
Chapter 2

Registration of tax practitioners

Outline of chapter

2.1 Division 602 of Item 18 of this Bill amends Schedule 1 to the *Taxation Administration Act 1953* (TAA 1953) to provide for the requirement for an entity to register in order to be allowed to provide a tax agent service or BAS service (collectively termed ‘tax agent services’) for a fee. It sets out:

- the definition of a tax agent service and a BAS service;
- the registration requirements and processes for termination of registration; and
- the liability for penalties for conduct prohibited without registration.

2.2 Division 610 of Item 18 of this Bill amends Schedule 1 to the TAA 1953 to provide for:

- registration decisions of the Tax Practitioners Board (the Board) to be reviewable by the Administrative Appeals Tribunal (AAT); and
- special rules relating to the liability for penalties of partners in partnerships.

2.3 In this Chapter, tax agents, BAS service providers and their nominees are collectively referred to as tax practitioners.

Context of amendments

Operation of current provisions

Definition of prohibited service without registration

2.4 The current law does not have a definition of a tax agent service. Subsection 251L(1) of the *Income Tax Assessment Act 1936* (ITAA 1936)

contains a list of services for which unregistered tax agents are prohibited from charging a fee. Subsection 251L(6) states that certain specified groups that provide a BAS service for a fee are exempted from the registration requirement.

Criminal penalties

2.5 Subsection 251L(1) of the ITAA 1936 provides for a criminal penalty for a person who provides any of the list of specified services for a fee without being registered.

2.6 Section 251O of the ITAA 1936 provides for a criminal penalty for the advertising or representation by an unregistered person as a registered tax agent.

Registration of tax agents and their nominees

2.7 Divisions 3 and 4 of Part VIIA of the ITAA 1936 specify the requirement (and process) for registration as a tax agent or as a nominee of a tax agent. For an individual, the registration requirement is that the individual must be a fit and proper person to prepare income tax returns and transact business on behalf of taxpayers in income tax matters and must not be an undischarged bankrupt.

2.8 Under section 251BC of the ITAA 1936, a person is not a fit and proper person if they do not hold the prescribed qualifications, are not a natural person, are not above 18 years of age, are not of good fame, integrity and character, have been convicted of a serious taxation offence during the previous five years or are under sentence of imprisonment for a serious taxation offence.

2.9 However, individuals who were registered immediately before 1 November 1988, can be fit and proper without holding the prescribed qualifications.

2.10 Currently, there is no separate registration requirement for the provision of a BAS service for a fee. Under subsection 251L(6) of the ITAA 1936, an individual who provides a BAS service for a fee is exempted from registration requirements in limited circumstances, for example, if they are a member of a recognised professional association (RPA), or if the individual is a bookkeeper working under the direction of a registered tax agent.

Conduct of tax agents

2.11 Section 251K of the ITAA 1936 specifies the grounds on which the existing state Tax Agents' Boards must or may suspend or cancel a registration. There is no other guidance given about the standard of service expected of a tax agent.

Rationale for major changes

Definition of tax agent service and BAS service

2.12 This Bill provides for positive definitions of tax agent service and BAS service.

Civil penalties

2.13 Civil penalties have been substituted for the current scheme of criminal offences and penalties. The Board may apply to the Federal Court for an order that the tax practitioner pay the Commonwealth a pecuniary penalty (a civil penalty order) where a tax practitioner is unregistered and has engaged in prohibited conduct such as providing a tax agent service for a fee.

2.14 Civil penalties are more appropriate where the conduct is not serious enough to warrant imprisonment or the cancellation or suspension of registration resulting in the loss of livelihood. There is, however, a need for significant monetary penalties to apply in some cases.

Registration of BAS service providers and their nominees

2.15 To provide a BAS service for a fee, an entity, other than an exempt legal practitioner or a customs broker licensed under Part XI of the *Customs Act 1901* if the BAS service relates to imports or exports to which an indirect tax law applies, must be a registered tax agent or BAS service provider. Applicants for registration as a BAS service provider are required to satisfy the prescribed minimum qualification requirements (for individuals) or sufficient resource requirements (for partnerships/companies), as well as meeting the fit and proper person test and the 'carrying on a business' requirements.

2.16 The scope of registration has been widened to include BAS service providers in order to improve the overall standards of BAS service providers, in recognition of the important role they play in the current tax system.

Conduct of tax practitioners

2.17 There are administrative sanctions available to the Board for breach of the Code of Professional Conduct (the Code) under Division 604 of this Bill, which include issuing a written caution, various orders, suspension and termination. (See Chapter 3 of this explanatory memorandum.)

2.18 Subdivision 602-C of this Bill outlines other grounds on which the Board must or may terminate registration.

Summary of new law

2.19 Entities are liable to pay civil penalties for the following conduct without registration:

- providing a tax agent service or BAS service for a fee;
- advertising the provision of a tax agent service or BAS service; or
- representing themselves to be a tax agent or BAS service provider.

2.20 Legal practitioners are exempted from these civil penalties if they are acting in the course of their profession and they:

- provide any tax agent service in their capacity as a trustee of a trust or personal legal representative of a deceased estate; and/or
- provide a tax agent service other than preparation of or lodgment of a return in any other case.

2.21 A ***tax agent service*** is any service that relates to advising, ascertaining or satisfying the liabilities, obligations or entitlements of an entity under a taxation law, provided in circumstances where it is reasonable to expect that the entity will rely on it. A ***BAS service*** is any service that relates to advising, ascertaining or satisfying the liabilities, obligations or entitlements of an entity under a BAS provision, provided in circumstances where it is reasonable to expect that the entity will rely on it.

2.22 A **BAS provision** is defined in section 995-1 of the *Income Tax Assessment Act 1997* (ITAA 1997) to mean:

- collection and recovery of tax provisions in Part VII to the *Fringe Benefits Tax Assessment Act 1986*;
- the indirect tax law (which means the GST law, the wine tax law, the luxury car tax law or the fuel tax law, as defined in section 995-1 of the ITAA 1997); and
- Parts 2-5 and 2-10 in Schedule 1 to the TAA 1953 (the PAYG system).

