Guidance Statement
TPB 01/2010

Code of Professional Conduct

This is a Tax Practitioners Board (TPB) Guidance Statement (TPB(GS)). It is intended for information only. It provides a provides a detailed explanation of the TPB's interpretation of the Code of Professional Conduct (Code) contained in Division 30 of the *Tax Agent Services Act 2009* (TASA), translating the provisions into practical principles that can be applied by the profession.

This TPB(GS) is designed to assist registered tax practitioners, the relevant institutions, professional associations, potential registrants and the wider community to understand the factors that provide the basis for the TPB's approach to the application of the TASA.

The principles, explanations and examples in this paper do not constitute legal advice and do not create additional legal obligations beyond those that are contained in the TASA.

Document history

The TPB released this TPB(GS) in the form of an explanatory paper as an exposure draft on 7 April 2010. The TPB invited comments and submissions in relation to the information contained in it. The closing date for submissions was 6 June 2010. The TPB considered the submissions made and published the TPB Explanatory Paper *TPB(EP) 01/2010 Code of Professional Conduct* on 16 December 2010.

The TPB has made the following updates to the TPB(GS) since its release:

- On 13 July 2017, the TPB updated this TPB(GS) to incorporate a reference to tax (financial) advisers, and to update currency and clarity.
- On 18 October 2021, the TPB updated this TPB(GS) to include an additional factor that may be considered in determining if a tax practitioner has complied with taxation laws in the conduct of their personal affairs.
- On 1 April 2022, the TPB updated this TPB(GS) to remove references to tax (financial) advisers and replace references from the repealed Tax Agent Services Regulations 2009 to Tax Agent Services Regulations 2022.
- On 1 July 2024, the TPB updated this TPB(GS) to include an additional administrative sanction that it can impose on tax practitioners for a breach of the Code.
- On 14 October 2024, the TPB updated this TPB(GS) to include references to the Administrative Review Tribunal which replaced the Administrative Appeals Tribunal on 14 October 2024.

- On 26 February 2025, the TPB updated this TPB(GS) to include references to the current versions of the APES Standards.
- On 30 April 2026, the TPB renamed its 'Explanatory Paper' to 'Guidance Statement'. All references in this document have been updated accordingly. The TPB Explanatory Paper TPB(EP) 01/2010 Code of Professional Conduct has been archived. In addition, the TPB updated this TPB(GS) to include information about the obligations for registered tax practitioners under Code items 15, 16 and 17 and other minor updates for clarity.
- On 13 August 2026, the TPB updated this TPB(GS) to clarify the meaning of 'personal affairs' for the purposes of subsection 30-10(2) of the TASA.
- On 6 November 2026, the TPB made minor updates to this TPB(GS) to include references to TPB(GS) 55/2026 The use of Artificial Intelligence and the Code of Professional Conduct.

Issued: 16 December 2010

Last modified: 6 November 2026

Contents

Purpose of guidance statement 5

Professional conduct of registered tax practitioners 6

Code of Conduct Provisions 6

Civil Penalty Provisions 7

Termination of registration 7

Application of the TASA 8

What is the Code of Professional Conduct? 8

Who does the Code apply to? 8

What are the principles of the Code? 8

(1) You must act honestly and with integrity 10

(2) You must comply with the taxation laws in the conduct of your personal affairs 12

(3) You must account for money or other property you receive on trust from or on behalf of your clients 14

(4) You must act lawfully in the best interests of your client 16

What does acting 'in the best interests of your clients' mean? 16

(5) You must have in place adequate arrangements for the management of conflicts of interest that may arise in relation to the activities that you undertake in the capacity of a registered tax agent or BAS agent 19

(6) Unless you have a legal duty to do so, you must not disclose any information relating to a client's affairs to a third party 22

(7) You must ensure that a tax agent service provided on your behalf is provided competently ... 26

(8) You must maintain knowledge and skills relevant to the tax agent services you provide 32

(9) You must take reasonable care in ascertaining a client's state of affairs, to the extent that ascertaining the state of those affairs is relevant to a statement you are making or a thing you are doing on behalf of the client 32

(10) You must take reasonable care to ensure that taxation laws are applied correctly to the circumstances in relation to which you are providing advice to a client 35

(11) You must not knowingly obstruct the proper administration of the taxation laws 38

(12) You must advise your client of the client's rights and obligations under the taxation laws that are materially related to the tax agent services you provide 40

(13) You must maintain professional indemnity insurance that meets the Board's requirements .. 43

(14) You must respond to requests and directions from the Board in a timely, responsible and reasonable manner 43

(15) You must not employ or use a disqualified entity to provide tax agent services on your behalf without approval 45

(16) You must not provide tax agent services in connection with an arrangement with a disqualified entity 46
(17) You must comply with any obligations determined under section 30-12 of the TASA 46
What are the consequences if a registered tax practitioner fails to comply with the Code? 53
What are the specific sanctions provided for a breach of the Code? 53
What is the effect of an order? 54
What is the effect of a suspension of a registered tax practitioner's registration? 56
What period of suspension may the TPB impose? 56
Can a registered tax practitioner apply for renewal of registration during a suspension period? 56
What is the effect of a termination of a registered tax practitioner's registration? 57
Is the TPB required to notify a registered tax practitioner of a decision to impose a sanction on that registered tax practitioner? 57
Is a TPB decision to impose an administrative sanction subject to review? 57
Appendix 1 – Case examples 58

Purpose of guidance statement

1. This Tax Practitioners Board (TPB) Guidance Statement (TPB(GS) is designed to provide assistance and explanation of general principles and matters relating to the Code of Professional Conduct (Code) that may be relevant to the professional practice of registered tax agents and registered BAS agents (collectively known as 'registered tax practitioners'). The TPB(GS) will also be relevant to the TPB's powers to take certain actions under the *Tax Agent Services Act 2009* (TASA).

2. The object of the TASA is to ensure that tax agent services (which, unless otherwise stated in this paper, includes BAS services and tax (financial) advice services) are provided to the public in accordance with appropriate standards of professional and ethical conduct.[1] The Code was created to assist in achieving this objective.

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

4. This TPB(GS) however, does not have the force of law and provides information and interpretative guidance only. Therefore, it is not intended to determine or exhaust the positions or actions the TPB may take in particular cases. Rather, this TPB(GS) provides a decision-making tool that the TPB may refer to when considering Code matters. It is also intended to assist registered tax practitioners in providing tax agent services.

5. This TPB(GS) provides the TPB's view in relation to the meaning of the Code provisions. This TPB(GS) does not create additional legal obligations beyond those which are contained in the TASA. In particular, a finding by the TPB that a registered tax practitioner has breached the Code does not itself give rise to a civil action against a registered tax practitioner by their client. Whether or not such an action arises is a matter for the client to determine in accordance with the general law.

6. In applying the Code to particular circumstances, the TPB has an obligation to ensure that its decisions are soundly based and do not constitute an improper use of the TPB's powers under the TASA. This obligation generally requires the TPB to observe the rules of natural justice when making a decision, ensure that there is enough evidence or other material to justify a decision, exercise its power having regard to any relevant considerations and have regard to the individual merits of a particular case when exercising a discretionary power. In addition, the TPB must exercise its powers in a manner that is not unreasonable.

7. The principles outlined and the case examples contained in this TPB(GS) provide examples of how the concepts relevant to the principles of the Code have been applied in different contexts. The cases are intended to act as a guide to the meaning and application of the principles in the Code.

---

[1] Section 2-5 of the TASA.

8. Registered tax practitioners that are members of professional bodies may have professional and ethical obligations imposed on them as members of those bodies.[2] While other codes may present similar duties and requirements, the duties created by the TASA are, where applicable, required to be complied with in addition to these other obligations.

Professional conduct of registered tax practitioners

9. The term 'professional conduct' refers to the way in which registered tax practitioners act while in their professional capacity. When providing services, it is expected that registered tax practitioners will display an appropriate, professional standard of behaviour beyond that which is expected of someone who is not acting in a professional capacity.

10. The TPB has a range of options available to it under the TASA in making findings about the conduct of registered tax practitioners. The options available to the TPB include:

    - imposing sanctions for breach of the Code
    - applying for a civil penalty for breach of the civil penalty provisions
    - terminating a registered tax practitioner's registration on the basis that the registered tax practitioner is no longer a fit and proper person to be a registered tax practitioner.

Code of Conduct Provisions

11. The provisions of the Code are contained in section 30-10 of the TASA.

12. The Code establishes a set of ethical and professional standards to be observed by registered tax practitioners.

13. The TPB may commence an investigation to determine whether there has, in fact, been a breach of the Code.[3] If the TPB is satisfied, following an investigation, that there has been a breach of the Code, it may apply one or more of the sanctions set out in section 30-15 of the TASA.

14. For further details of the administrative sanctions that may be applied for a breach of the Code, refer to the section of this TPB(GS) titled 'What are the consequences if a registered tax practitioner fails to comply with the Code?'

---

[2] Examples of such ethical and professional standards may include APES 110 Code of Ethics for Professional Accountants (including Independence Standards) and APES 220 Taxation Services. These standards apply to members of several accounting professional bodies including the Institute of Chartered Accountants in Australia, CPA Australia and the National Institute of Accountants.

[3] Section 60-95 of the TASA.

Civil Penalty Provisions

15. A civil penalty is a pecuniary penalty that is imposed by a court exercising civil rather than criminal jurisdiction. State and Commonwealth government bodies can apply to the courts to have a pecuniary penalty imposed against an individual for breaching a civil penalty provision in some circumstances. Unlike criminal penalties, civil penalties do not include criminal convictions or imprisonment.

16. While the Code applies only to registered tax practitioners, the civil penalty provisions apply to unregistered persons or entities in addition to registered tax practitioners.[4]

17. If there is a breach of any of these civil penalty provisions, the TPB has the option of applying to the Federal Court of Australia (Federal Court) for a civil penalty order against the tax practitioner.[5]

18. The TPB also has the option of applying to the Federal Court for an injunction. An injunction is a court order that requires a person to do, or refrain from doing, something. If a tax practitioner fails to comply with the terms of an injunction as specified in the court order, the practitioner may be guilty of contempt of court.

19. The TPB may apply for an injunction as an alternative to seeking a civil penalty (in the case of a permanent injunction) or in combination with a civil penalty application (in the case of an interim injunction). An interim injunction will generally remain operative until the Federal Court makes its final determination.

Termination of registration

20. The TPB may terminate the registration of a tax practitioner if the TPB is satisfied that the registered tax practitioner no longer meets the 'fit and proper person' requirement for registration.

21. In determining whether a registered tax practitioner is a fit and proper person, the TPB can examine the tax practitioner's previous conduct. The TPB may consider actions or omissions that occurred prior to the commencement of the TASA on 1 March 2010.

[4] Division 50 of the TASA.

[5] Subdivision 50-C of the TASA.

Application of the TASA

22. Some conduct by a registered tax practitioner that is covered by the civil penalty provisions could equally constitute a breach of the Code. Examples of this conduct may include:

- signing false declarations
- making false or misleading statements
- employing or using the services of a de-registered entity.

What is the Code of Professional Conduct?

23. Section 30-10 of the TASA establishes the legislated Code for registered tax practitioners. The Code sets out the professional and ethical standards required of registered tax practitioners. This section also outlines the duties that registered tax practitioners owe their clients, the TPB and other registered tax practitioners.

24. The Code consists of a list of core principles which are grouped into five categories:

- Honesty and integrity
- Independence
- Confidentiality
- Competence
- Other responsibilities.

Who does the Code apply to?

25. The Code applies to all registered tax practitioners.

What are the principles of the Code?

26. Section 30-10 of the TASA contains the Code consisting of the following 17 principles:

Honesty and integrity

(1) You must act honestly and with integrity.

(2) You must comply with the taxation laws in the conduct of your personal affairs.

(3) If:
(a) you receive money or other property from or on behalf of a client, and
(b) you hold the money or other property on trust;

you must account to your client for the money or other property.

Independence

(4) You must act lawfully in the best interests of your client.

(5) You must have in place adequate arrangements for the management of conflicts of interest that may arise in relation to the activities that you undertake in the capacity of a registered tax agent or BAS agent.

Confidentiality

(6) Unless you have a legal duty to do so, you must not disclose any information relating to a client's affairs to a third party without your client's permission.

Competence

(7) You must ensure that a tax agent service that you provide, or that is provided on your behalf, is provided competently.

(8) You must maintain knowledge and skills relevant to the tax agent services that you provide.

(9) You must take reasonable care in ascertaining a client's state of affairs, to the extent that ascertaining the state of those affairs is relevant to a statement you are making or a thing you are doing on behalf of a client.

(10) You must take reasonable care to ensure that taxation laws are applied correctly to the circumstances in relation to which you are providing advice to a client.

Other responsibilities

(11) You must not knowingly obstruct the proper administration of the taxation laws.

(12) You must advise your client of the client's rights and obligations under the taxation laws that are materially related to the tax agent services you provide.

(13) You must maintain professional indemnity insurance that meets the Board's requirements.

(14) You must respond to requests and directions from the Board in a timely, responsible and reasonable manner.

(15) You must not employ, or use the services of, an entity to provide tax agent services on your behalf if:
   (a) you know, or ought reasonably to know, that the entity is a disqualified entity; and
   (b) the Board has not given you approval under section 45-5 of the TASA to employ, or use the services of, the disqualified entity to provide tax agent services on your behalf.

(16) You must not provide tax agent services in connection with an arrangement with an entity that you know, or ought reasonably to know, is a disqualified entity.

(17) You must comply with any obligations determined under section 30-12 of the TASA. The following eight additional Code obligations are set out in the *Tax Agent Services (Code of Professional Conduct) Determination 2024* (Determination):[6]

- Upholding and promoting the ethical standards of the tax profession (section 10)
- False or misleading statements (section 15)
- Conflict of interest in activities undertaken for government (section 20)
- Maintaining confidentiality in dealings with government (section 25)
- Keeping of proper client records (section 30)
- Ensuring tax agent services provided on your behalf are provided competently (section 35)
- Quality management systems (section 40)
- Keeping your clients informed (section 45).

(1) You must act honestly and with integrity

What is 'acting honestly and with integrity'?

27. Honesty and integrity are terms which have their ordinary meanings.

28. The Macquarie Dictionary[7] defines each of the terms as follows:

Honesty

1. the quality or fact of being honest; uprightness, probity or integrity

2. truthfulness, sincerity or frankness
3. freedom from deceit or fraud

Integrity

soundness of moral principle and character; uprightness, honesty

29. The principles of honesty and integrity impose an obligation on a person to ensure:

- straightforwardness
- fair dealing
- a commitment not to mislead or deceive
- truthfulness.[8]

---

[6] The Determination was registered on 9 October 2024. The obligations set out in the Determination apply on or after the following dates:

- 1 July 2025 – for registered tax practitioners with 100 employees or less as at 31 July 2024
- 1 January 2025 – for any other registered tax practitioners.

[7] *The Macquarie Dictionary,* [Multimedia], version 5.0.0.

[8] Accounting Professional and Ethical Standards Board, *'APES110 Code of Ethics for Professional Accountants'* (2006) at [111.1 A1]; Accounting Professional and Ethical Standards Board, '*APES220 Taxation Services'* (2007) at [3.3]; International Ethics Standards Board for Accountants 'Code of Ethics for Professional Accountants' (2009) at [110].

30. The terms 'honesty' and 'integrity' are not defined in the TASA. Guidance can therefore be obtained from decisions of the courts. The following considerations have been used by the courts in determining when a person is acting with honesty and integrity:

- has the person acted with good morals and without depravity?[9]
- has the person acted properly and without deceit?[10]
- has the person acted without intent to gain an improper benefit or advantage for himself, herself or for another?[11]
- has the person acted with such carelessness as to demonstrate that no genuine attempt has been made to carry out the duties and obligations imposed on him or her by law?[12]
- is the person of such integrity that others may entrust their taxation affairs to that person's care?[13]
- is the person of such reputation and ability that officers of the ATO may assume that taxation returns lodged by the registered tax agent have been prepared by the agent honestly?[14]
- has the person, through their behaviour, displayed an inadequate sense of their obligations as a registered tax practitioner and/or an evident reluctance to ascertain and comply with those obligations?[15]
- has the person failed to make full disclosure of a matter in circumstances where that matter is relevant in assessing the suitability of that person to be registered, such as in the case of registered tax practitioners or legal practitioners?[16]
- does the person have a sufficient understanding of what is right and what is wrong so that they can be relied on to carry out their role or function as a registered tax practitioner?[17]
- making a false representation has also been held to be inconsistent with the integrity required for registration as a registered tax practitioner[18]
- accessing a taxpayer's personal taxation information on the Tax Agent Portal without authority has been held to breach the requirement of the Code to act honestly and with integrity[19]

---

[9] *Australian Securities and Investments Commission v Vines* [2005] NSWSC 1349; *Commonwealth bank of Australia v Friedrich* 5 ACSR 115 at 196.

[10] *Hall and Ors v Poolman and Ors* [2007] NSWSC 1330 at [325].

[11] As above; *Burnett and Tax Practitioners Board* [2014] AATA 687 at [70]-[74].

[12] As above.

[13] *Re Su and Tax Agents' Board of South Australia* 82 ATC 4284 at 4286; *Burnett and Tax Practitioners Board* [2014] AATA 687.

[14] As above.

[15] Re Fitzgibbon *and Tax Agents' Board of Queensland* 93 ATC 2053; *Burnett and Tax Practitioners Board* [2014] AATA 687.

[16] *Bouffiere v Tax Agents' Board of NSW* [2007] AATA 1978; Re Davis (1947) 75 CLR 409; *Re Kerin and Tax Agents' Board of South Australia* [2009] AATA 974.

[17] *Re Denton and Tax Agents' Board, South Australia* 83 ATC 4009 at 4014; *Burnett and Tax Practitioners Board* [2014] AATA 687.

[18] As above; *Re Kerin and Tax Agents' Board of South Australia* [2009] AATA 974.

[19] *Burnett and Tax Practitioners Board* [2014] AATA 687 at [70]-[74].

- engaging in rude, inappropriate and uncooperative behaviour toward ATO officers has been held to breach the requirement of the Code to act honestly and with integrity[20]

- failing to notify regulatory authorities, such as the ATO and the TPB, of fraudulent activity that a registered tax practitioner was aware of and that posed a risk to taxpayers and the integrity of the taxation system has been held to be inconsistent with the integrity required for registration as a registered tax practitioner.[21]

(2) You must comply with the taxation laws in the conduct of your personal affairs

What does 'taxation laws' mean?

31. The term 'taxation law' under the Code means:

    (a) 'any Act of which the Commissioner of Taxation has the general administration (including any part of an Act to the extent to which the Commissioner has the general administration of the Act);

    (b) any regulations under the Acts in paragraph (a) above, and

    (c) the *Tax Agent Services Act 2009* and the regulations made under that Act.'[22]

32. The Commissioner of Taxation (Commissioner) is responsible for the administration of a number of Acts and regulations concerning, among other things:

- income tax
- indirect taxes (including GST, luxury car tax, wine equalisation tax)
- superannuation
- the Medicare levy
- fringe benefits tax
- franking tax
- withholding taxes
- petroleum resource rent tax
- the administration or collection of the above taxes.

[20] *Burnett and Tax Practitioners Board* [2014] AATA 687.

[21] *Su and Tax Practitioners Board* [2014] AATA 644 at [30]-[32].

[22] Section 995-1 of the *Income Tax Assessment Act 1997*.

What does 'personal affairs' mean?

33. The term 'personal affairs' refers to a registered tax practitioner's personal taxation obligations, including timely lodgment of personal income tax returns and activity statements, payment of superannuation guarantee contributions and PAYG withholding and instalment payments.[23]

34. 'Personal affairs' also includes the affairs of:

- associated entities of a registered tax practitioner and entities that the registered tax practitioner has direct or indirect control over, particularly where the registered tax practitioner is responsible for, and/or actively involved in the tax affairs of the entity[24]
- the registered tax practitioner's practice, for example, the registered tax practitioner's duties and obligations with regard to maintaining registered tax practitioner registration.[25]

35. In the case of a company or partnership registered tax practitioner, the taxation obligations of the company or partnership mean the personal affairs of the company or partnership registered tax practitioner.

36. In particular, a partnership or company registered tax practitioner must ensure that at all times there is a sufficient number of individuals – being registered tax agents (in the case of a tax agent), or registered tax agents or BAS agents (in the case of a BAS agent – to provide tax agent services (including BAS services and tax (financial) advice services) to a competent standard and to carry out supervisory arrangements.

37. In other words, the registered tax practitioner must have enough registered individuals to:

- ensure services are provided competently
- exercise supervision over the services provided.

When is a registered tax practitioner complying with the taxation laws, in the conduct of their personal affairs?

38. Some of the factors that may be considered in deciding whether a registered tax practitioner has complied with the taxation laws in their personal affairs are:

- whether the registered tax practitioner has properly complied with their personal taxation obligations, including the timely lodgment of the practitioner's personal income tax returns and activity statements[26]

---

[23] Paragraph 3.28 of the Explanatory Memorandum to the Tax Agent Services Bill 2008.

[24] For further information refer to TPB(GS) 33/2018 Complying with taxation laws in the conduct of your personal affairs.

[25] *Bar Association (NSW) v Cummins* (2001) 52 NSWLR 279 at 289; *Re John Jeremy William Wyborn and Tax Agents' Board of New South Wales* [2007] AATA 1492.

[26] Paragraph 3.28 of the Explanatory Memorandum to the Tax Agent Services Bill 2008; *Grosfeld and Tax Practitioners Board* [2014] AATA 100 at [30] and [41].

