

## **EXPLANATORY STATEMENT**

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

#### *Tax Agent Services Act 2009*

#### *Tax Agent Services Amendment (Register Information) Regulations 2023*

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

Section 60-135 of the Act provides that the regulations may prescribe the details that the Board must enter in respect of each entity who is entered on the Tax Practitioners Board (TPB) Register (the Register). These details are set out in section 25 of the *Tax Agent Services Regulations 2022* (the Regulations).

The purpose of the *Tax Agent Services Amendment (Register Information) Regulations 2023* is to complement the *Treasury Laws Amendment (Measures for consultation) Bill 2023: Tax Practitioners Board* (the Bill). This Bill implements the Government's Response to the Independent Review of the Tax Practitioners Board (the TPB Review) and gives effect to the Government's commitment to restore public trust and confidence in the regulation of the tax profession. The current amendments to the Regulations give effect to three recommendations in the final report of the TPB Review:

- enabling the TPB to publish more detailed reasons for tax practitioner sanctions, including terminations, on the Register (recommendation 6.3);
- publishing a wider range of information, decision and outcomes on the Register (recommendation 8.1(a)); and
- removing time limits on how long certain information appears on the Register (recommendation 8.1(c)).

Registered tax agents and BAS agents (collectively referred to as 'tax practitioners') are governed by the TPB, which decides whether to register an entity as a tax practitioner and investigates conduct that may have breached the Act, or other requirements set out in the Regulations. The Act and Regulations form the legislative framework within which the TPB operates.

Section 60-135 of the Act requires the TPB to establish and maintain a register of information about current and former tax practitioners. Section 25 of the Regulations sets out what information is to be included about these tax practitioners in the Register.

The amendments contained in this Instrument, along with those in the Bill, are the next tranche following on from a range of earlier amendments to both primary and subordinate legislation. These amendments are introduced within the context of recent parliamentary and public scrutiny of disreputable tax practitioner conduct in Australia. Further amendments to

the Act and Regulations are expected to follow suit with the intention of further promoting the professional and ethical standards of tax practitioners.

The current amendments update the Regulations in three main ways:

- Additional information is published on the Register. This makes information about the conduct of registered and formerly registered tax professionals transparent to the public.
- Further detail is given about the how long certain information must be kept on the Register, securing the availability of that information to the public.
- Greater transparency of accountable individuals who form the sufficient number of tax practitioners within a registered company or partnership.

The Act does not specify any conditions that need to be satisfied before the power to make the Regulations may be exercised.

This instrument is a disallowable instrument that is subject to sunseting.

This instrument is a legislative instrument for the purposes of the *Legislation Act 2003*.

This instrument commences immediately after the commencement of the *Treasury Laws Amendment (Measures for consultation) Bill 2023: Tax Practitioners Board*.

Details of the Instrument are set out in [Attachment A](#).

## ATTACHMENT A

### Details of the *Tax Agent Services Amendment (Register Information) Regulations 2023*

This attachment sets out further details of the *Tax Agent Services Amendment (Register Information) Regulations 2023* (Instrument), which update the *Tax Agent Services Regulations 2022* (the Regulations).

#### Section 1 – Name

This section provides that the name of the instrument is the *Tax Agent Services Regulations 2022* (the Regulations).

#### Section 2 – Commencement

Schedule 1 to the Regulations commences immediately after the *Treasury Laws Amendment (Measures for consultation) Bill 2023: Tax Practitioners Board* (the Bill) commences.

#### Section 3 – Authority

The Instrument is made under the *Tax Agent Services Act 2009* (the Act).

#### Section 4 – Schedule

This section provides that each instrument that is specified in Schedule 1 to this instrument is amended or repealed as set out in the applicable items in Schedule 1, and any other item in the Schedule to this instrument has effect according to its terms.

#### Schedule 1 – Amendments

The Instrument prescribes that the Tax Practitioners Board (TPB) is required publish certain information about registered tax agents and Business Activity Statement agents (collectively known as ‘tax practitioners’ on the register established and maintained by the TPB (the Register). This includes information about sanctions (other than cautions), findings of investigations and rejected renewal applications and requires this information to appear on the Register for five years. The Instrument also requires that the Register include information about tax practitioners who form the ‘sufficient number’ of registered companies or partnerships.

Item 1 of Schedule 1 makes a minor editorial amendment by creating a new division under Part 5 of the Regulations entitled ‘Administrative assistance’.

