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| **EXPOSURE DRAFT** |

Inserts for

Treasury Laws Amendment (Measures for Consultation) Bill 2022: Tax Practitioners Board Review

| Commencement information | | |
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| Column 1 | Column 2 | Column 3 |
| Provisions | Commencement | Date/Details |
| 1. Schedule 1, Part 1 | The first 1 January, 1 April, 1 July or 1 October to occur after the day this Act receives the Royal Assent. |  |
| 2. Schedule 1, Part 2 | 1 July 2023. | 1 July 2023 |

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Schedule 1—Tax Practitioners Board Review

Part 1—Amendments

Tax Agent Services Act 2009

1 Section 2‑5

Repeal the section, substitute:

2‑5 Object

(1) The object of this Act is to support public trust and confidence in the integrity of the tax profession and of the tax system by ensuring that \*tax agent services are provided to the community in accordance with appropriate standards of professional and ethical conduct.

(2) This is to be achieved by (among other things) providing for:

(a) the registration and regulation, by a national Board, of entities that provide \*tax agent services; and

(b) a \*Code of Professional Conduct for \*registered tax agents and BAS agents; and

(c) sanctions to discipline entities in relation to their conduct as a \*registered tax agent or BAS agent; and

(d) sanctions where tax agent services are provided other than in accordance with this Act.

2 At the end of section 30‑10

Add:

(15) You must ensure that you do not employ, or use the services of, a \*disqualified entity to provide \*tax agent services on your behalf, without the approval of the Board under section 45‑5.

(16) You must comply with any obligations determined under section 30‑12.

3 At the end of Subdivision 30‑A

Add:

30‑12 Minister may determine Code of Professional Conduct obligations

(1) The Minister may, by legislative instrument, determine obligations for the purposes of subsection 30‑10(16).

(2) The obligations must relate to the professional and ethical conduct of \*registered tax agents and BAS agents. The obligations may elaborate or supplement any aspect of the \*Code of Professional Conduct but must not be inconsistent with the Code.

4 After Part 4

Insert:

Part 4A—Disqualified entities

Division 45—Disqualified entities

Guide to this Division

45‑1 What this Division is about

A registered tax agent or BAS agent may seek approval from the Tax Practitioners Board to employ, or use the services of, a disqualified entity to provide tax agent services on the registered tax agent or BAS agent’s behalf.

An entity is a disqualified entity if, among other things, the entity is subject to sanctions under this Act or has been convicted of certain offences.

A registered tax agent or BAS agent must give notice to the Board in relation to employing, or using the services of, a disqualified entity to provide tax agent services on the registered tax agent or BAS agent’s behalf, without the approval of the Board.

The disqualified entity must also give notice to the registered tax agent or BAS agent in relation to being a disqualified entity when seeking to provide, or providing, tax agent services on the registered tax agent or BAS agent’s behalf.

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45‑5 Approval of disqualified entity providing tax agent services on your behalf

45‑10 Obligation to give notice in relation to disqualified entity—registered tax agent or BAS agent

45‑15 Obligation to give notice in relation to disqualified entity—disqualified entity

45‑20 Transitional obligation to give notice in relation to disqualified entity—registered tax agent or BAS agent

45‑25 Transitional obligation to give notice in relation to disqualified entity—disqualified entity

45‑5 Approval of disqualified entity providing tax agent services on your behalf

Application

(1) If you are a \*registered tax agent or BAS agent, you may apply to the Board for approval to employ, or use the services of, a \*disqualified entity to provide \*tax agent services on your behalf.

(2) A ***disqualified entity*** is an entity that is not a \*registered tax agent or BAS agent, or a \*qualified tax relevant provider, and that within the last 5 years:

(a) has been convicted of:

(i) a \*serious taxation offence; or

(ii) a \*serious offence; or

(iii) an offence involving fraud or dishonesty; or

(b) has been penalised for being a \*promoter of a \*tax exploitation scheme; or

(c) has been penalised for implementing a \*scheme that has been promoted on the basis of conformity with a \*product ruling in a way that is materially different from that described in the product ruling; or

(d) has become an undischarged bankrupt or has gone into external administration; or

(e) has had action taken against it under subsection 30‑15(2) (sanctions for failure to comply with the Code of Professional Conduct); or

(f) has had its registration suspended, or terminated, under Subdivision 40‑A; or

(g) has had an application for registration or renewal of registration rejected under section 20‑25; or

(h) has been found by the Board, after being investigated under section 60‑95, or by a Court, to have contravened this Act.

(3) The application must be:

(a) in the form approved by the Board; and

(b) accompanied by any documents that are required by the Board.

(4) The Board must decide the application within 30 days of receiving it.

Decision

(5) The Board may give approval, having regard to:

(a) the reasons why the entity is a \*disqualified entity and the circumstances relating to those reasons; and

(b) the proposed role that the entity would perform in providing the \*tax agent services on your behalf; and

(c) the extent to which the reasons the entity is a disqualified entity are relevant to the entity’s ability to perform the proposed role to an appropriate standard of professional and ethical conduct; and

(d) any other matters that the Board considers relevant.