2.23 As taxation laws include BAS provisions, a tax agent service includes a BAS service.

2.24 To qualify for registration, an entity must satisfy the Board that it has met the tax practitioner registration requirements, which consist of the following three elements:

- the fit and proper person test;
- prescribed qualification requirements for individual applicants, or sufficient resource requirements for partnership/company applicants; and
- that the entity carries on, or proposes to carry on, a business that provides a tax agent service.

2.25 To register as a nominee, an individual is not required to carry on, or propose to carry on, a business of providing a tax agent service.

2.26 This Bill preserves the special registration criteria for those who were registered immediately before 1 November 1988 (pre-1988 tax agents). Pre-1988 tax agents are eligible for registration without satisfying the prescribed qualification requirements under this Bill. The Board can register pre-1988 tax agents provided that the Board is satisfied that they comply with all other registration requirements.

2.27 Individuals (including those acting in the capacity of a trustee), partnerships or companies (including those acting in the capacity of a trustee) may apply to the Board for registration as a tax practitioner. The Board must grant registration where all eligibility requirements have been satisfied. The Board has a period of six months after receiving the application for registration in which to decide whether to grant registration, or refuse the application. If the Board has not made a

decision within this six month period, then the Board is taken to have rejected the application.

2.28 Registered entities must comply with the Code. Chapter 3 of this explanatory memorandum contains a detailed explanation of the Code and the administrative sanctions available to the Board for breach of the Code.

2.29 The Board has discretion to terminate the registration of a tax practitioner if they no longer meet the registration requirements, or where a relevant adverse event happens. The Board must terminate the registration of a tax practitioner in certain specified circumstances, for example, the Board must terminate registration upon the surrender of registration by a tax practitioner.

2.30 Decisions of the Board under Division 602 of Item 18 of this Bill are reviewable by the AAT.

Comparison of key features of new law and current law

<i>New law</i>	<i>Current law</i>
Unregistered tax agents/BAS service providers are liable to pay a civil penalty if they provide a tax agent service/BAS service for a fee, or if they advertise or represent themselves to be a tax agent/BAS service provider.	Unregistered tax agents are liable for a criminal penalty if they provide a tax agent service for a fee, or if they advertise or represent themselves to be a tax agent.
A tax agent service is any service that relates to advising, ascertaining or satisfying the liabilities, obligations or entitlements of an entity under a taxation law provided in circumstances where it is reasonable to expect that the entity will rely on it.	Unregistered tax agents are prohibited from charging a fee in relation to specified services, including preparing or lodging a return on behalf of a taxpayer, or giving advice about a taxation law.
A BAS service is any service that relates to advising, ascertaining or satisfying the liabilities, obligations or entitlements of an entity under a BAS provision provided in circumstances where it is reasonable to expect that the entity will rely on it.	The definition of BAS service contains a list of services for which unregistered entities may charge a fee in limited circumstances, including preparing or lodging a BAS on behalf of taxpayer, or giving advice about a BAS provision.

<i>New law</i>	<i>Current law</i>
<p>To provide a BAS service for a fee, an entity must be a registered tax agent or BAS service provider and is required to have met the prescribed minimum education and relevant experience requirements, as well as the fit and proper person test.</p> <p>A registered tax agent may provide a BAS service without additional registration.</p>	<p>Unregistered entities can provide a BAS service for a fee under limited circumstances - for example, if they are a member of a recognised professional association or if the individual is a bookkeeper working under the direction of a registered tax agent.</p>
<p>An application for registration must be decided by the Tax Practitioners Board within 6 months of its receipt.</p>	<p>No requirement for the state Tax Agents' Boards to make a decision to register a tax agent or a nominee of a tax agent within a specified time.</p>
<p>A change in the composition of the partnership does not affect the continuity of the partnership. However, a partnership must notify the Board of any change in the composition of the partnership and must meet the registration requirements at all times. Where a partnership fails to notify the Board of any change in the composition of the partnership, the partnership exposes itself to a sanction for a breach of the Code of Professional Conduct, for failure to comply with a taxation law.</p>	<p>Where a partnership is registered as a tax agent and there is a change in the constitution of the partnership, registration is taken to be terminated from the time of that change. However, where the registration of a partnership has been terminated, there is a mechanism in which former partners of the original partnership can be registered as a successor to the original partnership, either as an individual or a partner in a new partnership.</p>
<p>There is no registration requirement for percentages of partners/directors to be qualified. To be registered, partnerships and companies must now only be able to demonstrate that they have sufficient resources (including financial, technological and appropriately qualified human resources) to provide a tax agent service or BAS service, as the case requires, to a competent standard, and to carry out supervisory arrangements.</p>	<p>The registration requirements for partnerships/companies include that a partnership/company must be a partnership/company in which qualified partners/directors have a substantial interest; that is, not less than 25 per cent of the partnership/company is owned by a partner/director, or by partners/directors each of whom is a fit and proper person (including the holding of the prescribed qualifications).</p>

Detailed explanation of new law

Civil penalties for prohibited conduct

2.31 Subdivision 602-A provides that unregistered entities that are not exempted legal practitioners are liable to pay civil penalties if they:

- provide a tax agent service or BAS service for a fee in circumstances where they know or are expected to know that such a service is a tax agent service or BAS service; or
- advertise that they provide a tax agent service or BAS service; or
- represent that they are a tax agent or BAS service provider, or both.

2.32 The maximum civil penalty for providing a tax agent service or BAS service for a fee if unregistered is 250 penalty units (currently \$27,500) for an individual and 1,250 penalty units (currently \$137,500) for a body corporate. (Please refer to Chapter 4 of this explanatory memorandum for an explanation of the procedure for obtaining a civil penalty order.) [*Schedule 1, Item 18, Division 602, section 602-5 of Schedule 1 to the TAA 1953*]

2.33 The maximum civil penalty for advertising a tax agent service or BAS service or representing as a tax agent or BAS service provider if unregistered is 50 penalty units (currently \$5,500) for an individual and 250 penalty units (currently \$27,500) for a body corporate. (Please refer to Chapter 4 of this explanatory memorandum for an explanation of the procedure for obtaining a civil penalty order.) [*Schedule 1, Item 18, Division 602, sections 602-20 and 602-25 of Schedule 1 to the TAA 1953*]

