

Frequently asked questions for tax 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 tax agents

What is a tax agent?

Under the new legislation, a tax agent is a person or entity registered under the TASA 2009 to provide a tax agent service.

What is a tax agent service?

Under the TASA 2009, a tax agent service is any 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 taxation law
- relates to representing an entity in dealings with the Commissioner
- 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 taxation law, or to claim entitlements that arise, or could arise, under a taxation law.

A tax agent service therefore includes, but is not limited to:

- preparing or lodging a return, notice, statement, application or other document about a taxpayer's liabilities, obligations or entitlements under a taxation law
- preparing or lodging on behalf of a taxpayer an objection under Part IVC of the *Taxation Administration Act 1953* (TAA 1953) against an assessment, determination, notice or decision under a taxation law
- applying to the Commissioner or the Administrative Appeals Tribunal for a review of, or instituting an appeal against, a decision on an objection under Part IVC of the TAA 1953
- giving a taxpayer advice about a taxation law that the taxpayer can reasonably be expected to rely upon to satisfy their taxation obligations
- dealing with the Commissioner on behalf of a taxpayer.

Tax agent services only include those services that involve the application or interpretation of a taxation law (and therefore require the provider to have a certain level of knowledge and experience in the taxation laws), and those services which involve representing an entity in their dealings with the Commissioner.

See section 90–5 of the TASA 2009 and Chapter 2, paragraph 2.29, explanatory memorandum to TASA 2009.

What is a taxation law?

A taxation law is defined as an Act (including a part of an Act) of which the Commissioner has general administration. This includes regulations under such an Act.

A taxation law includes BAS provisions and as such the definition of tax agent services includes BAS services. Registered tax agents can therefore provide BAS services.

BAS provisions are defined in section 995–1 of the *Income Tax Assessment Act 1997* (ITAA 1997) to 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).

It should be noted that a registered BAS agent is not able to provide tax agent services.

The Transitional Bill proposes to include the TASA 2009 within the definition of a taxation law.

See section 995–1 of the ITAA 1997.

Registration of tax agents

Who can be registered as a tax agent?

The new legislation makes provision for the following to be registered as tax 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 tax 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 tax 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 tax agent registration?

The draft TAS Regulations 2009 include fees of:

- \$500 – for registration as a tax agent who carries on a business as a tax agent
- \$250 – for registration as a tax agent who does not carry on a business as a tax agent.

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

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

The TASA 2009 does not require you to have an ABN to be eligible for registration as a tax 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 tax agent under the new legislation?

An **individual** aged 18 years or more is eligible for registration as a registered tax 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, to provide tax agent 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, to provide tax agent services to a competent standard and to carry out supervisory arrangements.

 Transitional arrangements in relation to tax agent registration are discussed in [What are the proposed transitional arrangements for tax 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 any part of 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 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 qualifications and experience requirements for tax agents under the new legislation?

To be eligible for registration as a tax agent, an individual must meet one of the following requirements prescribed in Schedule 2, Part 1 of the draft TAS Regulations 2009:


- (i) tertiary qualifications
- (ii) diploma or higher award
- (iii) admission to legal practice
- (iv) work experience
- (v) membership of professional association.

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

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



Eligibility
requirements for t...

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

What does relevant experience for tax agents mean?

Relevant experience means work by an individual:

- a) as a tax 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 registered under the TASA 2009
- d) under the supervision and control of a tax agent registered under Part VIIA of the ITAA 1936
- e) as an Australian legal practitioner
- f) 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 tax agent services **or** substantial involvement in a particular area of taxation law to which one or more of those types of tax agent services relate.

'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 106 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 subsections 50–30 (1) and (2) of the TASA 2009, a civil penalty may apply if:

- (a) you are a registered tax agent and an individual, and
- (b) you sign a declaration or other statement in relation to a taxpayer that is required or permitted by a taxation law including 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 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 who is an individual.

Subsection 50–30 (3) of the TASA 2009 provides for civil penalties for tax agent partnerships and companies which similarly contravene.

See explanatory memorandum to the TASA 2009, Chapter 2, paragraph 2.55.

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 tax agent registration must be a member of an RPA.

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

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

If I am a registered tax agent, do I need to register separately to provide BAS services?

A BAS service is a type of tax agent service. Registered tax agents can therefore provide BAS services under the new legislation.

A registered BAS agent however is not able to provide tax agent services.

See section 995–1 of the ITAA 1997.

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

The Tax Practitioners Board may impose one or more conditions on the registration of a tax agent concerning the subject area in which that entity provides tax agent 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 tax 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 tax agent of those providing tax agent services for the company or partnership.

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

Transitional arrangements

What happens to a tax agent’s existing registration under the new legislation?

If you are currently registered as a tax agent, your registration will continue under the new law from the day the new law comes into effect, provided your registration does not cease before the new legislation starts.

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

See Schedule 2, Part 2, section 2 of the draft Transitional Bill and Part 3 of the TASA 2009.

What happens to a tax agent nominee's existing registration under the new legislation?

If you are currently registered as a nominee of a tax agent, you will be taken to be a registered tax agent under the new law from the day the new law comes into effect provided your registration does not cease before the new legislation starts. This is because the new law does not make a distinction between 'tax agent' and 'nominee' registrations.

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

See Schedule 2, Part 2, section 3 of the draft Transitional Bill and Part 3 of the TASA 2009.

What will happen to pre-1988 tax agents and nominees under the new legislation?

If you are currently registered as a tax agent or nominee of a tax agent and were an individual who was registered under Part VIIA of the ITAA 1936 immediately before the commencement of section 39 of the *Taxation Laws Amendment Act (No. 2) 1988* on 1 November 1988, you will be taken to be a registered tax agent under the new law from the day the new law comes into effect provided your registration does not cease before the new legislation starts.

You are eligible for registration as a tax agent despite not meeting the prescribed educational qualifications and relevant experience requirements for registration. You must however meet the other registration requirements. The special treatment of pre-1988 tax agents is preserved under the new law.

See section 20–5(4) of the TASA 2009 and section 3 of the draft Transitional Bill.

Will there be transitional arrangements for registration of tax agents?

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

What are the proposed transitional arrangements for tax agent registration?

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

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

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



Transitional
arrangements TA t...

⚠ This table is based upon the draft Transitional Bill.

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 provide by the Transitional Bill, including the code of professional conduct and civil penalty provisions

Legal responsibilities of tax agents

What are a tax 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 tax agent to audit clients' records?

Tax 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 tax agent and their client.

See explanatory memorandum, TASA 2009, Chapter 3.

Will a tax agent need professional indemnity insurance?

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

The board may specify the professional indemnity insurance a registered tax 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.