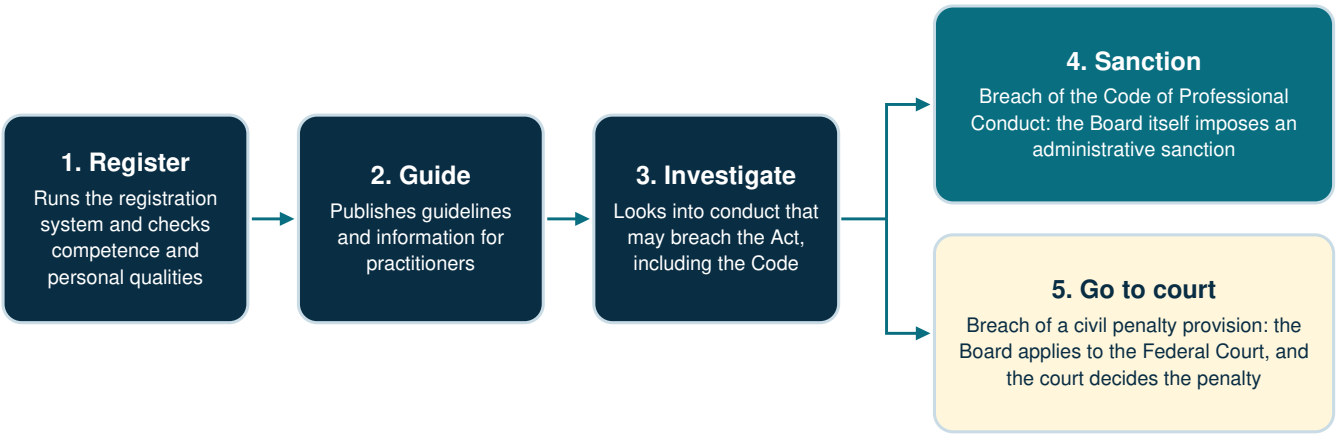
The TPB and registered tax practitioners

MODULE 1 | 1.2 | STUDENT COMPANION

Under self-assessment most taxpayers rely on a paid adviser whose work they can't judge for themselves. The **Tax Agent Services Act 2009** (TASA) therefore requires anyone who charges a **fee or takes any other reward for a tax agent service** to be registered. The **Tax Practitioners Board (TPB)** registers and regulates **tax agents** and **BAS agents**; providers of **tax (financial) advice services** have registered with **ASIC** since 1 January 2022. Unregistered practice is a matter for the Federal Court.

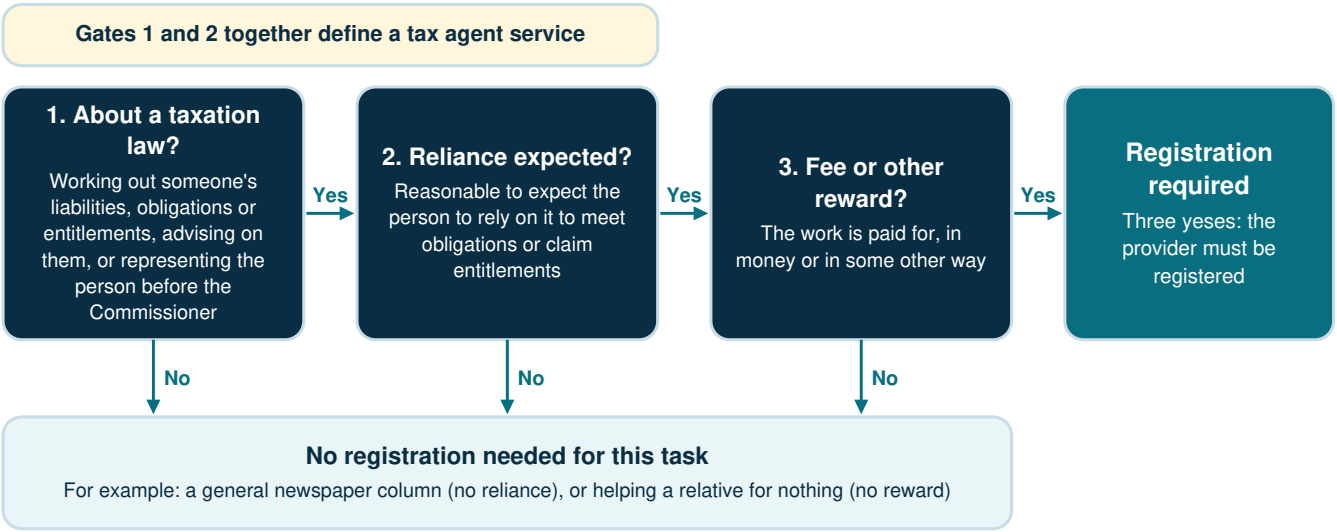
What the Tax Practitioners Board does



The TPB looks after the advisers; the ATO administers the tax laws and deals with taxpayers

