



Tax Agent Services Regulations 2009¹

Select Legislative Instrument 2009 No.

I, QUENTIN BRYCE, Governor-General of the Commonwealth of Australia, acting with the advice of the Federal Executive Council, make the following Regulations under the *Tax Agent Services Act 2009*.

Dated 2009

Governor-General

By Her Excellency's Command

[DRAFT ONLY – NOT FOR SIGNATURE]

Assistant Treasurer

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Part 1 Preliminary

1 Name of Regulations

These Regulations are the *Tax Agent Services Regulations 2009*.

2 Commencement

These Regulations commence as follows:

- (a) on the day after they are registered — regulations 1 to 3 and 11;
- (b) on the commencement of Part 2 of the *Tax Agent Services Act 2009* — the remainder.

3 Definitions

In these Regulations:

Act means the *Tax Agent Services Act 2009*.

Board means the Tax Practitioners Board established by section 60-5 of the Act.

recognised BAS agent association has the meaning given by regulation 4.

recognised professional association (or *RPA*) has the meaning given by regulation 5.

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.

4 Recognised BAS agent association

- (1) In these Regulations, an organisation is a *recognised BAS agent 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 must make the application using a form approved by the Board for this subregulation.

Decision about recognition

- (3) As soon as practicable after receiving an application, the Board must consider the application and decide whether to recognise the organisation.
- (4) If each of the requirements set out in Part 2 of Schedule 1 exists in relation to the organisation, the Board must:
- (a) decide to recognise the organisation; and
 - (b) notify the organisation, in writing, of the decision; and
 - (c) publish a notice of the decision on the Board's website.
- (5) For the period of 3 years starting when this regulation commences, if item 209 of Part 2 of Schedule 1 is the only requirement that does not exist in relation to the organisation, the Board must decide to recognise the organisation and comply with paragraphs (4) (b) and (c).
- (6) If:
- (a) item 202 of Part 2 of Schedule 1 is the only requirement that does not exist in relation to the organisation; and
 - (b) the Board is satisfied that the membership of the organisation is:
 - (i) located wholly or substantially in a particular geographical area of Australia; and
 - (ii) reasonably proportionate to the population of the particular geographic area;

the Board may decide to recognise the organisation and comply with paragraphs (4) (b) and (c).

Example

An organisation whose membership is located wholly or substantially in a State or Territory.

- (7) If 1 or more of the requirements set out in Part 2 of Schedule 1 do not exist in relation to the organisation, and subregulation (5) or (6) does not apply, the Board must:
- (a) refuse to recognise the organisation; and

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- (b) notify the organisation, in writing, of the decision and the reasons for the decision.

Termination of recognition

- (8) If the Board believes that one or more of the requirements set out in Part 2 of Schedule 1 have ceased to exist in relation to a recognised BAS agent association, the Board must:
 - (a) notify the recognised BAS agent association, in writing, of the Board's belief, and the reasons for the Board's belief; and
 - (b) invite the recognised BAS agent 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 agent association, having regard to any submission made by the recognised BAS agent 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 1 have ceased to exist in relation to the recognised BAS agent 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; and
 - (c) publish on its website a statement that it has terminated the recognition of the organisation.

Review of decisions

- (10) Application may be made to the Administrative Appeals Tribunal for review of:
 - (a) a decision of the Board under subregulation (5) to refuse to recognise an organisation; and
 - (b) a decision of the Board under subregulation (9) to terminate the recognition of a recognised BAS agent association.

5 Recognised professional association

- (1) In these Regulations, 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 1 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 1 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; and
 - (c) publish a notice of the decision on the Board's website.
- (6) If one or more of the requirements set out in Part 1 of Schedule 1 do not exist in relation to the organisation, and subregulation (7) does not apply, 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) If:
 - (a) item 202 of Part 2 of Schedule 1 is the only requirement that does not exist in relation to the organisation; and
 - (b) the Board is satisfied that the membership of the organisation is

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- (i) located wholly or substantially in a particular geographical area of Australia; and
 - (ii) reasonably proportionate to the population of the particular geographical location;

the Board may decide to recognise the organisation and comply with paragraphs (5) (b) and (c).

Example

An organisation whose membership is located wholly or substantially in a State or Territory.

Termination of recognition

- (8) If the Board believes that one or more of the requirements set out in Part 1 of Schedule 1 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.
- (9) If the Board is satisfied, after acting under subregulation (8), that one or more of the requirements set out in Part 1 of Schedule 1 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; and
 - (c) publish on its website a statement that it has terminated the recognition of the organisation.

Review of decisions

- (10) Application may be made to the Administrative Appeals Tribunal for review of:

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- (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 an RPA.

6 Meaning of *tax agent service* — services that are not tax agent services

For subsection 90-5 (2) 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.

Part 2 Registration

7 Eligibility for registration as tax agent — prescribed requirements

For paragraph 20-5 (1) (b) of the Act:

- (a) the requirements set out in Part 1 of Schedule 2 are prescribed; and
- (b) an individual is only required to comply with a requirement prescribed in one of the items in that Schedule.