Conduct prohibited without registration

Providing a tax agent service or BAS service for a fee if unregistered

2.34 To ensure the quality of tax agent services, only a registered tax agent or an exempted legal practitioner is allowed to provide tax agent services for a fee. Consequently, an entity is liable for a civil penalty if they provide a tax agent service (that is not a BAS service) for a fee and they are not registered as a tax agent, or are not an exempted legal practitioner. *[Schedule 1, Item 18, Division 602, subsection 602-5(1) of Schedule 1 to the TAA 1953]*

2.35 Similarly, an entity is liable for a civil penalty if they provide a BAS service for a fee and they are not registered as a tax agent, a BAS service provider, or are not an exempted legal practitioner or a customs broker licensed under Part XI of the *Customs Act 1901* if the BAS service relates to imports or exports to which an indirect tax law applies. *[Schedule 1, Item 18, Division 602, subsection 602-5(2) of Schedule 1 to the TAA 1953]*

2.36 The civil penalty only applies where an unregistered entity who provides a service *knows* or *ought reasonably to know* that service is a tax agent service or BAS service. This is to ensure that entities who take reasonable care, but provide a tax agent service or BAS service inadvertently, will not incur the penalty. *[Schedule 1, Item 18, Division 602, section 602-5 of Schedule 1 to the TAA 1953]*

Example 2.1

Norma is a licensed financial service provider, but is not a registered tax agent. In addition to providing advice about the tax implications of decisions about financial products, Norma prepares income tax returns for a fee. As a licensed financial service provider, Norma ought to know that she can only provide tax advice that is incidental to the financial services provided without being registered as a tax agent. Consequently, she ought reasonably to know that charging fees for preparing tax returns while unregistered is prohibited.

2.37 A tax agent service is any service that relates to:

- advising, ascertaining or satisfying the liabilities, obligations or entitlements of an entity under a taxation law; and
- is provided in circumstances where it can reasonably be expected that the entity will rely on it.

[Schedule 1, Item 14, subsection 995-1(1) of ITAA 1997 and Item 18, Division 602, subsection 602-10(1) of Schedule 1 to the TAA 1953]

2.38 For the purposes of this Part, a tax agent service includes, but is not limited to:

- preparing or lodging a return, notice, statement, application or other document about a taxpayer's liabilities, obligations or entitlements under a taxation law;
- preparing or lodging on behalf of a taxpayer an objection under Part IVC of the TAA 1953 against an assessment, determination, notice or decision under a taxation law;
- applying for a review of, or instituting an appeal against, a decision on such an objection;
- giving a taxpayer advice about a taxation law which the taxpayer is reasonably expected to rely upon to satisfy their taxation obligations;
- dealing with the Commissioner or a person exercising powers or performing functions under a taxation law on behalf of a taxpayer.

2.39 A tax agent service relates to services provided under a taxation law. A **taxation law** has the same meaning as in subsection 995-1(1) of the ITAA 1997, namely any Act for which the Commissioner has the general power of administration, and any regulation under such an Act. Consequently, the new provisions extend the concept of tax agent services beyond income tax matters.

2.40 Given the broad definition of taxation law, the regulation-making power gives the Government the flexibility in the future to specify in the regulations that a particular service does not fall within the tax agent service definition. The definition of BAS service includes a similar provision. [*Schedule 1, Item 18, Division 602, subsections 602-10(3) and 602-15(3) of Schedule 1 to the TAA 1953*]

2.41 The tax agent service definition does not capture services provided in circumstances where they are not expected to be relied upon.

Example 2.2

Tanto Ltd is a car dealer. In promoting sales, the firm often gives clients suggestions on the tax implications of car purchasing transactions, but includes with their advice that the client should consult their tax agent. This does not fall within the definition of tax

agent service as it cannot be the ‘advice’ reasonably expected to be relied upon.

2.42 A BAS service is any service that relates to advising, ascertaining or satisfying the liabilities, obligations or entitlements of an entity under a BAS provision, provided in circumstances where the recipient can reasonably be expected to rely on it. [*Schedule 1, Item 3, subsection 995-1(1) to the ITAA 1997 and Item 18, Division 602, subsection 602-15(1) of Schedule 1 to the TAA 1953*]

2.43 A BAS provision has the same meaning as in section 995-1 of the ITAA 1997 and means:

- collection and recovery of tax provisions in Part VII to the *Fringe Benefits Tax Assessment Act 1986*;
- the indirect tax law (which means the GST law, the wine tax law, the luxury car tax law or the fuel tax law, all as defined in section 995-1 of the ITAA 1997); and
- PAYG withholding and instalment provisions in Parts 2-5 and 2-10 in Schedule 1 to the TAA 1953.

2.44 A BAS service therefore includes:

- preparing or lodging an approved form about a taxpayer’s liabilities, obligations or entitlements under a BAS provision;
- giving advice about a BAS provision; or
- transacting any business with the Commissioner on behalf of a taxpayer in relation to a BAS provision.

2.45 However, not all items of work from the recording of a transaction to the preparation of an approved form (BAS) are BAS services. Only those tasks that involve the application of a BAS provision in ascertaining the liabilities of a taxpayer are a BAS service. A BAS service should be distinguished from services which, for example, simply require an individual to follow instructions or transfer data onto a computer programme.

Example 2.3

Francisca is a bookkeeper. She follows instructions from Chris, a registered BAS service provider, to code tax invoices and transfer data onto a computer programme for her clients. Francisca’s work is then reviewed by Chris to check its accuracy. Francisca is not required to register as a BAS service provider as following instructions to code

and transfer data onto a computer programme does not amount to providing a BAS service and, also, her work is reviewed by a registered BAS service provider.

Example 2.4

Penny operates a mobile bookkeeping service for a number of clients. She charges a fee for her services which include entering and coding clients' transactions into a commercial accounting computer programme. Penny uses the accounting software to produce a variety of reports, including those that assist clients in determining their BAS liability.

Penny's clients rely on the information she provides to complete their regular business activity statements. They do not expect to have to re-work reports and are paying Penny to provide a service that allows them to complete the BAS with information she provides. The act of coding the transactions constitutes the interpretation or application of a BAS provision. Similarly the act of generating the reports constitutes ascertaining liabilities, obligations or entitlements under a BAS provision.

In undertaking either function Penny has provided a service that the client can be expected to rely on and she would be required to register as a BAS service provider.

2.46 An employee whose job entails the preparation and reconciliation of GST and PAYG control accounts and additionally the preparation of BAS but only for the entity which employs them will not be required to register as a BAS service provider.

