



Tax Agent Services Bill 2008

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Glossary

<i>Abbreviation</i>	<i>Definition</i>
AAT	Administrative Appeals Tribunal
ATO	Australian Taxation Office
BAS	Business Activity Statement
Board	Tax Practitioners Board
CGT	capital gains tax
Code	Code of Professional Conduct
Commissioner	Commissioner of Taxation
Corporations Act	<i>Corporations Act 2001</i>
Criminal Code	<i>Criminal Code Act 1995</i>
Federal Court	Federal Court of Australia
FBT	fringe benefits tax
FMA Act	<i>Financial Management and Accountability Act 1997</i>
GST	goods and services tax
ITAA 1936	<i>Income Tax Assessment Act 1936</i>
ITAA 1997	<i>Income Tax Assessment Act 1997</i>
TAA 1953	<i>Taxation Administration Act 1953</i>
TAS	Tax Agent Service
R&D	research and development
state Boards	state Tax Agents' Boards
the Minister	relevant Treasury Portfolio Minister

Tax Agent Services Bill 2008

Date introduced: 13 November 2008

House: House of Representatives

Portfolio: Treasury

Commencement: The Act commences on Royal Assent. The commencements of the various Parts of the Bill are indicated in the Main provision section of each Part.

Links: The [relevant links](#) to the Bill, Explanatory Memorandum and second reading speech can be accessed via BillsNet, which is at <http://www.aph.gov.au/bills/>. When Bills have been passed they can be found at ComLaw, which is at <http://www.comlaw.gov.au/>.

Purpose

The Bill will provide a new regulatory framework for providers of tax agent services (TASs) and the providers of services in relation to business activity statements (BASs). The object of the Bill is to ensure that these services are provided to the public in accordance with appropriate standards of professional and ethical conduct. These measures include:

- establishing a national Tax Practitioners Board (the Board) to register fit and proper persons with the appropriate qualifications and experience as registered tax agents or BAS agents,
- introducing a Code of Professional Conduct (the Code) to regulate the personal and professional conduct of a registered tax agent or BAS agent,
- providing for sanctions to be imposed by the Board for failure to comply with the Code,
- providing for termination of registration by the Board if a person ceases to meet the tax practitioner registration requirements,
- providing for civil penalties if an unregistered person provides tax agent services or BAS services for a fee, advertises that such services can be provided or makes representations that such services can be provided.

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Background

Brief outline of the current regime

Currently, the regime for the regulation of registered tax agents is provided for in Part VIIA of the *Income Tax Assessment Act 1936* (ITAA 1936) and Part 9 of the *Income Tax Regulations 1936*. This regime was introduced in 1943 to deal primarily with taxpayer services in relation to income tax law and, on the introduction of the GST from 1 July 2000, it was expanded to include the providers of BAS services.

A tax agent service is not defined in the current law but section 251L of Part VIIA states that unregistered tax agents must not charge a fee for certain services listed in subsection 251L(1). Subsection 251L(6) provides exceptions for providers of a BAS service, and certain specified unregistered individuals may provide a BAS service for a fee. Subsection 251L(7) defines BAS service and briefly includes the preparation or lodging of an approved form about a taxpayer under a BAS provision, or giving advice in relation thereto, or dealing with the Commissioner in relation to such a provision. Members of recognised professional associations can render BAS services through an entity under subsection 251L(9).

Barristers and solicitors are also exempted from the provisions of subsection 251L(1) and may charge a fee for certain services to taxpayers listed in subsection 251L(8).

Division 2 of Part VIIA currently provides for Tax Agent's Boards to be established in each State. These State Boards are responsible for the registration of tax agents in each State. The Regulation Impact Statement (RIS) states that the six State Boards are resourced individually (but each to the same level, regardless of relative workloads) by the Australian Taxation Office (ATO) through its annual appropriation. The State Boards have their own rules and procedures and make decisions independently of each other.¹

Need for reform

The RIS states that the need for reform is justified by deficiencies in the existing regulatory framework under three broad categories:

- Inconsistency in the regulation of agents (paragraphs 6.12 to 6.15 on pages 125 to 126 of the Explanatory Memorandum),
- Inadequacy of consumer protection (paragraphs 6.16 to 6.19 on pages 126 to 128 of the Explanatory Memorandum), and
- Threat to the integrity of the tax system (paragraphs 6.20 and 6.21 on page 128 of the Explanatory Memorandum).

1 Explanatory Memorandum to the Bill, Chapter 6, paragraph 6.40 on page 134.

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The impact of these deficiencies must be viewed against increasing taxpayer dependence on providers of tax agency services and BAS services since this regime for the regulation of tax agent services was enacted in 1943. Some of the events that increased taxpayer dependence on tax agents include the tax reforms of the 1980s which resulted in the introduction of the capital gains tax (CGT), the fringe benefits tax (FBT) and the self-assessment regime since 1986-87. This was followed by the tax reforms of the 1990s which included the introduction of the goods and services tax (GST) from 1 July 2000, again under the self-assessment regime.

The ATO [Compliance Program 2006-07](#) set out the impact of the services of tax practitioners on the integrity and efficiency of the tax system with data that illustrates the significant role of tax agents and BAS service providers.

Tax practitioners are tax professionals such as tax agents, tax advisers and legal practitioners who are legally authorised to provide advice to taxpayers, to otherwise deal with us on behalf of taxpayers, or to prepare and lodge documents for taxpayers. For the purposes of this booklet, tax practitioners also include bookkeepers who provide services to businesses.

Tax practitioners play an important role in maintaining the integrity and efficiency of the tax system, providing a key compliance leverage point to influence taxpayer behaviour. A capable and well regulated tax profession benefits the tax system.

There are almost 26,000 registered tax agents in Australia. Collectively, they lodge around 74% of income tax returns for individuals and over 95% of returns for businesses. Many agents also provide financial advice and/or act as independent auditors of self managed superannuation funds.

There are more than 120,000 people working in the bookkeeping industry in Australia. We estimate that around 10% to 15% of bookkeepers prepare and lodge business activity statements on behalf of clients.

