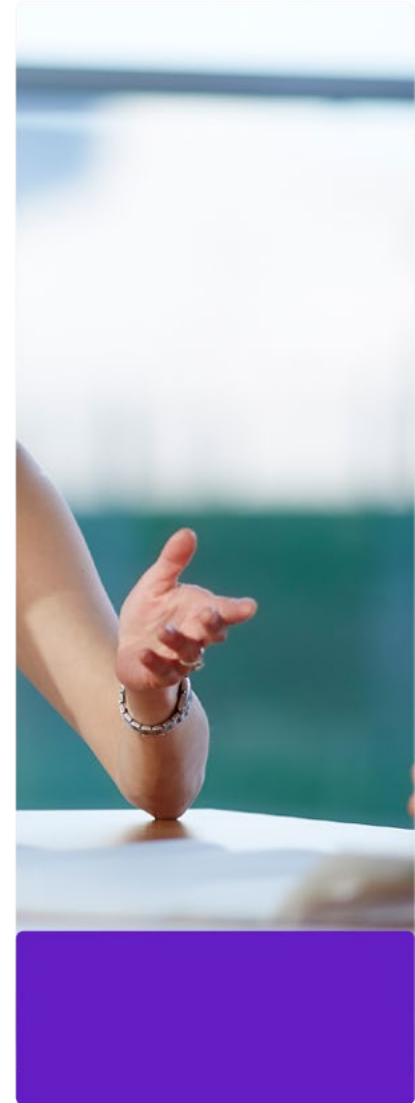
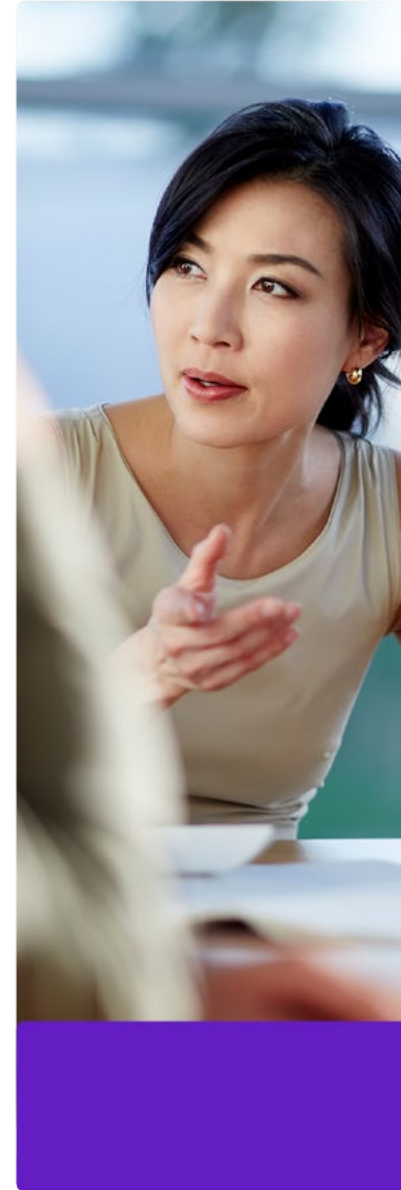


Member resource

Navigating the latest changes to your TASA obligations

16 July 2024

Online



Navigating the latest changes to your TASA obligations

Presenter and facilitator:

Robyn Jacobson, CTA, The Tax Institute

Panellists:

Tim Sandow, CTA, BDO

Marg Marshall, CTA, WLF Accounting & Advisory

Content

Session outline

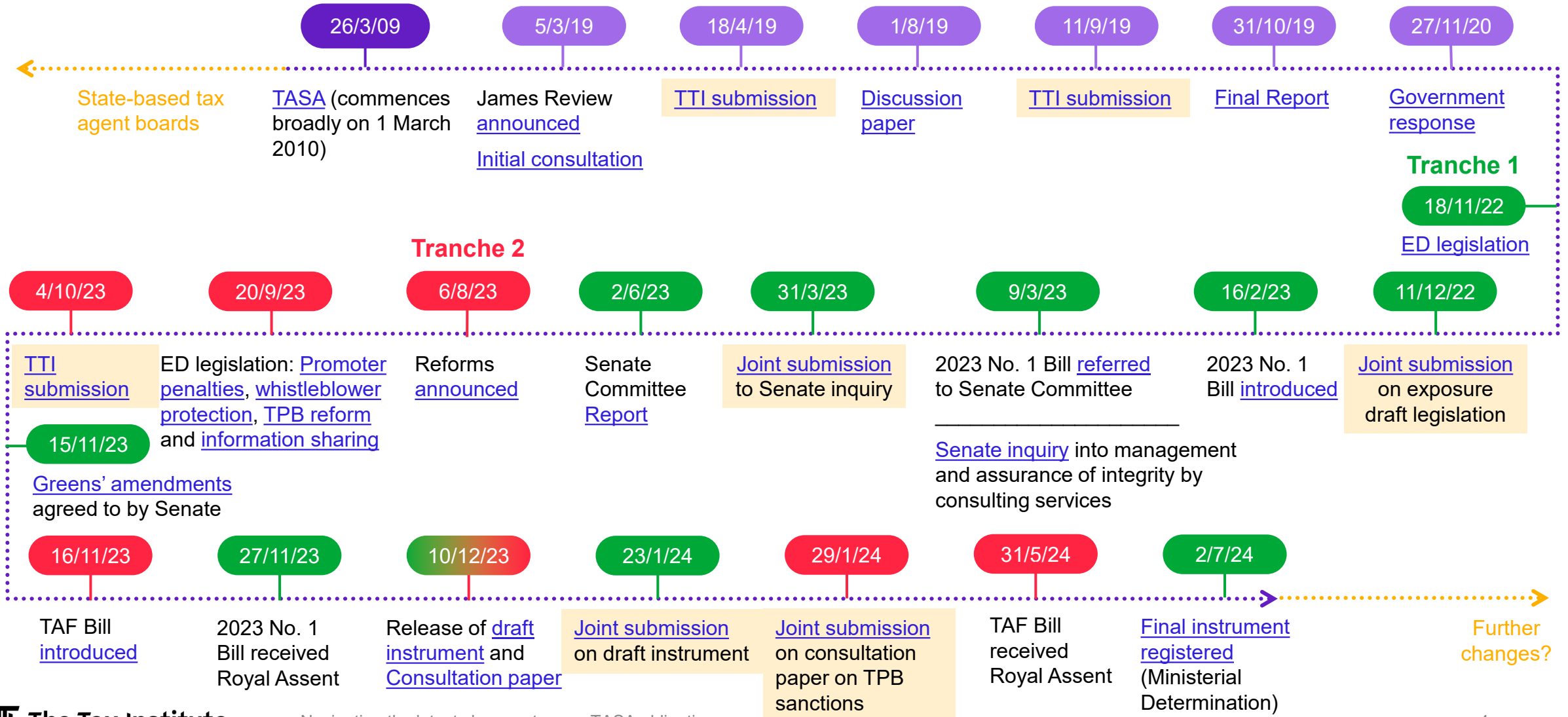
Overview of new TASA obligations

Breach reporting rules

Ministerial Determination: Tax Agent Services (Code of Professional Conduct)
Determination 2024

What can practitioners do to prepare and comply with these new obligations?

Historical note ... the TASA journey ...



