



Tax Agent Services Amendment Regulations 2010 (No. 1)

Select Legislative Instrument 2010 No. 273

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 27 October 2010

QUENTIN BRYCE
Governor-General

By Her Excellency's Command

BILL SHORTEN
Assistant Treasurer

1 Name of Regulations

These Regulations are the *Tax Agent Services Amendment Regulations 2010 (No. 1)*.

2 Commencement

These Regulations commence on the day after they are registered.

3 Amendment of *Tax Agent Services Regulations 2009*

Schedule 1 amends the *Tax Agent Services Regulations 2009*.

Schedule 1 Amendments

(regulation 3)

[1] Regulation 3, definition of *recognised BAS agent association* and *recognised tax agent association*

substitute

recognised BAS agent association means an organisation recognised by the Board under regulation 4A.

recognised tax agent association means an organisation recognised by the Board under regulation 5A.

requirements for recognition means:

- (a) for a recognised BAS agent association, the requirements mentioned in Part 1 of Schedule 1; and
- (b) for a recognised tax agent association, the requirements mentioned in Part 2 of Schedule 1.

[2] Regulation 3, at the foot

insert

Note Under subsection 90-1 (2) of the Act, expressions in the Act (other than the expression “this Act”) have the same meaning as in the *Income Tax Assessment Act 1997*. Therefore several other words and expressions used in these Regulations have the meaning given by the *Income Tax Assessment Act 1997*. For example:

- (a) stapled entity
- (b) taxation law
- (c) under common ownership.

[3] Regulations 4 to 6

substitute

Part 1A Recognition of professional associations as recognised BAS agent associations or recognised tax agent associations

4 Purpose of Part

For section 20-10 of the Act, this Part provides for a system to allow the Board to accredit professional associations as recognised BAS agent associations or recognised tax agent associations for the purposes of those organisations recognising professional qualifications and experience that are relevant to the registration of individuals as BAS agents and registered tax agents.

Division 1 Recognised BAS agent association**4A Application for recognition as recognised BAS agent association**

An organisation seeking recognition as a recognised BAS agent association must apply to the Board for recognition using a form approved by the Board.

4B When Board must consider application

The Board must consider an application for recognition as a recognised BAS agent association as soon as practicable after receiving the application.

4C Recognition of organisation as recognised BAS agent association — 1 March 2010 to 28 February 2013

In the period beginning on 1 March 2010 and ending on 28 February 2013, the Board must recognise an organisation as a recognised BAS agent association if:

- (a) the organisation meets the requirements for recognition for a recognised BAS agent association; or
- (b) the organisation meets the requirements for recognition for a recognised BAS agent association other than the requirement mentioned in item 109 of Schedule 1.

Note 1 Paragraph 6A (a) provides that a decision, under this regulation, not to recognise an organisation as a recognised BAS agent association is a reviewable decision.

Note 2 Section 27A of the *Administrative Appeals Tribunal Act 1975* requires a person who makes a reviewable decision to give a person whose interests are directly affected by the decision written notice of the making of the decision and of the person's right to have the decision reviewed.

4D Recognition of organisation as recognised BAS agent association — on and after 1 March 2013

- (1) This regulation applies on and after 1 March 2013.

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- (2) The Board must recognise an organisation as a recognised BAS agent association if the organisation meets the requirements for recognition for a recognised BAS organisation.
 - (3) The Board may recognise an organisation, after considering the matters set out in subregulation (4), if the organisation meets the requirements for recognition of a recognised BAS agent association other than the requirements mentioned in item 108 or 109 of Schedule 1.
 - (4) For subregulation (3), the Board must have regard to:
 - (a) the purposes of the Act; and
 - (b) the role of recognised BAS agent associations under these Regulations.

Note 1 Paragraph 6A (a) provides that a decision, under this regulation, not to recognise an organisation as a recognised BAS agent association is a reviewable decision.

Note 2 Section 27A of the *Administrative Appeals Tribunal Act 1975* requires a person who makes a reviewable decision to give a person whose interests are directly affected by the decision written notice of the making of the decision and of the person's right to have the decision reviewed.

4E Notice to Board if recognised BAS agent association ceases to meet requirement of recognition

If a recognised BAS agent association ceases to meet a requirement for recognition that applies to the association, it:

- (a) must give the Board written notice that it no longer meets the requirement; and
- (b) must give the notice not later than 30 days after the day on which the association becomes aware, or ought to have become aware, that it no longer meets the requirement; and
- (c) may make a written submission to the Board about why the association's recognition should not be terminated having regard to:
 - (i) the purposes of the Act; and
 - (ii) the role of recognised BAS agent associations under these Regulations.

4F Notice if Board requests

- (1) This regulation applies if:
 - (a) a recognised BAS agent association was recognised under subregulation 4D (3); and
 - (b) the Board gives the association a written request that the association tell the Board the reasons why it is still appropriate for the association to be recognised under subregulation 4D (3).
- (2) The recognised BAS agent association must:
 - (a) notify the Board in writing whether, in the association's view, the recognition is still appropriate having regard to:
 - (i) the purposes of the Act; and
 - (ii) the role of recognised BAS agent associations under these Regulations; and
 - (b) give the notice not later than 30 days after receiving the Board's request.

