

## **EXPLANATORY STATEMENT**

### **Select Legislative Instrument 2009 No. 314**

#### **Issued by authority of the Assistant Treasurer**

*Tax Agent Services Act 2009*

*Tax Agent Services Regulations 2009*

Section 70-55 of the *Tax Agent Services Act 2009* (the Act) provides that the Governor-General may make regulations prescribing matters required or permitted by the Act to be prescribed, or necessary or convenient to be prescribed for carrying out or giving effect to the Act.

The Regulations relate to the Act which implements the new legislative regime for tax agent services. Due to changes in Australia's tax base and the substantial growth in the tax laws, the existing law relating to the registration of tax agents is now out of date and inadequate for Australia's current tax and commercial setting.

The objective of the Regulations is to provide details to accompany the Act. They prescribe the:

- requirements for registration as a tax agent and a Business Activity Statement (BAS) agent;
- definitions of, and requirements for recognition as, recognised tax agent associations and recognised BAS agent associations;
- fees for registration applications;
- allowances and expenses payable to persons required to appear before the Tax Practitioners Board (Board) to give evidence or to provide certain documents; and
- obligations of the Commissioner of Taxation to provide administrative support to the Board.

Further details of the Regulations are set out in the Attachment.

The details of the Act and the Regulations were developed through an extensive consultation process commencing in 1998, involving both targeted confidential consultation and public consultation. Confidential consultation took place on the proposed legislative framework with the chief executive officers of the recognised professional associations, the Chairs of the state Tax Agents' Boards, a working group of the National Tax Liaison Group and a sample of tax agents and bookkeepers/BAS service providers during 2005. Several rounds of confidential consultation on drafts of the Bill and Regulations followed during 2006 and early 2007. Public consultation on a draft Bill and draft Regulations took place over a 14-week period in mid-2007,

followed by a four-week period in 2008 and the draft Regulations were again consulted on publicly in August 2009.

The Regulations are a legislative instrument for the purposes of the *Legislative Instruments Act 2003*.

The Regulations relating to the name, commencement and definitions used in the Regulations (regulations 1 to 3) and those relating to the Board (regulation 11) commenced on the day after the Regulations were registered on the Federal Register of Legislative Instruments. This recognises that the provisions in the Act relating to the Board have already commenced (allowing the Board to be set up in preparation of the new regulatory regime).

The remainder of the Regulations commenced at the same time as the main provisions of the new regime.

**Details of the Tax Agent Services Regulations 2009**

**Regulation 1 — Name of Regulations**

This regulation provides that the title of the Regulations is the *Tax Agent Services Regulations 2009*.

**Regulation 2 — Commencement**

Regulations 1 to 3 and 11 commenced on the day after the Regulations are registered on the Federal Register of Legislative Instruments and all other regulations commenced on the commencement of Part 2 of the *Tax Agent Services Act 2009*. Part 2 of the *Tax Agent Services Act 2009* commenced on a single day to be set by Proclamation.

**Regulation 3 — Definitions**

This regulation provides definitions for the terms used within these Regulations. The term *Act* refers to the *Tax Agent Services Act 2009*. *Board* refers to the Tax Practitioners Board established by section 60-5 of the Act. *Recognised BAS agent association* has the meaning given by Regulation 4. *Recognised tax agent association* has the meaning given by Regulation 5. (Note that Regulations 4 and 5 are outlined below.) *Secretary* means the secretary of the Board and includes a person performing the secretary's duties in his or her absence.

**Regulations 4 and 5 and Schedule 1 — Recognised Associations**

**The process of recognition**

Regulations 4 and 5 allow an organisation to become a recognised BAS agent association or a recognised tax agent association. There is no requirement for an individual to be a member of a recognised association in order to be registered. However, membership of a recognised BAS agent association or a recognised tax agent association provides *one* avenue of registration as a tax agent or BAS agent for members of those organisations. The decision to recognise an organisation as a recognised BAS agent association or a recognised tax agent association rests with the Tax Practitioners Board (the Board).

