



# **Tax Agent Services Act 2009**

**No. 13, 2009 as amended**

**Compilation start date:** 1 July 2014

**Includes amendments up to:** Act No. 31, 2014

Prepared by the Office of Parliamentary Counsel, Canberra

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## About this compilation

### **This compilation**

This is a compilation of the *Tax Agent Services Act 2009* as in force on 1 July 2014. It includes any commenced amendment affecting the legislation to that date.

This compilation was prepared on 17 July 2014.

The notes at the end of this compilation (the *endnotes*) include information about amending laws and the amendment history of each amended provision.

### **Uncommenced amendments**

The effect of uncommenced amendments is not reflected in the text of the compiled law but the text of the amendments is included in the endnotes.

### **Application, saving and transitional provisions for provisions and amendments**

If the operation of a provision or amendment is affected by an application, saving or transitional provision that is not included in this compilation, details are included in the endnotes.

### **Modifications**

If a provision of the compiled law is affected by a modification that is in force, details are included in the endnotes.

### **Provisions ceasing to have effect**

If a provision of the compiled law has expired or otherwise ceased to have effect in accordance with a provision of the law, details are included in the endnotes.

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# **An Act to establish the Tax Practitioners Board and to provide for the registration of tax agents and BAS agents, and for related purposes**

## **Part 1—Introduction**

### **Division 1—Preliminary**

#### **Table of sections**

1-1	Short title
1-5	Commencement
1-10	Extension of Act to external Territories
1-15	General administration of Act

#### **1-1 Short title**

This Act may be cited as the *Tax Agent Services Act 2009*.

#### **1-5 Commencement**

- (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

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<b>Commencement information</b>		
<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
<b>Provision(s)</b>	<b>Commencement</b>	<b>Date/Details</b>
1. Part 1 and anything in this Act not elsewhere covered by this table	The day on which this Act receives the Royal Assent.	26 March 2009

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 90-1.

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**Part 1** Introduction  
**Division 1** Preliminary

Section 1-5

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<b>Commencement information</b>		
<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
<b>Provision(s)</b>	<b>Commencement</b>	<b>Date/Details</b>
2. Parts 2 to 5	A single day to be fixed by Proclamation. A Proclamation must not specify a day that occurs before the day on which the <i>Tax Agent Services (Transitional Provisions and Consequential Amendments) Act 2009</i> receives the Royal Assent.  However, if any of the provision(s) do not commence within the period of 9 months beginning on the day on which the <i>Tax Agent Services (Transitional Provisions and Consequential Amendments) Act 2009</i> receives the Royal Assent, they commence on the first day after the end of that period. If the provision(s) commence in this way, the Minister must announce by notice in the <i>Gazette</i> the day on which the provision(s) commenced.	1 March 2010 (see F2009L04314)
3. Sections 60-1 to 60-90	The day on which this Act receives the Royal Assent.	26 March 2009
4. Sections 60-95 to 70-20	At the same time as the provision(s) covered by table item 2.	1 March 2010
5. Sections 70-25 to 70-45	The day on which this Act receives the Royal Assent.	26 March 2009
6. Sections 70-50 and 70-55	At the same time as the provision(s) covered by table item 2.	1 March 2010
7. Part 8	The day on which this Act receives the Royal Assent.	26 March 2009

Note: This table relates only to the provisions of this Act as originally passed by both Houses of the Parliament and assented to. It will not be expanded to deal with provisions inserted in this Act after assent.

(2) Column 3 of the table contains additional information that is not part of this Act. Information in this column may be added to or edited in any published version of this Act.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 90-1.

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**1-10 Extension of Act to external Territories**

This Act extends to every external Territory.

**1-15 General administration of Act**

The Board has the general administration of this Act.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 90-1.

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## Division 2—Overview of this Act

### Table of Subdivisions

2-A	Objects
2-B	Guide

### Subdivision 2-A—Objects

#### Table of sections

2-5	Object
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### 2-5 Object

The object of this Act is to ensure that \*tax agent services are provided to the public in accordance with appropriate standards of professional and ethical conduct. This is to be achieved by (among other things):

- (a) establishing a national Board to register tax agents, BAS agents and tax (financial) advisers; and
- (b) introducing a \*Code of Professional Conduct for \*registered tax agents, BAS agents and tax (financial) advisers; and
- (c) providing for sanctions to discipline registered tax agents, BAS agents and tax (financial) advisers.

### Subdivision 2-B—Guide

#### Table of sections

2-10	General guide to each Part
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### 2-10 General guide to each Part

- (1) You need to be registered to provide \*tax agent services for a fee or to engage in other conduct connected with providing such services. Part 2 sets out the requirements for registration.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 90-1.

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- (2) Once registered, you must comply with several requirements, in particular, the \*Code of Professional Conduct. The Code is set out in Part 3.
- (3) Part 4 sets out the circumstances in which your registration can be terminated.
- (4) Part 5 provides for civil penalties aimed at ensuring your compliance with this Act.
- (5) Part 6 establishes the Tax Practitioners Board and sets out the Board's functions and powers. The Board may investigate breaches of this Act and has certain reporting obligations.
- (6) Part 7 contains miscellaneous provisions, mainly administrative and machinery provisions relating to the operation of this Act.
- (7) Part 8 contains the Dictionary, which sets out a list of most of the terms that are defined in this Act. It also sets out the meanings of some important concepts and rules on how to interpret this Act.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 90-1.

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## Division 3—Explanation of the use of defined terms

### Table of sections

3-5	When defined terms are identified
3-10	When defined terms are <i>not</i> identified

### 3-5 When defined terms are identified

- (1) Many of the terms used in this Act are defined in the Dictionary, starting at section 995-1, to the *Income Tax Assessment Act 1997*. However, some terms used in this Act are only defined in this Act.

Note: Expressions in the *Income Tax Assessment Act 1997* (other than the expression “this Act”) have the same meaning in this Act as well, see subsection 90-1(2).

- (2) Most defined terms in this Act and the *Income Tax Assessment Act 1997* are identified by an asterisk at the start of the term: as in “\*BAS service”.

### 3-10 When defined terms are *not* identified

- (1) Once a defined term has been identified by an asterisk, later occurrences of the term in the same subsection are not usually asterisked.
- (2) Terms are not asterisked in the \*Guides, headings or notes contained in this Act.
- (3) The term “Board” is not identified with an asterisk.
- (4) If a term used in the *Income Tax Assessment Act 1997* is used in this Act and the term is *not* identified with an asterisk in that Act, the term is *not* identified with an asterisk in this Act.

Note: For expressions in the *Income Tax Assessment Act 1997* that are *not* identified with an asterisk, see subsection 2-15(3) of that Act.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 90-1.

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## **Part 2—Registration**

### **Division 20—Registration**

#### **Table of Subdivisions**

20-A	Eligibility for registration
20-B	Applying for registration
20-C	Renewing registration

#### **Guide to this Division**

##### **20-1 What this Division is about**

You must be registered to provide tax agent services for a fee or to engage in other conduct connected with providing such services. You will be eligible for registration if you are a fit and proper person and have appropriate qualifications and experience.

If you are eligible and apply to the Tax Practitioners Board for registration as a registered tax agent, BAS agent or tax (financial) adviser, you will be registered for a period of at least 3 years. Your registration may be subject to conditions. You may seek to vary these conditions.

Certain events, mainly relating to criminal convictions and bankruptcy, may affect your continued registration.

You may also apply to have your registration renewed.

#### **Subdivision 20-A—Eligibility for registration**

##### **Table of sections**

20-5	Eligibility for registration as registered tax agent, BAS agent or tax (financial) adviser
20-10	Regulations may prescribe system regarding professional associations
20-15	Criteria for determining whether an individual is a fit and proper person

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 90-1.

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**20-5 Eligibility for registration as registered tax agent, BAS agent or tax (financial) adviser**

*Individuals*

- (1) An individual, aged 18 years or more, is eligible for registration as a \*registered tax agent, BAS agent or tax (financial) adviser if the Board is satisfied that:
- (a) the individual is a fit and proper person; and
  - (b) the individual meets the requirements prescribed by the regulations (including, but not limited to, requirements relating to qualifications and experience) in respect of registration as a registered tax agent, BAS agent or tax (financial) adviser; and
  - (c) the individual maintains, or will be able to maintain, professional indemnity insurance that meets the Board's requirements; and
  - (d) in the case of a renewal of registration—the individual has completed continuing professional education that meets the Board's requirements.

Note 1: An individual in the capacity of trustee of a trust can be registered: see section 70-15.

Note 2: Subsection (4) provides for an exception to paragraph (1)(b) for pre-1988 tax agents and nominees.

*Partnerships*

- (2) A partnership is eligible for registration as a \*registered tax agent, BAS agent or tax (financial) adviser if the Board is satisfied that:
- (a) each partner who is an individual is:
    - (i) aged 18 years or more; and
    - (ii) a fit and proper person; and
  - (b) if a company is a partner:
    - (i) each director of the company is a fit and proper person; and
    - (ii) the company is not under external administration; and
    - (iii) the company has not been convicted of a \*serious taxation offence or an offence involving fraud or dishonesty during the previous 5 years; and

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 90-1.

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- (c) the partnership has:
  - (i) in the case of registration as a \*registered tax agent—a sufficient number of individuals, being registered tax agents, to provide \*tax agent services to a competent standard, and to carry out supervisory arrangements; or
  - (ii) in the case of registration as a \*registered BAS agent—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; and; or
  - (iii) in the case of registration as a \*registered tax (financial) adviser—taking into account the requirements of paragraphs 912A(1)(d) to (f) of the *Corporations Act 2001*, a sufficient number of individuals, being registered tax agents or registered tax (financial) advisers, to provide \*tax (financial) advice services to a competent standard, and to carry out supervisory arrangements.
- (d) the partnership maintains, or will be able to maintain, professional indemnity insurance that meets the Board's requirements.

*Companies*

- (3) A company is eligible for registration as a \*registered tax agent, BAS agent or tax (financial) adviser if the Board is satisfied that:
  - (a) each director of the company is a fit and proper person; and
  - (b) the company is not under external administration; and
  - (c) the company has not been convicted of a \*serious taxation offence or an offence involving fraud or dishonesty during the previous 5 years; and
  - (d) the company has:
    - (i) in the case of registration as a \*registered tax agent—a sufficient number of individuals, being registered tax agents, to provide \*tax agent services to a competent standard and to carry out supervisory arrangements; or
    - (ii) in the case of registration as a \*registered BAS agent—a sufficient number of individuals, being registered tax agents or BAS agents, to provide \*BAS services to a

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 90-1.

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competent standard, and to carry out supervisory arrangements; and; or

(iii) in the case of registration as a \*registered tax (financial) adviser—taking into account the requirements of paragraphs 912A(1)(d) to (f) of the *Corporations Act 2001*, a sufficient number of individuals, being registered tax agents or registered tax (financial) advisers, to provide \*tax (financial) advice services to a competent standard, and to carry out supervisory arrangements.

(e) the company maintains, or will be able to maintain, professional indemnity insurance that meets the Board's requirements.

Note: A company in the capacity of trustee of a trust can be registered: see section 70-15.

*Special rule about pre-1988 tax agents*

(4) An individual is eligible for registration as a \*registered tax agent even if the Board is not satisfied that the individual satisfies the requirements mentioned in paragraph (1)(b) if:

(a) the individual was 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 the commencement of item 7 of Schedule 1 to the *Tax Agent Services (Transitional Provisions and Consequential Amendments) Act 2009*) at both of the following times:

- (i) immediately before the commencement of this Act;
- (ii) immediately before the commencement of section 39 of the *Taxation Laws Amendment Act (No. 2) 1988*; and

(b) the individual is otherwise eligible for registration as a registered tax agent.

