



Australian Government



TAX  
PRACTITIONERS  
BOARD

# Taking reasonable care under pressure

**Presented by:**

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# Welcome

*'In the spirit of reconciliation, we respectfully acknowledge the Traditional Owners and Custodians of country throughout Australia and their connections to land, water and community. We pay our respect to their cultures, and Elders past, present and emerging.'*

Access the presentation slides: [tpb.gov.au/webinar-hub](https://tpb.gov.au/webinar-hub)

# What we will cover today

- ✓ What reasonable care means
- ✓ Your obligations under the Code of Professional Conduct
- ✓ Examples
- ✓ Tax practitioner compliance research findings
- ✓ Q&A

# Meet your presenters



**Debra Anderson**

- > Board member
- > Tax Practitioners Board



**Dr Doowon Lee**

- > Associate Professor
- > The University of Sydney



**Dr Bobae Choi**

- > Associate Professor
- > The University of Newcastle

# Understanding reasonable care



# 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

## 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 include the:
  - nature and scope of the tax agent services being provided
  - terms of engagement
  - skills, experience, qualifications and abilities of the provider
  - degree of supervision and oversight
  - client's circumstances; and
  - 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

- 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.

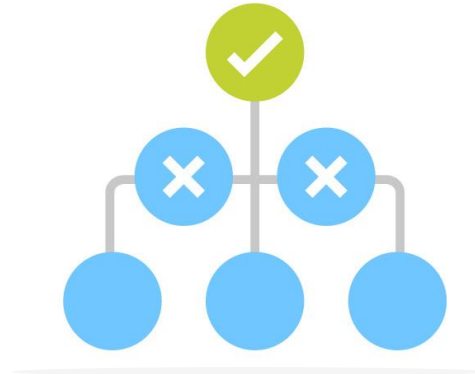


## Code item 10

“ 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

- 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.

**Level of reasonable care required**

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 or a modern design element.

# To what extent is reasonable care required?

- The requirement to take reasonable care relates to the services you have been engaged to provide.
- 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.



# Examples





## 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

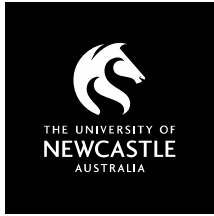
- BAS agent, Adele is engaged by Manny to prepare and lodge BAS.
- Manny has been referred to Adele by a tax agent.
- When preparing the BAS, Adele notices certain transactions appear abnormal.
- Manny is vague and does not provide sufficient clarity to satisfy Adele.
- Adele raises her concerns with the referring tax agent.
- The tax agent tells her to include the transactions with a note for them to look at the transactions in more detail.
- Adele discharged her obligations by raising the concerns with the tax agent.

## Case study

We terminated an individual and their 2 companies, imposing a 4 year ban from reapplying after they breached multiple Code items, including:

- Code item 1 – the tax agent misled us about his son’s employment with ASAPL
- Code item 7 – they lodged multiple returns and did not ensure there was sufficient evidence to substantiate deductions.
- Code item 9 – they failed to take reasonable care in ascertaining clients’ state of affairs.
- Code item 10 – they failed to take reasonable care in applying tax laws.

# Tax Agents' Behaviour Under Client Pressure



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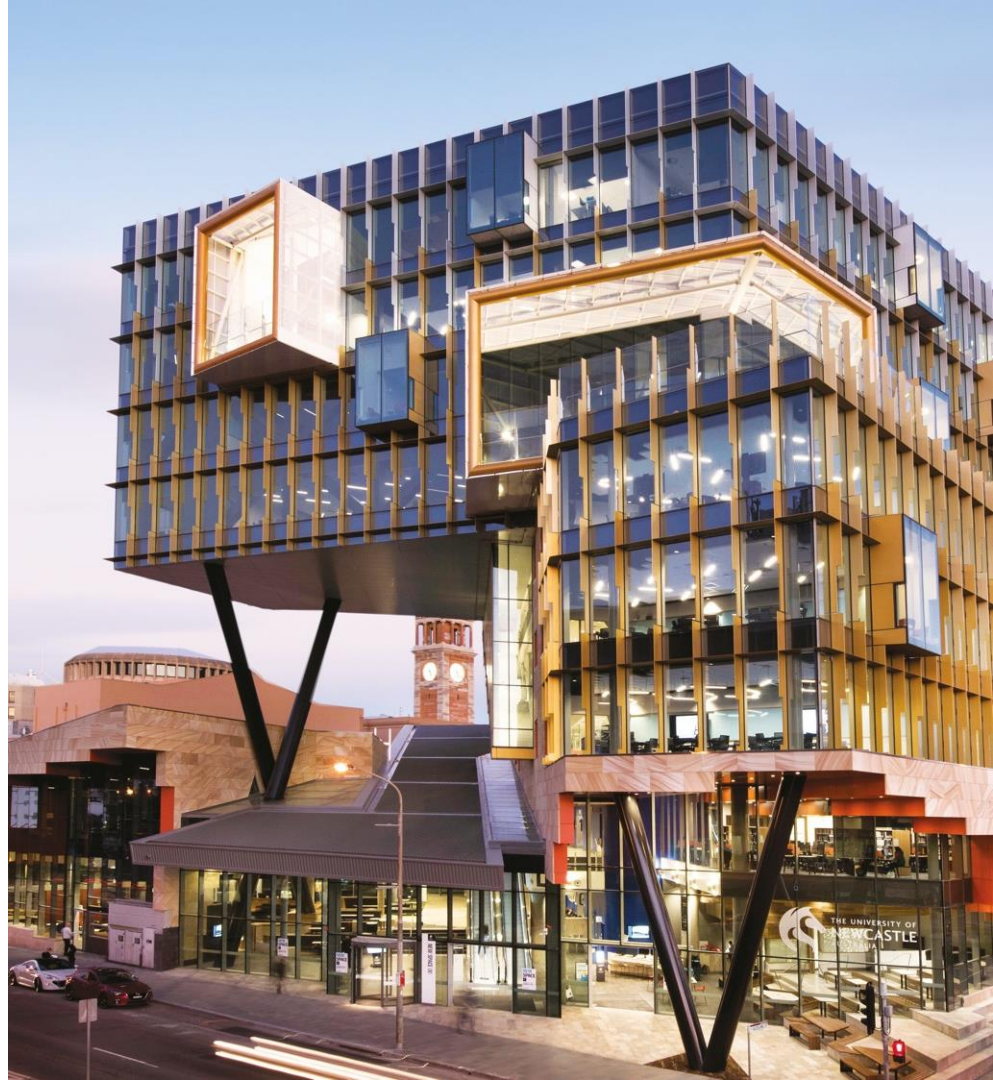
A.Prof Bobae Choi, University of Newcastle

A.Prof Doowon Lee, University of Sydney

Prof Sue Wright, UTS

Prof Christina Boedker, University of Newcastle

**TPB Webinar**  
**24 May 2023**



# Government Subsidy Schemes: Opportunity for fraudulent claims?

yahoo/finance | Yahoo Finance AU

**\$13.8 BILLION** in JobKeeper went to profitable companies, Treasury admits



**JobKeeper a \$6.2b 'sugar hit' for larger businesses that didn't take a big revenue hit during the pandemic**

By business reporter Nassim Khadem

Posted Tue 21 Sep 2021 at 6:03am, updated Wed 22 Sep 2021 at 11:44am

- There have been 3.5 million claims for flood support between February 28, 2022 and July 31, 2022
- There have been more than 27,770 claims that have raised suspicions
- More than 793 criminal investigations have been launched into suspected fraudulent claims

**ATO won't pursue \$180m in jobkeeper paid to ineligible businesses due to 'honest mistakes'**

## **Man charged with dishonestly claiming disaster recovery payments**

Services Australia General Manager Hank Jongen said since September 2019, over \$90 million dollars in Australian Government Disaster Relief Payments were paid to Australians who have been affected by the bushfires.

