



**Australian Government**



**TAX PRACTITIONERS BOARD**

# **SUMMARY OF PENALTIES, SANCTIONS AND TERMINATIONS**

**Edition 2**

**© 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  
October 2013

NAT 74415-10.2013  
JS 29520

---

# CONTENTS

Foreword	2	No evidence of Professional Indemnity Insurance	12
The TPB's compliance model	3	False and misleading BAS statements	13
Registered tax agent company failed to act with honesty and integrity	4	Not providing clients with their ATO tax refunds	14
Failure to lodge personal tax returns	5	Events affecting ongoing registration	15
Caution issued for not accounting for money received on behalf of clients	6	Not meeting personal tax obligations	16
Multiple breaches	7	Unregistered agent uses tax agent to lodge income tax returns	17
\$30,000 penalty for unregistered agent	8	Serious and extensive breaches of the Code	18
Satisfying registration requirements	9	Failure to notify the Board about bankruptcy	19
Former BAS agent penalised for providing tax services	10		
No longer of good fame, integrity and character	11		

# FOREWORD

This is the second edition of the Tax Practitioners Board (TPB) compliance booklet. The booklet provides a summary of some recent TPB compliance outcomes, including Federal Court, Administrative Appeals Tribunal and Board Conduct Committee matters.

The TPB's compliance activities have increased during 2012–13 following the initial period where resources were focused on the registration process.

We are now focused on agents meeting their obligations in respect of the Code of Professional Conduct (Code) contained in the *Tax Agent Services Act 2009* (TASA).

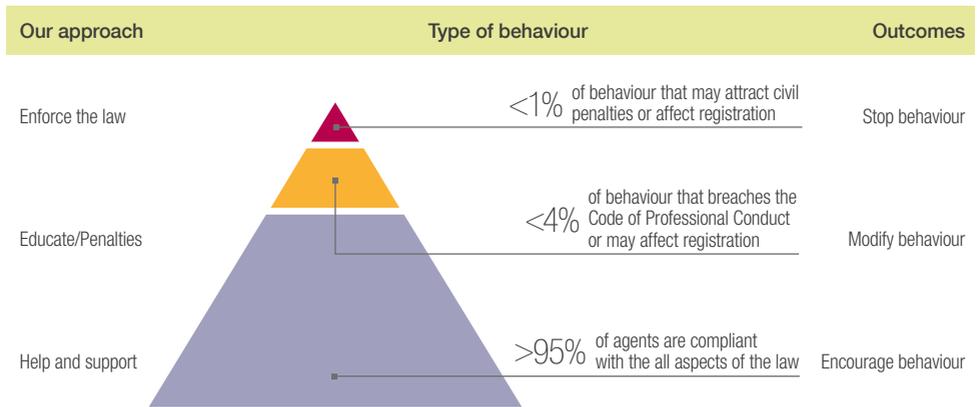
We have raised our expectations of agents in relation to compliance with their obligations. This is due to the TPB investing significant resources in providing guidance and support to equip tax practitioners to understand and meet their obligations.

Our compliance program focuses on issues where there is the greatest risk of harm to specific taxpayers and the community as a whole. In considering what action to take in particular cases, the TPB seeks outcomes that are commensurate with the seriousness of the breach of the law.

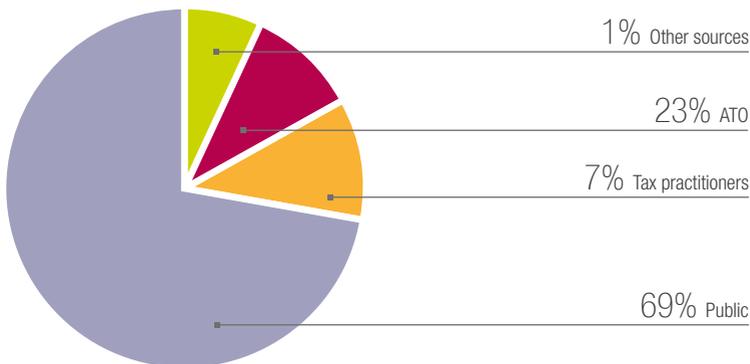
This compliance approach is guided by the following principles:

- to uphold the law
- 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 commence enquiries and investigations in a timely manner
- 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.

