an individual—250 penalty units; and

(b) for a body corporate—1,250 penalty units.

Note 1: Subdivision 50-C of this Act and Subdivision 298-B of Schedule 1 to the Taxation Administration Act 1953 determine the procedure for obtaining a civil penalty order against you.

Note 2: In some circumstances, it is an offence to recklessly make a false or misleading statement under sections 8K and 8N of the Taxation Administration Act 1953.

#### 50-25 Employing or using the services of deregistered entities

(1) You contravene this subsection if:

(a) you are a \*registered tax agent or BAS agent; and

(b) you employ or use the services of an entity to provide \*tax agent services on your behalf; and

(c) you know, or ought reasonably to know, that:

(i) the entity is not a registered tax agent or BAS agent but was previously a registered tax agent or BAS agent; and

(ii) the entity's registration was terminated within the period of 1 year before you first employed, or first used the services of, the entity.

Civil penalty:

(a) for an individual—250 penalty units; and

(b) for a body corporate—1,250 penalty units.

Note: Subdivision 50-C of this Act and Subdivision 298-B of Schedule 1 to the Taxation Administration Act 1953 determine the procedure for obtaining a civil penalty order against you.

(2) Subsection (1) does not apply if the entity's registration was terminated:

(a) because:

(i) the entity surrendered their registration; or

(ii) the entity became an undischarged bankrupt or went into external administration; or

(b) because of a reason prescribed by the regulations.

50-30 Signing of declarations etc.

Individuals

(1) You contravene this subsection if:

(a) you are a \*registered tax agent and an individual; and

(b) you sign a declaration or other statement in relation to a taxpayer that is required or permitted by a \*taxation law (other than a \*BAS provision); and

(c) the document in relation to which the declaration or other statement is being made was prepared by an entity other than:

(i) you; or

(ii) another registered tax agent who is an individual; or

(iii) another individual who is working under your supervision and control or the supervision or control of another registered tax agent who is an individual.

Civil penalty: 250 penalty units.

Note: Subdivision 50-C of this Act and Subdivision 298-B of Schedule 1 to the Taxation Administration Act 1953 determine the procedure for obtaining a civil penalty order against you.

(2) You contravene this subsection if:

(a) you are a \*registered tax agent or BAS agent who is an individual; and

(b) you sign a declaration or other statement in relation to a taxpayer that is required or permitted by a \*BAS provision; and

(c) the document in relation to which the declaration or other statement is being made was prepared by an entity other than:

(i) you; or

(ii) a registered tax agent or BAS agent who is an individual; or

(iii) an individual who is working under your supervision and control or the supervision or control of another registered tax agent or BAS agent who is an individual.

Civil penalty: 250 penalty units.

Note: Subdivision 50-C of this Act and Subdivision 298-B of Schedule 1 to the Taxation Administration Act 1953 determine the procedure for obtaining a civil penalty order against you.

#### Partnerships and companies

(3) You contravene this subsection if:

(a) you are a partnership or company that is a \*registered tax agent; and

(b) you sign a declaration or other statement in relation to a taxpayer that is required or permitted by a \*taxation law (other than a \*BAS provision); and

(c) the document in relation to which the declaration or other statement is being made was prepared by an entity other than:

(i) a registered tax agent who is an individual; or

(ii) an individual who is working under the supervision and control of a registered tax agent who is an individual.

Civil penalty: 1,250 penalty units.

Note 1: If you are a partnership and contravene this subsection, see also section 50-40.

Note 2: Subdivision 50-C of this Act and Subdivision 298-B of Schedule 1 to the Taxation Administration Act 1953 determine the procedure for obtaining a civil penalty order against you.

(4) You contravene this subsection if:

(a) you are a partnership or company that is a \*registered tax agent or BAS agent; and

(b) you sign a declaration or other statement in relation to a taxpayer that is required or permitted by a \*BAS provision; and

(c) the document in relation to which the declaration or other statement is being made was prepared by an entity other than:

(i) a registered tax agent or BAS agent who is an individual; or

(ii) an individual who is working under the supervision and control of a registered tax agent or BAS agent who is an individual.

Civil penalty: 1,250 penalty units.

Note 1: If you are a partnership and contravene this subsection, see also section 50-40.

Note 2: Subdivision 50-C of this Act and Subdivision 298-B of Schedule 1 to the Taxation Administration Act 1953 determine the procedure for obtaining a civil penalty order against you.

(5) Subsections (1) to (4) do not apply if you took reasonable steps to ensure the accuracy of the document. In civil

penalty proceedings, you bear the evidential burden of proving that you took such reasonable steps.

