



Taxation Administration Amendment Regulations 2007 (No.)¹

Select Legislative Instrument 2007 No.

I, PHILIP MICHAEL JEFFERY, Governor-General of the Commonwealth of Australia, acting with the advice of the Federal Executive Council, make the following Regulations under the *Taxation Administration Act 1953*.

Dated 2007

Governor-General

By His Excellency's Command

[DRAFT ONLY – NOT FOR SIGNATURE]

Minister for Revenue and Assistant Treasurer

DRAFT ONLY

1 Name of Regulations

These Regulations are the *Taxation Administration Amendment Regulations 2007* (No.).

2 Commencement

These Regulations commence on *[TBA]*.

3 Amendment of *Taxation Administration Regulations 1976*

Schedule 1 amends the *Taxation Administration Regulations 1976*.

Schedule 1 Amendments

(regulation 3)

[1] After Part 5

insert

Part 5A Provision of tax agent services

(Part 5-90 of Schedule 1 to the Act)

Division 1 General

44E Definitions for Part 5A

In this Part:

Board means the Tax Practitioners Board established by section 608-5 in Schedule 1 to the Act.

recognised professional association (or ***RPA***) has the meaning given by regulation 44F.

recognised BAS service provider association has the meaning given by regulation 44G.

secretary means the secretary of the Board, and includes, in his or her absence, a person who for the time being performs the duties of the secretary.

44F Recognised professional associations

- (1) For this Part, and for Schedules 3 and 4, an organisation is a *recognised professional association* (or an *RPA*) if:
 - (a) the organisation applies to the Board for recognition in accordance with this regulation; and
 - (b) the Board decides to recognise the organisation in accordance with this regulation.
- (2) The organisation may apply to the Board for recognition as a recognised professional association only if the requirements set out in Part 1 of Schedule 3 exist in relation to the organisation.
- (3) The organisation must make the application using a form approved by the Board for this subregulation.

Decision about recognition

- (4) As soon as practicable after receiving an application, the Board must consider the application and decide whether to recognise the organisation.
- (5) If all of the requirements set out in Part 1 of Schedule 3 exist in relation to the organisation, the Board must:
 - (a) decide to recognise the organisation; and
 - (b) notify the organisation, in writing, of the decision.
- (6) If one or more of the requirements set out in Part 1 of Schedule 3 do not exist in relation to the organisation, the Board must:
 - (a) refuse to recognise the organisation; and
 - (b) notify the organisation, in writing, of the decision and the reasons for the decision.

Termination of recognition

- (7) If the Board believes that one or more of the requirements set out in Part 1 of Schedule 3 have ceased to exist in relation to an RPA, the Board must:
- (a) notify the RPA, in writing, of the Board's belief, and the reasons for the Board's belief; and
 - (b) invite the RPA to make a written submission to the Board about the existence of the requirements, within a reasonable period specified in the notification; and
 - (c) as soon as practicable after the end of the period, consider whether one or more of the requirements have ceased to exist in relation to the RPA, having regard to any submission made by the RPA.
- (8) If the Board is satisfied, after acting under subregulation (7), that one or more of the requirements set out in Part 1 of Schedule 3 have ceased to exist in relation to the RPA, the Board must:
- (a) terminate the recognition of the organisation; and
 - (b) notify the organisation, in writing, of the decision and the reasons for the decision.

Review of decisions

- (9) Application may be made to the Administrative Appeals Tribunal for review of:
- (a) a decision of the Board under subregulation (6) to refuse to recognise an organisation; and
 - (b) a decision of the Board under subregulation (8) to terminate the recognition of an RPA.

44G Recognised BAS service provider associations

- (1) For this Part, and for Schedule 3, an organisation is a *recognised BAS service provider association* if:
- (a) the organisation applies to the Board for recognition in accordance with this regulation; and
 - (b) the Board decides to recognise the organisation in accordance with this regulation.

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- (2) The organisation may apply to the Board for recognition as a recognised BAS service provider association only if the requirements set out in Part 2 of Schedule 3 exist in relation to the organisation.
 - (3) The organisation must make the application using a form approved by the Board for this subregulation.

Decision about recognition

- (4) As soon as practicable after receiving an application, the Board must consider the application and decide whether to recognise the organisation.
- (5) If all of the requirements set out in Part 2 of Schedule 3 exist in relation to the organisation, the Board must:
 - (a) decide to recognise the organisation; and
 - (b) notify the organisation, in writing, of the decision.
- (6) Subject to subregulation (7), if 1 or more of the requirements set out in Part 2 of Schedule 3 do not exist in relation to the organisation, the Board must:
 - (a) refuse to recognise the organisation; and
 - (b) notify the organisation, in writing, of the decision and the reasons for the decision.
- (7) For the period of 5 years starting when this regulation commences, the Board may decide to act under subregulation (5) or (6) if item 209 of Part 2 of Schedule 3 is the only requirement that does not exist in relation to the organisation.