- whether the registered tax practitioner has properly complied with the taxation obligations of the registered tax practitioner practice.[27] This requires that the practitioner ensures timely performance of the practitioner's obligations concerning the maintenance of tax agent or BAS agent registration and communications with the TPB

- whether the registered tax practitioner has taken reasonable care in interpreting the law as it applies to their personal tax affairs[28]

- other particular facts and circumstances of the matter, including the tax practitioner's role or involvement in the entity.[29]

(3) You must account for money or other property you receive on trust from or on behalf of your clients

What does 'account' mean?

39. The Macquarie Dictionary[30] defines 'account' in this context, as follows:

> *'Account*
>
> *...*
>
> *14. To render an account, especially of money*
>
> *17. Account for, a. to give an explanation of...'*

Under what circumstances will a registered tax practitioner hold money, received from or on behalf of a client, 'on trust'?

40. Where money or other property has been received by a registered tax practitioner from a client, in circumstances that indicate the money or other property was to be held on behalf of the client and/or applied for some specific purpose and in accordance with certain terms, that money or other property may be held on trust for the benefit of the client.[31]

41. Examples of money received on trust may include, but are not limited to, the following:

- subject to the terms of a retainer, money held or received in advance by the registered tax practitioner for the purpose of settling or meeting liabilities

---

[27] Paragraph 3.29 of the Explanatory Memorandum to the Tax Agent Services Bill 2008.
[28] Paragraph 3.27 of the Explanatory Memorandum to the Tax Agent Services Bill 2008.

[29] *Birdseye and Tax Practitioners Board* [2021] AATA 1011.
[30] *The Macquarie Dictionary,* [Multimedia], version 5.0.0.

[31] *Cohen v Cohen* (1929) 42 CLR 91; *Walker v Corboy* (1990) 19 NSWLR 382 at [2] – [3]; *Associated Alloys Pty Ltd v ACN 001 452 106 Pty Ltd (in liq*) (2000) 202 CLR 588 at [33] – [34]. See also APES 10 *Trust Money*; Accounting Professional and Ethical Standards Board and Paragraph 2.2, Guidance Notes GN3, *Operation of Trust Accounts,* Accounting Professional and Ethical Standards Board.

- client tax refunds
- money paid to the registered tax practitioner for the purpose of seeking specialist advice.

What is a registered tax practitioner required to do to account for money received from or on behalf of a client on trust?

42. To comply with this requirement of the Code, a registered tax practitioner is required to keep money or other property which the registered tax practitioner holds on trust for the client separate from the registered tax practitioner's personal money or other property.

43. There is no Australia-wide scheme of legislation requiring registered tax practitioners to hold separate trust accounts. Some professional bodies have promulgated rules about how members are to deal with client funds but these are not industry-wide.[32]

44. The TPB notes that the trust accounting arrangements, outlined in the Code of Ethics for Professional Accountants, while not binding on all registered tax practitioners, may provide some guidance on adequate arrangements that could be adopted. Measures that the registered tax practitioner must adopt to ensure compliance with the Code include, but are not limited to:

    - keeping money and other property held on trust separate from the registered tax practitioner's personal or business assets
    - only applying the money or other property the registered tax practitioner holds on trust to the purpose for which it was intended and for which the registered tax practitioner has authority to do so
    - maintaining records of account such that the registered tax practitioner can account to entitled persons, on demand, for any money or other property held on trust
    - complying with all laws and regulations relating to the custody and accounting for such assets, and/ or
    - only disbursing money or other property held on trust in accordance with express client instructions or as required by operation of law.[33]

---

[32] These rules include Accounting Professional and Ethical Standards Board, *'APES110 Code of Ethics for Professional Accountants'* (2006) at [R350.5]; APS 10 Trust Accounts; Guidance Note GN3 *"Operation of trust Accounts'* issued jointly by the Institute of Chartered Accountants in Australia, CPA Australia and the National Institute of Accountants; International Ethics Standards Board for Accountants 'Code of Ethics for Professional Accountants' (2009) at [20.2]. APESB has recently issued an exposure draft APES 310 Dealing with Client Monies which will replace APS 10.

[33] *Case U122* 87 ATC 731 at 734 per DP Thompson; Section 350 of the 'Code of Ethics for Professional Accountants APES 110, Accounting Professional and Ethical Standards Board.

(4) You must act lawfully in the best interests of your client

What does acting 'in the best interests of your clients' mean?

45. Acting 'in the best interests of your client' has been held to mean acting in a representative character in the exercise of the registered tax practitioner's responsibility to the client.[34] This requires a registered tax practitioner to advance and protect their client's interests to the best of their ability, in all circumstances.

46. An act or omission by a registered tax practitioner which is inconsistent with the obligation imposed by the Code will be in breach of this provision of the Code.

47. This duty is similar to the fiduciary duties owed by other professional advisors to clients, and is necessarily limited or circumscribed by the scope of the engagement between the registered tax practitioner and the client.[35]

48. While the Code does not create a fiduciary duty between a registered tax practitioner and their client, in considering the meaning of 'acting in the best interests of your client', the TPB considers that the nature of the duty between a registered tax practitioner and their client is similar to that between lawyers and their clients, or other professional services providers and their clients, and therefore the interpretation of these duties will provide an indication of how this obligation should be applied in the context of registered tax practitioners.

49. Given this, the following discussion of fiduciary duties should not be interpreted as meaning that the Code creates such a duty but rather the nature of these duties and what has been considered breaches of the duties will guide the TPB in determining whether a registered tax practitioner has breached this Code obligation.

50. Fiduciary duties generally require a person to act in good faith for the benefit of another and to avoid situations where their personal interests conflict with that duty.[36]

51. Some relationships are automatically considered to be a 'fiduciary relationship', for example the relationship between a solicitor and their client. The relationship between a registered tax practitioner and their client is not one of these relationships. However, despite this, registered tax practitioners are required by the Code to act in the best interest of the client.

52. The nature of the relationship between a client and their registered tax practitioner will be determined by reference to the circumstances of the case, the circumstances of the relationship, the terms of the engagement and the position of the client.

53. The relationship between a registered tax practitioner and client is not wholly contained within the contract between the registered tax practitioner and the client. This is because the

---

[34] *Hospital Products Ltd v United States Surgical Corp* (1984) 156 CLR 41 at 96 per Mason J.

[35] *Re Woods (No. 1) and Migration Agents Registration Authority* [2004] AATA 457 at [359].

[36] *Butterworths Concise Australian Legal Dictionary, Second Edition, LexisNexis*.

Code creates positive obligations that registered tax practitioners must comply with in providing tax agent services to their clients. Therefore the duties owed by the registered tax practitioner to the client are not wholly contractual.

54. Characteristics of the relationship between a registered tax practitioner and their client that may be relevant to determining the scope of the duty include:

- the existence of 'a relationship of confidence'[37] and the duty to maintain client confidence (principle 6 of the Code)[38]
- an undertaking by the registered tax practitioner to perform a task or fulfil a duty in the interests of the client[39]
- dependency or vulnerability on the part of the client that causes them to rely on the registered tax practitioner for the taxation services provided by that registered tax practitioner[40]
- a reasonable expectation that the registered tax practitioner will act in the client's best interests.[41] While this duty may already exist under the common law, it also arises under a provision of the Code
- the object of the TASA[42], which is to support public trust and confidence in the integrity of the tax profession and tax system by ensuring that tax agent services are provided to the community in accordance with appropriate standards of professional and ethical conduct, and the Code prescribed under the TASA to achieve this purpose.[43]

55. This duty is designed to prevent registered tax practitioners from being influenced by personal and other interests when acting for clients and to prevent a registered tax practitioner from actually misusing the registered tax practitioner's position for the registered tax practitioner's personal advantage.[44]

56. The extent of the duty owed by the registered tax practitioner to the client is determined from the character of the relationship between the registered tax practitioner and the client.

---

[37] *Breen v Williams* (1996) 186 CLR 71; *Hospital Products Ltd v United States Surgical Corporation* (1994)156 CLR 41 at 69.

[38] Subsection 30-10(6) of the TASA.

[39] *Breen v Williams* (1996) 186 CLR 71; *Australian Securities Commission v AS Nominees Ltd & Ample Funds Ltd* (1995) 62 FLR 504; *Hospital Products Ltd v United States Surgical Corporation* (1994) 156 CLR 41 at 72, 96-97; *Pavan v Gowshan & Associations Pty Ltd v Ratnam* (1996) 23 ACSR 214 at 224; *Townsend & Anor v Roussety & Co (WA) Pty Ltd & Anor* (2007) WASCA 40 at 124-130.

[40] As above; *Hospital Products Ltd v United States Surgical Corporation* (1994) 156 CLR 41 at 142.

[41] *Australian Securities Commission v AS Nominees Ltd & Ample Funds Ltd* (1995) 62 FLR 504.

[42] Section 2-5 of the TASA.

[43] *Re Woods (No. 1) and Migration Agents Registration Authority* [2004] AATA 457 at [359].

[44] *Chan v Zacharia* (1984) 53 ALR 417 at 433 per Deane J.

57. The duty can be determined from the circumstances of the engagement, for example by a letter of engagement, report, advice or other communication between the registered tax practitioner and the client, the duties imposed by the TASA and any relevant course of conduct between the registered tax practitioner and the client.[45]

58. These duties impose the following obligations on the registered tax practitioners who owe them:

- a duty not to promote the registered tax practitioner's personal interest by making or pursuing a gain in circumstances in which there is a conflict or a real and substantial possibility of a conflict between the registered tax practitioner's personal interests and those of the persons whom the registered tax practitioner is bound to protect[46]

- a duty not to use the registered tax practitioner's position to make a personal profit or gain unless authorised to do so by the registered tax practitioner's client and to account to the client for any such unauthorised profit or gain.[47] Accounting for any unauthorised gain will not operate as an excuse for the initial breach that gave rise to the gain.

What does acting 'lawfully' in the best interests of your client mean?

59. Acting 'lawfully' in the best interests of a client requires a registered tax practitioner to act in a client's best interest but only to the extent that their actions are consistent with the law. That is, 'acting in the best interests of clients', is not a justification for a registered tax practitioner to contravene or disregard the law.[48]

Example

Michael works in the hospitality industry. He engages Rahul, a registered tax agent, to prepare and lodge his income tax return. He instructs Rahul to claim a deduction for work clothing for the black trousers he is required to wear. Although Michael might believe it is in his best interest to reduce his taxable income, Rahul is aware that Michael cannot claim the cost of his work clothing as an allowable deduction because the trousers are not protective or specific to his occupation. Rahul advises Michael accordingly and must not act in accordance with Michael's instruction.[49]

60. When acting for, or on behalf of, a client, the registered tax practitioner must only act where they are authorised to do so, and only if their actions are in accordance with or are sanctioned by the law.

---

[45] As above at 431 per Deane J.

[46] *Australian Securities Commission v AS Nominees Ltd & Ample Funds Ltd* (1995) 62 FLR 504.

[47] *Chan v Zacharia* (1984) 53 ALR 417 at 433 per Deane J; *Warman International Ltd v Dwyer* (1995) 128 ALR 201 at 209 per Mason CJ, Brennan, Deane, Dawson and Gaudron JJ.

[48] *Burnett and Tax Practitioners Board* [2014] AATA 687.

[49] Example 3.5 from the Explanatory Memorandum to the Tax Agent Services Bill 2008.

61. There may also be examples of where the law overrides the duty of a registered tax practitioner to their client. For example, providing information or documents to the ATO following a notice pursuant to section 353-10 in Schedule 1 to the *Taxation Administration Act 1953* (TAA 1953).[50] Another example may include providing information pursuant to a court order.

(5) You must have in place adequate arrangements for the management of conflicts of interest that may arise in relation to the activities that you undertake in the capacity of a registered tax agent or BAS agent

When will a conflict of interest arise?

62. Registered tax practitioners must ensure adequate arrangements are in place to manage any conflicts of interest that may arise, wholly or partially, in relation to the provision of tax agent services.[51]

63. Essentially a conflict of interest will arise where the registered tax practitioner has a personal interest or has a duty to another person which is in conflict with the duty owed to a client. A conflict of interest may be an actual or perceived conflict and can arise before the registered tax practitioner accepts an engagement or at any time during the engagement.

64. A perceived conflict arises where there is a perception, by others, that the service or benefit will not be provided fairly or impartially. Registered tax practitioners have a duty to manage both actual and perceived conflicts of interests.

65. Examples of where a conflict of interest can arise include, but are not limited to:

- where the registered tax practitioner acts for both clients in a matter e.g. a husband and wife experiencing matrimonial issues. This may be both an actual conflict, in that the interests of each client conflict, and/or a perceived conflict, in that one of the clients believes that the registered tax practitioner is not providing, or may not provide, services fairly or impartially to him or her

- where a registered tax practitioner's personal interest is involved, e.g. where a registered tax practitioner is providing taxation advice in relation to the treatment of a particular transaction and the registered tax practitioner will or may benefit from the transaction occurring or not occurring

- where a registered tax practitioner acts against a client, or a former client, having previously acted for that client in a related matter.

---

[50] See further, Principle 6 below; Paragraph 3.37 of the Explanatory Memorandum of the Tax Agent Services Bill 2008.

[51] Paragraph 3.34 of the Explanatory Memorandum to the Tax Agent Services Bill 2008.

What are 'adequate arrangements for the management of conflicts of interest'?

66. Whether a registered tax practitioner's conflict management arrangements are sufficient will be a question of fact having regard to the particular circumstances of the matter in question, including:[52]

    - the nature, scale and complexity of the registered tax practitioner's business
    - the nature of the services provided by the registered tax practitioner
    - any information the registered tax practitioner obtains that is relevant to the actual or potential conflict of interest.[53]

67. In addition to generally anticipating potential conflict situations before they arise, three mechanisms that registered tax practitioners may use to manage conflicts of interest are:

    - controlling conflicts of interest
    - avoiding conflicts of interest
    - disclosing conflicts of interest.

68. Further, where a conflict arises or is likely to arise before an engagement commences or tax agent services are provided, the registered tax practitioner will need to determine the appropriate course of action to deal with the conflict before the engagement commences.

69. Whilst many conflicts of interest can be managed by a combination of internal controls and disclosures, some conflicts cannot be managed in these ways and in such cases the registered tax practitioner should avoid the conflict or refrain from providing tax agent services (including BAS services and tax (financial) advice services) in those circumstances.

Controlling conflicts of interest

70. To control conflicts of interest, a registered tax practitioner should:

    - identify the conflicts of interest relating to the registered tax practitioner's practice
    - assess and evaluate those conflicts
    - decide upon, and implement, an appropriate response to those conflicts.[54]

---

[52] See, for example, *ASIC v Citigroup Global Markets Australia Pty Ltd* (ACN 113 114 832)(No. 4) [2007] FCA 963.

[53] Paragraph 3.36 of the Explanatory Memorandum to the Tax Agent Services Bill 2008.

[54] Regulatory Guide 181 Licensing: Managing conflicts of interest (2004) ASIC at RG 181.20 (this regulatory guide considers conflict management procedures in the context of paragraph 912A (1) (aa) of the *Corporations Act 2001* which is expressed in similar terms to the requirement under subsection 30-10 (5) of the *Tax Agent Services Act 2009* and may provide useful guidance on an approach to be adopted with respect to this obligation under the Code).

Avoiding conflicts of interest

71. In some circumstances, regardless of the arrangements put in place, the registered tax practitioner will not be able to adequately manage the conflict of interest and therefore should not perform the services for the client.[55]

72. Again, the registered tax practitioner should have regard to the factors listed above concerning the adequacy of conflict management arrangements in determining whether, in all the circumstances, the registered tax practitioner will be able to manage the conflict.

Disclosing conflicts of interest

73. Disclosure about conflicts of interest should:

- be timely, obvious, specific and meaningful to the client
- occur before or when the tax agent service is provided, but in any case, at a time that allows the client a reasonable time to assess its effect
- refer to the specific service to which the conflict relates.[56]

74. Examples of adequate and effective conflict management arrangements may include, but are not limited to, the following:

- continuous disclosure of any conflicts
- informed written consent of the client(s) involved in the conflict of interest, specifically authorising disclosure of the conflict of interest to the other parties involved in the conflict. This may be in the form of a signed waiver or other authorisation
- maintenance of appropriate records and documentation detailing the conflict management policies and procedures of a registered tax practitioner and recording what action has been taken in relation to any conflicts of interest
- maintaining 'ethical walls' – a form of physical and intellectual separation between the management of the affairs of the clients involved in an actual or potential conflict of interest. This may include:
    - the physical separation of various departments in order to insulate them from each other
    - having an ongoing educational program to emphasise the importance of not improperly or inadvertently breaching duties to a client

[55] As above at RG 181.28.

[56] Paragraph 3.35 of the Explanatory Memorandum to the Tax Agent Services Bill 2008.

- having strict and carefully defined procedures for dealing with situations where it is considered that action may need to be taken to avoid a risk of a breach of duty, in addition to the maintenance of proper records when this action is taken
- monitoring of compliance with the procedures
- enforcing disciplinary sanctions where there has been a breach of any internal procedures.[57]

75. For such measures to be effectively implemented, these should be established as a systemic part of the registered tax practitioner's practice in relation to situations giving rise to potential conflicts of interest.[58]

76. The TPB's guidance in relation to the application of this Code item to registered tax practitioners is provided in the TPB Guidance Statement *TPB(GS) 24/2014 Managing conflicts of interest*.

(6) Unless you have a legal duty to do so, you must not disclose any information relating to a client's affairs to a third party

77. Code Item 6 provides that, unless there is 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.

78. In the absence of client authorisation or a legal duty to disclose, any disclosure of information relating to the affairs of a client will be a breach of this provision of the Code.

79. This includes allowing clients to view or have access to documents containing information relating to the affairs of other clients in circumstances where the other clients had not authorised the disclosure of their information.[59]

80. This would also include disclosure of client information to an offshore entity engaged by a registered tax practitioner to provide certain services to the registered tax practitioner. Where relevant information is to be disclosed to offshore or onshore entities by a registered tax practitioner, a registered tax practitioner should obtain client permission, such as in a letter of engagement, report, advice or other communication with the client.

---

[57] Regulatory Guide 181 Licensing: Managing conflicts of interest (2004) ASIC at RG 181.52; see also Conflicts of Interest, Agenda item 2, International Ethics Standards Board for Accountants, June 23-24, 2010.

[58] Paragraph 3.36 of the Explanatory Memorandum to the *Tax Agent Services Bill 2008*.

[59] *Li and Tax Practitioners Board* [2014] AATA 299 at [55]-[58].

81. Any unauthorised disclosure of client information held by the registered tax practitioner may result in an administrative sanction under the TASA.[60]

82. In addition to this principle, the *Privacy Act 1988* sets out a number of Australian Privacy Principles (APPs) which govern the collection, use, storage and disclosure of personal information and other conduct by organisations. The *Privacy Act 1988* requires that organisations which are subject to the APPs, observe these standards.

83. Registered tax practitioners should seek their own advice about whether the provisions of the *Privacy Act 1988* apply to them. Whether or not a registered tax practitioner is legally required to comply with the APPs, they should be regarded as a benchmark for good information handling procedures that may be appropriately adapted depending on the particular circumstances of the registered tax practitioner.

84. Where artificial intelligence (AI) is used in the provision of tax agent services, registered tax practitioners should be mindful of their obligations under Code item 6. [61]

What is 'information relating to a client's affairs'?

85. The phrase 'information relating to a client's affairs' is not defined in the TASA. Therefore, this phrase should be interpreted consistently with the ordinary meanings of the words contained in the phrase.

86. The Macquarie Dictionary[62] provides the following definitions in relation to this phrase:

'Relate...

3. to have reference (to)

4. to have some relation (to)

Affair

1. Anything done or to be done; that which requires action or effort; business; concern

2. (plural) matters of interest or concern; particular doings or interest;

...

4. thing, matter

5. a private or personal concern; a special function, business or duty'

---

[60] As above; *Li and Tax Practitioners Board* [2014] AATA 299.

[61] For further information on the use of AI and the Code, see TPB(GS) 55/2026 The use of Artificial Intelligence and the Code of Professional Conduct

[62] *The Macquarie Dictionary,* [Multimedia], version 5.0.0.

87. In this context, the phrase 'information relating to a client's affairs' means information in 'relation, connection, reference or regard' to the 'activities, business or concerns' of the registered tax practitioner's client.[63]

88. The terms of this provision of the Code do not require that the information relating to the client's affairs actually be provided to the registered tax practitioner by the client themselves.

89. To be protected under this principle, it is only necessary that the information relates to the affairs of a client.[64]

90. When employment changes or a new client is engaged, the registered tax practitioner is entitled to use prior professional experience to assist a client. However, the registered tax practitioner should not use or disclose any confidential information either acquired or received as a result of a professional or business relationship.[65] The registered tax practitioner's duty not to disclose any information relating to a client's affairs continues beyond the term of the engagement with the client.[66]

What is the meaning of 'third party'?

91. A 'third party' is any person other than the client to whom the information relates.[67]

92. A third party may be situated within or outside the firm or organisation that employs the registered tax practitioner and may include, where relevant, AI models and tools.

93. Further, in relation to a tax agent registered to provide tax (financial) advice services and who is an authorised representative of Australian financial services (AFS) licensee, a third party includes the AFS licensee, and vice versa. However, the following is also recognised:

    - in the context of an AFS licensee / authorised representative relationship, it is understood that authorised representatives (who are registered tax practitioners) often use 'fact finds' other documents to obtain consent from clients and therefore facilitate the flow of client information to the AFS licensee from the authorised representative

    - an authorised representative of an AFS licensee is required to provide information to the AFS licensee pursuant to s912G of the *Corporations Act 2001* (Corporations Act)[68] if requested, provided the request is made:

---

[63] *Johns v Connor* (1992) 27 ALD 25 at 34-35; *Re Collie and Deputy Commissioner of Taxation* (1997) 45 ALD 556 at 563-564; *Re Allrange Tree Farms Pty Ltd and Deputy Commissioner of Taxation* (2004) 84 ALD 238 at 243.

