



Australian Government



# Confidentiality and conflicts - what to do!

**Presented by** Debra Anderson, Board Member, Tax Practitioners Board

## What we will cover today

- ✓ Overview of the Code
- ✓ Code item 6 – confidentiality of client information
- ✓ Code item 5 – conflicts of interest
- ✓ Consequences for failing to comply the Code
- ✓ Case studies
- ✓ Q&A

Access the slides and resource document: [tpb.gov.au/webinar-resources-hub](https://tpb.gov.au/webinar-resources-hub)



## Meet your presenter

- Debra Anderson
- Board Member
- Tax Practitioners Board

# Code of Professional Conduct

## Five key principles



Competence



Honesty &  
integrity



Independence



Confidentiality



Other  
responsibilities

**Code item 6**

# Confidentiality of client information

You must not disclose information relating to a client's affairs to a third party unless you have:

- obtained your client's permission; or
- a legal duty to do so.



## What is information?

- Information refers to the acquiring or deriving of knowledge and can include capturing information known about a client.
- This information could be acquired directly or indirectly from the client or other sources.
- It is only necessary that the information relates to the affairs of a client.





## Who is a 'third party'?

- A third party means any entity other than the client and the registered tax practitioner.
- A third party includes:
  - a related entity of the client and/or tax practitioner
  - any entity that is engaged to outsource work
  - entities that maintain offsite data storage systems (including 'cloud storage').

## Obtain your client's permission 🍷

When disclosing a client's information to a third party you should:

- clearly inform the client about the information you are disclosing
- advise them to whom and where the disclosure will be made
- obtain their written permission.

## Legal duty to disclose

- You may disclose information about a client's affairs to a third party without their permission if you have a legal duty to do so.
- If you are concerned whether there is a legal duty, consider seeking independent legal advice.

## Poll 1

- Olivia is a registered BAS agent. Olivia is contacted by the International Bank, a financial institution, requesting certain financial information relating to Darcy – who is one of her clients.
- The International Bank explains that the information is required to support Darcy's finance application for a new car.
- Before disclosing any of Darcy's information to the bank, Olivia requests Darcy's permission to provide the information to the bank via an email.
- Do you think Olivia has complied with her obligations under Code item 6?
  1. Yes
  2. No
  3. Unsure

## Inadvertent disclosure ⚠

- You must have appropriate arrangements in place to prevent inadvertent disclosure.
- Be particularly careful with:
  - using public computers
  - recycling paper that contains personal details
  - leaving client information in unsecured locations
  - disposing or reselling IT equipment
  - using external service providers.

## Privacy considerations

- In addition to Code item 6, the *Privacy Act 1988* sets out the Privacy Principles which govern the use of, storage and disclosure of personal information.
- Some of these privacy principles may have a direct impact on the requirement to obtain consent (express or implied) from clients.
- Registered practitioners should seek their own advice about whether the provisions of the *Privacy Act 1988* apply to them.

# Code item 6 examples

## Example: Cloud computing

- Stephanie is a registered BAS agent and is engaged to prepare business activity statements.
- Stephanie uses cloud computing.
- Prior to using the cloud she obtains signed written consent from clients.
- In this situation Stephanie has complied with her obligations under Code item 6.





## Example: Outsourcing

- Jackie runs a local coffee shop. She engages Tony's Tax Services to prepare and lodge her BAS and provide tax advice.
- Tony's Tax Services separately engages a registered BAS agent to prepare the BAS.
- Tony's Tax Services obtains Jackie's explicit permission by way of a signed engagement letter.



## Poll 2

- Vee Co is a large accounting firm and a registered tax agent company.
- To minimise its operating costs, Vee Co enters into an offshore agreement with a data processing firm in Vietnam.
- The processing firm will perform all the data processing work for Vee Co's clients.
- In order to send the clients' information overseas for processing what must Vee Co do?
  1. Disclose its arrangement with the overseas firm to all clients
  2. Obtain clients' permission
  3. Complete a signed agreement with each client
  4. All of the above