Example 2.5

Kylie, a bookkeeper, is employed by a business in her local area. Kylie is paid a salary and her work involves preparing and reconciling GST and PAYG control accounts and the preparation of BAS from these accounts.

Kylie is not required to register as a BAS service provider as she is an employee of the business, not a BAS service provider. She is paid a salary for the work and not a fee.

2.47 A service provided by a person in the course of performing their duties in the Australian Taxation Office (the Tax Office) does not fall within the definition of tax agent service or BAS service. [*Schedule 1, Item 3, Item 15, subsection 995-1(1) to the ITAA 1997 and Item 18, Division 602, subsections 602-10(2) and 602-15(2) of Schedule 1 to the TAA 1953*]

Advertising a tax agent service or BAS service if unregistered

2.48 Entities are liable for a penalty if they advertise that they provide a tax agent service and they are not a registered tax agent, or are not an exempted legal practitioner.

Example 2.6

John is a registered BAS service provider. He advertises in the local paper that he is able to prepare BAS and other income tax forms for individuals and business. As John is only registered as a BAS service provider, he is not entitled to advertise tax agent services including the preparation of income tax forms. He is liable for a penalty for incorrectly advertising tax agent services.

2.49 Entities are liable for a penalty if they advertise that they provide a BAS service and they are not a registered tax agent, BAS service provider, or are not an exempted legal practitioner or a customs broker licensed under Part XI of the *Customs Act 1901* if the BAS service relates to imports or exports to which an indirect tax law applies. [Schedule 1, Item 18, Division 602, section 602-20 of Schedule 1 to the TAA 1953]

Example 2.7

Ronald has been a bookkeeper for the past five years. Ronald advertises in the local paper that he is able to prepare BAS for small businesses. Unless he is registered, Ronald is liable for a penalty.

2.50 Entities are not liable for a civil penalty if they advertise that they provide a tax agent service and they provide those services on a voluntary basis under a scheme approved by the Commissioner by notice in the Gazette. A notice given by the Commissioner in these circumstances is not a legislative instrument for the purposes of the *Legislative Instruments Act 2003*. [Schedule 1, Item 18, Division 602, subparagraphs 602-20(1)(b)(iii) and 602-20(2)(b)(v) of Schedule 1 to the TAA 1953]

Example 2.8

Lisa, a retired tax agent, prepares the income tax returns of pensioners and newly arrived immigrants on a voluntary basis as part of the Tax Help Program, a gazetted scheme approved by the Commissioner of Taxation and run by the Tax Office. As a result, Lisa, although unregistered, is permitted to provide tax agent services and she is not liable for a penalty.

Representing that you are a tax agent or BAS service provider if unregistered

2.51 Entities are liable for a penalty if they represent that they are tax agents or BAS service providers, or both, and that representation is untrue. *[Schedule 1, Item 18, Division 602, section 602-25 of Schedule 1 to the TAA 1953]*

Example 2.9

Chris was once a registered tax agent, but failed to apply to renew his registration several years ago. Chris continues to represent himself as a tax agent. Chris is therefore liable for a penalty.

Exemptions for legal practitioners

2.52 A legal practitioner is not liable to pay a civil penalty if they are acting in the course of their profession in providing:

- a tax agent service in their capacity as a trustee of a trust or personal legal representative of a deceased estate; or
- a tax agent service (other than preparation of or lodgment of a return) in any other case.

[Schedule 1, Item 18, Division 602, subsections 602-5(3) and 602-20(3) of Schedule 1 to the TAA 1953]

Example 2.10

Philip has information about an investment opportunity which advertises significant tax deductions. He contacts his solicitor, Bryce, to obtain taxation advice on the investment. Although Bryce is advising Philip about his liabilities, obligations and entitlements under taxation law, he is not liable for a civil penalty as an unregistered agent as he is acting in the course of his profession as a legal practitioner.

2.53 If a legal practitioner provides a tax agent service for a fee, and the tax agent service is not within the course of their profession, they are subject to the same registration requirements that apply generally. For example, a financial planner who has legal qualifications, but who is not practising as a legal practitioner is not exempt from the penalty provisions.

Other exceptions

2.54 Customs brokers licensed under the *Customs Act 1901* are not liable for a civil penalty if the BAS service they provide relates to imports or exports to which an indirect tax law (as defined in section 995-1 of the ITAA 1997) applies. [*Schedule 1, Item 18, Division 602, subparagraphs 602-5(2)(c)(iv) and 602-20(2)(b)(iv) of Schedule 1 to the TAA 1953*]

Treatment of partnerships

2.55 Where a partnership is liable for a civil penalty, each partner is liable unless the partner can prove that they:

- have not engaged in the conduct;
- have not aided, abetted, counselled or procured the conduct; and
- were not in any way knowingly concerned in, or party to, the conduct (whether directly or indirectly or by any act or omission of the partner).

This limitation on the liability of a partner applies to the civil penalties in Divisions 602 and 604 of this Bill. [*Schedule 1, Item 18, Division 610, section 610-10 of Schedule 1 to the TAA 1953*]

2.56 In circumstances where a partnership consists of both individual and corporate partners, individual partners are subject to the maximum level of penalty for individuals when they are in breach of the civil penalty provisions, and corporate partners are subject to the maximum level of penalty for a body corporate.

Example 2.11

BK Services is a partnership providing bookkeeping services, but is not a registered BAS service provider. In this partnership, Kristel is an individual partner, and Henry's Services Ltd is a corporate partner. The partnership advertises in the local phone directory that their business prepares BAS and provides advice in relation to BAS provisions.

BK Services is found by the Federal Court to have breached the civil penalty provision that prohibits unregistered entities from advertising that they provide BAS services. The civil penalties for each partner are different. Henry's Services Ltd is liable for five times the amount that Kristel is liable for.

Kristel was able to prove that she did not engage or knowingly assist in the conduct of advertising the provision of BAS services, and was not liable for the civil penalty.

