

TPB Information sheet

TPB(I) 31/2016

Payroll service providers

DISCLAIMER

This is a Tax Practitioners Board (TPB) information sheet (TPB(I)). It is intended to be for information only. While it seeks to provide practical assistance and explanation, it does not exhaust, prescribe or limit the scope of the TPB's powers in the *Tax Agent Services Act 2009* (TASA) or the *Tax Agent Services Regulations 2009* (TASR).

In addition, please note that the principles and examples in this TPB(I) do not constitute legal advice and do not create additional rights or legal obligations beyond those that are contained in the TASA or which may exist at law.

Document history

The TPB originally released this document as a draft information sheet in the form of an exposure draft on 11 July 2014.. The TPB considered the submissions made and issued a second exposure draft on 18 August 2016. The closing date for the submissions was 3 October 2016.

The TPB considered the comments and submissions received and now publishes the following TPB(I).

Issued: 9 December 2016

Introduction

1. This information sheet (TPB(I)) has been prepared by the Tax Practitioners Board (TPB) to assist payroll service providers to understand the operation of the tax agent services regime and their responsibilities in relation to registration.
2. For the purposes of this TPB(I), the term 'payroll service provider' takes a broad interpretation and includes individuals or entities that process payroll, or perform payroll related functions, for clients in order to satisfy their clients' relevant tax related statutory requirements (see paragraphs 17 and 18 for more information regarding examples of services that may be provided by payroll services providers, and whether the payroll service provider needs to register with the TPB).
3. Ultimately, whether a payroll service provider needs to register with the TPB is a question of fact. This means that each situation will need to be considered on a case-by-case basis having regard to the facts and circumstances of the payroll service provider.
4. In this TPB(I), you will find the following information:
 - background about the tax agent services regime (paragraphs 5 to 16)
 - examples of circumstances where a payroll service provider does not need to register as a tax agent or BAS agent (paragraph 17)
 - examples of circumstances where a payroll service provider must register as a tax agent or BAS agent (paragraph 18)
 - options available to payroll service providers who need to register (paragraph 20), including information about the different eligibility pathways for registration.

Background

5. The TPB administers a system for the registration of tax agents, BAS agents and tax (financial) advisers under the Tax Agent Services Act 2009 (TASA). Given the nature of the services commonly provided by payroll service providers, this TPB(I) will only focus on registration as a tax agent or BAS agent.
6. An individual, partnership or company must be registered as a tax agent or BAS agent to provide a 'tax agent service' or 'BAS service' for a fee or other reward (see paragraphs 9 to 16 for information on the meaning of 'tax agent service' and 'BAS service').
7. It is important to note that the fee does not necessarily have to be separately charged to the client. It can form part of a package of services offered by the payroll service provider to the client.

8. There are no separate or specific legislative provisions relating to whether payroll service providers need to be registered under the TASA.

Tax agent service

9. A 'tax agent service' is any service that relates to:

- ascertaining liabilities, obligations or entitlements of an entity that arise, or could arise, under a taxation law, or
- advising an entity about liabilities, obligations or entitlements of the entity or another entity that arise, or could arise, under a taxation law, or
- representing an entity in their dealings with the Commissioner of Taxation (Commissioner), and
- that is provided in circumstances where the entity can reasonably be expected to rely on the service to satisfy liabilities or obligations, or to claim entitlements, that arise or could arise under a taxation law.¹

10. A tax agent service includes, but is not limited to:

- preparing or lodging a return, notice, statement, application or other document about a taxpayer's liabilities, obligations or entitlements under a taxation law
- giving a taxpayer advice about a taxation law that the taxpayer can reasonably be expected to rely upon to satisfy their taxation obligations
- dealing with the Commissioner on behalf of a taxpayer.

11. A taxation law includes BAS provisions and as such the definition of tax agent service includes BAS services.

12. Any decision about whether advice constitutes a tax agent service requires consideration of all the facts and circumstances to determine if the client can reasonably be expected to rely on that advice.

