



INFORMATION SHEET

Fit and proper person

This document is intended as an overview of the fit and proper person requirements. 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

WHAT DOES 'FIT AND PROPER PERSON' MEAN?

To be eligible for registration, an applicant must satisfy the Tax Practitioners Board (Board) that the applicant is a fit and proper person. The fit and proper person requirement applies to individuals, each individual partner (for partnerships) and each director of a company (for partnerships/companies).

In deciding whether an individual is a fit and proper person, the Board must have regard to the following:

- whether the individual is a person of **good fame, integrity and character**; and
- whether any of the following events have occurred during the previous 5 years:
 - (a) the individual has been convicted of a *serious taxation offence*;
 - (b) the individual has been convicted of an *offence involving fraud or dishonesty*;
 - (c) the individual has been *penalised for being a promoter of a tax exploitation scheme*;
 - (d) the individual has been *penalised for implementing a scheme that has been promoted on the basis of conformity with a product ruling in a way that is materially different from that described in the product ruling*;
 - (e) the individual has had the status of an *undischarged bankrupt*; and/or
 - (f) the individual has *served or been sentenced to a term of imprisonment in whole or in part*.

(a) What is a serious taxation offence?

A 'serious taxation offence' is:

- (i) an offence against any one of the following specified offences outlined in the *Criminal Code* that relates to a tax liability:
 - section 134.1 of the *Criminal Code* (obtaining property by deception);
 - section 134.2 of the *Criminal Code* (obtaining a financial advantage by deception);



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- section 135.1 of the *Criminal Code* (general dishonesty with respect to obtaining a gain, causing a loss or influencing a Commonwealth public official);
 - section 135.2 of the *Criminal Code* (obtaining a financial advantage); or
 - section 135.4 of the *Criminal Code* (conspiracy to defraud with respect to obtaining a gain, causing a loss or influencing a Commonwealth public official).
- (ii) a 'taxation offence' that is punishable on conviction by a fine exceeding 40 penalty units, or imprisonment, or both.

NOTE: 1 penalty unit = \$110.

'Taxation offence' means:

- an offence against a taxation law; or
- an offence against:
 - section 6 of the *Crimes Act 1914* (being an accessory after the fact);
 - section 11.1 of the *Criminal Code* (attempting to commit an offence);
 - section 11.4 of the *Criminal Code* (incitement to the commission of an offence); or
 - section 11.5 of the *Criminal Code* (conspiring with another person to commit an offence);

being an offence that relates to an offence against a taxation law.

(b) What is an offence involving fraud or dishonesty?

'Fraud' and 'dishonesty' take their ordinary meaning, and are determined by reference to community standards.

The *Criminal Code* defines 'dishonest' as dishonest according to the standards of ordinary people in circumstances where the defendant is aware of these standards.

Example

Patricia was convicted of theft and was fined \$1,500. To convict an individual for theft, a court must find that the individual has dishonestly appropriated property belonging to another with the intention of permanently depriving the other person of the property. Consequently, theft is an offence of dishonesty and the Board must consider this in determining whether Patricia satisfies the fit and proper person test for registration.



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(c) What does 'penalised for being a promoter of a tax exploitation scheme' mean?

An individual is considered to have been penalised for being a promoter of a tax exploitation scheme if that individual has been ordered to pay a civil penalty for engaging in conduct that results in that individual, or another entity, being a promoter of a tax exploitation scheme, within the meaning of Division 290 of Schedule 1 to the *Taxation Administration Act 1953*.

(d) What does 'penalised for implementing a scheme that has been promoted on the basis of conformity with a product ruling in a way that is materially different from that described in the product ruling' mean?

An individual is considered to have been penalised for implementing a scheme that has been promoted on the basis of conformity with a product ruling in a way that is materially different from that described in the product ruling if that individual has been ordered to pay a civil penalty for engaging in such conduct as defined within Division 290 of Schedule 1 to the *Taxation Administration Act 1953*.

(e) What does 'undischarged bankrupt' mean?

An undischarged bankrupt is an individual who has been declared bankrupt under the *Bankruptcy Act 1966* and has not been discharged from the bankruptcy.

Example

Seven years ago, William became bankrupt and was not discharged until three years ago. Although William became bankrupt more than five years ago, having the status of an undischarged bankrupt at any time during the past five years is a factor the Board must consider in deciding whether William is a fit and proper person for registration purposes.

(f) What does 'served or sentenced to a term of imprisonment' mean?

An individual has *served* a term of imprisonment if that individual has served all or part of a term of imprisonment.

An individual has been *sentenced* to a term of imprisonment if a sentence is imposed on that individual in relation to an offence and that sentence includes a term of imprisonment.

Example

Three years ago, Melissa was convicted of dangerous driving causing serious injury under section 319 of the Crimes Act 1958 (Vic) and received a two-year suspended prison sentence. Being sentenced to a term of imprisonment in the previous five years is an event the Board must consider in deciding whether Melissa is a fit and proper person for registration purposes.

NEED MORE INFORMATION?

Further information will be released as it becomes available on the Board's website at www.tpb.gov.au.