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# The Definitive Guide to the New TASA Code Obligations



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## The new TASA obligations for practitioners

### Breach reporting, 'client dob-in' rules and more

In response to the 2022 public disclosure of the PwC tax leaks scandal, the government has tightened up the ethical and conduct rules which apply to registered tax agents and registered BAS agents (registered tax practitioners), in a series of legislative amendments and Ministerial actions during 2023 and 2024.

The set of rules governing the conduct and obligations of registered tax practitioners is contained in the *Tax Agent Services Act 2009* (TASA), including the Code of Professional Conduct (Code) in s. 30-10 of the TASA.

The new requirements include mandatory breach reporting and eight additional Code items. They follow the [enactment](#) of the 'disqualified entity' rules and a shortening of the agent registration period from three years to annually, which were recommendations of the independent [Review of the Tax Practitioners Board](#) commissioned by the former government in 2019 (not discussed in this document).

The **breach reporting rules** commenced on 1 January 2024 (**Part 1** — page 5). The **eight new Code obligations** became mandatory for larger practices on 1 January 2025 and will come into effect for all remaining practices on **1 July 2025** (**Part 2** — page 9). There are also further regulatory changes on the drawing board (see a brief summary in **Part 3** — page 62).

A list of relevant legislation and TPB resources is included in the Appendix (page 64).

Non-compliance with the new Code obligations or breach reporting will be subject to the long established TPB sanctions regime. There are no new sanctions specific to the new rules. This paper does not discuss the sanctions in detail but a brief summary is available in the Appendix (page 65).

This Guide is current as at 2 June 2025.

### Key abbreviations

Australian Taxation Office	ATO
Tax Practitioners Board	TPB
Income Tax Assessment Act 1997	ITAA 1997
Income Tax Assessment Act 1936	ITAA 1936
Taxation Administration Act 1953	TAA
Tax Agent Services Act 2009	TASA
Tax Agent Services Regulations 2022	TASR

## Part 1: The breach reporting obligations

### Legislative background

The breach reporting rules require both self-reporting and peer reporting (of another registered agent) where, broadly, a registered tax practitioner has knowledge that a significant breach of the Code has occurred.

The breach reporting rules are contained in sections 30-35 and 30-40 of the TASA. The provisions were inserted by the [Treasury Laws Amendment \(2023 Measures No. 1\) Bill 2023](#), which received Royal Assent on 27 November 2023.

(Note that the breach reporting provisions were tabled by Greens Senator Barbara Pocock on 8 November 2023. With no accompanying explanatory material and no public consultation period, the amendments were passed by both Houses of Parliament.)

### When do the breach reporting rules apply?

The breach reporting provisions apply to registered tax practitioners from **1 July 2024**.

### TPB guidance

Information Sheet [TPB\(I\) 43/2024 — Breach reporting under the Tax Agent Services Act 2009](#) (23 December 2024, effective 1 July 2024)

Webinar recordings:

[Breach reporting — myth busting](#) (10 April 2025)

[New breach reporting requirements](#) (22 January 2025)

### What are the breach reporting requirements?

A registered tax practitioner must **notify the TPB**, in writing, if they have **reasonable grounds to believe** that:

- (a) another registered tax practitioner has **breached the Code**
- (b) the breach is a **significant breach**.

In addition, the registered tax practitioner must also notify a **professional association accredited by the TPB**, in writing, of the breach, where they are aware that the other registered tax practitioner is a member of the professional association.

### What is a 'significant breach of the Code'?

A 'significant breach of the Code' is defined in s. 90-1(1) as a breach that:

- constitutes an indictable offence, or an offence involving dishonesty, under an Australian law; or
- results, or is likely to result, in 'material loss or damage' (see below) to another entity (including the Commonwealth); or
- is otherwise significant, including taking into account any one or more of the following:
  - the number or frequency of similar breaches by the tax practitioner
  - the impact of the breach on the tax practitioner's ability to provide tax agent services
  - the extent to which the breach indicates that the tax practitioner's arrangements to ensure compliance with the Code are inadequate; or
  - is a breach of a kind prescribed by the Tax Agent Services Regulations 2022 (at this stage none have been prescribed).

## MATERIAL LOSS OR DAMAGE

The expression ‘material loss or damage’ is not defined in the TASA. The TPB considers that ‘loss or damage’ captures any detriment, disadvantage, injury, harm or cost to another entity resulting, or likely to result, from the breach. It covers both financial and non-financial ‘loss or damage’. For example, it may include a financial loss to a client resulting from fraudulent or dishonest conduct or a failure to provide competent services or take reasonable care in applying the taxation laws. It may also include reputational damage, a loss of privacy, breach of confidential information, or unauthorised disclosure of a client’s identity, and loss or damage in the form of adverse impacts on the health and wellbeing of clients as the result of a tax practitioner’s conduct.

The TPB considers that loss or damage will be ‘material’ if a reasonable person, having the knowledge, skill and experience of a registered tax practitioner in the same circumstances, would expect it to be of substantial import, effect or consequence to the other entity. This requires the registered tax practitioner to exercise their professional judgement, taking into account the individual circumstances, including the information known to them about the breach. The TPB considers it inappropriate to prescribe a set materiality threshold or a non-exhaustive list of ‘material’ types of loss or damage.

## OTHERWISE SIGNIFICANT

An ‘otherwise significant’ breach may not be material on its own. The breach may become otherwise significant — and reportable — if it forms part of a bigger picture of potential misconduct by the practitioner.

For example, one single instance of a work-related deduction which is overclaimed by \$100 may not on its own be material. However, if the registered tax practitioner overclaims for the client by \$100 every year, and/or has a pattern of overclaiming for many clients, then all the facts and circumstances will need to be considered as to whether that breach is otherwise significant, taking into account:

- the number and/or frequency of overclaiming the work-related expense
- the impact on the practitioner’s ability to provide tax agent services — in terms of competence and/or honesty and integrity
- the extent to which the breach indicates that the practitioner’s compliance with the Code is inadequate — e.g. insufficient quality management systems, inadequate supervision and review of employees’ work, and/or inadequate technical and/or ethical training.

## When must the registered tax practitioner make a notification?

The registered tax practitioner must notify the TPB (and the professional association, if applicable) **within 30 days** of the day on which they **first have, or ought to have, reasonable grounds to believe** that the other registered tax practitioner breached the Code, and that the breach is a significant breach.

A registered tax practitioner will be taken to have reasonable grounds of belief where, objectively assessed, that belief is likely to be held by a reasonable person, possessing the required knowledge, skill and experience of a registered tax practitioner, having regard to the considerations discussed in TPB(I) 43/2024. The registered tax practitioner must have a sound foundation or factual basis in the circumstances on which to form their belief. They do not need conclusive proof but need to be able to appropriately substantiate their claim.

A registered tax practitioner still has an obligation to report a significant breach even if the breach has been rectified or remedied.

The TPB has no statutory power to extend or otherwise modify the prescribed timeframe. TPB(I) 43/2024 sets out the TPB's approach to the timeframe. The key principle is that the 30-day period runs from the day the registered tax practitioner **first has, or ought to have, reasonable grounds for believing a significant breach has occurred** (the Information Sheet applies this principle where multiple reasonable grounds become evident at different times or the registered tax practitioner seeks legal advice).

If the registered tax practitioner does not comply with the 30-day notification period, they must still report the breach — and give reasons for the delay (the TPB will consider these reasons when determining any compliance action to take).

## How to notify the TPB and professional associations

The registered tax practitioner must make a notification to the TPB using the:

- [Notify a change in circumstances](#) form — if the breach relates to their own conduct
- [Complaints](#) form — if the breach relates to the conduct of another registered tax practitioner.

The TPB's [Breach Reporting Factsheet](#) sets out the information to include in a breach report.

The TPB does not prescribe how to report a breach to professional associations and recommends that registered tax practitioners contact the relevant association for information.

### Note:

If a registered tax practitioner has actual knowledge that a significant breach has been reported to the TPB (and to a professional association, if relevant) by another registered tax practitioner, the TPB will generally not take any compliance action against the registered tax practitioner if they do not report the breach. The exception is where a registered tax practitioner self-reports their breach — another registered tax practitioner is still required to report the same breach. This is because the obligation to self-report and the obligation to report breaches of others exist independently of each other.

## The TPB's investigative approach

A breach report will not automatically trigger the commencement of a formal investigation.

The TPB will undertake a preliminary analysis of the notification, make relevant enquiries and use available information to assess and validate the potential breach.

The TPB may take action against the reporting registered agent if it considers that a report is 'frivolous, vexatious or malicious'. This is to be contrasted with one in which a registered tax practitioner reports a breach in good faith, but the TPB reaches a different conclusion — in such cases, it is unlikely that the TPB would impose administrative sanctions.

To ensure a fair process, the TPB may be required to disclose details of the reported breach to the reportee. It may also be possible for the reportee to discern who reported the matter. If the reporter is concerned about confidentiality, they should advise the TPB when they report.

### Note:

The TPB has reported that, as at 28 February 2025, it had received 53 reports from registered tax practitioners indicating they were reporting a significant breach. Of the 53 reports:

- 38 were reports made by registered tax practitioners against another registered tax practitioner

- 15 were self-reported breaches.

The primary breaches which were reported about another registered tax practitioner relate to:

- Code item 1 (acting honestly and with integrity)
- Code item 7 (ensuring competent provision of tax agent service).

The TPB has also observed reports of fraud on clients.

Self-reports indicate Code item 1 breaches, usually by unethical practices being undertaken by staff in their practice. Tax practitioners are also advising of Code item 2 issues, where their personal tax obligations may not be up to date. The TPB is also seeing breaches of Code item 6 (maintaining client confidentiality), due to inadvertent sharing of clients' personal information.

None of the significant breach reports received have been identified as frivolous, vexatious or malicious.

*Source: 'Significant breach reporting', issued 23 April 2025.*

## Document everything!

The application of the breach reporting rules requires much professional judgment and consideration of facts and circumstances unique to a particular scenario. There may be administrative sanctions imposed on a registered tax practitioner if they either do not report a breach where they had, or ought to have had, reasonable grounds to believe that it was a significant breach, or otherwise if they make a report that is deemed to be frivolous, vexatious or malicious. To mitigate the risk of these consequences, it is critical for registered tax practitioners to comprehensively document:

- the nature and circumstances of the breach
- how the breach came to their attention
- the reasonable grounds for their belief that a breach is significant; or why they believe that the breach is not significant
- information used and actions undertaken relevant to determining whether or not there are reasonable grounds to believe that the breach is significant
- when they first formed a view that the breach is significant and should be reported
- when they notified the TPB of the breach, including keeping a copy of the notification
- the nature and timing of any legal or other advice received in relation to whether the breach is a significant breach
- any other relevant circumstances, including efforts to rectify the breach if self-reporting
- if they do not report the breach because another registered tax practitioner has reported the breach — how they acquired the actual knowledge of the other registered tax practitioner reporting the breach.



## Part 2: The eight new Code obligations

### Legislative background

The Code obligations are set out in s. 30-10 of the TASA, categorised under five principles.

The eight new obligations — which increased the number of obligations from 17 to 25 — were introduced by the [Tax Agent Services \(Code of Professional Conduct\) Determination 2024](#) (the Determination) under the new Ministerial power. The current version of the Determination was compiled on 9 October 2024.

The [Treasury Laws Amendment \(2023 Measures No. 1\) Act 2023](#) introduced a power into the TASA which enables the Minister to, by legislative instrument, supplement the Code with additional obligations (as long as they are not inconsistent with the existing Code). The power was enacted in late November 2023 (with effect from 1 January 2024) and on 10 December 2023, the Government released a draft Legislative Instrument titled the Tax Agent Services (Code of Professional Conduct) Determination 2023, proposing draft versions of the eight new obligations, for public consultation..

On 2 July 2024, the Assistant Treasurer and Minister for Financial Services, Stephen Jones, registered the Determination. The new rules were to commence on 1 August 2024. On 31 July 2024, the Assistant Treasurer granted a deferral of the commencement date from 1 August 2024 to 1 January 2025 for larger practices and 1 July 2025 for all others. The Assistant Treasurer subsequently registered two amendments to the Determination.

See the Appendix (page 64) for links to the TASA and relevant Legislative Instruments.

### TPB guidance

With the Determination finalised in October 2024, the TPB consulted on draft guidance in relation to the new Code obligations. On 23 December 2024 it issued seven finalised Information Sheets — one on breach reporting (the draft of which was released in April 2024) and six in relation to the new Code obligations.

During 2025 the TPB has hosted a number of free webinars on breach reporting and the new Code obligations. See the Appendix (page 64) for links to the TPB's resources, including its Information Sheets, factsheets and webinar recordings.

### The relevance of APES

Some of the new Code obligations have been informed by standards issued by the Accounting Professional and Ethical Standards Board (APESB). Accounting professionals who are members of CPA Australia, CA ANZ or the IPA must comply with the code of ethics and professional standards set by the APESB.

APES which may be relevant include:

- [APES 110 Code of Ethics for Professional Accountants \(including Independence Standards\)](#)
- [APES 220 Taxation Services](#) — note new version effective from 1 July 2025
- [APES 320 Quality Management for Firms that provide Non-Assurance Services](#)

While a detailed discussion of the relevant [APES](#) is outside the scope of this document, applicable references as noted by the TPB in its guidance will be highlighted.

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## Commencement dates

The new obligations apply from:

- in relation to a registered tax practitioner that has **100 employees or less as at 31 July 2024 — 1 July 2025**; and
- otherwise — **1 January 2025**.

The headcount is undertaken at the practice or firm level, as at 31 July 2024. Where the registered tax practitioner is a partnership or company, the headcount takes into account the employees of:

- the partnership or company
- any entity connected with the partnership or company; and
- any affiliate of the partnership or company.

The headcount rule only takes into account employees and not independent contractors. Whether an employee is full-time, part-time or casual has no relevance to the headcount test. There is also no distinction between employees who perform work related to tax/BAS agent services and those who do not.

## Summary of the new obligations

The following table summarises the topics covered by the eight new obligations (see the detail in the relevant sections of this paper):

Code principle	New obligation
Honesty and integrity	<b>1. You must uphold and promote the ethical standards of the tax profession</b> <i>Section 10 of the Determination</i> <i>See page 12</i>
	<b>2. You must not make false or misleading statements to the Board or the Commissioner</b> <i>Section 15 of the Determination</i> <i>See page 15</i>
Independence	<b>3. You must manage conflicts of interest in activities undertaken for government</b> <i>Section 20 of the Determination</i> <i>See page 34</i>
Confidentiality	<b>4. You must maintain confidentiality in dealings with government</b> <i>Section 25 of the Determination</i> <i>See page 40</i>
Competence	<b>5. You must keep proper client records</b> <i>Section 30 of the Determination</i> <i>See page 45</i>
	<b>6. You must ensure tax agent services provided on your behalf are provided competently</b> <i>Section 35 of the Determination</i> <i>See page 49</i>
Other responsibilities	<b>7. You must establish and maintain quality management systems</b> <i>Section 40 of the Determination</i> <i>See page 54</i>
	<b>8. You must keep your clients informed</b> <i>Section 45 of the Determination</i> <i>See page 57</i>

## New obligation 1: Upholding and promoting the ethical standards of the tax profession

### THE OBLIGATION — SECTION 10 OF THE DETERMINATION

Independently, and in cooperation with other registered tax practitioners, you must:

- (a) uphold and promote the Code
- (b) not engage in any conduct that you know, or ought reasonably to know, may:
  - (i) undermine public trust and confidence in the integrity of the tax profession (including conduct that discredits the tax profession or brings the tax profession into disrepute); or
  - (ii) undermine public trust and confidence in the integrity of the tax system; and
- (c) not engage in any conduct that you know, or ought reasonably to know, may undermine the collective work of registered tax practitioners, as a tax profession, to uphold and promote:
  - (i) the Code
  - (ii) public trust and confidence in the integrity of the tax profession and tax system; and
  - (iii) each member of the profession being held accountable for their individual conduct.

### TPB GUIDANCE

- Information Sheet [TPB\(I\) 44/2024 — Upholding and promoting the ethical standards of the tax profession](#) (23 December 2024)
- Webinar recording — [Code Determination guidance — upholding and promoting ethical standards and keeping clients informed](#) (19 February 2025)

### DISCUSSION

In its guidance TPB(I) 44/2024, the TPB notes the following.

#### Consistency with other obligations

The obligations in s. 10 are consistent with other obligations, such as the obligation to act honestly and with integrity. They are also generally consistent with standards set in APES 110 *Code of Ethics for Professional Accountants (including Independence Standards)* and APES 220 *Taxation Services*, particularly regarding principles of integrity and professional behaviour.

#### Responsibility for others' conduct

Registered tax practitioners are responsible for the conduct of any unregistered individuals, including employees, contractors and assistants providing tax agent services on their behalf.

#### Upholding and promoting the Code

The expression 'uphold and promote' is not defined. In the TPB's view:

- 'uphold' means to support or maintain
- 'promote' means to further growth, development or progress.

Generally, registered tax practitioners can demonstrate their compliance by ensuring their own compliance with the Code on an ongoing basis, and by taking reasonable steps to implement practical measures to uphold and promote the Code in their practice.

