

EXPOSURE DRAFT

2004-2005-2006-2007

The Parliament of the
Commonwealth of Australia

HOUSE OF REPRESENTATIVES

EXPOSURE DRAFT

If you have any comments on this exposure draft, they should be sent to the
General Manager, Tax System Review Division, Treasury, Langton Crescent,
Parkes ACT 2600 by 13 July 2007.

Tax Laws Amendment (Tax Agent Services) Bill 2007

No. , 2007

(Treasury)

**A Bill for an Act to amend the law relating to
taxation, and for related purposes**

EXPOSURE DRAFT

Contents

1	Short title	1
2	Commencement.....	1
3	Schedule(s)	2
Schedule 1—Amendments		3
	<i>Fringe Benefits Tax Assessment Act 1986</i>	3
	<i>Income Tax Assessment Act 1936</i>	3
	<i>Income Tax Assessment Act 1997</i>	3
	<i>Taxation Administration Act 1953</i>	6
Schedule 2—Transitional provisions		43

EXPOSURE DRAFT

1 **A Bill for an Act to amend the law relating to**
2 **taxation, and for related purposes**

3 The Parliament of Australia enacts:

4 **1 Short title**

5 This Act may be cited as the *Tax Laws Amendment (Tax Agent*
6 *Services) Act 2007*.

7 **2 Commencement**

8 (1) Each provision of this Act specified in column 1 of the table
9 commences, or is taken to have commenced, in accordance with
10 column 2 of the table. Any other statement in column 2 has effect
11 according to its terms.
12

EXPOSURE DRAFT

Commencement information

Column 1	Column 2	Column 3
Provision(s)	Commencement	Date/Details
1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table	The day on which this Act receives the Royal Assent.	
2. Schedule 1	A single day to be fixed by Proclamation. However, if any of the provision(s) do not commence within the period of 9 months beginning on the day on which this Act receives the Royal Assent, they commence on the first day after the end of that period.	
3. Schedule 2	Immediately after the commencement of the provisions covered by table item 2.	

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

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

3 Schedule(s)

8 Each Act that is specified in a Schedule to this Act is amended or
9 repealed as set out in the applicable items in the Schedule
10 concerned, and any other item in a Schedule to this Act has effect
11 according to its terms.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29

Schedule 1—Amendments

Fringe Benefits Tax Assessment Act 1986

1 Part IX

Repeal the Part.

Income Tax Assessment Act 1936

2 Part VIIA

Repeal the Part.

Income Tax Assessment Act 1997

3 Subsection 995-1(1)

Insert:

BAS service has the meaning given by section 602-15 in Schedule 1 to the *Taxation Administration Act 1953*.

4 Subsection 995-1(1)

Insert:

BAS service provider means an entity that is registered under Part 5-90 in Schedule 1 to the *Taxation Administration Act 1953* as a BAS service provider.

Note: An entity is taken not to be a BAS service provider if the entity is suspended from providing BAS services under section 604-25 in Schedule 1 to the *Taxation Administration Act 1953*.

5 Subsection 995-1(1)

Insert:

Code of Professional Conduct means the Code of Professional Conduct set out in section 604-10 in Schedule 1 to the *Taxation Administration Act 1953*.

6 Subsection 995-1(1)

Insert:

EXPOSURE DRAFT

Schedule 1 Amendments

1 *fit and proper person* has a meaning affected by section 602-45 in
2 Schedule 1 to the *Taxation Administration Act 1953*.

3 **7 Subsection 995-1(1)**

4 Insert:

5 *nominee*:

6 (a) of a *tax agent, means an individual registered under
7 Part 5-90 in Schedule 1 to the *Taxation Administration Act*
8 *1953* as a nominee of the tax agent; or

9 (b) of a *BAS service provider, means an individual registered
10 under Part 5-90 in Schedule 1 to the *Taxation Administration*
11 *Act 1953* as a nominee of the BAS service provider.

12 Note: An individual is taken not to be a nominee if the individual is
13 suspended under section 604-25 in Schedule 1 to the *Taxation*
14 *Administration Act 1953*.

15 **8 Subsection 995-1(1)**

16 Insert:

17 *prescribed BAS service provider requirements* has the meaning
18 given by paragraph 602-30(1)(b) in Schedule 1 to the *Taxation*
19 *Administration Act 1953*.

20 **9 Subsection 995-1(1)**

21 Insert:

22 *prescribed tax agent requirements* has the meaning given by
23 paragraph 602-30(1)(b) in Schedule 1 to the *Taxation*
24 *Administration Act 1953*.

25 **10 Subsection 995-1(1)**

26 Insert:

27 *relevant adverse event* has the meaning given by section 602-50 in
28 Schedule 1 to the *Taxation Administration Act 1953*.

29 **11 Subsection 995-1(1)**

30 Insert:

31 *secrecy provision* means a provision of a law of the
32 Commonwealth that purports to prohibit the communication,

EXPOSURE DRAFT

1 divulging or publication of information, the production of, or the
2 publication of the contents of, a document, or the production of a
3 thing.

4 **12 Subsection 995-1(1)**

5 Insert:

6 *serious taxation offence* means:

7 (a) an offence against section 134.1, 134.2, 135.1, 135.2 or 135.4
8 of the *Criminal Code*, if the offence relates to a tax liability
9 (as defined by the *Taxation Administration Act 1953*); or

10 (b) an offence that is:

11 (i) a taxation offence within the meaning of Part III of the
12 *Taxation Administration Act 1953*; and

13 (ii) punishable on conviction by a fine exceeding 40 penalty
14 units, or imprisonment, or both.

15 Note: See section 4AA of the *Crimes Act 1914* for the current value of
16 a penalty unit.

17 **13 Subsection 995-1(1)**

18 Insert:

19 *tax agent* means an entity that is registered under Part 5-90 in
20 Schedule 1 to the *Taxation Administration Act 1953* as a tax agent.

21 Note: An entity is taken not to be a tax agent if the entity is suspended from
22 providing tax agent services under section 604-25 in Schedule 1 to the
23 *Taxation Administration Act 1953*.

24 **14 Subsection 995-1(1)**

25 Insert:

26 *tax agent service* has the meaning given by section 602-10 in
27 Schedule 1 to the *Taxation Administration Act 1953*.

28 **15 Subsection 995-1(1)**

29 Insert:

30 *tax practitioner registration requirements* means the matters about
31 which the Board must, under Subdivision 602-B in Schedule 1 to
32 the *Taxation Administration Act 1953*, be satisfied before the

EXPOSURE DRAFT

Schedule 1 Amendments

1 Board is obliged to grant an application for registration under
2 Part 5-90 in that Schedule.

3 ***Taxation Administration Act 1953***

4 **16 After subsection 284-75(1) in Schedule 1**

5 Insert:

6 (1A) However, you are not liable to an administrative penalty under
7 subsection (1) if:

- 8 (a) you engage an entity that is registered under Part 5-90 in this
9 Schedule; and
- 10 (b) you give to the entity all relevant taxation information; and
- 11 (c) the entity makes the statement; and
- 12 (d) the statement results in a *shortfall amount; and
- 13 (e) the shortfall amount did not result from:
 - 14 (i) intentional disregard by you or the entity of a *taxation
15 law; or
 - 16 (ii) recklessness by you or the entity as to the operation of a
17 taxation law.

18 **17 Section 298-80 in Schedule 1 (at the end of the table)**

19 Add:

2 Part 5-90 Civil penalties for the provision of tax agent services

20 **18 At the end of Schedule 1**

21 Add:

22 **Part 5-90—Provision of tax agent services**

23 **Division 600—Guide to Part 5-90**

24 **600-1 What this Part is about**

25 You must be registered by the Tax Practitioners Board (the ***Board***)
26 if you engage in various types of conduct connected with providing
27 tax agent services.

