



Code of professional conduct

Please note this document is a guide only and contains an overview of the code of professional conduct contained within the *Tax Agent Services Act 2009*. The Tax Practitioners Board determines all matters individually.
This fact sheet is subject to change.

WHAT IS THE CODE OF PROFESSIONAL CONDUCT?

The code of professional conduct is a legislated code that sets out the professional and ethical standards required of registered tax agents and BAS agents. It outlines the duties that agents owe to their clients, the Tax Practitioners Board and other agents.

The code includes a number of core principles organised into five categories:

- honesty and integrity
- independence
- confidentiality
- competence
- other responsibilities,

The board may issue guidelines to explain how elements of the code apply in practice. Agents may rely on such guidelines when issued to apply the code to their circumstances.

This fact sheet is intended to provide assistance and is not a formal Board guideline.

WHO DOES THE CODE APPLY TO?

The code applies to all registered tax agents and BAS agents.

WHAT ARE THE CODE'S PRINCIPLES?

The code has 14 principles:

Honesty and integrity

- (1) You must act honestly and with integrity.
- (2) You must comply with the taxation laws in the conduct of your personal affairs.
- (3) If:
 - (a) you receive money or other property from or on behalf of a client, and
 - (b) you hold the money or other property on trust
 - (c) you must account to your client for the money or other property.



Independence

- (4) You must act lawfully in the best interests of your client.
- (5) You must have in place adequate arrangements to manage conflicts of interest that may arise in relation to the activities that you undertake in the capacity of a registered tax agent or BAS agent.

Confidentiality

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

Competence

- (7) You must ensure that a tax agent service you provide, or that is provided on your behalf, is provided competently.
- (8) You must maintain knowledge and skills relevant to the tax agent services that you provide.
- (9) You must take reasonable care in ascertaining a client's state of affairs, to the extent that ascertaining the state of those affairs is relevant to a statement you are making or an activity you are undertaking on behalf of the client.
- (10) You must take reasonable care to ensure that taxation laws are applied correctly to the circumstances in relation to which you are providing advice to a client.

Other responsibilities

- (11) You must not knowingly obstruct the proper administration of the taxation laws.
- (12) You must advise your client of their rights and obligations under the taxation laws that are materially related to the tax agent services you provide.
- (13) You must maintain the professional indemnity insurance that the board requires you to maintain.
- (14) You must respond to requests and directions from the board in a timely, responsible and reasonable manner.

(1) You must act honestly and with integrity

What does this mean?

The words 'honesty' and 'integrity' are used in their ordinary meanings.

Acting honestly and with integrity includes, but is not limited to:

- straightforwardness and honesty in professional and business relationships
- fair dealing
- a commitment not to mislead or deceive
- being truthful.

Example

Jack maintains a bank account in a false name and omits the interest from his income tax return. Jill, a registered tax agent, assisted Jack to set up this account. The board would likely conclude that Jill's behaviour calls into question her honesty and integrity.



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

What does this mean?

Under the code, the term 'taxation law' means:

- (a) any Act for which the Commissioner of Taxation has general administration (including any part of an Act for which the Commissioner has the general administration)
- (b) any regulations under the Acts in paragraph (a)
- (c) the *Tax Agent Services Act 2009* and the regulations under it.

What does it mean to comply with the taxation laws in the conduct of your personal affairs?

Complying with the taxation laws when conducting your personal affairs includes, but is not limited to:

- lodging your personal income tax returns and activity statements on time
- lodging your tax agent practice income tax returns and activity statements on time
- performing your duties and obligations under the taxation laws on time
- performing your duties and obligations as a registered tax agent or BAS agent under the *Tax Agent Services Act 2009* on time.

See the Tax Practitioners Board website at www.tpb.gov.au for more information on your duties and obligations as a registered tax agent or BAS agent under the *Tax Agent Services Act 2009*.

