TPB Guidance Statement TPB(GS) 22/2013

Code of Professional Conduct – Reasonable care to ascertain a client's state of affairs

Disclaimer

This is a Tax Practitioners Board (TPB) Guidance Statement (TPB(GS)). It is intended to be for information only. It provides information regarding the TPB's position on the application of subsection 30-10(9) of the *Tax Agent Services Act 2009* (TASA), containing one of the obligations of registered tax practitioners under the Code of Professional Conduct (Code) (Code item 9). While it seeks to provide practical assistance and explanation, it does not exhaust, prescribe or limit the scope of the TPB's powers in the TASA.

In addition, please note that the principles, explanations and examples in this TPB(GS) do not constitute legal advice and do not create additional rights or legal obligations beyond those that are contained in the TASA or which may exist at law. Please refer to the TASA for the precise content of the legislative requirements.

Document history

The TPB released this document as a draft information sheet in the form of an Exposure draft on 30 July 2013. The TPB invited comments and submissions in relation to the information in it. The closing date for submissions was 29 August 2013. The TPB considered the submissions made and published the TPB Information Sheet *TPB(I) 17/2013 Reasonable care to ascertain a client's state of affairs* on 15 November 2013. The following amendments have been made since:

- On 7 February 2017, the TPB updated this TPB(GS) to incorporate a reference to tax (financial) advisers.

- On 22 January 2019, the TPB updated this TPB(GS) to include two new examples. On 20 November 2019 the TPB updated this TPB(GS) to include further two new examples.

- On 4 December 2023, the TPB made further changes to this TPB(GS) to include specific requirements for tax agents with a tax (financial) advice services condition on their registration.
- On 14 October 2024, the TPB changed the reference from the Administrative Appeals Tribunal to the Administrative Review Tribunal.
- On 26 February 2025, the TPB updated this TPB(GS) to include references to the current versions of the APES Standards.
- On 22 August 2025, the TPB updated this TPB(GS) to include references to the tax planning and related services guidance in APES 110 *Code of Ethics for Professional Accountants (including Independence Standards)*.
- On 30 April 2026, the TPB renamed its 'Information Sheet' to 'Guidance Statement'. All references in this document have been updated accordingly. The TPB Information Sheet TPB(I) 17/2013 Reasonable care to ascertain a client's state of affairs has been archived.
- 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.

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OFFICIAL

Contents

Introduction 4

What is the obligation under Code Item 9? 4

What does 'reasonable care' mean? 4

What is 'reasonable care in ascertaining a client's state of affairs'? 6

What does '... to the extent that ascertaining the state of affairs is relevant to a statement the registered tax practitioner is making or a thing the registered tax practitioner is doing on behalf of their client' mean? 8

Relevant factors that may impact on the level of reasonable care required 10

Consequences for failing to comply with Code Item 9 10

Comparison with the *Corporations Act 2001* (Cth) for registered tax agents with a tax (financial) advice services condition 11

Practical examples involving Code Item 9 12

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Introduction

1. This Guidance Statement (TPB(GS)) has been prepared by the Tax Practitioners Board (TPB) to assist registered tax agents and BAS agents (collectively referred to as registered tax practitioners) to understand their obligations under subsection 30-10(9) of the *Tax Agent Services Act 2009* (TASA) Code of Professional Conduct (Code) item 9.[1]

2. While the focus of this TPB(GS) is on Code item 9, it is also important to note that there are 13 other items in the Code[2] and additional requirements in relation to being a 'fit and proper' person[3] which may also be relevant.

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

   - what the obligation is under Code Item 9
   - consequences for failing to comply with Code Item 9
   - practical examples.

What is the obligation under Code Item 9?

4. Code Item 9 requires registered tax practitioners to 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 they are making or a thing they are doing on behalf of the client.[4]

What does 'reasonable care' mean?

5. The duty to take reasonable care is a well-established feature of the common law in Australia. While Code Item 9 requires registered tax practitioners to take 'reasonable care' in ascertaining a client's state of affairs, the Code does not extend the common law duty of registered tax practitioners to take reasonable care. However, it does establish an additional range of possible statutory consequences under the TASA (see paragraphs 28 to 30 for more information on the consequences for failing to comply with Code 9).