EXPOSURE DRAFT

Schedule 1 Amendments

1 **Subdivision 602-A—Conduct that is prohibited without**
2 **registration**

3 **Table of sections**

4	602-5	Providing tax agent services if unregistered
5	602-10	What is a tax agent service?
6	602-15	What is a BAS service?
7	602-20	Advertising tax agent services if unregistered
8	602-25	Representing that you are a tax agent or BAS service provider if
9		unregistered

10 **602-5 Providing tax agent services if unregistered**

- 11 (1) You are liable for a civil penalty if:
- 12 (a) you provide a service that you know, or ought reasonably to
- 13 know, is a *tax agent service (other than a *BAS service); and
- 14 (b) you demand or receive a fee for providing the tax agent
- 15 service; and
- 16 (c) you are not one of the following:
- 17 (i) a *tax agent;
- 18 (ii) a *legal practitioner covered by subsection (3).

19 Civil penalty:

- 20 (a) for an individual—250 penalty units;
- 21 (b) for a body corporate—1,250 penalty units.

22 Note 1: See section 4AA of the *Crimes Act 1914* for the current value of a

23 penalty unit.

24 Note 2: Subdivision 606-B in this Schedule determines the procedure for

25 obtaining a civil penalty order against you.

- 26 (2) You are liable for a civil penalty if:
- 27 (a) you provide a service that you know, or ought reasonably to
- 28 know, is a *BAS service; and
- 29 (b) you demand or receive a fee for providing the BAS service;
- 30 and
- 31 (c) you are not one of the following:
- 32 (i) a *tax agent;
- 33 (ii) a *BAS service provider;
- 34 (iii) a *legal practitioner covered by subsection (3);

EXPOSURE DRAFT

- 1 (iv) where the BAS service relates to imports or exports to
2 which an *indirect tax law applies—a customs broker
3 licensed under Part XI of the *Customs Act 1901*.

4 Civil penalty:

- 5 (a) for an individual—250 penalty units;
6 (b) for a body corporate—1,250 penalty units.

7 Note 1: See section 4AA of the *Crimes Act 1914* for the current value of a
8 penalty unit.

9 Note 2: Subdivision 606-B in this Schedule determines the procedure for
10 obtaining a civil penalty order against you.

- 11 (3) A *legal practitioner is covered by this subsection if the legal
12 practitioner is acting in the course of his or her profession to
13 provide:
14 (a) if the legal practitioner is acting for a trust or deceased estate
15 as trustee or legal personal representative—any *tax agent
16 service; or
17 (b) in any other case—a tax agent service other than the
18 preparation or lodgment of a return.

19 **602-10 What is a tax agent service?**

- 20 (1) A **tax agent service** is any service that relates to:
21 (a) ascertaining or satisfying the liabilities, obligations or
22 entitlements of an entity under a *taxation law; or
23 (b) advising an entity about the liabilities, obligations or
24 entitlements of the entity under a taxation law;
25 and that is provided in circumstances where the entity can
26 reasonably be expected to rely on the service.
27 (2) A service provided by a person in the course of performing duties
28 in the Australian Taxation Office is not a **tax agent service**.
29 (3) A service specified in the regulations for the purposes of this
30 subsection is not a **tax agent service**.

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

33 **602-15 What is a BAS service?**

- 34 (1) A **BAS service** is a *tax agent service that relates to:
-

EXPOSURE DRAFT

Schedule 1 Amendments

- 1 (a) ascertaining or satisfying the liabilities, obligations or
2 entitlements of an entity under a *BAS provision; or
3 (b) advising an entity about the liabilities, obligations or
4 entitlements of the entity under a BAS provision;
5 and that is provided in circumstances where the entity can
6 reasonably be expected to rely on the service.
- 7 (2) A service provided by a person in the course of performing duties
8 in the Australian Taxation Office is not a **BAS service**.
- 9 (3) A service specified in the regulations for the purposes of this
10 subsection is not a **BAS service**.
- 11 Note: For specification by class, see subsection 13(3) of the *Legislative*
12 *Instruments Act 2003*.

13 **602-20 Advertising tax agent services if unregistered**

- 14 (1) You are liable for a civil penalty if:
15 (a) you advertise that you will provide a *tax agent service (other
16 than a *BAS service); and
17 (b) you are not:
18 (i) a *tax agent; or
19 (ii) a *legal practitioner covered by subsection (3); or
20 (iii) a person providing services on a voluntary basis under a
21 scheme approved by the Commissioner by notice
22 published in the *Gazette*.
- 23 Civil penalty:
24 (a) for an individual—50 penalty units;
25 (b) for a body corporate—250 penalty units.
- 26 Note 1: See section 4AA of the *Crimes Act 1914* for the current value of a
27 penalty unit.
- 28 Note 2: Subdivision 606-B in this Schedule determines the procedure for
29 obtaining a civil penalty order against you.
- 30 (2) You are liable for a civil penalty if:
31 (a) you advertise that you will provide a *BAS service; and
32 (b) you are not:
33 (i) a *tax agent; or
34 (ii) a *BAS service provider; or
35 (iii) a *legal practitioner covered by subsection (3); or
-

EXPOSURE DRAFT

Amendments **Schedule 1**

- 1 (iv) if the BAS service relates to imports or exports to which
2 an *indirect tax law applies—a customs broker licensed
3 under Part XI of the *Customs Act 1901*; or
4 (v) a person providing services on a voluntary basis under a
5 scheme approved by the Commissioner by notice
6 published in the *Gazette*.

7 Civil penalty:

- 8 (a) for an individual—50 penalty units;
9 (b) for a body corporate—250 penalty units.

10 Note 1: See section 4AA of the *Crimes Act 1914* for the current value of a
11 penalty unit.

12 Note 2: Subdivision 606-B in this Schedule determines the procedure for
13 obtaining a civil penalty order against you.

- 14 (3) A *legal practitioner is covered by this subsection if the legal
15 practitioner is acting in the course of his or her profession to
16 provide:
17 (a) if the legal practitioner is acting for a trust or deceased estate
18 as trustee or legal personal representative—any *tax agent
19 service; or
20 (b) in any other case—a tax agent service other than the
21 preparation or lodgment of a return.
22 (4) A notice under subparagraph (1)(b)(iii) or (2)(b)(v) is not a
23 legislative instrument.

24 **602-25 Representing that you are a tax agent or BAS service** 25 **provider if unregistered**

26 You are liable for a civil penalty if:

- 27 (a) you represent that you are either a *tax agent or a *BAS
28 service provider, or both; and
29 (b) that representation is untrue.

30 Civil penalty:

- 31 (a) for an individual—50 penalty units;
32 (b) for a body corporate—250 penalty units.

33 Note 1: See section 4AA of the *Crimes Act 1914* for the current value of a
34 penalty unit.

EXPOSURE DRAFT

Schedule 1 Amendments

1 Note 2: Subdivision 606-B in this Schedule determines the procedure for
2 obtaining a civil penalty order against you.

3 **Subdivision 602-B—Registration**

4 **Table of sections**

5	602-30	Eligibility for registration as tax agent or BAS service provider
6	602-32	Eligibility for registration as a nominee
7	602-35	Regulations may prescribe scheme about professional qualifications
8	602-40	Criteria for determining whether an individual is a fit and proper person
9	602-43	What is a relevant adverse event?
10	602-45	Application for registration
11	602-50	Registration
12	602-55	Commencement and duration of registration
13	602-57	Renewal of registration—special rules
14	602-60	Obligation to notify of change of circumstances

15 **602-30 Eligibility for registration as tax agent or BAS service** 16 **provider**

17 *Individuals*

- 18 (1) An individual is eligible for registration as a *tax agent or a *BAS
19 service provider if the Board is satisfied that:
- 20 (a) the individual is a *fit and proper person; and
 - 21 (b) the individual meets the requirements prescribed by the
22 regulations (including, but not limited to, requirements
23 relating to qualifications and experience) in respect of
24 registration as a tax agent or a BAS service provider, as the
25 case requires; and
 - 26 (c) the individual *carries on, or proposes to carry on, a *business
27 that provides *tax agent services or *BAS services, as the
28 case requires.

