

# TPB Information Sheet

## TPB(I) D60/2024

### Supervision, competency and quality management under the *Tax Agent Services Act 2009*

#### Tax Practitioners Board exposure draft

The Tax Practitioners Board (TPB) has released this draft Information Sheet (TPB(I) D60/2024) as an exposure draft. The TPB invites comments and submissions in relation to the information contained in this draft Information Sheet within 28 days. The closing date for submissions is **21 November 2024**. The TPB will then consider any submissions before settling its position, undertaking any further consultation required and finalising the TPB(I).

Written submissions should be made via email at [tpbsubmissions@tpb.gov.au](mailto:tpbsubmissions@tpb.gov.au) or by mail to:

Tax Practitioners Board  
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SYDNEY NSW 2001

#### Disclaimer

This document is in draft form, and when finalised, will be intended as information only. It provides information regarding the TPB's position on the application of obligations relating to supervision, competence and quality management contained within the *Tax Agent Services Act 2009* (TASA) and the Tax Agent Services (Code of Professional Conduct) Determination 2024 (the Determination).

While this draft TPB(I) seeks to provide practical assistance and explanation, it does not exhaust, prescribe or limit the scope of the TPB's powers in the TASA or the Tax Agent Services Regulations 2022 (TASR). The principles, explanations and examples in this draft TPB(I) do not constitute legal advice and do not create additional rights or legal obligations beyond those that are contained in the TASA, or which may exist at law. Please refer to the TASA, TASR and the Determination for the precise content of the legislative requirements.

#### Document history

This draft TPB(I) proposes the following amendments to TPB Information Sheet [TPB\(I\) 36/2021](#) [Supervisory arrangements under the \*Tax Agent Services Act 2009\*](#):

- changes to the title and headings within TPB(I) 36/2021 to reflect the updated purposes and information contained within the draft TPB(I)
- summaries of the obligations under sections 35 and 40 of the Determination in the context of the meaning of 'competent standard' and 'supervisory arrangements'

- updates to the considerations relevant to ensuring there is adequate supervision and control for the purposes of the TASA
- a summary of the purpose of the Determination
- explanations of the requirements of sections 35 and 40 of the Determination
- miscellaneous amendments to enhance the readability of TPB(I) 36/2021.

This draft TPB(I) was issued on 24 October 2024 and is based on the TASA as at the date of issue.

Issue date:24 October 2024

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# Supervision, competency and quality management under the *Tax Agent Services Act 2009*

## Introduction

1. This draft Information sheet (draft TPB(I)) has been prepared by the Tax Practitioners Board (TPB)<sup>1</sup> to assist registered tax and BAS agents (collectively referred to as 'registered tax practitioners') to understand their obligations relating to supervision, competency and quality management under the *Tax Agent Services Act 2009* (TASA) and the Tax Agent Services (Code of Professional Conduct) Determination 2024 (Determination).
2. These concepts are relevant to a number of sections of the TASA and the Determination, including:
  - Sufficient number requirement: All partnerships and companies seeking registration or renewal of registration need to meet the sufficient number requirement. The TPB must be satisfied, among other things, that the partnership or company has a sufficient number of registered individuals to provide tax agent or BAS services<sup>2</sup> to a competent standard, and to carry out supervisory arrangements.
  - Subsections 30-10(7) to (10) of the Code of Professional Conduct (Code) and sections 35 to 40 of the Determination: All registered tax practitioners must ensure that tax agent or BAS services provided on their behalf are provided competently, and must establish and maintain a system of quality management in relation to the provision of tax agent services.
3. It is important to note that there are 17 obligations in the Code<sup>3</sup> and further requirements that registered tax practitioners must comply with under the TASA. These include ongoing requirements in relation to maintaining registration under the TASA, including that a registered tax practitioner is a 'fit and proper' person.<sup>4</sup>
4. In this draft TPB(I), you will find the following information:
  - Background to the Determination (paragraphs 5 to 9)
  - Legislative framework relating to supervision, competency and quality management (paragraphs 10 to 18)
  - Sufficient number requirements (paragraphs 19 to 31)
  - Meaning of 'competent standard' and 'supervisory arrangements' (paragraphs 32 to 40)
  - Adequate and appropriate supervisory arrangements (paragraphs 41 to 50)

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<sup>1</sup> The TPB administers a system for the registration of tax agents and BAS agents (known collectively as 'tax practitioners') under the *Tax Agent Services Act 2009* (TASA).

<sup>2</sup> Tax agent services include tax (financial) advice services.

<sup>3</sup> The provisions of the Code are contained in section 30-10 of the TASA. The TPB has also published an explanatory paper that sets out its views on the application of the Code. Refer to TPB Explanatory paper [TPB\(EP\) 01/2010 Code of Professional Conduct](#).

<sup>4</sup> For further information, see TPB Explanatory paper [TPB \(EP\) 02/2010 Fit and proper person](#).

- Remote supervisory arrangements (paragraphs 51 to 59)
- Holding multiple supervisory roles (paragraphs 60 to 63)
- Code obligations relating to competence (paragraphs 64 to 69)
- Details of the obligations under sections 35 and 40 of the Determination (paragraphs 70 to 86)
- Consultation questions (paragraph 87)
- Appendix – Case Examples (pages 29 to 31).

## Background to the Determination

5. Section 30-10 of the TASA contains the Code, comprising 17 obligations that regulate the personal and professional conduct of registered tax practitioners.
6. One of these obligations is contained in subsection 30-10(17) of the TASA, which requires registered tax practitioners to comply with any obligations that the Minister determines, by legislative instrument, under section 30-12 of the TASA.
7. On 1 July 2024, the Minister determined 8 additional Code obligations, set out in the Determination. These additional Code obligations apply from:
  - **1 July 2025** – for registered tax practitioners with 100 or less employees as at 31 July 2024<sup>5</sup>
  - **1 January 2025** – for any other registered tax practitioners.<sup>6</sup>
8. The deferred application date provides registered tax practitioners time to understand their obligations, assess their own practice and implement changes, if required, to comply with their obligations under the Determination from the relevant application date under paragraph 7.
9. For further information on the Determination, refer to the TPB's website guidance titled [The Code Determination – Background and context](#). This document provides additional background information including in relation to:
  - the process to finalise the Determination
  - commencement and application date
  - the TPB's approach to support implementation.