#### Subdivision 50-C—Obtaining an order for a civil penalty

##### Table of sections

50-35 Federal Court may order you to pay a pecuniary penalty for contravening a civil penalty provision

50-40 Treatment of partnerships

50-45 Recovery of a pecuniary penalty

50-35 Federal Court may order you to pay a pecuniary penalty for contravening a civil penalty provision

##### Application for order

(1) Within 4 years after you contravene a civil penalty provision, the Board may apply on behalf of the Commonwealth to the \*Federal Court for an order that you pay the Commonwealth a pecuniary penalty.

##### Court may order you to pay pecuniary penalty

(2) If the \*Federal Court is satisfied that you have contravened a civil penalty provision, the Federal Court may order you to pay to the Commonwealth, for each contravention, the pecuniary penalty that the Federal Court determines is appropriate (but not more than the maximum amount specified for the provision).

##### Conduct contravening more than one civil penalty provision

(3) If conduct contravenes 2 or more civil penalty provisions of this Act, proceedings may be instituted against you in relation to the contravention of any one or more of those provisions. However, you are not liable to more than one pecuniary penalty in respect of the same conduct.

##### 50-40 Treatment of partnerships

(1) If a partnership contravenes a civil penalty provision, each partner in the partnership, at the time of the conduct constituting the contravention, is taken to have contravened the civil penalty provision unless the partner proves, on the balance of probabilities, that the partner:

(a) did not engage in the conduct; and

(b) did not aid, abet, counsel or procure the conduct; and

(c) was not in any way knowingly concerned in, or party to, the conduct (whether directly or indirectly or whether by any act or omission of the partner).

(2) If a partnership contravenes a civil penalty provision, the civil penalty that may be imposed on each partner in the partnership:

(a) if the partner is an individual—must not exceed an amount equal to one-fifth of the maximum penalty that could be imposed on a body corporate for the same contravention; and

(b) in any other case—must not exceed the maximum penalty that could be imposed on a body corporate for the same contravention.

## 50-45 Recovery of a pecuniary penalty

If the \*Federal Court orders you to pay a pecuniary penalty:

(a) the penalty is payable to the Commissioner, who receives the penalty on behalf of the Commonwealth; and

(b) the Commissioner may, on behalf of the Commonwealth, enforce the order as if it were a judgment of the Federal Court.

## Part 6—The Tax Practitioners Board

### Division 60—The Tax Practitioners Board

#### Table of Subdivisions

60-A Establishment, functions and powers of the Board

60-B Appointment etc. of members of the Board

60-C Board procedures

60-D Committees etc.

60-E Investigations

60-F Public reporting obligations of the Board

#### Guide to this Division

##### 60-1 What this Division is about

This Division establishes the Tax Practitioners Board and contains administrative provisions relating to Board appointments and Board procedures.

Comprising at least 7 Board members, the Board has functions and powers relating to the operation of this Act, including investigating your application for registration and conduct that may breach this Act. For the purposes of an investigation, the Board may oblige you to give it information.

The Board must also report to the Minister on its operations each year, maintain a register of registered tax agents and BAS agents, and publish decisions to terminate or suspend the registration of a registered tax agent or BAS agent.

#### Subdivision 60-A—Establishment, functions and powers of the Board

##### Table of sections

60-5 Establishment

60-10 Membership

60-15 Functions

60-20 Powers

60-5 Establishment

The Tax Practitioners Board is established.

60-10 Membership

(1) The Board consists of:

- (a) the \*Chair; and
- (b) 6 or more other \*Board members.

(2) The performance of the functions, or the exercise of the powers, of the Board is not affected only because of a vacancy or vacancies in the membership of the Board.

60-15 Functions

The functions of the Board are:

- (a) to administer the system for the registration of \*registered tax agents and BAS agents; and
- (b) to investigate:
  - (i) applications for registration; and
  - (ii) conduct that may breach this Act; and
- (c) to impose sanctions for non-compliance with the \*Code of Professional Conduct; and
- (d) to issue, by legislative instrument, guidelines to assist in achieving the functions mentioned in paragraphs (a), (b) and (c); and
- (e) such other functions as are conferred on the Board by this Act, the regulations or any other law of the Commonwealth; and
- (f) to do anything incidental or conducive to the performance of its functions.

60-20 Powers

The Board has power to do all things necessary or convenient to be done for or in connection with the performance of its functions.

