



Tax Agent Services (Transitional Provisions and Consequential Amendments) Act 2009

No. 114, 2009

An Act to amend the *Tax Agent Services Act 2009* and to deal with consequential and transitional matters arising from the enactment of that Act, and for related purposes

Note: An electronic version of this Act is available in ComLaw (<http://www.comlaw.gov.au/>)

Contents

1	Short title	2
2	Commencement	2
3	Schedule(s)	2
Schedule 1—Amendments		3
Part 1—Consequential amendments		3
<i>A New Tax System (Goods and Services Tax) Act 1999</i>		3
<i>Corporations Act 2001</i>		3
<i>Fringe Benefits Tax Assessment Act 1986</i>		3
<i>Income Tax Assessment Act 1936</i>		3
<i>Income Tax Assessment Act 1997</i>		4
<i>Income Tax (Transitional Provisions) Act 1997</i>		4
<i>Taxation Administration Act 1953</i>		4
Part 2—Other amendments		8
<i>Tax Agent Services Act 2009</i>		8
Schedule 2—Transitional provisions		9
Part 1—Preliminary		9
Part 2—Continuation of existing registrations etc.		10
Part 3—Applications for registration or re-registration		14
Division 1—Pending applications		14
Division 2—Applications not made, but time period for making applications not expired		20
Division 3—New applications		21
Part 4—References to, and things done by, or in relation to, a Tax Agents' Board		23
Part 5—Review of decisions		26
Part 6—Legal proceedings		28
Part 7—Reporting and disclosure obligations		30
Part 8—Miscellaneous		31



Tax Agent Services (Transitional Provisions and Consequential Amendments) Act 2009

No. 114, 2009

An Act to amend the *Tax Agent Services Act 2009* and to deal with consequential and transitional matters arising from the enactment of that Act, and for related purposes

[Assented to 16 November 2009]

The Parliament of Australia enacts:

1 Short title

This Act may be cited as the *Tax Agent Services (Transitional Provisions and Consequential Amendments) Act 2009*.

2 Commencement

- (1) Each provision of this Act 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
Provision(s)	Commencement	Date/Details
1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table	The day on which this Act receives the Royal Assent.	16 November 2009
2. Schedule 1, Part 1	Immediately after the commencement of Part 2 of the <i>Tax Agent Services Act 2009</i> .	1 March 2010
3. Schedule 1, Part 2	At the same time as Part 2 of the <i>Tax Agent Services Act 2009</i> commences.	1 March 2010
4. Schedule 2	Immediately after the commencement of Part 2 of the <i>Tax Agent Services Act 2009</i> .	1 March 2010

Note: This table relates only to the provisions of this Act as originally passed by both Houses of the Parliament and assented to. It will not be expanded to deal with provisions inserted in this Act after assent.

- (2) Column 3 of the table contains additional information that is not part of this Act. Information in this column may be added to or edited in any published version of this Act.

3 Schedule(s)

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

Schedule 1—Amendments

Part 1—Consequential amendments

A New Tax System (Goods and Services Tax) Act 1999

1 Section 195-1 (definition of *registered tax agent*)

Repeal the definition.

Corporations Act 2001

2 Paragraph 766B(5)(c)

Omit “tax agent registered under Part VIIA of the *Income Tax Assessment Act 1936*,” substitute “registered tax agent or BAS agent (within the meaning of the *Tax Agent Services Act 2009*),”.

Fringe Benefits Tax Assessment Act 1986

3 Part IX

Repeal the Part.

4 Subsection 136(1) (definition of *registered tax agent*)

Repeal the definition, substitute:

registered tax agent has the meaning given by subsection 90-1(1) of the *Tax Agent Services Act 2009*.

Income Tax Assessment Act 1936

5 Subsection 6(1) (definition of *registered tax agent*)

Repeal the definition.

6 Paragraph 16(4)(b)

Repeal the paragraph, substitute:

(b) any board, or member of a board, performing a function or exercising a power under a taxation law, for the purpose of performing that function or exercising that power;

7 Part VIIA

Repeal the Part.

Income Tax Assessment Act 1997

8 Section 214-185

Repeal the section.

9 Subsection 995-1(1) (paragraph (a) of the definition of *recognised tax adviser*)

After “*registered tax agent”, insert “or BAS agent”.

10 Subsection 995-1(1) (definition of *registered tax agent*)

Repeal the definition, substitute:

registered tax agent has the meaning given by subsection 90-1(1) of the *Tax Agent Services Act 2009*.

11 Subsection 995-1(1)

Insert:

registered tax agent or BAS agent has the same meaning as in the *Tax Agent Services Act 2009*.

12 Subsection 995-1(1) (at the end of the definition of *taxation law*)

Add:

; or (c) the *Tax Agent Services Act 2009* or regulations made under that Act.