"Over 1500 tip-offs of suspected fraud have been received by Services Australia and 43 criminal investigations have been referred to the Commonwealth Director of Public Prosecutions."

# Heightened Client Pressure



Rewards from government subsidies may motivate taxpayers to falsely report their income in tax returns.



Accordingly, tax agents may have been pressured by their clients to condone the false reporting of their clients' income.



# Recent Government Subsidy Schemes

## JobKeeper

- Original period: 30 March 2020 to 27 September 2020
- Extension 1: 28 September 2020 to 3 January 2021
- Extension 2: 4 January 2021 to 28 March 2021

## Disaster Recovery Allowance

- February and March 2022 South East Queensland and NSW floods
- July 2022 NSW floods
- September, October and November 2022 floods in NSW, SA, Tasmania, and VIC
- December 2022 to January 2023 ex-tropical cyclone Ellie




# JobKeeper Eligibility Criteria

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## DECLINE IN TURNOVER

- Businesses with a turnover of more than \$1 billion: a fall of more than 50% compared to the same period last year; and
- Businesses with a turnover of less than \$1 billion: a fall of more than 30% compared to the same period last year.





# Disaster Recovery Allowance eligibility rules

To get it, you must meet all of the following.  
You:

- were 16 or older at the time of the ex-tropical cyclone
- are an Australian resident or hold an eligible visa
- work or live in a declared Local Government Area
- lost some or all of your income as a direct result of the ex-tropical cyclone
- **earn less than the average Australian weekly income in the weeks after this income loss.**

# Key Research Questions

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How do tax agents respond to pressure from clients to falsely report their income?



To what extent do tax agents cooperate with clients or resist client pressure to engage in non-compliant behaviour?



What factors affect tax agents' responses to client pressure?

# Research Design

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- The Survey provides the context of a hypothetical Disaster Recovery Allowance scheme and asks questions about:
  - Reasons for non-compliance with the Code of Professional Conduct (Code)
  - Perceived Code in practice
  - Tax agent's willingness to cooperate with clients
  - Demographic questions



# Demographics of respondents

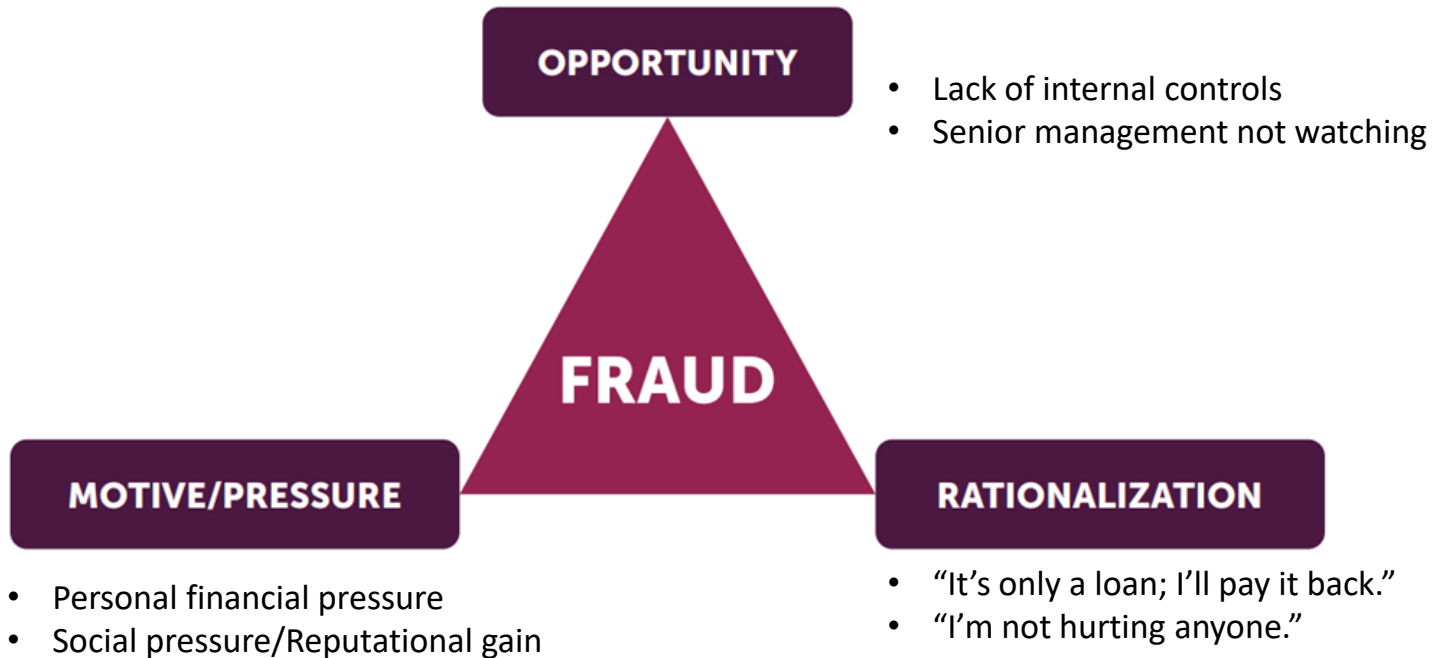
- 1100+ views
- 184 responses
- 81% with 10+ years of experience
- 90% owner / partner
- 61% agree/strongly agree that there is high competition in the profession
- 46% agree/strongly agree that they need to work harder to attract more clients.