Two paths after an investigation: for a breach of the Code of Professional Conduct the Board itself imposes an administrative sanction. For a breach of a civil penalty provision of TASA the Board cannot set the penalty: it applies to the Federal Court, and the court decides.

Who must register: three gates



The rule: an individual, partnership or company that charges a fee, or takes any other reward, for a tax agent service must be registered. Preparing a return, drafting an objection or advising on one client's own facts passes gates 1 and 2. A general article about how a tax rule works does not (no one can reasonably rely on it), and nor does keying in figures or reconciling a bank account (no tax law is applied).

BAS agents: a narrower registration

GST and PAYG brought regular activity statements, which bookkeepers were well placed to prepare. A **BAS service** passes the same gates, but only in relation to a **BAS provision**: goods and services tax (GST), fuel tax, wine equalisation tax, luxury car tax, the collection and recovery (only) of fringe benefits tax (FBT), and pay as you go (PAYG) withholding and PAYG instalments. The Board can also declare further services to be BAS services by legislative instrument (TASA s 90-10). It has done so for payroll-linked work: superannuation guarantee tasks tied to the payroll (including working out a shortfall and the superannuation guarantee charge, and preparing the charge statement), the taxable payments annual report, sending a TFN declaration to the ATO, and applying for an ABN for a client.

Outside the registration: income tax returns, advice on the FBT law itself, advice on salary packaging, and advice on deductions for superannuation contributions or on contribution caps must be referred to a registered tax agent.

Tax (financial) advice services: five elements

- a tax agent service, other than representing a client before the Commissioner;
- given by the holder of an Australian financial services (AFS) licence, or by a representative of one;
- given in the course of advice that such a person usually gives;
- concerned with liabilities, obligations or entitlements, actual or potential, under a taxation law;
- of a kind the client can be expected, reasonably, to rely on for tax purposes.

Outside the registration: preparing a return, lodging an objection or dealing with the ATO for a client. TASA still defines the service and still prohibits charging for it without registration.

The three practitioners side by side

Once registered, all three must also complete continuing professional education.

	Tax agent	BAS agent	Provider of tax (financial) advice
Registered by	TPB	TPB	ASIC (since 1 January 2022)
May provide	Any tax agent service	BAS services only	Tax advice as part of financial advice
To get in	Primary qualification in an approved field, or voting member of a tax agent association the Board recognises (extensive experience can sometimes stand in); Board-approved courses as required (not needed where entry is by voting membership); relevant work experience, the amount depending on the qualification	Primary qualification in bookkeeping or accounting; Board-approved GST and BAS course; relevant work experience (fewer hours for a voting member of an association the Board recognises)	Hold an AFS licence or represent a licensee; qualify as a qualified tax relevant provider (QTRP) through set education and training

Working without registration

- **The provider** breaches a civil penalty provision of TASA. The Board can investigate and apply to the Federal Court, which can order a financial penalty and grant an injunction to stop the conduct. There is no registration for the Board to suspend or terminate, so this is the court path.
- **The client** misses out on protection. Under the Taxation Administration Act 1953 a taxpayer who uses a registered agent (tax or BAS) may be sheltered from some ATO administrative penalties (the safe harbour). An unregistered preparer's client has no such shelter.

Practice questions

MODULE 1 | 1.2 | TRY THESE BEFORE THE WORKED ANSWERS

Question 1 - Sort the tasks

Decide whether each task is a tax agent service only, a BAS service as well, or neither.

Task (each is done for a fee)	Tax agent service only, BAS service as well, or neither?
(a) Preparing and lodging a company's income tax return	
(b) Completing a cafe's quarterly activity statement	
(c) Reconciling a client's bank account to the ledger each month	
(d) Advising an employer how much to withhold from a casual worker's pay	
(e) Writing a blog post that explains, in general terms, how GST registration works	
(f) Drafting an objection against an income tax assessment	
(g) Advising a new business whether it must register for GST	
(h) Advising a business owner whether salary packaging a car would reduce her tax	

Question 2 - One job too many

For each person, say what they may do and what must be referred on, and to whom.