**20-10 Regulations may prescribe system regarding professional associations**

The regulations may provide for a system to allow the Board to accredit professional associations for the purposes of recognising professional qualifications and experience that are relevant to the

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 90-1.

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registration of individuals as \*registered tax agents, BAS agents and tax (financial) advisers.

### **20-15 Criteria for determining whether an individual is a fit and proper person**

In deciding whether it is satisfied that an individual is a fit and proper person, the Board must have regard to:

- (a) whether the individual is of good fame, integrity and character; and
- (b) without limiting paragraph (a):
  - (i) whether an event described in section 20-45 has occurred during the previous 5 years; and
  - (ii) whether the individual had the status of an undischarged bankrupt at any time during the previous 5 years; and
  - (iii) whether the individual served a term of imprisonment, in whole or in part, at any time during the previous 5 years.

### **Subdivision 20-B—Applying for registration**

#### **Table of sections**

20-20	Application for registration
20-25	Registration
20-30	Board to notify you of grant of registration
20-35	Commencement and duration of registration
20-40	Variation of conditions of registration
20-45	Certain events may affect your continued registration

### **20-20 Application for registration**

- (1) You may apply to the Board for registration, including renewal of registration, as a \*registered tax agent or BAS agent.
- (2) An application must be in a form approved by the Board and must be accompanied by:
  - (a) any documents that are required by the Board; and
  - (b) the prescribed application fee.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 90-1.

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- (3) The Board must give the application fee to the Commissioner, who receives the fee on behalf of the Commonwealth.
- (4) If you withdraw your application:
  - (a) within 30 days after the day on which the application was made; and
  - (b) before the application has been granted or refused;the Commissioner must refund the application fee to you.

### **20-25 Registration**

#### *Grant of application for registration*

- (1) If you have applied to the Board for a type of registration, the Board must grant your application if you are eligible for registration of that type. Otherwise, the Board must reject your application.
- (2) The Board must decide your application within 6 months of receiving it.
- (3) If the Board does not decide your application within 6 months of receiving it, the Board is taken to have rejected your application. However, this does not apply if your application is for renewal of your registration.

Note: For renewals of registration, see section 20-50.

#### *Period of registration*

- (4) If the Board grants your application, the Board must also determine the period for which you are registered. The period must be for at least 3 years.

#### *Conditions of registration*

- (5) If the Board considers it appropriate to do so, the Board may impose one or more conditions to which your registration is subject.
- (6) If a condition is imposed, it must relate to the subject area in respect of which you may provide \*tax agent services.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 90-1.

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- (7) In deciding whether to impose a condition, the Board must have regard to the requirements prescribed by regulations under paragraph 20-5(1)(b) in relation to:
- (a) if you are an individual—your registration as a \*registered tax agent, BAS agent or tax (financial) adviser; and
  - (b) if you are a partnership or company—the registration of individuals who will provide \*tax agent services for you.

### **20-30 Board to notify you of grant of registration**

#### *Notification of decision*

- (1) The Board must, within 30 days of its decision to grant or reject your application for registration, notify you in writing of:
- (a) the decision; and
  - (b) if the Board rejects your application—the reasons for the decision; and
  - (c) if the Board grants your application—the following:
    - (i) the period of your registration;
    - (ii) any conditions to which your registration is subject.
- However, failure to comply does not affect the validity of the Board's decision.

- (2) The Board must also notify:
- (a) in the case of an entity's registration as a \*registered tax agent, BAS agent or tax (financial) adviser—the Commissioner of the Board's decision; and
  - (b) in the case of an entity's registration as a \*registered tax (financial) adviser—the Australian Securities and Investments Commission of the Board's decision.

#### *Professional indemnity insurance*

- (3) If the Board grants your application, the Board may, by written notice, require you to maintain professional indemnity insurance as specified in the notice. The notice may be given to you at the same time as the notice referred to in subsection (1), or subsequently.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 90-1.

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### **20-35 Commencement and duration of registration**

Your registration:

- (a) commences:
  - (i) if it is a renewal of your registration—on the day after the day on which your previous registration expired; or
  - (ii) in any other case—on the day specified in the notice given under subsection 20-30(1); and
- (b) expires at the end of the period determined by the Board, unless it is terminated before that time.

Note: Registration may be terminated under Subdivision 30-B or 40-A.

### **20-40 Variation of conditions of registration**

- (1) The Board may vary a condition to which your registration as a \*registered tax agent, BAS agent or tax (financial) adviser is subject if:
  - (a) you make an application for variation of the condition; and
  - (b) the Board is satisfied that it is appropriate to vary the condition.
- (2) Your application must be:
  - (a) in a form approved by the Board; and
  - (b) accompanied by any information or documents that are required by the Board.

### **20-45 Certain events may affect your continued registration**

The following events may affect your continued registration as a \*registered tax agent, BAS agent or tax (financial) adviser:

- (a) you are convicted of a \*serious taxation offence;
- (b) you are convicted of an offence involving fraud or dishonesty;
- (c) you are penalised for being a \*promoter of a \*tax exploitation scheme;
- (d) you are 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;

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 90-1.

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- (e) you become an undischarged bankrupt or go into external administration;
- (f) you are sentenced to a term of imprisonment.

### **Subdivision 20-C—Renewing registration**

#### **Table of sections**

20-50      Renewal of registration

#### **20-50 Renewal of registration**

- (1) The Board may renew your registration under section 20-25 if you make an application for renewal:
  - (a) at least 30 days before the day on which your registration expires; or
  - (b) within such shorter period as the Board allows.
- (2) Your registration is taken to continue until your application has been decided.
- (3) You may apply for renewal of registration during a period when your registration is suspended under section 30-25.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 90-1.

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## **Part 3—The Code of Professional Conduct**

### **Division 30—The Code of Professional Conduct**

#### **Table of Subdivisions**

- 30-A The Code of Professional Conduct
- 30-B Your liability for administrative sanctions
- 30-C Notifying a change of circumstances

#### **Guide to this Division**

##### **30-1 What this Division is about**

The Code of Professional Conduct regulates your personal and professional conduct as a registered tax agent, BAS agent or tax (financial) adviser.

If the Board investigates you and finds that you have failed to comply with the Code, the Board may give you a written caution, order you to take specified actions, or suspend or terminate your registration.

You must also notify the Board if certain circumstances change, including if you cease to meet the requirements for registration.

#### **Subdivision 30-A—The Code of Professional Conduct**

##### **Table of sections**

- 30-5 Application of the Code of Professional Conduct
- 30-10 The Code of Professional Conduct

##### **30-5 Application of the Code of Professional Conduct**

The \*Code of Professional Conduct applies to you if you are a \*registered tax agent, BAS agent or tax (financial) adviser.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 90-1.

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### **30-10 The Code of Professional Conduct**

#### *Honesty and integrity*

- (1) You must act honestly and with integrity.
- (2) You must comply with the \*taxation laws in the conduct of your personal affairs.
- (3) If:
  - (a) you receive money or other property from or on behalf of a client; and
  - (b) you hold the money or other property on trust;you must account to your client for the money or other property.

#### *Independence*

- (4) You must act lawfully in the best interests of your client.
- (5) You must have in place adequate arrangements for the management of conflicts of interest that may arise in relation to the activities that you undertake in the capacity of a \*registered tax agent, BAS agent or tax (financial) adviser

#### *Confidentiality*

- (6) Unless you have a legal duty to do so, you must not disclose any information relating to a client's affairs to a third party without your client's permission.

#### *Competence*

- (7) You must ensure that a \*tax agent service that you provide, or that is provided on your behalf, is provided competently.
- (8) You must maintain knowledge and skills relevant to the \*tax agent services that you provide.
- (9) You must take reasonable care in ascertaining a client's state of affairs, to the extent that ascertaining the state of those affairs is relevant to a statement you are making or a thing you are doing on behalf of the client.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 90-1.

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- (10) You must take reasonable care to ensure that \*taxation laws are applied correctly to the circumstances in relation to which you are providing advice to a client.

*Other responsibilities*

- (11) You must not knowingly obstruct the proper administration of the \*taxation laws.
- (12) You must advise your client of the client's rights and obligations under the \*taxation laws that are materially related to the \*tax agent services you provide.
- (13) You must maintain professional indemnity insurance that meets the Board's requirements.
- (14) You must respond to requests and directions from the Board in a timely, responsible and reasonable manner.

**Subdivision 30-B—Your liability for administrative sanctions**

**Table of sections**

30-15	Sanctions for failure to comply with the Code of Professional Conduct
30-20	Orders
30-25	Suspension
30-30	Termination

**30-15 Sanctions for failure to comply with the Code of Professional Conduct**

- (1) This Subdivision applies if the Board is satisfied, after conducting an investigation under Subdivision 60-E, that you have failed to comply with the \*Code of Professional Conduct.
- (2) The Board may do one or more of the following:
- (a) give you a written caution;
  - (b) give you an order under section 30-20;
  - (c) suspend your registration under section 30-25;
  - (d) terminate your registration under section 30-30.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 90-1.

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### **30-20 Orders**

- (1) The Board may make an order that requires you take one or more actions including, but not limited to, the following:
  - (a) completing a course of education or training specified in the order;
  - (b) providing \*tax agent services for which you are registered only under the supervision of a \*registered tax agent, BAS agent or tax (financial) adviser specified in the order;
  - (c) providing only those tax agent services that are specified in the order.
- (2) The Board must notify you in writing of the order. The order may specify the following, as appropriate:
  - (a) the period of time within which you must complete the requirements specified in the order;
  - (b) the period of time during which the order applies.

### **30-25 Suspension**

- (1) The Board may, by notice in writing, suspend your registration for a period determined by the Board.

Note: The Board must cause notice of its decision to be published in the *Gazette*: see section 60-140.
- (2) You must not provide \*tax agent services during the period of suspension.

Note: If you provide tax agent services while suspended, you may contravene a civil penalty provision: see subsection (4) and Subdivision 50-A.
- (3) If, when the Board suspends your registration under subsection (1), your registration is already suspended, suspension is for a further period that the Board determines is appropriate. The further period commences at the end of the period of suspension.
- (4) While you are suspended, you are taken not to be a \*registered tax agent, BAS agent or tax (financial) adviser, except for the purposes of:

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 90-1.

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Section 30-30

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- (a) Part 2 (Registration), Subdivision 30-C (Notifying a change of circumstances) and Part 4 (Termination of registration); and
- (b) this Division.

**30-30 Termination**

The Board may terminate your registration.

Note: For notice and effect of termination, see Subdivision 40-B.

**Subdivision 30-C—Notifying a change of circumstances**

**Table of sections**

30-35 Obligation to notify a change of circumstances

**30-35 Obligation to notify a change of circumstances**

*Individuals*

- (1) If you are a \*registered tax agent, BAS agent or tax (financial) adviser and an individual, you must notify the Board in writing whenever:
  - (a) you cease to meet one of the \*tax practitioner registration requirements; or
  - (b) an event affecting your continued registration, as described in section 20-45, occurs; or
  - (c) there is a change in your business or email address or of any other circumstances relevant to your registration.

*Partnerships*

- (2) If you are a \*registered tax agent, BAS agent or tax (financial) adviser and a partnership, you must notify the Board in writing whenever:
  - (a) you cease to meet one of the \*tax practitioner registration requirements; or
  - (b) an event affecting your continued registration, as described in section 20-45, occurs in respect of:
    - (i) a partner in the partnership; or

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 90-1.

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- (ii) a director of a company that is a partner in the partnership; or
- (c) the composition of the partnership changes; or
- (d) there is a change in your business or email address or of any other circumstances relevant to your registration.

*Companies*

- (3) If you are a \*registered tax agent, BAS agent or tax (financial) adviser and a company, you must notify the Board in writing whenever:
  - (a) you cease to meet one of the \*tax practitioner registration requirements; or
  - (b) an event affecting your continued registration, as described in section 20-45, occurs in respect of a director of the company; or
  - (c) an individual becomes, or ceases to be, a director of the company; or
  - (d) there is a change in your business or email address or of any other circumstances relevant to your registration.

