

# EXPOSURE-DRAFT

1 Inserts for  
2 **Tax Laws Amendment (2013 Measures**  
3 **No. #) Bill 2013: tax agent services**  
4

## EXPOSURE DRAFT

If you have any comments on the exposure draft, please email them to [taxagentservices@treasury.gov.au](mailto:taxagentservices@treasury.gov.au), or send them to:

The General Manager  
Law Design Practice  
The Treasury  
Langton Crescent  
Parkes, ACT 2600

For further information, please contact Philip Akroyd on (02) 6263 4385.

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### Commencement information

Column 1	Column 2	Column 3
Provision(s)	Commencement	Date/Details
1. Schedule 1, items 1 to 9	1 July 2013.	1 July 2013
2. Schedule 1, item 10	1 January 2015.	1 January 2015
3. Schedule 1, items 11 to 20	1 July 2013.	1 July 2013
4. Schedule 1, item 21	1 January 2015.	1 January 2015
5. Schedule 1, item 22	1 July 2013.	1 July 2013
6. Schedule 1, item 23	1 January 2015.	1 January 2015
7. Schedule 1, item 24	1 July 2013.	1 July 2013
8. Schedule 1, items 25 to 27	1 January 2015.	1 January 2015
9. Schedule 1, items 28 to 53	1 July 2013.	1 July 2013

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<b>Commencement information</b>		
<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
<b>Provision(s)</b>	<b>Commencement</b>	<b>Date/Details</b>
10. Schedule 2	The day after this Act receives the Royal Assent.	

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## Schedule 1—Creating a regulatory framework for tax advice (financial product) services

### Part 1—Main amendments

#### *Tax Agent Services Act 2009*

##### **1 Paragraphs 2-5(a), (b) and (c)**

Omit “and BAS agents”, substitute “, BAS agents and tax (financial product) advisers”.

##### **2 Section 20-1**

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

##### **3 Section 20-5 (heading)**

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

##### **4 Subsection 20-5(1)**

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

##### **5 Subsection 20-5(2)**

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

##### **6 At the end of paragraph 20-5(2)(c)**

Add:

; or (iii) in the case of registration as a \*registered tax (financial product) adviser—a sufficient number of individuals, being registered tax agents or registered tax (financial product) advisers, to provide \*tax advice (financial product) services to a competent standard, and to carry out supervisory arrangements.

##### **7 Subsection 20-5(3)**

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

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## 8 At the end of paragraph 20-5(3)(d)

Add:

; or (iii) in the case of registration as a \*registered tax (financial product) adviser—a sufficient number of individuals, being registered tax agents or registered tax (financial product) advisers, to provide \*tax advice (financial product) services to a competent standard, and to carry out supervisory arrangements.

## 9 Section 20-10

Omit “and BAS agents”, substitute “, BAS agents and tax (financial product) advisers”.

## 10 Subsection 20-20(1)

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

## 11 Paragraph 20-25(7)(a)

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

## 12 Subsection 20-30(2)

Repeal the subsection, substitute:

(2) The Board must also notify:

(a) in the case of an entity’s registration as a \*registered tax agent, BAS agent or tax (financial product) adviser—the Commissioner of the Board’s decision; and

(b) in the case of an entity’s registration as a \*registered tax (financial product) adviser—the Australian Securities and Investments Commission of the Board’s decision.

## 13 Subsection 20-40(1)

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

## 14 Section 20-45

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

## 15 Sections 30-1 and 30-5

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

3 **16 Subsection 30-10(5)**

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

6 **17 Paragraph 30-20(1)(b)**

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

9 **18 Subsections 30-25(4) and 30-35(1), (2) and (3)**

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

12 **19 Subsections 40-5(1), 40-10(1) and 40-15(1)**

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

15 **20 Subsection 40-20(3)**

16 Repeal the subsection, substitute:

17 (3) The Board must also notify:

18 (a) in the case of an entity’s registration as a \*registered tax  
19 agent, BAS agent or tax (financial product) adviser—the  
20 Commissioner of the Board’s decision and the reasons for the  
21 decision; and

22 (b) in the case of an entity’s registration as a \*registered tax  
23 (financial product) adviser—the Australian Securities and  
24 Investments Commission of the Board’s decision and the  
25 reasons for the decision.

