

***TAX AGENT REGULATION FOR A MODERN ECONOMY –  
LAUNCH OF THE NATIONAL TAX PRACTITIONERS BOARD***

**ADDRESS TO THE INSTITUTE OF  
CHARTERED ACCOUNTANTS OF AUSTRALIA**

**SYDNEY**

**23 OCTOBER 2009**

Good afternoon.

I would like to thank Graham (CEO, ICAA) for his introduction and also thank the Institute of Chartered Accountants in Australia, for inviting me to speak today.

I'd also like to acknowledge Alex Malley, CEO of CPA Australia; Noel Rowland, CEO of the Taxation Institute of Australia; Robert Comelli, CEO of the Association of Accounting Technicians; Sharyn Grant, CEO of the Australian Association of Professional Bookkeepers; Robert Duncan, President of the Association of Taxation and Management Accountants; Matthew Addison, Managing Director of the Institute of Certified Bookkeepers; Darren Hagarty, Director of the Australian Bookkeepers Network; and representatives from a range of other organisations.

It's excellent to see here today a wide range of key representatives from the peak accounting and book-keeping organisations. It is illustrative of where we've come to in this area.

We are now all moving together, rapidly towards a truly national, truly streamlined and truly modern regime for the regulation of tax agents services.

As everyone in this room is very well aware, the new tax agent services regime has been a long time in development and the fact that we are all here today, on the eve of its commencement, owes a great deal to the involvement of the professional bodies and the very professional individuals that staff them, throughout the various rounds of consultation.

Today I want to say a few things about the current regime under which you all operate and how it is no longer quite up to scratch for a truly national and modern economy.

Then I will make two significant announcements, both of which I know you've all been waiting for, for some time – one is to launch the new national Tax Practitioners Board including announcing the fantastic team of people who've been selected as its inaugural members, and second, I

want to run through some improvements I have incorporated in the Tax Agent Regulations, stemming from my consultations with your various organisations.

All in all – today is a milestone day in the long development of this national regime and I am extremely glad to be here to share it with you.

## **The existing regulatory regime**

So, first to the current regime.

When the current regulatory regime for the registration of tax agents was introduced into Australian tax law in 1943, the world was a very different place.

John Curtin was Prime Minister and Australia, and most of the rest of the world, had been at war for four years.

Only a year earlier, the Curtin Government had introduced uniform national income taxation, taking over from the various State systems, to fund the war effort.

And of course, primary responsibility for the majority of taxation, and all income taxation, has stayed with the Commonwealth ever since. Various Council of Australian Government decisions and the weight of natural progression has seen increasingly more functions of government, business and professional life being carried out on a national basis.

Even sport is now national – the dominant force in 1943 in the then Victorian Football League was Richmond.

I am happy to say as a proud Geelong supporter, that the Cats are now the dominant force in what we of course now know as the Australian Football League.

The world has clearly moved on since the 1940s and so too has our tax system.

As the Treasurer said just this week, it is true that our tax system has become somewhat of a "jungle" through which individuals and organisations need to slash a path to a clearing. Of course, this isn't the case for everyone but for the majority it has led to the need to engage professional tax advisors.

Since the 1940s, the increase in levels of the use of tax professionals by Australians to assist them in meeting their tax obligations is quite striking.

The use of tax agents has grown substantially over the last thirty years, with tax agents currently lodging around 73 per cent of income tax returns for individuals and 95 per cent of business tax returns.

Let me be clear – especially in the company of the peak tax agent services groups, or I may not get offered dessert – there is nothing inherently wrong with individuals and businesses engaging tax services professionals.

The observation I make in running through this history and noting the expansion of the tax jungle's undergrowth is to flag a key priority for the Government in the need to simplify our tax system. This doesn't mean necessarily completely removing a role for tax advice, but rather it may mean a recalibration of the balance between complexity and simplicity.