Termination of recognition

- (8) If the Board believes that one or more of the requirements set out in Part 2 of Schedule 3 have ceased to exist in relation to a recognised BAS service provider association, the Board must:
 - (a) notify the recognised BAS service provider association, in writing, of the Board's belief, and the reasons for the Board's belief; and

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- (b) invite the recognised BAS service provider association to make a written submission to the Board about the existence of the requirements, within a reasonable period specified in the notification; and
 - (c) as soon as practicable after the end of the period, consider whether one or more of the requirements have ceased to exist in relation to the recognised BAS service provider association, having regard to any submission made by the recognised BAS service provider association.
- (9) If the Board is satisfied, after acting under subregulation (8), that one or more of the requirements set out in Part 2 of Schedule 3 have ceased to exist in relation to the recognised BAS service provider association, the Board must:
- (a) terminate the recognition of the organisation; and
 - (b) notify the organisation, in writing, of the decision and the reasons for the decision.

Review of decisions

- (10) Application may be made to the Administrative Appeals Tribunal for review of:
- (a) a decision of the Board under subregulation (6) to refuse to recognise an organisation; and
 - (b) a decision of the Board under subregulation (9) to terminate the recognition of a recognised BAS service provider association.

Division 2 The requirement to register

(Division 602 of Schedule 1 to the Act)

44H What is a tax agent service?

For subsection 602-10 (3) of the Act, a service that is provided by an auditor of a self managed superannuation fund under the *Superannuation Industry (Supervision) Act 1993* is not a tax agent service.

44I Eligibility for registration as tax agent — prescribed requirements

For paragraph 602-30 (1) (b) in Schedule 1 to the Act:

- (a) the requirements set out in Part 1 of Schedule 4 are prescribed; and
- (b) an individual is only required to comply with a requirement prescribed in one of the items in that Schedule.

44J Eligibility for registration as BAS service provider — prescribed requirements

For paragraph 602-30 (1) (b) in Schedule 1 to the Act:

- (a) the requirements set out in Part 2 of Schedule 4 are prescribed; and
- (b) an individual is only required to comply with a requirement prescribed in one of the items in that Schedule.

44K Application for registration — fees

For paragraph 602-55 (3) (b) in Schedule 1 to the Act, the fee for an application to the Board for registration is set out in the table.

Note The period of registration is for at least 3 years: see section 602-65 in Schedule 1 to the Act. Registration may be renewed with effect from when current registration expires: see section 602-70 in Schedule 1 to the Act.

Item	For an application for this type of registration	the fee is ...
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...

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| 1 | Registration as a tax agent
(see section 602-30 in Schedule 1 to the Act) | |
| 2 | Registration of an individual as a nominee of a tax agent
(see section 602-35 in Schedule 1 to the Act) | |
| 3 | Registration as a BAS service provider
(see section 602-30 in Schedule 1 to the Act) | |

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- 4 Registration of an individual as a nominee of a BAS service provider

(see section 602-35 in Schedule 1 to the Act)

Division 6 Investigation and enforcement (Division 606 of Schedule 1 to the Act)

44L Advice and assistance from professional bodies

The Board may make arrangements, in writing, with:

- (a) an RPA; or
- (b) a recognised BAS service provider association;

to provide advice or other assistance to the Board for the purposes of this Part.

44M Power to require witnesses to attend — allowances and expenses

For subsection 606-10 (2) in Schedule 1 to the Act, the allowances and expenses payable to a person who is required, under subsection 606-25 (1) in Schedule 1 to the Act, to attend an investigation are set out in the table.

Item	Person	Allowances and expenses
1	Person required to attend to give evidence because of that person's professional, scientific or other special skill or knowledge	In respect of each day on which the person attends, the amount specified in the <i>High Court Rules 2004</i> in relation to the expenses of a witness of that kind
2	Person not mentioned in item 1	In respect of each day on which the person attends, the amount specified in the <i>High Court Rules 2004</i> in relation to the expenses of a witness of that kind

Item	Person	Allowances and expenses
3	Person mentioned in item 1 or 2, giving skilled evidence	In addition to the amount payable to the person under item 1 or 2, an amount that the Board considers reasonable and properly incurred and paid for qualifying to give skilled evidence
4	Person mentioned in item 1 or 2	In addition to the amount payable to the person under item 1 or 2, and any amount payable under item 3: <ul style="list-style-type: none"> (a) an amount that the Board considers reasonable for the actual cost of the person's conveyance; and (b) an amount that the Board considers reasonable for sustenance or maintenance

Division 8 The Tax Practitioners Board
(Division 608 of Schedule 1 to the Act)

44N Appointment of secretary

- (1) The Commissioner must appoint a person performing duties in the Australian Taxation Office as the secretary of the Board.
- (2) The secretary must:
 - (a) attend all meetings of the Board; and
 - (b) keep a record of the proceedings of the Board.
- (3) A certificate or other instrument given or issued by the Board is taken to be sufficiently authenticated if signed by the secretary on behalf of the Board.

