



Australian Government



Are you taking reasonable care?

Presented by Craig Stephens, Board Member, Tax Practitioners Board

What we will cover today

- ✓ What does 'reasonable care' mean?
- ✓ Code item 9 obligations
- ✓ Code item 10 obligations
- ✓ Level of reasonable care required
- ✓ Examples
- ✓ What happens if you fail to comply?
- ✓ Case studies
- ✓ Q&A

Access the presentation slides and resource document: tpb.gov.au/webinar-resources-hub



Meet your presenter

- Craig Stephens
- Board Member
- Tax Practitioners Board

Understanding reasonable care

A decorative graphic in the bottom right corner consisting of numerous thin, light blue curved lines that sweep upwards and to the right, creating a sense of motion and depth.

Code of professional conduct

Code item 1

Act honestly and with integrity

Code item 2

Comply with tax laws in the conduct of your personal affairs

Code item 3

Account to your client for money or other property you hold in trust

Code item 4

Act lawfully in your client's best interest

Code item 5

Manage conflicts of interest

Code item 6

Do not disclose information without client permission

Code item 7

Ensure tax agent services are provided competently

Code item 8

Maintain the knowledge/skills relevant to the services you provide

Code item 9

Take reasonable care to ascertain your client's state of affairs

Code item 10

Take reasonable care to ensure taxation laws are applied correctly

Code item 11

Do not obstruct the proper administration of taxation laws

Code item 12

Advise your client of their rights and obligations

Code item 13

Maintain professional indemnity insurance

Code item 14

Respond to requests and directions from the Board

What is reasonable care



- The standard of care of a competent and reasonable person, possessing the knowledge, skills, qualifications and experience a registered tax practitioner is expected to have.
- Factors in considering reasonable care:
 - the terms of engagement
 - the complexity of the transaction
 - the client's circumstances
 - the nature of any pre-existing relationship.

Code items 9 and 10



Code item 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 a client.



Ascertain a client's state of affairs



Code item 9

- You cannot automatically discharge your responsibility by simply accepting what your client tells you.
- You must exercise your professional judgment on whether circumstances require further checking.
- Where needed, ask questions of your client, or examine their records, or both.

When to make further enquiries



Examples of situations where you should make further enquiries:

- where there are new or substantial changes in the law
- for a new or inexperienced client
- you notice unusual transactions for a regular client.

Example 1



- Mitch engages Tia to prepare and lodge his income tax return.
- He's a new client and is a sole trader under the GST registration threshold with no employees.
- Mitch indicates his turnover for the year was \$35K and his expenses were \$25K.
- After consulting the ATO Benchmarks, Tia notices the turnover appears to be low and his business expenses high.
- Tia requests further information then works with Mitch to estimate his cash income for the year.

Example 2



- Mike a tax agent was completing an income tax return for his client Ruby who operates a coffee shop.
- Mike notices Ruby claiming the purchase of several board games.
- Mike is concerned she may be trying to inappropriately claim the board games for her personal use.
- Mike requests that Ruby confirms how the purchase is related to running a coffee shop.
- Ruby advises the coffee shop runs a games night twice a week and the purchase was for business purposes.
- Mike has taken reasonable steps to ensure that the claims were correct.

Example 3



- Adele a BAS agent is engaged by Manny to prepare and lodge their quarterly BAS.
- Manny has been referred to Adele by a tax agent.
- When preparing the BAS, Adele notices that certain transactions appear to be abnormal for the industry Manny works in.
- Adele finds Manny to be vague and he does not provide sufficient clarity to satisfy Adele.
- Adele raises her concerns with the referring tax agent.
- The tax agent tells her to include the transactions with a note for the tax agent to look at the transactions more closely at the end of the reporting period.
- Adele has discharged her obligations by raising the concerns with the tax agent.

Example 4



- Tax agent, Stefano prepares an income tax return for his client, Pam.
- She has engaged Stefano for the previous five years.
- For the past three years Pam had been single and had not reported a spouse in her income tax return.
- While preparing Pam's income tax return, Stefano did not make any enquiries to ascertain if any of her personal circumstances had changed.
- As a result, he incorrectly reported that Pam did not have a spouse, which affected her eligibility to receive a rebate for private health insurance.
- Stefano failed to take reasonable care to ascertain his client's state of affairs relevant to the preparation of her income tax return.

Example 5



- Daisy completes an income tax return for her client Parker.
- Parker started a new job working as a delivery driver, using his personal car.
- Daisy also prepares income tax returns for a number of workers at the same business.
- When reviewing Parker's logbook, she notices the figures in Parker's logbook were identical to another two clients.
- Daisy is busy so decides to accept all the information from Parker at face value.
- Daisy has failed to carry out her obligations, by failing to make additional enquiries to be satisfied that the claims made by Parker are correct.

