

## **DRAFT EXPLANATORY STATEMENT**

### **Issued by authority of the Assistant Treasurer, Minister for Housing and Minister for Homelessness, Social and Community Housing**

*Tax Agent Services Act 2009*

*Tax Agent Services Regulations 2022*

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.

The purpose of the *Tax Agent Services Regulations 2022* (the Regulations) is to remake and improve the operation of the *Tax Agent Services Regulations 2009* (the 2009 Regulations) prior to ‘sunsetting’. The Legislation Act 2003 provides that all legislative instruments, other than exempt instruments, progressively sunset according to the timetable in section 50 of that Act. The 2009 Regulations will be automatically repealed on 1 April 2022. Legislative instruments generally cease to have effect after a specific date unless further action is taken to extend their operation, such as remaking the instrument.

The Regulations remake and improve the 2009 Regulations by repealing redundant provisions, simplifying language, restructuring and renumbering provisions for ease of navigation. These changes do not affect the substantive meaning or operation of the provisions except in limited cases that are specifically identified in Attachment A to this Explanatory Statement. The Schedules to the Regulations broadly follow the structure and numbering of the Schedules to the 2009 Regulations.

**Details of the *Tax Agent Services Regulations 2022***

This attachment sets out further details of the *Tax Agent Services Regulations 2022* (the Regulations). All references are to the Regulations unless otherwise stated.

Changes of a minor or machinery nature, such as the increased use of headings and also references to ‘section’ rather than ‘regulation’ in accordance with modern drafting practice, are generally not specifically identified in this Attachment. Where changes are made that are intended to apply in a different way or require further explanation, these are identified and explained in this Attachment.

The Regulations improve the *Tax Agent Services Regulations 2009* (2009 Regulations) by repealing redundant provisions, simplifying language, restructuring and renumbering provisions for ease of navigation. The Regulations have changed the order of the provisions from the order found in the 2009 Regulations for ease of reader comprehension. The Schedules to the Regulations broadly follow the structure and numbering of the Schedules to the 2009 Regulations.

Consequently, references to a 'corresponding provision' are to the corresponding provision in the 2009 Regulations as identified by the finding table in Attachment B.

The *Financial Sector Reform Amendment (Hayne Royal Commission Response—Better Advice) Regulations 2021 (Better Advice Regulations)* that repealed a number of redundant provisions in the 2009 Regulations have been incorporated into these Regulations.

**Part 1 – Preliminary**

**Section 1 – Name of the Regulations**

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

**Section 2 – Commencement**

Schedule 1 to the Regulations commence on 1 April 2022.

**Section 3 – Authority**

The Regulations are made under the *Tax Agent Services Act 2009* (the Act).

**Section 4 – Schedule**

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

**Schedule 5 – Definitions**

This section contains defined expressions used throughout the regulations. A number of definitions have been updated including using a ‘signpost’ for terms that have

been defined in the Act. This is done where it improves the comprehensibility of that section.

## **Part 2 – Recognition of professional associations**

### **Division 1 – Purpose of Part**

#### Section 6 – Purpose

This section replicates the corresponding provision in the 2009 Regulations with minor editorial updates.

### **Division 2 – Recognised BAS agent associations**

#### Sections 7 and 8 – Application for recognition and Recognition of association

Sections 7 and 8 replicates the corresponding provision in the 2009 Regulations with editorial updates.

#### Section 9 – Notice to Board if association ceases to meet requirements

This section replicates the corresponding provision in the 2009 Regulations with editorial updates. The provision has also been simplified by removing specific legislative obligations which are redundant.

#### Section 10 – Notice if Board Requests

This section replicates the corresponding provision in the 2009 Regulations with editorial updates.

#### Section 11 – Termination of recognition

This section incorporates provisions in the 2009 Regulations relating to the termination of recognition by the Board or at the request of an association that were included in various parts of the 2009 Regulations and consolidates them in one location in accordance with current drafting practice. These changes have not altered its scope or any other feature of its substantive operation.

### **Division 3 – Registered tax agent associations**

#### Section 12 – Application for recognition

This section replicates the corresponding provision in the 2009 Regulations with editorial updates.

