



Events that may affect your continued registration

Please note that this document is intended as a guide only and contains an overview of matters relating to events that may affect your continued registration as a registered tax agent or BAS agent under the new Tax Agent Services regulatory regime. This fact sheet is subject to change.

OVERVIEW

The *Tax Agent Services Act 2009* (TASA 2009) provides that certain events may affect your continued registration. These events are specifically provided for in section 20-45 of the TASA 2009. These events may affect all types of both tax agent registration and BAS agent registration.

Section 20-15 of the TASA 2009 provides that in determining whether an individual is a fit and proper person, the Board must have regard to, among other things, whether an event that may affect your continued registration has occurred during the previous 5 years.

WHAT EVENTS MAY AFFECT YOUR CONTINUED REGISTRATION?

The following events may affect your continued registration as a registered tax agent or BAS agent:

- (a) you are convicted of a serious taxation offence;
- (b) you are convicted of an offence involving fraud or dishonesty;
- (c) you are penalised for being a promoter of a tax exploitation scheme;
- (d) you are 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;
- (e) you become an undischarged bankrupt or go into external administration; or
- (f) you are sentenced to a term of imprisonment.

NOTE: For a partnership that is a registered tax agent or BAS agent, “you” means a partner in the partnership, and/or a director a company that is a partner in the partnership.

For a company that is a registered tax agent or BAS agent, “you” means a director of the company.



(a) What is a serious taxation offence?

A 'serious taxation offence' is:

- (i) an offence against any one of the following specified offences outlined in the *Criminal Code* that relates to a tax liability:
 - obtaining property by deception;
 - obtaining a financial advantage by deception;
 - general dishonesty with respect to obtaining a gain, causing a loss or influencing a Commonwealth public official;
 - obtaining a financial advantage;
 - conspiracy to defraud with respect to obtaining a gain, causing a loss or influencing a Commonwealth public official; or
- (ii) a 'taxation offence' that is punishable on conviction by a fine exceeding 40 penalty units, or imprisonment, or both.

NOTE: 1 penalty unit = \$110.

'Taxation offence' means:

- an offence against a taxation law; or
- an offence against:
 - section 6 of the *Crimes Act 1914* (being an accessory after the fact);
 - section 11.1 of the *Criminal Code* (attempting to commit an offence);
 - section 11.4 of the *Criminal Code* (incitement to the commission of an offence); or
 - section 11.5 of the *Criminal Code* (conspiring with another person to commit an offence);

being an offence that relates to an offence against a taxation law.

(b) What is an offence involving fraud or dishonesty?

'Fraud' and 'dishonesty' take their ordinary meaning, and are determined by reference to community standards.

The *Criminal Code* defines 'dishonest' as dishonest according to the standards of ordinary people in circumstances where the defendant is aware of these standards.

Example

Patricia was convicted of theft and was fined \$1,500. To convict an individual for theft, a court must find that the individual has dishonestly appropriated property belonging to another with the intention of permanently depriving the other person of the property. Consequently, theft is an offence of dishonesty and the Board must consider this in determining whether Patricia satisfies the fit and proper person test for registration.



(c) When are you considered to have been penalised for being a promoter of a tax exploitation scheme?

You are considered to have been penalised for being a promoter of a tax exploitation scheme if you have been ordered to pay a civil penalty for engaging in conduct that results in you, or another entity, being a promoter of a tax exploitation scheme, within the meaning of Division 290 of Schedule 1 to the *Taxation Administration Act 1953*.

(d) When are you considered to have 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?

You are considered to have 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 if you have been ordered to pay a civil penalty for engaging in such conduct as defined within Division 290 of Schedule 1 to the *Taxation Administration Act 1953*.

(e) What does ‘undischarged bankrupt’ and ‘external administration’ mean?

Undischarged bankrupt

You are an undischarged bankrupt if you have been declared bankrupt under the *Bankruptcy Act 1966* and have not been discharged from the bankruptcy.

Example

Seven years ago, William became bankrupt and was not discharged until three years ago. Although William became bankrupt more than five years ago, having the status of an undischarged bankrupt at any time during the past five years is a factor the Board must consider in deciding whether William is a fit and proper person for registration purposes.

External administration

Generally, a company will go into external administration when its directors are required to relinquish direction of its affairs to a receiver, administrator, provisional liquidator or liquidator.

A company will go into external administration for the purposes of the TASA 2009 if it goes into external administration as defined in the *Corporations Act 2001*.



(f) What does 'sentenced to a term of imprisonment' mean?

You are considered to have been 'sentenced to a term of imprisonment' if a sentence is imposed on you in relation to an offence and that sentence includes a term of imprisonment. This does not require you to have actually *served* all or part of that term of imprisonment, only that you were *sentenced* to a term of imprisonment.

Example

Three years ago, Melissa was convicted of dangerous driving causing serious injury under section 319 of the Crimes Act 1958 (Vic) and received a two-year suspended prison sentence. Being sentenced to a term of imprisonment in the previous five years is an event the Board must consider in deciding whether Melissa is a fit and proper person for registration purposes.

ARE YOU REQUIRED TO NOTIFY THE BOARD IF AN EVENT AFFECTING YOUR CONTINUED REGISTRATION OCCURS?

Individuals

You must notify the Board in writing whenever an event affecting your continued registration occurs.

NOTE: You must also notify the Board in writing if you cease to meet one of the tax practitioner registration requirements.

Partnerships

You must notify the Board in writing whenever an event affecting your continued registration occurs in respect of:

- a partner in your partnership; or
- a director of a company that is a partner in your partnership.

NOTE: You must also notify the Board in writing if you cease to meet one of the tax practitioner registration requirements, or if the composition of your partnership changes.



Companies

You must notify the Board in writing whenever an event affecting your continued registration occurs in respect of a director of your company.

NOTE: You must also notify the Board in writing if you cease to meet one of the tax practitioner registration requirements, or if an individual becomes, or ceases to be, a director of your company.

HOW LONG DO YOU HAVE TO NOTIFY THE BOARD IF AN EVENT AFFECTING YOUR CONTINUED REGISTRATION OCCURS?

You must notify the Board within 30 days of the day on which you become, or ought to have become, aware that the event occurred.

Failure to comply with this requirement is a breach of section 8C of the *Taxation Administration Act 1953* and the Code of Professional Conduct.

WHAT ARE THE POSSIBLE CONSEQUENCES IF AN EVENT AFFECTING YOUR CONTINUED REGISTRATION OCCURS?

Individuals

If an event affecting your continued registration occurs, the Board may terminate your registration.

Partnerships

If an event affecting your continued registration occurs in respect of a partner in your partnership, then the Board may require you to remove the partner from your partnership within a specified period.

If an event affecting your continued registration occurs in respect of a director of a company that is a partner in your partnership, then the Board may require the removal of:

- the partner; or
- the director of the company.

NOTE: Failure to comply with a notice requiring you to remove a partner in your partnership, or a director of a company that is a partner in your partnership, is a breach of the Code of Professional Conduct.

The Board may also terminate your registration if you cease to meet one of the tax practitioner registration requirements.



Australian Government

FACT SHEET

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TAX PRACTITIONERS BOARD

Companies

If an event affecting your continued registration occurs, the Board may terminate your registration.

If an event affecting your continued registration occurs in respect of a director of your company, then the Board may require you to remove the director from the board of directors within a specified period.

NOTE: Failure to comply with a notice requiring you to remove a director in your company is a breach of the Code of Professional Conduct.

NEED MORE INFORMATION?

Further information will be released as it becomes available on the Tax Practitioners Board's website at www.tpb.gov.au.