Of course the Henry Review will likely have much to say on this front and we await their report before the end of the year.

But turning briefly back to what else has changed since the regime was brought in back in 1943.

Australia's tax base has changed dramatically in the intervening 66 years.

We have since seen the introduction and development of Fringe Benefits Tax (FBT), Capital Gains Tax (CGT), Goods and Services Tax (GST) and compulsory superannuation.

The existing tax agent services regulatory framework had a firm initial focus on the provision of services related to income tax and was appropriate for a considerable period of time.

However, the introduction and importance of FBT, CGT and GST has left the regulation no longer reflecting the reality of the today's taxation and commercial environments.

In addition, the existing framework allows only very limited circumstances in which individuals can provide Business Activity Statement (BAS) services and equally limited flexibility when it comes to specialist tax agent service providers. These problems creates barriers to entry and have the potential to restrict competition.

While the current framework is legally based in a national Act, it has been applied inconsistently which is of no surprise given it has been administered by six separate state tax agents' boards.

This obviously has consequences for the uniform regulation of tax agents across the country and has the potential to result in varied standards of services provided to taxpayers.

Finally, as many people here today would be also aware, while many tax agents are the subject of codes of ethical and professional conduct by virtue of their membership of professional bodies, this is not the case for all registered tax agents.

All in all, the Rudd Government firmly holds the view that the existing regulatory regime is now out of date, inadequate and ill-adapted for Australia's current tax setting and future developments.

We have a modern, 21st century economy and we are moving forward with a significant array of productivity boosting reforms, so the time has well and truly come to turn the next page on the regulation of professional tax services.

### **The new tax agent services regime**

With the passage of the *Tax Agent Services Act 2009* earlier this year, the way was paved for a standard, national regulation framework for tax and BAS agents across Australia.

The tax agents' services regime is a major piece of red-tape reducing national reform – it will see one, clear, straight-forward national regime put in place for the first time.

The new regime will be governed by a single, national Board which will replace the six existing state based boards.

This will reduce the potential overlap of the old system, and provide a simple, single point of contact for both tax agents and clients.

The new Act also contains many other new improvements, including bringing those entities and individuals associated with providing Business Activity Statement services for a fee into the regulatory environment for the first time through the creation of two registration categories – one for tax agents and one for BAS agents.

This is an important step towards recognising the important work that BAS agents do and also towards providing crucial protection for their customers, most of whom are small businesses.

In my many conversations with the BAS agents organisations here today, I know you all share the view that these enhancements are an important step forward in support of your members' businesses.

The new regime will also see the introduction of an enforceable code of professional conduct.

This means that for the first time in Australia, all tax and BAS agents will be required to comply with a single clear code of conduct.

This will provide a single, level playing field for all tax and BAS agents across Australia, cutting red-tape by removing duplication of regulation on the one hand, but significantly boosting consumer protection on the other.

A further new and important step forward is also the introduction of landmark safe harbour provisions for taxpayers.

This means a taxpayer will not be subject to a penalty for lodging late or misleading returns where that is caused by the negligence of the tax agent – eliminating the need to take the agent to court for compensation.

The safe-harbour provisions are a recognition that the new regulatory regime will allow effective action to be taken to improve the performance of tax agents or BAS agents when necessary.

Finally, the new regime will replace current criminal penalties with civil penalties and injunctions, supported by administrative sanctions, to provide appropriate and rapid consequences for misconduct.

The new national tax and BAS agents regime is a wholly new era of consumer protection in tax services.

A consistent code of conduct, the regulation of those providing BAS services and a broader range of sanctions that can be applied by the Board, all mean consumers can be confident the services they pay for are of a proper standard.

And we should recognise the sheer scale of this enterprise – in rough figures we estimate that the new regime will regulate approximately **20,000** tax agents and **10,000** BAS agents across Australia.

And what does this new regime mean for practitioners?