Example

Peter is a registered tax agent. For the past two years, he has failed to lodge his own income tax return. Each failure to lodge his tax return is a breach of the code, because Peter has failed to comply with a taxation law in the conduct of his personal affairs.

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

What does this mean?

Tax agents and BAS agents may receive money for services that they are yet to perform. Such amounts are held on trust for the client.

What are your obligations in relation to money or other property received and held on trust?

Where money or other property has been received and is held on trust, you must account for it to your client. This means you can only disburse the money or property in accordance with your client's instructions or as required by law.

In complying with this principle, it is considered best practice to establish and maintain a trust account separate from your general business operating account to receive money on trust.



Example

Anthony, a registered tax agent, receives money on trust from his clients. To account for all the trust money he receives, Anthony sets up a separate trust account with an authorised deposit taking institution. Other than where the law requires him to do so, Anthony is only permitted to disburse the money in the trust account at his clients' instructions.

In some circumstances, you may be required under law to pay money held in trust for a purpose other than which you received it from your client. Doing so would not be a breach of the code.

Example

The Commissioner of Taxation issues a notice requiring you to pay money held in your trust account on behalf of your client to satisfy your client's tax related liability. You can pay these funds to the Commonwealth without breaching the code as this disbursement is required by law.

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

What does this mean?

It means that you must act in the best interests of your client, but only to the extent that your actions are legal.

Example

Michael works in the hospitality industry. He engages Rahul, a registered tax agent, to prepare and lodge his income tax return. He instructs Rahul to claim a deduction for work clothing for the black trousers he is required to wear.

Although Michael might believe it is in his best interest to reduce his taxable income, Rahul knows Michael can't claim the cost of his work clothing as an allowable deduction because the trousers are not protective or specific to his occupation. Rahul advises Michael accordingly and must not act in accordance with Michael's instructions.

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

What does this mean?

Generally, a conflict of interest arises when you are unable to remain objective when performing services for your client. The conflict may be an actual or potential conflict of interest.

What are 'adequate arrangements to manage conflicts of interest'?

The adequacy of conflict management arrangements will depend upon:

- the nature, scale and complexity of your business
- the nature of the services you are providing
- any information you obtain that is relevant to an actual or potential conflict of interest.



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

- 'ethical walls' – a form of physical and intellectual separation between managing the affairs of clients involved in an actual or potential conflict of interest
- disclosing any conflicts of interest
- receiving informed consent from the client or clients involved in the conflict of interest. This means authorising disclosure of the conflict to the other parties involved, perhaps in the form of a signed waiver or other authorisation.

Example

James and Margie, recently divorced, have used the same registered tax agent, Sally, for the past 10 years. In preparing their returns post divorce it became apparent to Sally that by James claiming a certain deduction, it would prevent Margie from claiming a deduction.

Although Sally's professional judgment was that the deduction was more properly claimable by James, she was in a position where her duty to Margie was in conflict with her duty to James. Sally discloses the conflict and receives a waiver from both clients. She is not in breach of the code.

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

What does this mean?

'Information relating to a client's affairs' means information relating to a current, previous or prospective client.

What does 'third party' mean?

A third party is an entity or person other than the client to whom the information relates.

For clients that are part of a service trust structure, a third party would include an entity within the same service trust structure as the client, unless the client is defined (for example, in the engagement letter) as the whole structure.

Under what circumstances can you disclose information relating to a client's affairs?

You can **only** disclose information relating to a client's affairs if:

- disclosure is authorised by your client
- disclosure is required or permitted by law.

Example

Lilly & Co is a large accounting firm and a registered tax agent. To minimise its operating costs, Lilly & Co enters into an agreement with a data processing firm in Hong Kong, Zheng & Co, to perform data processing work for Lilly & Co's clients. To send the clients' information to Zheng & Co for processing, Lilly & Co is required to disclose its arrangement with Zheng & Co to its clients and obtain their explicit permission.