Income Tax (Transitional Provisions) Act 1997

13 Section 214-130

Repeal the section.

Taxation Administration Act 1953

14 Subsection 2(1)

Insert:

registered tax agent or BAS agent has the same meaning as in the *Tax Agent Services Act 2009*.

15 After subsection 3B(1B)

Insert:

- (1C) Subsection (1) does not apply in relation to sections 3D and 3E, Part III and sections 15 and 15A insofar as that Part and those sections apply in relation to the *Tax Agent Services Act 2009*.

16 At the end of subsection 3C(1AB)

Add “or the *Tax Agent Services Act 2009*”.

17 Paragraph 8AAZLH(2A)(b)

After “registered tax agent”, insert “or BAS agent”.

18 At the end of Division 1 of Part III

Add:

8AC Application of Part to the *Tax Agent Services Act 2009*

This Part applies in relation to the *Tax Agent Services Act 2009* as if references in this Part (other than paragraph 8C(1)(b) and sections 8HA, 8W, 8WC, 8ZE, 8ZG and 8ZH) to the Commissioner, or an office of the Commissioner, were references to the Tax Practitioners Board established by the *Tax Agent Services Act 2009*.

19 Subsection 8J(2A)

After “registered tax agent”, insert “or BAS agent”.

20 After subsection 15(2)

Insert:

- (3) This section applies in relation to the *Tax Agent Services Act 2009* as if:
- (a) references in this section to the Commissioner were references to the Tax Practitioners Board (within the meaning of that Act); and
 - (b) references in this section to a Second Commissioner or to a Deputy Commissioner were omitted.

21 At the end of section 15A

Add:

- (12) This section applies in relation to the *Tax Agent Services Act 2009* as if references in this section to the Commissioner were references to the Chair of the Tax Practitioners Board (within the meaning of that Act).

22 Subsection 255-1(2) in Schedule 1

After “Division 290”, insert “of this Schedule or Part 5 of the *Tax Agent Services Act 2009*”.

23 After subsection 284-75(1) in Schedule 1

Insert:

- (1A) However, you are not liable to an administrative penalty under subsection (1) if:
- (a) you engage a *registered tax agent or BAS agent; and
 - (b) you give the registered tax agent or BAS agent all relevant taxation information; and
 - (c) the registered tax agent or BAS agent makes the statement; and
 - (d) the statement results in a *shortfall amount; and
 - (e) the shortfall amount did not result from:
 - (i) intentional disregard by the registered tax agent or BAS agent of a *taxation law; or
 - (ii) recklessness by the agent as to the operation of a taxation law.
- (1B) If you wish to rely on subsection (1A), you bear an evidential burden in relation to paragraph (1A)(b).

24 After subsection 286-75(1) in Schedule 1

Insert:

- (1A) However, you are not liable to an administrative penalty under subsection (1) if:
- (a) you engage a *registered tax agent or BAS agent; and
 - (b) you give the registered tax agent or BAS agent all relevant taxation information to enable the agent to give a return,

- notice, statement or other document to the Commissioner in the *approved form by a particular day; and
- (c) the registered tax agent or BAS agent does not give the return, notice, statement or other document to the Commissioner in the approved form by that day; and
 - (d) the failure to give the return, notice, statement or other document to the Commissioner did not result from:
 - (i) intentional disregard by the registered tax agent or BAS agent of a *taxation law; or
 - (ii) recklessness by the agent as to the operation of a taxation law.

(1B) If you wish to rely on subsection (1A), you bear an evidential burden in relation to paragraph (1A)(b).

25 Section 298-80

Repeal the section, substitute:

298-80 Application of Subdivision

This Subdivision applies for the purposes of the following provisions (the *civil penalty provisions*):

- (a) Division 290 of this Schedule (civil penalties for the promotion and implementation of schemes);
- (b) Part 5 of the *Tax Agent Services Act 2009* (civil penalties for providing tax agent services while unregistered and for certain conduct when providing tax agent services).

26 Application provision

- (1) The amendment made by item 23 applies in relation to statements given on or after the commencement of the item.
- (2) The amendment made by item 24 applies in relation to a return, notice, statement or other document required to be given on or after the commencement of the item.

Part 2—Other amendments

Tax Agent Services Act 2009

27 Paragraph 20-5(4)(a)

Omit “item 12”, substitute “item 7”.

28 Subparagraphs 50-30(1)(c)(iii) and (2)(c)(iii)

Omit “or control”, substitute “and control”.

29 Subsection 70-40(1)

Omit “if the Board is satisfied that the information is relevant to”,
substitute “for the purposes of”.

30 After paragraph 70-40(1)(a)

Insert:

(aa) establishing whether a civil penalty provision of a *taxation
law has been, or is being, contravened; or

Schedule 2—Transitional provisions

Part 1—Preliminary

1 Definitions

- (1) In this Schedule:

Board means the Tax Practitioners Board established under section 60-5 of the new law.

commencement means the commencement of Part 1, Schedule 1 to this Act.

