Australian Government | TAX PRACTITIONERS BOARD

TPB Guidance Statement TPB(GS) 50/2024

False or misleading statements

Disclaimer

This is a Tax Practitioners Board (TPB) Guidance Statement (TPB(GS)).

This document is intended as information only. It provides information regarding the TPB's position on the application of section 15 of Tax Agent Services (Code of Professional Conduct) Determination 2024 (Determination).

While this TPB(GS) seeks to provide practical assistance and explanation, it does not exhaust, prescribe or limit the scope of the TPB's powers in the *Tax Agent Services Act 2009* (TASA). In addition, please note that the principles, explanations and examples in this TPB(GS) 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 and the Determination for the precise content of the legislative requirements.

Document history

This TPB(GS) was originally issued as an exposure draft on 24 October 2024. The TPB invited comments and submissions in relation to the information contained in it by 21 November 2024. The TPB considered all the comments and submissions received, and published the TPB Information Sheet *TPB(I) 45/2024 False or misleading statements* on 23 December 2024. This is based on the TASA as at the date of issue.

On 23 December 2025, this TPB(GS) was updated to make a number of minor edits and to further clarify the requirements of the provision (section 15).

On 30 April 2026, the TPB renamed its 'Information Sheet' to 'Guidance Statement'. All references in this document have been updated accordingly. The TPB Information Sheet TPB(I) 45/2024 False or misleading statements has been archived.

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False or misleading statements

Introduction

1. This Guidance Statement (TPB(GS)) has been prepared by the Tax Practitioners Board (TPB) to assist registered tax agents and BAS agents (collectively referred to as 'registered tax practitioners') to understand their obligations under section 15 of the Tax Agent Services (Code of Professional Conduct) Determination 2024 (Determination).

2. While the focus of this TPB(GS) is on the obligations in section 15 of the Determination, it is important to note that there are also 17 obligations in the Code of Professional Conduct (Code),[1] additional obligations in the Determination, and further requirements that registered tax practitioners must comply with under the *Tax Agent Services Act 2009* (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.[2]

3. In this TPB(GS), you will find the following information:

   - Background to the legislative requirements (paragraphs 4 to 9)
   - Overview of the requirements (paragraphs 10 to 15)
   - The Code obligation (paragraphs 16 to 39)
   - Required action after a false or misleading statement has been made to the TPB or Australian Taxation Office (ATO) (paragraphs 40 to 138)
   - Statements made to other Australian government agencies (paragraphs 139 to 141)
   - Application of the Code obligation to more than one tax practitioner within the same entity (paragraph 142)
   - Breach reporting obligations for registered tax practitioners (paragraphs 143 to 145)
   - Application date of the new requirements under section 15 of the Determination (paragraph 146)
   - Other considerations - civil penalties and criminal liability for making false or misleading statements (paragraphs 147 to 153)
   - Case studies (paragraph 154)
   - Appendix 1 – illustration of requirement to notify the TPB and ATO (page 47).

Background

4. Section 30-10 of the TASA contains the Code, comprising 17 items which regulate the personal and professional conduct of all registered tax practitioners.

5. 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.

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[1] The provisions of the Code are contained in section 30-10 of the TASA. The TPB has also published a guidance statement that sets out its views on the application of the Code. Refer to the TPB Guidance Statement TPB(GS) 01/2010 Code of Professional Conduct .
[2] For further information, see the TPB Guidance Statement TPB(GS) 02/2010 Fit and proper person.

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6. 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[3]
   - **1 January 2025** – for any other registered tax practitioners.[4]

7. Therefore, the obligations under section 15 of the Determination applies to false or misleading statements made on or after the relevant application date under paragraph 6.[5]

8. The deferred application of the new obligations provides registered tax practitioners time to develop, implement and update systems and processes necessary to meet their obligations by commencement.

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:
   - the process to finalise the Determination
   - commencement and application date
   - the TPB's approach to support implementation.

Overview of the requirements

10. Under subsection 15 of the Determination, a registered tax practitioner must not:

    - make a statement to the Board, the Commissioner or other Australian government agency; or
    - prepare a statement that you know, or ought reasonably to know, is likely to be made to the Board, Commissioner other Australian government agency by an entity; or
    - permit or direct someone else to make or prepare such a statement;

    that the registered tax practitioner knows, or ought reasonably to know, is false or misleading in a material particular, or omits any matter or thing without which the statement is misleading in a material respect, in their capacity as a registered tax practitioner or in any other capacity.

[3] This includes new registered tax practitioners with 100 or less employees that register between 1 August 2024 and 30 June 2025 inclusive.
[4] See the Tax Agent Services (Code of Professional Conduct) Amendment (Measures No. 1) Determination 2024.
[5] See subsection 100(1) of the Determination.

11. Where a registered tax practitioner made a statement, or permitted or directed someone else to make the statement (other than for a client), or made or prepared a statement, or permitted or directed someone else to make or prepare the statement (for a client) that has been given to the Board or the Commissioner, and **all** the following apply:

    a. At a time after the statement was made the registered tax practitioner had reasonable grounds to believe that the statement:
        - was either false or misleading in a material particular at the time the statement was made, or
        - omitted a matter or thing, at the time it was made, that made the statement misleading in a material particular.

    b. The registered tax practitioner had reasonable grounds to believe that the false or misleading nature of the statement resulted from:
        - a failure to take reasonable care in connection with the preparation or making of the statement; or
        - recklessness as to the operation of a taxation law; or
        - intentional disregard of a taxation law

    by the registered tax practitioner (or someone permitted or directed by the registered tax practitioner) or the client.

12. Within a reasonable period of time after the registered tax practitioner believes that the statement was materially false or misleading, the registered tax practitioner must respond and take the following actions, in Table 1, depending on their situation:

Table 1: reasonable step actions

Situation		Take reasonable steps to
1	The registered tax practitioner made the statement or permitted or directed someone else to make the statement (other than a statement made for a client)	Have the statement corrected.
2	Where the registered tax practitioner made or prepared the statement, or permitted or directed someone else to make or prepare the statement, for a client	Advise the client about all of the following: a. that the statement should be corrected; and b. the possible consequences of not taking action to correct the statement.

	Situation	Take reasonable steps to
		However, this item does not apply to the extent that doing so would be unlawful under another Australian law.
3	Where: a. the registered tax practitioner made or prepared the statement, or permitted or directed someone else to make or prepare the statement, for a client; and b. after a reasonable period of time after taking the steps mentioned in item 2 of this table, the registered tax practitioner is not reasonably satisfied that the client has corrected the statement or otherwise adequately explained the basis for the statement; and c. the false or misleading nature of the statement resulted from recklessness as to the operation of a taxation law or intentional disregard of a taxation law	Withdraw from the engagement, and professional relationship, with the client (including no longer providing any further tax agent services to the client). However, this item does not apply to the extent that: • doing so would pose an unreasonable risk to the registered tax practitioner's personal safety, or the safety of a member of their family or an at risk staff member; or • doing so would be unlawful under another Australian law.
4	Where: a. the registered tax practitioner made or prepared the statement, or permitted or directed someone else to make or prepare the statement, for a client; and b. after a reasonable period of time after taking the steps mentioned in item 2 of this table, the registered tax practitioner is not reasonably satisfied that the client has corrected the statement or otherwise adequately explained the basis for the statement; and c. the false or misleading nature of the statement resulted from recklessness as to the operation of a taxation law or intentional disregard of a taxation law	Notify the Board or Commissioner (as the case requires) that the registered tax practitioner has advised the client that a statement made to the Board or Commissioner should be corrected and they are not reasonably satisfied that their advice was acted upon. However, this item does not apply to the extent that: • doing so would pose an unreasonable risk to the registered tax practitioner's personal safety, or the safety of a member of their family or an at risk staff member; or • doing so would be unlawful under another Australian law.

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	Situation	Take reasonable steps to
	d. the registered tax practitioner has reasonable grounds to believe the client's actions have caused, are causing, or may still cause, substantial harm to the interests of others (including investors, creditors, employees, or the public)	Take any further action as the registered tax practitioner reasonably considers is needed in the public interest. However, this item does not apply to the extent that: • doing so would pose an unreasonable risk to the registered tax practitioner's personal safety, or the safety of a member of their family or an at risk staff member; or • doing so would be unlawful under another Australian law.

13. A flow chart in respect of the obligation to take action in relation to a false or misleading statement given to the TPB or ATO is provided in Appendix 1 to this TPB(GS).

14. Given the trust placed in registered tax practitioners, it is important that an appropriate balance is struck between their duties to their clients and their duties to support public trust and confidence in the integrity of the tax profession and tax system.

15. Subsection 15(2) of the Determination reflects that a registered tax practitioner has an ethical responsibility to act in the public interest by notifying regulatory authorities of the conduct of a client where there is credible evidence of substantial harm to the material interests of the broader public from serious non-compliance of the tax laws by a client.

The Code obligation

16. Section 15 of the Determination provides that a registered tax practitioner must not:

- make a statement to the Board, the Commissioner or other Australian government agency; or
- prepare a statement that you know, or ought reasonably to know, is likely to be made to the Board, Commissioner or other Australian government agency by an entity; or
- permit or direct someone else to make or prepare such a statement;

that the registered tax practitioner knows, or ought reasonably to know, is false or misleading in a material particular, or omits any matter or thing without which the statement is misleading in a material respect, in their capacity as a registered tax practitioner or in any other capacity.

Making or preparing (or permitting or directing another to make or prepare) false or misleading statements

Make

17. A registered tax practitioner will 'make' a statement if they prepare, draft or cause the statement to be made or if they permit or direct another person to make the statement. This includes statements made by or about the tax practitioner (or about the tax practitioner's affairs) or on behalf of, or about, another entity (such as a client).

Statement

18. Consistent with the concept of a 'false or misleading statement' in respect of the administration of penalties by the ATO under the *Taxation Administration Act 1953* (TAA),[6] a statement for the purposes of the TASA is anything that is disclosed for a purpose connected with a taxation law orally or in writing (and includes those made electronically). A statement includes the following:

    - statements made in correspondence, a registration and/or application form, any taxation document,[7] an activity statement, an amendment request or any other communication
    - statements made by omission, if an entity fails to include material information in a document that requires that information to be supplied.

19. Where a registered tax practitioner lodges a form, the form itself is not the statement that is made. The statement is the information at the individual labels, fields or questions, schedules or annexures. This means that a form can consist of more than one statement.

20. A statement also includes statements made to the TPB, including:

    - under the requirements to notify the TPB of a change in circumstance or a significant breach of the Code, contained in sections 30-35 and 30-40 of the TASA[8]
    - in response to formal and informal information requests made by the TPB
    - by registered tax practitioners through My Profile, for instance, in providing information relevant to a tax practitioner's registration that may or may not be published on the TPB's Public Register
    - in any other communication.