4G Termination of recognition of recognised BAS agent association

- (1) The Board may terminate the recognition of a recognised BAS agent association if:
 - (a) the association has not given the Board notice under regulation 4E or 4F; or
 - (b) the Board has reasonable grounds for believing the association has ceased to meet the requirements for recognition for the association and the Board is not satisfied that it is appropriate for the association to be recognised having regard to:
 - (i) the purposes of the Act; and
 - (ii) the role of recognised BAS agent associations under these Regulations.
- (2) Before terminating the recognition of an association, the Board must give the association written notice:
 - (a) that it believes that the association's recognition should be terminated; and

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- (b) the reasons why it believes the association's recognition should be terminated; and
 - (c) inviting the association to make a written submission to the Board about why the association's recognition should not be terminated.
- (3) The written notice must specify a reasonable period within which the association may provide a submission.
 - (4) In considering whether to terminate the association's recognition, the Board must:
 - (a) have regard to any submission made by the association:
 - (i) under paragraph 4E (c); or
 - (ii) in response to an invitation by the Board for the submission under paragraph (2) (c); and
 - (b) make a decision as soon as practicable after:
 - (i) receiving the submission; or
 - (ii) if no submission has been received — the end of the period specified for the giving of a submission.

Note 1 Paragraph 6A (b) provides that a decision, under this regulation, to terminate a recognised BAS agent association's recognition is a reviewable decision.

Note 2 Section 27A of the *Administrative Appeals Tribunal Act 1975* requires a person who makes a reviewable decision to give a person whose interests are directly affected by the decision written notice of the making of the decision and of the person's right to have the decision reviewed.

Division 2 Recognised tax agent association

5 Application for recognition as recognised tax agent association

An organisation seeking recognition as a recognised tax agent association must apply to the Board for recognition using a form approved by the Board.

5A When Board must consider application

The Board must consider an application for recognition as a recognised tax agent association as soon as practicable after receiving the application.

5B Recognition of organisation as recognised tax agent association

- (1) The Board must recognise an organisation as a recognised tax agent association if the organisation meets the requirements for recognition for a recognised tax agent association.
- (2) The Board may recognise an organisation, after considering the matters set out in subregulation (3), if the organisation meets the requirements for recognition of a recognised tax agent association other than the requirements mentioned in item 209 or 210 of Schedule 1.
- (3) For subregulation (2), the Board must have regard to:
 - (a) the purposes of the Act; and
 - (b) the role of recognised tax agent associations under these Regulations.

Note 1 Paragraph 6A (c) provides that a decision, under this regulation, not to recognise an organisation as a recognised tax agent association is a reviewable decision.

Note 2 Section 27A of the *Administrative Appeals Tribunal Act 1975* requires a person who makes a reviewable decision to give a person whose interests are directly affected by the decision written notice of the making of the decision and of the person's right to have the decision reviewed.

5C Notice to Board if recognised tax agent association ceases to meet requirement of recognition

If a recognised tax agent association ceases to meet a requirement for recognition that applies to the association, it:

- (a) must give the Board written notice that it no longer meets the requirement; and
- (b) must give the notice not later than 30 days after the day on which the association becomes aware, or ought to have become aware, that it no longer meets the requirement; and

- (c) may make a written submission to the Board about why the association's recognition should not be terminated having regard to:
 - (i) the purposes of the Act; and
 - (ii) the role of recognised tax agent associations under these Regulations.

5D Notice if Board requests

- (1) This regulation applies if:
 - (a) a recognised tax agent association was recognised under subregulation 5B (2); and
 - (b) the Board gives the association a written request that the association tells the Board the reasons why it is still appropriate for the association to be recognised under subregulation 5B (2).
- (2) The recognised tax agent association must:
 - (a) notify the Board in writing whether, in the association's view, the recognition is still appropriate having regard to:
 - (i) the purposes of the Act; and
 - (ii) the role of recognised tax agent associations under these Regulations; and
 - (b) give the notice not later than 30 days after receiving the Board's request.

5E Termination of recognition of recognised tax agent association

- (1) The Board may terminate the recognition of a recognised tax agent association if:
 - (a) the association has not given the Board notice under regulation 5C or 5D; or
 - (b) the Board has reasonable grounds for believing the association has ceased to meet the requirements for recognition for the association and the Board is not satisfied that it is appropriate for the association to be recognised having regard to:
 - (i) the purposes of the Act; and

- (ii) the role of recognised tax agent associations under these Regulations.
- (2) Before terminating the recognition of an association, the Board must give the association written notice:
 - (a) that it believes that the association's recognition should be terminated; and
 - (b) the reasons why it believes the association's recognition should be terminated; and
 - (c) inviting the association to make a written submission to the Board about why the association's recognition should not be terminated.
- (3) The written notice must specify a reasonable period within which the association may provide a submission.
- (4) In considering whether to terminate the association's recognition, the Board must:
 - (a) have regard to any submission made by the association:
 - (i) under paragraph 5C (c); or
 - (ii) in response to an invitation by the Board for the submission under paragraph (2) (c); and
 - (b) make a decision as soon as practicable after:
 - (i) receiving the submission; or
 - (ii) if no submission has been received — the end of the period specified for the giving of a submission.