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

old law means Part VIIA of the *Income Tax Assessment Act 1936* as in force immediately before commencement.

- (2) An expression used in this Schedule that is also used in the new law has the same meaning in this Schedule as it has in the new law.
- (3) Subject to subitem (2), an expression used in this Schedule that is also used in the *Income Tax Assessment Act 1997* has the same meaning in this Schedule as it has in that Act.

Part 2—Continuation of existing registrations etc.

2 Registration of a tax agent continues in force

- (1) If an entity was, immediately before commencement, a registered tax agent within the meaning of the old law, the entity is taken to be a registered tax agent within the meaning of the new law for the period:
- (a) beginning on the day on which this Schedule commences; and
 - (b) ending on the day on which:
 - (i) the entity's registration would have expired under the old law but for its repeal by Schedule 1 to this Act; or
 - (ii) if item 17 of this Schedule applies and the Board decides to cancel the entity's registration—the entity's registration is cancelled under the old law despite its repeal by Schedule 1 to this Act; or
 - (iii) the entity's registration is terminated under Subdivision 30-B or 40-A of the new law;whichever occurs first.

Note: A registered tax agent within the meaning of the new law is registered under section 20-25 of the new law.

- (2) If an entity was, immediately before commencement, taken not to be a registered tax agent within the meaning of the old law because of subsection 251K(6) of the old law (which relates to suspension), the entity is taken to have been suspended under section 30-25 of the new law for the period:
- (a) beginning on the day on which this Schedule commences; and
 - (b) ending on the day on which the suspension would have ended under the old law but for its repeal by Schedule 1 to this Act.
- (3) If subitem (2) applies in relation to an entity, immediately after the period of suspension ends, the entity is taken to be a registered tax agent within the meaning of the new law for the period:
- (a) beginning on the day immediately after the day on which the suspension ends; and
 - (b) ending on the day on which:

- (i) the entity's registration would have expired under the old law but for its repeal by Schedule 1 to this Act; or
 - (ii) if item 17 of this Schedule applies and the Board decides to cancel the entity's registration—the entity's registration is cancelled under the old law despite its repeal by Schedule 1 to this Act; or
 - (iii) the entity's registration is terminated under Subdivision 30-B or 40-A of the new law;
- whichever occurs first.

Note: A registered tax agent within the meaning of the new law is registered under section 20-25 of the new law.

3 Special rule relating to the registration of nominees of tax agents

If a person was, immediately before commencement, registered as a nominee of a tax agent under the old law, the person is taken to be a registered tax agent within the meaning of the new law for the period:

- (a) beginning on the day on which this Schedule commences; and
 - (b) ending on the day on which:
 - (i) the person's registration as a nominee would have ceased under paragraph 251KD(2)(g) of the old law but for its repeal by Schedule 1 to this Act because the registration of the tax agent ceases to be in force under the old law by virtue of subparagraph 2(1)(b)(i) of this Schedule; or
 - (ii) if item 17 of this Schedule applies and the Board decides to cancel the person's registration—the person's registration is cancelled under the old law despite its repeal by Schedule 1 to this Act; or
 - (iii) the person's registration as a registered tax agent is terminated under Subdivision 30-B or 40-A of the new law;
- whichever occurs first.

Note 1: A registered tax agent within the meaning of the new law is registered under section 20-25 of the new law.

Note 2: Subparagraph (b)(i)—the registration of the tax agent (of whom the person is the nominee) will continue because of item 2 of this Schedule.

4 Special rule relating to the provision of tax agent services by certain entities

- (1) If:
- (a) immediately before commencement, an entity was providing a service that is a tax agent service (other than a BAS service within the meaning of the new law) but was not required to be registered as a tax agent under the old law; and
 - (b) during the 3 month period beginning immediately after commencement, the entity notifies the Board that the entity satisfies paragraph (a);

the entity is taken to be a registered tax agent within the meaning of the new law for the 2 year period beginning immediately after commencement.

Note 1: A registered tax agent within the meaning of the new law is registered under section 20-25 of the new law.

Note 2: Paragraph (b)—for the form of the notification, see item 25 of this Schedule.

- (2) To avoid doubt, if an entity is taken to be a registered tax agent under subitem (1), the Board may, in accordance with the new law, do either or both of the following:

- (a) impose conditions to which the entity's registration is subject;
- (b) require the entity to maintain professional indemnity insurance;

as if the entity had applied for registration and the Board had decided to grant the application.