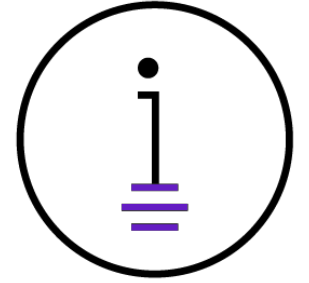
TTI advocacy

Date	Activity
18 April 2019	TTI submission on initial consultation on Review of the TPB
11 September 2019	TTI submission on consultation paper relating to Review of the TPB
11 December 2022	Joint submission on the exposure draft legislation giving effect to the Tranche 1 changes
31 March 2023	Joint submission to Senate inquiry
4 October 2023	TTI submission on ED legislation on promoter penalties, whistleblower protection, TPB reform and information sharing, giving effect to the Tranche 2 changes
23 January 2024	Joint submission on draft legislative instrument (Ministerial Determination)
29 January 2024	Joint submission on consultation paper on TPB sanctions
31 May 2024	Joint submission on the TPB's draft guidance on the breach reporting rules
15 July 2024	Open letter to the Assistant Treasurer on the Tax Agent Services (Code of Professional Conduct) Determination 2024

James Review of the TPB



(James) Review of the TPB



- Announced on 5 March 2019
- Purpose:
 - Independent review into the effectiveness of the TPB and the TASA to ensure that tax agent services (**TAS**) are provided to the public in accordance with appropriate professional and ethical standards
- [Final Report](#) released on 27 November 2020
- 28 recommendations — Government supports 20 of the recommendations in full, in part or in principle
- 5 of these recommendations form Tranche 1¹

Tranche 1:
enacted law

James Review recommendations

Recommendation	Govt response
1 1.1 Retain the TPB as the statutory authority responsible for regulating tax practitioners	Supports
2 2.1 Update the object clause of the TASA	Supports and included in Tranche 1 amendments
3 3.1 TPB should become a separate agency and receive its own specific appropriation from the Govt rather than as an allocated proportion of the ATO budget	Supports and included in Tranche 1 amendments
4 3.2(a) The CEO of the TPB should be accountable to the Board and become a statutory appointment rather than an ATO employee on secondment to the TPB 3.2(b) Formal secondment arrangements should be put in place for ATO staff seconded to the TPB	Supports in part (does not support the CEO becoming a statutory appointment)
5 3.3(a) TPB and ATO should maintain and publish a plan that sets out how they will work together 3.3(b) Create a Tax Practitioner Governance and Standards Forum (TPGSF)	Supports TTI is a member of the TPGSF

James Review recommendations

Recommendation	Govt response
6 3.4 Amend law to oblige cooperation between TPB/ATO and TPB/ASIC, and to share information/notify each other when belief formed that a breach has occurred	Supports in principle
7 3.5 Amend the whistleblower laws so TPB is an 'eligible recipient'	Noted, will consult Tranche 2 amendments
8 3.6(a) Board composition: at least 1 member should be a community member 3.6(b) Committee composition: 2 must be Board members, 3 rd at Board's discretion	(a) Supports in principle ² (b) Not supported
9 4.1(a) Education and experience requirements: undertake a review to determine if settings are at the right level 4.1(b) Determine whether an amendment to the TASR is appropriate to give the TPB greater flexibility to accept other qualifications that may not fall within traditional tax practitioner courses of study	Noted, will consult
10 4.2 TPB should no longer accredit professional associations as a 'recognised professional association' (remove registration entry pathway based on being a voting member of a TPB recognised professional association, with grandfathering)	Noted, will consult

James Review recommendations

Recommendation

Govt response

<p>11 4.3(a) Amend TASR to give the TPB greater flexibility to accept different types and periods of relevant experience</p> <p>4.3(b) Determine whether an amendment to the TASR is appropriate to amend the amount of relevant experience (and nature of experience) required to be registered as a BAS agent</p>	<p>(a) Supports</p> <p>(b) Will consult</p>
<p>12 4.4 Amend eligibility requirements for company and partnership tax practitioners in the TASA to include a requirement that the entity has appropriate governance arrangements in place that demonstrate who is accountable for the delivery of tax agent services</p>	<p>Supports, will consult</p>
<p>13 4.5(a) Amend the fit and proper person test in the TASA to ensure greater consistency with the requirements of other government regulators (e.g. ASIC, APRA)</p> <p>4.5(b) Current 5-year period in the TASA should be increased or removed entirely</p> <p>4.5(c) Those applying for registration with the TPB, including renewal, must disclose any spent convictions</p>	<p>All: Supports in principle</p> <p>(c) Will consult</p>

James Review recommendations

Recommendation

Govt response

14 4.6 | Amend the TASA to include a requirement to declare close associates and/or employees who provide TAS and are affected by the fit and proper person test, and if they have engaged anyone listed on the proposed unregistered practitioners register

Supports in principle and included in [Tranche 1 amendments](#)

15 4.7 | Convert the 3-year registration period to an annual period (with pro-rated fees)

Supports in part (fees to be determined) and included in [Tranche 1 amendments](#)

16 4.8 | Following completion of the trial of tax clinics and decisions of the Government to either cease or extend the program, review the issue of tax clinics and the TPB to determine if any longer term amendments may be required

Noted, will continue with the program (too early to conduct a further review)

17 4.9(a) | Only those tax intermediaries that are not regulated by any other government body should require registration with the TPB, despite otherwise being required to be registered with the TPB

Supports

4.9(b) | TPB should have the power, through legislative instrument, to exclude certain other services from having to register with the TPB

James Review recommendations

Recommendation

Govt response

18 5.1 | Relevant Minister should be given a legislative instrument power to be able to supplement the Code to address emerging or existing behaviours and practices

Supports and included in **Tranche 1 amendments**

Any proposed changes to the Code will be considered first by the TPGSF

19 5.2 | LPP provision (such as in section 70 of the ASICA) be enacted in the TAA, and a protocol similar to that being developed between LCA and the ATO in relation to LPP claims should be developed for tax practitioners generally

Supports in part

20 6.1 | Increase TPB's sanctions powers, including introducing the following sanctions into the TASA, which could be applied to registered and unregistered practitioners: infringement notices, enforceable undertakings, quality assurance audits, interim suspensions, permanent disbarment and external intervention

Noted, will consult

James Review recommendations

Recommendation

Govt response

<p>21 6.2(a) Investigations can commence and/or continue once a registered tax practitioner either has their registration terminated, chooses not to re-register, or is seeking to surrender their registration</p> <p>6.2(b) Remove limitation on the TPB formally gathering information prior to commencing and notifying a tax practitioner of an investigation</p> <p>6.2(c) Remove 6-month timeframe to conduct an investigation</p>	<p>Supports in part</p> <p>(a) Supports and will amend the law</p> <p>(b) and (c) Will consult Tranche 2 amendments</p>
<p>22 6.3 Amend the TASR to enable the TPB to publish more detailed reasons for tax practitioner sanctions, including terminations, on the publicly available TPB Register</p>	<p>Noted, will consult Tranche 2 amendments</p>
<p>23 6.4 An administrative penalty regime, administered by the ATO, should be introduced to impose penalties on tax practitioners who demonstrate an intentional disregard of the tax laws in making, or being involved in making, a statement to the Commissioner</p>	<p>Noted</p>
<p>24 6.5 Safe harbour protection should be extended to cover instances where the tax agent or BAS agent has demonstrated recklessness or intentional disregard with respect to a taxation law</p>	<p>Noted</p>

James Review recommendations

Recommendation

Govt response

25 7.1 A new model should be developed for regulating tax (financial) advisers in consultation with ASIC, FASEA, the TPB and Treasury so tax (financial) advisers will be subject only to a single disciplinary regime	Supports in principle
26 7.2 The Government should initiate a specific review of what advice accountants can and cannot give in respect of superannuation and which accountants that might apply to — such a review could perhaps be undertaken by the Productivity Commission	Supports in principle
27 8.1(a) Expand details of tax practitioners that are currently included on the TPB Register to include publishing a wider range of information, decisions and outcomes 8.1(b) Make available a register of unregistered tax practitioners 8.1(c) Remove time limits on how long certain information appears on the Register	(a) Supports in principle (b) and (c) Not supported Tranche 2 amendments
28 8.2 Include details of tax practitioners who are included on the TPB Register on the Modernising Business Register ³	Supports in principle