## Legislative framework

### Sufficient number requirement

10. Partnerships and companies seeking registration or renewal of registration as a tax practitioner will need to meet all the eligibility criteria contained in section 20-5 of the TASA.

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<sup>5</sup> This includes new registered tax practitioners with 100 or less employees that register between 1 August 2024 and 30 June 2025 inclusive.

<sup>6</sup> See the *Tax Agent Services (Code of Professional Conduct) Amendment (Measures No. 1) Determination 2024*.

11. Under paragraphs 20-5(2)(c) and 20-5(3)(d) of the TASA, one of these eligibility criteria is that the partnership or company has:
  - i. in the case of registration as a registered tax agent – a sufficient number of individuals, being registered tax agents, to provide tax agent services to a competent standard, and to carry out supervisory arrangements
  - ii. in the case of registration as a registered BAS agent – a sufficient number of individuals, being registered tax agents or BAS agents, to provide BAS services to a competent standard, and to carry out supervisory arrangements.
12. The purpose of section 20-5 is to ensure that a partnership or company tax practitioner has sufficient organisational qualifications and experience to provide tax agent or BAS services competently.<sup>7</sup>
13. Further, the sufficient number requirement is an ongoing registration requirement. Section 30-35 of the TASA provides that a partnership or company tax practitioner must notify the TPB in writing whenever it ceases to meet one of the tax practitioner registration requirements<sup>8</sup> or any other circumstances relevant to registration<sup>9</sup> changes.
14. Whether a partnership or company tax practitioner has a sufficient number of registered individuals to provide tax agent or BAS services to a competent standard and to carry out supervisory arrangements is a question of fact. This means that each application for registration or renewal will need to be considered on a case-by-case basis having regard to the entity's facts and circumstances.

## Supervisory arrangements

15. Supervisory arrangements are also directly relevant in the context of:
  - Code item 7 of the Code which requires all registered tax practitioners to ensure that the services provided on their behalf are provided competently<sup>10</sup>
  - the Determination,<sup>11</sup> which requires all registered tax practitioners to:
    - ensure that each entity providing tax agent services on their behalf maintains knowledge and skills relevant to the tax agent services the entity is providing<sup>12</sup>
    - ensure that each entity providing tax agent services on their behalf is appropriately supervised, having regard to knowledge and skills of the entity, the

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<sup>7</sup> Paragraph 2.56 of the Explanatory Memorandum to the Tax Agent Services Bill 2008.

<sup>8</sup> Paragraphs 30-35(2)(a) and 30-35(3)(a) of the TASA.

<sup>9</sup> Paragraphs 30-35(2)(d) and 30-35(3)(d) of the TASA.

<sup>10</sup> The Accounting Professional and Ethical Standards Board (APESB) standard *APES 110 Code of Ethics for Professional Accountants* (APES 110) also applies to registered tax practitioners who are members of one of the joint accounting bodies. R113.2 requires members to take reasonable care to ensure that those working in a professional capacity under the member's authority have appropriate training and supervision. In addition, paragraph 3.13 of APES 220 Taxation Services requires members to be competent when providing a tax service. See [www.apesb.org.au](http://www.apesb.org.au).

<sup>11</sup> Subsection 30-10(17) of the TASA (Code Item 17) requires all registered tax practitioners to comply with the obligations contained within the Tax Agent Services (Code of Professional Conduct) Determination 2023 (the Determination), as determined by the Minister under section 30-12 of the TASA.

<sup>12</sup> Subsection 35(1) of the Determination.

tax agent services being provided by the entity, and the registered tax practitioner's system of quality management<sup>13</sup>

- establish and maintain a system of quality management in relation to the provision of tax agent services, designed to provide the registered tax practitioner with reasonable confidence that they are complying with the Code<sup>14</sup>
- document and enforce the policies and procedures of their system of quality management.<sup>15</sup>
- relevant experience requirements for an individual obtaining relevant experience in order to be registered:
  - Schedule 2 of the Tax Agent Services Regulations 2022 (TASR) provides that relevant experience for the purposes of registration can include work under the supervision and control of a registered tax practitioner
- the civil penalty provisions in section 50-30 of the TASA, 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 tax or BAS agent<sup>16</sup>

## Civil penalties

16. A tax practitioner will contravene section 50-30 of the TASA if, in the course of providing a tax agent service, they sign a declaration (or other statement) in relation to a taxpayer that is required (or permitted) by a taxation law, and the relevant document was prepared by an entity other than:

- the tax practitioner (if they are an individual tax practitioner)
- another individual tax practitioner, or
- an unregistered individual who is working under the supervision and control of the tax practitioner, or the supervision and control of another individual tax practitioner.

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<sup>13</sup> Subsection 35(2) of the Determination.

<sup>14</sup> Subsection 40(1) of the Determination.

<sup>15</sup> Subsection 40(2) of the Determination.

<sup>16</sup> The penalty imposed for contravening these provisions is:

- up to 250 penalty units for an individual tax agent or BAS agent,
  - up to 1,250 penalty units for a partnership or company tax agent or BAS agent.
- Currently one penalty unit includes \$313 (current as at 1 July 2023 and subject to indexation).

## Relevant experience requirements

17. Schedule 2 to the TASR provides that an individual seeking registration as a tax practitioner must meet relevant experience requirements.<sup>17</sup> Relevant experience requirements include work performed by an individual under the supervision and control of a registered tax practitioner.
18. For the purposes of seeking tax agent registration with a tax (financial) advice services condition, *relevant tax (financial) advice experience* also includes:
  - work performed by an individual under the supervision and control of a 'registered tax (financial) adviser' within the meaning of the TASA, as in force immediately prior to 1 January 2022, or
  - work performed by an individual under the supervision and control of a qualified tax relevant provider.<sup>18</sup>

## Sufficient number requirement

### Who can form the sufficient number?

19. The number of registered individual tax agent(s) or BAS agent(s) that a partnership or company tax agent or BAS agent is required to have, for the purposes of satisfying the sufficient number requirement, is unique and can be wide-ranging having regard to the entity's particular circumstances. The individuals may include partners, directors, employees, contractors and staff provided under a service trust arrangement.<sup>19</sup>
20. Similarly, the number of registered individual tax agent(s) that a partnership or company tax agent with a tax (financial) advice services condition is required to have, for the purposes of satisfying the sufficient number requirement, is unique and can be wide-ranging having regard to the entity's particular circumstances. The individuals, in addition to those outlined at paragraph 19 above, may also include the financial services licensee's representatives<sup>20</sup>, including authorised representatives of the licensee, responsible managers, compliance officers and regional/line managers.
21. The phrases 'supervisory arrangements' and 'supervision and control' are not defined in the TASA. As a result, these phrases must take on their ordinary meaning, as discussed at paragraphs 39 and 40 below.

