

Frequently asked questions for BAS agents

New legislation and regulations

What is the new legislation?

The tax agent services legislative package consists of the:

- [Tax Agent Services Act 2009](#) (TASA 2009). The TASA 2009 is the main Act. It establishes the Tax Practitioners Board and provides for the registration of tax agents and BAS agents.
- [Tax Agent Services Regulations 2009](#) (TAS Regulations 2009). The Regulations contain, among other things, the qualifications and relevant experience requirements for registration. The Regulations are currently in draft form.
- [Tax Agent Services \(Transitional and Consequential Amendments\) Bill 2009](#) (Transitional Bill). This Bill deals with the consequential and transitional matters arising from the enactment of the TASA 2009. The Transitional Bill is currently before Parliament.

When does the new legislation take effect?

The *Tax Agent Services Bill 2008* was introduced into Parliament on 13 November 2008 and Royal Assent was given to the TASA 2009 on 26 March 2009.

Some of the provisions of the new legislation, specifically those relating to the establishment of the new Tax Practitioners Board and appointment of the chair and board members, commenced on 26 March 2009 when Royal Assent was given to the TASA 2009.

The remaining provisions of the new legislation will commence on a date to be fixed by proclamation or on the date nine months after the day on which the Transitional Bill receives Royal Assent. The draft of that Bill was made available for public comment and the Bill was subsequently introduced into Parliament on 24 June 2009. Royal Assent has not yet been received.

When will the new regulations be available?

The TAS Regulations 2009 have not yet been finalised however [draft regulations](#) were released on the Treasury website on 2 August 2009 for public consultation. The closing date for submissions was 26 August 2009.

The Regulations will outline the:

- prescribed qualifications and relevant work experience requirements for registration as a tax agent or business activity statement (BAS) agent
- application fees for registration as a tax agent or BAS agent
- prescribed requirements for recognition as a recognised professional association (RPA) and recognised BAS agent association

- allowances and expenses payable to those required to attend an investigation of the Tax Practitioners Board
- administrative assistance to be provided to the board
- information that the board must maintain on the register of registered and deregistered tax agents and BAS agents.

When will the Tax Practitioners Board be established?

On 6 May 2009, the Assistant Treasurer issued a [press release](#) announcing that the government was seeking applications from suitable individuals for appointment to the new Tax Practitioners Board. Those applications are currently being considered.

About BAS agents

What is a BAS agent?

Under the new legislation, a BAS agent is a person or entity registered under the TASA 2009 to provide a BAS service (see section 90–1 of the TASA 2009).

What is a BAS service?

Under the TASA 2009, a BAS service is a tax agent service that:

- relates to ascertaining or advising an entity about the liabilities, obligations or entitlements of the entity, or another entity, that arise, or could arise, under a BAS provision
- relates to representing an entity in dealings with the Commissioner in relation to a BAS provision
- is provided in circumstances where the entity can reasonably be expected to rely on the service for the purpose of satisfying liabilities or obligations that arise, or could arise, under a BAS provision, or to claim entitlements that arise, or could arise, under a BAS provision.

A BAS service therefore includes, but is not limited to:

- preparing or lodging an approved form about a taxpayer's liabilities, obligations or entitlements under a BAS provision
- giving a taxpayer advice about a BAS provision that the taxpayer can reasonably be expected to rely upon to satisfy their obligations
- dealing with the Commissioner on behalf of a taxpayer in relation to a BAS provision.

See section 90–10 of the TASA 2009.

What is a BAS provision?

BAS provisions include:

- GST law
- wine equalisation tax law

- luxury car tax law
- pay as you go (PAYG) instalments
- PAYG withholding
- fuel tax law
- fringe benefits tax instalments (relating to collection and recovery only).

See section 995–1 of the *Income Tax Assessment Act (ITAA) 1997*.

Registration of BAS agents

Who can be registered as a BAS agent?

The new legislation makes provision for the following to be registered as BAS agents:

- individuals (including those in the capacity of a trustee of a trust)
- partnerships
- companies (including those in the capacity of trustee of a trust).

When can I apply to register as a BAS agent under the new legislation?

You are not yet able to apply for registration under the TASA 2009. Further information will be released as it becomes available on the Tax Practitioners Board segment of this website.

How do I register as a BAS agent under the new legislation?

Once the provisions of the TASA 2009 and the Transitional Bill relating to registration commence, you can apply to the Tax Practitioners Board for registration. You will be required to use a form approved by the board, include any documentation required by the board and pay the prescribed registration fee.

