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TAX AGENT SERVICES MEASURE — TRANSITIONAL PROVISIONS AND CONSEQUENTIAL AMENDMENTS

SUMMARY OF CONSULTATION PROCESS

The Government announced on 29 May 2008 that it would introduce a new regulatory regime to improve the registration and regulation of entities providing tax agent services.

The legislative amendments necessary to create this new regulatory regime have proceeded in two stages. The *Tax Agent Services Act 2009*, which received Royal Assent on 26 March 2009, contains the core elements of the new regime.

The second stage is the enactment of the Tax Agent Services (Transitional Provisions and Consequential Amendments) Bill 2009 (Transitional Bill). Introduced into Parliament on 24 June 2009, this Bill is designed to ensure a smooth transition from the existing law to the new regime.

This consultation summary relates to the Transitional Bill.

Consultation process

Reform of the existing regulation of tax agents was first announced in 1998 and the new regime, including elements of the Transitional Bill, have been developed through extensive confidential and public consultation since that time.

Most recently public consultation on an exposure draft Transitional Bill was conducted between 12 February 2009 and 26 March 2009. In total 18 submissions were received.

Submissions can be viewed by clicking on the following [link](#).

Summary of key issues

Submissions generally supported the provisions in the exposure draft Bill.

The key issues

Some submissions expressed the desire to broaden the application of the safe harbour provisions which provide exemptions from certain administrative penalties in the *Taxation Administration Act 1953* (TAA 1953) in certain circumstances. In particular, there was a suggestion that a safe harbour should be applied to subsection 284-75(3) of Schedule 1 to the TAA 1953 which imposes an administrative penalty for the failure to lodge a document in certain circumstances.

Some submissions also suggested a need for further clarification in relation to the elements that constitute the safe harbours provisions.



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Issues were also raised concerning some of the provisions designed to transition entities into the new regime as tax agent. Specifically, there was a view that the provisions should ensure that certain specialist providers of tax agent services (such as those in the research and development field) be able to effectively transition into the new regime as registered tax agents.

Other submissions raised some concern that the potential time in which certain entities could provide BAS services without being required to meet the qualification/ experience requirements for registration was too long.

Concern was also raised regarding the investigation provisions contained in the exposure draft Bill and, in particular, the importance of ensuring that the new Tax Practitioners Board could continue to sanction conduct undertaken before the commencement of the new regime under the old law.

Response

Main changes to the Bill as a result of consultation:

The manner in which the safe harbour provisions are intended to operate was further clarified in the explanatory memorandum. In addition, amendments were made to the Bill to make it clear that taxpayers wishing to rely on a safe harbour bear the evidential burden with respect to certain aspects of the safe harbour.

The fact that certain specialist tax service providers will be transitioned into the new regime and the provision under which this would occur was further clarified in the explanatory memorandum.

Amendments were also made to the exposure draft Bill to ensure that the potential time in which BAS agents can provide services without satisfying all requirements for registration was reduced.

With respect to the status of inappropriate conduct undertaken prior to the commencement of the new regime and investigations that may be underway with respect to that conduct (for instance, by the Australian Taxation Office), no changes were made to the Bill. This was on the basis that, as a consequence of other provisions in the Bill and provisions in the *Acts Interpretation Act 1901*, the new Tax Practitioners Board will (without the aid of a specific provision) be able to sanction pre-commencement conduct under the old law and will, where relevant, be able to take into account such conduct in making decisions under the new regulatory regime. These issues were further clarified in the explanatory memorandum.

Suggestions that were not adopted:

The application of the safe harbour provisions was not expanded. This was because subsection 284-75(3) will generally apply only where there is an intentional or reckless disregard of the provisions of a taxation law, making the inclusion of a safe harbour (which would not apply in such circumstances) of little efficacy.



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Feedback

Feedback on the consultation process for this measure can be forwarded to consultation@treasury.gov.au . Alternatively, you can contact Lucas Rutherford on 02 6263 4334.

Thank you to all participants in the consultation process.