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

[2] The TPB has also published an explanatory paper that sets out its views on the application of the Code, including Code item 9. Refer to the TPB Guidance Statement TPB(GS) 01/2010 Code of Professional Conduct.

[3] For further information, see the TPB Guidance Statement TPB(GS) 02/2010 Fit and proper person.

[4] In relation to tax agents with a tax (financial) advice services condition, the Code does not apply to conduct when providing financial services (as opposed to tax (financial) advice services).

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6. There is no no set formula for determining what it means to take reasonable care in any given situation. Rather, whether a registered tax practitioner has taken reasonable care in a given situation will depend on an examination of all the circumstances,[5] including the nature and scope of the tax agent services, BAS services and tax (financial) advice services being provided and the client's level of professional knowledge and experience.

7. The starting point for determining what reasonable care is will involve a registered tax practitioner exercising their own professional judgment taking into account relevant factors, such as the client's individual circumstances including their records and systems and the nature and complexity of the transaction.

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

9. The Accounting Professional and Ethical Standards Board (APESB) has stated in APES 110 *Code of Ethics for Professional Accountants (including Independence Standards)* and APES 220 *Taxation Services* that professional competence and due care is a fundamental principle that members must comply with. This principle requires a member 'to maintain professional knowledge and skill at a level required to ensure that a client or employer receives competent professional services ... and act diligently in accordance with applicable technical and professional standards'. This requires, among other things, the exercise of sound judgment in applying professional knowledge and skill in the performance of such a service.[6]

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

[6] AESB APES 110 *Code of Ethics for Professional Accountants (including Independence Standards)*, sections 110.1 A1 and 113.1 A1. See also APES 220 *Taxation Services*, paragraphs 3.13 to 3.20.

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

10. The obligation to take reasonable care does not mean that the care taken needs to be perfect or to the highest level of care possible. It is sufficient that the registered tax practitioner acts in a way that is consistent with how a reasonable person, possessing the required knowledge, skill and experience of a registered tax practitioner, objectively determined, would act in providing tax agent services, BAS services or tax (financial) advice services.[7]

11. Where a statement provided by a client seems credible (and for existing clients is consistent with previous statements) and the registered tax practitioner has no basis on which to doubt the information supplied, the registered tax practitioner may discharge their responsibility by accepting the statement provided by the client without further checking.

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

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

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

[7] Registered tax practitioners who are also members of Chartered Accountants Australia and New Zealand, CPA Australia or the Institute of Public Accountants may have additional obligations when advising on tax planning arrangements. If applicable, see guidance in sections 280 and 380 of APES 110 Code of Ethics for Professional Accountants (including Independence Standards).

15. Where artificial intelligence (AI) is used in the provision of tax agent services, registered tax practitioners should be mindful of their obligations under the Code, including Code item 9.[8]

16. Also, if the client's circumstances have changed, the registered tax practitioner would need to consider what additional questions would need to be asked of the client to ascertain the client's state of affairs relevant to the tax agent services, BAS services or tax (financial) advice services being provided.

17. Some other circumstances in which there may be a need to make further enquiries of the client include:

    - new or substantial changes in the law
    - nature and circumstances of the client, including whether a new or inexperienced client
    - unusual transactions in the context of the regular business of the client.

18. Therefore, Code item 9 does not require registered tax practitioners to 'audit', examine or review books and records or other source documents to independently verify the accuracy of information supplied by their clients. However, there may be circumstances (see paragraphs 13 to 16 above) where a registered tax practitioner may not automatically discharge their responsibility in particular cases by simply accepting what they have been told by their clients.

19. In relation to registered tax practitioners with a tax (financial) advice services condition, it is also recommended to review their relevant advice processes. This review is essential to ensure these processes promote a thorough understanding of their client's circumstances, including 'fact finding' and / or appropriate documentation (for example, in relation to agreed terms of engagement, ensuring that the Statement of Advice (SOA) is clearly articulating the tax component of the advice process undertaken).

[8] 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.

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What does '... to the extent that ascertaining the state of affairs is relevant to a statement the registered tax practitioner is making or a thing the registered tax practitioner is doing on behalf of their client' mean?

20. The requirement to take reasonable care relates to the services that are to be provided and is therefore subject to the agreed terms of the engagement with the client.

