



Australian Government



TAX PRACTITIONERS BOARD

SUMMARY OF PENALTIES, SANCTIONS AND TERMINATIONS



© COMMONWEALTH OF AUSTRALIA, 2013

You are free to copy, adapt, modify, transmit and distribute this material as you wish (but not in any way that suggests the Tax Practitioners Board or the Commonwealth endorses you or any of your services or products).

PUBLISHED BY

Tax Practitioners Board
Canberra
February 2013

NAT 74415-02.2013
JS 26246

CONTENTS

Foreword	2	Queensland case prompts penalty of \$40,000	14
The TPB's compliance model	3	Caution issued to company	15
Gold Coast unregistered tax agent pays penalty of \$30,000	4	Company's registration terminated	16
Application rejected	5	Convicted agent's registration terminated	17
Good fame, integrity and character	6	Not being fit and proper	18
Complaints and not responding to the TPB lead to termination	7	The importance of accounting to clients	19
AAT affirms TPB decision	8	Agents must meet their personal tax obligations	20
Exemption denied	9	Individual and company registration terminated	21
Under supervision	10	Conditions applied	22
Agent surrenders their registration	11	Tax agent deregistered for lodging hundreds of fraudulent returns	23
Sufficient number of tax agents	12	Federal court orders \$64,500 penalty	24
Another agent's registration terminated	13		

FOREWORD

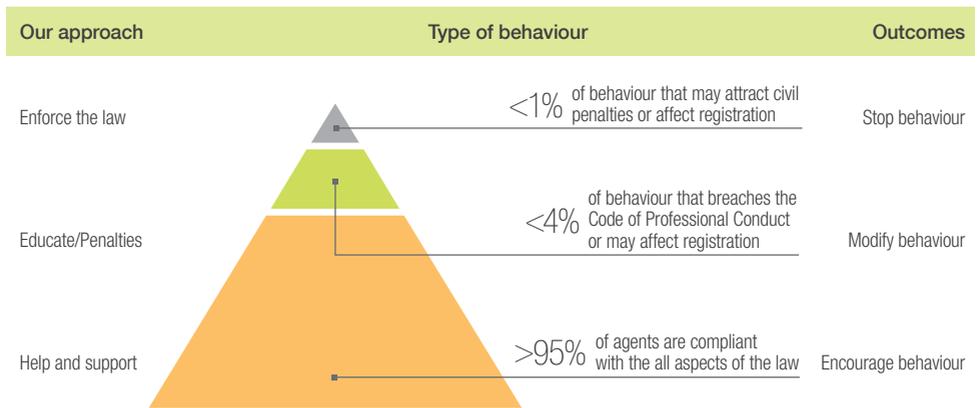
This compliance booklet provides a summary of some recent Tax Practitioners Board (TPB) compliance cases, including Federal Court, Administrative Appeals Tribunal (AAT), and Board Conduct Committee matters.

The TPB compliance strategy is based on providing strong support for tax practitioners who are responsible and who comply with the Code of Professional Conduct (Code) and other legislative requirements, while taking firm action in relation to those agents who do not comply.

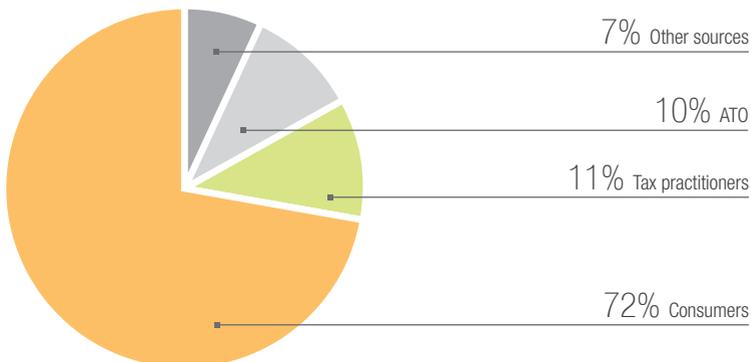
This compliance approach is guided by the following principles:

- to respond appropriately to all complaints and referrals and take action where agents are identified as being at risk of not meeting their obligations
- to exercise sound judgment and use available powers
- to enhance the skills and knowledge of agents
- to identify and address undesirable behaviour in agents
- to treat our clients and stakeholders fairly and with respect
- to enhance the integrity of the tax system
- to uphold the law.

THE TPB'S COMPLIANCE MODEL



Sources of complaints to the TPB in 2011–12



GOLD COAST UNREGISTERED TAX AGENT PAYS PENALTY OF \$30,000

The Tax Practitioners Board (TPB) brought its first civil penalty case to the Federal Court against an unregistered tax agent in May 2012.