*When notice must be given*

- (4) You must give the notice within 30 days of the day on which you become, or ought to have become, aware that the event occurred.

Note: A breach of this subsection is a breach of section 8C of the *Taxation Administration Act 1953* and of subsection 30-10(2) of this Act.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 90-1.

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## **Part 4—Termination of registration**

### **Division 40—Termination of registration**

#### **Table of Subdivisions**

- 40-A Grounds for terminating registration
- 40-B Notice and effect of termination

#### **Guide to this Division**

##### **40-1 What this Division is about**

Your registration may be terminated if an event occurs that affects your continued registration (see section 20-45), you cease to meet the tax practitioner registration requirements or you breach a condition of your registration. If your registration is terminated, the Board may also determine a period during which you may not apply for registration.

##### **Subdivision 40-A—Grounds for terminating registration**

#### **Table of sections**

- 40-5 Termination of registration—individuals
- 40-10 Termination of registration—partnerships
- 40-15 Termination of registration—companies

##### **40-5 Termination of registration—individuals**

- (1) If you are a \*registered tax agent, BAS agent or tax (financial) adviser and an individual, the Board may terminate your registration if:
  - (a) an event affecting your continued registration, as described in section 20-45, occurs; or
  - (b) you cease to meet one of the \*tax practitioner registration requirements; or
  - (c) you breach a condition of your registration.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 90-1.

Note: The Board may also terminate your registration for breach of the Code of Professional Conduct: see Subdivision 30-B.

- (2) The Board must terminate your registration if:
  - (a) you surrender your registration by notice in writing to the Board; or
  - (b) you die.
- (3) Despite paragraph (2)(a), the Board need not terminate your registration if:
  - (a) you surrender your registration by notice in writing to the Board; and
  - (b) the Board considers that, due to a current investigation or the outcome of an investigation, it would be inappropriate to terminate your registration.

#### **40-10 Termination of registration—partnerships**

- (1) If you are a \*registered tax agent, BAS agent or tax (financial) adviser and a partnership, the Board may terminate your registration if:
  - (a) you cease to meet one of the \*tax practitioner registration requirements; or
  - (b) you breach a condition of your registration.

Note: The Board may also terminate your registration for breach of the Code of Professional Conduct: see Subdivision 30-B.

- (2) The Board must terminate your registration if you surrender your registration by notice in writing to the Board.
- (2A) Despite subsection (2), the Board need not terminate your registration if:
  - (a) you surrender your registration by notice in writing to the Board; and
  - (b) the Board considers that, due to a current investigation or the outcome of an investigation, it would be inappropriate to terminate your registration.
- (3) If an event affecting your continued registration, as described in section 20-45, occurs in respect of a partner in your partnership, then the Board may, by notice in writing, require you to remove the

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 90-1.

Section 40-15

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partner from your partnership within the period specified in the notice.

Note: A failure to comply with a notice given under this subsection is a breach of subsection 30-10(14).

- (4) If an event affecting your continued registration, as described in section 20-45, occurs in respect of a director of a company that is a partner in your partnership, then the Board may, by notice in writing, require:

- (a) you to remove the partner from your partnership; or
- (b) the company to remove the director;

within the period specified in the notice.

Note: A failure to comply with a notice given under this subsection is a breach of subsection 30-10(14).

- (5) In determining the period, the Board must have regard to:

- (a) for the purpose of subsection (3) and paragraph (4)(a)—the requirements of any \*Australian law in relation to the removal of partners from partnerships; and
- (b) for the purpose of paragraph (4)(b)—any requirement of the *Corporations Act 2001* in relation to the removal of directors.

#### **40-15 Termination of registration—companies**

- (1) If you are a \*registered tax agent, BAS agent or tax (financial) adviser and a company, the Board may terminate your registration if:

- (a) an event affecting your continued registration, as described in section 20-45, occurs; or
- (b) you cease to meet one of the \*tax practitioner registration requirements; or
- (c) you breach a condition of your registration.

Note: The Board may also terminate your registration for breach of the Code of Professional Conduct: see Subdivision 30-B.

- (2) The Board must terminate your registration if:

- (a) you surrender your registration by notice in writing to the Board; or
- (b) you cease to exist.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 90-1.

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- (2A) Despite paragraph (2)(a), the Board need not terminate your registration if:
- (a) you surrender your registration by notice in writing to the Board; and
  - (b) the Board considers that, due to a current investigation or the outcome of an investigation, it would be inappropriate to terminate your registration.
- (3) If an event affecting your continued registration, as described in section 20-45, occurs in respect of a director of your company, then the Board may, by notice in writing, require you to remove the director from the board of directors within the period specified in the notice. In determining the period, the Board must have regard to any requirement of the *Corporations Act 2001* in relation to the removal of directors.

Note: A failure to comply with a notice given under this subsection is a breach of subsection 30-10(14).

### **Subdivision 40-B—Notice and effect of termination**

#### **Table of sections**

40-20	Notification of decision to terminate registration and when termination takes effect
40-25	Period during which you may not apply for registration

#### **40-20 Notification of decision to terminate registration and when termination takes effect**

- (1) If the Board terminates your registration, the Board must, within 30 days of the decision to terminate your registration, notify you in writing of:
- (a) the decision and the reasons for the decision; and
  - (b) any determination under section 40-25 of a period during which you are not eligible to apply for registration.

However, a failure to notify does not affect the validity of the Board's decision.

Note 1: The Board may terminate your registration under Subdivision 30-B or 40-A.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 90-1.

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**Division 40** Termination of registration

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Note 2: The Board must cause notice of its decision to be published in the *Gazette*: see section 60-140.

- (2) The termination takes effect on the day specified in the notice given under subsection (1). The day specified in the notice must be at least 28 days after the date of the notice.
- (3) The Board must also notify:
  - (a) in the case of an entity's registration as a \*registered tax agent, BAS agent or tax (financial) adviser—the Commissioner of the Board's decision and the reasons for the decision; and
  - (b) in the case of an entity's registration as a \*registered tax (financial) adviser—the Australian Securities and Investments Commission of the Board's decision and the reasons for the decision.

**40-25 Period during which you may not apply for registration**

- (1) If the Board terminates your registration, the Board may also determine a period, of not more than 5 years, during which you may not apply for registration.
- (2) Subsection (1) does not apply if your registration was terminated because:
  - (a) you surrendered your registration; or
  - (b) you became an undischarged bankrupt; or
  - (c) you went into external administration.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 90-1.

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## **Part 5—Civil penalties**

### **Division 50—Civil penalties**

#### **Table of Subdivisions**

- 50-A Conduct that is prohibited without registration
- 50-B Other civil penalties
- 50-C Obtaining an order for a civil penalty

#### **Guide to this Division**

##### **50-1 What this Division is about**

This Division contains civil penalty provisions. If you contravene a civil penalty provision, the Board may apply to the Federal Court for an order that you pay a pecuniary penalty.

You contravene a civil penalty provision if you are unregistered and provide tax agent services for a fee, advertise that you can provide tax agent services or represent yourself as registered.

You also contravene a civil penalty provision if you are registered and you make a false or misleading statement, employ or use the services of an entity whose registration has been terminated, or sign a declaration or statement that was prepared by an unregistered entity who was not working under the supervision or control of a registered tax agent, BAS agent or tax (financial) adviser.

#### **Subdivision 50-A—Conduct that is prohibited without registration**

##### **Table of sections**

- 50-5 Providing tax agent services if unregistered
- 50-10 Advertising tax agent services if unregistered

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 90-1.

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Section 50-5

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50-15 Representing that you are a registered tax agent, BAS agent or tax (financial) adviser if unregistered

**50-5 Providing tax agent services if unregistered**

- (1) You contravene this subsection if:
- (a) you provide a service that you know, or ought reasonably to know, is a \*tax agent service; and
  - (b) the tax agent service is not a \*BAS service or a \*tax (financial) advice service; and
  - (c) you charge or receive a fee or other reward for providing the tax agent service; and
  - (d) you are not a \*registered tax agent; and
  - (e) if you provide the tax agent service as a legal service—either:
    - (i) you are prohibited, under a \*State law or \*Territory law that regulates legal practice and the provision of legal services, from providing that tax agent service; or
    - (ii) subject to subsection (3), the service consists of preparing, or lodging, a return or a statement in the nature of a return.

Civil penalty:

- (a) for an individual—250 penalty units; and
- (b) for a body corporate—1,250 penalty units.

Note: Subdivision 50-C of this Act and Subdivision 298-B of Schedule 1 to the *Taxation Administration Act 1953* determine the procedure for obtaining a civil penalty order against you.

- (2) You contravene this subsection if:
- (a) you provide a service that you know, or ought reasonably to know, is a \*BAS service; and
  - (b) you charge or receive a fee or other reward for providing the BAS service; and
  - (c) you are not a \*registered tax agent or BAS agent; and
  - (d) if you provide the BAS service as a legal service—either:
    - (i) you are prohibited, under a \*State law or \*Territory law that regulates legal practice and the provision of legal services, from providing that BAS service; or

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 90-1.

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- (ii) subject to subsection (4), the service consists of preparing, or lodging, a return or a statement in the nature of a return; and
- (e) if the BAS service relates to imports or exports to which an \*indirect tax law applies—you are not a customs broker licensed under Part XI of the *Customs Act 1901*.

Civil penalty:

- (a) for an individual—250 penalty units; and
- (b) for a body corporate—1,250 penalty units.

Note: Subdivision 50-C of this Act and Subdivision 298-B of Schedule 1 to the *Taxation Administration Act 1953* determine the procedure for obtaining a civil penalty order against you.

(2A) You contravene this subsection if:

- (a) you provide a service that you know, or ought reasonably to know, is a \*tax (financial) advice service; and
- (b) the tax (financial) advice service is not a \*BAS service; and
- (c) you charge or receive a fee or other reward for providing the tax (financial) advice service; and
- (d) you are not a \*registered tax agent or a \*registered tax (financial) adviser; and
- (e) in the case of you providing the tax (financial) advice service as a legal service—you are prohibited, under a \*State law or \*Territory law that regulates legal practice and the provision of legal services, from providing that tax (financial) advice service.

Civil penalty:

- (a) for an individual—250 penalty units; and
- (b) for a body corporate—1,250 penalty units.

Note: Subdivision 50-C of this Act and Subdivision 298-B in Schedule 1 to the *Taxation Administration Act 1953* determine the procedure for obtaining a civil penalty order against you.

- (3) Subparagraph (1)(e)(ii) does not apply if you provide the \*tax agent service as a legal service in the course of acting for a trust or deceased estate as trustee or \*legal personal representative.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 90-1.

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- (4) Subparagraph (2)(d)(ii) does not apply if you provide the \*BAS service as a legal service in the course of acting for a trust or deceased estate as trustee or \*legal personal representative.
- (5) If you wish to rely on subsection (3) or (4) in civil penalty proceedings, you bear an \*evidential burden in relation to that matter.

### **50-10 Advertising tax agent services if unregistered**

- (1) You contravene this subsection if:
  - (a) you advertise that you will provide a \*tax agent service; and
  - (b) the tax agent service is not a \*BAS service or a \*tax (financial) advice service; and
  - (c) you are not a \*registered tax agent; and
  - (d) if the tax agent service would be provided as a legal service—either:
    - (i) you are prohibited, under a \*State law or \*Territory law that regulates legal practice and the provision of legal services, from providing that tax agent service; or
    - (ii) subject to subsection (3), the service would consist of preparing, or lodging, a return or a statement in the nature of a return; and
  - (e) if the tax agent service would be provided on a voluntary basis—you would not provide the service under a scheme approved by the Commissioner by notice published in the *Gazette*.