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<sup>17</sup> Refer to Schedule 2 of the TASR at items 103 (for BAS agent registration) and 212 (for tax agent registration, including tax agent registration with a tax (financial) advice services condition).

<sup>18</sup> Refer to the definition of *relevant tax (financial) advice experience* in Schedule 2 to the TASR at item 212 paragraphs (c), (d) and (f).

<sup>19</sup> See paragraph 2.56 of the Explanatory Memorandum to the Tax Agent Services Bill 2008.

<sup>20</sup> 'Representatives' has the meaning given by paragraph (a) of the definition of that expression in section 910A of the *Corporations Act 2001*.



## Determining the sufficient number

22. There is no set formula for determining the sufficient number of registered individual tax practitioners a partnership or company is required to have to satisfy this requirement. However, the minimum number of registered individuals forming the sufficient number must be at least one.
23. In determining the adequacy of the nominated sufficient number, the TPB will take into account a number of factors, including:
- having available adequate resources (including financial, technological and human resources) to provide the tax agent or BAS services and to carry out supervisory arrangements
  - maintaining the competence to provide those tax agent or BAS services
  - ensuring that the registered individual tax practitioner responsible for the supervision and control is fit for purpose, that is, the registered individual is adequately trained and competent, to provide the supervision and control
  - ensuring that the registered individual tax practitioner responsible for the supervision and control only supervises tax agent or BAS services they are registered to provide
  - size and scale of the tax agent or BAS services provided within the business (for example, turnover, number of clients and number of relevant staff)
  - the type and complexity of tax agent or BAS services being provided and supervised
  - number of qualified and experienced staff
  - the number of qualified tax relevant providers<sup>21</sup> responsible for overseeing the supervisory arrangements
  - the frequency of appropriate training and development activities for all relevant staff
  - the level, type and complexity of technology or software used, including network security protocols in place and digital monitoring and review processes
  - risk management processes and procedures, including the use of delegated supervision processes
  - the supervisory arrangements (for example, quality assurance and control practices and escalation procedures) in place
  - any conditions imposed by the TPB on the entity's registration based on the qualifications and experience of its staff.<sup>22</sup>

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<sup>21</sup> Subsection 90-1(1) of the TASA states that qualified tax relevant provide has the same meaning as in Part 7.6 of the Corporations Act. See section 910A of the *Corporations Act 2001*.

<sup>22</sup> Some of these factors are taken from paragraph 2.56 of the Explanatory Memorandum to the Tax Agent Services Bill 2008.

24. In assessing the capacity of the individual tax practitioner assuming the role of supervising tax practitioner and their ability to continue providing a competent service to their own client base, it is important to take into consideration all of the factors set out in paragraph 23 above.
25. In addition, the TPB requires that the prior informed written consent of the registered individual tax practitioner forming the sufficient number must be obtained. A partnership or company registered tax practitioner must ensure that the individual registered tax practitioner has considered all the relevant information, including the nature of the supervisory arrangements in place and the supervision and control to be undertaken, and provided their prior informed consent by way of a written signed statement to the partnership or company registered tax practitioner. This ensures that the individual is aware of their appointment as a supervising tax practitioner and understands the responsibilities that attach to that role.
26. Where existing documentation sets out the nature of the supervisory arrangements and the supervision and control to be undertaken, and the individual tax practitioner forming the sufficient number is aware of and understands the obligations set out in that existing documentation, this will obviate the need for the prior informed written consent to be obtained.

#### **Example 1**

AAA Pty Ltd is a registered tax agent company. The company employs Tom, a registered tax agent, and three additional employees who are new to the industry and are not currently registered with the TPB. AAA Pty Ltd provides tax agent services to around 50 clients, including government agencies.

As part of its registration application, AAA Pty Ltd nominated Tom as the supervising agent for the company. AAA Pty Ltd did not seek Tom's prior written informed consent before nominating Tom as its supervising agent. Also, there is no existing documentation in place that would remove the need for Tom's prior written informed consent.

As AAA Pty Ltd has not received Tom's prior informed consent, AAA Pty Ltd is not meeting its ongoing registration requirement to have a sufficient number of registered individual tax agents to provide tax agent services to a competent standard and to carry out supervisory arrangements on behalf of the company.

27. The TPB is of the view that it is ultimately a matter for all registered tax practitioners to assess how many registered individual tax practitioners their business requires to ensure that tax agent or BAS services are provided competently and to ensure there are adequate supervisory arrangements in place. A partnership or company will be required to demonstrate, on the balance of probabilities, that it satisfies the sufficient number requirement where requested to do so by the TPB.

## Tax agents with a tax (financial) advice services condition

28. The TPB recognises that the business models and structures in the financial services industry are different to those commonly found with tax and BAS agents. This is in part due to the licensing requirements under the *Corporations Act 2001*. Existing business models and structures in the financial services industry that the TPB is aware of include:
- licensees with multiple practices operating under one licence
  - licensees operating with authorised representatives only (which may include corporate authorised representatives and/or individual authorised representatives), employee representatives only or a combination of both
  - licensees with a small number of representatives operating a salaried advice business
  - corporate authorised representatives authorised by one of the above licensee structures
  - authorised representatives, often as sole traders, operating a financial planning business under the licence of a larger licensee.
29. Where an AFS licensee registers as a tax agent, it must have at least one registered tax agent as its sufficient number. In determining the number of registered tax agents required to satisfy the sufficient number requirement, the TPB may take into account the number of qualified tax relevant providers within the company who provide tax (financial) advice services.
30. Where an AFS licensee does not register as a tax agent, it must ensure that every entity that provides tax (financial) advice services on its behalf are either registered as a tax agent with the TPB or a qualified tax relevant provider with the Australian Securities and Investments Commission in order to continue providing tax (financial) advice services on behalf of the AFS licensee for a fee or reward.