Tax practices, in cooperation with individual tax practitioners within them, should institute measures such as:

- providing training and resources on complying with the Code

- introducing and actively undertaking processes to manage underperformance in relation to breaches of the Code
- instituting mechanisms for staff to report and address concerns about conduct that may breach the Code
- providing appropriate and adequate protection for staff that report conduct that may breach the Code, such as having a whistleblower policy in place
- see also (if applicable) paragraphs R360.19 to 3360.24 A1 of APES 110 *Code of Ethics for Professional Accountants (including Independence Standards)* for guidance on determining whether further action is needed when aware of non-compliance or suspected non-compliance with laws and regulations (NOCLAR)
- providing directions to staff not to engage in specific conduct where that conduct may result in a breach of the Code
- maintaining appropriate records relating to potential breaches of the Code
- processes for amending or correcting false or misleading statements in documents or conversations
- having recruitment processes that include police checks, checks of the TPB's register and checks to test whether someone is a disqualified entity
- encouraging compliance with the Code when considering remuneration, including promotions and bonuses, as well as in other human resource policies; and
- developing a culture of transparency, accountability, ethical conduct, and compliance with the Code and with the tax laws
- see also (if applicable) para. 120.13 A2 of APES 110 *Code of Ethics for Professional Accountants (including Independence Standards)* for examples of where the promotion of an ethical culture within an organisation is most effective.

In practice, how a registered tax practitioner meets the obligation will depend on their individual circumstances. Not all of the suggested measures will be relevant for every agent. Ultimately, registered tax practitioners should exercise their professional judgement, having regard to the facts and circumstances of their firm.

## Conduct that does not breach the obligation

The following conduct will not be considered to be conduct that breaches the obligation:

- providing considered feedback or submissions, which may include criticism on the content of public consultation documents or proposed government policies, that is done professionally
- choosing to exercise their legal rights, such as:
  - lodging an objection to a decision of the Commissioner; or
  - appealing a decision of the Commissioner or TPB to the Administrative Review Tribunal.

## To know or ought reasonably to know

The phrase 'know or ought reasonably to know' has two elements:

1. 'know' refers to actual knowledge; and
2. 'ought reasonably to know' refers to construction knowledge — where a person is taken to have knowledge about their conduct, if the existence of that conduct could be discovered by a reasonable person in the same position as the person, making reasonable enquiries.

## Undermining the collective work of the tax profession

Conduct that may be considered to undermine the collective work of the tax profession includes:

- not removing staff from a project or work area where there are reasonable concerns about potential unethical conduct relating to the project or work area
- asking not to be informed of, or for appropriate records to be made of, information relating to potential breaches of the Code
- destroying evidence relating to any potential breach of the Code
- taking or threatening any adverse action against an individual who raises concerns about potentially unethical conduct
- rewarding or encouraging an individual in relation to conduct that is unethical or not discouraging such unethical behaviour; and
- findings in relation to the misuse of legal professional privilege.

## TPB CASE STUDY

TPB(I) 44/2024 contains three case studies. Case study 2 is reproduced here.

### Case study 2 — registered tax practitioner company undermines the collective work of the tax profession

#### Situation

Anne is a director of registered tax agent company, KDG Pty Ltd.

Anne was approached by an employee of the company, James, who works solely under one of the supervising registered tax agents for the company, Lachlan. James had some concerns about Lachlan's potentially unethical conduct in the company.

James claimed he had seen Lachlan providing tax agent services to a large number of clients recently without asking for any proof of identity documentation to verify the identities of the clients and he had exaggerated claims on behalf of clients in their income tax returns to ensure they all received substantial tax refunds. James had raised these concerns previously with Lachlan, but they were disregarded.

Having discussed this matter, Anne checked the client files and found evidence of the claims James had raised with her. She was immediately concerned with how this would look for the company if James raised this any further. Anne subsequently met with James and advised that he should not be questioning Lachlan's work and asked James to refrain from pursuing these types of matters. Anne further added that if James continued to raise this issue, it would be detrimental to his future career in the company. She then deleted her email communications with James which discussed Lachlan's conduct and continued to employ Lachlan as a supervising registered tax agent for the company.

The TPB later investigated Lachlan's conduct and found he and KDG Pty Ltd had both breached subsection 15(1) of the Determination for making false and incorrect statements to the Commissioner when they ought to reasonably have known that the statements made were false in material particulars. Lachlan and KDG Pty Ltd also breached subsection 30-10(7) of the TASA, for failing to provide services competently, and subsection 30-10(9) of the TASA, for failing to take reasonable care to ascertain their clients' state of affairs.

#### Is there a breach of section 10 of the Determination?

KDG Pty Ltd is in breach of section 10 of the Determination for engaging in conduct that undermines the collective work of the tax profession, given the company did not hold its supervising registered tax agent, Lachlan, accountable for his actions. In making this finding, the TPB also noted that the company:

- failed to remove or discipline Lachlan where there were reasonable concerns about potential unethical conduct relating to his work

- asked not to be informed of, or for appropriate records to be made of, information relating to potential breaches of the Code
- destroyed evidence relating to potential breaches of the Code
- threatened adverse action against James when he raised concerns about potentially unethical conduct.

## New obligation 2: False or misleading statements

### TPB GUIDANCE

- Information Sheet [TPB\(I\) 45/2024 — False or misleading statements](#) (23 December 2024)
- Webinar recording — [Code Determination guidance — false or misleading statements](#) (19 February 2025)

### APPLICATION DATE

The obligations only apply to **statements made on or after 1 January 2025 or 1 July 2025** depending on the applicable commencement date for the registered tax practitioner.

#### Note:

The application of this obligation depends on the date that the statement is made and not the date or year the statement relates to. Statements made in 2024-25 tax returns which will be lodged after 30 June 2025 will be subject to the obligation. Also, it is irrelevant as to when the false or misleading nature of the statement was discovered. That is, if at a time after 30 June 2025 a practitioner uncovers the false or misleading nature of a statement made in a prior year tax return prepared and lodged before 1 July 2025, that will not be subject to this obligation. (However, breach reporting may be relevant and other Code obligations may potentially be breached depending on the circumstances.)

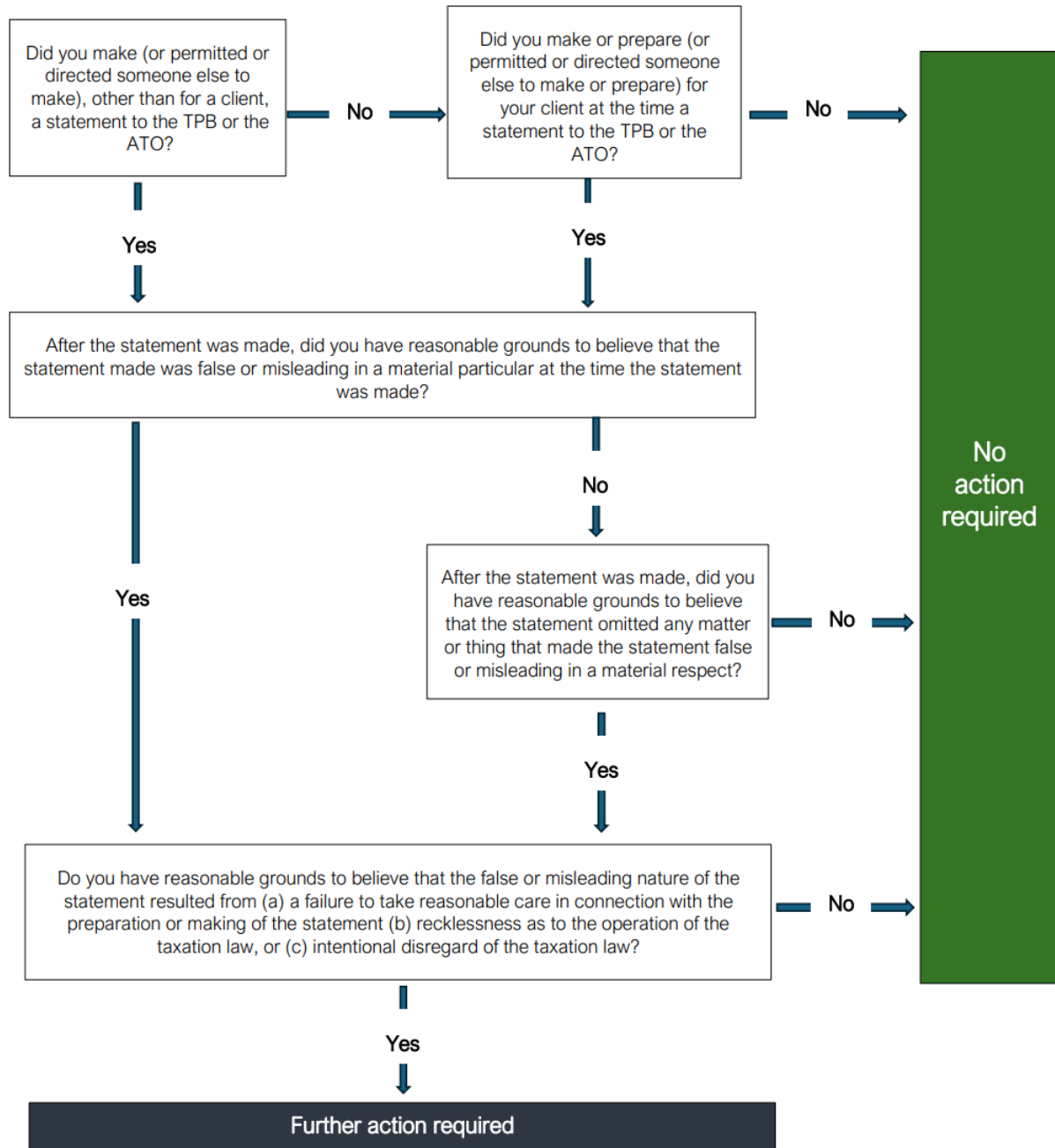
## PART 1 — STATEMENTS MADE TO THE TPB OR THE COMMISSIONER

### The obligation not to make materially false or misleading statements — section 15(1) of the Determination

You must not:

- (a) make a statement to the TPB or the Commissioner; or
- (b) prepare a statement that you know, or ought reasonably to know, is likely to be made to the Board or Commissioner by an entity; or
- (c) permit or direct someone else to make or prepare such a statement;

that you know, or ought reasonably to know, is **false or misleading in a material particular**, or omits any matter or thing without which the statement is **misleading in a material respect**, in your capacity as a registered tax practitioner or in any other capacity.



Excerpt from diagram in Appendix 1 to TPB(I) 2024/45



## Discussion — the obligation not to make materially false or misleading statement

### Making or preparing, or permitting or directing another to make or prepare, a false or misleading statement

A registered tax practitioner will ‘make’ a statement if they prepare, draft or cause the statement to be made or if they permit or direct another person to make the statement.

This includes statements made by or about the agent or their affairs, or on behalf of, or about, another entity e.g. a client.

A registered tax practitioner will ‘permit or direct’ someone else to prepare a statement where they give permission to, allow, instruct, provide an opportunity to, or otherwise facilitate the preparation of the statement by that other person or entity.

#### A ‘statement’

A ‘statement’ is anything that is disclosed for a purpose connected with a taxation law orally or in writing (and includes those made electronically), including the following:

- statements made in correspondence, a registration and/or application form, any ‘taxation document’ (see below), an activity statement, an amendment request or any other communication
- statements made by omission, if an entity fails to include material information in a document that requires that information to be supplied.

A ‘taxation document’ means any return, notice, statement or other document given to the Commissioner in the approved form within the meaning of s. 388-50 in Schedule 1 to the TAA.

Where a form is lodged, the form itself is not the statement that is made. The statement is the information at the individual labels, fields or questions, schedules or annexures. This means that a form can consist of more than one statement.

A statement also includes statements made to the TPB, including:

- under the requirements to notify the TPB of a change in circumstance or a significant breach of the Code
- in response to formal and informal information requests made by the TPB
- by registered tax practitioners through My Profile
- in any other communication.

#### Note:

Failing to lodge or provide a statement to the TPB or ATO will not constitute making a false or misleading statement for the purposes of this obligation. However it may give rise to contraventions of other obligations under the TASA and other taxation laws.

- Not lodging a tax return and thereby not disclosing an amount of derived income will not cause the registered tax practitioner to be caught within the s. 15 obligation. However, lodging a tax return but omitting that amount of income will fall within the scope of the obligation.
- When it comes to unpaid SG — no statement is made when an employer pays SG. Therefore the non-payment of SG may not fall within the scope of this obligation as there is no ‘false or misleading statement’ ... unless and until a ‘statement’ is actually made, such as the subsequent lodgment of an SG statement or a statement made to the ATO

upon a review or audit (and that statement is itself false or misleading, e.g. materially understating the SG liability still outstanding).

**That a registered tax practitioner knows, or ought reasonably to know, is likely to be made to the TPB, ATO or another government agency**

The phrase 'know or ought reasonably to know' has two elements. The term 'know' refers to actual knowledge. The phrase 'ought reasonably to know' extends to 'constructive knowledge', where a person is taken to have knowledge about a matter, if the existence of that matter could be discovered by a reasonable and honest person in the same position as the person.

The registered tax practitioner must have actual or constructive knowledge that the statement prepared is likely to be made to the TPB, ATO or another government agency by an entity.

The obligation will not apply if a registered tax practitioner can demonstrate that the statement prepared was unlikely to be made to the TPB, ATO or another government agency. This may include, for example:

- a statement prepared as part of an advice or some other document or communication which is unlikely to be made or provided to the TPB, ATO or another government agency
- a statement prepared to be made to an entity other than the TPB, ATO or another government agency.

**Statement is false or misleading in a material particular, or omits any matter or thing without which the statement is misleading in a material respect**

The nature of this obligation is one of truthfulness and integrity. The provision is concerned with particulars that are material in nature. False or misleading particulars that are minor, insignificant, immaterial or trivial in the circumstances will not constitute a breach of the obligation.

The TPB's guidance on the key concepts is as follows:

Concept	TPB explanation
False statements	<ul style="list-style-type: none"> <li>• A statement is false if it is contrary to fact or wrong.</li> <li>• A statement may be false because of something contained in the statement or because something is omitted from the statement.</li> <li>• If a statement was correct at the time it was made but is subsequently made incorrect because of a retrospective amendment to the law, it is not later considered false (or misleading).</li> </ul>
Misleading statements	<ul style="list-style-type: none"> <li>• A statement is misleading if it creates a false impression.</li> <li>• It may be misleading because of something contained in the statement or because of something omitted from the statement.</li> <li>• The reason the statement is misleading may be because it is uninformative, unclear or deceptive.</li> </ul>
In a material particular	<ul style="list-style-type: none"> <li>• The leading case on the meaning of 'material particulars' or 'material respects' is <i>Minister for Immigration, Local Government and Ethnic Affairs v Dela Cruz</i> (1992) 34 FCR 348:</li> <li>• A statement or particular will be 'material' where it is relevant to the purpose for which it is made, for example, if it will be taken into account by a decision-maker (regardless of whether it is required to be taken into account under the relevant statute), when making a decision to which the statement or particular relates.</li> <li>• To be material the false or misleading particular must be of moment or significance, not merely trivial or inconsequential.</li> <li>• Whether the false or misleading statement is 'material' will depend on the facts and circumstances, and whether a reasonable person, having the knowledge, skill and experience of a registered tax practitioner, would expect the misstatement or omission to be of substantial import, effect or consequence to the outcome for which it was given.</li> <li>• A statement may be false or misleading in a material particular regardless of whether the maker of the statement knew at the time of making the statement, that the particular is material.</li> <li>• Materiality is determined at the time the statement is made — a statement cannot be made material because of subsequent events.</li> <li>• However, materiality may be unknown until a subsequent event occurs or further evidence comes to light which reveals that the statement was false or misleading in a material particular at the time it was made.</li> </ul>

The obligation extends to the omission of any matter or thing without which the statement is misleading in a material respect.

Whether or not the particular is misleading in a material respect will depend on the circumstances, and whether a reasonable person, having the knowledge, skill and experience of a registered tax practitioner, would expect the misstatement or omission to be of substantial import, effect or consequence to the outcome for which it was given. This requires the registered tax practitioner to exercise their professional judgement.

The 'materiality' concept is consistent with the approach under APES 220 *Taxation Services*, which excludes certain obligations for members in relation to making false or misleading statements, where the false or misleading information in question is immaterial or inconsequential in nature.

## In their capacity as a registered tax practitioner or in any other capacity

The obligation extends to statements a registered tax practitioner makes, prepares, or permits or directs someone else to make or prepare in their capacity as a registered tax practitioner or in any other capacity. 'Any other capacity' means any capacity other than an entity's capacity as a registered tax practitioner and includes personal capacity.

## PART 2 — RESPONDING TO A FALSE OR MISLEADING STATEMENT MADE TO THE TPB OR COMMISSIONER

### The obligation to undertake an appropriate action — section 15(2) of the Determination

Where:

- (a) a statement has been given to the TPB or Commissioner
- (b) either:
  - (i) you made the statement, or permitted or directed someone else to make the statement, other than for a client; or
  - (ii) for an entity that was your client at the time the statement was given — you made or prepared the statement, or permitted or directed someone else to make or prepare the statement
- (c) at a time after the statement was made, you have **reasonable grounds to believe** that the statement:
  - (i) was **false or misleading in a material particular** at the time it was made; or
  - (ii) omitted any matter or thing, at the time it was made, without which the statement at that time is **misleading in a material respect**; and
- (d) you also have **reasonable grounds to believe** that the false or misleading nature of the statement resulted from:
  - (i) a **failure to take reasonable care** in connection with the preparation or making of the statement; or
  - (ii) **recklessness** as to the operation of a taxation law; or
  - (iii) **intentional disregard** of a taxation law; or

within a reasonable period of time after you come to believe that the statement given satisfies paragraph (c), you must take the relevant action(s) as set out in the following table.