#### Section 13 - Recognition of association

This section incorporates provisions in the 2009 Regulations relating to the recognition of tax agent associations that were included in various parts of the 2009 Regulations and consolidates them in one location in accordance with current drafting practice. These changes have not altered its scope or any other feature of its substantive operation.

The requirement for the Board to maintain a list of recognised associations on the website has been relocated to a new provision in section 19.

#### Section 14 – Notice to Board if association ceases to meet requirements

This section has been updated to refer directly to clause numbers to improve reader navigability. This section replicates the corresponding provision in the 2009 Regulations with editorial updates. The provision has also been simplified by removing specific legislative obligations which are redundant. This change to the way the provisions are expressed have not altered the substantive operation of the provisions.

#### Sections 15 and 16 – Notice if Board requests and Termination of recognition

These sections replicate the corresponding provision in the 2009 Regulations with editorial updates.

#### Section 17 – Notice of recognition

Section 17 has been incorporated as a result of the amendments from the Better Advice Regulations.

### **Division 4 – Miscellaneous**

#### Section 18 – Review of decisions

This section replicates the corresponding provisions in the 2009 Regulations with minor editorial updates.

#### Section 19 – List of recognised associations

New section 19 requires the Board to maintain a list of recognised associations on the Board's website. The purpose of this provision is for the Board to provide and maintain a list of associations recognised by the Board so that BAS agents and tax agents can refer to the recognised associations as an alternative pathway for recognition.

## **Part 3 – Registration of BAS agents and tax agents**

### **Divisions 1 and 2 – Registered BAS agents and tax agents**

#### Sections 20 and 21 – Eligibility for registration for registered BAS and tax agents

These sections replicate the corresponding provisions in the 2009 Regulations with editorial updates.

### **Division 3 – Application fees for registration**

#### Section 22 – Fees for registration

In section 22, the fees have been updated in accordance with indexation and applies from 1 July 2022 as this is the next financial year after the commencement date. These changes have not altered its scope or any other feature of its substantive operation.

## **Part 4 – Investigations**

### **Section 23 – Power to require witnesses to attend—allowances and expenses**

Section 23 has been updated in accordance with current drafting practices and is consistent with the corresponding provision in the 2009 Regulations. These changes have not altered its scope or any other feature of its substantive operation.

### **Section 24 – Administrative assistance**

This section replicates the corresponding provision in the 2009 regulations with minor editorial updates to improve readability. The provision has also been simplified by removing specific legislative obligations which are redundant.

Section 24 relies on the necessary and convenient power in paragraph 70-55(1)(b) of the Act.

### **Section 25 – Register of registered and deregistered tax agents and BAS agents**

These sections replicate the corresponding provisions in the 2009 Regulations with minor editorial updates.

### **Section 26 – Services that are not tax agent services**

Section 26 replicates the corresponding regulations in the 2009 Regulations with some clarifications to the way in which the provisions are expressed.

The amendments from the Better Advice Regulations have been incorporated in Section 26.

## **Schedule 1 and Schedule 2**

The structure and numbering of the Schedules has been retained and is consistent with the 2009 Regulations. The Schedules incorporate amendments from the Better Advice Regulations.

## **Schedule 3—Repeals**

This section repeals the whole of the *Tax Agent Services Regulations 2009*.

**ATTACHMENT B**

**FINDING TABLES – *Tax Agent Services Regulations 2009***

<i>Old Law</i>	<i>New Law</i>
<i>Tax Agent Services Regulations 2009</i>	<i>Tax Agent Services Regulations 2022</i>
1	1
New sections – no equivalent	2 - 4
3	5
4	6
4A	7
4B	8
4D	8
4E	9
4F	10
4G	11
5	12
5A	13
5B	13
5C	14
5D	15
5E	16
5F - 5L	Repealed by the Better Advice Regulations
6	17 – inserted by the Better Advice Regulations
6	8 and 11 and 13
6A	18
6B	11
7	19

<i>Old Law</i>	<i>New Law</i>
<i>Tax Agent Services Regulations 2009</i>	<i>Tax Agent Services Regulations 2022</i>
8	20
8A	Repealed by the Better Advice Regulations
9	22
10	23
11	24
12	25 References to tax (financial) advisers removed by Better Advice Regulations
13	26