Time line on attempts to reform tax agents services law

Attempts to reform the law in relation to the regulation of tax agents goes back to at least 1992. This was discussed by Mr Michael D'Ascenzo, the Commissioner of Taxation (the Chief Tax Counsel), in a [speech presented](#) to the Australian Society of Public Accountants at the Hilton Hotel, Sydney, on the 24 March 1995:

A national review of standards for the tax profession was undertaken by tax professionals, the Tax Agents' Board of NSW, the Attorney-General's department and the Australian Tax Office (ATO) following discussions in July 1992.

In November 1994 a report was subsequently issued which recommended a number of improvements to the regulation of tax agents.

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The Report of the National Review of Standards for the Tax Profession released on 2 November 1994 titled *Tax Services for the Public* was the genesis of the current reforms. A time line of the progress made thereafter is given in Attachment A to this Bills Digest and outlines the various steps taken since the publication of *Tax Services for the Public* to the introduction of this Bill.

Position of significant interest groups/press commentary

The Bill has generally been accepted by the taxation community, particularly because it has been such a long time coming. However, some concerns still have been expressed.

The Taxation Institute of Australia said in a [press release](#) on 14 November 2008:

Although the *Tax Agent Services Bill 2008* is the corner stone of the new regulatory regime, the Taxation Institute believes that we still don't have the full picture for this new regulatory regime.

According to the press release, the Institute's specific problems with the Bill centre around:

- Concerns about the potential for inconsistencies between the words of the legislation and the more pragmatic guidance material in the Explanatory Memorandum.
- The need for clarification as to when a tax agent can rely on information provided by a client and when the tax agent needs to seek confirmation of that information.
- Specific wording on the safe harbour measures. Details of these measures are not included in the Bill. However, the Explanatory Memorandum suggests that a client will not be protected from penalties if the relevant error is made by the tax agent other than carelessly (eg negligently or recklessly).

Important issues relating to the consequences of tax agents negligence, including the removal of the current statutory cause of action to recover a penalty, fine or interest charge from an agent, will be contained in the Tax Agent Services (Transitional Provisions and Consequential Amendments) Bill. **That Bill is expected to be introduced in early 2009.** Some detail regarding the proposed changes are however discussed in paragraphs 3.12-3.15 of the Explanatory Memorandum.

President of the Taxation Institute Sue Williamson was welcoming of the Bill and potential reform in a [press release](#) on 14 November 2008:

"This Bill is an important step forward in supporting a mature tax profession with an appropriate regulatory regime. It ensures that clients can use tax agents with greater comfort in knowing that their tax agent will be expected to meet education requirements and be required to comply with an acceptable code of conduct," Ms. Williamson said.

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Financial Planning Association CEO Jo-Anne Bloch also welcomed the Bill in a [press release](#) on 13 November 2008, especially since it resolved issues the association had with the exposure draft issued in May.

The Tax Agents Services Bill and the accompanying Explanatory Memorandum clarify that financial planners are not required to become registered tax agents to provide advice to consumers.

“A financial planner must take into account their client’s individual circumstances and financial position, including tax implications, in order to be able to provide adequate and appropriate advice which helps their client make informed financial decisions,” said Ms Bloch. “But this does not mean that financial planners are tax experts, nor Tax Agents, unless specifically qualified to perform such services.”

Financial implications

The Explanatory Memorandum to the Bill on page 4 sets out the financial impact as follows.

The revenue impact of the measure is as follows:

- It is expected that the impact of replacing criminal penalties with civil penalties will result in a small gain to revenue. This gain is not expected to exceed \$1 million over four years.
- There is expected to be a cost associated with the introduction of ‘safe harbour’ provisions which exempt taxpayers from administrative penalties in certain circumstances when they use a tax agent or BAS agent, however this cost is unquantifiable.

The ‘safe harbour’ provisions are not in this Bill. However, as stated in paragraph 1.24 on page 11 of the Explanatory Memorandum taxpayers who use a tax agent or BAS agent may be relieved from certain administrative penalties in certain circumstances.

Safe harbour from penalties

1.24 A taxpayer who uses a tax agent or BAS agent will benefit from a safe harbour from certain administrative penalties in certain circumstances. Penalties will no longer apply:

- where a false or misleading statement is made carelessly, provided the taxpayer has taken reasonable care to comply with their tax obligations by giving their tax agent or BAS agent the information necessary to make the statement; and
- where a document (such as a return, notice or statement) is not lodged on time in the approved form due to the tax agent’s or BAS agent’s carelessness, provided the taxpayer gave the agent the necessary

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information, in sufficient time, to lodge the document on time and in the approved form.

Main provisions

The Bill has eight Parts and the main provisions in each Part will be considered in this Bills Digest.

Part 1—Introduction

Division 1 of **Part 1** includes the commencement provisions of each Part in a table in **clause 1-5**.

Clause 1-15 provides that the proposed Tax Practitioners Board has the general administration of the Act, thus making the Board independent of the Commissioner of Taxation who has the general administration of taxation laws.

Division 2 of Part 1 provides an overview of the Act with **subdivision 2-A** stating the objects of the Act and **subdivision 2-B** providing a general guide to each Part. **Clause 2-5** of the Bill provides that 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 and that this object is to be achieved by (among other things):

- establishing a national Board to register tax agents and BAS agents; and
- introducing a Code of Professional Conduct for registered tax agents and BAS agents; and
- providing for sanctions to discipline registered tax agents and BAS agents.

Commencement

Item 1 in the table in **clause 1-5** provides that Part 1 will commence when the Act receives the Royal Assent. The commencement of Parts 2 to 8 will be considered when dealing with the main provisions of the respective parts.

Part 2—Registration

The requirements for registration as a tax agent or BAS agent are provided for in **clause 20-5** of **subdivision 20-A** of **Part 2** and is available to eligible individuals, partnerships and companies.

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Requirements for registration of individuals

Subclause 20-5(1) provides that an individual, aged 18 years or more, is eligible for registration as a registered tax agent or BAS agent if the Board is satisfied that:

- the individual is a fit and proper person; and
- the individual meets the requirements prescribed by the regulations.

Criteria for determining whether a person is a ‘fit and proper’ person are set out in **clause 20-15**.

