



Persons seeking registration as tax agents must apply to the registrar in the prescribed form. This form is available on the IRC website. An applicant seeking registration as a tax agent must satisfy the Registrar that:

- He or she is a fit and proper person to prepare income tax returns, and to transact business on behalf of taxpayers in income tax matters and GST matters; and
- Where the application is made by a partnership or company that all partners or directors, managers and other administrative officers, as the case may be, are over the age of 21 on the date of the application, and are of good fame, integrity and character.¹

Only a natural person can be considered a fit and proper person. Therefore, an applicant that is not a natural person will not satisfy the fit and proper person test. Thus, in the case of a company or partnership, the test will be applied to its nominee.

If the applicant is a *partnership*, the Registrar is required to register the applicant as a tax agent if the applicant satisfies the Registrar that:

- a partner specified in the application as the original nominee of the partnership satisfies the fit and proper person test
- in the case of each partner who is a natural person - the partner is at least 21 years of age at the date on which the application is made and is of good fame, integrity and character, and
- in the case of each partner that is a company - each director and executive officer of the company is at least 21 years of age at the date on which the application is made and is of good fame, integrity and character.

If the applicant is a *company*, the Registrar is required to register the applicant as a tax agent if the applicant satisfies the Registrar that:

- a person employed by the company and specified in the application as the original nominee of the company satisfies the fit and proper test
- each director and executive officer of the company is at least 21 years of age at the date on which the application is made and is of good fame, integrity and character

A person is a fit and proper person to handle the affairs of a client if he is a person of good reputation, has proper knowledge of taxation laws and is able to deal competently with any queries which may be raised by officers of the IRC. He should be a person of such competence and integrity that others may entrust their taxation affairs to his care. He should be a person of such reputation and ability that officers of the IRC may proceed upon the footing that the taxation returns lodged by the agent have been prepared by him honestly and competently. Further, a tax agent should be a person of such integrity and competence that clients' affairs can be entrusted to him or her and that

¹ Section 346(3) of the Income Tax Act 1959 & section 117A(2) of the Goods and Services Tax Act

he or she should be of such integrity and competence that IRC officers can place reliance upon returns prepared and lodged by him or her.

The requirement to be a fit and proper person is an ongoing one as the Registrar may cancel the registration of a tax agent upon being satisfied that, among other matters, the tax agent is not a fit and proper person to remain a tax agent.

In considering whether a person is fit and proper to hold a tax agents registration the Registrar will have regard to:

1. Whether the person is of good fame, integrity and character.

The Registrar may also take into consideration any other conduct that may be relevant to a determination on fitness and propriety including 'misconduct,' 'improper conduct,' 'unprofessional conduct' and 'wrongdoing', whether or not the conduct constitutes a minor or serious breach of the standards expected of a tax.

Tax agents are expected to act honestly and with integrity and to act lawfully in the best interest of a client. To advise the client of their rights and obligations under the relevant taxation laws and where uncertain as to how a taxation law applies to a particular set of circumstances, they should seek guidance from the IRC, professional bodies, Circulars, case law or other published guidelines.

Tax agents are also required to comply with the taxation laws in the conduct of their personal affairs and not knowingly obstruct the proper administration of the taxation laws. The personal taxation obligations of a tax agent include, but are not limited to, the timely lodgement of personal income tax returns and withholding instalments and payments. It would also include the timely lodgement of tax returns and withholding instalments and payments of entities over which he has control or influence; such as a company of which he is a director or partnership of which he is a partner.

A failure to accurately complete tax returns and notices and to comply with other requirements of the Commissioner General may indicate a lack of competence, good fame, integrity and character; such that the individual concerned cannot be relied upon to adequately provide tax agent services. A persons inability to comply with their own taxation affairs could subsequently cast doubt over the competence with which the agent would prepare the returns of his or hers clients. This could also result in adverse treatment of the clients' returns on the basis that there is no assurance that the returns were completed competently.

