

# TPB Information Sheet

## TPB(I) 09/2011

### Digital service providers and the *Tax Agent Services Act 2009*

#### DISCLAIMER

This is a Tax Practitioners Board (TPB) information sheet (TPB(I)). It is intended to be for information only. While it seeks to provide practical assistance and explanation, it does not exhaust, prescribe or limit the scope of the TPB's powers in the *Tax Agent Services Act 2009* (TASA).

In addition, please note that the principles 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.

#### Document history

In November 2011, the TPB published TPB(I) 09/2011 Software developers. As a result of ongoing developments and changes that affect software providers, the TPB released an updated TPB(I) 09/22011 Software developers as an exposure draft on 20 May 2015 for comments and submissions by 21 June 2015. The TPB considered the submissions made and now publishes the following TPB(I). On 4 February 2019, the TPB updated this TPB(I) to:

- include information on Single Touch Payroll (STP) enabled software systems
- provide additional guidance on the transmission of data to the Commissioner of Taxation through the use of STP enabled software systems
- replace the term “software provider” with “digital service provider”.

On 1 April 2022, the TPB updated this TPB(I) to remove references to tax (financial) advisers and replace references from the repealed Tax Agent services Regulations 2009 to Tax Agent Services Regulations 2022.

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# Digital service providers

## Introduction

1. This information sheet (TPB(I)) has been prepared by the Tax Practitioners Board (TPB) to assist digital service providers who provide tax related software systems to understand the operation and impact of the tax agent services regime.
2. For the purposes of this TPB(I), the term 'digital service providers' takes a broad interpretation and includes entities that develop, write and sell software systems (including single touch payroll (STP)<sup>1</sup> enabled software systems)<sup>2</sup>, or provide software related systems and services.
3. In this TPB(I), you will find the following information:
  - background about the tax agent services regime (paragraphs 4 to 16)
  - examples of circumstances where a digital service provider may need to register as a tax or BAS agent (paragraph 17)
  - examples of circumstances where a digital service provider does not need to register as a tax or BAS agent (paragraph 18)
  - the consequences for digital service providers (paragraphs 19 to 26).

## Background

4. The TPB administers a system for the registration of tax agents and BAS agents (known collectively as 'tax practitioners') under the *Tax Agent Services Act 2009* (TASA).
5. Being subject to the TASA means that individuals and entities providing tax agent services or BAS services for a fee or other reward are required to register as tax or BAS agents with the TPB.
6. An individual, partnership or company must be registered as a tax or BAS agent to provide a 'tax agent service' or 'BAS service' for a fee or other reward (see paragraphs 10 to 16 for information on the meaning of 'tax agent service' and 'BAS service').
7. Any decision about whether a service constitutes a tax agent service or BAS service requires consideration of all the facts and circumstances, including whether the client can reasonably be expected to rely on that service.

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<sup>1</sup> Single Touch Payroll is a payroll reporting mechanism that allows employers to meet their reporting obligations to the Commissioner of Taxation using their own payroll or accounting software.

<sup>2</sup> A reference to software or software systems in this information sheet includes a reference to single touch payroll enabled software and single touch payroll enabled software systems.

8. It is also important to note that the fee does not necessarily have to be separately charged to the client. It can form part of a package or bundle of services offered by the digital service provider to the client.
9. There are no separate or specific legislative provisions relating to whether digital service providers need to be registered under the TASA.

## Tax agent service

10. A 'tax agent service' is any service that relates to:
  - ascertaining liabilities, obligations or entitlements of an entity that arise, or could arise, under a taxation law<sup>3</sup>, or
  - advising an entity about liabilities, obligations or entitlements of the entity or another entity that arise, or could arise, under a taxation law, or
  - representing an entity in their dealings with the Commissioner of Taxation (Commissioner), and

that is provided in circumstances where the entity can reasonably be expected to rely on the service to satisfy liabilities or obligations, and/or to claim entitlements, that arise or could arise under a taxation law.<sup>4</sup>

11. A tax agent service includes, but is not limited to:
  - preparing or lodging a return, notice, statement, application or other document about a taxpayer's liabilities, obligations or entitlements under a taxation law
  - giving a taxpayer advice about a taxation law that the taxpayer can reasonably be expected to rely upon to satisfy their taxation obligations
  - dealing with the Commissioner on behalf of a taxpayer.
12. A taxation law includes BAS provisions and as such the definition of tax agent service includes BAS services.

## BAS service

13. A 'BAS service' is a 'tax agent service' that relates to:
  - ascertaining liabilities, obligations or entitlements of an entity that arise, or could arise, under a BAS provision; or
  - advising an entity about liabilities, obligations or entitlements of the entity or another entity that arise, or could arise, under a BAS provision; or
  - representing an entity in their dealings with the Commissioner in relation to a BAS provision; and

that is provided in circumstances where the entity can reasonably be expected to rely on the service to satisfy liabilities or obligations, and/or to claim entitlements, that arise or could arise under a BAS provision.