³ The Government [announced](#) on 28 Aug 2023 that it will not be proceeding with the Modernising Business Registers program following independent review findings that the program could not deliver value for money, with massive budget and timeline blowouts

Overview of new TASA obligations



Code of Professional Conduct

Code item (section 30-10)

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;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 for the management of 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.
-

Code of Professional Conduct

Code item (section 30-10)

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 that 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 a thing you are doing 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.
-

Code of Professional Conduct

Code item (section 30-10)

Other responsibilities

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

Other responsibilities — New code items

- 15 You must not employ, or use the services of, an entity to provide tax agent services on your behalf if:
 - (a) you know, or ought reasonably to know, that the entity is a disqualified entity; and
 - (b) the Board has not given you approval under section 45-5 to employ, or use the services of, the disqualified entity to provide tax agent services on your behalf.
- 16 You must not provide tax agent services in connection with an arrangement with an entity that you know, or ought reasonably to know, is a disqualified entity.
- 17 You must comply with any obligations determined under section 30-12 [Ministerial power to determine Code].

Start date of amendments



1 January 2024

1 July 2024

1 August 2024⁴

1 October 2024

- Use of disqualified entities
- Power of Minister to determine additional Code obligations
- Object of TASA

- Annual registration
- **Breach reporting rules**
- TPB Special Account

• [Tax Agent Services \(Code of Professional Conduct\) Determination 2024 \(Determination\)](#)⁵

- Appointments to TPB

31 May 2024

1 July 2024

- Information sharing — disclosures made on or after **31 May 2024** irrespective of when information was received

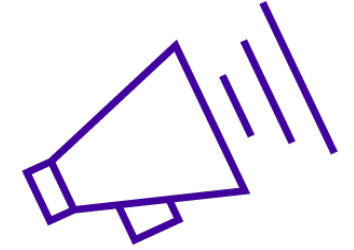
- Promoter penalties
- Whistleblower protection
- Information on TPB Register
- Conclude TPB investigations within 24 months

⁴ Proposed in the Determination

⁵ Must be tabled in both Houses by **15 August 2024**. A motion to disallow can be given within 15 sitting days after tabling

Breach reporting rules

Breach reporting rules



- Where an order is made by the TPB to take action, the registered agent must notify all their current clients about the findings of the TPB's investigation specified in the order⁶
- Registered agents must notify the TPB if they have reasonable grounds to believe:⁷
 - They have breached the Code and the breach is a 'significant breach' (self-reporting)⁸
 - Another agent has breached the Code and the breach is a 'significant breach' (reporting another agent)⁹

**Breaches
arising on or
after 1 July 2024**

Intent is not relevant

⁶ New paragraph 30-20(1)(d)

⁷ Gives effect to [amendments](#) tabled in the Senate by the Greens: Part 4 of Schedule 3 to the [2023 No. 1 Act](#)

⁸ New paragraphs 30-35(1)(ba), 30-35(2)(ba) and 30-35(3)(ba)

⁹ New subsection 30-40(1)

Breach reporting rules



- Registered agents must also **notify the accredited professional association** if they are aware of that other agent's membership¹⁰
- Must notify the TPB or the association **within 30 days** of the day on which:
 - in the case of themselves — they became, or ought to have become, aware that the breach occurred and that the breach is a 'significant breach'¹¹
 - in the case of another registered agent — they first have, or ought to have, reasonable grounds to believe that the other agent breached the Code and that the breach is a 'significant breach'¹²

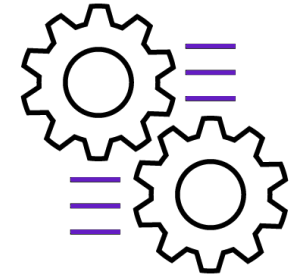
**Breaches
arising on or
after 1 July 2024**

¹⁰ New subsection 30-40(2)

¹¹ New subsection 30-35(4) as amended

¹² New subsection 30-40(3)

Meaning of ‘significant breach’¹³



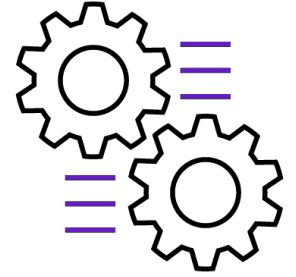
Significant breach of the Code means a breach of the Code by a registered agent if the breach:

- (a) constitutes an **indictable offence**, or an **offence involving dishonesty**, under an Australian law;
- (b) results, or is likely to result, in **material loss or damage** to another entity (including the Commonwealth);
- (c) is **otherwise significant**, including taking into account any one or more of the following:
 - (i) the number or frequency of similar breaches by the agent;
 - (ii) the impact of the breach on the agent’s ability to provide TAS;
 - (iii) the extent to which the breach indicates that the agent’s arrangements to ensure compliance with the Code are inadequate; or
- (d) is a breach of a kind prescribed by the regulations for the purposes of this paragraph

**Breaches
arising on or
after 1 July 2024**

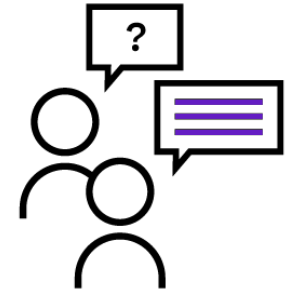
Draft TPB guidance

- [TPB\(I\) D53/2024](#) Breach reporting under the TASA
 - Explains the obligations of registered tax practitioners under section 30-40 of the TASA
- [Joint Bodies' submission](#) lodged on 31 May 2024
- TPB is yet to finalise the guidance



**Breaches
arising on or
after 1 July 2024**

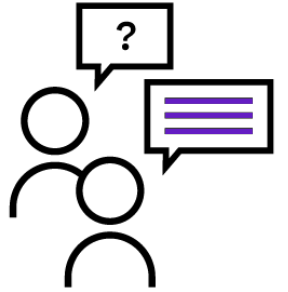
Draft TPB guidance | Key concerns



- Lacks practical guidance to assist practitioners
- Varying degrees of evidentiary requirements may cause confusion and practical challenges for practitioners
- Additional guidance required on:
 - Repercussions of frivolous, vexatious or malicious complaints
 - Repercussions of failing to comply with reporting obligations by the due date
 - Lack of whistleblower protection for unrelated¹⁴ practitioners
 - Consequences, appeal rights and resolution of cases where a practitioner disagrees with the TPB's position on being required to report a breach
 - Action to be taken by a recognised professional association (**RPA**) upon receiving notification from a practitioner

**Breaches
arising on or
after 1 July 2024**

Draft TPB guidance | Key Recommendations



Joint Bodies' recommendations

- Establish an ethics officer or hotline for practitioners — should be able to seek guidance on ethical dilemmas and obligations under the TASA, preferably on an anonymous basis
- Provide further examples and case studies on:
 - 'Significant breach of the Code' and 'otherwise significant'
 - Specific practical circumstances dealing with the application of the breach reporting rules insofar as they affect:
 - Supervision and control of employees
 - Staff training and tax discussion groups etc.
 - Agents providing advice to other agents

**Breaches
arising on or
after 1 July 2024**

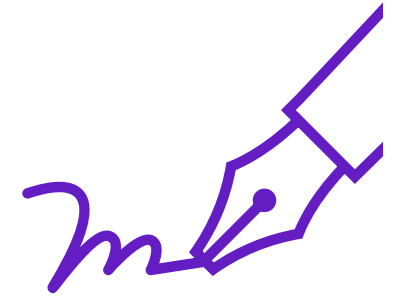
Panel discussion



- Lack of awareness by practitioners of positive obligation on them to report ‘significant breaches’
- How can practitioners understand the meaning of the vaguely expressed terms used in the law?
- How can practitioners comply with the 30-day reporting period?
May necessitate seeking legal advice
- What does a ‘breach arising on or after 1 July 2024’ mean?
- What should practitioners do when a ‘significant breach’ relates to a new client and their former agent?
- What else should practitioners be thinking about?