[6] Section 284-75 of the *Taxation Administration Act 1953* (TAA) imposes penalties under various circumstances where an entity (or their agent) makes a false or misleading statement to the Commissioner or other entities in limited circumstances.
[7] A *taxation document* in this context means any return, notice, statement or other document given to the Commissioner in the *approved form within the meaning of section 388-50 in Schedule 1 to the TAA.
[8] Further information in relation to notification requirements for tax practitioners is provided in the TPB Guidance Statement TPB(GS) 48/2024 Breach reporting under the Tax Agent Services Act 2009.

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21. Failing to lodge or provide a statement to the TPB or ATO will not constitute making a false or misleading statement for the purposes of section 15, however may give rise to contraventions of other obligations under the TASA, Determination and tax laws more generally.

'Permitting or directing'

22. A registered tax practitioner will 'permit or direct' someone else to prepare a statement where they give permission to, allow, instruct, provide an opportunity to, or otherwise facilitate the preparation of the statement by that other person or entity.

TPB, ATO or Australian government agency

23. In addition, these obligations will only apply where the statement is made to one of the following:

- the TPB
- the ATO
- another Australian government agency[9].

Preparing a statement that a registered tax practitioner knows, or ought reasonably to know, is likely to be made to the TPB, ATO or another Australian government agency by an entity

24. A registered tax practitioner will be taken to prepare a statement if they formulate, draft, or otherwise get it ready.

That a registered tax practitioner knows, or ought reasonably to know

25. The phrase 'know or ought reasonably to know' has two elements. The term 'know' refers to actual knowledge. The phrase 'ought reasonably to know' extends to 'constructive knowledge', where a person is taken to have knowledge about a matter, if the existence of that matter could be discovered by a reasonable and honest person in the same position as the person.[10]

Is likely to be made to the TPB, ATO or another Australian government agency by an entity

26. The registered tax practitioner must have actual or constructive knowledge that the statement prepared is likely to be made to the TPB, ATO or another government agency by an entity.

[9] For further information on the meaning of 'Australian government agency' refer to paragraphs 139 to 141 of this TPB(GS).
[10] For further information on the phrase 'know or ought reasonably to know', see paragraphs 30 to 32 of this TPB(GS).

27. The obligation will not apply if a registered tax practitioner can demonstrate that the statement prepared was **unlikely** to be made to the TPB, ATO or another Australian government agency. This may include, for example:

- a statement prepared as part of an advice or some other document or communication which is unlikely to be made or provided to the TPB, ATO or another Australian government agency
- a statement prepared to be made to an entity other than the TPB, ATO or another Australian government agency.

Permitting or directing someone else to make or prepare such a statement

28. A statement to the TPB, ATO or another Australian government agency will also be caught if a registered tax practitioner permits or directs someone else to make or prepare such a statement. This could include, for example:

- statements that a registered tax practitioner permits to be made by individuals working under the supervision and control of the registered tax practitioner
- statements that a registered tax practitioner directs another individual (such as another registered tax practitioner, a client, employee or any other person) to make.

That the registered tax practitioner knows, or ought reasonably to know, is false or misleading in a material particular, or omits any matter or thing without which the statement is misleading in a material respect, in their capacity as a registered tax practitioner or in any other capacity

29. This second component of the requirement under subsection 15(1) of the Determination includes the following three elements:

- the registered tax practitioner knows or ought reasonably to know
- that the statement is false or misleading in a material particular, or omits any matter or thing without which the statement is misleading in a material respect
- in their capacity as a registered tax practitioner or in any other capacity.

Registered tax practitioner knows or ought reasonably to know

30. The phrase 'knows or ought reasonably to know' includes actual and constructive knowledge. The nature of constructive knowledge is that the registered tax practitioner will be taken to have the knowledge of matters that, a reasonable and honest tax practitioner in their position will have in the circumstances.[11]

[11] *Consul Development Pty Ltd v DPC Estates Pty Ltd* [1975] HCA 8; (1975) 132 CLR 373 (26 February 1975).

31. Whether an honest and reasonable tax practitioner in the same circumstances as a registered tax practitioner will have constructive knowledge of a matter should be considered in the context of the professional and ethical obligations that all registered tax practitioners must comply with under the TASA, including the Code - for example:

- Code item 7 under subsection 30-10(7) of the TASA requires registered tax practitioners to ensure that the tax agent services they provide or that are provided on their behalf are provided competently[12]

- Code item 9 under subsection 30-10(9) of the TASA requires registered tax practitioners to take reasonable care to ascertain a client's state of affairs,[13] and

- Code item 10 under subsection 30-10(10) of the TASA requires registered tax practitioners to take reasonable care to ensure that the taxation laws are applied correctly to the circumstances in relation to which advice is being provided to a client.[14]

32. It follows that the appropriate skill, ethical attributes, judgement and knowledge expected and required of registered tax practitioners will inform the matters about which a registered tax practitioner will be considered to have constructive knowledge in the circumstances.

Statement is false or misleading in a material particular, or omits any matter or thing without which the statement is misleading in a material respect

33. The obligation under subsection 15(1) of the Determination is limited to statements that are false or misleading **in a material particular**, or omit any matter or thing without which the statement is misleading in a **material respect**.

34. The nature of this obligation is one of truthfulness and integrity.[15] The provision is concerned with particulars that are material in nature. This means that false or misleading particulars that are minor, insignificant, immaterial or trivial in the circumstances will not constitute a breach of section 15 of the Determination.[16]

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[12] Further information in relation to what it means to act competently is provided in the TPB Guidance Statement TPB(GS) 01/2010 Code of Professional Conduct.
[13] Further information in relation to what it means to take reasonable care to ascertain a client's state of affairs is provided in the TPB Guidance Statement TPB(GS) 22/2013 Reasonable care to ascertain a client's state of affairs.
[14] Further information in relation to what it means to take reasonable care to ensure taxation laws are applied correctly is provided in the TPB Guidance Statement TPB(GS) 23/2013 Reasonable care to ensure taxation laws are applied correctly.
[15] Explanatory Statement to the Tax Agent Services (Code of Professional Conduct) Determination 2023.
[16] Ibid.

35. The concepts of 'false statements', 'misleading statements' and 'material particulars' are further explained below.

False statements

- a statement is false if it is contrary to fact or wrong
- a statement may be false because of something contained in the statement or because something is omitted from the statement
- if a statement was correct at the time it was made but is subsequently made incorrect because of a retrospective amendment to the law, it is not later considered false (or misleading).

Misleading statements

- a statement is misleading if it creates a false impression
- it may be misleading because of something contained in the statement or because of something omitted from the statement
- the reason the statement is misleading may be because it is uninformative, unclear or deceptive.

In a material particular

- The leading case on the meaning of 'material particulars' or 'material respects' in relation to false or misleading statements is *Minister for Immigration, Local Government and Ethnic Affairs v Dela Cruz* (1992) 34 FCR 348. In that case, the Full Federal Court held that, in relation to section 234 of the *Migration Act 1958*, the term 'material', being an expression appearing in many statutes, both in Australia and overseas, requires no more and no less than that; the false or misleading particular must be of moment or of significance, not merely trivial or inconsequential. A statement will be false or misleading in a material particular if it is relevant to the purpose for which it is made and relevant to that purpose if it may, not only if it must or if it will, be taken into account in making a decision under the Act.
- A statement or particular will be 'material' where it is relevant to the purpose for which it is made,[17] for example, if it will be taken into account by a decision-maker (regardless of whether it is required to be taken into account under the relevant statute), when making a decision to which the statement or particular relates.[18]
- To be material the false or misleading particular must be of moment or significance, not merely trivial or inconsequential.[19]

[17] *Jovcevski v. Minister for Immigration, Local Government* **and** *Ethnic Affairs* (Lockhart J., 12 October 1989, unreported.
[18] *Re Minister for Immigration, Local Government and Ethnic Affairs v Ricardo Dela Cruz* (1992) 34 FCR 348 at 13.
[19] Ibid at 12.

- Whether the false or misleading statement is 'material' will depend on the facts and circumstances, and whether a reasonable person, having the knowledge, skill and experience of a registered tax practitioner, would expect the misstatement or omission to be of substantial import, effect or consequence to the outcome for which it was given.[20]
- A statement may be false or misleading in a material particular regardless of whether the maker of the statement knew at the time of making the statement, that the particular is material.[21]
- Materiality is determined at the time the statement is made - a statement cannot be made material because of subsequent events.[22]
- However, materiality may be unknown until a subsequent event occurs or further evidence comes to light which reveals that the statement was false or misleading in a material particular at the time it was made.[23]

36. The obligation under subsection 15(1) of the Determination extends to the omission of any matter or thing without which the statement is misleading in a material respect. Whether or not the particular is misleading in a material respect will depend on the circumstances, and whether a reasonable person, having the knowledge, skill and experience of a registered tax practitioner, would expect the misstatement or omission to be of substantial import, effect or consequence to the outcome for which it was given. This requires the registered tax practitioner to exercise their professional judgement, taking into account the facts and circumstances of their client and those surrounding the making, or preparing, of the statement.

37. The concept of 'materiality' under section 15 of the Determination is consistent with the approach under the *APES 220 Taxation Services*, which excludes certain obligations for members in relation to making false or misleading statements, where the false or misleading information in question is immaterial or inconsequential in nature.[24]

In their capacity as a registered tax practitioner or in any other capacity

38. The obligation under subsection 15(1) of the Determination extends to statements a registered tax practitioner makes, prepares, or permits or directs someone else to make or prepare in their capacity as a registered tax practitioner or in any other capacity.

39. 'Any other capacity' means any capacity other than an entity's capacity as a registered tax practitioner and includes personal capacity.

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[20] Explanatory Statement to the Tax Agent Services (Code of Professional Conduct) Amendment (Measures No. 2) Determination 2024.
[21] Ibid at 18.
[22] For further information about material particulars see Practice Statement Law Administration PS LA 2012/4 Administration of the false or misleading statement penalty – where there is no shortfall amount and Practice Statement Law Administration PS LA 2012/5 Administration of the false or misleading statement penalty – where there is a shortfall amount.
[23] Ibid.
[24] Paragraph 7.9 of *APES 220 Taxation Services*.

Required action after a false or misleading statement has been made to the TPB or ATO

40. Subject to some exceptions (see paragraph 128 onwards) registered tax practitioners will be required to take action in respect of false or misleading statements made (outlined in **Table 2** in paragraph 41 below), when **all** the elements listed in **Table 2** in paragraph 41 have been satisfied.

41. There are a number of key concepts and phrases which are defined and explained further in this TPB(GS).

Table 2 – Elements that must be satisfied before action is required in respect of a false or misleading statement made

Element		Explanation of Element
1	A statement has been given to the TPB or ATO	• The statement must actually have been given to the TPB or ATO. • The obligation will not arise if the statement has merely been prepared but not given to the TPB or ATO. • The obligations to take action only apply to false or misleading statements given to the TPB or ATO, and not to statements given to any other entity, including another Australian government agency (although this may have other consequences for registered tax practitioners).
2	One of the following applies: a. the registered tax practitioner made the statement, or permitted or directed someone else to make the statement, other than for a client, or b. for an entity that was a client of the registered tax practitioner at the time the statement was given to the TPB or ATO, the	This element will be satisfied if: • **in relation to a statement for an entity other than a client** – the registered tax practitioner made the statement or permitted or directed someone else to make the statement. This could include a statement made by a registered tax practitioner for themself.

