



Australian Government
The Treasury

TSY/AU

Review of the Tax Practitioners Board

Background to the review

March 2019

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Background to the review of the Tax Practitioners Board

Previous regime

- The previous regime for regulating tax agents was contained in the tax legislation and was originally introduced in 1943. During that time the tax environment changed and there were a much larger proportion of taxpayers using tax agents to lodge their returns and help them comply with their obligations (see [Appendix](#)). A large part of this was moving to a self-assessment regime in the 1980s.
- With the introduction of self-assessment in 1986 it was recognised that the way the tax profession was being regulated needed to be reviewed.
- The regime which existed post self-assessment, included:
 - a registration process for tax agents, but not Business Activity Statement (BAS) agents;
 - provisions which provided that only tax agents were entitled to supply certain tax agent services for a fee;
 - separate state Tax Agents' Boards responsible for registration of tax agents; and
 - administrative penalties for taxpayers making a false or misleading statement resulting in a shortfall amount, or for late lodgment, irrespective of whether they engaged a tax agent to prepare and/or lodge the document.
- The legislative regime introduced in 2009 was intended to ensure that tax agent and BAS services provided to the public were of an appropriate ethical and professional standard. It sought to do so by:
 - requiring tax and BAS agents to be registered and to comply with a nationally consistent and enforceable professional code of conduct;
 - creating appropriate sanctions for misconduct by tax practitioners and safe harbours for taxpayers; and
 - establishing an independent national board to register tax and BAS agents and to monitor and enforce compliance with those standards.

Key elements of the *Tax Agent Services Act 2009*

The key elements identified when the current regime was implemented in 2009 were:

The establishment of a national Tax Practitioners Board (TPB)

- The TPB was created to have responsibility for registering tax and BAS agents, ensuring that agents maintain appropriate skills and knowledge, investigating complaints against agents and ensuring that unregistered entities do not hold themselves out to be agents.

A wide scope of application

- BAS agents were to be governed the same way as tax agents, but would only be able to provide a limited range of services relating to BAS.

Registration requirements

- Meeting the fit and proper person test, as well as minimum educational qualifications and relevant experience requirements, were required in order to obtain registration. These requirements were less demanding for BAS agents, in recognition of the narrower scope of services they provide.
- To allow for the registration of 'specialist' tax and BAS agents, the TPB was empowered to impose conditions on registration limiting the scope of services agents could provide.

The introduction of a Code of Professional Conduct

- The Code of Professional Conduct (Code) was introduced to govern the ethical and professional standards of tax and BAS agents.
- The code came out of the 1994 Report of the National Review of Standards for the Tax Profession, *Tax Services for the Public*, which recommended that any code should be legislated to enable a board to impose sanctions for breaches and thereby to enforce compliance.

A range of sanctions for breaches of the Code of Professional Conduct

- The TPB was given a range of sanction powers where a tax or BAS agent was found to breach the Code.
- The TPB may caution the agent, require the agent to complete training, subject the agent to practising restrictions, require the agent to practise under supervision, or suspend or terminate the agent's registration. The TPB may also apply to the Federal Court for an order to pay a pecuniary penalty for certain serious misconduct.

Safe harbour from penalties

- A taxpayer who used a tax or BAS agent would benefit from a safe harbour from certain administrative penalties in certain circumstances. Penalties would no longer apply:
 - where a false or misleading statement is made carelessly, provided the taxpayer has taken reasonable care to comply with the tax obligations by giving their tax or BAS agent the information necessary to make the statement; and
 - where a document is not lodged on time in the approved form due to the tax or BAS agent's carelessness, provided the taxpayer gave the agent the necessary information, in sufficient time, to lodge the document on time and in the approved form.

Tax (Financial) Advisers (TFAs)

- Up until 30 June 2014, financial services licensees and their authorised representatives did not need to register with the TPB if they provided tax advice in the course of providing financial product advice, unless they provided a broader range of tax or BAS agent services.
- From 1 July 2014, entities that give tax advice in the course of giving advice that is usually provided by financial services licensees need to be registered with the TPB and comply with the various regulatory requirements.
- This was to ensure the consistent regulation of all forms of tax advice, irrespective of whether it is provided by a tax agent, a BAS agent or an entity in the financial services industry. It also sought to minimise compliance costs by avoiding regulatory overlap between the TPB and ASIC, achieved in part by removing legislative impediments to the TPB and ASIC sharing information.