Ministerial Determination: Tax Agent Services (Code of Professional Conduct) Determination 2024

Enable the Minister to determine Code¹⁵



Power from
1 Jan 2024

- [Code](#) sets out professional and ethical standards that registered agents are required to comply with
- Minister can determine, in a legislative instrument, additional Code obligations¹⁶
- [New Code item 17](#):¹⁷

You must comply with any obligations determined under section 30-12
[Ministerial power to determine Code]

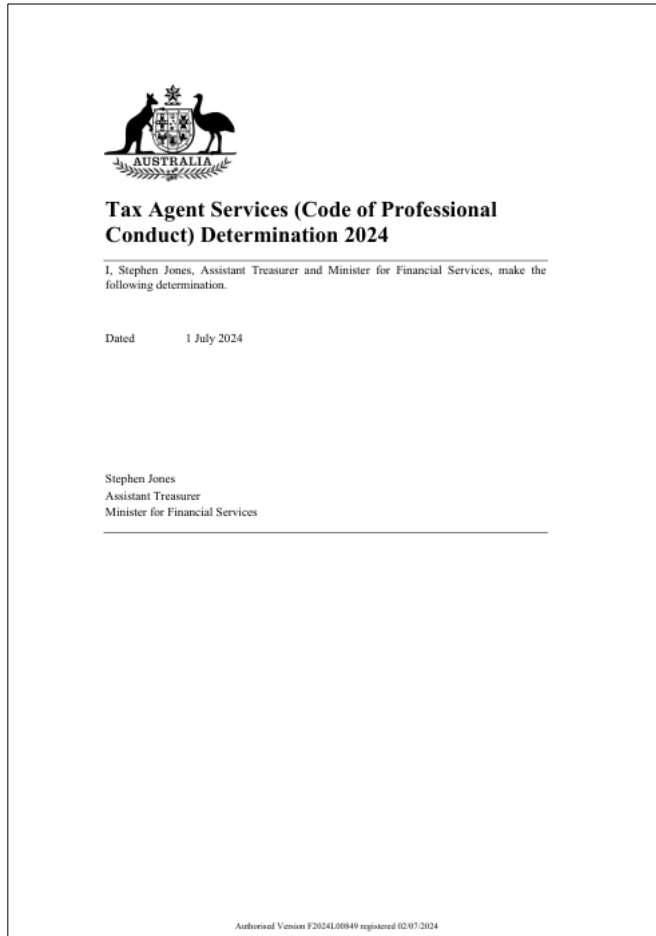
- Power cannot be used to reduce any existing obligations under the Code
- Obligations must relate to the professional and ethical conduct of registered agents
- Obligations may elaborate or supplement any aspect of the Code but must not be inconsistent with the Code (to the extent a Ministerial determination conflicts with the Code, the conflicting provisions have no effect)

¹⁵ Gives effect to recommendation 5.1: Part 1 of Schedule 3 to the [2023 No. 1 Act](#)

¹⁶ New section 30-12

¹⁷ New subsection 30-10(17)

Ministerial Determination



Tax Agent Services (Code of Professional Conduct) Determination 2024 (Determination)

- 8 additional Code obligations
- Made on 1 July 2024
- Registered on 2 July 2024
- Commences on **1 August 2024**
- Transitional provision for section 45 only

Determination | 8 additional Code obligations

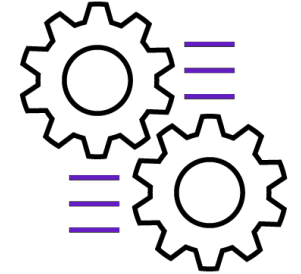
1 Section 10 | **Must uphold and promote ethical standards of the tax profession**

2 Section 15 | **False or misleading statements**

- Must not make or prepare a statement to the TPB or the Commissioner that you know, or ought reasonably to know, is false, incorrect or misleading in a material particular
- Must take all necessary steps to correct such a statement, or advise the maker of the statement that it should be corrected, as soon as possible after becoming aware
- Must notify the TPB or the Commissioner where you prepared the statement and the maker does not correct the statement within a reasonable time

3 Section 20 | **Conflicts of interest in dealings with government**²¹

- Must take reasonable steps to identify and document any material conflicts of interest in connection with an activity undertaken for a government agency
- Must disclose details of any material conflict of interest that arises as soon as possible after becoming aware of the conflict
- Must take reasonable steps to manage, mitigate and avoid such material conflicts of interest

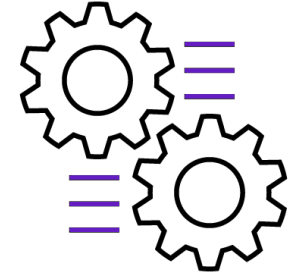


**Obligations from
1 August 2024**

Determination | 8 additional Code obligations

4 Section 25 | **Maintaining confidentiality in dealings with government**

- Unless legal duty to do so, must not disclose any information received from a government agency unless it is reasonable to conclude that the information received was authorised by that agency for further disclosure
- Must not use any information received from a government agency for your personal advantage, or that of your associate, employee, employer or client unless it is reasonable to conclude that the information received was authorised by that agency to be used in that way



**Obligations from
1 August 2024**

5 Section 30 | **Keeping of proper client records**

- Must keep records that correctly record the TAS provided to each of your clients, including former clients (including information exchanged with the client and advice provided to the client)
- Records must be retained for at least 5 years after the service is provided
- For more complex matters — must also retain the relevant facts, assumptions and reasoning underpinning the advice provided to the client

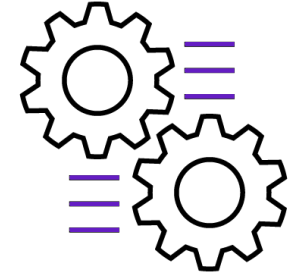
Determination | 8 additional Code obligations

6 Section 35 | Ensuring TAS provided on your behalf are provided competently

- Must ensure that each entity providing TAS on your behalf maintains knowledge and skills relevant to the TAS they are providing
- Must ensure those providing TAS on your behalf are appropriately supervised, having regard to the knowledge and skills of the entity, the TAS provided by the entity and your quality management system

7 Section 40 | Quality management systems

- Must establish and maintain a system of quality management designed to provide you with reasonable confidence that you are complying with the Code
- Must document and enforce the policies and procedures of your system of quality management

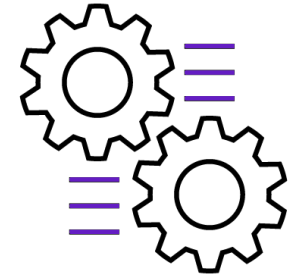


**Obligations from
1 August 2024**

Determination | 8 additional Code obligations

8 Section 45 | Keeping your clients informed of all relevant matters

- Must advise all current and prospective clients in writing **by 1 August 2024** of all the following:
 - Any matter that could significantly influence a decision of a client to engage you or to continue to engage you to provide a TAS
 - That the TPB maintains a register of tax agents and BAS agents and how they can access and search the register
 - How they can make a complaint about a TAS you have provided
- Must notify at the time of the inquiry (if you are aware at that time) or **within 30 days** of becoming aware of the matter
- **Transitional rule**
 - Section 45 applies in relation to matters that have arisen on or after **1 July 2022**
 - However, for matters arising on or before 1 August 2024, the standard 30-day period is replaced with a 90-day period starting from that day (i.e. **by 30 October 2024**)



