



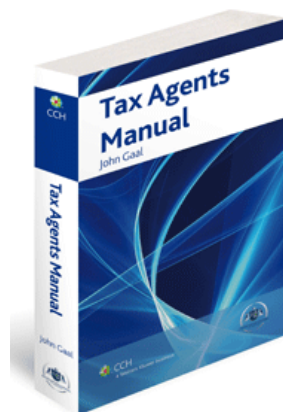
Frequently Asked Questions (Tax Agent Services Regime)

Tax Agents Manual & Bonus Toolkit and Roadshow events

CCH and the Taxation Institute of Australia have joined together to publish the *Tax Agents Manual*. This new publication deals with the *Tax Agent Services Act 2009* and the fundamental changes to the law governing practice as a tax agent. This practical publication includes a bonus Tax Agent Compliance Toolkit on CD-ROM containing checklists and templates that practitioners will need to ensure they comply with the requirements of the new regime.

This publication is now available to order and included in the February 2010 Tax Agent Services Regime Roadshow registration fee. Attend the Roadshow to learn about all the finalised legislation and regulations, now that the new national Tax Practitioners Board has formed. The Taxation Institute presents an experienced practitioner to guide you through the implications of these complex changes.

For more information on either of these essential information sources visit our dedicated website www.taxinstitute.com.au/tasr



About this document?

The following questions are submitted by Taxation Institute Members and non-members. Responses are provided by the Taxation Institute or, where noted, by the Tax Practitioners Board.

The Taxation Institute's charter prevents us from providing taxation advice. The responses here include references to relevant legislation to allow readers to solve their tax related questions. The terms of service can be viewed [here](#).

This file is updated regularly with new questions. The responses are valid at the dates indicated.

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Are you eligible to register? 8/12/09

Entities that provide tax agent services or BAS services for a fee or other reward, who advertise the provision of such services, or who hold themselves out as being registered, will be required to register with the Board.

The Tax Agent Services Act 2009 (TAS Act) provides for the registration of tax agents and BAS agents. The draft Tax Agent Services Regulations 2009 contain the qualifications and relevant experience requirements for registration.

To be eligible to register, an entity must satisfy:

- a fit and proper person test; and
- prescribed qualification and education requirements.

The following case studies illustrate the registration requirements.

Who is fit and proper? 8/12/09

Two years ago, Bob was convicted of a drink driving charge. He received a suspended prison sentence. This is a matter that would need to be disclosed to the Board for their consideration when determining whether Bob is a fit and proper person.

Does an accounting degree qualify you to register? 8/12/09

Bill has an accounting degree and has been working as an accountant for the last 12 months.

Unless the transitional rules are applicable, Bill will need to complete an approved course in Australian taxation law and commercial law to be eligible to register.

Does a diploma qualify you to register? 8/12/09

Bill has an accounting diploma. He has been working as a tax lawyer for the last 2 years.

Unless the transitional rules are applicable, Bill will need to complete an approved course in Australian taxation law and commercial law to be eligible to register.

Does a law degree qualify you to register? 8/12/09

Bill has a law degree and is admitted as an Australian legal practitioner. He has been working as a tax lawyer for the last 12 months.

Unless the transitional rules are applicable, Bill will need to complete an approved course in basic accountancy and Australian taxation law to be eligible to register.

Does work experience qualify you to register? 8/12/09

Bill does not have any tertiary qualifications. However, he has worked as an accountant for the last 8 years.

Unless the transitional rules are applicable, Bill will need to complete an approved course in basic accountancy, Australian taxation law and commercial law to be eligible to register.

What if I do not meet the above criteria? 8/12/09

In this case, Bill would only be eligible to register if he is a voting member of a recognised tax agent association (**RTAA**) (such as the Taxation Institute) and he has at least 8 years of relevant work experience in the last 10 years.