	Element	Explanation of Element
	registered tax practitioner made or prepared the statement, or directed someone else to make or prepare the statement.	• **in relation to a statement for a client** – the registered tax practitioner made or prepared the statement, or permitted or directed someone else to make or prepare the statement.
3	At a time after the statement was made, the registered tax practitioner has reasonable grounds to believe that the statement: a. was false or misleading in a material particular at the time it was made, or b. omitted any matter or thing, at the time it was made, without which the statement at that time is misleading in a material respect.	• Subsequent to the statement being made to the TPB or ATO, the registered tax practitioner must have **reasonable grounds to believe** that the statement was false or misleading (including by omission) in a material particular at the time it was made.
4	The registered tax practitioner also has reasonable grounds to believe that the false or misleading nature of the statement resulted from: a. a failure to take reasonable care in connection with the preparation or making of the statement, or b. recklessness as to the operation of a taxation law, or c. intentional disregard of a taxation law by the registered tax practitioner (or someone permitted or directed by the registered tax practitioner) or the client.	• The registered tax practitioner must have **reasonable grounds to believe** that the false or misleading nature of the statement resulted from one of the 3 specified reasons. • This element will not be satisfied if the registered tax practitioner has reasonable grounds to believe that the false or misleading nature of the statement resulted from some other reason – for example, the registered tax practitioner has a reasonable belief that reasonable care was taken in the circumstances. • The false or misleading nature of the statement can be from the tax practitioner about their own affairs, from the tax practitioner making or preparing the statement on the client's behalf, or from the client about the client's affairs.

42. When all the above elements have been satisfied, registered tax practitioners are required to take action as outlined in Table 1 above, within a reasonable period of time after the registered tax practitioner comes to believe that the statement given was materially false or misleading.

43. Innocent or genuine errors or mistakes of registered tax practitioners and their clients are not intended to be captured by the above obligations. The threshold for required action (outlined above) aligns with the administrative penalty regime under the taxation law, relating to statements that have been made without reasonable care, recklessly or with intentional disregard of the taxation laws. Examples of false or misleading statements that would not require action may include:

- information reported at incorrect labels in a statement or return, that results in minimal or no change to the overall tax position of the client
- typographical errors
- genuine mistakes that have occurred due to minor misunderstandings of a client's situation or the application of a tax law.

44. While subsection 15(2) does not require registered tax practitioners to take action in relation to a statement that was not false or misleading at the time it was made, but later becomes false or misleading because of some later event, registered tax practitioners must ensure that subsequent statements made to the TPB or ATO are not false or misleading in a material particular, and must comply with all other obligations under the TASA, for example, the requirement to notify the TPB about changes in circumstances[25] and breach reporting.[26]

[25] Further information about the requirement of tax practitioners to notify the TPB of certain changes to their circumstances can be found at tpb.gov.au/change-registration-details-or-circumstances.
[26] Further information in relation to notification requirements for tax practitioners is provided in the TPB Guidance Statement TPB(GS) 48/2024 Breach reporting under the Tax Agent Services Act 2009.

45. The requirements to take action after a false or misleading statement has been made apply regardless of how the registered tax practitioner becomes aware of the false or misleading statement. For example, if a registered tax practitioner becomes aware that a false or misleading statement has been made due to notification by the ATO, the registered tax practitioner will still be required to take action as required by subsection 15(2), including the notification requirements (if applicable).

46. These obligations support registered tax practitioners in being accountable and taking steps to assist the TPB and ATO in ensuring that they have access to the most accurate information. This action also displays the goodwill of the registered tax practitioner and may be factored into any potential sanctions pursued by the TPB for breach of the Code.

47. These obligations have been informed by the standards issued by the Accounting Professional & Ethical Standards Board (APESB).[27]

Reasonable period of time after the tax practitioner comes to believe the statement given was materially false or misleading

48. Subsection 15(2A) of the Determination states that in determining what is a reasonable period of time, registered tax practitioners should have regard to:

- the nature of the statement (for example, the entitlement or obligation that the false or misleading statement relates to)
- the circumstances of the client (for example, any practical issues with advising the client to correct the statement or taking action as required, for example if the client is overseas, unwell or uncontactable)
- the details that were false or misleading (for example, how complex the matter that the statement relates to is and/or how easily the statement can be corrected, or any action can be taken by the registered tax practitioner and/or client)
- how long ago the statement was made
- the relevant period of review
- any timeframe set out in a taxation law for the lodgement of the statement or a correction to the statement[28]
- any other relevant matter.

[27] In particular, see the Code of Ethics for Professional Accountants (including Independence Standards) (The APES 110) and Taxation Services Pronouncement (APES 220), found at https://apesb.org.au/standards-guidance/.
[28] Further information about the timeframes for fixing mistakes and/or amending returns can be found on the ATO's website at https://www.ato.gov.au/businesses-and-organisations/preparing-lodging-and-paying/fix-a-mistake-or-amend-your-tax-return.

Take all reasonable steps

49. Depending on the circumstances that have occurred, registered tax practitioners must take all reasonable steps to take action, as described in Table 1 above. Determining what is required for the purposes of taking '*all reasonable steps*' will vary, depending on the circumstances. For example, the appropriate and reasonable steps to correct a statement (not made for a client) will vary depending on what the statement is, and how the TPB or ATO (whichever is relevant) requires corrections to statements of its nature. For example, an amendment to an income tax return will require registered tax practitioners to follow the ATO's processes and timeframes for amending returns.

50. Where a registered tax practitioner is unable to take the necessary course of action (set out in Table 1 above) despite, in their view, taking all reasonable steps, the registered tax practitioner should document the steps they undertook in attempting to take the necessary course of action as required under subsection 15(2) of the Determination. The importance in documenting the steps undertaken is that it will be a mitigating factor the TPB considers in determining what compliance action to take (if any).

51. The key elements of the obligations to take action in respect of a false or misleading statement under subsection 15(2) of the Determination are explained further below.

Actions that may be required to be taken

52. In responding to a false or misleading statement, depending on the situation, registered tax practitioners must take reasonable steps to take at least one of the following actions (further details of these actions are explained below):

    - Have the statement corrected.
    - Advise the client to which the statement relates that the statement should be corrected and the possible consequences of not taking action to correct the statement.
    - Withdraw from the engagement and professional relationship with the client.
    - Notify the TPB or ATO (as the case requires).
    - Take any further action reasonably considered needed in the public interest.

Have the statement corrected (statements that were not made by, or for, a client)

53. The obligation for registered tax practitioners to have a statement corrected under subsection 15(2) of the Determination will arise where:

    - all the elements in Table 2 in paragraph 41 above are satisfied, and
    - the registered tax practitioner made the statement, or permitted or directed someone else to make the statement, for an entity other than their client.

54. This could arise where the registered tax practitioner has made the statement for themselves, or for any other entity provided that entity is not a client.

55. The obligation to have the statement corrected does not require that the registered tax practitioner make the correction themself. The registered tax practitioner can arrange to have the correction made for them.

56. For statements provided to the ATO, where an amendment or correction is required after a statutory time limit has passed, the registered tax practitioner should consider whether it is appropriate to request an extension of time to lodge an objection, which will allow the false or misleading statement to be corrected. However, in circumstances where there has been fraud or evasion, there will be an indefinite amendment period.[29]

Advise the client to which the statement relates that the statement should be corrected and the possible consequences of not taking action to correct the statement

57. The obligation for registered tax practitioners to advise their client to which the statement relates that the statement should be corrected under subsection 15(2) of the Determination will arise (subject to the exception explained in paragraph 128 onwards) where:

    - all the elements in Table 2 in paragraph 41 above are satisfied, and
    - the registered tax practitioner made or prepared the statement, or permitted or directed someone else to make or prepare the statement for a client.

58. Importantly, the requirement to advise about a correction under this provision only relates to statements that are made or prepared for a client.

59. Not only must registered tax practitioners in these circumstances advise their clients that the statement should be corrected, they must also advise the client about the possible consequences of not taking action to correct the statement. Such consequences of not taking action includes any consequences that may arise for breaching relevant laws, including any fines, penalties or other liability that could arise in connection with the false or misleading statement.

[29] Further information on extensions of time can be found on the ATO's website: Application for extension of time to lodge an objection – supporting information.

60. In some circumstances, it may be appropriate for the registered tax practitioner's advice to the client to reference the requirements of the registered tax practitioner if they are not reasonably satisfied that the client has corrected the statement or otherwise adequately explained the basis for the statement, to:

    - withdraw from the engagement, and professional relationship, with the client (including no longer providing any further tax agent services to the client), and
    - in certain circumstances, notifying the TPB or ATO (as the case requires) that the registered tax practitioner is not reasonably satisfied that the registered tax practitioner's advice to the client that the statement should be corrected has been acted upon, and
    - taking any further action as the registered tax practitioner reasonably considers is needed in the public interest.

61. In considering whether to reference the registered tax practitioner's above obligations to take action, registered tax practitioners should have regard to their obligations to inform clients of matters under section 45 of the Code Determination[30]. In particular, this includes the registered tax practitioner's rights, responsibilities and obligations as a tax or BAS agent, under the taxation laws, including the TASA and the Code.

62. The registered tax practitioner may also wish to advise or recommend to the client that the registered tax practitioner can correct the statement on the client's behalf, and seek the client's authorisation and/or instructions to do so (including agreement of any fees or other terms that may be applicable for the registered tax practitioner doing so).

63. It will be a matter for the registered tax practitioner to decide *how* they advise their client for the purposes of this requirement. However, the TPB recommends that the advice to the client be in writing, clear and unambiguous.

64. If, given the nature of the registered tax practitioner's relationship with the client, the registered tax practitioner verbally advises the client that the statement should be corrected, it is recommended that the registered tax practitioner confirms the advice provided in writing (for example, through email or letter), or at the very least, keep a file note recording the verbal advice provided.

65. Registered tax practitioners should also be aware of their other obligations under the Code, including for example, Code item 12 (advising clients about their rights and obligations under the taxation laws that are materially related to the tax agent services provided), and Code item 7 (providing tax agent services to a competent standard). Further information on these Code items, and all obligations under the Code, can be found in the TPB Guidance Statement TPB(GS) 01/2010 Code of Professional Conduct.

[30] Further information on section 45 of the Code Determination can be found in the TPB Guidance Statement TPB(GS) 54/2024 Keeping your clients informed.

Withdraw from the engagement and professional relationship with the client

66. The obligation for registered tax practitioners to withdraw from the engagement with the client will arise where **all** of the following are satisfied (subject to the exceptions explained in paragraph 128 onwards):

    - all the elements in Table 2 in paragraph 41 above are met, and
    - the registered tax practitioner made or prepared the statement, or permitted or directed someone else to make or prepare the statement for a client, and
    - after a reasonable period of time after advising their client that the statement should be corrected, the registered tax practitioner is not reasonably satisfied that their client has corrected the statement or otherwise adequately explained the basis for the statement, and
    - the registered tax practitioner has reasonable grounds to believe that the false or misleading nature of the statement resulted from recklessness or intentional disregard of a taxation law by the registered tax practitioner (or someone permitted or directed by the registered tax practitioner) or the client.