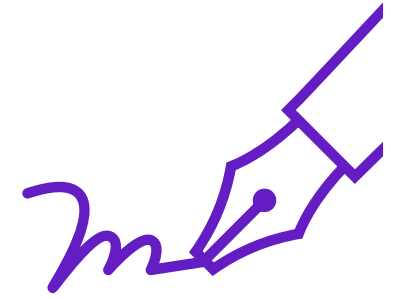
**Obligations from
1 August 2024**

Must notify clients
within 30 days

Transitional rule

For matters arising
from 1 July 2022 to
1 August 2024,
must notify by
30 October 2024

Determination | Policy concerns



Joint Bodies' [open letter](#) to the Assistant Treasurer, 15 July 2024

- 'Practitioners are an integral part of the tax system but the commencement date [of the Determination] in a few weeks does not recognise a collaborative process or respect for the role of the profession'
- 'Strong concerns about the construct and implications of provisions of the [Determination] registered on 2 July 2024'
- 'Request the Minister withdraw the [Determination] as registered and conduct further targeted consultation ... to ensure that the new measures can be fairly implemented and that there are no unintended consequences for tax practitioners or the regulator, the TPB'
- 'Concerned that the ... commencement date of 1 August 2024 is unrealistic and unachievable for many tax practitioners who are already operating under heavy workloads ... As a minimum, a six-month period should be allowed before the commencement'

Panel discussion

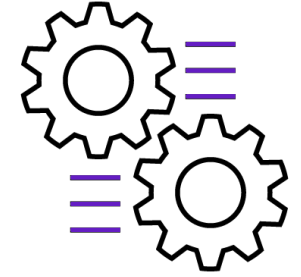


- How much of the Determination seemingly duplicates existing Code obligations?
- What should practitioners do to ensure they comply with the Determination?
- How can practitioners comply by 1 August 2024?
- Failure to comply with the additional Code obligations = breach of the Code — if a ‘significant breach’, would need to self-report by 30 August 2024
- Will this change practices and behaviours of practitioners?
- Where does this leave the provision of ‘verbal advice’?
- How will the TPB administer and enforce the Determination?

Other Tranche 1 changes



Use of disqualified entities¹⁸



From
1 Jan 2024

New Code items 15 and 16

- New subsection 30-10(15):

You must not employ, or use the services of, an entity to provide TAS on your behalf if:

- (a) you know, or ought reasonably to know, that the entity is a disqualified entity; and
- (b) the Board has not given you approval under section 45-5

- New subsection 30-10(16):

You must not provide TAS in connection with an arrangement with an entity that you know, or ought reasonably to know, is a disqualified entity

- Registered tax agent or BAS agent may apply to the TPB for approval to employ, or use the services of, an entity to provide TAS on their behalf¹⁹

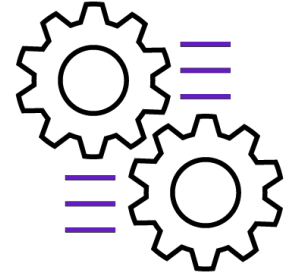
¹⁸ Gives effect to recommendation 4.6: Part 1 of Schedule 3 to the [2023 No. 1 Act](#)

¹⁹ New subsection 45-5(1)

Use of disqualified entities

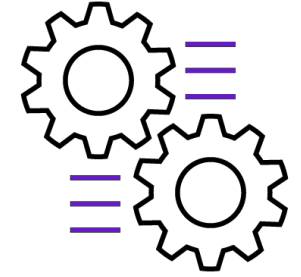
Disqualified entity (DQE)²⁰

- An entity is a DQE if it is neither a registered agent nor a qualified tax relevant provider and, within the last 5 years, has:
 - been convicted of a serious taxation offence, a serious offence or an offence involving fraud or dishonesty
 - been penalised under the promoter penalty provisions
 - been an undischarged bankrupt or has gone into external administration
 - been subject to sanctions for a breach of the Code
 - had their registration terminated
 - had their application for registration or renewal rejected
 - been found to have contravened the TASA



From
1 Jan 2024

Use of disqualified entities



**From
1 Jan 2024**

- **Obligations of DQE²¹**
 - Seeking to provide TAS to a registered agent — required to notify the agent that they are a DQE before they are employed or engaged
 - Providing TAS to a registered agent — required to notify the agent that they have become a DQE **within 30 days** of becoming aware they are disqualified (see **transitional rule** below)²²
- **Penalty for failure to notify the agent²³**
 - Individual — 250 penalty units (\$82,500²⁴)
 - Body corporate — 1,250 penalty units (\$412,500²⁴)
- **Transitional rule²⁵ — if:**
 - immediately before 1 January 2024, a registered agent employs or uses a DQE (that is a DQE on 1 January 2024) to provide TAS on their behalf;
 - immediately before 1 January 2025, the registered agent employs or uses the DQE to provide TAS on their behalf; and
 - the DQE has not already notified the registered agent that they are a DQE,

the DQE must notify the registered agent by **30 January 2025**

²¹ New subsection 45-10(1)

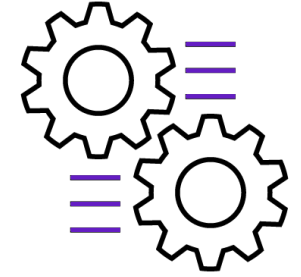
²² New subsection 45-15(1)

²³ New subsection 45-10(3)

²⁴ The amount of a penalty unit is \$330 from 1 July 2024: MYEFO 2023–24 and Schedule 3 to the [Crimes Bill](#)

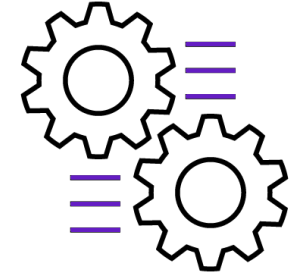
²⁵ New section 45-20

TPB guidance



- [TPB\(I\) 41/2024](#) **Code of Professional Conduct – Employing or using a disqualified entity in the provision of tax agent services without approval**
 - Explains the obligations of registered tax practitioners under Code item 15 (subsection 30-10(15) of the TASA) in respect of their employment, contracting with, or otherwise use of a ‘disqualified entity’ to provide tax agent services on their behalf
- [TPB\(I\) 42/2024](#) **Code of Professional Conduct – Prohibition on providing tax agent services in connection with an arrangement with a disqualified entity**
 - Explains the obligations of registered tax practitioners under Code item 16 (subsection 30-10(16) of the TASA) in respect of their arrangements with a ‘disqualified entity’
- [Web guidance](#)

TPB guidance



How to determine if an entity is a disqualified entity

- Step 1** Check if the entity is (or was previously) registered on the [TPB Register](#) (12-month limit) and ASIC's [Financial Advisers Register](#)
- Step 2** Before employing, using or entering into an arrangement with an entity to provide TAS:
- Undertake [proof of identity checks](#)
 - Discuss the requirements of Code Items 15 and 16 with the entity
 - Obtain written confirmation from the entity that they have not had a disqualifying event occur within the last 5 years — the entity should use the TPB's [Disqualifying events declaration and consent form](#)
 - Does the written contract/employment enable you to immediately cease employing or using the entity if they become a DQE? May need to seek employment law advice
- Step 3** Existing contract/arrangement — follow Steps 1 and 2, see transitional provisions