For ease of reading, key guidance points from TPB(I) 45/2024 have been included in the table instead of in the Discussion section below.

<b>A. Where you made the statement or permitted or directed someone else to make the statement (other than a statement made for a client)</b>
<b>Item 1</b> You must take all reasonable steps to have the statement corrected.
<b>TPB guidance</b> The registered tax practitioner does not have to make the correction themselves — they can arrange to have the correction made for them.
<b>B. Where you made the statement or permitted or directed someone else to make the statement for a client</b>
<b>Item 2</b> You must take all reasonable steps to advise your client: <ul style="list-style-type: none"> <li>that the statement should be corrected</li> <li>about the possible consequences of not taking action to correct the statement.</li> </ul> <b>Exception</b> To the extent that doing so would be unlawful under another Australian law.
<b>TPB guidance</b> The TPB does not prescribe how the registered tax practitioner advises their client but recommends that the advice be in writing, clear and unambiguous. If the advice is given verbally, it is recommended that the registered tax practitioner confirms the advice in writing or, at the very least, keeps a file note.
<b>Item 3</b> Where, after a reasonable period of time after taking the actions in Item 2: <ul style="list-style-type: none"> <li>you are not reasonably satisfied that your client has corrected the statement or otherwise adequately explained the basis for the statement; and</li> <li>you have reasonable grounds to believe that the false or misleading nature of the statement resulted from recklessness or intentional disregard of a taxation law (i.e. not from a failure to take reasonable care);</li> </ul> you must take all reasonable steps to withdraw from the engagement, and professional relationship, with your client. <b>Exception</b> To the extent that doing so would: <ul style="list-style-type: none"> <li>pose an unreasonable risk to your personal safety, or the safety of a member of your family or an at risk staff member of yours; or</li> </ul>

**B. Where you made the statement or permitted or directed someone else to make the statement for a client**

- be unlawful under another Australian law.

***TPB guidance***

How the registered tax practitioner withdraws from the engagement and professional relationship will depend on the contractual relationship. Registered tax practitioners should ensure that their engagement letters and/or other contractual arrangements enable them to fulfil their obligations should the need arise.

The withdrawal requirement extends to a professional relationship outside of the provision of tax agent services. For example, the registered tax practitioner must also withdraw from an engagement to provide business advisory, accounting, audit and/or financial services.

The requirement to withdraw is limited to the registered tax practitioner engaged to provide services. In the case of a multi-disciplinary partnership, the obligation will apply to the partnership.

The obligation to withdraw does not extend to related entities of the client. For example, where the registered tax practitioner has been engaged by a group of taxpayers, the 'client' will be the entity about which the false or misleading statement relates.

**Note:**

While the TPB has now clarified that the practitioner's statutory obligation only relates to the specific taxpayer who refuses to correct their false or misleading statement and not to associated entities, this may result in practical difficulties.

In many cases the taxpayer is part of a larger client group comprising of multiple family members and/or business entities. The practitioner will have to navigate how to withdraw from providing services to the taxpayer in question — in some cases it may result in withdrawing from the professional relationship with the entire group.

Where the practitioner is part of a multi-disciplinary practice which provides tax and non-tax services to the taxpayer, the firm will need to cease providing any services at all to the taxpayer even if there are no issues with the non-tax services. Contractual arrangements for the non-tax services will need to be carefully considered in this event. In the lead-up to 1 July 2025, registered tax practitioners in multi-disciplinary firms should discuss the obligation with colleagues who provide non-tax services to tax clients.

**Item 4**

Where, after a reasonable period of time after taking the actions in Item 2:

- you are not reasonably satisfied that your client has corrected the statement or otherwise adequately explained the basis for the statement
- you have reasonable grounds to believe that the false or misleading nature of the statement resulted from recklessness or intentional disregard of a taxation law (i.e. not from a failure to take reasonable care)
- you have reasonable grounds to believe your client's actions have caused, are causing, or may still cause, substantial harm to the interests of others (including investors, creditors, employees, or the public);

## B. Where you made the statement or permitted or directed someone else to make the statement for a client

you must take all reasonable steps to notify the TPB or the ATO that you have advised your client that a statement made should be corrected and you are not reasonably satisfied that your advice was acted upon.

### *Exception*

To the extent that doing so would:

- pose an unreasonable risk to your personal safety, or the safety of a member of your family or an at risk staff member of yours; or
- be unlawful under another Australian law.

### *TPB guidance*

The registered tax practitioner is not required to correct the statement or explain to the TPB or ATO why they believe the statement to be false or misleading or what the registered tax practitioner otherwise believes the statement should have said.

It is for the relevant regulatory authority to consider the notification (being a piece of intelligence and simply a concern, of an ethical nature, of the registered tax practitioner about their client's potential compliance with tax laws), and consider, what, if any, mitigation is required.

The registered tax practitioner is required to:

- advise of the client's full legal name and any other relevant identifying information
- advise that the notification is being made pursuant to section 15 of the Determination
- confirm that the registered tax practitioner has advised their client that a statement made to the TPB or ATO should be corrected and they are not reasonably satisfied that this advice was acted upon
- include relevant and sufficient information that would assist the TPB or ATO in their assessment of the potential false or misleading statement and decide if any mitigation is required.

This means that a registered tax practitioner would need to provide the TPB or ATO with enough specific information to assess if a false or misleading statement has been made. For example, that the relevant statement is contained in the 2022-23 company income tax return or the business activity statement for March 2024.

In some circumstances, reporting registered tax practitioners may be eligible for the tax whistleblower protections that commenced from 1 July 2024. See the Appendix at page 68.

The method and process to notify the TPB and ATO will be published on the respective website.

## Item 5

In the same situation as for Item 4 — you must take all reasonable steps to take any further action as you reasonably consider is needed in the public interest.

### *Exception*

To the extent that doing so would:

<b>B. Where you made the statement or permitted or directed someone else to make the statement for a client</b>
<ul style="list-style-type: none"> <li>pose an unreasonable risk to your personal safety, or the safety of a member of your family or an at risk staff member of yours; or</li> <li>be unlawful under another Australian law.</li> </ul>
<p><i>TPB guidance</i></p> <p>The registered tax practitioner needs to have sound and sensible basis for regarding or deciding that further action is needed, in the public interest.</p> <p>What is in the ‘public interest’ will be constrained to matters that are relevant to supporting the public trust and confidence in the integrity of the tax profession and of the tax system by ensuring that tax agent services are provided to the community in accordance with appropriate standards of professional and ethical conduct.</p> <p>Further action may include (but is not limited to) the following:</p> <ul style="list-style-type: none"> <li>providing additional information or material to the TPB or ATO to assist them in taking the appropriate action in response to the notification</li> <li>providing relevant information to other regulatory or law enforcement agencies, for example, ASIC or police</li> <li>alerting the registered tax practitioner’s professional association about the general circumstances or issues</li> <li>advising another registered tax practitioner who is subsequently engaged by the client and seeks information and/or assurances from the registered tax practitioner in respect of the tax affairs of the client (for example, through an ethical letter)</li> <li>responding to requests for information or documents from the TPB or ATO.</li> </ul> <p>The obligation applies regardless of whether the client consents to the registered tax practitioner notifying the TPB or ATO about the false or misleading statement.</p> <p>The notification will not be in contravention of the confidentiality requirements in Code item 6 because registered tax practitioners have a legal duty to take such action (subject to information being protected by legal professional privilege).</p>

## Discussion — the obligation to undertake an appropriate action

### Required actions

Innocent or genuine errors or mistakes of registered tax practitioners and their clients are not intended to be captured by the obligations. The threshold for required further action aligns with the administrative penalty regime under the taxation law, relating to statements that have been made without reasonable care, recklessly or with intentional disregard of the taxation laws. Examples of false or misleading statements that would not require further action may include:

- information reported at incorrect labels in a statement or return, that results in minimal or no change to the overall tax position of the client
- typographical errors
- genuine mistakes that have occurred due to minor misunderstandings of a client’s situation or the application of a tax law.



While registered tax practitioners are not required to take action in relation to a statement that was not false or misleading at the time it was made, but later becomes false or misleading because of some later event, registered tax practitioners must ensure that subsequent statements made to the TPB or ATO are not false or misleading in a material particular.

The requirements to take further action apply regardless of how the registered tax practitioner becomes aware of the false or misleading statement.

## **Reasonable period of time after the tax practitioner comes to believe the statement was materially false or misleading**

Subsection 15(2A) states that in determining what is a reasonable period of time, registered tax practitioners should have regard to:

- the nature of the statement (e.g. the entitlement or obligation to which the false or misleading statement relates)
- the circumstances of the client (e.g. any practical issues with advising the client to correct the statement or taking further action as required, for example if the client is overseas, unwell or uncontactable)
- the details that were false or misleading (e.g. how complex the matter that the statement relates to is and/or how easily the statement can be corrected, or further action can be taken by the registered tax practitioner and/or client)
- how long ago the statement was made
- the relevant period of review
- for income tax matters, in most cases the amendment period is 2 or 4 years — see s. 170 of the ITAA 1936
- for GST tax periods, in most cases a 4-year period of review applies — see s. 155-35 of Schedule 1 to the TAA
- any timeframe set out in a taxation law for the lodgement of the statement or a correction to the statement
- any other relevant matter.

## **Take all reasonable steps**

Determining what is required for the purposes of taking ‘all reasonable steps’ will vary, depending on the circumstances. For example, the appropriate and reasonable steps to correct a statement (not made for a client) will vary depending on what the statement is, and how the TPB or ATO requires corrections to statements of its nature. For example, an amendment to an income tax return will require registered tax practitioners to follow the ATO’s processes and timeframes for amending returns.

Where a registered tax practitioner is unable to take the necessary course of action despite, in their view, taking all reasonable steps, the registered tax practitioner should document the steps they undertook in attempting to take the necessary course of action. Documenting the steps undertaken will be a mitigating factor the TPB considers in determining what compliance action to take (if any).

## **Reasonable grounds to believe**

Having regard to the ordinary meaning, the phrase ‘reasonable grounds to believe’ requires the registered tax practitioner to have a sound foundation or basis in the circumstances on which to credit or form their belief.

It is established in case law that there needs to be an existence of facts which are sufficient to induce that state of mind in a reasonable person. Whether a person has reasonable grounds for a belief is an

objective test, and it is irrelevant whether the person subjectively believes they have reasonable grounds. A 'reasonable belief' is generally considered to infer a higher threshold than a 'reasonable suspicion'.

The foundation or basis for the belief does not need to be established to a high evidentiary standard. There does not have to be conclusive proof. It is sufficient if a reasonable person, possessing the required knowledge, skill and experience of a registered tax practitioner would, when objectively considered, form the belief on the same grounds in the same circumstances.

Making such a determination will depend on an analysis of the surrounding circumstances and consideration of a number of factors, including but not limited to:

- the source of the information forming the basis of the belief and the credibility and reliability of that source/information
- whether there is independent evidence, verification or corroboration to support the belief
- the circumstances in which the registered tax practitioner became aware of the possibility that the statement is false or misleading and/or that the false or misleading nature of the statement resulted from recklessness or an intentional disregard of a taxation law by the registered tax practitioner (or someone permitted or directed by them) or the client
- whether, and to what extent, the registered tax practitioner made reasonable enquiries or sought advice to confirm their belief
- whether there are any reasonable alternative explanations that could counter the registered tax practitioner's belief.

## **Reasonable care in connection with the preparation or making of the statement**

Whether a registered tax practitioner has taken reasonable care in a given situation will depend on an examination of all the circumstances, including:

- the nature and scope of the statement
- if the statement is being made or prepared for a client
- the client's circumstances and the circumstances surrounding the client making the statement
- the client's level of professional knowledge and experience.

The standard of 'reasonable care' generally required of registered tax practitioners is that of a competent and reasonable person, possessing the knowledge, skills, qualifications and experience that a registered tax practitioner is expected to have, in the circumstances.

Similarly for a client, a lack of reasonable care will be determined having regard to how a reasonable person, in the same circumstances as the client, would act in connection with making the statement, or engaging and/or instructing a registered tax practitioner to make or prepare the statement on their behalf. For unsophisticated clients, the level of reasonable care expected of the client will be of a lesser standard than that of a registered tax practitioner.

## **Recklessness as to the operation of a taxation law**

Having regard to the ordinary meaning, recklessness is behaviour which falls significantly short of the standard of care expected of a reasonable person in the same circumstances as the entity. It goes beyond a failure to take reasonable care, and will generally involve gross carelessness.

A finding of recklessness depends on the application of an essentially objective test. There must be the presence of conduct that falls short of the standard of a reasonable person in the position of the entity. Dishonesty is not an element of establishing recklessness. The actual intention of the entity is of no relevance.

Recklessness must relate to the operation of a 'taxation law' which is defined in s. 995-1(1) of the ITAA 1997 to mean:

- an Act of which the Commissioner has the general administration; or
- legislative instruments made under such an Act; or
- the TASA or regulations made under the TASA.

## **Intentional disregard of a taxation law**

Having regard to the ordinary meaning, intentional disregard means an intent and purposeful decision to leave something out of consideration. Unlike recklessness, 'intentional' requires something more than reckless disregard of, or indifference to, a taxation law.

The test for intentional disregard is purely subjective in nature. The actual intention of the entity in question is a key factor and dishonesty is a requisite feature. There must be actual knowledge that the statement made is false.

The intentional disregard must be in the context of a 'taxation law'.

## **Not reasonably satisfied that a client has corrected the statement**

Having regard to the ordinary meaning, the phrase 'not reasonably satisfied' means not having a sound basis to be assured that the client has corrected the statement.

The foundation or basis for a registered tax practitioner being 'reasonably satisfied' does not need to be established to a high evidentiary standard. There does not have to be conclusive proof. It is sufficient if a reasonable person, possessing the required knowledge, skill and experience of a registered tax practitioner would, when objectively considered, form the belief on the same grounds in the same circumstances.

Making such a determination will depend on an analysis of the surrounding circumstances and consideration of a number of factors, including but not limited to:

- the registered tax practitioner's ability to independently verify that the statement has been corrected (for example, through accessing the ATO's systems)
- any responses or assurances provided by the client in relation to the registered tax practitioner's advice about correcting the false or misleading statement
- the circumstances that led to the statement being false or misleading, and the role and conduct of the client in connection with the making of the false or misleading statement
- the registered tax practitioner's familiarity and relationship with the client.

## **Believe on reasonable grounds that the client's actions have caused, are causing, or may still cause, substantial harm to the interests of others**

See above for guidance on believing on reasonable grounds.

Note 4 to s. 15 of the Determination provides that when considering whether a client's actions have caused, are causing, or may still cause, substantial harm to the interests of others (including investors, creditors, employees, or the public), regard is expected to be had to all relevant matters including:

- whether the client's actions have resulted, are resulting, or may result, in serious adverse consequences to others in either financial or non-financial terms
- any of the rights and obligations under the taxation laws (as are relevant)

- the appropriateness and timeliness of the client's response to the registered tax practitioner's advice that the statement should be corrected (including any information that would lead the registered tax practitioner to conclude that the client lacks integrity)
- the urgency of the situation.

The concept of 'substantial harm' is consistent with the same concept in APES 110 (see para. 360.5 A3).

'The interests of others' includes both financial and non-financial interests of investors, creditors, employees and the public.

'The public' includes other registered tax practitioners, clients, as well as the general public (for example, when considering harm or impacts on public revenue collections and/or the public trust and confidence in the tax profession and tax system more broadly).

Relevant additional matters could include:

- whether, if identified by the TPB or ATO, the existence of the false or misleading statement would likely give rise to a fine, penalty, sanction or other liability (criminal, civil or administrative)
- whether public knowledge of the false or misleading statement has or is likely to impact the standing and reputation of a third party, including the TPB and/or ATO
- whether public knowledge of the false or misleading statement has or is likely to adversely impact the public's trust and confidence in the tax profession and tax system
- whether the actions of the client have or will impact on the entitlements of others, for example, through phoenixing activity that may cause substantial harm to employees, creditors and other businesses who are put at a competitive disadvantage
- whether the actions of the client create a loss of revenue to the community that could have otherwise contributed to community services.

## Discussion — exceptions

### Contrary to another Australian law

Examples of circumstances where advising or withdrawing from an engagement or professional relationship with a client, notifying the ATO or TPB about a false or misleading statement, or taking further action as considered reasonably needed in the public interest would otherwise be contrary to another Australian law could include:

- prohibitions relating to 'tipping off' an entity about information included in suspicious matter reports under the *Anti-Money Laundering and Counter Terrorism Financing Act 2006*
- provisions relating to advice, engagement, obligations and withdrawing from professional appointments, other than related to the provision of tax agent services, for example, the obligations that apply to auditors of public companies under the *Corporations Act 2001* and auditors of SMSFs.

### Unreasonable risk to the registered tax practitioner's personal safety, the safety of a member of the registered tax practitioner's family, or the safety of an at risk staff member

Having regard to the ordinary meaning, the phrase 'unreasonable risk' requires the registered tax practitioner to have a sound foundation or basis in the circumstances on which to conclude that there is an exposure to an injury, loss, hazard or danger.