Registration

Registration requirements

2.57 Individuals (including those acting in the capacity of a trustee), partnerships or companies (including those acting in the capacity of a trustee) may apply to the Board for registration as a tax agent or BAS service provider. Individuals may apply to the Board for registration as a nominee of a tax agent or BAS service provider. *[Schedule 1, Item 4, subsection 995-1(1) of the ITAA 1997 and Item 13, subsection 995-1(1) of the ITAA 1997 and Item 18, Division 602, subsections 602-55(1) and (2) of Schedule 1 to the TAA 1953]*

2.58 Except for an application for registration as a nominee, the tax practitioner registration requirements consist of the following three elements:

- the fit and proper person test (which applies to individual applicants and partners/directors of partnership/company applicants);
- prescribed qualification requirements for individual applicants, or sufficient resource requirements for partnership/company applicants; and
- that the entity carries on, or proposes to carry on, a business that provides tax agent services (whether in their own right, or acting in their capacity as a trustee of a trust).

[Schedule 1, Item 15, subsection 995-1(1) to the ITAA 1997, Item 18, Division 602, section 602-30 of Schedule 1 to the TAA 1953]

2.59 Applicants for registration as a nominee do not need to satisfy the requirement that they carry on, or propose to carry on, a business that provides tax agent services. *[Schedule 1, Item 18, Division 602, section 602-35 of Schedule 1 to the TAA 1953]*

Element 1: Fit and proper person test

2.60 The fit and proper person requirement applies to individuals, each individual partner (for partnership registrants) and each director of a company (for partnership/company registrants). *[Schedule 1, Item 18,*

Division 602, paragraphs 602-30(1)(a), 602-30(2)(a) and 602-30(3)(a), and subparagraph 602-30(2)(b)(i) of Schedule 1 to the TAA 1953]

2.61 To be eligible for registration, the Board must be satisfied that an applicant is a fit and proper person. The Board, in deciding whether an individual is a **fit and proper person**, must have regard to whether the individual is of good fame, integrity and character and, in particular, whether the applicant has experienced a relevant adverse event in the past five years. *[Schedule 1, Item 6, subsection 995-1(1) to the ITAA 1997, and Item 18, Division 602, subsection 602-45(1), paragraphs 602-30(1)(a), (2)(a) and (3)(a) and subparagraph 602-30(2)(b)(i) of Schedule 1 to the TAA 1953]*

2.62 An applicant must be over 18 for the Board to be satisfied that they are a fit and proper person. *[Schedule 1, Item 6, subsection 995-1(1) to the ITAA 1997 and Item 18, Division 602, subsection 602-45(2) of Schedule 1 to the TAA 1953]*

2.63 A **relevant adverse event** occurs if an individual has been:

- convicted of a serious taxation offence;
- convicted of an offence involving fraud or dishonesty;
- penalised for being a promoter of a tax exploitation scheme;
- an undischarged bankrupt or under external administration; and/or
- sentenced to a term of imprisonment.

[Schedule 1, Item 10, subsection 995-1(1) to the ITAA 1997 and Item 18, Division 602, section 602-50 of Schedule 1 to the TAA 1953]

Example 2.12

Three years ago, Melissa was convicted of dangerous driving causing serious injury under section 319 of the *Crimes Act 1958 (Vic)* and received a two year suspended prison sentence. Being sentenced to a term of imprisonment is a relevant adverse event. The Board must consider the event in deciding whether to grant Melissa registration.

2.64 A **taxation offence** is defined in section 8A of the TAA 1953 as an offence against any taxation law. A **serious taxation offence** is an offence that is a taxation offence that is punishable on conviction by a fine exceeding 40 penalty units, or imprisonment, or both. *[Schedule 1, Item 12, paragraph 995-1(1)(b) to the ITAA 1997]*

Example 2.13

Heather maintains a bank account in a false name and omits the interest from her income tax returns. If convicted, the offence is punishable by a fine of up to 50 penalty units, therefore this is a serious taxation offence.

Heather was convicted and fined 35 penalty units. Although the fine was actually less than 40 penalty units, it is considered a serious taxation offence as the maximum fine for this type of offence is 50 penalty units.

2.65 A serious taxation offence also refers to those offences outlined in the *Criminal Code* which relate to:

- obtaining property by deception (section 134.1 of the *Criminal Code*);
- obtaining financial advantage by deception (section 134.2 of the *Criminal Code*);
- general dishonesty with respect to obtaining a gain, causing a loss or influencing a Commonwealth public official (section 135.1 of the *Criminal Code*);
- obtaining a financial advantage (section 135.2 of the *Criminal Code*); and/or
- conspiracy to defraud with respect to obtaining a gain, causing a loss or influencing a Commonwealth public official (section 135.4 of the *Criminal Code*).

[Schedule 1, Item 12, paragraph 995-1(1)(a) to the ITAA 1997]

2.66 A relevant adverse event includes circumstances where an individual has been convicted of an offence involving fraud or dishonesty. The offence of dishonesty takes its ordinary meaning. Under section 130.3 of the *Criminal Code*, dishonest is defined as dishonest according to the standards of ordinary people in circumstances where the defendant is aware of these standards. Consequently, the scope of dishonest is determined by community standards.

Example 2.14

Patricia was convicted of theft and was fined \$1,500. To convict an individual for theft, a court must be satisfied that the individual has

dishonestly appropriated property belonging to another with the intention of permanently depriving the other person of the property. Consequently, theft is an offence of dishonesty and the Board may decline to grant Patricia's registration application on the grounds that she does not satisfy the fit and proper person test.

Element 2: Prescribed qualifications

Prescribed requirements (for individuals)

2.67 An individual is required to satisfy the **prescribed tax agent requirements** in order to register as a tax agent or a nominee of a tax agent, or required to satisfy the **prescribed BAS service provider requirements** in order to register as a BAS service provider or a nominee of a BAS service provider. The requirements prescribed in the regulations include requirements for minimum academic qualifications and relevant experience. [Schedule 1, Items 8, 9, subsection 995-1(1) to the ITAA 1997 and Item 18, Division 602, subsection 602-30(1)(b) of Schedule 1 to the TAA 1953]

2.68 The regulations may prescribe a scheme relating to the recognition of the academic qualifications and relevant experience requirements for tax agents and BAS service providers. This regulation making power is to provide flexibility in the recognition of qualifications and experience of an applicant. The regulations may also provide for a system of accrediting professional associations for the purposes of the scheme. [Schedule 1, Item 18, Division 602, section 602-40 of Schedule 1 to the TAA 1953]

Sufficient resource requirements (for companies/partnerships)

2.69 In order to be registered, applicants other than individuals must satisfy the Board that they have sufficient resources available in order to provide the service to a competent standard and carry out necessary supervisory arrangements. This is equivalent to the prescribed requirements for individuals. [Schedule 1, Item 18, Division 602, paragraphs 602-30(2)(c) and (3)(d) of Schedule 1 to the TAA 1953]

2.70 The sufficient resource requirements ensure that consumers can have confidence in the expertise and professionalism of registered tax agents/BAS service providers and their employees and that all practitioners have the organisational capacity to provide a tax agent service or BAS service competently. This requirement includes having sufficient financial, technological and appropriately qualified human resources. The level of financial, technological and human resources that an applicant must establish will vary according to the nature, scale and complexity of the applicant's business.