Civil penalty:

- (a) for an individual—50 penalty units; and
- (b) for a body corporate—250 penalty units.

Note: Subdivision 50-C of this Act and Subdivision 298-B of Schedule 1 to the *Taxation Administration Act 1953* determine the procedure for obtaining a civil penalty order against you.

- (2) You contravene this subsection if:
  - (a) you advertise that you will provide a \*BAS service; and
  - (b) you are not a \*registered tax agent or BAS agent; and

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 90-1.

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- (c) if the BAS service would be provided as a legal service—either:
  - (i) you are prohibited, under a \*State law or \*Territory law that regulates legal practice and the provision of legal services, from providing that BAS service; or
  - (ii) subject to subsection (4), the service would consist of preparing, or lodging, a return or a statement in the nature of a return; and
- (d) if the BAS service relates to imports or exports to which an \*indirect tax law applies—you are not a customs broker licensed under Part XI of the *Customs Act 1901*; and
- (e) if the BAS service would be provided on a voluntary basis—you would not provide the service under a scheme approved by the Commissioner by notice published in the *Gazette*.

Civil penalty:

- (a) for an individual—50 penalty units; and
- (b) for a body corporate—250 penalty units.

Note: Subdivision 50-C of this Act and Subdivision 298-B of Schedule 1 to the *Taxation Administration Act 1953* determine the procedure for obtaining a civil penalty order against you.

(2A) You contravene this subsection if:

- (a) you advertise that you will provide a \*tax (financial) advice service; and
- (b) the tax (financial) advice service is not a \*BAS service; and
- (c) you are not a \*registered tax agent or a \*registered tax (financial) adviser; and
- (d) where the tax (financial) advice service would be provided as a legal service—you are prohibited, under a \*State law or \*Territory law that regulates legal practice and the provision of legal services, from providing that tax (financial) advice service.

Civil penalty:

- (a) for an individual—50 penalty units; and
- (b) for a body corporate—250 penalty units.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 90-1.

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Section 50-15

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Note: Subdivision 50-C of this Act and Subdivision 298-B in Schedule 1 to the *Taxation Administration Act 1953* determine the procedure for obtaining a civil penalty order against you.

- (3) Subparagraph (1)(d)(ii) does not apply if you would provide the \*tax agent service as a legal service in the course of acting for a trust or deceased estate as trustee or \*legal personal representative.
- (4) Subparagraph (2)(c)(ii) does not apply if you would provide the \*BAS service as a legal service in the course of acting for a trust or deceased estate as trustee or \*legal personal representative.
- (4A) If you wish to rely on subsection (3) or (4) in civil penalty proceedings, you bear an \*evidential burden in relation to that matter.
- (5) A notice under paragraph (1)(e) or (2)(e) is not a legislative instrument.

**50-15 Representing that you are a registered tax agent, BAS agent or tax (financial) adviser if unregistered**

You contravene this section if:

- (a) you represent that you are a \*registered tax agent, BAS agent or tax (financial) adviser; and
- (b) that representation is untrue.

Civil penalty:

- (a) for an individual—50 penalty units; and
- (b) for a body corporate—250 penalty units.

Note: Subdivision 50-C of this Act and Subdivision 298-B of Schedule 1 to the *Taxation Administration Act 1953* determine the procedure for obtaining a civil penalty order against you.

**Subdivision 50-B—Other civil penalties**

**Table of sections**

50-20	Making false or misleading statements
50-25	Employing or using the services of deregistered entities
50-30	Signing of declarations etc.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 90-1.

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### **50-20 Making false or misleading statements**

You contravene this section if:

- (a) you are a \*registered tax agent or BAS agent; and
- (b) you:
  - (i) make a statement to the Commissioner; or
  - (ii) prepare a statement that you know, or ought reasonably to know, is likely to be made to the Commissioner by an entity; or
  - (iii) permit or direct an entity to do a thing mentioned in subparagraph (i) or (ii); and
- (c) you know, or are reckless as to whether, the statement:
  - (i) is false, incorrect or misleading in a material particular; or
  - (ii) omits any matter or thing without which the statement is misleading in a material respect.

Civil penalty:

- (a) for an individual—250 penalty units; and
- (b) for a body corporate—1,250 penalty units.

Note 1: Subdivision 50-C of this Act and Subdivision 298-B of Schedule 1 to the *Taxation Administration Act 1953* determine the procedure for obtaining a civil penalty order against you.

Note 2: In some circumstances, it is an offence to recklessly make a false or misleading statement under sections 8K and 8N of the *Taxation Administration Act 1953*.

### **50-25 Employing or using the services of deregistered entities**

- (1) You contravene this subsection if:
  - (a) you are a \*registered tax agent or BAS agent; and
  - (b) you employ or use the services of an entity to provide \*tax agent services on your behalf; and
  - (c) you know, or ought reasonably to know, that:
    - (i) the entity is not a registered tax agent, BAS agent or tax (financial) adviser but was previously a registered tax agent, BAS agent or tax (financial) adviser; and

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 90-1.

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Section 50-25

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- (ii) the entity's registration was terminated within the period of 1 year before you first employed, or first used the services of, the entity.

Civil penalty:

- (a) for an individual—250 penalty units; and
- (b) for a body corporate—1,250 penalty units.

Note: Subdivision 50-C of this Act and Subdivision 298-B of Schedule 1 to the *Taxation Administration Act 1953* determine the procedure for obtaining a civil penalty order against you.

(1A) You contravene this subsection if:

- (a) you are a \*registered tax (financial) adviser; and
- (b) you employ or use the services of an entity to provide \*tax (financial) advice services on your behalf; and
- (c) you know, or ought reasonably to know, that:
  - (i) the entity is not a registered tax (financial) adviser but was previously a registered tax (financial) adviser; or
  - (ii) the entity is not a registered tax (financial) adviser but was previously a \*registered tax agent; or
  - (iii) the entity is not a registered tax agent but was previously a registered tax agent; or
  - (iv) the entity is not a registered tax agent but was previously a registered tax (financial) adviser; and
- (d) you know, or ought reasonably to know, that the entity's registration was terminated within the period of 1 year before you first employed, or first used the services of, the entity.

Civil penalty:

- (a) for an individual—250 penalty units; and
- (b) for a body corporate—1,250 penalty units.

Note: Subdivision 50-C of this Act and Subdivision 298-B in Schedule 1 to the *Taxation Administration Act 1953* determine the procedure for obtaining a civil penalty order against you.

(2) Subsections (1) and (1A) do not apply if the entity's registration was terminated:

- (a) because:
  - (i) the entity surrendered their registration; or

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 90-1.

- (ii) the entity became an undischarged bankrupt or went into external administration; or
- (b) because of a reason prescribed by the regulations.

### **50-30 Signing of declarations etc.**

#### *Individuals*

- (1) You contravene this subsection if:
  - (a) you are a \*registered tax agent and an individual; and
  - (b) in the course of providing a \*tax agent service, you sign a declaration or other statement in relation to a taxpayer that is required or permitted by a \*taxation law; 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; or
    - (ii) another registered tax agent who is an individual; or
    - (iii) another individual who is working under your supervision and control or the supervision and control of another registered tax agent who is an individual.

Civil penalty: 250 penalty units.

Note: Subdivision 50-C of this Act and Subdivision 298-B of Schedule 1 to the *Taxation Administration Act 1953* determine the procedure for obtaining a civil penalty order against you.

- (2) You contravene this subsection if:
  - (a) you are a \*registered tax agent or BAS agent who is an individual; and
  - (b) in the course of providing a \*BAS service, you sign a declaration or other statement in relation to a taxpayer that is required or permitted by a \*taxation law; 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; or
    - (ii) a registered tax agent or BAS agent who is an individual; or

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 90-1.

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- (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.

Civil penalty: 250 penalty units.

Note: Subdivision 50-C of this Act and Subdivision 298-B of Schedule 1 to the *Taxation Administration Act 1953* determine the procedure for obtaining a civil penalty order against you.

*Partnerships and companies*

- (3) You contravene this subsection if:
  - (a) you are a partnership or company that is a \*registered tax agent; and
  - (b) in the course of providing a \*tax agent service, you sign a declaration or other statement in relation to a taxpayer that is required or permitted by a \*taxation law; and
  - (c) the document in relation to which the declaration or other statement is being made was prepared by an entity other than:
    - (i) a registered tax agent who is an individual; or
    - (ii) an individual who is working under the supervision and control of a registered tax agent who is an individual.

Civil penalty: 1,250 penalty units.

Note 1: If you are a partnership and contravene this subsection, see also section 50-40.

Note 2: Subdivision 50-C of this Act and Subdivision 298-B of Schedule 1 to the *Taxation Administration Act 1953* determine the procedure for obtaining a civil penalty order against you.

- (4) You contravene this subsection if:
  - (a) you are a partnership or company that is a \*registered tax agent or BAS agent; and
  - (b) in the course of providing a \*BAS service, you sign a declaration or other statement in relation to a taxpayer that is required or permitted by a \*taxation law; and
  - (c) the document in relation to which the declaration or other statement is being made was prepared by an entity other than:
    - (i) a registered tax agent or BAS agent who is an individual; or

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 90-1.

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- (ii) an individual who is working under the supervision and control of a registered tax agent or BAS agent who is an individual.

Civil penalty: 1,250 penalty units.

Note 1: If you are a partnership and contravene this subsection, see also section 50-40.

Note 2: Subdivision 50-C of this Act and Subdivision 298-B of Schedule 1 to the *Taxation Administration Act 1953* determine the procedure for obtaining a civil penalty order against you.

- (5) Subsections (1) to (4) do not apply if you took reasonable steps to ensure the accuracy of the document. In civil penalty proceedings, you bear the \*evidential burden of proving that you took such reasonable steps.

### **Subdivision 50-C—Obtaining an order for a civil penalty**

#### **Table of sections**

50-35	Federal Court may order you to pay a pecuniary penalty for contravening a civil penalty provision
50-40	Treatment of partnerships
50-45	Recovery of a pecuniary penalty

#### **50-35 Federal Court may order you to pay a pecuniary penalty for contravening a civil penalty provision**

##### *Application for order*

- (1) Within 4 years after you contravene a civil penalty provision, the Board may apply on behalf of the Commonwealth to the \*Federal Court for an order that you pay the Commonwealth a pecuniary penalty.

##### *Court may order you to pay pecuniary penalty*

- (2) If the \*Federal Court is satisfied that you have contravened a civil penalty provision, the Federal Court may order you to pay to the Commonwealth, for each contravention, the pecuniary penalty that the Federal Court determines is appropriate (but not more than the maximum amount specified for the provision).

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 90-1.

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*Conduct contravening more than one civil penalty provision*

- (3) If conduct contravenes 2 or more civil penalty provisions of this Act, proceedings may be instituted against you in relation to the contravention of any one or more of those provisions. However, you are not liable to more than one pecuniary penalty in respect of the same conduct.

**50-40 Treatment of partnerships**

- (1) If a partnership contravenes a civil penalty provision, each partner in the partnership, at the time of the conduct constituting the contravention, is taken to have contravened the civil penalty provision unless the partner proves, on the balance of probabilities, that the partner:
- (a) did not engage in the conduct; and
  - (b) did not aid, abet, counsel or procure the conduct; and
  - (c) was not in any way knowingly concerned in, or party to, the conduct (whether directly or indirectly or whether by any act or omission of the partner).
- (2) If a partnership contravenes a civil penalty provision, the civil penalty that may be imposed on each partner in the partnership:
- (a) if the partner is an individual—must not exceed an amount equal to one-fifth of the maximum penalty that could be imposed on a body corporate for the same contravention; and
  - (b) in any other case—must not exceed the maximum penalty that could be imposed on a body corporate for the same contravention.