(6) The Board must, within a reasonable period after its decision to give approval or to reject the application for approval, notify you in writing of:

(a) the decision; and

(b) if the Board rejects the application—the reasons for the decision.

45‑10 Obligation to give notice in relation to disqualified entity—registered tax agent or BAS agent

(1) You must give the Board a notice in writing, if:

(a) you are a \*registered tax agent or BAS agent; and

(b) you employ, or use the services of, an entity to provide \*tax agent services on your behalf; and

(c) the entity is, or becomes, a \*disqualified entity; and

(d) you have not been approved under section 45‑5 to employ, or use the services of, the disqualified entity to provide tax agent services on your behalf.

(2) The notice must include the following information:

(a) the entity’s name;

(b) the entity’s relationship to you.

(3) You must give the notice within 30 days of the day on which you become, or ought to have become, aware that the entity is, or became, a \*disqualified entity.

Civil penalty

(4) You contravene this subsection if you fail to give a notice in accordance with this section.

Civil penalty:

(a) for an individual—250 penalty units; and

(b) for a body corporate—1,250 penalty units.

Note: Subdivision 50‑C of this Act and Subdivision 298‑B of Schedule 1 to the *Taxation Administration Act 1953* determine the procedure for obtaining a civil penalty order against you.

Transitional

(5) You are not required to give a notice under subsection (1) in relation to an entity if:

(a) immediately before the day this section commences the entity provides \*tax agent services on your behalf; and

(b) at the start of the day this section commences the entity is a \*disqualified entity.

Note: You may be required to give a notice under section 45‑20 in relation to the entity.

45‑15 Obligation to give notice in relation to disqualified entity—disqualified entity

(1) If you are a \*disqualified entity seeking to provide \*tax agent services on behalf of a \*registered tax agent or BAS agent, you must notify the registered tax agent or BAS agent, in writing, that you are a disqualified entity before the registered tax agent or BAS agent:

(a) enters into a contract to employ you, or use your services, to provide tax agent services on the registered tax agent or BAS agent’s behalf; or

(b) renews such a contract; or

(c) agrees to extend such a contract.

(2) If:

(a) you are providing \*tax agent services on behalf of a \*registered tax agent or BAS agent; and

(b) you become a \*disqualified entity;

you must notify the registered tax agent or BAS agent, in writing, that you are a disqualified entity. You must notify the registered tax agent or BAS agent within 30 days of the day on which you become, or ought to have become, aware, that you are a disqualified entity.

Civil penalty

(3) You contravene this subsection if you fail to give a notice in accordance with subsection (1) or (2).

Civil penalty:

(a) for an individual—100 penalty units; and

(b) for a body corporate—500 penalty units.

Note: Subdivision 50‑C of this Act and Subdivision 298‑B of Schedule 1 to the *Taxation Administration Act 1953* determine the procedure for obtaining a civil penalty order against you.

45‑20 Transitional obligation to give notice in relation to disqualified entity—registered tax agent or BAS agent

(1) You must give the Board a notice, in writing, if:

(a) you are a \*registered tax agent or BAS agent; and

(b) immediately before the day this section commences you employ, or use the services of, an entity to provide \*tax agent services on your behalf; and

(c) at the start of the day this section commences the entity is a \*disqualified entity; and

(d) immediately before the day that is 12 months after the day this section commences you employ, or use the services of, the entity to provide tax agent services on your behalf.

(2) The notice must include the following information:

(a) the entity’s name;

(b) the entity’s relationship to you.

(3) You must give the notice within 30 days of the day that is 12 months after the day this section commences.

Civil penalty

(4) You contravene this subsection if you fail to give a notice in accordance with this section.

Civil penalty:

(a) for an individual—250 penalty units; and

(b) for a body corporate—1,250 penalty units.

Note: Subdivision 50‑C of this Act and Subdivision 298‑B of Schedule 1 to the *Taxation Administration Act 1953* determine the procedure for obtaining a civil penalty order against you.

45‑25 Transitional obligation to give notice in relation to disqualified entity—disqualified entity

(1) If:

(a) immediately before the day this section commences a \*registered tax agent or BAS agent employs you, or uses your services, to provide \*tax agent services on the registered tax agent or BAS agent’s behalf; and

(b) at the start of the day this section commences you are a \*disqualified entity; and

(c) immediately before the day that is 12 months after the day this section commences the registered tax agent or BAS agent employs you, or uses your services, to provide tax agent services on the registered tax agent or BAS agent’s behalf; and

(d) you have not already notified the registered tax agent or BAS agent that you are a disqualified entity under subsection 45‑15(1);

you must notify the registered tax agent or BAS agent, in writing, that you are a disqualified entity.

(2) You must give the notice within 30 days of the day that is 12 months after the day this section commences.

Civil penalty

(3) You contravene this subsection if you fail to give a notice in accordance with this section.