29 Note 1: The reference in paragraph (c) to an individual includes a reference to
30 an individual who is acting in the capacity of a trustee of a trust that
31 carries on, or proposes to carry on, a business that provides tax agent
32 services or BAS services.

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

EXPOSURE DRAFT

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20

Partnerships

- (2) A partnership is eligible for registration as a *tax agent or a *BAS service provider if the Board is satisfied that:
- (a) each partner who is an individual is 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 available sufficient resources (including financial, technological and appropriately qualified human resources) to provide *tax agent services or *BAS services, as the case requires, to a competent standard, and to carry out supervisory arrangements; and
 - (d) the partnership *carries on, or proposes to carry on, a *business that provides tax agent services or BAS services, as the case requires.

21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36

Companies

- (3) A company is eligible for registration as a *tax agent or a *BAS service provider 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 available sufficient resources (including financial, technological and appropriately qualified human resources) to provide *tax agent services or *BAS services, as the case requires, to a competent standard, and to carry out supervisory arrangements; and
 - (e) the company *carries on, or proposes to carry on, a *business that provides tax agent services or BAS services, as the case requires.

EXPOSURE DRAFT

Schedule 1 Amendments

1 Note: The reference in paragraph (e) to a company includes a reference to a
2 company that is acting in the capacity of a trustee of a trust that carries
3 on, or proposes to carry on, a business that provides tax agent services
4 or BAS services.

5 *Special rule about pre-1988 tax agents*

- 6 (4) An individual is eligible for registration as a *tax agent even if the
7 Board is not satisfied that the individual satisfies the requirements
8 mentioned in paragraph (1)(b) if:
- 9 (a) the individual was registered as a tax agent for the purposes
10 of Part VIIA of the *Income Tax Assessment Act 1936* (as in
11 force immediately before the commencement of item 2 of
12 Schedule 1 to the *Tax Laws Amendment (Tax Agent Services)*
13 *Act 2007*) both:
- 14 (i) immediately before the commencement of this Part; and
15 (ii) immediately before the commencement of section 39 of
16 the *Taxation Laws Amendment Act (No. 2) 1988*; and
17 (b) the individual is otherwise eligible for registration as a tax
18 agent.

19 **602-35 Eligibility for registration as a nominee**

- 20 (1) An individual who would be eligible for registration as a *tax agent
21 but for paragraph 602-30(1)(c) in this Schedule is eligible to be
22 registered as a *nominee of a specified tax agent.
- 23 (2) An individual who would be eligible for registration as a *BAS
24 service provider but for paragraph 602-30(1)(c) in this Schedule is
25 eligible to be registered as a *nominee of a specified BAS service
26 provider.

27 Note: Paragraph 602-30(1)(c) in this Schedule requires that to be registered
28 as a tax agent or a BAS service provider, an individual must be
29 carrying on, or proposes to carry on, a business that provides tax agent
30 services or BAS services.

31 **602-40 Regulations may prescribe scheme about professional** 32 **qualifications**

33 The regulations may prescribe a scheme relating to the recognition
34 of professional qualifications and experience of *tax agents and
35 *BAS service providers and, without limiting this subsection, may:

- 1 (a) provide for a system of accreditation of professional
2 associations for the purposes of the scheme; and
3 (b) confer functions on the Board in relation to developing and
4 administering the system of accreditation (including, but not
5 limited to, functions relating to the investigation of
6 professional associations for those purposes).

7 **602-45 Criteria for determining whether an individual is a fit and**
8 **proper person**

- 9 (1) In deciding whether it is satisfied that an individual is a *fit and*
10 *proper person*, the Board must have regard to:
11 (a) whether the individual is of good fame, integrity and
12 character; and
13 (b) without limiting paragraph (a), whether a *relevant adverse
14 event has happened to the individual during the previous 5
15 years.
16 (2) The Board cannot be satisfied that an individual aged under 18
17 years is a *fit and proper person*.

18 **602-50 What is a relevant adverse event?**

- 19 A *relevant adverse event* happens to you if one or more of the
20 following applies:
21 (a) you are convicted of a *serious taxation offence;
22 (b) you are convicted of an offence involving fraud or
23 dishonesty;
24 (c) you are penalised for being a promoter of a *tax exploitation
25 scheme within the meaning of Division 290 in this Schedule;
26 (d) you become an undischarged bankrupt or go into external
27 administration;
28 (e) you are sentenced to a term of imprisonment.

29 **602-55 Application for registration**

- 30 (1) You may apply to the Board for registration, including renewal of
31 registration, of a type mentioned in column 2 of the table in
32 subsection (2).

EXPOSURE DRAFT

Schedule 1 Amendments

Types of registration

- 1
2 (2) This table sets out the type of registration for which you may
3 apply.
4

Item	Type of registration	Provision in this Schedule that sets out eligibility requirements for that type of registration
1	Registration of an individual as a *tax agent	Subsection 602-30(1)
2	Registration of an individual as a *BAS service provider	Subsection 602-30(1)
3	Registration of a partnership as a *tax agent	Subsection 602-30(2)
4	Registration of a partnership as a *BAS service provider	Subsection 602-30(2)
5	Registration of a company as a *tax agent	Subsection 602-30(3)
6	Registration of a company as a *BAS service provider	Subsection 602-30(3)
7	Registration of an individual as a *nominee of a *tax agent	Subsection 602-35(1)
8	Registration of an individual as a *nominee of a *BAS service provider	Subsection 602-35(2)

- 5 (3) An application under subsection (1) must be in a form approved by
6 the Board and must be accompanied by:
7 (a) any documents that are required by the Board; and
8 (b) the prescribed application fee (if any).
- 9 (4) The Board must give the application fee to the Commissioner, who
10 receives the fee (if any) on behalf of the Commonwealth.
- 11 (5) If you withdraw an application made under subsection (1):
12 (a) within 30 days after the day on which the application was
13 made; and
14 (b) before the application has been granted or refused;

EXPOSURE DRAFT

Amendments **Schedule 1**

1 the Commissioner must refund the application fee (if any) to you.

2 **602-60 Registration**

3 *Grant of application for registration*

4 (1) If you have applied to the Board for registration of a type
5 mentioned in column 2 of subsection 602-55(2) in this Schedule,
6 the Board must grant your application if you are eligible for
7 registration of that type. Otherwise, the Board must reject your
8 application.

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

11 (3) If the Board does not comply with subsection (2), the Board is
12 taken to have rejected your application.

13 Note: Section 602-70 in this Schedule specifies a different rule for renewals.

14 *Notification of decision*

15 (4) The Board must, within 30 days of the decision, notify you in
16 writing of:

17 (a) the decision; and

18 (b) if the Board rejects your application—the reasons for the
19 decision.

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

22 *Professional indemnity insurance*

23 (5) If the Board grants your application, the Board may, by written
24 notice, require you to maintain professional indemnity insurance at
25 a level specified in the notice. The notice may be given to you at
26 the same time as the notice referred to in subsection (4), or
27 subsequently.

28 **602-65 Commencement and duration of registration**

29 Registration under section 602-60 in this Schedule:

30 (a) commences:

EXPOSURE DRAFT

Schedule 1 Amendments

- 1 (i) if it is a renewal of your registration—on the day after
2 the day on which your previous registration expired; or
3 (ii) in any other case—on the day specified in the notice
4 given under subsection 602-60(4) in this Schedule; and
5 (b) expires at the end of the period of at least 3 years determined
6 by the Board, unless it is terminated before that time.

7 Note: Registration may be terminated under Subdivision 602-C or 604-B in
8 this Schedule.

9 **602-70 Renewal of registration—special rules**

- 10 (1) The Board may renew your registration under section 602-60 in
11 this Schedule if you make an application for renewal at least 30
12 days, or such shorter period as the Board allows, before the day on
13 which your registration expires.
- 14 (2) Your registration is taken to continue until your application has
15 been decided (despite subsection 602-60(3) in this Schedule).
- 16 (3) You may apply for renewal of registration during a period when
17 your registration is suspended under section 604-25 in this
18 Schedule, but your application must comply with subsection (1).