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<sup>3</sup> 'Taxation law' has the meaning as defined in subsection 995-1 of the *Income Tax Assessment Act 1997*.

<sup>4</sup> It should be noted that there are a number of services which are specified not to be a tax agent service – see subsection 90-5(2) of the *Tax Agent Services Act 2009* and section 26 of the *Tax Agent Services Regulations 2022*.

14. A BAS service therefore includes, but is not limited to:
- preparing or lodging an approved form about a taxpayer's liabilities, obligations or entitlements under a BAS provision
  - giving a taxpayer advice about a BAS provision that the taxpayer can reasonably be expected to rely upon to satisfy their obligations
  - dealing with the Commissioner on behalf of a taxpayer in relation to a BAS provision.
15. Under section 995-1 of the *Income Tax Assessment Act 1997*, BAS provisions means:
- Part VII of the *Fringe Benefits Tax Assessment Act 1986* (the collection and recovery of tax provisions)
  - Indirect tax laws, including goods and services tax (GST) law, wine equalisation tax (WET) law, luxury car tax (LCT) law and fuel tax law
  - Parts 2-5 and 2-10 in Schedule 1 to the *Taxation Administration Act 1953* (the pay as you go (PAYG) withholding and instalments systems).
16. A BAS service also includes any service which the TPB, by legislative instrument, specifies to be a BAS service.<sup>5</sup>

## Examples where a digital service provider may need to register as a tax agent or BAS agent

17. The following are examples of services that may be provided by a digital service provider, which the TPB considers would most likely be covered by the definition of a tax agent service (including a BAS service) and therefore would require the provider to be registered.

### **Example 1 – A client outsources their entire payroll and accounts work to a digital service provider.**

The digital service provider not only sells the software, but provides an outsourced payroll/accounts processing service using that software. In the provision of this service they interpret and apply a taxation law, which includes a BAS provision, and/or represent the client in their dealings with the Commissioner and it would be reasonable to expect that their client will rely on those services.

### **Example 2 – A digital service provider configures and customises a software system to deliver a specific tax outcome for their client.**

The service is provided in circumstances where the client can reasonably be expected to rely on the service for the purposes of satisfying liabilities or obligations or to claim entitlements of the client that arise, or could arise, under a taxation law or BAS provision.

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<sup>5</sup> See subsection 90-10(1A) of the *Tax Agent Services Act 2009*.

**Example 3 – A digital service provider offers a help desk which provides customised advice to assist their client to meet a specific tax outcome.**

For advice to constitute a tax agent service, the advice would need to relate to the client's particular circumstances and would require the interpretation of taxation laws or BAS provisions. It must also be reasonable for the client to rely on the advice. If these conditions are met, such advice will be a tax agent service.

**Example 4 – A digital service provider offers written tax related advice to their client that is specific to the client's circumstances.**

For the written advice to constitute a tax agent service, the advice would need to relate to the client's particular circumstances and would require the interpretation of taxation laws or a BAS provision. It must also be reasonable to expect the client to rely on the advice.

## Examples where a digital service provider does not need to register as a tax agent or BAS agent

18. The following are examples of services that may be provided by a digital service provider, which in the TPB's view would not require the digital service provider to register as a tax or BAS agent.

**Example 5 – A digital service provider writes and sells a accounting software system packages.**

The TPB considers that a digital service provider who writes and sells non-customised accounting software is not providing a tax agent service, even if the software includes tax calculators or lodgement feature. In this case, the digital service provider is merely considered to be providing a tool which assists the user to meet their own accounting and other process requirements (see paragraph 19 for additional information).

**Example 6 – A digital service provider conducts general classroom and/or on-site training about the installation, configuration and/or use of software systems.**

If the training is general in nature, and it does not involve advice about a client's own, specific circumstances and there is no expectation by the client that they can rely on the training to assist the client in meeting their particular obligations and liabilities under a taxation law or BAS provision, then the training will not be considered to be a tax agent service.

**Example 7 – A digital service provider offers user manuals or other generic information (such as fact sheets or examples) to clients to assist them in the use of the software system.**

Where it would be unreasonable for an entity to rely on the advice contained in these materials as applying to their specific circumstances, the provision of a user manual or other generic information will not be a tax agent service.

**Example 8 – A digital service provider offers a help desk to assist clients in the use of the software system.**

If the help is general in nature, does not provide advice about a client's own, specific circumstances and there is no reasonable expectation by the client that they can rely on the help to assist in meeting their particular obligations and liabilities under a taxation law or BAS provision, then the help desk service will not be a tax agent service.

