

EXPLANATORY STATEMENT

STATUTORY RULES 2007 No.

**Issued by authority of the Minister for Revenue
and Assistant Treasurer**

Taxation Administration Act 1953

Taxation Administration Amendment Regulations 2007 (No.)

Section 18 of the *Taxation Administration Act 1953* (the Act) provides that the Governor-General may make regulations prescribing matters required or permitted by the Act to be prescribed, or necessary or convenient to be prescribed for carrying out or giving effect to the Act.

The Regulations relate to Part 5-90 of Schedule 1 to the Act which implement the new legislative regime for tax agent services as announced by the then Assistant Treasurer on 6 April 1998.

The purpose of the Regulations is to replace Part 9 of the Income Tax Regulations 1936 relating to the registration of tax agents.

The Regulations outline the prescribed requirements for registration as tax agents and BAS service providers, the definitions of recognised professional associations (RPAs) or recognised BAS service provider associations, the prescribed fees for registration application, allowances and expenses for persons involved in the investigation process and the secretariat for the Board. Details of the Regulations are set out in the Attachment.

Confidential consultations for the proposed legislative regime took place with the chief executive officers of the current RPAs, the Chairs of the state Tax Agents' Boards, a working group of the National Tax Liaison Group and a sample of tax agents and bookkeepers/BAS service providers since 1998. Confidential consultations for the Regulations took place in 2006 and 2007. Public consultation for the Regulations took place over a 10-week period in 2007.

The Act specifies no condition that needs to be satisfied before the power to make the proposed Regulations may be exercised.

The Regulations are a legislative instrument for the purposes of the *Legislative Instruments Act 2003*.

The Regulations commenced on the day after registration on the Federal Register of Legislative Instruments.

ATTACHMENT

Details of the *Taxation Administration Amendment Regulations 2007 (No.)*

Regulation 1 – Name of Regulations

This regulation provides that the title of the Regulations is the *Taxation Administration Amendment Regulations 2007 (No.)*.

Regulation 2 – Commencement

This regulation provides for the Regulations to commence on [TBA].

Regulation 3 – Amendment of *Taxation Administration Regulations 1976*

This regulation provides that the *Taxation Administration Regulations 1976* are amended as set out in Schedule 1.

Schedule 1 – Amendments

Item [1] – regulations 44E to 44N

Item 1 inserts a new Part 5A relating to the provision of tax agent services. The new Part 5A relates to Part 5-90 of Schedule 1 to the Act.

Recognised associations

The Regulations allow organisations to be recognised as a recognised professional association (RPA) or a recognised BAS service provider association. The Tax Practitioners Board (the Board) recognises both RPAs and recognised BAS service provider associations in accordance with the prescribed requirements. Regulation 44F allows the Board to recognise organisations as RPAs using a set of objective requirements outlined in Part 1 of Schedule 3 of the Regulations. Similarly, regulation 44G allows the Board to recognise organisations as recognised BAS service provider associations using a set of objective requirements outlined in Part 2 of Schedule 3 of the Regulations. (Schedule 3 is explained below in Item 2.) The benefit of having objective requirements is that only those professional associations that enforce high educational, ethical and professional requirements (relevant to taxation) on their members can be recognised by the Board as RPAs or recognised BAS service provider associations.

The recognition process requires the organisation to apply to the Board, in the approved form, for recognition as an RPA or recognised BAS service provider association. If all the requirements in Schedule 3 are satisfied, the Board must recognise the organisation as an RPA or recognised BAS service provider association and notify them of the decision in writing. The Board must refuse to recognise an organisation if one of the prescribed requirements is not met. The Board must also terminate recognition if the Board is satisfied that one or more of the prescribed criteria ceases to exist. However, it may only terminate recognition after it has notified the organisation of its belief (with reasons) and provided the organisation

with the opportunity to make a written submission. The Board's decision to refuse or terminate recognition is reviewable by the Administrative Appeals Tribunal.

An RPA or recognised BAS service provider association has a role in advising and assisting the Board for the purposes of the Regulations. Regulation 44L gives the Board a general capacity to enter into an arrangement with an RPA or recognised BAS service provider association for it to provide advice and/or other assistance to the Board at the Board's request. The RPAs or recognised BAS service provider associations may have a role in providing training courses which are recognised by the Board for training and disciplinary purposes. The Board is able to negotiate a more significant role for individual RPAs and recognised BAS service provider associations in what is envisaged to be a co-regulatory scheme for the provision of tax agent services.

Recognised BAS service provider associations are a new type of recognised association that will enhance education and training for BAS services providers and, in particular, will provide for the ongoing education and performance monitoring of BAS service providers.

