TPB Guidance Statement TPB(GS) 23/2013

Code of Professional Conduct – Reasonable care to ensure taxation laws are applied correctly

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(10) 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 10). 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) 18/2013 Reasonable care to ensure taxation laws are applied correctly* on 15 November 2013. The following amendments have been made since:

- On 25 January 2017, the TPB updated this TPB(GS) to incorporate a reference to tax (financial) advisers.
- On 5 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 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 The TPB Information Sheet TPB(I) 18/2013 Reasonable care to ensure taxation laws are applied correctly has been archived.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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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(10) of the *Tax Agent Services Act 2009* (TASA) (Code of Professional Conduct (Code) item 10.)[1]

2. While the focus of this TPB(GS) is on Code item 10, 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 10
    - consequences for failing to comply with Code Item 10
    - practical examples.

What is the obligation under Code Item 10?

4. Code Item 10 requires registered tax practitioners to take reasonable care to ensure that taxation laws are applied correctly to the circumstances in relation to which the registered tax practitioner is providing advice to a 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 10 requires registered tax practitioners to take 'reasonable care' to ensure that taxation laws are applied correctly to the circumstances in relation to which the registered tax practitioner is providing advice to a client, the Code does not extend the common law duty of registered tax practitioners to take reasonable care. However, the Code does establish an additional range of possible statutory consequences under the TASA (see paragraphs 18 to 20 for more information on the consequences for failing to comply with Code Item 10).

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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 10. 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).

6. There is 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 judgement 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 judgement in applying professional knowledge and skill in the performance of such a service.[6]

What is 'reasonable care in ensuring that taxation laws are applied correctly'?

10. The starting point for determining what is reasonable care in this situation is giving appropriate attention to complying with the obligations under a taxation law at a standard that could be expected of a reasonable person, objectively determined. This will involve a registered tax practitioner exercising their own professional skills and judgement.[7]

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

[6] APESB APES 110 *Code of Ethics for Professional Accountants (including Independence Standards)*, sections 110.1 A1and 113.1 A1. See also APES 220 *Taxation Services*, paragraphs 3.13 to 3.20.

[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).*

11. Code Item 10 requires registered tax practitioners to take 'reasonable care' to ensure the correct interpretation and application of the law.[8] An incorrect interpretation and application of the law, therefore, may not necessarily amount to a failure to take reasonable care for the purpose of the TASA.

12. If, on the other hand, the registered tax practitioner applied the taxation laws incorrectly to the circumstances of a client and, in doing so, did not take reasonable care to determine the correct taxation treatment in the circumstances, the registered tax practitioner will likely be in breach of Code Item 10.

13. There is no set formula for what it means to take reasonable care in any given situation. However, it may include the registered tax practitioner referring to some or all of the following material to ensure that they apply the taxation laws correctly to their client's circumstances:

    - legislation and related extrinsic material (for example, explanatory memoranda to Acts)
    - case law
    - rulings and determinations issued by the Commissioner of Taxation (Commissioner) on the topic in question
    - 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 relevant regulatory agency
    - publications, information, advice or commentaries published by other experts, registered tax practitioners or specialists
    - another registered tax practitioner or a legal practitioner who has the ability and expertise to provide the advice on taxation laws and/or
    - relevant training material.

14. 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 10.[9]

[8] Additionally, while not binding on all registered tax practitioners, APES 110 *Code of Ethics for Professional Accountants* requires that members recommend or otherwise advise on a tax planning arrangement only if they have determined that there is a credible basis in laws and regulations for the arrangement. The determination of whether there is a credible basis involves the exercise of professional judgement by the member. See *APES 110 Code of Ethics for Professional Accountants*, sections 280 and 380.

[9] 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.

What does '... to the circumstances in relation to which the registered tax practitioner is providing advice to a client' mean?

15. The requirement to take reasonable care relates to the circumstances to which the registered tax practitioner is providing advice to their client and is therefore subject to the agreed terms of the engagement with the client.

16. The terms of the engagement with the client may arise from a variety of sources, which may include a letter of engagement, an email or a telephone communication.[10] 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.

17. 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 and is appropriately reviewed when relevant circumstances change, 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.

18. In all cases, whether or not a registered tax practitioner has taken reasonable care under Code Item 10 will be 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
    - the complexity of the transaction that is subject to the advice
    - the client's circumstances, including their level of sophistication (such as education standard and level of tax knowledge in the area which is the subject of advice)
    - the nature of any pre-existing relationship between the registered tax practitioner and their client

[10] 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 (incorporating an 'authority to proceed') signed by the client,
- a relevant Record of advice (incorporating an 'authority to proceed') signed by the client, or
- a relevant Product disclosure statement and consent.

- whether the provider of the service has provided an effective disclaimer against responsibility for the particular tax (financial) advice service. However, the existence of a disclaimer does not automatically absolve the entity from their obligations under the Code. Rather, the existence of an effective disclaimer is merely a relevant factor for consideration.