In determining whether to recognise an organisation as a BAS agent association, regulation 4 states that the Board must have regard to a set of objective requirements outlined in Part 1 of Schedule 1 to the Regulations. Regulation 5 similarly states that the Board must have regard to the objective requirements listed in Part 2 of Schedule 1 to the Regulations in determining whether or not to recognise an organisation as a recognised tax agent association.

The requirements outlined in Schedule 1 to the Regulations (further described below) ensure that only those professional associations that enforce high educational, ethical and professional requirements (relevant to taxation) on their members can be

recognised by the Board as recognised tax agent associations or recognised BAS agent associations.

The recognition process requires the organisation to apply to the Board in a form approved by the Board. As soon as practicable after receiving an application, the Board must consider the application and decide whether to recognise the organisation. If all the requirements relevant to their application in Schedule 1 are satisfied, the Board *must* decide to recognise the organisation as a recognised tax agent association or recognised BAS agent association (as appropriate), notify the organisation in writing of the decision and publish a notice of the decision on the Board's website. The Board must refuse to recognise an organisation if one or more of the requirements relevant to their application in Schedule 1 are not met, or if the Board does not apply one of the specific exceptions to the requirements found in the Regulations.

If the Board refuses to recognise the organisation, the Board must notify the organisation in writing of the decision to refuse recognition detailing the reasons for the decision.

*Exceptions to the requirement for associations to meet all objective criteria to be registered*

There are two exceptions to the requirements that an association must meet all of the objective criteria listed in Schedule 1.

First of all, for the first three years of the new regime, an organisation that meets all criteria for recognition as a recognised BAS agent association, other than the fact that its members have obtained a Certificate IV Financial Services (Bookkeeping) or Certificate IV Financial Services (Accounting), must be recognised as a recognised BAS agent association by the Board.

The transitional period provided by this exemption recognises that BAS agents themselves are exempt under the *Tax Agent Services (Transitional Provisions and Consequential Amendments) Act 2009* from the qualification requirements following the commencement of the new regime. Recognising an organisation as a recognised BAS agent association before its members are required to satisfy the necessary qualification requirement for registration, will allow that organisation to assist its members to obtain the required qualifications.

A recognised BAS agent association that is recognised in this way will be liable to have their registration terminated if they cease to meet this requirement after the three years from commencement of the new regime.

The second exception is designed to provide the Board with greater flexibility with respect to its ability to recognise an organisation. At any time, the Board may recognise an organisation, as either a recognised tax agent or BAS agent association, if it does not have the requisite number of members and/or its members do not have appropriate qualifications, provided that the association meets all the other objective criteria. The Board may recognise an organisation in these circumstances if it considers it appropriate having regard to the purposes of the Act and the role that the organisation plays under the new regime.

This discretion recognises that there may be a number of circumstances in which a well governed and representative professional association which imposes high ethical and professional obligations on its members should be eligible for recognition by the Board (notwithstanding that it lacks the requisite number of members or seeks to represent those with qualifications not traditionally related to the provision of tax agent or BAS agent services).

Taking the number of members for instance, there may be limitations beyond the control of the organisation that prevent it from having the requisite numbers. For example, the law societies are created by statute in each state and territory. These geographic limitations on law societies, particular from some of the smaller states and the territories, may prevent them from automatically qualifying for recognition as a recognised tax agent association. This discretion provides the Board with some flexibility to recognise such organisations, if it considers it appropriate.

With respect to the qualifications that voting members of organisations must have, there may be a number of legitimate reasons why an organisation is not able to comply with the specific requirements imposed by the Regulations. Certainly it is not expected, and it is not the case under the old regime, that there would be professional associations set up to represent *only* tax agents.

