



Australian Government



# Protect your practice

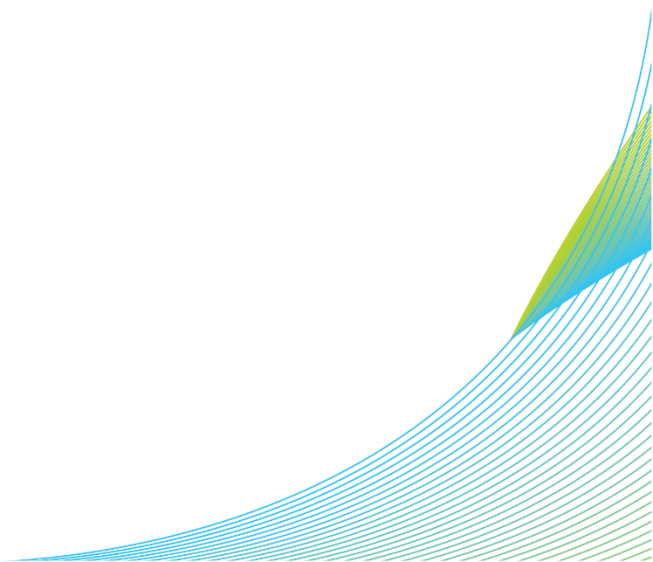
**Presented by:** Amanda Gascoigne, TPB Board Member

# Welcome

*'In the spirit of reconciliation, we respectfully acknowledge the Traditional Owners and Custodians of country throughout Australia and their connections to land, sea and community. We pay our respect to their cultures, and Elders past, present and emerging.'*

Access the presentation slides: [tpb.gov.au/webinar-hub](https://tpb.gov.au/webinar-hub)

## What we will cover today

- ✓ How to safeguard your business and clients
  - ✓ Steps to take when engaging with disqualified entities
  - ✓ How to avoid high-risk arrangements
  - ✓ Best practices for client verification and proof of identity
  - ✓ Q&A
- 

# **How to safeguard your business and clients**

# How to safeguard your business and clients



- Protecting your practice can cover a broad range of matters across the TASA;
  - The vast majority of tax practitioners are honest, compliant and have robust processes in place.
  - However, a small minority either engage in illegal conduct or lack safeguards in place.
- We recommend taking appropriate checks to engage people to provide tax or BAS services on your behalf and onboard new clients into your practice.

# **Steps to take when engaging with disqualified entities**

# Who are disqualified entities?

- You have Code obligations when using disqualified entities to provide tax or BAS services on your behalf.
- Under TASA: an entity **not** registered as a tax practitioner or qualified tax relevant provider and has had certain events in the last 5 years.
- Any entity currently registered (tax agent, BAS agent, QTRP) is not a disqualified entity.
- An 'entity' includes individuals, companies, partnerships and trusts.



# Disqualified entity events



- Convicted of a serious taxation offence.
- Convicted of a serious offence (>12-month imprisonment).
- Convicted of a fraud/dishonesty offence.
- Penalised for promoting or implementing a tax exploitation scheme or misusing a product ruling.

The entity has:

- Become an undischarged bankrupt or gone into external administration.
- Found to have contravened the TASA or had Code sanctions imposed.
- Had a registration or renewal rejected for eligibility reasons (other than education/experience).
- Had registration terminated due to:– an event affecting continued registration – no longer meeting a registration requirement– breaching a registration condition.



# Code obligations

- **Code item 15** – you must not employ or use the services of an entity that you know (or ought reasonably to know) is a disqualified entity, to provide tax agent services (including BAS services) on your behalf, unless you have obtained our approval.
- **Code item 16** – prohibits you from having certain arrangements, with an entity that you know (or ought reasonably to know) is a disqualified entity, in connection with the provision of tax agent services, including BAS services.



## Identifying a disqualified entity



- You must take reasonable steps and make reasonable enquiries to determine if an entity you employ or use to provide tax agent services on your behalf is a disqualified entity.
- These reasonable steps and enquiries are expected to include new information gathering processes for entities providing tax agent services on your behalf such as:
  - Onboarding requirements for new employees or other entities.
  - Employee reporting processes or contractual notification requirements for non-employee entities.

# Steps in identifying a disqualified entity

## Step 1

- Check if the entity is (or was previously) registered – use the TPB public register at [tpb.gov.au](http://tpb.gov.au).
- Check if the entity is currently registered as a QTRP with ASIC using their financial advisers register.