[64] *Re Collie and Deputy Commissioner of Taxation* (1997) 45 ALD 556; *Re Corrs Chambers Westgarth and Commissioner of Customs* (1998) 53 ALD 769.

[65] Paragraph R114.2, APES 110 *Code of Ethics for Professional Accountants,* 2006.

[66] *Bolkiah (Prince Jefri) v KPMG (a firm)* [1999] 1 All ER 517; *Beach Petroleum NL v Kennedy (1999)* 48 NSWLR 1 at 47-48 (considering *Prince Jefri*).

[67] Section 22 of the *Acts Interpretation Act 1901*.

[68] As notionally inserted by Australian Securities and Investments Commission (ASIC) Class Order [CO 14/923] *Record-keeping obligations for Australian financial services licensees when giving personal advice*.

- in connection with the obligations imposed on the AFS licensee under Chapter 7 of the Corporations Act
- within 7 years after the day on which the personal advice was provided to the client.

Under what circumstances can a registered tax practitioner disclose information relating to a client's affairs?

94. A registered tax practitioner may disclose information relating to a client's affairs to a third party, only if:

- disclosure is authorised by the client, or
- there is a legal duty to disclose.[69]

95. Examples of where there is a legal duty to disclose information relating to a client's affairs include:

- providing information to the TPB under a notice issued pursuant to section 60-100 of the TASA
- providing information to a court or Administrative Review Tribunal (ART) pursuant to a direction, order, or other court process, to provide that information
- providing information or documents to the ATO pursuant to section 353-10 in Schedule 1 to the *Taxation Administration Act 1953* concerning taxation laws. This requirement is subject to that material being properly withheld under legal professional privilege
- providing information to AUSTRAC to meet reporting obligations under the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006*
- if you are an authorised representative of an AFS licensee - providing information to the AFS licensee pursuant to s912G of the Corporations Act.[70]

96. The TPB's guidance in relation to the application of this Code item to registered tax practitioners is provided in the TPB Guidance Statement TPB(GS) 26/2014 Confidentiality of client information.

[69] Paragraph 3.37 of the Explanatory Memorandum of the *Tax Agent Services Bill 2008*; *Crowley and Others v Murphy* (1981) 34 ALR 496; *Parry-Jones v Law Society* [1969] 1 Ch. 1; [1968] 2 W.L.R. 397.

[70] As notionally inserted by ASIC Class Order [CO 14/923] *Record-keeping obligations for Australian financial services licensees when giving personal advice*.

(7) You must ensure that a tax agent service provided on your behalf is provided competently

What does 'competently' mean?

97. A registered tax practitioner should be a person of such competence and integrity that others may entrust their taxation affairs to the registered tax practitioner's care. The registered tax practitioner should be a person of such reputation and ability that the Commissioner of Taxation may assume that the taxation returns or other documents lodged by the registered tax practitioner have been prepared honestly and competently.[71]

98. The Macquarie Dictionary[72] provides the following definition of 'competent':

'Competent

1.properly qualified; capable;

2. fitting, suitable or sufficient for the purpose; adequate'

99. Competence, with respect to registered tax practitioners, can therefore be defined as a state of being capable, fitting, suitable or sufficient to provide a tax agent service (including a BAS service).

100. A registered tax practitioner will be competent if the registered tax practitioner possesses such skill, ability and knowledge required to perform a tax agent service that clients may entrust their taxation affairs to the registered tax practitioner's care and officers of the ATO may rely upon client returns or other documents prepared by the registered tax practitioner.[73]

101. The maintenance of competence by a registered tax practitioner requires a continuing awareness and understanding of technical, legal and business developments relevant to the tax agent services provided by the registered tax practitioner.[74]

102. Where AI is used in the provision of tax agent services, registered tax practitioners should be mindful of their obligations under Code item 7.[75]

103. The assurance of competence by a registered tax practitioner, in the provision of a tax agent service, requires the registered tax practitioner to:

---

[71] *Re Su and Tax Agent's Board of South Australia* 82 ATC 4284 at 4286.

[72] *The Macquarie Dictionary,* [Multimedia], version 5.0.0.

[73] As above; *Burnett and Tax Practitioners Board* [2014] AATA 687.

[74] Accounting Professional and Ethical Standards Board, *Stasos v Tax Agents' Board* (1990) 90 ATC 4950.

[75] For further information on the use of AI and the Code, see TPB(GS) 55/2026 The use of Artificial Intelligence and the Code of Professional Conduct.

- act diligently in accordance with applicable technical and professional standards when providing a tax agent service[76]

- maintain knowledge and skills at the level required to ensure that a client is provided with an appropriate standard of tax agent services[77]

- exercise reasonable care in the provision of a tax agent service.[78]

104. The Macquarie Dictionary[79] provides the following definition of 'diligent':
    a. *'Diligent'*
        i. *constant and persistent in an effort to accomplish something;*
        ii. *pursued with persevering attention'*

105. Acting diligently requires a registered tax practitioner to act in accordance with the terms of the client engagement carefully, thoroughly and on a timely basis.[80]

106. Circumstances that suggest a lack of competence include, but are not limited to:

- providing tax agent services relating to an area of the taxation laws in which the registered tax practitioner is not properly qualified, capable or suitable, without first obtaining the necessary support of a third party expert[81]

- not providing clients with a means of communicating with the registered tax practitioner or otherwise remaining inaccessible to clients[82]

- causing inappropriate delay in the lodgment of client tax returns and other documents[83]

- causing inappropriate delay in forwarding on client tax refunds from the ATO[84]

---

[76] While the TPB acknowledges that a lack of diligence may not always correspond with a lack of competence, diligence may, nonetheless, be an ingredient of competence; *Su and Tax Practitioners Board* [2014] AATA 644; *Li and Tax Practitioners Board* [2014] AATA 299.

[77] Refer to the discussion of subsection 30-10(8) of the TASA below for further details; also see *Comino and Tax Agents' Board of NSW* [2009] AATA 766; *Su and Tax Practitioners Board* [2014] AATA 644.

[78] Refer to the discussion of subsections 30-10(9) and (10) of the TASA below for further details; *Burnett and Tax Practitioners Board* [2014] AATA 687; *Su and Tax Practitioners Board* [2014] AATA 644; *Li and Tax Practitioners Board* [2014] AATA 299.

[79] *The Macquarie Dictionary,* [Multimedia], version 5.0.0.

[80] Accounting Professional and Ethical Standards Board, *'APES110 Code of Ethics for Professional Accountants'* (2006) at [113.1 A4].

[81] Explanatory Memorandum to the *Tax Agent Services Bill 2008* at Example 3.32.

[82] *Case U122* 87 ATC 731 at 736; *Pappalardo v Tax Agents' Board of Victoria* 2003 ATC 2207; *Grosfeld and Tax Practitioners Board* [2014] AATA 100 at [44].

[83] As above.

[84] As above.

- not making sufficient enquiries to ascertain the affairs of clients to enable the registered tax practitioner to be reasonably satisfied that documents they prepare and lodge on behalf of these clients are correct[85]

- performance of work of a quality such that it needs to be redone[86]

- failing to lodge the registered tax practitioner's own income tax returns or otherwise failing to adequately manage the registered tax practitioner's personal taxation affairs or those of their practice.[87]

What is a registered tax practitioner required to do to ensure that services are provided competently?

107. There are a number of steps a registered tax practitioner may take to ensure that tax agent services are provided competently. These include, but are not limited to:

- maintaining adequate knowledge, skill and resources in the area/s the registered tax practitioner provides services

- not accepting an engagement or providing services where the registered tax practitioner has insufficient knowledge and skill to complete the engagement or provide those services competently unless the registered tax practitioner is able to obtain such knowledge and skill, without delay and cost to the client

- not accepting an engagement or providing services where this would breach a condition that has been imposed on the registered tax practitioner's registration[88]

- where a registered tax practitioner has a narrow, specialised area of expertise, not providing tax agent services outside of this area of expertise unless the registered tax practitioner has taken steps to obtain the necessary knowledge and skills[89]

---

[85] *Su and Tax Practitioners Board* [2014] AATA 644; *Li and Tax Practitioners Board* [2014] AATA 299.

[86] *Re Modini and Tax Agents' Board of Queensland* (2007) 98 ALD 466 at 475.

[87] Case U122 87 ATC 731 at 735; *Carbery & Associates v Tax Agents' Board of Queensland* 2001 ATC 2025 at 2033; *Pappalardo v Tax Agents' Board of Victoria* 2003 ATC 2207 at 2211; *Re Su and Tax Agents' Board of South Australia* 82 ATC 4284; *Comino and Tax Agents' Board of NSW* [2009] AATA 766.

[88] *Stasos v Tax Agents' Board* (1990) 90 ATC 4950; *Comino and Tax Agents' Board of NSW* [2009] AATA 766.

[89] Paragraph 3.40 of the Explanatory Memorandum to the *Tax Agent Services Bill 2008*.

- setting out and agreeing the scope and cost of the services to be provided in a letter of engagement, signed consent, or other communication with the client. This should clearly outline what services are to be performed as part of the engagement based on the needs of the client and the skills, qualification and experience of the registered tax practitioner

- obtaining expert advice and assistance where appropriate

- obtaining knowledge and skill through private study and research

- informing the client of any likely delay and cost for the registered tax practitioner to acquire the requisite knowledge and skill to provide the service competently, and obtaining the client's consent to the registered tax practitioner providing the service.

What measures can a registered tax practitioner adopt to ensure that a tax agent service provided on their behalf is provided competently?

108. A registered tax practitioner is accountable for any tax agent services provided on their behalf.

109. In the case of an individual registered tax practitioner, a person working under the supervision and control of that registered tax practitioner is permitted to provide relevant tax agent services on behalf of that registered tax practitioner. In the case of a company or partnership registered tax practitioner, a person working under the supervision and control of an individual registered tax practitioner is permitted to provide relevant tax agent services on behalf of the company or partnership registered tax practitioner.[90]

110. Where those tax agent services are provided on behalf of the registered tax practitioner by any other person or entity, the registered tax practitioner is still required to ensure that those services are provided competently.

111. Importantly, if an entity not permitted under the TASA to provide tax agent services on behalf of a registered tax practitioner does, in fact, provide those services, the registered tax practitioner may be liable to a civil penalty for allowing this to occur. This may also constitute a breach of the Code to the extent that the registered tax practitioner has not complied with a taxation law and has not acted honestly and with integrity.

112. To ensure that a service provided on behalf of a registered tax practitioner is provided competently, the registered tax practitioner must ensure that the provider of the service, including any subcontractor, has the requisite skills and experience. They must

[90] Paragraph 3.41 of the Explanatory Memorandum to the *Tax Agent Services Bill 2008*.

also ensure that adequate supervision and review arrangements are in place to ensure the accuracy of any services provided.[91]

113. This does not necessarily require the registered tax practitioner to independently verify the technical accuracy of material prepared by a third party expert on the registered tax practitioner's behalf.

114. The level of supervision will depend upon a range of factors including:

- the educational qualifications and extent of experience of the provider of the service
- the nature of the actual service being provided
- any structures or processes in place within an organisation (for example, supervisory arrangements or quality assurance procedures) to facilitate the competent provision of tax agent services.[92]

115. The matters that could be considered relevant in determining the adequacy of the level of supervision and control that is being undertaken by a registered tax practitioner, may include, but are not limited to:

- whether the registered tax practitioner has identified the knowledge and skills required of an entity to competently provide a tax agent service on the registered tax practitioner's behalf and has assured that the entity providing the tax agent service both possesses and maintains the knowledge and skills[93]
- the physical proximity of the relevant registered tax practitioner to the person carrying out the work on the registered tax practitioner's behalf[94]
- the level and depth of personal physical or other oversight undertaken by the registered tax practitioner over the provision of tax agent services on the registered tax practitioner's behalf[95]

---

[91] Section 50-30 of the TASA.

[92] Paragraph 3.42 and 3.43 of the Explanatory Memorandum to the *Tax Agent Services Bill 2008*; Subsection 5030(5) of the *Tax Agent Services Act 2009*.

[93] Paragraph 3.44 of the Explanatory Memorandum to the *Tax Agent Services Bill 2008*.

[94] Subsection 30-10(8) of the TASA. This is also analogous to the obligations imposed on financial services licensees pursuant to 'Regulatory Guide 104: Licensing: Meeting the general obligations', ASIC 2007.

[95] *Re McGowan and Tax Agents' Board of Queensland* 96 ATC 2056 at [5]; *Scott v Tax Agents' Board of Queensland* 2001 ATC 2218 at 2254; *Re S & T Income Tax Aid Specialists Pty Ltd and Christopher Forward and Tax Agents' Board of New South Wales* 87 ATC 2001.

- the undertaking of ongoing, periodic review of the tax agent services provided on the registered tax practitioner's behalf, rather than only undertaking final review of services performed.[96]

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

(8) You must maintain knowledge and skills relevant to the tax agent services you provide

What is a registered tax practitioner required to do to maintain relevant knowledge and skills?

116. A registered tax practitioner must maintain knowledge and skills in the areas of the taxation laws and tax administration relating to the tax agent services provided by the registered tax practitioner. In relation to the provision of a tax agent service (including BAS service and tax (financial) advice service), the maintenance of competence by a registered tax practitioner requires continuing awareness, understanding and up-to-date knowledge of relevant technical, legal and business developments.[97]

117. It is a mandatory requirement for renewal of registration as a registered tax practitioner that the registered tax practitioner has completed continuing professional education (CPE) that meets the TPB's requirements.[98] The TPB's guidance in relation to the CPE requirements for registered tax practitioners are set out in the TPB Guidance Statements:

- TPB(GS) 37/2021 Continuing professional education requirements for tax and BAS agents
- TPB(GS) 38/2022 Continuing professional education requirements for tax agents with a tax (financial) advice services condition.

118. Where AI is used in the provision of tax agent services, registered tax practitioners should be mindful of their obligations under Code item 8.[99]

(9) You must take reasonable care in ascertaining a client's state of affairs, to the extent that ascertaining the state of those affairs is relevant to a statement you are making or a thing you are doing on behalf of the client

Under what circumstances is a registered tax practitioner required to comply with this principle?

[97] *Re McGowan and Tax Agents' Board of Queensland* 96 ATC 2056 at [5]; *Re S & T Income Tax Aid Specialists Pty Ltd and Christopher Forward and Tax Agents' Board of New South Wales* 87 ATC 2001; *Scott v Tax Agents' Board of Queensland* 2001 ATC 2218 at 2254.

[98] Paragraph 20-5(1)(d) of the TASA.

[99] For further information on the use of AI and the Code, see TPB(GS) 55/2026 The use of Artificial Intelligence and the Code of Professional Conduct.

119. A registered tax practitioner is required to comply with this principle if the registered tax practitioner is acting on behalf of a client. This includes, for example, preparing and lodging a return on behalf of a client.[100]

What are a registered tax practitioner's obligations under this principle?

120. A registered tax practitioner is only required to take reasonable care in ascertaining the client's state of affairs to the extent that the state of those affairs is relevant to a statement the registered tax practitioner is making or a thing the registered tax practitioner is doing on behalf of a client. Therefore, the requirement to take reasonable care is necessarily limited by the scope of the engagement between the registered tax practitioner and the client.[101]

What does 'reasonable care' mean for registered tax practitioners?

121. The standard of 'reasonable care' generally required of a registered tax practitioner is that of a competent and reasonable person, possessing the skills, qualifications and experience that are required to become a registered tax practitioner.[102]

122. If, however, a registered tax practitioner specialises in any particular areas of the taxation laws, the standard of 'reasonable care' required is that of a competent and reasonable person professing to have the skills relevant to the area of specialisation.[103]

123. 'Reasonable care' means what is reasonable in the circumstances. This will depend upon a range of factors, including the scope of the tax agent services being provided and the client's level of professional knowledge and experience.[104]

What is 'reasonable care in ascertaining a client's state of affairs'?

124. It is considered that 'more is expected of a registered tax practitioner than a taxpayer completing his or her own return'.[105] This higher standard of care is a reflection of a registered tax practitioner's 'knowledge, education, experience and skill'.[106]

125. It should be noted at the outset that this requirement under the Code does not create a requirement that a registered tax practitioner effectively 'audits' all of the

---

[100] Paragraph 3.48 of the Explanatory Memorandum to the *Tax Agent Services Bill 2008*.

[101] Paragraph 3.49 of the Explanatory Memorandum to the *Tax Agent Services Bill 2008*.

[102] *Hawkins v Clayton* [1988] HCA 15; (1988) 164 CLR 539; *Martinazzo and Commissioner of Taxation* [2009] AATA 61.

[103] *Re Sparks and Federal Commissioner of Taxation* [2000] AATA 28; *Reeders v Federal Commissioner of Taxation* 2001 ATC 2334 at 2336; *Martinazzo and Commissioner of Taxation*[2009] AATA 61.

[104] As above; *Re Arnett and Federal Commissioner of Taxation* 39 ATR 1095; *Re Keitac Pty Ltd ATF the McNamara Property Development Trust and Commissioner of Taxation* [2007] AATA 1206 at [39] – [45].

[105] *Paragraph 3.54 of the Explanatory Memorandum to the Tax Agent Services Bill 2008*.

[106] *Walker v Hungerfords* (1987) 49 SASR 93; Miscellaneous Taxation Ruling MT 2008/1.

registered tax practitioner's clients before providing tax agent services to avoid breaching the Code.[107]

126. Rather, this requirement is a duty of registered tax practitioners to take care beyond placing complete reliance on the accounts prepared, or work done, by a person without considering their level of knowledge and/or understanding of the taxation laws and the correctness of their work to ensure that the information upon which the provision of the tax agent services is based is accurate.[108]

127. In most cases, this will require that a registered tax practitioner ask the client appropriate questions, based on the registered tax practitioner's professional knowledge and experience, to ascertain the accurate factual basis upon which the tax agent services are provided and, where appropriate, to obtain supporting documents and records evidencing these facts.[109]

128. The requirement to take reasonable care relates to the services that are to be provided and is therefore subject to the agreed scope of the engagement with the client. A registered tax practitioner would not be required to make further enquiries and it would be reasonable to rely on information or advice, if the scope of the tax agent services excludes the examination of information provided by the client or requires the registered tax practitioner to rely on the information or advice of another expert.[110] These observations must also be considered in light of other paragraphs in this section and with the obligations under the TASA, which must be complied with.

129. Taking reasonable care will in many cases require that a registered tax practitioner ask questions based on their professional knowledge and experience in seeking information.[111] Where there are grounds to doubt the information provided by a client, the registered tax practitioner must take positive steps and make reasonable enquiries to satisfy themselves as to the completeness and/or accuracy of that information.[112]

130. Where a statement provided by a client seems plausible and is consistent with previously established statements and the registered tax practitioner has no basis on which to doubt the client's reliability or the veracity of the information supplied, the

---

[107] Paragraph 3.54 of the Explanatory Memorandum to the *Tax Agent Services Bill 2008*.

[108] As above.

[109] Paragraph 3.52 of the Explanatory Memorandum to the *Tax Agent Services Bill 2008*; *Reeders v Federal Commissioner of Taxation* 2001 ATC 2334 at 2337; *Burnett and Tax Practitioners Board* [2014] AATA 687; *Su and Tax Practitioners Board* [2014] AATA 644; *Li and Tax Practitioners Board* [2014] AATA 299.

[110] Paragraph 3.50 of the Explanatory Memorandum to the *Tax Agent Services Bill 2008*; *Re Keitac Pty Ltd ATF the McNamara Property Development Trust and Commissioner of Taxation* [2007] AATA 1206.

[111] Paragraph 3.52 of the Explanatory Memorandum to the *Tax Agent Services Bill 2008*.

[112] Paragraphs 3.52 to 3.54 and Example 3.12 of the Explanatory Memorandum to the *Tax Agent Services Bill 2008*; *Su and Tax Practitioners Board* [2014] AATA 644; *Li and Tax Practitioners Board* [2014] AATA 299.

registered tax practitioner may discharge their responsibility by accepting the statement provided by the client without further checking.[113]

131. However, if the information supplied by a client seems implausible or inconsistent with a previous pattern of claim or statement, further enquiries would be required.[114]

132. Again, whilst there is no requirement to audit, examine or review books and records or other source documents supplied by a client, a registered tax practitioner does not discharge their responsibility in such a case by simply accepting what they have been told.[115]

133. Where information has been provided by a suitable, independent, third party expert and there is no prior experience to the contrary, it may be reasonable for a registered tax practitioner to rely on that information without further checking or enquiries.

134. Where AI is used in the provision of tax agent services, registered tax practitioners should be mindful of their obligations under Code item 9.[116]

135. The TPB's guidance in relation to the application of this Code item to registered tax practitioners is provided in the TPB Guidance Statement TPB(GS) 22/2013 Reasonable care to ascertain a client's state of affairs.

(10) You must take reasonable care to ensure that taxation laws are applied correctly to the circumstances in relation to which you are providing advice to a client

What are the obligations of a registered tax practitioner under this principle?

136. This principle requires a registered tax practitioner to take reasonable care to ensure the correct interpretation and application of the taxation laws to the circumstances in relation to which clients seek advice.[117] These circumstances may be the actual circumstances of the client or hypothetical circumstances provided by the client.[118]

---

[113] See Example 3.14 and Paragraph 3.53 of the Explanatory Memorandum to the *Tax Agent Services Bill 2008*.

[114] Paragraph 3.30 of the Explanatory Memorandum to the *Tax Agent Services Bill 2008*.

[115] Paragraph 3.54 of the Explanatory Memorandum to the *Tax Agent Services Bill 2008*.

[116] For further information on the use of AI and the Code, see TPB(GS) 55/2026 The use of Artificial Intelligence and the Code of Professional Conduct.

[117] Paragraph 3.56 of the Explanatory Memorandum to the *Tax Agent Services Bill 2008*.

