

EXPOSURE DRAFT

EXPOSURE DRAFT

1
2
3
4
5
6
7

Inserts for
**Treasury Laws Amendment (Measures
for Consultation) Bill 2022: Tax
Practitioners Board Review**

Commencement information

Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
1. Schedule 1, Part 1	The first 1 January, 1 April, 1 July or 1 October to occur after the day this Act receives the Royal Assent.	
2. Schedule 1, Part 2	1 July 2023.	1 July 2023

8
9
10
11
12
13

Contents

Schedule 1—Tax Practitioners Board Review	2
Part 1—Amendments	2
<i>Tax Agent Services Act 2009</i>	2
Part 2—Amendments commencing 1 July 2023	10
<i>Tax Agent Services Act 2009</i>	10

EXPOSURE DRAFT

Schedule 1—Tax Practitioners Board Review

Part 1—Amendments

Tax Agent Services Act 2009

1 Section 2-5

Repeal the section, substitute:

2-5 Object

- (1) The object of this Act is to support public trust and confidence in the integrity of the tax profession and of the tax system by ensuring that *tax agent services are provided to the community in accordance with appropriate standards of professional and ethical conduct.
- (2) This is to be achieved by (among other things) providing for:
 - (a) the registration and regulation, by a national Board, of entities that provide *tax agent services; and
 - (b) a *Code of Professional Conduct for *registered tax agents and BAS agents; and
 - (c) sanctions to discipline entities in relation to their conduct as a *registered tax agent or BAS agent; and
 - (d) sanctions where tax agent services are provided other than in accordance with this Act.

2 At the end of section 30-10

Add:

- (15) You must ensure that you do not employ, or use the services of, a *disqualified entity to provide *tax agent services on your behalf, without the approval of the Board under section 45-5.
- (16) You must comply with any obligations determined under section 30-12.

3 At the end of Subdivision 30-A

Add:

EXPOSURE DRAFT

30-12 Minister may determine Code of Professional Conduct obligations

- (1) The Minister may, by legislative instrument, determine obligations for the purposes of subsection 30-10(16).
- (2) The obligations must relate to the professional and ethical conduct of *registered tax agents and BAS agents. The obligations may elaborate or supplement any aspect of the *Code of Professional Conduct but must not be inconsistent with the Code.

4 After Part 4

Insert:

Part 4A—Disqualified entities

Division 45—Disqualified entities

Guide to this Division

45-1 What this Division is about

A registered tax agent or BAS agent may seek approval from the Tax Practitioners Board to employ, or use the services of, a disqualified entity to provide tax agent services on the registered tax agent or BAS agent's behalf.

An entity is a disqualified entity if, among other things, the entity is subject to sanctions under this Act or has been convicted of certain offences.

A registered tax agent or BAS agent must give notice to the Board in relation to employing, or using the services of, a disqualified entity to provide tax agent services on the registered tax agent or BAS agent's behalf, without the approval of the Board.

The disqualified entity must also give notice to the registered tax agent or BAS agent in relation to being a disqualified entity when seeking to provide, or providing, tax agent services on the registered tax agent or BAS agent's behalf.

Table of sections

EXPOSURE DRAFT

1	45-5	Approval of disqualified entity providing tax agent services on your behalf
2	45-10	Obligation to give notice in relation to disqualified entity—registered tax agent or BAS agent
3		
4	45-15	Obligation to give notice in relation to disqualified entity—disqualified entity
5		
6	45-20	Transitional obligation to give notice in relation to disqualified entity—registered tax agent or BAS agent
7		
8	45-25	Transitional obligation to give notice in relation to disqualified entity—disqualified entity
9		

