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Exposure Draft Information Sheets: Tax Agent Services (Code of Professional Conduct) Determination 2024

The Institute of Public Accountants (IPA) welcomes the opportunity to make a submission in relation to the six Exposure Draft Information Sheets issued by the TPB in respect of the eight new obligations contained in the *Tax Agent Services (Code of Professional Conduct) Determination 2024* (Determination):

- TPB(I) D56/2024 — Upholding and promoting the ethical standards of the tax profession
- TPB(I) D57/2024 — False or misleading statements
- TPB(I) D58/2024 — Managing conflicts of interest when undertaking activities for government and maintaining confidentiality in dealings with government
- TPB(I) D59/2024 — Obligation to keep proper client records of tax agent services provided
- TPB(I) D60/2024 — Supervision, competency and quality management under the Tax Agent Services Act 2009
- TPB(I) D61/2024 — Keeping your clients informed

The IPA is one of the three professional accounting bodies in Australia, representing over 50,000 members and students in Australia and in over 100 countries. Approximately three-quarters of the IPA's members work in or are advisers to small business and small to medium enterprises.

We have set out our detailed submission points for each of the six draft information sheets separately.

Note: All legislative references are to the Determination unless otherwise stated.

TPB(I) D56/2024 — Upholding and promoting the ethical standards of the tax profession

Case study 1

How should Sam have approached the situation so as not to breach s. 10? Would it have been sufficient to set up conflict of interest management protocols or would it have been advisable to refuse to engage with one or both of the spouses?

In the case study both of the taxpayers sign on as new clients subsequent to the divorce. It would be useful if the TPB could extend this case study to cover a common situation where a married couple — with related entities — are Sam's existing clients. They divorce, and



Sam needs to manage the new conflict of interest in light of his professional relationships with the whole family group.

Further, where both ex-spouses expressly consent to the practitioner acting for both taxpayers, what is the view of the TPB in relation to whether it is sufficient to mitigate the conflict of interest?

[Suggestion for additional case study](#)

Where a registered practitioner constantly publicises views that are not technically correct and perhaps may be encouraging taxpayers or other agents to undertake unethical behaviour, for example through their personal or their practice's LinkedIn or Facebook public accounts, website, blog articles, podcast interviews and online discussion groups. These means of public communication of views and general advice are common. We recommend that the finalised guidance include some commentary or a case study outlining the TPB's views of how s. 10 may apply in these circumstances.

[TPB\(I\) D57/2024 — False or misleading statements](#)

[Guidance on meanings of key terms](#)

The wording in s. 15(2) mirrors that the language of the administrative penalty provisions in Schedule 1 to the *Taxation Administration Act 1953*. The draft guidance contains references to TPB information sheets relating to the concept of 'reasonable care'. While these are highly relevant, it may also be useful to include references to the ATO's technical guidance (for example, PS LA 2012/5 and MT 2008/1) on the meanings of the terms 'reasonable care', 'false and misleading', 'recklessness' and 'intentional disregard' — in particular, the terms in relation to which the TPB has not issued its own interpretative guidance (subject to the extent to which the TPB's interpretation for the purposes of s. 15 is consistent with the ATO's). If there are particular aspects in which the TPB's interpretation differs from the ATO's, these should be noted in the final guidance.

[Paragraph 32 — concept of 'In a material particular'](#)

The second bullet point under the heading 'In a material particular' states that a statement or particular will be 'material' where it is relevant to the purpose for which it is made. Based on this definition, it may be construed that every disclosure of \$1 or \$0.50 will be considered material.

As currently drafted, the question of whether it will be taken into account by the decision-maker is not the test for materiality but an example of 'relevance'.

We recommend that the TPB clarify the wording under this heading to remove ambiguity. That is, to clarify that it is the 'of moment or of significance, not merely trivial or inconsequential' test which should be applied for s. 15 purposes. If the question of whether it will be taken into account by the decision-maker is the threshold then that should be clarified.

[Paragraph 38 — table of required actions](#)

Item 3 of Table 2 states that the practitioner has reasonable grounds to believe [...] 'at a time after the statement was made'. The legal requirement is that appropriate action must be



taken if the reasonable grounds to believe arises at ANY time after the statement was made — which may be months or years after the statement was made.