[2] **After Schedule 2**

insert

**Schedule 3 Requirements in relation to
potential RPAs and
recognised BAS service
provider associations**

(regulations 44F and 44G)

Part 1 Recognised professional association

- 101 The organisation is a non-profit organisation.
- 102 The organisation has at least 1 000 voting members.
- 103 The organisation has adequate corporate governance and operational procedures to ensure that:
- (a) it is properly managed; and
 - (b) its internal rules are enforced.
- 104 The organisation has professional and ethical standards for its voting members, including terms to the effect that:
- (a) voting members who are registered entities under Part 5-90 of Schedule 1 to the Act must undertake at least 15 hours of continuing professional education each year; and
 - (b) voting members must be of good fame, integrity and character; and
 - (c) each voting member is subject to rules controlling the member's conduct in the practice of that profession; and
 - (d) each voting member is subject to discipline for breaches of those rules; and
 - (e) if a voting member is permitted by that organisation to be in public practice, the voting member has professional indemnity insurance.

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- 105 The organisation has satisfactory arrangements in place for:
- (a) notifying clients of its members, or of members of its member bodies, as to how to make complaints; and
 - (b) receiving, hearing and deciding those complaints; and
 - (c) taking disciplinary action if complaints are justified.
- 106 The organisation has satisfactory arrangements in place for publishing annual statistics about:
- (a) the kinds and frequency of complaints made to the organisation (except complaints under the Act about registered tax agents); and
 - (b) findings made as a result of the complaints; and
 - (c) action taken as a result of those findings.
- 107 The organisation is able to pay its debts as they fall due.
- 108 The management of the organisation:
- (a) is required to be accountable to its members; and
 - (b) is required to abide by the corporate governance and operational procedures of the organisation.
- 109 Each voting member of the organisation is required to comply with at least one of the following requirements:
- (a) the member has been awarded a degree or a post-graduate award from:
 - (i) an Australian tertiary institution; or
 - (ii) an equivalent institution;in the discipline of accountancy, on the basis of successfully completing at least 3 years of full-time study or a part-time equivalent;
 - (b) the member has been awarded a diploma or certificate from:
 - (i) an Australian college of technical and further education; or
 - (ii) an equivalent institution;in the discipline of accountancy, on the basis of successfully completing at least 2 years of full-time study or a part-time equivalent;

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- (c) the member is admitted as a Barrister or Solicitor of the Supreme Court of a State or Territory;
 - (d) the member was registered as a tax agent for the purposes of Part VIIA of the *Income Tax Assessment Act 1936* both:
 - (i) immediately before the commencement of Part 5-90 of the Act; and
 - (ii) immediately before the commencement of section 39 of the *Taxation Laws Amendment Act (No. 2) 1988*.

110 A voting member of the organisation is permitted to hold a qualification that is equivalent to a qualification mentioned in item 109.

111 An organisation is taken to have arrangements that comply with a requirement in item 104, 105 or 106 if the organisation is subject to:

- (a) a law of a State or Territory; or
- (b) a rule or other instrument of a body created by or under a law of a State or Territory;

that sets out a requirement in terms that are the same, or that have a similar effect, to the requirement in item 104, 105 or 106.

Part 2 Recognised BAS service provider association

201 The organisation is a non-profit organisation.

202 The organisation has at least 1 000 voting members.

203 The organisation has adequate corporate governance and operational procedures to ensure that:

- (a) it is properly managed; and
- (b) its internal rules are enforced.

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- 204 The organisation has professional and ethical standards for its voting members, including terms to the effect that:
- (a) voting members must undertake at least 15 hours of continuing professional education each year; and
 - (b) voting members must be of good fame, integrity and character; and
 - (c) each voting member is subject to rules controlling the member's conduct in the practice of that profession.
 - (d) each voting member is subject to discipline for breaches of those rules; and
 - (e) if a voting member is permitted by that organisation to be in public practice, the voting member has professional indemnity insurance.
- 205 The organisation has satisfactory arrangements in place for:
- (a) notifying clients of its members, or of members of its member bodies, as to how to make complaints; and
 - (b) receiving, hearing and deciding those complaints; and
 - (c) taking disciplinary action if complaints are justified.
- 206 The organisation has satisfactory arrangements in place for publishing annual statistics about:
- (a) the kinds and frequency of complaints (except complaints under the Act about registered tax agents); and
 - (b) findings made as a result of the complaints; and
 - (c) action taken as a result of those findings.
- 207 The organisation is able to pay its debts as they fall due.
- 208 The management of the organisation:
- (a) is required to be accountable to its members; and
 - (b) is required to abide by the corporate governance and operational procedures of the organisation.