Section 4 of the Determination defines an 'at risk staff member' as meaning:

- an employee of the registered tax practitioner
- where the registered tax practitioner is an employee or member of a partnership or company that is also a registered tax practitioner — a member or an employee of the partnership or company (or any entity connected with, or an affiliate of, the partnership or company)
- another entity that provides tax agent services (including BAS services) on behalf of the registered tax practitioner.

Consideration of whether there is an unreasonable risk does not need to be established to a high evidentiary standard. There does not have to be conclusive proof. It is sufficient if a reasonable person in the position of the registered tax practitioner would, when objectively considered, consider that there is a risk.

Examples of relevant risks could include (but are not limited to):

- risk of physical injury or harm to the registered tax practitioner, a member of their family, or an at risk staff member
- risk of emotional distress or psychological harm caused by harassment of the registered tax practitioner, a member of their family, or an at risk staff member.

Where a registered tax practitioner wishes to rely on an exception, they should keep records to substantiate this assessment, including:

- a file note about the basis for considering that the action(s) in question would pose an unreasonable risk
- summaries or copies of copies of any advice (professional or otherwise) in respect of the risks or lawfulness in taking the action(s) otherwise required (but for the exception)
- any other evidence or documentation that is relevant to the registered tax practitioner's consideration as to the application of the exceptions.

If a registered tax practitioner decides not to take any or all of the actions due to the operation of the exceptions, they do not need to notify the TPB or ATO at the time the decision is made. However, registered tax practitioners should ensure that they retain appropriate records.

## Tips

- The obligation to report a client is not to be conflated with the breach reporting rules. The client reporting rules require the registered tax practitioner to report a client (taxpayer) in respect of a false or misleading statement in certain circumstances, whereas the breach reporting regime obliges a registered tax practitioner to report a fellow agent or to self-report themselves (but not to report a taxpayer) in respect of a breach of the Code.
- The registered tax practitioner's obligation also covers work done by an employee, contractor or other third party under the agent's permission or direction. It does not matter if the other party is themselves also a registered tax practitioner (although breach reporting may be relevant here).
- If the circumstances leading to the making of the false or misleading statement constitutes a breach of the Code, the registered tax practitioner will need to consider whether they also need to report themselves or another agent under the breach reporting rules. In some circumstances both regimes could apply.

## PART 3 — STATEMENTS MADE TO OTHER AUSTRALIAN GOVERNMENT AGENCIES — SECTION 15(3) OF THE DETERMINATION

You must not:

- (a) make a statement to an Australian government agency (other than the TPB or the ATO)
- (b) prepare a statement that you know, or ought reasonably to know, is likely to be made to an Australian government agency (other than the TPB or the ATO); or
- (c) permit or direct someone else to make or prepare such a statement;

that you know, or ought reasonably to know, is false or misleading in a material particular, or omits any matter or thing without which the statement is misleading in a material respect, in your capacity as a registered tax practitioner or in any other capacity.

### Note:

‘Australian government agency’ is defined in s. 995-1 of the ITAA 1997 as the Commonwealth, State or Territory, or an authority of the Commonwealth, State or Territory. They include ASIC, the ACCC and the Department of the Treasury.

## OTHER CONSIDERATIONS

### Application of obligation to more than one practitioner within the same entity

Where there is a registered tax practitioner partnership or company engaged by the client, the registered entity will ultimately be responsible for ensuring compliance with the obligations of section 15 by the entity to clients, regardless of whether the false or misleading statement was made or prepared on its behalf by an employee (including a registered tax practitioner individual). It is expected that the registered tax practitioner engaged by the client will have appropriate internal controls and procedures in place to ensure that the false or misleading statements are appropriately identified, managed and actioned.

### Interaction with breach reporting

In some circumstances, the making, preparing or directing, or permitting someone to make or prepare a false or misleading statement may give rise to the registered tax practitioner having a reasonable belief that they have committed a ‘significant breach’ of the Code. Where this is the case, the registered tax practitioner will be required to provide a report to the TPB under the breach reporting requirements. See ‘Part 1: The breach reporting obligations’ from page 5.

Note that:

- the breach reporting rules require the practitioner to **report themselves (in their capacity as a registered agent) or another registered agent** to the TPB in relation to a significant breach of the Code
- the Code obligation in s. 15 of the Determination requires the practitioner to **report a client** to the TPB or Commissioner in relation to a false or misleading statement.

There may be circumstances where a materially false or misleading statement may result in the practitioner having an obligation to report both:

- themselves to the TPB, for preparing the statement (or directing etc someone else to do so) and
- the client to the ATO, for refusing to correct the statement.

The TPB will take into account mitigating circumstances, for example, compliance with the obligations relating to correcting false or misleading statements and the breach reporting obligations, when considering the appropriate course of action (including the imposition of sanctions).

## Civil penalties and criminal liability

Registered tax practitioners may also be subject to civil penalties and criminal liability for making, preparing or permitting or directing the making or preparing of false or misleading statements to the ATO:

- civil penalty liability under s. 50-20 of the TASA
- criminal liability under sections 8K and 8N of the TAA
- administrative penalties imposed under Schedule 1 to the TAA.

## TPB CASE STUDIES

TPB(I) 45/2024 contains seven case studies, including the following, summarised as follows.

### Case study 2 — Where a client had intentional disregard of the tax laws in making statements to the ATO

Archie, a registered BAS agent, was engaged by his client Tom to assist with lodging BASs for the past 2 years. Archie agreed to complete the BAS for Tom even though the instructions were consistent with a widely publicised media release issued by the ATO to warn taxpayers who were considering entering into a particular fraudulent scheme to claim false GST refunds. When Archie raised his concerns about the fraudulent scheme with Tom, Tom told Archie that he understands Archie's concerns but would like him to lodge the BAS anyway. The BAS were lodged by Archie, on behalf of Tom, and the business was issued with GST refunds.

After some months had passed, Archie saw media articles where the ATO advised that it was taking compliance against entities who had entered into these fraudulent schemes. Archie considered his obligations under subsection 15(2) and that he had reasonable grounds to believe that the false statements arose from an intentional disregard of the law by both Archie and Tom. As such, Archie advised Tom that the statements should be corrected within 28 days (having regard to the relevant statutory timeframes, and, in Archie's opinion, how long it will reasonably take to correct the statements) and the possible consequences if the statements were not corrected (including by showing Tom the media articles).

Tom told Archie he had no intention of correcting the statements himself, nor did he intend to instruct Archie to correct them on his behalf. As such, after 28 days, Archie:

- withdrew from his engagement and professional relationship with Tom
- given that Archie has reasonable grounds to believe that Tom's actions in conducting fraud on the Commonwealth have caused substantial harm to the interests of others, including the public and the Commonwealth, Archie notified the ATO that he has advised Tom the statements should be corrected and that he is not reasonably satisfied that the advice was acted upon.

Subsequent to withdrawing from the engagement, Archie received an ethical letter from a registered BAS agent engaged by Tom. In the circumstances, Archie reasonably considered that it was in the public interest to:

- advise the registered BAS agent of the false or misleading statements made by Tom and surrounding circumstances
- provide a copy of the ATO's media release in relation to the fraudulent scheme
- advise the registered BAS agent of the steps Archie has taken to comply with his obligations under section 15, including notifying the ATO of the false or misleading statement.

In undertaking the above actions, Archie has satisfied his obligations under subsection 15(2) in taking reasonable steps to remedy the breach. The TPB took Archie's compliance into account when determining an appropriate sanction to impose on Archie for his breach of subsection 15(1) as he

made a statement to the Commissioner that he ought to have known was false in a material particular, in his capacity as a registered BAS agent.

It is important to note that Archie may also be in breach of other Code items, including Code item 1 relating to honesty and integrity and Code item 11 relating to not obstructing the administration of taxation laws.

**Note:**

In this case study, a period of 28 days was considered to be a reasonable period of time within which Archie was to take appropriate action. This will not always be the case. The TPB is silent as to what may constitute a reasonable period of time in other particular circumstances.

**Case study 4 — registered tax practitioner intentionally disregards a taxation law in making a false or misleading statement to the ATO on behalf of their clients**

Julian was identified by the ATO as having high work-related expense (WRE) claims across his client base. Over 100 client audits were completed. The types of behaviours noted by the ATO demonstrated that Julian made statements to the ATO that were false, and contrary to the information available to him. This was despite the ATO's audit activity identifying that clients had provided all relevant and accurate information and records to Julian when engaging him to complete their income tax returns.

Considering the information and source documents provided to Julian, the nature of the false statements made and the consistency of the falsehoods across Julian's client base, it was clear that Julian knew his statements were false and therefore resulted from an intentional disregard of taxation laws.

Julian is in breach of subsection 15(1) by preparing statements to the ATO that he knew to be false in a material particular/s.

Given that Julian made the statements for clients, he has reasonable grounds to believe that the statements he made were false or misleading in material particulars, and resulted from intentional disregard of taxation laws, Julian also had an obligation to take reasonable steps in relation to advising clients, withdrawing from his engagement with the clients and in certain circumstances, notifying ATO and taking further action in the public interest. As Julian did not take any steps as required under subsection 15(2), he is also in breach of this provision.

Julian may also be found to be in breach of his obligations under Code item 1 (acting honestly and with integrity), Code item 7 (providing tax agent services competently), Code item 11 (obstructing the proper administration of the tax laws) and he may also be found to no longer be a fit and proper person for registration as a tax practitioner.

**Case study 5 — registered tax practitioner makes a false or misleading statement for a client in an immaterial particular**

Felix had been engaged by Leila for the past 5 years to prepare her income tax returns. While preparing Leila's income tax return of the most recent financial year, Felix discovered that he had accidentally provided an inaccurate business industry code (BIC) in Leila's income tax return in the previous year.

While the inclusion of the incorrect BIC in Leila's income tax return was a false or misleading statement, it was not material. As such, Felix was not in breach of section 15 due to his mistake, and the obligations to take further action under subsection 15(2) did not arise.



## Case study 6 — registered tax practitioner considers that a client's actions may cause substantial harm to others

Don, a registered tax agent, was reviewing the taxation and financial records of his client, Phil, and Phil's company DFE Constructions Pty Ltd.

In closely reviewing the company's records, Don noticed that statements he had previously prepared on behalf of the company and provided to the ATO were materially false or misleading, resulting in the company's underpayment of GST and superannuation entitlements to employees. After reviewing the records he kept in relation to the tax agent services provided to Phil and the company, Don suspected that Phil had intentionally provided Don with incorrect information (including falsified source documents) in order to pay less GST and superannuation entitlements than what was required under the taxation laws.

Don identified that he had made false or misleading statements in material particulars to the ATO, on behalf of Phil and the company, and upon reviewing his records, Don considered that he had reasonable grounds to believe that the false or misleading nature of the statements resulted from an intentional disregard of taxation laws by Phil.

Given the seriousness of the false or misleading statements made to the ATO, Don contacted Phil within the same day, and advised Phil that:

- he had identified the false or misleading statements previously made to the ATO
- the statements should be corrected as soon as possible
- if the statements were not corrected it is likely that penalties will be imposed by the ATO (should the false or misleading statements be identified).

Don offered to assist Phil, for a fee, in having the false or misleading statements corrected, and negotiating a payment arrangement with the ATO in respect of the outstanding amounts and any penalties that might apply.

In response to this advice, Phil told Don that he was not concerned about any penalties arising in respect of the false or misleading statements made to the ATO, and that should the issue come up, he intended to liquidate the company, and set up a new company in a way that the ATO will not be able to recover any outstanding debts or penalties. Phil indicated that he had experience in these sorts of arrangements and was confident that he could avoid any liabilities that might arise.

Taking Phil's response into account, Don was not reasonably satisfied that Phil would take steps to correct the false or misleading statements. In addition to considering that he had reasonable grounds to believe that the false or misleading statements made to the ATO were as a result of Phil's intentional disregard of a taxation law, Don also considered that he had reasonable grounds to believe that Phil and/or the company's actions have caused and may still cause substantial harm to:

- employees, creditors and investors of the company
- the public, including taxpayers generally and the tax system.

As a result, Don withdrew from the engagement with Phil and the company. He then notified the ATO about the false or misleading statements. In the circumstances, Don also reasonably considered that it was in the public interest to provide the ATO with additional information, to assist the ATO in looking into Phil and the company's conduct, as well as notifying the ATO about Phil's plans to avoid liability, should the false or misleading statements be identified and actioned by the ATO.

In these circumstances, Don would not be in breach of subsection 15(1) because he did not know, or ought reasonably to know that the statements he made on behalf of the company were false or misleading in a material particular, at the time the statements were made. Don was also not be in

breach of subsection 15(2), because he took appropriate steps as required to address the breach once it was identified.

## New obligation 3: Conflicts of interest in activities undertaken for government

### THE OBLIGATION — SECTION 20 OF THE DETERMINATION

In relation to any activities you undertake for an ‘Australian government agency’ (agency) in a professional capacity, you must:

- (a) take reasonable steps to **identify and document any material conflicts of interest** (real or apparent) you have in connection with the activity
- (b) **disclose** the details of any identified material conflict of interest (real or apparent) to the agency as soon as you become aware of the conflict; and
- (c) take reasonable steps to **manage, mitigate**, and where appropriate and possible, **avoid**, any identified material conflict of interest (real or apparent) (except to the extent that the agency has expressly agreed otherwise).

### TPB GUIDANCE

- Information Sheet [TPB\(I\) 46/2024 — Managing conflicts of interest when undertaking activities for government and maintaining confidentiality in dealings with government](#) (23 December 2024)
- Webinar recording — [Code Determination guidance — conflicts of interest and confidentiality with government, keeping proper client records, competency, and quality management systems](#) (25 February 2025)

### DISCUSSION

The TPB has provided the following guidance in TPB(I) 46/2024.

#### Note:

The TPB recognises that the obligations of some Australian financial services (AFS) licensees and their representatives under the Corporations Act 2001 are similar to some obligations under the TASA. See TPB(I) 46/2024 for details.

### Managing and mitigating conflicts of interest

The obligation does not prohibit registered tax practitioners from having conflicts of interest. Rather, the obligation is to appropriately manage and mitigate conflicts of interest. Where possible and appropriate, reasonable steps must be taken to avoid conflicts unless the Australian government agency has expressly agreed to accept a particular conflict.

Where a registered tax practitioner identifies and discloses a material conflict of interest to a government agency, the continued engagement of the registered tax practitioner will be at the discretion of the agency having regard to the nature of the conflict and any steps taken by the agent to manage or mitigate the conflict.

#### Note:

APES 110 *Code Ethics for Professional Accountants (including Independence Standards)* and APES 220 *Taxation Services* provide useful guidance on what steps can be taken to ensure a registered tax practitioner can take to ensure they have adequate arrangements in place for the management of conflicts of interest that may arise. APES 110 notes that a member is required to not allow conflict of interests to override professional or business judgments, while APES 220 outlines requirements as to objectivity.

## Australian government agency

An 'Australian agency' is defined in s. 995-1 of the ITAA 1997 as the Commonwealth, a State or a Territory, or an authority of the Commonwealth, or of a State or a Territory.

Examples include the Department of the Treasury, TPB, ATO, Australian Securities and Investments Commission, Australian Competition and Consumer Commission, Department of Education and Training Victoria, and NSW Health.

## Activities undertaken in the registered tax practitioner's professional capacity

Broadly, the term 'professional capacity' would include activities undertaken by the registered tax practitioner:

- in their capacity as a registered tax practitioner
- in any other skilled or expert capacity where the relevant activities fall outside of the definition of a tax agent service or BAS service.

This includes providing any advice, assistance, or feedback to the government, whether paid or otherwise.

It does not extend to activities or interactions that are of a personal nature.

Relevant activities may include, but are not limited to, the following:

- providing expert advice, assistance, or feedback on technical and professional matters, including potential legislative changes
- providing advice, assistance, or feedback on strategy
- providing accounting and/or information technology services
- undertaking research activities, such as attitudinal surveys and feasibility studies; and
- overseeing government functions.

These activities may be undertaken through either:

- a formal engagement (such as through a procurement process, or a confidential consultation process); or
- an informal engagement (which may include internal meetings and discussions, or informal consultation processes).

## A conflict of interest

A conflict of interest is where a registered tax practitioner has:

- a personal interest associated with the activities they undertake for a government agency in their professional capacity; or
- a duty to another person which is in conflict with the duty owed to the government agency.

A conflict of interest:

- may be direct or indirect
- can arise before the registered tax practitioner accepts an engagement or at any time during the engagement.

A conflict of interest may be:

- real — where the registered tax practitioner has multiple competing interests and cannot objectively and impartially act in one of the interests; or

- apparent (or perceived) — where the registered tax practitioner has multiple interests, and the nature of those interests are such that they give rise to a reasonable perception by the public that one interest could possibly impact the motivation to act impartially for another interest.

## Materiality

The term ‘material’ is not defined. The TPB considers that the test of whether a conflict of interest is ‘material’ will depend on the facts and circumstances and whether a reasonable person, having the knowledge, skill and experience of a registered tax practitioner, would expect it to be of substantial import, effect or consequence to the other entity.

The registered tax practitioner will need to exercise their professional judgement, taking into account the facts and circumstances surrounding the activities they are undertaking, including:

- the information known to the registered tax practitioner about the activities
- the consequences for the government agency if the registered tax practitioner’s personal interest is such that it could give rise to a real or apparent conflict of interest that could affect their ability to discharge their duties and / or obligations to the government agency.