5 Special rules relating to the provision of BAS services by certain persons and entities

- (1) If:
- (a) immediately before commencement, a person:
 - (i) was a person referred to in paragraph 251L(6)(a), (b) or (c) of the old law; and
 - (ii) was providing a BAS service within the meaning of subsection 251L(7) of the old law; and
 - (b) during the 6 month period beginning immediately after commencement, the person notifies the Board that he or she satisfies paragraph (a) of this subitem;

the person is taken to be a registered BAS agent within the meaning of the new law for the 2 year period beginning immediately after commencement.

Note 1: A registered BAS agent is registered under section 20-25 of the new law.

Note 2: Paragraph (b)—for the form of the notification, see item 25 of this Schedule.

- (2) If:
- (a) an entity is not a person mentioned in subitem (1); and
 - (b) immediately before commencement, the entity was providing a BAS service within the meaning of the new law (other than a BAS service within the meaning of subsection 251L(7) of the old law); and
 - (c) during the 6 month period beginning immediately after commencement, the entity notifies the Board that the entity satisfies paragraphs (a) and (b);

the entity is taken to be a registered BAS agent within the meaning of the new law for the 2 year period beginning immediately after commencement.

Note 1: A registered BAS agent is registered under section 20-25 of the new law.

Note 2: Paragraph (c)—for the form of the notification, see item 25 of this Schedule.

- (3) To avoid doubt, if a person is taken to be a registered BAS agent under subitem (1), the Board may, in accordance with the new law, do either or both of the following:
- (a) impose conditions to which the person's registration is subject;
 - (b) require the person to maintain professional indemnity insurance;

as if the person had applied for registration and the Board had decided to grant the application.

- (4) To avoid doubt, if an entity is taken to be a registered BAS agent under subitem (2), the Board may, in accordance with the new law, do either or both of the following:
- (a) impose conditions to which the entity's registration is subject;
 - (b) require the entity to maintain professional indemnity insurance;

as if the entity had applied for registration and the Board had decided to grant the application.

Part 3—Applications for registration or re-registration

Division 1—Pending applications

6 Pending applications for registration—tax agents

- (1) If:
- (a) an entity has applied to a Tax Agents' Board for registration under section 251J of the old law; and
 - (b) the Tax Agents' Board has not decided the application before commencement;
- then:
- (c) the Board must decide the application in accordance with section 251JA of the old law within 6 months after commencement; and
 - (d) if the Board decides to grant the application—the Board must:
 - (i) register the entity as a registered tax agent under section 20-25 of the new law; and
 - (ii) notify the entity of its decision in accordance with section 20-30 of the new law; and
 - (e) if the Board decides to reject the application—the Board must notify the entity of its decision in accordance with subsection 251JA(3) and section 251QB of the old law.
- (2) The Board is taken to have rejected the application if it has not made its decision within 6 months after commencement.
- (3) To avoid doubt, if the Board decides to grant the application, the Board may, in accordance with subsection 20-30(3) of the new law, require the entity to maintain professional indemnity insurance.

7 Pending applications for re-registration—tax agents

- (1) If:
- (a) an entity has applied to a Tax Agents' Board for re-registration under section 251JB of the old law; and
-

- (b) the Tax Agents' Board has not decided the application before commencement;

then:

- (c) the Board must decide the application in accordance with section 251JC of the old law within 6 months after commencement; and
 - (d) if the Board decides to grant the application—the Board must:
 - (i) register the entity as a registered tax agent under section 20-25 of the new law; and
 - (ii) notify the entity of its decision in accordance with section 20-30 of the new law; and
 - (e) if the Board decides to reject the application—the Board must notify the entity of its decision in accordance with subsection 251JC(3) and section 251QB of the old law.
- (2) The Board is taken to have rejected the application if it has not made its decision within 6 months after commencement.
 - (3) To avoid doubt, if the Board decides to grant the application, the Board may, in accordance with subsection 20-30(3) of the new law, require the entity to maintain professional indemnity insurance.
 - (4) The entity is taken to be a registered tax agent for the period:
 - (a) beginning on the day on which this Schedule commences; and
 - (b) ending:
 - (i) on the day on which the Board makes its decision; or
 - (ii) on the day that occurs 6 months after commencement; whichever occurs first.
 - (5) If:
 - (a) an entity has requested a Tax Agents' Board to allow, under paragraph 251JB(4)(b) of the old law, an application for re-registration to be made at a later time but before the day on which the entity's registration would have ended under the old law but for its repeal by Schedule 1 to this Act; and
 - (b) the Tax Agents' Board has not made a decision before commencement;

then:

- (c) the Board must make a decision in accordance with section 251JB of the old law; and
- (d) if the Board decides to allow the request:
 - (i) the entity may apply for re-registration within the time decided by the Board; and
 - (ii) for the purposes of paragraph (1)(a) of this item, the entity is taken to have applied to a Tax Agents' Board for re-registration under section 251JB of the old law; and
- (e) if the Board decides to refuse the request—the Board must notify the entity in accordance with subsection 251JB(5) and section 251QB of the old law.