The requirements to become a voting member of the Taxation Institute can be found [here](#) but may change in 2010 in order to allow the Institute to apply to become an RTAA

Will the letter of engagement be required to conform with APES 320 Quality Control for Firms equivalent to (ISQC 1)? 8/12/09

This query will need to be directed to Accounting Professional and Ethical Standards Board www.apesb.org.au. It would seem however that wherever organisations already have engagement letters in place that they should be reviewed to ensure they cover the requirements under the TAS Act.

When will the 'safe harbour' provisions commence and will they be retrospective? 8/12/09

See Item 26 of the Tax Agent Services (Transitional Provisions and Consequential Amendments) Act 2009 (**Transitional Act**).

Under the safe harbour provisions, if an agent is late to lodge, but lodges before the lodgement date will there be remissions available? Will the tax agent be penalised? 8/12/09

Refer to Items 23 and 24 of the Transitional Act. Refer to para 2.30 of the Explanatory Memorandum for the Transitional Act (**Transitional EM**).

In the "Stefan and Craig" example (Explanatory Memorandum to Tax Agent Services Bill 2008 (TASA EM) Example 3.14) what is the client expected to do? 8/12/09

Please clarify your question i.e. do you wish clarification on the safe harbour provisions or reporting issues to the Board?

Is a verbal agreement acceptable for a letter of engagement? 8/12/09

Refer section 30-10 of the TAS Act and paras 3.38 and 3.64 of the TASA EM. Verbal agreements are not specifically addressed and this query would need to be raised with the Tax Practitioners Board.

If a BAS is created by someone else, how much is the Tax Agent expected to check to ensure the BAS is correct? 8/12/09

The ability for Tax Agents/BAS Agents to rely on work prepared by other Tax Agents and BAS Agents is an issue that has already been referred to the Board. Some guidance is provided in section 30 – 10 of the TAS Act and paras 3.42 to 3.55 of the TASA EM.

I have been conducting my tax agent business as a family partnership with my wife since 1987. The first year of operation I had a nominee but from the 1988 year I have been the nominee. My wife has no qualifications or tax expertise. I understood from the Perth Roadshow that I would have to register as a sole trader or incorporate. However, if I can operate as a company I should be able to continue in my current situation. Could you please advise whether the indication I drew from the Roadshow was correct, i.e. I cannot continue as is (or advise otherwise)? 5/2/10

Under the new regime, partnerships can still be registered (refer s20-5(2) of the *Tax Agent Services Act 2009* (TAS Act)). For a partnership to be eligible to register each partner must be at least 18 years of age and be a “fit and proper person”. There is no legal requirement for each partner to be a registered tax agent. Therefore, your wife’s lack of tax qualifications will not necessarily be an issue. However, there must be a sufficient number of registered tax agents to supervise the activities carried out by the partnership (refer s20-5(2)(c) of the TAS Act). At this stage, the Board has not provided guidance of what will constitute sufficient supervision. Therefore, it may or may not be sufficient for you to be the only registered tax agent in the partnership.

The other point to note is that you (in your capacity as an individual) will also need to be registered under the new regime (refer s 20-5(1) of the TAS Act). For an individual (such as yourself) to be eligible to register an individual must be at least 18 years of age, a fit and proper person and must satisfy certain educational requirements.

In relation to the education requirements, we note that if you were a registered tax agent or nominee before 1 November 1988, the education requirements will be disregarded for the purposes of determining whether you are eligible to register (refer section 20-5(4) of the TAS Act).

You will also need to consider how the transitional rules apply to your registration.

When the new regime commences on 1 March 2010, a person who was registered as a nominee immediately before 1 March 2010 will automatically be taken to be registered under the new regime (refer Sch 2, Part 2, item 3 of the *Tax Agent Services (Transitional Provisions and Consequential Amendments) Act 2009* (Transitional

Act)). The registration will remain in force until the entities registration under the former provisions would have expired.