2. Whether they have appropriate educational qualifications

Applicants must be able to demonstrate that they have proper knowledge of taxation laws and are able to deal competently with any queries which may be raised by officers of the IRC. Evidence of such knowledge and competency would be demonstrated by them having

obtained a minimal educational requirement. The Registrar would expect that applicants hold at a minimum a Diploma in accounting or a Degree in Accounting, Law or Business in which they have undertaken pre-requisite modules in taxation.

It would also be expected that applicants would be voting members of a recognised professional association such as CPA PNG.

3. Whether they have relevant employment experience.

It is not enough that an applicant meet the educational requirements as they must also demonstrate that they are able to apply their learning's in practice. That is, the applicant must have been involved in relevant employment on a full time basis for a long enough a period to be able to demonstrate both the currency of their knowledge and their competency. In this regard it would be expected that applicants would have been engaged in supervised relevant employment of at least 18 months in the preceding five years.

The relevant employment must be a period of work as an employee or as a partner in a registered partnership. It does not include working alone in their own business, nor does it include work as an independent contractor. This is to ensure that the employee has been under substantial supervision and control in the ordinary course of business, involving appropriate checks on the accuracy and standard of their work.

Relevant employment also requires that the applicant can demonstrate experience in dealing with a range of tax returns in the course of which there has been both substantial involvement in income tax matters and a broad range of income tax returns, preparation or examination of objections and provision of advice in relation to such returns, assessments or objections. A "broad range" requires experience across a range of income tax returns spread over the spectrum of potential taxpayers, it is not sufficient to examine closely a few specialised returns.

Therefore, a determination on whether a person is fit and proper is not made by applying a single, standard test or rule, but rather, by balancing a range of considerations that may be seen to be relevant to fitness and propriety generally. Whether or not the considerations present in a given case result in a finding that a person is not fit and proper for registration will depend on a range of considerations, including (but not limited to) the nature and degree of the misconduct or improper conduct, any prior conduct or experience of the agent and any relevant surrounding circumstances.

Annual Renewal

A failure by an agent to discharge their responsibilities on behalf of clients could reflect adversely on the agent's fitness and propriety for registration where it amounts to unsatisfactory or unreasonable failure in the agent's circumstances and all the surrounding circumstances of the case. Failure to properly maintain client relationships that may in the

circumstances reflect adversely on fitness and propriety for registration include, but are not limited to:

- failure to prepare or lodge client returns in a timely fashion;
- failure to respond to client telephone calls and correspondence;
- failure to otherwise make oneself available to attend to client matters or to notify clients of any change to contact details;
- failure to pass on correspondence from the Commissioner General to clients;
- provision of misleading information to clients in relation to the filing of returns with the Commissioner General;
- imposition of blame on clients or staff for delays caused by the agent in filing returns; and
- provision of money to clients to influence them against complaining to any official body, however, the absence of any complaints may not bear much relevance when considered in conjunction with other relevant facts and circumstances.

Automatic cancellation of Registration

The Registrar must cancel an agent's registration if the agent:

- has failed to apply for renewal of his registration (*section 348(3)*);
- dies;
- becomes bankrupt /insolvent; or
- permanently ceases to carry on business as a tax agent (*section 348(4)*).

Further to this the Registrar may cancel the registration of a tax agent where:

- a return has been prepared by or on behalf of the tax agent which is false in any material particular; or
- the tax agent –
 - has neglected the business of a principal;
 - has been guilty of misconduct as a tax agent;
 - is not a fit and proper person to remain registered; or
 - has not within the previous three years lodged sufficient numbers of income tax returns or transacted sufficient income tax business as a tax agent to warrant remaining registered; or
- in the case of a partnership or company –
 - a nominee of the tax agent is not a fit and proper person to be such a nominee;
 - that a person who has become a member of the partnership or a director/officer of the company is under 21 years of age; or
 - that a person who has become a member of the partnership or a director/officer of the company is not of good fame, integrity and character.