Consequences for failing to comply with Code Item 10

19. If a registered tax practitioner does not take reasonable care to ensure that taxation laws are applied correctly under Code Item 10, the TPB may find that the registered tax practitioner has breached the Code and may impose sanctions for that breach.

20. 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.

21. In addition, the same conduct which may amount to a failure to take reasonable care under Code item 10 could constitute a breach of another Code item.

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

22. 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.

23. While compliance with relevant Corporations Act and Australian Securities and Investments Commission (ASIC) requirements will be a relevant factor, it is not conclusive in relation to whether obligations under Code item 10 in the TASA have been satisfied.

24. Having regard to the principles and elements of Code item 10 in the TASA, the following sections in the Corporations Act are highlighted:

    - Section 912A – General obligations of AFSLs
    - Section 961B – Provider must act in the best interests of the client
    - Section 961G – Resulting advice must be appropriate to the client
    - Section 961H – Resulting advice still based on incomplete or inaccurate information.

25. In particular, the following requirements are noted:

- A licensee must comply with financial services laws and take reasonable steps to ensure that its representatives comply with financial services laws.

- The person providing personal advice to a retail client is required to act in the best interests of the client in relation to the advice, and the resulting advice must also be appropriate to the client (including, among other things, making reasonable enquiries to obtain complete and accurate information, and assessing whether the provider has requisite expertise to provide the client with advice on the subject matter sought).

- The provider must only provide the advice to the client if it would be reasonable to conclude that the advice is appropriate to the client, had the provider satisfied the duty under section 961B to act in the best interests of the client.

- It would reasonably be regarded as in the best interests of the client to take a step, if a person with a reasonable level of expertise in the subject matter of the advice that has been sought by the client, exercising care and objectively assessing the client's relevant circumstances, would regard it as in the best interests of the client, given the client's relevant circumstances, to take that step.

26. Further, although not specifically related to taxation advice, the TPB notes that there are ASIC requirements outlined in relevant ASIC Regulatory guides (RGs), including:

- RG 175 Licensing: Financial product advisers – Conduct and disclosure[11]

- RG 244: Giving information, general advice and scaled advice.

27. 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,[12] and/or

- an order for compensation for loss or damage suffered by the client.[13]

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[11] See, in particular, the following paragraphs:

- RG 175.340 to 175.358, including RG 175.356 to 175.358 in relation to requirements where there are material tax implications outside of an advice provider's competence; and
- RG 175.359 to 175.362, in relation to warning the client if advice is based on incomplete of inaccurate information.

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

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

Practical examples involving Code Item 10

28. The following are indicative examples which illustrate the general application of Code Item 10. 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 engagement

Brooke runs a boutique wine bar and prepares her own accounts. She engages Danny, a registered BAS agent, to provide advice and prepare and lodge her BAS.

Brief description of scenario

Brooke bought some bar stools for her new house but has claimed the cost of the stools as a business expense in her accounts. Brooke advises Danny that she wishes to claim a GST credit for the cost of the bar stools, even though the bar stools were purchased for private use.

Reasonable care steps

To comply with his obligations under Code Item 10, Danny must take reasonable care to ensure that taxation laws are applied correctly to the circumstances in relation to which he is providing advice to Brooke.

Danny considers the business expenses that Brooke wishes to claim and determines that the GST credit for the bar stools cannot be claimed in the circumstances and confirms that the BAS will be prepared on this basis. By taking these steps, Danny has complied with his obligations under Code Item 10.

Alternative scenario

Brooke insists that Danny claim the GST credit for the bar stools and prepare and lodge the BAS on this basis. Danny should consider declining to act for Brooke in this matter to avoid breaching his obligations under the Code, in addition to relevant civil penalty provisions.[14]

[14] For example, see section 50-20 of the *Tax Agent Services Act 2009* regarding making false or misleading statements.

Example 2

Terms of engagement

Ami Pty Ltd engages Sarah, a registered tax agent, to help her claim the current Research and Development (R&D) tax incentive.

Brief description of scenario

Sarah is not familiar with the current R&D tax incentive rules. Although Sarah has previously advised on the R&D tax concessions (which were replaced with the R&D tax incentive), she is not a specialist in the area of taxation law and has not updated her knowledge of the rules at this time.

Reasonable care steps

To comply with her obligations under Code Item 10, Sarah must take reasonable care to ensure that taxation laws are applied correctly to the circumstances in relation to which she is providing advice to Ami Pty Ltd.

Sarah recognises that she does not have the requisite skills and knowledge to advise Ami Pty Ltd about the R&D tax incentive and seeks assistance from another registered tax agent, Ryan, who Sarah knows specialises in R&D. Sarah confirms this arrangement with Ami Pty Ltd. By taking these steps, Sarah has complied with her obligations under Code Item 10.