Voting membership of an RPA is a prescribed qualification for BAS service provider registration.

Prescribed requirements for registration as tax agents and BAS service providers

One element that the Board needs to be satisfied with for the purpose of registration as a tax agent or BAS service provider under paragraph 602-30(1)(b) of Schedule 1 to the Act is that the individual has complied with the prescribed requirements. For individuals, regulation 44I provides that the eligibility requirements for registration as a tax agent are prescribed in Part 1 of Schedule 4 of the Regulations. Similarly, regulation 44J provides that the eligibility requirements for registration as a BAS service provider are prescribed in Part 2 of Schedule 4 of the Regulations. (Schedule 4 is explained below in Item 3.)

The prescribed requirements vary depending on the applicant, but in each case require the applicant to satisfy two essential requirements:

1. academic qualifications; and
2. relevant experience.

Definition of 'tax agent service'

A *tax agent service* is defined in section 602-10 of Schedule 1 to the Act as any service that relates to ascertaining or satisfying the liabilities, obligations or entitlements of an entity under a taxation law, or advising an entity about these rights and responsibilities, in circumstances where an entity can be reasonably expected to rely on the service. However, not all services are intended to be captured within this definition. As such, subsection 602-10(3) of Schedule 1 to the Act provides for a regulation-making power to prescribe a service that is not a *tax agent service*. Pursuant to subsection 602-10(3), regulation 44I states that a service provided by an auditor of a self managed superannuation fund (SMSF auditors) under the

Superannuation Industry (Supervision) Act 1993 (SIS Act) is not a tax agent service. SMSF auditors are excluded from the definition of *tax agent service* for the following reasons:

- the qualification and experience requirements for SMSF auditors are different to a tax agent;
- the functions SMSF auditors perform are different to that of a tax agent; and
- SMSF auditors are already subject to penalties under the SIS Act and are subject to disciplinary procedures from their professional associations.

Prescribed fees for registration application

An application for registration to the Board under section 602-55 of Schedule 1 to the Act must be accompanied by an application fee. The table in regulation 44K sets out the relevant application fees, payable to the Board, for the different types of registration. The duration for all types of registration is at least three years.

Secretariat for the Board

Regulation 44N of the Regulations provides that the Commissioner of Taxation (Commissioner) must appoint an individual, currently being employed by the Australian Taxation Office, as a secretary to the Board. The definition of *secretary* in regulation 44E also includes a person who performs the duties of the secretary in his or her absence.

The secretary is responsible for providing administrative support to the Board. As part of his/her duties, the secretary will be required to attend and keep a record of all Board meetings. Further, if the secretary signs a certificate or other instrument (issued by the Board) on the Board's behalf, then the certificate/instrument is considered to be sufficiently authenticated.

Allowances and expenses for persons involved in the investigation process

Division 6 of Schedule 1 of the Act deals with the investigation and enforcement powers of the Board. As part of their investigation powers under section 606-10 of Schedule 1 to the Act, the Board, or a committee established by the Board, can require a person to appear before it to give evidence or to produce certain documents.

Witnesses who attend at the Board's request will be duly compensated. Regulation 44M of the Regulations sets out the prescribed allowances and expenses payable to a witness who is required to attend an investigation. The prescribed allowances and expenses payable to a witness for each day that he or she attend/s is calculated based on the amount specified in the *High Court Rules 2004*. A witness should be paid an additional amount for qualifications to give skilled evidence, and/or for their travel, meal and other maintenance costs, if the Board considers it reasonable to do so.

Item [2] – Schedule 3, Items 101-111; 201-209

Prescribed requirements for recognition as recognised associations

The requirements for recognition as an RPA are set out in Part 1 of Schedule 3 of the Regulations. To qualify as an RPA, an organisation must satisfy the Board that it is a non-profit organisation with at least 1000 voting members, must have adequate corporate governance and operational procedures to ensure that it is properly managed and internal rules are enforced, must be able to pay its debts as they fall due, and must have professional and ethical standards for its members (including a requirement that members undertake at least 15 hours of continuing professional education each year). Further, the management of an RPA must abide by the corporate governance and operational procedures of its organisation and must be accountable to its members.

An RPA must satisfy the Board that it has satisfactory arrangements in place for notifying clients of its members, or of members of its member bodies, as to how to make complaints. An RPA must also have satisfactory arrangements in place for receiving, hearing and deciding complaints from its members, taking disciplinary action if complaints are justified and for publishing annual statistics. An organisation is taken to have met with these requirements, as well as the professional and ethical standard requirements for its members, if it is subject to a law of a State or Territory or a rule or other instrument of a body created by or under a law of a State or Territory that contains a similar requirement. As a result, the Board may recognise legal professional associations as an RPA even though many legal professional associations refer complaints made about their members to a statutory legal body.