Subdivision 60-B—Appointment etc. of members of the Board

Table of sections

60-25 Appointment

60-30 Term of appointment

60-35 Remuneration and allowances



60-40 Leave of absence

60-45 Outside employment

60-50 Disclosure of interests

60-55 Resignation

60-60 Termination of appointment

60-65 Terms and conditions of appointment not provided for by Act

60-25 Appointment

(1) A Board member is to be appointed by the Minister by written instrument, on a full-time basis or on a part-time basis.

(2) The Minister must appoint one of the \*Board members to be the \*Chair. However, that member must not be:

(a) a person who holds any office or appointment (other than as a Board member) under a law of the Commonwealth; or

(b) a person appointed or engaged under the Public Service Act 1999.

(3) A person's appointment as a \*Board member is not invalid because of a defect or irregularity in connection with the person's appointment.

60-30 Term of appointment

A \*Board member holds office for the period specified in the instrument of appointment.

Note: A Board member is eligible for reappointment: see subsection 33(4A) of the Acts Interpretation Act 1901.

60-35 Remuneration and allowances

(1) A \*Board member is to be paid the remuneration that is determined by the Remuneration Tribunal. If no determination of that remuneration is in operation, a Board member is to be paid the remuneration that is prescribed by the regulations.

(2) A \*Board member is to be paid the allowances that are prescribed by the regulations.

(3) This section has effect subject to the Remuneration Tribunal Act 1973.

60-40 Leave of absence

(1) A full-time \*Board member has the recreation leave entitlements that are determined by the Remuneration Tribunal.

(2) The Minister may grant a full-time \*Board member leave of absence, other than recreation leave, on the terms and conditions as to remuneration or otherwise that the Minister determines.

(3) The Minister may grant leave of absence to a part-time \*Board member on the terms and conditions that the

Minister determines.

#### 60-45 Outside employment

(1) A full-time \*Board member must not engage in paid employment outside the duties of his or her office without the Minister's approval.

(2) A part-time \*Board member must not engage in paid employment that conflicts or may conflict with the proper performance of his or her duties.

#### 60-50 Disclosure of interests

A \*Board member must give written notice to the Minister of any direct or indirect pecuniary interest that the Board member has or acquires and that conflicts or could conflict with the proper performance of the Board's functions.

#### 60-55 Resignation

(1) A \*Board member may resign his or her appointment by giving the Minister a written resignation. The resignation must specify a day from which the resignation will take effect.

(2) The \*Chair may resign his or her appointment without resigning his or her appointment as a \*Board member.

#### 60-60 Termination of appointment

##### All Board members

(1) The Minister may terminate the appointment of a \*Board member:

(a) for misbehaviour or physical or mental incapacity; or

(b) if the Board member:

(i) becomes bankrupt; or

(ii) applies to take the benefit of any law for the relief of bankrupt or insolvent debtors; or

(iii) compounds with his or her creditors; or

(iv) makes an assignment of his or her remuneration for the benefit of his or her creditors; or

(c) if the Board member fails, without reasonable excuse, to comply with section 60-50.

##### Additional grounds: full-time Board members

(2) The Minister may terminate the appointment of a full-time \*Board member if:

(a) the Board member is absent, except on leave of absence, for 14 consecutive days or for 28 days in any 12 months; or

(b) the Board member engages, except with the Minister's approval, in paid employment outside the duties of his or her office.

##### Additional grounds: part-time Board members

(3) The Minister may terminate the appointment of a part-time \*Board member if:

(a) the Board member is absent, except on leave of absence, from 3 consecutive meetings of the Board; or

(b) the Board member engages in paid employment that conflicts or may conflict with the proper performance of his or her duties.

60-65 Terms and conditions of appointment not provided for by Act

A \*Board member holds office on such terms and conditions (if any) in relation to matters not provided for by this Act as are determined, in writing, by the Minister.

Subdivision 60-C—Board procedures

Table of sections

60-70 Meetings

60-75 Decisions without meetings

60-80 Administrative support for the Board

60-70 Meetings

(1) At a meeting of the Board, a majority of \*Board members constitutes a quorum.

(2) A question arising at a meeting is decided by a majority of the votes of the \*Board members present and voting.

(3) The \*Chair presides at all meetings at which he or she is present. If the Chair is not present, the \*Board members present must appoint one of themselves to preside. However, the member appointed to preside must not be:

(a) a person who holds any office or appointment (other than as a Board member) under a law of the Commonwealth; or

(b) a person appointed or engaged under the Public Service Act 1999.

(4) The \*Board member presiding at a meeting has a deliberative vote and, if necessary, a casting vote.

(5) The Board may regulate proceedings at its meetings as it considers appropriate.