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- 209 Each voting member of the organisation has been awarded a Certificate IV Financial Services (Bookkeeping), or a Certificate IV Financial Services (Accounting), or an equivalent award, from:
- (a) an Australian college of technical and further education; or
 - (b) an equivalent institution.

Schedule 4 Eligibility for registration as tax agent or BAS service provider — prescribed requirements

(regulations 44I and 44J)

Part 1 Tax agents

Division 1 Requirements

Tertiary qualifications

- 101 A requirement is that the individual:
- (a) has been awarded:
 - (i) a degree or a post-graduate award from an Australian tertiary institution; or
 - (ii) a degree or award that is approved by the Board from an equivalent institution;in the discipline of accountancy; and
 - (b) has successfully completed a course in Australian taxation law that is approved by the Board; and
 - (c) has successfully completed a course in commercial law that is approved by the Board; and
 - (d) has been engaged in the equivalent of 12 months of full-time relevant experience in the preceding 5 years.

Note The Board may approve a course for paragraph (b) or (c) by an approval process, an accreditation scheme, or by other means.

Diploma or certificate

- 102 A requirement is that the individual:
- (a) has been awarded:
 - (i) a diploma or certificate from an Australian college of technical and further education; or
 - (ii) a diploma or award that is approved by the Board from an equivalent institution;
- in the discipline of accountancy, on the basis of successfully completing at least 2 years of full-time study or a part-time equivalent; and
- (b) has successfully completed a course in Australian taxation law that is approved by the Board; and
 - (c) has successfully completed a course in commercial law that is approved by the Board; and
 - (d) has been engaged in the equivalent of 2 years of full-time relevant experience in the preceding 5 years.

Note The Board may approve a course for paragraph (b) or (c) by an approval process, an accreditation scheme, or by other means.

Admission to legal practice

- 103 A requirement is that the individual:
- (a) has successfully completed:
 - (i) the academic and other requirements for admission as a Barrister or Solicitor of the Supreme Court of a State or Territory; and
 - (ii) a course in Australian taxation law that is approved by the Board; and
 - (iii) a course in basic accountancy principles that is approved by the Board; and
 - (b) the individual has been engaged in the equivalent of 12 months of full-time relevant experience in the preceding 5 years.

Note The Board may approve a course for subparagraph (a) (i) by an approval process, an accreditation scheme, or by other means.

Work experience

- 104 A requirement is that the individual:
- (a) is a voting member of an RPA; and
 - (b) has successfully completed:
 - (i) a course in Australian taxation law that is approved by the Board; and
 - (ii) a course in basic accountancy principles that is approved by the Board; and
 - (c) has been engaged in the equivalent of 8 years full-time relevant experience in the preceding 10 years.

Note 1 An RPA is explained in regulation 44F.

Note 2 The Board may approve a course for subparagraph (b) (i) by an approval process, an accreditation scheme, or by other means.

Division 2 Meaning of *relevant experience*

- 105 For Division 1 of this Part, *relevant experience* means work by an individual:
- (a) as a registered tax agent; or
 - (b) under the supervision and control of a registered tax agent;
or
 - (c) as a Barrister or Solicitor of the Supreme Court of a State or a Territory;
- in the course of which the individual's work has included substantial involvement in either or both of the types of tax agent services described in section 602-10 in Schedule 1 to the Act, or substantial involvement in an area of taxation law to which either or both of those types of tax agent services relate.

Part 2 **BAS service providers**

Division 1 **Qualifications**

Accounting qualifications

- 201 A requirement is that the individual:
- (a) has been awarded at least a Certificate IV Financial Services (Accounting), or a Certificate IV Financial Services (Bookkeeping), from an Australian college of technical and further education, or an equivalent institution, that required the successful completion of a course in basic GST/BAS taxation principles; and
 - (b) has undertaken at least 1400 hours of relevant experience in the preceding 3 years.

Other qualification or standard

- 202 A requirement is that the individual is a voting member of an RPA.

Note An RPA is explained in regulation 44F.

Division 2 **Meaning of *relevant experience***

- 203 For Division 1 of this Part, *relevant experience* means:
- (a) work by an individual as a registered tax agent or a registered BAS service provider; or
 - (b) work by an individual under the supervision and control of a registered tax agent or a registered BAS service provider; or
 - (c) work by an individual of a kind approved by the Board; in the course of which the individual's work has included substantial involvement in either or both of the reconciliation of GST and PAYG control accounts and the preparation of BASs.

Note

1. All legislative instruments and compilations are registered on the Federal Register of Legislative Instruments kept under the *Legislative Instruments Act 2003*. See www.frli.gov.au.