A material conflict of interest may arise in circumstances that include, but are not limited to, where a registered tax practitioner:

- is engaged by a government agency to consult on proposed government law reform that impacts clients of the registered tax practitioner such that it may result in a potential or perceived benefit or gain to the registered tax practitioner and / or their clients
- may benefit or gain financially from their engagement with the government agency directly or indirectly (to the registered tax practitioner themselves, their employer, client and / or other associate)
- misuses confidential information obtained in dealings with government in circumstances where this conduct may result in a potential or perceived benefit or gain to the registered tax practitioner
- interferes in government decision making in circumstances where this conduct may result in a potential or perceived benefit or gain to the registered tax practitioner.

## Reasonable steps to identify and document any material conflict of interest

The TPB expects that registered tax practitioners record the conflict of interest as soon as possible and practicable after the conflict of interest is identified. The record should contain sufficient details of the conflict of interest, including details of the materiality of the conflict.

Relevant factors in deciding whether a registered tax practitioner has taken reasonable steps to identify and document any material conflict of interest may include the following:

- the size of the practice
- the type of work undertaken
- the client base
- the likelihood of conflicts of interest arising
- the sensitive nature of the activities undertaken for the government agency
- any possible adverse consequences for the government agency should a conflict of interest arise
- whether the registered tax practitioner has provided training to staff on identifying, disclosing and documenting conflicts of interest
- whether the registered tax practitioner has established procedures for the disclosure and record-keeping of potential conflicts of interest

- whether the registered tax practitioner has established procedures for identifying and documenting conflicts of interest, which could include:
- preliminary conflict checks prior to accepting clients or allocating staff to projects
- maintaining, and periodically reviewing, a conflict of interest register
- information handling procedures that utilise technology to limit information access to those with a legitimate need to know.

## Disclose details of any material conflict of interest as soon as you become aware of the conflict

The obligation to disclose a conflict of interest is not limited to the registered tax practitioner disclosing information about their own material conflicts of interest. It extends to any material conflict of interest that they are aware of that arises:

- in connection with any activity undertaken for the agency (whether the same or different activity); or
- in relation to any activity undertaken for another government agency.

This may include any conflict of interest of any employee, associate, contractor or other relevant entity of the registered tax practitioner.

## Details to disclose to the agency

Details to disclose to the government agency may include, but are not limited to, the following:

- the nature of the conflict
- the extent of the conflict
- what interest, association (including any membership of and/or employment at a professional association) or incentive gives rise to the conflict
- the identity of the registered tax practitioners or others related to the conflict and the extent to which they have been involved in the services provided to the government agency
- when the conflict was first identified
- how the advice or services provided to the government agency might have been different had there not been a conflict of interest
- any benefit, financial or otherwise, obtained due to the conflict of interest
- whether any actions have been taken or are proposed to avoid the conflict or to mitigate any damage arising from the conflict.

The disclosure should:

- be made as soon as the registered tax practitioner becomes aware of the material conflict of interest
- be specific and meaningful to the government agency
- refer to the specific activities to which the conflict relates
- allow the agency a reasonable time to assess the effect of the conflict of interest.

The TPB strongly recommends that the disclosure be made in writing.

The government agency will determine whether, and to what extent, the registered tax practitioner can continue to engage in the activities.

The TPB recommends that:

- the disclosure be made in writing
- where the registered tax practitioner is unsure as to whether a conflict of interest arises or whether the conflict is material or not, they should err on the side of caution and disclose the potential conflict of interest

- where the registered tax practitioner assesses the conflict of interest as one that is not material and decides not to disclose the details — they document that decision should:
- they be required to explain it as part of a future review or investigation; and/or
- the TPB form the view that the conflict of interest was material and should have been disclosed to the relevant government agency.

If the registered tax practitioner decides, in good faith, not to disclose a conflict of interest they have deemed as one that is not material, and can support their rationale for not disclosing, and the TPB later makes a contrary finding, the TPB will take a pragmatic and balanced approach when deciding what compliance action to take (if any). The TPB's response is likely to be measured and educative, and is unlikely to impose sanctions (depending on circumstances).

## Reasonable steps to manage and mitigate a material conflict of interest

The phrase 'manage and mitigate' is not defined. In the TPB's view:

- the term 'manage' means to take charge of or care of, or to handle, direct, govern, or control in action or use
- the term 'mitigate' means to moderate the severity of.

Reasonable steps to manage and mitigate a conflict of interest may require a registered tax practitioner to:

- assess and evaluate the conflict of interest
- implement appropriate mechanisms to manage or control the impact of the conflict of interest on the registered tax practitioner's advice or decisions, or the decisions of the agency
- implement appropriate mechanisms to mitigate the conflict of interest.

What is reasonable will involve consideration of a number of factors, including the practice size, type of work undertaken and likelihood of conflicts of interest arising. It will be up to the registered tax practitioner to exercise their professional judgement to determine the most appropriate method to meet the obligation.

Examples of reasonable steps include, but are not limited to, the following:

- enforcing procedures for managing, mitigating, and avoiding conflicts of interest
- allocating staff to projects in a way that manages or avoids potential conflicts of interest, for example, by:
  - not allocating staff with conflicts to certain projects or tasks; or
  - allocating staff with conflicts of interest to work on initial identification and analysis of issues but having staff without conflicts of interest reviewing that analysis and making final decisions
  - having internal governance policies in relation to conflicts of interest that include consequences for failing to comply with those procedures
  - maintaining a conflict of interest register and information handling procedures that utilise technology to limit information access to those with a legitimate need to know.

Additional techniques may include:

- placing a positive onus on employees or anyone else providing relevant services to declare conflicts of interest, including reporting to appropriate people, and signing relevant declarations
- developing and regularly revising a register of private interests
- reviewing conflict of interest declarations periodically

- relevant training, including to employees or anyone else providing relevant services, to ensure appropriate awareness and understanding of what constitutes a conflict of interest and how to act in accordance with relevant internal procedures and protocols
- seeking advice from an independent third party, which may include legal advice (e.g. see paras. 210 and 310 of APES 110 *Code of Ethics for Professional Accountants (including Independence Standards)*).

## Avoiding a conflict of interest

A number of mechanisms, including those listed above, may be adopted to avoid a conflict of interest arising.

In some cases, conflicts will be unmanageable and the only way to adequately manage the conflict will be to avoid it altogether. This will generally require the registered tax practitioner to decline the engagement. Otherwise, the continued engagement by the agency of the practitioner will be at the discretion of the agency.

## Continued engagement at the discretion of the government agency

An assessment of whether to continue with the engagement may consider a number of factors, including any mitigating steps taken by the practitioner, the damage that may result and whether the information and/or services may be obtained from elsewhere.

The discretion of the agency to continue the engagement recognises that there may be circumstances where the only way the agency can obtain relevant and necessary expertise is from a registered agency that has a conflict of interest.

The conflict of interest must be managed in a way that is consistent with:

- the express consent provided by the agency
- the obligation to maintain confidentiality in dealings with government.

## TPB CASE STUDIES

TPB(I) 46/2024 contains three case studies in relation to the s. 20 obligation:

Situation	Met the obligation?
<p>Ann is a tax partner at a large tax firm. She is asked to participate in a confidential consultation in relation to proposed tax consolidation integrity rules.</p> <p>Upon receiving the confidential papers, Ann identifies that the proposed measures would adversely impact some of her clients. Ann identified that her duty to her clients could be perceived as a material conflict of interest. There was a potential opportunity for her to financially benefit by offering advice to existing and new clients on how they could restructure their affairs.</p> <p>She does not document nor disclose the conflict of interest. She takes no steps to manage, mitigate or avoid the conflict of interest.</p>	<p>No, Ann has breached her obligation.</p> <p>Further, if Ann used the confidential information to financially benefit, the TPB may also find that she is in breach of s. 30-10(1) (failing to act with honesty and integrity) and is no longer a fit and proper person.</p>
<p>Max is a tax partner at a large accounting firm. His clients include large corporations.</p>	<p>Yes, Max has met his obligation.</p>

Situation	Met the obligation?
<p>Due to his expertise in company tax law, he is engaged by The Treasury to in the design of company tax reform measures.</p> <p>Max documents and discloses the conflict of interest to The Treasury, including an overview of how he intends to manage and mitigate the conflict.</p> <p>The Treasury provides Max with express written consent to continue with the engagement and requests that he does not engage any clients who may be impacted by the proposed changes during the period of the engagement.</p>	
<p>John is an expert on the superannuation laws. He is engaged by an agency to provide advice in relation to a proposed superannuation reform package which are intended to apply to all superannuation funds.</p> <p>John is a passive member of 123 Super Fund. Although John identifies that there is a conflict of interest as he is a member of a superfund that will be impacted, he assesses this conflict as one that is not material given the proposed reforms will apply broadly to all superannuation funds. Nonetheless, John documents and discloses the conflict to the agency.</p>	<p>Yes, John has met his obligations.</p> <p>Even if John had not disclosed the conflict, he would not have breached the obligation.</p>

## New obligation 4: Maintaining confidentiality in dealings with government

### THE OBLIGATION — SECTION 25 OF THE DETERMINATION

#### Part 1 — Disclosure

Unless you have a legal duty to do so, you **must not disclose any information** you have received, directly or indirectly, from an Australian government agency, in connection with any activities you undertake with the agency in a professional capacity, except to the extent that:

- (a) it is reasonable to conclude that the information received from the agency was **authorised** by that agency for further disclosure; and
- (b) any further disclosure of the information is done consistently with the agency's authorisation (whether express or implied, and as reasonably concluded).

#### Part 2 — Use for personal advantage

You must not use any information you have received, directly or indirectly, from an Australian government agency, in connection with any activities you undertake with the agency in a professional capacity, **for your personal advantage**, or for the advantage of an associate, employee, employer or client of yours, except to the extent that all of the following apply:

- (a) it is reasonable to conclude that the information received from the agency was **authorised** by that agency to be used in a way that may provide for such an advantage; and
- (b) any further use of the information was done consistently with the agency's authorisation (whether express or implied, and as reasonably concluded).



## TPB GUIDANCE

- Information Sheet [TPB\(I\) 46/2024 — Managing conflicts of interest when undertaking activities for government and maintaining confidentiality in dealings with government](#) (23 December 2024)
- Webinar recording — [Code Determination guidance — conflicts of interest and confidentiality with government, keeping proper client records, competency, and quality management systems](#) (25 February 2025)

## DISCUSSION — DISCLOSURE

### Information

‘Information’ refers to the acquiring or deriving of knowledge obtained in connection with activities undertaken with a government agency by a registered tax practitioner in their professional capacity. This information could be acquired either directly or indirectly from the agency or other sources.

Examples include:

- proposed government reform, including potential legislative changes
- information about procurement processes, including tender or pricing information, an agency’s project budget, pre-tender estimates, or evaluation methodologies
- proposed or ongoing law enforcement activities
- personal information about entities, including a client of the registered tax practitioner
- cabinet in-confidence documents or market sensitive information.

### Third party

A third party means any entity other than the registered tax practitioner and the government agency.

Prior to disclosing relevant information to a third party, the TPB recommends that the registered tax practitioner should consider clearly informing the agency that there will be such a disclosure and obtain the agency’s permission. The communication should outline the intended disclosures, as well as information about the entity or entities that will have access to the information.

A third party also includes an entity to which a component of the tax agent services is outsourced and entities that maintain offsite data storage (cloud storage) systems. In relation to these arrangements, the TPB suggests seeking further guidance on steps to take from APESB guidance (see in particular APES Guidance Note GN 30 *Outsourced Services*) and recognised professional associations.

#### Note:

Where a partner (or employee) of a firm signs a confidentiality agreement as part of their engagement with an agency, a disclosure of confidential information by that individual to other partners and staff of the same firm will constitute a breach of the obligation (see Case study 6 in TPB(I) 46/2024).

### Reasonable to conclude further disclosure was authorised

Whether the further disclosure was authorised by the agency is to be determined based on a registered tax practitioner’s reasonable assessment of the agency’s actions and surrounding circumstances, including whether:

- the agency has advised that the information provided is confidential — note that there is no requirement that the information be marked as confidential or identified as for limited distribution (although this may be a relevant factor)
- any supplied documentation is marked in a manner indicating the contents are to be held in confidence

- the agency has advised that the information is set to be made public on or after a particular time.

if a reasonable person, possessing the required knowledge, skill and experience of a registered tax practitioner, objectively determined, would conclude that the further disclosure of the information was authorised by the government agency, this will be sufficient. It is not necessary to determine the question with any certainty. If a reasonable person, possessing the required knowledge, skill and experience of a registered tax practitioner, objectively determined, would conclude that the further disclosure of the information was authorised by the agency, this will be sufficient.

It would be reasonable to conclude that further disclosure is authorised in the following circumstances:

- where there are no communications from the agency indicating the information has been supplied in confidence
- where there are no communications from the agency indicating the reproduction or disclosure is somehow qualified
- the information is not protected under law from disclosure
- it is not generally accepted that information of this type or nature would be held in confidence.

For example, where a registered agent receives information in relation to a client, it would be reasonable to conclude that the information was authorised for disclosure to the client. Any further disclosure, such as to a legal practitioner, will be a matter determined by the terms of the agreement between the agent and the client.

Other relevant factors may include the following:

- the context in which the information was provided
- comments made by the agency when providing the information to the registered tax practitioner
- the availability of the information provided to the registered tax practitioner from other sources.

If information is sensitive or disclosure raises appreciable risks of potential misuse for personal advantage, there would be a presumption that further disclosure would not be reasonably authorised.

## Further on-disclosure of information

Where an agency authorises the disclosure of information to a third party, any further on-disclosure by the third party would also require the agency's authorisation.

Where the on-disclosure occurs without the registered tax practitioner's awareness, the TPB is of the view that it is highly unlikely that the registered tax practitioner would be found to be in breach of the obligation. However, they may be required to report the on-disclosure in accordance with their breach reporting obligations where the third parties are registered tax practitioners. The TPB may also take action against the third parties.

## Legal duty to do so

A registered tax practitioner may disclose information to a third party without the agency's agreement if they have a legal duty to disclose the information.

Such circumstances may include providing information to:

- the TPB under a s. 60-100 notice or the breach reporting rules
- a court or tribunal pursuant to a direction, order, or other court process
- AUSTRAC under the AML/CTF laws
- the ATO under a s. 353-10 TAA 1953 notice

- an AFS licensee under the Corporations Act 2001.

The obligation, and TASA as a whole, does not affect the law relating to legal professional privilege.

## Inadvertent disclosure

Registered tax practitioners need to ensure they have appropriate arrangements to prevent inadvertent disclosure — for example:

- leaving information in unsecured locations which may be accessed by third parties
- disposing (such as trading in or selling to a second-hand market) of IT equipment or mobile devices that contain / store data that may be accessible by third parties
- the use of shredding and data disposal services
- the use of external service providers which may include, e.g. IT consultants, virtual assistants, and cleaners
- the use of virtual meetings to discuss information when third parties may be in attendance
- the use of public Wi-Fi or unsecure network when providing the services
- the use of unencrypted cloud storage.

## Privacy

Some of the Australian Privacy Principles (APP) in the Privacy Act 1988 may be relevant to the obligation, such as:

- APP6 — outlines the circumstances in which an entity may use or disclose personal information that it holds
- APP11 — states that an entity must take reasonable steps to protect personal information it holds from misuse, interference and loss, and from unauthorised access, modification or disclosure.

## DISCUSSION — USE FOR PERSONAL ADVANTAGE

### Personal advantage

‘Personal advantage’ is not defined. The TPB is of the view that a registered tax practitioner, much like a director, other officer or employee of a corporation, is in a position of trust and confidence when engaging with an agency in their professional capacity. Any confidential information obtained from the agency in connection with activities the registered tax practitioner undertakes with the agency in their professional capacity, that is used for a purpose other than the purpose for which it was intended, would be considered to have been used for the personal interests of the registered tax practitioner.

It is not necessary that:

- an actual advantage or benefit was gained; or
- the use of the information was likely or guaranteed to result in a personal advantage.

The mere possibility that the information has the potential to result in a personal advantage to be gained is enough to trigger the obligation. It is also not necessary that the advantage or benefit gained be financial.

The extension of the obligation to the personal advantage of an associate, employee, employer or client ensures that any potential indirect benefits do not flow to the registered tax practitioner.

### Use of the information for personal advantage authorised by agency

If a reasonable person, possessing the required knowledge, skill and experience of a registered tax practitioner, objectively determined, would conclude that the use of the information for such a purpose

was authorised by the agency, this will be sufficient. It is not necessary to determine the question with any certainty, although it is recommended to seek consent if in any doubt.

In determining whether it is reasonable to reach such a conclusion, the following factors may be relevant:

- the use of the information for the personal advantage of the registered tax practitioner (or others) was expressly authorised by the government agency, either in writing or otherwise (for example, the formal engagement letter included a clause authorising the information to be used in such a manner)
- the use of the information for the personal advantage of the registered tax practitioner (or others) was implied by the agency, either in writing or otherwise.

## TPB CASE STUDIES

TPB(I) 46/2024 contains six case studies in relation to the s. 25 obligation, including the following:

### Case study 5 — Agency authorises disclosure, but disclosure is inconsistent with authorisation

#### Situation

Thomas is a tax partner at a mid-size firm. He is invited to a set of Treasury round table discussions in relation to a proposed increase to tax rates that would largely impact high-wealth individuals, which is a large portion of the firm's client base.