19 **602-75 Obligation to notify of change of circumstances**

- 20 (1) An entity that is registered under this Part must notify the Board in
21 writing if any of the following events occurs:
- 22 (a) the entity ceases to meet one or more of the *tax practitioner
23 registration requirements;
- 24 (b) a *relevant adverse event happens to any of the following:
25 (i) the entity;
26 (ii) if the entity is a partnership—a partner in the
27 partnership or a director of a company that is a partner
28 in the partnership;
29 (iii) if the entity is a company—a director of the company;
- 30 (c) if the entity is a partnership—the composition of the
31 partnership changes;
- 32 (d) if the entity is a company:
33 (i) one or more of the directors of the company cease to be
34 a director;

EXPOSURE DRAFT

Amendments **Schedule 1**

- 1 (ii) one or more individuals become a director of the
2 company.

3 Note: A breach of this subsection is a breach of section 8C and of subsection
4 604-10(1) in this Schedule.

- 5 (2) The entity must give the notice within 28 days of the event.

6 **Subdivision 602-C—Termination of registration**

7 **Table of sections**

8	602-70	Termination of registration—individuals
9	602-75	Termination of registration—partnerships
10	602-80	Termination of registration—companies
11	602-88	Period during which you cannot apply for registration
12	602-90	Notification of decision to terminate registration and when termination
13		takes effect

14 **602-80 Termination of registration—individuals**

- 15 (1) The Board may terminate the registration of an individual if one or
16 both of the following occurs:

- 17 (a) a *relevant adverse event happens to the individual;
18 (b) the individual ceases to meet the *tax practitioner registration
19 requirements.

20 Note: Termination for breach of the Code of Professional Conduct is dealt
21 with in Division 604 in this Schedule.

- 22 (2) The Board must terminate the registration of an individual if one or
23 more of the following occurs:

- 24 (a) the individual surrenders the individual's registration by
25 notice in writing to the Board;
26 (b) unless the individual is a *nominee—the individual
27 permanently ceases to *carry on a *business that provides *tax
28 agent services or *BAS services, as the case requires;
29 (c) the individual dies;
30 (d) if the individual is a nominee of a *tax agent or a *BAS
31 service provider:
32 (i) the tax agent or BAS service provider notifies the Board
33 that the tax agent or BAS service provider no longer
34 desires the individual to be its nominee; or

EXPOSURE DRAFT

Schedule 1 Amendments

- 1 (ii) the registration of the tax agent or BAS service provider
2 is terminated.

3 **602-85 Termination of registration—partnerships**

- 4 (1) The Board may terminate the registration of a partnership if the
5 partnership ceases to meet the *tax practitioner registration
6 requirements.

7 Note: Termination for breach of the Code of Professional Conduct is dealt
8 with in Division 604 in this Schedule.

- 9 (2) The Board must terminate the registration of a partnership if one or
10 both of the following occurs:

11 (a) the partnership surrenders the partnership's registration by
12 notice in writing to the Board;

13 (b) the partnership permanently ceases to *carry on a *business
14 that provides *tax agent services or *BAS services, as the
15 case requires.

- 16 (3) If a *relevant adverse event happens to:

17 (a) a partner of a partnership that is registered under this Part; or

18 (b) a director of a company that is a partner in such a
19 partnership;

20 then the Board may, by notice in writing, require the partnership to
21 remove the partner from the partnership, or the company to remove
22 the director, within the period specified in the notice. In
23 determining the period, the Board must have regard to the
24 requirements of any law of the Commonwealth, a State or a
25 Territory in relation to the removal of partners from partnerships.

26 Note: A breach of this subsection is a breach of section 8C and of subsection
27 604-10(1) in this Schedule.

28 **602-90 Termination of registration—companies**

- 29 (1) The Board may terminate the registration of a company if one or
30 more of the following occurs:

31 (a) a *relevant adverse event happens to the company;

32 (b) the company ceases to meet the *tax practitioner registration
33 requirements.

34 Note: Termination for breach of the Code of Professional Conduct is dealt
35 with in Division 604 in this Schedule.

EXPOSURE DRAFT

Amendments **Schedule 1**

- 1 (2) The Board must terminate the registration of a company if one or
2 more of the following occurs:
- 3 (a) the company surrenders the company's registration by notice
4 in writing to the Board;
- 5 (b) the company permanently ceases to *carry on a *business that
6 provides *tax agent services or *BAS services.
- 7 (3) If a *relevant adverse event happens to a director of a company,
8 then the Board may, by notice in writing, require the company to
9 remove the director from the board of directors of the company
10 within the period specified in the notice. In determining the period,
11 the Board must have regard to any requirement of the *Corporations*
12 *Act 2001* in relation to the removal of directors.
- 13 Note: A breach of this subsection is a breach of section 8C and of subsection
14 604-10(1) in this Schedule.

15 **602-95 Period during which you may not apply for registration**

- 16 If the Board terminates your registration under this Subdivision,
17 the Board must also determine a period of at least 5 years during
18 which you may not make an application for registration unless:
- 19 (a) your registration was surrendered or terminated because you
20 ceased to *carry on a *business as a *tax agent or a *BAS
21 service provider; or
- 22 (b) your registration was terminated because you became an
23 undischarged bankrupt or you went into external
24 administration; or
- 25 (c) in the case of registration as a *nominee—your registration
26 was terminated because of paragraph 602-80(2)(d) in this
27 Schedule.

28 **602-100 Notification of decision to terminate registration and when** 29 **termination takes effect**

- 30 (1) If the Board terminates your registration, the Board must, within 30
31 days of the decision to terminate your registration, notify you in
32 writing of:
- 33 (a) the decision and reasons for the decision; and
34 (b) any determination under section 602-95 in this Schedule of a
35 period during which you are not eligible to apply for
36 registration.

EXPOSURE DRAFT

Schedule 1 Amendments

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

3 (2) The termination takes effect on the day specified in the notice
4 given under subsection (1). The day specified in the notice must be
5 at least 14 days after the date of the notice.

6 **Division 604—Your obligations if you are registered**

7 **Table of Subdivisions**

8 Guide to Division 604
9 604-A The Code of Professional Conduct
10 604-B Your liability for administrative sanctions
11 604-C Your liability to civil penalty

12 **Guide to Division 604**

13 **604-1 What this Division is about**

14 If you are registered under this Part, the Code of Professional
15 Conduct regulates the way in which you provide tax agent services.

16 If you undertake specified actions, you may be liable for an
17 administrative sanction issued by the Board or for a civil penalty.

18 **Subdivision 604-A—The Code of Professional Conduct**

19 **Table of sections**

20 604-5 Application of the Code of Professional Conduct
21 604-10 The Code of Professional Conduct

22 **604-5 Application of the Code of Professional Conduct**

23 The *Code of Professional Conduct applies to you if you are:

- 24 (a) a *tax agent; or
25 (b) a *BAS service provider; or
26 (c) a *nominee of a tax agent or a BAS service provider.