26 **21 Section 50-1**

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

29 **22 Paragraph 50-5(1)(b)**

30 After “\*BAS service”, insert “or a \*tax advice (financial product)  
31 service”.

32 **23 After subsection 50-5(2)**

33 Insert:

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1 (2A) You contravene this subsection if:

- 2 (a) you provide a service that you know, or ought reasonably to  
3 know, is a \*tax advice (financial product) service; and  
4 (b) you charge or receive a fee or other reward for providing the  
5 tax advice (financial product) service; and  
6 (c) you are not a \*registered tax agent or a \*registered tax  
7 (financial product) adviser; and  
8 (d) in the case of you providing the tax advice (financial product)  
9 service as a legal service—you are prohibited, under a \*State  
10 law or \*Territory law that regulates legal practice and the  
11 provision of legal services, from providing that tax advice  
12 (financial product) service.

13 Civil penalty:

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

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

## 19 **24 Paragraph 50-10(1)(b)**

20 After “\*BAS service”, insert “or a \*tax advice (financial product)  
21 service”.

## 22 **25 After subsection 50-10(2)**

23 Insert:

24 (2A) You contravene this subsection if:

- 25 (a) you advertise that you will provide a \*tax advice (financial  
26 product) service; and  
27 (b) you are not a \*registered tax agent or a \*registered tax  
28 (financial product) adviser; and  
29 (c) where the tax advice (financial product) service would be  
30 provided as a legal service—you are prohibited, under a  
31 \*State law or \*Territory law that regulates legal practice and  
32 the provision of legal services, from providing that tax advice  
33 (financial product) service.

34 Civil penalty:

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

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

## 26 Section 50-15 (heading)

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

## 27 Paragraph 50-15(a)

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

## 28 After subsection 50-25(1)

Insert:

(1A) You contravene this subsection if:

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

Civil penalty:

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

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

## 29 Subsection 50-25(2)

Omit “Subsection (1) does”, substitute “Subsections (1) and (1A) do”.

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1 **30 Section 60-1**

2 Omit “and BAS agents”, substitute “, BAS agents and tax (financial  
3 product) advisers”.

4 **31 Section 60-1**

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

7 **32 Paragraph 60-15(a)**

8 Omit “and BAS agents”, substitute “, BAS agents and tax (financial  
9 product) advisers”.

10 **33 Subparagraph 60-125(8)(c)(iii)**

11 Omit “and”.

12 **34 At the end of paragraph 60-125(8)(c)**

13 Add:

14 (iv) if the decision or finding concerns a \*registered tax  
15 (financial product) adviser or a \*registered tax agent in  
16 relation to providing a \*tax advice (financial product)  
17 service—the Australian Securities and Investments  
18 Commission; and

19 **35 At the end of paragraph 60-125(8)(d)**

20 Add:

21 ; and (iii) if subparagraph (c)(iv) applies—the Australian  
22 Securities and Investments Commission.

23 **36 Paragraph 60-135(1)(a)**

24 Omit “and BAS agents”, substitute “, BAS agents and tax (financial  
25 product) advisers”.

26 **37 Paragraph 60-135(1)(b)**

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

29 **38 Subsection 60-135(3)**

30 Omit “or BAS agent” (wherever occurring), substitute “, BAS agent or  
31 tax (financial product) adviser”.

32 **39 Section 60-140**

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1 Omit “or BAS agent” (wherever occurring), substitute “, BAS agent or  
2 tax (financial product) adviser”.

## 3 **40 After subsection 70-40(3)**

4 Insert:

5 *Disclosures to the Australian Securities and Investments*  
6 *Commission*

7 (3A) Subsection 70-35(1) does not apply if the record or disclosure is to  
8 the Australian Securities and Investments Commission for the  
9 purpose of the Commission performing any of its functions or  
10 exercising any of its powers.

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

## 13 **41 Subsection 90-1(1)**

14 Insert:

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

## 17 **42 Subsection 90-1(1)**

18 Insert:

19 *financial product* has the same meaning as in Chapter 7 of the  
20 *Corporations Act 2001*.

## 21 **43 Subsection 90-1(1)**

22 Insert:

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

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

## 29 **44 Subsection 90-1(1)**

30 Insert:

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

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1 agent, a registered BAS agent or a registered tax (financial  
2 product) adviser.

## 3 **45 Subsection 90-1(1)**

4 Insert:

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

- 7 (a) entities that are registered under this Act as registered tax  
8 agents;
- 9 (b) entities that are registered under this Act as registered BAS  
10 agents;
- 11 (c) entities that are registered under this Act as registered tax  
12 (financial product) advisers.