### Example 2

XYZ Pty Ltd is a financial services licensee that applies to be registered as a tax agent on 1 June 2023.

To be eligible to be registered as a tax agent, XYZ Pty Ltd must have a sufficient number of individuals (such as employees and directors) who are able to provide tax agent services (which includes tax (financial) advice services) to a competent standard and to carry out supervisory arrangements. To meet this requirement, XYZ Pty Ltd must have at least one representative (employee or director) who is a registered tax agent. However, in determining whether XYZ Pty Ltd meets the sufficient number test, the TPB may also take into account the number of qualified tax relevant providers within the company who provide tax (financial) advice services.

Until it is registered, XYZ Pty Ltd must ensure that all of its employees/representatives who provide tax (financial) advice services on its behalf are registered tax agents or qualified tax relevant providers.

31. It is ultimately a matter for the AFS licensee to ensure it has a sufficient number of individuals, being registered tax agents, to provide tax (financial) advice services to a competent standard, and to carry out supervisory arrangements.

## Meaning of 'competent standard' and 'supervisory arrangements'

32. The phrases 'competent standard' and 'supervisory arrangements' are not defined in the TASA. As a result, they take on their ordinary meaning and are broadly considered to be arrangements aimed at directing, overseeing and checking the tax agent or BAS services performed on behalf of a registered tax practitioner to ensure those services are provided competently.

### 'Competent standard'

33. The Macquarie Dictionary<sup>23</sup> provides the following definition:

*Competent*

Properly qualified; capable

Fitting, suitable or sufficient for the purpose; adequate.

34. The Code contained in section 30-10 of the TASA provides some guidance in relation to the meaning of competence. In particular, subsections 30-10(7) to (10) of the TASA, 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.<sup>24</sup>

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<sup>23</sup> The Macquarie Dictionary, [Multimedia], version 5.0.0.

<sup>24</sup> For registered tax practitioners who are members of one of the joint accounting bodies, consideration should also be given to APES 110, which considers factors in determining the level of supervision required. In addition, paragraph 3.13 of APES 220 requires members to be competent when providing a tax service. See [www.apesb.org.au](http://www.apesb.org.au).

35. Further, sections 30 and 35 of the Determination require that registered tax practitioners must:
- keep records that correctly record the tax agent services they have provided, or that are provided on their behalf, to each of their clients, including former clients<sup>25</sup>
  - ensure each entity providing tax agent services on their behalf maintains knowledge and skills relevant to the tax agent services the entity is providing<sup>26</sup>
  - ensure each entity providing tax agent services on their behalf is appropriately supervised, having regard to knowledge and skills of the entity, the tax agent services being provided by the entity, and the registered tax practitioner's system of quality management.<sup>27</sup>
36. In addition, section 40 of the Determination, although not under the key principle of competence, relevantly requires registered tax practitioners to establish and maintain a system of quality management in relation to the provision of tax agent services, designed to provide the registered tax practitioner with reasonable confidence that they are complying with the Code.<sup>28</sup> Tax practitioners are also required to document and actively enforce the policies and procedures of their system of quality management.<sup>29</sup>
37. Competence, with respect to tax practitioners and those who provide tax agent services on their behalf, can therefore 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.
38. Further, section 20-5 of the TASA requires that a partnership or company tax practitioner have a sufficient number of registered individuals to provide tax agent or BAS services to a competent standard and to carry out supervisory arrangements. The purpose of this provision is to ensure that a partnership or company tax practitioner has sufficient qualifications and experience to provide tax agent or BAS services competently.<sup>30</sup>

## 'Supervisory arrangements' and 'supervision and control'

39. The Macquarie Dictionary<sup>31</sup> provides the following definitions:

### *Supervise*

1. To oversee (a process, work, workers, etc) during execution or performance; superintend; have the oversight and direction of.

### *Supervision*

1. The act or function of supervising; oversight; superintendence.

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<sup>25</sup> Subsection 30(1) of the Determination.

<sup>26</sup> Subsection 35(1) of the Determination.

<sup>27</sup> Subsection 35(2) of the Determination.

<sup>28</sup> Subsection 40(1) of the Determination.

<sup>29</sup> Subsection 40(2) of the Determination.

<sup>30</sup> Paragraph 2.56 of the Explanatory Memorandum to the Tax Agent Services Bill 2008.

<sup>31</sup> The Macquarie Dictionary, [Multimedia], version 5.0.0.

### *Control*

1. To exercise restraint or direction over; dominate; command
  2. To hold in check; curb
  4. The act or power of controlling; regulation; domination or command
  5. Check or restraint.
40. Considering the ordinary meaning of the words and the purpose of the requirements in section 20-5 of the TASA, the Code and the Determination, 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.<sup>32</sup>

## Adequate and appropriate supervisory arrangements

41. There is no precise definition of what constitutes adequate and appropriate supervisory arrangements. What is adequate and appropriate should be determined on the basis of the specific facts of a particular case.
42. 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. Guidance can be taken from case law considering these concepts and balancing these considerations.
43. Administrative Appeals Tribunal (AAT)<sup>33</sup> cases decided under the *Income Tax Assessment Act 1936* (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, and
  - 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.

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<sup>32</sup> APESB standard *APES 320 Quality Control for Firms* (APES 320) also applies to registered tax practitioners who are members of one of the joint accounting bodies. Paragraph 61 of APES 320 considers the elements of engagement supervision, including the tracking of progress, and considering of the competence and capabilities of individual members of the engagement. See [www.apesb.org.au](http://www.apesb.org.au).

<sup>33</sup> The Administrative Review Tribunal has replaced the Administrative Appeals Tribunal on 14 October 2024.