EXPOSURE DRAFT

1 **604-10 The Code of Professional Conduct**

- 2 (1) You must comply with the *taxation law.
- 3 (2) You must not knowingly impede the proper administration of the
4 *taxation law.
- 5 (3) You must act honestly and with integrity.
- 6 (4) You must act lawfully in the best interests of your client.
- 7 (5) You must not allow your own interests to conflict with those of a
8 client other than with the consent of the client.
- 9 (6) You must not allow the interests of one of your clients to conflict
10 with those of another of your clients other than with the consent of
11 the relevant clients.
- 12 (7) Unless you have a legal duty to do so, you must not disclose any
13 information relating to a client's affairs to a third party without
14 your client's permission.
- 15 (8) You must ensure that a *tax agent service that you provide is
16 provided competently.
- 17 (9) You must maintain knowledge and skills relevant to the *tax agent
18 services that you provide.
- 19 (10) You must take reasonable care to ascertain the true state of the
20 affairs of your clients that are relevant to the *taxation law.
- 21 (11) You must take all reasonable steps to correctly apply the *taxation
22 law to the circumstances of your clients.
- 23 (12) You must advise your clients of the client's rights and obligations
24 under the *taxation law that are related to the *tax agent services or
25 *BAS services that you are providing to the client.
- 26 (13) If another person provides *tax agent services on your behalf, you
27 must supervise and control the person's provision of those tax
28 agent services.
- 29 (14) If you receive money or other property from or on behalf of a
30 client and you hold the money or other property on trust, you must
31 account to your client for the money or other property.

EXPOSURE DRAFT

Schedule 1 Amendments

1 (15) You must maintain any professional indemnity insurance that the
2 Board requires you to maintain.

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

5 **Subdivision 604-B—Your liability for administrative sanctions**

6 **Table of sections**

7	604-15	Sanctions for failure to comply with the Code of Professional Conduct
8	604-20	Orders
9	604-25	Suspension
10	604-27	Termination

11 **604-15 Sanctions for failure to comply with the Code of Professional** 12 **Conduct**

13 If the Board is satisfied, after conducting an investigation under
14 Subdivision 606-A in this Schedule, that you have failed to comply
15 with the *Code of Professional Conduct, the Board may impose
16 one or more of the following sanctions on you:

- 17 (a) a written caution under this paragraph;
- 18 (b) an order under section 604-20 in this Schedule;
- 19 (c) suspension of your registration under section 604-25 in this
20 Schedule;
- 21 (d) termination of your registration under section 604-30 in this
22 Schedule.

23 **604-20 Orders**

- 24 (1) The Board may make an order that requires you take one or more
25 actions including, but not limited to, the following:
 - 26 (a) completing a course of education or training specified in the
27 order;
 - 28 (b) providing services for which you are registered under this
29 Part only under the supervision of a *tax agent or *BAS
30 service provider specified in the order;
 - 31 (c) providing only those services that are specified in the order.
- 32 (2) The Board must notify you in writing of the order. The order may
33 specify the following, as appropriate;

EXPOSURE DRAFT

- 1 (a) the period of time within which you must complete the
2 requirements specified in the order;
3 (b) the period of time for which the requirements of the order
4 apply to you.

5 **604-25 Suspension**

- 6 (1) The Board may, by notice in writing, suspend your registration for
7 a period determined by the Board.
- 8 (2) You must not provide *tax agent services during the period of
9 suspension.
- 10 (3) If, when the Board suspends your registration under subsection (1),
11 your registration is already suspended, suspension is for a further
12 period that the Board determines is appropriate. The further period
13 commences at the end of the period of suspension.
- 14 (4) While you are suspended, you are taken not to be a *tax agent, a
15 *BAS service provider or a *nominee, as the case requires, except
16 for the purposes of:
17 (a) Subdivision 602-B (Registration) and 602-C (Termination of
18 registration) in this Schedule; and
19 (b) this Subdivision.

20 **604-30 Termination**

21 The Board may terminate your registration. If the Board terminates
22 your registration, the Board must notify you in writing.

23 **Subdivision 604-C—Your liability to civil penalty**

24 **Table of sections**

25	604-30	Making false or misleading statements
26	604-40	Employing or using the services of deregistered entities
27	604-45	Signing of declarations etc.

28 **604-35 Making false or misleading statements**

29 You are liable for a civil penalty if:

- 30 (a) you are a *tax agent, a *BAS service provider, a *nominee of
31 a tax agent or a nominee of a BAS service provider; and
-

EXPOSURE DRAFT

Schedule 1 Amendments

- 1 (b) you:
2 (i) make a statement to the Commissioner; or
3 (ii) prepare a statement that you know, or ought reasonably
4 to know, is likely to be made to the Commissioner by
5 another person; or
6 (iii) permit or direct a person to do a thing mentioned in
7 subparagraph (i) or (ii); and
8 (c) you know, or ought reasonably to know, that the statement is
9 false, incorrect or misleading in a material particular or omits
10 any matter or thing without which the statement is misleading
11 in a material respect.

12 Civil penalty:

- 13 (a) for an individual—250 penalty units;
14 (b) for a body corporate—1,250 penalty units.

15 Note 1: See section 4AA of the *Crimes Act 1914* for the current value of a
16 penalty unit.

17 Note 2: Subdivision 606-B in this Schedule determines the procedure for
18 obtaining a civil penalty order against you.

19 Note 3: Under section 8K, it is an offence to make a false or misleading
20 statement.

21 **604-40 Employing or using the services of deregistered entities**

- 22 (1) You are liable for a civil penalty if:
23 (a) you are a *tax agent or a *BAS service provider; and
24 (b) you employ or use the services of another entity that you
25 know, or ought reasonably to know, is not registered under
26 this Part to provide *tax agent services on your behalf; and
27 (c) you know, or ought reasonably to know, that the entity was
28 previously registered under this Part, but the entity's
29 registration was terminated within the period of 3 years
30 before you first employed, or first used the services of, the
31 entity.

32 Civil penalty:

- 33 (a) for an individual—250 penalty units;
34 (b) for a body corporate—1,250 penalty units.

35 Note 1: See section 4AA of the *Crimes Act 1914* for the current value of a
36 penalty unit.

EXPOSURE DRAFT

Amendments **Schedule 1**

1 Note 2: Subdivision 606-B in this Schedule determines the procedure for
2 obtaining a civil penalty order against you.

- 3 (2) Subsection (1) does not apply if the reason for the termination of
4 the entity's registration was one of the following:
- 5 (a) the entity surrendered the registration;
 - 6 (b) the entity ceased to *carry on a *business as a *tax agent or a
7 *BAS service provider;
 - 8 (c) the entity became an undischarged bankrupt or went into
9 external administration;
 - 10 (d) if the entity was registered as a *nominee—because of
11 paragraph 602-80(2)(d) in this Schedule;
 - 12 (e) a reason prescribed by the regulations.

13 **604-45 Signing of declarations etc.**

- 14 (1) You are liable for a civil penalty if:
- 15 (a) you are a *tax agent; and
 - 16 (b) you sign a declaration or other statement in relation to a
17 taxpayer that is required by a *taxation law; and
 - 18 (c) the document in relation to which the declaration or other
19 statement is being made was prepared by an entity other than:
 - 20 (i) you; or
 - 21 (ii) your *nominee; or
 - 22 (iii) an individual working under your supervision and
23 control or under the supervision and control of your
24 nominee; or
 - 25 (iv) another tax agent or a nominee of another tax agent.

26 Civil penalty:

- 27 (a) for an individual—250 penalty units;
- 28 (b) for a body corporate—1,250 penalty units.

29 Note 1: See section 4AA of the *Crimes Act 1914* for the current value of a
30 penalty unit.

31 Note 2: Subdivision 606-B in this Schedule determines the procedure for
32 obtaining a civil penalty order against you.

- 33 (2) You are liable for a civil penalty if:
- 34 (a) you are a *BAS service provider; and

EXPOSURE DRAFT

Schedule 1 Amendments

- 1 (b) you sign a declaration or other statement in relation to a
2 taxpayer that is required by a *BAS provision; and
3 (c) the document in relation to which the declaration or other
4 statement is being made was prepared by an entity other than:
5 (i) you; or
6 (ii) your *nominee; or
7 (iii) an individual working under your supervision and
8 control or under the supervision and control of your
9 nominee; or
10 (iv) another BAS service provider or a nominee of another
11 BAS service provider.

12 Civil penalty:

- 13 (a) for an individual—250 penalty units;
14 (b) for a body corporate—1,250 penalty units.

15 Note 1: See section 4AA of the *Crimes Act 1914* for the current value of a
16 penalty unit.

17 Note 2: Subdivision 606-B in this Schedule determines the procedure for
18 obtaining a civil penalty order against you.