## 13 **46 At the end of Division 90**

14 Add:

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

16 A *tax advice (financial product) service* is a \*tax agent service  
17 provided in the course of advising on one or more financial  
18 products to the extent that:

- 19 (a) the service relates to:
- 20 (i) ascertaining liabilities, obligations or entitlements of an  
21 entity that arise, or could arise, under a \*taxation law; or
- 22 (ii) advising an entity about liabilities, obligations or  
23 entitlements of the entity or another entity that arise, or  
24 could arise, under a taxation law; and
- 25 (b) the service is provided in circumstances where the entity can  
26 reasonably be expected to rely on the service for either or  
27 both of the following purposes:
- 28 (i) to satisfy liabilities or obligations that arise, or could  
29 arise, under a taxation law;
- 30 (ii) to claim entitlements that arise, or could arise, under a  
31 taxation law.

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1 **Part 2—Consequential amendments**

2 *Income Tax Assessment Act 1997*

3 **47 Subsection 995-1(1) (paragraph (a) of the definition of**  
4 ***recognised tax adviser*)**

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

7 **48 Subsection 995-1(1)**

8 Insert:

9 *registered tax agent, BAS agent or tax (financial product) adviser*  
10 has the same meaning as in the *Tax Agent Services Act 2009*.

11 **49 Subsection 995-1(1) (definition of *registered tax agent or***  
12 ***BAS agent*)**

13 Repeal the definition.

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## Part 3—Transitional provisions

### 50 Definitions

In this Part:

*representative* has the same meaning as in paragraph 910A(a) of the *Corporations Act 2001*.

*entity* has the same meaning as in the *Income Tax Assessment Act 1997*.

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

*new law* means the *Tax Agent Services Act 2009*.

*notification period* means the period:

- (a) beginning on 1 July 2013; and
- (b) ending on 31 December 2014.

*transitional period* means the period:

- (a) beginning on 1 January 2015; and
- (b) ending on 30 June 2016.

### 51 Provision of tax advice (financial product) services by certain entities during the notification period

(1) If:

- (a) immediately before 1 July 2013, an entity:
  - (i) was a financial services licensee or a representative of a financial services licensee; and
  - (ii) was providing tax advice (financial product) services; and
- (b) during the notification period, the entity notifies the Board that the entity satisfies paragraph (a) of this subitem;

the entity is taken, for the purposes of the new law, to be a registered tax (financial product) adviser for the 3-year period beginning on 1 July 2013.

Note: A registered tax (financial product) adviser is registered under section 20-25 of the new law.

(2) If an entity notifies the Board under subitem (1), the entity's notification must:

- (a) be in a form approved by the Board; and
- (b) include any information, statement or document required by the Board; and

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(c) be given to the Board in a way required by the Board.

- (3) To avoid doubt, if an entity is taken to be a registered tax (financial product) adviser under subitem (1), the Board may impose conditions to which the entity's registration is subject.

## 52 Registering as a registered tax (financial product) adviser during the transitional period

If:

- (a) an entity (other than an entity taken to be a registered tax (financial product) adviser under item 51 of this Schedule) applies for registration as a registered tax (financial product) adviser under section 20-20 of the new law during the transitional period; and
- (b) the entity would be eligible for registration but for the operation of:
  - (i) paragraph 20-5(1)(b) of the new law (which requires the Board to be satisfied of requirements prescribed by regulations, including requirements in relation to qualifications and experience in respect of registration as a registered tax (financial product) adviser); or
  - (ii) subparagraph 20-5(2)(c)(iii) or (3)(d)(iii) of the new law; and
- (c) the Board is satisfied that the entity has sufficient experience to be able to provide tax advice (financial product) services to a competent standard;

then, despite paragraph 20-5(1)(b), (2)(c) or (3)(d) of the new law, the entity is eligible for registration.

## 53 Transitional regulations

- (1) The Governor-General may make regulations prescribing matters:
  - (a) required or permitted by this Part to be prescribed; and
  - (b) necessary or convenient to be prescribed for carrying out or giving effect to this Part.
- (2) In particular, regulations may be made prescribing matters of a transitional nature (including any saving or application provisions) relating to the amendments or repeals made by Part 1 or 2 of this Schedule.
- (3) Subitem (2) does not limit subitem (1).

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## Schedule 2—Amendments to the Tax Agent Services Act 2009

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### 1 At the end of subsection 20-5(1)

Add:

; and (c) the individual maintains, or will be able to maintain, professional indemnity insurance that meets the Board's requirements; and

(d) in the case of a renewal of registration—the individual has completed continuing professional education that meets the Board's requirements.

### 2 At the end of subsection 20-5(2)

Add:

; and (d) the partnership maintains, or will be able to maintain, professional indemnity insurance that meets the Board's requirements.