Our tax practice currently has a company registration as a tax agent with the two directors as nominees. The directors are not individually registered as tax agents. With the introduction of the new Tax Agents Services Regime, will: our company automatically be a registered corporate tax agent?; the existing nominees automatically be tax agents under the new regime? 5/2/10

Under the new regime, if a company was registered as a tax agent under the former provisions immediately before 1 March 2010, the entity will be deemed to be registered under the new regime (refer Sch 2, Part 2, item 1 of the Transitional Act). The registration will remain in force until the entities registration under the former provisions would have expired. To remain registered after this time, the requirements of the new regime will need to be satisfied (refer s20-5(3) of the TAS Act).

When the new regime commences on 1 March 2010, a person who was registered as a nominee immediately before 1 March 2010 will automatically be taken to be registered under the new regime (refer Sch 2, Part 2, item 3 of the Transitional Act). The registration will remain in force until the entities registration under the former provisions would have expired. To remain registered after this time, the requirements of the new regime will need to be satisfied (refer s20-5(1) of the TAS Act).

The following question relates to my role as an in-house tax adviser/tax agent for a privately owned corporate group. The legislation acknowledges that registered tax agents don't have to carry on a business as a tax agent (eg. the application fee indicated by the scale of fees is \$500 for those in business compared to \$250 for those tax agents not in business). However, will the Tax Practitioners Board require those tax agents not in business to have professional indemnity insurance? 5/2/10

The Code of Professional Conduct applies to all registered tax and BAS agents regardless of whether they are carrying on a business (refer s30-5 of the TAS Act). As such, all registered tax agents will be required to maintain professional indemnity insurance at the level dictated by the Board (refer s30-10(13)). As yet, the Board has not set any levels for professional indemnity insurance. Therefore, at this stage, we do not know whether the Board will require tax agents who are not in business to have professional indemnity insurance or whether they will set the level at "nil" for such agents.

Does this legislation affect Bookkeepers or just Bookkeepers doing BAS? 5/2/10

The legislation affects any bookkeepers providing a "BAS Service" (refer s 90-10). These services include more than just preparing and lodging a BAS.

Section 90-10 provides that:

“(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.”

The following link provides some practical examples to assist you in determining whether you are providing a BAS Services. Link:

http://www.tpb.gov.au/TPB/BAS_agents/FAQ/TPB/BAS_agents/FAQ_for_BAS_agents.aspx

To be a BAS Agent do you have to both "meet accounting qualifications" AND be a "member of professional association" or is it one or the other? 5/2/10

To satisfy the education requirements for registration as a BAS Agent, the relevant individual must satisfy certain education requirements. These education requirements are set out in Sch 2, Part 1, Div 1, items 101 and 102 of the *Tax Agent Services Regulations 2009 (Regulations)*.

These requirements are labeled “Accounting Qualifications” (refer item 101) and “Membership of professional association” (refer item 102) in the Regulations. Only one (not both) of these requirements needs to be satisfied. However, it is important to note that the labels “Accounting Qualifications” and “Membership of professional association” are only labels and the wording of the Regulations need to be considered in full.

To satisfy the “Accounting Qualifications” set out item 101 an individual must:

- have a Certificate IV Financial Services (Bookkeeping) or Certificate IV Financial Services (Accounting);
- have successfully completed an approved course in basic GST /BAS principles; and
- must have at least 1400 hours of relevant experience in the last 3 years.

To satisfy the “Membership of professional association” set out item 102 an individual must:

- be a voting member of a professional association;
- have a Certificate IV Financial Services (Bookkeeping) or Certificate IV Financial Services (Accounting);
- have successfully completed an approved course in basic GST /BAS principles; and
- must have 1000 hours of relevant experience in the last 3 years.

As can be seen from above, the education requirements are the same regardless of whether or not you are relying on being a member of a professional association to become registered. The difference is that number of hours of relevant experience required.

We are proposing a tax agent business structure that has a Corporate Trustee, an Operating Service Unit Trust and a holding company. We would like to know if this would be compliant? 5/2/10

There is insufficient detail to respond to this question. However, we suggest that you should consider the commentary on service trusts in the explanatory memorandum to the TAS Act (refer paragraphs 2.56 and 3.38 and examples 2.5, 2.19 and 4.51).