

EXPOSURE DRAFT



EXPOSURE DRAFT (08/09/2023)

Tax Agent Services Amendment (Register Information) Regulations 2023

I, General the Honourable David Hurley AC DSC (Retd), Governor-General of the Commonwealth of Australia, acting with the advice of the Federal Executive Council, make the following regulations.

Dated 2023

David Hurley
Governor-General

By His Excellency's Command

Stephen Jones [DRAFT ONLY—NOT FOR SIGNATURE]
Assistant Treasurer
Minister for Financial Services

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1 Name

This instrument is the *Tax Agent Services Amendment (Register Information) Regulations 2023*.

2 Commencement

- (1) Each provision of this instrument specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Commencement information		
Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
1. The whole of this instrument	Immediately after the commencement of <i>[the relevant amendments of the Tax Agent Services Act 2009]</i> .	

Note: This table relates only to the provisions of this instrument as originally made. It will not be amended to deal with any later amendments of this instrument.

- (2) Any information in column 3 of the table is not part of this instrument. Information may be inserted in this column, or information in it may be edited, in any published version of this instrument.

3 Authority

This instrument is made under the *Tax Agent Services Act 2009*.

4 Schedules

Each instrument that is specified in a Schedule to this instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms.

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Schedule 1—Amendments

Tax Agent Services Regulations 2022

1 Before section 24

Insert:

Division 1—Administrative assistance

2 Section 25

Repeal the section, substitute:

Division 2—Register of entities

25 Authority for this Division

This Division (except for section 25E) is made for the purposes of subsection 60-135(1) of the Act.

25A Basic details

- (1) If an entity is required (whether under the Act or under these Regulations) to be entered on the register for a period, then:
 - (a) the details specified under subsections (2) and (3) must be entered on the register in respect of the entity for that period; and
 - (b) those details must be kept up to date throughout that period.

Current details

- (2) The following details are specified:
 - (a) the name of the entity;
 - (b) the contact details of the entity;
 - (c) if the entity is a registered tax agent or BAS agent:
 - (i) the registration number of the entity; and
 - (ii) any relevant professional affiliation of the entity; and
 - (iii) the period for which the entity is to be registered as a registered tax agent or BAS agent; and
 - (iv) any condition to which the registration of the entity is subject.

Historical details

- (3) The following details are also specified:
 - (a) if the entity has, in the previous 5 years, had a name that is not the same as the entity's current name—each name that the entity has had during the previous 5 years;
 - (b) if the entity is a registered tax agent or BAS agent and has, in the previous 5 years, had a registration number that is not the same as the entity's current registration number—each registration number that the entity has had during the previous 5 years;

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- (c) if the entity is not a registered tax agent or BAS agent but has, at any time in the previous 5 years, been a registered tax agent or BAS agent—each registration number that the entity has had during the previous 5 years.

25B Orders, suspensions and terminations

- (1) If the Board has:
 - (a) given the entity an order under section 30-20 of the Act; or
 - (b) suspended the entity's registration under section 30-25 of the Act; or
 - (c) terminated the entity's registration under section 30-30 or Subdivision 40-A of the Act;then:
 - (d) the entity must be entered on the register; and
 - (e) the details specified under subsection (2) of this section must be entered on the register in respect of the entity;for a period of 5 years starting on the day when the order, suspension or termination takes effect.

Note: For when a termination takes effect, see subsection 40-20(2) of the Act. For when an order or a suspension takes effect, see subsections (3) and (5) of this section.

- (2) For the purposes of subsection (1), the following details are specified:
 - (a) a statement to the effect that the entity has been given an order, had its registration suspended or had its registration terminated (whichever applies);
 - (b) if the entity has been given an order—a summary of the content of the order;
 - (c) the day on which the order, suspension or termination takes effect;
 - (d) if the entity has been given an order, and the order is in force for a period—the period for which order is in force (see subsection (4));
 - (e) if the entity's registration has been suspended—the period for which the suspension is in force (see subsection (5));
 - (f) the reasons for the order, suspension or termination.

Timing of orders

- (3) For the purposes of this section, an order given under section 30-20 of the Act takes effect at the following time:
 - (a) if the order specifies a period as mentioned in paragraph 30-20(2)(a) or (b) of the Act—the start of that period;
 - (b) otherwise—the start of the day after the day when the order is given.
- (4) For the purposes of this section:
 - (a) an order given under section 30-20 of the Act is in force for a period if the order specifies a period as mentioned in paragraph 30-20(2)(a) or (b) of the Act; and
 - (b) if the order specifies such a period, then the order is in force for that period.

Timing of suspensions

- (5) For the purposes of this section, if an entity's registration is suspended for a period under section 30-25 of the Act, then:

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Schedule 1 Amendments

- (a) the suspension takes effect at the start of that period; and
- (b) the suspension is in force for that period.