For many involved in the provision of BAS services, the new regime will mean being subject to a regulatory regime for the first time.

I know many BAS service providers are apprehensive at the prospect of registration. But I encourage them to see the changes as confirmation of the important role they play in the tax system – and as an opportunity to be a core part of an important and dynamic profession.

For those providing tax agent services in specialised areas, the new regime will remove the existing barriers to entry.

It gives the Board the flexibility to recognise qualifications outside of law and accounting, which are more suited to the provision of these specialised services.

The regime also represents a strengthening of the integrity of the tax system more generally – given the increasingly important role tax agents and BAS agents play in the administration of the national taxation system.

And of course, at the macro-policy level, strengthening the integrity of the tax system has positive flow-on effects for the Australian economy.

## **The Tax Practitioners Board**

As I have mentioned, at the core of this new national regime is the national Tax Practitioners Board.

The Board will administer the new regime – a very, very big job and completely critical to the forward success of the entire project.

Of course to achieve this success, the Board must be an experienced and highly capable group, and it must be ready for the challenge.

Well this morning its been my pleasure to meet with the Board during its inaugural gathering and it is now my pleasure to publicly announce its chairman and its full membership, almost all of whom are with us for lunch today.

First, I am pleased to announce the appointment of **Dale Boucher** as the Chair of the Board.

I know most in this room know Dale well. He is of course the former Chief Executive Officer of the Australian Government Solicitor's Office, the AGS, and the recipient of the public service medal for outstanding leadership in the development of the AGS. Dale has also been a Partner and General Counsel of Minter Ellison Lawyers.

Dale and I have had several long discussions since his selection and I am very confident, with his management and leadership experience, he is well placed to take on this challenging role and to oversee the transition to the new regime and the operation of the Board in the coming years.

To assist Dale, I have also appointed ten further members to make up the inaugural Board. This team of individuals bring with them a broad range of experience and qualifications.

They represent all corners of the tax and BAS agent community, including current tax practitioners, representatives of the book-keeping industry and members of existing state-based boards.

In addition, the Board is further enhanced by the inclusion of tax academics and legal professionals with extensive experience in management and in administrative law.

So, turning to the individuals, I can announce the following team:

- **Roger Cotton**, who, as many of you here would well be aware, was for many years the Chief Executive Officer of the National Institute of Accountants;
- **Chris Doogan**, the former Chief Executive and Principal Registrar of the High Court of Australia;
- **Miriam Holmes** the current Director of the Social Security Appeals Tribunal in Victoria who brings to the Board a solid foundation in administrative law.
- **George Fox** the Chair of the existing Queensland State Tax Agents' Board and **Professor Gordon Cooper** a member of the New South Wales State Tax Agents' Board – both of whom will bring an important level of continuity between the old and new regimes and an invaluable understanding of the existing regulatory environment.
- **Matthew Addison** the Executive Director of the Institute of Certified Bookkeepers and **Russell Smith** the Chair of the Bookkeeping Industry Group, both bringing extensive experience in the bookkeeping industry that will ensure the Board will have an understanding of the BAS agent industry from day one.
- **Professor Dale Pinto**, the Head of the Taxation Department at Curtin University and **Cynthia Coleman**, a leading tax academic at the

University of Sydney and Editor of the Australian Tax Forum, both with extensive experience in the field of taxation law; and finally;

- **Michael Evans** a Partner with KPMG and a member of the GST Subcommittee of the National Tax Liaison Group, who brings to the Board his extensive experience in indirect tax issues.

The Chair is a full-time position, member positions are part-time and all appointments will be for a renewable term of 3 years.

As I have said, Dale and his new team, sit at the core of the new national regime and they will perform a variety of statutory functions. These include:

- administering the system for the registration of tax agents and BAS agents;
- determining applications for registration;
- investigating conduct that may breach the *Tax Agent Services Act 2009*, including non-compliance with the Code of Professional Conduct and breaches of the civil penalty provisions;
- imposing administrative sanctions for non-compliance with the Code of Professional Conduct; and
- issuing detailed guidelines on relevant matters.