44. As the TPB must consider the meaning of supervision and control under the TASA in relation to relevant experience and the prohibition on tax agents and BAS agents signing declarations or statements in relation to a taxpayer under a taxation law in the circumstances set out in section 50-30 of the TASA, these principles are equally applicable to the TPB under the TASA. The TPB recognises that although working patterns have changed over time with an increasing prevalence for workplaces to operate in a remote or digital setting, the principles drawn from the AAT cases continue to remain relevant.
45. Some key examples of these cases are provided in the [Appendix – Case examples](#).
46. The following considerations may be relevant in determining whether adequate and appropriate supervision and control has been, or is being, exercised<sup>34</sup>:
- the level and depth of oversight undertaken over the provision of tax agent or BAS services,<sup>35</sup> 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<sup>36</sup>, 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<sup>37</sup>
  - 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<sup>38</sup>
  - supervision and control, at the very least, requires periodic and ‘spot’ checks of material prepared by staff and supervision of office work<sup>39</sup>
  - it is not necessary for there to be an employer-employee relationship in relation to the person performing or doing a particular thing for there to be adequate supervision and control<sup>40</sup>

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<sup>34</sup> For registered tax practitioners who are members of one of the joint accounting bodies, consideration should also be given to paragraphs 39 and 57 of APES 320, which consider factors relating to competence, capabilities and resources, in addition to factors in determining the level of supervision required. See [www.apesb.org.au](http://www.apesb.org.au).

<sup>35</sup> *Re S & T Income Tax Aid Specialists Pty Ltd and Christopher Forward and Tax Agents' Board of New South Wales* 87 ATC 2001 at 2006; *Scott v Tax Agents' Board of Queensland* 2001 ATC 2218 at 2254.

<sup>36</sup> Substantial supervision means ample or a considerable amount of involvement. It requires more than simply being involved from time to time.

<sup>37</sup> *Re S & T Income Tax Aid Specialists Pty Ltd and Tax Agents' Board of New South Wales* 87 ATC 2001 at 2006; *Re Cafferty and Tax Agents' Board of NSW* [2004] AATA 560.

<sup>38</sup> As above

<sup>39</sup> As above; *Re Scott and Tax Agents' Board of Queensland* 2001 ATC 2218 at 2254

<sup>40</sup> Explanatory Statement to the Tax Agent Services Regulations 2009, at 13.

- the degree of control over the way in which a person carries out their work will be indicative of the level of control<sup>41</sup>.

47. The following considerations may also be relevant to ensure that adequate and appropriate supervision and control is undertaken by a registered tax practitioner:

- 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 the 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<sup>42</sup>
- ensuring substantive review and sign-off work is conducted prior to sending work to a client, or submitting returns on behalf of a client<sup>43</sup>
- 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.

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<sup>41</sup> *City Motors Pty Ltd v Commissioner of State Taxation (WA)* 93 ATC 4742; *Roy Morgan Research Centre Pty Ltd v The Commissioner of State Revenue* 97 ATC 5070 (these cases were decided in the context of determining whether there was an employer/employee relationship between entities. The comments in relation to what constitutes 'control' are still, however, instructive in interpreting the requirements for supervision and control under the TASA and the meaning of supervisory arrangements.

<sup>42</sup> Section 40 of the Determination requires tax practitioners to establish, maintain, document and enforce a quality management system to provide confidence that they are compliant with the Code. Refer to paragraph 78 of this Information sheet for further information.

<sup>43</sup> Refer to the Explanatory Statement (ES) to the Determination at page 13.



48. One mechanism for ensuring that adequate and appropriate arrangements are in place is through the development of a plan setting out the supervisory arrangements. The plan should set out the processes and procedures in place to ensure that the tax agent or BAS services provided are of a competent standard, and there is adequate and appropriate supervision and control in place. The supervisory plan should cover the considerations outlined in paragraphs 46 and 47 above.
49. It is the TPB's view that developing a supervisory plan can assist tax practitioners to establish a clear understanding of the responsibilities of supervisors and staff under the plan and ensure that the supervision and control is adequate and appropriate. As such, the TPB strongly recommends the use of a supervisory plan as a means of establishing the specific processes and procedures in place for the supervisory arrangement, and to assist in compliance with the Code and the Determination.
50. However, a supervisory plan alone may not necessarily demonstrate that there is adequate and appropriate supervision and control in place. Whether the supervisory plan is adequate and appropriate will be assessed on a case-by-case basis, taking into account all of the facts and circumstances, including the steps taken to ensure compliance with the plan.

## Remote supervisory arrangements

51. The concept of 'remote' supervisory arrangements is not defined in the TASA and therefore takes its ordinary meaning.
52. The Macquarie Dictionary<sup>44</sup> provides the following definition:  
*Remote*
  1. Far apart; far distant in space.
  2. Distance from main population centres.
  3. Out-of-the-way; secluded.
  5. Distant in relationship or connection.
53. Remote supervisory arrangements refer to arrangements where supervision and control is exercised from a different location, including in relation to outsourcing and offshoring arrangements.<sup>45</sup> It may also refer to remote supervisory arrangements where the supervisor and the supervised entity are employed by different entities.
54. The TPB notes that while it may be ideal that supervision and control be undertaken within a practice or business, physical proximity to the person carrying out the work on behalf of the registered tax practitioner is not necessarily indicative of the adequacy or appropriateness of the supervision and control arrangements in place.

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<sup>44</sup> *The Macquarie Dictionary*, [Multimedia], version 5.0.0.

<sup>45</sup> For more information about adequate supervisory arrangements where tax agent or BAS services have been outsourced or offshored, see TPB Practice Note [TPB\(PN\) 2/2018 Outsourcing and offshoring of tax services – Code of Professional Conduct considerations](#).

55. In addition to the factors outlined in paragraphs 46 and 47 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 at all times 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.<sup>46</sup>

56. A determination of whether the supervision is adequate and appropriate will be a question of fact having regard to the particular circumstances of the arrangement.

57. As noted at paragraphs 48 and 49 above, the TPB strongly recommends the use of a supervisory plan as a means of establishing the specific processes and procedures in place for the remote supervisory arrangement, and to assist in compliance with the Code and the Determination. In addition to the factors set out in paragraphs 46 and 47 above, where remote supervisory arrangements are in place, the supervisory plan should also cover the considerations outlined in paragraph 55 above.

58. 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.

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<sup>46</sup> These considerations have been drawn from guiding principles established by other regulators, including the Financial Adviser Standards and Ethics Authority (FASEA), the Australian Securities and Investments Commission (ASIC), Law Society of New South Wales and Victorian Legal Services Board.