8 Pending applications for registration—nominees

- (1) If:
 - (a) an entity has applied to a Tax Agents' Board for registration of a nominee under section 251KB of the old law; and
 - (b) the Tax Agents' Board has not decided the application before commencement;then:
 - (c) the Board must decide the application in accordance with section 251KC of the old law within 6 months after commencement; and
 - (d) if the Board decides to grant the application—the Board must:
 - (i) register the nominee as a registered tax agent under section 20-25 of the new law; and
 - (ii) notify the entity and the nominee of its decision in accordance with section 20-30 of the new law; and
 - (e) if the Board decides to reject the application—the Board must notify the entity and the nominee of its decision in accordance with subsection 251KC(3) and section 251QB of the old law.
 - (2) The Board is taken to have rejected the application if it has not made its decision within 6 months after commencement.
 - (3) To avoid doubt, if the Board decides to grant the application, the Board may, in accordance with subsection 20-30(3) of the new law, require the nominee to maintain professional indemnity insurance.
-

9 Pending applications for re-registration—nominees

- (1) If:
- (a) an entity has applied to a Tax Agents' Board for re-registration of a nominee under section 251KB of the old law; and
 - (b) the Tax Agents' Board has not decided the application before commencement;
- then:
- (c) the Board must decide the application in accordance with section 251KC of the old law within 6 months after commencement; and
 - (d) if the Board decides to grant the application—the Board must:
 - (i) register the nominee as a registered tax agent under section 20-25 of the new law; and
 - (ii) notify the entity and the nominee of its decision in accordance with section 20-30 of the new law; and
 - (e) if the Board decides to reject the application—the Board must notify the entity and the nominee of its decision in accordance with subsection 251KC(3) and section 251QB of the old law.
- (2) The Board is taken to have rejected the application if it has not made its decision within 6 months after commencement.
- (3) To avoid doubt, if the Board decides to grant the application, the Board may, in accordance with subsection 20-30(3) of the new law, require the nominee to maintain professional indemnity insurance.
- (4) The nominee is taken to be a registered tax agent for the period:
- (a) beginning on the day on which this Schedule commences; and
 - (b) ending:
 - (i) on the day on which the Board makes its decision; or
 - (ii) on the day that occurs 6 months after commencement;whichever occurs first.
- (5) If:
- (a) an entity has requested a Tax Agents' Board to allow, under paragraph 251KB(4)(b) of the old law, an application for
-

re-registration of a nominee to be made at a later time but before the day on which the nominee's registration would have ended under the old law but for its repeal by Schedule 1 to this Act; and

- (b) the Tax Agents' Board has not made a decision before commencement;

then:

- (c) the Board must make a decision in accordance with section 251KB of the old law; and
- (d) if the Board decides to allow the request:
 - (i) the entity may apply for re-registration within the time decided by the Board; and
 - (ii) for the purposes of paragraph (1)(a) of this item, the entity is taken to have applied to a Tax Agents' Board for re-registration under section 251KB of the old law; and
- (e) if the Board decides to refuse the request—the Board must notify the entity and the nominee in accordance with subsection 251KB(5) and section 251QB of the old law.

10 Pending applications for registration—successor tax agents

- (1) If:

- (a) the registration of a partnership has been terminated because of section 251JD of the old law; and
- (b) a person has applied to a Tax Agents' Board in accordance with subsection 251JE(1) of the old law; and
- (c) the Tax Agents' Board has not registered the person under section 251JF of the old law before commencement;

then, despite section 251JD of the old law, the partnership's registration is taken not to have been terminated at the time of the change in the constitution of the partnership.

- (2) If:

- (a) the registration of a partnership (the *original partnership*) has been terminated because of section 251JD of the old law; and
 - (b) a new partnership has applied to a Tax Agents' Board in accordance with subsection 251JE(2) of the old law; and
-

- (c) the Tax Agents' Board has not registered the new partnership under section 251JF of the old law before commencement;

then, despite section 251JD of the old law, the original partnership's registration is taken not to have been terminated at the time of the change in the constitution of the partnership.

- (3) If:

- (a) a Tax Agents' Board received a document from an entity purporting to be an application made in accordance with section 251JE of the old law; and
- (b) the Tax Agents' Board notified the entity in accordance with subsection 251JE(8) of the old law that the Tax Agents' Board was of the opinion that the document was not an application made in accordance with section 251JE of the old law; and
- (c) at commencement, the 7 day period mentioned in subsection 251JE(9) of the old law has not expired; and
- (d) the entity has not made an application under section 251JE of the old law, as allowed by subsection 251JE(9) of the old law;

then:

- (e) the entity may, under subsection 251JE(9) of the old law, apply in accordance with section 251JE of the old law within 7 days after commencement; and
- (f) if the Board is of the opinion that the entity has applied in accordance with section 251JE of the old law—the Board must:
 - (i) register the entity as a registered tax agent under section 20-25 of the new law; and
 - (ii) notify the entity of its decision in accordance with section 20-30 of the new law.