In accordance with the proposed terms of the engagement, Thomas asks two of the firm's partners to participate in the engagement, and this is communicated to, and authorised by, The Treasury. The authorisation clearly stipulates that any information shared with that core group is to be provided through email only (with a cc to The Treasury) and not to be provided in printed form.

Thomas discloses information to the two partners throughout the engagement. On several occasions, Thomas prints emails from The Treasury in relation to the confidential round table discussions, including confidential meeting papers, and provides those to the two partners.

#### Is there a breach?

Yes. Thomas has breached his obligation. It is not reasonable to conclude that the information received in connection with the activities Thomas has undertaken for The Treasury was authorised by the department to be disclosed to the core group in the manner in which it was disclosed.

### Case studies 6 and 7 — Agency does not authorise disclosure or use of information for personal advantage

#### Situation

Isabella is a registered tax practitioner and a partner at a large tax consulting firm. Isabella is asked to participate in a confidential consultation by The Treasury in relation to new measures, including rules to stop multinationals avoiding tax by shifting profits from Australia to tax havens.

The consultation papers distributed to Isabella were marked 'under embargo'. In addition, Isabella was asked to sign a confidentiality agreement which clearly stipulated that any information received, directly or indirectly, in connection with any activities undertaken for The Treasury in relation to these new measures, is not for further dissemination and that any further disclosure would require the prior authorisation of the agency.

Throughout the engagement, Isabella made unauthorised disclosures of the confidential law reform to partners and staff within the consulting firm.

Isabella became aware that the firm's clients would be impacted by the proposed measures. Isabella chose to disclose the information for her personal advantage, noting that she stood to gain financially by disclosing the information to the partners of the firm whose clients would be impacted. Similarly, the partners, and others within the firm to whom the confidential information was also disclosed, would gain personally from the unauthorised disclosure, noting the financial benefit that would be gained by informing impacted clients prior to The Treasury publishing the draft legislation.

## Is there a breach?

Isabella has breached her obligations under subsections 25(1) and (2) of the Determination.

Depending on the circumstances, the TPB may also find that she is in breach of her obligation to act with honesty and integrity and / or that she is no longer a fit and proper person to be registered as a tax practitioner.

## Case study 9 — Confidential information about third party taxpayer received when undertaking activities with the ATO in relation to a client

### Situation

123 Limited is a widely held public company and is listed on the ASX.

In early 2023, 123 Limited announced to its shareholders that it was planning a corporate restructure. It engaged Joshua, a registered tax agent and partner at Firm 456, to oversee and advise on the tax implications of the corporate restructure.

Joshua lodged an application for a Class Ruling in late 2023, which sought the ATO view on the income tax consequences of the corporate restructure, particularly for current holders of ordinary shares and whether those shareholders would be eligible for roll-over relief.

In early 2024, a draft Class Ruling was provided to 123 Limited, setting out the ATO's draft view on the tax implications for 123 Limited and for ordinary shareholders. It was provided to Joshua on an in-confidence basis requesting a response from 123 Limited in relation to some minor aspects of the proposed restructure.

Joshua shared the draft Class Ruling with the Board and CEO of 123 Limited only. It was not shared with shareholders.

## Is there a breach?

Joshua has not breached the obligation. It is reasonable to conclude that the information received was authorised by the ATO to be disclosed to 123 Limited. There was no further disclosure of the draft Class Ruling.

## New obligation 5: Keeping of proper client records

### THE OBLIGATION — SECTION 30 OF THE DETERMINATION

You must **keep records** that correctly record the tax agent services you have provided, or that are provided on your behalf, to each of your clients, including former clients.

The records must:

- (a) be in English, or readily accessible and easily convertible into English
- (b) be retained for at least 5 years after the service has been provided
- (c) show the nature, scope and outcome of the tax agent service provided
- (d) reference information reasonably considered in the provision of the tax agent service
- (e) include all advice received from the client; and

- (f) include all advice provided to the client, and for more complex matters: the relevant facts, assumptions and reasoning underpinning any advice provided (including the basis on which, and the method by which, any calculations, determinations, or estimates used, have been made).

## TPB GUIDANCE

- Information Sheet [TPB\(I\) 47/2024 — Obligation to keep proper client records of tax agent services provided](#) (23 December 2024)
- Webinar recording — [Code Determination guidance — upholding and promoting ethical standards and keeping clients informed](#) (19 February 2025)

## DISCUSSION

This new obligation is independent of the client's own statutory record-keeping obligations under the tax legislation.

### Records

The term 'records' is not defined. The TPB considers that, at a minimum, the following types of records (where relevant) should be kept and retained:

- client details — name, contact information, date of birth, bank and employment details
- letters of engagement (or other agreement setting out the terms and conditions of the engagement)
- file notes relating to proof of identity or client verification checks undertaken, including relevant authorising documentation for representatives of clients
- client permissions (including consent to disclose client information)
- agreements to offshore or outsource services to clients, including confidentiality agreements
- records that explain or evidence an essential part or element of the tax agent service provided to the client, or steps taken to provide the service, including:
- records that reference or describe information exchanged with the client
- records of steps taken to ascertain the client's state of affairs, including records of source documents sighted or reviewed
- facts, assumptions and reasoning underpinning any advice provided to the client in complicated matters
- how liabilities, obligations or entitlements have been worked out, and any related advice provided to the client
- any advice or opinion provided to the client on their rights and obligations under taxation laws
- communications seeking review and approval/authority of the client of documentation prior to lodgment with the ATO
- any dealings with the ATO
- key client communications and records of discussion with the client
- key communications with third parties, including the ATO
- copies of advice received from third party advisers or consultants
- tax invoices issued to the client evidencing the nature of tax agent services provided
- records that a client must keep and retain under a taxation law, which are:
- essential to explaining or evidencing an essential part or element of the tax agent service provided to the client (or steps taken to provide the service); and/or
- subject to a recordkeeping agreement between the registered tax practitioner and client, in which the registered tax practitioner has agreed to keep and retain the record for the client
- records evidencing the receipt and handling of money or property held in trust and disbursement instructions and authorities
- other records that evidence compliance or non-compliance with the Code.

## Records that 'correctly record' the service

The TPB considers that records will 'correctly record' a tax agent service if they accurately reflect, without error to the extent possible, the tax agent service provided to the client.

However, the obligation extends beyond simply ensuring the accuracy of records in the strict sense of them being free from error. For records to 'correctly' record the service, they need to cover all relevant details sufficient to explain and/or evidence the service (i.e. the essential aspects and elements of the service), such that it enables a complete and accurate record of that service to be kept.

## Services provided by the tax practitioner or 'on their behalf'

The obligation covers (but is not limited to) services provided by entities that a registered tax practitioner employs, uses or otherwise engages to provide tax agent services on their behalf.

The obligation therefore covers records of tax agent services provided by:

- employees and other entities (including contractors) in relation to which the registered tax practitioner is required to exercise adequate supervision and control
- entities with which they maintain (or are required to maintain) a:
  - supervisory plan in connection with the employment of, or use of, one or more nominated supervising tax practitioners
- remote supervisory arrangement, as is the case with an outsourcing or offshoring arrangement.

## Minimum requirements for records

The records must, at a minimum, among other things, show the nature, scope and outcome of the tax agent service provided. They must evidence the:

- kind or type of tax agent service provided
- extent or range of the tax agent service and what it inherently involves or comprises
- result and consequence of the tax agent service and issues involved.

The obligation requires that the records must reference information reasonably considered in the provision of the tax agent service, which may include legislative references, case law references and references to other relevant materials.

The records must include all advice received from the client and provided to the client, in writing and orally.

The TPB considers the following minimum details need to be captured:

- who the service was provided to (details of which client or former client)
- the terms and conditions of the engagement for the service, which may be evidenced by a letter of engagement
- why the service was provided, including details of relevant tax obligations involved
- what the service involved, sufficient to explain the:
  - scope of the engagement
  - relevant fee arrangements
  - key parts, elements or features of the service, including the outcome
  - relationships between parties to transactions
  - reasons for decision(s) made
  - advice provided to the client
- who the service was provided by, which may be the registered tax practitioner, employees under their supervision and control, contractors, or entities to which tax agent services are outsourced

- how the service was provided, including details of client communications and interactions with other entities relevant to providing the service, including the ATO
- when the service was provided, including key dates
- date that the record was made and the date of any modifications to the record.

**Note:**

APES 220 *Taxation Services* and APES 320 *Quality Management for Firms that provide Non-Assurance Services* provide useful guidance on what steps a registered tax practitioners can take to ensure they have adequate arrangements in place for record keeping. Amongst other things, APES 220 (at paras. 11.1 To 11.3) notes that a practitioner is required to prepare working papers that appropriately document the work performed and APES 320 (at paras. 4.49 to 4.58) outlines the requirements for engagement documentation.

The details that are considered sufficient, necessary and appropriate will be more wide-ranging and comprehensive for complex taxation affairs and transactions when compared to more simple matters.

The TPB does not expect registered tax practitioners to record every detail relating to a tax agent service — they must exercise their professional judgment. It is not necessary for separate records to be kept and retained for different services if the same record explains more than one service.

## How records should be kept

The records can be kept and retained in paper or electronic format. Electronic records must be in a form that is readily accessible and able to be retrieved as required.

Registered tax practitioners should have adequate procedures, policies, systems and controls in place to protect the security and confidentiality of client records. Records should be stored in a way that protects the record and information from being changed or damaged.

## How long records need to be kept

The records must be kept for at least five years after the tax agent service has been provided. The TPB considers a tax agent service to have been ‘provided’ from the date the service is considered complete. This will be determined based on the facts and circumstances including the scope of the engagement, including any ancillary or subsequent reviews, audits, objections or appeals.

The scope of the engagement and term of retention may be extended by virtue of the relevance of prior financial year records to a subsequent financial year’s tax documentation, such as in the case of carried forward losses or depreciating assets.

It is recommended that engagement letters clearly stipulate the scope of services and a clearly defined timeframe, and ongoing arrangements should be reconfirmed or reviewed regularly (e.g. annually).

After the five-year period, there are no mandatory requirements under the TASA to return, destroy or de-identify client records. Registered tax practitioners should consider whether they need to take these steps with regard to any recordkeeping arrangement with the client (e.g. as documented in the engagement letter) and relevant privacy laws.

## Interaction with client’s own obligations

Importantly, the obligation does not replace or override the separate obligations imposed on clients to keep and retain records under the taxation law. This means that clients cannot rely on their registered tax practitioner’s obligation to absolve them of their own recordkeeping responsibilities.



## TPB CASE STUDIES

TPB(I) 47/2024 includes three case studies, including the following:

### Case study 3 — Subsequent review of income tax return creates new record keeping requirements

Carla is a registered tax practitioner who provides tax agent services through her company Helpful Tax Pty Ltd (Helpful Tax). Carla, on behalf of the company, prepared and lodged Dean's income tax return four years ago, and kept relevant records of these services.

Recently, the ATO undertook a review of the income tax return. Carla on behalf of Helpful Tax represents Dean in the ATO review, which is ultimately finalised 12 months later.

While the five-year recordkeeping period has now expired for the initial tax agent services provided to Dean in lodging his income tax return, the company has provided new tax agent services to Dean in representing him in the ATO review.

As such, the company takes steps to ensure that it keeps records that correctly record the tax agent services provided to Dean in connection with the ATO review for five years from the date that the services are completed, which was when the ATO communicated that the review had been finalised. Given their relevance to the ATO review, these records include documentation relating to the income tax return completed four years ago.

Helpful Tax has complied with its obligation.

## New obligation 6: Ensuring tax agent services provided on your behalf are provided competently

### THE OBLIGATION — SECTION 35 OF THE DETERMINATION

You must ensure that each entity providing tax agent services on your behalf **maintains knowledge and skills** that are relevant to the tax agent services the entity is providing.

You must ensure that each entity providing tax agent services on your behalf is appropriately **supervised**, having regard to knowledge and skills of the entity, the tax agent services being provided by the entity, and your system of quality management.

#### Note:

Supervisory arrangements are also directly relevant in the context of:

- Code obligation 7 (part of the original 17 obligations) which requires all registered tax practitioners to ensure that the services provided on their behalf are provided competently
- the relevant experience requirements or an individual obtaining relevant experience in order to be registered
- the civil penalty provisions in s. 50-30, which relate to the signing of declarations or statements prepared by someone who is not working under the supervision or control of the registered individual agent.

#### Note:

APES 110 *Code of Ethics for Professional Accountants (including Independence Standards)* para. R113.2 requires practitioners to take reasonable care to ensure that those working in a professional capacity under their authority have appropriate training and supervision. APES 220 *Taxation Services* para. 3.13 requires practitioners to be competent when providing a tax service.

## TPB GUIDANCE

- Information Sheet [TPB\(I\) 48/2024 — Supervision, competency and quality management under the Tax Agent Services Act 2009](#) (23 December 2024)
- Webinar recording — [Code Determination guidance — conflicts of interest and confidentiality with government, keeping proper client records, competency, and quality management systems](#) (25 February 2025)

## DISCUSSION

### Competent standard

Competence can be defined as a state of being capable, fitting, suitable or sufficient to provide a tax agent or BAS service to the appropriate professional and ethical standards.

Subsections 30-10(7) to (10), all of which fall under the key principle of ‘competence’, require that tax practitioners must:

- ensure the tax agent or BAS services they provide, or are provided on their behalf, are provided competently
- maintain knowledge and skills relevant to the tax agent or BAS services they provide
- take reasonable care to ascertain clients’ state of affairs
- take reasonable care to ensure the taxation laws are applied correctly.

#### Note:

APES 110 *Code of Ethics for Professional Accountants (including Independence Standards)* considers factors in determining the level of supervision required. APES 220 *Taxation Services* para. 3.13 requires practitioners to be competent when providing a tax service. APES 320 *Quality Management for Firms that provide Non-Assurance Services* para. 4.29 provides examples of factors to consider in determining the level of supervision required for assigning engagement teams.

### ‘Supervisory arrangements’ and ‘supervision and control’

Supervisory arrangements may be broadly considered to be arrangements aimed at directing, overseeing and checking the services performed on behalf of the registered tax practitioner (individual, partnership or company) to ensure that those services are provided competently.

#### Notes:

- Section 20-5 requires partnerships and companies that are registered tax practitioners to have a sufficient number of individuals, being registered tax or BAS agents (as appropriate), to provide tax agent services or BAS agent services (as appropriate) to a competent standard, and to carry out supervisory arrangements. There is no formula for determining the sufficient number of registered individual tax practitioners a partnership or company is required to have (but it must be at least one). In addition, the TPB requires that the prior informed written consent of the registered individual tax practitioner forming the sufficient number must be obtained.
- APES 320 *Quality Management for Firms that provide Non-Assurance Services* para. 4.41 considers the elements of engagement supervision, including the tracking of progress, and considering of the competence and capabilities of individual members of the engagement.

## Adequate and appropriate supervisory arrangements

Determining whether there are adequate and appropriate arrangements in place to ensure supervision and control is being exercised will require an assessment of the measures taken by a registered tax practitioner to supervise and control relevant activities in the context of their circumstances.

Administrative Appeals Tribunal (AAT) cases decided under the ITAA 1936 established a number of principles concerning what constitutes a sufficient degree of supervision and control in the context of:

- the requirement that an agent have some relevant employment prior to being registered as a tax agent
- the prohibition on tax agents allowing other non-tax agent entities, not under the agent's supervision and control, to prepare statements in relation to a taxpayer required or permitted by a taxation law on behalf of the agent and to conduct business on the tax agent's behalf.

The following considerations may be relevant in determining whether adequate and appropriate supervision and control has been, or is being, exercised:

- the level and depth of oversight undertaken over the provision of tax agent or BAS services, which will vary according to the skills and experience of the staff and the complexity of the services being provided, noting that a substantial degree of oversight may be necessary, for example, when supervising a terminated tax practitioner
- merely checking a document prepared by an unskilled employee to determine whether the contents of the document seem reasonable does not demonstrate a sufficient degree of supervision and control. There must be substantial supervision
- the relevant supervision and control must be exercised over the business transacted relating to any statement in relation to a taxpayer that is required or permitted by a taxation law
- supervision and control, at the very least, requires periodic and 'spot' checks of material prepared by staff and supervision of office work
- it is not necessary for an employer-employee relationship to exist in relation to the person performing or doing a particular thing for there to be adequate supervision and control
- the degree of control over the way in which a person carries out their work will be indicative of the level of control.

**Note:**

APES 320 *Quality Management for Firms that provide Non-Assurance Services* paras. 4.11 and 4.29 consider factors relating to competence, capabilities and resources, in addition to factors in determining the level of supervision required.

The following considerations may also be relevant:

- taking reasonable steps to ensure the accuracy of a document for which a declaration or statement is signed by a registered tax practitioner in relation to a taxpayer that is required or permitted by a taxation law, where the document or statement has been prepared by an individual who is not working under supervision and control of either the registered tax practitioner or another registered tax practitioner
- ensuring the staff providing the services possess an adequate level of education and understanding of the relevant taxation law to undertake the tasks for which they are responsible. This requirement is more onerous in cases of more complex taxation affairs
- providing adequate and appropriate initial and on-going training to staff to enable them to provide tax agent services competently
- training staff to raise issues with supervisors that are beyond their knowledge or experience or any specifically raised concerns of taxpayers. Documented procedures should be implemented to ensure that these processes can occur
- conducting quality review of work undertaken by staff as required
- implementing quality control mechanisms and quality management systems
- ensuring substantive review and sign-off work is conducted prior to sending work to a client, or submitting returns on behalf of a client
- undertaking spot checks of the source documents and questions asked by staff to justify income and deductions declared
- inspecting, advising and directing how the staff undertake their tasks. While it is not necessary that all work or interviews be monitored, a substantial degree of oversight of the staff and what they do is necessary. This will vary according to the skills and experience of the staff and the complexity of the tax matters involved
- whether the registered tax practitioner supervises one entity or multiple entities.