Avril Hogan ultimately admitted that she had lodged at least 150 tax returns for the 2010 tax year for a fee while being unregistered.

Many of Ms Hogan's clients were required to pay additional tax as a result of the incorrect returns she had submitted.

In investigating the case, the TPB used its powers to compel Ms Hogan's clients to provide evidence and information. These witnesses were cooperative and provided strong evidence for the TPB's case.

When the case was put before the Federal Court, the Court noted that Ms Hogan had cooperated with the TPB and was contrite about her conduct.

The Federal Court ordered Ms Hogan to pay a penalty of \$30,000 for providing tax agent services for a fee while not being registered on 26 occasions. She also had to pay costs and an injunction was ordered against her.

**Dale Boucher,
Chair of the TPB, said:**

“ This case demonstrates that the TPB can take strong and effective action against unregistered preparers who are preparing and lodging tax returns for a fee. ”

APPLICATION REJECTED

Ferdinand Anciano applied to register as a tax agent, using the transitional registration option.

However, the TPB was not satisfied Mr Anciano had provided services to a competent standard for a reasonable period.

Also, Mr Anciano had provided information which indicated that he had been providing tax agent services for a fee while not being registered with the TPB.

To support his application, Mr Anciano claimed he had been providing tax agent services for three years for his relatives, friends and communal family. He claimed he had not charged any fees for these services.

He also said he had provided bookkeeping and accounting services to a construction company. The fees for these services were not paid because of the company's financial difficulties.

The TPB rejected the application for registration because Mr Anciano had not provided services to a competent standard for a reasonable period of time (which the TPB considers to be at least two years full time) and for not being a fit and proper person.

Mr Anciano appealed to the AAT for a review of the decision. The AAT affirmed the TPB's decision because it was not satisfied that Mr Anciano had been providing tax agent services to a competent standard for a reasonable period. It was not necessary for the AAT to make a finding in respect of Mr Anciano's fitness and propriety.

**The AAT affirmed
the TPB'S decision...**

GOOD FAME, INTEGRITY AND CHARACTER

The TPB took firm action after reviewing the registration of a tax agent.

The agent had:

- failed to pass on income tax refunds to clients
- failed to pay the GST of a client
- sent cheques to clients which were subsequently dishonoured
- failed to lodge the BAS and return the taxation refund of a client.

After considering the evidence and providing the agent an opportunity to respond, the TPB decided the agent was no longer of good fame, integrity and character.

The TPB was also of the view the agent remained a risk to the public and terminated the agent's registration.

The code sets out the personal, professional and ethical standards expected of all registered tax agents and BAS agents.

COMPLAINTS AND NOT RESPONDING TO THE TPB LEAD TO TERMINATION

In one case, the TPB received over 20 serious complaints about a registered tax agent.

The complaints indicated that the agent had:

- failed to forward tax refunds to 16 of his clients
- failed to lodge the 2010 income tax returns of five of his clients
- failed to respond to client communications and provide clients with a way to communicate with him.

The TPB sent the agent numerous letters and left telephone messages asking the agent to contact the TPB. The agent was given a number of opportunities to make a submission, but did not respond to any of the TPB's letters or calls.

Given the seriousness of the allegations in the complaints and the agent's failure to respond to the TPB, the Board felt the agent was no longer a fit and proper person and terminated his registration.

**To make a complaint,
use our online complaint
form at [www.tpb.gov.au/
makeacomplaint](http://www.tpb.gov.au/makeacomplaint)**

AAT AFFIRMS TPB DECISION

Between 2000 and 2005, Mr Hourani helped his employer, MSB Taxation and Accounting Services, understate and underpay MSB clients' taxation liabilities.

The Australian Taxation Office (ATO) undertook an audit of Mr Hourani's tax affairs. Mr Hourani admitted to lying during the audit, but claimed he lied under pressure from his employer.

The findings of the audit in respect of Mr Hourani's conduct led to the TPB rejecting his application for registration.

Mr Hourani appealed to the AAT to review the TPB's decision.

The AAT found that he had admitted to lying and misleading the ATO and he had defrauded the ATO and some clients. The AAT also found that Mr Hourani lacked any remorse or insight into his wrongdoing. The AAT affirmed the TPB's decision.

Maurice Hourani applied to the TPB to register as a tax agent. The TPB was not satisfied that he was a 'fit and proper person' and, therefore, refused his application.

EXEMPTION DENIED

All registered tax agents must have professional indemnity insurance cover, unless they receive an exemption from the TPB.