# Scenario



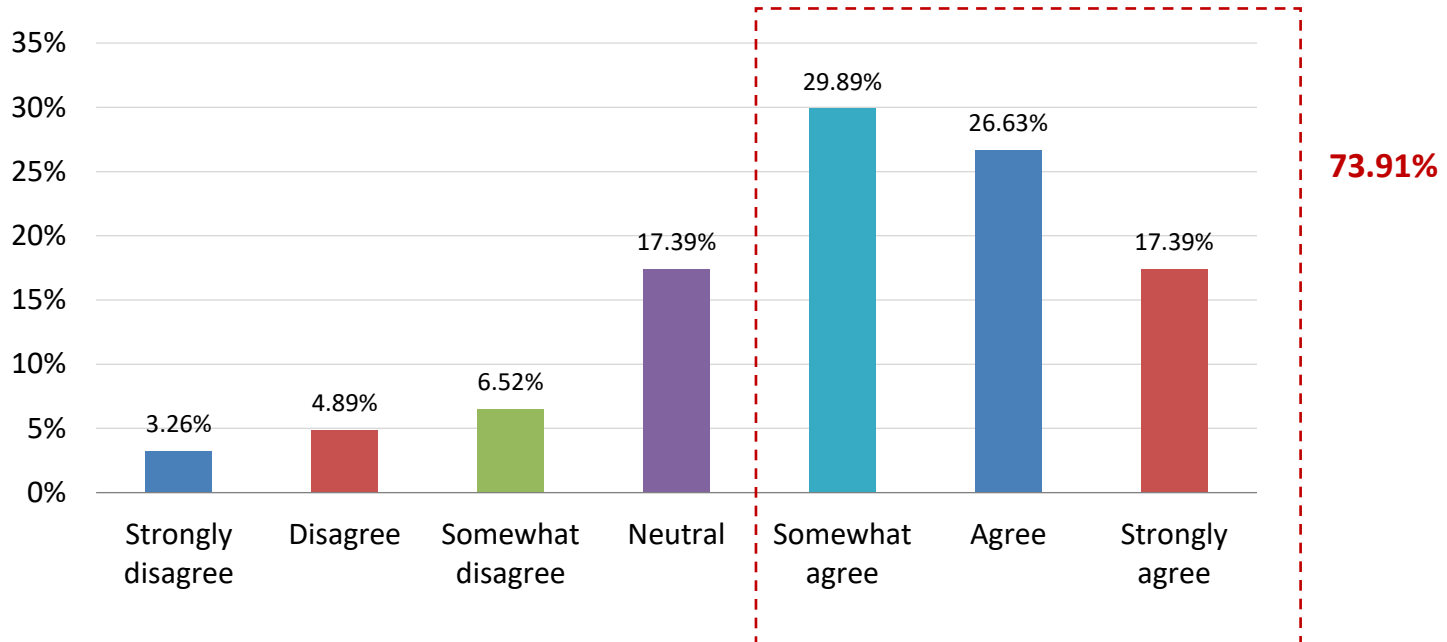
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- Recently, heavy rains severely impacted your local area, and in response, the state government established a Disaster Recovery Allowance scheme to provide support to individuals and businesses whose income had been affected by the floods.
  - To qualify for the scheme, applicants must earn less than the average Australian weekly income in the weeks following the event caused by flooding that led to their income loss.
  - You have heard that a tax agent who works for a local tax service firm has been successful in obtaining the government disaster support payment for clients whose businesses were potentially affected by the floods.
  - However, some of these clients may not have been eligible for the allowance.
  - **You suspect that the tax agent may have bent the rules to secure the payment.**

# Three conditions that increase the risk of fraud



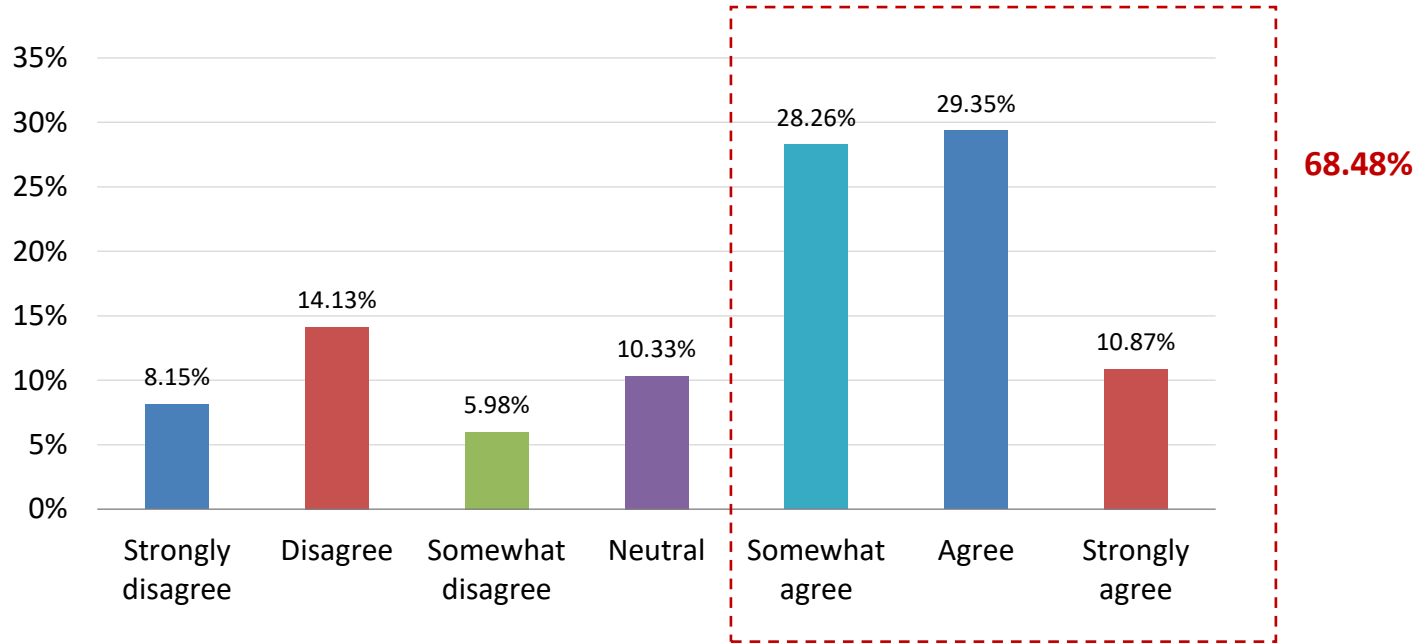
# THE “WHY” – MOTIVE/PRESSURE

The tax agent was at risk of losing clients by NOT doing what s/he did.