67. How the tax practitioner withdraws from the engagement and professional relationship with the client will depend on the contractual relationship between the registered tax practitioner and the client. As such, registered tax practitioners are advised to ensure that their engagement letters and/or other contractual arrangements enable the registered tax practitioner to fulfil their obligations under subsection 15(2) of the Determination, should the need arise. Registered tax practitioners may wish to seek legal advice in this regard.

68. Not only are registered tax practitioners required to withdraw from their engagement in providing tax agent services (including BAS services) to the client, they must also withdraw from their professional relationship with the client. This means that the registered tax practitioner must withdraw from any other professional relationship they have with the client outside of the provision of tax agent services. For example, if the registered tax practitioner also provides business advisory, accounting, audit and/or financial services to the client, the registered tax practitioner must also withdraw the engagement in connection with the provision of these services.

69. Relevantly, the requirement to withdraw is limited to the registered tax practitioner engaged to provide services to the client. For example, in the case of a multi-disciplinary partnership that is a registered tax practitioner engaged to provide services, the obligation to withdraw will apply to the partnership.

70. If the registered tax practitioner is required to withdraw from their engagement and/or professional relationship with a client under subsection 15(2) of the Determination, this obligation to withdraw will not extend to related entities of the client, that the registered tax practitioner is engaged by or has a professional relationship with. The obligation to withdraw attaches to the client that has not corrected the false or misleading statement or has not adequately otherwise explained the basis for the statement. For example, where a registered tax practitioner has been engaged by a group representing a number of taxpayers or entities, the 'client' for the purposes of the obligations under subsection 15(2) of the Determination will be the entity about which the false or misleading statement in question relates. Notwithstanding this, registered tax practitioners should be alert to all their obligations under the TASA in determining whether to engage, or continue to engage, with a particular client.

Notify the TPB or ATO (as the case requires)

71. The obligation for registered tax practitioners to notify the TPB or ATO (as the case requires) that they have advised the client that a statement made should be corrected, and the registered tax practitioner is not reasonably satisfied that the advice was acted upon will arise where **all** of the following are satisfied (subject to the exceptions explained in paragraph 128 onwards):

    - all the elements in Table 2 in paragraph 41 above are met
    - the registered tax practitioner made or prepared the statement, or permitted or directed someone else to make or prepare the statement for a client
    - after a reasonable period of time after advising their client that the statement should be corrected, the registered tax practitioner is not reasonably satisfied that their client has corrected the statement or otherwise adequately explained the basis for the statement the registered tax practitioner has reasonable grounds to believe that the false or misleading nature of the statement resulted from recklessness or intentional disregard of a taxation law
    - the registered tax practitioner has reasonable grounds to believe the client's actions have caused, are causing, or may still cause, substantial harm to the interests of others (including investors, creditors, employees or the public).

72. As noted above and at paragraph 128 onwards, registered tax practitioners will not be required to notify the TPB or ATO if doing so would:

    - pose an unreasonable risk to the registered tax practitioner's safety, the safety of a member of their family, or the safety of an at risk staff member, or
    - be unlawful under another Australian law.

73. Where the tax practitioner is obliged to notify the TPB or the ATO (as the case requires), the registered tax practitioner is not required to correct the statement or explain to the TPB or

the ATO why they believe the statement to be false or misleading or what the registered tax practitioner otherwise believes the statement should have said. It is for the relevant regulatory authority to consider the notification (being a piece of intelligence and simply a concern, of an ethical nature, of the registered tax practitioner about their client's potential compliance with one or more tax laws), and consider, what, if any, mitigation is required.[31]

74. When notifying the TPB or ATO under this requirement, registered tax practitioners are required to advise the TPB or ATO (as appropriate):

- the client's full legal name and any other identifying information, as considered appropriate in the circumstances
- that the notification is being made pursuant to section 15 of the Determination
- confirmation that the registered tax practitioner has advised their client that a statement made to the TPB or ATO should be corrected and they are not reasonably satisfied that this advice was acted upon
- relevant and sufficient information that would assist the TPB or ATO in their assessment of the potential false or misleading statement and decide if any mitigation is required. This means that a registered tax practitioner would need to provide the TPB or ATO with enough specific information to assess if a false or misleading statement has been made. For example, the relevant statement is contained in the 2022-23 company income tax return or the business activity statement for March 2024. Section 15 does not limit registered tax practitioners from providing additional information if they reasonably believe it is in the public interest to do so.

75. In some circumstances, reporting registered tax practitioners may be eligible for the tax whistleblower protections that commenced from 1 July 2024, introduced by the *Treasury Laws Amendment (Tax Accountability and Fairness) Act 2024*. These changes provide protections for disclosures by eligible whistleblowers to the TPB. Eligible whistleblowers will have their identity protected from disclosure, unless it is to an authorised body, or with the whistleblower's consent. Further information about whistleblower protections can be found on the TPB's website at www.tpb.gov.au/whistleblower-legislation.

76. The appropriate manner in which the registered tax practitioner notifies the TPB or ATO will depend on the nature of the false or misleading statement originally made to the TPB or ATO.

77. The method and process to notify the TPB and ATO will be published on the website of each agency.

[31] Explanatory Statement to the Tax Agent Services (Code of Professional Conduct) Amendment (Measures No. 2) Determination 2024.

Take any further action as reasonably considered is needed in the public interest

78. The obligation for registered tax practitioners to take any further action as they reasonably consider is needed in the public interest will arise where **all** of the following are satisfied (subject to the exceptions explained in paragraph 128 onwards):

    - all the elements in Table 2 in paragraph 41 above are met
    - the registered tax practitioner made or prepared the statement, or permitted or directed someone else to make or prepare the statement for a client
    - after a reasonable period of time after advising their client that the statement should be corrected, the registered tax practitioner is not reasonably satisfied that their client has corrected the statement or otherwise adequately explained the basis for the statement
    - the registered tax practitioner has reasonable grounds to believe that the false or misleading nature of the statement resulted from recklessness or intentional disregard of a taxation law by the registered tax practitioner (or someone permitted or directed by the registered tax practitioner) or the client
    - the registered tax practitioner has reasonable grounds to believe the client's actions have caused, are causing, or may still cause, substantial harm to the interests of others (including investors, creditors, employees or the public).

79. Having regard to the ordinary meaning[32] of the terms 'reasonable' and 'consider', the phrase 'reasonably consider' requires the registered tax practitioner to have sound and sensible basis for regarding or deciding that further action is needed, in the public interest.

80. 'Public interest', while not being defined in the TASA or the Determination, is a concept frequently used in legislative settings. The consideration of what is in the public interest can be far reaching and broad. However, in the context of a registered tax practitioner's obligations under the Determination and the TASA, what is in the 'public interest' will be constrained to matters that are relevant to supporting the public trust and confidence in the integrity of the tax profession and of the tax system by ensuring that tax agent services are provided to the community in accordance with appropriate standards of professional and ethical conduct.[33]

[32] The Macquarie Dictionary, Macmillan Publishers Australia, 2023

[33] Refer to Hogan v Hinch (2011) 243 CLR 506, [31] where French CJ stated that when 'used in a statute, the term [public interest] derives its content from "the subject matter and the scope and purpose" of the enactment in which it appears'.

81. Further action for the purposes of this obligation may include (but is not limited to) the following:

- providing additional information or material to the TPB or ATO to assist them in taking the appropriate action in response to the notification[34]
- providing relevant information to other regulatory or law enforcement agencies, for example, the Australian Securities and Investments Commission (ASIC) or police
- alerting the registered tax practitioner's professional association about the general circumstances or issues
- advising another registered tax practitioner who is subsequently engaged by the client and seeks information and/or assurances from the registered tax practitioner in respect of the tax affairs of the client (for example, through an ethical letter)[35]
- responding to requests for information or documents from the TPB or ATO.

82. This obligation is representative of the important role that registered tax practitioners play in the overall trust and confidence that the public places in the tax profession and tax system. Consistent with the obligation in Code item 4, which requires registered tax practitioners to act lawfully in the best interests of their clients, it is recognised that in some circumstances there may be a tension between acting in accordance with a client's instructions and/or interests, and the registered tax practitioner's own legal and ethical obligations. In these circumstances, registered tax practitioners are required to uphold their own legal and ethical obligations, even if doing so is contrary to their clients' wishes or interests. Subject to some exceptions (see paragraph 128 onwards), this obligation will apply regardless of whether a client or former client permits or consents to the registered tax practitioner notifying the TPB or ATO about the false or misleading statement.

83. Further, registered tax practitioners notifying the TPB or ATO that a statement previously provided to the TPB or ATO is false or misleading in a material particular, or notifying another registered tax practitioner in response to an ethical letter (where the registered tax practitioner reasonably considers it is needed in the public interest) will not be in contravention of the confidentiality requirements in Code item 6 under subsection 30-10(6) of the TASA[36] because registered tax practitioners have a legal duty to take such action under subsection 15(2) of the Determination.

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[34] Registered tax practitioners must consider their legal obligations in responding to formal notices or requests from the TPB or ATO, compelling the provision of information or production of documents, which will be separate and distinct from the obligations under section 15.

[35] The APES 110, Section 320, outlines requirements for communication with the existing, predecessor or proposed accountant when determining whether to accept an accountant.

[36] Subsection 30-10(6) of the TASA provides that unless they have a legal duty to do so, registered tax practitioners must not disclose any information relating to a client's affairs to a third party without the client's permission.

84. However, when making a notification to the TPB or ATO, or taking any further action, under subsection 15(2) of the Determination, registered tax practitioners should exercise caution to ensure that the requirements of section 15 have been satisfied (see paragraphs 71 and 78 respectively) and that the notification itself only includes such information that is lawfully permitted (see paragraph 73). Registered tax practitioners that make a notification to the TPB or ATO, or take any further action, that is not supported by section 15 of the Determination risk breaching the Code, including Code items 4 and 6.

85. This is subject to any information, including client information, being protected by legal professional privilege (LPP). LPP protects confidential communications between a qualified legal advisor and their client from compulsory production where they were made for the dominant purpose of seeking legal advice, or for use in existing or anticipated litigation. LPP does not attach to all communications between a qualified legal advisor or their client. For example, LPP does not extend to communications in furtherance of an illegal or improper purpose. Once waived, LPP cannot be restored and may be lost permanently. Waiver may occur by way of widely distributing a confidential legal advice to different third parties or in communications that refer to and/or disclose the content or essence of the legal advice.

86. The TASA, including the obligations under section 15 of the Determination, does not override the law relating to LPP.[37] As such, registered tax practitioners should consider whether LPP applies before providing information to the TPB, ATO or other entities (for example, registered tax practitioners, professional associations, regulatory or law enforcement agencies), and if so, they have a duty to consult their client as to whether the client wishes to waive their right to LPP in order to provide the information to the third party.

87. If registered tax practitioners are unsure how the law relating to LPP applies, it would be prudent for them to seek legal advice.