Alternative scenario

If Sarah decided not to seek assistance from another registered tax agent with the requisite specialist R&D skills and knowledge and instead advised Ami Pty Ltd about the R&D tax incentive based on her limited knowledge of the previous rules (and without undertaking her own research about the relevant subject matter), she will most likely have breached her obligations under Code Item 10.

Similarly, if the terms of the engagement between Sarah and Ami Pty Ltd were such that Sarah was to spend a specified amount of time which she considered to be insufficient to complete this work, Sarah should consider declining to act for the client in this matter to avoid breaching her obligations under Code Item 10.

Example 3

Terms of engagement

Bob is a property developer and engages Julie, a registered tax agent, to provide GST related tax advice, including in relation to the application of the margin scheme.

Brief description of scenario

Julie specialises in GST-related advisory work. However, she does not have an in-depth understanding of the rules relating to the margin scheme.

Reasonable care steps

To comply with her obligations under Code Item 10, Julie must take reasonable care to ensure that taxation laws are applied correctly to the circumstances in relation to which she is providing advice to Bob.

As Julie's experience and knowledge of the rules relating to the margin scheme is limited, she refers to the relevant legislation, case law and publications by the ATO (including the Commissioner's views as expressed in relevant rulings and determinations). Julie may also refer to colleagues or other experts. Julie then applies this research in providing her advice to Bob.

In this case, Julie has complied with her obligations under Code Item 10 to take reasonable care to ensure that taxation laws are applied correctly by undertaking the necessary research prior to providing her advice to Bob.

Alternative scenario

If Julie relied upon her existing limited knowledge of the margin scheme to advise Bob, she will most likely have breached her obligations under Code Item 10 as she has not taken reasonable care to ensure the correct application of the law to Bob's circumstances.

Example 4

Terms of engagement

Sunshine Solar Pty Ltd engages Kevin & Green, a large accounting firm and registered tax agent, to provide advice on the taxation implications relating to the importation of certain solar panels.

Brief description of scenario

Sunshine Solar Pty Ltd advises Kevin & Green that it has already received advice from Paul Partners, another registered tax agent, regarding the taxation implications relating to the importation of the solar panels. Sunshine Solar Pty Ltd provides Kevin & Green with a copy of the advice from Paul Partners and advises Kevin & Green that it wants a second opinion.

Reasonable care steps

To comply with its obligations under Code Item 10, Kevin & Green must take reasonable care to ensure that taxation laws are applied correctly to the circumstances in relation to which it is providing advice to Sunshine Solar Pty Ltd.

To ensure that taxation laws are applied correctly, Kevin & Green obtains relevant source documentation from Sunshine Solar Pty Ltd and undertakes the necessary research in relation to the relevant taxation laws. Kevin & Green determines that there are two views in relation to the application of the relevant taxation laws but considers that the more correct view is the same as that contained in the advice from Paul Partners.

Kevin & Green advises Sunshine Solar Pty Ltd that its advice is likely to be the same as that provided by Paul Partners.

In this case, Kevin & Green has complied with its obligations under Code Item 10 to take reasonable care to ensure that taxation laws are applied correctly.

Example 5

Terms of engagement

Len engages Barry, a tax agent with a tax (financial) advice services condition, to provide advice on the tax implications of an inheritance Len is entitled to receive.

Brief description of scenario

Barry does not have any expertise to advise on the tax implications of receiving an inheritance.

Reasonable care steps

As Barry is unfamiliar with the tax implications of receiving an inheritance, he declines the engagement and refers Len to another appropriately skilled registered tax agent or legal practitioner. In this case, Barry has satisfied his obligations under Code Item 10.

Alternative scenario

If Barry decided to proceed with the engagement and provide advice on the tax implications of the inheritance based on his limited and inadequate knowledge of the relevant taxation laws, he will have breached his obligations under Code Item 10.

Example 6

Terms of engagement

Tony engages Rick, a registered tax agent with a tax (financial) advice services condition, to provide tax (financial) advice services, including in relation to superannuation. Tony specifically tells Rick that one of his goals is to maximise his superannuation contributions without exceeding the super contributions cap.

Brief description of scenario

As part of the tax (financial) advice services provided, Rick advises Tony to make a sizeable concessional superannuation contribution through a salary sacrifice arrangement. However, in doing so, Rick fails to identify that Tony has an existing salary sacrificing arrangement in place. Consequently, Tony exceeds the super contributions cap and is required to pay excess contributions tax.

Reasonable care steps

By failing to properly identify all the relevant facts and circumstances applicable to Tony (in particular, that Tony had an existing salary sacrificing arrangement in place), Rick has failed to take reasonable care in relation to the application of the super contribution cap rules. Accordingly, Rick has breached his obligations under Code item 10.