**Mean : 5.031** | Confidence Interval @ 95% : [4.821 - 5.241] | Standard Deviation : 1.495 | Standard Error : 0.107

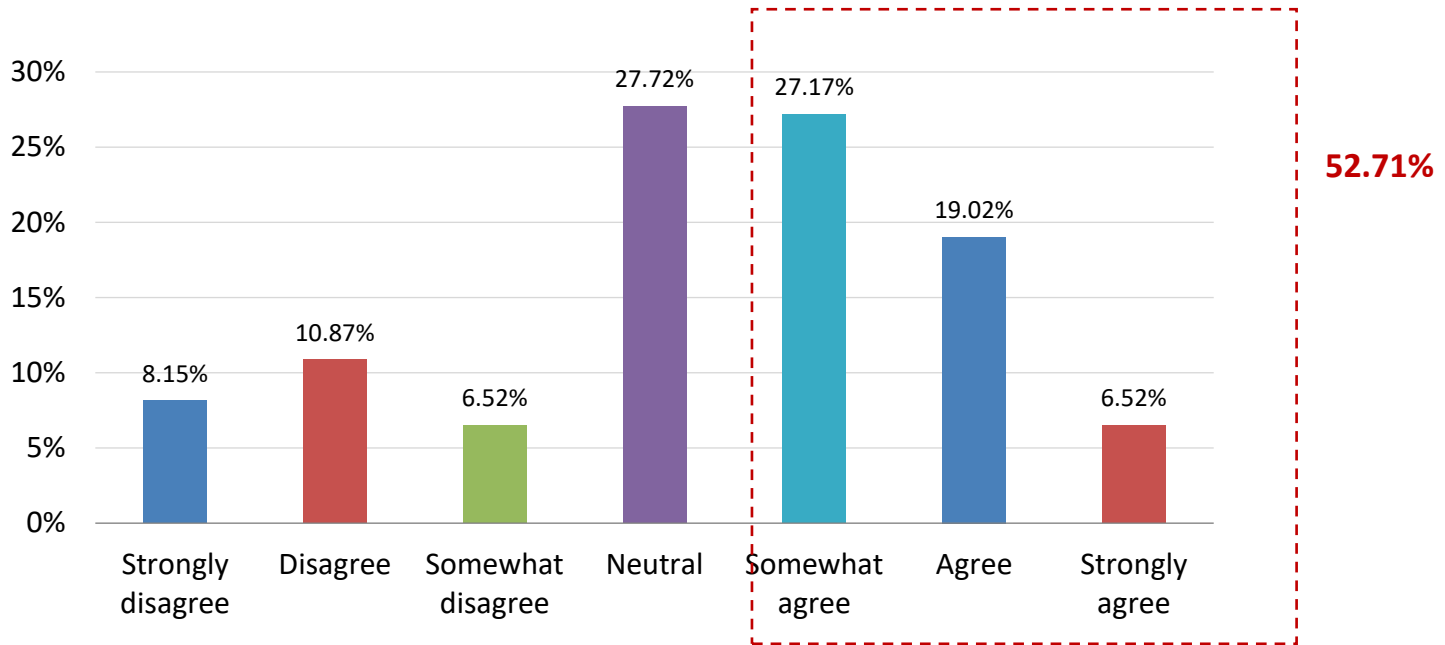
The tax agent stood to gain in reputation by doing what s/he did.



**Mean : 4.569** | Confidence Interval @ 95% : [4.317 - 4.820] | Standard Deviation : 1.799 | Standard Error : 0.128



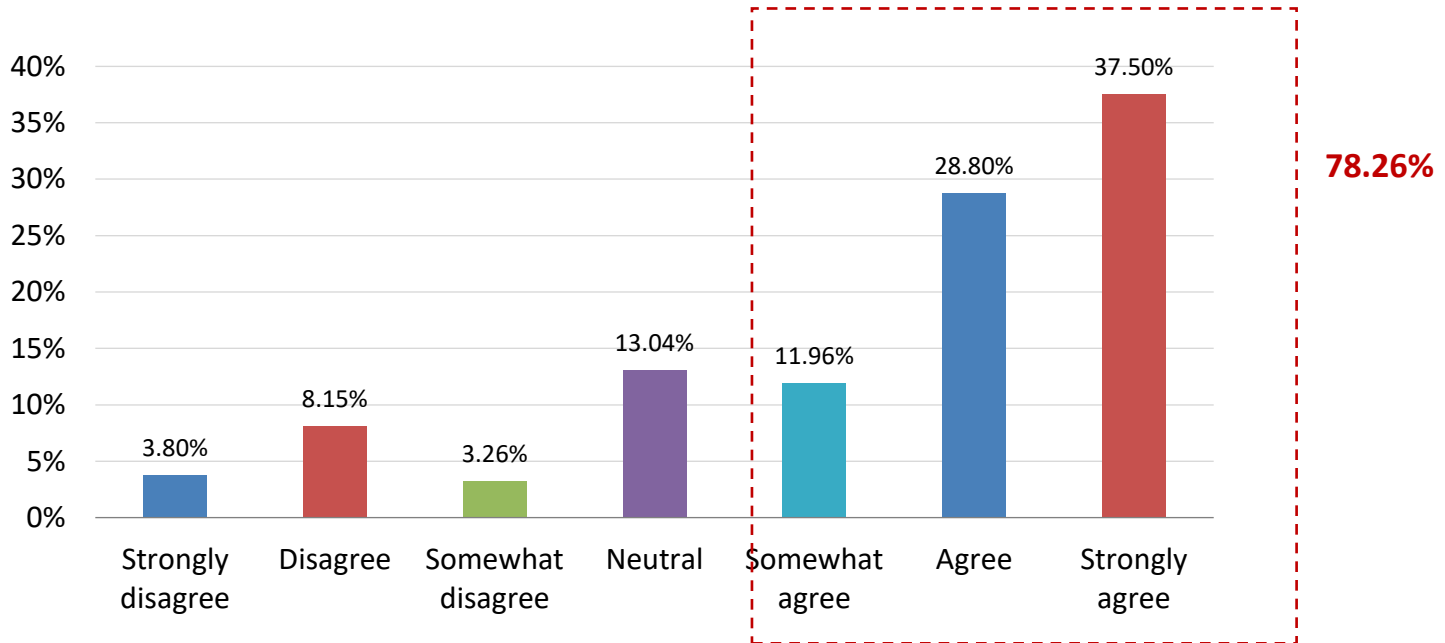
The tax agent was instructed by a superior to do what s/he did.