The TPB recommends the development and use of a plan setting out the supervisory arrangements, covering the above considerations. However, a supervisory plan alone may not necessarily demonstrate that there is adequate and appropriate supervision and control.

## Remote supervisory arrangements

Remote supervisory arrangements refer to arrangements where supervision and control is exercised from a different location, including in relation to outsourcing and offshoring arrangements, or where the supervisor and the supervised entity are employed by different entities.

In addition to the factors outlined above, the following additional considerations may be relevant in determining whether remote supervisory arrangements are adequate:

- frequency of contact and the methods of communication
- whether the supervisor is available to be contacted when required by staff
- access to training and research resources while working remotely
- management of workflow, particularly where the supervision and control is being exercised by an unrelated entity
- how documents are to be reviewed, and feedback provided to staff
- how file and document sharing logistics will be managed
- whether systems allow for audits or reviews to be carried out remotely

- whether the registered tax practitioner supervises one entity or multiple entities
- other administrative obstacles inherent with a remote supervisory arrangement.

The TPB is likely to be satisfied with a remote supervisory arrangement where the following arrangements exist:

- there is a structured supervisory arrangement in place, including documented processes and procedures specific to the remote supervisory arrangement in place
- the remote supervisory arrangement is clearly set out in a supervisory plan
- an agreed schedule for regular 'check-ins', training, and review of documents exists
- there is clear communication of routines and expectations to enable work to be completed and reviewed in a timely manner.

## Holding multiple supervisory roles

Where a registered tax practitioner is carrying out supervisory arrangements for multiple entities, related or unrelated, the following additional considerations may be relevant to determine whether the supervisory arrangements are adequate:

- size of each entity (for example, turnover of business, number of clients, and number of relevant staff)
- market segment of the client base of each entity
- type and complexity of the tax agent or BAS services being provided or supervised
- other professional duties or responsibilities of the registered tax practitioner undertaking the supervision and control.

## Ensuring tax agent services provided on your behalf are provided competently

Registered tax practitioners must ensure unregistered staff providing tax agent services on their behalf are provided with adequate training, to ensure that these services are provided competently.

Adequate training may consist of both formal and 'on-the-job' training.

Registered tax practitioners will also be required to ensure that substantive review and sign-off of work is conducted prior to sending work to clients or lodging returns on behalf of a client.

## TPB CASE STUDIES

TPB(I) 48/2024 contains four examples in relation to supervision and competency and summaries of four AAT decisions referred to above.

### Example 4

Bizy B Pty Ltd (Bizy B) is a registered tax agent company. Barry, a registered tax agent, is the sole director of the company and the nominated supervising agent.

Vanessa provides tax agent services on behalf of Bizy B. She is not registered. She works from home full-time.

Barry is seeking to expand the client base of Bizy B by offering BAS services, in addition to other services Bizy B already provides. Barry asks Vanessa to assist him in preparing and lodging BAS for these new clients.

Vanessa has no experience in preparing BAS and has not undertaken any education in relation to providing BAS services.

Bizy B's expanding client base has left Barry with limited time to supervise Vanessa as she undertakes this new work. These supervisory arrangements, which have been discussed verbally with Vanessa, generally consist of:

- spot checks of BAS prepared by Vanessa and her working papers
- monthly team meetings via videoconference to check-in on her progress
- links to online training modules for Vanessa to complete which contain out-of-date information
- no requirement or timeframe for Vanessa to confirm once these online training modules have been completed.

The TPB is unlikely to be satisfied that Bizy B has met the requirement to ensure Vanessa maintains knowledge and skills that are adequate and relevant to the tax agent service she is providing on their behalf. Factors the TPB would consider include:

- Vanessa's inexperience and lack of education in relation to providing BAS services
- the training modules Vanessa has been asked to complete contain out-of-date information.

The TPB is also unlikely to be satisfied that Bizy B has ensured Vanessa is being appropriately supervised, having regard to Vanessa's inexperience and lack of knowledge/skills. Factors the TPB would consider include:

- the spot checks and check-ins are not frequent enough to be considered appropriate supervision
- there is no requirement for Vanessa to confirm once she has completed relevant training modules.

To ensure that Vanessa maintains adequate knowledge and skills relevant to the tax agent services she is providing, the TPB would expect Barry (as the nominated supervising agent) to:

- conduct a greater level of supervision and checking of Vanessa's work until Vanessa has developed a greater level of experience in providing BAS services
- ensure that the training modules Vanessa is required to complete contain up-to-date information
- require that Vanessa provide written confirmation to Barry once she has successfully completed the relevant training modules.

## New obligation 7: Quality management systems

### THE OBLIGATION — SECTION 40 OF THE DETERMINATION

You must establish and maintain **a system of quality management**, in relation to the provision of tax agent services by you, or on your behalf, which is designed to provide you with reasonable confidence that you are complying with the Code of Professional Conduct.

You must document and enforce the policies and procedures of your system of quality management.

### TPB GUIDANCE

- Information Sheet [TPB\(I\) 48/2024 — Supervision, competency and quality management under the Tax Agent Services Act 2009](#) [23 December 2024]
- Webinar recording — [Code Determination guidance — conflicts of interest and confidentiality with government, keeping proper client records, competency, and quality management systems](#) [25 February 2025]

## DISCUSSION

### A system of quality management

A system of quality management includes policies and procedures relating to governance and leadership, monitoring of performance, adherence to the Code, client engagement, proper keeping of records, protecting confidentiality of information, the management of conflicts of interest, and the recruitment, training and management of employees.

#### What should be included?

The TPB recommends that registered tax practitioners consider the requirements of APES 320 *Quality Management for Firms that provide Non-Assurance Services*, the TPB's guidance products in relation to various obligations and the impact of broader organisational policies and procedures.

While the APES 320 requirements are prescriptive, registered tax practitioners must also ensure that their quality management system provides them with reasonable confidence that they are complying with the TASA. In particular, the following obligations should be considered:

- breach reporting
- false or misleading statements
- conflicts of interest and confidentiality in dealings with government
- keeping proper client records
- keeping clients informed
- employing or using a disqualified entity to provide tax agent services on your behalf without approval.

Registered tax practitioners should also consider the impact of broader organisational policies and procedures on compliance with the Code, e.g. recruitment, supervision, record-keeping and dealing with complaints.

Registered tax practitioners are required to exercise their professional judgement in determining the appropriate controls in their circumstances by considering a range of factors, including the size, nature and clientele of their practice.

Registered tax practitioners must document and enforce the policies and procedures of their quality management system (also see APES 320 para. 3.6).

#### Note:

IPA members can access Quality Management Manual templates on the member portal. These templates were updated in early 2025 and cater for sole practitioners and multi-partner practices.

### Practices of different sizes

The extent of internal controls in place will differ significantly between registered tax practitioners based on the size of individual practices, level of day-to-day engagement by a registered tax practitioner on the tax agent services being provided, complexity of the services and the complexity of the clients' tax affairs.

For example, a large firm providing various streams of tax agent services to multinational clients would be expected to use extensive internal controls to provide reasonable assurance that all tax practitioners within the firm (as well as the firm itself) are compliant with the Code.

However, the TPB recognises that sole tax practitioners and small-to-medium sized firms will generally require less sophisticated and detailed internal controls in comparison to a large firm. Examples of appropriate internal controls for these smaller practices may include:

- a written policy on the professional standards that staff are required to adhere to in providing tax agent services
- use of letters of engagement to set out the terms of engagement with a client, including processes for managing complaints and conflicts
- a process for verifying the identity of a client and conducting proof of identity checks
- maintaining physical controls over filing cabinets and storage of physical documents
- policies and processes for recruitment, education and training of both registered and unregistered staff
- policies and processes for the appropriate engagement of external consultants and contractors in the provision of tax agent services
- maintaining a dedicated register of actual or perceived conflicts of interest, to be checked prior to engaging or re-engaging a client
- quality assurance processes and systems to maintain supervision and review the accuracy of tax agent services being provided to clients
- regular periodic reviews of whether the firm's quality management system remains effective and up to date
- regularly updating software to manage cybersecurity risks and ensure information remains confidential.

A sole practitioner without staff is still required to document, maintain and enforce internal controls, however these may be tailored and scaled as appropriate to their circumstances and the services they provide. For example, a sole practitioner without staff is not required to maintain internal controls in relation to recruitment or reporting lines and responsibilities of staff. However, they may need to make arrangements for maintaining compliance with the TASA in the event that they become incapacitated and cannot provide services.

## TPB CASE STUDY

TPB(I) 48/2024 provides one example in relation to the obligation.

### Example 5

Koality Pty Ltd (Koality) is a medium-sized registered tax agent company. The company employs a mixture of registered tax agents and those who are not registered.

Koality last reviewed and updated its quality management policies and procedures five years ago, including its documented policies and procedures relating to adherence to the Code, which are now out-of-date.

Koality does not provide in-house training to any staff on their obligations under the Code when providing tax agent services. Instead, Koality expects employees who are registered tax agents to complete relevant professional education activities from external providers. However, Koality does not require employees to maintain a record of the activities completed. Koality also does not conduct internal audits or reviews to assess whether these expectations are being met.

In these circumstances, the TPB is unlikely to be satisfied that Koality is meeting the obligation.

Factors the TPB would consider include the following:

- Koality's policies and procedures regarding adherence to the Code have not been adequately maintained and are now out-of-date.



- Koality does not actively enforce its expectation that registered tax agent employees complete professional education activities from external providers regarding their Code obligations.
- Those Koality employees who are not registered tax agents are not provided training, or expected to complete professional education activities, regarding how the Code applies to tax agent services they provide on Koality's behalf.

## New obligation 8: Keeping your clients informed

### THE OBLIGATION — SECTION 45 OF THE DETERMINATION

You must advise **all current and prospective clients** of all of the following:

Information	When to advise client
(a) that the TPB maintains a register of tax agents and BAS agents and how they can <b>access and search the register</b>	Upon: <ul style="list-style-type: none"> <li>• engagement or re-engagement of the client (as applicable); or</li> <li>• receiving a client's request for information</li> </ul>
(b) how they can make a <b>complaint</b> about a tax agent service you have provided, including the complaints process of the TPB	
(c) the following general information: <ul style="list-style-type: none"> <li>(i) your rights, responsibilities and obligations as a registered tax practitioner, including to your client, under the taxation laws (including the TASA and Code)</li> <li>(ii) what obligations your clients have to you as their registered tax practitioner</li> </ul>	
(d) Prescribed events (see below) which arose:	
(i) between 1 July 2022 and the relevant application date of the obligation	By no later than: <ul style="list-style-type: none"> <li>• 31 July 2025 — for registered tax practitioners with 100 or less employees as at 31 July 2024</li> <li>• 31 January 2025 — for all other registered tax practitioners</li> </ul>
(ii) on or after the relevant application date of the obligation	For: <ul style="list-style-type: none"> <li>• a current or prospective client who makes inquiries to engage or re-engage a registered tax practitioner to provide tax agent services — at the time of the inquiry</li> <li>• an existing client not previously advised of the information — within 30 days of the event</li> </ul>
(e) if your registration as a tax agent or BAS agent is subject to conditions	

## Prescribed events

The registered tax practitioner must disclose if any of the following events have occurred within the last five years:

- (i) their registration was suspended or terminated by the TPB
- (ii) they were an undischarged bankrupt or went into external administration
- (iii) they were convicted of a serious taxation offence
- (iv) they were convicted of an offence involving fraud or dishonesty
- (v) they were serving, or were sentenced to, a term of imprisonment in Australia for six months or more
- (vi) they were penalised, subject to an injunction, or been subject to an order for breaching a voluntary undertaking, for being a promoter of a tax exploitation scheme
- (vii) they were penalised, subject to an injunction, or been subject to an order for breaching a voluntary undertaking, for implementing a scheme that has been promoted on the basis of conformity with a public ruling, private ruling or oral ruling in a way that is materially different from that described in the ruling
- (viii) they were penalised, subject to an injunction, or been subject to an order for breaching a voluntary undertaking, for promoting on the basis of conformity with a public ruling, private ruling or oral ruling a scheme that is materially different from that described in the ruling; or
- (ix) the Federal Court has ordered you to pay a pecuniary penalty for contravening a civil penalty provision under the TASA.

### Note:

The disclosure obligation does not apply to events which occurred before 1 July 2022, even if it would otherwise be within the five-year timeframe.

The information must be given, in writing, in a prominent, clear and unambiguous way.

## TPB GUIDANCE

- Information Sheet [TPB\(I\) 49/2024 — Keeping your clients informed](#) (23 December 2024)
- Webinar recording — [Code Determination guidance — upholding and promoting ethical standards and keeping clients informed](#) (19 February 2025)

## DISCUSSION

### Current and prospective clients

Current clients include individuals and entities that have received, or are currently receiving, a tax agent service from a registered tax practitioner and remain engaged with the registered tax practitioner.

Prospective clients include individuals and entities that have:

- directly contacted a registered tax practitioner about seeking an engagement for the provision of tax agent services, but are yet to engage the registered tax practitioner; or
- received a tax agent service previously from a registered tax practitioner, but it remains unclear whether they intend to re-engage the registered tax practitioner.

Prospective clients do not include individuals or entities making general enquiries — e.g. related to pricing — about a registered tax practitioner.

### Information about how to access and search the TPB's Register

At a minimum, the TPB recommends registered tax practitioners provide the following information:

- The TPB maintains a Register of entities including current registered tax and BAS agents.
- The Register can be accessed via the TPB's website and a direct link is provided to the registered tax practitioner's register entry.
- Details of how to search the Register.

## Information about how to make a complaint to the TPB

At a minimum, the TPB recommends registered tax practitioners provide the following information:

- If the client wishes to make a complaint about a tax agent service that has been provided by the registered agent, a complaint can be made in writing to the TPB via its website and include a website link to the complaint form.
- Further information on how to make a complaint to the TPB can be found on its website, including the TPB's complaints process.

## Information about rights, responsibilities and obligations

General information about the rights, responsibilities and obligations of a **registered tax practitioner** includes, but is not limited to, information about obligations under the Code, such as acting lawfully in the client's best interests, acting honestly and with integrity, having arrangements in place to manage any conflicts of interest, taking reasonable care to ensure the taxation laws are complied with, and providing services in a competent and timely manner.

General information about a **client's** obligations to their registered tax practitioner may include, but is not limited to:

- making all relevant information available to their registered tax practitioner in a complete and timely manner
- being truthful with the information provided to their registered tax practitioner
- advising of any changes in any matter that is relevant to the tax agent services that are to be provided by their registered tax practitioner
- keeping the required records and providing information to their registered tax practitioner on a timely basis
- being co-operative with their registered tax practitioner's requests and meeting their due dates.

### Note:

See also (if applicable) guidance in paras. 3.17 and 3.18 of APES 220 *Taxation Services*.

Registered tax practitioners may enter into a contractual arrangement with their client (for example, via a letter of engagement) which sets out the rights, responsibilities and obligations of each party. Registered tax practitioners cannot contract out of their statutory obligations under the TASA. For example, where a registered tax practitioner seeks an indemnity from their client in the event of a breach of the terms of a contract, this will not abrogate their obligations under the TASA.

## Information about prescribed events

Most of the events prescribed for disclosure in para. (d) of the obligation — that is, events (ii) and (vii) (see table above) — are consistent with the events that may affect the continued registration of a registered tax practitioner, which must be notified to the TPB as part of the ongoing registration requirement to be a fit and proper person.

The TPB generally expects registered tax practitioners to provide a reasonable level of detail about the prescribed event so that clients are adequately informed of the matter(s). Information that may be disclosed to clients includes:

- the date the prescribed event occurred

- a description of the prescribed event
- a website link to the registered tax practitioner's record on the TPB Register
- whether the prescribed event is ongoing or has been finalised
- how the registered tax practitioner intends to provide another update about the prescribed event (if applicable).

Where relevant, registered tax practitioners should also consider making arrangements for while they are unable to run their practice in the short or long term to avoid any impact on their clients and the practice.

Where the registered tax practitioner has received legal advice about the prescribed event, it is not necessary to disclose the legal advice to clients or waive legal professional privilege.

## How to keep clients informed

While the phrase 'prominent, clear and unambiguous way' is not defined in the TASA, it is generally taken to mean that information is explained in simple, plain English which allows clients to make informed decisions as to whether to engage (or continue to engage) a registered tax practitioner to provide them with a tax agent service.

The Determination states that an agent will be taken to satisfy the obligation if, within the required timeframes, they do all of the following:

- publish the information on a publicly accessible website that they use to promote the tax agent services they offer
- include the information in letters of engagement or re-engagement (as case the requires) given to each of their clients
- provide their clients, upon engagement or re engagement (as case the requires), with a copy of the TPB's factsheet on general information for clients.