- 19 (3) Subsection (1) and (2) do not apply if:
20 (a) the document in relation to which the declaration or other
21 statement is being made, as mentioned in paragraph (1)(c) or
22 (2)(c) (as the case may be), was prepared by an entity other
23 than an entity of a kind mentioned in that paragraph; and
24 (b) you took reasonable steps to ensure the accuracy of the
25 document.
26 (4) If you wish to rely on subsection (3) in proceedings for a civil
27 penalty order, you bear an evidential burden in relation to that
28 matter.

29 **Division 606—Investigation and enforcement**

30 **Table of Subdivisions**

31	Guide to Division 606
32	606-A Investigation
33	606-B Obtaining an order for a civil penalty
34	606-C Obtaining an injunction to restrain or require conduct

1 **Guide to Division 606**

2 **606-1 What this Division is about**

3 The Board may investigate matters relating to your registration,
4 including your application for registration and your conduct if you
5 are registered under this Part. The Board may oblige you to give
6 them information.

7 Once the Board has completed an investigation, the Board must
8 make a decision.

9 The Board or the Commissioner may apply to the Federal Court of
10 Australia if you have breached a provision of this Part imposing a
11 civil penalty.

12 **Subdivision 606-A—Investigation**

13 **Table of sections**

14	606-10	Investigation
15	606-25	Power to require witnesses to attend
16	606-35	Self-incrimination
17	606-40	Power to take evidence on oath or affirmation
18	606-50	Decision after investigation
19	606-55	Legal professional privilege

20 **606-5 Investigation**

- 21 (1) The Board may investigate any matter relating to one or more of
22 the following:
- 23 (a) an application under section 602-55 in this Schedule for
24 registration;
 - 25 (b) any conduct that may breach this Part;
 - 26 (c) such other matters as are prescribed by the regulations.
- 27 (2) The Board may establish a committee to undertake an investigation
28 on behalf of the Board, comprised of any one or more individuals
29 as determined by the Board.

EXPOSURE DRAFT

Schedule 1 Amendments

- 1 (3) The Board must notify you in writing if the Board has decided to
2 investigate you under subsection (1). The notice must be given
3 within 2 weeks after the decision.
- 4 (4) An investigation is taken to commence on the date of the notice
5 mentioned in subsection (3).
- 6 (5) The Board, or a committee established under subsection (2) to
7 undertake an investigation on behalf of the Board:
8 (a) has a discretion as to its procedure; and
9 (b) is not bound by the rules of evidence; and
10 (c) must conduct the investigation with as little formality, and
11 with as much expedition, as the requirements of this Part and
12 a proper consideration of the matters to be considered in the
13 investigation permit.

14 **606-10 Power to require witnesses to attend**

- 15 (1) The Board, or a committee established under subsection 606-5(2)
16 in this Schedule to undertake an investigation on behalf of the
17 Board, may, by notice in writing, require a person to appear before
18 it for one or both of the following purposes:
19 (a) to give evidence;
20 (b) to produce such documents, articles and other information (if
21 any) relating to the matter the subject of the investigation, as
22 are referred to in the notice.
- 23 (2) If a person is required to attend an investigation, the person is
24 entitled to be paid the prescribed allowances and expenses (if any):
25 (a) if the person is required to attend at the request of an entity
26 that is registered or that has applied for registration under this
27 Part and that is the subject of the investigation—by that
28 entity; or
29 (b) in any other case—by the Commonwealth.
- 30 Note: Sections 8C and 8D provide for offences relating to failure to attend,
31 failure to answer questions and other matters.

32 **606-15 Self-incrimination**

- 33 (1) An individual is not excused from giving information, producing a
34 document, or answering a question, under section 606-10 in this
35 Schedule on the ground that to do so might tend to incriminate the
-

EXPOSURE DRAFT

1 individual or otherwise expose the individual to a penalty or other
2 liability.

3 (2) However, neither:

4 (a) the information or answer given or the document produced;
5 nor

6 (b) any information, document or thing obtained as a direct or
7 indirect consequence of giving the information or answer or
8 producing the document;

9 is admissible in evidence against the individual in proceedings,
10 other than proceedings for an offence against section 8C or 8D of
11 this Act or section 137.1, 137.2 or 149.1 of the *Criminal Code* that
12 relates to this Act.

13 **606-20 Power to take evidence on oath or affirmation**

14 (1) The Board, or a committee established under subsection 606-5(2)
15 in this Schedule to undertake an investigation on behalf of the
16 Board, may take evidence on oath or affirmation and, for that
17 purpose, the Chair, or an individual acting on behalf of the Chair,
18 may administer an oath or affirmation.

19 (2) The oath or affirmation to be taken or made by a person for the
20 purposes of this section is an oath or affirmation that the evidence
21 given by the person will be true.

22 (3) The Board, or a committee established under subsection 606-5(2)
23 in this Schedule to undertake an investigation on behalf of the
24 Board, may, if it thinks that it is appropriate, permit a witness to
25 give evidence by tendering a written statement and verifying it by
26 oath or affirmation.

27 **606-25 Decision after investigation**

28 (1) After an investigation under section 606-5 in this Schedule has
29 been completed, the Board must:

30 (a) if the investigation relates to an application for registration
31 under section 602-55 in this Schedule—make a decision in
32 accordance with section 602-60 in this Schedule; or

33 (b) in any other case—do one or more of the following:

34 (i) make a decision that no further action will be taken in
35 relation to the investigation;

EXPOSURE DRAFT

Schedule 1 Amendments

- 1 (ii) impose one or more sanctions under Subdivision 604-B
2 in this Schedule;
- 3 (iii) apply to the Federal Court of Australia for a civil
4 penalty order under Subdivision 606-B in this Schedule;
- 5 (iv) apply to the Federal Court of Australia for an injunction
6 under Subdivision 606-C in this Schedule.
- 7 (2) The Board must make a decision under this section:
- 8 (a) within 6 months after the day on which the investigation is
9 taken to have commenced under subsection 606-5(4) in this
10 Schedule; or
- 11 (b) within the longer period determined by the Board under
12 subsection (3).
- 13 (3) If the Board is satisfied that, for reasons beyond the control of the
14 Board, a decision under this section cannot be made within the
15 period mentioned in subsection (2), the Board may determine a
16 longer period within which the Board must make a decision under
17 this section.
- 18 (4) The Board must make a decision under subsection (3) not later
19 than 2 weeks before the expiry of the period mentioned in
20 paragraph (2)(a).
- 21 (5) The reasons mentioned in subsection (3) include, but are not
22 limited to, the following:
- 23 (a) undue delay that has been caused by an entity other than the
24 Board and that affects the conduct of the investigation to
25 which the decision relates;
- 26 (b) the complexity of the investigation.
- 27 (6) If the Board does not comply with subsection (3), the Board is
28 taken to have decided to take no further action in relation to the
29 matter that was the subject of investigation.
- 30 (7) If the Board makes a decision under this section, the Board must:
- 31 (a) notify the entity affected by the decision of the decision; and
32 (b) if the decision is made under subsection (1):
- 33 (i) include reasons for the decision in the notice; and
34 (ii) notify the Commissioner of the decision and the reasons
35 for the decision.

1 (8) A notice under subsection (7) must be in writing.

2 **606-30 Legal professional privilege**

3 This Part does not affect the law relating to legal professional
4 privilege.

5 **Subdivision 606-B—Obtaining an order for a civil penalty**

6 **Table of sections**

7	606-60	Federal Court may order you to pay pecuniary penalty for contravening a
8		civil penalty provision
9	606-65	Contravening a provision of this Part imposing a civil penalty is not an
10		offence
11	606-75	Recovery of a pecuniary penalty

12 **606-35 Federal Court may order you to pay pecuniary penalty for**
13 **contravening a civil penalty provision**

14 *Application for order*

15 (1) Within 4 years after you contravene a provision of this Part
16 imposing a civil penalty, the Board or the Commissioner may
17 apply, on behalf of the Commonwealth, to the Federal Court of
18 Australia for an order that you pay the Commonwealth a pecuniary
19 penalty.