## Circumstances where a registered tax practitioner is unlikely to carry out adequate remote supervisory arrangements

59. The following is an example of where the TPB is unlikely to be satisfied that adequate and appropriate remote supervisory arrangements are in place.

### Example 3

XYZ Pty Ltd has been a registered tax agent with the TPB since 1 July 2018. Steven, a registered tax agent, is the sole director of the company and the nominated supervising agent.

Amanda provides tax agent services on behalf of XYZ Pty Ltd. She is not registered with the TPB.

As the nominated supervising agent for XYZ Pty Ltd, Steven is responsible for the supervision and control of Amanda who is located in an interstate office. As part of the supervisory arrangements XYZ Pty Ltd has in place, Steven:

- undertakes spot checks of Amanda's work intermittently
- has infrequent Skype check-ins with Amanda which are often cancelled
- has provided Amanda with a suite of training material but has not undertaken any training or mentoring of Amanda himself
- has no remote supervisory arrangement plan in place.

In these circumstances, the TPB is unlikely to be satisfied that XYZ Pty Ltd has adequate and appropriate remote supervisory arrangements in place. There is no remote supervisory arrangement plan setting out the nature of the remote supervisory arrangement, contact with Amanda is irregular and insufficient, and there is no agreed schedule for check-ins, training or review of work undertaken by Amanda on behalf of XYZ Pty Ltd.

## Holding multiple supervisory roles

60. The TPB acknowledges that a registered tax practitioner carrying out supervisory arrangements may be doing so for multiple related or unrelated entities, or both.
61. Where a registered tax practitioner is carrying out supervisory arrangements for multiple related entities, due consideration must be given to the factors outlined in paragraphs 46 and 47 above. Where the supervisory arrangements involve unrelated entities, due consideration must also be given to the factors outlined in paragraph 55 above.
62. In addition, 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.

### **Circumstances where a registered tax practitioner holding multiple supervisory roles is unlikely to carry out adequate supervisory arrangements**

63. The following is an example of where the TPB is unlikely to be satisfied that adequate and appropriate supervisory arrangements are in place where the registered tax practitioner holds multiple supervisory roles.

#### **Example 4**

Gaby is a registered BAS agent. She is the sole director and nominated supervising agent of a registered BAS agent company. She employs 10 staff to undertake BAS services on behalf of the registered BAS agent company. Of the 10 staff:

- a) 2 are recent graduates with less than 6 months experience
- b) one staff member has 5 years of experience in providing BAS services
- c) the remaining staff members have 2 years of experience.

The staff member with 5 years of experience will on occasion assist in the review of work undertaken by and the training of the 2 graduates.

Gaby is also the nominated supervising agent for 3 unrelated entities. All 3 entities are registered BAS agent companies and Gaby is the sole supervising agent for each.

Gaby's registered BAS agent company provides BAS services to 50 small businesses, each with an annual turnover of less than \$2 million. The unrelated entities' client base includes mostly medium enterprises with annual turnovers of between \$10 and \$100 million and more complex tax affairs. These unrelated entities have approximately 150 clients each.

In these circumstances, the TPB is unlikely to be satisfied that there are adequate and appropriate supervisory arrangements in place for Gaby's registered BAS agent company, as well as the unrelated entities, given the number of clients, the size and complexity of the tax affairs of the clients, and Gaby's responsibility to her own client base.

## **Code of Professional Conduct**

64. The Code sets out the professional and ethical standards that registered tax practitioners are required to comply with. It outlines the duties that registered tax practitioners owe to their clients, the TPB and other registered tax practitioners.

65. The Code is contained in section 30-10 of the TASA and provides some guidance in relation to the meaning of competence. In particular, sub-sections 30-10(7) to (10) of the TASA, which all fall under the key principle of 'competence', require that registered 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.
66. Of most relevance in the context of supervisory arrangements is Code Item 7 which provides that you must ensure that the tax agent or BAS service provided on your behalf is provided competently.
67. To ensure that a service provided on behalf of a registered tax practitioner is provided competently, the registered tax practitioner must be satisfied that the provider of the service, including any subcontractor, has the requisite skills and experience to provide the services on their behalf. They must also ensure that adequate supervision and control arrangements are in place to ensure the accuracy of any services provided on their behalf.
68. The level of supervision and control will depend on a range of factors including:
- the educational qualifications and extent of experience of the provider of the service
  - the nature of the actual service being provided
  - any structures or processes in place (for example, supervisory arrangements or quality assurance and control procedures) to facilitate the competent provision of tax agent or BAS services.
69. The TPB has a range of options available to it under the TASA in making findings about the conduct of registered tax practitioners. The options open to the TPB include:
- imposing sanctions for breach of the Code
  - applying for a civil penalty for breach of the civil penalty provisions
  - terminating registration on the basis that the registered tax practitioner is no longer a fit and proper person to be registered. This may include terminating the director(s) or partner(s) of a registered tax practitioner company or partnership where the director(s) or partner(s) are registered with the TPB and are found to be no longer fit and proper.

## Sections 35 and 40 of the Determination

70. The Determination contains additional obligations which relate to the professional and ethical conduct of registered tax practitioners which elaborate or supplement aspects of the Code.<sup>47</sup> Subsection 30-10(17) of the TASA requires that registered tax practitioners must comply with the Determination.
71. Subsections 35(1) and (2) respectively of the Determination require that registered tax practitioners must ensure that each entity providing tax agent services on their behalf:
- maintains knowledge and skills that are relevant to the tax agent services the entity is providing
  - is appropriately supervised, having regard to knowledge and skills of the entity, the tax agent services being provided by the entity, and the registered tax practitioner's system of quality management.
72. Subsections 40(1) and (2) respectively of the Determination require that registered tax practitioners must:
- establish and maintain a system of quality management in relation to the provision of tax agent services, designed to provide the registered tax practitioner with reasonable confidence that they are complying with the Code
  - document and enforce the policies and procedures of their system of quality management.