[118] Paragraph 3.31 of the Explanatory Memorandum to the *Tax Agent Services Bill 2008*.

137. This principle does not require registered tax practitioners to determine the correct application of the law; rather it requires registered tax practitioners to take reasonable care to ensure the correct interpretation and application of the law in the circumstances.[119]

Note: Section 995-1 of the *Income Tax Assessment Act 1997* provides that a 'taxation law' means:

(a) 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

(b) regulations under such an Act (including such a part of the Act); or

(c) the *Tax Agent Services Act 2009* or regulations made under that Act.

The Commissioner of Taxation is responsible for the administration of a number of Acts and regulations concerning:

- income tax
- indirect taxes (including GST, luxury car tax, wine equalisation tax)
- superannuation
- the Medicare levy
- fringe benefits tax
- franking tax
- withholding taxes
- petroleum resource rent tax
- the administration or collection of the above taxes
- product grants or benefits mentioned in section 8 of the *Product Grants and Benefits Administration Act 2000* or the administration or payment of the product grants and benefits
- net fuel amount, or the administration, collection or payment of a net fuel amount.

What is 'reasonable care' for the purposes of this principle?

[119] Paragraph 3.56 of the Explanatory Memorandum to the *Tax Agent Services Bill 2008*.

138. It is considered that 'more is expected of a registered tax practitioner than a taxpayer completing his or her own return'.[120] This higher standard of care is a reflection of a registered tax practitioner's 'knowledge, education, experience and skill'.[121]

139. For the purposes of this principle, taking 'reasonable care' in ensuring the taxation laws are applied correctly means giving appropriately serious attention to complying with the obligations imposed under a taxation law at a standard that could be expected of a reasonable person in the registered tax practitioner's position.[122]

140. Where a registered tax practitioner is uncertain about how a taxation law applies to a particular set of circumstances, taking reasonable care may include seeking clarification from relevant authorities and sources such as:

- legislation and related extrinsic material (for example, explanatory memoranda)
- relevant case law
- rulings and determinations issued by the Commissioner on the topic
- the Commissioner's instructions in documents such as income tax returns, BAS returns, fact sheets and practice statements
- any other guidance material published by the Australian Taxation Office (ATO), including on its website
- information published or provided by a recognised professional association or other regulatory agency
- information or relevant commentaries published by other experts, registered tax practitioners or specialists
- relevant training material.[123]

141. In consulting relevant authorities and sources, the registered tax practitioner may choose to seek assistance from another appropriately qualified person who has the ability and resources to provide advice on taxation laws.[124]

142. Where AI is used in the provision of tax agent services, registered tax practitioners should be mindful of their obligations under Code item 10.[125]

---

[120] *Re Sparks and Federal Commissioner of Taxation* [2000] AATA 28; *Reeders v Federal Commissioner of Taxation* 2001 ATC 2334 at 2336; *Martinazzo and Commissioner of Taxation* [2009] AATA 61.

[121] As above; *Re Arnett and Federal Commissioner of Taxation* 39 ATR 1095; *Re Keitac Pty Ltd ATF the McNamara Property Development Trust and Commissioner of Taxation* [2007] AATA 1206 at [39] – [45].

[122] *Re Martinazzo and Commissioner of Taxation* [2009] AATA 61 at [67]; *Burnett and Tax Practitioners Board* [2014] AATA 687.

[123] Paragraph 3.57 of the Explanatory Memorandum to the *Tax Agent Services Bill 2008*.

[124] In order to demonstrate to the TPB that reasonable care has been taken through consulting, or seeking the assistance of, appropriately qualified parties, a registered tax practitioner will be required to provide some written or documentary record of such a request.

[125] For further information on the use of AI and the Code, see TPB(GS) 55/2026 The use of Artificial Intelligence and the Code of Professional Conduct.

143. The TPB's guidance in relation to the application of this Code item to registered tax practitioners is provided in the TPB Guidance Statement TPB(GS) 23/2013 Reasonable care to ensure taxation laws are applied correctly.

(11) You must not knowingly obstruct the proper administration of the taxation laws

What are a registered tax practitioner's obligations under this principle?

144. A registered tax practitioner must not knowingly obstruct the proper administration of the taxation laws.

145. A registered tax practitioner does not breach this requirement by relying on the registered tax practitioner's or the client's rights to withhold documents or to not provide information. Examples of such rights may include legal professional privilege or the ATO accountant's concession set out in the published 'Guidelines to accessing professional accounting advisers' papers'.[126]

What does 'knowingly obstruct' mean?

146. The word obstruction is defined by reference to its ordinary meaning.[127]

147. The Macquarie Dictionary[128] defines the relevant terms as follows:

Obstruct

2. to interrupt, make difficult, or oppose the passage, progress, course, etc., of

Obstruction

1 something that obstructs; an obstacle or hindrance

2 the act of obstructing

148. The test for determining whether an act or omission constitutes an obstruction is a test of reasonableness - that is, in doing the act or making the omission, has the person acted reasonably?[129]

---

[126] Paragraph 3.61 of the Explanatory Memorandum to the Tax Agent Services Bill 2008.

[127] *Jenkins v Allied Ironfounders Ltd (1970) 1 WLR 304 at 315; Scanlan v Swan 82 ATC 4402 at 4405*.

[128] *The Macquarie Dictionary*, [Multimedia], version 5.0.0.

[129] *Scanlan v Swan* 82 ATC 4402 at 4405.

149. This is a question of fact to be answered with respect to the specific circumstances of a particular case.[130] The word 'knowingly' requires that the registered tax practitioner had actual knowledge, as opposed to constructive knowledge, of the obstruction caused by the registered tax practitioner's conduct.[131]

150. In determining whether this test is satisfied, the following considerations are relevant:

- a temporary denial of access on reasonable grounds may fall short of being an obstruction[132]
- denial of documents for an indefinite period may constitute an obstruction[133]
- a positive act of obstruction by a person, from whom access to inspection of documents or other information is sought, is not necessarily a requirement in establishing that there has been an obstruction[134]
- actions essentially negative in character, for example withholding specific information, or knowledge of the means to access that information, from the TPB or the Commissioner may be considered an obstruction[135]
- an act or omission that causes delay may be considered an obstruction where it can be established that the delay sought was for other than a genuine and reasonable purpose[136]
- repeated failure by a person to keep appointments or supply information may be considered an obstruction[137]
- repeated failure by a person to respond adequately to formal requests for information may be considered an obstruction. This will include excessive or repeated delays in responding, not replying to the request for information, giving information that is not relevant or does not address the issues in the request and/or supplying inadequate information.[138]

---

[130] *O'Reilly v Commissioners of the State Bank of Victoria* 83 ATC 4156 at 4163.

[131] *Re Secretary, Department of Family and Community Services and Jonauskas* (2001) 65 ALD 553.

[132] *Scanlan v Swan* 82 ATC 4402 at 4405.

[133] *Ansett Transport Industries (Operations) Pty Ltd v Australian Federation of Air Pilots* (1991) 101 ALR 407 at 414.

[134] *Ansett Transport Industries (Operations) Pty Ltd v Australian Federation of Air Pilots* (1991) 101 ALR 407 at 415.

[135] *O'Reilly v Commissioners of the State Bank of Victoria* 83 ATC 4156 at 4163.

[136] *Scanlan v Swan* 82 ATC 4402 at 4405.

[137] Paragraph 74 of the ATO Practice Statement PS LA 2006/8 *Remission of shortfall interest charge and general interest charge for shortfall periods* (PS LA 2006/8).

[138] As above.

What does 'proper administration of' the taxation laws mean?

151. The phrase 'proper administration of' is not defined in the legislation and so adopts its ordinary meaning.

152. The Commissioner has primary responsibility for the general administration of the taxation laws.[139]

153. The TPB is, however, responsible for the general administration of the TASA.[140] The TASA is a taxation law.[141]

154. The proper administration of the taxation laws includes performing the statutory duties and functions as required by the taxation laws.

155. A registered tax practitioner will breach the Code where the registered tax practitioner knowingly obstructs the Commissioner or the TPB, or officers properly acting on behalf of the Commissioner or the TPB in performing their respective statutory duties and functions as required by the taxation laws.

(12) You must advise your client of the client's rights and obligations under the taxation laws that are materially related to the tax agent services you provide

What are a registered tax practitioner's obligations under this principle?

156. A registered tax practitioner is required to advise the registered tax practitioner's clients of the client's rights and obligations under the taxation laws that are materially related to the tax agent services that the registered tax practitioner provides to that client.[142]

157. In this context, the phrase 'related to' will carry its ordinary meaning of 'associated with', 'connected with' or 'linked with'.[143]

158. For a client's rights and obligations to be materially related to the tax agent services provided, a connection between the rights and obligations and the tax agent

---

[139] Section 8 of the ITAA 1936; section 1-7 of the ITAA 1997; section 34 of the *Taxation Administration Act 1953*; section 356-5 of Schedule 1 to the *Taxation Administration Act 1953*.

[140] Section 1-15 of the TASA.

[141] Section 995-1 of the ITAA 1997.

[142] Paragraph 3.62 of the Explanatory Memorandum to the *Tax Agent Services Bill 2008*.

[143] *Re Nabalco Pty Ltd and Collector of Customs* (1993) 32 ALD 771; *Collector of Customs v The Western Australian Government Railways Commission (Westrail)* (1995) 39 ALD 21.

services is required. This connection must be substantial, rather than so tenuous that it is immaterial or can be ignored.[144]

159. Whether a client's rights and obligations are materially related to a tax agent service in any given case will vary according to the nature of the services provided to the client.

Note: Section 995-1 of the *Income Tax Assessment Act 1997* provides that a 'taxation law' means:

(a) 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
(b) regulations under such an Act (including such a part of the Act); or
(c) the *Tax Agent Services Act 2009* or regulations made under that Act.

The Commissioner of Taxation is responsible for the administration of a number of Acts and regulations concerning:

- income tax
- indirect taxes (including GST, luxury car tax, wine equalisation tax)
- superannuation
- the Medicare levy
- fringe benefits tax
- franking tax
- withholding taxes
- petroleum resource rent tax
- the administration or collection of the above taxes
- product grants or benefits mentioned in section 8 of the *Product Grants and Benefits Administration Act 2000* or the administration or payment of the product grants and benefits
- net fuel amount, or the administration, collection or payment of a net fuel amount.

160. The registered tax practitioner's obligations under this principle only extend to services within the scope of engagement between the registered tax practitioner and the client.[145]

161. These rights and obligations could be referred to in a letter of engagement, report, advice or other communication with the client and may include, but are not limited to, providing advice on:

---

[144] RE*Warne and Defence Force Retirement and death Benefits Authority* (1989) 18 ALD 662; *International Development and Construction Pty Ltd v North Sydney Council* [2005] NSWLEC 691.

[145] Paragraph 3.64 of the Explanatory Memorandum to the *Tax Agent Services Bill 2008*; *O'Reilly v Law Society of New South Wales* (1988) 24 NSWLR 204 at 213 per Mahoney J.

- the nature of self-assessment, including the Commissioner's ability to amend an assessment within a certain time after the original assessment, impose penalties and issue rulings on which clients may rely

- the client's obligation to keep proper records and the consequences of not doing so[146]

- that the responsibility for the accuracy and completeness of the particulars and information required to comply with the taxation laws rests with the client

- the application of the safe harbour provisions contained in the *Taxation Administration Act 1953*

- where necessary, the rights or options available to clients, including how to seek a private ruling and how to object or appeal against adverse decisions made by the Commissioner.[147]

162. Any letter of engagement, report, advice or other significant communication with the client should be in writing.

[146] *'Taxpayers' Charter – What you need to know'*, Australian Taxation Office, June 2010.

[147] Paragraph 3.63 of the Explanatory Memorandum to the *Tax Agent Services Bill 2008*.

(13) You must maintain professional indemnity insurance that meets the Board's requirements

What are a registered tax practitioner's obligations under this principle?

163. Registered tax practitioners are potentially liable to clients for the registered tax practitioner's own professional negligence as well as the negligence of those providing services on the registered tax practitioner's behalf.[148]

164. It is an ongoing eligibility requirement of registration, as well as a requirement under the Code, that a registered tax practitioner maintains professional indemnity (PI) insurance that meets the TPB's requirements.[149] This requirement serves as an important protection to clients in the event that they are made liable to pay tax or penalties that are imposed as a result of the conduct of a registered tax practitioner, and therefore it is in the public interest that registered tax practitioners are adequately insured.[150]

165. If a registered tax practitioner fails to maintain PI insurance that meets the TPB's requirements, they will be in breach of this requirement of the Code[151] and may also cease to meet the registered tax practitioner registration requirement under Subdivision 20-A of the TASA that they maintain, or will be able to maintain, PI insurance as required by the TPB.

166. The TPB's PI insurance requirements for tax practitioners are set out in the TPB Guidance Statement TPB(GS) 06/2010 Professional indemnity insurance requirements for tax and BAS agents.

(14) You must respond to requests and directions from the Board in a timely, responsible and reasonable manner

What are a registered tax practitioner's obligations under this principle?

167. If a registered tax practitioner receives a request or direction from the TPB, the registered tax practitioner must respond to that request in a timely, responsible and reasonable manner.

---

[148] *Scott v Tax Agents' Board of Queensland* [2001] AATA 435 at [180] – [183].

[149] Subsections 20-5(1)(c), 20-5(2)(d), 20-5(3)(e) and 30-10(13) of the TASA.

[150] *Grosfeld and Tax Practitioners Board* [2014] AATA 100 at [42].

[151] As above.

168. Claiming legal professional privilege or other legal rights on behalf of a client will not be considered an unreasonable response to a direction of the TPB.[152]

What does 'timely, responsible and reasonable' mean?

169. These terms are not defined in the legislation and should therefore take on their ordinary meanings.

170. The Macquarie Dictionary[153] relevantly defines these terms as follows:

'Timely

1. Occurring at a suitable time

Responsible

...

2. Having a capacity for moral decisions and therefore accountable; capable of rational thought or action

3. able to discharge obligations or pay debts

4. reliable in business of other dealings; showing reliability

Reasonable

1. Endowed with reason

2. agreeable to reason or sound judgment

3. not exceeding the limit prescribed by reason, not excessive

4. moderate'

171. Examples of failures to respond to a TPB request or direction in a timely, responsible and reasonable manner may include:

- failing to provide written responses to TPB correspondence within the time period specified for the response[154]

- making arrangements with the TPB to provide information and subsequently failing to provide that information in accordance with the arrangement[155]

---

[152] Paragraph 3.68 of the Explanatory Memorandum to the *Tax Agent Services Bill 2008*.

[153] *The Macquarie Dictionary*, [Multimedia], version 5.0.0.

[154] *Morrissey v Tax Agents' Board of Queensland* 2004 ATC 2309; *Cowlishaw & Ors v Tax Agents' Board of Queensland* [1999] AATA 412 at [9]; *Pappalardo v Tax Agents' Board of Victoria* [2003] AATA 990 at [30]; *Grosfeld and Tax Practitioners Board* [2014] AATA 100.

[155] As above.

- providing responses to TPB requests and/or directions that are false or misleading[156]
- providing inadequate responses to requests for information from the TPB.[157]

(15) You must not employ or use a disqualified entity to provide tax agent services on your behalf without approval

What are a registered tax practitioner's obligations under this principle?

172. A registered tax practitioner must not employ or use the services of an entity that the registered tax practitioner knows (or ought reasonably to know) is a disqualified entity, to provide tax agent services (including BAS services) on the registered tax practitioner's behalf,[158] without approval from the TPB.

173. If a registered tax practitioner employs or uses the services of a disqualified entity to provide tax agent services on their behalf without TPB approval, the TPB will find that the registered tax practitioner has breached the Code and may impose sanctions for that breach.

What is a 'disqualified entity'?

174. A disqualified entity is an entity (including an individual) that is not a registered tax agent, BAS agent, or a 'qualified tax relevant provider' (QTRP) and has had an event specified in the TASA occur in the last five years,[159] which disqualifies them from providing tax agent services or BAS services on behalf of a registered tax practitioner without approval.

175. If a registered tax practitioner intends to employ or use (or continue to employ or use) a disqualified entity to provide tax agent services on their behalf, the registered tax practitioner must apply to the TPB for approval.

176. The TPB's guidance in relation to the application of this Code item to registered tax practitioners, including the minimum steps and enquiries a registered tax practitioner should take to comply, is provided in the TPB Guidance Statement TPB(GS) 46/2024 Employing or using a disqualified entity in the provision of tax agent services without approval.

---

[156] As above.

[157] *Grosfeld and Tax Practitioners Board* [2014] AATA 100.

[158] An entity is providing a tax agent service on a registered tax practitioner's behalf if they are required to provide the service under the tax practitioner's supervision and control.

[159] The relevant disqualified entity events are specified in subsection 45-5(2) of the TASA.

(16) You must not provide tax agent services in connection with an arrangement with a disqualified entity

What are a registered tax practitioner's obligations under this principle?

177. A registered tax practitioner is prohibited from having certain arrangements with an entity that they know (or ought reasonably to know) is a disqualified entity, in connection with the provision of tax agent services, including BAS services. These types of arrangements cannot be approved by the TPB.

178. If a registered tax practitioner is considering entering into (or is already in) an arrangement with an entity in connection with the provision of tax agent services, they must consider whether this type of arrangement is prohibited, and whether the entity in the arrangement is a disqualified entity.

179. The definition of a 'disqualified entity' and relevant disqualified entity events for the purposes of Code item 16 are the same as under Code item 15.[160]

What types of arrangements are prohibited?

180. Code item 16 is intended to prevent arrangements where a disqualified entity is operating 'through' the registered tax practitioner.[161] This may occur where the disqualified entity is acting as the 'controlling mind' of the registered tax practitioner and provides tax agent services (while unregistered) using the registered tax practitioner's credentials.[162]

181. The circumstances which may constitute an 'arrangement' for the purposes of Code item 16 can vary significantly and will be considered on a case-by-case basis.

182. The TPB's guidance in relation to the application of this Code item to registered tax practitioners, including relevant case examples, is provided in the TPB Guidance Statement TPB(GS) 47/2024 Prohibition on providing tax agent services in connection with an arrangement with a disqualified entity.

(17) You must comply with any obligations determined under section 30-12 of the TASA

183. For the purpose of Code item 17, the Minister determined under section 30-12 of the TASA, eight additional Code obligations for registered tax practitioners which relate to professional and ethical conduct. These obligations are set out in the Determination,

[160] Refer to paragraph 169 in this TPB(GS).

[161] Paragraph 3.40 of the Explanatory Memorandum to the Treasury Laws Amendment (2023 Measures No. 1) Bill 2023.

[162] Ibid.

which was registered on 9 October 2024. The obligations apply on or after the following dates:

- 1 July 2025 – for registered tax practitioners with 100 employees or less as at 31 July 2024
- 1 January 2025 – for any other registered tax practitioners.

184. A summary of the eight additional Code obligations is provided below.

Section 10 of the Determination: Upholding and promoting the ethical standards of the tax profession

185. A registered tax practitioner is required to independently and in cooperation with other registered tax practitioners:

(a) uphold and promote the Code; and

(b) *not* engage in any conduct they know, or ought reasonably to know, may:
   i. undermine public trust and confidence in the integrity of the tax profession (including conduct that discredits the tax profession or brings the tax profession into disrepute); or

   ii. undermine public trust and confidence in the integrity of the tax system; and

(c) *not* engage in any conduct they know, or ought reasonably to know, may undermine the collective work of registered tax practitioners, as a tax profession, to uphold and promote:
   i. the Code; and

   ii. public trust and confidence in the integrity of the tax profession and tax system; and

   iii. each member of the tax profession being held accountable for their individual conduct.[163]

186. The TPB's guidance in relation to the application of section 10 of the Determination to registered tax practitioners is provided in the TPB Guidance Statement TPB(GS) 49/2024 Upholding and promoting the ethical standards of the tax profession.

[163] This obligation is consistent with other obligations of registered tax practitioners, such as Code item 1 and the breach reporting notification requirements. It is also generally consistent with standards set for members of the accounting profession in APES 110 Code of Ethics for Professional Accountants (including Independence Standards) and APES 220 Taxation Services, particularly regarding principles of integrity and professional behaviour.

Section 15 of the Determination: False or misleading statements

187. A registered tax practitioner must not:

(a) make a statement to the Board, the Commissioner or other Australian government agency; or

(b) prepare a statement that they know, or ought reasonably to know, is likely to be made to the Board, Commissioner, other Australian government agency by an entity; or

(c) 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.

188. Where such a false or misleading statement has been given to the Board or Commissioner, the registered tax practitioner may be required to take further steps including notifying the Board or Commissioner of the false or misleading statement.

189. The TPB's guidance in relation to the application of section 15 of the Determination to registered tax practitioners is provided in the TPB Guidance Statement TPB(GS) 50/2024 False or misleading statements.

Section 20 of the Determination: Conflicts of interest in activities undertaken for government

190. A registered tax practitioner is required, in relation to any activities they undertake for an Australian government agency in a professional capacity, to:

(a) take reasonable steps to identify and document any material conflict of interest (real or apparent) they have in connection with the activity; and
(b) disclose the details of any material conflict of interest (real or apparent) identified in relation to steps undertaken under paragraph (a) above as soon as they became aware of the conflict; and
(c) take reasonable steps to manage, mitigate, and where appropriate and possible avoid, any material conflict of interest (real or apparent) identified in relation to the steps undertaken under paragraph (a) above (except to the extent that the agency has expressly agreed otherwise).

191. This obligation is intended to assist in minimising potential adverse impacts to Australian government agencies where a registered tax practitioner has a conflict of

interest in connection with an activity undertaken for an Australian government agency.[164]

192. The TPB's guidance in relation to the application of section 20 of the Determination to registered tax practitioners is provided in the TPB Guidance Statement TPB(GS) 51/2024 Managing conflicts of interest when undertaking activities for government and maintaining confidentiality in dealings with government.