# THE TPB'S COMPLIANCE MODEL



## Sources of complaints to the TPB in 2012–13



# REGISTERED TAX AGENT COMPANY FAILED TO ACT WITH HONESTY AND INTEGRITY

An investigation by the Tax Practitioners Board (TPB) into the conduct of a registered tax agent company revealed that it appeared to have:

- lodged three false activity statements on behalf of another business without its consent
- lodged three false activity statements on behalf of another company without its consent
- used another person's Australian Taxation Office (ATO) tax agent portal identification
- lodged activity statements on behalf of two clients with different figures than those supplied by the clients. The ATO audited the statements and imposed shortfall tax penalties on them.

The registered tax agent company breached the Code as it had failed to ensure the tax agent services provided on its behalf were provided competently.

The company's registration was terminated and, due to the seriousness and the risk to the public, it was prohibited from applying to register under the TASA for a period of three years.

The purpose of the Code is to ensure that tax and BAS agent services are provided to the public in accordance with appropriate standards of professional and ethical conduct. The Board expects and relies upon registered agents to comply with the Code.

# FAILURE TO LODGE PERSONAL TAX RETURNS

The TPB requested a BAS agent respond to allegations (contained in a referral from the ATO) that she had failed to lodge her own income tax returns over a period of 14 consecutive years. The BAS agent did not respond to the request.

The TPB found that the agent had breached the Code by failing to lodge her income tax returns for the period and had failed to respond to the Board's request in a timely, responsible and reasonable manner.

The TPB decided to terminate her BAS agent registration on the grounds she had ceased to meet the tax practitioner registration requirement that she was a fit and proper person.

The TPB found that the BAS agent's failure to comply with her own taxation obligations for an extended period demonstrated a lack of appreciation and regard for the taxation laws, in particular, as they relate to the timely lodgment of income tax returns. There is a clear public interest in registered agents upholding the standards applying to the preparation and lodgment of returns.

**Registered tax and BAS agents play a significant role in influencing and supporting the tax system. It is therefore very important for them to keep their personal tax obligations up-to-date.**

# CAUTION ISSUED FOR NOT ACCOUNTING FOR MONEY RECEIVED ON BEHALF OF CLIENTS

Several clients complained that a tax agent had failed to promptly pass on their tax return refunds.

The agent received the refund monies from the ATO, but had failed to pass on these refunds to clients on a timely basis. The agent misled the clients as to the reasons for the delay in payment and provided one client with a cheque that was dishonoured on presentation.

The TPB found that the agent had breached the Code as she failed to account to clients for monies she received on their behalf from the ATO. The agent had also breached the Code by not ensuring the tax agent services she provided, or that were provided on her behalf, were provided competently.

The TPB found that inappropriate delays in forwarding tax refunds suggested a lack of competence on the part of the agent.

The TPB imposed a written caution on the tax agent and imposed an order requiring her to complete and pass a course of education or training in relation to practice management, including trust account management.

**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.**

# MULTIPLE BREACHES

The TPB received information from the ATO about a registered tax agent who had not met his personal tax obligations. The agent had previously lodged personal income tax returns up to two years late. He also had a large outstanding debt with the ATO and did not have a payment arrangement in place.

The TPB determined that the agent had breached the Code by failing to comply with his personal tax obligations, through failure to lodge his income tax returns, not lodging a BAS when required for several periods in 2010 and 2011 and for failing to pay his tax debt or enter into a payment arrangement with the ATO.

The agent had also breached the Code by not ensuring the tax agent services provided by him were provided competently. The agent failed to prepare and lodge several clients' business and personal tax returns and failed to notify one client of outstanding matters raised by the ATO.

The agent had also failed to provide several clients with a means of contacting him and failed to notify them that he had closed his tax agent practice.

During the investigation the agent also failed to respond to TPB correspondence in a timely, responsible and reasonable manner.

The TPB imposed an order that the agent only provide services for which he is registered under the supervision of another registered tax agent for 12 months.

The TPB also imposed a written caution on the tax agent for these breaches of the Code. The TPB took into consideration the agent's personal circumstances and as a result imposed a less severe sanction than may otherwise have been warranted.

# \$30,000 PENALTY FOR UNREGISTERED AGENT

In January 2013, the TPB brought another civil penalties case before the Federal Court. The TPB took action against Mr Mark Shanahan for preparing and lodging 49 income tax returns and Business Activity Statements (BAS) for a fee, when he was not a registered tax or BAS agent.