2.71 The technological resources that are considered adequate will depend on the nature, scale and complexity of the tax practitioner's business, and vary according to the types of systems a registered tax practitioner uses in their business. It is expected that registered tax practitioners will use a range of technological resources from simple manual systems to sophisticated information technology systems. The Board may specify particular requirements if there is a reason to doubt an applicant's ability to provide tax agent services competently due to technological deficiencies.

2.72 The requirement that practitioners have adequate financial resources promotes financial risk management to ensure that potential cash shortfalls do not put compliance with the tax practitioner's registration obligations at risk. Registered tax practitioners should have a risk management system in place to deal with the risk that their financial resources will not be adequate to enable them to carry on their business of providing a tax agent service, or to wind up their business in an orderly manner.

2.73 The financial requirements are not, however, intended to place an unreasonable burden on practitioners to maintain a particular level of assets, nor is it intended to act as a barrier for entry into the tax agent services industry.

2.74 To have appropriately qualified human resources requires a company or partnership to have an adequate number of staff in key management positions overseeing work and staff who satisfy the prescribed tax agent/BAS service provider requirements and the fit and proper person test. It may depend on the qualification of the applicant's responsible officers, whose expertise the business relies on to meet its sufficient resources obligations.

2.75 A business is therefore required to have an adequate number of staff (depending on the size and activities of the business) who can provide a tax agent or BAS service competently. There is no set formula for determining the ratio of qualified staff to returns.

Example 2.15

Superfast Tax is a registered company tax agent providing tax agent services for a large number of clients from many premises across the state. To satisfy the appropriately qualified human resources requirement, the company has registered nominees in key management positions responsible for supervising its employees ensuring that returns are prepared to the required standard. Superfast Tax ensures its staff possesses the required level of skills and knowledge as it provides

training in tax technical and technology matters on a regular basis. The company also keeps up to date with the latest software and equipment to assist its staff in providing an accurate and prompt service for its clients.

Element 3: Carrying on a business that provides a tax agent service

2.76 To become registered as a tax practitioner (other than a nominee), an entity must carry on, or propose to carry on, a business that provides a tax agent service. [*Schedule 1, Item 18, Division 602, paragraphs 602-30(1)(c), 602-30(2)(d), and 602-30(3)(e) of Schedule 1 to the TAA 1953*]

2.77 This requirement applies to entities that are carrying on, or that propose to carry on, a business in their own right or in their capacity as a trustee of a trust that is providing a tax agent service or BAS service. The definition of ‘carries on, or proposes to carry on a business’ takes its ordinary meaning.

2.78 While registration is limited to individuals, partnerships and companies, there is no limitation on the type of business structure that may provide a tax agent service for a fee. The trust structure is recognised through the registration of individuals or companies in their capacity as trustees. Employees of a trust (including a service trust) may provide a tax agent service/BAS service on behalf of a trustee of the trust who is a registered tax agent or BAS service provider, for a fee, if the employee is under the supervision and control of the trustee or its nominees. This is to ensure that there is a natural person (individual trustee or director of a corporate trustee) who can be held accountable for the actions of the trust.

Example 2.16

Ella is the trustee of a service trust. She satisfies the prescribed tax agent requirements and the fit and proper person test and is eligible for registration as a tax agent as she is acting in the capacity of a trustee for a service trust that is proposing to carry on a business of providing a tax agent service. Once Ella is a registered tax agent, the employees of the service trust can provide a tax agent service for a fee under Ella’s supervision and control.

Pre-1988 tax agents

2.79 Individuals who were registered as a tax agent under Part VIIA of the ITAA 1936 immediately before the commencement of section 39 of the *Taxation Laws Amendment Act (no.2) 1988* on 1 November 1988 and remain registered immediately prior to commencement of item 2 of Schedule 1 to this Act are eligible for registration, even if they do not meet the prescribed tax agent requirements. The Board has discretion to

grant registration to these applicants even if the individual does not satisfy the prescribed academic and relevant experience requirements. *[Schedule 1, Item 18, Division 602, subsection 602-30(4) of Schedule 1 to the TAA 1953]*

2.80 This rule governing pre-1988 tax agents preserves the special treatment in the former law that exempted pre-1988 registered tax agents from having to meet the academic and work experience criteria for registration and re-registration.

Registration of nominees

2.81 The Board may register an individual who satisfies the prescribed requirements and the fit and proper person test, but who is not carrying on or does not propose to carry on a business, as a nominee of a registered tax agent or BAS service provider. This allows owners of a partnership/corporate tax agent or BAS service provider who are not technically qualified themselves to employ qualified nominees to provide or supervise the provision of tax agent services on their behalf.

2.82 The registration of nominees also allows registered tax agents/BAS service providers to employ nominees to provide or supervise the provision of tax agent services on their behalf where the volume of work is excessive, they occupy separate physical premises or some other business reason. *[Schedule 1, Item 7, subsection 995-1(1) to the ITAA 1997 and Item 18, Division 602, 602-35 of Schedule 1 to the TAA 1953]*

Example 2.17

Jackie is currently employed by an accountant, Michael, who is a registered tax agent. Jackie has attained the prescribed academic and relevant experience requirements and also meets the fit and proper person test. However, as she is an employee, she does not carry on a business providing a tax agent service. It is possible for Michael to request the Board to register Jackie as his nominee. It is not possible for Jackie to register as a tax agent in her own right unless she intends to carry on a business in the future.