**50-45 Recovery of a pecuniary penalty**

If the \*Federal Court orders you to pay a pecuniary penalty:

- (a) the penalty is payable to the Commissioner, who receives the penalty on behalf of the Commonwealth; and
- (b) the Commissioner may, on behalf of the Commonwealth, enforce the order as if it were a judgment of the Federal Court.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 90-1.

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## **Part 6—The Tax Practitioners Board**

### **Division 60—The Tax Practitioners Board**

#### **Table of Subdivisions**

60-A	Establishment, functions and powers of the Board
60-B	Appointment etc. of members of the Board
60-C	Board procedures
60-D	Committees etc.
60-E	Investigations
60-F	Public reporting obligations of the Board

#### **Guide to this Division**

##### **60-1 What this Division is about**

This Division establishes the Tax Practitioners Board and contains administrative provisions relating to Board appointments and Board procedures.

Comprising at least 7 Board members, the Board has functions and powers relating to the operation of this Act, including investigating your application for registration and conduct that may breach this Act. For the purposes of an investigation, the Board may oblige you to give it information.

The Board must also report to the Minister on its operations each year, maintain a register of registered tax agents, BAS agents and tax (financial) advisers, and publish decisions to terminate or suspend the registration of a registered tax agent, BAS agent or tax (financial) adviser.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 90-1.

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## **Subdivision 60-A—Establishment, functions and powers of the Board**

### **Table of sections**

60-5	Establishment
60-10	Membership
60-15	Functions
60-20	Powers

### **60-5 Establishment**

The Tax Practitioners Board is established.

### **60-10 Membership**

- (1) The Board consists of:
  - (a) the \*Chair; and
  - (b) 6 or more other \*Board members.
- (2) The performance of the functions, or the exercise of the powers, of the Board is not affected only because of a vacancy or vacancies in the membership of the Board.

### **60-15 Functions**

The functions of the Board are:

- (a) to administer the system for the registration of \*registered tax agents, BAS agents and tax (financial) advisers; and
- (b) to investigate:
  - (i) applications for registration; and
  - (ii) conduct that may breach this Act; and
- (c) to impose sanctions for non-compliance with the \*Code of Professional Conduct; and
- (d) to issue, by legislative instrument, guidelines to assist in achieving the functions mentioned in paragraphs (a), (b) and (c); and
- (e) such other functions as are conferred on the Board by this Act, the regulations or any other law of the Commonwealth; and

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 90-1.

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- (f) to do anything incidental or conducive to the performance of its functions.

### **60-20 Powers**

The Board has power to do all things necessary or convenient to be done for or in connection with the performance of its functions.

### **Subdivision 60-B—Appointment etc. of members of the Board**

#### **Table of sections**

60-25	Appointment
60-30	Term of appointment
60-35	Remuneration and allowances
60-40	Leave of absence
60-45	Outside employment
60-50	Disclosure of interests
60-55	Resignation
60-60	Termination of appointment
60-65	Terms and conditions of appointment not provided for by Act
60-67	Acting appointments

### **60-25 Appointment**

- (1) A Board member is to be appointed by the Minister by written instrument, on a full-time basis or on a part-time basis.
- (2) The Minister must appoint one of the \*Board members to be the \*Chair. However, that member must not be:
  - (a) a person who holds any office or appointment (other than as a Board member) under a law of the Commonwealth on a full-time basis; or
  - (b) a person appointed or engaged under the *Public Service Act 1999*.
- (3) A person's appointment as a \*Board member is not invalid because of a defect or irregularity in connection with the person's appointment.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 90-1.

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### **60-30 Term of appointment**

A \*Board member holds office for the period specified in the instrument of appointment.

Note: A Board member is eligible for reappointment: see section 33AA of the *Acts Interpretation Act 1901*.

### **60-35 Remuneration and allowances**

- (1) A \*Board member is to be paid the remuneration that is determined by the Remuneration Tribunal. If no determination of that remuneration is in operation, a Board member is to be paid the remuneration that is prescribed by the regulations.
- (2) A \*Board member is to be paid the allowances that are prescribed by the regulations.
- (3) This section has effect subject to the *Remuneration Tribunal Act 1973*.

### **60-40 Leave of absence**

- (1) A full-time \*Board member has the recreation leave entitlements that are determined by the Remuneration Tribunal.
- (2) The Minister may grant a full-time \*Board member leave of absence, other than recreation leave, on the terms and conditions as to remuneration or otherwise that the Minister determines.
- (3) The Minister may grant leave of absence to a part-time \*Board member on the terms and conditions that the Minister determines.

### **60-45 Outside employment**

- (1) A full-time \*Board member must not engage in paid employment outside the duties of his or her office without the Minister's approval.
- (2) A part-time \*Board member must not engage in paid employment that conflicts or may conflict with the proper performance of his or her duties.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 90-1.

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### **60-50 Disclosure of interests**

A \*Board member must give written notice to the Minister of any direct or indirect pecuniary interest that the Board member has or acquires and that conflicts or could conflict with the proper performance of the Board's functions.

### **60-55 Resignation**

- (1) A \*Board member may resign his or her appointment by giving the Minister a written resignation. The resignation must specify a day from which the resignation will take effect.
- (2) The \*Chair may resign his or her appointment without resigning his or her appointment as a \*Board member.

### **60-60 Termination of appointment**

#### *All Board members*

- (1) The Minister may terminate the appointment of a \*Board member:
  - (a) for misbehaviour or physical or mental incapacity; or
  - (b) if the Board member:
    - (i) becomes bankrupt; or
    - (ii) applies to take the benefit of any law for the relief of bankrupt or insolvent debtors; or
    - (iii) compounds with his or her creditors; or
    - (iv) makes an assignment of his or her remuneration for the benefit of his or her creditors; or
  - (c) if the Board member fails, without reasonable excuse, to comply with section 60-50.

#### *Additional grounds: full-time Board members*

- (2) The Minister may terminate the appointment of a full-time \*Board member if:
  - (a) the Board member is absent, except on leave of absence, for 14 consecutive days or for 28 days in any 12 months; or

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 90-1.

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Section 60-65

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- (b) the Board member engages, except with the Minister's approval, in paid employment outside the duties of his or her office.

*Additional grounds: part-time Board members*

- (3) The Minister may terminate the appointment of a part-time \*Board member if:
  - (a) the Board member is absent, except on leave of absence, from 3 consecutive meetings of the Board; or
  - (b) the Board member engages in paid employment that conflicts or may conflict with the proper performance of his or her duties.

**60-65 Terms and conditions of appointment not provided for by Act**

A \*Board member holds office on such terms and conditions (if any) in relation to matters not provided for by this Act as are determined, in writing, by the Minister.

**60-67 Acting appointments**

- (1) The Minister may, by written instrument, appoint a \*Board member to act as the \*Chair:
  - (a) during a vacancy in the office of the Chair (whether or not an appointment has previously been made to the office); or
  - (b) during any period, or during all periods, when the Chair:
    - (i) is absent from duty or from Australia; or
    - (ii) is, for any reason, unable to perform the duties of the office.
- (2) However, the \*Board member appointed to act as the \*Chair must not be:
  - (a) a person who holds any office or appointment (other than as a Board member) under a law of the Commonwealth on a full-time basis; or
  - (b) a person appointed or engaged under the *Public Service Act 1999*.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 90-1.

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- (3) The Minister may, by written instrument, appoint a person to act as a \*Board member:
- (a) during a vacancy in the office of a Board member (whether or not an appointment has previously been made to the office); or
  - (b) during any period, or during all periods, when a Board member:
    - (i) is absent from duty or from Australia; or
    - (ii) is, for any reason, unable to perform the duties of the office.

Note: For rules that apply to acting appointments, see sections 33AB and 33A of the *Acts Interpretation Act 1901*.

### **Subdivision 60-C—Board procedures**

#### **Table of sections**

60-70	Meetings
60-75	Decisions without meetings
60-80	Administrative support for the Board

#### **60-70 Meetings**

- (1) At a meeting of the Board, a majority of \*Board members constitutes a quorum.
- (2) A question arising at a meeting is decided by a majority of the votes of the \*Board members present and voting.
- (3) The \*Chair presides at all meetings at which he or she is present. If the Chair is not present, the \*Board members present must appoint one of themselves to preside. However, the member appointed to preside must not be:
  - (a) a person who holds any office or appointment (other than as a Board member) under a law of the Commonwealth; or
  - (b) a person appointed or engaged under the *Public Service Act 1999*.
- (4) The \*Board member presiding at a meeting has a deliberative vote and, if necessary, a casting vote.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 90-1.

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Section 60-75

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- (5) The Board may regulate proceedings at its meetings as it considers appropriate.

Note: Section 33B of the *Acts Interpretation Act 1901* provides for participation in meetings by telephone etc.

**60-75 Decisions without meetings**

- (1) The Board may only make a decision without meeting if the Board determines that the decision may be made in that way.
- (2) If the Board determines that a decision may be made without meeting, a decision is taken to have been made at a Board meeting if:
- (a) a majority of the Board indicate agreement with the proposed decision in accordance with the method determined by the Board under subsection (3); and
  - (b) all \*Board members were informed of the proposed decision, or reasonable efforts were made to inform all Board members of the proposed decision.
- (3) The Board may determine the method by which \*Board members are to indicate agreement with proposed decisions.
- (4) The Board must keep a record of decisions made in accordance with this section.

**60-80 Administrative support for the Board**

The Board is to be assisted by APS employees whose services are made available to the Board by the Commissioner.

**Subdivision 60-D—Committees etc.**

**Table of sections**

60-85	Establishment of committees
60-90	Remuneration and allowances of committee members

**60-85 Establishment of committees**

- (1) The Board may establish \*committees to assist the Board in the performance of its functions and the exercise of its powers.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 90-1.

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- (2) A \*committee is to consist of such persons (whether \*Board members or not) as the Board determines.

### **60-90 Remuneration and allowances of committee members**

- (1) A member of a \*committee (other than a \*Board member) is to be paid the remuneration that is determined by the Remuneration Tribunal but, if no determination is in operation, the member is to be paid the remuneration that is prescribed by the regulations.
- (2) A member of a \*committee (other than a \*Board member) is to be paid the allowances that are prescribed by the regulations.
- (3) This section has effect subject to the *Remuneration Tribunal Act 1973*.

### **Subdivision 60-E—Investigations**

#### **Table of sections**

60-95	Investigations
60-100	Power to request production of a document or thing
60-105	Power to require witnesses to appear before the Board
60-110	Power to take evidence on oath or affirmation
60-115	Self-incrimination
60-120	Board may retain documents and things
60-125	Outcomes of investigations

### **60-95 Investigations**

- (1) The Board may investigate:
- (a) your application for registration; or
  - (b) any conduct that may breach this Act; or
  - (c) other matters prescribed by the regulations.
- (2) The Board must notify you in writing if the Board decides to investigate you. The notice must be given within 2 weeks after the decision is made.
- (3) An investigation is taken to commence on the date of the notice.
- (4) The Board:

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 90-1.

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- (a) has a discretion as to its procedure; and
- (b) is not bound by the rules of evidence.

### **60-100 Power to request production of a document or thing**

- (1) For the purpose of an investigation, the Board may, by notice, request a person:
  - (a) to give the Board the information referred to in the notice; or
  - (b) to produce to the Board the documents or things referred to in the notice.

Note: Failure to give the information, or produce the documents or things, is an offence: see sections 8C and 8D of the *Taxation Administration Act 1953*.

- (2) The Board's request must:
  - (a) be in writing; and
  - (b) specify the period within which the person must comply with the request.

The period specified under paragraph (b) must be at least 14 days after the date of the request.

### **60-105 Power to require witnesses to appear before the Board**

- (1) For the purpose of an investigation, the Board may, by notice in writing, require a person to appear before it:
  - (a) to give evidence; or
  - (b) to produce the documents or things referred to in the notice.