(a) Imran Qadri, a registered BAS agent, prepares a florist's monthly activity statements and registers the business for PAYG withholding. The owner now asks him to work out the deductions she can claim in her own income tax return.

(b) Oksana Petrenko, a financial planner registered with ASIC as a qualified tax relevant provider, explains the tax effect of a client's extra superannuation contributions as part of a financial plan. The client now asks her to lodge his overdue tax return and to ring the ATO about a payment arrangement.

(c) Gareth Kellaway, an unregistered bookkeeper, enters a builder's invoices and reconciles the bank account. The builder now offers him an extra fee to work out the figures for the activity statement.

Question 3 - Unregistered and paid

A person with no registration prepares income tax returns for neighbours at a set fee per return. Explain the consequences (a) for that person and (b) for the neighbours who use the service.

Worked answers

MODULE 1 | 1.2 | WORKED ANSWERS - ATTEMPT THE QUESTIONS FIRST

Question 1 - Sort the tasks

Task	Answer	Reasoning
(a) Company income tax return	Tax agent service only	Applies income tax law to the client's facts; income tax is not a BAS provision
(b) Quarterly activity statement	BAS service as well	Works out liabilities under BAS provisions (GST, PAYG); a BAS agent or a tax agent may do it
(c) Bank reconciliation	Neither	No tax law is interpreted or applied (gate 1 fails)
(d) Withholding from a worker's pay	BAS service as well	PAYG withholding is a BAS provision, and the employer will rely on the advice
(e) General blog post on GST	Neither	About a tax law, but not applied to anyone's circumstances, so reliance can't reasonably be expected (gate 2 fails)
(f) Objection to an income tax assessment	Tax agent service only	A Part IVC objection concerns an income tax assessment, which is outside the BAS provisions
(g) Whether to register for GST	BAS service as well	Advice about an obligation under the GST law, which is a BAS provision
(h) Salary packaging a car	Tax agent service only	Advice on salary packaging and on the FBT law itself is outside the BAS provisions (only FBT collection and recovery is inside)

Remember: every BAS service is also a tax agent service, so a registered tax agent may do all six tasks that need registration. A BAS agent may do only (b), (d) and (g) of them. Tasks (c) and (e) need no registration at all.

Question 2 - One job too many

- **(a) Imran Qadri (BAS agent).** The activity statements and the PAYG withholding registration are BAS services, so both are within his registration. Working out deductions for an income tax return is a tax agent service outside the BAS provisions. He must decline and refer the owner to a registered tax agent.
- **(b) Oksana Petrenko (tax (financial) advice).** Explaining the tax effect of the contributions is a tax (financial) advice service: she holds or represents an AFS licence, the advice forms part of a financial plan, and the client will rely on it. Preparing or lodging a return is not covered, and nor is representing the client before the Commissioner, so both the return and the call to the ATO must go to a registered tax agent.
- **(c) Gareth Kellaway (unregistered).** Entering invoices and reconciling the bank account apply no tax law, so no registration is needed. Working out the figures for an activity statement is a BAS service, and he would be doing it for a fee, so all three gates are met. He must not take it on unless he registers; the builder should use a registered BAS agent or tax agent.

Question 3 - Unregistered and paid

(a) The provider. Preparing a return applies a tax law to a person's circumstances, the person relies on it, and a fee is charged, so each return is a tax agent service provided for reward. Doing that without registration breaches a civil penalty provision of the Tax Agent Services Act 2009. The TPB can investigate and apply to the Federal Court, which can order a financial penalty and grant an injunction to stop the conduct. The Board's own administrative sanctions (such as suspending or terminating registration) are not available, because there is no registration to act against.

(b) The neighbours. Each remains responsible for their own return under self-assessment. If a return is wrong, they face the tax, interest and perhaps a penalty. The Taxation Administration Act 1953 can protect a taxpayer who gives all relevant information to a **registered** agent (tax or BAS) from some administrative penalties (the safe harbour). That protection is not available where the preparer is unregistered. The preparer has also not had to show the Board any qualifications, experience or continuing education.