A long time lag may be due to the practitioner's breach of other obligations under the Code, e.g. where the practitioner did not adequately carry out their obligation to ascertain the client's circumstances and/or to supervise their subordinate's work at the time the statement was prepared.

It would be useful to have an example whereby the false or misleading nature of the statement comes to light a year or two later (e.g. during an ATO review or an internal quality control audit). The practitioner would then have an obligation to carry out an appropriate action under s. 15 – but it may also leave them exposed to consequences under other Code obligations where the delay was due to the practitioner's negligence.

Paragraphs 44-45

In the draft guidance, only case study 2 references a timeframe within which the client was to take corrective action. It would be useful to include, either within the main body of the guidance or within the examples, some examples of a reasonable period of time in different circumstances.

Paragraph 52

Paragraph 52 relates to the correction of statements that were not made by, or for, a client.

The second sentence of the paragraph relates to a statement that has been made by or for a client. This sentence may need to be moved elsewhere.

Paragraph 64

The example in this paragraph involves a single 'practitioner' providing a number of different services to the client, and the practitioner must withdraw from all of these services when they withdraw from the provision of tax agent services.

In the case of a multidisciplinary firm — being a company or partnership — with a number of partners or principals, the different services may be led by different principals — some of whom may not be registered practitioners with the TPB. Similarly, the key person responsible for each of these non-tax functions at the client may be different people — they may have no influence on the refusal to correct the false or misleading statement provided to the TPB or the ATO.

In this context, please confirm that the professional relationship withdrawal requirement in item 3 of the table in s. 15(2) will always require the company or partnership to withdraw from all services, including non-tax services, provided to the legal entity. Would there be circumstances where the non-tax services, provided by non-tax principals to non-tax key persons of the client entity, may be retained?

Paragraph 65

If an individual is the director or trustee of a company or trust to which the false or misleading statement relates — and was the key person responsible for approving / lodging the statement — would the practitioner be required to withdraw from their professional

relationship with that individual in their personal capacity as well as their capacity as director / trustee?

In particular, how would the withdrawal requirement apply where the individual is a trustee or member of an SMSF, and the practitioner provides services to the SMSF as well as to the individual?

Conversely, if it is the individual in their personal capacity to which the false or misleading statement relates, would the practitioner be required to cease their professional relationship with any entities of which the individual is a key person, e.g. director / trustee?

Definition of 'client'

A 'client' for the purposes of s. 15 is not defined in the Determination. It is common for one engagement to cover a whole family group, comprising multiple taxpayers. Where the refusal to correct a false or misleading statement relates to only one taxpayer, please clarify whether the withdrawal requirement will only relate to that specific taxpayer and not the entire group. We note that item 3 of the table in s. 15(2) refers to the practitioner's 'client' and not to a 'taxpayer'.

Paragraph 67

The draft guidance only states that when notifying the TPB or the ATO, the registered practitioner is not required to explain why they believe the statement to be false or misleading or what they otherwise believe the statement should have said.

We recommend that the final guidance provides some positive detail as to what information *should* be provided in a notification to the TPB. While the TPB may not be able to be prescriptive in such guidance, it would be extremely helpful to practitioners to be given some broad parameters and indicative examples.

We also recommend that the final guidance includes discussion and examples of how the TPB and ATO may 'consider the notification ... and ... mitigation'. That is, once the notification is received, what will be the practical steps taken by the regulators in dealing with the notification. While the draft guidance states that the notification does not need to explain why the practitioner believes the statement to be false or misleading, it is reasonable for a practitioner to expect that the regulators will apply their general powers of information gathering to investigate the notification, under which the practitioner will be required to provide detailed information relating to the statement.

Paragraph 77

Does the TPB have any other practical examples of further action that may be needed in the public interest? For example, are there scenarios in which a false or misleading statement made to the TPB or the ATO may necessitate reporting to the police, ASIC, other government bodies or industry bodies under s. 15(2)?