21. The terms of the engagement with the client may arise from a variety of sources, which may include a letter of engagement, an email, telephone communication or face-to-face visit.[9] These terms will determine the scope of the engagement between the registered tax practitioner and their client and adherence to these terms will usually be the first step towards showing that reasonable care has been taken.

22. The TPB considers that a written agreement between a registered tax practitioner and their client that sets out the terms and conditions of the arrangement between the parties is prudent. An engagement letter is likely to be a simple way to assist a registered tax practitioner to comply with their obligations under the Code and to define the obligations of both parties. For further information on engagement letters, refer to the TPB Guidance Statement TPB(GS) 34/2019 Letters of engagement.

23. Where a registered tax practitioner knows or ought reasonably to know that information provided by the client is not credible, the registered tax practitioner should make further enquiries or consider declining to act for the client rather than continue to provide tax agent services, BAS services or tax (financial) advice services. Further, where the agreed scope of the 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, then further enquiries would not be required to rely on the relevant information unless the registered tax practitioner identifies, or reasonably ought to have identified, that the information was incorrect or incomplete.[10]

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[9] In certain circumstances, a tax agent with a tax (financial) advice services condition may include the terms of an engagement with a client in the following:

- a relevant Financial services guide and consent,
- a relevant Statement of advice (which may incorporate an 'authority to proceed') signed by the client, or
- a relevant Record of advice (incorporating an 'authority to proceed') signed by the client.

[10] It is noted that this aligns with a relevant requirement in the *Corporations Act 2001* (Cth) (see paragraphs 30 to 34 in this TPB(GS)).

24. In all cases, whether a registered tax practitioner has taken reasonable care under Code Item 9 is a question of fact to be determined by examining all of the circumstances of a particular situation. Various factors will need to be considered, including the terms of the engagement between a registered tax practitioner and their client.

A 'statement' the registered tax practitioner is making

25. Generally, a statement a registered tax practitioner makes will be a statement made to the Commissioner of Taxation (Commissioner). For example, where a registered tax practitioner has been engaged to electronically lodge a client's tax return or BAS, the relevant statement will be the registered tax practitioner's declaration made when the registered tax practitioner electronically submits the tax return or BAS.

26. The statement could also include a statement (oral or written) made by a registered tax practitioner to their client. For example, a registered tax practitioner may make a statement to their client as to the operation of a taxation law or BAS provision to the client's particular circumstances.

A 'thing' the registered tax practitioner is doing on behalf of the client

27. A thing a registered tax practitioner does on behalf of their client is a broad encompassing term. It includes, but is not limited to:

- preparing or lodging a return, notice, statement, application or other document about a taxpayer's liabilities, obligations or entitlements under a taxation law or BAS provision

- preparing or lodging on behalf of a taxpayer an objection under Part IVC of the *Taxation Administration Act 1953* (TAA 1953) against an assessment, determination, notice or decision under a taxation law or BAS provision

- applying to the Commissioner or the Administrative Review Tribunal[11] for a review of, or instituting an appeal against, a decision or an objection under Part IVC of the TAA 1953

- giving a taxpayer advice about a taxation law that the taxpayer can reasonably be expected to rely upon to satisfy their taxation obligations, or

[11] The Administrative Review Tribunal replaced the Administrative Appeals Tribunal on 14 October 2024.

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- dealing with the Commissioner on behalf of a taxpayer, such as lodging a private ruling request or lodging an amendment.

Relevant factors that may impact on the level of reasonable care required

28. Some of the factors that may impact upon the steps required to take reasonable care under Code Item 9 include:
    - the terms of engagement between a registered tax practitioner and their client
    - the complexity of the transaction
    - the client's circumstances, including their level of sophistication (such as a large client with in-house tax teams and specialists)
    - the nature of any pre-existing relationship between the registered tax practitioner and their client.

Consequences for failing to comply with Code Item 9

29. If a registered tax practitioner does not take reasonable care in ascertaining a client's state of affairs under Code Item 9, the TPB may find that the registered tax practitioner has breached the Code and may impose sanctions for that breach.

30. If a registered tax practitioner breaches the Code, the TPB may impose one or more of the following sanctions:

    - a written caution
    - an order requiring the registered tax practitioner to do something specified in the order
    - suspension of the registered tax practitioner's registration
    - termination of the registered tax practitioner's registration.