45-5 Approval of disqualified entity providing tax agent services on your behalf

Application

- (1) If you are a *registered tax agent or BAS agent, you may apply to the Board for approval to employ, or use the services of, a *disqualified entity to provide *tax agent services on your behalf.
- (2) A **disqualified entity** is an entity that is not a *registered tax agent or BAS agent, or a *qualified tax relevant provider, and that within the last 5 years:
- (a) has been convicted of:
 - (i) a *serious taxation offence; or
 - (ii) a *serious offence; or
 - (iii) an offence involving fraud or dishonesty; or
 - (b) has been penalised for being a *promoter of a *tax exploitation scheme; or
 - (c) has been penalised for implementing a *scheme that has been promoted on the basis of conformity with a *product ruling in a way that is materially different from that described in the product ruling; or
 - (d) has become an undischarged bankrupt or has gone into external administration; or
 - (e) has had action taken against it under subsection 30-15(2) (sanctions for failure to comply with the Code of Professional Conduct); or
 - (f) has had its registration suspended, or terminated, under Subdivision 40-A; or
 - (g) has had an application for registration or renewal of registration rejected under section 20-25; or
 - (h) has been found by the Board, after being investigated under section 60-95, or by a Court, to have contravened this Act.

EXPOSURE DRAFT

-
- 1 (3) The application must be:
2 (a) in the form approved by the Board; and
3 (b) accompanied by any documents that are required by the
4 Board.
- 5 (4) The Board must decide the application within 30 days of receiving
6 it.

7 *Decision*

- 8 (5) The Board may give approval, having regard to:
9 (a) the reasons why the entity is a *disqualified entity and the
10 circumstances relating to those reasons; and
11 (b) the proposed role that the entity would perform in providing
12 the *tax agent services on your behalf; and
13 (c) the extent to which the reasons the entity is a disqualified
14 entity are relevant to the entity's ability to perform the
15 proposed role to an appropriate standard of professional and
16 ethical conduct; and
17 (d) any other matters that the Board considers relevant.
- 18 (6) The Board must, within a reasonable period after its decision to
19 give approval or to reject the application for approval, notify you in
20 writing of:
21 (a) the decision; and
22 (b) if the Board rejects the application—the reasons for the
23 decision.

24 **45-10 Obligation to give notice in relation to disqualified entity—**
25 **registered tax agent or BAS agent**

- 26 (1) You must give the Board a notice in writing, if:
27 (a) you are a *registered tax agent or BAS agent; and
28 (b) you employ, or use the services of, an entity to provide *tax
29 agent services on your behalf; and
30 (c) the entity is, or becomes, a *disqualified entity; and
31 (d) you have not been approved under section 45-5 to employ, or
32 use the services of, the disqualified entity to provide tax
33 agent services on your behalf.
- 34 (2) The notice must include the following information:
35 (a) the entity's name;
-

EXPOSURE DRAFT

1 (b) the entity’s relationship to you.

2 (3) You must give the notice within 30 days of the day on which you
3 become, or ought to have become, aware that the entity is, or
4 became, a *disqualified entity.

5 *Civil penalty*

6 (4) You contravene this subsection if you fail to give a notice in
7 accordance with this section.

8 *Civil penalty:*

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

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

14 *Transitional*

15 (5) You are not required to give a notice under subsection (1) in
16 relation to an entity if:

- 17 (a) immediately before the day this section commences the entity
18 provides *tax agent services on your behalf; and
19 (b) at the start of the day this section commences the entity is a
20 *disqualified entity.

21 Note: You may be required to give a notice under section 45-20 in relation
22 to the entity.

23 **45-15 Obligation to give notice in relation to disqualified entity—**
24 **disqualified entity**

25 (1) If you are a *disqualified entity seeking to provide *tax agent
26 services on behalf of a *registered tax agent or BAS agent, you
27 must notify the registered tax agent or BAS agent, in writing, that
28 you are a disqualified entity before the registered tax agent or BAS
29 agent:

- 30 (a) enters into a contract to employ you, or use your services, to
31 provide tax agent services on the registered tax agent or BAS
32 agent’s behalf; or
33 (b) renews such a contract; or
34 (c) agrees to extend such a contract.