Paragraph 113

While some of the case studies touch on the concept of 'substantial harm', it would be useful to have some additional commentary and specific examples of what the TPB would consider to constitute 'substantial harm' to the interests of others.



Paragraph 116

In the Exception column for items 3 to 5 of Table 3, the first sentence should also include a reference to notifying the TPB/ATO and taking any further action. Currently, the wording only covers line item 3 (withdrawing from the engagement), but not items 4 or 5.

Case study 2

In this case study the practitioner advises the client that the statements should be corrected within 2 weeks. Please clarify whether the choice of 2 weeks is based on the relevant statutory amendment period or another reason. This is the only part of the draft guidance which specifies a timeframe. In the absence of more general guidelines and examples, practitioners will require more certainty around the 2-week timeframe in case study 2.

Suggestions for additional case studies

We recommend that the TPB considers including case studies or examples in relation to the following scenarios:

1. A client changes tax agent and the new agent advises the former agent of a false or misleading statement made while the client was a client of the former agent.
2. A non-registered employee of a registered practitioner prepared the false or misleading statement — the registered practitioner did not adequately supervise and review the work. Section 15 obligations for the registered practitioner subsequently arise when the false or misleading nature of the statement is made apparent. What is the interaction with other Code obligations for the registered practitioner who did not adequately supervise the employee?
3. A registered practitioner has been overclaiming deductions for multiple clients, resulting in false or misleading statement. An example where a particular incorrect claim may not be considered material, but the cumulative effect of many incorrect claims across the practitioner's client base, and the repeated nature of the claims, renders the overclaims material.
4. A statement made to a government agency other than the ATO or the TPB that would be caught within s. 15.
5. A practitioner makes a false or misleading statement in their personal or professional capacity to a government entity other than the ATO or the TPB in relation to a non-tax matter — for example, relating to a traffic infringement, an immigration declaration, a disclosure to ASIC or the ACNC, a statement made to a state revenue authority, etc.
6. A client changes tax agent. The new agent discovered that a statement made while the taxpayer was a client of the former agent is false or misleading. The new agent advises the former agent of this. How should the former agent meet their obligations under s. 15(2), given that the client is no longer a client (but was a client at the time the statement was given to the TPB or ATO)?
7. What is meant by taking 'reasonable care' in the preparation or making of the false or misleading statement.
8. Where taking an otherwise required action would be unlawful under another Australian law. For example, where the withdrawal of an engagement may be contrary to the terms of the contract, or prohibitions under anti-money laundering legislation.
9. Where taking an otherwise required action would pose an unreasonable risk to personal safety.



10. More examples of the meaning of a 'material particular' and 'material respect'.
11. More examples of what should be included in an ethical letter to a former client's new agent for the former agent to satisfy s. 15 — we note that case study 2 contains one example.

On a broader note, we recommend that the TPB include more figures (dollar amounts and/or percentages, as appropriate) in the case studies (acknowledging that materiality requires a consideration of all relevant facts and circumstances).

Other issues

Underpayment of Superannuation Guarantee (SG)

Non-compliance with SG is a serious concern. We recommend that the final guidance provides detailed commentary and case studies or examples in relation to the extent to which s. 15 may apply in circumstances where a practitioner becomes aware that a client has not complied with their SG obligations in a previous quarter. In particular:

Single Touch Payroll (STP)

We note that under STP, employers are not required to report actual SG contributions. The liability for SG does not arise until 28 days after the quarter to which a payrun relates. Therefore there can be no false or misleading statement in an STP report relating to the SG payment for a quarter. However, the employer may under-report the salary or wages, or the OTE, in the STP report which then leads to an understated SG calculation. Would this cause a false or misleading statement to arise at the time that the STP report was submitted?

Please also clarify that in circumstances where the employer prepares and submits the STP report without the involvement of the registered practitioner, s. 15 would not give rise to obligations when the practitioner subsequently is made aware of the under-reporting (although obligations may arise under other Code items).

SGC statement

Would the non-lodgment of an SGC statement for a quarter by the due date be treated as an 'omission' for the purposes of s. 15(2)?

Is there any other point in time at which a s. 15 obligation could potentially arise in relation to a client's non-compliance with SG?