# Steps in identifying a disqualified entity

## Step 2

- Conduct proof of identity (POI) checks – similar to the POI checks you are required to undertake on your clients.
- Discuss the requirements of Code Item 15 and 16 with the entity.
- Obtain written confirmation from the entity that they have not had a disqualifying event occur in the last 5 years and use the Disqualifying events declaration form to get this consent. This must be retained for 5 years after ceasing relationship with the entity.
- Have a written contract or arrangement with the entity that requires them to notify you immediately and enables you to immediately cease employing them if they become disqualified.
- Be aware of obligations under employment and contract law.

# Disqualified entities notification

- A disqualified entity must notify you in writing of their disqualified status before they are used or employed to provide tax agent services on your behalf, or enter an arrangement with you in connection with tax agent services you provide.
- Notification must be made **within 30 days** of when they become aware (or ought to have become aware) they are a disqualified entity.
- If they fail to give notice, they may be subject to civil penalties – the maximum penalty is 250 units for an individual and 1,250 units for a body corporate. The current value of a penalty unit is \$330.



## Seeking our approval



- You must obtain written consent from the disqualified entity before applying to us for approval.
- To lodge an application, simply login to My Profile to access our approved form.
- We must make a decision within 60 days of receiving the application, unless we have agreed on a longer period.
- If we reject your application, we will provide you with the reasons for the decision.
- If we do not make a decision within 60 days (or the agreed longer period), your application is taken to be rejected.
- If your application is rejected, you can apply to the Administrative Review Tribunal for a review .

# Arrangements prohibited by code item 16

- Code item 16 prohibits you from having certain arrangements with a disqualified entity in connection with the provision of tax agent services.
- The term 'arrangement' is defined broadly and can include agreement or undertaking whether express or implied.
- Code item 16 is intended to prevent arrangements where the disqualified entity is operating 'through' the registered tax practitioner
- This may occur where the disqualified entity is acting as the 'controlling mind' of the registered tax practitioner
- The circumstances can vary significantly and will be considered on a case-by-case basis.
- Unlike code item 15, arrangements under code item 16 are prohibited and cannot be approved.

## Scenario 1



- Sebastian, a registered tax practitioner, wishes to enter into a contract with Head Pty Ltd for the provision of tax agent services on his behalf.
- Head Pty Ltd has two employees, Mark and Nancy, who are also not registered tax practitioners.
- Nancy is a disqualified entity.
- To meet his obligations under Code item 7, Sebastian is required to provide adequate supervision and control over the services provided by Head Pty Ltd and its staff on his behalf.
- Sebastian is also required to ensure that he has TPB approval to use any disqualified entities in providing tax agent services on his behalf.
- Sebastian makes an application to the TPB for approval.
- The TPB approves the application for Sebastian to use Nancy, as employee of Head Pty Ltd, to provide the tax agent service on his behalf.



## Scenario 2



- Cheryl is a disqualified entity and seeks to enter into an arrangement with James who is a registered tax practitioner, in connection with the tax agent services provided by James.
- James undertook POI enquiries with respect to Cheryl and discussed the disqualifying events that could prevent her entering the arrangement
- James received a written declaration from Cheryl that none of the events applied to her. James searched for Cheryl on the TPB public register and her details did not appear.
- James ensured that the arrangement with Cheryl included terms requiring whether she is (or becomes) a disqualified entity.
- During the period of the arrangement James discovers that Cheryl is a disqualified entity and ceases his arrangements with Cheryl immediately.
- James has undertaken reasonable enquiries and has complied with his obligations under Code item 16.

# **WHY COMPLIANCE MATTERS**

# Why the disqualified entities amendment was introduced

- The Explanatory Memorandum of the Treasury Laws Amendment (2023 Measures No.1) Bill amended the TASA to raise ethical and professional standards for tax/BAS services.
- Recommendation 4.6 of the Bill introduced obligations that disqualified entities must disclose their status, and tax practitioners must not employ/use or enter arrangements with disqualified entities without TPB approval.



# Why compliance matters



Your professional obligations under the TASA requires you to Comply with the Code of Conduct, including:

- Ensure all services are provided competently.
- Avoid false or misleading statements, even if unintentional.
- Not make materially false or misleading statements to the TPB, ATO or other government agencies.

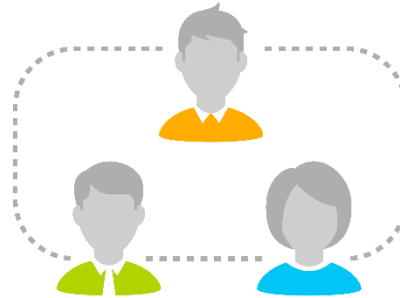
Why it protects your practice:

- Reduces exposure to sanctions.
- Strengthens trust through transparent behaviour.