Registration Process

Application for registration

2.83 Entities may apply to the Board for registration as a tax agent, BAS service provider, or nominee of a tax agent or BAS service provider. *[Schedule 1, Item 18, Division 602, subsections 602-55(1) and (2) of Schedule 1 to the TAA 1953]*

2.84 An application for registration must be in the form approved by the Board, accompanied by the prescribed application fee and any documents that are required by the Board. *[Schedule 1, Item 18, Division 602, subsection 602-55(3) of Schedule 1 to the TAA 1953]*

2.85 The Board must give the application fee to the Commissioner who receives the fee on behalf of the Commonwealth. If the applicant decides to withdraw an application for registration as a tax agent or BAS service provider the application fee will be refunded, but only if the withdrawal occurs within 30 days of the application being made and before the application has been granted or refused. *[Schedule 1, Item 18,, Division 602, subsections 602-55(4) and (5) of Schedule 1 to the TAA 1953]*

Decision by the Board to register the applicant

2.86 If the Board is satisfied that the applicant complied with all the elements of registration, the Board must grant registration. Otherwise, the Board must reject the application for registration. *[Schedule 1, Item 18, Division 602, subsection 602-60(1) of Schedule 1 to the TAA 1953]*

2.87 The Board has a period of six months after receiving an application for registration in which to decide whether to grant registration, or refuse the application. Where the Board has not made a decision on a registration application within six months of receiving the application, the Board is taken to have rejected the application. *[Schedule 1, Item 18, Division 602, subsections 602-60(2) and (3) of Schedule 1 to the TAA 1953]*

2.88 The Board's decision to reject an application for registration, or failure to determine an application within six months, is a reviewable decision, which the applicant can refer to the AAT. This right allows those entities who have been affected by the Board's decision to question the exercise of power by the Board independently. *[Schedule 1, Item 18, Division 610, paragraph 610-5(a) of Schedule 1 to the TAA 1953]*

2.89 The Board must notify the applicant of its decision to register or refuse to register within 30 days of that decision being made. If the Board refuses to register an entity, it must also furnish the entity with reasons for the decision. However, failure by the Board to comply with this requirement does not affect the validity of the Board's decision. That is, if the Board fails to provide notification of the decision, the decision is still valid. *[Schedule 1, Item 18, Division 602, subsection 602-60(4) of Schedule 1 to the TAA 1953]*

Commencement and duration of registration

2.90 The registration of a tax practitioner for the purposes of this Part is taken to commence on the date specified by the Board when it notifies the tax practitioner of its registration decision under subsection 602-60(4).

[Schedule 1, Item 18, Division 602, subparagraph 602-65(a)(ii) of Schedule 1 to the TAA 1953]

2.91 Registration shall be valid for a period of at least three years. The Board has the power to determine a period longer than three years. *[Schedule 1, Item 18, Division 602, paragraph 602-65(b) of Schedule 1 to the TAA 1953]*

2.92 The registration expires at the end of the period determined by the Board unless it is terminated before that time. *[Schedule 1, Item 18, Division 602, section 602-65 of Schedule 1 to the TAA 1953]*

2.93 Under the rules for renewal of registration, if a tax practitioner applies for renewal of the registration at least 30 days prior to the expiration of the registration, or such shorter period as the Board allows, the tax practitioner's registration is taken to continue until his or her application has been decided despite the operation of subsection 602-60(3) of this Act. *[Schedule 1, Item 18, Division 602, subsections 602-70(1) and (2) of Schedule 1 to the TAA 1953]*

2.94 An entity whose registration has been suspended under subsection 604-25(1) may apply for a renewal of registration during their period of suspension. *[Schedule 1, Item 18, Division 602, subsection 602-70(3) of Schedule 1 to the TAA 1953]*

2.95 A decision by the Board refusing to grant the applicant a shorter period in which to lodge their application for renewal of registration is a reviewable decision against which the applicant can apply for a review to the AAT. *[Schedule 1, Item 18, Division 610, paragraph 610-5(b) of Schedule 1 to the TAA 1953]*

Notification of change in circumstances

2.96 Tax practitioners must notify the Board, in writing, of certain changes in their circumstances after registration.

2.97 An entity must notify the Board of a change in circumstances when they cease to meet any of the registration requirements, or if a relevant adverse event happens. *[Schedule 1, Item 18, Division 602, paragraph 602-75(1)(a) and subparagraph 602-75(1)(b)(i) of Schedule 1 to the TAA 1953]*

2.98 A partnership must notify the Board when the partnership ceases to meet any of the registration requirements, if a relevant adverse event happens to a partner or a director of a company that is a partner in the partnership, or if the composition of the partnership changes. *[Schedule 1, Item 18, Division 602, paragraphs 602-75(1)(a) and (c), and subparagraph 602-75(1)(b)(ii) of Schedule 1 to the TAA 1953]*

2.99 For the purposes of this Part, a change in the composition of the partnership does not affect the registration. A partnership's registration does not lapse every time a partner leaves or a new partner is admitted, provided partners registered continue to comply with the partnership registration requirements, including the fit and proper person test. *[Schedule 1, Item 18, Division 602, paragraph 602-75(1)(c), Division 610, section 610-15 of Schedule 1 to the TAA 1953]*

2.100 A company must notify the Board when the company ceases to meet any of the registration requirements, if a relevant adverse event happens to a director of the company, if one or more directors ceases to be a director, or if one or more persons becomes a director of the company. *[Schedule 1, Item 18, Division 602, paragraphs 602-75(1)(a) and (d), and subparagraph 602-75(1)(b)(iii) of Schedule 1 to the TAA 1953]*

2.101 The affected individual, partnership or company must notify the Board within 28 days if any of these events occur. Failure to notify within the time allowed is a breach of the Code of Professional Conduct under subsection 604-10(1), exposing the individual, partnership or company to a sanction under this Part. A breach of this subsection is also an offence under section 8C of the TAA 1953 for failure to comply with requirements under a taxation law. *[Schedule 1, Item 18, Division 602, section 602-75 of Schedule 1 to the TAA 1953]*

Termination of registration

2.102 The Board may terminate the registration of a tax practitioner if they either cease to meet the registration requirements, or a relevant adverse event happens to them. (Please refer to paragraph 2.63 for an explanation of relevant adverse event.) *[Schedule 1, Item 18, Division 602, subsections 602-80(1), 602-85(1) and 602-90(1) of Schedule 1 to the TAA 1953]*

2.103 For partnerships and companies, where a relevant adverse event happens to a partner, a director of a company that is a partner in a registered partnership, or a director of a company, the Board may decide to do one of the following:

- take no further action in appropriate circumstances;
- require the partnership to remove the partner, or the director of the company that is a partner in a registered partnership;
- require the company to remove the director from the board of directors of the company; or
- terminate registration.