Note: Section 33B of the Acts Interpretation Act 1901 provides for participation in meetings by telephone etc.

60-75 Decisions without meetings

(1) The Board may only make a decision without meeting if the Board determines that the decision may be made in that way.

(2) If the Board determines that a decision may be made without meeting, a decision is taken to have been made at a Board meeting if:

(a) a majority of the Board indicate agreement with the proposed decision in accordance with the method determined by the Board under subsection (3); and

(b) all \*Board members were informed of the proposed decision, or reasonable efforts were made to inform all Board members of the proposed decision.

(3) The Board may determine the method by which \*Board members are to indicate agreement with proposed decisions.

(4) The Board must keep a record of decisions made in accordance with this section.

#### 60-80 Administrative support for the Board

The Board is to be assisted by APS employees whose services are made available to the Board by the Commissioner.

#### Subdivision 60-D—Committees etc.

##### Table of sections

60-85 Establishment of committees

60-90 Remuneration and allowances of committee members

60-85 Establishment of committees

(1) The Board may establish \*committees to assist the Board in the performance of its functions and the exercise of its powers.

(2) A \*committee is to consist of such persons (whether \*Board members or not) as the Board determines.

60-90 Remuneration and allowances of committee members

(1) A member of a \*committee (other than a \*Board member) is to be paid the remuneration that is determined by the Remuneration Tribunal but, if no determination is in operation, the member is to be paid the remuneration that is prescribed by the regulations.

(2) A member of a \*committee (other than a \*Board member) is to be paid the allowances that are prescribed by the regulations.

(3) This section has effect subject to the Remuneration Tribunal Act 1973.

#### Subdivision 60-E—Investigations

##### Table of sections

60-95 Investigations

60-100 Power to request production of a document or thing

60-105 Power to require witnesses to appear before the Board

60-110 Power to take evidence on oath or affirmation

60-115 Self-incrimination

60-120 Board may retain documents and things

60-125 Outcomes of investigations

60-95 Investigations

(1) The Board may investigate:

- (a) your application for registration; or
- (b) any conduct that may breach this Act; or
- (c) other matters prescribed by the regulations.

(2) The Board must notify you in writing if the Board decides to investigate you. The notice must be given within 2 weeks after the decision is made.

(3) An investigation is taken to commence on the date of the notice.

(4) The Board:

- (a) has a discretion as to its procedure; and
- (b) is not bound by the rules of evidence.

60-100 Power to request production of a document or thing

(1) For the purpose of an investigation, the Board may, by notice, request a person:

- (a) to give the Board the information referred to in the notice; or
- (b) to produce to the Board the documents or things referred to in the notice.

Note: Failure to give the information, or produce the documents or things, is an offence: see sections 8C and 8D of the Taxation Administration Act 1953.

(2) The Board's request must:

- (a) be in writing; and
- (b) specify the period within which the person must comply with the request.

The period specified under paragraph (b) must be at least 14 days after the date of the request.

60-105 Power to require witnesses to appear before the Board

(1) For the purpose of an investigation, the Board may, by notice in writing, require a person to appear before it:

- (a) to give evidence; or
- (b) to produce the documents or things referred to in the notice.

Note: Failure to attend, answer questions, or produce the documents or things, is an offence: see sections 8C and 8D of the Taxation Administration Act 1953.

(2) If a person is required to appear before the Board because the person has been nominated by an entity that has applied for registration, the person is entitled to be paid by the entity any allowances and expenses that are prescribed by the regulations.

(3) In any other case, a person required to appear before the Board is entitled to be paid by the Commonwealth any allowances and expenses that are prescribed by the regulations.

#### 60-110 Power to take evidence on oath or affirmation

(1) For the purpose of taking evidence, the \*Chair, or an individual acting on behalf of the Chair, may:

- (a) require a person to either take an oath or make an affirmation; and
- (b) administer an oath or affirmation to the person.

Note: Failure to take an oath or make an affirmation is an offence: see section 8D of the Taxation Administration Act 1953.

(2) The oath or affirmation is an oath or affirmation that the evidence the person will give will be true.

(3) The Board may, if it thinks that it is appropriate, allow a person who has been sworn, or who has made an affirmation, to give evidence by tendering a written statement and verifying it by oath or affirmation.

#### 60-115 Self-incrimination

(1) A person is not excused from:

- (a) giving information or evidence; or
- (b) producing a document or thing;

under section 60-100 or 60-105 on the ground that doing so might tend to incriminate the person or expose the person to a penalty.

