

EXPOSURE DRAFT

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1 Name of regulation

This regulation is the *Tax Agent Services Amendment (Tax (Financial) Advisers) Regulation 2014*.

2 Commencement

This regulation commences on the day after it is registered.

3 Authority

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

4 Schedule(s)

Each instrument that is specified in a Schedule to this instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms.

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Schedule 1 Amendments

Schedule 1—Amendments

Tax Agent Services Regulations 2009

1 Regulation 3

Insert:

recognised tax (financial) adviser association means an organisation recognised by the Board under regulation 5H.

2 Regulation 3 (definition of *requirements for recognition*)

Repeal the definition, substitute:

requirements for recognition means:

- (a) for a recognised BAS agent association—the requirements mentioned in Part 1 of Schedule 1; or
- (b) for a recognised tax agent association—the requirements mentioned in Part 2 of Schedule 1; or
- (c) for a recognised tax (financial) adviser association—the requirements mentioned in Part 3 of Schedule 1.

3 Part 1A (heading)

Repeal the heading, substitute:

Part 1A—Recognition of professional associations

4 Regulation 4

Repeal the regulation, substitute:

4 Purpose of Part

For section 20-10 of the Act, this Part provides for a system to allow the Board to accredit professional associations for the purposes of recognising professional qualifications and experience that are relevant to the registration of individuals as registered tax agents, BAS agents and tax (financial) advisers.

5 Subregulation 4D(3)

Omit “recognition of”, substitute “recognition for”.

6 Subparagraphs 4G(4)(b)(i) and (ii)

Repeal the subparagraphs, substitute:

- (i) receiving the submission in response to the invitation by the Board under paragraph (2)(c); or
- (ii) if no such submission has been received within the period specified for making the submission—the end of the period specified for making the submission.

7 Subregulation 5B(2)

Omit “recognition of”, substitute “recognition for”.

8 Subparagraphs 5E(4)(b)(i) and (ii)

Repeal the subparagraphs, substitute:

- (i) receiving the submission in response to the invitation by the Board under paragraph (2)(c); or
- (ii) if no such submission has been received within the period specified for making the submission—the end of the period specified for making the submission.

9 After Division 2 of Part 1A

Insert:

Division 2A—Recognised tax (financial) adviser association

5F Application for recognition as recognised tax (financial) adviser association

An organisation seeking recognition as a recognised tax (financial) adviser association must apply to the Board for recognition using a form approved by the Board.

5G When Board must consider application

The Board must consider an application for recognition as a recognised tax (financial) adviser association as soon as practicable after receiving the application.

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Schedule 1 Amendments

5H Recognition of organisation as recognised tax (financial) adviser association

- (1) The Board must recognise an organisation as a recognised tax (financial) adviser association if the organisation meets the requirements for recognition for a recognised tax (financial) adviser) association.
- (2) The Board may recognise an organisation, after having regard to the matters set out in subregulation (3), if the organisation meets the requirements for recognition for a recognised tax (financial) adviser association other than the requirements mentioned in item 309 or 310 of Schedule 1.
- (3) For subregulation (2), the Board must have regard to:
 - (a) the purposes of the Act; and
 - (b) the role of recognised tax (financial) adviser associations under these Regulations.

Note 1: Paragraph 6A(e) provides that a decision, under this regulation, not to recognise an organisation as a recognised tax (financial) adviser association is a reviewable decision.

Note 2: Section 27A of the *Administrative Appeals Tribunal Act 1975* requires a person who makes a reviewable decision to give a person whose interests are directly affected by the decision written notice of the making of the decision and of the person's right to have the decision reviewed.

5J Notice to Board if recognised tax (financial) adviser association ceases to meet requirement of recognition

If a recognised tax (financial) adviser association ceases to meet a requirement for recognition that applies to the association, it:

- (a) must give the Board written notice that it no longer meets the requirement; and
- (b) must give the notice not later than 30 days after the day on which the association becomes aware, or ought to have become aware, that it no longer meets the requirement; and
- (c) may make a written submission to the Board about why the association's recognition should not be terminated having regard to:
 - (i) the purposes of the Act; and

- (ii) the role of recognised tax (financial) adviser associations under these Regulations.