This is a big work agenda, but, as I also mentioned earlier, I have held talks this morning with the Board and I can assure tax and BAS agents across Australia that they can rest assured that the Board will do all it can to make the transition to the new regulatory regime as smooth as possible.

I'm confident this inaugural Board will be taking a long-term and pragmatic view and will work hard with industry and professional bodies to implement a system that will serve Australia for decades to come.

## Tax Agent Services Regulations

Finally today I would like talk about the Regulations that will fill out the remaining details of the national regime – the details that sit behind the Act and which the Board will use to guide its statutory role.

This new Board is now entrusted with the administration of a regulatory regime shaped by many years of robust consultation with tax agents and bookkeepers, professional associations, community organisations, government departments and agencies, the state Boards and taxpayers.

I know in relation to numerous issues raised with me during recent consultations, I have indicated to you that a fair amount of the final implementation details have been very rightly left to the Board and its guidelines.

But today I am releasing the proposed final form of the Tax Agent Services Regulations, which of course remain subject to approval by the Governor-General in Executive Council.

We have been consulting over the last few months on the content and I can also confirm today that the final Regulations include several new features that take account of stakeholder submissions received during the final round of public consultation.

The key new features include:

- maintaining the existing ability for individuals with academic qualifications in law to seek registration as a tax agent, even if they haven't completed the additional practical legal training course required to practice law;
- providing the Board with greater flexibility in determining which additional courses a specialist tax agent service provider is required to complete in order to be eligible for registration – this ensures that individuals whose registration is limited to providing services in a narrow area of the taxation law, such as quantity surveyors, are not required to complete courses that are of limited or negligible value;

- providing the Board with greater flexibility in the types of organisations it is able to recognise for the purposes of the Regulations;
- confirming that Recognised Tax Agent Associations are not intended to exist exclusively for tax agent or BAS agent members as it is realistic for professional associations to seek to represent a wider group;
- replacing the term 'Recognised Professional Associations' with 'Recognised Tax Agent Associations' to better reflect the full suite of associations present across tax agent services;
- providing the Board with the discretion to recognise Recognised Tax Agent Associations that do not meet the voting requirements or do not have the requisite number of members having regard to the purpose and intent of the tax agent services regime, to ensure that a broader range of organisations can seek to be recognised by the Board;
- confirming that if a Recognised Tax Agent Association's registration is terminated by the Board, the Board will have full discretion to delay the termination of an tax or BAS agents registration so as to give them sufficient time to seek membership of an alternative association; and
- ensuring that Recognised Tax Agent Associations are not prevented from offering voting membership to individuals with substantial experience in providing tax agent services and individuals who have academic legal qualifications – but may not have completed the additional practical legal training required to practice law.

This package of adjustments will, I believe, see the regime better match the needs of all agents, all Recognised Tax Agent Associations and, importantly, all consumers.

## **Conclusion**

To conclude, the start of the new regime may seem to be approaching fast, and indeed it is, but I can reassure everyone – particularly prospective tax and BAS agents – that the Government has been working towards a smooth transition into the new regime.

I am extremely confident that the Board I have announced today is the right group for the job at hand, and it's fully committed to facilitating that smooth transition and to providing guidance so that everyone is well informed.

There has been broad support expressed for all elements of the proposed reforms and from all parts of the sector.

I know that industry is eager for the regime to begin and today the Government is pleased to be able to implement the tax agent services regime after a long path of consultation.

I repeat my public commitment that the full regime commence on, or as close to, 1 January 2010. Today's announcements bring us almost all the way there.

Now, it's my pleasure to formally launch the new national Tax Practitioners Board here today and I'd now like to ask Dale Boucher, the new Chair of the Board to come up and say a few words.

Thank you.