Further information will be released as it becomes available on the Tax Practitioners Board segment of this website.

What are the proposed application fees for BAS agent registration?

The draft TAS Regulations 2009 include fees of:

- \$100 – for registration as a BAS agent who carries on a business
- \$50 – for registration as a BAS agent who does not carry on a business as a BAS agent.

See Part 2, item 9 of the draft TAS Regulations 2009.

Do I need an Australian business number (ABN) to register as a BAS agent?

The TASA 2009 does not require you to have an ABN to be eligible for registration as a BAS agent.

There are however other tax law and administrative considerations which may make holding an ABN relevant to your circumstances. You should seek independent advice.

Eligibility requirements

What are the requirements for registration as a BAS agent under the new legislation?

An **individual** aged 18 years or more is eligible for registration as a registered BAS agent if the Tax Practitioners Board is satisfied that the individual:

- (a) is a fit and proper person
- (b) meets the requirements prescribed by the regulations including requirements relating to qualifications and experience.

A **partnership** is eligible for registration if the board is satisfied that:

- (a) each partner who is an individual is:
 - (i) aged 18 years or more
 - (ii) a fit and proper person
- (b) if a company is a partner:
 - (i) each director of the company is a fit and proper person
 - (ii) the company is not under external administration
 - (iii) the company has not been convicted of a serious taxation offence or an offence involving fraud or dishonesty during the previous five years
- (c) the partnership has a sufficient number of individuals, being registered tax agents or BAS agents, to provide BAS services to a competent standard and to carry out supervisory arrangements.

A **company** is eligible for registration if the board is satisfied that:

- (a) each director of the company is a fit and proper person
- (b) the company is not under external administration
- (c) the company has not been convicted of a serious taxation offence or an offence involving fraud or dishonesty during the previous five years
- (d) the company has a sufficient number of individuals, being registered tax agents or BAS agents, to provide BAS services to a competent standard and to carry out supervisory arrangements.

 Transitional arrangements in relation to BAS agent registration are discussed in [What are the proposed transitional arrangements for BAS agent registration?](#)

See section 20–5 of the TASA 2009.

What is fit and proper?

To be eligible for registration under the new legislation, the Tax Practitioners Board must be satisfied that an applicant is a fit and proper person. The fit and proper person requirement applies to individuals, each individual partner (for partnerships) and each director of a company (for partnerships/companies).

In deciding whether an individual is a fit and proper person, the board must have regard to whether:

- the individual is of good fame, integrity and character
- an event affecting the individual's continued registration happened to the individual in the past five years
- the individual had the status of an undischarged bankrupt at any time during the previous five years
- the individual had served a term of imprisonment, in whole or in part, at any time during the previous five years.

An event affecting an entity's continued registration occurs if the entity:

- is convicted of a serious taxation offence
- is convicted of an offence involving fraud or dishonesty
- is penalised for being a promoter of a tax exploitation scheme (under subsection 290–50(1) of Schedule 1 to the *Taxation Administration Act 1953* (TAA 1953))
- is penalised for implementing a scheme that has been promoted on the basis of conformity with a product ruling in a way that is materially different from that described in the product ruling (under subsection 290–50(2) of Schedule 1 to the TAA 1953)
- becomes an undischarged bankrupt or goes into external administration (as defined in the *Corporations Act 2001*)
- is sentenced to a term of imprisonment.

See sections 20–5, 20–15 and 20–45 of the TASA 2009 and Chapter 2, paragraph 2.45 explanatory memorandum to the TASA 2009.

What are the proposed qualification and experience requirements for BAS agents under the new legislation?

To be eligible for registration as a BAS agent, an individual must meet one of the following requirements prescribed in Schedule 2, Part 2 of the draft TAS Regulations 2009:

- (i) accounting qualifications
- (ii) membership of a professional association – RPA
- (iii) membership of a professional association – recognised BAS agent association.

See Schedule 2, Part 2 of the draft TAS Regulations 2009.




See [Eligibility requirements for BAS agents](#) for further explanation.