(2) However, in the case of an individual:

- (a) the information or evidence given or the document or thing produced; and
- (b) the giving of the information or evidence or the producing of the document or thing; and
- (c) any information, document or thing obtained as a direct or indirect consequence of giving the information or evidence, or producing the document or thing;

are not admissible in evidence against the individual in proceedings, other than proceedings for an offence against:

(d) section 8C or 8D of the Taxation Administration Act 1953 in relation to the information or evidence given, or document or thing produced, under this Act; or

(e) section 137.1 or 137.2 of the Criminal Code (which deals with false or misleading information or documents) in relation to the information or evidence given, or document produced, under this Act; or

(f) section 149.1 of the Criminal Code (which deals with obstruction of Commonwealth public officials) that

relates to this Act.

#### 60-120 Board may retain documents and things

(1) If a document or thing is produced to the Board in accordance with section 60-100 or 60-105, the Board:

- (a) may take possession of, and make copies of, the document or thing, or take extracts from the document; and
- (b) may retain possession of the document or thing for such period as is necessary for the purposes of the

investigation to which the document or thing relates.

(2) While the Board retains the document or thing, the Board must allow a person who would otherwise be entitled to possession of the document or thing, or a person authorised by that person:

(a) reasonable access to the document for the purposes of inspecting and making copies of, or taking extracts from, it; and

(b) reasonable access to the thing.

#### 60-125 Outcomes of investigations

##### Investigation relating to application for registration

(1) After completing an investigation in relation to an application for registration under section 20-20, the Board must make a decision in accordance with section 20-25.

##### Investigation relating to whether conduct breaches this Act

(2) If the Board investigates conduct under section 60-95 and finds that the conduct breaches this Act, the Board must either:

(a) make a decision that no further action will be taken; or

(b) do one or more of the following:

(i) impose one or more sanctions under Subdivision 30-B;

(ii) terminate an entity's registration under Subdivision 40-A;

(iii) apply to the \*Federal Court for an order for payment of a pecuniary penalty under Subdivision 50-C;

(iv) apply to the Federal Court for an injunction under section 70-5.

Note: The Board may terminate an entity's registration under Subdivision 40-A without investigating conduct under section 60-95.

##### Period within which a decision must be made

(3) The Board must make a decision under subsection (2):

(a) within 6 months after the day on which the investigation is taken to have commenced under subsection 60-95(3); or

(b) if a longer period is determined by the Board under subsection (4)—within that period.

(4) If the Board is satisfied that, for reasons beyond the control of the Board, a decision under subsection (2) cannot be made within the period mentioned in paragraph (3)(a), the Board may determine a longer period within which the Board must make a decision under subsection (2).

(5) If the Board determines a longer period, the Board must do so not later than 2 weeks before the expiry of the period mentioned in paragraph (3)(a).

(6) The reasons mentioned in subsection (4) include, but are not limited to, the following:

(a) undue delay that has been caused by an entity other than the Board and that has affected the conduct of the investigation to which the decision relates;

(b) the complexity of the investigation.

#### Decision not made

(7) If:

(a) a decision is not made within the period mentioned in paragraph (3)(a) and the Board does not determine a longer period; or

(b) the Board determines a longer period but does not make a decision within that period;

the Board is taken to have decided to take no further action in relation to the matter that was the subject of investigation.

#### Notification of decisions

(8) If:

(a) the Board makes a decision under subsection (2); or

(b) the Board investigates conduct under section 60-95 and finds that the conduct does not breach this Act;

the Board must, within 30 days of making the decision or finding:

(c) notify the following persons, in writing, of the decision or finding:

(i) the entity affected by the decision or finding;

(ii) the complainant (if any);

(iii) if the decision or finding is relevant to the administration of the \*taxation laws (other than this Act)—the Commissioner; and

(d) give, in writing, the reasons for the decision to:

(i) the entity affected by the decision; and

(ii) if subparagraph (c)(iii) applies—the Commissioner.

(9) If the Board determines a longer period under subsection (4), the Board must, within 30 days of making the



determination:

- (a) notify the entity affected by the determination, in writing, of the determination; and
- (b) give, in writing, the reasons for the determination.

#### Subdivision 60-F—Public reporting obligations of the Board

##### Table of sections

60-130 Annual report

60-135 Register

60-140 Publication of information

60-130 Annual report

(1) The \*Chair must, as soon as practicable after the end of each \*financial year, prepare and give to the Minister, for presentation to the Parliament, a report on its operations during that year.

Note: See also section 34C of the Acts Interpretation Act 1901, which contains extra rules about annual reports.