88. The elements, situations and obligations listed in Table 1 and Table 2 in paragraph 41 above contain a number of key terms and phrases that are explained in further detail below.

Reasonable grounds to believe

89. The obligations under subsection 15(2) of the Determination arise where, amongst other matters, the registered tax practitioner has

- 'reasonable grounds to believe' that a statement made to the TPB or ATO was false or misleading in a material particular at the time that it was made (or omitted any matter or thing at the time it was made, without which the statement was misleading in a material respect); and

[37] Section 70-50 of the TASA.

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- ‘reasonable grounds to believe’ that the false or misleading nature of the statement resulted from:
    - a failure to take reasonable care in connection with the preparation or making of the statement; or
    - recklessness as to the operation of a taxation law; or
    - intentional disregard of a taxation law

  by the registered tax practitioner (or someone permitted or directed by the registered tax practitioner) or the client.

90. The phrase ‘reasonable grounds to believe’ is not defined, or otherwise explained, in the TASA. As a result, it is given its ordinary meaning, having regard to the purpose of the provision and its statutory context.

91. As discussed below, what constitutes ‘reasonable grounds to believe’ in any given scenario will ultimately depend on the facts and circumstances and must be considered on a case-by-case basis.

92. Having regard to the ordinary meaning[38] of these terms, the phrase ‘reasonable grounds to believe’ requires the registered tax practitioner to have a sound foundation or basis in the circumstances on which to credit or form their belief.

93. Further, it is established in case law that when legislation uses the term ‘reasonable grounds’ to describe a basis for a state of mind, for example, in forming a belief about a matter, there needs to be an existence of facts which are sufficient to induce that state of mind in a reasonable person.[39] Whether a person has reasonable grounds for a belief is an objective test, and it is irrelevant whether the person subjectively believes they have reasonable grounds. A ‘reasonable belief’ is a term that has been used in some criminal jurisdictions and is generally considered to infer a higher threshold than a ‘reasonable suspicion’.[40]

94. For a registered tax practitioner to have ‘reasonable grounds to believe’ a matter, the foundation or basis for the belief does not need to be established to a high evidentiary standard. This means there does not have to be conclusive proof. It is sufficient if a reasonable person, possessing the required knowledge, skill and experience of a registered tax practitioner would, when objectively considered, form the belief on the same grounds in the same circumstances.

[38] The Macquarie Dictionary, Macmillan Publishers Australia, 2023.
[39] *George v Rockett* [1990] HCA 26; (1990) 170 CLR 104.
[40] For example, see section 3W of the *Crimes Act 1914*.

95. Making such a determination will depend on an analysis of the surrounding circumstances and consideration of a number of factors, including but not limited to:

- the source of the information forming the basis of the belief and the credibility and reliability of that source/information
- whether there is independent evidence, verification or corroboration to support the belief
- the circumstances in which the registered tax practitioner became aware of the possibility that the statement is false or misleading and/or that the false or misleading nature of the statement resulted from recklessness or an intentional disregard of a taxation law by the registered tax practitioner (or someone permitted or directed by the registered tax practitioner) or the client
- whether, and to what extent, the registered tax practitioner made reasonable enquiries or sought advice to confirm their belief
- whether there are any reasonable alternative explanations that could counter the registered tax practitioner's belief.

Reasonable care in connection with the preparation or making of the statement

96. There is no set formula for determining what it means to take reasonable care in any given situation, including in connection with the preparation or making of a statement. Rather, whether a registered tax practitioner has taken reasonable care in a given situation will depend on an examination of all the circumstances,[41] including:

- the nature and scope of the statement
- if the statement is being made or prepared for a client
- the client's circumstances and the circumstances surrounding the client making the statement
- the client's level of professional knowledge and experience.

97. The standard of 'reasonable care' generally required of registered tax practitioners is that of a competent and reasonable person, possessing the knowledge, skills, qualifications and experience that a registered tax practitioner is expected to have, in the circumstances.

[41] See, for example, Miscellaneous Taxation Ruling MT 2008/1 *Penalty relating to statements: meaning of reasonable care, recklessness and intentional disregard*.

98. The obligation to take reasonable care does not mean that the care taken needs to be perfect or to the highest level of care possible. It is sufficient that the registered tax practitioner acts in a way that is consistent with how a reasonable person, possessing the required knowledge, skill and experience of a registered tax practitioner, objectively determined, would act in connection with making, preparing or directing or permitting someone else to make or prepare, the statement.

99. Similarly for a client, a lack of reasonable care will be determined having regard to how a reasonable person, in the same circumstances as the client, would act in connection with making the statement, or engaging and/or instructing a registered tax practitioner to make or prepare the statement on their behalf. For unsophisticated clients, the level of reasonable care expected of the client will be of a lesser standard than that of a registered tax practitioner.

100. If a statement prepared by a registered tax practitioner for a client seems credible (and for existing clients contained information that is consistent with what has been included in previous statements) and the registered agent has no basis on which to doubt the information supplied, the registered tax practitioner will have exercised reasonable care by accepting the statement (and information contained within the statement) provided by the client without further checking.

101. In this case, the registered tax practitioner is not just accepting what the client tells them or gives them at face value. Rather, the registered tax practitioner is exercising their professional judgment based on the information previously provided by the client and the nature of the client themselves, and making a decision that further checking is not required in the particular circumstances.

102. On the other hand, if the information supplied by a client for the purposes of preparing or making a statement does not seem credible (in accordance with how a competent and reasonable person, possessing the knowledge, skills, qualifications and experience of a registered tax practitioner, objectively determined, would perceive the information) or appears to be inconsistent with a previous pattern of claim or statement, further enquiries would be required, having regard to the terms of the engagement with the client.

103. In such situations, taking reasonable care will mean that a registered tax practitioner will need to ask questions of their clients or examine the client's records, or both, based on a reasonable registered tax practitioner's professional knowledge, skills and experience in seeking information.

104. Some other circumstances in which there may be a need to make further enquiries of the client in order to take reasonable care, include:

- new or substantial changes in the law
- nature and circumstances of the client, including whether a new or experienced client
- changes to the client's circumstances relating to the statement being made or prepared

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- unusual transactions in the context of the regular business of the client.

105. Further information about what it means to take reasonable care can be found in the TPB Guidance Statements TPB(GS) 22/2013 Reasonable care to ascertain a client's state of affairs and TPB(GS) 23/2013 Reasonable care to ensure taxation laws are applied correctly.

Recklessness as to the operation of a taxation law

106. 'Recklessness' is not defined, or otherwise explained, in the TASA. As a result, it is given its ordinary meaning, having regard to the purpose of the provision and its statutory context.

107. As discussed below, what constitutes 'recklessness' in any given scenario will ultimately depend on the facts and circumstances and must be considered on a case-by-case basis.

108. Having regard to the ordinary meaning[42] of this term and in the context of the provision of tax agent services, recklessness is behaviour which falls significantly short of the standard of care expected of a reasonable person in the same circumstances as the entity. It goes beyond a failure to take reasonable care, and will generally involve gross carelessness.

109. Recklessness as to the operation of a taxation law in the context of making or preparing a statement (or directing or permitting someone to make or prepare a statement) is behaviour that demonstrates a disregard of the risk or indifference to the consequences that are foreseeable by a reasonable person. However, the entity does not need to actually realise the likelihood of the risk for it to be reckless.[43]

110. Similar to the test for determining whether reasonable care has been taken, a finding of recklessness depends on the application of an essentially objective test. There must be the presence of conduct that falls short of the standard of a reasonable person in the position of the entity. Dishonesty is not an element of establishing recklessness. The actual intention of the entity is of no relevance.[44] Depending on the circumstances, behaviour that constitutes recklessness by a registered tax practitioner may differ to the type of behaviour that constitutes recklessness by a client.

111. Recklessness must relate to the operation of a 'taxation law' which is defined in subsection 995-1(1) of the *Income Tax Assessment Act 1997* (ITAA 1997) to mean:

- an Act of which the Commissioner has the general administration (including a part of an Act to the extent to which the Commissioner has the general administration of the Act); or
- legislative instruments made under such an Act (including such a part of an Act); or
- the TASA or regulations made under the TASA.

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[42] The Macquarie Dictionary, Macmillan Publishers Australia, 2023.
[43] *Shawinigan Ltd v. Vokins & Co Ltd* [1961] 2 Lloyd's Rep 153 at 162; [1961] 1 WLR 1206 at 1214; [1961] 3 All ER 396 at 403.
[44] Refer to Miscellaneous Taxation Ruling MT 2008/1 Penalty relating to statements: meaning of reasonable care, recklessness and intentional disregard for further guidance relating to recklessness.

'Intentional disregard of a taxation law'

112. Having regard to the ordinary meaning[45] of this term, the purpose of the provision and its statutory context, intentional disregard means an intent and purposeful decision to leave something out of consideration. Unlike recklessness, 'intentional' requires something more than reckless disregard of, or indifference to, a taxation law.

113. In contrast to the objective test which applies to determine whether there has been a lack of reasonable care or reckless behaviour, the test for intentional disregard is purely subjective in nature. The actual intention of the entity in question is a key factor in determining whether there has been an intentional disregard for a taxation law. Further, dishonesty is a requisite feature of behaviour that shows an intentional disregard for the operation of the law. This is another significant difference between this type of behaviour and behaviour that shows a lack of reasonable care or recklessness where dishonesty is not an element.[46]

114. Further, intentional disregard means that there must be actual knowledge that the statement made is false. To establish intentional disregard, the entity must have understood the effect of the relevant legislation and how it operates in respect of the statement made or prepared (or directed or permitted to be made or prepared) and make a deliberate choice to ignore the law.[47]

115. In addition, the intentional disregard must be in the context of a 'taxation law' which is defined in subsection 995-1(1) of the *Income Tax Assessment Act 1997* (ITAA 1997) to mean:

- an Act of which the Commissioner has the general administration (including a part of an Act to the extent to which the Commissioner has the general administration of the Act); or
- legislative instruments made under such an Act (including such a part of an Act); or
- the TASA or regulations made under the TASA.

116. As discussed below, what constitutes 'intentional disregard' in any given scenario will ultimately depend on the facts and circumstances and must be considered on a case-by-case basis. Depending on the circumstances, behaviour that constitutes an intentional disregard of a taxation law by a registered tax practitioner may differ according to the type of behaviour that constitutes intentional disregard of a taxation law by a client.

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[45] The Macquarie Dictionary, Macmillan Publishers Australia, 2023.
[46] Refer to Miscellaneous Taxation Ruling MT 2008/1 Penalty relating to statements: meaning of reasonable care, recklessness and intentional disregard at paragraph 111.
[47] *Price Street Professional Centre Pty Ltd v. Federal Commissioner of Taxation* [2007] FCA 345; 2007 ATC 4320; (2007) 66 ATR 1 at paragraph 43.

Not reasonably satisfied that a client has corrected the statement

117. Having regard to the ordinary meaning of the terms[48] and having regard to the purpose of the provision and its statutory context, the phrase 'not reasonably satisfied' means not having a sound basis to be assured that the client has corrected the statement.