Note: Failure to attend, answer questions, or produce the documents or things, is an offence: see sections 8C and 8D of the *Taxation Administration Act 1953*.

- (2) If a person is required to appear before the Board because the person has been nominated by an entity that has applied for registration, the person is entitled to be paid by the entity any allowances and expenses that are prescribed by the regulations.
- (3) In any other case, a person required to appear before the Board is entitled to be paid by the Commonwealth any allowances and expenses that are prescribed by the regulations.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 90-1.

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### **60-110 Power to take evidence on oath or affirmation**

- (1) For the purpose of taking evidence, the \*Chair, or an individual acting on behalf of the Chair, may:
  - (a) require a person to either take an oath or make an affirmation; and
  - (b) administer an oath or affirmation to the person.

Note: Failure to take an oath or make an affirmation is an offence: see section 8D of the *Taxation Administration Act 1953*.
- (2) The oath or affirmation is an oath or affirmation that the evidence the person will give will be true.
- (3) The Board may, if it thinks that it is appropriate, allow a person who has been sworn, or who has made an affirmation, to give evidence by tendering a written statement and verifying it by oath or affirmation.

### **60-115 Self-incrimination**

- (1) A person is not excused from:
  - (a) giving information or evidence; or
  - (b) producing a document or thing;under section 60-100 or 60-105 on the ground that doing so might tend to incriminate the person or expose the person to a penalty.
- (2) However, in the case of an individual:
  - (a) the information or evidence given or the document or thing produced; and
  - (b) the giving of the information or evidence or the producing of the document or thing; and
  - (c) any information, document or thing obtained as a direct or indirect consequence of giving the information or evidence, or producing the document or thing;are not admissible in evidence against the individual in proceedings, other than proceedings for an offence against:
  - (d) section 8C or 8D of the *Taxation Administration Act 1953* in relation to the information or evidence given, or document or thing produced, under this Act; or

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 90-1.

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Section 60-120

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- (e) section 137.1 or 137.2 of the *Criminal Code* (which deals with false or misleading information or documents) in relation to the information or evidence given, or document produced, under this Act; or
- (f) section 149.1 of the *Criminal Code* (which deals with obstruction of Commonwealth public officials) that relates to this Act.

**60-120 Board may retain documents and things**

- (1) If a document or thing is produced to the Board in accordance with section 60-100 or 60-105, the Board:
  - (a) may take possession of, and make copies of, the document or thing, or take extracts from the document; and
  - (b) may retain possession of the document or thing for such period as is necessary for the purposes of the investigation to which the document or thing relates.
- (2) While the Board retains the document or thing, the Board must allow a person who would otherwise be entitled to possession of the document or thing, or a person authorised by that person:
  - (a) reasonable access to the document for the purposes of inspecting and making copies of, or taking extracts from, it; and
  - (b) reasonable access to the thing.

**60-125 Outcomes of investigations**

*Investigation relating to application for registration*

- (1) After completing an investigation in relation to an application for registration under section 20-20, the Board must make a decision in accordance with section 20-25.

*Investigation relating to whether conduct breaches this Act*

- (2) If the Board investigates conduct under section 60-95 and finds that the conduct breaches this Act, the Board must either:
  - (a) make a decision that no further action will be taken; or
  - (b) do one or more of the following:

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 90-1.

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- (i) impose one or more sanctions under Subdivision 30-B;
- (ii) terminate an entity's registration under Subdivision 40-A;
- (iii) apply to the \*Federal Court for an order for payment of a pecuniary penalty under Subdivision 50-C;
- (iv) apply to the Federal Court for an injunction under section 70-5.

Note: The Board may terminate an entity's registration under Subdivision 40-A without investigating conduct under section 60-95.

*Period within which a decision must be made*

- (3) The Board must make a decision under subsection (2):
  - (a) within 6 months after the day on which the investigation is taken to have commenced under subsection 60-95(3); or
  - (b) if a longer period is determined by the Board under subsection (4)—within that period.
- (4) If the Board is satisfied that, for reasons beyond the control of the Board, a decision under subsection (2) cannot be made within the period mentioned in paragraph (3)(a), the Board may determine a longer period within which the Board must make a decision under subsection (2).
- (5) If the Board determines a longer period, the Board must do so not later than 2 weeks before the expiry of the period mentioned in paragraph (3)(a).
- (6) The reasons mentioned in subsection (4) include, but are not limited to, the following:
  - (a) undue delay that has been caused by an entity other than the Board and that has affected the conduct of the investigation to which the decision relates;
  - (b) the complexity of the investigation.

*Decision not made*

- (7) If:

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 90-1.

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- (a) a decision is not made within the period mentioned in paragraph (3)(a) and the Board does not determine a longer period; or
- (b) the Board determines a longer period but does not make a decision within that period;

the Board is taken to have decided to take no further action in relation to the matter that was the subject of investigation.

*Notification of decisions*

- (8) If:
  - (a) the Board makes a decision under subsection (2); or
  - (b) the Board investigates conduct under section 60-95 and finds that the conduct does not breach this Act;the Board must, within 30 days of making the decision or finding:
  - (c) notify the following persons, in writing, of the decision or finding:
    - (i) the entity affected by the decision or finding;
    - (ii) the complainant (if any);
    - (ia) any professional association accredited by the Board under the regulations of which the entity is a member;
    - (iii) if the decision or finding is relevant to the administration of the \*taxation laws (other than this Act)—the Commissioner;
    - (iv) if the decision or finding concerns a \*registered tax (financial) adviser or a \*registered tax agent in relation to providing a \*tax (financial) advice service—the Australian Securities and Investments Commission; and
  - (d) give, in writing, the reasons for the decision to:
    - (i) the entity affected by the decision; and
    - (ia) if subparagraph (c)(ia) applies—the relevant professional association; and
    - (ii) if subparagraph (c)(iii) applies—the Commissioner; and
    - (iii) if subparagraph (c)(iv) applies—the Australian Securities and Investments Commission.
- (9) If the Board determines a longer period under subsection (4), the Board must, within 30 days of making the determination:

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 90-1.

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- (a) notify the entity affected by the determination, in writing, of the determination; and
- (b) give, in writing, the reasons for the determination.

## **Subdivision 60-F—Public reporting obligations of the Board**

### **Table of sections**

60-130	Annual report
60-135	Register
60-140	Publication of information

### **60-130 Annual report**

- (1) The \*Chair must, as soon as practicable after the end of each \*financial year, prepare and give to the Minister, for presentation to the Parliament, a report on its operations during that year.

Note: See also section 34C of the *Acts Interpretation Act 1901*, which contains extra rules about annual reports.

- (2) The \*Chair must also set out in the report, in relation to each general category of offence and in relation to each \*law enforcement agency:
  - (a) the number of occasions (if any) during the year on which the Board was requested by, or on behalf of, the head of the agency to disclose information under subsection 70-40(4) to \*authorised law enforcement agency officers; and
  - (b) the number of occasions (if any) during the year on which information was disclosed under that subsection to authorised law enforcement agency officers.

### **60-135 Register**

- (1) The Board must establish and maintain a register of:
  - (a) \*registered tax agents, BAS agents and tax (financial) advisers; and
  - (b) each entity who was a \*registered tax agent, BAS agent or tax (financial) adviser and whose registration has been terminated other than because of a reason prescribed by the regulations:

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 90-1.

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- (i) because the entity surrendered their registration; or
  - (ii) because of a reason prescribed by the regulations.
- (2) The regulations may prescribe the details that the Board must enter on the register in respect of each entity who is entered on the register.
- (3) Details of an entity who was a \*registered tax agent, BAS agent or tax (financial) adviser must only be kept on the register for the 12 month period starting on the day on which the entity's registration as a registered tax agent, BAS agent or tax (financial) adviser was terminated.
- (4) The register is to be made available for inspection on the internet.

**60-140 Publication of information**

The Board must cause a notice of the following decisions to be published in the *Gazette*:

- (a) a decision under Subdivision 30-B or 40-A to terminate the registration of a \*registered tax agent, BAS agent or tax (financial) adviser;
- (b) a decision under section 30-25 to suspend the registration of a registered tax agent, BAS agent or tax (financial) adviser.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 90-1.

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## **Part 7—Miscellaneous**

### **Division 70—Miscellaneous**

#### **Table of Subdivisions**

70-A	Injunctions
70-B	Administrative review
70-C	Provisions affecting trustees and partnerships
70-D	Provisions relating to the Board
70-E	Miscellaneous

#### **Guide to this Division**

##### **70-1 What this Division is about**

This Division sets out some miscellaneous provisions, including a provision allowing the Board to apply to the Federal Court for an injunction, a provision allowing you to apply to the Administrative Appeals Tribunal for review of a Board's decision and a provision about the treatment of trustees.

#### **Subdivision 70-A—Injunctions**

##### **Table of sections**

70-5	Injunction to restrain or require certain conduct
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##### **70-5 Injunction to restrain or require certain conduct**

- (1) If, on the application of the Board, the \*Federal Court is satisfied that you have engaged, or are proposing to engage, in conduct that would constitute a contravention of a civil penalty provision, the Federal Court may grant an injunction:
  - (a) restraining you from engaging in the conduct; or
  - (b) if in the Federal Court's opinion it is desirable to do so, requiring you to do something.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 90-1.

- (2) Before deciding the application, the \*Federal Court may grant an interim injunction:
- (a) restraining you from engaging in conduct; or
  - (b) requiring you to do something.

### **Subdivision 70-B—Administrative review**

#### **Table of sections**

70-10 Administrative review

#### **70-10 Administrative review**

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

- (a) a decision under section 20-25:
  - (i) to reject an application for registration (including renewal of registration); or
  - (ii) to specify a condition to which registration is subject;
- (c) a decision under section 20-40 to refuse to vary a condition to which registration is subject;
- (d) a decision under subsection 20-50(1) not to determine a shorter period for making a renewal application;
- (e) a decision under Subdivision 30-B or 40-A to terminate registration;
- (f) a decision under section 30-20 to make an order or to specify a time period in respect of an order;
- (g) a decision under section 30-25 to suspend registration (including a decision as to the length of the suspension);
- (ga) a decision under Subdivision 40-A not to terminate registration;
- (h) a decision under section 40-25 to determine a period during which an application for registration may not be made;
- (i) a decision under subsection 60-125(4) to extend the period of time within which an investigation is to be completed.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 90-1.

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### **Subdivision 70-C—Provisions affecting trustees and partnerships**

#### **Table of sections**

70-15	How this Act applies to an individual or company in the capacity of a trustee
70-20	Continuity of partnerships

#### **70-15 How this Act applies to an individual or company in the capacity of a trustee**

This Act applies to:

- (a) a trustee who is an individual in the same way as it applies to an individual; and
- (b) a trustee that is a company in the same way as it applies to a company.

#### **70-20 Continuity of partnerships**

For the purposes of this Act, a change in the composition of a partnership does not affect the continuity of the partnership.

### **Subdivision 70-D—Provisions relating to the Board**

#### **Table of sections**

70-25	Immunity from legal action
70-30	Delegation by Board

#### **70-25 Immunity from legal action**

No action, suit or proceeding may be brought against:

- (a) a person who is, or has been, a \*Board member; or
- (b) a person who is, or has been, a member of a \*committee; in relation to anything done, or omitted to be done, in good faith by the Board member or committee member:
- (c) in the performance, or purported performance, of the Board's functions; or
- (d) in the exercise, or purported exercise, of the Board's powers.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 90-1.