Note 1 Paragraph 6A (d) provides that a decision, under this regulation, to terminate a recognised tax agent association's recognition is a reviewable decision.

Note 2 Section 27A of the *Administrative Appeals Tribunal Act 1975* requires a person who makes a reviewable decision to give a person whose interests are directly affected by the decision written notice of the making of the decision and of the person's right to have the decision reviewed.

Division 3 Miscellaneous

6 Publication of notice on Board's website

The Board must publish notice of the following decisions on its website:

- (a) a decision by the Board to recognise an organisation as a recognised BAS agent association under regulation 4C or 4D;
- (b) a decision by the Board to terminate the recognition of a recognised BAS agent association under regulation 4G;
- (c) a decision by the Board to recognise an organisation as a recognised tax agent association under regulation 5B;
- (d) a decision by the Board to terminate the recognition of a recognised tax agent association under regulation 5E.

6A Review of decisions

Application may be made to the Administrative Appeals Tribunal for review of any of the following decisions of the Board:

- (a) a decision not to recognise an organisation as a recognised BAS agent association under regulation 4C or 4D;
- (b) a decision to terminate a recognised BAS agent association's recognition under regulation 4G;
- (c) a decision not to recognise an organisation as a recognised tax agent association under regulation 5B;
- (d) a decision to terminate a recognised tax agent association's recognition under regulation 5E.

[4] After regulation 12*insert***Part 5 Matters specified for
Dictionary in Act****13 Specified services that are not tax agent services**

- (1) For subsection 90-5 (2) of the Act, the following services are specified:
- (a) a service provided by an auditor of a self-managed superannuation fund under the *Superannuation Industry (Supervision) Act 1993*;
 - (b) a service provided by an entity to a related entity;
 - (c) a service provided by a related entity of an entity (the ***first entity***) to another related entity of the first entity;
 - (d) a service provided by a trustee of a trust (or a related entity of the trustee) to the trust in relation to the trust;
 - (e) a service provided by a trustee of a trust (or a related entity of the trustee) to a wholly owned or controlled entity of the trust in relation to the entity;
 - (f) a service provided by a responsible entity of a managed investment scheme (or a related entity of the responsible entity, the manager of the managed investment scheme or the operator of the managed investment scheme) to the scheme in relation to the scheme;
 - (g) a service provided by a partner in a partnership (or a related entity of the partner) to another partner of the partnership in relation to the partnership;
 - (h) a service provided by a member of a joint venture (or a related entity of the member) to another member of the joint venture or an entity established to pursue the joint venture:
 - (i) in accordance with a written agreement; and
 - (ii) in relation to the joint venture;

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- (i) a service that is a custodial or depository service provided by a financial services licensee or an authorised representative of the licensee;
- (j) a service provided by an entity (the **first entity**) to an entity previously owned by the first entity (the **second entity**) in relation to the second entity's obligations under a taxation law for the income year in which it was sold by the first entity.
- (2) For subsection 90-5 (2) of the Act, and for the period beginning on the day on which this regulation commences and ending on 30 June 2011, a service that is financial product advice is specified if it is:
- (a) provided by a financial services licensee or an authorised representative of the licensee; and
- (b) accompanied by a statement that:
- (i) the provider of the advice is not a registered tax agent under the *Tax Agent Services Act 2009*; and
- (ii) if the receiver of the advice intends to rely on the advice to satisfy liabilities or obligations or claim entitlements that arise, or could arise, under a taxation law, the receiver should request advice from a registered tax agent.
- (3) In this regulation:
- associated entity** has the meaning given by section 9 of the *Corporations Act 2001*.
- authorised representative** has the meaning given by section 761A of the *Corporations Act 2001*.
- custodial or depository service** has the meaning given by section 761A of the *Corporations Act 2001*.
- financial product advice** has the meaning given by section 761A of the *Corporations Act 2001*.
- financial services licensee** has the meaning given by section 761A of the *Corporations Act 2001*.
- managed investment scheme** has the meaning given by section 9 of the *Corporations Act 2001*.

related entity, in relation to an entity, means:

- (a) an associated entity of the entity; or
- (b) an entity under common ownership with the entity; or
- (c) a stapled entity of the entity or an associated entity of the stapled entity; or
- (d) an entity connected with the entity (within the meaning of section 328-125 of the *Income Tax Assessment Act 1997*, applied as if references in section 328-125 to a control percentage of 40% were references to a control percentage of 50%).

[5] Schedule 1, heading

substitute

Schedule 1 Requirements to become recognised BAS agent associations and tax agent associations

(regulations 4C, 4D and 5B)

[6] Schedule 1, items 108 and 109, note

omit

[7] Schedule 1, item 208

omit each mention of
item 204, 205 or 206

insert

item 203, 204 or 205

[8] Schedule 1, items 209 and 210, note

omit

[9] Schedule 2, subparagraphs 101 (a) (ii) and 102 (a) (ii)

after

equivalent institution;

insert

and