Eligibility requirements for BAS agents

<p>(i) Accounting qualifications (Schedule 2, Part 2, Division 1, item 201)</p>	<p>(ii) Membership of professional association – RPA (Schedule 2, Part 2, Division 1, item 202)</p>	<p>(iii) Membership of professional association – recognised BAS agent association (Schedule 2, Part 2, Division 1, item 203)</p>
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<p>1. Individual has been awarded at least a Certificate IV Financial Services (Accounting), or a Certificate IV Financial Services (Bookkeeping) from:</p> <ul style="list-style-type: none"> a) a registered training organisation b) an equivalent institution <p>that required the successful completion of a course in basic GST/BAS taxation principles</p> <p>AND</p> <p>2. has undertaken at least 1,400 hours of relevant experience in the preceding three years.</p>	<p>1. Individual is a voting member of an RPA</p> <p>AND</p> <p>2. has undertaken at least 1,000 hours of relevant experience in the preceding three years.</p>	<p>1. Individual is a voting member of a recognised BAS agent association</p> <p>AND</p> <p>2. has undertaken at least 1,400 hours of relevant experience in the preceding three years.</p>
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 Transitional arrangements in relation to BAS agent registration are discussed in [What are the proposed transitional arrangements for BAS agent registration?](#)

What does relevant experience for BAS agents mean?

Relevant experience means work by an individual:

- a) as a tax agent or BAS agent registered under the TASA 2009
- b) as a tax agent registered under Part VIIA of the ITAA 1936
- c) under the supervision and control of a tax agent or BAS agent registered under the TASA 2009
- d) under the supervision and control of a tax agent registered under Part VIIA of the ITAA 1936
- e) of a kind approved by the Tax Practitioners Board

in the course of which the individual's work has included substantial involvement in one or more types of BAS services.

'Work by an individual of a kind approved by the board' will be a matter for the board to determine once established.

See Schedule 2, Part 2, Division 2, item 204 of draft TAS Regulations 2009.

What does a sufficient number of individuals for partnerships and companies mean?

There is no set formula for determining the number of registered individuals that a company or partnership is required to have to satisfy this requirement.

The Tax Practitioners Board may provide further guidance on adequate staffing and supervision from time to time.

In providing such guidance, the board may take into account factors that may include, but are not limited to the:

- size of the business
- services being offered
- conditions that may be imposed on the entity's registration
- supervisory arrangements in place.

Under subsection 50–30 (2) of the TASA 2009, a civil penalty may apply if:

- (a) you are a registered tax agent or BAS agent who is an individual, and
- (b) you sign a declaration or other statement in relation to a taxpayer that is required or permitted by a BAS provision, and
- (c) the document in relation to which the declaration or other statement is being made was prepared by an entity other than:
 - (i) you
 - (ii) a registered tax agent or BAS agent who is an individual
 - (iii) an individual who is working under your supervision and control or the supervision and control of another registered tax agent or BAS agent who is an individual.

Subsection 50–30 (4) of the TASA 2009 provides for civil penalties for BAS agent partnerships and companies which similarly contravene.

What is a recognised BAS agent association?

A recognised BAS agent association is an organisation that:

- applies to the Tax Practitioners Board for recognition in accordance with the draft TAS Regulations 2009 (see Part 1, item 4), and
- the board decides to recognise in accordance with the Regulations (see Schedule 1, Part 2 which sets out the requirements for a recognised BAS agent association).

Currently, there are no organisations that are a recognised BAS agent association.

See Part 1, item 4, and Schedule 1, Part 2 of the draft TAS Regulations 2009.

What is a recognised professional association?

A recognised professional association is an organisation that:


- applies to the Tax Practitioners Board for recognition in accordance with the draft TAS Regulations 2009 (see Part 1, item 5), and
- the board decides to recognise in accordance with the regulations (see Schedule 1, Part 1 which sets out the requirements for a recognised professional association).

See Part 1, item 5, and Schedule 1, Part 1 of the draft TAS Regulations 2009.

Do you need to be a member of a professional association to be registered?

There is **no** requirement that an individual applying for BAS agent registration must be a member of an RPA.

An individual who is not a member of an RPA or a recognised BAS agent association may still apply for registration provided they meet the registration criteria in the new legislation.

 Transitional arrangements in relation to BAS agent registration are discussed in [What are the proposed transitional arrangements for BAS agent registration?](#)

Currently, there are no recognised BAS agent associations within the meaning of the new legislation.

What courses are available to satisfy the registration requirements?

The prescribed academic qualifications required to satisfy the criteria for registration are set out in [What are the proposed qualification and experience requirements for BAS agents under the new legislation?](#)

Further information on specific courses may be available from relevant course providers or from professional bodies.

Can the board impose conditions on the registration of a BAS agent?