To be exempt, the agent must demonstrate they have satisfactory arrangements in place to compensate clients, if necessary.

Ferdinand Lengyel applied for an exemption on several grounds, including:

- his low annual turnover
- the fact that he is highly qualified and experienced with nil risk to clients
- he has adequate financial resources to compensate any client.

The TPB decided not to approve the exemption, and Mr Lengyel applied for a review by the AAT.

In appealing the TPB's decision, Mr Lengyel conceded taking out professional indemnity insurance would not cause him hardship, but said it would act to his disadvantage.

The AAT affirmed the TPB's decision. It found that Mr Lengyel was in exactly the same situation as any other person applying for registration, and therefore not at a disadvantage.

It also found that even though Mr Lengyel may be able to meet any claim from his own resources, that situation may change.

UNDER SUPERVISION

The TPB received complaints from the clients of a registered tax agent.

After investigating the case, the TPB found:

- in 2010, the registered tax agent failed to lodge five of his clients' income tax returns
- in 2009, the agent did not provide two clients with their income tax refund monies
- the agent failed to submit his own 2010 income tax return
- the agent failed to respond to a number of letters sent by the TPB.

The Board considered the explanations from the agent and decided to make an order that requires the agent to only provide tax agent services under the supervision of another registered tax agent for 12 months.

The agent failed to submit his own 2010 income tax return.

AGENT SURRENDERS THEIR REGISTRATION

The TPB received 22 complaints from clients about a registered tax agent and associated company.

The complaints related to withholding or not forwarding refund money in excess of \$100,000. In 2011, the Australian Securities & Investments Commission (ASIC) de-registered the company.

Medical reports indicated, among other things, that the registered agent was not capable of managing his financial affairs. The agent wrote to the TPB stating they wished to surrender their registration.

The TPB terminated the registration of the individual agent – because the company had been de-registered by ASIC, the TPB also terminated the company's registration. The TPB register was updated to show the agent was no longer registered and the TPB notified the Commissioner of Taxation, as required.

Find out if your tax or
BAS agent is registered
with the TPB by checking
the online register at
**[www.tpb.gov.au/
onlineregister](http://www.tpb.gov.au/online/register)**

SUFFICIENT NUMBER OF TAX AGENTS

For a company to provide tax agent services, they must have a sufficient number of individuals who are registered tax agents.

This requirement is to enable the company to provide tax agent services to a competent standard and allow for supervision.

In a particular case, the company only had one individual registered agent, which was sufficient given its size and scale. However, the individual agent decided not to renew their registration.

The TPB wrote to the company asking them to provide reasons why its registration should not be terminated, because there was no registered tax agent linked to the company. The TPB made follow-up contact.

The company did not provide details of an individual registered tax agent who was providing tax agent services. As a result, the company no longer met the eligibility requirements for registration and the Board terminated the company's tax agent registration.

The individual agent decided not to renew their registration.

ANOTHER AGENT'S REGISTRATION TERMINATED

In 2006, an agent received a three-month suspended prison sentence under the *Taxation Administration Act 1953* for offences that occurred between 2001 and 2005.

The agent also failed to lodge personal income tax returns for 2008 and 2009, and failed to lodge outstanding business activity statements for nine consecutive quarters.

On many occasions, the TPB sent letters and tried to contact the agent by phone seeking an explanation about these matters.

The agent did not respond to any correspondence from the TPB.

The TPB determined that the agent was no longer a fit and proper person and terminated the agent's registration.

The agent failed to lodge outstanding business activity statements for nine consecutive quarters.

QUEENSLAND CASE PROMPTS PENALTY OF \$40,000

Trevor Schmierer was not registered with the TPB. The TPB received several complaints from taxpayers that he was providing tax advice, completing details and lodging tax returns for a fee.

As a result of the complaints, the TPB launched an investigation into Mr Schmierer's activities.

The TPB found that he had been providing advice and tax services. In addition, he was sending emails advertising his services as a tax agent while not being registered, which is illegal.

In September 2012, the Federal Court in Brisbane ordered Mr Schmierer to pay a penalty of \$40,000. This was for preparing and lodging income tax returns on 132 separate occasions when he was not registered to do so. The Court also ordered Mr Schmierer to pay the TPB's costs. Included in the overall penalty of \$40,000 was a \$5,000 penalty for advertising tax agent services while unregistered.

Dale Boucher,
Chair of the TPB, said:

“When the Tax Practitioners Board identifies a serious breach of the law, it is a priority for us to ensure it stops.