¹ 'Taxation law' includes any Act (including a part of an Act) of which the Commissioner has general administration of, or any regulations made under such an Act. Key Acts include, but are not limited to, the:

- *Income Tax Assessment Act 1936*;
- *Income Tax Assessment Act 1997*;
- *Superannuation Industry (Supervision) Act 1993*; and
- *Fringe Benefits Tax Assessment Act 1986*.

Taxation laws also include the TASA and regulations made under the TASA, for which the TPB has general administration.

13. Sometimes parties to a transaction might attempt to use disclaimers to deny that a tax agent service is being provided. While the TPB will consider a disclaimer in determining if a person could reasonably be expected to rely on a service, the mere existence of a disclaimer alone will not be determinative of whether any reliance was placed on the service and was reasonable. Evidence of other in-house practices and procedures that purport to limit the service may also be relevant, as may other evidence of the circumstances.

BAS service

14. A 'BAS service' is a 'tax agent service' that relates to:
- ascertaining liabilities, obligations or entitlements of an entity that arise, or could arise, under a BAS provision, or
 - advising an entity about liabilities, obligations or entitlements of the entity or another entity that arise, or could arise, under a BAS provision, or
 - representing an entity in their dealings with the Commissioner in relation to a BAS provision, and
- that is provided in circumstances where the entity can reasonably be expected to rely on the service to satisfy liabilities or obligations, or to claim entitlements, that arise or could arise under a BAS provision.²

² Under section 995-1 of the *Income Tax Assessment Act 1997*, BAS provisions means:

- Part VII of the *Fringe Benefits Tax Assessment Act 1986* (the collection and recovery of tax provisions), and
- Indirect tax laws, including goods and services tax law, wine equalisation tax law, luxury car tax law and fuel tax law
- Parts 2-5 and 2-10 in Schedule 1 to the *Taxation Administration Act 1953* (the pay as you go (PAYG) withholding and instalments systems).

15. A BAS service also includes any service which the TPB, by legislative instrument, specifies to be a BAS service.³ On 1 June 2016, the TPB specified the following services to be a BAS service:

- services under the Superannuation Guarantee (Administration) Act 1992 to the extent that they relate to a payroll function or payments to contractors
- determining and reporting the superannuation guarantee shortfall amount and any associated administrative fees
- dealing with superannuation payments made through a clearing house
- completing and lodging the Taxable payments annual report to the (Australian Taxation Office (ATO), on behalf of a client sending a tax file number declaration to the Commissioner, on behalf of a client
- applying to the Australian Business Registrar for an Australian business number, on behalf of a client.⁴

16. A BAS service also includes, but is not limited to:

- preparing or lodging an approved form about a taxpayer's liabilities, obligations or entitlements under a BAS provision
- giving a taxpayer advice about a BAS provision that the taxpayer can reasonably be expected to rely upon to satisfy their obligations
- dealing with the Commissioner on behalf of a taxpayer in relation to a BAS provision.

³ See subsection 90-10(1A) of the TASA.

⁴ See section 5 of the *Tax Agent Services (Specified BAS Services) Instrument 2016*.

Circumstances where a payroll service provider does not need to register as a tax agent or BAS agent

17. A payroll service provider does not need to register as a tax agent or BAS agent if:
- the services provided are considered to be 'in-house services'. This includes arrangements where there may be a cost recovery and/or shared services arrangement in place for the provision of the services by entities regarded as in-house service providers
 - the services are not provided for a fee or other reward
 - the services provided do not meet the definition of tax agent service (which includes BAS service). Such services include, for example:
 - data entry, providing the data entry does not require the interpretation or application of a taxation law
 - coding of transactions based on instructions provided
 - processing of payments
 - preparing bank reconciliations
 - determining State/Territory obligations or entitlements (including payroll tax and WorkCover).

Circumstances where a payroll service provider must register as a tax agent or BAS agent

18. The following are examples of services that may be provided by a payroll service provider, which the TPB considers would most likely be covered by the definition of a tax agent service (including a BAS service) and therefore would require the payroll service provider to be registered.

Example 1 – A client outsources their entire payroll and accounts work to a payroll service provider.

In the provision of this service, the payroll service provider interprets and applies a taxation law, which includes a BAS provision, and/or represents the client in their dealings with the Commissioner and it would be reasonable to expect that their client will rely on those services.