Mr Shanahan represented himself to clients on 20 occasions as a registered agent when this was not the case. He also lodged income tax returns for his clients using the tax agent number of a registered tax agent, without that agent's knowledge.

In considering the penalty imposed on Mr Shanahan, the Court found that the contraventions in which he engaged in were deliberate and involved him consciously misusing a registered tax agent's tax portal without the agent's knowledge, in order to get around his own personal situation of not being a registered tax or BAS agent.

The Federal Court ordered Mr Shanahan to pay a penalty of \$30,000 for breaches of the TASA.

Ian Taylor, Chair of the TPB, said "One of our key priorities is to protect the community from the actions of unregistered agents. We encourage consumers to use services provided by registered tax and BAS agents. Registered agents are bound by a Code of Professional Conduct and must meet standards of ethical and professional behaviour."

## Mr Taylor also stated

“ If consumers are going to engage a tax or BAS agent, including preparing and lodging tax returns, they should check first that their agent is registered. The TPB maintains a register on our website for the purpose of checking the registration status of an agent. ”

# SATISFYING REGISTRATION REQUIREMENTS

An application to register as a tax agent was rejected by the TPB as we were not satisfied that the applicant had met the qualification and relevant experience requirements.

To register as a tax agent with the TPB, applicants must satisfy certain qualifications and relevant experience requirements. This can include work:

- as a registered tax agent
- under the supervision and control of a registered tax agent
- as an Australian legal practitioner
- of another kind approved by the TPB.

The applicant claimed they had prepared business activity statements and tax returns and provided services to nine clients from 2004 to 2012 that was sufficient to meet the relevant experience requirement for registration. However, there was not sufficient evidence to support these claims. The TPB also found they had not been under the supervision of a tax agent while preparing the returns and that the work they performed was not work of another kind approved by the TPB.

The applicant appealed to the Administrative Appeals Tribunal (AAT) for a review of the TPB's decision. The AAT affirmed the TPB's decision to reject the application, as the applicant did not satisfy the relevant experience requirement.

**For more information on qualifications and relevant experience visit the TPB website at [www.tpb.gov.au/taxeducation](http://www.tpb.gov.au/taxeducation)**

# FORMER BAS AGENT PENALISED FOR PROVIDING TAX SERVICES

BAS agent was penalised \$40,000 by the Federal Court.

Ms Isabella Munro was a registered BAS agent from March 2010 – March 2012. During this time, she was fully aware that if she provided tax agent services for a fee or reward to taxpayers, she was required to be a registered tax agent.

From July 2010 to August 2011, Ms Munro charged and received payment for providing advice, completing and lodging individual tax returns while not a registered tax agent.

As a result of an audit by the ATO of the individual tax returns lodged by Ms Munro for the 2010 tax year, one taxpayer received a \$7,740 penalty for reckless preparation of his tax return in relation to an over-claim for a deduction. Ms Munro acknowledged this was the result of an error on her part.

In determining the penalty the Court also considered that in July 2011 Ms Munro pleaded guilty in the Magistrates Court of Queensland to 16 offences under the *Income Tax Assessment Act 1936* of charging or receiving a fee for preparing tax returns while unregistered.

**Anyone can make a complaint to the TPB if they feel tax agent or BAS services are not being provided to an appropriate standard, or if the agent is not registered at [www.tpb.gov.au/makeacomplaint](http://www.tpb.gov.au/makeacomplaint)**

# NO LONGER OF GOOD FAME, INTEGRITY AND CHARACTER

The TPB considered an application from a tax agent to renew their registration. The TPB determined the agent was no longer a fit and proper person.

The agent was responsible for allowing a formerly registered tax agent company to incur substantial debts to the ATO and to be placed under external administration. The agent was the sole director and the only registered agent associated with the company. The agent failed to:

- notify the TPB that the company was placed under external administration
- ensure that the company made compulsory superannuation contributions on behalf of two employees
- notify the TPB within the time frame required under the TASA that he had become an undischarged bankrupt.

The TPB determined the agent was no longer a fit and proper person to be a registered tax agent on the basis that the agent was not of good fame, integrity and character and an event affecting the agent's registration had occurred in the past five years.

The TPB rejected the application to renew the agent's registration.