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### 70-30 Delegation by Board

- (1) Subject to subsections (1A) and (2), the Board may, by writing, delegate all or any of its functions and powers to:
  - (a) a \*Board member; or
  - (b) a \*committee; or
  - (c) an APS employee whose services are made available to the Board under section 60-80; or
  - (d) to a person engaged by the Board.
- (1A) The Board may not delegate:
  - (a) its function of issuing guidelines; or
  - (b) its power to establish a committee under section 60-85.
- (2) The Board may only delegate to a \*committee a power to make a decision in respect of which an application for review may be made to the Administrative Appeals Tribunal under section 70-10 if:
  - (a) the committee has 3 members or more; and
  - (b) all members of the committee are \*Board members.
- (3) A delegate is, in the exercise of a delegated function or power, subject to the directions of the Board.
- (4) A delegation under this section:
  - (a) may be revoked by the Board (whether or not constituted by the \*Board members who constituted the Board when the power was delegated); and
  - (b) continues in force even if the membership of the Board changes.

### Subdivision 70-E—Miscellaneous

#### Table of sections

70-35	Official information not to be disclosed
70-40	Exceptions to the prohibition on disclosure of official information
70-45	On-disclosure of official information
70-50	Legal professional privilege
70-55	Regulations

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 90-1.

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## **70-35 Official information not to be disclosed**

### *Offence—recording or disclosing official information*

- (1) A person commits an offence if:
- (a) the person:
    - (i) is or has been a \*Board member or a member of a \*committee; or
    - (ii) is or has been an APS employee whose services were made available to the Board by the Commissioner; or
    - (iii) is or has been a person appointed or employed by, or a provider of services for, the Commonwealth; and
  - (b) the person:
    - (i) makes a record of information; or
    - (ii) discloses information to another person (other than the person to whom the information relates or that person's \*agent in relation to the information) or to a court or tribunal; and
  - (c) the information is \*official information; and
  - (d) the information was acquired by the first-mentioned person in the course of, or because of, his or her duties under or in relation to this Act or the regulations.

Penalty: Imprisonment for 2 years.

### *Consent is not a defence*

- (2) It is not a defence to a prosecution for an offence against subsection (1) that the entity to whom the information relates has consented to:
- (a) the making of the record; or
  - (b) the disclosure of the information.

### *Limits on disclosure to courts and tribunals*

- (3) A person mentioned in paragraph (1)(a) is not required to disclose to a court or tribunal \*official information that was acquired by the person in the course of, or because of, his or her duties under or in relation to this Act or the regulations except if it is necessary to do

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 90-1.

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so for the purpose of carrying into effect the provisions of this Act or the regulations.

**70-40 Exceptions to the prohibition on disclosure of official information**

*Disclosure in the performance of duties*

- (1) Subsection 70-35(1) does not apply if the record or disclosure is made in performing the person's duties under or in relation to this Act or the regulations.

Note: A defendant bears an evidential burden in relation to the matters in subsection (1): see subsection 13.3(3) of the *Criminal Code*.

*Disclosure of publicly available information*

- (2) Subsection 70-35(1) does not apply if the information was already available to the public (otherwise than as a result of a contravention of subsection 70-35(1) or 70-45(1)).

Note: A defendant bears an evidential burden in relation to the matters in subsection (2): see subsection 13.3(3) of the *Criminal Code*.

- (3) Subsection 70-35(1) does not apply if the record or disclosure is to the Commissioner and is for the purpose of administering a \*taxation law.

Note: A defendant bears an evidential burden in relation to the matters in subsection (3): see subsection 13.3(3) of the *Criminal Code*.

*Disclosures to the Australian Securities and Investments Commission*

- (3A) Subsection 70-35(1) does not apply if the record or disclosure is to the Australian Securities and Investments Commission for the purpose of the Commission performing any of its functions or exercising any of its powers.

Note: A defendant bears an evidential burden in relation to the matters in subsection (3A): see subsection 13.3(3) of the *Criminal Code*.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 90-1.

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*Disclosure in relation to serious offences and proceeds of crime orders*

- (4) Subsection 70-35(1) does not apply if:
- (a) the record is made for, or the disclosure is to, an \*authorised law enforcement agency officer; and
  - (b) the record or disclosure is for the purpose of:
    - (i) investigating a \*serious offence; or
    - (ii) enforcing a law, the contravention of which is a serious offence; or
    - (iii) the making, or proposed or possible making, of a \*proceeds of crime order.

Note: A defendant bears an evidential burden in relation to the matters in subsection (4): see subsection 13.3(3) of the *Criminal Code*.

**70-45 On-disclosure of official information**

*Offence—on-disclosure of information*

- (1) A person commits an offence if:
- (a) the person:
    - (i) makes a record of information; or
    - (ii) discloses information to another person (other than a person to whom the information relates or the person's \*agent in relation to the information) or to a court or tribunal; and
  - (b) the information was acquired by the first-mentioned person under an exception in section 70-40 or in this section; and
  - (c) the first-mentioned person did not acquire the information in the course of, or because of, his or her duties under or in relation to this Act or the regulations.

Penalty: Imprisonment for 2 years.

*Consent is not a defence*

- (2) It is not a defence to a prosecution for an offence against subsection (1) that the entity to whom the information relates has consented to:

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 90-1.

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Section 70-50

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- (a) the making of the record; or
- (b) the disclosure of the information.

*Exceptions*

- (3) Subsection (1) does not apply if the information was already available to the public (otherwise than as a result of a contravention of subsection (1) or 70-35(1)).

Note: A defendant bears an evidential burden in relation to the matters in subsection (3): see subsection 13.3(3) of the *Criminal Code*.

- (4) Subsection (1) does not apply if:
  - (a) the information was originally disclosed under an exception in section 70-40 for a purpose specified in that exception (the *original purpose*); and
  - (b) the information was acquired by the person under this section or an exception in section 70-40; and
  - (c) the record or disclosure is made by the person for the original purpose, or in connection with the original purpose.

Note: A defendant bears an evidential burden in relation to the matters in subsection (4): see subsection 13.3(3) of the *Criminal Code*.

- (5) Without limiting subsection (4), a record or disclosure is made by the person in connection with the original purpose if the record or disclosure is for purposes of criminal, civil or administrative proceedings (including merits review or judicial review) that are related to the original purpose.

*Limit on on-disclosure to courts or tribunals*

- (6) A person is not to be required to disclose to a court or tribunal information that was acquired by the person under this section, except if it is necessary to do so for the purpose of carrying into effect the provisions of this Act or the regulations.

**70-50 Legal professional privilege**

This Act does not affect the law relating to legal professional privilege.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 90-1.

**70-55 Regulations**

- (1) The Governor-General may make regulations prescribing matters:
  - (a) required or permitted by this Act to be prescribed; or
  - (b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.
- (2) In particular, regulations may be made in relation to transitional matters relating to the enactment of this Act and the repeal of Part VIIA of the *Income Tax Assessment Act 1936*.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 90-1.

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## Part 8—Interpretation

### Division 80—Rules for interpreting this Act

#### Table of sections

80-1	What forms part of this Act
80-2	What does not form part of this Act
80-5	The role of Guides in interpreting this Act

#### 80-1 What forms part of this Act

- (1) These all form part of this Act:
  - (a) the headings to the Parts, Divisions and Subdivisions of this Act;
  - (b) \*Guides;
  - (c) the headings to the sections and subsections of this Act;
  - (d) the notes and examples (however described) that follow provisions of this Act.
- (2) The asterisks used to identify defined terms form part of this Act. However, if a term is not identified by an asterisk, disregard that fact in deciding whether or not to apply to that term a definition or other interpretation provision.

#### 80-2 What does not form part of this Act

Tables of Subdivisions and tables of sections do not form part of this Act.

#### 80-5 The role of Guides in interpreting this Act

- (1) A **Guide** consists of sections under a heading indicating that what follows is a Guide to a particular Subdivision, Division etc.
- (2) A **Guide** forms part of this Act, but is kept separate from operative provisions. In interpreting an operative provision, a Guide may only be considered:

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 90-1.

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- (a) in determining the purpose or object underlying the provision; or
- (b) to confirm that the provision's meaning is the ordinary meaning conveyed by its text, taking into account its context in the Act and the purpose or object underlying the provision; or
- (c) in determining the provision's meaning if the provision is ambiguous or obscure; or
- (d) in determining the provision's meaning if the ordinary meaning conveyed by its text, taking into account its context in the Act and the purpose or object underlying the provision, leads to a result that is manifestly absurd or is unreasonable.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 90-1.

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## Division 90—Dictionary

### Table of sections

90-1	Dictionary
90-5	Meaning of <i>tax agent service</i>
90-10	Meaning of <i>BAS service</i>
90-15	Meaning of <i>tax (financial) advice service</i>

### 90-1 Dictionary

(1) In this Act:

***BAS service*** has the meaning given by section 90-10.

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

***Board member*** means a member of the Board appointed in accordance with section 60-25 (including the Chair).

***Chair*** means the Chair of the Board.

***Code of Professional Conduct*** means the Code of Professional Conduct set out in section 30-10.

***committee*** means a committee established under section 60-85.

***evidential burden***, in relation to a matter, means the burden of adducing or pointing to evidence that suggests a reasonable possibility that the matter exists or does not exist.

***Federal Court*** means the Federal Court of Australia.

***financial services licensee*** has the same meaning as in Chapter 7 of the *Corporations Act 2001*.

***Guide*** has the meaning given by section 80-5.

***official information*** means information that:

- (a) was disclosed or obtained under or for the purposes of this Act; and
- (b) relates to the affairs of a person; and

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 90-1.

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- (c) identifies, or is reasonably capable of being used to identify, the person.

**registered BAS agent** means an entity that is registered under this Act as a registered BAS agent.

Note: In most cases, an entity is taken not to be a registered BAS agent if the entity is suspended from providing BAS services under section 30-25.

**registered tax agent** means an entity that is registered under this Act as a registered tax agent.

Note: In most cases, an entity is taken not to be a registered tax agent if the entity is suspended from providing tax agent services under section 30-25.

**registered tax agent, BAS agent or tax (financial) adviser** means an entity that is registered under this Act as a registered tax agent, a registered BAS agent or a registered tax (financial) adviser.

**registered tax agent or BAS agent** means an entity that is registered under this Act as a registered tax agent or a registered BAS agent.

**registered tax agents and BAS agents** means entities that are registered under this Act as registered tax agents and entities that are registered under this Act as registered BAS agents.

**registered tax agents, BAS agents and tax (financial) advisers** means the following:

- (a) entities that are registered under this Act as registered tax agents;
- (b) entities that are registered under this Act as registered BAS agents;
- (c) entities that are registered under this Act as registered tax (financial) advisers.

**registered tax (financial) adviser** means an entity that is registered under this Act as a registered tax (financial) adviser.

Note: In most cases, an entity is taken not to be a registered tax (financial) adviser if the entity is suspended from providing tax (financial) advice services under section 30-25.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 90-1.

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**representative** has the meaning given by paragraph (a) of the definition of that expression in section 910A of the *Corporations Act 2001*.

**serious taxation offence** means:

- (a) an offence against section 134.1, 134.2, 135.1, 135.2 or 135.4 of the *Criminal Code*, if the offence relates to a tax liability (within the meaning of the *Taxation Administration Act 1953*); or
- (b) a \*taxation offence that is punishable on conviction by a fine exceeding 40 penalty units, or imprisonment, or both.

**tax agent service** has the meaning given by section 90-5.

**taxation offence** has the meaning given by section 8A of the *Taxation Administration Act 1953*.

**tax (financial) advice service** has the meaning given by section 90-15.

**tax practitioner registration requirements** means the matters about which the Board must, under Subdivision 20-A, be satisfied before the Board is obliged to grant an application for registration under this Act.

- (2) An expression has the same meaning in this Act as in the *Income Tax Assessment Act 1997* (other than the expression “this Act”).

### 90-5 Meaning of *tax agent service*

- (1) A **tax agent service** is any service:
  - (a) that relates to:
    - (i) ascertaining liabilities, obligations or entitlements of an entity that arise, or could arise, under a \*taxation law; or
    - (ii) advising an entity about liabilities, obligations or entitlements of the entity or another entity that arise, or could arise, under a taxation law; or
    - (iii) representing an entity in their dealings with the Commissioner; and

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 90-1.