Item 2 of Schedule 1 creates a second division under Part 5 of the Regulations entitled ‘Register of entities.’ New section 25 notes that this new Division 2 (with the exception of section 25E) is made for the purposes of subparagraph 60-135(1) of the Act which requires the TPB to maintain a register in accordance with the Act and Regulations. The Act provides an overarching framework for the structure of the Register and allows the Regulations to provide further detail in relation to the specific information published and the duration it appears on the Register.

## **Information published on the Register**

The Register is a publicly available database of current, and in some cases former, tax practitioners, which is maintained by the TPB. The Register assists employers of tax practitioners and members of the public who may require tax agent services by allowing them to search tax practitioners based on their expertise or location. The Register also provides visibility of any conditions or sanctions imposed on the entity. For completeness, 'entity' is defined at subparagraph 960-100(1) in the *Income Tax Assessment Act 1997* to include individuals, body corporates and partnerships.

### *Basic information*

New section 25A gives effect to subparagraph 60-135(1) of the Act by outlining the details required to be maintained on the Register by the TPB. Where an entity must be entered on the Register, all details prescribed in subsections 25A(2) and (3) must be published and this information must be updated throughout the period it is on the Register. This ensures that the information about tax practitioners can be relied upon by the public as an accurate and contemporaneous source of information.

New subsection 25A(2) specifies the Register must include the name and contact details for all entities entered on the Register. In addition to this, for all registered tax practitioners, the following basic information must also be published:

- registration number;
- any relevant professional affiliation;
- duration of registration; and
- any conditions affecting the entity's registration.

New subsection 25A(3) also requires certain details to be entered on the Register where there have been changes of name or multiple registration numbers over the preceding 5 years. If an entity has changed its name in the last 5 years, then the previous name is required to be included on the registration record of the relevant entity. Similarly, if there is more than one registration number for an entity over the last 5 years, then each registration number held during that period is required to be entered on the registration record of the relevant entity. The listing of these registration numbers extends to former tax practitioners who are required to remain on the Register and were, within the last 5 years, current tax practitioners.

In addition to basic information about an entity, information about changes in name or registration number are important to allow tracing of an entity's past and maintain transparency on the Register. This information ensures orders, sanction or terminations under former names or registration numbers of entities will continue to be recorded for a reasonable time against the entity's current record on the Register.

### *Orders, suspensions and terminations*

The Regulations prescribe that certain information about current or former tax practitioners is required to be entered on the Register where the TPB orders an entity to take specified actions, or the TPB suspends or terminates an entity's registration. This may arise as a result of conduct that was found by the TPB not to comply with the Code of Professional Conduct

or an investigation finding that an entity's conduct breached the Act. Publication of this information enables members of the public to make better, more informed decisions about an entity's suitability to provide tax agent services.

New subsection 25B(1) states that current and former tax practitioners must be entered on the Register for five years where the TPB has:

- imposed orders under section 30-20 of the Act;
- suspended registration under section 30-25 of the Act; or
- terminated registration under section 30-30 or subdivision 40-A of the Act.

Written cautions are specifically excluded from being published on the Register. Where the TPB finds an entity did not comply with the Code of Professional Conduct and gives an entity a written caution, there is no requirement for details relating to the caution to be entered on the Register. Such cautions provide an opportunity for an entity to rehabilitate their conduct and are not considered sufficiently significant.

New subsection 25B(2) specifies the details the TPB must publish on a relevant entity's record on the Register where it orders that entity to take specified actions, or suspends or terminates the registration of that entity. These details include:

- a statement that an order, suspension or termination has been imposed on the entity;
- the reasons given by the TPB for the order, suspension or termination;
- where an order has been given, a summary of the order's content;
- the period for which the order or suspension is in force (if provided). New subsection 25B(4) provides that an order is in force for a period of time, if this is specified in the notice under subsection 30-20(2) of the Act;
- the date the order, suspension, or termination takes effect.

Where an order is given to an entity, new subsection 25B(3) provides this date of effect is either the start of the time period specified in a notice under subsection 30-20(2) of the Act for the action required by the order to be completed, or otherwise the day after the order is given to the entity. Where an entity's registration is suspended, new subsection 25B(5) provides that suspension takes effect at the start of the suspension period, and continues for the entirety of that period.