Poll



- Sophia engages Jonah, a registered tax agent, to prepare and lodge her income tax return.
- She is a regular client of Jonah.
- Jonah enquires and ascertains that Sophia's personal circumstances have not changed.
- He also checks the information is consistent with previous returns he's prepared for Sophia.
- **Has Jonah complied with his reasonable care obligations?**

Code item 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. ”

Ensure taxation laws are applied correctly



Code item 10

- Making a mistake does not mean there is an automatic breach of the Code.
- However, if you made a mistake because you did not take reasonable care, it could be considered a breach.

How to apply the laws correctly



Taking reasonable care means taking steps such as referring to:

- legislation and related material
- case law
- rulings and determinations issued by the ATO
- other guidance material published by the ATO
- information published or provided by a recognised professional associations or APRA
- relevant training material.

Example 6



- ACME Corporation engages Sarah, a registered tax agent, to help claim the current Research and Development (R&D) tax incentive.
- Sarah is not familiar with the R&D tax incentive rules or a specialist in the area.
- Sarah must take reasonable care to ensure taxation laws are applied correctly to the circumstances.
- Sarah seeks assistance from another registered tax agent who specialises in R&D.
- Sarah confirms this arrangement with ACME Corporation.
- By taking these steps, Sarah has complied with her obligations.

Example 7

- Sunshine Solar engages Kevin & Green, a large accounting firm, to provide advice on the tax implications relating to solar panels.
- Sunshine Solar advises that it has already received advice from another registered tax agent and provides a copy of the advice for a second opinion.
- Kevin & Green undertake the necessary research in relation to the relevant tax laws.
- They determine there are two views in relation to the application of the relevant tax laws but considers that the more correct view is the same as that contained in the previous advice.
- In this case, Kevin & Green has complied with its obligations to take reasonable care.

**Level of reasonable care
required**

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To what extent is reasonable care required?



- The requirement to take reasonable care relates to the services you have been engaged to provide for the client.
- Further enquiries would not be required if the agreed scope of the services either:
 - excludes the examination of information provided by the client, or
 - requires you to rely on the information or advice of another expert.

Poll



- Poppy's Designs engages Linh, a registered tax agent, to prepare its income tax return.
- They're a new client so provide all their tax information, including its BAS and GST reconciliation accounts which have been prepared by Rose, a registered BAS agent.
- Linh has previously examined work prepared by Rose and has not had any concerns.
- As Rose is a registered BAS agent and Linh has no reason to doubt the quality of her work, he accepts Rose's work at face value.
- Further, he undertakes relevant checks in relation to the information provided by Poppy's Designs which has not been prepared by Rose.
- **Has Linh complied with his reasonable care obligations in this situation?**

Example 8



- Bob is a property developer who engages Leigh, a registered tax agent, to provide GST related tax advice, including application of a margin scheme.
- Leigh specialises in GST related advisory work but has limited knowledge and experience with the margin scheme rules.
- Leigh refers to the relevant legislation, case law and publications by the ATO before providing advice to Bob.
- Leigh also refers to colleagues and other experts and then applies this research in providing her advice to Bob.
- In this case, Leigh has complied with her obligations under Code item 10 by undertaking the necessary research prior to providing her advice to Bob.

Failing to comply



Consequences for failing to comply



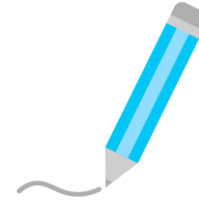
Termination



Suspension



Order



Written
caution

Case studies



Case study

- The ATO referred a tax case to us after completing audits where they disallowed work-related expenses because they were not adequately substantiated and/or the clients did not demonstrate sufficient connection between the claims and the work-related activities.
- The BCC found the company had breached the Code by failing to:
 - ask sufficient or relevant questions regarding work-related expense deductions
 - sight the necessary supporting documentation to ascertain work-related expenses were actually incurred
 - ensure the taxation laws were applied correctly to clients' circumstances
 - substantiate clients' work-related expense claims.

Case study

- The BCC terminated an individual and company registration, imposing a five-year ban from applying for registration.
- The ATO audited 48 clients of the company's practice showing that work-related expense claims could not be substantiated or didn't relate to assessable income.
- This resulted in the claims and rental deductions being disallowed or reduced, with a total tax shortfall of over \$317,000.
- The ATO also audited one of the agent's associated entities, disallowing unsubstantiated R&D refundable tax offsets, and imposing administrative penalties.
- They also failed to comply with personal tax obligations with debts over \$250,000.



Questions

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