Subparagraph 20-5(1)(b) also adds that the requirements prescribed by regulations may not be limited to requirements relating to qualifications and experience in respect of registration as a registered tax agent or BAS agent. It is only when the regulations are made that it will be clear what other requirements, apart from qualifications and experience, that may be prescribed for registration.

Note 1 to **subclause 20-5(1)** makes a reference to **subclause 70-15** whereby an individual in the capacity of a trustee of a trust can be registered as a tax agent or BAS agent.

Note 2 to **subclause 20-5(1)** makes a reference to **subclause 20-5(4)** which has a special rule about pre-1988 tax agents and nominees. This special rule is referred to below.

Requirements for registration of partnerships

Subclause 20-5(2) provides that a partnership is eligible for registration as a registered tax agent or BAS agent if the Board is satisfied that:

- each partner who is an individual is:
 - aged 18 years or more; and
 - a fit and proper person; and
- if a company is a partner:
 - each director of the company is a fit and proper person; and
 - 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
- the partnership has:
 - 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

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- 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.

Requirements for registration of companies

A company is eligible for registration as a registered tax agent or BAS agent if the Board is satisfied that:

- each director of the company is a fit and proper person; and
- 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
- the company has:
 - 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
 - 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.

A note to **subclause 20-5(3)** states that a company in the capacity of a trustee can be registered under **clause 70-15**.

Special rule about pre-1988 tax agents

Paragraph 20-5(4)(a) provides that individuals registered as tax agents or as nominees under Part VIIA of the ITAA 1936 as in force immediately before the commencement of item 12 of Schedule 1 to the *Tax Agents Services (Transitional Provisions and Consequential Amendments) Act 2008* would be entitled to be registered as a tax agent, regardless of whether they satisfied the qualifications, experience and other requirements prescribed by regulation under **paragraph 20-5(1)(b)**, if they were so registered at both of the following times:

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

Further, **paragraph 20-5(4)(b)** provides that the individual must be otherwise be eligible for registration as a registered tax agent.

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As the Tax Agent Services (Transitional Provisions and Consequential Amendments) Bill 2008 has not yet been introduced into Parliament it is not possible to ascertain the commencement time of item 12 of Schedule 1 of the *Tax Agent Services (Transitional Provisions and Consequential Amendments) Act 2008*.

Again, it will be necessary to await the regulations prescribed under **paragraph 20-5(1)(b)** to know what other conditions must be satisfied by an individual under **paragraph 20-5(4)(b)** to be otherwise eligible for registration as a registered tax agent.

Paragraph 2.22 on page 23 of the Explanatory Memorandum sheds some light on the operation of **clause 20-5(4)** as follows.

The Bill preserves the special registration criteria for individuals who were registered either as a tax agent or a nominee immediately before 1 November 1988 (pre-1988 tax agents or nominees). Pre-1988 tax agents or nominees who were also registered immediately before the commencement of all of the provisions of the Bill are eligible for registration without satisfying the prescribed qualifications and experience requirements under the Bill. The Board must register pre-1988 tax agents or nominees as tax agents provided that the Board is satisfied that they comply with other registration requirements.

Even this explanation would leave pre-1988 tax agents in a state of suspense as to what other requirements (other than qualifications and experience) might be prescribed by regulations. Further, it is unsatisfactory that the Tax Agent Services (Transitional Provisions and Consequential Amendments) Bill 2008 was not introduced at the same time as this Bill to let tax practitioners know the full scope of the requirements of registration under the new regime including the safe harbour provisions referred to in the Financial implications section of this Bills Digest.

Clause 20-10 states that regulations may provide for a system to allow the Board to accredit professional associations for the purpose of recognizing professional qualifications and experience that are relevant for the registration of individuals as registered tax agents and BAS agents.

Certain events may affect your continued registration

Clause 20-45, euphemistically titled as ‘events that may affect your registration’, that is events that *may* end your registration as a tax agent or BAS agent, are the following:

- conviction of a serious tax offence,
- conviction of an offence involving fraud or dishonesty,
- penalised for being a promoter of a tax exploitation scheme,
- penalised for implementing a scheme that is materially different from that described in the product ruling, but promoted on the basis of complying with the product ruling,

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- become an undischarged bankrupt or go into external administration,
- being sentenced to a term of imprisonment.

The grounds for termination of registration, including **clause 20-45** events, are listed in **Subdivision 40-A**.

Commencement

Item 2 of the table in **subclause 1-5(1)** provides that Part 2 will commence on a single day to be fixed by Proclamation.

Item 2 also states that this day must not occur before the *Tax Agent Services (Transitional Provisions and Consequential Amendments) Act 2008* receives the Royal Assent.

It adds, that if any of the provision(s) do not commence within the period of 9 months beginning on the day when the *Tax Agent Services (Transitional Provisions and Consequential Amendments) Act 2008* 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 the on which the provision(s) commence.

Part 3 – The Code of Professional Conduct

Overview and application of the Code of Professional conduct

The Code of Professional Conduct (the Code) is set out in **Division 30** of **Part 3** of the Bill.

The Guide to this Division in **Clause 30-1** states what this Division is about as follows.

The Code of Professional Conduct regulates your personal and professional conduct as a registered tax agent or BAS agent.

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.

Clause 30-5 provides that the Code applies to you if you are a registered tax agent or BAS agent.

Core principles and other responsibilities of the Code of Professional Conduct

Clause 30 -10 of Division 30 the Bill sets out the core principles and other responsibilities of the Code which are set out below. As is common in taxation law, the provisions are

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drafted in the second person (that is, using the personal pronoun 'you') and this phraseology is followed in this Bills Digest.

Honesty and integrity

Subclause 30-10(1), (2) and (3) respectively provide that:

- you must act honestly and with integrity,
- you must comply with the taxation laws in the conduct of your personal affairs, and
- if you receive money or other property from or on behalf of a client, and you hold the money or other property on trust, then you must account to your client for the money or other property.

Independence

Subclause (4) and (5) respectively provide:

- you must act lawfully in the best interests of your client,
- 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 or BAS agent.