5K Notice if Board requests

- (1) This regulation applies if:
 - (a) a recognised tax (financial) association was recognised under subregulation 5H(2); and
 - (b) the Board gives the association a written request that the association tells the Board the reasons why it is still appropriate for the association to be recognised under subregulation 5H(2).
- (2) The recognised tax (financial) adviser association must:
 - (a) notify the Board in writing whether, in the association's view, the recognition is still appropriate having regard to:
 - (i) the purposes of the Act; and
 - (ii) the role of recognised tax (financial) adviser associations under these Regulations; and
 - (b) give the notice not later than 30 days after receiving the Board's request.

5L Termination of recognition of recognised tax (financial) adviser association

- (1) The Board may terminate the recognition of a recognised tax (financial) adviser association if:
 - (a) the association has not given the Board written notice under regulation 5J or 5K; or
 - (b) the Board has reasonable grounds for believing the association has ceased to meet the requirements for recognition for the association and the Board is not satisfied that it is appropriate for the association to be recognised having regard to:
 - (i) the purposes of the Act; and
 - (ii) the role of recognised tax (financial) adviser associations under these Regulations.
- (2) Before terminating the recognition of an association, the Board must give the association written notice:

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Schedule 1 Amendments

- (a) stating that it believes that the association's recognition should be terminated; and
 - (b) stating the reasons why it believes the association's recognition should be terminated; and
 - (c) inviting the association to make a written submission to the Board about why the association's recognition should not be terminated.
- (3) The written notice must specify a reasonable period within which the association may provide a submission.
- (4) In considering whether to terminate the association's recognition, the Board must:
- (a) have regard to any submission made by the association:
 - (i) under paragraph 5J(c); or
 - (ii) in response to an invitation by the Board for the submission under paragraph (2)(c); and
 - (b) make a decision as soon as practicable after:
 - (i) receiving the submission in response to the invitation by the Board under paragraph (2)(c); or
 - (ii) if no such submission has been received within the period specified for making the submission—the end of the period specified for making the submission.

Note 1: Paragraph 6A(f) provides that a decision, under this regulation, to terminate a recognised tax (financial) adviser association's recognition is a reviewable decision.

Note 2: Section 27A of the *Administrative Appeals Tribunal Act 1975* requires a person who makes a reviewable decision to give a person whose interests are directly affected by the decision written notice of the making of the decision and of the person's right to have the decision reviewed.

10 At the end of regulation 6

Add:

- ; (e) a decision by the Board to recognise an organisation as a recognised tax (financial) adviser association under regulation 5H;
- (f) a decision by the Board to terminate the recognition of a recognised tax (financial) adviser association under regulation 5L.

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Amendments Schedule 1

11 At the end of regulation 6A

Add:

- ; (e) a decision not to recognise an organisation as a recognised tax (financial) adviser association under regulation 5H;
- (f) a decision by the Board to terminate a recognised tax (financial) adviser association's recognition under regulation 5L.

12 Regulation 7

Repeal the regulation, substitute:

7 Eligibility for registration as BAS agent—prescribed requirements

For paragraph 20-5(1)(b) of the Act, in respect of registration as a registered BAS agent, an individual must meet at least one of the requirements set out in Division 1 of Part 1 of Schedule 2.

13 Regulation 8

Repeal the regulation, substitute:

8 Eligibility for registration as tax agent—prescribed requirements

For paragraph 20-5(1)(b) of the Act, in respect of registration as a registered tax agent, an individual must meet at least one of the requirements set out in Division 1 of Part 2 of Schedule 2.

14 After regulation 8

Insert:

8A Eligibility for registration as tax (financial) adviser—prescribed requirements

For paragraph 20-5(1)(b) of the Act, in respect of registration as a registered tax (financial) adviser, an individual must meet at least one of the requirements set out in Division 1 of Part 3 of Schedule 2.

15 Regulation 9 (at the end of the table)

Add:

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Schedule 1 Amendments

5	Registration as a tax (financial) adviser who carries on a business as a tax (financial) adviser	\$400
6	Registration as a tax (financial) adviser who does not carry on a business as a tax (financial) adviser	\$200

16 Regulation 12 (heading)

Repeal the heading, substitute:

17 Register of registered and deregistered tax agents, BAS agents and tax (financial) advisers

17 Subregulation 12(1)

Omit “and BAS agents”, substitute “, BAS agents and tax (financial) advisers”.