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

73. Subsections 35(1) and (2) of the Determination complement and extend the Code by specifically requiring individuals who provide tax agent services on behalf of registered tax practitioners to maintain sufficient skills and knowledge to provide those services competently.<sup>48</sup>
74. In practice, this requires tax practitioners to ensure unregistered staff providing tax agent services on their behalf are provided with adequate training<sup>49</sup>, to ensure that these services are provided competently.<sup>50</sup>
75. 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.<sup>51</sup>

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<sup>47</sup> Subsection 30-12(2) of the TASA.

<sup>48</sup> ES to the Determination at pages 12-13.

<sup>49</sup> Training can take various forms and does not necessarily require the provision of *formal* training.

<sup>50</sup> *Ibid* at page 13.

<sup>51</sup> *Ibid* at page 13.

76. Registered tax practitioners should refer to paragraphs 39 to 63 above for additional guidance with respect to what may be considered appropriate supervision, including in the context of remote supervisory arrangements.
77. The following is an example of where the TPB is unlikely to be satisfied that the requirements of section 35 of the Determination have been met.

#### **Example 5**

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 with the TPB. As the nominated supervising agent for Bizy B, Barry is responsible for the supervision and control of Vanessa, who 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, and
- no requirement or timeframe for Vanessa to confirm once these online training modules have been completed.

In these circumstances, the TPB is unlikely to be satisfied that Bizy B has met the requirements of section 35 of the Determination, which require Bizy B 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, and
- 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, and
- there is no requirement for Vanessa to confirm once she has completed relevant training modules.

## Quality management systems

78. For the purpose of section 40 of the Determination, 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.<sup>52</sup>
79. The extent of internal controls in place will differ significantly between tax practitioners based on the size of individual practices, level of day-to-day engagement by a tax practitioner on the tax agent services being provided, complexity of the services being provided, and the complexity of the clients' tax affairs.<sup>53</sup> 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.<sup>54</sup> Examples of these internal controls include:

- regular training of new and existing staff on their obligations under the TASA when providing tax agent services whether or not as a registered tax practitioner
- the use of information barriers where there is a conflict of interest between current and former clients
- quality assurance processes and systems to review the accuracy and standard of tax agent services being provided to clients
- authorisation and risk management processes considering potential conflicts of interest prior to accepting new clients
- file management system with access controls, limiting the users' access to confidential information
- documented reporting lines and responsibilities to ensure staff duties are effectively segregated and prevent the incidence of fraud or non-compliance
- independent internal control reviews.<sup>55</sup>

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<sup>52</sup> Refer to Note 1 at section 40 of the Determination.

<sup>53</sup> ES to the Determination at page 13.

<sup>54</sup> Ibid.

<sup>55</sup> Ibid.



80. In comparison, individual tax practitioners with a relatively small client base who are generally located in the same geographical area would require less sophisticated internal controls.<sup>56</sup> These may include:

- physical controls over filing cabinets
- conducting a conflict of interest check prior to engaging or re-engaging a client
- regularly updating software to ensure information remains confidential.<sup>57</sup>

81. The obligations in section 40 of the Determination have been informed by standards issued by the Accounting Professional and Ethical Standards Board (APESB).<sup>58</sup> Further details about appropriate quality management processes can be found in *APES 320 Quality Management for Firms that provide Non-Assurance Services (APES 320)* released by the APESB.<sup>59</sup>

82. *APES 320* requires firms to establish and maintain a system of quality management that includes policies and procedures which address each of the following elements:

- Governance and leadership
- Professional standards
- Acceptance and continuance of client relationships and specific engagements
- Resources
- Engagement performance
- Information and communication
- Monitoring and remediation.<sup>60</sup>

83. *APES 320* also requires firms to document their policies and procedures and communicate them to their personnel.<sup>61</sup> Whilst the requirements under *APES 320* are more prescriptive than the requirements of the Determination, tax practitioners must ensure that their quality management systems are also consistent with the requirements of the TASA, as outlined in the TPB's guidance.

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<sup>56</sup> Ibid at page 14.

<sup>57</sup> Ibid.

<sup>58</sup> Refer to Note 2 at section 40 of the Determination.

<sup>59</sup> ES to the Determination at page 14. Refer to *APES 320 Quality Management for Firms that provide Non-Assurance Services (APES 320)* as reissued by the APESB in February 2022 and published on the APESB website. Accessible at: [https://apesb.org.au/wp-content/uploads/2022/02/APES\\_320\\_reissued\\_Feb\\_2022.pdf](https://apesb.org.au/wp-content/uploads/2022/02/APES_320_reissued_Feb_2022.pdf).

<sup>60</sup> APES 320 at paragraph 3.5.

<sup>61</sup> Ibid at paragraph 3.6.

84. Registered tax practitioners must also consider the impact of broader organisational policies and procedures on compliance with the Code, the Determination and integrity, including policies and procedures relating to:

- recruitment
- training
- supervision
- information sharing
- reporting
- record-keeping
- security
- information technology
- human resources
- dealing with complaints
- workplace culture.<sup>62</sup>

85. Registered tax practitioners are required to exercise their professional judgment in determining the appropriate controls in their circumstances by considering a range of factors, including the size, nature and clientele of their practice.<sup>63</sup> For example, a sole practitioner without staff would not be required to have controls in relation to recruitment and other staff related matters. Registered tax practitioners are also required to document and enforce the policies and procedures of their system of quality management.<sup>64</sup>

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<sup>62</sup> ES to the Determination at page 14.

<sup>63</sup> Ibid.

<sup>64</sup> Subsection 40(2) of the Determination.

86. The following is an example of where the TPB is unlikely to be satisfied that the requirements of section 40 of the Determination have been met.

#### **Example 6**

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 with the TPB. The company maintains a sufficient number of individual registered tax agents to provide tax agent services to a competent standard, and to carry out supervisory arrangements.

Koality last reviewed and updated its quality management policies and procedures 5 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 requirements of section 40 of the Determination, which requires Koality to:

- establish and maintain a system of quality management, in relation to the provision of tax agent services, designed to provide them with reasonable confidence that they are complying with the Code, and
- adequately document and enforce these policies and procedures.

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.