118. The foundation or basis for a registered tax practitioner being 'reasonably satisfied' that their client has corrected a false or misleading statement does not need to be established to a high evidentiary standard. This means there does not have to be conclusive proof. It is sufficient if a reasonable person, possessing the required knowledge, skill and experience of a registered tax practitioner would, when objectively considered, form the belief on the same grounds in the same circumstances.

119. Making such a determination will depend on an analysis of the surrounding circumstances and consideration of a number of factors, including but not limited to:

- the registered tax practitioner's ability to independently verify that the statement has been corrected (for example, through accessing the ATO's systems)
- any responses or assurances provided by the client in relation to the registered tax practitioner's advice about correcting the false or misleading statement
- the circumstances that led to the statement being false or misleading, and the role and conduct of the client in connection with the making of the false or misleading statement
- the registered tax practitioner's familiarity and relationship with the client.

120. As discussed below, what it means to be 'reasonably satisfied' in any given scenario will ultimately depend on the facts and circumstances and must be considered on a case-by-case basis.

Believe on reasonable grounds that the client's actions have caused, are causing, or may still cause, substantial harm to the interests of others

121. Having regard to the ordinary meaning of the terms[49] and having regard to the purpose of the provision and its statutory context, the phrase 'believe on reasonable grounds' requires the registered tax practitioner to have a sound foundation or basis in the circumstances on which to credit or form their belief.

[48] The Macquarie Dictionary, Macmillan Publishers Australia, 2023.
[49] The Macquarie Dictionary, Macmillan Publishers Australia, 2023.

122. Further, it is established in case law that when legislation uses the term 'reasonable grounds' to describe a basis for a state of mind, for example, in forming a belief about a matter, there needs to be an existence of facts which are sufficient to induce that state of mind in a reasonable person.[50] Whether a person has reasonable grounds for a belief is an objective test, and it is irrelevant whether the person subjectively believes they have reasonable grounds. A 'reasonable belief' is a term that has been used in some criminal jurisdictions and is generally considered to infer a higher threshold than a 'reasonable suspicion'.[51]

123. For a registered tax practitioner to have 'reasonable grounds to believe' a matter, the foundation or basis for the belief does not need to be established to a high evidentiary standard. This means there does not have to be conclusive proof. It is sufficient if a reasonable person, possessing the required knowledge, skill and experience of a registered tax practitioner would, when objectively considered, form the belief on the same grounds in the same circumstances.

124. Further, the Determination provides that when considering whether a client's actions have caused, are causing, or may still cause, substantial harm to the interests of others (including investors, creditors, employees, or the public), regard is expected to be had to all relevant matters including:[52]

- whether the client's actions have resulted, are resulting, or may result, in serious adverse consequences to others in either financial or non-financial terms
- any of the rights and obligations under the taxation laws (as are relevant)
- the appropriateness and timeliness of the client's response to the registered tax practitioner's advice that the statement should be corrected (including any information that would lead the registered tax practitioner to conclude that the client lacks integrity)
- the urgency of the situation.[53]

[50] *George v Rockett* [1990] HCA 26; (1990) 170 CLR 104.
[51] For example, see section 3W of the *Crimes Act 1914*.
[52] The concept of 'substantial harm' in section 15 is consistent with the same concept contained in APES 110 (in particular, see paragraph 360.5 A3).
[53] Note 4 to section 15 in the Code Determination.

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125. In this context, 'the interests of others' includes both financial and non-financial interests of investors, creditors, employees and the public. 'The public' includes other registered tax practitioners, clients, as well as the general public (for example, when considering harm or impacts on public revenue collections and/or the public trust and confidence in the tax profession and tax system more broadly). Additional matters that might assist a registered tax practitioner in forming a belief on reasonable grounds that a client's actions have caused, are causing or may still cause, substantial harm to the interests of others could include:

- whether, if identified by the TPB or ATO, the existence of the false or misleading statement would likely give rise to a fine, penalty, sanction or other liability (criminal, civil or administrative)
- whether public knowledge of the false or misleading statement has or is likely to impact the standing and reputation of a third party, including the TPB and/or ATO
- whether public knowledge of the false or misleading statement has or is likely to adversely impact the public's trust and confidence in the tax profession and tax system
- whether the actions of the client have or will impact on the entitlements of others, for example, through phoenixing activity that may cause substantial harm to employees, creditors and other businesses who are put at a competitive disadvantage
- whether the actions of the client create a loss of revenue to the community that could have otherwise contributed to community services.

126. Whether any harm is substantial is a matter to be assessed based on the impacts on others, Parliament's views as expressed in the regulatory frameworks it has enacted, including any rights and responsibilities under the taxation laws as are relevant to the client, tax practitioner or other parties involved or affected, and a client's response and integrity of character.[54]

127. What constitutes 'believing on reasonable grounds' in any given scenario will ultimately depend on the facts and circumstances and must be considered on a case-by-case basis.

[54] Explanatory Statement to the Tax Agent Services (Code of Professional Conduct) Amendment (Measures No. 2) Determination 2024.

Exceptions to the requirement under subsection 15(2) to take action

128. Table 3 below outlines the exceptions to the requirement to take action.

Table 3 - exceptions to taking action

Requirement		Exception
1	Have the statement corrected	• There is **no** exception to this requirement.
2	Advise the client: • that the statement should be corrected; **and** • the possible consequences of not taking action to correct the statement.	• The registered tax practitioner will **not** be required to provide this advice if doing so would be unlawful under another Australian law.
3	**Withdraw from the engagement**, and professional relationship, with the client (including no longer providing any further tax agent services to the client).	• The registered tax practitioner will **not** be required to take action if doing so would: ○ pose an unreasonable risk to the registered tax practitioner's safety, the safety of a member of their family, or the safety of an at risk staff member; or ○ be unlawful under another Australian law.
4	**Notify the TPB or ATO (as the case requires)** that the registered tax practitioner has advised the client that a statement should be corrected and the registered tax practitioner is not reasonably satisfied that the advice was acted upon.	
5	Take any further action as the registered tax practitioner reasonably considers is needed in the public interest.	

Contrary to another Australian law

129. Examples of circumstances where advising or withdrawing from an engagement or professional relationship with a client, notifying the ATO or TPB about a false or misleading statement, or taking further action as considered reasonably needed in the public interest would otherwise be contrary to another Australian law could include:[55]

- prohibitions relating to 'tipping off' an entity about information included in suspicious matter reports under the *Anti-Money Laundering and Counter Terrorism Financing Act 2006;*[56]

- provisions relating to advice, engagement, obligations and withdrawing from professional appointments, other than related to the provision of tax agent services, for example, the obligations that apply to auditors of public companies under the *Corporations Act 2001*[57] and auditors of self-managed superannuation funds (SMSFs).[58]

130. If a registered tax practitioner considers that taking one or more actions listed in Table 3 could be contrary to another Australian law, they may wish to seek legal advice in respect of their obligations.

Unreasonable risk to the registered tax practitioner's personal safety, the safety of a member of the registered tax practitioner's family, or the safety of an at risk staff member

131. As outlined in Table 3 above, this exception only applies to the requirements to:

- withdraw from the engagement and professional relationship with the client

- notify the TPB or ATO that the registered tax practitioner has advised the client that a statement should be corrected and is not reasonably satisfied that the advice has been acted upon

- take any further action as reasonably considered is needed in the public interest.

132. Having regard to the ordinary meaning of the terms[59] and having regard to the purpose of the provision and its statutory context, the phrase 'unreasonable risk' requires the registered tax practitioner has a sound foundation or basis in the circumstances on which to conclude that there is an exposure to an injury, loss, hazard or danger.

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[55] Registered tax practitioners cannot contract out of their obligations under the TASA, including the Determination.
[56] For further information refer to: https://www.austrac.gov.au/business/core-guidance/reporting/suspicious-matter-reports-smrs/tipping.
[57] For further information refer to: https://asic.gov.au/for-finance-professionals/company-auditors/your-ongoing-obligations-as-a-registered-company-auditor/auditor-resignation-or-removal/resignation-of-an-auditor-of-a-public-company/.
[58] For further information refer to: https://asic.gov.au/for-finance-professionals/self-managed-superannuation-fund-smsf-auditors/.
[59] The Macquarie Dictionary, Macmillan Publishers Australia, 2023.

133. Section 4 of the Determination defines an 'at risk staff member' as meaning:

- an employee of the registered tax practitioner; or
- where the registered tax practitioner is an employee or member of a partnership or company that is also a registered tax practitioner – a member or an employee of the partnership or company (or any entity connected with, or an affiliate of, the partnership or company); or
- another entity that provides tax agent services (including BAS services) on behalf of the registered tax practitioner.

134. Whether taking actions would pose an unreasonable risk to a registered tax practitioner's personal safety, the safety of a family member, or the safety of an at risk staff member will depend on the circumstances.

135. Similar to the standard of 'reasonable belief', consideration of whether there is an unreasonable risk to a registered tax practitioner's personal safety, the safety of a member of their family or the safety of an at risk staff member does not need to be established to a high evidentiary standard. This means there does not have to be conclusive proof of the existence of such a risk. It is sufficient if a reasonable person in the position of the registered tax practitioner would, when objectively considered, consider that there is a risk to the registered tax practitioner's personal safety, the safety of a member of their family, or the safety of an at risk staff member. Examples of risks that may be posed to a registered tax practitioner, their family or an at risk staff member in this context could include (but are not limited to):

- risk of physical injury or harm to the registered tax practitioner, a member of their family, or an at risk staff member; or
- risk of emotional distress or psychological harm caused by harassment of the registered tax practitioner, a member of their family, or an at risk staff member.

136. In circumstances where a registered tax practitioner wishes to rely on the above exceptions to the requirements listed in Table 3 above, they should keep records to substantiate this assessment, including:

- a file note about the basis for considering that the action(s) in question would pose an unreasonable risk to the registered tax practitioner's personal safety, the safety of a member of their family, or the safety of an at risk staff member
- summaries or copies of any advice (professional or otherwise) in respect of the risks or lawfulness in taking the action(s) otherwise required (but for the exception)
- any other evidence or documentation that is relevant to the registered tax practitioner's consideration as to the application of the exceptions to the requirements to take actions as listed in paragraph 128 above.

137. If a registered tax practitioner decides not to take any or all of the actions listed in Table 1 due to the operation of the exceptions described above, they do not need to notify the TPB or ATO about this decision at the time that it is made. However, registered tax practitioners should ensure that they retain appropriate records (including those listed as examples at paragraph 136 above) which can be provided to the TPB or ATO, should the matter be raised at a later stage. Registered tax practitioners should retain any such records in accordance with their obligations under section 30 of the Code Determination (keeping proper client records).[60]

138. Registered tax practitioners who are concerned for their personal safety, the safety of a family member or the safety of an at-risk staff member should seek the assistance of support services or Police, as appropriate. Further information on mental health support services is available at Seeking mental health support on the TPB website.[61]

Statements made to other Australian government agencies

139. Subsection 15(3) of the Determination extends similar obligations under subsection 15(1) in relation to making or preparing or permitting or directing someone else to make or prepare, false or misleading statements to other Australian government agencies.

