



## BAS AGENTS - REGISTRATION DURING TRANSITIONAL PERIOD

Please note that this document is intended as a guide only and contains a non-exhaustive explanation of the special rules surrounding registration of BAS agents during the transitional period under the new Tax Agent Services regulatory regime.

**NOTE:** In this fact sheet references to:

- '**New law**' means the *Tax Agent Services Act 2009*, the draft *Tax Agent Services Regulations 2009* and the *Tax Agent Services (Transitional Provisions and Consequential Amendments) Bill 2009*; and
- '**Old law**' means Part VIIA of the *Income Tax Assessment Act 1936* and Part 9 of the *Income Tax Regulations 1936*.

### WHAT IS THE NEW LAW?

- *Tax Agent Services Act 2009* (TASA 2009).
  - The TASA 2009 is the main Act and establishes the Tax Practitioners Board (Board) and provides for the registration of tax agents and BAS agents.
- *Tax Agent Services Regulations 2009* (TAS Regulations 2009) (Currently in draft form).
  - Contains, amongst other things, the qualifications and relevant experience requirements for registration.
- *Tax Agent Services (Transitional and Consequential Amendments) Bill 2009* (Transitional Bill) (Currently before Parliament).
  - Deals with the consequential and transitional matters arising from the enactment of the TASA 2009.

Previously, tax agents and nominees of tax agents were registered by their respective State Tax Agents' Board under Part VIIA of the *Income Tax Assessment Act 1936*. BAS agents were not required to be registered under this regime.

The Tax Practitioners Board (Board) will replace the current State-based Tax Agents' Boards. Under the new law, entities wishing to provide 'BAS services' for a fee will need to be registered.

There are transitional arrangements to allow for the registration of *certain* individuals and entities as BAS agents under the new regulatory regime. These are explained in more detail below.



## WHO MUST REGISTER?

You must be registered as a BAS agent or a tax agent to provide a “BAS service” for a fee.

A “BAS service” is a ‘tax agent service’ that relates to:

- ascertaining liabilities, obligations or entitlements of an entity that arise, or could arise, under a ‘BAS provision’; or
- advising an entity about liabilities, obligations or entitlements of the entity or another entity that arise, or could arise, under a BAS provision; or
- representing an entity in their dealings with the Commissioner of Taxation in relation to a BAS provision; and

that is provided in circumstances where the entity can reasonably be expected to rely on the service for the purpose of satisfying liabilities or obligations that arise, or could arise, under a BAS provision and/or to claim entitlements that arise, or could arise, under a BAS provision.

‘BAS provision’ means:

- the collection and recovery of tax provisions in Part VII to the Fringe Benefits Tax Assessment Act 1986;
- the indirect tax law (that is, GST law, the wine tax law, the luxury car tax law, or the fuel tax law);
- the pay as you go withholding and instalments provisions in Part 2-5 and 2-10 of Schedule 1 to the Taxation Administration Act 1953.

A list of indicative BAS services can be found in *Appendix A* **attached** to this fact sheet.

## WHO IS NOT REQUIRED TO REGISTER?

You are not required to register as a BAS agent if:

- you are an employee who is providing BAS services to your employer; or
- you are registered as a tax agent; or
- you are a customs broker licensed under Part XI of the Customs Act 1901 and the BAS service relates to imports or exports to which an indirect tax law applies; or
- you are permitted to provide the BAS service as a legal service under a state or territory law that regulates legal practice and the provision of legal services, and you provide the BAS service in the course of acting for a trust or deceased estate as trustee or legal personal representative; or
- you are permitted to provide the BAS service as a legal service under a state or territory law that regulates legal practice and the provision of legal services, and the BAS service does not involve the preparation or lodgement of a return or a return-like statement such as a BAS, instalment activity statement, superannuation guarantee statement or pay as you go withholding payment summary statement.



## WHAT IF YOU DO NOT REGISTER?

You may contravene a civil penalty provision if you are unregistered and provide BAS services for a fee or other reward.

You may also contravene a civil penalty provision if you are unregistered and you:

- advertise that you will provide BAS services; or
- represent yourself as a registered BAS agent.

Civil penalties of up to \$27,500 for an individual may apply under the civil penalty provisions of the *Tax Agent Services Act 2009*.