**Mean : 4.303** | Confidence Interval @ 95% : [4.076 - 4.530] | Standard Deviation : 1.617 | Standard Error : 0.116

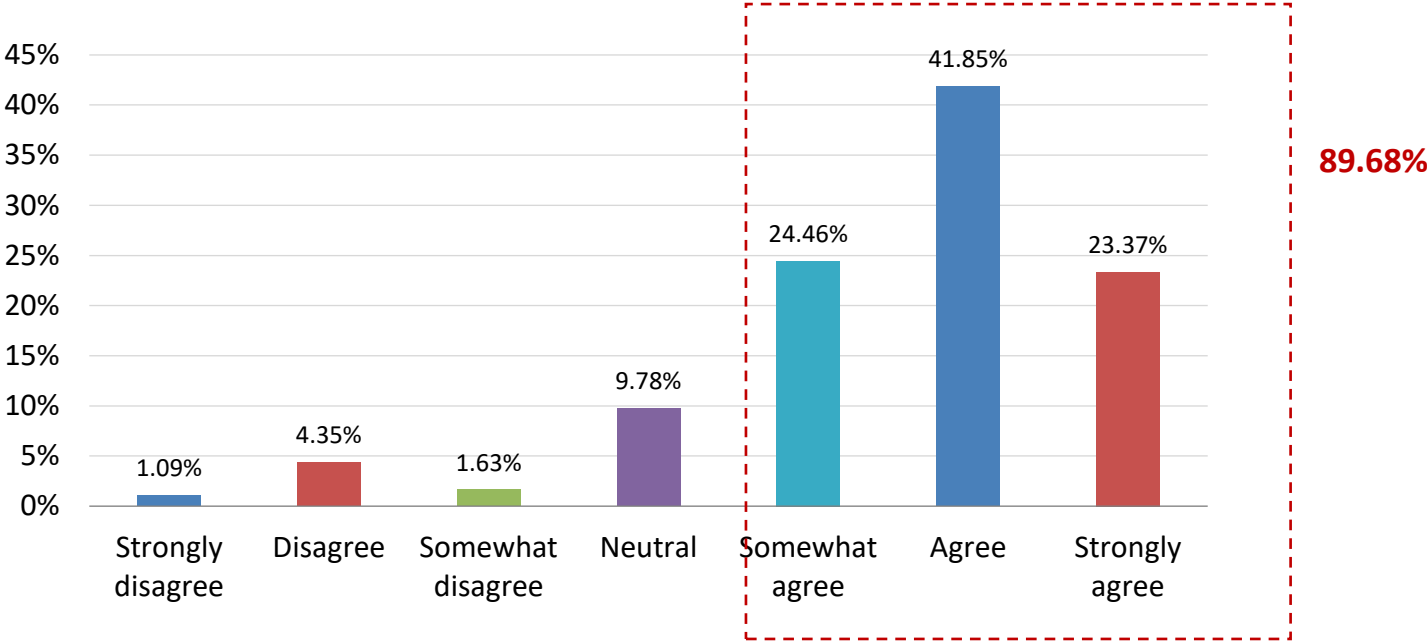
# THE “HOW” - OPPORTUNITY

The tax service firm in the scenario allowed the tax agent to take an action that is inconsistent with the Code.



**Mean : 5.418** | Confidence Interval @ 95% : [5.175 - 5.662] | Standard Deviation : 1.739 | Standard Error : 0.124

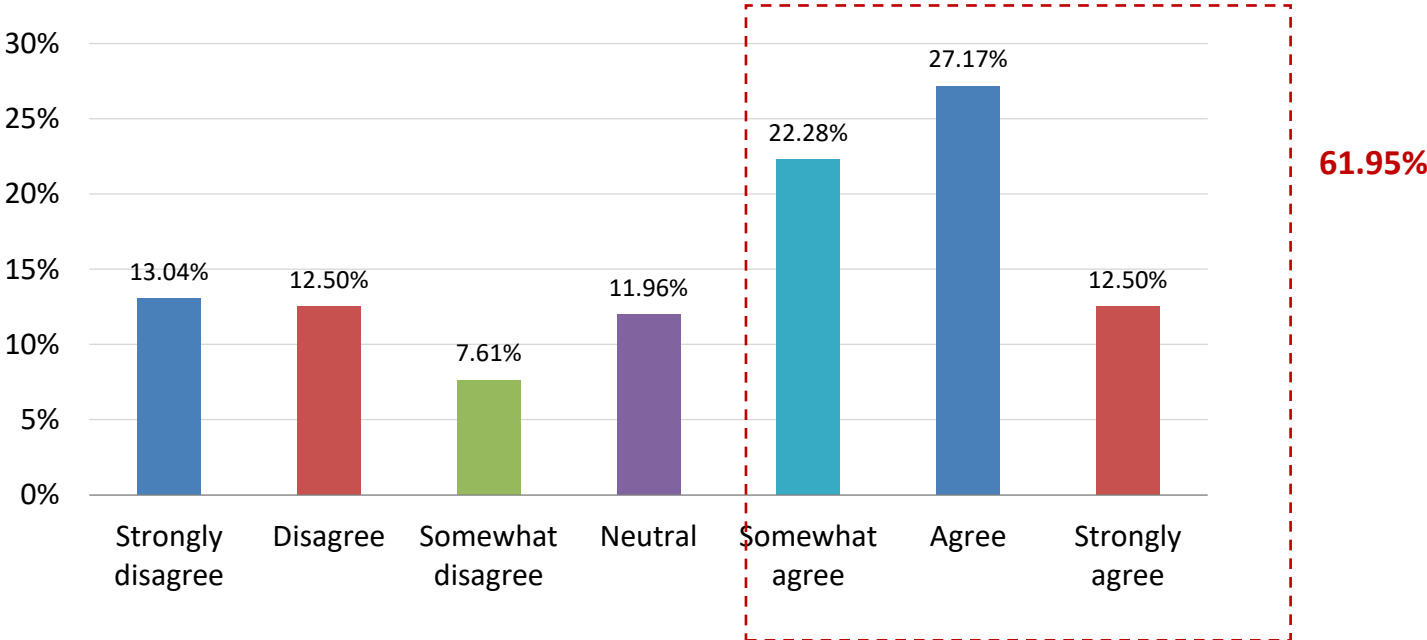
The tax service firm in the scenario had a **weak internal control system**.



**Mean : 5.546** | Confidence Interval @ 95% : [5.365 - 5.727] | Standard Deviation : 1.290 | Standard Error : 0.092

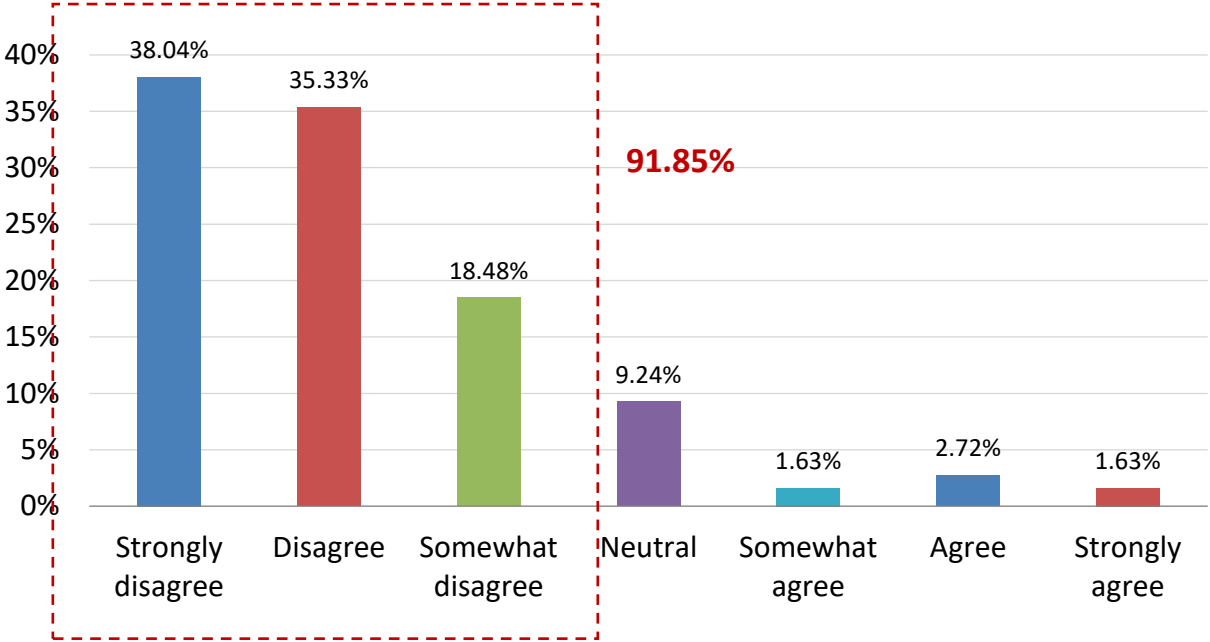
# RATIONALISATION

The tax agent was helping her/his clients by doing what s/he did.