30. In addition, the same conduct which may amount to a failure to take reasonable care under Code Item 9 could constitute a breach of another Code Item or one of the civil penalty provisions in the TASA. For example, section 50-20 of the TASA makes it an offence for registered tax practitioners to make false, misleading or reckless statements to the

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Commissioner. Also, section 50-30 of the TASA creates an offence in relation to the signing of declarations in certain circumstances, unless the registered tax practitioner takes reasonable steps to ensure the accuracy of the document.

Comparison with the *Corporations Act 2001* (Cth) for registered tax practitioners with a tax (financial) advice services condition

31. The TPB recognises that the obligations of some Australian financial services (AFS) licensees and their representatives under the *Corporations Act 2001* (Cth) (Corporations Act) are similar to some obligations under the TASA.[12]

32. While compliance with relevant Corporations Act and ASIC requirements will be a relevant factor, it is not conclusive in relation to whether obligations under Code item 9 in the TASA have been satisfied.

33. Having regard to the principles and elements of Code Item 9 in the TASA, the following sections in the Corporations Act are highlighted:
    - 912A – General obligations of AFS licensees
    - 961B – Provider must act in the best interests of the client
    - 961E – What would reasonably be regarded as in the best interests of the client?
    - 961H – Resulting advice still based on incomplete or inaccurate information.

34. In particular, the following requirements are noted:
    - The person providing the advice must must make reasonable enquiries to obtain complete and accurate information relating to the client's relevant circumstances.[13]

    - If it is reasonably apparent that the information on which the advice is based is incomplete or inaccurate, the person providing the advice must warn the client that:

[12] Although not specifically related to taxation advice, the TPB also notes that there are Australian Securities and Investments Commission (ASIC) requirements outlined in relevant ASIC Regulatory Guides (RGs), including:
- RG 175 Licensing: Financial product advisers – Conduct and disclosure
- RG 244: Giving information, general advice and scaled advice.

[13] See paragraph 961B(2)(c) of the Corporations Act.

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- the advice is, or or may be, based on incomplete or inaccurate information relating to the client's relevant personal circumstances, and
- that the client should consider the appropriateness of the advice before acting on it.[14]

- If the person providing the advice does not have the expertise required to provide advice on the particular subject matter to the client, they must decline to provide the advice.[15]
- It is also noted that licensees must ensure that their representatives are adequately trained and are competent to provide financial services.

35. It is noted that if an AFS licensee or an authorised representative of an AFS licensee fails to comply with the Corporations Act (including the best interests duty), they may be liable for:
    - a civil penalty,[16] and/or
    - an order for compensation for loss or damage suffered by the client.[17]

Practical examples involving Code Item 9

36. The following are indicative examples which illustrate the general application of Code Item 9. In all cases, consideration will need to be given to the specific facts and circumstances as well as to the taxation laws as applied to those facts.

Example 1

Terms of of engagement

Sophia engages Jonah, a registered tax agent, to prepare and lodge her income tax return based on the information provided by Sophia.

Brief description of scenario

Sophia is a regular client of Jonah's and her personal circumstances have not changed from previous years.

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[14]See section 961H of the Corporations Act.

[15] See paragraph 961B(2)(d) of the Corporations Act.

[16] See sections 961K and 961Q of the Corporations Act.

[17] See section 961M of the Corporations Act.

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Reasonable care steps

To comply with his obligations under Code Item 9, Jonah must take reasonable care to ascertain Sophia's state of affairs to the extent that ascertaining the state of those affairs is relevant to the thing Jonah is doing on behalf of Sophia. In this case, the relevant thing is preparing and lodging Sophia's income tax return.

Sophia is a regular client of Jonah's. Jonah enquires and ascertains that Sophia's personal circumstances have not changed from previous years. Jonah simply checks to ensure that the information provided by Sophia is consistent with previous tax returns prepared for Sophia. Jonah concludes that the information provided by Sophia is consistent with tax returns for previous years. Further, Jonah does not have any reason to doubt the accuracy or completeness of the information provided by Sophia.

In this case, Jonah has satisfied his obligation under Code Item 9 to take reasonable care by exercising his professional knowledge, skills and judgment and would not be required to undertake any further detailed enquiries.