The potential application of whistleblower provisions

The tax whistleblower protections contained in Part IVD of the *Tax Administration Act 1953* only apply to the eligible whistleblowers in relation to an entity listed in s. 14ZZU of the *TAA*. A registered tax agent or registered BAS agent of an entity is not covered by the protections (unless they are otherwise an eligible whistleblower).

We recommend that the final guidance contains some commentary in relation to the potential application or non-application of the whistleblower protections where the registered practitioner notifies the TPB or the ATO under item 4 of the table in s. 15(2).



False and misleading statements made by omission

As noted in para. 17, a statement for the purposes of the *TASA* includes statements made by omission.

The only case study relating to an omission is case study 1, where a registered practitioner makes an omission in her online renewal form for TPB registration.

We recommend that the TPB include one or more case studies involving an omission from an income tax return prepared by a registered practitioner for a client. In particular, where the omission does not affect the calculation of taxable income but may nevertheless be considered 'material'. For example this may perhaps include where the practitioner does not fill in certain disclosure labels in the Company tax return — for example, those relating to loans to shareholders and their associates (Div 7A), carry forward losses, PSI, or fringe benefits employee contributions.

Further, what is the consequence of a non-disclosure where there is no effect on the amount of taxable income or a taxation liability?

[TPB\(I\) D58/2024 — Managing conflicts of interest when undertaking activities for government and maintaining confidentiality in dealings with government](#)

Case study 4

It would be helpful if the example was extended to set out the implications (if any) for Thomas if one of the other two partners discloses the confidential information without authority.

Suggestions for additional case studies

We recommend including an example where the registered practitioner's firm uses cloud services for storing the firm's filenotes and emails — in particular, in what circumstances the practitioner is required to seek authorisation from the government entity before using these services in respect of the storage of documents relating to the practitioner's dealings with the government entity.

We also recommend some commentary or an example covering a situation where a government entity is an ongoing client of the registered practitioner.

[TPB\(I\) D59/2024 — Obligation to keep proper client records of tax agent services provided](#)

Suggestions for additional case studies

It is commonplace for a registered practitioner to provide tax agent services to a client outside of formal meetings and written advice. For example, the practitioner may provide verbal advice to clients in unscheduled phone calls, or at networking or CPD events. The discussion may cover both tax agent services and non-tax agent services. We recommend that the TPB considers including case studies or examples illustrating the practical ways in which the practitioner would comply with s. 30 in these circumstances.



We also recommend that the final guidance contains some examples or case studies illustrating the extent to which an engagement letter may help the practitioner to satisfy some of the requirements in s. 30.

[TPB\(I\) D60/2024 — Supervision, competency and quality management under the Tax Agent Services Act 2009](#)

[Paragraph 55](#)

In the list of additional considerations that may be relevant in determining whether remote supervisory arrangements are adequate, the second bullet point states ‘whether the supervisor is available to be contacted at all times by staff’. We suggest that this should be reworded so that the supervisor’s required availability is limited to their working hours, or hours as agreed with staff, or similar, rather than ‘at all times’.

[Paragraph 85](#)

Paragraph 85 notes that practitioners are required to exercise their professional judgment in determining the appropriate controls, including the size of their practice. We recommend that the TPB include some further commentary around what aspects of a quality management system would be acceptable for sole practitioners and other smaller practices. In particular, where a sole practitioner falls ill or otherwise becomes unavailable to fulfil their duties to their clients — what steps would the TPB consider necessary and what systems should be put in place so that the practitioner can continue to satisfy s. 40 in such circumstances?

We also recommend that the TPB include some commentary specific to managing cybersecurity risks in a quality management system.

[TPB\(I\) D61/2024 — Keeping your clients informed](#)

[Case study 2](#)

During the transitional period, what approach will the TPB take to assist practitioners in rectifying a breach of the disclosure requirements? For example, in this case, would the TPB provide CTX with education on the requirements and allow extra time to comply, before commencing compliance action?

[Suggestion for additional case study](#)

We recommend that the guidance includes a case study where a practitioner has to disclose a prescribed event which arose after 1 July 2022 but before the relevant application date.



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Yours sincerely

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