35 (2) If:

EXPOSURE DRAFT

-
- 1 (a) you are providing *tax agent services on behalf of a
2 *registered tax agent or BAS agent; and
3 (b) you become a *disqualified entity;
4 you must notify the registered tax agent or BAS agent, in writing,
5 that you are a disqualified entity. You must notify the registered
6 tax agent or BAS agent within 30 days of the day on which you
7 become, or ought to have become, aware, that you are a
8 disqualified entity.

9 *Civil penalty*

- 10 (3) You contravene this subsection if you fail to give a notice in
11 accordance with subsection (1) or (2).

12 *Civil penalty:*

- 13 (a) for an individual—100 penalty units; and
14 (b) for a body corporate—500 penalty units.

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

18 **45-20 Transitional obligation to give notice in relation to disqualified** 19 **entity—registered tax agent or BAS agent**

- 20 (1) You must give the Board a notice, in writing, if:
21 (a) you are a *registered tax agent or BAS agent; and
22 (b) immediately before the day this section commences you
23 employ, or use the services of, an entity to provide *tax agent
24 services on your behalf; and
25 (c) at the start of the day this section commences the entity is a
26 *disqualified entity; and
27 (d) immediately before the day that is 12 months after the day
28 this section commences you employ, or use the services of,
29 the entity to provide tax agent services on your behalf.
- 30 (2) The notice must include the following information:
31 (a) the entity's name;
32 (b) the entity's relationship to you.
- 33 (3) You must give the notice within 30 days of the day that is 12
34 months after the day this section commences.

EXPOSURE DRAFT

Civil penalty

- (4) You contravene this subsection if you fail to give a notice in accordance with this section.

Civil penalty:

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

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

45-25 Transitional obligation to give notice in relation to disqualified entity—disqualified entity

(1) If:

- (a) immediately before the day this section commences a *registered tax agent or BAS agent employs you, or uses your services, to provide *tax agent services on the registered tax agent or BAS agent’s behalf; and
- (b) at the start of the day this section commences you are a *disqualified entity; and
- (c) immediately before the day that is 12 months after the day this section commences the registered tax agent or BAS agent employs you, or uses your services, to provide tax agent services on the registered tax agent or BAS agent’s behalf; and
- (d) you have not already notified the registered tax agent or BAS agent that you are a disqualified entity under subsection 45-15(1);

you must notify the registered tax agent or BAS agent, in writing, that you are a disqualified entity.

- (2) You must give the notice within 30 days of the day that is 12 months after the day this section commences.

Civil penalty

- (3) You contravene this subsection if you fail to give a notice in accordance with this section.

Civil penalty:

- (a) for an individual—100 penalty units; and
- (b) for a body corporate—500 penalty units.

EXPOSURE DRAFT

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

4 **5 After paragraph 70-10(h)**

5 Insert:

6 (ha) a decision under section 45-5 to reject an application for
7 approval to employ, or use the services of, a
8 *disqualified entity;

9 **6 Subsection 90-10(1)**

10 Insert:

11 *disqualified entity* has the meaning given by subsection 45-5(2).

12 **7 After subsection 90-10(1)**

13 Insert:

14 (1AA) A tax agent service that relates to any of the following is also a
15 **BAS service**:

- 16 (a) section 9 of the *A New Tax System (Australian Business*
17 *Number) Act 1999*;
18 (b) sections 202CD and 202CF of the *Income Tax Assessment*
19 *Act 1936*;
20 (c) the *Superannuation Guarantee Charge Act 1992*;
21 (d) Part 3B of the *Superannuation Industry (Supervision) Act*
22 *1993*;
23 (e) Part 5-30 in Schedule 1 to the *Taxation Administration Act*
24 *1953*.

25 (1AB) A tax agent service that relates to the *Superannuation Guarantee*
26 *(Administration) Act 1992* is also a **BAS service** to the extent that it
27 relates to a payroll function or payments to contractors.