**Code item 5**

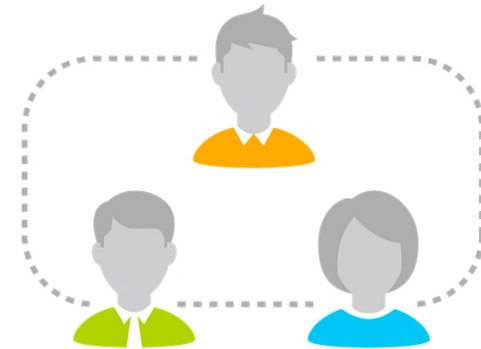
## Managing conflicts of interest



- You must have adequate arrangements in place for the management of conflicts of interest that may arise in relation to activities you undertake in the capacity of a registered tax practitioner.
- Code item 5 does not prohibit you from having conflicts of interest but creates an obligation to appropriately manage conflicts that arise or may arise.

## What is a conflict of interest?

- A conflict of interest is where a tax practitioner has a personal interest, or duty to another person, which is in conflict with the duty owed to the client.
- A conflict of interest may be an **actual** or **potential** conflict.



# Managing conflicts of interest

There are a number of mechanisms to manage conflicts of interest:



Disclose



Control



Avoid

## Disclosing conflicts of interest

Disclosure should:

- be made at the earliest possible opportunity
- be specific and meaningful to the client
- occur before or when the service is provided
- refer to the specific service to which the conflict relates.

## Controlling conflicts of interest

To control conflicts of interest, you should:

- identify the conflicts of interest
- assess and evaluate those conflicts
- decide upon, and implement, appropriate responses.

In all cases, it is recommended you keep adequate records of the steps taken to control conflicts of interest.



## Avoiding conflicts of interest

- In some cases, regardless of arrangements in place, conflicts of interest will be unmanageable.
- The only way to adequately manage the conflict will be to avoid it altogether.
- Registered tax practitioners are required to ensure their objectivity is not impaired by a conflict of interest.

## Other techniques

Additional techniques that may assist to manage conflicts of interest include:

- placing a positive onus on declaring a conflict of interest
- developing a register of private interests
- relevant training
- seeking advice from an independent third party.

# Code item 5 examples



## Example: Commissions/referrals

- Miranda is a tax agent who receives a commission for recommending a particular software.
- When she recommends software or technology to her clients, Miranda needs to ensure the needs of her clients are being met.
- Miranda needs to use her professional judgement to determine how best to deal with a conflict of interest when it arises.

## Example: Marital break ups

- Terrence and Sandra have recently divorced. They have used Craig as their registered tax agent for the past seven years.
- In preparing their income tax returns, Craig determines that the claiming of a rebate by Terrence would prevent Sandra from claiming the rebate.
- Craig discloses his conflict of interest to Terrence and Sandra and receives a waiver from both parties in relation to the conflict.

## Poll 3

- Lucia, a registered BAS agent is asked by a client to refer an appropriately qualified tax agent to provide advice in relation to superannuation.
- Lucia is aware of a number of suitable registered tax agents but refers her client to ABC Accounting because she receives a fee for the referral from this company.
- Lucia discloses that she will receive a fee for referrals to ABC Accounting to her client and includes in a signed letter of engagement.
- Has she satisfied her obligations under Code item 5?
  1. Yes
  2. No
  3. Unsure

# **Consequences for failing to comply with the Code**

## Consequences for failing to comply



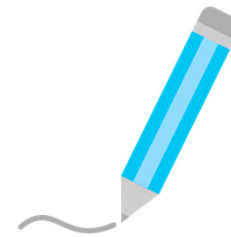
Termination



Suspension



Order



Written  
caution



## Case study 1

- The TPB terminated Mr Carter's tax agent registration as he was no longer a fit and proper person given he had:
  - entered into loans with a client without proper written agreements
  - failed to have adequate arrangements in place to manage the conflict of interest arising from these loan transactions
  - sent messages to a client, threatening to withhold loan interest repayments unless the complaint to the TPB was withdrawn.
- The decision to terminate the registration and impose a one year non-application period was affirmed by the AAT.

## Case study 2

- A tax agent company's employee had unauthorised access to a former client's tax information and disclosed it to a third party.
- The Board Conduct Committee (BCC) determined the company had breached Code item 6.
- The company did not have adequate internal systems in place to protect client information and guarantee security.
- The BCC decided to impose a written caution on the company for its failure to comply the Code.



**Questions**

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