Example 2 – A payroll service provider offers a help desk which provides customised advice to assist their client to meet a specific tax outcome.

For advice to constitute a tax agent service, the advice would need to relate to the client's particular circumstances and would require the interpretation of taxation laws. It must also be reasonable for the client to rely on the advice. If these conditions are met, such advice will be a tax agent service.

Example 3 – A payroll service provider undertakes a payroll compliance review for their client to ensure compliance with taxation obligations.

For the payroll compliance review to constitute a tax agent service, it would need to involve the payroll service provider providing an assessment and/or opinion as to whether their client is compliant with their taxation obligations under one or more taxation laws.

Example 4 – A payroll service provider offers tax related advice to their client that is specific to the client's circumstances.

For the advice to constitute a tax agent service, it would need to relate to the client's particular circumstances and would require the interpretation of taxation laws. It must also be reasonable to expect the client to rely on the advice. The advice may be verbal or written. Examples of tax related advice typically provided by payroll service providers that would require registration include advice regarding:

- PAYG withholding liability
- Superannuation Guarantee obligations
- fringe benefits tax laws
- termination and redundancy payments.

Example 5 – A payroll service provider prepares and/or lodges documents with the ATO on behalf of their client.

The preparation and/or lodgement of documents with the ATO on behalf of a client is a tax agent service and will require the payroll service provider to be registered.

Example 6 – A payroll service provider deals with the Commissioner on behalf of their client.

For this type of activity to constitute a tax agent service, it must involve the payroll service provider dealing with the Commissioner on behalf of a client in respect of a taxation law.

19. If an unregistered payroll service provider provides a tax agent service or BAS service for a fee or other reward, they may contravene a civil penalty provision in the TASA. In this case, the TPB may apply to the Federal Court for an order requiring the payroll service provider to pay a civil penalty, or may seek an injunction to restrain the payroll service provider from engaging in the unregistered conduct.

Options available to payroll service providers who need to register

20. If a payroll service provider intends to provide a tax agent service or a BAS service for a fee or other reward, the following options are available:

a) Subject to meeting the eligibility requirements, the payroll service provider could register as a tax agent or BAS agent

For registration as an individual, the payroll service provider will need to meet qualifications and experience requirements, and other requirements such as being a fit and proper person.⁵

For partnership and company registration, the payroll service provider will need to ensure that it has a sufficient number of registered individuals, being registered agents, to provide services to a competent standard and to carry out necessary supervisory arrangements.

For information about how to register, see www.tpb.gov.au/registration

b) Engage a registered tax agent or BAS agent to provide tax agent services and work under the supervision and control of the registered agent

The alternative to registering as a tax agent or BAS agent is to engage a registered agent to provide the tax agent services, and to work under the registered agent's supervision and control as an employee or contractor.

For more information about contractors, refer to the TPB information sheet TPB(I) 13/2012 Contractors available on our website at www.tpb.gov.au > Publications & legislations > Policies and guidance material

For more information about supervision, refer to Supervisory Arrangements and Supervision and Control available on our website from the Tax agents or BAS agents sections.

Appendix A – Summary of the qualifications and experience options for registering as an individual tax agent or BAS agent

The following tables contain a summary of options regarding the qualifications and experience requirements for registering as a tax agent or BAS agent. Individual applicants must meet one of the options in relation to the registration type they are seeking.

Summary of qualification and experience requirements for registration (including renewal) as a BAS agent (Only ONE item needs to be satisfied)

ITEM ¹	ACCOUNTING QUALIFICATIONS	MEMBERSHIP OF A PROFESSIONAL ASSOCIATION
	101	102
PRIMARY QUALIFICATION	At least a Certificate IV Financial Services (Accounting) or Certificate IV Financial Services (Bookkeeping) from a registered training organisation or equivalent institution	At least a Certificate IV Financial Services (Accounting) from a registered training organisation or equivalent institution
BOARD APPROVED COURSE IN BASIC GST/BAS TAXATION PRINCIPLES²	Required	Required
MEMBERSHIP OF A PROFESSIONAL ASSOCIATION	Not required	Voting member of a recognised tax agent or BAS agent association ³
RELEVANT EXPERIENCE⁴	At least 1,400 hours of relevant experience in the past four years	At least 1,000 hours of relevant experience in the past four years