[Schedule 1, Item 18, Division 602, subsections 602-85(3) and 602-90(3) of Schedule 1 to the TAA 1953]

2.104 If the Board directs the removal of a partner/director from a partnership/company, it must do so by notice in writing that specifies a period within which the partnership/company must remove the partner or director. In determining a suitable period for the removal of a partner, or the director of the company that is a partner in a registered partnership, the Board must have regard to the requirements of any law of the Commonwealth, a State or a Territory in relation to the removal of partners from partnerships. Similarly, when determining a suitable period for the removal of a director in a company, the Board must have regard to any requirement of the *Corporations Act 2001* in relation to the removal of directors. *[Schedule 1, Item 18, Division 602, subsections 602-85(3) and 602-90(3) of Schedule 1 to the TAA 1953]*

2.105 Failure to follow the Board's direction to remove a partner/director in these circumstances amounts to a breach of the Code and is an offence under section 8C of the TAA 1953. Section 8C outlines absolute liability offences for entities who fail to comply with requirements under a taxation law. An absolute liability offence is an offence where there are no fault elements for any of the physical elements of the offence and the defence of mistake of fact is unavailable. However, the existence of an absolute liability offence does not make any other defence unavailable. (See section 6.2 of the *Criminal Code*.) *[Schedule 1, Item 18, Division 602, subsections 602-85(3) and 602-90(3) of Schedule 1 to the TAA 1953]*

2.106 The Board must terminate the registration of an individual if the individual:

- dies;
- surrenders their registration to the Board by notice in writing;
or
- permanently ceases to carry on a business that provides a tax agent service or BAS service, as the case requires (unless they are a nominee of a tax agent or BAS service provider).

[Schedule 1, Item 18, Division 602, subsection 602-80(2) of Schedule 1 to the TAA 1953]

Example 2.18

Louise has been a registered tax agent for the past eight years. During this time, she has opened a restaurant with her husband Daniel. As a result of her ongoing commitments with the restaurant, Louise has only

prepared a total of three tax returns in the past three years, all relating to her restaurant business. The Board carries out a general review of tax practitioner lodgments and queries Louise on her low number of lodgments. In her response, Louise is unable to satisfy the Board that she is carrying on a business. The Board terminates Louise's registration because the evidence confirms that Louise no longer carries on, and does not intend to carry on, a business of providing tax agent services.

2.107 The Board must terminate the registration of a nominee of a tax agent or BAS service provider if:

- the tax agent or BAS service provider notifies the Board that they no longer want the individual to be its nominee; or
- the registration of the tax agent or BAS service provider has been terminated.

[Schedule 1, Item 18, Division 602, paragraph 602-80(2)(d) of Schedule 1 to the TAA 1953]

2.108 The Board must terminate the registration of a partnership or a company if the partnership or company:

- surrenders its registration to the Board by notice in writing; or
- permanently ceases to carry on a business that provides a tax agent service or BAS service (as the case requires).

[Schedule 1, Item 18, Division 602, subsections 602-85(2) and 602-90(2) of Schedule 1 to the TAA 1953]

Example 2.19

SmallTax Pty Ltd is a registered tax agent with a single director and four employees. SmallTax has decided to merge its business with SupaTax Ltd, another registered tax agent. SmallTax closes down its business and surrenders its registration to the Board. The Board must terminate the registration of SmallTax Pty Ltd.

2.109 Where the Board has terminated the registration of a tax practitioner, it must specify a period of at least five years during which the tax practitioner is prohibited from being registered, except in the following circumstances where the termination is not related to his or her fitness to provide a tax agent service:

- a tax agent's or BAS service provider's registration was surrendered or terminated because they ceased to carry on business;
- a nominee's registration was terminated because the supervising tax agent or BAS service provider notifies the Board that it no longer wants the individual to be its nominee or the registration of the supervising tax agent or BAS service provider was terminated; or
- where registration was terminated because the tax practitioner became an undischarged bankrupt or has gone into external administration.

[Schedule 1, Item 18, Division 602, section 602-95 of Schedule 1 to the TAA 1953]

2.110 If an individual becomes an undischarged bankrupt for reasons independent of their business endeavours (for example, if they agree to be a guarantor for a loan) it would be unfair to specify a period of at least five years in which that individual cannot reapply for registration.

2.111 Where the Board has terminated the registration of a tax practitioner, the Board must notify the tax practitioner in writing of the decision and reasons for the decision within 30 days of the decision being made. The Board must also notify the tax practitioner in writing of any determination of a period during which they are not eligible to apply for registration, within 30 days of that determination being made. However, failure by the Board to comply with this requirement does not affect the validity of the Board's decision. That is, if the Board fails to provide notification of the decision, the decision is still valid. *[Schedule 1, Item 18, Division 602, subsection 602-100(1) of Schedule 1 to the TAA 1953]*

Example 2.20

The Board decides to terminate Kate's registration as she no longer meets the fit and proper person test for registration purposes. The Board, however, does not notify Kate of its decision within the 30 day time limit. Despite the Board's failure to comply with this timing requirement, its decision is still valid.

2.112 The date of effect of the Board's decision to terminate a tax practitioner's registration is the date specified by the Board in the termination notice. Rather than termination taking effect immediately, the Board must specify a termination date that is at least 14 days after the date of the notice. This allows the entity time to wind up its affairs and to

inform its clients. *[Schedule 1, Item 18, Division 602, subsection 602-100(2) of Schedule 1 to the TAA 1953]*

2.113 A decision by the Board to:

- terminate the registration of a tax practitioner, including a decision requiring a company or partnership to remove a partner/director where a relevant adverse event happens to the partner/director, or
- determine a period during which a tax practitioner, whose registration has previously been terminated, may not make an application for registration

is a reviewable decision from which the tax practitioner may apply for a review to the AAT. *[Schedule 1, Item 18, Division 610, paragraphs 610-5(c) and (d) of Schedule 1 to the TAA 1953]*