Confidentiality

Subclause 30-10(6) provides that unless there is 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

Subclauses 30-10(7), (8), (9) and (10) respectively provide that:

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

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Other responsibilities

Subclauses (11), (12), (13) and (14) respectively provide that:

- you must not knowingly obstruct the proper administration of the taxation laws,
- 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,
- you must maintain the professional indemnity insurance that the Board requires you to maintain,
- you must respond to requests and directions from the Board in a timely, responsible and reasonable manner.

The reader is referred to paragraphs 3.21 to 3.69 on pages 52 to 64 of the Explanatory Memorandum for details, with examples, of the core principles of the Code and other responsibilities of registered tax agents and BAS agents.

Sanctions for failure to comply with the Code of Professional Conduct

The range of sanctions available to the Board for failure to comply with the Code is set out in **clause 30-15**, and includes:

- giving a written caution, or
- giving an order under **clause 30-20**, or
- suspending registration under **clause 30-25**, or
- terminating registration under **clause 30-30**.

The reader is referred to paragraphs 3.70 to 3.78 on pages 64 to 67 of the Explanatory Memorandum for details, with examples, of these administrative sanctions that may be imposed by the Board.

A decision by the Board to impose an administrative sanction of making an order under **clause 30-20**, suspending registration under **clause 30-25** or terminating registration under **clause 30-30** is a reviewable decision under **paragraphs 70-10(f), (g) and (e)** respectively. The affected tax registered tax agent or BAS agent may apply to the Administrative Appeals Tribunal (AAT) for a review.

Obligation to notify change of circumstances

Subclause 30-35(1) imposes an obligation on a registered tax agent or BAS agent to notify the Board in writing whenever you cease to meet one of the tax practitioner registration requirements or an event affecting your continued registration described in **clause 20-45**, occurs. Similar obligations are imposed under **subclauses 30-35(2) and (3)** respectively on partnerships and companies which are registered tax agents or BAS agents.

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Commencement

Item 2 in the table in **subclause 1-5(1)** provides that **Part 3** will commence on a single date to be fixed by Proclamation. Also see the comments on the commencement of Part 2 for the qualifications relating to this date which apply to **Part 3** as well.

Part 4 – Termination of registration

Division 40 of **Part 4** of the Bill deals with the termination of registration. The Guide to this Division in **clause 40-1** states that the registration of a registered tax agent or a BAS agent *may* be terminated by the Board if:

- an event occurs that affects their continued registration as set out in **clause 20-45** above,
- they cease to meet the tax practitioner registration requirements, or
- they breach a condition of registration.

Clause 40-5 of **Subdivision 40-A**, sets out the grounds on which the termination of an individual as a registered tax agent or BAS agent may take place, reflecting the grounds set out in the Guide. Similar provisions in respect of the termination of registered tax agents and BAS agents who are partnerships and companies are set out in **clause 40-10** and **clause 40-15** of **Subdivision 40-A**.

Paragraph 70-10(e) provides that a decision of the Board under **Subdivision 40-A** is a decision reviewable by the Administrative Appeals Tribunal (AAT).

If the registration is terminated, the Board may also determine a period during which you may not apply for registration under **clause 40-25** of **Subdivision 40-B** of **Part 4**. Under **subclause 40-25(1)** the period so determined by the Board should not be more than 5 years.

Subclause 40-25(2) provides that **subclause 40-25(1)** does not apply if the registration was terminated because you surrendered your registration or you became an undischarged bankrupt or you went into external administration. This means such a person can re-apply for registration at any time. Paragraphs 2.95 and 2.96 on page 45 of the Explanatory Memorandum state that these exceptions avoid the potentially unfair outcome where the termination is not related to the agent's character.

Commencement

Item 2 in the table in **subclause 1-5(1)** provides that **Part 4** will commence on Proclamation. Also see the comments on the commencement of Part 2 for the qualifications relating to this date of Proclamation which apply to **Part 4** as well.

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Part 5 – Civil penalties

There are two broad categories of civil penalties provided for under **Division 50** of **Part 5**. **Subdivision 50-A** deals with civil penalties for conduct that is prohibited by entities without registration. **Subdivision 50-B** deals with other civil penalties in relation to serious misconduct prohibited by entities that are registered. These are briefly referred to below.

Conduct that is prohibited without registration

Entities (including individuals) are liable to pay a pecuniary penalty under **subdivision 50-A** for engaging in the following conduct without registration:

- providing tax agent services for a fee or other reward if unregistered (**subclause 50-5(1)**),
- providing a BAS service for a fee or other award if unregistered as a tax agent or BAS agent (**subclause 50-5(2)**),
- advertising tax agent services if unregistered (**subclause 50-10(1)**),
- advertising BAS services if unregistered as a tax agent or BAS agent (**subclause 50-10(2)**),
- representing that you are a registered tax agent or BAS agent if unregistered (**clause 50-15**).

The reader is referred to paragraphs 4.26 to 4.44 on pages 75 to 81 of the Explanatory Memorandum for details, with examples, of the application of these civil penalty provisions. The maximum penalties range up to 250 penalty units (\$27 500) for individuals and 1250 penalty units (\$137 500) for corporations.

Serious misconduct prohibited while registered

Registered tax agents and BAS agents are liable to pay a pecuniary penalty under **Subdivision 50-B** for the following serious misconduct:

- making a false or misleading statements (**clause 50-20**),
- employing or using the services of deregistered entities (**clause 50-25**),
- signing of a declaration or other statement in certain circumstances (**clause 50-30**).

The reader is referred to paragraphs 4.45 to 4.58 on pages 81 to 86 of the Explanatory Memorandum for details, with examples, of the application of these civil penalty provisions. Similar maximum penalties apply as for **Subdivision 50-A**.

Obtaining an order for a civil penalty

The penalties under the Bill are imposed through a court order.

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Clause 50-35 of **Subdivision 50-C** provides that within 4 years after you contravene a civil penalty provision, the Board may apply to the Federal Court on behalf of the Commonwealth for an order that you pay the Commonwealth a pecuniary penalty. The Federal Court may order the person to pay an appropriate pecuniary penalty, but not more than the maximum amount specified for the provision.

The court only needs to be satisfied on the ‘balance of probabilities’ (as compared to the criminal standard of ‘beyond reasonable doubt’) of the contravention to make the order for a penalty.