## Consultation questions

87. The TPB welcomes submissions addressing any aspects of this draft TPB(I) as it relates to proposed changes to *TPB(I) 36/2021 Supervisory arrangements under the Tax Agent Services Act 2009*. The following consultation questions may assist you in providing feedback:

Consultation questions	
Q1	Do you have any general comments regarding the guidance on the obligation under section 35 of the Determination, contained within paragraphs 73 to 77 of this draft TPB(I)?
Q2	Do you have any general comments regarding the guidance on the obligation under section 40 of the Determination, contained within paragraphs 78 to 86 of this draft TPB(I)?
Q3	Do you consider the suggested internal controls outlined at paragraphs 79 and 80 of this draft TPB(I), in relation to quality management systems for large firms and individual tax practitioners respectively, to be adequate and appropriate? If no, please provide further detail including any additional suggestions of internal controls that should be included.
Q4	Are there additional case study scenarios that would assist registered tax practitioners in understanding how the obligations under sections 35 and 40 of the Determination apply practically? If so, what types of scenarios should be addressed?

## Appendix – Case Examples

### **Re: S & T Income Tax Aid Specialists Pty Ltd and Christopher Forward and Tax Agents' Board of New South Wales 87 ATC 2001**

As a result of information received, the Board cancelled the registration of S & T as it was satisfied the company was guilty of misconduct and was not fit and proper to remain a registered tax agent. Furthermore, the Board was satisfied that the nominees of the company were not exercising the necessary supervision and control required by section 251N. The company applied for a review of the Board's decision cancelling its registration.

The AAT (Deputy President Bannon QC, Members Stevens & Taylor) considered if certain actions of the company (through its managing director), created sufficient grounds for the company's registration to be cancelled. Two of the actions alleged were:

1. permitting a person who was not an employee of the company to prepare returns that were then lodged in the name of the company as a registered tax agent
2. failing to ensure the necessary supervision and control of nominees of the company.

The AAT found that the evidence justified a positive finding in relation to the first matter. The company allowed a person who was not an employee to prepare tax returns that were lodged in the name of the company. The managing director of the company checked the returns, but the AAT was satisfied that the supervision required by the ITAA 1936 did not exist. The AAT noted that in the case of a company, the ITAA 1936 requires that returns be prepared and supervised by employees of the registered agent. This had not occurred.

In relation to the issue concerning supervision and control, the AAT said:

Section 251N requires much more than that the nominee supervise the preparation of a tax return in the sense of checking a document prepared by an unskilled employee in order to see if the figures appear reasonable. The evidence established that unqualified employees (termed consultants) interviewed the client, examined the client's expenditure receipts and vouchers and entered the particulars in a tax return form, generally a salaried employee's return. The client's receipts and vouchers were then returned to the person concerned. The next step was for the completed document to be perused and checked by another consultant who was provided with a tape check on the figures therein. If these matched and the return appeared reasonable, it was passed to a manager for further checking before being passed to a nominee for their perusal and checking prior to signing or, if any doubt arose as to its correctness, for the taking of appropriate action.

Evidence was given that the nominee would take one to three minutes to deal with an 'S' return. Section 251N calls for much more than this. It requires supervision and control of the preparation of the returns and of the business transacted by S & T relating to any income tax return or income tax matter. This involves, in our opinion, at least making spot checks on the accuracy of the initial material from which the returns are prepared and supervising the office work. S & T's nominees have in many cases done no more than a few hours work in moonlighting jobs over and above their normal employment, making a rough appraisal of the completed work of unqualified employees of S & T. When the Act speaks of the nominee being an employee and supervising the

work it is really calling for substantial supervision and employment while the agent's office is open to transact tax business.

Despite finding that the business of the company lacked the requisite degree of supervision and control, the AAT nonetheless exercised the discretion conferred by section 251K and set aside the Board's decision to cancel the registration of the company.

### **Re: McGowan and Tax Agents' Board of Queensland 96 ATC 2056**

The applicant sought review of a decision of the Board to reject his application for registration as a tax agent. Before the AAT (Senior Member Muller (as he was then)), one of the issues was whether or not the applicant had been adequately supervised during his employment.

The AAT found that the applicant was supervised by a registered tax agent for 7 years and that for 9 months of each year the applicant physically shared the same office as the tax agent. For the remaining three months, the applicant and the tax agent were based in the same building. In addition, for 3 of these years, the applicant was supervised by a tax agent – they were in contact with each other virtually on a daily basis in busy times and about twice per week during less hectic periods. Approximately 15 per cent of returns prepared by the applicant were spot-checked by the tax agent.

On the basis of these findings, the AAT concluded that the supervision of the applicant by the tax agents was sufficient in the circumstances to constitute proper supervision in accordance with the Act and regulations.

### **Re: Scott and Tax Agents' Board of Queensland [2001] AATA 435; [2001] ATC 2218**

The applicant applied for a review of the Board's decision to cancel her registration as a tax agent. There were a number of matters in issue before the AAT (Deputy President Forgie, Members Way & Horrigan), one of which concerned whether or not the applicant had breached subsections 251N(1) and (2A).

The applicant's husband and one of her sons prepared client income tax returns on behalf of the applicant. The applicant claimed that she supervised them in this.

The applicant was found to be in breach of subsection 251N(2A), in that she failed to exercise supervision and control over her husband and son and an employee. In relation to income tax returns prepared by these people, the applicant checked that returns had been completed and looked at a checklist. However, she did not go further and conduct spot checks of particular income tax returns to see whether they were correct and that claims made were justified.

The AAT affirmed the Board's decision to cancel the applicant's registration as a tax agent.

### **Re: Cafferty and Tax Agents' Board of New South Wales [2004] AATA 560**

This case related to a refusal to grant original registration on the basis that the applicant had failed to satisfy the 'relevant employment' requirement under Regulation 156 of the Income Tax Regulations 1936. Here the applicant relied on a period of work performed for an accounting firm during which he prepared tax returns individually and referred these returns to his

supervisor (a public accountant) for final checking. While the supervision model involved a general lack of supervision of the applicant in his day-to-day work, the supervisor cleared all matters that were to leave the office.

Senior Member M J Sassella, in citing *Re: Underwood v Tax Agents' Board of Queensland* ('Underwood') emphasised that an employee must be adequately supervised in order to have engaged in 'relevant employment' under Regulation 156. In such a case involving the demonstration of employment, the level of supervision was inadequate as it was carried out only at the end of the process, and therefore more closely reflected the position of a self-employed accountant.