1 See Schedule 2, Part 1 of the *Tax Agent Services Regulations 2009* (TASR)

2 Until 29 February 2012, the BAS unit 'Carry out business activity and instalment activity statement tasks' in the Certificate IV Financial Services (Bookkeeping) or (Accounting) courses, in either the FNS04 or FNS10 Financial Services Training Package, will be an approved course in basic GST/BAS taxation principles. From 1 March 2012, applicants will need to have both the 'Carry out business activity and instalment activity statement tasks' and 'Establish and maintain a payroll system' BAS units in the Certificate IV Financial Services (Bookkeeping) or (Accounting) courses, in either the FNS04 or FNS10 Financial Services Training Package, to satisfy the Board approved course in basic GST/BAS taxation principles or be able to demonstrate this content has been studied in another successfully completed course. If the BAS units are part of the FNS04 Training Package, applicants will need to demonstrate knowledge of the *Tax Agent Services Act 2009* and in particular the Code of Professional Conduct. See TPB Information Sheet [TPB\(1\) 04/2011 BAS agent educational qualification requirements](#).

3 See [List of recognised tax agent and BAS agent associations](#)

4 See item 103 in Schedule 2, Part 1, Division 2 of the *Tax Agent Services Regulations 2009*

Summary of qualifications and experience requirements for registration (including renewal) as a tax agent

(Only ONE item needs to be satisfied)

ITEM ¹	TERTIARY QUALIFICATIONS IN ACCOUNTANCY	QUALIFICATIONS IN ANOTHER DISCIPLINE – SPECIALISTS TERTIARY	DIPLOMA OR HIGHER AWARD	TERTIARY QUALIFICATIONS IN LAW	WORK EXPERIENCE	MEMBERSHIP OF A PROFESSIONAL ASSOCIATION
PRIMARY QUALIFICATION	201 Degree or post-graduate award (from an Australian tertiary institution) or degree or award that is Board approved (from an equivalent institution) in discipline of accountancy	202 Degree or post-graduate award (from an Australian tertiary institution) or degree or award that is Board approved (from an equivalent institution) in a relevant discipline other than accountancy	203 Diploma or higher awarded (from a registered training organisation or equivalent institution) in the discipline of accountancy	204 Academic qualifications to be an Australian legal practitioner	205 Not applicable	206 Individual is a voting member of a recognised tax agent association ²
BOARD APPROVED COURSE IN AUSTRALIAN TAXATION LAW ³	Required	May be required – if Board considers it is relevant to the tax agent services to which the application relates	Required	Required	Required	Not required
BOARD APPROVED COURSE IN COMMERCIAL LAW ⁴	Required	May be required – if Board considers it is relevant to the tax agent services to which the application relates	Required ⁷	Not required	Required ⁷	Not required
BOARD APPROVED COURSE IN BASIC ACCOUNTANCY PRINCIPLES ⁵	Not required	May be required – if Board considers it is relevant to the tax agent services to which the application relates	Not required	Required	Required	Not required
RELEVANT EXPERIENCE ⁶	Equivalent of 12 months full-time experience in preceding 5 years	Equivalent of 12 months full-time experience in past 5 years	Equivalent of 2 years full-time experience in preceding 5 years	Equivalent of 12 months full-time experience in preceding 5 years	Equivalent of 8 years full-time experience in past 10 years	Equivalent of 8 years full-time experience in preceding 10 years

1. See Schedule 2, Part 2 of the Tax Agent Services Regulations 2009

2. See [List of recognised tax agent associations](#)

3. See proposed guideline – [Course in Australian taxation law that is approved by the Board](#)

4. See proposed guideline – [Course in commercial law that is approved by the Board](#)

5. See proposed guideline – [Course in basic accountancy principles that is approved by the Board](#)

6. See Item 207 in Schedule 2, Part 2, Division 2 of the Tax Agent Services Regulations 2009

7. Applicants who were previously registered under the Income Tax Assessment Act 1936 and are seeking to register or renew their registration under items 203 or 205 will not be required to complete a Board approved course in commercial law.