Section 25 of the Determination: Maintaining confidentiality in dealings with government

193. A registered tax practitioner is required to comply with the following two obligations in relation to maintaining confidentiality in dealings with Australian government agencies:

(a) subject to some exceptions, a registered tax practitioner must not disclose any information received, directly or indirectly, from an Australian government agency in connection with any activities undertaken with that agency in a registered tax practitioner's professional capacity,[165] and

(b) subject to some exceptions, a registered tax practitioner must not use any information received, directly or indirectly, from an Australian government agency in connection with any activities undertaken with that agency in a registered tax practitioner's professional capacity, for their personal advantage, or for the advantage of an associate, employee, employer or client of the registered tax practitioner.[166]

194. This obligation is intended to protect against the unauthorised disclosure and improper use by registered tax practitioners of information they obtain in relation to activities they undertake with an Australian government agency.

195. The TPB's guidance in relation to the application of section 25 of the Determination to registered tax practitioners is provided in the TPB Guidance Statement TPB(GS) 51/2024 Managing conflicts of interest when undertaking activities for government and maintaining confidentiality in dealings with government.

---

[164] While not binding on all registered tax practitioners, APES 110 Code Ethics for Professional Accountants (including Independence Standards) and APES 220 Taxation Services provide useful guidance on what steps a registered tax practitioner can take to ensure they have adequate arrangements in place for the management of conflicts of interest that may arise in relation to activities that are undertaken in their capacity as a registered tax practitioner. APES 110 notes, among other things, that a member is required to not allow conflict of interests to override professional or business judgments, while APES 220 Taxation Services also outlines requirements as to objectivity.

[165] See exceptions listed in paragraphs 86 to 105 of the TPB Guidance Statement TPB(GS) 51/2024 Managing conflicts of interest when undertaking activities for government and maintaining confidentiality in dealings with government.

[166] Ibid; See exceptions listed in paragraphs 116 to 120.

Section 30 of the Determination: Keeping of proper client records

196. A registered tax practitioner must keep records that correctly record the tax agent services they have provided, or that are provided on their behalf, to each of their clients, including former clients.

197. The records must:

(a) be in English, or readily accessible and easily convertible into English; and

(b) be retained for at least five years after the service has been provided; and

(c) show the nature, scope and outcome of the tax agent service provided; and

(d) reference information reasonably considered in provision of the tax agent service; and

(e) include all advice received from the client; and

(f) include all advice provided to the client, and for more complex matters: the relevant facts, assumptions and reasoning underpinning any advice provided (including the basis on which, and the method by which, any calculations, determinations, or estimates used, have been made).

198. The TPB's guidance in relation to the application of section 30 of the Determination to registered tax practitioners is provided in the TPB Guidance Statement TPB(GS) 52/2024 Obligation to keep proper client records of tax agent services provided.

Section 35 of the Determination: Ensuring tax agent services provided on your behalf are provided competently

199. A registered tax practitioner must ensure that each entity providing tax agent services on their behalf:

(a) maintains knowledge and skills that are relevant to the tax agent services the entity is providing;
(b) is appropriately supervised, having regard to knowledge and skills of the entity, the tax agent services being provided by the entity, and the registered tax practitioner's system of quality management.

200. These obligations complement and extend the Code by specifically requiring individuals who provide tax agent services on behalf of registered tax practitioners to maintain sufficient skills and knowledge to provide those services competently.

201. The TPB's guidance in relation to the application of section 35 of the Determination to registered tax practitioners is provided in the TPB Guidance Statement

TPB(GS) 53/2024 Supervision, competency and quality management under the *Tax Agent Services Act 2009*.

Section 40 of the Determination: Quality management systems

202. A registered tax practitioner must:

(a) establish and maintain a system of quality management in relation to the provision of tax agent services, designed to provide the registered tax practitioner with reasonable confidence that they are complying with the Code;

(b) document and enforce the policies and procedures of their system of quality management.[167]

203. For the purpose of these obligations, a system of quality management includes policies and procedures relating to governance and leadership, monitoring of performance, adherence to the Code, client engagement, proper keeping of records, protecting confidentiality of information, the management of conflicts of interest, and the recruitment, training and management of employees.[168]

204. The TPB's guidance in relation to the application of section 40 of the Determination to registered tax practitioners is provided in the TPB Guidance Statement TPB(GS) 53/2024 Supervision, competency and quality management under the Tax Agent Services Act 2009.

Section 45 of the Determination: Keeping your clients informed

205. A registered tax practitioner must advise all current and prospective clients, in the prescribed manner, form and timeframes, of the following:

(a) that the TPB maintains a register of tax agents and BAS agents and how they can access and search the register;
(b) how they can make a complaint about a tax agent service provided by a registered tax practitioner, including the complaints process of the TPB;
(c) general information about:

[167] The obligations in section 40 of the Determination have been informed by standards issued by the APESB. Further details about appropriate quality management processes can be found in APES 320 Quality Management for Firms that provide Non-Assurance Services (APES 320). Registered tax practitioners may also be able to seek guidance from their professional association with regards to the requirements of APES 320.

[168] Refer to Note 1 at section 40 of the Determination.

i. the registered tax practitioner's rights, responsibilities and obligations as a registered tax practitioner, including to their client, under the taxation laws (including the TASA and Code);
ii. what obligations their clients have to them as their registered tax agent or BAS agent;

(d) if any prescribed events have occurred within the last five years;
(e) if the registration of the registered tax practitioner is subject to conditions.

206. The TPB's guidance in relation to the application of section 45 of the Determination to registered tax practitioners is provided in the TPB Guidance Statement TPB(GS) 54/2024 Keeping your clients informed.

What are the consequences if a registered tax practitioner fails to comply with the Code?

207. As detailed in paragraphs 16 to 22 of this TPB(GS), conduct that constitutes a breach of the Code may also be relevant to a determination of whether a registered tax practitioner is a fit and proper person or whether the civil penalty provisions will apply to the registered tax practitioner's conduct.

What are the specific sanctions provided for a breach of the Code?

208. A registered tax practitioner is required to comply with all the obligations set out in the Code. If, following an investigation, the TPB is satisfied that a registered tax practitioner has failed to comply with any of the principles of the Code, it may impose one or more of the following administrative sanctions on the registered tax practitioner:

- a written caution
- an order requiring the registered tax practitioner to take one or more actions including, but not limited to, the following:[169]
  - completing a course of education or training specified in the order by the TPB
  - providing services (for which the registered tax practitioner is registered) only under the supervision of another registered tax practitioner that has been specified in the order, and/or
  - providing only those services specified in the order
  - notify clients about the Board's finding that that they breached the Code

[169] Section 30-20 of the TASA

- suspension of registration, and/or
- termination of registration.[170]

209. If the TPB decides to terminate the tax practitioner's registration, it may also impose a period, of not more than five years, during which the tax practitioner may not apply for registration.[171] In exercising this discretion, the TPB will consider:

- the purpose of the TASA
- general deterrence
- whether the practitioner has already suffered a substantial period of loss of registration
- the administrative burden of assessing registration applications by tax practitioners who have recently been terminated.[172]

210. The severity of any sanction imposed by the TPB will depend upon the TPB's consideration of the nature and extent of the breach and the individual circumstances of each case.[173]

211. If the TPB imposes a sanction, other than a caution, on a registered tax practitioner, details of the sanction will be included on the TPB's public register of registered and deregistered tax practitioners.[174]

What is the effect of an order?

212. An order is a direction from the TPB requiring a registered tax practitioner to take one or more actions.[175]

213. If the TPB decides to make an order, it will notify the registered tax practitioner in writing of the order. The order may specify, as appropriate:

- the period of time within which the registered tax practitioner must complete the requirements specified in the order; and/or

[170] Section 30-15 of the TASA

[171] Section 40-25 of the TASA

[172] *Birdseye and Tax Practitioners Board* [2021] AATA 1011 at [268] – [271]

[173] Paragraphs 3.71 to 3.73 of the Explanatory Memorandum to the *Tax Agent Services Bill 2008*

[174] Section 25 of the Tax Agent Services Regulations 2022

[175] Subsection 30-20(1) of the TASA

- the period of time during which the order applies.[176]

[176] Subsection 30-20(2) of the TASA

What is the effect of a suspension of a registered tax practitioner's registration?

214. If a registered tax practitioner's registration is suspended, the registered tax practitioner must not provide tax agent services for the period of that suspension.[177]

215. If the registered tax practitioner does provide tax agent services during a period of suspension, the TPB may do one or more of the following:

- impose further administrative sanctions
- apply to the Federal Court for a civil penalty order, and/or
- apply to the Federal Court for an injunction to restrain the registered tax practitioner from continuing to provide tax agent services.[178]

What period of suspension may the TPB impose?

216. The TPB may determine the period of suspension as it sees fit.[179] If a registered tax practitioner's registration is already suspended when the TPB suspends that registered tax practitioner's registration, the TPB may extend the registered tax practitioner's original suspension for a further period. In this case, the further period of suspension commences at the end of the original suspension period.[180]

Can a registered tax practitioner apply for renewal of registration during a suspension period?

217. If a registered tax practitioner's registration is due to expire during the period for which the registered tax practitioner is under suspension, the registered tax practitioner is still permitted to apply for registration or renewal of registration despite the fact that the registered tax practitioner is under suspension.[181]

---

[177] Subsection 30-25(2) of the TASA

[178] Sections 30-15, 50-5, 50-10, 50-15, 70-5 and Subdivision 50-C of the TASA; paragraphs 3.77 of the Explanatory Memorandum to the Tax Agent Services Bill 2008

[179] Subsection 30-25(1) of the TASA

[180] Subsection 30-25(3) of the TASA

[181] Subsection 30-25(4) of the TASA

What is the effect of a termination of a registered tax practitioner's registration?

218. If the TPB decides to terminate a registered tax practitioner's registration, the practitioner will receive a written notice, which will include:

- the TPB's decision to terminate the registered tax practitioner's registration
- the reasons for the decision
- details of any period during which the registered tax practitioner is prohibited from applying for registration
- the registered tax practitioner's rights of review.[182]

Is the TPB required to notify a registered tax practitioner of a decision to impose a sanction on that registered tax practitioner?

219. If the TPB decides to impose a sanction on a registered tax practitioner for a breach of the Code, the TPB is required to provide that registered tax practitioner with notification of that decision in writing.[183]

Is a TPB decision to impose an administrative sanction subject to review?

220. If the TPB makes a decision to impose an administrative sanction (except for a written caution), the registered tax practitioner may apply to the Administrative Review Tribunal (ART) for a review of that decision.[184]

[182] Section 40-20 of the *Tax Agent Services Act 2009*

[183] Subsections 30-20(2), 30-25(1) and 40-20(1) and paragraphs 60-125(8) (c) and (d) of the TASA

[184] Paragraphs 70-10(e), (f) and (g) of the TASA

Appendix 1 – Case examples

In considering whether or not there has been a breach of the Code, the TPB will make a determination based on the specific facts and circumstances of each case that it considers.

The cases have been divided into categories based on the principles of the Code to which they apply. The case examples outlined below include a summary, outline of relevant facts and relevant principles established or confirmed by the case for each relevant Code item that applies.

A summary table categorising applicable Code items for the case examples is also provided below.

Case example	Applicable Code items for relevant case principles
Ansett Transport Industries (Operations) Pty Ltd v Australian Federation of Air Pilots (1991) 101 ALR 407	**Code item 11 –** not knowingly obstruct the proper administration of the taxation laws
Australian Securities and Investments Commission v Citigroup Global Markets Australia Pty Ltd (ACN 113 114 832) (No 4) (2007) 241 ALR 705	**Code item 5** – have in place adequate arrangements for management of conflicts of interest that may arise
Bolkiah (Prince Jefri) v KPMG (a firm) [1999] 1 All ER 517	**Code item 5** – have in place adequate arrangements for management of conflicts of interest that may arise **Code item 6** – not disclose any information relating to a client's affairs to a third party unless you have a legal duty to do so
Burnett and Tax Practitioners Board [2014] AATA 687	**Code item 1** – act honestly and with integrity **Code item 7** - a tax agent service provided on your behalf is provided competently **Code item 9** - take reasonable care in ascertaining a client's state of affairs **Code item 10** - take reasonable care to ensure taxation laws are applied correctly
Chan v Zacharia (1984) 53 ALR 417	**Code item 4** - act lawfully in the best interests of your client

Case example	Applicable Code items for relevant case principles
Re Collie and Deputy Commissioner of Taxation (1997) 45 ALD 556	Code item 6 – not disclose any information relating to a client's affairs to a third party unless you have a legal duty to do so
Re Corrs Chambers Westgrath and Commissioner of Customs (1998) 53 ALD 769	Code item 6 – not disclose any information relating to a client's affairs to a third party unless you have a legal duty to do so
Re Cowlishaw and Ors and Tax Agents' Board of Queensland [1999] AATA 412	Code item 14 – respond to requests and directions from the Board
Grosfeld and Tax Practitioners Board [2014] AATA 100	Code item 2 – comply with the taxation laws in the conduct of your personal affairs Code item 7 - a tax agent service provided on your behalf is provided competently Code item 13 - maintain professional indemnity insurance that meets the Board's requirements Code item 14 - respond to requests and directions from the Board
Hawkins v Clayton [1988] HCA 15; (1988) 164 CLR 539	Code item 9 - take reasonable care in ascertaining a client's state of affairs Code item 10 – take reasonable care to ensure taxation laws are applied correctly
Hospital Products Ltd v United States Surgical Corp (1984) 156 CLR 41	Code item 4 - act lawfully in the best interests of your client
Keitac Pty Ltd ATF McNamara Property Development Trust and Commissioner of Taxation [2007] AATA 1206; (2007) 68 ATR 61	Code item 10 – take reasonable care to ensure taxation laws are applied correctly

Case example	Applicable Code items for relevant case principles
Leo Comino and Tax Agents Board of New South Wales 2009 AATA 766	Code item 8 – maintain knowledge and skills relevant to the tax agent services you provide
Li and Tax Practitioners Board [2014] AATA 299	Code item 6 – not disclose any information relating to a client's affairs to a third party unless you have a legal duty to do so Code item 7 – a tax agent service provided on your behalf is provided competently Code item 9 – take reasonable care in ascertaining a client's state of affairs
Martinazzo and Commissioner of Taxation [2009] AATA 61	Code item 9 – take reasonable care in ascertaining a client's state of affairs
Pappalardo v Tax Agents' Board of Victoria [2003] AATA 990	Code item 14 – respond to requests and directions from the Board
Reeders v Federal Commissioner of Taxation 2001 ATC 2334	Code item 9 – take reasonable care in ascertaining a client's state of affairs
Scanlan v Swan 82 ATC 4402	Code item 11 – not knowingly obstruct the proper administration of the taxation laws
Su and Tax Practitioners Board [2014] AATA 644	Code item 1 – act honestly and with integrity Code item 7 – a tax agent service provided on your behalf is provided competently Code item 9 – take reasonable care in ascertaining a client's state of affairs Code item 12 – advise your client of rights and obligations under the taxation laws
Su and Tax Agents' Board of South Australia [1982] AATA 127	Code item 7 – a tax agent service provided on your behalf is provided competently

Case example	Applicable Code items for relevant case principles
Re Warne and Defence Force Retirement and Death Benefits Authority (1989) 18 ALD 662	Code item 12 – advise your client of rights and obligations under the taxation laws
Re Woods (No. 1) and Migration Agents Registration Authority [2004] AATA 457	Code item 4 – act lawfully in the best interests of your client

1. You must act honestly and with integrity

Su and Tax Practitioners Board [2014] AATA 644

Summary

Imposition of a non-application period of three years considered in relation to termination of registration for breaches of the Code in the TASA and ceasing to meet the registration requirement of being a fit and proper person.

Keywords: registration as tax agent; termination of registration; rejection of application for renewal of registration; prohibition on applying for registration for three years; whether length of non-application period excessive; whether fit and proper person; breaches of the Code of Professional Conduct; unsatisfactory understanding of role as tax agent; shortcomings in integrity; concerns over competence as a tax agent; lack of insight into the seriousness of shortcomings.

Outline of relevant facts

Over a five-week period from 6 July 2011 to 9 August 2011, the tax agent prepared and lodged 164 tax returns on behalf of taxpayers based on the instructions of intermediaries. The taxpayers had not authorised the intermediaries to arrange preparation and lodgment of their tax returns, and all of those tax returns contained false information including overstated PAYG withholding amounts, incorrect income figures, and deductions that were not allowable.

The agent failed to take any steps to (a) confirm the information and claims made by any of the intermediaries, (b) seek any identification for any of the taxpayers, (c) make personal contact with any of the taxpayers, and (d) use the ATO tax agent portal to check the accuracy of payment summaries provided or any of the details relating to the taxpayers.

The agent did not dispute the findings of the TPB that, by his conduct, the agent had breached subsections 30-10(1), (7), (9) and (12).

The Administrative Appeals Tribunal (AAT)[185] identified four reasons for affirming the TPB's decision to impose a non-application period of three years:

1. the agent's unsatisfactory understanding of the role of a tax agent as evidenced by his failure to acknowledge the importance of testing and confirming information provided by clients
2. perceived shortcomings in the agent's integrity arising from his evidence at the hearing regarding (a) information on further potential returns that he deleted and did not disclose to the authorities and (b) his method for charging for the 164 tax returns that he lodged
3. concerns over the agent's competence as a tax agent arising from deductions being claimed that were excessive and/or lacked a nexus with the taxpayer's employment
4. the agent's lack of insight into the seriousness of the shortcomings in his behaviour as evidenced by his failure to acknowledge that his performance as a tax agent had been comprehensively unsatisfactory.

Relevant principle/s established or confirmed by the case

The AAT considered that there was "no room in the system for tax agents who do not understand" that "[t]he self assessment tax system requires accurate information to be provided to the ATO. It requires tax agents to do all they can to ensure that the information their clients provide is accurate. From time to time they need to ask their clients hard questions. They need to scrutinise the answers and form a professional judgment as to whether what they are being told is reliable."

The AAT stated that "[t]he primary purpose of not permitting a person to apply for registration for a period of time is to protect the public and the integrity of the tax system. Whilst [the agent] may see the period of three years as further punishment for his actions, that is not its purpose. It is to protect the public, and the taxation system, from further harm. [The agent] needs time to develop an improved level of integrity and competence, without which he will find it difficult to satisfy the Board that he should once again be registered as a tax agent."

Burnett and Tax Practitioners Board [2014] AATA 687

Summary

Fitness and propriety of a registered tax agent considered in relation to:

- whether the agent was of good fame, integrity and character
- findings that the agent breached the Code in the TASA for:
  - accessing a taxpayer's records on the ATO Tax Agent Portal without authority
  - preparing and lodging tax returns on behalf of clients containing inaccurate and unsupported claims, without making sufficient enquiries with the clients to ascertain

[185] The AAT has been replaced by the Administrative Review Tribunal on 14 October 2024.

their affairs or to confirm the correct application of taxation laws to ensure that these returns were prepared and lodged competently

- lack of contrition and understanding and appreciation of the taxation laws and seriousness of the agent's conduct.

Keywords: fit and proper; good fame, integrity and character; application for renewal of registration; honesty and integrity; competence; reasonable care to ascertain a client's state of affairs; reasonable care to ensure that taxation laws are applied correctly; relationship with the Board, the Commissioner and the AAT; contrition; knowledge of the taxation laws; appreciation of responsibilities and obligations of a registered tax practitioner; excessive and unsupported claims in clients' tax returns.

Outline of relevant facts

This case involved an application by the agent to the AAT for review of a TPB decision to reject the agent's application for renewal of her registration as a tax agent. The TPB had conducted an investigation into the agent's conduct and, as a result of this investigation, received evidence that:

- a number of taxpayers whose 2010 and 2012 tax returns were lodged by the agent were subject to ATO audits. As a result of these audits, the ATO made significant adjustments to claims in these returns, including for work-related expense deductions and tax offsets, and imposed administrative penalties on these clients. These decisions were based on findings that various claims were made without any nexus to a work-related activity, were not reasonably substantiated and/or were unsupported estimates. In one case, the agent had created a log book in order to respond to an ATO request for substantiation during the audit
- the agent had accessed the taxation records of taxpayers on the ATO Tax Agent Portal on three occasions without authorisation.

In her responses to the TPB during the course of its investigation, the agent maintained that she fulfilled her obligations in the preparation of her clients' returns by relying on limited information provided by these clients, including their estimates of expenses incurred without making further enquiries or sighting supporting documentation. The agent also submitted that the ATO had significantly changed its policies and enforcement approach in relation to the claiming of deductions and was inconsistent in the interpretation and application of its own policies.

The TPB determined that the agent's conduct breached the Code in the TASA, specifically the requirements under the Code to:

- act honestly and with integrity (subsection 30-10(1))
- act lawfully in the best interests of her clients (subsection 30-10(4))
- ensure that tax agent services she provided, or that were provided on her behalf, were provided competently (subsection 30-10(7))
- take reasonable care in ascertaining a client's state of affairs, to the extent that ascertaining the state of those affairs was relevant to a statement she was making or a thing she was doing on behalf of the client (subsection 30-10(9))

- take reasonable care to ensure that taxation laws were applied correctly to the circumstances in relation to which she was providing advice to a client (subsection 30-10(10).

The TPB decided to reject the agent's application for renewal of her registration as a tax agent, on the basis that it was not satisfied that she met the 'fit and proper person' eligibility requirement for registration. In reaching its decision, the TPB took into account the serious nature of the agent's conduct which was found to breach the Code and her responses to the TPB's requests for information regarding her alleged conduct, which demonstrated a lack of understanding and appreciation of the seriousness of her conduct. Having regard to these matters, the TPB found that the agent was not of good fame, integrity and character, and therefore not a fit and proper person to be registered as a tax agent.