For instance, an organisation seeking to become recognised as a BAS agent association may also seek to represent individuals in the bookkeeping industry who lack any formal qualifications and who do not wish to become a registered BAS agent. Certain specialist tax agent service providers may also belong to established professional associations which represent members in a particular field, only a part of which are involved in the provision of tax agent services (for instance, quantity surveyors). Again, the Board may consider it appropriate to recognise such organisations, notwithstanding that their members do not have the requisite qualifications.

### Termination

The Board must terminate recognition of a recognised tax agent association or recognised BAS agent association if the Board is satisfied that one or more of the prescribed requirements ceases to exist. This includes where a BAS agent association, which was recognised in the first three years of the regime without its members having the requisite qualifications, does not have members with the requisite qualifications after the three-year period from commencement of the new regime. It also includes where the Board has exercised its discretion to recognise an organisation without the requisite voting membership or number of members and no longer considers it appropriate for that organisation to be recognised.

In satisfying itself, the Board must advise the recognised association of its intention to terminate recognition and give the association the opportunity to object. To this end, the Board may only terminate recognition after it has notified the association of its belief (with reasons) that the association has ceased to satisfy a requirement and provided the association with the opportunity to make a written submission within reasonable time. The Board must then consider if a criterion has ceased to exist, having regard to any submission made by the association. Once the Board terminates the recognition of the organisation it must also notify the organisation in writing of

the decision and the reasons for that decision and publish a statement regarding the termination on the Board's website.

Voting members of a terminated recognised tax agent association or recognised BAS agent association who are either registered tax agents or registered BAS agents by virtue of their membership will cease to meet one of the tax practitioner registration requirements once their association is terminated, as they will cease to be a voting member of a professional association. The *Tax Agent Services Act 2009* provides discretion for the Board to terminate an agent's registration if the agent ceases to meet one of the tax practitioner registration requirements. It is expected that the Board will allow sufficient time for the voting members of terminated organisations to become voting members of other recognised professional associations, so that they continue to meet the registration requirements.

The Board's decision to refuse or terminate recognition is reviewable by the Administrative Appeals Tribunal (AAT). Generally, the decision of the Board to terminate recognition will stand until the AAT sets aside or varies the decision. The AAT may also remit the matter back to the Board for reconsideration.

An applicant can apply for a stay of the Board's decision independent of the AAT process and the effect of this is that the Board's decision is not in force until it is affirmed by the AAT and the time period allowed for lodgement of an appeal lapses.

#### Schedule 1 - Prescribed requirements for recognition as a recognised association

Schedule 1 to the Regulations sets out the requirements for recognition as a recognised BAS agent association and a recognised tax agent association.

#### ***Recognised BAS agent association***

The requirements for recognition as a recognised BAS agent association are set out in Part 1 of Schedule 1 to the Regulations.

#### *Prescribed Requirements*

The basic requirements to be satisfied to be a recognised BAS agent associations are similar to those required for recognised tax agent associations. They go to the ability of the organisation to adequately oversee its members and to ensure the professional services provided by its members are provided to a high standard (that is, the role that the organisation plays to its members supports the intent of the Act and new regulatory regime contained therein).

There are two specific requirements applicable to organisation seeking recognition as a BAS agent association. Failure to meet either or both of these requirements does not necessarily preclude the organisation from being recognised by the Board if the basic requirements are met (see above).

Recognised BAS agent associations must either have at least 1,000 voting members, at least 500 voting members who are registered BAS agents under the Act. This is to ensure that the organisation is large enough to support its members and that it is representative of the BAS agent industry.

An organisation must also satisfy the Board that its voting members have been awarded at least a Certificate IV Financial Services (Accounting) or a Certificate IV Financial Services (Bookkeeping) from a registered training organisation or an equivalent institution. This reflects the qualifications that all BAS agents must have to seek registration. However, as noted above, an organisation that does not meet the voting and/or membership requirements may still be recognised at the Board's discretion.