25C Rejection of renewal application on integrity grounds

- (1) If:
 - (a) the Board has, under section 20-25 of the Act, rejected an application (a **renewal application**) by an entity for renewal of the entity's registration as a registered tax agent or BAS agent; and
 - (b) the Board rejected the renewal application because (or in part because):
 - (i) if the entity is an individual—the Board was not satisfied that the individual met the requirement set out in paragraph 20-5(1)(a) of the Act; or
 - (ii) if the entity is a partnership—the Board was not satisfied that the partnership met a requirement set out in subparagraph 20-5(2)(a)(ii), (b)(i) or (iii), of the Act; or
 - (iii) if the entity is a company—the Board was not satisfied that the company met a requirement set out in paragraph 20-5(3)(a) or (c) of the Act;

then:

- (c) the entity must be entered on the register; and
- (d) the details specified under subsection (2) of this section must be entered on the register in respect of the entity;

for a period of 5 years starting on the day on when the Board rejected the renewal application.

Note: The requirements mentioned in subparagraphs (b)(i), (ii) and (iii) of this subsection either impose a fit and proper person test on the entity (or a related entity), or require the entity (or a related entity) not to have been convicted of certain offences during the previous 5 years.

- (2) For the purposes of paragraph (1)(d), the following details are specified:
 - (a) a statement to the effect that the Board rejected the renewal application;
 - (b) the date on which the Board rejected the renewal application;
 - (c) the reason mentioned in subparagraph (1)(b)(i), (ii) or (iii) (whichever applies) for the Board's rejection of the renewal application.

25D Sufficient number individuals for partnerships and companies

- (1) This section applies if:
 - (a) a partnership or company applies under section 20-20 of the Act for registration (including renewal of registration) as a registered tax agent or BAS agent; and
 - (b) in connection with that application, the partnership or company gives the Board details of an individual (a **sufficient number individual** for the partnership or company) that is a registered tax agent or BAS agent, for the purposes of satisfying the requirement in paragraph 20-5(2)(c) or (3)(d) of the Act (whichever applies); and
 - (c) the Board, under section 20-25 of the Act, grants the application and determines a period (the **registration period**) for which the partnership or company is to be registered.

- (2) If an individual is a sufficient number individual for the partnership or company, then:
- (a) the name and registration number of the individual must be entered on the register in respect of the partnership or company; and
 - (b) the name and registration number of the partnership or company must be entered on the register in respect of the individual;
- for the period that:
- (c) starts at the beginning of the registration period; and
 - (d) ends at earliest of the following:
 - (i) the end of the registration period;
 - (ii) the end of the day when the individual, or the partnership or company, ceases to be a registered tax agent or BAS agent;
 - (iii) if the partnership or company gives the Board notice that the individual is, from a specified day, no longer to be counted for the purposes of determining whether the partnership or company satisfies the requirement in paragraph 20-5(2)(c) or (3)(d) of the Act (whichever applies)—the start of that day.

25E Findings of investigations

- (1) This section applies if:
- (a) the Board investigates conduct under section 60-95 of the Act and finds that the conduct breaches the Act; and
 - (b) the Board makes a decision (a **publication decision**) under subparagraph 60-125(2)(b)(v) of the Act in relation to the entity (the **contravening entity**) that engaged in the conduct.
- (2) For the purposes of subparagraph 60-125(2)(b)(v) of the Act:
- (a) the prescribed details in respect of the contravening entity are:
 - (i) the Board's finding that the conduct of the contravening entity breaches the Act; and
 - (ii) the reasons for that finding; and
 - (b) the prescribed period is the period of 5 years starting on the day when the Board makes the publication decision.

Note: Under subsection 60-125(2A) of the Act, the contravening entity, and the prescribed details, must be entered on the register for the prescribed period.

3 Application of amendments

Definitions

- (1) In this item:

TAS Act means the *Tax Agent Services Act 2009*.

TAS Regulations means the *Tax Agent Services Regulations 2022*.

Basic details to be entered on register

- (2) To avoid doubt, a period of 5 years referred to in subsection 25A(3) of the TAS Regulations may be a period that starts before, on or after the commencement of this instrument.

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Schedule 1 Amendments

Orders, suspensions and terminations

- (3) Section 25B of the *Tax Agent Services Regulations 2022* applies in relation to:
- (a) an order given under section 30-20 of the *Tax Agent Services Act 2009*; or
 - (b) a suspension of registration under section 30-25 of the TAS Act; or
 - (c) a termination of registration under section 30-30 or Subdivision 40-A of the TAS Act;

if, for the purposes of section 25B of the TAS Regulations, the order, suspension or termination (as the case may be) takes effect on or after 1 July 2022.

Rejection of renewal applications

- (4) Section 25C of the TAS Regulations applies in relation to a rejection under section 20-25 of the TAS Act of an application for renewal of registration if the rejection occurs on or after 1 July 2022.

Sufficient number individuals

- (5) Section 25D of the TAS Regulations applies in relation to an application by a partnership or company for registration (including renewal of registration) under section 20-20 of the TAS Act if:
- (a) the application was made on or after the commencement of this instrument; or
 - (b) the application was made before the commencement of this instrument and, immediately before that commencement, the Board had not made a decision about whether to grant the application; or
 - (c) the application was made before the commencement of this instrument and both of the following apply:
 - (i) before that commencement, the Board had granted the application and determined a period (the **registration period**) for which the partnership or company is to be registered;
 - (ii) immediately before that commencement, the registration period had not ended.