The Tax Practitioners Board may impose one or more conditions on the registration of a BAS agent concerning the subject area in which that entity provides BAS services.

In determining whether it is appropriate to impose such conditions, the board must consider:

- for an individual – the requirements prescribed in the draft TAS Regulations 2009 concerning the individual's qualifications and relevant experience for registration as a BAS agent
- for a company or partnership – the requirements prescribed in the draft TAS Regulations 2009 concerning the qualifications and relevant experience for registration as a BAS agent of those providing BAS services for the company or partnership.

See sections 20–5, 20–25 (5) – (7) of the TASA 2009.

Transitional arrangements

Will there be transitional arrangements for registration of BAS agents?

Yes. The transitional arrangements for registration for BAS agents are included in the Transitional Bill, which was introduced to Parliament on 24 June 2009 but has not yet received Royal Assent.

What are the proposed transitional arrangements for BAS agent registration?

During the transitional period there are three ways in which a BAS agent may become registered under the new legislation. These are:

- (i) applying for BAS agent registration under the TASA 2009
- (ii) notifying the Tax Practitioners Board under the Transitional Bill
- (iii) applying for BAS agent registration under the Transitional Bill.

➤ See [Transitional arrangements for BAS agents](#) for further explanation.

Transitional arrangements for BAS agents

(i) Applying for BAS agent registration under TASA 2009 <i>(section 20–5 TASA 2009)</i>	(ii) Notifying the board under Transitional Bill <i>(Schedule 2, Part 2, section 5 of Transitional Bill)</i>	(iii) Applying for BAS agent registration under Transitional Bill <i>(Schedule 2, Part 3, section 14 of Transitional Bill)</i>
<ul style="list-style-type: none"> • Although not strictly a transitional arrangement, it is important to note that if an applicant meets the criteria for registration as a BAS agent under section 20–5 of the TASA 2009, including the requirements prescribed by the draft TAS Regulations 2009 relating to qualifications and experience, they may, from the date of commencement of the new legislation, apply for BAS agent registration. 	<ul style="list-style-type: none"> ▪ Under this transitional arrangement, an entity that notifies the board within the prescribed time that the entity meets certain conditions, will be taken to be registered for a two year period beginning immediately after commencement. <p>Who does this apply to?</p> <ul style="list-style-type: none"> ▪ an individual that was, immediately before commencement, providing a BAS service under the old law, that is they were a person referred to in section 251L(6) of the ITAA 1936 and were providing BAS services within the meaning of section 251L(7) of the ITAA 1936, OR ▪ an entity that was, immediately before commencement, providing a BAS service (as defined under TASA 2009) other than a BAS service under old law. <p>What is an entity required to do for this to apply?</p> <ul style="list-style-type: none"> ▪ If this transitional arrangement applies to an entity, that entity has six months from date of commencement to notify the board, in the approved form, 	<ul style="list-style-type: none"> ▪ Under this transitional arrangement, an entity that applies for registration under the new law, within the prescribed time, and meets certain conditions, will be eligible for registration under the new law without having to satisfy certain registration requirements. <p>Who does this apply to?</p> <ul style="list-style-type: none"> ▪ An entity that has been providing BAS services to a competent standard for a reasonable period before an application is made. <p>What is an entity required to do for this to apply?</p> <ul style="list-style-type: none"> ▪ An entity must apply for registration under the new law within three years from the date of commencement for this transitional arrangement to apply. <p>What is the effect of this transitional arrangement?</p> <ul style="list-style-type: none"> ▪ The entity and associated individuals, in the case of partnership and company entities, must still satisfy the fit and proper person requirements prescribed under the TASA 2009. ▪ The entity is not required to

	<p>that this transitional arrangement applies to the entity.</p> <p>What is the effect of this transitional arrangement?</p> <ul style="list-style-type: none"> ▪ The entity does not have to meet the registration requirements and is taken to be registered for a two year period beginning immediately after commencement. 	<p>satisfy the registration requirements relating to:</p> <ul style="list-style-type: none"> - in the case of an individual – the requirements prescribed by the TAS Regulations 2009, including, but not limited to, requirements relating to qualifications and experience, or - in the case of a company or partnership – the requirement that the partnership or company has a sufficient number of registered individuals to provide BAS services and carry out supervisory arrangements. <ul style="list-style-type: none"> ▪ If registered, the entity's registration will continue for a period of at least three years.
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 This table is based upon the draft Transitional Bill.

