



# INFORMATION SHEET

IS-L02209PW

## Investigations

This document is intended as an overview of the investigations process set out in the *Tax Agent Services Act 2009*. This information sheet is intended to provide assistance. It is not a formal Board Guideline. This information sheet may be changed from time to time.

### DOES THE BOARD HAVE THE POWER TO INVESTIGATE YOU?

Yes, the Board has the power to investigate you or your application for registration as a tax agent or BAS agent under the *Tax Agent Services Act 2009* (TASA) .

### WHAT CAN THE BOARD INVESTIGATE?

The Board can investigate matters relating to any aspect of its responsibilities. The Board's responsibilities include the general administration of the tax agent and BAS agent registration requirements under the TASA .

If you are registered (or applying for registration), the Board may investigate:

- your application for registration;
- any conduct that may breach a provision of the TASA ; and
- any other matter prescribed by regulations made under the TASA .

### HOW CAN THE BOARD START AN INVESTIGATION?

- *Complaint by a third party*

The Board may start an investigation if a complaint is made by a third party.

The Board will determine whether it is appropriate to investigate you having regard to the substance of the complaint. The Board may make this determination by gathering information by any means it considers appropriate.

- *Board decides*



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The Board may start an investigation of its own motion, where no complaint has been made.

## WILL THE BOARD NOTIFY YOU WHEN IT STARTS AN INVESTIGATION?

Yes, the Board must notify you in writing of its decision to investigate you or your application for registration.

The Board will give this notice within two weeks after its decision to investigate.

## WHEN DOES AN INVESTIGATION START?

The investigation is taken to start on the date of the Board's notice advising you of its decision to investigate.

**NOTE:** If you are registered under the *Income Tax Assessment Act 1936* and your respective State Tax Agents' Board has issued you with a show cause notice, special time limits apply to the Board's decision on whether to continue the investigation.

For further information, please see the *Continuation of existing registration (Transitional) information sheet* available at [http://www.tpb.gov.au/TPB/tax\\_agents/Registration\\_information/](http://www.tpb.gov.au/TPB/tax_agents/Registration_information/)

## HOW CAN THE BOARD CONDUCT AN INVESTIGATION?

The Board may set its own procedures to conduct an investigation.

The Board may by written notice require a person to:

- provide the Board with information, documents or things; and/or
- appear before the Board to give evidence or to produce documents or things.

A person who provides evidence may be required to take an oath or make an affirmation.

If a person provides a document or thing to the Board, the Board may:



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- take possession of, and make copies or take extracts of, the document; and
- retain possession of the document or thing for such period necessary for the purposes of the investigation.

A person who fails to give information, produce records, documents or things, attend, take an oath, make an affirmation, answer questions or do other things when required may have committed an offence under the *Taxation Administration Act 1953* (TAA 1953).

## ARE THERE TIME LIMITS ON THE CONDUCT OF AN INVESTIGATION?

Yes, the Board must make a decision within 6 months after starting an investigation.

However, the Board may determine a longer period to make a decision. The Board will notify you in writing if it determines a longer period. If the Board determines a longer period, it must make a decision within that period.

The Board is deemed to have decided to take no further action relating to the investigation if it does not make a decision within 6 months or the longer determined period.

## CAN THE BOARD DELEGATE ITS INVESTIGATION POWERS?

The Board may set up a committee consisting of such individual(s) as the Board thinks fit to assist in conducting investigations.

For further information on the Code, please refer to the *Code of Professional Conduct information sheet* available at

[http://www.tpb.gov.au/TPB/tax\\_agents\\_/Regulatory\\_information](http://www.tpb.gov.au/TPB/tax_agents_/Regulatory_information)

## WHAT ARE THE ENTITLEMENTS OF INDIVIDUALS WHO PROVIDE INFORMATION TO THE BOARD?

A person who appears before the Board for the purpose of an investigation will be compensated for the time and expense they incur in carrying out their role in accordance with prescribed allowances.



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A person who has taken an oath or made an affirmation may be allowed to give evidence through a written statement rather than appearing in person before the Board.

A person must provide information to the Board if required, even if doing so might incriminate the person or make them liable for a penalty. However, this information (and the giving of the information) cannot be used as evidence other than in proceedings for an offence under:

- section 8C or 8D of the TAA 1953 (failure to comply with requirements under a taxation law or to answer questions when attending before the Commissioner);
- section 137.1 or 137.2 of the *Criminal Code* (false or misleading documents); or
- section 149.1 of the *Criminal Code* (obstruction of Commonwealth public officials).

A person who is entitled to possession of a document or thing provided to the Board (or a person authorised by that person) will be allowed reasonable access to inspect, make copies or take extracts.

An investigation does not affect the confidentiality of a communication between a legal practitioner and their client.

## WHAT HAPPENS AFTER AN INVESTIGATION?

After the Board investigates you it will decide what action (if any) to take.

If the Board investigates your application for registration, the Board must decide to grant or reject your application.

If the Board finds that your conduct breaches the TASA, it may do one or more of the following:

- Impose a sanction;
- suspend your registration;
- terminate your registration;
- apply to the Federal Court of Australia for a penalty order and/or injunction.

You will receive written notice and reasons for a decision by the Board on whether your conduct breaches the TASA within 30 days of the Board making its decision or finding.



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## WHAT ARE THE LIMITS ON THE BOARD'S INVESTIGATION POWERS?

The Board can only disclose information it acquires under an investigation in performing its duties under or in relation to the TASA .

Board members may disclose this information to the Commissioner and to certain law enforcement agencies for the purpose of investigating certain criminal offences.

**NOTE:** A "law enforcement agency" includes state and territory police departments, the Australian Federal Police and other agencies such as the Australian Securities and Investments Commission that have law enforcement powers.

The Board has a discretion as to the procedures it adopts for investigations and is not bound by the rules of evidence in its investigations. It may, however, apply the rules of evidence as a guide.

The Board is required to follow the principles of natural justice (including procedural fairness) in its investigation.

## NEED MORE INFORMATION?

Further information will be released as it becomes available on the Board's website at [www.tpb.gov.au](http://www.tpb.gov.au).