### ***Recognised tax agent association***

The requirements for recognition as a recognised tax agent association are set out in Part 2 of Schedule 1.

### ***Prescribed Requirements***

As with the requirements for recognised BAS agent associations, the basic requirements are designed to ensure that only truly professional and well-run associations are capable of recognition. To qualify for recognition as a recognised tax agent association, an organisation must satisfy the Board that it is a non-profit organisation, has adequate corporate governance and operational procedures to ensure that it is properly managed and internal rules are enforced, it must be able to pay its debts as they fall due, and the management of the organisation must be accountable to its members and abide by the corporate governance and operational procedures of its organisation.

The organisation must have professional and ethical standards for its members including requirements that voting members must undertake an appropriate number of hours of continuing professional education each year and must be of good fame, integrity and character. The appropriate number of hours of continued professional education will differ depending on the profession to which the voting members belong.

Voting members must be subject to rules controlling their conduct in the practice of that profession and must be subject to discipline for breaches of those rules. If the voting member is permitted by that organisation to be in public practice, the voting member must be required to have professional indemnity insurance.

The organisation must have satisfactory arrangements in place for notifying clients of its members (or of members of its member bodies) as to how to make complaints and for receiving, hearing and deciding those complaints and taking disciplinary action if complaints are justified. The organisation must have satisfactory arrangements in place for publishing annual statistics about the kinds and frequency of complaints (except complaints under the Act about registered tax agents), findings made as a result of complaints and action taken as a result of those findings.

In certain cases, an organisation is taken to have arrangements that comply with the requirements related to professional and ethical standards for members, dealing with complaints and publishing annual statistics, where arrangements for such requirements are governed by external regulation. An organisation is taken to have such arrangements in place if it is, or its members are, subject to a law of a state or territory, or rule or other instrument of a body created by or under a law of a state or

territory, that sets out requirements that have a similar effect to those requirements mentioned above. This allows legal professional associations to be recognised as recognised tax agent associations, because, in the legal profession, these requirements are regulated by the state and territory law or by a statutory body.

There are two specific requirements that, if the Board is satisfied are met, entitle an organisation (that meets the basic criteria explained above) to recognition. However, as noted above, an organisation that fails to meet either or both of these criteria may still be recognised by the Board if it considers it appropriate.

The first of these criteria is that the organisation has at least 1,000 voting members, 500 of which are registered tax agents. This establishes that the organisation is large enough to effectively administer its professional governance arrangements for its members and also ensures that the organisation is representative of tax agents.

Secondly, the organisation's voting members must have at least:

- completed a post graduate award from an Australian tertiary institution or equivalent institution, in the discipline of accountancy; or
- completed the academic qualifications required to be an Australian legal practitioner; or
- completed a diploma or higher award from a registered training organisation or equivalent institution in the discipline of accountancy; or
- have been a registered tax agent under the old tax agent services regime immediately before the commencement of the new regime *and* was also a voting member of a recognised professional association within the meaning of the old law (that is, section 251LA of the *Income Tax Assessment Act 1936*); or
- in the opinion of the organisation, have the equivalent of eight years of full-time experience in providing tax agent services in the last 10 years.

#### Regulation 6 — Exclusion from the meaning of *tax agent service*

*Tax agent service* is defined in section 90-5 of the Act. Subsection 90-5(2) allows services to be excluded from this definition through regulations.

As noted in the explanatory memorandum to the Act, this regulation making power was included because of the broad definition of 'taxation law'. That is, because a tax agent service is a service relating to an entity's obligations, liabilities or entitlements under a 'taxation law' this may inadvertently capture services that were not intended to be captured. Relevantly, a 'taxation law' includes an Act or a part of an Act administered by the Commissioner of Taxation (the Commissioner).

Regulation 6 specifies that, for subsection 90-5(2) of the Act, a service provided by an auditor of a self managed superannuation fund (SMSF auditors) under the *Superannuation Industry (Supervision) Act 1993* (SIS Act) is not a tax agent service.