- (4) To avoid doubt, if the Board decides to grant the application, the Board may, in accordance with subsection 20-30(3) of the new law, require the entity to maintain professional indemnity insurance.

11 Pending applications—refund of lodgment fees

If:

- (a) an application made under section 251J, 251JB or 251KB of the old law is covered by this Division; and

- (b) the application is withdrawn; and
- (c) the application is neither granted nor refused by the Board before it is withdrawn;

the Commissioner must refund the lodgment fee paid in respect of the application under section 251KF of the old law, despite its repeal by Schedule 1 to this Act.

Division 2—Applications not made, but time period for making applications not expired

12 Applications for registration not made—successor tax agents

(1) If:

- (a) the registration of a partnership has been terminated because of section 251JD of the old law; and
- (b) at commencement:
 - (i) a person had not applied to a Tax Agents' Board in accordance with subsection 251JE(1) of the old law; but
 - (ii) the 30 day period within which an application had to be made (as mentioned in subsection 251JE(4) of the old law) had not expired;

then, the person may apply to the Board in accordance with subsection 251JE(1) of the old law, despite its repeal by Schedule 1 of this Act, within the 30 day period.

(2) If the person makes an application mentioned in subitem (1), then despite section 251JD of the old law, the partnership's registration is taken not to have been terminated at the time of the change in the constitution of the partnership.

(3) If:

- (a) the registration of a partnership (the *original partnership*) has been terminated because of section 251JD of the old law; and
- (b) at commencement:
 - (i) a new partnership had not applied to a Tax Agents' Board in accordance with subsection 251JE(2) of the old law; but

- (ii) the 30 day period within which an application had to be made (as mentioned in subsection 251JE(4) of the old law) had not expired;

then, the new partnership may apply to the Board in accordance with subsection 251JE(2) of the old law, despite its repeal by Schedule 1 of this Act, within the 30 day period.

- (4) If the new partnership makes an application mentioned in subitem (3), then despite section 251JD of the old law, the original partnership's registration is taken not to have been terminated at the time of the change in the constitution of the partnership.

Division 3—New applications

13 Special rule for applications for registration as a registered tax agent

- (1) If:
 - (a) an entity applies for registration as a registered tax agent under section 20-20 of the new law before the end of the 6 month period beginning immediately after commencement; 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 agent); or
 - (ii) paragraph 20-5(2)(c) or (3)(d); and
 - (c) immediately before commencement, the entity was providing a tax agent service within a particular area of the taxation laws; and
 - (d) the Board is satisfied that the entity had been providing that tax agent service to a competent standard for a reasonable period before making the application;

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

- (2) The entity is taken to be a registered tax agent within the meaning of the new law for the period:

- (a) beginning on the day on which this Schedule commences;
and
- (b) ending immediately before the day on which the Board makes a decision under section 20-25 of the new law.

14 Special rule for applications for registration as a registered BAS agent

(1) If:

- (a) an entity applies for registration as a registered BAS agent under section 20-20 of the new law before the end of the 3 year period beginning immediately after commencement; 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 BAS agent); or
 - (ii) paragraph 20-5(2)(c) or (3)(d); and
- (c) the Board is satisfied that the entity had been providing BAS services to a competent standard for a reasonable period before making the application;

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

(2) If:

- (a) an entity is or has been taken to be a registered BAS agent under item 5 of this Schedule; and
- (b) the entity is eligible for registration under subitem (1) of this item;

then, despite subsection 20-25(4) of the new law, the period that the Board may determine under that subsection must be at least 12 months.

Part 4—References to, and things done by, or in relation to, a Tax Agents' Board

15 Things done by, or in relation to, a Tax Agents' Board

- (1) If a thing was done by, or in relation to, a Tax Agents' Board under the old law, then the thing is taken, for the purposes of the operation of any law after commencement, to have been done by, or in relation to, the Board.
- (2) The Minister may, by writing, determine that subitem (1) does not apply in relation to a specified thing done by, or in relation to, a Tax Agents' Board.
- (3) To avoid doubt, doing a thing includes making an instrument.
- (4) A determination under subitem (2) is not a legislative instrument.

16 References in instruments

- (1) If:
 - (a) an instrument is in force immediately before commencement; and
 - (b) the instrument contains a reference to a Tax Agents' Board;then, the instrument has effect after commencement as if the reference to the Tax Agents' Board were a reference to the Board.
- (2) The Minister may, by writing, determine that subitem (1) does not apply in relation to a specified reference.
- (3) A determination made under subitem (2) is not a legislative instrument.