18 Subregulation 12(1)

Omit “and BAS agent”, substitute “, BAS agent and tax (financial) adviser”.

19 Subregulation 12(1) (including the note)

Omit “or BAS agent” (wherever occurring), substitute “, BAS agent or tax (financial) adviser”.

20 Subregulation 12(2)

Omit “and BAS agents”, substitute “, BAS agents and tax (financial) advisers”.

21 Subregulation 12(2)

Omit “or BAS agent”, substitute “, BAS agent or tax (financial) adviser”.

22 Subregulation 12(3)

Omit “or BAS agents”, substitute “, BAS agents or tax (financial) advisers”.

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Amendments **Schedule 1**

23 Subregulation 12(4)

Omit “and BAS agents” (wherever occurring), substitute “, BAS agents and tax (financial) advisers”.

24 Paragraph 13(1)(d)

After “the trust” (first occurring), insert “, or a member of the trust,”.

25 Paragraph 13(1)(f)

After “the scheme” (first occurring), insert “, or a member of the scheme,”.

26 At the end of subregulation 13(1)

Add:

; (k) a service that is required, by a law of the Commonwealth or of a State or Territory, to be provided only by an actuary.

27 Subregulation 13(2)

Insert:

actuary has the same meaning as in the *Income Tax Assessment Act 1997*.

28 Schedule 1 (heading)

Repeal the heading (including the note), substitute:

Schedule 1—Requirements to become a recognised association

Note: See regulations 4C, 4D, 5B and 5H.

29 At the end of Schedule 1

Add:

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Part 3—Recognised tax (financial) adviser association

- 301 The organisation is a non-profit organisation.
- 302 The organisation has adequate corporate governance and operational procedures to ensure that:
- (a) it is properly managed; and
 - (b) its internal rules are enforced.
- 303 The organisation has professional and ethical standards for its voting members, including terms to the effect that:
- (a) voting members must undertake an appropriate number of hours of continuing professional education each year, having regard to the circumstances and requirements of the members; and
 - (b) voting members must be of good fame, integrity and character; and
 - (c) each voting member is subject to rules controlling the member's conduct in the practice of his or her profession; and
 - (d) each voting member is subject to discipline for breaches of those rules; and
 - (e) if a voting member is permitted by that organisation to be in public practice, the voting member has professional indemnity insurance.

Note: The appropriate number of hours of education each year may differ for members who have particular qualifications, areas of expertise or professional experience.

- 304 The organisation has satisfactory arrangements in place for:
- (a) notifying clients of its members, or of members of its member bodies, about how to make complaints; and
 - (b) receiving, hearing and deciding those complaints; and
 - (c) taking disciplinary action if complaints are justified.
- 305 The organisation has satisfactory arrangements in place for publishing annual statistics about:

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Amendments **Schedule 1**

- (a) the kinds and frequency of complaints made to the organisation (except complaints under the Act about entities registered under the Act); and
 - (b) findings made as a result of the complaints; and
 - (c) action taken as a result of those findings.
- 306 The organisation is able to pay its debts as they fall due.
- 307 The management of the organisation:
- (a) is required to be accountable to its members; and
 - (b) is required to abide by the corporate governance and operational procedures of the organisation.
- 308 An organisation is taken to have arrangements that comply with a requirement in item 303, 304 or 305 if the organisation is, or its members are, subject to:
- (a) a law of a State or Territory; or
 - (b) a rule or other instrument of a body created by or under a law of a State or Territory;
- that sets out a requirement in terms that are the same as, or that have a similar effect to, the requirement in item 303, 304 or 305.
- 309 The organisation has at least 1 000 voting members, of whom at least 500 are registered tax (financial) advisers.
- 310 Each voting member of the organisation is required to comply with at least 1 of the following requirements:
- (a) the member has been awarded a degree or a post-graduate award from:
 - (i) an Australian tertiary institution; or
 - (ii) an equivalent institution;in a relevant discipline (within the meaning of item 305 Schedule 2);
 - (b) the member has been awarded a diploma or higher award from:
 - (i) a registered training organisation; or
 - (ii) an equivalent institution;in a relevant discipline (within the meaning of item 305 Schedule 2);

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- (c) the member has the equivalent of 6 years of full-time experience in providing tax (financial) advice services in the past 8 years.