To qualify for recognition by the Board as an RPA, item 109 provides that the organisation's voting members must comply with the following requirements:

- the member has been awarded a degree, post graduate award, diploma or certificate in accountancy; or
- the member has been admitted as a Solicitor or Barrister in the Supreme Court of a State or Territory; or
- the member was registered as a tax agent immediately before the commencement of section 39 of the *Tax Laws Amendment Act (No.2) 1988* or Part 5-90 of the *Income Tax Assessment Act 1936*.

The requirements for recognition as a recognised BAS service provider association are set out in Part 2 of Schedule 3 of the Regulations. Recognised BAS service provider associations will have to satisfy the Board that they have complied with the same objective requirements that apply to RPAs. They will not, however, be required to comply with the same education requirements for RPA voting members in item 109. Instead, an organisation must satisfy the Board that its voting members have, at the very least, either a Certificate IV Financial Services (Accounting), a Certificate IV Financial Services (Bookkeeping), or an equivalent qualification from an Australian college of technical and further education or an equivalent institution.

Item [3] – Schedule 4, Items 101-104; 201-203

Academic qualifications and relevant experience for tax agents and BAS service providers

The prescribed requirement for tax agent or BAS service provider registration is that tax agents and BAS service providers have *both* the necessary academic qualifications *and* relevant experience.

For tax agents, to satisfy the prescribed requirements for registration purposes, Division 1 in Part 1 of Schedule 4 of the Regulations provides that they must complete one of the following academic and relevant experience requirements:

- a degree or post graduate award in accounting and courses in Australian taxation law and commercial law, or admission as a Barrister or Solicitor and courses in accounting and taxation law
 - plus 12 months' full-time relevant experience in the last five years; or
- a two-year full-time diploma or certificate course in accounting and a course in taxation law and commercial law
 - plus two years' full-time relevant experience in the last five years; or
- without formal qualifications:
 - is a member of an RPA;
 - has successfully completed a course in accounting or taxation law; and
 - has eight years full-time relevant experience in the last 10 years.

For a BAS service provider, to satisfy the prescribed requirements for registration purposes, Division 1 in Part 2 of Schedule 4 of the Regulations provides that they must complete the following academic and relevant experience requirements:

- a minimum of Certificate IV Financial Services (Accounting), or Certificate IV Financial Services (Bookkeeping), including courses in basic GST/BAS taxation principles
 - plus 1,400 hours of relevant experience in the last three years.

Also, for BAS service providers, item 202 of Schedule 4 provides that voting members of an RPA do not need to comply with the prescribed academic qualification and relevant experience requirements and are automatically eligible for registration by virtue of their membership.

Meaning of relevant experience for tax agents

To reflect the principled definition of tax agent services in Part 5-90 of the Act, the definition of relevant experience for tax agents under item 104 will include any work undertaken by an individual as a registered tax agent or under the supervision and

control of a registered tax agent, which substantially involves the provision of tax agent services. This includes being substantially involved in the preparation of a broad range of documents relating to an entity's obligations or entitlements under a taxation law (or under a specialised area of taxation law), or the provision of advice in relation to the preparation of documents.

Under Part 5-90 of the Act, a legal practitioner can provide tax agent services for a fee without registration as a tax agent provided they are acting in the course of his or her profession except for the preparation and lodgement of a return. Consequently, a legal practitioner must register as a tax agent if they wish to prepare or lodge a return or provide any other tax agent service that does not fall within the course of his or her profession. It is for this reason that the definition of relevant experience includes work as a Barrister or Solicitor of the Supreme Court of a State or a Territory provided this work includes substantial involvement in the provision of a tax agent service.

Further, specialist tax practitioners will be able to register as a tax agent under Part 5-90 of the Act, as the definition of relevant experience permits those individuals, who are only in the business of providing tax advice or who specialise in an area of taxation law, to be registered as tax agents.

Meaning of relevant experience for BAS service providers

The definition of relevant experience for BAS service providers in item 203 will include work undertaken by an individual in their capacity as a tax agent or BAS service provider or work completed under the supervision of a registered tax agent or BAS service provider.

The definition will also include work undertaken by an individual of a kind approved by the Board. This allows individuals who obtained their experiences without working under the supervision and control of a registered tax agent or BAS service provider to comply with the relevant experience requirement provided they satisfy the Board that they are able to complete work to a standard approved by the Board.

For the purposes of this relevant experience definition, the work undertaken must include substantial involvement in either or both the reconciliation of GST and PAYG control accounts and the preparation of BAS.