17 Continuation of inquiries by a Tax Agents' Board

- (1) If, before commencement, a Tax Agents' Board had given an entity a show cause notice, then:
 - (a) within 60 days after commencement, the Board must decide whether to investigate the entity; and
 - (b) if the Board decides to investigate the entity—the Board must:

Schedule 2 Transitional provisions

Part 4 References to, and things done by, or in relation to, a Tax Agents' Board

- (i) notify the entity in accordance with section 60-95 of the new law; and
 - (ii) carry out its investigation in accordance with the process required or allowed by Subdivision 60-E of the new law as if the Board were investigating conduct that may breach the *Tax Agent Services Act 2009*; and
 - (iii) take whatever action in relation to the entity allowed by the old law, despite its repeal by Schedule 1 to this Act, that the Board considers appropriate; and
 - (c) if the Board decides not to investigate the entity—the Board must, within 30 days of its decision, notify the entity, in writing, that no further action will be taken in relation to the show cause notice.
- (2) If a decision is not made within 60 days after commencement, the Board is taken to have decided not to investigate the entity.
- (3) If, as allowed by subparagraph (1)(b)(iii), the Board suspends an entity, the entity is taken not to be a registered tax agent within the meaning of the new law while the entity is suspended, except for the purposes of the following Parts of the new law:
- (a) Part 2 (Registration);
 - (b) Part 3 (The Code of Professional Conduct);
 - (c) Part 4 (Termination of registration).
- (4) If:
- (a) a Tax Agents' Board required a person to provide evidence, information or any document; and
 - (b) the evidence, information or document was not provided to the Tax Agents' Board before commencement;
- then, the evidence, information or document must be provided to the Board.
- (5) In this item:
- show cause notice*** means a written notice to an entity that:
- (a) sets out the grounds on which a Tax Agents' Board is giving the notice; and
 - (b) invites the entity to respond to the Tax Agents' Board, in writing, addressing the grounds on which the Tax Agents' Board has given the notice; and
-

- (c) states the period within which the entity must give the written response to the Tax Agents' Board.

Part 5—Review of decisions

18 Rights of review of certain decisions

- (1) Despite the repeal of section 251QA of the old law by Schedule 1 to this Act, an application may be made to the Administrative Appeals Tribunal under that section for review of any of the following decisions:
- (a) a decision by a Tax Agents' Board made before commencement under a provision of the old law if, at commencement, the period for making an application for review has not ended;
 - (b) a decision by the Board to reject an application for registration decided in accordance with section 251JA of the old law under paragraph 6(1)(c) of this Schedule;
 - (c) a decision by the Board to reject an application for re-registration decided in accordance with section 251JC of the old law under paragraph 7(1)(c) of this Schedule;
 - (d) a decision by the Board to refuse a request to allow an application for re-registration to be made at a later time in accordance with section 251JB of the old law under paragraph 7(5)(c) of this Schedule;
 - (e) a decision by the Board to reject an application for registration decided in accordance with section 251KC of the old law under paragraph 8(1)(c) of this Schedule;
 - (f) a decision by the Board to reject an application for re-registration decided in accordance with section 251KC of the old law under paragraph 9(1)(c) of this Schedule;
 - (g) a decision by the Board to refuse a request to allow an application for re-registration to be made at a later time in accordance with section 251KB of the old law under paragraph 9(5)(c) of this Schedule;
 - (h) a decision by the Board to suspend or cancel the registration of an entity after investigating the entity in accordance with the new law as referred to in item 17 of this Schedule.
- (2) To avoid doubt, an application may be made to the Administrative Appeals Tribunal under section 70-10 of the new law for review of any of the following decisions of the Board:
-

- (a) a decision under section 20-25 of the new law, as applied by one of the following provisions of this Schedule, to specify a condition to which registration is subject:
 - (i) paragraph 4(2)(a);
 - (ii) paragraph 5(3)(a);
 - (iii) paragraph 5(4)(a);
 - (iv) subparagraph 6(1)(d)(i);
 - (v) subparagraph 7(1)(d)(i);
 - (vi) subparagraph 8(1)(d)(i);
 - (vii) subparagraph 9(1)(d)(i);
 - (viii) subparagraph 10(3)(f)(i);
- (b) a decision under section 20-30 of the new law, as applied by one of the following provisions of this Schedule, to require professional indemnity insurance to be maintained:
 - (i) paragraph 4(2)(b);
 - (ii) paragraph 5(3)(b);
 - (iii) paragraph 5(4)(b);
 - (iv) subparagraph 6(1)(d)(ii);
 - (v) subparagraph 7(1)(d)(ii);
 - (vi) subparagraph 8(1)(d)(ii);
 - (vii) subparagraph 9(1)(d)(ii);
 - (viii) subparagraph 10(3)(f)(ii);
- (c) a decision under subsection 60-125(4) of the new law, as applied by subparagraph 17(1)(b)(ii) of this Schedule, to extend the period of time within which an investigation is to be completed.