(2) The \*Chair must also set out in the report the things mentioned in paragraphs 3B(1AA)(b) and (c) of the Taxation Administration Act 1953, to the extent that the Board discloses information under section 3E of that Act during the year.

Note: Section 3E of the Taxation Administration Act 1953 applies in relation to the Board: see section 70-45.

60-135 Register

(1) The Board must establish and maintain a register of:

- (a) \*registered tax agents and BAS agents; and
- (b) each entity who was a \*registered tax agent or BAS agent and whose registration has been terminated other

than:

- (i) because the entity surrendered their registration; or
- (ii) because of a reason prescribed by the regulations.

(2) The regulations may prescribe the details that the Board must enter on the register in respect of each entity who is entered on the register.

(3) Details of an entity who was a \*registered tax agent or BAS agent must only be kept on the register for the 12 month period starting on the day on which the entity's registration as a registered tax agent or BAS agent was terminated.

(4) The register is to be made available for inspection on the internet.

60-140 Publication of information

The Board must cause a notice of the following decisions to be published in the Gazette:

- (a) a decision under Subdivision 30-B or 40-A to terminate the registration of a \*registered tax agent or BAS agent;
- (b) a decision under section 30-25 to suspend the registration of a registered tax agent or BAS agent.

## Part 7—Miscellaneous

### Division 70—Miscellaneous

#### Table of Subdivisions

- 70-A Injunctions
- 70-B Administrative review
- 70-C Provisions affecting trustees and partnerships
- 70-D Provisions relating to the Board
- 70-E Miscellaneous

#### Guide to this Division

##### 70-1 What this Division is about

This Division sets out some miscellaneous provisions, including a provision allowing the Board to apply to the Federal Court for an injunction, a provision allowing you to apply to the Administrative Appeals Tribunal for review of a Board's decision and a provision about the treatment of trustees.

#### Subdivision 70-A—Injunctions

##### Table of sections

- 70-5 Injunction to restrain or require certain conduct
- 70-5 Injunction to restrain or require certain conduct

(1) If, on the application of the Board, the \*Federal Court is satisfied that you have engaged, or are proposing to engage, in conduct that would constitute a contravention of a civil penalty provision, the Federal Court may grant an injunction:

- (a) restraining you from engaging in the conduct; or
- (b) if in the Federal Court's opinion it is desirable to do so, requiring you to do something.

(2) Before deciding the application, the \*Federal Court may grant an interim injunction:

- (a) restraining you from engaging in conduct; or
- (b) requiring you to do something.

#### Subdivision 70-B—Administrative review

Table of sections

70-10 Administrative review

70-10 Administrative review

An application may be made to the Administrative Appeals Tribunal for review of any of the following decisions of the Board:

- (a) a decision under section 20-25:
  - (i) to reject an application for registration (including renewal of registration); or
  - (ii) to specify a condition to which registration is subject;
- (b) a decision under subsection 20-30(3) to require professional indemnity insurance;
- (c) a decision under section 20-40 to refuse to vary a condition to which registration is subject;
- (d) a decision under subsection 20-50(1) not to determine a shorter period for making a renewal application;
- (e) a decision under Subdivision 30-B or 40-A to terminate registration;
- (f) a decision under section 30-20 to make an order or to specify a time period in respect of an order;
- (g) a decision under section 30-25 to suspend registration (including a decision as to the length of the suspension);
- (h) a decision under section 40-25 to determine a period during which an application for registration may not be made;
- (i) a decision under subsection 60-125(4) to extend the period of time within which an investigation is to be completed.

Subdivision 70-C—Provisions affecting trustees and partnerships

Table of sections

70-15 How this Act applies to an individual or company in the capacity of a trustee

70-20 Continuity of partnerships

70-15 How this Act applies to an individual or company in the capacity of a trustee

This Act applies to:

- (a) a trustee who is an individual in the same way as it applies to an individual; and
- (b) a trustee that is a company in the same way as it applies to a company.

70-20 Continuity of partnerships

For the purposes of this Act, a change in the composition of a partnership does not affect the continuity of the partnership.

## Subdivision 70-D—Provisions relating to the Board

### Table of sections

70-25 Immunity from legal action

70-30 Delegation by Board

70-25 Immunity from legal action

No action, suit or proceeding may be brought against:

- (a) a person who is, or has been, a \*Board member; or
- (b) a person who is, or has been, a member of a \*committee;

in relation to anything done, or omitted to be done, in good faith by the Board member or committee member:

- (c) in the performance, or purported performance, of the Board's functions; or
- (d) in the exercise, or purported exercise, of the Board's powers.