It should now be clear to unregistered agents who provide tax services for a fee, that they will be caught. ”

CAUTION ISSUED TO COMPANY

After receiving a number of complaints about a company, the TPB found it had been contributing to delays in the lodgment of their clients' income tax returns.

The TPB also found the company was causing delay in the return of original source documentation to clients, and not providing a way for clients to contact them.

The company had also failed to lodge their own business activity statements with the Commissioner of Taxation for five quarters in 2010 and 2011, and failed to reply to the Board in a timely, responsible and reasonable manner.

The TPB found that the company had failed to comply with the Code and issued a written caution to the company.

The TPB may impose a sanction for any breach of the Code – these sanctions can include a written caution, an order, suspension or termination of registration.

COMPANY'S REGISTRATION TERMINATED

The TPB received numerous complaints about the taxation services provided by a company.

The company had failed to account to 23 clients for over \$150,000 of tax refund money. When one of the clients asked about the refund, the agent indicated that the ATO had been causing problems.

The agent had also:

- provided a client with a cheque for her 2010 tax refund which was dishonoured
- failed to provide 11 clients with a way to contact them
- failed to respond to the TPB.

The TPB viewed these as serious breaches of the Code and terminated the company's registration.

The TPB then went on to consider the registration of the tax agent, who was the only registered tax agent associated with the company. As the agent had been the sole director and the only registered agent associated with the company, the agent was personally responsible for the company failing to comply with the Code under the *Tax Agent Services Act 2009* (TASA).

The TPB felt that they, the Commissioner of Taxation and the public could not have confidence that he could perform his functions as a registered tax agent competently and with integrity. The TPB terminated the agent's registration.

CONVICTED AGENT'S REGISTRATION TERMINATED

An individual registered as a tax agent was the sole director and shareholder of a company and the only registered tax agent associated with the company.

In 2010, the agent was convicted of 44 separate counts of stealing and sentenced to four-and-a-half years imprisonment.

The TPB offered the agent, in prison, a number of opportunities to explain, but no responses were received.

The Board decided the agent was no longer a fit and proper person and terminated his tax agent registration.

As the agent was the only registered agent for the company, the company no longer had an adequate number of registered agents and did not meet the registration requirements. The company's registration was also terminated.

The TPB offered the agent, in prison, a number of opportunities to explain, but no responses were received.

NOT BEING FIT AND PROPER

The TPB was aware that a registered tax agent had pleaded guilty to two offences involving the theft of nearly \$1 million from his clients.

The agent was subsequently sentenced to imprisonment.

The TPB sent a letter to the agent in 2010, asking him to explain the situation and why he should be regarded as a fit and proper person.

No response was received from the agent.

As a result, the TPB decided the agent was not a fit and proper person and terminated the agent's registration.

Find out if your tax or BAS agent is registered with the TPB by checking the online register at www.tpb.gov.au/online/register

THE IMPORTANCE OF ACCOUNTING TO CLIENTS

The TPB was investigating a registered tax agent for alleged serious breaches of the Code.

The agent was a trusted adviser to a vulnerable client. The agent had taken advantage of this position of trust and had borrowed money from the client without the client's knowledge. In June 2010, the agent failed to tell the client about her income tax refund money of over \$4,000 which the agent received from the ATO on behalf of the client.

Later that year, the client paid the agent \$3,500 to meet her future tax liabilities – this money was not sent to the ATO. The client later received an amendment that showed she owed the ATO over \$2,000, which the client paid by cheque. The client had no knowledge of what happened to the \$3,500 that she had paid to the agent.

During June 2010, the agent had failed to account to two other clients for their income tax refunds of about \$750 and over \$900. The agent then proceeded to lodge these clients' income tax returns for 2011 without their authority.

With each of these clients, the agent failed to provide a way for clients to contact her. This was a further breach of the competence requirement in the Code.

After considering the case and evidence, the Board decided this was a serious breach of the Code and terminated the agent's registration.

...the agent had taken advantage of this position of trust...

AGENTS MUST MEET THEIR PERSONAL TAX OBLIGATIONS

Registered agents must meet their personal taxation obligations.

The TPB was aware that a registered tax agent had not been keeping his personal taxation obligations up to date as required by the Code. He had failed to lodge his income tax returns for the years 2006–07 and 2009–11. He had also failed to lodge business activity statements for six periods throughout 2010–11.

This matter had previously been raised by a former state-based Tax Agents' Board in 2009. The agent had responded by saying he would bring his personal taxation obligations up to date. Despite these assurances, the agent still had outstanding income tax returns and business activity statements.

The agent had continually failed to comply and had a number of opportunities to bring his personal tax obligations up to date.