The AAT affirmed the TPB's decision to reject the agent's application for renewal of her tax agent registration.

In affirming the TPB's decision, the AAT also had regard to the agent's conduct during the AAT proceeding. This included denials of any wrongdoing, the making of seriousness and unfounded allegations against ATO officers in response to allegations concerning her conduct and the giving of inconsistent and misleading evidence. This also included the agent's verbal evidence regarding the ATO's purported policies and compliance approach, which was contradicted by evidence given by the ATO in the proceeding. This led the AAT to form the view that the agent had a '*flawed understanding of relevant tax law and ATO requirements in the area of [work related expense] deductions, nexus and substantiation*'.

In this regard, the AAT concluded that the agent failed to show contrition and had an insufficient appreciation of her responsibilities and obligations as a tax agent and the seriousness of her conduct. Consequently, the AAT determined that it could not have confidence that she would not engage in similar conduct in the future and that she would pose an unacceptable risk to the community if she were allowed to continue in practice as a tax agent.

Relevant principle/s established or confirmed by the case

- A registered tax practitioner's diligence in providing tax agent services, current knowledge of the relevant legal frameworks (including income tax laws) and competence and professionalism in dealing with both clients and the ATO are relevant to assessing whether the practitioner possesses the integrity and competence required of a registered tax practitioner, such that others may entrust their taxation affairs to their care.
- These qualities are also relevant to whether the practitioner is a fit and proper person to be registered under the TASA. This is particularly so in a self-assessment tax regime, in which inaccuracies in returns generally only come to light during random audits and penalties for inaccurate claims and late lodgments can be imposed on taxpayer clients, who rely on the practitioner to properly advise, guide and lodge accurate and timely returns and other tax documents with the Commissioner on their behalf.
- The access of a taxpayer's records without proper authorisation is a matter that is relevant to determining whether a registered tax practitioner has acted without honesty and integrity. Further, the circumstances surrounding the unauthorised access and the practitioner's explanation of these circumstances and of their conduct are relevant to determining whether they possess the integrity required of a registered tax practitioner, and also whether they have a sufficient level of contrition and understanding of their legal

obligations and constraints upon them to be considered a fit and proper person for registration. In this regard, the AAT noted that 'Mrs Burnett either was or should have been aware that the ability to access tax records through the Tax Agent Portal is a privilege conferred on tax agents on the understanding that they will only access the records of their own clients'

2. You must comply with the taxation laws in the conduct of your personal affairs

Grosfeld and Tax Practitioners Board [2014] AATA 100

Summary

Fitness and propriety of a registered tax agent considered in relation to:

- failing to lodge personal income tax returns and BAS
- failing to provide clients with a means of contact
- failing to ensure that tax agent services were provided competently
- failing to maintain PI insurance as required by the TPB
- failing to respond to requests from the TPB.

Keywords: fit and proper; application for renewal of registration; compliance with taxation laws in the conduct of personal affairs; competence; relationship with the Board and the Commissioner; appreciation of responsibilities and obligations of a registered tax practitioner; requirement to maintain PI insurance.

Outline of relevant facts

This case involved an application by the agent to the AAT for review of a TPB decision to reject the agent's application for renewal of his registration as a tax agent. The TPB had conducted an investigation into the agent's conduct and, as a result of this investigation, found that:

- the agent failed to lodge his 2009 to 2012 personal tax returns and December 2009 to September 2012 BAS by their respective due dates, with periods of delays extending up to over one year
- the agent failed to provide tax agent services competently to 14 clients. In particular, the agent had:
    - not provided these clients with a means of contact, and remained inaccessible to them for extended periods
    - caused inappropriate delays in the preparation and lodgment of tax returns for seven of these clients
    - failed to provide tax agent services requested by seven of these clients after accepting payment of fees for these services
    - failed to return client source documents, when requested, to nine of these clients

    - failed to forward ATO notices of assessment of tax refunds to two of these clients.
- the agent failed to maintain PI insurance that meets the TPB's requirements until April 2013, despite being notified by the TPB of its PI insurance requirement and requested to provide details of his insurance arrangements on previous occasions
- the agent failed to provide adequate and timely responses to TPB requests for information on several occasions from April 2011 to February 2013.

The TPB determined that this conduct breached the Code in the TASA, specifically the requirements under the Code to:

- comply with the taxation laws in the conduct of his personal affairs (subsection 30-10(2))
- ensure that tax agent services he provided, or that were provided on his behalf, were provided competently (subsection 30-10(7))
- maintain PI insurance that meets the TPB's requirements (subsection 30-10(13))
- respond to requests and directions from the TPB in a timely, responsible and reasonable manner (subsection 30-10(14)).

The TPB also became aware of findings in Supreme Court proceedings that the agent had breached his duty as executor of a deceased estate. The court found that he was not a fit and proper person to continue as an executor and the grant of probate to the agent was revoked. In particular, the TPB noted that the agent's conduct that led to the court's findings involved the withdrawal of significant funds from the estate bank account to the agent's business account, and that this breach of duty was exacerbated by the fact that these withdrawals were concealed in the description of the payments in the agent's statement of account.

The TPB decided to reject the agent's application for renewal of his registration as a tax agent, on the basis that it was not satisfied that he met the 'fit and proper person' eligibility requirement for registration. In reaching its decision, the TPB took into account the serious nature of the agent's conduct which was found to breach the Code and the findings of the Supreme Court regarding his conduct as executor of a deceased estate. Having regard to these matters, the TPB found that the agent was not a fit and proper person to be registered as a tax agent.

The AAT affirmed the TPB's decision to reject the agent's application for renewal of his tax agent registration.

In affirming the TPB's decision, the AAT took into account the persistent and sustained nature of the agent's breaches of the Code and the agent's failure to adequately respond to the TPB's requests for information regarding his alleged conduct, which demonstrated a lack of understanding and appreciation of the seriousness of his conduct. Consequently, the AAT determined that it could not have confidence that he would take adequate steps to ensure compliance with his responsibilities and that such breaches would not reoccur in the future.

The AAT also found that although the Supreme Court findings were unrelated to the agent's registration as a tax agent, they were relevant to the consideration of whether the agent was a fit and proper person. The AAT noted that the findings related to the management of financial affairs for others that required duties to be discharged with '*integrity, trust and competence*', which are not dissimilar to the obligations of a registered tax practitioner. Following from this, '*a*

finding of misconduct demonstrates the presence of qualities that are inconsistent with fitness and propriety to practice as a tax agent'.

Relevant principle/s established or confirmed by the case

The failure by a registered tax practitioner to lodge a personal tax return or BAS by the relevant legislative due date constitutes a breach of the requirement under subsection 30-10(2) of the TASA that the registered tax practitioner complies with the taxation laws in the conduct of their personal affairs. A breach of this requirement may also adversely impact on the registered tax practitioner's fitness and propriety for registration under the TASA. This is particularly so given the overriding public protection rationale of the TASA and the premise that '*incompetence in relation to one's own affairs more often than not has an effect sooner or later in relation to the affairs of a client*'.

4. You must act lawfully in the best interests of your client

Hospital Products Ltd v United States Surgical Corp (1984) 156 CLR 41

Summary

In relation to a manufacturer and distributor the High Court considered whether a fiduciary relationship existed and whether the manufacturer had breached their duty to the distributor.

Keywords: fiduciary duty; fiduciary relationship; breach; disadvantage or vulnerability; reliance; distributorship agreement; importation of fiduciary duties into commercial transactions; relevance of terms of contract to existence of fiduciary relationship.

Outline of relevant facts

Hospital Products Ltd (the appellant) had entered into a distributorship agreement with the United States Surgical Corp (the respondent) under which the appellant was to be the sole distributor of the respondent's products in Australia. The appellant subsequently proceeded to produce copies of the respondent's products and filled orders for the respondent's products with the copies.

In this case, the High Court had cause to consider whether the appellant owed a fiduciary duty to the respondent and whether that duty had been breached. As the relationship of manufacturer and distributor was not an established fiduciary relationship, the High Court looked at the elements of a fiduciary relationship.

Relevant principle/s established or confirmed by the case

- The critical feature of a fiduciary relationship is that the fiduciary undertakes to act on behalf of, or in the interests of, another person in the exercise of a power or discretion which will affect the interests of that other person in a practical or legal sense. [per Mason J]
- Underlying the concept of fiduciary obligation is the notion that inherent in the nature of the relationship itself is a position of disadvantage or vulnerability on the part of one of the parties which causes that party to place reliance upon the other. This requires equitable protection, which acts upon the conscience of that other person. [per Dawson J]

Chan v Zacharia (1984) 53 ALR 417

Summary

In relation to the dissolution of a partnership one of the issues considered by the High Court was whether a fiduciary relationship existed and whether the fiduciary duty had been breached.

Keywords: fiduciary relationship; fiduciary duty; breach; partnership; dissolution; assets; constructive trust.

Outline of relevant facts

Both parties were doctors who were operating a medical practice in partnership with each other. The partnership was dissolved and, in the process of accounting for the assets of the partnership, a dispute arose in relation to the lease, specifically an option to renew, held by the partnership. The partners could not agree on if, when or how the option was to be exercised.

During this time, the appellant engaged in separate negotiations with the owner of the leased property which resulted in the owner offering the lease to the appellant individually and not for the partnership. The respondent brought an action against the appellant claiming, among other things, that the appellant had breached his fiduciary duty to the respondent as a partner.

Relevant principle/s established or confirmed by the case

In considering the nature of fiduciary duties, the High Court held the following:

- The subject matter over which the fiduciary obligations extend is determined by the character of the venture or undertaking for which the partnership exists, and this is to be ascertained, not merely from the express agreement of the parties, whether embodied in written instrument or not, but also from the course of dealing actually pursued by the firm'.
- The objective of this rule is to preclude the fiduciary from both being swayed by considerations of personal interest and actually misusing the fiduciary's position for personal advantage.
- The statement of the rule provided by Deane J, with whom Gibbs CJ, Brennan and Dawson JJ agreed, was:
    - A person who is under a fiduciary obligation must account to the person to whom the obligation is owed for any benefit or gain:

        i. which has been obtained or received in circumstances where a conflict or significant possibility of conflict existed between the fiduciary duty and the fiduciary's personal interest in the pursuit or possible receipt of such a benefit or gain, or

        ii. which was obtained or received by use or by reason of the person's fiduciary position or their opportunity or knowledge resulting from it.

Re Woods (No. 1) and Migration Agents Registration Authority [2004] AATA 457

Summary

- In relation to their registration with the Migration Agent Registration Authority (MARA) a migration agent's fitness and propriety was considered in light of misconduct in the Legal Practice Tribunal and whether this conduct also breached the MARA Code of Conduct.
- The AAT affirmed MARA's decision and found that the agent was not a person of integrity or was not a fit and proper person to give immigration assistance and had not complied with the MARA Code of Conduct. The AAT stated also that the standards of conduct required of migration agents were no less than the standards of conduct owed by lawyers.

Keywords: migration agent; breach of Code of Conduct; conflict of interest; vulnerability; fit and proper person; standard of conduct.

Outline of relevant facts

Woods was a solicitor and migration agent that, in the course of acting for the client in obtaining a visa to enter Australia, entered into a business arrangement with that client whereby a company part owned by Woods, was a shareholder in a business acquired by the client.

In undertaking this transaction, Woods and his associates engaged in conduct that amounted to misconduct in the Legal Practice Tribunal. The question before MARA was whether this conduct could support a determination that Woods was not a fit and proper person to be a migration agent.

Relevant principle/s established or confirmed by the case

- As to whether the duty of a migration agent to their clients was any different to that of a lawyer to their clients, the Tribunal held that the standard of conduct of migration agents are no less than the standard of conduct owed by lawyers. Here the Tribunal had regard to the objectives of the Act, the intention of Parliament as evident by the Minister's speech upon introduction of the Act, the numerous decisions of superior courts referring to the vulnerability of migration applicants and the duty generally of a professional seeking reward and, not insignificantly, the prescription of a Code of Conduct applicable to migration agents.
- The Tribunal did not consider it was sufficient for the applicant to submit that a lower standard of conduct ought to be expected of migration agents given the limited nature of the training and qualifications required compared to that of lawyers.

5.You must have in place adequate arrangements for the management of conflicts of interest that may arise in relation to the activities that you undertake in the capacity of a registered tax agent or BAS agent

Bolkiah (Prince Jefri) v KPMG (a firm) [1999] 1 All ER 517

Summary

In relation to litigation, the use of Chinese walls within an accounting firm was considered and whether the actions of the accounting firm were enough to discharge their duty not to allow a conflict of interest to arise between the interests of multiple clients.

Keywords: accountant; conflict of interest; information barriers; Chinese walls; consent.

Outline of relevant facts

The defendant, KPMG, was an accounting firm that had been acting for BIA, the investment agency responsible for managing the general reserve fund of the Government of Brunei as auditors. The plaintiff had been the chairman of BIA until 1998. The plaintiff had engaged the defendant to provide litigation support services for 18 months from 1996 to 1998, during which time the defendant was entrusted with and acquired large amounts of confidential information concerning the assets and income of the plaintiff.

In 1998, the plaintiff was dismissed from his position of chairman at BIA and the Government of Brunei commenced an investigation into the affairs of BIA relating to the period that the plaintiff was the chairman. The Government engaged the defendant to assist in this investigation. The defendant did not consider that there was an unmanaged conflict of interest by agreeing to assist in the investigation as the defendant had established information barriers, referred to as 'Chinese walls' within those parts of the firm assisting with the BIA investigation.

The plaintiff's consent to assist in the investigation of BIA was never sought by the defendant. The plaintiff sought an injunction restraining the defendant from assisting with the investigation.

A key question for the House of Lords was whether the arrangements put in place by the defendant were sufficient to discharge their duty to not allow a conflict of interest to arise between the interests of multiple clients.

Relevant principle/s established or confirmed by the case

- A person cannot, without the consent of both clients, act for one client while their partner is acting for another with a conflicting interest. The person's disqualification has nothing to do with the confidentiality of the client information. It is based on the inescapable conflict of interest which is inherent in the situation.
- The court should grant an injunction restraining the defendant acting for the second client unless it is satisfied on the basis of clear and convincing evidence that effective measures have been taken to ensure that no disclosure will occur.

- A 'Chinese wall' will ordinarily involve a combination of the following:
    - the physical separation of various departments in order to insulate them from each other
    - an ongoing educational program to emphasise the importance of not improperly or inadvertently breaching duties to a client
    - strict and carefully defined procedures for dealing with situations where it is considered that action may need to be taken that might create a risk of a breach of duty, in addition to the maintenance of proper records when this action is taken
    - monitoring of compliance with the procedures
    - disciplinary sanctions where there has been a breach of any internal procedures.
- To be effective, these measures need to be 'an established part of the organisational structure of the firm, not created ad hoc and dependent on the acceptance of evidence sworn for the purpose by members of staff engaged on the relevant work.'

Australian Securities and Investments Commission v Citigroup Global Markets Australia Pty Ltd (ACN 113 114 832) (No 4) (2007) 241 ALR 705

Summary

In relation to an allegation that Citigroup had breached the *Corporations Act 2001*, the Federal Court considered whether a fiduciary relationship existed between Citigroup and Toll and then whether Citigroup failed to manage a conflict of interest. The Court also considered whether a fiduciary relationship could be contracted out of.

Keywords: fiduciary relationship; fiduciary duty; *Corporations Act 2001*; conflict of interest; Chinese walls.

Outline of relevant facts

This case involved allegations by ASIC that Citigroup had breached its fiduciary relationship with Toll Holdings, a client, as Citigroup had profited from trading in shares in Patrick, the company for which Toll Holdings was making a takeover bid.

ASIC also alleged that Citigroup had failed to establish adequate arrangements for the management of conflicts of interest pursuant to section 912A (1) (aa) of the *Corporations Act 2001*.

In dismissing the application from ASIC, the Federal Court commented on the requirement to establish adequate arrangements for the management of conflicts of interest.

Relevant principle/s established or confirmed by the case

- The requirement to establish adequate arrangements for the 'management' of conflicts of interest indicates that this requirement does not necessarily require that those subject to it eliminate conflicts of interest.

- Whether the given conflict management arrangements employed by an entity are adequate will be a question of fact to be determined on the basis of the circumstances of a particular case.
- In relation to ethical walls generally, this form of conflict management, to be adequate, will need to be an established part of the organisational structure of the business as opposed to an 'ad hoc' arrangement.

6.Unless you have a legal duty to do so, you must not disclose any information relating to a client's affairs to a third party

Re Collie and Deputy Commissioner of Taxation (1997) 45 ALD 556

Summary

In relation to a Freedom of Information application, the AAT considered whether certain documents should not be disclosed because they revealed information respecting the affairs of another person.

Keywords: freedom of information; exemption; affairs of a person; *Income Tax Assessment Act 1936*.

Outline of relevant facts

This case involved an application to the AAT for review of a decision by the Australian Taxation Office to refuse access (in whole or part) to certain documents requested under the *Freedom of Information Act 1982* in the course of proceedings for recovery of amounts owing by the applicant.

The refusal of the request was based on a number of grounds for exemption contained in that Act, including that certain documents revealed information "respecting the affairs of another person" under section 16(2) of the *Income Tax Assessment Act 1936*. In substituting the original decision, the AAT held that certain information fell within the non-disclosure provision in subsection 16(2) and was thereby exempt.

Relevant principle/s established or confirmed by the case

In applying subsection 16(2) to the information requested by the applicant, the AAT set out a number of guiding principles on the interpretation of the phrase "respecting the affairs of another person" in the context of that provision.

These principles are as follows:

- To respect the affairs of another person, it is not necessary that information be capable of identifying the person.
- The "affairs" of a person are to receive a broad interpretation. The ordinary meaning of "affairs" extends to the activities, business or concerns of a person.
- The interpretation of "affairs" is not affected by the status of the person, i.e. whether the affairs of an individual or corporate entity are under consideration.

- To be "respecting" the affairs of a person, information must, in a general sense, be in "relation, connection, reference (or) regard" to such affairs.

Re Corrs Chambers Westgarth and Commissioner of Customs (1998) 53 ALD 769

Summary

In relation to a Freedom of Information application, the AAT considered whether certain documents should not be disclosed because they revealed information respecting the affairs of another person.

Keywords: freedom of information; exemption; affairs of a person; *Income Tax Assessment Act 1936*.

Outline of relevant facts

This case related to a request for access under the *Freedom of Information Act 1982* to documents prepared and compiled as part of a taxation review of a corporate group and its subsidiaries. The documents comprised copies of correspondence with unrelated third parties, a private ruling in relation to an unrelated third party and a note regarding a tax agent's request for advice concerning an unrelated third party.

The Commissioner refused access on the basis that they were exempted under that Act, in particular as they were "respecting the affairs of another person" pursuant to subsection 16(2) of the *Income Tax Assessment Act 1936*. The applicant applied to the AAT for review of the decision. The AAT varied the original decision in respect of certain documents, but otherwise held that the remaining were exempt under the ground contained in subsection 16(2).

Relevant principle/s established or confirmed by the case

As in Collie, the case of Corrs highlighted a number of principles on the interpretation of the term "respecting the affairs of another person" under subsection 16(2) of the *Income Tax Assessment Act 1936*.

These principles are as follows:

- The "affairs" of a person need not be their taxation affairs, but may include the personal, professional or business concerns of the person.
- The relevant test for determining whether information should be protected on the basis that it respects the affairs of another person is whether or not the recipient or a person viewing the information would know more about the other person if the information were disclosed.
- In relation to both an individual or corporate entity, "matters" may include, for example, the amount the person earns, how the person makes money, interactions between the person and others and the relations of a corporation with its employees and the public.
- Information may fall within the scope of subsection 16(2) even if it is not identifying information or information respecting an identifiable person.

Prince Jefri Bolkiah v KPMG (a firm) [1999] 1 All ER 517

Summary

In relation to litigation, the use of Chinese walls within an accounting firm was considered and whether the actions of the accounting firm were enough to discharge their duty not to allow a conflict of interest to arise between the interests of multiple clients.

Keywords: accountant; duty of confidentiality; conflict of interest; information barriers; Chinese walls; consent.

Outline of relevant facts

This case related to confidential information about the assets and financial affairs of the former chairman of an investment agency (plaintiff), which were acquired and held by a firm of accountants retained to provide litigation support services in the course of private litigation in which the plaintiff was engaged whilst he was the chairman of an investment agency. Following the plaintiff's dismissal, the client of the investment agency (the Brunei government) commenced an investigation into the conduct of the affairs of the agency and for that purpose sought to engage the same firm of accountants previously retained by the plaintiff.

The firm accepted the retainer and, on account of the confidential information held, erected an information barrier around the department providing the service on behalf of the government. This barrier entailed arrangements to ensure that nobody in possession of the confidential information could undertake work on the investigation and steps to avoid the risk of that information later becoming available to the staff assigned to the investigation. However, the firm neither informed nor sought the consent of the plaintiff prior to accepting the assignment.

The firm submitted that a voluntary undertaking not to disclose or use information acquired in the course of the previous litigation work was sufficient to protect the plaintiff's interests. The plaintiff successfully appealed against a discharge of an injunction to restrain the firm from continuing the work on the basis that the firm had not discharged its duty to preserve the confidentiality of the information.

Relevant principle/s established or confirmed by the case

The case of Prince Jefri establishes a number of principles relevant to the scope of the duty of confidentiality owed by accountants to their clients, in particular the measures required to be adopted to protect against disclosure of confidential information.

These principles are as follows:

- Akin to a solicitor's professional obligation, an accountant owes a duty to a former client to maintain the confidentiality of information acquired during the course of the professional relationship, which continues beyond the termination of that relationship.
- To comply with the duty, an accountant must actively preserve the confidentiality of the information and it is not sufficient merely to take reasonable steps to do so.
- The duty of confidentiality extends to an obligation not to misuse confidential information.
- Where an accountant is in receipt of confidential information, they must take effective measures to ensure not only against deliberate disclosure but that there was no risk of the information being unwittingly, inadvertently or negligently disclosed to other persons.