70-30 Delegation by Board

(1) Subject to subsection (2), the Board may, by writing, delegate all or any of its functions and powers to a \*Board member or a \*committee, other than:

- (a) its function of issuing guidelines; and
- (b) its power to establish a committee under section 60-85.

(2) The Board may only delegate to a \*committee a power to make a decision in respect of which an application for review may be made to the Administrative Appeals Tribunal under section 70-10 if:

- (a) the committee has 3 members or more; and
- (b) all members of the committee are \*Board members.

(3) A delegate is, in the exercise of a delegated function or power, subject to the directions of the Board.

(4) A delegation under this section:

(a) may be revoked by the Board (whether or not constituted by the \*Board members who constituted the Board when the power was delegated); and

- (b) continues in force even if the membership of the Board changes.

## Subdivision 70-E—Miscellaneous

### Table of sections

70-35 Secrecy

70-40 Provision of information by Board to Commissioner

70-45 Application of certain secrecy provisions of the Taxation Administration Act 1953

70-50 Legal professional privilege

70-55 Regulations

70-35 Secrecy

(1) A person commits an offence if:

(a) the person:

(i) is or has been a \*Board member or a member of a \*committee; or

(ii) is or has been an APS employee whose services were made available to the Board by the Commissioner; or

(iii) is or has been a person appointed or employed by, or a provider of services for, the Commonwealth; and

(b) the person acquires or acquired information relating to a person in the course of, or because of, his or her duties under or in relation to this Act or the regulations; and

(c) the person:

(i) discloses the information to another person (including a Minister); or

(ii) makes a record of the information.

Penalty: Imprisonment for 2 years.

(2) However, subsection (1) does not apply if the information is disclosed or a record of the information is made:

(a) under or for the purposes of this Act or the regulations; or

(b) in the course of, or because of, the person's duties under or in relation to this Act or the regulations.

Note: A defendant bears an evidential burden in relation to the matters in subsection (2): see subsection 13.3(3) of the Criminal Code.

(3) A person mentioned in paragraph (1)(a) is not required to disclose information of a kind mentioned in paragraph (1)(b) to a court or tribunal except if it is necessary to do so for the purpose of carrying into effect the provisions of this Act or the regulations.

70-40 Provision of information by Board to Commissioner

(1) Despite section 70-35, the Board may disclose information to the Commissioner if the Board is satisfied that the information is relevant to:

(a) establishing whether a \*taxation offence has been, or is being, committed; or

(b) the making, or proposed or possible making, of a \*proceeds of crime order.

(2) A reference in this section to the possible making of a \*proceeds of crime order in respect of a person includes a reference to the making of an order that is only a possibility at the time in question because the person has not been convicted (within the meaning of section 331 of the Proceeds of Crime Act 2002) of an offence to which the order relates.

#### 70-45 Application of certain secrecy provisions of the Taxation Administration Act 1953

Sections 3D and 3E of the Taxation Administration Act 1953 apply as if the references in those sections to the Commissioner were references to the Board.

#### 70-50 Legal professional privilege

This Act does not affect the law relating to legal professional privilege.

#### 70-55 Regulations

(1) The Governor-General may make regulations prescribing matters:

- (a) required or permitted by this Act to be prescribed; or
- (b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.

(2) In particular, regulations may be made in relation to transitional matters relating to the enactment of this Act and the repeal of Part VIIA of the Income Tax Assessment Act 1936.

### Part 8—Interpretation

#### Division 80—Rules for interpreting this Act

##### Table of sections

80-1 What forms part of this Act

80-5 The role of Guides in interpreting this Act

80-1 What forms part of this Act

(1) These all form part of this Act:

- (a) the headings to the Parts, Divisions and Subdivisions of this Act;
- (b) \*Guides;
- (c) the headings to the sections and subsections of this Act;
- (d) the notes and examples (however described) that follow provisions of this Act.

(2) The asterisks used to identify defined terms form part of this Act. However, if a term is not identified by an asterisk, disregard that fact in deciding whether or not to apply to that term a definition or other interpretation provision.

80-5 The role of Guides in interpreting this Act

(1) A Guide consists of sections under a heading indicating that what follows is a Guide to a particular Subdivision, Division etc.

(2) A Guide forms part of this Act, but is kept separate from operative provisions. In interpreting an operative provision, a Guide may only be considered:

(a) in determining the purpose or object underlying the provision; or

(b) to confirm that the provision's meaning is the ordinary meaning conveyed by its text, taking into account its context in the Act and the purpose or object underlying the provision; or

(c) in determining the provision's meaning if the provision is ambiguous or obscure; or

(d) in determining the provision's meaning if the ordinary meaning conveyed by its text, taking into account its context in the Act and the purpose or object underlying the provision, leads to a result that is manifestly absurd or is unreasonable.