### *Rejected renewal applications*

Significant failures to uphold an appropriate ethical standard in the tax profession include where an entity has failed to meet fit and proper person requirements and where a company has been convicted of certain offences within the last 5 years. As such, where an entity has applied for renewal of registration as a tax practitioner (referred to as a ***renewal application***) and it is rejected on one of these bases, the Register will include this information. This will ensure members of the public requiring tax agent services and employers of tax practitioners are aware of that entity's serious misconduct.

New section 25C requires information to be published about a rejected renewal application where:

- a renewal application for an individual has been rejected due to a failure to meet fit and proper person requirements;
- a renewal application for a partnership has been rejected due to a partner or, where a partner is a company, a director of that company failing to meet fit and proper person requirements, or where that company has been convicted of a serious taxation offence or an offence involving fraud or dishonesty in the past 5 years;
- a renewal application for a company has been rejected due to a director of that company failing to meet fit and proper person requirements, or where that company has been convicted of a serious taxation offence or an offence involving fraud or dishonesty in the past 5 years.

If an entity's application is rejected in one of the above circumstances, then that entity is required to have a record on the Register and the information about the rejected renewal application must remain published for five years starting from the date the Board rejected the renewal application. New section 25C(2) sets out this required information including:

- a statement that the TPB has rejected the renewal application;
- the date the renewal application was rejected; and
- the reasons for the TPB's rejection if they relate to a lack of integrity (either a failure to meet the fit and proper person requirements or a conviction for a serious taxation offence or an offence involving fraud or dishonesty in the last 5 years).

#### *Findings of investigations*

The Bill creates a new outcome for investigations where the TPB finds there has been a breach of the Act. In addition to applying sanctions or civil penalties, the TPB can opt to publish the findings on the Register. These amendments allow the TPB to publish the findings of the investigation on the Register where they find a breach is sufficiently serious. Therefore, particularly where tax practitioners are no longer registered, this provision provides the TPB a different avenue for penalising misconduct and makes clear to the public that, while sanctions may not have been imposed, the entity was still found to have breached the Act.

New section 25E provides that where the Board has conducted an investigation and found that conduct has breached the Act, and they have made a decision to publish the findings (**publication decision**) in relation to the entity that breached the Act (**contravening entity**), the TPB must publish:

- the finding that conduct of the contravening entity breached the Act; and
- the reasons for that finding.

This information must remain on the Register for five years from the date of making the decision to publish. Different application rules apply to published decisions made for investigations where a decision was originally made after 1 July 2022 and before commencement of the Bill.

Increased information on the public Register will assist members of the public who are seeking tax agent services. It provides greater visibility over past professional misconduct and ensures members of the public are able to make better-informed decisions about

engaging an entity for tax agent services. Additionally, the publishing of rejected renewal applications and findings of investigations, where there was misconduct that breached the Act, allows employers to make more informed decisions about current or potential employees.

### **Timeframe information appears on Register**

The Act enables the Regulations to establish the period of time information must be maintained on the Register. Item 2 stipulates that information about orders, suspensions, terminations, rejected renewal applications, or findings of investigations, must be published and remain on the Register for five years from the date the sanction was imposed, the renewal application was rejected, or the Board makes the publication decision. Requiring this information to be maintained on the Register for five years ensures the information is available and transparent to the public. It also provides assurance to the public that entities who have not met the requisite professional and ethical standards for a tax practitioner are easily identifiable and are appropriately penalised for their conduct.

The increased timeframe will likely deter tax practitioners from breaching the Act, given this information will be publicly displayed on a tax practitioner's record in the Register. This is particularly relevant, in scenarios where the TPB found there was breach, the investigation findings were published, but no orders, suspensions or terminations were imposed as the tax practitioner's registration had ceased at the time the decision was made. In these cases, the entity who committed a breach may still have these details published on the Register for five years and would not be able to avoid consequences for their misconduct by failing to seek renewal of their registration as a tax practitioner.

These amendments create consistency across the Act and Regulations in relation to the potential sanctions that may be imposed on an entity, and the timeframe for which these sanctions may affect an entity's opportunities in the tax profession. The five year timeframe reflects the maximum period of time in which the TPB can ban an entity from seeking re-registration with the Board, and the historical period that the TPB is compelled to consider when determining whether a tax practitioner is a fit and proper person. It also aligns with disqualified entity provisions, which set out that an entity can be disqualified based on certain conduct, sanctions or findings occurring within the past five years. These provisions are subject to the passage of the *Treasury Laws Amendment (2023 Measures No. 1) Bill 2023*, which is currently before Parliament for consideration. By aligning the timeframe which information is published, it ensures that these details are removed from the Register at the point in time when the information is no longer relevant for consideration by consumers or employers.