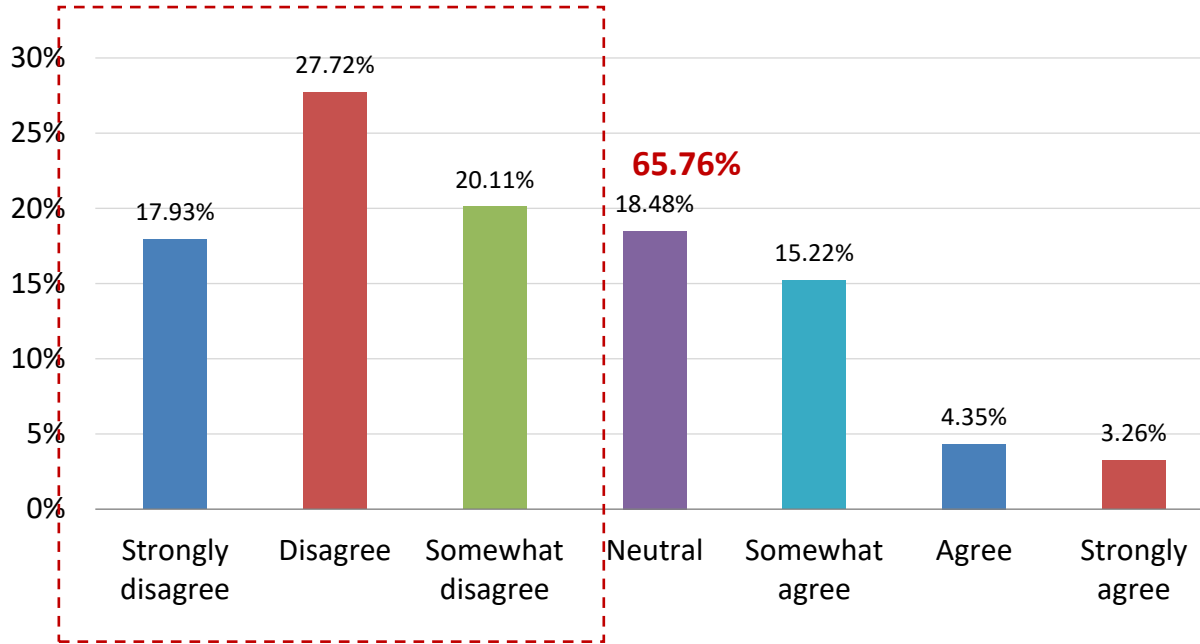
**Mean : 4.396** | Confidence Interval @ 95% : [4.125 - 4.667] | Standard Deviation : 1.942 | Standard Error : 0.138

# The tax agent was not hurting anyone.



**Mean : 2.213** | Confidence Interval @ 95% : [2.028 - 2.398] | Standard Deviation : 1.327 | Standard Error : 0.095

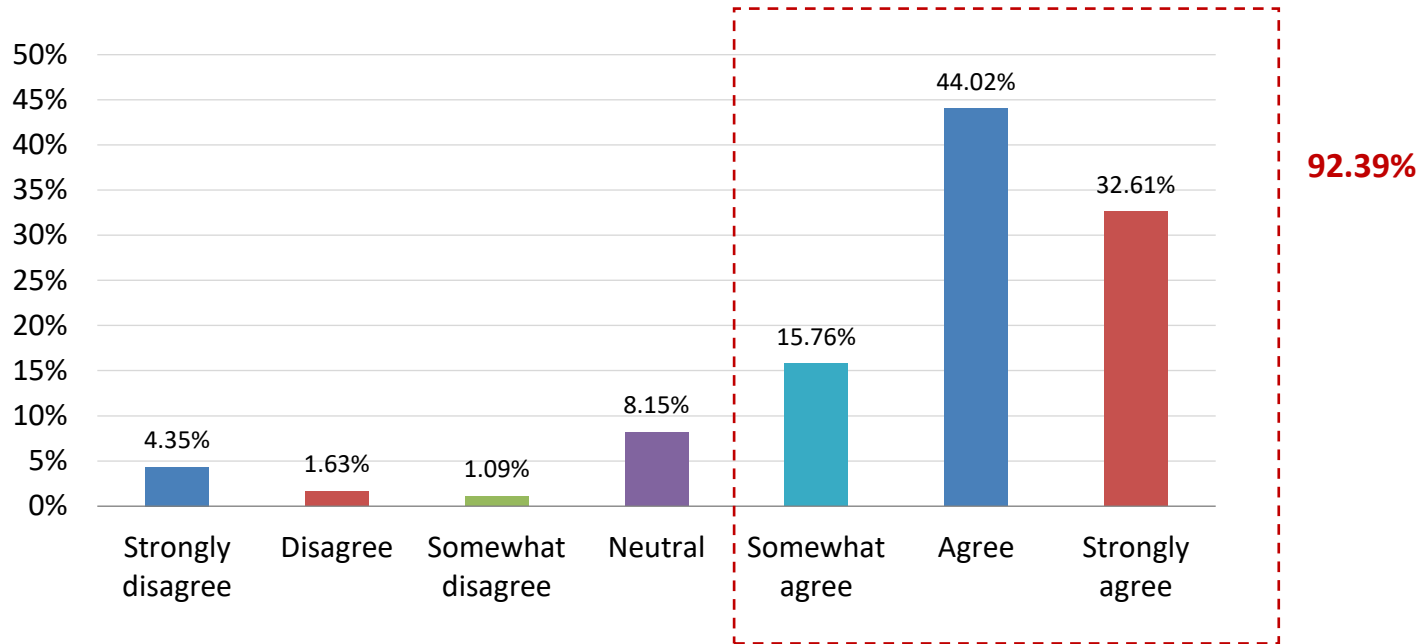
## The client/s should be blamed for what the tax agent did.