As the explanatory memorandum to the Act notes, auditing services are not intended to be captured by the definition of tax agent services. However SMSF auditors, in

providing auditing services to SMSF's under the SIS Act may be inadvertently captured. This is because parts of the SIS Act, relating to SMSFs, are administered by the Commissioner and are therefore a 'taxation law'.

Moreover, it is inappropriate to regulate services provided by SMSF auditors under the SIS Act as those services are already regulated under a separate regulatory framework. This exemption does not exempt all services provided by SMSF auditors from the definition of tax agent service, just those services provided under the SIS Act.

### Regulations 7 and 8 and Schedule 2 — BAS agents and Tax agents

Paragraph 20-5(1)(b) of the Act provides that individual applicants must meet the requirements prescribed by the Regulations (including, but not limited to, requirements relating to qualifications and experience) in respect of registration as a tax agent or BAS agent under the Act. Regulations 7 and 8 provide that the eligibility requirements for registration as a BAS agent and as a tax agent are prescribed, respectively, in Part 1 of Schedule 2 and Part 2 of Schedule 2 to the Regulations. (Schedule 2 is explained below.)

Regulations 7 and 8 state that an individual is only required to comply with one of the combinations of requirements. The prescribed requirements vary depending on the applicant, but in each case require the applicant to satisfy two essential requirements relating to:

1. academic qualifications; and
2. relevant experience.

### *Schedule 2 – Eligibility for registration as a BAS agent or tax agent*

#### ***BAS agents***

Division 1 in Part 1 of Schedule 2 to the Regulations sets out the requirements for registration as a BAS agent. An applicant must satisfy an academic and relevant experience combination.

#### *Accounting qualifications*

Under this avenue, an applicant must have completed a Certificate IV Financial Services (Accounting) or Certificate IV Financial Services (Bookkeeping), or higher award, from a registered training organisation or equivalent institution *and* a course in basic goods and services tax/BAS taxation principles that is approved by the Board.

In addition, the applicant must have undertaken at least 1,400 hours of relevant experience in the preceding three years.

In approving a course in basic goods and services tax/BAS taxation principles needed for registration as a BAS agent the Board may approve specific courses provided by certain organisations or simply approve course content. The Board may also involve recognised BAS agent association in the course approval process. Individual courses

to be approved by the Board may be included in the primary qualification, being either the Certificate IV Financial Services (Accounting) or Certificate IV Financial Services (Bookkeeping).

#### *Membership of a professional association*

Voting membership of either a recognised tax agent association or a recognised BAS agent association provides an avenue to registration. If an applicant wishes to become a registered BAS agent by virtue of their voting membership of a professional association, they are also required to have completed a Certificate IV Financial Services (Accounting) or Certificate IV Financial Services (Bookkeeping), or higher award, from a registered training organisation or equivalent institution *and* a course in basic goods and services tax/BAS taxation principles that is approved by the Board. Also, they would need to have undertaken at least 1,000 hours of relevant experience in the preceding three years.

This difference in hours of experience needed is reduced when an individual is a member of a professional association (either a recognised tax agent association or a recognised BAS agent association) recognising that voting members are subject to an additional 'layer' of professional oversight and support.

#### *Meaning of relevant experience for BAS agents*

The definition of relevant experience for BAS agents under Division 2 in Part 1 of Schedule 2 means work by an individual:

- as a registered tax agent under the Act or under Part VIIA of the *Income Tax Assessment Act 1936*; or
- as a registered BAS agent under the Act; or
- under the supervision and control of a registered tax agent under the Act or under Part VIIA of the *Income Tax Assessment Act 1936*; or
- under the supervision and control of a registered BAS agent; or
- of a kind approved by the Board.