If the Board decides to publish findings of investigations under subparagraph 60-125(2)(b)(v) of the Bill, in circumstances where a no further action decision was made on or after 1 July 2022 but before commencement of the Bill, the findings will remain on the Register for five years from the date of the Board decided to take no further action, as per subsection 60-125(2A). For example, if the decision was made to take no further action in January 2023, but after commencement of the Bill, the Board decides to publish the findings, these findings would only appear on the Register until January 2028. This provision is contained in item 12(3) of the Bill.

## **Sufficient number of tax practitioners**

It is a prerequisite to registration that a company or partnership have a sufficient number of individuals providing tax agent services to a competent standard, carrying out supervisory arrangements, and who are already registered as tax practitioners. The number of individuals that must be provided and the relationship between the company or partnership and the individual tax practitioner(s) comprising the sufficient number are not prescribed but are left to the company or partnership's discretion.

New subsection 25D(1) requires that for each company or partnership that successfully applies for registration or renewal of registration, the *sufficient number individuals* who are tax practitioners and form the sufficient number for the registered company or partnership, must be published on the Register for the *registration period* granted.

New subsection 25D(2) requires that the name and registration number of the sufficient number individuals is published on the company or partnership record. Similarly, the name and registration number of the company or partnership must be published on the record of the sufficient number individual the entity has nominated. For example, where company B is granted registration, if person A forms part of the sufficient number for company B, then company B's record on the Register should give details about person A, and person A's record on the Register should also give details about company B.

The information required under section 25D is to remain published from the beginning of the registration period until the earlier of:

- the end of the registration period of the company;
- the point in time the individual, company, or partnership ceases to be a registered tax practitioner; or
- when notice is given to the TPB that the individual is no longer considered part of a company or partnership's sufficient number.

This amendment is not expected to increase the administrative burden for companies and partnerships as updates to the Register will typically occur alongside the registration or renewal process, or when an entity notifies the TPB that their sufficient number has changed. However, this may mean information on the Register may not be contemporaneous as it will be updated by the TPB at the end of each registration period or when notified by the company or partnership.

Publication of the required sufficient number details provides greater clarity as to which tax practitioners are ultimately accountable for the tax agent services provided. By making this information available, it improves the transparency of registered company and partnership operations and increases the quality of information held about those entities. It also more closely aligns the Register with other public registers maintained by ASIC for financial advisers and auditors.

## **Application of amendments**

Item 3 sets out the defined terms of the *TAS Act* referring to the *Tax Agent Services Act 2009* and *TAS Regulations* referring to the *Tax Agent Services Regulations 2022*.



For the avoidance of doubt, item 3(2) notes that the five-year period referred to in relation to basic information may commence prior to the commencement of new subsection 25A.

New section 25B applies to orders, suspensions and terminations that occurred on or after 1 July 2022, from their date of effect. Similarly, new section 25C applies to rejected renewal applications that were rejected on or after 1 July 2022. Therefore, this information will be published for five years from the date the order, suspension or termination took effect or the date the renewal application was rejected. This information is to be included on the Register for five years, irrespective of whether it was ever published or was removed from the Register prior to commencement of this Instrument.

In effect, for relevant information that is not currently published on the Register, the five-year timeframe will start from commencement of this Instrument. For relevant information that was decided on or after 1 July 2022, publication will extend for the full five-year period from the decision's date of effect. For example, if a tax practitioner received a 12-month suspension, and this was imposed in December 2022 and removed from the Register in December 2023, the application of these amendments would mean the suspension would be reinstated on the Register, at commencement, and appear until December 2027. Similarly, for new information such as rejected renewal applications, if an application was rejected in March 2023, this information will appear on the Register at commencement, and continue to appear until March 2028.

New section 25D in relation to the publication of sufficient number individuals, applies to applications for registration or renewal where:

- the application was made on or after commencement of the Instrument;
- the application was made before commencement and the Board had not decided whether to grant the application; or
- the application was made before commencement of this Instrument and the Board had granted the application and determined the *registration period*, or time the entity was to be registered, and this period had not ended before commencement.

Accordingly, sufficient number information will be published on the Register for companies and partnerships with active registrations on commencement, new applications, or existing applications where the Board has not made a decision whether to grant registration or renewal.