This is not the only way in which the obligation can be satisfied. For example, if the registered tax practitioner does not have a public website, they may satisfy the requirements by simply undertaking the other two steps.

Where information is published on a website, this information should be published for the duration for which the matter could be reasonably relevant to a client's decision to engage or continue to engage the registered agent. For example, in the case of information appearing on the TPB's Register (such as a sanction imposed by the TPB), the timeframe should, at a minimum, align with the duration the information appears on the Register.

The TPB's ['Information for clients' factsheet](#) is a two-page document which succinctly summarises the following:

- the client's obligations, and consequences if they do not meet their obligations
- the tax practitioner's obligations, and consequences if they do not meet their obligations
- information about the TPB Register and how to make a complaint to the TPB; and
- other matters of which the tax practitioner must keep the client informed.

Ensure that an up to date copy of this factsheet is incorporated into the standard engagement letter package for all clients. The factsheet will need to be supplemented with additional relevant information pertaining to the terms of engagement via an engagement letter or other communication.

The IPA updated its suite of engagement letter templates, available on the IPA member portal, in early 2025 to be compliant with the new Code obligations. Each template can be customised for the particular needs and circumstances of the practice.

## TPB CASE STUDIES

TPB(I) 49/2024 contains three case studies, two of which are summarised below.

### Case study 1 — Tax agent fails to advise of prescribed event

Eric is a registered tax agent, operating as a sole practitioner. In early 2023, he was subject to a TPB investigation into his alleged breach of Code item 7 (for failing to ensure that a tax agent service that he provided was provided competently). The TPB found Eric had breached Code item 7 and on 1 June 2023, it suspended Eric's registration for 6 months. The sanction was published on the TPB Register.

As the suspension is a prescribed event and it arose after 1 July 2022 but before 1 July 2025 (i.e. Eric's application date), Eric is required to clearly inform all current and prospective clients of the suspension no later than 31 July 2025.

However, Eric chooses to conceal his prior suspension from his clients and therefore does not inform his clients of this information within the required 30-day timeframe.

Eric has failed to comply with subsection 45(1) of the Determination and as a result, he has breached subsection 30-10(17) of the TASA, for failing to keep his clients informed of a prescribed event. Depending on the circumstances, the TPB may also find Eric has breached other obligations under the Code and/or is not a fit and proper person to be registered as a tax agent.

### Case study 3 — BAS agent re-engages current client and advises of matters

Robyn is a registered BAS agent, operating as a sole practitioner with no employees.

Robyn engages a new client and provides a letter of engagement to the client. The letter contains detailed information about, among other things, the TPB's Register, how to make a complaint to the TPB, including the TPB's complaints process, and general information about the rights, responsibilities and obligations of Robyn as the registered BAS agent and the client. Robyn's practice does not have a publicly accessible website.

In the following year, the client expressed interest in continuing the engagement of services. Robyn reviews and re-confirms the arrangement with the client with a new letter of engagement, which again attaches additional information about the TPB's Register, complaints process and general information about rights, responsibilities and obligations.

Robyn has complied with her obligations.

## Part 3: Regulation of tax practitioners — other recent developments

### First tranche of TPB reforms enacted

The first tranche of the Government's TPB reforms was [enacted](#) on 27 November 2023. The amendments to the TASA:

1. updated and modernised the objects clause
2. created financial independence for the TPB from the ATO
3. introduced a requirement for registered tax practitioners — from 1 January 2024 — to not:
  - (a) employ or use a disqualified entity without the TPB's approval; or
  - (b) enter an arrangement with a disqualified entity
4. converted the registration period from every three years to annually, from 1 July 2024
5. introduced the Ministerial power to supplement the existing Code.

### Further reforms

On 6 August 2023, the Government announced a further package of reforms to strengthen the integrity of the tax system and the regulatory frameworks, as part of its response to the PwC scandal.

#### MEASURES ALREADY ENACTED

The following measures from the package have now been [enacted](#). These changes have effect from 1 July 2024.

#### New tax whistleblower protections now in force

The tax whistleblower provisions in the TAA have been extended to protect an 'eligible whistleblower' who discloses information about a registered tax practitioner's behaviour to the ATO or the TPB and considers that the information may assist the TPB to perform its legal functions or duties in relation to the entity or an associate of the entity.

Disclosures will also be protected when made to prescribed entities. Entities that may be prescribed in the future include relevant professional associations.

#### Note:

Information disclosed by a whistleblower in relation to another entity's *associate* may also be eligible for protection.

See the Appendix at page 68 for a summary of the whistleblower provisions. Also see the TPB factsheet '[Whistleblower legislation](#)' for more details.

#### Extension of time for TPB investigations

The default period of time that the TPB has to conclude investigations into potential breaches of the TASA has been extended from 6 months to 24 months. Further, the TPB has a new power to publish the findings of the investigation on its Register.

#### MEASURES CURRENTLY UNDER CONSULTATION

Some of the proposed measures are relevant to the regulation of practitioners and are currently still in consultation / draft stage:

Consultation	Treasury consultation period
<b>Reforming the tax secrecy laws</b> Proposed amendments to the secrecy provisions, including a new exception to allow the ATO and TPB to disclose suspected misconduct of professionals to their professional associations or disciplinary bodies.	<a href="#">February 2025</a> <a href="#">Joint Bodies submission</a>
<b>TPB registration requirements</b> A review of the TPB's registration requirements, with a particular focus on the education, qualification and experience requirements.	<a href="#">July to August 2024</a> <a href="#">IPA submission</a>
<b>Regulation of firms</b> The regulation of accounting, auditing and consulting firms.	<a href="#">May to June 2024</a> <a href="#">IPA submission</a>
<b>Regulator information gathering powers</b> A review into the ATO's and TPB's information gathering powers.	<a href="#">May 2024</a> <a href="#">IPA submission</a>
<b>Stronger TPB sanctions</b> Proposals to enhance the TPB's sanctions regime, to enable the regulator to impose sanctions that escalate in severity and respond to misconduct in a timely manner.	<a href="#">December 2023 to January 2024</a> <a href="#">Joint Bodies submission</a>

## Appendix

### Legislation and legislative instruments — the Code

[Tax Agent Services Act 2009](#)

[Tax Agent Services \(Code of Professional Conduct\) Determination 2024](#) (9 October 2024)

[Tax Agent Services \(Code of Professional Conduct\) Amendment \(Measures No. 1\) Determination 2024](#) (6 September 2024)

[Tax Agent Services \(Code of Professional Conduct\) Amendment \(Measures No. 2\) Determination 2024](#) (8 October 2024)

### TPB resources

#### BREACH REPORTING

Information Sheets
<a href="#">TPB(I) 43/2024 — Breach reporting under the Tax Agent Services Act 2009</a> (23 December 2024)
Factsheets
<a href="#">Breach reporting</a>
<a href="#">Debunking myths about breach reporting</a>
<a href="#">FAQs — Breach reporting</a>
<a href="#">Significant breach reporting</a>
Webinar recordings
<a href="#">Complying with the Code determination</a> (12 June 2025)
<a href="#">Breach reporting — myth busting</a> (10 April 2025)
<a href="#">New breach reporting requirements</a> (22 January 2025)
Other
<a href="#">Complaints form (breach reporting)</a>



## NEW CODE OBLIGATIONS

Information Sheets
<a href="#">TPB(I) 44/2024</a> — Upholding and promoting the ethical standards of the tax profession (23 December 2024)
<a href="#">TPB(I) 45/2024</a> — False or misleading statements (23 December 2024)
<a href="#">TPB(I) 46/2024</a> — Managing conflicts of interest when undertaking activities for government and maintaining confidentiality in dealings with government (23 December 2024)
<a href="#">TPB(I) 47/2024</a> — Obligation to keep proper client records of tax agent services provided (23 December 2024)
<a href="#">TPB(I) 48/2024</a> — Supervision, competency and quality management under the Tax Agent Services Act 2009 (23 December 2024)
<a href="#">TPB(I) 49/2024</a> — Keeping your clients informed (23 December 2024)
Factsheets
<a href="#">Information for clients</a>
Webinar recordings
<a href="#">Complying with the Code determination</a> (12 June 2025)
<a href="#">Code Determination guidance — conflicts of interest and confidentiality with government, keeping proper client records, competency, and quality management systems</a> (25 February 2025)
<a href="#">Code Determination guidance — false or misleading statements</a> (19 February 2025)
<a href="#">Code Determination guidance — upholding and promoting ethical standards and keeping clients informed</a> (19 February 2025)

## Consequences of non-compliance

Non-compliance with the new Code obligations or breach reporting will be subject to the long established TPB sanctions regime. There are no new sanctions specific to the new rules. The below is a brief recap of the sanctions and actions available to the TPB.

### TPB POWER TO INVESTIGATE

The TPB has the power to investigate conduct that may breach the TASA, including the Code, under s. 60-95 of the TASA.

The TPB notifies the entity in writing within two weeks of a decision to investigate.

The TPB can compel witnesses to appear and to require production of a document or other item.

The TPB must make a decision about the outcome of the investigation within 24 months. The period can be extended in some circumstances.

## ADMINISTRATIVE SANCTIONS

If the TPB finds that a registered tax practitioner has failed to comply with the Code, there is a graduated level of administrative sanctions that it can apply (Subdiv 30-B of the TASA), including:

- giving a written caution
- requiring a response to requests and directions from the TPB
- requiring a course of training be completed
- subjecting a practitioner to specified restrictions
- requiring a practitioner to practise under the supervision of another registered practitioner
- requiring a practitioner to notify clients about the TPB's finding that they breached the Code
- suspending registration for a period of time
- terminating registration.

When the TPB terminates a practitioner's registration, it may also determine a period of up to five years during which the practitioner may not apply for registration (s. 40-25 of the TASA).

## PUBLICATION DECISIONS

The TPB can decide, in certain circumstances, to publish the outcomes of an investigation on the TPB Register (reg. 25F of the TASR). Publication decisions remain on the Register for at least five years and can be appealed.

## CIVIL PENALTIES

Under Div 50 of the TASA, the TPB may apply to the Federal Court for a civil penalty to be imposed on a practitioner for serious misconduct in a range of circumstances, including making a false or misleading statement to the Commissioner.

For making a false or misleading statement, the penalties are currently:

- individual — up to \$82,500 (250 penalty units)
- body corporate — up to \$412,500 (1,250 penalty units).

The TPB may also apply to the Federal Court for an injunction to restrain or require certain conduct (s. 70-5 of the TASA).

## RIGHT OF REVIEW

Registered tax practitioners have the right of review with the Administrative Review Tribunal in relation to certain decisions, including determining a period that an application for registration may not be made, extending the period of investigation, suspending or terminating registration and a publication decision (s. 70-10 of the TASA).

## Code obligations prior to the Determination

The 17 Code obligations (s. 30-10 of the TASA) which were in effect prior to the registration of the Determination are as follows:

Principles	Obligation
Honesty and integrity	You must act honestly and with integrity
	You must comply with the taxation laws in the conduct of your personal affairs
	If you: <ul style="list-style-type: none"> <li>• receive money or other property from or on behalf of a client, and</li> </ul>

Principles	Obligation
	<ul style="list-style-type: none"> <li>hold the money or other property on trust</li> </ul> <p>you must account to your client for the money or other property</p>
Independence	You must act lawfully in the best interests of your client
	You must have in place adequate arrangements for the management of conflicts of interest that may arise in relation to the activities that you undertake in the capacity of a registered tax agent
Confidentiality	Unless you have a legal duty to do so, you must not disclose any information relating to a client's affairs to a third party without your client's permission
Competence	You must ensure that a tax agent service that you provide, or that is provided on your behalf, is provided competently
	You must maintain knowledge and skills relevant to the tax agent services that you provide
	You must take reasonable care in ascertaining a client's state of affairs, to the extent that ascertaining the state of those affairs is relevant to a statement you are making or a thing you are doing on behalf of a client
	You must take reasonable care to ensure that taxation laws are applied correctly to the circumstances in relation to which you are providing advice to a client
Other responsibilities	You must not knowingly obstruct the proper administration of the taxation laws
	You must advise your client of the client's rights and obligations under the taxation laws that are materially related to the tax agent services you provide
	You must maintain the professional indemnity insurance that the Board requires you to maintain
	You must respond to requests and directions from the Board in a timely, responsible and reasonable manner
	<p>You must not employ, or use the services of, an entity to provide tax agent services on your behalf if:</p> <ul style="list-style-type: none"> <li>(a) you know, or ought reasonably to know, that the entity is a disqualified entity; and</li> <li>(b) the Board has not given you approval under section 45-5 to employ or use the services of the disqualified entity to provide tax agent services on your behalf</li> </ul>
	You must not provide tax agent services in connection with an arrangement with an entity that you know, or ought reasonably to know, is a disqualified entity
	You must comply with any obligations determined under section 30-12

## Tax whistleblower protections

### LEGISLATION

Part IVD of the TAA (sections 14ZZT to 14ZZZE), introduced by the Treasury Laws Amendment (Enhancing Whistleblower Protections) Act 2019 and extended by the Treasury Laws Amendment (Tax Accountability and Fairness) Act 2024.

### APPLICATION DATE

The tax whistleblower rules apply to disclosures that are made on or after 1 July 2024 and relate to matters that occur or occurred before, at or after that date.

### DISCLOSURES QUALIFYING FOR PROTECTION

A disclosure by an individual (the discloser) qualifies for protection if:

- (a) the disclosure is an 'eligible whistleblower' in relation to an entity; and
  - the disclosure is made to the Commissioner and the discloser considers that the information may assist the Commissioner to perform their functions or duties under a taxation law in relation to the entity or an associate of the entity; or
  - the disclosure is made to the Commissioner or the TPB and the discloser considers that the information may assist the TPB to perform its functions or duties under the TASA in relation to the entity or an associate of the entity; or
  - the disclosure is made to an 'eligible recipient' in relation to the entity; the discloser has reasonable grounds to suspect that the information indicates misconduct, or an improper state of affairs or circumstances, in relation to the tax affairs of the entity or an associate of the entity; and the discloser considers that the information may assist the eligible recipient to perform functions or duties in relation to the tax affairs of the entity or its associate; or
- (b) the disclosure is made to a legal practitioner for the purpose of obtaining legal advice or legal representation in relation to the operation of the whistleblower rules; or
- (c) the disclosure is made to an entity prescribed by the regulations, the discloser is a member of the entity and the disclosure is made for the purpose of obtaining assistance in relation to the operation of the whistleblower rules; or
- (d) the disclosure is made to a medical practitioner or psychologist for the purpose of obtaining medical or psychiatric care, treatment or counselling.

### IS A DISCLOSER REQUIRED TO IDENTIFY THEMSELVES?

There is no requirement for a discloser to identify themselves to qualify for protection.

### ELIGIBLE WHISTLEBLOWER

An individual is an eligible whistleblower if they are, or have been, any of the following:

- (a) an officer of the entity
- (b) an employee of the entity
- (c) an individual who supplies services or goods to the entity (whether paid or unpaid)
- (d) an employee of a person that supplies services or goods to the entity (whether paid or unpaid)
- (e) an individual who is an associate of the entity
- (f) a spouse or child of an individual referred to in any of paragraphs (a) to (e)
- (g) a dependant of an individual referred to in any of paragraphs (a) to (e), or of such an individual's spouse

- (h) an individual prescribed by the regulations for the purposes of this paragraph in relation to the entity.

## ELIGIBLE RECIPIENT

Each of the following is an eligible recipient in relation to an entity:

- (a) an auditor, or a member of an audit team conducting an audit, of the entity
- (b) a registered tax agent or BAS who provides tax agent services or BAS services to the entity
- (c) a person authorised by the entity to receive disclosures that may qualify for protection
- (d) a person or body prescribed by the Taxation Administration Regulations 2017 in relation to the entity — i.e. the Inspector-General of Taxation.

The following are also eligible recipients in relation to an entity:

Entity	Eligible recipients
Body corporate	a director, secretary or senior manager
	any other employee or officer who has functions or duties that relate to the tax affairs of the body corporate
Trust	a trustee
	a person authorised by a trustee to receive disclosures that may qualify for protection
Partnership	a partner
	a person authorised by a partner to receive disclosures that may qualify for protection

## WHO THE DISCLOSURE CAN BE MADE TO

An eligible whistleblower can make a disclosure to:

- the Commissioner or the TPB if the discloser considers that the information may assist the agency in performing its functions or duties under a taxation law in relation to the entity or an associate of the entity
- an eligible recipient in relation to the entity (e.g. a registered a tax or BAS agent) if the discloser:
- has reasonable grounds to suspect that the information indicates misconduct, or an improper state of affairs or circumstances, in relation to the tax affairs of the entity or an associate of the entity, and
- considers that the information may assist the eligible recipient to perform their functions or duties in relation to the tax affairs of the entity or an associate of the entity.

An 'associate' is defined in s. 318 of the ITAA 1936. 'Tax affairs' means affairs relating to any tax imposed by or under, or assessed or collected under, a law administered by the Commissioner.

## Disclosers who are not eligible whistleblowers

An individual who is not an eligible whistleblower will still qualify for protection if they make a disclosure to:

- a legal practitioner

- a medical practitioner or psychologist
- an entity prescribed by the regulations.

## WHISTLEBLOWER PROTECTIONS

The protections available to eligible whistleblowers include:

- identify protection
- civil, criminal and administrative liability protection
- detrimental conduct protection
- compensation and other remedies.

Refer to the [ATO](#) and [TPB](#) guidance for more details.