30 Schedule 2 (heading)

Repeal the heading (including the note), substitute:

Schedule 2—Eligibility for registration as BAS agent, tax agent or tax (financial) adviser: prescribed requirements

Note: See regulations 7, 8 and 8A.

31 Paragraph 101(a) of Schedule 2

Omit “Financial Services (Bookkeeping) or a Certificate IV Financial Services (Accounting)”, substitute “Bookkeeping or a Certificate IV Accounting”.

32 Paragraphs 101(c) and 102(d) of Schedule 2

Omit “3”, substitute “4”.

33 At the end of Schedule 2

Add:

Part 3—Tax (financial) advisers

Division 1—Requirements

Tertiary qualifications

301 A requirement is that:

- (a) the individual has been awarded:
 - (i) a degree or a post-graduate award from an Australian tertiary institution in a relevant discipline; or
 - (ii) a degree or award that is approved by the Board from an equivalent institution in a relevant discipline; and
- (b) the individual has successfully completed a course in commercial law that is approved by the Board; and

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Amendments **Schedule 1**

- (c) the individual has successfully completed a course in Australian taxation law that is approved by the Board; and
- (d) the individual has been engaged in the equivalent of 12 months of full-time, relevant experience in the preceding 5 years; and
- (e) the individual is, or was within the preceding 90 days:
 - (i) a financial services licensee within the meaning of Chapter 7 of the *Corporations Act 2001*; or
 - (ii) a representative of a financial services licensee within the meaning of paragraph 910A(a) of the *Corporations Act 2001*.

Diploma or higher award

302 A requirement is that:

- (a) the individual has been awarded a diploma or higher award from:
 - (i) a registered training organisation; or
 - (ii) an equivalent institution;in a relevant discipline; and
- (b) the individual has successfully completed a course in commercial law that is approved by the Board; and
- (c) the individual has successfully completed a course in Australian taxation law that is approved by the Board; and
- (d) the individual has been engaged in the equivalent of 18 months of full-time, relevant experience in the preceding 5 years; and
- (e) the individual is, or was within the preceding 90 days:
 - (i) a financial services licensee within the meaning of Chapter 7 of the *Corporations Act 2001*; or
 - (ii) a representative of a financial services licensee within the meaning of paragraph 910A(a) of the *Corporations Act 2001*.

Work experience

303 A requirement is that:

- (a) the individual has successfully completed a course in commercial law that is approved by the Board; and

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Schedule 1 Amendments

- (b) the individual has successfully completed a course in Australian taxation law that is approved by the Board; and
- (c) the individual has been engaged in the equivalent of 3 years of full-time, relevant experience in the preceding 5 years; and
- (d) the individual is, or was within the preceding 90 days:
 - (i) a financial services licensee within the meaning of Chapter 7 of the *Corporations Act 2001*; or
 - (ii) a representative of a financial services licensee within the meaning of paragraph 910A(a) of the *Corporations Act 2001*.

Note: The Board may approve a course by an approval process, an accreditation scheme, or by other means.

Membership of professional association

304 A requirement is that:

- (a) the individual is a voting member of a recognised tax (financial) adviser association or a recognised tax agent association; and
- (b) the individual has been engaged in the equivalent of 6 years of full-time relevant experience in the preceding 8 years; and
- (c) the individual is, or was within the preceding 90 days:
 - (i) a financial services licensee within the meaning of Chapter 7 of the *Corporations Act 2001*; or
 - (ii) a representative of a financial services licensee within the meaning of paragraph 910A(a) of the *Corporations Act 2001*.

Division 2—Definitions

305 For Division 1:

relevant discipline includes a discipline related to finance, tax, accountancy, or law.

relevant experience means work by an individual:

- (a) as a tax (financial) adviser registered under the Act; or
- (b) as a tax agent registered under the Act, or under Part VIIA of the *Income Tax Assessment Act 1936* as in force immediately before 1 March 2010; or
- (c) under the supervision and control of a tax (financial) adviser registered under the Act; or
- (d) under the supervision and control of a tax agent registered under the Act, or under Part VIIA of the *Income Tax Assessment Act 1936* as in force immediately before 1 March 2010; or
- (e) of another kind approved by the Board;

that included substantial involvement in 1 or more of the types of tax (financial) advice services described in section 90-15 of the Act, or substantial involvement in a particular area of taxation law to which 1 or more of those types of tax (financial) advice services relate.