Civil penalty:

(a) for an individual—100 penalty units; and

(b) for a body corporate—500 penalty units.

Note: Subdivision 50‑C of this Act and Subdivision 298‑B of Schedule 1 to the *Taxation Administration Act 1953* determine the procedure for obtaining a civil penalty order against you.

5 After paragraph 70‑10(h)

Insert:

(ha) a decision under section 45‑5 to reject an application for approval to employ, or use the services of, a \*disqualified entity;

6 Subsection 90‑10(1)

Insert:

***disqualified entity*** has the meaning given by subsection 45‑5(2).

7 After subsection 90‑10(1)

Insert:

(1AA) A tax agent service that relates to any of the following is also a ***BAS service***:

(a) section 9 of the *A New Tax System (Australian Business Number) Act 1999*;

(b) sections 202CD and 202CF of the *Income Tax Assessment Act 1936*;

(c) the *Superannuation Guarantee Charge Act 1992*;

(d) Part 3B of the *Superannuation Industry (Supervision) Act 1993*;

(e) Part 5‑30 in Schedule 1 to the *Taxation Administration Act 1953*.

(1AB) A tax agent service that relates to the *Superannuation Guarantee (Administration) Act 1992* is also a ***BAS service*** to the extent that it relates to a payroll function or payments to contractors.

8 Application of Code of Conduct obligation about disqualified entities

Application from commencement

(1) If, on or after the commencement of this Part, you:

(a) enter into a contract to employ, or use the services of, an entity to provide tax agent services on your behalf; or

(b) renew such a contract; or

(c) agree to extend such a contract;

subsection 30‑10(15) of the *Tax Agent Services Act 2009*, as inserted by this Part, applies to you in relation to the entity on and after the date of entering or renewing the contract or the date of the agreement.

Application 12 months from commencement

(2) In addition to subitem (1), subsection 30‑10(15) the *Tax Agent Services Act 2009*, as inserted by this Part, applies to you in relation to an entity that you employ, or use of the services of, to provide tax agent services on your behalf, on and after the day that is 12 months after the day this Part commences.

Acquisition of property

(3) Despite subitems (1) and (2), subsection 30‑10(15) of the *Tax Agent Services Act 2009*, as inserted by this Part, has no effect to the extent (if any) to which operation of that subsection would result in the acquisition of property (within the meaning of paragraph 51(xxxi) of the Constitution) from a person otherwise than on just terms (within the meaning of that paragraph).

Part 2—Amendments commencing 1 July 2023

Tax Agent Services Act 2009

9 Section 20‑1

Omit “3 years”, substitute “1 year”.

10 Subsections 20‑25(2) and (3)

Omit “6 months”, substitute “4 months”.

11 Subsection 20‑25(4)

Omit “3 years”, substitute “1 year”.

12 Application of registration period amendments

The amendments of section 20‑25 made by this Part apply in relation to an application made on or after 1 July 2023.

13 At the end of Part 6

Add:

Subdivision 60‑G—Finance

Table of sections

60‑145 Tax Practitioners Board Special Account

60‑150 Credits to the Tax Practitioners Board Special Account

60‑155 Purposes of the Tax Practitioners Board Special Account

60‑145 Tax Practitioners Board Special Account

(1) The Tax Practitioners Board Special Account is established by this section.

(2) The Tax Practitioners Board Special Account is a special account for the purposes of the *Public Governance, Performance and Accountability Act 2013*.

60‑150 Credits to the Tax Practitioners Board Special Account

There must be credited to the Tax Practitioners Board Special Account amounts equal to the following:

(a) amounts received by the Commonwealth under this Act (other than amounts received by way of penalty or amounts related to such amounts);

(b) amounts appropriated by the Parliament for the purposes of the Account.

Note: An Act appropriating money for expenditure out of the Consolidated Revenue Fund may contain a provision to the effect that, if any of the purposes of a special account is a purpose that is covered by an item in such an Act (whether or not the item expressly refers to the special account), then amounts may be debited against the appropriation for that item and credited to that special account.

60‑155 Purposes of the Tax Practitioners Board Special Account

The purposes of the Tax Practitioners Board Special Account are as follows:

(a) paying or discharging the costs, expenses and other obligations incurred by the Commonwealth in the performance of the Board’s functions under this Act;

(b) paying any remuneration and allowances payable to any person under this Act (including APS employees mentioned in section 60‑80);

(c) reducing the balance of the account (and therefore the available appropriation for the account) without making a real or notional payment.

Note: See section 80 of the *Public Governance, Performance and Accountability Act 2013* (which deals with special accounts).

14 Refunds paid before commencement not to be debited from the Tax Practitioners Board Special Account

If:

(a) before the commencement of this Part, an amount is received by the Commissioner,on behalf of the Commonwealth, under the *Tax Agent Services Act 2009*; and

(b) all or some of the amount is refunded by the Commonwealth on or after the commencement of this Part;

the refunded amount is not to be debited from the Tax Practitioners Board Special Account.