**Mean : 3.107** | Confidence Interval @ 95% : [2.885 - 3.328] | Standard Deviation : 1.589 | Standard Error : 0.113

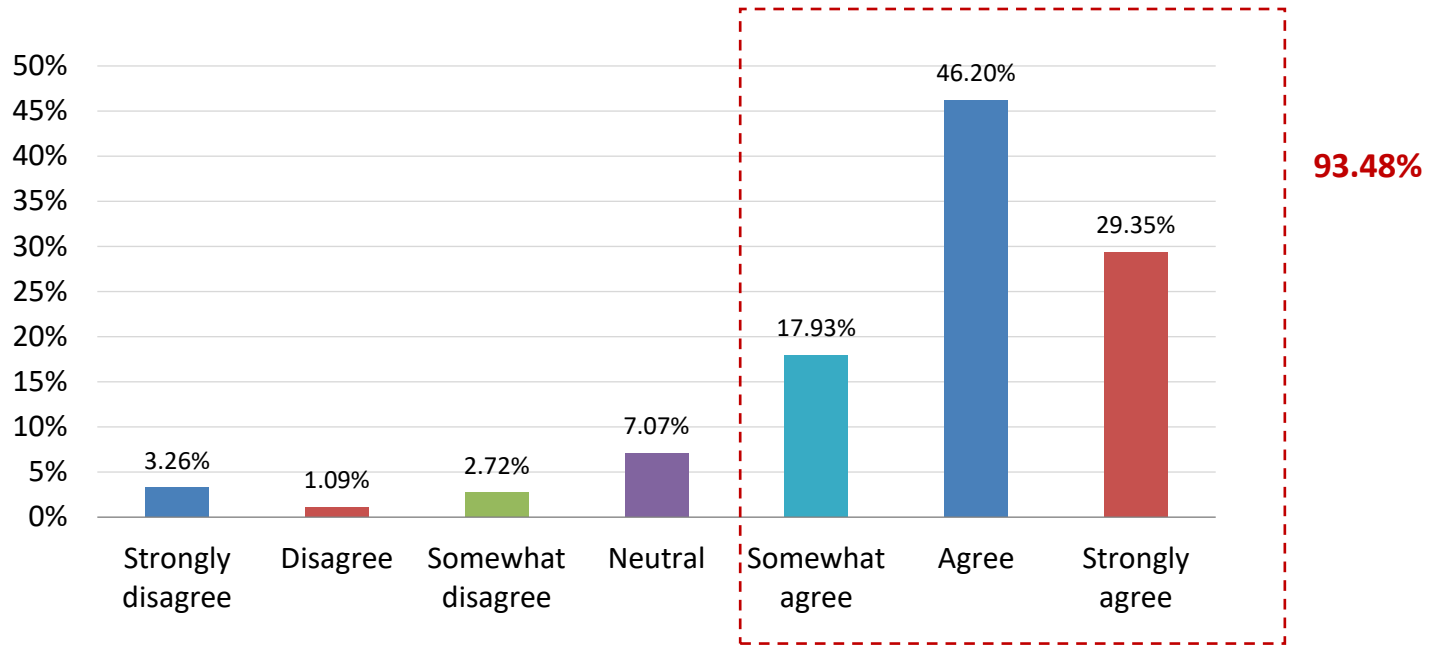
# Perception of the Code of Professional Conduct

The TPB standards, rules and policies for good professional conduct are respected in my profession.



**Mean : 5.712** | Confidence Interval @ 95% : [5.514 - 5.910] | Standard Deviation : 1.422 | Standard Error : 0.101

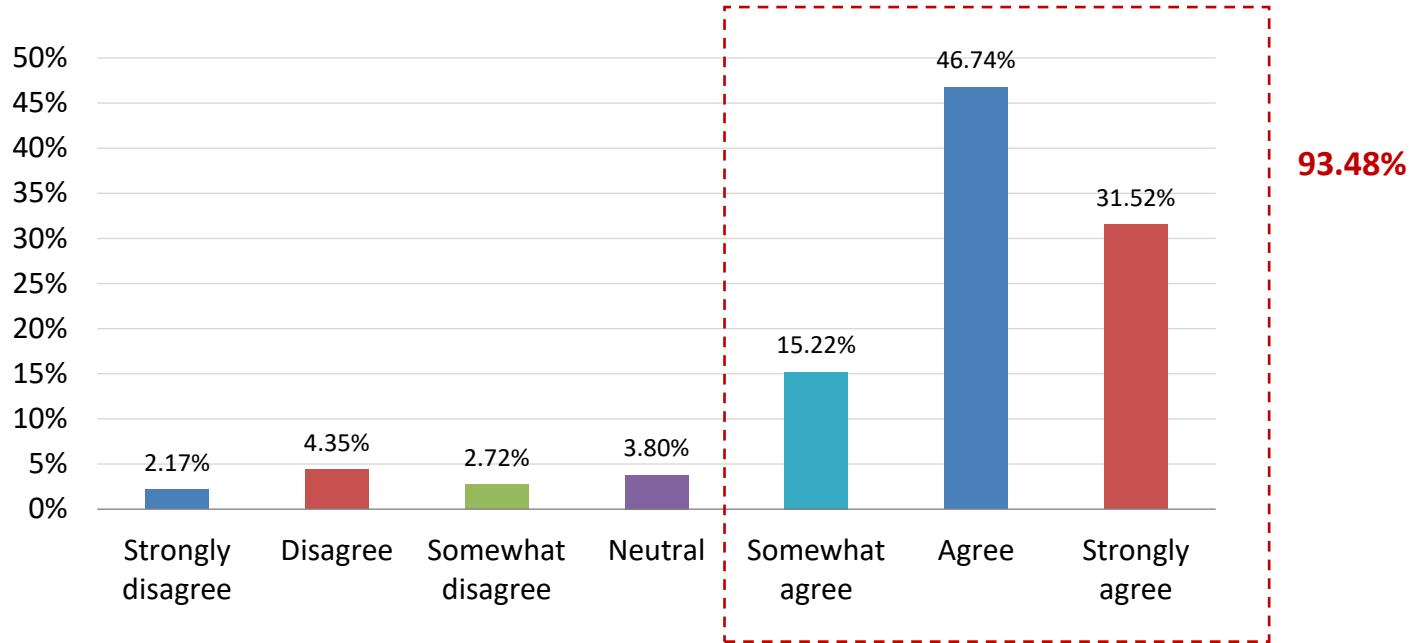
## The Code is followed in my profession.