If a partnership contravenes a civil penalty provision, **subclause 50-40(1)** provides that each partner in the partnership, at the time when the contravention took place, is taken to have contravened the civil penalty provision, unless the partner proves, on the balance of probabilities, that the partner:

- did not engage in the conduct, and
- did not aid, abet, counsel or procure the conduct, and
- was not in any way knowingly concerned in, or party to, the conduct.

If a partnership contravenes a civil penalty provision, **subclause 50-40(2)** provides that the civil penalty that may be imposed on each partner in the partnership:

- if the partner is an individual, must not exceed one-fifth of the maximum penalty that could be imposed on a body corporate for the same contravention, and
- in any other case, must not exceed the maximum penalty that may be imposed on a body corporate for the same contravention.

Subclause 70-5(1) provides that an injunction may be granted by the Federal Court, on the application of the Board, if the Federal Court is satisfied that a tax agent or BAS agent has engaged in the past or is proposing to engage in the future in conduct that would constitute a contravention of a civil penalty provision.

The reader is referred to paragraphs 4.59 to 4.76 on pages 86 to 89 of the Explanatory Memorandum for details, with examples, of the application of the provisions relating to obtaining an order for a civil penalty.

Commencement

Item 2 in the table in **subclause 1-5(1)** provides that **Part 5** will commence on Proclamation. Also see the comments on the Commencement of Part 2 for the qualifications relating to this date of Proclamation which apply to **Part 5** as well.

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Part 6 – The Tax Practitioners Board

An overview of the scheme of Part 6

Division 60 in **Part 6** of the Bill deals with the Tax Practitioners Board (the Board), which as mentioned earlier, has the general administration of the Act (**clause 1-10**).

- The provisions relating to the establishment, functions and powers of the Board are dealt with in **Subdivision 60-A**.
- The provisions relating to the appointment of Board members, their remuneration and allowances, disclosure of interest by Board members, their resignation and termination of appointment are included in **Subdivision 60-B**.
- The Board procedures in relation to its meetings, the taking of decisions without meetings and the administrative support of the Board by APS employees whose services are to be made available to the Board by the Commissioner of Taxation are dealt with in **Subdivision 60-C**.
- The power given to the Board to establish committees to assist the Board in the performance of its functions and the exercise of its powers, as well as the power to determine the remuneration of committee members are set out in **Subdivision 60-D**.
- The scope of the power given to the Board to undertake investigations in relation to applications for registration and whether conduct breaches this Act is set out in **Subdivision 60-E**. For the purpose of its investigation the Board is given power in **Subdivision 60-E** to request the production of a document or thing, the power to require witnesses to appear before the Board, the power to take evidence on oath or affirmation. The method of notification of decisions on the conclusion of investigations is also set out in Subdivision 60-E. More commentary on the investigatory powers is contained below.
- The public reporting obligations of the Board in relation to its annual report, the requirement to establish and maintain a register of tax agents and BAS agents and to make it available for inspection on the internet are all set out in Subdivision 60-F.

A detailed commentary on the measures in each Subdivision is beyond the scope of this Bills Digest and in the following paragraphs the commentary will be restricted to certain significant aspects of the functions, powers and obligations of the Board. The reader who requires a detailed commentary on the Board and its role is referred to Chapter 5 of the Explanatory Memorandum. References will be made in the following paragraphs to the paragraphs of the Explanatory Memorandum that give detailed explanations and examples.

Functions and appointment of the Board

The functions of the Board as set out in **clause 60-15** of **Subdivision 60-A** are:

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- to administer the system for the registration of registered tax agents and BAS agents , and
- to investigate applications for registration and conduct that may breach this Act, and
- to impose sanctions for non-compliance with the Code of Professional Conduct, and
- to issue, by legislative instrument, guidelines to assist the functions mentioned above, and
- to carry out such other functions as are conferred on the Board by this Act, the regulations and any other law of the Commonwealth, and
- to do anything incidental or conducive to the performance of its functions.

The Board is appointed by the Minister: **clause 60-25**. There are no eligibility requirements in terms of expertise or experience. However, Board members cannot hold any other office or appointment under Commonwealth law or be employed under the *Public Service Act 1999*. The Board is not subject to any direction by the Minister in performing its functions

A standard set of provisions on outside employment, disclosure of interest and termination of appointment apply. However, it is notable that **clause 60-65** states that the Minister may set written terms and conditions of appointment to the Board *additional* to those in the Act.

The investigatory powers of the Board

The Board may investigate applications for registration, any conduct that may breach the Act, or any other matter set out in regulations: **subclause 60-95(1)**. If the Board does intend to investigate a person or entity, it must advise them within two weeks of making the decision to investigate. In undertaking its investigation, the Board is not subject to the rules of evidence: **subclause 60-95(4)**.

For purpose of an investigation, the Board may require persons to produce documents, or appear before the Board to give evidence, including requiring the evidence to be under oath or affirmation: **clauses 60-100 – 60-110**. Amendments that are due to be introduced by the Tax Agent Services (Transitional Provisions and Consequential Amendments) Bill, will mean that failure by a person to comply with these provisions will potentially render them liable to a maximum penalty of 20 penalty units (\$2 200) – see sections 8C-8E of the **Taxation Administration Act 1953**.

Clause 60-115 deals with self-incrimination. It provides that an individual is *not* excused from providing information, evidence or documentation on the grounds of self-incrimination, or of exposure of the individual to a penalty. However, the information, evidence or documentation, *or anything obtained as a direct or indirect consequence* of the information, evidence or documentation provided cannot be used in evidence against the individual in *criminal* proceedings except for a prosecution for under the *Criminal*

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Code Act 1995 for failing to provide information, giving false or misleading information, obstruction of Commonwealth public officials, or under sections 8C-8E of the *Taxation Administration Act 1953*. Note that the information given could be used to criminally prosecute another party, and also it could also be used to suspend a person's registration etc.

Administrative support for the Board by the Commissioner of Taxation and issues relating to the independence of the Board

Clause 60-80 of **Subdivision 60-C** provides that the Board is to be assisted by APS employees whose services are made available to the Board by the Commissioner.