Example

The Tax Office is conducting an audit on Patricia's income tax return from the previous financial year, but Patricia doesn't have all her receipts and payment summaries. As her registered tax agent, Edward, completed her tax return, the Tax Office has issued a notice under the Income Tax Assessment Act for Edward to provide all relevant information on Patricia's income tax return from the previous financial year. Although Edward is required to maintain the confidentiality of Patricia's information, the notice creates an overriding legal obligation. Edward must therefore provide the Tax Office with the information it requested.

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

What does this mean?

'Competent' means being fully capable, fitting, suitable or sufficient to provide a service or to complete a task.

What must I do to ensure that services I provide are provided competently?

To ensure the services you provide are provided competently, you must maintain adequate knowledge, skill and resources.

So, if you hold a narrow, specialised area of expertise, this requirement would prevent you from providing a tax agent service that is outside of that area of expertise.

To ensure the services you provide are provided competently, you may also:

- obtain expert advice and assistance
- obtain knowledge and skill through private study and research
- inform your client of the likely delay and cost to acquire the necessary knowledge and skill to provide the service competently, and obtain the client's voluntary consent to you providing the service.

Example

Matilda is a registered tax agent who mostly prepares and lodges income tax returns for small businesses in the suburb in which she practises. Matilda's client, Thom, is seeking some tax advice from Matilda on some mergers and acquisitions transactions that his company is contemplating. Providing this advice however, involves areas of the taxation laws with which Matilda is not familiar. Matilda may be in breach of the code if she provides the advice to Thom for a fee unless she can otherwise satisfy the board that she is competent to give that advice.

Example

Peter is an Australian legal practitioner and obtained (unconditional) tax agent registration based on his experience in providing tax agent services (other than the preparation and lodgment of returns) as a legal practitioner. Peter will breach the code if he prepares and lodges returns on behalf of his clients for a fee unless he can satisfy the board that he is competent to do so. For example, if he has studied materials published by the Tax Office or has completed certain courses on return preparation.



What measures can you adopt to ensure that services provided on your behalf are provided competently?

As a registered tax agent or BAS agent, you are also accountable for tax agent services that are provided on your behalf. Entities that may provide services on your behalf include, but are not limited to, those who you employ or who you supervise and control.

To ensure that services provided on your behalf are provided competently, you must ensure the providers have appropriate skills and experience, and that their work is adequately supervised or reviewed.

The level of supervision required will depend on a range of factors, including:

- the educational qualifications and extent of experience of the entity providing the service
- the nature of the service being provided
- any structures or processes in place within your organisation that facilitate the competent provision of tax agent services.

Example

Wayne is a registered tax agent who outsources payroll-related services to Leigh who is not a registered agent. While direct supervision and control by Wayne is not possible in the circumstances, Wayne must ensure that the payroll services provided on his behalf by Leigh are provided competently by reviewing Leigh's work to ensure its accuracy.

If Leigh is a registered BAS agent whose expertise is in payroll services, then Wayne may meet this requirement of the code without reviewing Leigh's work.

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

What does this mean?

It means you have to maintain and improve your knowledge and skills in the areas of the taxation laws and tax administration relating to the tax agent services you provide. This includes keeping up-to-date with developments in relevant taxation laws and tax administration.

To comply with this requirement, you may be required to undergo a certain minimum number of hours of tax-related continuing professional education.

Continuing professional education is not restricted to courses offered by recognised professional associations, recognised BAS agent associations or registered tax agents or BAS agents. It could include face-to-face training courses, distance learning and online courses.

The board may from time to time provide guidance on acceptable courses to assist you in complying with this requirement.



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

What does this mean?

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

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

In most cases, this means asking your client appropriate questions, based on your professional knowledge and experience, to seek the relevant information.

Where there are grounds to doubt the information provided by a client, you must make reasonable enquiries as to the completeness, correctness and accuracy of that information.

