



Australian Government



# INFORMATION FOR TAX PRACTITIONERS

## KNOW YOUR OBLIGATIONS WHEN EMPLOYING OR USING A DISQUALIFIED ENTITY TO PROVIDE TAX AGENT OR BAS SERVICES ON YOUR BEHALF

### Overview

Under Code of Professional Conduct (Code) item 15, if you know (or ought reasonably to know) an entity is a disqualified entity, you must not employ or use the entity to provide tax agent or BAS services on your behalf, without the approval of the Tax Practitioners Board (TPB).

This obligation assists in protecting consumers, reducing tax fraud and ensuring those providing tax agent or BAS services have appropriate ethical and professional standards.

Code item 15 does not apply to individuals or entities only providing peripheral and non-tax services, such as administrative support.

### Who is a disqualified entity?

An entity will be a 'disqualified entity' if a disqualifying event has occurred within the last 5 years. See events list below.

An entity cannot be a disqualified entity if they are currently registered as a tax agent, BAS agent or qualified tax relevant provider (QTRP).

### Does an entity provide tax agent or BAS services on your behalf?

An entity provides tax agent or BAS services on your behalf if they are required to be under your supervision and control in providing the service.

These entities can include employees, associates, contractors, or any other entity that provides tax agent or BAS services on your behalf, even if these services are outsourced or provided offshore.

## DISQUALIFYING EVENTS

- Has been convicted of a serious taxation offence.
- Has been convicted of a serious offence (an offence against an Australian law that is punishable by imprisonment for a period exceeding 12 months).
- Has been convicted of an offence involving fraud or dishonesty.
- Has been penalised for being a promoter of a tax exploitation scheme.
- 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.
- Has become an undischarged bankrupt (even if they are no longer an undischarged bankrupt) or gone into external administration.
- Has been found to have contravened the *Tax Agent Services Act 2009* (TASA) by the TPB or a Court.
- Has had sanctions imposed for failing to comply with the Code.
- Has had their registration or renewal application rejected for eligibility reasons other than education or experience requirements.
- Has had their registration terminated due to an event affecting their continued registration had occurred, ceasing to meet a tax practitioner registration requirement or breaching a condition of registration.

## Determining if an entity is disqualified

You must take reasonable steps and make reasonable enquiries to determine if an entity you employ or use, to provide tax agent or BAS services on your behalf, is a disqualified entity.

As a minimum, follow these steps:

1. Check the [TPB Public Register](#) and ASIC's [Financial Advisers Register](#) to see if the entity is currently registered as a tax agent, BAS agent or QTRP. If they are registered, they cannot be a disqualified entity.
2. Check the TPB Public Register for details of any TPB sanctions or disciplinary actions imposed on the entity, or any rejected applications for registration or renewal, within the last 5 years.
3. Undertake [proof-of-identity checks on the entity](#), discuss the requirements of Code item 15 and obtain written confirmation (using [our form](#)) that they are not a disqualified entity.
4. Have a written contract or agreement with the entity to notify you as soon as possible if a disqualifying event occurs and to ensure the entity does not provide tax agent or BAS services on your behalf, unless and until you have received TPB approval.

## Options when an entity is disqualified

If you know an entity is a disqualified entity, you must:

- not commence employing or using the entity to provide tax agent or BAS services on your behalf, or
- take steps to ensure the entity stops providing tax agent or BAS services on your behalf.

You may apply to the TPB for approval for the entity to provide tax agent or BAS services on your behalf using our [approved form](#).

A disqualified entity must not provide tax agent or BAS services on your behalf without you first obtaining TPB approval.

We recommend you seek independent legal advice about your obligations under employment or contract law before ceasing to employ or use the services of a disqualified entity.

## Seeking TPB approval

Before applying to the TPB for approval, you must obtain written consent from the disqualified entity using the [Disqualifying events declaration and consent form](#).

Login to [My Profile](#) to access the approved form and provide relevant information to support your application.

The TPB must make a decision within 60 days of receiving your application, or within a longer period if agreed to by you.

TPB decisions to reject an application for approval are reviewable by the Administrative Review Tribunal.

## Failure to comply

If you employ or use the services of a disqualified entity to provide tax agent or BAS services on your behalf, without the TPB's approval, you will be in breach of the Code and may be liable to sanctions for the breach, including termination of your registration.

A breach of Code item 15 may also impact on other requirements in the TASA, including:

- fit and proper person requirements to maintain registration as a tax or BAS agent
- other Code items, including Code item 1 (relating to honesty and integrity) and Code item 7 (relating to ensuring tax agent services are provided competently).

An entity that fails to notify you that they are a disqualified entity may also be liable for civil penalties.

## Record keeping

You must keep records relevant to employing or using a disqualified entity to provide tax agent or BAS services on your behalf, including notes of any discussion or documentation provided by the entity, for at least **5 years** after ceasing to employ or use them to provide those services on your behalf.

### Further information

For further information, see [TPB\(I\) 41/2024 Code of Professional Conduct – Employing or using a disqualified entity in the provision of tax agent services without approval](#).