Purpose of the 2009 regime

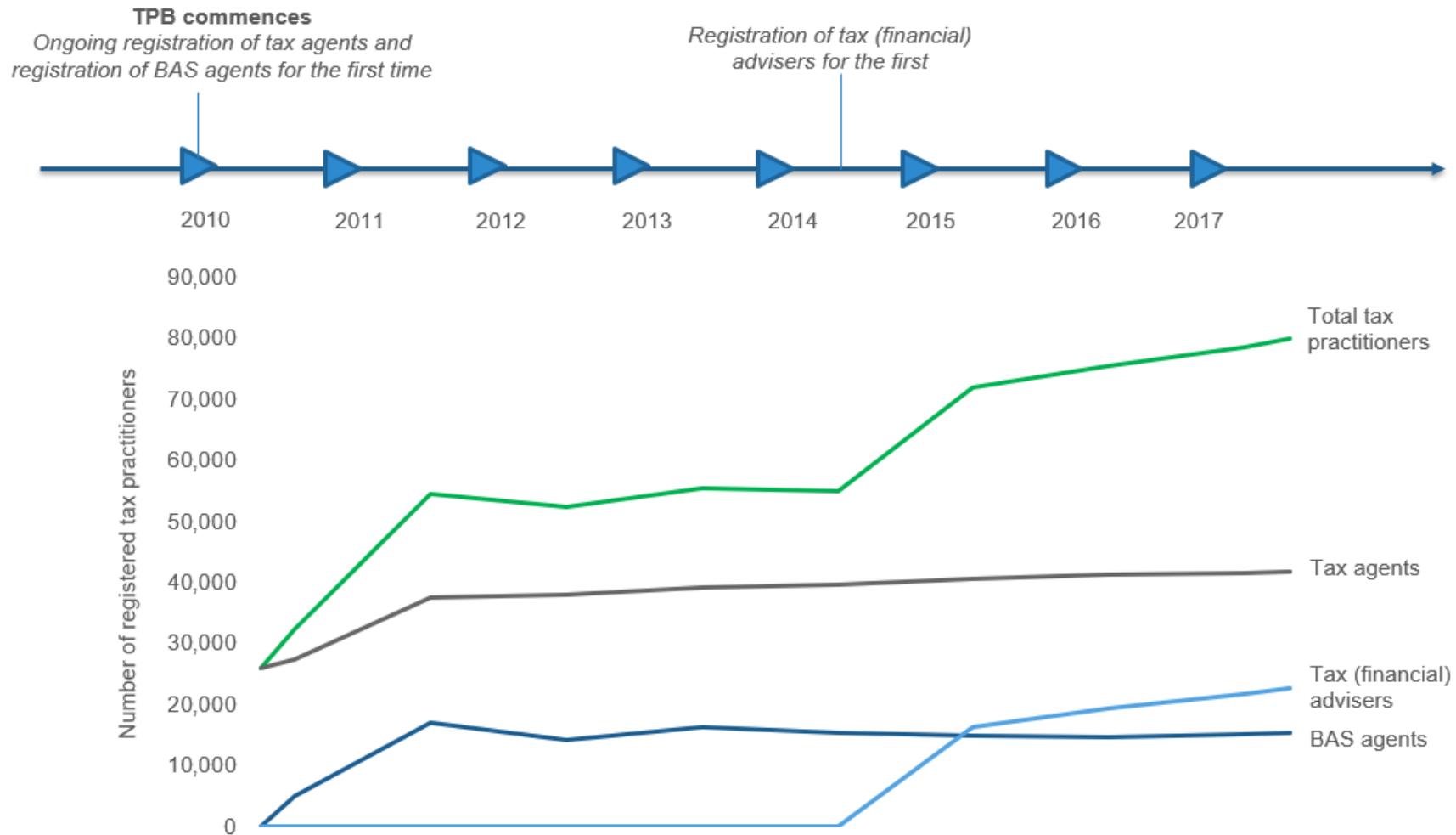
- A national TPB was to:
 - provide a nationally consistent regulation that could allocate and use resources more efficiently;
 - provide certainty to agents of what is expected of them through registration, broader regulation and the introduction of the Code. This was also to improve taxpayer confidence;
 - introduce a wider range of more constructive and administrative sanctions to improve agent performance; and
 - provide appropriate consequences and disincentives for misconduct by replacing criminal penalties with civil penalties.

Why is there a TPB review?

- As part of its establishment phase, it was considered efficient for the TPB to sit within the ATO, due to the administrative obligations that would otherwise apply to it as a separate agency. However, it was intended for there to be a post-implementation review to assess whether this arrangement remains appropriate and satisfactory.
- The role of tax practitioners and new entrants into the profession is evolving. Technological advancements have both changed the landscape for tax practitioners and created new opportunities to assist taxpayers comply with their tax obligations. Given the tax system has changed considerably since the Act was introduced, there is a need to reconsider the current regulatory framework of the tax profession and the current structure of the TPB.
- The review will provide an opportunity to evaluate current and future suitability and effectiveness of the legislative and governance framework, the regulation of the sector and to identify possible improvements.

Appendix

Registered tax practitioners – population growth since 2010



Source: Tax Practitioners Board