In each case, for experience to be recognised as 'relevant' the individual's work must have included substantial involvement in one or more of the kinds of BAS services described in section 90-10 of the Act, that is, advice or compliance work, or representing an entity in dealings with the Commissioner.

The Board is able to approve experience gained other than as a registered agent or under the supervision and control of a registered agent as ‘relevant’. As individuals providing BAS services will be required to register as a BAS agent under the new regime, the Board should have the flexibility to approve the work experience gained by an individual before the commencement of the new regime as relevant work experience for registration as a BAS agent.

### ***Tax agents***

To satisfy the prescribed requirements for registration purposes, Division 1 in Part 2 of Schedule 2 to the Regulations provides that an individual must satisfy one of a number of academic and relevant experience combinations.

#### *Tertiary qualifications — Accounting, Other Specialists and Law*

An applicant with a prescribed tertiary qualification must have the equivalent of 12 months of full-time relevant experience in the last five years. The prescribed tertiary qualifications are:

- degree or post-graduate award from an Australian tertiary institution, or a degree or award that is approved by the Board from an equivalent institution, in the discipline of accountancy, *and* a course in each of Australian taxation law and commercial law that are approved by the Board; or
- a degree or a post-graduate award from an Australian tertiary institution, or a degree or award that is approved by the Board from an equivalent institution, in another discipline that is relevant to the tax agent services to which the application relates, *and* if the Board considers it relevant to the tax agent services to which the application relates, a course in basic accountancy principles, Australian taxation law and commercial law that are approved by the Board; or
- completion of the academic qualifications required to be an Australian legal practitioner *and* courses in each of Australian taxation law and basic accountancy principles that are approved by the Board;

The Board may approve courses in basic accountancy principles, Australian taxation law and commercial law. In doing so, the Board may approve specific courses provided by certain organisations or simply approve course content. The Board may also involve recognised tax agent association in the course approval process. In some instances, the principle qualification (for instance, an accounting degree, law degree or relevant specialist degree) may have already required the applicant to complete one or all of the additional approved courses required for registration. In these cases, it may be unnecessary for the applicant to complete the ‘additional’ approved courses in basic accountancy principles, Australian taxation law or commercial law as the Board may be satisfied that the requirement to have completed the additional courses has already been satisfied.

The second tertiary qualification avenue listed above recognises that, for some specialist tax agent services, qualifications in law and/or accounting are not necessarily the only type of qualifications that would enable an individual to provide

those services. For instance, certain tax depreciation services provided may be best provided by individuals with qualifications relevant to the quantity surveying profession. This avenue of registration allows the Board to recognise these 'other tertiary' qualifications where relevant to the provision of services in a specific area of the taxation law.

Of note, this 'specialist' avenue of registration also gives the Board some discretion as to whether it requires the additional courses in Australian taxation law, basic accountancy principles or commercial law. This recognises that such specialist tax agent service providers may have their registration limited to the provision of services in a narrow area of the taxation law. In such cases, the Board may consider that some of these additional courses (such as commercial law) do not greatly assist that individual in the provision of those services.

The third tertiary qualification avenue is designed to allow individuals with a law degree (LLB), who have also completed the additional courses and have the relevant experience, to become a registered tax agent. To gain registration under this avenue, individuals are not required to be Australian legal practitioners (ie. have current practising certificates) nor are they required to have completed the practical legal training requirement to be an Australian legal practitioner.

#### *Diploma*

An applicant can also have a diploma or higher award from a registered training organisation or an equivalent institution in the discipline of accountancy. Again this must also include/be supplemented by a course in Australian taxation law that is approved by the Board and, if the application for registration is made three years or later after the commencement of the new regime, a course in commercial law that is approved by the Board. This recognises that a course in commercial law is not a requirement in the equivalent diploma avenue for registration in the old regime.

Applicants seeking registration via this avenue must also have been engaged in the equivalent of two years of full-time relevant experience in the preceding five years.