The TPB felt that this behaviour demonstrated the agent was no longer a fit and proper person and that he had breached the Code. The TPB terminated the agent's registration.

The agent had responded by saying he would bring his personal taxation obligations up to date.

INDIVIDUAL AND COMPANY REGISTRATION TERMINATED

Ken Kai Hing Cho was a registered tax agent and sole director of the registered tax company Fortune Corporation Pty Ltd.

Mr Cho was approached by two men asking if he would act as a tax agent for members of the local Indian community. He was paid in cash to prepare the tax returns, using data provided to him by the two men.

Mr Cho did not seek authorisation or any information from the alleged taxpayers.

Much of the information provided was very similar across clients – similarities Mr Cho did not query. Mr Cho also did not check the returns, submitted by a staff member, to see if they had been rejected by the ATO for non-compliance.

The TPB decided Mr Cho was not a fit and proper person and terminated Mr Cho's registration as a tax agent.

This also meant the company did not meet the requirement for each director of the company to be a fit and proper person.

As a result, the TPB also terminated the company's registration.

Mr Cho appealed the decisions to the AAT. The AAT affirmed the TPB's decisions to terminate both the individual and company registrations.

The TPB also terminated the company's registration.

CONDITIONS APPLIED

Mr Adegboyega Arogun applied to register as a tax agent – the registration on the condition that he only provide BAS services and prepare and lodge individual tax returns.

Mr Arogun subsequently applied to vary the conditions, which the TPB refused.

He then applied to the AAT for a review of the decision.

The AAT found that Mr Arogun did not provide enough evidence to support his application to provide tax agent services for business entities. He had previously only completed one preparation of a partnership tax return and one company tax return, both under supervision.

On this basis, the AAT affirmed the TPB's refusal to vary the conditions on Mr Arogun's registration.

The AAT found that Mr Arogun did not provide enough evidence to support his application.

TAX AGENT DEREGISTERED FOR LODGING HUNDREDS OF FRAUDULENT RETURNS

The TPB terminated tax agent Nei Tung's registration for preparing and lodging hundreds of fraudulent income tax returns. The TPB imposed a period of three years during which Mr Tung cannot reapply to register as a tax agent.

Mr Tung lodged income tax returns for 346 taxpayers based on information provided by six people who said they were acting on behalf of the other taxpayers. Mr Tung said he believed the tax returns were for the friends of the people and they were too busy to lodge themselves.

Mr Tung was aware of discrepancies with the information that was given to him, but proceeded to lodge the tax returns anyway. At no point did he verify the accuracy of the personal information, payment summaries or bank account details of the taxpayers, nor did he ask for their proof of identity.

The TPB investigated Mr Tung and found he had breached the Code on hundreds of occasions.

Mr Tung applied to the AAT for a review of the TPB's decision, claiming that the penalty imposed by the TPB was too severe. The AAT affirmed the TPB's decision determining that Mr Tung cannot be regarded as a fit and proper person to prepare tax returns.

**Dale Boucher,
Chair of the TPB, said:**

“ It is the responsibility of a registered tax agent to adhere to the Code and ensure that the services they provide are competent, careful and fair. ”

FEDERAL COURT ORDERS \$64,500 PENALTY

In August 2012, the TPB brought its second civil penalty case before the Federal Court against an unregistered tax agent.

The TPB took action against Malcolm Campbell for preparing requests for amendments to the previous year's returns for 13 people when he was not a registered tax agent.

Many of Mr Campbell's clients had been penalised by the ATO for lodging incorrect tax returns, and some of them incurred large tax bills because of this.

Initially the TPB had difficulty in serving the legal documents on Malcolm Campbell. He seemed to operate from a number of addresses in Sydney and the Riverina area of country NSW. However, the TPB was able to obtain a court order to use a substitute legal process for service of process – this meant TPB was able to serve the documents by emailing them to Mr Campbell.

Mr Campbell did not file a defence or take part in the proceedings and the Federal Court granted the TPB's application for a default judgment.

The Federal Court ordered Mr Campbell to pay a penalty of \$64,500 for breaching the TASA. He must also pay the TPB's court costs.

The Court also ordered an injunction against Mr Campbell for three years in relation to providing tax agent services.

The Court's findings reinforce the important role of the TPB in protecting consumers from unregistered tax and BAS agents.

ABOUT TAX PRACTITIONERS BOARD

The Tax Practitioners Board (TPB) was established to regulate tax and BAS agents to protect consumers. The TPB assures the community that tax and BAS agents meet appropriate standards of professional and ethical conduct.



For more information visit **www.tpb.gov.au**

© Commonwealth of Australia 2013. This information was current in February 2013