In the Second reading speech, emphasis was placed on the need to ensure the practical independence of the Board from the Commissioner of Taxation:

The Bill will establish an independent national Tax Practitioners Board to replace the existing state-based Tax Agent's Boards. The Board's key functions will be to register agents and to regulate the provision of tax agent services. The establishment of a single national Board will make the registration process consistent and standardise the way in which entities providing tax agent services are regulated across the country. It will also enable greater efficiency in the allocation and use of the Board's resources.

The Bill proposes to establish the Board as a statutory authority within the Australian Taxation Office. The Board's funding will be quarantined from the Tax Office's annual appropriation and its functions and powers under the Bill will be vested independently from the Commissioner of Taxation, thus providing all possible practical independence.

A formal post-implementation review of the proposed governance arrangements for the Board will be conducted in three years' time to assess whether the independence of the Board is impaired in any way because of its continued connection with the Tax Office, and whether an alternative arrangement should be considered.

The Explanatory Memorandum in paragraphs 5.29 to 5.33 on pages 96 and 97 set out the technicalities of the arrangements to fund the operations of the Board by means of a special account under section 20 of the *Financial Management and Accountability Act 1997* (the FMA Act) through the annual appropriations to the Australian Taxation Office (ATO).

5.29. The Board is a statutory authority that falls within the portfolio responsibilities of the Treasurer. It is not itself a prescribed agency under the *Financial Management and Accountability Act 1997* (FMA Act) and is not a body regulated by the *Commonwealth Authorities and Companies Act 1997* (ie, the Board is neither a prescribed FMA Act agency nor a Commonwealth Authorities and Companies Act body) but is formally part of the ATO, a prescribed FMA Act agency.

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- 5.30. To ensure that the Board has the requisite degree of independence from the ATO, it will be funded via a Special Account (under section 20 of the FMA Act) through the annual appropriation to the ATO. As such, the Board's annual appropriation will be quarantined within the ATO's funding. The Commissioner of Taxation (Commissioner) will provide resources to the Board within the limits of the Special Account.
- 5.31. In this way the Board will operate with decision-making independence from the ATO, but will rely on the ATO for administrative support. The Board will have available to it the resources necessary to perform its functions up to the amount of its Budget as determined by the Finance Minister. The exact nature of the service relationship and arrangements between the Board and the ATO will be determined through agreements between the two parties. Such agreements are likely to cover a number of issues including resourcing, technical support and legal support.
- 5.32. In the establishment phase, it is efficient for the Board to sit within the ATO, due to the administrative obligations that would otherwise apply to it as a separate agency and because the ATO provides the most appropriate functional fit for the Board from amongst existing prescribed FMA Act agencies.
- 5.33. However, this arrangement is intended to be the subject of a post-implementation review to be conducted three years after commencement of the Bill — refer to paragraph 6.71 in Chapter 6 of this explanatory memorandum. The key focus of the review will be to assess whether this arrangement remains appropriate and satisfactory. The review will consider whether the independence of the Board is impaired in any way because of its continued connection with the ATO, and whether an alternative arrangement should be considered.

It is not clear whether the Board will be free to draw up budgets for funding its operations and will have the resources to do so independently of the administrative structure in place in the ATO. To ensure the practical independence of the Board in its decision making it has to be well resourced. If resources are inadequate the main function of the Board that might be adversely affected will be the extent to which it may be able to exercise its powers of investigation into applications for registration and conduct which allegedly breaches the Act. The planned post-implementation review at the end of three years is therefore welcome, but it is noted that the review is *not* a statutory requirement.

The Regulation Impact Statement (RIS) adds in paragraph 6.72 on page 143 of the Explanatory Memorandum that in any case, the legislation will be reviewed under the government's 'five-yearly review requirements'. However, it provides no information on what these requirements actually are.

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Commencement

The following provisions of Part 6 commence, under **item 3** in the table in **subclause 1-5(1)** of the Bill, on the day on which the Act receives the Royal Assent:

- Establishment of the Board its membership, functions and powers under **Subdivision 60-A**
- Appointment etc of members of the Board under **Subdivision 60-B**
- Board procedures under **Subdivision 60-C**
- Committees etc under **Subdivision 60-D**

The following provisions commence on by Proclamation, under **item 4** and **item 2** of the table in **subclause 1-5(1)** of the Bill or such other date as may arise under **item 2** of the table in **subclause 1-5(1)**:

- Investigations under **Subdivision 60-E**
- Public reporting obligations of the Board under **Subdivision 60-F**

Part 7 – Miscellaneous

Division 70 of **Part 7** of the Bill has five Subdivisions dealing with the following miscellaneous matters.

Federal Court injunctions to restrain or require certain conduct under Subdivision 70-A

Subdivision 70-A deals with the Board's power to make application to the Federal Court for injunctions to restrain or require certain conduct.

Subclause 70-5(1) provides that if the Federal Court is satisfied you are engaged, or proposing to engage, in conduct that would constitute a contravention of a civil penalty provision, it may, on application by the Board grant an injunction to refrain you from engaging in that conduct or, if the Federal Court so decides, require you to do something.

Subclause 70-5(2) provides that before deciding the application of the Board the Federal Court may grant an interim injunction restraining you from engaging in conduct or requiring you to do something.

Certain Board decisions subject to administrative review under Subdivision 70-B

An application may be made under **clause 70-10** for review by the Administrative Appeals Tribunal (AAT) of the following Board decisions:

- A decision under clause 20-25 to reject an application for registration, including renewal of registration, or a condition imposed by the Board on registration.

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- A decision under subclause 20-30(3) to require professional indemnity insurance on registration.
- A decision under subclause 20-50(1) not to determine a shorter period for making a renewal application.
- A decision under Subdivision 30-B or Subdivision 40-A to terminate registration.
- A decision made under clause 30-20 to make an order or to specify a time period in respect of an order. These orders relate to sanctions for failure to comply with the Code of Professional conduct and may require you to complete a course of education, providing tax agent services under supervision of a registered tax agent or BAS agent or providing only those tax agent services specified in an order.
- A decision under clause 30-25 to suspend registration, including a decision as to the length of suspension.
- A decision under clause 40-25 to determine a period during which an application may not be made, after termination of registration.
- A decision under subclause 60-125(4) to extend the period of time within which an investigation is to be completed.