140. This obligation applies to statements made or prepared by a registered tax practitioner in any capacity.

141. 'Australian government agency' is defined in section 995-1 of the *Income Tax Assessment Act 1997* as the Commonwealth, State or Territory, or an authority of the Commonwealth, State or Territory. They include the Australian Securities and Investments Commission, Department of the Treasury and the Australian Competition and Consumer Commission.

[60] Further information about the obligation to keep records under section 30 of the Code Determination can be found in the TPB Guidance Statement TPB(GS) 52/2024 Obligation to keep proper client records of tax agent services provided.
[61] Additional support services and resources for managing risks to health and safety in the workplace can also be found on the Safe Work Australia website at https://www.safeworkaustralia.gov.au/safety-topic/managing-health-and-safety.

Application of the Code obligation to more than one tax practitioner within the same entity

142. Where there is a registered tax practitioner partnership or company engaged by the client in question, the registered tax practitioner entity will ultimately be responsible for ensuring compliance with the obligations of section 15 of the Determination by the entity to clients, regardless of whether the false or misleading statement was made or prepared on its behalf by an employee (including a registered tax practitioner individual). In these circumstances, it is expected that the registered tax practitioner engaged by the client will have appropriate internal controls and procedures in place to ensure that the false or misleading statements are appropriately identified, managed and actioned.

Breach reporting obligations for registered tax practitioners

143. In some circumstances, the making, preparing or directing, or permitting someone to make or prepare a false or misleading statement may give rise to the registered tax practitioner having a reasonable belief that they have committed a 'significant breach' of the Code, particularly where the false or misleading statement resulted from a failure to take reasonable care, recklessness or an intentional disregard of a taxation law by the registered tax practitioner. Where this is the case, the registered tax practitioner will be required to provide a report to the TPB under the breach reporting requirements in the TASA.

144. While the obligation to notify the TPB under subsection 15(2) of the Determination in certain circumstances is separate to the breach reporting obligations in the TASA, in some circumstances a single notification to the TPB may satisfy both obligations. Further information on the breach reporting requirements, including how to lodge a report, can be found at tpb.gov.au/breach-reporting.

145. Although the TPB's consideration and treatment of breaches of the TASA and Code ultimately depend on the facts and circumstances, the TPB will take into account mitigating circumstances, for example, compliance with the obligations relating to correcting false or misleading statements and the breach reporting obligations, when considering the appropriate course of action (including the imposition of sanctions) in respect of a breach by a registered tax practitioner.

Application date of the new requirements under section 15 of the Determination

146. Per the transitional arrangements in paragraph 6, the obligations in section 15 of the Determination only apply to statements made on or after 1 January 2025 or 1 July 2025 depending on the applicable transition period in relation to the registered tax practitioner. They do not apply to any statement made, prepared or permitted or directed to be made or prepared before the end of the relevant transition period. This means that the obligations to take action only arise if the statement was made after the end of the relevant transition period. Notwithstanding this, other existing obligations under the TASA may still apply.

Other considerations – civil penalties and criminal liability for making false or misleading statements

147. In addition to the requirements contained in section 15 of the Determination, registered tax practitioners may also be subject to civil penalties and criminal liability for making, preparing or permitting or directing the making or preparing of false or misleading statements to the ATO.

Civil penalty liability under the TASA

148. Section 50-20 of the TASA prohibits registered tax practitioners from knowingly or recklessly (by inclusion or omission):

- making a false or misleading statement to the ATO
- preparing a false or misleading statement which the registered tax practitioner knows, or ought reasonably to know is likely to be made to the ATO
- permitting or directing an entity to make or prepare a false or misleading statement to the ATO.

Criminal liability under sections 8K and 8N of the TAA

149. Section 8K of the TAA makes it an offence for a person to make a statement that is false or misleading in a material particular to a taxation officer, including where the statement is misleading in a material particular due to an omission. This is an offence of 'absolute liability'.[62]

[62] An offence of 'absolute liability' is an offence where no fault elements apply to the physical elements of the offence and the defence of reasonable mistake is not available: section 6.2 of the *Criminal Code Act 1995* (Cth), which applies to offences under the TAA.

150. Section 8N of the TAA makes it an offence for a person to recklessly make a statement that is false or misleading in a material particular to a taxation officer, including where the statement is misleading in a material particular due to an omission.

151. The penalties imposed for offences under section 8K and 8N are set out in sections 8M and 8R of the TAA and will depend on the type of registered tax practitioner entity that has committed the offence (individual or corporation), and whether there have been any previous offences.

Penalties imposed by the ATO under Schedule 1 to the TAA

152. Section 284-75 in Schedule 1 to the TAA imposes penalties at law in circumstances where an entity or their agent makes a statement to the ATO or another entity exercising powers or performing functions under a taxation law, and the statement is false or misleading in a material particular, whether because of things in it or omitted from it.[63]

153. An entity will be liable for the penalty for a statement they or their authorised representatives (including tax agents, BAS agents, authorised employees or other agents[64]) make on their behalf.

Case studies

154. These case studies provide general guidance only. In all cases, consideration will need to be given to the specific facts and circumstances.

Case study 1 – registered tax practitioner intentionally disregards a taxation law in making a misleading statement to the TPB by omitting a material particular

Esther is a registered tax agent, operating as an individual sole practitioner.

In seeking to renew her tax agent registration, Esther completes the online renewal form, declaring that she continues to meet the ongoing registration requirements. However, Esther was recently declared an undischarged bankrupt, which is an event affecting her continued registration, and a matter that she is required to advise the TPB about. Esther is aware that she is an undischarged bankrupt at the time she completes the online renewal form and understands the impact of this on her ongoing registration requirements.

Esther fails to take any steps to have the information she provided in her online renewal form corrected within a reasonable period of time of the form being lodged with the TPB.

[63] Subsections 284-75(1) and (4) in Schedule 1 to the TAA imposes numerous penalties relating to the making of false and misleading statements in various circumstances.
[64] Under commercial law, an agent is a person who is either expressly or impliedly authorised by a principal to act for that principal so as to create or effect legal relations between the principal and third parties. An act done by the agent on behalf of the principal is considered an act of that principal.

Esther's omission of her status as an undischarged bankrupt is material, as it relates to her ongoing eligibility, and the registration requirements, as a registered tax agent. It is reasonable for Esther to believe that the omission resulted from an intentional disregard of taxation law, as Esther had actual knowledge that the omission of her status as an undischarged bankrupt was misleading with respect to whether she met ongoing registration requirements under the TASA. Esther is also in breach of Code item 1, for failing to act with honesty and integrity, and subsection 15(2) of the Determination for failing to take reasonable steps to have the statement corrected within a reasonable period of time.

Having regard to the circumstances surrounding Esther's conduct, the TPB may also find that Esther is not a fit and proper person to be registered as a tax agent.

Case study 2 – where a client had intentional disregard of the tax laws in making statements to the ATO

Archie, a registered BAS agent, was engaged by his client Tom to assist with lodging business activity statements (BAS) for the past 2 years. Archie agreed to complete the BAS for Tom even though the instructions were consistent with a widely publicised media release issued by the ATO to warn taxpayers who were considering entering into a particular fraudulent scheme to claim false GST refunds. When Archie raised his concerns about the fraudulent scheme with Tom, Tom told Archie that he understands Archie's concerns but would like him to lodge the BAS anyway. The BAS were lodged by Archie, on behalf of Tom, and the business was issued with GST refunds.

After some months had passed, Archie saw media articles where the ATO advised that it was taking compliance against entities who had entered into these fraudulent schemes. Archie considered his obligations under subsection 15(2) of the Determination and that he had reasonable grounds to believe that the false statements arose from an intentional disregard of the law by both Archie and Tom. As such, Archie advised Tom that the statements should be corrected within 28 days (having regard to the relevant statutory timeframes, and, in Archie's opinion, how long it will reasonably take to correct the statements) and the possible consequences if the statements were not corrected (including by showing Tom the media articles).

Tom told Archie he had no intention of correcting the statements himself, nor did he intend to instruct Archie to correct them on his behalf. As such, after 28 days, Archie:

- withdrew from his engagement and professional relationship with Tom; and
- given that Archie has reasonable grounds to believe that Tom's actions in conducting fraud on the Commonwealth have caused substantial harm to the interests of others, including the public and the Commonwealth, Archie notified the ATO that he has advised Tom the statements should be corrected and that he is not reasonably satisfied that the advice was acted upon.

Subsequent to withdrawing from the engagement, Archie received an ethical letter from a registered BAS agent engaged by Tom. In the circumstances, Archie reasonably considered that it was in the public interest to:

- advise the registered BAS agent of the false or misleading statements made by Tom and surrounding circumstances
- provide a copy of the ATO's media release in relation to the fraudulent scheme
- advise the registered BAS agent of the steps Archie has taken to comply with his obligations under section 15, including notifying the ATO of the false or misleading statement.

In undertaking the above actions, Archie has satisfied his obligations under subsection 15(2) of the Determination in taking reasonable steps to remedy the breach. The TPB took Archie's compliance with subsection 15(2) of the Determination into account when determining an appropriate sanction to impose on Archie for his breach of subsection 15(1) of the Determination as he made a statement to the Commissioner that he ought to have known was false in a material particular, in his capacity as a registered BAS agent.

It is important to note that Archie may also be in breach of other Code items, including Code item 1 relating to honesty and integrity and Code item 11 relating to not obstructing the administration of taxation laws.

Case study 3 – registered tax practitioner corrects a false statement previously made to the TPB that was made without reasonable care

Ella, a registered BAS agent, advised the TPB that she was covered by the professional indemnity (PI) insurance policy taken out by her employer company ABC Pty Ltd, and provided the TPB with a policy number and expiry date that she believed was the PI insurance policy that she was covered by. Ella obtained the policy number and expiry date from an old email forwarded to her by a colleague and did not review any documentation for the latest policy held by ABC Pty Ltd.

Upon undertaking an annual review of ABC Pty Ltd's insurance policies, it became apparent that Ella was not actually covered by the PI insurance policy held by the company. As such, statements made by ABC Pty Ltd and Ella regarding meeting the TPB's PI insurance requirements and accompanying policy details were false.

ABC Pty Ltd promptly updated its PI insurance policy to ensure that the provision of tax agent services by all employees and contractors on behalf of the company are covered, and ABC Pty Ltd and Ella subsequently advised the TPB of the false statements that had previously been provided, and the new and correct PI insurance details.

The conduct by ABC Pty Ltd and Ella gave rise to breaches of subsection 15(1) of the Determination and Code item 13 (failing to maintain PI insurance that meets the TPB's requirements). False statements were made by Ella and ABC Pty Ltd due to a failure to take reasonable care in checking the coverage provided by the latest PI insurance policy held by ABC Pty Ltd. However, Ella and ABC Pty Ltd have met their obligations under subsection 15(2) of the Determination by taking all reasonable steps to have the statement corrected within a reasonable period of time.