Alternative Scenario - Additional reasonable care steps

If Sophia was a new client of Jonah's and provided no supporting evidence relating to the information to be included in the tax return, then Jonah would need to make further enquiries to ascertain Sophia's state of affairs in relation to preparing and lodging her tax return in order to demonstrate that he took reasonable care under Code Item 9. The purpose of undertaking further enquiries would be to ensure that the tax return included all relevant information pertaining to the taxation affairs of Sophia.

Example 2

Terms of engagement

Wayne engages Antonia, a registered BAS agent, to prepare and lodge his quarterly BAS.

Brief description of scenario

Wayne is a new client. Wayne advises Antonia that he has appropriate record keeping systems in place and that all his suppliers are registered for, and charging, GST.

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Reasonable care steps

To comply with her obligations under Code Item 9, Antonia must take reasonable care to ascertain Wayne's state of affairs to the extent that ascertaining the state of those affairs is relevant to the thing Antonia is doing on behalf of Wayne. In this case, the relevant thing is preparing and lodging Wayne's quarterly BAS.

As Wayne is a new client, Antonia makes relevant enquiries of Wayne and undertakes appropriate follow-up action to assure herself that Wayne does in fact have appropriate record keeping systems in place and that she can rely on the information provided by Wayne to prepare and lodge his quarterly BAS.

In addition, Antonia identifies certain transactions that she considers to be abnormal in the circumstances and seeks further clarification from Wayne in relation to these transactions.

In this case, Antonia has satisfied her obligations under Code Item 9 to take reasonable care by exercising her professional knowledge, skills and judgment and by making further enquiries, particularly in relation to Wayne's record keeping systems and the abnormal transactions identified.

Example 3

Terms of engagement

Marshall's Machinery engages Penny & Co, a registered tax agent, to prepare and lodge its annual income tax return. The engagement letter specifies that the annual income tax return is to be based on the externally audited financial statements of Marshall's Machinery (Penny & Co is not the auditor).

Brief description of scenario

Marshall's Machinery is a large company with appropriately qualified staff, including its own finance and tax team. The financial statements of Marshall's Machinery have been externally audited by Anthony Brown Davis Auditing Services.

Reasonable care steps

To comply with its obligations under Code Item 9, Penny & Co must take reasonable care to ascertain Marshall's Machinery's state of affairs to the extent those state of affairs is relevant

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to the thing Penny & Co is doing on behalf of Marshall's Machinery. In this case, the relevant thing is preparing and lodging Marshall's Machinery's annual income tax return.

Penny & Co determines that it can rely on the information provided by Marshall's Machinery to prepare and lodge its annual income tax return because:

- Marshall's Machinery has appropriately qualified staff and processes (including external audit of financial statements); and
- Penny & Co ascertains that there is no other reason to doubt the quality of the information provided by Marshall's Machinery.

In this case, Penny & Co has satisfied its obligation under Code Item 9 to take reasonable care by exercising its professional knowledge, skills and judgment and would not be required to undertake any further detailed enquiries.

Alternative Scenario - Additional reasonable care steps

If Penny & Co becomes aware of an issue with the plausibility of the information provided by Marshall's Machinery, this should be raised with Marshall's Machinery to determine necessary steps to be undertaken prior to Penny & Co lodging the income tax return.

Example 4

Terms of engagement

Poppy Pies Pty Ltd engages Stefan, a registered tax agent, to prepare its income tax return.

Brief description of scenario

Poppy Pies Pty Ltd is a new client. It gives Stefan all of its tax information, including its BAS and goods and services tax (GST) reconciliation accounts which have been prepared by Sarina, a registered BAS agent. Stefan has previously examined work prepared by Sarina for other clients and has not had any concerns as to the quality of Sarina's work.

Reasonable care steps

To comply with his obligations under Code Item 9, Stefan must take reasonable care to ascertain Poppy Pies Pty Ltd's state of affairs to the extent the state of those affairs is relevant to the thing Stefan is doing on behalf of Poppy Pies Pty Ltd. In this case, the relevant thing is preparing the income tax return.

As Sarina is a registered BAS agent and Stefan has no reason to doubt the quality of Sarina's work, Stefan accepts Sarina's work at face value.

Further, Stefan undertakes relevant checks in relation to such tax information provided by Poppy Pies Pty Ltd which has not been prepared by Sarina to assure himself that he has all the relevant information to prepare the income tax return.