Provisions affecting trustees and partnerships under Subdivision 70-C

How this Act applies to an individual or company in the capacity of a trustee

Clause 70-15 provides that this Act applies to:

- A trustee who is an individual in the same way that it applies to an individual, and
- A trustee that is a company in the same way that it applies to a company.

Continuity of partnerships

Clause 70-20 provides that for the purpose of this Act, a change in the composition of a partnership does not affect the continuity of the partnership.

Provisions relating to the Board under Subdivision 70-D

Immunity from legal action to Board member or committee² member acting in good faith

Clause 70-25 states that no action, suit or proceeding may be brought against:

- a person who is or has been a Board member, or
- a person who is or has been a member of a committee

2. Committees may be established under **clause 60-85**.

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in relation to anything done or omitted to be done in good faith by the Board member or committee member:

- in the performance or purported performance of the Board's functions, or
- in the exercise or purported exercise of the Board's powers.

Delegation by the Board

Subclause 70-30(1) provides that, subject to **subclause 70-30(2)**, the Board may delegate to a Board member or committee member any of its functions and powers, other than:

- its functions of issuing guidelines, and
- its power to establish a committee under **clause 70-10**.

However, **subclause 70-30(1)** is qualified by the operation of **subclause 70-30(2)**. This provides that 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 **clause 70-10** if:

- the committee has 3 members or more, and
- all members of the committee are Board members.

Secrecy and provision of information by Board to Commissioner under Subdivision 70-E

Secrecy

Subclause 70-35(1) provides that a person commits an offence if the person is or has been:

- a Board member or a member of a committee, or
- an APS employee whose services were made available to the Board by the Commissioner, or
- a person appointed or employed by or a provide of services for the Commonwealth and the person acquires or acquired information relating to a person in the course of or because of his or her duties in relation to the Act or regulations, and the person:
 - discloses the information to another person, including a Minister, or
 - makes a record of the information.

The maximum penalty is imprisonment for 2 years.

However, **subclause 70-35(2)** provides that **subclause 70-35(1)** does not apply if the information is disclosed or a record of the information is made:

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- under or for the purposes of this Act or regulations, or
- in the course of or because of the person's duties under or in relation to this Act or the regulations.

Subclause 70-35(3) provides that a person who has acquired information in the circumstances of performing his or her duties under this Act or regulations, referred to in **paragraph 70-35(1)(a)**, is not required to disclose information to a court or tribunal except if it is necessary to do so for the purpose of carrying into effect the provisions of this Act or regulations.

Provision of information by the Board to the Commissioner

Subclause 70-40(1) provides that, despite the secrecy provisions in **clause 70-35**, the Board may disclose information to the Commissioner if the Board is satisfied that the information is relevant to:

- establishing whether a taxation offence has been or is being committed, or
- the making or proposed or possible making of a proceeds of crime order.

Subclause 70-40(2) provides that a reference in **clause 70-40** to the possible making of a proceeds of crime order includes a reference to a potential order because a person is not yet convicted of an offence.

Commencement

The following provisions of Part 7 commence on a single day to be fixed by proclamation under **item 2** of the table in **subclause 1-5(1)**:

- **clause 70-1** (provision on the Guide), **clause 70-5** (provisions on the granting of injunctions), **clause 70-10** (administrative review provisions), and **clauses 70-15 and 70-20** (provisions affecting trustees and partnerships - under **item 4** of the table in **subclause 1-5(1)**), and
- **clause 70-50** (provision in relation to legal professional privilege) and **clause 70-55** (provision dealing with the making of regulations) - under **item 6** of the table in **subclause 1-5(1)**

The following provisions of **Part 7** commence on the day on which this Act receives the Royal Assent under **item 5** of the table in **subclause 1-5(1)**.

- **Clause 70-25** (provisions dealing with immunity from legal action), **clause 70-30** (provisions dealing with delegation by the Board), **clause 70-35** (secrecy provisions), **clause 70-40** (provision of information by Board to Commissioner) and **clause 70-45** (application of certain secrecy provisions of the *Taxation Administration Act 1953*)

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Part 8 – Interpretation

Part 8 consists of Divisions 80 and 90.

Division 80 contains rules for interpreting this Act and Division 90 contains the Dictionary.

Division 80—Rules for interpreting this Act

What forms part of this Act

Subclause 80-1(1) states that the following forms part of this Act:

- the headings to the Parts, Divisions and Subdivisions of this Act,
- the Guides,
- the headings to the sections and subsections of this Act,
- the notes and examples (however described) that follow provisions of this Act.

Subclause 80-1(2) provides that asterisks used to identify 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.

The role of Guides in interpreting this Act

Subclause 80-5(1) provides that a Guide consists of sections under a heading indicating that what follows is a Guide to a particular Division, Subdivision, etc.

Subclause 80-5(2) states that 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:

- in determining the purpose or object underlying the provision, or
- 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
- in determining the provision's meaning if the provision is ambiguous or obscure, or
- 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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Division 90—Dictionary

The dictionary contains the meaning of two significant expressions, namely, ‘tax agent service’ and ‘BAS service’. These are replicated below.

Meaning of ‘tax agent service’

Clause 90-5 of the Bill gives the following 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;

(iii) representing an entity in their dealings with the Commissioner; 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 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.

Meaning of ‘BAS service’

Clause 90-10 of the Bill gives the following 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;

(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

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(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.

(2) A service specified in the regulations for the purposes of this subsection is not a **BAS service**.

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

Commencement

Item 7 of the table in **subclause 1-5(1)** provides that Part 8 commences on the day this Act receives the Royal Assent.

Concluding comments

It was noted earlier that the Taxation Institute of Australia in a [press release](#) on 14 November 2008 took the position that this Bill does not give the full picture of the new regulatory regime for tax agents and BAS agents.

Applicants for tax agent services and BAS services must await the regulations to know what further requirements apart from qualifications and experience they will have to comply with to secure registration.

The safe harbour provisions referred to in the Financial implications section of this Bill's Explanatory Memorandum will only be known when the Tax Agent Services (Transitional Provisions and Consequential Amendments) Bill is introduced into Parliament. While the Explanatory Memorandum has given some indication of what the safe harbour provisions might mean to tax practitioners and taxpayers who use their services, nevertheless, the full picture of the new regulatory regime is not complete at this stage.