Where a statement provided by a client seems plausible, is consistent with previously established statements and you have no basis to doubt our client's reliability or the veracity of the information supplied, you can discharge your responsibility by accepting the statement provided by the client without further checking.

However, if the information supplied seems implausible or inconsistent with a previous pattern of claim or statement, further enquiries would be required. While you are not required to audit, examine or review books and records or other source documents supplied by your clients, you should not discharge your responsibility in such a case by simply accepting what you have been told.

Example

Alfred & Co is a registered tax agent and has been engaged by XYZ Media to conduct a review of its annual income tax return prepared by its in-house tax manager. In reviewing the draft return, Alfred & Co identifies an inconsistency in the information it contains, namely that the value of the stock on hand is less than the daily stock turnover. As such, Alfred & Co must make further enquiries to resolve the inconsistency.

Example

Ozz & Associates, a registered tax agent, has been engaged by Abco Media to prepare its annual income tax return, based on its audited financial statements (Ozz & Associates is not the auditor).

Ozz & Associates determines that it can rely on the information provided by Abco Media, because it has appropriate staff involved in its financial function and Ozz & Associates has no reason to doubt the quality of the materials provided in the course of the tax return preparation engagement.

Ozz & Associates is not required to undertake audit-like activities, such as comparing the value of trading stock on hand at the end of the year with average daily sales, in relation to the facts which underlie the financial records from which the return is prepared.



Example

Stefan, a registered tax agent, has been engaged by Walsh Ltd to prepare its income tax return. Walsh Ltd gave Stefan all of its tax information, including its BAS and GST reconciliation accounts which were prepared by Craig, a BAS agent.

As Craig is a registered BAS agent, it would normally be reasonable for Stefan to accept Craig's work at face value. However, based on previous examination of other work by Craig, Stefan has doubts as to the accuracy of Craig's work.

In these circumstances, it is not reasonable for Stefan to accept Craig's work at face value. In this case, Stefan can demonstrate having taken reasonable care in various ways. These might include reviewing the original documentation, such as tax invoices, or satisfying himself of the procedure and methodology Craig used to arrive at a particular determination.

Stefan may decide to alert the board to his concerns about the accuracy of Craig's work.

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

What does this mean?

It means you are required to take reasonable care to ensure the correct interpretation and application of the taxation laws to the circumstances on which your client seeks advice.

These circumstances may be actual circumstances of your client, or hypothetical circumstances provided by your client.

NOTE: A 'taxation law' means:

- (a) an Act for which the Commissioner has general administration (including part of an Act to the extent to which the Commissioner has the general administration of the Act)
- (b) regulations under such an Act (including such a part of the Act)
- (c) the *Tax Agent Services Act 2009* or regulations made under that Act.

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

'Reasonable care' means taking logical and practical steps to ensure the correct interpretation and application of the law.

Where you are uncertain about how a taxation law applies to a particular set of circumstances, taking reasonable care may include seeking clarification from relevant authorities and sources such as:

- legislation and related extrinsic material (for example, explanatory memoranda)
- case law
- rulings and determinations issued by the Commissioner
- the Commissioner's instructions in documents such as income tax return form instructions, BAS instructions, fact sheets and practice statements
- information published or provided by a recognised professional association or other regulatory agency
- information or relevant commentaries published by other experts, registered agents or specialists.



If after consulting relevant authorities and sources, you are still uncertain about the application of a taxation law, you may seek assistance from another party who has the ability and resources to provide advice on taxation laws, such as another agent, a legally qualified professional, a recognised professional association, or the Tax Office.

Example

Justin is a registered tax agent. Bryn engages Justin to provide GST-related tax advice. As the majority of Justin's work involves providing income tax advice or preparing and lodging income tax returns, his experience and knowledge in the GST law is not up-to-date. Without carrying out any further research (such as checking the relevant law and Tax Office publications on the subject), Justin provides the advice based on his existing knowledge of the GST law which he obtained through certain professional education courses he attended several years ago. As a result, Justin's advice to Bryn is incorrect. Justin is in breach of the code for failing to take reasonable care to ensure the correct application of the taxation laws to Bryn's circumstances.