#### *Without formal qualifications*

Applicants without any formal qualifications but with significant relevant experience can also be registered. To be successful, such applicants must have been engaged in the equivalent of eight years of full-time relevant experience in the preceding 10 years. Again, such applicants must also have completed a course in each of basic accountancy principles, Australian taxation law and, if the application for registration is made three years or later after the commencement of the new regime, a course in commercial law that is approved by the Board.

#### *Membership of a professional association*

Again, in recognition of the fact that voting members of a recognised tax agent association are subject to an additional 'layer' of professional oversight and support, such membership also provides an avenue to registration. Such applicants, however, are also required to have been engaged in the equivalent of eight years of full-time relevant experience in the preceding 10 years.

### Meaning of relevant experience for tax agents

The definition of relevant experience for tax agents under Division 2 in Part 2 of Schedule 2 means work by an individual:

- as a tax agent under the Act or under Part VIIA of the *Income Tax Assessment Act 1936* (that is, work as a tax agent prior to the commencement of the new regime); or
- under the supervision and control of a tax agent under the Act or under Part VIIA of the *Income Tax Assessment Act 1936*; or
- as an Australian legal practitioner; or
- of a kind that is approved by the Board.

The individual's work experience must have included substantial involvement in one or more of the types of tax agent services described in section 90-5 of the Act, or substantial involvement in a particular area of taxation law to which one or more of those types of tax agent services relate.

The concept of 'supervision and control' does not necessarily imply an employer/employee relationship. Certainly, in this context, services provided by an individual to a tax agent under a contract for service may still satisfy the requirements of relevant experience, depending on the circumstances.

Under subsection 50-5(3) of the Act, a legal practitioner can provide certain tax agent services for a fee without registration as a tax agent in certain circumstances. However, a legal practitioner must register as a tax agent if they wish to prepare or lodge a return or provide any other tax agent service that does not fall within the course of his or her profession. It is for this reason that the definition of relevant experience includes work as an Australian legal practitioner provided this work includes substantial involvement in the provision of tax agent services.

Giving the Board a further discretion to determine what constitutes 'relevant experience' gives the registration framework some flexibility to recognise experience which has provided the individual with a robust and thorough understanding of the requirements of the taxation law, though it has not been obtained either as a registered tax agent or under the supervision and control of a tax agent.

This issue might arise, for example, where an applicant has been employed in a corporate tax department or financial services organisation which has been providing tax agent services to clients of the corporate entity. It may also be relevant to certain specialist tax agent service providers who, though required to be registered under the new regime, may not necessarily have obtained experience as a registered tax agent or under the supervision and control of one.

### Regulation 9 — Application processing fees for Registration

An application for registration under section 20-20 of the Act must be accompanied by an application processing fee. The fee is payable for the lodgement of the application itself and should not be construed as a per annum registration fee (that, if an applicant surrenders their registration one year short of its expiry they would not be

eligible for a refund of a portion of the fee). The registration application fees for registration are set out in the table in regulation 9. There is no difference in fees for an original application and a renewal application.

The registration application fees for a tax agent who carries on a business as a tax agent and a tax agent who does not carry on a business as a tax agent are \$500 and \$250 respectively. The registration application fees for a BAS agent who carries on a business as a BAS agent and a BAS agent who does not carry on a business as a BAS agent are \$100 and \$50 respectively.

While the distinction between tax agents and nominees existing under the old regime (and therefore, the relevance of whether the entity is ‘carrying on a business’) has been removed from the registration requirements in the new regime, this distinction is maintained in the fee structure. This recognises that those entities ‘carrying on a business’ have a greater capacity to pay.

#### Regulation 10 — Allowances and expenses for witnesses required to appear before the Board

The investigation and enforcement powers of the Board contained in section 60-105 of the Act enable the Board to require a person to appear before it to give evidence or to produce certain documents.