28 **8 Application of Code of Conduct obligation about** 29 **disqualified entities**

30 *Application from commencement*

- 31 (1) If, on or after the commencement of this Part, you:
32 (a) enter into a contract to employ, or use the services of, an
33 entity to provide tax agent services on your behalf; or
34 (b) renew such a contract; or

EXPOSURE DRAFT

1 (c) agree to extend such a contract;
2 subsection 30-10(15) of the *Tax Agent Services Act 2009*, as inserted by
3 this Part, applies to you in relation to the entity on and after the date of
4 entering or renewing the contract or the date of the agreement.

5 *Application 12 months from commencement*

6 (2) In addition to subitem (1), subsection 30-10(15) the *Tax Agent Services*
7 *Act 2009*, as inserted by this Part, applies to you in relation to an entity
8 that you employ, or use of the services of, to provide tax agent services
9 on your behalf, on and after the day that is 12 months after the day this
10 Part commences.

11 *Acquisition of property*

12 (3) Despite subitems (1) and (2), subsection 30-10(15) of the *Tax Agent*
13 *Services Act 2009*, as inserted by this Part, has no effect to the extent (if
14 any) to which operation of that subsection would result in the
15 acquisition of property (within the meaning of paragraph 51(xxxi) of
16 the Constitution) from a person otherwise than on just terms (within the
17 meaning of that paragraph).

18 **Part 2—Amendments commencing 1 July 2023**

19 *Tax Agent Services Act 2009*

20 **9 Section 20-1**

21 Omit “3 years”, substitute “1 year”.

22 **10 Subsections 20-25(2) and (3)**

23 Omit “6 months”, substitute “4 months”.

24 **11 Subsection 20-25(4)**

25 Omit “3 years”, substitute “1 year”.

26 **12 Application of registration period amendments**

27 The amendments of section 20-25 made by this Part apply in
28 relation to an application made on or after 1 July 2023.

29 **13 At the end of Part 6**

30 Add:

EXPOSURE DRAFT

1 Subdivision 60-G—Finance

2 Table of sections

3	60-145	Tax Practitioners Board Special Account
4	60-150	Credits to the Tax Practitioners Board Special Account
5	60-155	Purposes of the Tax Practitioners Board Special Account

6 60-145 Tax Practitioners Board Special Account

7 (1) The Tax Practitioners Board Special Account is established by this
8 section.

9 (2) The Tax Practitioners Board Special Account is a special account
10 for the purposes of the *Public Governance, Performance and*
11 *Accountability Act 2013*.

12 60-150 Credits to the Tax Practitioners Board Special Account

13 There must be credited to the Tax Practitioners Board Special
14 Account amounts equal to the following:

- 15 (a) amounts received by the Commonwealth under this Act
16 (other than amounts received by way of penalty or amounts
17 related to such amounts);
- 18 (b) amounts appropriated by the Parliament for the purposes of
19 the Account.

20 Note: An Act appropriating money for expenditure out of the Consolidated
21 Revenue Fund may contain a provision to the effect that, if any of the
22 purposes of a special account is a purpose that is covered by an item in
23 such an Act (whether or not the item expressly refers to the special
24 account), then amounts may be debited against the appropriation for
25 that item and credited to that special account.

26 60-155 Purposes of the Tax Practitioners Board Special Account

27 The purposes of the Tax Practitioners Board Special Account are
28 as follows:

- 29 (a) paying or discharging the costs, expenses and other
30 obligations incurred by the Commonwealth in the
31 performance of the Board's functions under this Act;
- 32 (b) paying any remuneration and allowances payable to any
33 person under this Act (including APS employees mentioned
34 in section 60-80);

EXPOSURE DRAFT

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16

(c) reducing the balance of the account (and therefore the available appropriation for the account) without making a real or notional payment.

Note: See section 80 of the *Public Governance, Performance and Accountability Act 2013* (which deals with special accounts).

14 Refunds paid before commencement not to be debited from the Tax Practitioners Board Special Account

If:

- (a) before the commencement of this Part, an amount is received by the Commissioner, on behalf of the Commonwealth, under the *Tax Agent Services Act 2009*; and
- (b) all or some of the amount is refunded by the Commonwealth on or after the commencement of this Part;

the refunded amount is not to be debited from the Tax Practitioners Board Special Account.