In this case, Stefan has satisfied his obligation under Code Item 9 to take reasonable care by:

- exercising his professional knowledge, skills and judgment to determine that he can accept the tax information prepared by Sarina at face value, in the circumstances; and
- undertaking relevant checks in relation to such tax information provided by Poppy Pies Pty Ltd which has not been prepared by Sarina to assure himself that he has all the relevant information to prepare Poppy Pies Pty Ltd's income tax return.

Alternative Scenario – Additional reasonable care steps

If Stefan has doubts as to the quality of Sarina's work (for example, doubts arising from previous interactions with Sarina), it would not be reasonable for Stefan to accept Sarina's work at face value. In these circumstances, Stefan could demonstrate that he exercised reasonable care in various ways. These might include seeking further instructions from his client to review the original documentation (for example, tax invoices) or to satisfy himself of the procedure and methodology Sarina used to arrive at a particular determination.

Example 5

Terms of engagement

John engages Alana, a registered tax agent, to provide tax advice in relation to the sale of his rental property.

Brief description of scenario

John ordinarily prepares and lodges his own tax return. However, John determines that he needs advice in relation to the sale of his rental property before he can prepare and lodge his current year's tax return.

As part of his instructions to Alana, John informs Alana that his rental property had been sold during the relevant financial year. However, John does not mention to Alana that the rental

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property had been John's principal place of residence for the past 15 years and that he had only been renting it for five months prior to selling it.

Reasonable care steps

To comply with her obligations under Code Item 9, Alana must take reasonable care to ascertain John's state of affairs to the extent the state of those affairs is relevant to the thing Alana is doing on behalf of John. In this case, the relevant thing is providing advice to John in relation to the sale of his rental property, advice that he will ultimately rely upon to prepare and lodge his tax return.

Alana advises John to provide correct and complete information so that she can properly ascertain his state of affairs and provide the requested advice. Recognising that John is a new client, Alana asks a series of questions to ascertain John's state of affairs. As part of this process, Alana asks John for additional information in regard to the usage of the rental property, including whether John had ever lived in the house.

In this case, Alana has satisfied her obligations under Code Item 9 to take reasonable care by exercising her professional knowledge, skills and judgment and by making further enquiries to ascertain John's state of affairs, including in relation to the use of his rental property.

Alternative Scenario – Failure to take reasonable care

If Alana had not asked for additional information about the way in which the rental property had been used, Alana would not have taken reasonable care in the circumstances.

Example 6

Terms of engagement

Qube Finance Ltd engages Bernard's Accountants, a registered tax agent, to provide 'high level' preliminary advice on the taxation aspects of certain derivative transactions.

Brief description of scenario

Qube Finance Ltd is a publicly listed company with its own internal tax team and finance department.

From time to time, Qube Finance Ltd will seek preliminary advice from accounting and law firms regarding particular matters. In this particular matter, Qube Finance Ltd's internal tax

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director (Jenny) decides to seek expert preliminary advice from Bernard's Accountants, a registered tax agent that specialises in taxation of derivatives and options.

To obtain the expert preliminary advice, Jenny drafts a detailed referral letter containing relevant matters for Bernard's Accountants to consider.

Reasonable care steps

To comply with its obligations under Code Item 9, Bernard's Accountants must take reasonable care to ascertain Qube Finance Ltd's state of affairs to the extent the state of those affairs is relevant to the preliminary advice Bernard's Accountants is providing.

Bernard's Accountants relies upon the information contained in the referral letter that is provided by Jenny. Further, Bernard's Accountants outlines in its preliminary advice that its advice is based solely upon the information provided in the referral letter, and to the extent that the information in the referral letter is incorrect, its preliminary advice may vary.

In this case, Bernard's Accountants has satisfied its obligation under Code Item 9 to take reasonable care by exercising its professional knowledge, skills and judgment and would not be required to undertake any further detailed enquiries in relation to the information provided by Jenny on behalf of Qube Finance Ltd. In particular, Bernard's Accountants has taken reasonable care by obtaining relevant information from Qube Finance Ltd in writing and clearly stating the basis on which its advice is provided.