Annual registration^{26, 27}



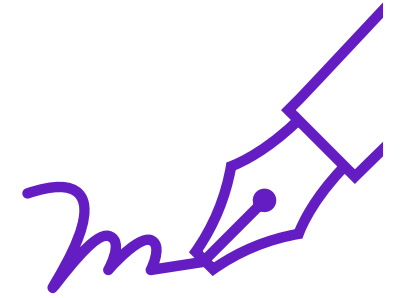
**Started on
1 July 2024**

- Registration period reduced from at least every 3 years to at least every year³
- Aligns with other regulatory obligations of tax practitioners such as maintaining professional indemnity insurance
- Removes the need for practitioners to submit an annual declaration with the TPB
- Applies from the next renewal date that occurs from 1 July 2024
- No changes have been made to the CPE requirements at this stage
- To accommodate the shorter renewal period, the maximum time permitted for the TPB to process and determine the outcome of an application has been reduced to **4 months** (previously 6 months)
- [Registration fees](#) for the period from 1 July 2024 to 30 June 2025: **\$273** for tax agents and **\$54** for BAS agents
- TPB resources: [FAQ on annual registration](#) and [Get ready for annual registration](#)

²⁶ Gives effect to recommendation 4.7: Part 2 of Schedule 3 to the [2023 No. 1 Act](#)

²⁷ Section 20-25 (as amended)

Appointments to the TPB²⁸



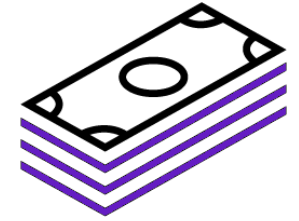
Starts on
1 Oct 2024

- In appointing a Board member, the Minister must be satisfied the individual is a ‘community representative’ — i.e. they are **not** any of the following:²⁹
 - a partner in a partnership or an executive officer of a company (director, secretary or senior manager within the meaning of the Corps Act) that is a **prescribed tax agent** (i.e. is a registered agent and has **more than 100 employees**)
 - a former partner in a partnership that is currently a prescribed tax agent, if the individual is receiving regular and ongoing benefits, or has within the last 6 months received a **material benefit**, from the partnership
 - a former executive officer of a company that is currently a prescribed tax agent if either of the following apply:
 - the individual is receiving regular and ongoing benefits, or has within the last 6 months received a material benefit, from the company
 - the individual holds shares in the company

²⁸ Gives effect to [amendments](#) tabled in the Senate by the Greens: Part 4 of Schedule 3 to the [2023 No. 1 Act](#)

²⁹ New section 60-25

TPB Special Account³⁰



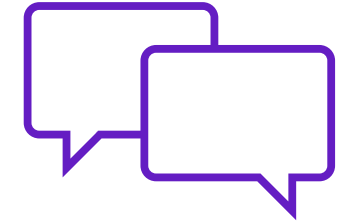
**Started on
1 July 2024**

- Establishment of a TPB Special Account³¹ — means funding for the TPB will largely be independent of the ATO
- Enables a special appropriation to be made specifically for the TPB
- Increases the TPB's independence as it is legally entitled to an established amount
 - Compared to the previous process where the ATO had the final decision regarding the portion of its annual departmental budget allocated to the TPB

³⁰ Gives effect to recommendation 3.1: Part 3 of Schedule 3 to the [2023 No. 1 Act](#)

³¹ New Subdivision 60-G

Objects clause³²



- Updates and modernises the object of the TASA:³³

To support public trust and confidence in the integrity of the tax profession and of the tax system by ensuring that TAS are provided to the community ~~public~~ in accordance with appropriate standards of professional and ethical conduct

**Started on
1 Jan 2024**

- This is to be achieved by (among other things) providing for:
 - (a) the registration and regulation, by a national Board, of entities that provide TAS;
 - (b) a Code for registered agents;
 - (c) sanctions to discipline entities in relation to their conduct as a registered agent; and
 - (d) sanctions where TAS are provided otherwise than in accordance with the TASA

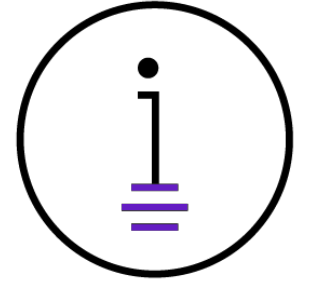
³² Gives effect to recommendation 2.1: Part 1 of Schedule 3 to the [2023 No. 1 Act](#)

³³ Subsection 2-5 (as amended)

Tranche 2 changes

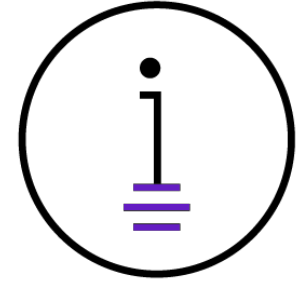


Package of reforms



- **6 August 2023:** [Announced](#) by the Government
 - Strengthen the integrity of the tax system
 - Increase the powers of our regulators
 - Strengthen regulatory arrangements to ensure they are fit for purpose
- **6 August 2023:** TTI issued a [media release](#)
 - Welcomed the announcement of reform measures to increase the integrity of our tax system and improved collaboration between government agencies and with professional associations
 - TTI members are subject to our [by-laws](#) and [Code of Professional Conduct](#)
- **4 October 2023:** [TTI submission](#) to Treasury on exposure draft legislation
- **16 November 2023:** [TAF Bill](#) introduced into House of Reps
- **10 December 2023:** [Draft Determination](#) (Code) and [Consultation Paper](#) on TPB sanctions
- **31 May 2024:** TAF Bill enacted

Overview of enacted changes



Reform of promoter penalties³⁴

From 1 July 2024

- Increased maximum promoter penalties (**PP**) for advisers and firms who promote tax exploitation schemes — from \$8.25m to \$825m
- Expand PP laws so they are easier for the ATO to apply
- Increase the time limit for the ATO to bring Federal Court proceedings on PP from 4 years to 6 years after the conduct occurred

Expanding whistleblower protection³⁵

From 1 July 2024

- Protect whistleblowers when providing TPB with evidence of agent misconduct (But no change to the meaning of 'eligible whistleblower'³⁶ for breach reporting purposes)

Reform of TPB³⁷

From 1 July 2024

- Give the TPB more time to complete complex investigations — up to 24 months
- Improve TPB's public register of practitioners

Changes to information sharing³⁸

From 1 June 2024

- Remove limitations in the tax secrecy laws that are a barrier to regulators
- Enable ATO and TPB to refer ethical misconduct by advisers to professional associations for disciplinary action

³⁴ Schedule 1 to the TAF Act

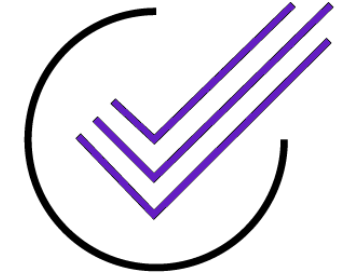
³⁵ Schedule 2 to the TAF Act

³⁶ Section 14ZZU of the TAA

³⁷ Schedule 3 to the TAF Act

³⁸ Schedule 4 to the TAF Act

Promoter penalties | Overview



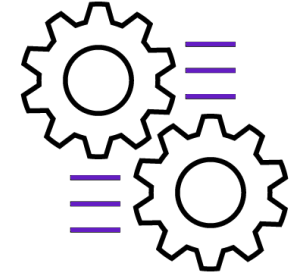
Previous requirements

- An entity must not engage in conduct that results in that (or another) entity being a promoter of a tax exploitation scheme³⁹
- An entity must not engage in conduct that results in a scheme that has been promoted on the basis of conformity with a product ruling (**PR**) being implemented in a materially different way from that described in the PR⁴⁰
 - Not 'materially different' — if the tax outcome for participants in the scheme is the same as that described in the PR