#### Division 90—Dictionary

##### Table of sections

90-1 Dictionary

90-5 Meaning of tax agent service

90-10 Meaning of BAS service

90-1 Dictionary

(1) In this Act:

BAS service has the meaning given by section 90-10.

Board means the Tax Practitioners Board established by section 60-5.

Board member means a member of the Board appointed in accordance with section 60-25 (including the Chair).

Chair means the Chair of the Board.

Code of Professional Conduct means the Code of Professional Conduct set out in section 30-10.

committee means a committee established under section 60-85.

Federal Court means the Federal Court of Australia.

Guide has the meaning given by section 80-5.

penalty unit has the meaning given by section 4AA of the Crimes Act 1914.

proceeds of crime order means an order, relating to a person's commission of a \*taxation offence, under:

- (a) Chapter 2 or Division 1 of Part 3-1 of the Proceeds of Crime Act 2002; or
- (b) Part II or III of the Proceeds of Crime Act 1987; or
- (c) a law of a State or Territory corresponding to paragraph (a) or (b); or
- (d) Division 3 of Part XIII of the Customs Act 1901.

registered BAS agent means an entity that is registered under this Act as a registered BAS agent.

Note: In most cases, an entity is taken not to be a registered BAS agent if the entity is suspended from providing BAS services under section 30-25.

registered tax agent means an entity that is registered under this Act as a registered tax agent.

Note: In most cases, an entity is taken not to be a registered tax agent if the entity is suspended from providing tax agent services under section 30-25.

registered tax agent or BAS agent means an entity that is registered under this Act as a registered tax agent or a registered BAS agent.

registered tax agents and BAS agents means entities that are registered under this Act as registered tax agents and entities that are registered under this Act as registered BAS agents.

serious taxation offence means:

- (a) an offence against section 134.1, 134.2, 135.1, 135.2 or 135.4 of the Criminal Code, if the offence relates to a tax liability (within the meaning of the Taxation Administration Act 1953); or
- (b) a \*taxation offence that is punishable on conviction by a fine exceeding 40 penalty units, or imprisonment, or both.

tax agent service has the meaning given by section 90-5.

taxation offence has the meaning given by section 8A of the Taxation Administration Act 1953.

tax practitioner registration requirements means the matters about which the Board must, under Subdivision 20-A, be satisfied before the Board is obliged to grant an application for registration under this Act.

(2) An expression has the same meaning in this Act as in the Income Tax Assessment Act 1997 (other than the expression "this Act").

90-5 Meaning of tax agent service

(1) A tax agent service is any service:

(a) that relates to:

- (i) ascertaining liabilities, obligations or entitlements of an entity that arise, or could arise, under a \*taxation law; or
- (ii) advising an entity about liabilities, obligations or entitlements of the entity or another entity that arise, or



could arise, under a taxation law; or

(iii) representing an entity in their dealings with the Commissioner; and

(b) that is provided in circumstances where the entity can reasonably be expected to rely on the service for either or both of the following purposes:

(i) to satisfy liabilities or obligations that arise, or could arise, under a taxation law;

(ii) to claim entitlements that arise, or could arise, under a taxation law.

(2) A service specified in the regulations for the purposes of this subsection is not a tax agent service.

Note: For specification by class, see subsection 13(3) of the Legislative Instruments Act 2003.

#### 90-10 Meaning of BAS service

(1) A BAS service is a \*tax agent service:

(a) that relates to:

(i) ascertaining liabilities, obligations or entitlements of an entity that arise, or could arise, under a \*BAS provision; or

(ii) advising an entity about liabilities, obligations or entitlements of the entity or another entity that arise, or could arise, under a BAS provision; or

(iii) representing an entity in their dealings with the Commissioner in relation to a BAS provision; and

(b) that is provided in circumstances where the entity can reasonably be expected to rely on the service for either or both of the following purposes:

(i) to satisfy liabilities or obligations that arise, or could arise, under a BAS provision;

(ii) to claim entitlements that arise, or could arise, under a BAS provision.

(2) A service specified in the regulations for the purposes of this subsection is not a BAS service.

Note: For specification by class, see subsection 13(3) of the Legislative Instruments Act 2003.

[Minister's second reading speech made in—

House of Representatives on 13 November 2008

Senate on 12 February 2009]

(213/08)