Example 7

Terms of engagement

Since 2014, Borough Bakery Pty Ltd (Borough) engaged Philip Partners, a registered tax agent, to prepare and lodge its income tax returns for the bakery business and the proprietor, Mr Joseph.

Brief description of scenario

Borough's sole business is a suburban bakery, which based on the information provided to Philip Partners, has operated at a loss since 2010 and has not made distributions or paid a salary to its sole director, Mr Joseph.

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In preparing Borough's income tax returns for the 2014 to 2018 financial years, Philip Partners takes into account log books provided by the company, as well as Mr Joseph's personal bank account statements. In undertaking these enquiries, Philip Partners notices that:

- the logbooks provided by Borough relate to three new luxury vehicles, which it purports are used solely for business purposes, with the deductions claimed in relation to the use of these vehicles totalling $120,000;
- there are no loans or other finance arrangements in relation to the luxury vehicles; and
- despite the bakery operating at a loss (evidenced by the company's bank statements), the ATO's Portal indicated that Mr Joseph earned significant interest income during the period.

Noting the inconsistencies and lack of credibility in relation to the information and evidence provided by Borough, Philip Partners makes further enquiries to satisfy itself of the veracity of the claims being made in the company's income tax returns, including requesting evidence in relation to:

- the use of the luxury vehicles
- how the company financed the purchase of the luxury vehicles, having regard to the company's financial position
- the source of the interest income earned by Mr Joseph
- whether there are any other relevant bank accounts.

Despite the requests from Philip Partners, Borough does not provide additional supporting evidence to substantiate its claims. Accordingly, Philip Partners declines to act for Borough, makes comprehensive file notes in relation to the matter, and returns all original documentation back to Borough.

Reasonable care steps

By asking further questions and requesting supporting evidence in relation to the claims being made by Borough, and by declining to act for the company when it refused to provide additional information and evidence, Philip Partners has appropriately discharged its obligations under Code Item 9.

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Alternative Scenario – Failure to take reasonable care

If Philip Partners had not asked for additional information and evidence, and lodged Borough's income tax returns despite the inconsistencies in the information it was provided, Philip Partners would not have carried out its obligations under Code Item 9.

Example 8

Terms of engagement

Irina engages George, a registered tax agent, to lodge her income tax return. Irina is a new client and has only recently arrived in Australia.

Brief description of scenario

Irina has been working in Australia as a pharmacy assistant for 5 months of the relevant financial year. She provides George with her Payment Summary showing that she earned $30,000 during that period. Irina instructs George to include work related expense deductions of $12,000, comprising of:

- home office expenses
- motor vehicle expenses.

Reasonable care steps

George notices that the amount and nature of the claims made by Irina seem out of the ordinary, given her income and occupation type. After asking Irina further pertinent questions, George establishes that Irina is not entitled to claim home office expenses, and that while she can claim motor vehicle expenses (Irina's duties include delivering medication to some customers), she has calculated these expenses based on the entire 12-month period of the financial year, even though she was only in Australia for 5 months during the relevant period. George advises Irina of her entitlements in light of this information and receives Irina's instructions to lodge her income tax return on the basis of Irina's reduced entitlement. George has met his obligations under Code Item 9.

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Example 9

Terms of engagement

Victor engages Sam, a registered tax agent, to prepare and lodge his income tax returns for the past 3 income tax years.

Brief description of scenario

Victor is a bricklayer who has been busy and hasn't had the time to lodge his income tax returns for the past 3 years. During their initial discussion, Victor tells Sam that he is married with 3 children and a wife who has no income.

Victor provides Sam with invoices, bank statements and receipts for the past 3 years to assist with preparation of his income tax return. Sam notes that Victor has a poor record keeping system and the income reported appears low when compared to the expenses.

Reasonable care steps

Sam explains to Victor that all income must be declared and asks if he has any cash sales that did not have invoices or were not deposited into his bank account. Sam also advises that Victor is required to lodge his income tax returns by the due date.

Victor admits that the majority of his income is from cash payments and as the income hasn't been deposited into his bank account he doesn't need to declare the income. Sam explains to Victor that this is not correct and he could be subject to interest and penalties if he does not declare all of his income.

Sam lodges Victor's three income tax returns and includes the cash payments he has received. Sam also provides advice on record keeping requirements.

As Victor's turnover is over $75,000, Sam advises him that he will also need to register for GST and commences lodging Business Activity Statements.