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Attachment A - Time line on reform of Tax Agents Services law

July 1992	<p>The CPA Australia website in discussing the tax agents legislative framework states:</p> <p><i>A national review of standards for the tax profession was undertaken by tax professionals, the Tax Agents' Board of NSW, the Attorney-General's department and the Australian Tax Office (ATO) following discussions in July 1992.</i></p>
20 December 1993	<p>National Review of Standards for the Tax Profession Discussion Paper released</p>
2 November 1994	<p>Report of the National Review of Standards for the Tax Profession 'Tax services for the public' released</p>
6 April 1998	<p>Media Release No.014 of 1998 by the then Assistant Treasurer, Senator the Hon Rod Kemp. The key statement in relation to its previous history is stated at the outset of this Media Release as follows:</p> <p><i>A new legislative framework for tax agent services has been approved by the Government, the Assistant Treasurer, Senator Rod Kemp, announced today. The proposals have been developed over the last few years as a co-operative undertaking by the Australian Taxation Office, tax practitioners and representatives of taxation and community organisations.</i></p>
9 May 2006	<p>Media Release No.016 issued by the Hon Peter Dutton MP, the then Minister for Revenue and Assistant Treasurer. The key announcements were:</p> <p><i>The Minister for Revenue and Assistant Treasurer, Peter Dutton, announced today that the Government will provide \$57.5 million over four years for the implementation of a new national legislative framework for tax practitioners.</i></p> <p><i>The new regime will:</i></p> <ul style="list-style-type: none"> • <i>establish a national Tax Practitioners Board, to replace the existing state Tax Agents Boards;</i> • <i>create a Code of Practice to govern the provision of tax practitioner services;</i> • <i>allow a more flexible approach to regulating tax practitioners through a wider range of disciplinary sanctions; and</i> • <i>provide for a safe harbour from tax shortfall penalties for false and misleading statements for taxpayers where they engage a registered tax agent to prepare their return and take reasonable care to provide that person with all of the information necessary to complete it.</i> <p><i>The new regime will also provide for the registration of Business Activity Statement (BAS) service providers and enable the registration of certain types of tax specialists.</i></p>

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7 May 2007	<p>Release of Exposure Draft on 7 May 2007: <i>The Minister for Revenue and Assistant Treasurer, Peter Dutton, today released the draft Tax Laws Amendment (Tax Agent Services) Bill 2007 and associated draft Tax Administration Amendment Regulations, along with relevant explanatory materials, for public consultation and comment.</i></p> <p>...</p> <p><i>The key features of the Bill and Regulations are:</i></p> <ul style="list-style-type: none"> • <i>the establishment of a national Tax Practitioners Board, replacing the existing State-based Boards;</i> • <i>a legislated Code of Professional Conduct that governs the provision of tax agent services; a wider range of disciplinary sanctions available to the new Board, including a civil penalty for certain serious misconduct by tax practitioners;</i> • <i>registration and regulation of Business Activity Statement (BAS) service providers; and</i> • <i>a 'safe harbour' for taxpayers from tax shortfall penalties for making false or misleading statements, where a taxpayer demonstrates that they have taken reasonable care by engaging a registered tax practitioner and providing the tax practitioner with all relevant taxation information.</i>
4 July 2007	<p>Deadline for submissions extended to 10 August 2007</p>
20 August 2007	<p>Submissions: Exposure Draft Tax Agent Services Bill, Related Regulations and Explanatory Material</p> <p><i>Treasury has received 114 submissions in response to the Exposure Draft Tax Agent Services Bill, Related Regulations and Explanatory Material. Eighty-one of these are public submissions and 33 are confidential submissions. The submissions that do not contain confidential material are listed below and are accessible by selecting the author.</i></p> <p><i>Since the public submissions were first published on 20 August 2007, three submissions that had been previously classified confidential have been reclassified following requests to do so by the authors. These submissions are those from TIS Partners, Indirect Tax Consulting Group and Duncan Smith and are attached below.</i></p>
13 May 2008	<p>Way forward on tax measures announced, but not enacted, by the previous government</p> <p><i>Tax agent services regime listed as a measure for which no final decisions had been reached.</i></p>
29 May 2008	<p>Release of revised Exposure Draft on 29 May 2008</p> <p><i>The Assistant Treasurer and Minister for Competition Policy and Consumer Affairs, the Hon Chris Bowen MP, has released for public consultation an exposure draft Tax Agent Services Bill, key consequential and transitional</i></p>

Warning:

This Digest was prepared for debate. It reflects the legislation as introduced and does not canvass subsequent amendments.

This Digest does not have any official legal status. Other sources should be consulted to determine the subsequent official status of the Bill.

	<p>provisions, associated draft Regulations and relevant explanatory materials.</p> <p>...</p> <p>The key elements of the regulatory reforms encapsulated in this package are:</p> <ul style="list-style-type: none"> • a national Tax Practitioners Board (Board) to replace the existing state based Boards; • registration and regulation of entities providing Business Activity Statement (BAS) services as BAS agents; • a legislated Code of Professional Conduct to govern tax agents and BAS agents; • a wider and more flexible range of disciplinary sanctions which may be imposed by the Board; • civil penalties and injunctions to replace criminal penalties for certain misconduct by agents and unregistered entities; and • 'safe harbours' which provide that, in certain circumstances, taxpayers who engage a tax agent or a BAS agent are not liable to certain administrative penalties that would otherwise ordinarily apply for making a false or misleading statement resulting in a tax shortfall amount, or for lodging a document late. <p><i>Minister Bowen's press release outlines the key changes made to the draft materials since a first round of public consultation in mid-2007</i></p>
18 July 2008	<p><u>Submissions: Revised Exposure Draft Tax Agent Services Legislation and Explanatory Materials</u></p> <p><i>Treasury received 45 submissions in response to the Revised Exposure Draft Tax Agent Services Legislation and Explanatory Materials. Twenty-four of these are public submissions and 21 are confidential submissions.</i></p>
12 November 2008	Tax Agents Services Bill 2008 cleared for introduction

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