³⁹ Subsection 290-50(1) of Schedule 1 to the TAA

⁴⁰ Subsection 290-50(2) of Schedule 1 to the TAA

Promoter penalties | Overview



Previous definitions

- An entity is a ***promoter*** if all the following requirements are met:⁴¹
 - the entity markets the scheme or otherwise encourages the growth of the scheme or interest in it;
 - the entity or an associate receives consideration in respect of marketing the scheme; and
 - it is reasonable to conclude that the entity had a substantial role in marketing the scheme

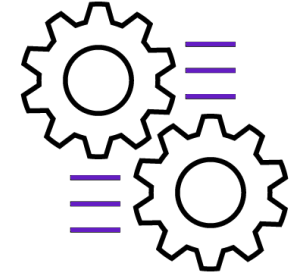
An entity is not a promoter merely because the entity provides advice about the scheme

- A scheme is a ***tax exploitation scheme*** if it is:⁴²
 - reasonable to conclude that an entity entered into or carried out the scheme with the sole or dominant purpose of that or another entity getting a scheme benefit (whether or not the scheme is implemented); and
 - **not reasonably arguable** that the scheme benefit is available at law, or would be if the scheme were implemented

⁴¹ Section 290-60 of Schedule 1 to the TAA

⁴² Section 290-65 of Schedule 1 to the TAA

Promoter penalties | Overview



Previous exclusions and exceptions

- Conduct that occurred by reasonable mistake of fact, due to the act or default of another entity, due to an accident or due to some other cause beyond the entity's control⁴³
- Reliance on advice given by or on behalf of Commissioner⁴⁴
- 4 years have passed since the entity last engaged in conduct that resulted in the entity being a promoter — unless the scheme involves tax evasion⁴⁵
- The entity did not know and could not have reasonably been expected to know that its conduct would produce that result⁴⁶
- Employees whose employers have been ordered to pay PP in relation to the same scheme⁴⁷

⁴³ Subsection 290-55(1) of Schedule 1 to the TAA

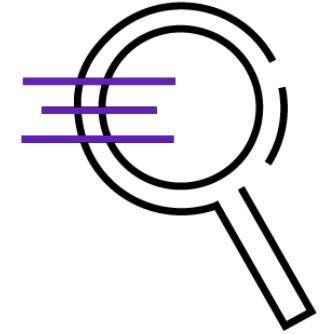
⁴⁴ Subsection 290-55(3) of Schedule 1 to the TAA

⁴⁵ Subsection 290-55(4)-(6) of Schedule 1 to the TAA

⁴⁶ Subsection 290-55(7) of Schedule 1 to the TAA

⁴⁷ Subsection 290-55(8) of Schedule 1 to the TAA

Promoter penalties | Guidance



Cases

[Commissioner of Taxation v Rowntree](#) [2020] FCA 1322

[Commissioner of Taxation v Bogiatto](#) [2020] FCA 1139

[Commissioner of Taxation v Pavihi](#) [2019] FCA 2056

[Commissioner of Taxation v International Indigenous Football Foundation Australia Pty Ltd](#) [2018] FCA 528

[Commissioner of Taxation v Arnold \(No 2\)](#) [2015] FCA 34

[Commissioner of Taxation of the Commonwealth of Australia v Barossa Vines Ltd](#) [2014] FCA 20

[Commissioner of Taxation v Ludekens](#) [2013] FCAFC 100

ATO guidance

[PS LA 2021/1](#): Application of the promoter penalty laws

[Decision Impact Statement](#) – Bogiatto (published 4 February 2021)

[Decision Impact Statement](#) – Ludekens (published 7 May 2014)

[Decision Impact Statement](#) – Barossa Vines Ltd (published 31 March 2014)

Promoter penalties | Changes

Previously	New law
An entity can be a promoter only if it receives consideration for marketing the scheme	An entity can be a promoter if it receives a benefit for marketing the scheme
PP laws apply when a scheme is promoted on the basis of conformity with a product ruling , but implemented in a materially different way	PP laws apply when a scheme is promoted on the basis of conforming with a public, private or oral ruling ⁴⁸
Commissioner has 4 years from when an entity last engaged in the alleged conduct to bring a PP case before the FCA, except in the case of schemes involving tax evasion	Commissioner has 6 years from when an entity last engaged in the alleged conduct to bring a PP case before the FCA, except in the case of schemes involving tax evasion
Partners in a partnership have a defence if they prove they did not aid, abet, counsel or procure (or were not knowingly a party, whether directly or indirectly) ⁴⁹	All partners in a partnership and co-trustees of a trust have joint and several liability

⁴⁸ This is irrespective of whether the scheme is actually implemented and regardless of whether the scheme is the subject of the ruling

⁴⁹ Subsection 444-30(4) of Schedule 1 to the TAA

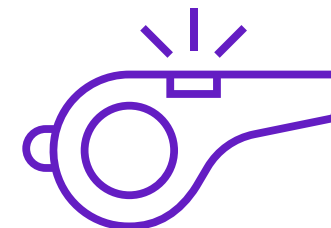
Promoter penalties | Changes

Previously	New law
The defence of reasonable mistake or reasonable precaution is not available to an employee or agent of an entity	The defence of a reasonable mistake or reasonable precaution is not available to: <ul style="list-style-type: none">• an employee or agent of an entity;• a director of a body corporate;• a partner in a partnership; or• a trustee of a trust
N/A	<i>Tax exploitation scheme</i> extended to DPT or MAAL if: <ul style="list-style-type: none">• the scheme (whether or not implemented) was entered into for a principal purpose (or for more than one principal purpose that includes a purpose) of getting a benefit from the scheme; and• it is not reasonably arguable that the scheme benefit is (or would be) available at law

Promoter penalties | Changes

Previously	New law
<p>The maximum penalty is the greater of:</p> <ul style="list-style-type: none">• for:<ul style="list-style-type: none">○ an individual — 5,000 penalty units⁵⁰ (\$1.65m)○ a body corporate — 25,000 penalty units (\$8.25m); or• twice the consideration received or receivable (directly or indirectly) by the entity or its associates in respect of the scheme	<p>The maximum penalty is the greater of:</p> <ul style="list-style-type: none">• for:<ul style="list-style-type: none">○ an entity other than a body corporate or an SGE — 5,000 penalty units (\$1.65m)○ a body corporate or an SGE — 50,000 penalty units (\$16.5m);• 3 times the benefits received or receivable (directly or indirectly) by the entity and associates of the entity in respect of the scheme; or• for a body corporate, a partner in a partnership that is an SGE or a trustee of a trust that is an SGE — 10% of the aggregated turnover of the entity for the most recent income year to end before the entity engaged in the conduct, capped at 2.5m penalty units (\$825m)

Whistleblower protection⁵¹



Statutory review
is planned for
late 2024

- A disclosure qualifies for protection if it is made to:
 - the **Commissioner** to assist him in performing his duties under the taxation legislation;
 - the **TPB** to assist it in performing its function under the TASA; or
 - a **medical practitioner or psychologist** for the purpose of obtaining medical or psychiatric care/treatment or counselling
- May allow disclosures to professional associations, unions etc. via future regulations
- Burden of proof is reversed for claims for protection from liabilities by a discloser
- Breach report qualifies for protection only if all conditions are met:
 - made by an eligible whistleblower⁵²
 - made to an eligible recipient (if not the Commissioner or the TPB)⁵³
 - information assists the Commissioner in his role OR discloser has reasonable grounds to suggest the information indicates misconduct relating to tax affairs⁵⁴