Ella and ABC Pty Ltd's timely correction of the false statement and ensuring compliance with the TPB's PI insurance requirements going forward, resulted in the TPB deciding to take no further action against Ella and issued ABC Pty Ltd with a written caution as a result of the breaches found.

Case study 4 – registered tax practitioner intentionally disregards a taxation law in making a false or misleading statement to the ATO on behalf of their clients

Julian, a registered tax agent, was identified by the ATO as having high work-related expense (WRE) claims across his client base. Over 100 client audits were completed, and during the audits, the types of behaviours noted by the ATO demonstrated that Julian made statements to the ATO that were false, and contrary to the information available to him. This was despite the ATO's audit activity identifying that clients had provided all relevant and accurate information and records to Julian when engaging him to complete their income tax returns.

Considering the information and source documents provided to Julian, the nature of the false statements made and the consistency of the falsehoods across Julian's client base, it was clear that Julian knew his statements were false and therefore resulted from an intentional disregard of taxation laws.

Julian is in breach of subsection 15(1) of the Determination by preparing statements to the ATO that he knew to be false in a material particular/s.

Given that Julian made the statements for clients, he has reasonable grounds to believe that the statements he made were false or misleading in material particulars, and resulted from intentional disregard of taxation laws, Julian also had an obligation to take reasonable steps in relation to advising clients, withdrawing from his engagement with the clients and in certain circumstances, notifying ATO and taking further action in the public interest. As Julian did not take any steps as required under subsection 15(2), he is also in breach of this provision.

In these circumstances, Julian may also be found to be in breach of his obligations under Code item 1 (acting honestly and with integrity), Code item 7 (providing tax agent services competently), Code item 11 (obstructing the proper administration of the tax laws) and he may also be found to no longer be a fit and proper person for registration as a tax practitioner.

Case study 5 – registered tax practitioner makes a false or misleading statement for a client in an immaterial particular

Felix, a registered tax agent, had been engaged by Leila for the past 5 years to prepare her income tax returns. While preparing Leila's income tax return of the most recent financial year, Felix discovered that he had accidentally provided an inaccurate business industry code (BIC) in Leila's income tax return in the previous year.

While the inclusion of the incorrect BIC in Leila's income tax return was a false or misleading statement, the inclusion of the incorrect BIC was not material. As such, Felix was not in breach of section 15 due to his mistake, and the obligations to take action under subsection 15(2) did not arise.

Case study 6 – registered tax practitioner considers that a client's actions may cause substantial harm to others

Don, a registered tax agent, was reviewing the taxation and financial records of his client, Phil, and Phil's company DFE Constructions Pty Ltd.

In closely reviewing the company's records, Don noticed that statements he had previously prepared on behalf of the company and provided to the ATO were materially false or misleading, resulting in the company's underpayment of GST and superannuation entitlements to employees. After reviewing the records he kept in relation to the tax agent services provided to Phil and the company, Don suspected that Phil had intentionally provided Don with incorrect information (including falsified source documents) in order to pay less GST and superannuation entitlements than what was required under the taxation laws.

Don identified that he had made false or misleading statements in material particulars to the ATO, on behalf of Phil and the company, and upon reviewing his records, Don considered that he had reasonable grounds to believe that the false or misleading nature of the statements resulted from an intentional disregard of taxation laws by Phil.

Given the seriousness of the false or misleading statements made to the ATO, Don contacted Phil within the same day, and advised Phil that:

- he had identified the false or misleading statements previously made to the ATO
- the statements should be corrected as soon as possible
- if the statements were not corrected it is likely that penalties will be imposed by the ATO (should the false or misleading statements be identified).

Don offered to assist Phil, for a fee, in having the false or misleading statements corrected, and negotiating a payment arrangement with the ATO in respect of the outstanding amounts and any penalties that might apply.

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In response to this advice, Phil told Don that he was not concerned about any penalties arising in respect of the false or misleading statements made to the ATO, and that should the issue come up, he intended to liquidate the company, and set up a new company in a way that the ATO will not be able to recover any outstanding debts or penalties. Phil indicated that he had experience in these sorts of arrangements and was confident that he could avoid any liabilities that might arise.

Taking Phil's response into account, Don was not reasonably satisfied that Phil would take steps to correct the false or misleading statements. In addition to considering that he had reasonable grounds to believe that the false or misleading statements made to the ATO were as a result of Phil's intentional disregard of a taxation law, Don also considered that he had reasonable grounds to believe that Phil and/or the company's actions have caused and may still cause substantial harm to:

- employees, creditors and investors of the company
- the public, including taxpayers generally and the tax system.

As a result, Don withdrew from the engagement with Phil and the company. He then notified the ATO about the false or misleading statements. In the circumstances, Don also reasonably considered that it was in the public interest to provide the ATO with additional information, to assist the ATO in looking into Phil and the company's conduct, as well as notifying the ATO about Phil's plans to avoid liability, should the false or misleading statements be identified and actioned by the ATO.

In these circumstances, Don would not be in breach of subsection 15(1) because did not know, or ought reasonably to know that the statements he made on behalf of the company were false or misleading in a material particular, at the time the statements were made. Don was also not be in breach of subsection 15(2), because he took appropriate steps as required to address the breach once it was identified.

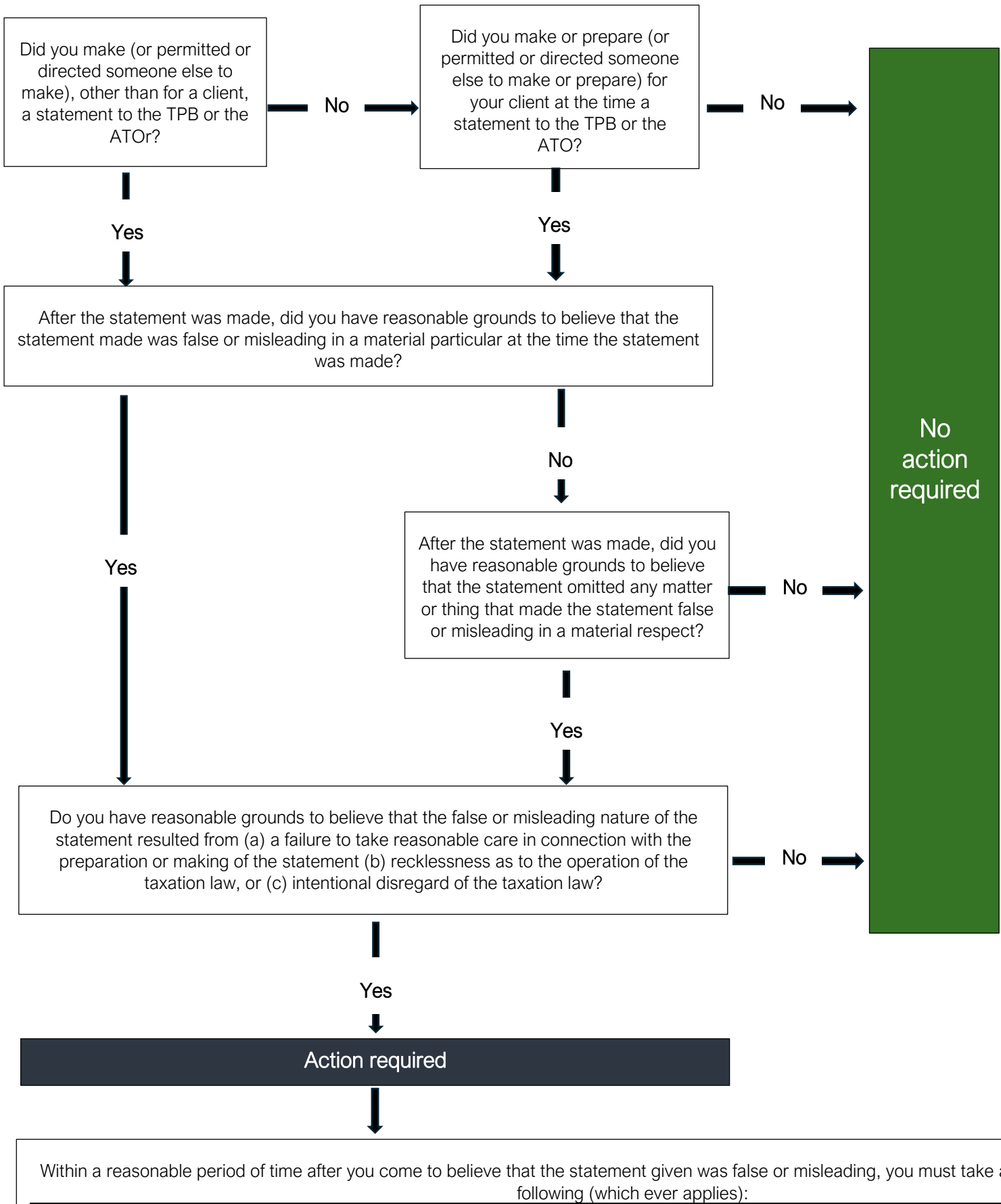
Case study 7 – registered tax practitioner makes a false or misleading statement for a client in an immaterial particular

Jake, a registered BAS agent, noticed that some bank feed transactions had not been included in a business activity statement he had prepared and lodged for his client Sam, resulting in false or misleading statements being made to the ATO.

While the omission of this information meant that statements made in the business activity statement were false or misleading, Jake considered that the false or misleading statements made in the business activity statement were immaterial, and did not give rise to action being required by Jake for the purposes of section 15 of the Determination.

Jake was correct in his consideration that these false or misleading statements made to the ATO were immaterial. Jake was not in breach of section 15 of the Determination in relation to the false or misleading statements made to the ATO.

Appendix 1 – When to take action under s15(2)



Within a reasonable period of time after you come to believe that the statement given was false or misleading, you must take all reasonable steps to do the following (which ever applies):

[1] Statement relates to an entity other than a client	[2] Statement relates to a client's affairs
You must have the statement corrected	**Subject to some exceptions (see below)**: 1. You must advise your client of <u>**all**</u> of the following: a. that the statement must be corrected b. possible consequences of not taking action to correct the statement 2. If: • after a reasonable period of time after you advised your client to correct the statement you are not reasonably satisfied that your client has corrected the statement or otherwise adequately explained the basis for the statement, and • you also have reasonable grounds to believe that the false or misleading nature of the statement resulted from recklessness or intentional disregard of a taxation law; you must do <u>**all**</u> the following: a. Withdraw from the engagement, and professional relationship, with your client (including no longer providing any further tax agent services to your client). b. Where you have reasonable grounds to believe that your client's actions have caused, are causing, or may still cause, substantial harm to the interest of others, notify the TPB and/or ATO that you: • have advised your client that a statement made to the TPB and/or ATO should be corrected. • are not reasonably satisfied that your client has acted on your advice. c. Take any further action as you reasonably consider is needed in the public interest. <u>EXCEPTIONS</u>: *Obligation under 1 and 2(a) does not apply where it would be unlawful under another Australian law.* *Obligations under 2(b) and (c) does not apply where doing so would pose an unreasonable risk to your personal safety or the safety of a member of your family or an at risk staff member of yours, or would be unlawful under another Australian law.*