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

What does this mean?

It means that you must not knowingly do anything that would obstruct the proper administration of the taxation laws.

Relying on your own, or your client's, lawful rights to withhold documents or not provide information will not amount to obstruction of the taxation laws. Examples of such lawful rights may include legal professional privilege or the accountants' concession.

Example

Stella is a registered tax agent. Stella becomes aware that the Tax Office is investigating the tax affairs of one of her clients, Georgia. To delay the investigation process, Stella removes documents relating to Georgia's tax affairs from her business premises and 'misplaces' them elsewhere. Stella is in breach of this principle of the code.

Example

Elizabeth is a registered tax agent. Greg is one of Elizabeth's clients. The Tax Office is auditing Greg and serves notice to Elizabeth to obtain information relating to Greg's tax affairs.

After consulting with Greg, Elizabeth delays compliance with the notice, however she provides the required information within the timeframe specified. Elizabeth is not knowingly obstructing the proper administration of the taxation laws.

Example

Henry is a registered tax agent. Ella is one of Henry's clients. In response to a notice being served by the Tax Office on Henry to provide documents relating to Ella, Henry, on behalf of Ella, claims accountants' concession, in good faith, over some of the documents sought. Henry is not in breach of this requirement by claiming the concession.

However, if Henry knows that the documents sought are not within the scope of the accountants' concession, and still claims they are in an effort to delay the process, he would be in breach of this requirement.



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

What does this mean?

You must advise your client of their rights and obligations under the taxation laws that are related to the tax agent services you provide, but your obligations under this principle only extend to services within the scope of engagement between you and your client.

Depending on the scope of your engagement, the advice may include:

- an explanation of the nature of self assessment, including the Commissioner's ability to amend an assessment within a certain time of the original assessment
- your client's obligations to keep proper records and the consequences of not doing so
- your client's responsibility to provide accurate and complete particulars and information to comply with the taxation laws
- where necessary, advice on the rights or options available to your clients including how to seek a private ruling and how to object or appeal against adverse decisions made by the Commissioner.

(13) You must maintain the professional indemnity insurance that the Board requires you to maintain

What does this mean?

It means that you are required to maintain appropriate professional indemnity insurance, as required by the board.

If you do not have professional indemnity insurance, or if you do not have *appropriate* professional indemnity insurance, the board may, under subsection 20-30 (3) of the *Tax Agent Services Act 2009*, direct you to maintain professional indemnity insurance, including the level and essential terms of the insurance.

In determining the appropriate type or level of insurance for registered tax agents and BAS agents, the board may refer to the insurance level standards currently imposed by recognised professional associations, and the Commonwealth legislative framework regarding the capping of liabilities for damages.

If you do not maintain the professional indemnity insurance that the board requires you to maintain, you will breach the code.

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

What does this mean?

If you receive a request or direction from the board, you must respond in a timely, responsible and reasonable manner.

Claiming legal professional privilege or other legal rights on behalf of your client is not an unreasonable response to a direction of the Board.



Example

Mario is a director of M&J Tax Pty Ltd, a registered tax agent. Recently, Mario was penalised for being a promoter of a tax exploitation, which is an event affecting M&J Tax Pty Ltd's continued registration. The board subsequently informed M&J Tax Pty Ltd, by notice in writing, that it was required to remove Mario from its board of directors within a certain period.

M&J Tax Pty Ltd ignored the board's direction and allowed Mario to remain on its board of directors. This failure to follow the board's direction is a breach of the code.

WHAT ARE THE CONSEQUENCES IF YOU FAIL TO COMPLY WITH THE CODE?