20 *Court may order you to pay pecuniary penalty*

21 (2) If the Court is satisfied that you have contravened the provision,
22 the Court may order you to pay to the Commonwealth, for each
23 contravention, the pecuniary penalty that the Court determines is
24 appropriate (but not more than the relevant amount specified for
25 the provision).

26 *Conduct contravening more than one provision of this Part*
27 *imposing a civil penalty*

28 (3) If conduct constitutes a contravention of 2 or more provisions of
29 this Part imposing a civil penalty, proceedings may be instituted
30 under this Part against you in relation to the contravention of any
31 one or more of those provisions.

EXPOSURE DRAFT

Schedule 1 Amendments

- 1 (4) However, you are not liable to more than one pecuniary penalty
2 under this section in respect of the same conduct.

3 **606-40 Contravening a provision of this Part imposing a civil**
4 **penalty is not an offence**

5 A contravention of a provision of this Part imposing a civil penalty
6 is not an offence.

7 **606-45 Recovery of a pecuniary penalty**

8 If the Federal Court of Australia orders you to pay a pecuniary
9 penalty:

- 10 (a) the penalty is payable to the Commissioner, who receives the
11 penalty on behalf of the Commonwealth; and
12 (b) the Commissioner may, on behalf of the Commonwealth,
13 enforce the order as if it were a judgment of the Court.

14 **Subdivision 606-C—Obtaining an injunction to restrain or**
15 **require conduct**

16 **Table of sections**

17 606-90 Injunction to restrain or require certain conduct

18 **606-50 Injunction to restrain or require certain conduct**

- 19 (1) If, on the application of the Board or the Commissioner, the
20 Federal Court of Australia is satisfied that you have engaged, or are
21 proposing to engage, in conduct that would constitute a
22 contravention of one or more of the following provisions:
23 (a) Subdivision 602-A in this Schedule (Conduct that is
24 prohibited without registration);
25 (b) Subdivision 604-C in this Schedule (Your liability to civil
26 penalty);
27 the Court may grant an injunction:
28 (c) restraining you from engaging in the conduct; or
29 (d) if in the Court's opinion it is desirable to do so, requiring you
30 to do something.

- 1 (2) Before deciding the application, the Court may grant an interim
2 injunction:
3 (a) restraining you from engaging in conduct; or
4 (b) requiring you to do something.

5 **Division 608—The Tax Practitioners Board**

6 **Table of Subdivisions**

7		Guide to Division 608
8	608-A	Establishment and functions of the Tax Practitioners Board
9	608-B	Reporting and disclosure obligations of the Tax Practitioners
10		Board

11 **Guide to Division 608**

12 **608-1 What this Division is about**

13 The Board is established and comprises at least 7 members. The
14 Board has functions and powers in relation to the operation of this
15 Part and also has certain obligations in relation to reporting,
16 publication of information and disclosure.

17 **Subdivision 608-A—Establishment and functions of the Tax 18 Practitioners Board**

19 **Table of Sections**

20	608-2	Establishment
21	608-5	Functions
22	608-10	Powers
23	608-15	Composition of the Board
24	608-30	Remuneration
25	608-35	Immunity from legal action
26	608-40	Termination of appointment
27	608-50	Meetings
28	608-55	Decisions without meetings

EXPOSURE DRAFT

Schedule 1 Amendments

1 **608-5 Establishment**

2 The Tax Practitioners Board (the *Board*) is established.

3 **608-10 Functions**

4 The functions of the Board are:

- 5 (a) to administer the system for the registration of *tax agents,
6 *BAS service providers and *nominees; and
- 7 (b) to investigate matters relating to registration and to
8 investigate and impose sanctions for non-compliance with the
9 *Code of Professional Conduct; and
- 10 (c) to issue, by legislative instrument, guidelines to assist in
11 achieving the functions mentioned in paragraphs (a) and (b);
12 and
- 13 (d) such other functions as are conferred on the Board by this
14 Act, the regulations or any other law of the Commonwealth;
15 and
- 16 (e) to do anything incidental or conducive to the performance of
17 its functions.

18 **608-15 Powers**

- 19 (1) The Board has power to do all things necessary or convenient to be
20 done for or in connection with the performance of its functions.
- 21 (2) The Board may establish committees, consisting of such
22 individuals as the Board thinks fit, to assist the Board in the
23 performance of its functions.

24 **608-20 Composition of the Board**

- 25 (1) The Board consists of:
26 (a) the Chair; and
27 (b) 6 or more other members.
- 28 (2) The Minister is responsible for appointing each member of the
29 Board.
- 30 (3) A member of the Board holds office, on a part-time basis, for a
31 period determined by the Minister and is eligible for
32 reappointment.

EXPOSURE DRAFT

Amendments **Schedule 1**

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

4 **608-25 Remuneration**

- 5 (1) The members of the Board, and members of a committee
6 established by the Board, are to be paid such remuneration as is
7 determined by the Remuneration Tribunal.
- 8 (2) The members of the Board, and members of a committee
9 established by the Board, are to be paid such allowances as are
10 prescribed.
- 11 (3) This section has effect subject to the *Remuneration Tribunal Act*
12 *1973*.

13 **608-30 Immunity from legal action**

14 No action or suit may be brought against a person who is, or has
15 been, a member of the Board, or a member of a committee
16 established by the Board, in relation to the exercise of the person's
17 functions or the performance of the person's duties.

18 **608-35 Termination of appointment**

- 19 (1) A member may resign by giving to the Minister a signed notice of
20 resignation. The notice must specify a date from which it is
21 proposed that the resignation will take effect.
- 22 (2) The Minister may terminate the appointment of a member for
23 misbehaviour or physical or mental incapacity.
- 24 (3) The Minister may terminate the appointment of a member if:
25 (a) the member:
26 (i) becomes bankrupt; or
27 (ii) applies to take the benefit of any law for the relief of
28 bankrupt or insolvent debtors; or
29 (iii) compounds with his or her creditors; or
30 (iv) makes an assignment of his or her remuneration for the
31 benefit of his or her creditors; or

EXPOSURE DRAFT

Schedule 1 Amendments

- 1 (b) the member is absent, except on leave of absence, from 3
2 consecutive meetings of the Board; or
3 (c) the member engages, except with the Minister's approval, in
4 paid employment outside the duties of his or her office.

5 **608-40 Meetings**

- 6 (1) At a meeting of the Board, a majority of the members of the Board
7 constitutes a quorum.
- 8 (2) A question arising at a meeting is decided by a majority of the
9 votes of the members of the Board present and voting.
- 10 (3) The Chair presides at all meetings at which he or she is present. If
11 the Chair is not present, the members present must appoint one of
12 themselves to preside.
- 13 (4) The individual presiding at a meeting has a deliberative vote and, if
14 necessary, a casting vote.
- 15 (5) The Board may regulate proceedings at its meetings as it considers
16 appropriate.

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

19 **608-45 Decisions without meetings**

- 20 (1) A decision is taken to have been made at a meeting of the Board if:
21 (a) without meeting, a majority of the Board indicate agreement
22 with the proposed decision in accordance with the method
23 determined by the Board under subsection (2); and
24 (b) all the members of the Board were informed of the proposed
25 decision, or reasonable efforts were made to inform all the
26 members of the proposed decision.
- 27 (2) Subsection (1) applies only if the Board:
28 (a) has determined that it applies; and
29 (b) has determined the method by which members of the Board
30 are to indicate agreement with proposed decisions.
- 31 (3) The Board must keep a record of decisions made in accordance
32 with this section.