Note: Where an entity notifies the board under the Transitional Bill and subsequently applies to register as a BAS agent under the Transitional Bill, the board can determine a period of registration in relation to the application of at least 12 months, rather than at least three years. The intention is that BAS agents do not remain registered for five years without satisfying the registration requirements concerning proper qualifications (see Schedule 2, Part 3, section 14(2)).

In relation to (i) – (iii) above, the board may impose conditions on these registrations and may require the registered entity to maintain professional indemnity insurance. These entities will be subject to the provisions of the TASA 2009, except where otherwise provided by the Transitional Bill, including the code of professional conduct and civil penalty provisions.

Are you providing BAS services within the meaning of section 251L of the ITAA 1936?

The transitional arrangement outlined in (ii) of the [Transitional arrangements for BAS agents](#) provides that an individual who was, immediately before commencement, providing a BAS service under the old law (that is, they were a person referred to in section 251L (6) of the ITAA 1936 and were providing BAS services within the meaning of section 251L (7) of the ITAA 1936) will be taken to be registered for two years if that individual notifies the Tax Practitioners Board that they fulfil this requirement.

In addition, the transitional arrangement outlined in (iii) of the [Transitional arrangements for BAS agents](#) applies to an entity that has been providing BAS services to a competent standard for a reasonable period before an application is made. It is considered that if an entity was providing these services in contravention of section 251L of the ITAA 1936 (that is, they **were not** a person referred to in

section 251L (6) of the ITAA 1936 and **were** providing BAS services within the meaning of section 251L (7) of the ITAA 1936) then the Tax Practitioners Board would need to consider whether the fit and proper requirement for registration could be met.

While the board is not responsible for administering the current law under the ITAA 1936, the Tax Office website provides a [self assessment tool](#) to help individuals establish whether they qualify as a provider of a BAS service for a fee in accordance with sections 251L (6)(a) and 251L(6)(b) of the ITAA 1936.

Legal responsibilities of BAS agents

What are a BAS agent's legal responsibilities?

Registered entities will be subject to the provisions of the TASA 2009. This includes the code of professional conduct in section 30–10 and the civil penalty provisions in Part 5.

It is likely that guidance in relation to these responsibilities under the new legislation will be released by the Tax Practitioners Board once the board is established.

What is the code of professional conduct?

The code of professional conduct is a legislated code contained within the TASA 2009 which sets out the professional and ethical standards required of tax agents and BAS agents. It outlines the duties that agents owe to their clients, the Tax Practitioners Board and other agents.

The code applies to all registered tax agents and BAS agents.

See Part 3 of the TASA 2009.

Does the new legislation require a BAS agent to audit clients' records?

BAS agents are only required to take reasonable care in ascertaining their clients' state of affairs to the extent that the state of those affairs is relevant to the service that they have been engaged to provide. Therefore, the requirement is subject to the scope of the engagement between a BAS agent and their client.

See explanatory memorandum, TASA 2009, Chapter 3.

Will a BAS agent need professional indemnity insurance?

The TASA 2009 provides that the Tax Practitioners Board may require a registered BAS agent to maintain professional indemnity insurance.

The board may specify the professional indemnity insurance a registered BAS agent is required to maintain.

What are the civil penalty provisions?

Division 50 of the TASA 2009 contains civil penalty provisions. If an entity breaches a civil penalty provision, the Tax Practitioners Board may apply to the Federal Court for an order that the entity pay a pecuniary penalty.

Subject to the provisions of Division 50 of the TASA 2009, an entity will contravene a civil penalty provision if the entity:

- provides a tax agent service, including a BAS service, for a fee while not being registered under the TASA 2009 to provide that service
- advertises that the entity can provide a tax agent service, including a BAS service, while not being registered under the TASA 2009 to provide that service
- represents the entity as being a registered tax agent or BAS agent when, in fact, that entity is not a registered tax agent or BAS agent.

Subject to the provisions of Division 50 of the TASA 2009, where the entity is a registered tax agent or BAS agent, the entity will contravene a civil penalty provision if the entity:

- makes false or misleading statements to the Commissioner
- employs or uses the services of a de-registered entity
- signs a declaration or statement that was prepared by an unregistered entity that was not working under the supervision or control of a registered tax agent or BAS agent.

See Division 50 of the TASA 2009.

Need more information?

Further information will be released as it becomes available on the Tax Practitioners Board's website, which we expect to be up and running in early November.