**Example 9 – A digital service provider offers a SBR26<sup>6</sup> messaging service for the transfer of information to the Commissioner.**

Where the messaging service does not transform STP data and is merely a portal used by a digital service provider for the transmission of data to the Commissioner of Taxation, the transmission of that data will not be considered a tax agent service. This includes data transmitted through the use of STP enabled software, providing the digital service provider ensures they have appropriate procedures/processes in place within the software itself to ensure that they are not regarded as providing a tax agent service (which includes a BAS service), as detailed in paragraphs 19 to 25 of this Information Sheet.

**Example 10 – A digital service provider transforms the form in which data is reported and offers a SBR2 messaging service for the transfer of information to the Commissioner.**

Where the messaging service transforms the form in which data is reported and is merely a portal used by a digital service provider for the transmission of data to the Commissioner of Taxation, the transformation of the form of the data and subsequent transmission of that data will not be considered a tax agent service. This includes data transmitted through the use of STP enabled software, providing the digital service provider ensures they have appropriate procedures/processes in place within the software itself to ensure that they are not regarded as providing a tax agent service (which includes a BAS service), as detailed in paragraphs 19 to 25 of this Information Sheet.

## Consequences for digital service providers

### Digital service providers who are not registered with the TPB

19. For a digital service provider to write and sell software system packages and provide support mechanisms for the use of that software without being required to be registered with the TPB, the digital service provider must ensure they have appropriate procedures/processes in place within the software itself to ensure that they are not regarded as providing a tax agent service (which includes a BAS service).

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<sup>6</sup> Standard Business Reporting (SBR) is a feature built into business/accounting software that uses the business transactions captured in business software to prepare reports. The platform is then used by digital service providers to transmit data to the ATO. SBR2 is the latest version of this electronic messaging service.

20. Where a registered tax practitioner is not involved, such procedures/process should include:
  - a) presenting the client, or an authorised person of the client, with the data that has been obtained, calculated and collated into the relevant form that is about to be transmitted to the Australian Taxation Office (ATO)
  - b) providing a mechanism for the client or authorised person to review the data about to be transmitted
  - c) providing a mechanism for the client or authorised person to verify the correctness and appropriateness of that data for transmission
  - d) the software retaining evidence of the verification as per subparagraph (c) above.
21. A slightly modified process to that described in paragraph 20 above would be required where the process involves the business engaging a registered tax practitioner to use the business software to bring about the transmission to the ATO. In this situation, such procedures/process should include:
  - a) presenting the registered tax practitioner with the data that has been obtained, calculated and collated into the relevant form that is about to be transmitted to the ATO
  - b) providing a mechanism for the registered tax practitioner to review the data about to be transmitted
  - c) providing a mechanism for the registered tax practitioner and client or authorised person to verify the correctness and appropriateness of that data for transmission
  - d) the software retaining evidence of the verification as per subparagraph (c) above
  - e) the TPB registration number as part of the transmission.
22. In addition, the TPB is of the view that an appropriately worded declaration is required to make it clear to clients who use the software that the digital service provider is not a registered tax or BAS agent and if the client is seeking tax or BAS related advice to rely on to meet their tax obligations, they should request advice from a registered tax or BAS agent.
23. However, while the TPB will consider a declaration in determining if a person could reasonably be expected to rely on a service, the mere existence of a declaration alone will not be determinative of whether any reliance was placed on the services and was reasonable. Evidence of other inhouse practices and procedures, such as those outlined in paragraph 20 above, that limit the service may also be relevant, as may other evidence of the circumstances.
24. Ultimately clients of the digital service provider need to be aware that the digital service provider is simply being the transmitter of data to the ATO and not the provider of a tax agent service.
25. For example, a digital service provider who includes appropriate processes, such as those outlined in paragraphs 20 to 24 above, and allows their online services identification to be used to secure a transmission is not providing a tax agent service (which includes a BAS service). Therefore, in this situation, a digital service provider would not need to be registered as a tax or BAS agent with the TPB.

## Digital service providers that provide tax agent services

26. If a digital service provider has an intention to provide a tax agent service that is relied upon for a fee or other reward, the following options are available:

- a) Subject to meeting the eligibility requirements, the digital service provider could register as a tax or BAS agent.

For partnership or company registration, this does not necessarily require the person providing the service, for example an employee, to be registered in their own right. The company or partnership can be registered if they have a sufficient number of registered individuals, being registered tax practitioners, to provide services to a competent standard and to carry out necessary supervisory arrangements.

For information about how to register, see [Registration and renewal](#).

- b) Engage a registered tax or BAS agent to provide tax agent services or BAS services.

This can be achieved through the use of contractors who are registered tax practitioners to either personally undertake the work or to supervise non-registered individuals who are providing the tax agent service. This arrangement may not require the engagement of a registered tax practitioner on a full-time basis.