**Registered tax and BAS agents must notify the TPB in writing of changes in circumstances that affect their registration.**

# NO EVIDENCE OF PROFESSIONAL INDEMNITY INSURANCE

A registered agent was found to have breached the Code. It was found that the agent did not maintain the professional indemnity (PI) insurance that the Board required and failed to respond to requests from the TPB in a timely, responsible and reasonable manner.

The TPB had been seeking responses from the agent about his PI insurance arrangements over a significant period of time but the agent failed to respond on numerous occasions.

The agent's failure to maintain PI insurance cover and their lack of response to the TPB breached the Code. The TPB suspended the agent's registration for a period of three months and imposed an order requiring the agent to maintain PI insurance cover that meets the Board's requirements.

The agent had to provide written evidence demonstrating that they complied with the TPB requirements.

Find out more information  
about the Board's PI  
insurance requirements at  
[www.tpb.gov.au/PII](http://www.tpb.gov.au/PII)

# FALSE AND MISLEADING BAS STATEMENTS

The TPB received a referral from the ATO advising of findings from an audit of a registered tax agent's practice.

After an investigation, the TPB determined that the agent had failed to act honestly and with integrity and failed to comply with the Code in respect of his personal taxation obligations.

The agent was found to have breached the Code by:

- failing to report his taxable supplies and acquisitions in BAS lodged with the ATO for three separate periods
- failing to lodge BAS when required by the Commissioner
- failing to lodge personal income tax returns for two years
- incorrectly reporting that nil amounts of GST were payable to the Commissioner.

The TPB determined that:

- the agent's conduct in making false and misleading statements to the Commissioner demonstrated a complete lack of appreciation and regard for the taxation laws and the standards required of a registered tax agent
- the agent's failure to comply with his own taxation obligations further demonstrated a lack of appreciation and regard for the taxation laws, particularly as they relate to the timely lodgment of income tax returns and activity statements
- the Board, the Commissioner, clients and the public could not have confidence that the agent would perform the functions of a registered tax agent with integrity
- the agent was not of good fame, integrity and character and therefore was not a fit and proper person.

The TPB rejected the agent's application for renewal of registration as a tax agent and the agent is therefore no longer a registered tax agent.

# NOT PROVIDING CLIENTS WITH THEIR ATO TAX REFUNDS

A complaint was received by the TPB that a registered tax agent had not provided his client with their tax refund from the ATO on a timely basis.

The TPB conducted an investigation into the complaint and other breaches of the TASA.

The investigation found the agent had breached the Code by:

- failing to account in a timely manner to his client for tax refund money he received on the client's behalf from the ATO
- failing to lodge personal income tax returns for two years
- failing to lodge BAS for several quarters.

Information available to the TPB from the ATO indicated that the agent had lodged his outstanding income tax returns and BAS, however these late lodgments were still considered to be a breach of subsection 30-10(2) of the Code.

The agent received a written caution and an order requiring him to complete and pass a course of education or training in relation to practice management, including trust account management.

When considering the case, the TPB took into account the personal circumstances of the agent and the fact that the money owed to the client had been paid in full. The TPB's Regulatory Assurance team will conduct a review of the agent's practice six months after the closure of this case, with a particular focus upon the timely remittance of refunds to clients.

**The severity of a sanction depends on the nature and extent of the breach and the individual circumstances of each case.**

# EVENTS AFFECTING ONGOING REGISTRATION

A registered tax agent was convicted of four offences of dishonestly obtaining a financial advantage from the ATO and was sentenced to serve 20 months imprisonment.

The registered agent's conduct related to his role as a director of a company that intentionally failed to ensure that the correct GST was remitted to the ATO in its BAS and made false and misleading statements to the ATO.

Under section 20-45 of the TASA, being convicted of a serious taxation offence; being convicted of an offence involving fraud or dishonesty; and being sentenced to a term of imprisonment are events that may affect an agent's continued registration.

The registered agent failed to notify the TPB that events affecting his registration had occurred.

The TPB determined that the agent was no longer a fit and proper person to be registered as a tax agent. The TPB terminated the agent's registration and also prohibited the agent from applying for registration for a period of two years.

**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/onlineregister)**

# NOT MEETING PERSONAL TAX OBLIGATIONS

A registered BAS agent breached the Code by failing to lodge personal income tax returns for the years ended 30 June 2003 through to 30 June 2012.

Following an investigation the TPB decided that the failure to comply with personal taxation obligations for a period extending over ten years demonstrated a serious lack of appreciation and regard for taxation laws.