### 3 At the end of subsection 20-5(3)

Add:

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

### 4 Subsection 30-10(13)

Repeal the subsection, substitute:

(13) You must maintain professional indemnity insurance that meets the Board's requirements.

### 5 At the end of subsection 30-35(1)

Add:

; or (c) there is a change in your business or email address or of any other circumstances relevant to your registration.

### 6 At the end of subsection 30-35(2)

Add:

; or (d) there is a change in your business or email address or of any other circumstances relevant to your registration.

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## 7 At the end of subsection 30-35(3)

Add:

; or (d) there is a change in your business or email address or of any other circumstances relevant to your registration.

## 8 At the end of section 40-5

Add:

(3) Despite paragraph (2)(a), the Board need not terminate your registration if:

(a) you surrender your registration by notice in writing to the Board; and

(b) the Board considers that, due to a current investigation or the outcome of an investigation, it would be inappropriate to terminate your registration.

## 9 After subsection 40-10(2)

Insert:

(2A) Despite subsection (2), the Board need not terminate your registration if:

(a) you surrender your registration by notice in writing to the Board; and

(b) the Board considers that, due to a current investigation or the outcome of an investigation, it would be inappropriate to terminate your registration.

## 10 After subsection 40-15(2)

Insert:

(2A) Despite paragraph (2)(a), the Board need not terminate your registration if:

(a) you surrender your registration by notice in writing to the Board; and

(b) the Board considers that, due to a current investigation or the outcome of an investigation, it would be inappropriate to terminate your registration.

## 11 After subsection 50-10(4)

Insert:

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1 (4A) If you wish to rely on subsection (3) or (4) in civil penalty  
2 proceedings, you bear an evidential burden in relation to that  
3 matter.

## 4 **12 After subparagraph 60-125(8)(c)(ii)**

5 Insert:

6 (ia) any professional association accredited by the Board  
7 under the regulations of which the entity is a member;

## 8 **13 After subparagraph 60-125(8)(d)(i)**

9 Insert:

10 (ia) if subparagraph (c)(ia) applies—the relevant  
11 professional association; and

## 12 **14 Paragraph 70-10(b)**

13 Repeal the paragraph.

## 14 **15 After paragraph 70-10(g)**

15 Insert:

16 (ga) a decision under Subdivision 40-A not to terminate  
17 registration;

## 18 **16 Subsection 70-30(1)**

19 Repeal the subsection, substitute:

20 (1) Subject to subsections (1A) and (2), the Board may, by writing,  
21 delegate all or any of its functions and powers to:

- 22 (a) a \*Board member; or
- 23 (b) a \*committee; or
- 24 (c) an APS employee whose services are made available to the  
25 Board under section 60-80; or
- 26 (d) to a person engaged by the Board.

27 (1A) The Board may not delegate:

- 28 (a) its function of issuing guidelines; or
- 29 (b) its power to establish a committee under section 60-85.

## 30 **17 Subsection 70-40(3)**

31 Repeal the subsection, substitute:



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

## 4 **18 Subsection 90-1(1)**

5 Insert:

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

## 9 **19 After subsection 90-10(1)**

10 Insert:

11 (1A) The Board may, by legislative instrument, specify that another  
12 service is a *BAS service*.

## 13 **20 Application**

14 (1) The amendments made by items 1 to 3 and 14 of this Schedule apply in  
15 relation to an application for registration, including renewal of  
16 registration, as a registered tax agent, BAS agent or tax (financial  
17 product) adviser that is made on or after the day this item commences.

18 (2) The amendments made by items 8 to 10 of this Schedule apply in  
19 relation to a notice in writing surrendering registration that is received  
20 by the Board on or after the day this item commences.

21 (3) The amendment made by item 11 of this Schedule applies in relation to  
22 civil penalty proceedings that are brought on or after the day this item  
23 commences, even if the advertisement to which the proceedings relate is  
24 published or broadcast before that time.

25 (4) The amendments made by items 12 and 13 of this Schedule applies in  
26 relation to a decision made by the Board on or after the day this item  
27 commences, even if the investigation to which the decision relates  
28 began before that time.

29 (5) The amendment made by item 17 of this Schedule applies to:

30 (a) a record made on or after the day this item commences, even  
31 if the information to which the record relates was acquired  
32 before that time; and

33 (b) a disclosure made on or after the day this item commences,  
34 even if the information disclosed is contained in a record  
35 made before that time.

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1 **21 Saving of existing delegations**

2 A delegation in force under section 70-30 of the *Tax Agent Services Act*  
3 *2009* immediately before the day this item commences continues to  
4 have effect, on and after the day this item commences, as if it were a  
5 delegation under that section as amended by this Schedule.