Regulation 10 sets out the prescribed allowances and expenses payable to a witness who is required to attend an investigation to give evidence. These prescribed allowances and expenses seek to reimburse or compensate witnesses for the time, skill, costs (and foregone earnings) that they incur or bring to the conduct of an investigation. Item 1 of the table in regulation 10 stipulates that a person required to give evidence because of that person’s professional, scientific or other special skill or knowledge is entitled to receive a prescribed allowance in respect of each day on which that person attends, being the amount specified in the *High Court Rules 2004* in relation to the expenses of a witness of that kind.

Similarly, item 2 of the table states that persons not mentioned in item 1 also receive an amount specified by the *High Court Rules 2004* in relation to the expenses of a witness of that kind. Under item 3 a witness should be paid an additional amount for giving skilled evidence, being an amount that the Board considers reasonable and properly incurred and paid for qualifying to give skilled evidence. Under item 4, in addition to the amount payable to the person under item 1 or 2, and any amount payable under item 3, the person may also be paid an amount that the Board considers reasonable for the actual cost of the person’s conveyance and an amount the Board considers reasonable for sustenance or maintenance.

#### Regulation 11 — Administrative support and role of Secretary

Regulation 11 provides that the Commissioner must provide an ATO officer to act as the secretary of the Board as well as ATO officers to provide administrative assistance to the Board.

Before appointing the ATO officer to be the secretary, the Commissioner must first consult with the Board. In addition, in determining the number of persons to be made

available to provide administrative assistance to the Board, the Commissioner must have regard to:

- the number of persons required to enable the Board to perform its functions and exercise its powers; and
- the amount of funding that has been allocated for the purpose of the Board performing its functions.

The regulation is designed to ensure that the Board is provided with adequate and sufficiently skilled administrative assistance to enable it to effectively perform its functions. However, the amount of resources provided would be limited by the funding allocated for the purpose of the Board performing its functions and would be made in line with the Commissioner's broader obligations under the *Financial Management and Accountability Act 1997* (FMA Act).

The secretary must manage the resources made available for the purpose of administrative assistance to the Board in accordance with the *Public Service Act 1999*, the *Financial Management and Accountability Act 1997* and other applicable legislative instruments, attend all meetings of the Board and keep a record of the proceedings of the Board. If the secretary signs a certificate or other instrument (issued by the Board) on the Board's behalf, the certificate/instrument is considered to be sufficiently authenticated. As it may be impractical for the secretary to be in attendance at all meeting, he or she has the power to delegate any of his or her functions to another officer of the ATO whose services have been made available to the Board by the Commissioner.

#### Regulation 12 — Register of registered and deregistered agents

Section 60-135 of the Act provides that the Board must establish and maintain a register of registered agents and each entity who was a registered agent and whose registration has been terminated, except in certain circumstances. Under Section 60-135, details of an entity's termination of registration must only be placed on the register for 12 months after the date of registration.

The following information must be included on the registered of registered agents:

- the name of the agent;
- the contact details of the agent;
- any relevant professional affiliation;
- duration of registration;
- conditions on the registration; and
- any sanctions that have been imposed by the Board on the agent (other than a caution or termination).

The following information must be included on the register of deregistered agents:

- the name of the entity;
- contact details of the entity;
- date of effect of the termination; and
- the reason for termination.

The publication of information about registered agents whose registrations have been terminated will facilitate compliance with the civil penalty for employing or using the services of a deregistered entity in the Act.

Similar to the requirement that information regarding termination only be placed on the register for a period of 12 months following the date of termination, information regarding other sanctions (other than cautions) must be placed on the register for a period of 12 months commencing on the day on which the sanction is imposed or the period during which the sanction has effect (whichever is the longer). This limitation seeks to strike a balance between the public's interest in being made aware of inappropriate conduct of their representatives and the tax or BAS agent's interests in moving on from previous infractions.

The registers may include other information that is relevant to the operation of the arrangements for the registration of tax agents and BAS agents.