8 Eligibility for registration as BAS agent — prescribed requirements

For paragraph 20-5 (1) (b) of the Act:

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

9 Application for registration — fees

For paragraph 20-20 (2) (b) of 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 subsection 20-25 (4) of the Act. Registration may be renewed with effect from when current registration expires: see section 20-50 of the Act.

Item	For an application for this type of registration ...	the fee is ...
1	Registration as a tax agent who carries on a business as a tax agent	\$500
2	Registration as a tax agent who does not carry on a business as a tax agent	\$250
3	Registration as a BAS agent who carries on a business as a BAS agent	\$100

4	Registration as a BAS agent who does not carry on a business as a BAS agent	\$50
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Part 3 Investigations

10 Power to require witnesses to attend — allowances and expenses

For subsections 60-105 (2) and (3) of the Act, the allowances and expenses payable to a person who is required, under subsection 60-105 (1) of 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
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: (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

Part 4 The Tax Practitioners Board

11 Administrative assistance to the Board

- (1) For section 60-80 of the Act:
- (a) the Commissioner must make available to the Board persons engaged under the *Public Service Act 1999*, and performing duties in the Australian Taxation Office, to provide administrative assistance to the Board; and
 - (b) the Commissioner is to determine the number of persons having regard to:
 - (i) the number of persons who would be required to enable the Board to perform its functions and exercise its powers under the Act; and
 - (ii) the funding that has been allocated, as agreed between the Commissioner and the Board, for the purpose of allowing the Board to perform its functions and exercise its powers under the Act; and
 - (c) the Commissioner must, after consulting the Board, identify 1 of those persons as the secretary of the Board.

Note 1 Subregulation (1) does not prevent other persons, who are not engaged under the *Public Service Act 1999* or who are not performing duties in the Australian Taxation Office from being engaged to perform services related to the performance of the Board's functions and the exercise of its powers (for example, contractors involved in the establishment of IT systems).

Note 2 For paragraph (1)(b), the Commissioner also has obligations to promote the efficient, effective and ethical use of Commonwealth resources under the *Financial Management and Accountability Act 1997*.

- (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.

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- (4) The secretary may, in writing, delegate any of his or her powers and functions (other than this power of delegation) to a person who has been made available to the Board under paragraph (1) (a).

12 Register of registered and deregistered tax agents and BAS agents

- (1) For subsection 60-135 (2) of the Act, the register of registered tax agents and BAS agents required by paragraph 60-135 (1) (a) of the Act must include the following information for each registered tax agent and BAS agent:
- (a) the name of the registered tax agent or BAS agent;
 - (b) the contact details of the registered tax agent or BAS agent;
 - (c) any relevant professional affiliation of the registered tax agent or BAS agent;
 - (d) the duration of the registration of the registered tax agent or BAS agent;
 - (e) any condition to which the registration of the registered tax agent or BAS agent is subject;
 - (f) any sanction (other than a caution) that has been imposed by the Board on the registered tax agent or BAS agent.

Note A sanction includes the termination of the registration of a registered tax agent or BAS agent, even if the agent becomes registered again after the period during which the agent may not apply for registration.

- (2) Information on the register of registered tax agents and BAS agents that relates to a sanction (other than a caution) that has been imposed by the Board on a registered tax agent or BAS agent must be kept on the register for the longer of:
- (a) 12 months starting on the day on which the sanction is imposed; and
 - (b) the period, of more than 12 months, during which the sanction has effect.
- (3) For subsection 60-135 (2) of the Act, the register of entities who were registered tax agents or BAS agents, and whose registration has been terminated in certain circumstances, required by paragraph 60-135 (1) (b) of the Act must include the following information for each entity:

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- (a) the name of the entity;
 - (b) the contact details of the entity;
 - (c) the date of effect of the termination of the entity's registration;
 - (d) the reason for the termination of the entity's registration.
- (4) The register of registered tax agents and BAS agents may include other information that is relevant to the operation of the arrangements for the registration of tax agents and BAS agents.

Schedule 1 Requirements in relation to potential RPAs and recognised BAS agent associations

(regulations 4 and 5)

Part 1 Recognised professional association

- 101 The organisation is an Australian 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 must undertake an appropriate number of hours of continuing professional education each year, having regard to the circumstances and requirements of the members; 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.

Example for paragraph (a)

The appropriate number of hours of education each year may differ for members who have particular qualifications, areas of expertise or professional experience.

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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 entities registered under the Act); 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;
 - (b) the member has been awarded a diploma or higher award from:
 - (i) a registered training organisation; or
 - (ii) an equivalent institution;in the discipline of accountancy;
 - (c) the member is admitted as an Australian legal practitioner;
 - (d) the member was:

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- (i) registered as a tax agent, or as a nominee, for the purposes of Part VIIA of the *Income Tax Assessment Act 1936* as in force immediately before this item commences; and
 - (ii) a member of, and entitled to vote at meetings of, a recognised professional association within the meaning of section 251LA of the *Income Tax Assessment Act 1936* as in force immediately before this item commences.