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- (b) that is provided in circumstances where the entity can reasonably be expected to rely on the service for either or both of the following purposes:
  - (i) to satisfy liabilities or obligations that arise, or could arise, under a taxation law;
  - (ii) to claim entitlements that arise, or could arise, under a taxation law.
- (2) A service specified in the regulations for the purposes of this subsection is not a **tax agent service**.

Note: For specification by class, see subsection 13(3) of the *Legislative Instruments Act 2003*.

### 90-10 Meaning of **BAS service**

- (1) A **BAS service** is a \*tax agent service:
  - (a) that relates to:
    - (i) ascertaining liabilities, obligations or entitlements of an entity that arise, or could arise, under a \*BAS provision; or
    - (ii) advising an entity about liabilities, obligations or entitlements of the entity or another entity that arise, or could arise, under a BAS provision; or
    - (iii) representing an entity in their dealings with the Commissioner in relation to a BAS provision; and
  - (b) that is provided in circumstances where the entity can reasonably be expected to rely on the service for either or both of the following purposes:
    - (i) to satisfy liabilities or obligations that arise, or could arise, under a BAS provision;
    - (ii) to claim entitlements that arise, or could arise, under a BAS provision.
- (1A) The Board may, by legislative instrument, specify that another service is a **BAS service**.
- (2) A service specified in the regulations for the purposes of this subsection is not a **BAS service**.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 90-1.

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Note: For specification by class, see subsection 13(3) of the *Legislative Instruments Act 2003*.

**90-15 Meaning of *tax (financial) advice service***

- (1) A ***tax (financial) advice service*** is a \*tax agent service (other than within the meaning of subparagraph (1)(a)(iii) of the definition of that expression) provided by a \*financial services licensee or a \*representative of a financial services licensee in the course of giving advice of a kind usually given by a financial services licensee or a representative of a financial services licensee to the extent that:
  - (a) the service relates to:
    - (i) ascertaining liabilities, obligations or entitlements of an entity that arise, or could arise, under a \*taxation law; or
    - (ii) advising an entity about liabilities, obligations or entitlements of the entity or another entity that arise, or could arise, under a taxation law; and
  - (b) the service is provided in circumstances where the entity can reasonably be expected to rely on the service for either or both of the following purposes:
    - (i) to satisfy liabilities or obligations that arise, or could arise, under a taxation law;
    - (ii) to claim entitlements that arise, or could arise, under a taxation law.
- (2) The Board may, by legislative instrument, specify that another service is a ***tax (financial) advice service***.
- (3) However, a service is not a ***tax (financial) advice service*** if:
  - (a) it consists of preparing a return or a statement in the nature of a return; or
  - (b) it is specified in the regulations for the purposes of this paragraph.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 90-1.

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## Endnotes

### Endnote 1—About the endnotes

The endnotes provide details of the history of this legislation and its provisions. The following endnotes are included in each compilation:

- Endnote 1—About the endnotes
- Endnote 2—Abbreviation key
- Endnote 3—Legislation history
- Endnote 4—Amendment history
- Endnote 5—Uncommenced amendments
- Endnote 6—Modifications
- Endnote 7—Misdescribed amendments
- Endnote 8—Miscellaneous

If there is no information under a particular endnote, the word “none” will appear in square brackets after the endnote heading.

### Abbreviation key—Endnote 2

The abbreviation key in this endnote sets out abbreviations that may be used in the endnotes.

### Legislation history and amendment history—Endnotes 3 and 4

Amending laws are annotated in the legislation history and amendment history.

The legislation history in endnote 3 provides information about each law that has amended the compiled law. The information includes commencement information for amending laws and details of application, saving or transitional provisions that are not included in this compilation.

The amendment history in endnote 4 provides information about amendments at the provision level. It also includes information about any provisions that have expired or otherwise ceased to have effect in accordance with a provision of the compiled law.

### Uncommenced amendments—Endnote 5

The effect of uncommenced amendments is not reflected in the text of the compiled law, but the text of the amendments is included in endnote 5.

## Endnotes

Endnote 1—About the endnotes

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### **Modifications—Endnote 6**

If the compiled law is affected by a modification that is in force, details of the modification are included in endnote 6.

### **Misdescribed amendments—Endnote 7**

An amendment is a misdescribed amendment if the effect of the amendment cannot be incorporated into the text of the compilation. Any misdescribed amendment is included in endnote 7.

### **Miscellaneous—Endnote 8**

Endnote 8 includes any additional information that may be helpful for a reader of the compilation.



**Endnote 2—Abbreviation key**

ad = added or inserted	pres = present
am = amended	prev = previous
c = clause(s)	(prev) = previously
Ch = Chapter(s)	Pt = Part(s)
def = definition(s)	r = regulation(s)/rule(s)
Dict = Dictionary	Reg = Regulation/Regulations
disallowed = disallowed by Parliament	reloc = relocated
Div = Division(s)	renum = renumbered
exp = expired or ceased to have effect	rep = repealed
hdg = heading(s)	rs = repealed and substituted
LI = Legislative Instrument	s = section(s)
LIA = <i>Legislative Instruments Act 2003</i>	Sch = Schedule(s)
mod = modified/modification	Sdiv = Subdivision(s)
No = Number(s)	SLI = Select Legislative Instrument
o = order(s)	SR = Statutory Rules
Ord = Ordinance	Sub-Ch = Sub-Chapter(s)
orig = original	SubPt = Subpart(s)
par = paragraph(s)/subparagraph(s) /sub subparagraph(s)	

## Endnotes

### Endnote 3—Legislation history

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#### Endnote 3—Legislation history

Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
Tax Agent Services Act 2009	13, 2009	26 Mar 2009	ss. 20–1 to 50–45, 60–95 to 70–20, 70–50 and 70–55: 1 Mar 2010 ( <i>see</i> F2009L04314) Remainder: Royal Assent	
Tax Agent Services (Transitional Provisions and Consequential Amendments) Act 2009	114, 2009	16 Nov 2009	Schedule 1 (items 27–30): 1 Mar 2010 ( <i>see</i> s. 2(1)) Schedule 2: (a)	Sch. 2
Tax Laws Amendment (Confidentiality of Taxpayer Information) Act 2010	145, 2010	16 Dec 2010	Schedule 2 (items 92–95, 123(1)): 17 Dec 2010	Sch. 2 (item 123(1))
Acts Interpretation Amendment Act 2011	46, 2011	27 June 2011	Schedule 2 (items 1107, 1108) and Schedule 3 (items 10, 11): 27 Dec 2011	Sch. 3 (items 10, 11)
Tax Laws Amendment (2013 Measures No. 3) Act 2013	120, 2013	29 June 2013	Sch 1 (items 1–9, 11–43, 48–50): 1 July 2014 (s 2(1) items 2, 4, 6) Sch 1 (item 10): 1 Jan 2016 (s 2(1) item 5 and Endnote 5) Sch 2: 30 June 2013 (s 2(1) item 7)	Sch 1 (items 48–50) and Sch 2 (items 28, 29)
Statute Law Revision Act (No. 1) 2014	31, 2014	27 May 2014	Sch 8 (item 41): 24 June 2014 (s 2(1) item 9)	—

(a) Subsection 2(1) (item 4) of the *Tax Agent Services (Transitional Provisions and Consequential Amendments) Act 2009* provides as follows:

## Endnote 3—Legislation history

- (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

<b>Commencement information</b>		
<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
<b>Provision(s)</b>	<b>Commencement</b>	<b>Date/Details</b>
4. Schedule 2	Immediately after the commencement of Part 2 of the <i>Tax Agent Services Act 2009</i> .	1 March 2010

## Endnotes

### Endnote 4—Amendment history

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### Endnote 4—Amendment history

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<b>Provision affected</b>	<b>How affected</b>
<b>Pt 1</b>	
<b>Div 2</b>	
<b>Sdiv 2-A</b>	
s 2-5 .....	am No 120, 2013
<b>Pt 2</b>	
<b>Div 20</b>	
s 20-1 .....	am No 120, 2013
<b>Sdiv 20-A</b>	
hdg to s 20-5 .....	am No 120, 2013
s 20-5 .....	am No 114, 2009; No 120, 2013
s 20-10 .....	am No 120, 2013
<b>Sdiv 20-B</b>	
s 20-25 .....	am No 120, 2013
s 20-30 .....	am No 120, 2013
s 20-40 .....	am No 120, 2013
s 20-45 .....	am No 120, 2013
<b>Pt 3</b>	
<b>Div 30</b>	
s 30-1 .....	am No 120, 2013
<b>Sdiv 30-A</b>	
s 30-5 .....	am No 120, 2013
s 30-10 .....	am No 120, 2013
<b>Sdiv 30-B</b>	
s 30-20 .....	am No 120, 2013
s 30-25 .....	am No 120, 2013
<b>Sdiv 30-C</b>	
s 30-35 .....	am No 120, 2013
<b>Pt 4</b>	
<b>Div 40</b>	
<b>Sdiv 40-A</b>	

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## Endnote 4—Amendment history

<b>Provision affected</b>	<b>How affected</b>
s 40-5.....	am No 120, 2013
s 40-10.....	am No 120, 2013
s 40-15.....	am No 120, 2013
<b>Sdiv 40-B</b>	
s 40-20.....	am No 120, 2013
<b>Pt 5</b>	
<b>Div 50</b>	
s 50-1.....	am No 120, 2013
<b>Sdiv 50-A</b>	
s 50-5.....	am No 120, 2013
s 50-10.....	am No 120, 2013
hdg to s 50-15.....	am No 120, 2013
s 50-15.....	am No 120, 2013
<b>Sdiv 50-B</b>	
s 50-25.....	am No 120, 2013
s 50-30.....	am No 114, 2009; No 120, 2013
<b>Pt 6</b>	
<b>Div 60</b>	
s 60-1.....	am No 120, 2013
<b>Sdiv 60-A</b>	
s 60-15.....	am No 120, 2013
<b>Sdiv 60-B</b>	
s 60-25.....	am No 120, 2013
Note to s. 60-30.....	am No 46, 2011
s 60-67.....	ad No 120, 2013
<b>Sdiv 60-E</b>	
s 60-125.....	am No 120, 2013
<b>Sdiv 60-F</b>	
s 60-130.....	am No 145, 2010
s 60-135.....	am No 120, 2013
s 60-140.....	am No 120, 2013
<b>Pt 7</b>	

## Endnotes

### Endnote 4—Amendment history

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<b>Provision affected</b>	<b>How affected</b>
<b>Div 70</b>	
<b>Sdiv 70-B</b>	
s 70-10.....	am No 120, 2013
<b>Sdiv 70-D</b>	
s 70-30.....	am No 120, 2013
<b>Sdiv 70-E</b>	
s 70-35.....	rs No 145, 2010
s 70-40.....	am No 114, 2009
	rs No 145, 2010
	am No 120, 2013
s 70-45.....	rs No 145, 2010
<b>Pt 8</b>	
<b>Div 80</b>	
s 80-2.....	ad No 46, 2011
<b>Div 90</b>	
s 90-1.....	am No 145, 2010; No 120, 2013; No 31, 2014
s 90-10.....	am No 120, 2013
s 90-15.....	ad No 120, 2013

**Endnote 5—Uncommenced amendments**

**Tax Laws Amendment (2013 Measures No. 3) Act 2013 (No 120, 2013)**

**Sch 1**

**10 Subsection 20-20(1)**

Omit “or BAS agent”, substitute “, BAS agent or tax (financial) adviser”.

**Endnotes**

Endnote 6—Modifications [none]

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**Endnote 6—Modifications [none]**

**Endnote 7—Misdescribed amendments [none]**

**Endnote 8—Miscellaneous [none]**