Based on the agent's conduct, the TPB was also of the view the agent was not of good fame, integrity and character and was not a fit and proper person to be registered as a BAS agent.

For an individual to be eligible for renewal of registration as a BAS agent the TPB must be satisfied, among other things, that the individual is a fit and proper person within the meaning of the TASA.

Therefore, the agent did not meet one of the eligibility requirements for registration as a BAS agent in accordance with the TASA. The TPB rejected the agent's application for renewal of registration as a BAS agent.

See the TPBs website at [www.tpb.gov.au](http://www.tpb.gov.au) for more information on the duties and obligations of a registered tax or BAS agent under the TASA.

# UNREGISTERED AGENT USES TAX AGENT TO LODGE INCOME TAX RETURNS

A registered tax agent gave their tax agent registration number and electronic lodgment service (ELS) registration codes and password to a personal friend and former business associate.

This person – who was not a registered tax agent – used the information to lodge over 300 income tax returns from 2010 to 2012.

The registered tax agent knew or suspected that returns were being lodged by this unregistered agent using their electronic password and signature and they did not take any active steps to stop them even though:

- the unregistered agent was not authorised to lodge income tax returns on behalf of the taxpayers
- the registered tax agent had not reviewed the unregistered agent's work to ensure that it was accurate or that the income tax returns were prepared in accordance with the information provided by the taxpayers.

After completing an investigation the TPB determined that the registered tax agent had failed to comply with the Code.

The registered tax agent failed to:

- act with honesty and integrity
- act lawfully in the best interests of the client
- ensure that the tax agent service provided, or provided on their behalf, was provided competently
- take reasonable care in ascertaining a client's state of affairs, or ensure that taxation laws were applied correctly to the circumstances.

Based on the findings the TPB was of the view that the registered tax agent was not a person of good fame integrity and character and therefore was not a fit and proper person to be registered as a tax agent. The TPB terminated the tax agent's registration and prohibited them from applying for registration for a period of two years.

# SERIOUS AND EXTENSIVE BREACHES OF THE CODE

The TPB conducted an investigation into the conduct of a tax agent after it received complaints from several of the tax agent's clients.

The TPB determined that the tax agent had breached the Code by:

- failing to notify the Board he was an undischarged bankrupt
- failing to comply with the taxation laws in the conduct of his personal affairs by failing to lodge personal income tax returns from 2008 to 2011
- failing to account to clients for superannuation contributions and tax refunds that he received on their behalf
- making unauthorised withdrawals of money from a client's account
- not responding to TPB correspondence in a timely and reasonable manner.

The TPB determined that due to the agent's extensive breaches of the Code, the agent was not a fit and proper person and terminated their registration. The TPB prohibited the agent from applying for registration for two years.

**If a registered tax or BAS agent ceases to meet the fit and proper person registration requirement, the TPB may decide to terminate their registration.**

# FAILURE TO NOTIFY THE BOARD ABOUT BANKRUPTCY

The TPB conducted an investigation into the conduct of a registered tax agent. The investigation revealed that the agent was an undischarged bankrupt and had failed to notify the TPB.

The agent also failed to respond to Board letters and phone calls asking for an explanation about the bankruptcy.

Under section 20-45 of the TASA, becoming an undischarged bankrupt is an event that may affect an agent's continued registration.

The TPB found that the registered agent had breached the Code by failing to notify the TPB, in writing, that they had become an undischarged bankrupt and by failing to respond, as directed, to the TPB's letters.

Based on the agent's conduct, the TPB was not satisfied that the agent was a fit and proper person to be a registered tax agent and terminated the agent's registration.

**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.**

## CONTACT US

For more information on the TPB visit our website at [www.tpb.gov.au](http://www.tpb.gov.au)

If you are need to discuss a specific query you can:

- email us at [enquirymanagement@tpb.gov.au](mailto:enquirymanagement@tpb.gov.au)
- phone us on **1300 362 829**  
Monday to Friday 9am to 5pm (AEST)
- write to us at:  
Tax Practitioners Board  
PO Box 126  
HURSTVILLE BC NSW 1481

## ABOUT TAX PRACTITIONERS BOARD

The Tax Practitioners Board regulates tax practitioners to protect consumers. The TPB aims to assure the community that tax practitioners meet appropriate standards of professional and ethical conduct.





For more information visit [www.tpb.gov.au](http://www.tpb.gov.au)

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