- 110 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 agent association

- 201 The organisation is an Australian non-profit organisation.
- 202 The organisation has:
- (a) at least 1 000 voting members; or
 - (b) at least 500 voting members who are registered BAS agents.
- 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.
- 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

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- (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.
- 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 entities registered under the Act); 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.
- 209 Each voting member of the organisation has been awarded at least a Certificate IV Financial Services (Bookkeeping), or a Certificate IV Financial Services (Accounting), from:
- (a) a registered training organisation; or
- (b) an equivalent institution.

Schedule 2 Eligibility for registration as tax agent or BAS agent — prescribed requirements

(regulations 7 and 8)

Part 1 Tax agents

Division 1 Requirements

Tertiary qualifications

101 A requirement is that:

- (a) either:
 - (i) the individual has been awarded:
 - (A) a degree or a post-graduate award from an Australian tertiary institution in the discipline of accountancy; or
 - (B) a degree or award that is approved by the Board from an equivalent institution in the discipline of accountancy; or
 - (ii) the individual:
 - (A) has been awarded a degree or a post-graduate award from an Australian tertiary institution, or a degree or award that is approved by the Board from an equivalent institution, in another discipline that is relevant to the tax agent services to which the application relates; and
 - (B) has successfully completed a course in basic accountancy principles that is approved by the Board; and
- (b) the individual has successfully completed a course in commercial law that is approved by the Board; and
- (c) the individual has successfully completed a course in Australian taxation law that is approved by the Board; and

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- (d) 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 paragraph (b) or (c) by an approval process, an accreditation scheme, or by other means.

Diploma or higher award

102 A requirement is that the individual:

- (a) has been awarded a diploma or higher award from:
- (i) a registered training organisation; or
 - (ii) an equivalent institution;
- in the discipline of accountancy; and
- (b) has successfully completed a course in commercial law that is approved by the Board; and
- (c) has successfully completed a course in Australian taxation 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 an Australian legal practitioner; and
 - (ii) a course in basic accountancy principles that is approved by the Board; and
 - (iii) a course in Australian taxation law 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) (ii) or (iii) by an approval process, an accreditation scheme, or by other means.

Work experience

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

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

Membership of professional association

- 105 A requirement is that the individual:
- (a) is a voting member of an RPA; and
 - (b) the individual has been engaged in the equivalent of 8 years of full-time relevant experience in the preceding 10 years.

Note An RPA is explained in regulation 5.

Division 2 Meaning of *relevant experience*

- 106 For Division 1 of this Part, *relevant experience* means work by an individual:
- (a) as a tax agent registered under the Act; or
 - (b) as a tax agent registered under Part VIIA of the *Income Tax Assessment Act 1936*; or
 - (c) under the supervision and control of a tax agent registered under the Act; or
 - (d) under the supervision and control of a tax agent registered under the previous regulatory regime contained in Part VIIA of the *Income Tax Assessment Act 1936*; or
 - (e) as an Australian legal practitioner;

in the course of which the individual's work has included substantial involvement in one or more of the types of tax agent services described in section 90-5 of the Act, or substantial involvement in a particular area of taxation law to which one or more of those types of tax agent services relate.

107 For Division 1 of this Part, *relevant experience* also means work by an individual:

- (a) of a kind that is approved by the Board for this paragraph; and
- (b) in the course of which the individual's work has included substantial involvement in one or more of the types of tax agent services described in section 90-5 of the Act, or substantial involvement in a particular area of taxation law to which one or more of those types of tax agent services relate; and

Part 2 BAS agents

Division 1 Requirements

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:
 - (i) a registered training organisation; or
 - (ii) an equivalent institution;that required the successful completion of a course in basic GST/BAS taxation principles; and
- (b) has undertaken at least 1 400 hours of relevant experience in the preceding 3 years.

Membership of professional association

202 A requirement is that the individual:

- (a) is a voting member of an RPA; and

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- (b) has undertaken at least 1 000 hours of relevant experience in the preceding 3 years.

Note An RPA is explained in regulation 5.

203 A requirement is that the individual:

- (a) is a voting member of a recognised BAS agent association; and
- (b) has undertaken at least 1 400 hours of relevant experience in the preceding 3 years.

Note A recognised BAS agent association is explained in regulation 4.

Division 2 Meaning of *relevant experience*

204 For Division 1 of this Part, *relevant experience* means:

- (a) work by an individual as a tax agent registered under the Act or a BAS agent registered under the Act; or
- (b) work by an individual as a tax agent registered under Part VIIA of the *Income Tax Assessment Act 1936*; or
- (c) work by an individual under the supervision and control of a tax agent registered under the Act or a BAS agent registered under the Act; or
- (d) work by an individual under the supervision and control of a tax agent registered under the previous regulatory regime contained in Part VIIA of the *Income Tax Assessment Act 1936*; or
- (e) 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 one or more of the kinds of BAS services described in section 90-10 of the Act.

Note

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