
Chapter 1

New legislative regime for tax agent services

Outline of chapter

- 1.1 This chapter outlines:
- the background to the new legislative regime for tax agent services; and
 - the key elements of the regime.

History and background

1.2 The current regime for regulating tax agents appears in Part VIIA of the *Income Tax Assessment Act 1936* (ITAA 1936) and was originally introduced in 1943. Since then the tax environment has changed and a much larger proportion of taxpayers use tax agents to lodge their returns and help them comply with their tax obligations. In 2006, over 74% of individuals and 95% of businesses used a tax agent to prepare and lodge their tax returns.

- 1.3 The current regime includes:
- a registration process for tax agents and their nominees (but not BAS service providers);
 - provisions that only registered tax agents are entitled to supply certain tax agent services for a fee;
 - separate state Tax Agents' Boards responsible for both the registration and the disciplining of tax agents; and
 - penalties for taxpayers who have a shortfall amount, irrespective of whether they engage tax agents to prepare their returns.

1.4 On 6 April 1998, the then Assistant Treasurer, Senator the Hon Rod Kemp, announced that the Government would introduce a new

legislative regime to govern the provision of tax agent services. Broadly, the new legislative regime would:

- establish a new national Tax Agents' Board;
- develop a legislated Code of Practice that would specify the conduct expected of tax agents by the community; and
- create a 'safe harbour' from penalties for those taxpayers who engage a tax agent, provided they exercise reasonable care by furnishing all the relevant taxation information to that tax agent.

1.5 Although the new legislative regime was initially announced to commence on 1 July 1999, introduction of the measure was delayed at the request of the tax profession, to allow practitioners to focus on preparing for the reforms introduced with *A New Tax System* from 1 July 2000.

1.6 In 2002-03, a working group of tax professional associations was reconvened to develop the details of the announced regime and update the proposal for recent developments.

1.7 Confidential consultation on a detailed discussion paper occurred in 2005 and confidential consultation on a draft Bill and Regulations took place with professional bodies representing tax agents and bookkeepers during 2006.

1.8 The draft legislation and explanatory material were exposed for public comment for two months during early 2007.

1.9 The 2006-07 Budget contained an additional \$57.5 million over four years for the implementation of the new national legislative framework.

Key elements of the new regime

The key elements of the new framework are:

The establishment of a national Tax Practitioners Board

1.10 The Board has responsibility for registering tax practitioners, ensuring that tax practitioners maintain appropriate skills and knowledge, investigating complaints against registered practitioners and ensuring that unregistered persons do not hold themselves out to be registered tax practitioners.

A wider definition of tax practitioner

1.11 Under the new arrangements, in addition to tax agents and their nominees, BAS service providers and their nominees will also need to be registered. BAS service providers will be governed in the same way as tax agents, but will provide a limited range of services relating to tax laws relevant to BAS.

1.12 Tax agents, BAS service providers and the nominees of tax agents and BAS service providers are collectively referred to as tax practitioners.

Registration requirements

1.13 Entities that meet the ‘fit and proper person’ test, as well as minimum education requirements and relevant experience tests, will be able to be registered to provide tax agent services. The minimum educational requirements and relevant experience tests are set at a less demanding level for registering as a BAS service provider than for registering as a tax agent, in recognition of the more limited knowledge requirements for BAS service providers.

1.14 While registration is restricted to individuals, partnerships and companies, there is flexibility for a registered entity to conduct its business through a trust structure. The Board may put some restrictions on structure to ensure adequate resources are in place to provide the services to a competent standard, and to carry out supervisory arrangements.

The introduction of a Code of Professional Conduct

1.15 A Code of Professional Conduct (the Code) governs the ethical and professional standards of registered tax practitioners. The Code is set out in principled form and the Board may issue written guidelines for the interpretation and application of the Code.

A range of sanctions for breaches of the Code

1.16 Under the current arrangements the only administrative sanctions available to the Board for misconduct on the part of tax agents are suspension or cancellation of registration. Under the new arrangements, if the Board finds that a tax practitioner has breached the Code, the Board has a range of options. The Board may caution the tax practitioner, require the practitioner to complete a course of training, subject the practitioner to practising restrictions, require the practitioner to practise under supervision, or suspend or terminate the practitioner’s registration.

1.17 The Board will also be entitled to apply to the Federal Court of Australia for civil penalties for certain serious breaches, or seek an injunction to prevent a tax practitioner from engaging in, or compel a practitioner to undertake, certain conduct.

1.18 Such a wide range of sanctions allows the Board to tailor its responses according to the severity of the breaches of the Code.

Role of Recognised Professional Associations

1.19 Organisations which satisfy the requirement of Recognised Professional Associations, including any recognised BAS service provider associations, may assist the Board by providing Board-recognised courses for ongoing professional education and disciplinary purposes.

A safe harbour from penalties

1.20 A taxpayer who uses a tax practitioner will benefit from a ‘safe harbour’ from administrative penalties for making false or misleading statements, provided the taxpayer has taken reasonable care to comply with their tax obligations by giving the tax practitioner the information necessary to complete their return.