Sam has satisfied his obligations under Code Item 9 as by asking for additional information and including the cash payments he has taken reasonable care to ascertain the state of Victor's affairs.

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Example 10

Terms of engagement

Mitch engages Tia, a registered tax agent, to prepare and lodge his income tax return for his tiling business.

Brief description of scenario

Tia has been operating her tax agent business for the last 5 years. She has been building up her client base within her community and has new clients coming to her based on referrals. Mitch is a new client that has asked Tia to prepare his income tax return for the year. Mitch is a sole trader who is under the GST registration threshold and has no employees.

Reasonable care steps

Mitch provides some information that indicates his turnover for the year was $35,000 and his expenses were $25,000. Mitch has been running his tiling business for 4 years now and says he is kept pretty busy throughout the year.

After consulting the ATO Small Business Benchmarks Tia notices that Mitch's turnover of $35,000 appears to be low and that Mitch's business expenses as a proportion of his turnover are high for the industry that he works in.

Tia explains to Mitch that the ATO Small Business Benchmarks show ranges of business expenses to business turnover that can be used to compare his business to similar businesses in the tiling services industry. Should Tia lodge the income tax return as instructed it is more likely that he would come to the attention of the ATO who will seek additional information to substantiate his income and expenses.

Tia requested information on how Mitch records cash sales. Mitch admitted he needs to improve his record keeping, sometimes he keeps notes of what he was paid that he makes after a job, but there have been times where he has been so tired after he finishes a job that he might have forgotten. Mitch also advises that he just uses his personal bank account to deposit the cash and pay expenses. Tia advised that it is important for Mitch to keep better records going forward. Tia also advises Mitch that he should consider getting a business bank account that is separate from his personal account.

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Tia works with Mitch to estimate his cash income for the year. After reviewing his bank account records, Mitch also revised the business expenses - removing personal expenses included in error.

Alternative Scenario – Failure to take reasonable care

Tia asks clients to provide source records when completing their lodgment requirements but keeps no written notes of conversations, working papers or records of what was provided and has no checklist to refer to. Due to the practice getting busier, Tia admits to not asking further questions in relation to the clients' income and expenses and doesn't wait for documents that were not provided but accepts a verbal account.

While knowing the business expenses and income reported fall outside of the Small Business Benchmarks, Tia's workload and desire to keep new clients leads to her not asking Mitch about his cash income, expenses or record keeping. Tia lodges Mitch's income tax return as instructed.

Tia has failed to carry out her obligations under Code Item 9 by failing to make additional enquiries in relation to Mitch's comparatively high business expenses and low turnover.

Example 11

Terms of engagement

Kimberley engages Helena, a tax agent with a tax (financial) advice services condition, to provide scaled advice on the investment of specific funds and the tax implications in relation to this investment.

Brief description of scenario

After making preliminary enquiries, Helena recommends that Kimberley pursues a mixed portfolio of particular investments and provides advice on the tax implications of these investments. However, Helena fails to ascertain relevant details of Kimberly's current assets and liabilities which, if known, would have affected Helena's advice on the tax implications of the recommended investments.

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Reasonable care steps

Although the investments were ultimately profitable for Kimberley, Helena has failed to take reasonable care in ascertaining Kimberley's state of affairs relevant to the tax (financial) advice services provided by failing to undertake a more comprehensive review to identify relevant details of Kimberly's current assets and liabilities. Accordingly, Helena has breached her obligations under Code Item 9.

Example 12

Terms of engagement

Karl engages Johnny, a tax agent with a tax (financial) advice services condition, to provide advice on retirement including superannuation options.

Brief description of scenario

Johnny undertakes a fact find to identify relevant information for the purposes of his advice. Karl provides Johnny with all the relevant information as requested, except Karl omits the fact that he has been married before and has children from the previous marriage because Johnny did not specifically seek this information.

Johnny subsequently provides the requested advice; however, this advice is materially different to that which would have been provided had Johnny identified details of Karl's previous marriage.

Reasonable care steps

Johnny has failed to take reasonable care in ascertaining Karl's state of affairs relevant to the tax (financial) advice services provided by failing to identify details of Karl's previous marriage. Accordingly, Johnny has breached his obligations under Code Item 9.

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