EXPOSURE DRAFT

Amendments Schedule 1

Subdivision 608-B—Reporting and disclosure obligations of the Tax Practitioners Board

Table of sections

608-60	Report to Parliament
608-65	Publication of information
608-70	Disclosure to Australian Federal Police etc. or the Commissioner

608-50 Report to Parliament

- (1) As soon as practicable after 30 June in each year, the Chair of the Board must cause a report to be prepared and given to the Minister.
- (2) The report must relate to the operation of the Board for the year.
- (3) The Minister must cause a copy of a report given to him or her under subsection (1) to be laid before each House of the Parliament within 15 sitting days of that House after the day on which the Minister receives the report.

608-55 Publication of information

The Board:

- (a) must cause a register of every entity that is registered under this Part to be maintained on the website maintained by the Board on the Internet. The register must include:
 - (i) the name of the entity; and
 - (ii) the contact details of the *business of the entity; and
 - (iii) any relevant professional affiliation of the entity; and
 - (iv) any sanction (other than a caution) that has been imposed by the Board on the entity; and
- (b) may, if the Board thinks that it is appropriate, cause a notice to be published on the website maintained by the Board on the Internet if:
 - (i) the Board makes a decision under Subdivision 602-C or 604-B in this Schedule to terminate the registration of an entity; or
 - (ii) the Board makes a decision under section 604-25 in this Schedule to suspend the registration of an entity.

EXPOSURE DRAFT

Schedule 1 Amendments

608-60 Disclosure to Australian Federal Police etc. or the Commissioner

- (1) Despite any *secrecy provision, the Board may disclose information acquired by the Board under the provisions of this Part to the following:
- (a) if the Board is satisfied that the information is relevant to the enforcement of the criminal law to:
 - (i) the Australian Federal Police; or
 - (ii) the police force or police service of a State or Territory; or
 - (iii) the Australian Crime Commission; or
 - (iv) the Australian Securities and Investments Commission; or
 - (v) the Commonwealth Director of Public Prosecutions;
 - (b) if the Board is satisfied that the information is relevant to establishing whether a person is in breach of a provision of the *taxation law (other than a provision of this Part)—the Commissioner.
- (2) If the Board discloses information as mentioned in paragraph (1)(b), the Commissioner, or a person in the course of performing duties in the Australian Taxation Office to whom the Commissioner has disclosed the information, must not make a record of, disclose or otherwise use the information for a purpose that is neither a purpose for which it was acquired nor a purpose in respect of which the person to whom the information relates has given written consent.

Division 610—General provisions

Guide to Division 610

610-1 What this Division is about

This Division sets out some general provisions that apply to this Part. These include provisions about administrative review and the treatment of partnerships.

Table of sections

EXPOSURE DRAFT

1	610-5	Administrative review
2	610-10	Civil Penalties—treatment of partnerships
3	610-15	Continuity of partnerships

4 **610-5 Administrative review**

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

- 7 (a) a decision under section 602-60 in this Schedule to reject an
8 application for registration (including renewal of registration)
9 or to require professional indemnity insurance;
- 10 (b) a decision under subsection 602-70(1) in this Schedule not to
11 determine a shorter period for making a renewal application;
- 12 (c) a decision under Subdivision 602-C in this Schedule to
13 terminate registration;
- 14 (d) a decision under section 602-95 in this Schedule to determine
15 a period during which an application for registration may not
16 be made;
- 17 (e) a decision under paragraph 604-15(a) in this Schedule to
18 issue a caution;
- 19 (f) a decision under section 604-20 in this Schedule to make an
20 order or to specify a time period in respect of an order;
- 21 (g) a decision under section 604-25 in this Schedule to suspend
22 registration (including a decision as to the length of the
23 suspension);
- 24 (h) a decision under section 604-30 in this Schedule to terminate
25 registration;
- 26 (i) a decision under subsection 606-25(3) in this Schedule to
27 extend the period of time within which an investigation is to
28 be completed.

29 **610-10 Civil Penalties—treatment of partnerships**

30 If a partnership is liable to a civil penalty because of particular
31 conduct, each partner in the partnership is taken to be so liable
32 unless the partner proves, on the balance of probabilities, that the
33 partner:

- 34 (a) did not engage in the conduct; and
- 35 (b) did not aid, abet, counsel or procure the conduct; and

EXPOSURE DRAFT

Schedule 1 Amendments

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

4 Note: Section 444-30 in this Schedule also contains provisions about the
5 treatment of partnerships.

6 **610-15 Continuity of partnerships**

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

9 **19 Application provision**

10 The amendments made by item 16 apply in relation to statements
11 required to be given on or after the commencement of the item.

EXPOSURE DRAFT

Transitional provisions **Schedule 2**

Schedule 2—Transitional provisions

1 Definitions

(1) In this Schedule:

amended administration Act means the *Taxation Administration Act 1953* as amended by this Act.

National Board means the Tax Practitioners Board established under section 608-5 in Schedule 1 to the amended administration Act.

State Board means a Tax Agents' Board that is established in a State under section 251C of the *Income Tax Assessment Act 1936*.

transition time means the commencement of Schedule 1 to this Act.

(2) Subject to subitem (1), an expression used in this Schedule that is also used in the *Income Tax Assessment Act 1997* has the same meaning in this Schedule as it has in that Act.

2 Registration of a tax agent continues in force

(1) This item applies to:

(a) an entity that was, immediately before the transition time, a registered tax agent within the meaning of Part VIIA of the *Income Tax Assessment Act 1936*; and

(b) an entity that was, immediately before the transition time, taken not to be a registered tax agent because of subsection 251K(6) (which relates to suspension).

(2) Part 5-90 in Schedule 1 to the amended administration Act has effect, from the transition time, in relation to the entity as if the entity were registered as a tax agent.

(3) The registration of an entity to which paragraph (1)(b) applies is taken to have been suspended under section 604-25 in Part 5-90 in Schedule 1 to the amended administration Act for the period:

(a) that begins at the transition time; and

(b) that ends at the time at which the suspension would have ended but for the repeal of section 251K of the *Income Tax Assessment Act 1936* by Schedule 1 to this Act.

EXPOSURE DRAFT

Schedule 2 Transitional provisions

3 Special rule relating to provision of BAS services by certain individuals

- (1) This item applies to an individual if:
- (a) immediately before the transition time, the individual was providing exempt BAS services; and
 - (b) during the period of 2 years beginning at the transition time, the individual provides a BAS service; and
 - (c) at the time of provision of the BAS service, the individual is a person referred to in subsection 251L(6) of the *Income Tax Assessment Act 1936* as in force immediately before the transition time.
- (2) Part 5-90 in Schedule 1 to the amended administration Act has effect, in relation to the provision of the BAS service by the individual as if the individual were registered as a BAS service provider.
- (3) If:
- (a) the individual applies for registration as a BAS service provider under section 602-55 in Part 5-90 in Schedule 1 to the amended administration Act before the end of the period of 3 years beginning at the transition time; and
 - (b) the individual would be eligible for registration but for the operation of paragraph 602-30(1)(b) in that Part (which requires the National Board to be satisfied that the individual meets the prescribed BAS service provider requirements within the meaning of that Part); and
 - (c) the National Board is satisfied that the individual had been providing BAS services to a competent standard for a reasonable period before making the application;
- then, despite paragraph 602-30(1)(b) in that Part, the individual is eligible for registration.
- (4) In this item:
- exempt BAS service** means a BAS service, within the meaning of subsection 251L(7) of the *Income Tax Assessment Act 1936*, to which subsection 251L(1) of that Act did not apply because of the application of subsection 251L(6) of that Act.

4 Registration of a nominee continues in force

EXPOSURE DRAFT

Transitional provisions **Schedule 2**

- 1 (1) This item applies to an individual that was, immediately before the
2 transition time, a nominee of a registered tax agent within the meaning
3 of Part VIIA of the *Income Tax Assessment Act 1936*.
- 4 (2) Part 5-90 in Schedule 1 to the amended administration Act has effect,
5 after the transition time, in relation to the individual, as if the individual
6 were registered as a nominee of the tax agent.