- A risk of subsequent disclosure may arise where, for example, the accountant later accepts instructions to act for another client with an adverse interest in a matter to which the confidential information is, or may be, relevant.
- Where confidential information is held by a section/department within a firm, it will be presumed (in the absence of cogent evidence to the contrary) that the information was being imparted across the firm.
- To eliminate the risk of disclosure of confidential information within sections of a firm, the firm must implement special measures as part of its broad organisational arrangements (as opposed to ad hoc measures).
- The principles of confidentiality apply equally to all forms of employment that involve confidential relationships between persons and clients with whom they do business.
- Following the termination of a professional relationship, the duty of confidentiality requires that there be no risk of disclosure (not merely an insubstantial one). However, to warrant restraint a risk must be a "real one, and not merely fanciful or theoretical."

Li and Tax Practitioners Board [2014] AATA 299

Summary

Termination of registration, imposition of a non-application period of three years and rejection of application for renewal of registration considered in relation to breaches of the Code in the TASA and ceasing to meet the registration requirement of being a fit and proper person.

Keywords: registration as tax agent; termination of registration and prohibition on applying for registration for 3 years; refusal to renew registration; whether fit and proper person; breaches of the Code of Professional Conduct; unwitting involvement in fraud by third parties; failure to keep client information confidential; failure to take reasonable care in establishing client's circumstances; failure to provide tax agent services competently.

Outline of relevant facts

Between about mid-August 2011 and about 19 September 2011, the tax agent prepared and lodged (or attempted to lodge) 454 tax returns on behalf of taxpayers based on the instructions of intermediaries. The taxpayers had not authorised the intermediaries to arrange preparation and lodgment of their tax returns, and about 400 of those tax returns contained salary, wages and tax instalment deduction amounts that did not match those recorded on payment summaries lodged by the taxpayers' employers.

The agent did not (a) meet or request to meet or make direct contact with any of the taxpayers, or (b) use the ATO tax agent portal to check information and did not use the pre-filling function to assist with lodging returns. In preparing the returns, the agent printed the unsigned returns on 'recycled paper' (paper previously used to print other returns) and provided them to the intermediaries to have them signed by the relevant taxpayer. 33 of the tax returns that had been printed on 'recycled paper' contained information about 85 other taxpayers, of which two were taxpayers that were not connected with the intermediaries.

The AAT held that the agent had breached subsection 30-10(6) of the Code by printing tax returns on 'recycled paper' which contained confidential information on the reverse – noting that the agent had admitted to doing this as part of his usual practice.

The AAT held that the agent had breached subsections 30-10(7) and 30-10(9) of the Code by failing to seek verification that the information provided by the intermediaries was legitimate or authorised in circumstances where he ought to have made further enquiries including failing to request substantiation for deductions claimed and speaking with any taxpayers to satisfy himself that expenses were incurred.

In affirming the TPB's decision to terminate the agent's registration and impose a non-application period of three years, the AAT noted that there had been numerous serious breaches of the Code and there had been loss and inconvenience to taxpayers. There had been evidence of incompetence and negligent, if not wilful, breach. Whilst the agent had expressed remorse, he had sought to minimise his role and the extent of his responsibility. Finally, whilst it was noted that the agent would suffer hardship from being unable to practice, there was no evidence to suggest that the agent could not find alternative employment until the period of disqualification ended. For the AAT, the public interest favoured termination and a sufficiently lengthy disqualification to ensure that the agent properly reflected on his conduct, the public was protected from harm and other tax agents were deterred from engaging in similar conduct.

Relevant principle/s established or confirmed by the case

The AAT considered that the following factors identified by Santow J in ASIC v Adler[186] were relevant to determining the appropriateness of a termination and the imposition of a non-application period:

> "*(i) Banning orders are designed to protect the public from harm;*
>
> *(ii) The banning order is protective against present and future breach;*
>
> *(iii) A banning order has a motive of personal deterrence, though it is not punitive;*
>
> *(iv) The objects of general deterrence are also sought to be achieved;*
>
> *(v) In assessing the fitness of a person to be permitted to provide tax agent services, they have an understanding of their role and obligations;*
>
> *(vi) In assessing an appropriate length of prohibition, consideration has been given to the degree of seriousness of the contraventions, the propensity that the defendant may engage in similar conduct in the future and the likely harm that may be caused to the public;*
>
> *(vii) Longer periods of disqualification are reserved for cases where contraventions have been of a serious nature such as those involving dishonesty;*
>
> *(viii) It is necessary to balance the personal hardship to the defendant against the public interest and the need for protection of the public from any repeat of the conduct;*
>
> *(ix) A mitigating factor in considering a period of disqualification is the likelihood of the defendant reforming;*

[186] (2002) 42 ACSR 80; [2002] NSWSC 483 at [55]-[56].

(x) It is necessary to assess matters such as the character of the person, the nature of the breaches, risks to others from the continued registration of the person;

(xi) Factors which lead to the imposition of the longest periods of disqualification include large financial losses, high propensity for the person to engage in similar conduct and lack of contrition or remorse."

7.You must ensure that a tax agent service provided on your behalf is provided competently

Su and Tax Agents' Board of South Australia [1982] AATA 127

Summary

Fitness and propriety of registered tax agent considered in relation to:

- convictions and fines relating to considerable delays and failure to lodge personal income tax returns
- failure to remit group tax instalments in his capacity as an employer
- failure to furnish return of company of which he was director
- failure to disclose convictions in annual notices to the board.

Keywords: fit and proper; cancellation of registration; convictions; personal income tax affairs; relationship with the Board and Commissioner.

Outline of relevant facts

Refer to the facts outlined above under the case summaries for Principle 2 of the Code.

Relevant principle/s established or confirmed by the case

- While particular acts or omissions by a tax agent may not be enough, viewed separately, to warrant removal from the register, it is possible for multiple less serious matters, if sufficient in number, to provide a basis for a board to determine that a tax agent was not fit and proper.
- In addition, the failure of a tax agent to comply with their own taxation obligations is relevant to fitness and propriety as it may result in adverse treatment of the clients of that agent and the Commissioner will have reduced confidence in the competence with which those returns were prepared.
- Certain offences are so inconsistent with performing the role of a tax agent that conviction for these offences will render a person not fit and proper to be a registered tax agent. The AAT highlighted offences involving tax evasion to be an example of such an offence.
- In relation to the failure to accurately complete the annual returns to the Board, someone incapable of accurately completing a simple yet important notice "is not a person of sufficient competence and integrity to hold the privilege of acting for clients in the preparation and lodgment of their income tax returns."

Li and Tax Practitioners Board [2014] AATA 299

Summary

Termination of registration, imposition of a non-application period of three years and rejection of application for renewal of registration considered in relation to breaches of the Code in the TASA and ceasing to meet the registration requirement of being a fit and proper person.

Keywords: registration as tax agent; termination of registration and prohibition on applying for registration for 3 years; refusal to renew registration; whether fit and proper person; breaches of the Code of Professional Conduct; unwitting involvement in fraud by third parties; failure to keep client information confidential; failure to take reasonable care in establishing client's circumstances; failure to provide tax agent services competently.

Outline of relevant facts

Refer to the facts outlined above under the case summaries for Principle 6 of the Code.

Relevant principle/s established or confirmed by the case

The AAT considered that the following factors identified by Santow J in *ASIC v Adler*[187] were relevant to determining the appropriateness of a termination and the imposition of a non-application period:

> "*(i) Banning orders are designed to protect the public from harm;*
>
> *(ii) The banning order is protective against present and future breach;*
>
> *(iii) A banning order has a motive of personal deterrence, though it is not punitive;*
>
> *(iv) The objects of general deterrence are also sought to be achieved;*
>
> *(v) In assessing the fitness of a person to be permitted to provide tax agent services, they have an understanding of their role and obligations;*
>
> *(vi) In assessing an appropriate length of prohibition, consideration has been given to the degree of seriousness of the contraventions, the propensity that the defendant may engage in similar conduct in the future and the likely harm that may be caused to the public;*
>
> *(vii) Longer periods of disqualification are reserved for cases where contraventions have been of a serious nature such as those involving dishonesty;*
>
> *(viii) It is necessary to balance the personal hardship to the defendant against the public interest and the need for protection of the public from any repeat of the conduct;*
>
> *(ix) A mitigating factor in considering a period of disqualification is the likelihood of the defendant reforming;*
>
> *(x) It is necessary to assess matters such as the character of the person, the nature of the breaches, risks to others from the continued registration of the person;*
>
> *(xi) Factors which lead to the imposition of the longest periods of disqualification include large financial losses, high propensity for the person to engage in similar conduct and*

[187] (2002) 42 ACSR 80; [2002] NSWSC 483 at [55]-[56].

lack of contrition or remorse."

Su and Tax Practitioners Board [2014] AATA 644

Summary

Imposition of a non-application period of three years considered in relation to termination of registration for breaches of the Code in the TASA and ceasing to meet the registration requirement of being a fit and proper person.

Keywords: registration as tax agent; termination of registration; rejection of application for renewal of registration; prohibition on applying for registration for three years; whether length of non-application period excessive; whether fit and proper person; breaches of the Code of Professional Conduct; unsatisfactory understanding of role as tax agent; shortcomings in integrity; concerns over competence as a tax agent; lack of insight into the seriousness of shortcomings.

Outline of relevant facts

Refer to the facts outlined above under the case summaries for Principle 1 of the Code.

Relevant principle/s established or confirmed by the case

The AAT considered that there was "*no room in the system for tax agents who do not understand*" that "*[t]he self assessment tax system requires accurate information to be provided to the ATO. It requires tax agents to do all they can to ensure that the information their clients provide is accurate. From time to time they need to ask their clients hard questions. They need to scrutinise the answers and form a professional judgment as to whether what they are being told is reliable.*"

The AAT stated that "*[t]he primary purpose of not permitting a person to apply for registration for a period of time is to protect the public and the integrity of the tax system. Whilst [the agent] may see the period of three years as further punishment for his actions, that is not its purpose. It is to protect the public, and the taxation system, from further harm. [The agent] needs time to develop an improved level of integrity and competence, without which he will find it difficult to satisfy the Board that he should once again be registered as a tax agent.*"

Burnett and Tax Practitioners Board [2014] AATA 687

Summary

Fitness and propriety of a registered tax agent considered in relation to:

- whether the agent was of good fame, integrity and character
- findings that the agent breached the Code in the TASA for:
    - accessing a taxpayer's records on the ATO Tax Agent Portal without authority
    - preparing and lodging tax returns on behalf of clients containing inaccurate and unsupported claims, without making sufficient enquiries with the clients to ascertain their affairs or to confirm the correct application of taxation laws to ensure that these returns were prepared and lodged competently.
- lack of contrition and understanding and appreciation of the taxation laws and seriousness of the agent's conduct.

Keywords: fit and proper; good fame, integrity and character; application for renewal of registration; honesty and integrity; competence; reasonable care to ascertain a client's state of affairs; reasonable care to ensure that taxation laws are applied correctly; relationship with the Board, the Commissioner and the AAT; contrition; knowledge of the taxation laws; appreciation of responsibilities and obligations of a registered tax practitioner; excessive and unsupported claims in clients' tax returns.

Outline of relevant facts

Refer to the facts outlined above under the case summaries for Principle 1 of the Code.

Relevant principle/s established or confirmed by the case

- A registered tax practitioner's diligence in providing tax agent services, current knowledge of the relevant legal frameworks (including income tax laws) and competence and professionalism in dealing with both clients and the ATO are relevant to assessing whether the registered tax practitioner possesses the integrity and competence required of a registered tax practitioner, such that others may entrust their taxation affairs to their care.
- These qualities are also relevant to whether the registered tax practitioner is a fit and proper person to be registered under the TASA. This is particularly so in a self-assessment tax regime, in which inaccuracies in returns generally only come to light during random audits and penalties for inaccurate claims and late lodgments can be imposed on taxpayer clients, who rely on the registered tax practitioner to properly advise, guide and lodge accurate and timely returns and other tax documents with the Commissioner on their behalf.

- To ensure that a tax agent service is provided competently, a registered tax practitioner is expected to keep up to date with developments in taxation laws to maintain a proper knowledge of these laws. This may involve research and other enquiries to confirm the application of any relevant ATO policies and guidelines to the circumstances of the client. A registered tax practitioner is also expected to ask sufficient and pertinent questions of their client to enable them to be reasonably satisfied of the accuracy of claims they prepare and lodge on the client's behalf. This may include sighting specific and necessary evidence to substantiate the claims.

Grosfeld and Tax Practitioners Board [2014] AATA 100

Summary

Fitness and propriety of a registered tax agent considered in relation to:

- failing to lodge personal income tax returns and BAS
- failing to provide clients with a means of contact
- failing to ensure that tax agent services were provided competently
- failing to maintain PI insurance as required by the TPB
- failing to respond to requests from the TPB.

Keywords: fit and proper; application for renewal of registration; compliance with taxation laws in the conduct of personal affairs; competence; relationship with the Board and the Commissioner; appreciation of responsibilities and obligations of a registered tax practitioner; requirement to maintain PI insurance.

Outline of relevant facts

Refer to the facts outlined above under the case summaries for Principle 2 of the Code.

Relevant principle/s established or confirmed by the case

- Evidence of the following matters relating to a registered tax practitioner's dealings with a client, among other things, are relevant to determining whether the registered tax practitioner has failed to ensure that a tax agent service they provided, or that was provided on their behalf, was provided competently:
    - not providing a client with a means of contact, or remaining inaccessible to a client for an unreasonable period of time
    - causing an inappropriate delay in the preparation and lodgment of a tax return or other taxation document on behalf of a client
    - not providing a tax agent service that is requested by a client, despite accepting payment of a fee of this service from the client
    - not returning source documentation to a client, despite a reasonable request to do so (for example, when the client engages another registered tax practitioner who requires the information to provide tax agent services to the client)

- not forwarding relevant ATO correspondence relating to a client's taxation obligations, liabilities and entitlements, as necessary, to the client.

8.You must maintain knowledge and skills relevant to the tax agent services you provide

Leo Comino and Tax Agents Board of New South Wales 2009 AATA 766

Summary

Fitness and propriety of applicant for tax agent re-registration considered in relation to:

- failure to lodge quarterly BAS
- prior convictions for failure to lodge income tax returns
- failure to lodge personal tax returns.

Keywords: fit and proper; personal income tax affairs; whether special circumstances exist; meaning of 'special circumstances'; diligence and professionalism.

Outline of relevant facts

This was a review by the AAT of a decision by the Tax Agents' Board of NSW to refuse an agent's application for re-registration on the ground that the agent was not fit and proper person to prepare income tax returns. The AAT affirmed the board's decision to refuse the application.

Among the other facts in this case, the applicant had five previous convictions for failure to lodge quarterly BAS's in 2006 and 2007. The applicant also had two prior convictions for failing to lodge income tax returns and was late in lodging his personal income tax returns in four different tax years.

Relevant principle/s established or confirmed by the case

- It is essential that a tax agent keeps up to date with the changes in the income tax laws.
- Maintaining this knowledge requires a level of diligence and professionalism.
- Given the importance of a tax agent maintaining knowledge and skills in the areas within which they provide tax agent services, an admission by an agent that they are unable to keep abreast of these changes reflects adversely on the agent's fitness to provide those services competently.
- At [34] the AAT said:

  "Mr Comino acknowledged that he had experienced problems with the introduction of the GST and that this had been a factor in the late lodgment of business activity statements. Given the importance of tax agents keeping up to date with the relevant law in order to fulfil their responsibilities in properly advising clients, Mr Comino's acknowledgement, while a frank admission, does not give the AAT confidence in his ability to keep abreast of changes in the law, especially since the problems with business activity statements occurred in 2006/7, and the introduction of GST took place in 2000."

9.You must take reasonable care in ascertaining a client's state of affairs, to the extent that ascertaining the state of those affairs is relevant to a statement you are making or a thing that you are doing on behalf of the client

Hawkins v Clayton [1988] HCA 15; (1988) 164 CLR 539

Summary

The High Court considered whether the legal firm had breached its duty of care to the executor of a testatrix estate for their failure to take positive steps to inform the executor of the contents of the will, a document which only the solicitor was aware of.

Keywords: solicitor; duty of care; standard of care; reasonable care; damages.

Outline of relevant facts

This case involved an appeal from a decision of the New South Wales Court of Appeal to dismiss an action for breach of an alleged contract and a duty of care owed by a firm of solicitors (respondent) to the appellant as executor of a testatrix's estate. The action arose following a failure by the respondent to take positive steps to locate and disclose to the executor the existence of the will of the testatrix during a period of more than six years after her death. The failure resulted in such losses as the deterioration of the house property (being the principal asset in the estate) and the loss of rent and income that might have otherwise been derived from the house.

The High Court allowed the appeal on the basis that the respondent had, as a matter of fact, breached its duty of care to the appellant in failing to take such positive steps to avoid the damage.

In arriving at its decision, the Court placed particular emphasis on the responsibility undertaken by the respondent for the custodianship of the testatrix's will after her death and the foreseeability of a risk of damage if the respondent simply retained the will.

Relevant principle/s established or confirmed by the case

- The general standard of care owed by a professional to a client is that of "due care, skill and diligence." This does not require an extraordinary degree of skill and competence, but rather, that the professional exercise the competence and skill that is "usual" among qualified and careful persons in the practice of the profession.
- Reasonable care means what is reasonable in the circumstances. This will depend on a range of factors including the scope of the services provided and the client's level of professional knowledge and experience.

Martinazzo and Commissioner of Taxation [2009] AATA 61

Summary

In relation to an administrative penalty imposed by the Commissioner of Taxation, the AAT considered whether the tax agent's client's false and misleading statement to the Commissioner was caused by a failure to take reasonable care on the part of the agent.

Keywords: tax agent; penalty; standard of care; failure to take reasonable care; knowledge, education, experience and skill of agent.

Outline of relevant facts

This case concerned the question of whether amounts purportedly paid to the applicant as "advances in the nature of loans" were in fact income and should have been reported as such in his tax return. The ATO had imposed an administrative penalty under the *Tax Administration Act 1953* for making a false and misleading statement to the Commissioner. The amount of that penalty was determined by whether the shortfall in tax was caused by a failure to take "reasonable care to comply with a taxation law" on the part of the taxpayer or the registered tax agent.

The matter went on appeal to the AAT. In this case the AAT found that the agent should clearly have included the amounts in assessable income.

On this and other grounds the decision to impose the penalty was therefore affirmed.

Relevant principle/s established or confirmed by the case

- To take reasonable care, in the context of making a statement to the Commissioner, means giving appropriate serious attention to complying with the obligations imposed under a taxation law. It requires an entity to take the same care in fulfilling their tax obligations that could be expected of a reasonable ordinary person in their shoes.
- The standard of care is measured objectively (the actual intentions of the entity are not relevant) but takes into account subjective factors such as the entity's knowledge, education, experience and skill.
- A professional person with specialist tax knowledge will be subject to a higher standard of care that reflects the level of knowledge and experience a reasonable person in their circumstances will possess.
- The appropriate benchmark is the level of care that would be expected of an ordinary and competent practitioner practising in that field and having the same level of expertise.

Reeders v Federal Commissioner of Taxation 2001 ATC 2334

Summary

In relation to a disallowed claimed deduction and penalty imposed by the Commissioner of Taxation, the AAT considered whether the taxpayer entity and tax agent had demonstrated reasonable care in relation to the claim.

Keywords: Claimed deduction; penalty; reasonable care; knowledge, education, experience and skill of agent.

Outline of relevant facts

In this case the Commissioner had disallowed a claimed deduction for self-education expenses, being the cost of obtaining a pilot's license. The Commissioner also imposed a penalty under s226G of the ITAA 1936 which allowed a penalty to be imposed where the tax shortfall had been caused by the failure of the taxpayer or of a registered tax agent to take reasonable care to comply with the Act or the regulations and the taxpayer was therefore liable to pay the penalty. In this case the taxpayer objected to the penalty and the case came before the AAT sitting as the Small Taxation Claims Tribunal.

The taxpayer had consulted an accountant before lodging the claim for the deduction and the tax agent had made some inquiries before advising that the deduction was allowable. One of the questions before the AAT was whether there was any indication of a want of care by the tax agent.

Relevant principle/s established or confirmed by the case

- More might be expected of a tax agent than a taxpayer completing his or her own return.
- The tax agent must act reasonably having regard to the agent's knowledge, education, experience and skill.
- Making reasonable inquiries of a client to determine the nature of certain claims for deductions made by the client and the basis on which those claims were being made would be considered taking reasonable steps to ascertain a client's state of affairs.

Li and Tax Practitioners Board [2014] AATA 299

Summary

Termination of registration, imposition of a non-application period of three years and rejection of application for renewal of registration considered in relation to breaches of the Code in the TASA and ceasing to meet the registration requirement of being a fit and proper person.

Keywords: registration as tax agent; termination of registration and prohibition on applying for registration for 3 years; refusal to renew registration; whether fit and proper person; breaches of the Code of Professional Conduct; unwitting involvement in fraud by third parties; failure to keep client information confidential; failure to take reasonable care in establishing client's circumstances; failure to provide tax agent services competently.

Outline of relevant facts

Refer to the facts outlined above under the case summaries for Principle 6 of the Code.