Part 6—Legal proceedings

19 Substitution of Board as a party to pending proceedings

If any proceedings to which a Tax Agents' Board was a party were pending in any court or tribunal immediately before commencement, the Board is substituted for the Tax Agents' Board, after commencement, as a party to the proceedings.

20 Legal proceedings by taxpayers to recover fines etc.

(1) If:

- (a) a taxpayer is or becomes liable to pay a fine or other penalty, additional tax, shortfall interest charge or the general interest charge under a provision of:
 - (i) the *Income Tax Assessment Act 1936*; or
 - (ii) the *Income Tax Assessment Act 1997*; or
 - (iii) Part IVC of the *Taxation Administration Act 1953*, so far as that Part relates to the *Income Tax Assessment Act 1936*, the *Income Tax Assessment Act 1997* or Schedule 1 to the *Taxation Administration Act 1953*; or
 - (iv) Schedule 1 to the *Taxation Administration Act 1953*; and
- (b) a registered tax agent (within the meaning of the old law) or a person exempted under section 251L of the old law would have been liable to pay to the taxpayer the amount of that fine or other penalty, additional tax, shortfall interest charge or general interest charge under section 251M of the old law, but for its repeal by Schedule 1 to this Act;

then, the taxpayer may, in accordance with section 251M of the old law, sue for and recover that amount as if that section had not been repealed by Schedule 1 to this Act.

(2) If:

- (a) an employer (within the meaning of the *Fringe Benefits Tax Assessment Act 1986*) is or becomes liable to pay a fine or other penalty or any additional tax; and
- (b) a registered tax agent (within the meaning of the old law) would have been liable to pay to the employer the amount of

that fine, penalty or additional tax under section 120 of the *Fringe Benefits Tax Assessment Act 1986*, but for its repeal by Schedule 1 to this Act;

then, the employer may, in accordance with section 120 of the *Fringe Benefits Tax Assessment Act 1986*, sue for and recover that amount as if that section had not been repealed by Schedule 1 to this Act.

21 Special rule relating to the cancellation of registration

(1) If an entity was a registered tax agent or a registered nominee within the meaning of the old law, then, the entity is taken to have been previously a registered tax agent or BAS agent for the purposes of subparagraph 50-25(1)(c)(i) of the new law.

(2) If:

- (a) an entity was a registered tax agent or a registered nominee within the meaning of the old law; and
- (b) the registration of the entity was cancelled under section 251K or 251KE of the old law (other than because the entity permanently ceased to carry on business as a registered tax agent);

then, the cancellation of the entity's registration under section 251K or 251KE of the old law is taken to have been a termination of registration under Part 4 of the new law for the purposes of subparagraph 50-25(1)(c)(ii) of the new law.

Part 7—Reporting and disclosure obligations

22 Modified reporting requirements for first year

If commencement occurs during the last 3 months of a financial year, then, despite subsection 60-130(1) of the new law:

- (a) the Chair is not required to prepare a report for that financial year; and
- (b) the period from commencement to the end of the financial year must be dealt with in the next annual report.

23 Obligation to keep register

The requirements of section 60-135 of the new law apply in relation to an entity if:

- (a) the entity was a registered tax agent or a registered nominee within the meaning of the old law; and
- (b) in the period of 12 months before commencement, the registration of the entity was cancelled under section 251K or 251KE of the old law other than because the entity permanently ceased to carry on business as a registered tax agent.

24 Transfer of custody of records of Tax Agents' Board

- (1) This item applies to any records or documents that:
 - (a) are in the custody of a Tax Agents' Board immediately before commencement; or
 - (b) relate to the activities of a Tax Agents' Board but are in the custody of the Commissioner of Taxation before commencement.
- (2) The records and documents must be transferred into the custody of the Board as soon as practicable after commencement.

Part 8—Miscellaneous

25 Notifications given to the Board

If an entity notifies the Board under subitems 4(1), 5(1) and 5(2) of this Schedule, 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
- (c) be given to the Board in a way required by the Board.

26 Transitional regulations

- (1) The Governor-General may make regulations prescribing matters:
 - (a) required or permitted by this Schedule to be prescribed; or
 - (b) necessary or convenient to be prescribed for carrying out or giving effect to this Schedule.
- (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 Schedule 1 to this Act.
- (3) Subitem (2) does not limit subitem (1).

*[Minister's second reading speech made in—
House of Representatives on 24 June 2009
Senate on 29 October 2009]*

(127/09)

Tax Agent Services (Transitional Provisions and Consequential Amendments) Act 2009 No.
114, 2009 31