You are required to comply with all the obligations set out in the code. If, following an investigation, the board is satisfied that you failed to comply with the code, it may impose one or more of the following administrative sanctions:

- (a) a written caution
- (b) an order requiring you to take one or more actions including, but not limited to:
 - completing a course of education or training specified by the board
 - providing services (for which the tax agent or BAS agent is registered) only under the supervision of another tax agent or BAS agent that has been specified in the order
 - providing only those services that are specified in the order
- (c) suspending your registration
- (d) terminating your registration.

The severity of a sanction will depend on the board's consideration of the nature and extent of the breach and the circumstances of each case.

Example

Arif is a registered BAS agent. Several complaints have recently been made to the board regarding Arif.

After investigating, the board discovers that Arif has made numerous errors in advising clients, largely in relation to recent developments in the taxation laws. Arif has not undertaken any continuing professional education in accordance with the guidelines issued by the board for the last two years. The board concludes that Arif is in breach of the code for, in part, failing to maintain up-to-date knowledge and skills relevant to the tax agent services he provides.

Since this is Arif's first breach of the code, and to ensure that Arif is appropriately supervised until he updates his knowledge, the board may impose sanctions such as issuing Arif with a written caution, together with orders to complete the necessary further training and to work under another agent's supervision until he completes the further training.



Example

Rithy is a registered tax agent. It is brought to the board's attention that for 2007–08, Rithy lodged 22 income tax returns on behalf of clients containing mistakes in relation to allowable deductions. The board orders Rithy to undertake a course in taxation law specialising in general and specific deductions. Rithy ignores the board's direction and fails to comply with the order by the notified date. When asked why, he responds that he has been too busy. Rithy fails to comply with a new order for training issued by the board with an extended date.

The board may subsequently decide to suspend Rithy's registration for displaying a serious disregard of the code by repeatedly failing to follow the directions of the board.

What is an order?

An order is a direction from the board requiring you to take one or more actions.

If the board decides to make an order, it will notify you in writing. The order may specify, as appropriate:

- the period of time within which you must complete the requirements specified in the order
- the period of time during which the order applies.

What is the effect of a suspension of your registration?

If your registration is suspended, you must not provide tax agent services for the period of that suspension.

If you do provide tax agent services during the suspension period, the board may:

- impose further administrative sanctions
- apply to the Federal Court for a civil penalty order
- apply to the Federal Court for an injunction to prevent you providing tax agent services.

Period of suspension

The board may determine the period of suspension as it sees fit.

If, when the board suspends your registration, your registration is already suspended, the board may extend your original suspension for a further period. In this case, the further period of suspension commences at the end of the original suspension period.

Example

Luke has had his registration suspended by the board for breaching the code. Luke does not inform his clients that his registration has been suspended and continues to provide tax agent services.

The board applies to the Federal Court for a civil penalty order against Luke for providing tax agent services for a fee while unregistered. At the same time, the board also applies to the Federal Court for an injunction to restrain Luke from continuing to provide tax agent services to his clients during the period of his suspension.



No limitation on application for renewal of registration during suspension period

If your registration is due to expire during the period you are under suspension, you are still permitted to apply for registration or renewal of registration despite the fact that you are under suspension.

What is the effect of a termination of your registration?

If the board decides to terminate your registration, you will receive a written notice, which will include:

- the board's decision to terminate your registration
- the reasons for the decision
- details of any period during which you are prohibited from applying for registration
- your rights of review.

→ See the fact sheet **Termination of registration** for more information on termination of registration.

Will I receive notification of the board's decision to impose a sanction?

Yes, you will receive written notification, which will include reasons for the board's decision.

Can a decision of the board to impose an administrative sanction be reviewed?

Yes, if the board makes a decision to impose an administrative sanction, you may apply to the Administrative Appeals Tribunal for a review of the decision.

NEED MORE INFORMATION?

Further information will be released as it becomes available on the Tax Practitioners Board's website at www.tpb.gov.au.