



TPB Information Sheet TPB(I) 08/2011

Reports or other advice incorporating tax agent services provided by a third party

DISCLAIMER

This is a Tax Practitioners Board (Board) Information Sheet (TPB(I)). It is intended to be for information only. It provides an overview of the Board's position on reports or other advice incorporating tax agent services provided by a third party. While it seeks to provide practical assistance and explanation, it does not exhaust, prescribe or limit the scope of the Board's powers provided in the *Tax Agent Services Act 2009 (TASA)*.

In addition, please note that the principles, explanation and examples in this TPB(I) do not constitute legal advice and do not create additional rights or legal obligations beyond those that are contained in the TASA or which may exist at law. Readers should refer to the TASA for the precise content of the legislative requirements.

Document History

The Board released this document as a draft Information Sheet in the form of an exposure draft on 15 June 2010. The Board invited comments and submissions in relation to the information in it. The closing date for submissions was 17 August 2010. The Board did not receive any submissions and now publishes the following TPB(I).

ISSUED: 17/10/2011



Reports or other advice incorporating tax agent services provided by a third party

Background

1. This information sheet deals with the situation where an entity (the issuer), for a fee or other reward, provides a report or other advice containing tax-related information:
 - that is provided by a third party;
 - which relates to ascertaining or advising on liabilities, entitlements or obligations of another entity (the client) as referred to in subparagraphs 90-5(1)(a)(i) and (ii) of the *Tax Agent Services Act 2009* (TASA); and
 - the circumstances are such that the client is reasonably likely to rely on the advice of the third party for the purposes set out in subparagraphs 90-5(1)(b)(i) and/or (ii) of the TASA.
2. Without limiting the circumstances where this situation might arise, an example of the types of circumstances where this might occur is a due diligence report where tax-related information may be provided by a third party who is a registered tax or BAS agent and has been engaged, as such, to provide the tax-related information to be included in the due diligence report.
3. References in this information sheet to a tax agent service include a BAS service and references to provisions in section 90-5 (which defines a 'tax agent service') include the similar provisions in section 90-10 (which defines a 'BAS service') of the TASA.



Proposed Approach

4. The issuer of a report or other advice will not contravene section 50-5 (which provides for civil penalties for the provision of tax agent services by unregistered entities) of the TASA in respect of the provision of the tax-related information if the arrangements between the client, the issuer and the tax or BAS agent are such that:
 - the obligations of the issuer are to procure the tax-related advice from a tax or BAS agent; and
 - the tax or BAS agent will be responsible to the client in relation to that advice.

5. The Board will take this approach where, under the arrangements surrounding the issue of the report or other advice:
 - the information constituting a tax agent service is to be, and is in fact, provided by a separate entity;
 - the separate entity is a registered tax or BAS agent who is clearly identified in the report or other advice as the provider of the tax agent service;
 - the tax or BAS agent is responsible to the client for the accuracy of the information that constitutes the tax agent service; and
 - the information that constitutes the tax agent service is clearly identified within the report or other advice.

6. In these circumstances, the Board considers that the issuer of the report or other advice does not provide the tax agent service (as defined in section 90-5 the TASA) but merely arranges for the provision of a tax agent service to be made by a properly authorised and qualified entity who is responsible to the client for the tax agent service.

7. It will be a question of degree whether the issuer goes further to include other elements in the report that may constitute the provision of a tax agent service, in which case registration as a tax or BAS agent may be required under the TASA.

Need more information?

8. For further information about the tax agent services regime, please visit the Board's website at www.tpb.gov.au.