## HOW DO YOU REGISTER?

There are three ways in which you may obtain registration as a BAS agent upon commencement of the new law:

- (i) Applying for BAS agent registration under the TASA 2009;
- (ii) Notifying the Board under the Transitional Bill; or
- (iii) Applying for BAS agent registration in connection with the Transitional Bill.

An explanation of each of these is provided below.

## APPLYING FOR BAS AGENT REGISTRATION UNDER THE TASA 2009

You may obtain registration as a BAS agent by applying for registration under the TASA 2009. You should use this method if you meet all of the requirements for registration prescribed by section 20-5 of the TASA 2009.

### (i) NOTIFYING THE BOARD UNDER THE TRANSITIONAL BILL

Under the transitional arrangements of the new law, certain individuals and entities providing BAS services immediately before commencement of the new law may obtain registration as a BAS agent by notifying the Board in the approved form.

The purpose of this arrangement is to ensure that unregistered individuals and entities that were legally providing BAS services before commencement of the new law are able to transition into the new law under the *Tax Agent Services Act 2009*.



## WHAT ARE THE REQUIREMENTS FOR REGISTRATION?

You may obtain registration as a BAS agent by notifying the Board under the Transitional Bill if you are an individual and you meet all of the following requirements:

- you were, immediately before commencement of the new law, an 'exempt person' providing a 'BAS service' within the meaning of the old law (see Appendix B); and
- you notify the Board in the approved form, within 6 months of commencement of the new law, that you satisfy the above requirement.

Alternatively, you may obtain registration as a BAS agent by notifying the Board under the Transitional Bill if you are an entity (that is, a person, partnership or company), and you meet all of the following requirements:

- you were not an 'exempt person' providing a 'BAS service' within the meaning of the old law;
- you were, immediately before commencement of the new law, providing a 'BAS service' within the meaning of the new law (other than a 'BAS service' within the meaning of the old law); and
- you notify the Board in the approved form, within six months of commencement of the new law, that you satisfy the above two requirements.

**'Exempt person'** means:

- a member (except a student member or retired member) of a recognised professional association; or
- a bookkeeper working under the direction of a registered tax agent; or
- a person who provides payroll services to an employer.

## HOW DO YOU NOTIFY THE BOARD IN THE APPROVED FORM?

If you meet either one of the set of requirements for registration set out above and you wish to obtain registration as a BAS agent, you must notify the Board in the approved form within 6 months of commencement of the new law.

## WHAT HAPPENS ONCE YOU NOTIFY THE BOARD IN THE APPROVED FORM?

If you meet either one the set of requirements for registration set out above and you notify the Board in the approved form within the required timeframe, you will be taken to be a registered BAS agent for a period of 2 years beginning immediately after commencement of the new law.



If you are taken to be a registered BAS agent under this transitional arrangement, the Board may:

- impose conditions upon your registration; and/or
- require you to maintain professional indemnity insurance.

You will also be subject to the provisions of the new law, including the Code of Professional Conduct and civil penalty provisions.

If you wish to continue to be a registered BAS agent after your initial 2 year period of registration expires, you will need to lodge an application for renewal of registration under the new law. In order to have your registration renewed, you will need to meet all of the relevant requirements set out in section 20-5 of the TASA 2009.

**NOTE:** If you are eligible for registration under this transitional arrangement and you are also eligible for registration under the arrangement in (iii), please refer to the special rules detailed below.

## (ii) APPLYING FOR BAS AGENT REGISTRATION IN CONNECTION WITH THE TRANSITIONAL BILL

Under the transitional arrangements of the new law, certain entities may apply for registration as a BAS agent despite not meeting the qualifications and relevant experience requirements for registration.

This arrangement allows entities that are currently unregistered, but have been providing BAS services to a competent standard, to apply to be transitioned into the new law under the *Tax Agent Services Act 2009*.