**Mean : 5.707** | Confidence Interval @ 95% : [5.522 - 5.892] | Standard Deviation : 1.331 | Standard Error : 0.095



## There should be negative consequences for a tax agent who breached the Code.

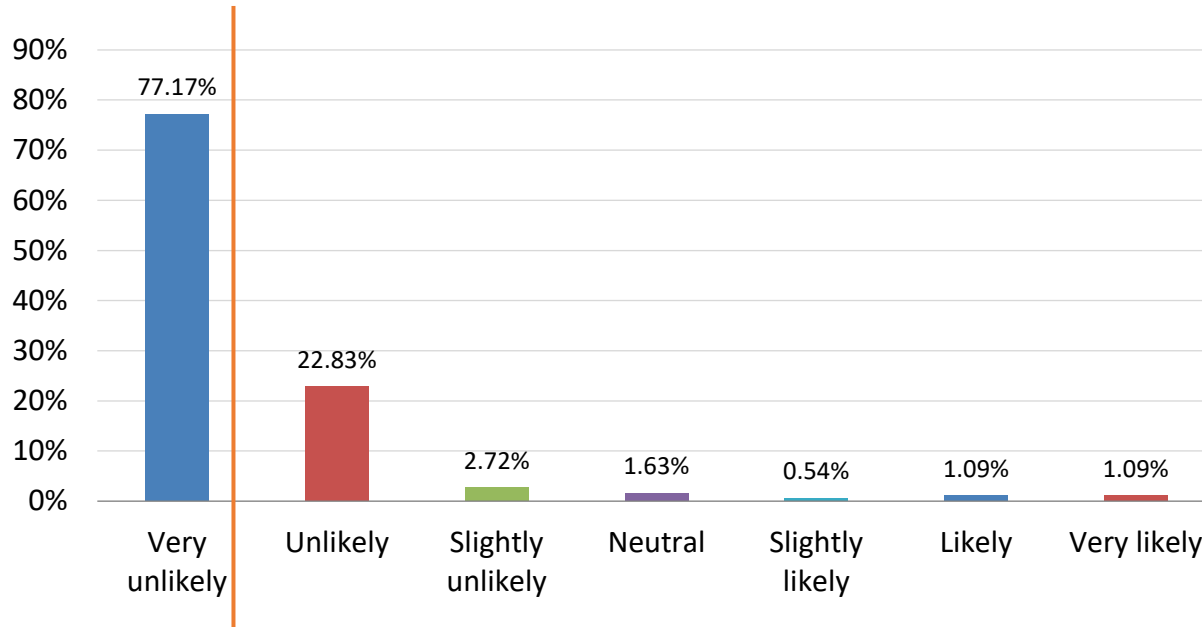


**Mean : 5.740** | Confidence Interval @ 95% : [5.546 - 5.934] | Standard Deviation : 1.384 | Standard Error : 0.099



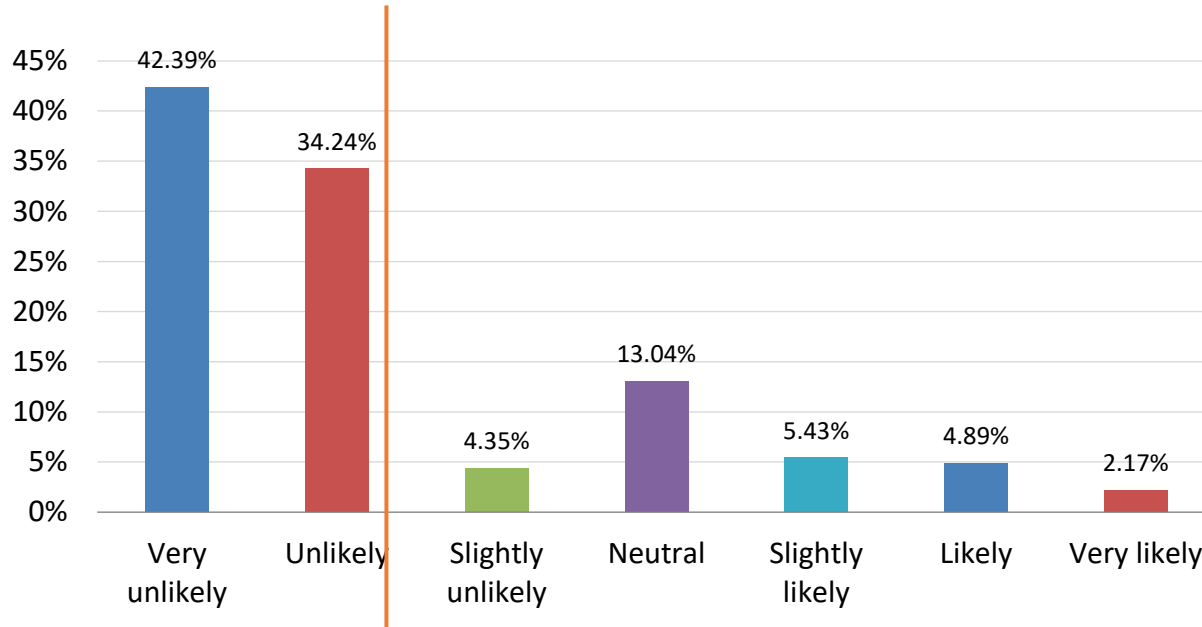
So, what would YOU  
do if you were in the  
same situation as the  
tax agent in the  
scenario?

If you were in the same situation as the tax agent in the scenario, how likely is it that **YOU** would help your non-eligible clients to receive the allowance?



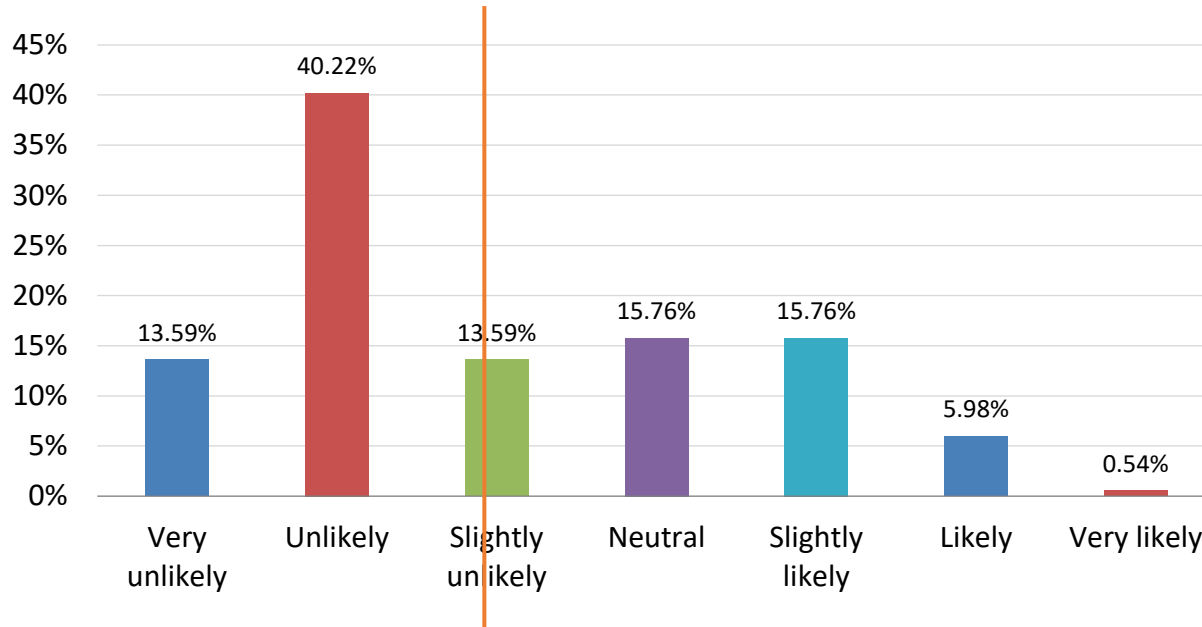
**Mean : 1.442** | Confidence Interval @ 95% : [1.305 - 1.579] | Standard Deviation : 0.981 | Standard Error : 0.070

## How likely is it that your **PEER TAX AGENTS** would help their non-eligible clients to receive the allowance?



**Mean : 2.327** | Confidence Interval @ 95% : [2.103 - 2.550] | Standard Deviation : 1.593 | Standard Error : 0.114

## How likely is it that **MOST TAX AGENTS** in Australia would help their non-eligible clients to receive the allowance?



**Mean : 3.000** | Confidence Interval @ 95% : [2.789 - 3.211] | Standard Deviation : 1.500 | Standard Error : 0.108

# Findings and Implications

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- The main motives to cooperate with clients in non-compliant behavior:
  - Financial gain (i.e., not losing clients), reputational gain, and pressure from a superior
  
- The circumstances that allow this cooperation with clients to occur:
  - A weak internal control system in a firm
  
- However, the respondents strongly oppose rationalisation statements such as "The tax agent was not hurting anyone" and "The clients should be blamed for."

# Findings and Implications



- The Code is respected and followed by most tax agents.

**Most tax agents are more compliant with the Code than you might think they are!**

# THANK YOU



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# Questions

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