Relevant principle/s established or confirmed by the case

The AAT considered that the following factors identified by Santow J in ASIC v Adler[188] were relevant to determining the appropriateness of a termination and the imposition of a non-application period:

> "*(i) Banning orders are designed to protect the public from harm;*
>
> *(ii) The banning order is protective against present and future breach;*
>
> *(iii) A banning order has a motive of personal deterrence, though it is not punitive;*
>
> *(iv) The objects of general deterrence are also sought to be achieved;*
>
> *(v) In assessing the fitness of a person to be permitted to provide tax agent services, they have an understanding of their role and obligations;*
>
> *(vi) In assessing an appropriate length of prohibition, consideration has been given to the degree of seriousness of the contraventions, the propensity that the defendant may engage in similar conduct in the future and the likely harm that may be caused to the public;*
>
> *(vii) Longer periods of disqualification are reserved for cases where contraventions have been of a serious nature such as those involving dishonesty;*
>
> *(viii) It is necessary to balance the personal hardship to the defendant against the public interest and the need for protection of the public from any repeat of the conduct;*
>
> *(ix) A mitigating factor in considering a period of disqualification is the likelihood of the defendant reforming;*
>
> *(x) It is necessary to assess matters such as the character of the person, the nature of the breaches, risks to others from the continued registration of the person;*
>
> *(xi) Factors which lead to the imposition of the longest periods of disqualification include large financial losses, high propensity for the person to engage in similar conduct and lack of contrition or remorse."*

Su and Tax Practitioners Board [2014] AATA 644

Summary

Imposition of a non-application period of three years considered in relation to termination of registration for breaches of the Code in the TASA and ceasing to meet the registration requirement of being a fit and proper person.

Keywords: registration as tax agent; termination of registration; rejection of application for renewal of registration; prohibition on applying for registration for three years; whether length of non-application period excessive; whether fit and proper person; breaches of the Code of Professional Conduct; unsatisfactory understanding of role as tax agent; shortcomings in integrity; concerns over competence as a tax agent; lack of insight into the seriousness of shortcomings.

---

[188] (2002) 42 ACSR 80; [2002] NSWSC 483 at [55]-[56].

Outline of relevant facts

Refer to the facts outlined above under the case summaries for Principle 1 of the Code.

Relevant principle/s established or confirmed by the case

The AAT considered that there was "*no room in the system for tax agents who do not understand*" that "*[t]he self assessment tax system requires accurate information to be provided to the ATO. It requires tax agents to do all they can to ensure that the information their clients provide is accurate. From time to time they need to ask their clients hard questions. They need to scrutinise the answers and form a professional judgment as to whether what they are being told is reliable.*"

The AAT stated that "*[t]he primary purpose of not permitting a person to apply for registration for a period of time is to protect the public and the integrity of the tax system. Whilst [the agent] may see the period of three years as further punishment for his actions, that is not its purpose. It is to protect the public, and the taxation system, from further harm. [The agent] needs time to develop an improved level of integrity and competence, without which he will find it difficult to satisfy the Board that he should once again be registered as a tax agent.*"

Burnett and Tax Practitioners Board [2014] AATA 687

Summary

Fitness and propriety of a registered tax agent considered in relation to:

- whether the agent was of good fame, integrity and character
- findings that the agent breached the Code in the TASA for:
    - accessing a taxpayer's records on the ATO Tax Agent Portal without authority
    - preparing and lodging tax returns on behalf of clients containing inaccurate and unsupported claims, without making sufficient enquiries with the clients to ascertain their affairs or to confirm the correct application of taxation laws to ensure that these returns were prepared and lodged competently.
- lack of contrition and understanding and appreciation of the taxation laws and seriousness of the agent's conduct.

Keywords: fit and proper; good fame, integrity and character; application for renewal of registration; honesty and integrity; competence; reasonable care to ascertain a client's state of affairs; reasonable care to ensure that taxation laws are applied correctly; relationship with the Board, the Commissioner and the Tribunal; contrition; knowledge of the taxation laws; appreciation of responsibilities and obligations of a registered tax practitioner; excessive and unsupported claims in clients' tax returns.

Outline of relevant facts

Refer to the facts outlined above under the case summaries for Principle 1 of the Code.

Relevant principle/s established or confirmed by the case

- A registered tax practitioner's diligence in providing tax agent services, current knowledge of the relevant legal frameworks (including income tax laws) and competence and professionalism in dealing with both clients and the ATO are relevant to assessing whether the registered tax practitioner possesses the integrity and competence required of a registered tax practitioner, such that others may entrust their taxation affairs to their care.
- These qualities are also relevant to whether the registered tax practitioner is a fit and proper person to be registered under the TASA. This is particularly so in a self-assessment tax regime, in which inaccuracies in returns generally only come to light during random audits and penalties for inaccurate claims and late lodgments can be imposed on taxpayer clients, who rely on the registered tax practitioner to properly advise, guide and lodge accurate and timely returns and other tax documents with the Commissioner on their behalf.
- To take reasonable care in ascertaining a client's state of affairs that is relevant to a tax agent service, a registered tax practitioner is expected to ask sufficient and pertinent questions of their client to enable them to be reasonably satisfied of the accuracy of claims they prepare and lodge on the client's behalf. This may include sighting specific and necessary evidence to substantiate the claims.

10.You must take reasonable care to ensure that taxation laws are applied correctly to the circumstances in relation to which you are providing advice to a client

Hawkins v Clayton [1988] HCA 15; (1988) 164 CLR 539

Summary

The High Court considered whether the legal firm had breached its duty of care to the executor of a testatrix estate for their failure to take positive steps to inform the executor of the contents of the will, a document which only the solicitor was aware of.

Keywords: solicitor; duty of care; standard of care; reasonable care; damages.

Outline of relevant facts

Refer to the facts outlined above under the case summaries for Principle 9 of the Code.

Relevant principle/s established or confirmed by the case

Whilst Hawkins provides direct authority for the content of a solicitor's duty to their client, a number of principles on the standard of care required to be exercised by professionals generally can be distilled from the case.

These principles are as follows:

- The general standard of care owed by a professional to a client is that of "due care, skill and diligence." This does not require an extraordinary degree of skill and competence, but rather, that the professional exercise the competence and skill that is "usual" among qualified and careful persons in the practice of the profession.
- Depending on the circumstances of the case, a duty of care may extend beyond a mere obligation to take reasonable care in performing a function which, in the absence of such care, might cause loss to the client.
- Circumstances that are relevant in determining the scope of a duty and whether an obligation to take positive and prompt steps should be imposed include the following:
    - the nature of the work undertaken
    - the assumption of active responsibility by the person undertaking the work for the matter for which the steps are required
    - the general nature and contents of the agreement between the parties
    - the purpose for the undertaking accepted by the person
    - the nature of the foreseeable consequences arising from a failure to take the steps, and
    - contemporary community standards (particularly where liability for a breach would unduly outweigh the risk that a person undertaking the work could reasonably be expected to bear.
- The standard of care owed by a person performing professional work to a client extends beyond that contained in the express or implied terms of their agreement.

Keitac Pty Ltd ATF McNamara Property Development Trust and Commissioner of Taxation [2007] AATA 1206; (2007) 68 ATR 61

Summary

In relation to a penalty imposed by the Commissioner of Taxation for an input tax credit in a BAS, the AAT considered whether the tax agent and accountant had taken reasonable care, when acting for their client.

Keywords: tax agent; input tax credit penalty; whether penalty was lawfully imposed; whether penalty should be remitted; standard of care; reasonable care.

Outline of relevant facts

Keitac involved an application to the AAT for review of an assessment by the Commissioner of Taxation of a penalty for failure to take reasonable care to comply with a taxation law.

The matter arose in relation to a purchase of land, in respect of which the applicant as purchaser engaged accountants and tax agents to prepare the BAS. Following the preparation of a draft contract which had been viewed and advised on by the accountants, a condition was mistakenly inserted (of which the applicant was unaware) which disentitled it from an input tax credit. The accountants then requested the "key terms" of the contract and the applicant only provided the first page (without the condition). As the accountants had provided earlier advice on the contract, they thought it unnecessary to request the remainder before attesting to it. As a result, a credit was claimed in relation to the purchase.

The applicant successfully claimed for a reduction of the penalty on the basis of a lack of reasonable care by the accountants and tax agents.

Keitac established the following principles on the interpretation of "reasonable care" in the context of work undertaken by accountants and tax agents:

- The greater the value of a transaction, the higher the standard of care that may be required, in particular, the level of enquiries required in following up the provision of information by a client.
- "Reasonable care" imposes an obligation on an accountant or tax agent to follow up or pursue ostensibly inadequate responses to requests for information.

Burnett and Tax Practitioners Board [2014] AATA 687

Summary

Fitness and propriety of a registered tax agent considered in relation to:

- whether the agent was of good fame, integrity and character
- findings that the agent breached the Code in the TASA for:
    - accessing a taxpayer's records on the ATO Tax Agent Portal without authority
    - preparing and lodging tax returns on behalf of clients containing inaccurate and unsupported claims, without making sufficient enquiries with the clients to ascertain their affairs or to confirm the correct application of taxation laws to ensure that these returns were prepared and lodged competently.
- lack of contrition and understanding and appreciation of the taxation laws and seriousness of the agent's conduct.

Keywords: fit and proper; good fame, integrity and character; application for renewal of registration; honesty and integrity; competence; reasonable care to ascertain a client's state of affairs; reasonable care to ensure that taxation laws are applied correctly; relationship with the Board, the Commissioner and the Tribunal; contrition; knowledge of the taxation laws; appreciation of responsibilities and obligations of a registered tax practitioner; excessive and unsupported claims in clients' tax returns.

Outline of relevant facts

Refer to the facts outlined above under the case summaries for Principle 1 of the Code.

Relevant principle/s established or confirmed by the case

- A registered tax practitioner's diligence in providing tax agent services, current knowledge of the relevant legal frameworks (including income tax laws) and competence and professionalism in dealing with both clients and the ATO are relevant to assessing whether the registered tax practitioner possesses the integrity and competence required of a registered tax practitioner, such that others may entrust their taxation affairs to their care.
- These qualities are also relevant to whether the registered tax practitioner is a fit and proper person to be registered under the TASA. This is particularly so in a self-assessment tax regime, in which inaccuracies in returns generally only come to light during random audits and penalties for inaccurate claims and late lodgments can be imposed on taxpayer clients, who rely on the registered tax practitioner to properly advise, guide and lodge accurate and timely returns and other tax documents with the Commissioner on their behalf.
- To take reasonable care to ensure that taxation laws are applied correctly to the circumstances of a client, a registered tax practitioner is expected to keep up to date with developments in taxation laws to maintain a proper knowledge of these laws, and to ask sufficient and pertinent questions of their client to enable them to be reasonably satisfied of the accuracy of claims they prepare and lodge on the client's behalf. This may include sighting specific and necessary evidence to substantiate the claims.

11.You must not knowingly obstruct the proper administration of the taxation laws

Scanlan v Swan 82 ATC 4402

Summary

In relation to a conviction for obstructing or hindering an officer in the discharge of their duties under the ITAA 1936, the District Court considered whether a temporary denial of access on reasonable grounds constitutes an obstruction.

Keywords: *Income Tax Assessment Act 1936*; obstruction; temporary denial of access; reasonable grounds; reliance on common law right.

Outline of relevant facts

This case related to an appeal to the District Court of Queensland from a conviction of the appellant in the Magistrates Court of the offence under section 232 of the ITAA 1936 of obstructing or hindering an officer in the discharge of their duties under that Act or the Income Tax Regulations 1936.

The conviction arose after two officers of the Commissioner sought access to documents in the appellant's business premises in the course of an interview with the appellant pursuant to section 263 of the ITAA 1936, which facilitates full and free access to all buildings, places, books, documents and other papers (and the making of copies) for the purposes of that Act. As one of the officers attempted to have access to a file on the appellant's desk, the appellant placed his hand on the file to prevent access by the officer.

The appellant argued against the finding in relation to section 232 on the basis that he was exercising a common law right, being the right to obtain legal advice. The District Court allowed the appeal and set aside the conviction and other orders made by the magistrate.

The District Court summarised the following principles on the meaning of the word "obstruct" in the context of the exercise by officers of their statutory duties and powers:

- "Obstruction" is a word of common and everyday usage in the English language. Therefore, an obstruction in a given case is not capable of specific definition but must be measured in accordance with relevant tests.
- A temporary denial of access, on reasonable grounds, will not amount to an obstruction.
- What constitutes a temporary denial of access and reasonable grounds must be determined according to all the circumstances of the case.
- The assessment of whether something amounts to an obstruction is one of reasonableness.
- In general, a short delay for the purpose of obtaining legal advice may be considered a reasonable ground. However, this result may not be reached in every single case and all will depend on the relevant circumstances.
- Reliance on a common law right is a relevant factor in determining whether a person has acted reasonably. This does not require the assertion of a common law right before the issue of reasonableness can be raised and considered.
- Conversely however, there may be reasonable grounds not involving the assertion of a common law right. By the same token, the assertion of a common law right may, in some circumstances, be considered unreasonable and amount to an obstruction (e.g. where a person claiming a right to obtain legal advice is "spurious and unreasonable" and their conduct in asserting the right is "truly obstructive").

Ansett Transport Industries (Operations) Pty Ltd v Australian Federation of Air Pilots (1991) 101 ALR 407

Summary

In relation to convictions under the *Industrial Relations Act 1988* for hindering or obstructing officers from carrying out an inspection of certain records, the Federal court considered the meanings of 'hinder' and 'obstruct'.

Keywords: industrial law; inspection and interview by authorised officer of organisation; whether deferral of decision to allow inspection amounts to hindrance or obstruction; temporary denial of access.

Outline of relevant facts

This case related to an appeal to the Federal Court from a decision of a single judge convicting the appellant of two offences under section 306(a) of the *Industrial Relations Act 1988* of hindering or obstructing two authorised officers of the respondent from carrying out an inspection of certain records for the purpose of ensuring observance of certain awards in accordance with that Act.

The conviction arose after the officers who attended the appellant's premises were told by an officer of the appellant that their "application" to enter and inspect the records would be considered but that no response would be granted that day.

The Federal Court dismissed the appeal on the basis that the appellant's action amounted to a hindrance or obstruction within the terms of the Act.

Relevant principle/s established or confirmed by the case

The Federal Court outlined the following principles on the meanings of "hinder" and "obstruct" in the context of the administration of a statutory function:

- An obligation to not hinder or obstruct an officer's exercise of their powers of access does not imply a general positive duty to provide assistance to exercise the power.
- A person's action/s may amount to an obstruction even if no positive conduct is involved.
- A temporary refusal of access may amount to an obstruction in circumstances where it is apparent that access will be denied for an indefinite period or where no indication is given of when the officer/s will be informed whether or not access will be granted.
- The possibility that a person may need to obtain legal advice before permitting access may not be raised as an excuse for an obstruction if the relevant statute does not provide a right to defer access pending legal advice or if the person does not claim legal professional privilege.

12.You must advise your client of the client's rights and obligations under the taxation laws that are materially related to the tax agent services you provide

Re Warne and Defence Force Retirement and Death Benefits Authority (1989) 18 ALD 662

Summary

In relation to a determination of eligibility for an invalidity benefit the AAT considered the phrase 'materially aggravated'.

Keywords: invalidity benefit; materially connected; whether condition was not materially aggravated by service.

Outline of relevant facts

This case involved consideration of section 28(1) of the *Defence Force Retirement and Death Benefits Act 1973*. Specifically, this case considered the meaning of the words 'materially aggravated'. In the context of the TASA it provides an example of the interpretation of when something is 'materially' connected with something else.

Relevant principle/s established or confirmed by the case

For something to be 'materially' connected with something else, a connection is required between those things that is of substance rather than being so tenuous as to be immaterial or ignored.

Su and Tax Practitioners Board [2014] AATA 644

Summary

Imposition of a non-application period of three years considered in relation to termination of registration for breaches of the Code in the TASA and ceasing to meet the registration requirement of being a fit and proper person.

Keywords: registration as tax agent; termination of registration; rejection of application for renewal of registration; prohibition on applying for registration for three years; whether length of non-application period excessive; whether fit and proper person; breaches of the Code of Professional Conduct; unsatisfactory understanding of role as tax agent; shortcomings in integrity; concerns over competence as a tax agent; lack of insight into the seriousness of shortcomings.

Outline of relevant facts

Refer to the facts outlined above under the case summaries for Principle 1 of the Code.

Relevant principle/s established or confirmed by the case

The AAT considered that there was "*no room in the system for tax agents who do not understand*" that "*[t]he self assessment tax system requires accurate information to be provided to the ATO. It requires tax agents to do all they can to ensure that the information their clients provide is accurate. From time to time they need to ask their clients hard questions. They need to scrutinise the answers and form a professional judgment as to whether what they are being told is reliable.*"

The AAT stated that "*[t]he primary purpose of not permitting a person to apply for registration for a period of time is to protect the public and the integrity of the tax system. Whilst [the agent] may see the period of three years as further punishment for his actions, that is not its purpose. It is to protect the public, and the taxation system, from further harm. [The agent] needs time to develop an improved level of integrity and competence, without which he will find it difficult to satisfy the Board that he should once again be registered as a tax agent.*"

13.You must maintain professional indemnity insurance that meets the Board's requirements

Grosfeld and Tax Practitioners Board [2014] AATA 100

Summary

Fitness and propriety of a registered tax agent considered in relation to:

- failing to lodge personal income tax returns and BAS
- failing to provide clients with a means of contact
- failing to ensure that tax agent services were provided competently
- failing to maintain PI insurance as required by the TPB
- failing to respond to requests from the TPB.

Keywords: fit and proper; application for renewal of registration; compliance with taxation laws in the conduct of personal affairs; competence; relationship with the Board and the Commissioner; appreciation of responsibilities and obligations of a registered tax practitioner; requirement to maintain PI insurance.

Outline of relevant facts

Refer to the facts outlined above under the case summaries for Principle 2 of the Code.

Relevant principle/s established or confirmed by the case

The failure by a registered tax practitioner to maintain PI insurance as required by the TPB during any period after these requirements became effective (1 July 2011 for registered tax agents and BAS agents) amounts to a breach of subsection 30-10(13) of the TASA. This PI insurance requirement serves to protect clients in the event that they are made liable for additional tax or penalties as a result of the conduct of a registered tax practitioner. As such, it '*is in the public interest that tax [practitioners] are adequately insured' and a breach of this requirement 'has the potential to undermine confidence and credibility in the regulatory regime*'.

14.You must respond to requests and directions from the Board in a timely, responsible and reasonable manner

Re Cowlishaw and Ors and Tax Agents' Board of Queensland [1999] AATA 412

Summary

Fitness and propriety of registered tax agents considered in relation to:

- the excessive claiming of deductions on behalf of clients
- failure to respond to ATO telephone calls and correspondences

- failure to act on substantiation requests by the ATO despite being granted extensions of time
- failure to respond to board correspondence
- failure to file clients' income tax returns
- failure to pass on ATO correspondences to clients
- shifting of blame for delays by agents on to clients
- staff and client complaints regarding failure to pass on refunds.

Keywords: fit and proper; excessive claiming of deductions; failure to respond to Board and ATO correspondences; relationship with the Board and Commissioner; failure and delay in filing clients' income tax returns; misrepresentations to clients; failure to pass on ATO correspondences; failure to pass on tax refunds; shifting of blame onto clients and staff.

Outline of relevant facts

Refer to the facts outlined above under the case summaries for Principle 2 of the Code.

Relevant principle/s established or confirmed by the case

- A lack of cooperation with the Commissioner officers and failure to treat the board with proper respect amount to a serious breach of the proper conduct of a tax agent business.
- The following matters may be considered to be misconduct as a tax agent such that an agent engaged in this conduct will not be a fit and proper person to prepare income tax returns or transact business on behalf of taxpayers in income tax matters:
    - failing to file tax returns within a reasonable time or in some cases at all
    - failing to respond to telephone calls and correspondence
    - failing to pass on correspondence from the Commissioner to clients
    - misleading clients by informing them that returns had been filed with the Commissioner when they had not
    - blaming clients for delays
    - blaming staff for delays
    - providing money to clients to keep them quiet and to stop them from complaining to any official body.

Pappalardo v Tax Agents' Board of Victoria [2003] AATA 990

Summary

Fitness and propriety of registered tax agent considered in relation to:

- failure to lodge personal income tax returns
- failure to adequately respond to board correspondence

- lack of contrition and agent's submission of confused and misleading evidence to the AAT.

Keywords: fit and proper; cancellation of registration; personal income tax affairs; failure to respond to Board correspondences; relationship with the Board and Commissioner; lack of contrition; submission of confused and misleading evidence.

Outline of relevant facts

Refer to the facts outlined above under the case summaries for Principle 7 of the Code.

Relevant principle/s established or confirmed by the case

- Inaccurate or misleading statements/submissions to a board or the AAT can in circumstances reflect an inability to clearly think about the relevant issues and consequently may be relevant to evaluating competence and fitness and propriety in general.
- Failure to return board and client correspondences reflects adversely on fitness and propriety to be registered as it demonstrates a serious neglect of the business of a tax agent and a lack of appreciation of the significance of completely and promptly responding to requests from a regulatory authority.

Grosfeld and Tax Practitioners Board [2014] AATA 100

Summary

Fitness and propriety of a registered tax agent considered in relation to:

- failing to lodge personal income tax returns and BAS
- failing to provide clients with a means of contact
- failing to ensure that tax agent services were provided competently
- failing to maintain PI insurance as required by the TPB
- failing to respond to requests from the TPB.

Keywords: fit and proper; application for renewal of registration; compliance with taxation laws in the conduct of personal affairs; competence; relationship with the Board and the Commissioner; appreciation of responsibilities and obligations of a registered tax practitioner; requirement to maintain PI insurance.

Outline of relevant facts

Refer to the facts outlined above under the case summaries for Principle 2 of the Code.

Relevant principle/s established or confirmed by the case

A failure by a registered tax practitioner to respond to a TPB request for information within the requested time frame, without reasonable explanation, or to provide a response that sufficiently addresses the TPB request, constitutes a breach of the requirement under subsection 30-10(14) of the TASA that the registered tax practitioner respond to requests and directions from the TPB in a timely, responsible and reasonable manner.