## WHAT ARE THE REQUIREMENTS FOR REGISTRATION?

You are eligible for registration as a BAS agent under this transitional arrangement if you meet all of the following requirements:

- (a) you apply for registration in the approved form within 3 years of commencement of the new law;
- (b) if you are an individual:
  - you are aged 18 years or more and you are a fit and proper person;



- (c) if you are a partnership:
- each partner who is an individual is aged 18 years or more and is a fit and proper person; and
  - if a company is a partner, each director of the company is a fit and proper person, the company is not under external administration, and the company has not been convicted of a serious taxation offence or an offence involving fraud or dishonesty during the previous 5 years;
- (d) if you are a company:
- each director of the company is a fit and proper person, the company is not under external administration, and the company has not been convicted of a serious taxation offence or an offence involving fraud or dishonesty during the previous 5 years; and
- (e) you satisfy the Board that you have been providing BAS services to a competent standard for a reasonable period before making your application.

## WHAT HAPPENS IF YOU MEET THE REQUIREMENTS?

If you meet all of the requirements for registration set out above (which includes lodging an application in the approved form, the Board will grant your application for registration as a BAS agent for a period of at least 3 years.

If you are granted registration as a BAS agent under this transitional arrangement, the Board may:

- impose conditions upon your registration; and/or
- require you to maintain professional indemnity insurance.

You will also be subject to the provisions of the new law, including the Code of Professional Conduct and civil penalty provisions.

If you wish to continue to be a registered BAS agent after your initial period of registration expires, you will need to lodge an application for renewal of registration under the new law. In order to have your registration renewed, you will need to meet all of the relevant requirements set out in section 20-5 of the TASA 2009.



## **(iii) WHAT HAPPENS IF YOU MEET THE REQUIREMENTS FOR REGISTRATION UNDER (ii) and (iii) ABOVE?**

If you meet the requirements for registration as a BAS agent under the transitional arrangements described in (ii) and (iii) above, you could potentially obtain registration under the transitional arrangements for up to 5 years without having to meet certain registration requirements.

To overcome this, the Transitional Bill provides that if:

- you have already been registered as a BAS agent under the transitional arrangements described in (ii) above; and
- you meet all of the requirements for registration under the transitional arrangements described in (iii) above;

then the Board will grant your application for registration as a BAS agent under (iii) for a period of at least 1 year, instead of at least 3 years.

This ensures that you have sufficient, but not excessive, time to obtain the necessary qualifications and/or experience in order to meet the requirements for registration under the new law at the time of renewal of registration.

## **NEED MORE INFORMATION?**

Further information will be released as it becomes available on the Tax Practitioners Board website at [www.tpb.gov.au](http://www.tpb.gov.au).



## APPENDIX A EXAMPLES OF 'BAS SERVICES' UNDER NEW LAW

The following table includes a non-exhaustive list of the types of services which, if provided for a fee or reward, may constitute a 'BAS service' under the new law.

Service	BAS service	Not a tax agent service or BAS service	Tax agent service only (cannot be provided by BAS agents)
Installing computer accounting software without determining default GST codes tailored to the client		X	
Installing computer accounting software and determining default GST codes tailored to the client	X		
Coding tax invoices and transferring data onto a computer program for clients	X		
Reconciling data entry to ascertain the figures to be included on a client's activity statement	X		
Filling in the activity statement on behalf of an entity or instructing the entity which figures to include	X		
Coding tax invoices and transferring data onto a computer program for clients under the instruction and supervision of a registered BAS agent		X	
Ascertaining or advising about the superannuation guarantee obligations for a client			X
General training in relation to the use of computerised accounting software		X	
Preparing bank reconciliations		X	
Entering data		X	
Ascertaining the withholding obligations for the employees' of your clients. This includes the preparation of payment summaries.	X		



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## APPENDIX B 'BAS SERVICE' UNDER THE OLD LAW

### What is a 'BAS service' under the old law?

A BAS service under the old law does not have the same meaning as a "BAS service" under the new law.

A **BAS service** under the old law means:

- preparing or lodging a form about a taxpayer's liabilities, obligations or entitlements under a BAS provision;
- giving advice about a BAS provision; or
- dealing with the Commissioner of Taxation or a person who is exercising powers or performing functions under a taxation law in relation to a BAS provision.

'BAS provision' means:

- the collection and recovery of tax provisions in Part VII to the *Fringe Benefits Tax Assessment Act 1986*;
- the indirect tax law (that is, GST law, the wine tax law, the luxury car tax law, or the fuel tax law);
- the pay as you go withholding and instalments provisions in Part 2-5 and 2-10 of Schedule 1 to the *Taxation Administration Act 1953*.