# **Protecting your practice with proof of identity checks**

# Why client verification is important

- Taking steps to verify your clients' identity is important to protect;
  - your business
  - the Australian community; and
  - our tax and superannuation systems.
- Remote working has increased reliance on technology. This has resulted in identity theft significantly increasing.



## Relevant TASA provisions

If you fail to take appropriate POI steps you may breach:

- Code item 1 – acting honestly and with integrity.
- Code item 7 – ensuring tax agent services are provided competently.
- Code item 9 – taking reasonable care to ascertain a client's state of affairs.
- The fit and proper requirement.
- Section 50-20 of the TASA – which may be breached if you make statements or lodge documents with the ATO that are false, incorrect or misleading.

# Minimum requirements – individuals



- We expect you to undertake POI prior to providing services.
- For individual clients, you need to verify the client's full name and either their residential address or date of birth.
- For individual clients using a representative, you need to verify:
  - both the client's and their representative's full names and either their residential addresses or dates of birth; and
  - the authority of the representative to engage you on behalf of the client.



# Evidence to verify an individual's identity



- For individual clients and representatives, one primary photographic identification document (or ID for short) will be sufficient.
- If there is no photo ID, both a primary non-photographic ID and a secondary ID will need to be sighted.
- Primary non-photographic ID will include documents such as an Australian or foreign birth certificate, citizenship certificate, or a government issued concession card such as pensioner concession card, or a health care card.
- Secondary IDs could include a Medicare card, council rates notice or a utilities bill issued within the past three months, or an ATO or other government agency notice issued in the past year.

# Evidence to validate representative of an individual client

- To verify the authority of individual representatives to act on behalf of individual clients, you can use official or legal documents such as:
  - an enduring power of attorney; or
  - a letter of authority.
- To verify a parental or guardianship relationship for a representative, you can sight a:
  - birth certificate
  - adoption paper
  - court order
  - letter of authority; or
  - signed doctor's letter with explanation of circumstances.

# Minimum requirements – non-individuals

For non-individual clients with an individual representative verify the:

- representative's full name and either their residential address or date of birth
- non-individual client's full name and either its ABN, ACN or any other details that will help to assess their identity
- authority of the representative to engage on behalf of the non-individual client.



# Evidence to validate a non-individual representative

- To verify the authority of individual representatives to act on behalf of non-individual clients, documents such as a:
  - current ASIC company extract identifying the individual representative as a public officer
  - trust deed, or
  - partnership agreement can be used.
- Using your professional judgement and expertise, to verify that the individual is authorised to represent the client.

# Document verification checks

- When sighting documents ensure the photo matches the details of the client and/or their representative.
- Make sure the name, address and date of birth all match the information provided.
- Where you have followed ATO guidance, you should generally meet our requirements too.



# Electronic and remote verification

- We strongly recommend you don't use email for communicating sensitive information, unless you use an encrypted or password protected attachment.
- Use secure websites, secure online mailboxes or secure messaging.
- When engaging remotely use webcam or videoconferencing to sight documents – record a note of the checks done.
- In circumstances where you engage with clients online and without a visual medium, refer to the ATO's requirements.



# Well established clients

- Assess the need to conduct POI checks on well-established clients by considering:
  - The extent of your relationship with the client.
  - Is a change in details or an amendment being requested?
  - Has there been a change in circumstances?
  - Are there discrepancies in their identity or other affairs?



# Identifying discrepancies



- If you identify discrepancies, you should:
  - ask additional questions
  - ask for documentation or evidence; or
  - see if you can independently verify the information.
- If you are still unable to verify or are not satisfied, you should decline the engagement.
- You should also consider notifying us or other relevant authorities.



# Record keeping

- We do not require you to keep copies or originals of IDs.
- We do require a record for POI checks done, including:
  - date and time the checks were done
  - type of IDs sighted
  - how the documents were sighted – in person or electronically
  - who performed the checks
  - confirmation that the IDs were clear.



## Scenario 3



- Carla, provides tax agent services through her company Helpful Tax Pty Ltd (Helpful Tax). Carla, on behalf of the company, prepared and lodged Dean's income tax return 4 years ago keeping relevant records of these services.
- The ATO reviewed Dean's income tax return completed 4 years ago. Dean engages Helpful Tax to represent him in the ATO review. Carla on behalf of Helpful Tax represents Dean in the review, which is ultimately finalised 12 months later.
- While the 5-year recordkeeping period has now expired for the initial tax agent services provided, the company has provided new tax agent services to Dean in representing him in the ATO review.
- As such, the company takes steps to ensure that it keeps records that correctly record the tax agent services provided to Dean in connection with the ATO review for 5 years from the date that the services are completed. These records include documentation relating to the income tax return completed 4 years ago.



**Questions**

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