⁵¹ ATO guidance:
[Tax whistleblowers](#)

⁵² [Section 14ZZU](#) of the TAA

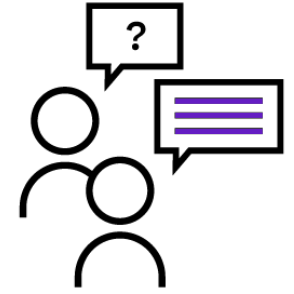
⁵³ [Section 14ZZV](#) of the TAA

⁵⁴ [Section 14ZZT](#) of the TAA

TPB reform

Previously	New law
TPB has 6 months in which to conclude investigations into potential breaches of the TASA	TPB has 24 months in which to conclude investigations into potential breaches of the TASA
Details of unregistered tax practitioners can be included on the Register only for 12 months	TASR may specify the timeframes for which information can remain on the Register (see the Tax Agent Services Amendment (Register Information) Regulations 2024 registered on 4 July 2024 which specify a 5-year period)
Unregistered tax practitioners can be listed on the Register only if their registration has been terminated for a reason other than a reason prescribed by the TASR	TASA or TASR can require information about unregistered entities to be published on the Register Includes where past investigations resulted in no further action taken by the TPB on or after 1 July 2022
N/A	A decision to publish information is subject to administrative review

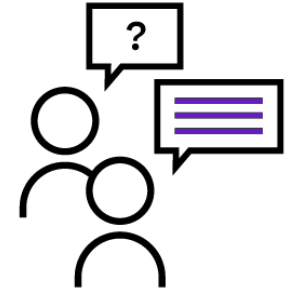
Secrecy provisions | Overview



- Division 355 of Schedule 1 to the TAA (applies from 17 December 2010)
- Designed to protect confidentiality of taxpayer information
- Prevents disclosures or on-disclosures of protected information (except to listed parties for listed reasons) — applies to the ATO and other recipients

[Overview of secrecy provisions](#), written by **Jonathan Ortner** FTI, Partner, Arnold Bloch Leibler and Chair of The Tax Institute's National SME Technical Committee (TTI members only)

Information sharing



- Allows ATO officers and TPB officials to share protected information with Treasury:
 - Information must be about misconduct arising out of breaches (or suspected breaches) of confidentiality by intermediaries engaging with the Commonwealth
 - Information must be shared for the purpose of responding to the breach (or suspected breach)
- Allows Treasury to on-disclose to the Minister or Finance Minister
- Allows the ATO and the TPB to share protected information with **prescribed disciplinary bodies (PDB)** (a professional disciplinary body that is prescribed) where they reasonably believe a person's actions may constitute a breach of the PDB's code of conduct or professional standards

TPB sanctions regime

Proposal to increase the range of powers available to the TPB:

[Consultation Paper](#)⁵⁵

Current

Proposed

Written cautions⁵⁶

Warning orders⁵⁷

Enforceable voluntary undertakings

Infringement notices

Injunctions⁵⁸

Civil penalties⁵⁹

Interim/Contingent suspensions

Suspension or termination of registration⁶⁰

Criminal penalties

LOW RANGE

MEDIUM RANGE

HIGH RANGE

[Joint Bodies' submission](#)

⁵⁵ Released on 10 December 2023, comments by 21 January 2024

⁵⁶ Section 30-15 of the TASA

⁵⁷ Section 30-20 of the TASA

⁵⁸ Section 70-5 of the TASA

⁵⁹ Division 50 of the TASA and Subdiv 298-B of Sch 1 to the TAA

⁶⁰ Section 30-25 and Division 40 of the TASA

Proposed TPB sanctions regime

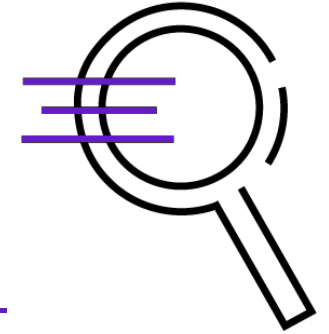


- Reintroduction of criminal penalties for unregistered preparers
- Broader and increased civil penalties in the TASA
- Introduction of infringement notices
- Introduction of enforceable voluntary undertakings with tax practitioners
- Introduction of contingent and interim suspensions

Further sanctions considered unnecessary at this stage

- Quality assurance audits
- Permanent disbarment
- External intervention

Further consultation and reviews



Strengthening regulatory arrangements to ensure they are fit for purpose — consultation will be undertaken to deliver options over the next 2 years:

1. Implement remaining recommendations from the independent review of the TPB
2. Treasury review of the promoter penalty laws
3. Treasury review of emerging fraud and threats to clamp down on systemic abuse of our tax system
4. Treasury and Attorney-General's Department joint review of the use of legal professional privilege in Commonwealth investigations
5. Treasury examination of the regulation of consulting, accounting and auditing firms to consider whether reforms are needed
6. Treasury review of the compulsory information gathering powers of the ATO
7. Treasury review of the secrecy provisions that apply to the ATO and TPB
8. Department of Finance review into the use of confidentiality arrangements across all government agencies to ensure they are fit for purpose, legally binding and enforceable

Thank you

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Abbreviations

Abbreviation	Explanation
APRA	Australian Prudential Regulation Authority
ASIC	Australian Securities and Investments Commission
ATO	Australian Taxation Office
BAS (agent)	Business activity statement (agent)
CEO	Chief Executive Officer
Code	Code of Professional Conduct, section 30-10 of the <i>Tax Agent Services Act 2009</i>
CPE	Continuing professional education

Abbreviations

Abbreviation	Explanation
DPT	Diverted profits tax
DQE	Disqualified entity
ED	Exposure draft
FAQ	Frequently asked questions
FASEA	Financial Adviser Standards and Ethics Authority
FCA FCAFC	Federal Court of Australia Full Federal Court of Australia
James Review	Review of the Tax Practitioners Board (2019)

Abbreviations

Abbreviation	Explanation
LCA	Law Council of Australia
LPP	Legal professional privilege
MAAL	Multinational anti-avoidance law
MYEFO 2023–24	Mid-Year Economic and Fiscal Outlook 2023–24
PDB	Prescribed disciplinary body
PP	Promoter penalties in Division 290 of Schedule 1 to the <i>Taxation Administration Act 1953</i>
PR	Product Ruling

Abbreviations

Abbreviation	Explanation
PS LA	Practice Statement Law Administration
RPA	Recognised professional association
TAS	Tax agent service
TPB	Tax Practitioners Board
TPGSF	Tax Practitioner Governance and Standards Forum
TTI	The Tax Institute

Abbreviations

Abbreviation	Legislation
2023 No. 1 Act	<u>Treasury Laws Amendment (2023 Measures No. 1) Act 2023</u>
ASICA	<u>Australian Securities and Investments Commission Act 2001</u>
Corps Act	<u>Corporations Act 2001</u>
Crimes Bill	<u>Crimes and Other Legislation Amendment (Omnibus No. 1) Bill 2024</u>
Determination	<u>Tax Agent Services (Code of Professional Conduct) Determination 2024</u>

Abbreviations

Abbreviation

Legislation

ITAA 1936

Income Tax Assessment Act 1936

TAA

[Taxation Administration Act 1953](#)

TAF Bill/Act

[Treasury Laws Amendment \(Tax Accountability and Fairness\) Act 2024](#)

TASA | TASR

[Tax Agent Services Act 2009](#) | [Tax Agent Services Regulations 2022](#)

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