



Australian Government



Personal tax obligations

Presented by: Debra Anderson, Board Member
Tax Practitioners Board

Welcome

'In the spirit of reconciliation, I respectfully acknowledge the Traditional Owners and Custodians of Country throughout Australia and their continuing connection to land, waters and community. I would like to pay my respect to them and their cultures, and Elders past and present'.

Access the presentation slides: tpb.gov.au/webinar-hub

What we will cover today

- ✓ Code of Professional Conduct
- ✓ Code item 2
- ✓ What are personal tax affairs
- ✓ Complying with your personal tax obligations
- ✓ How Code item 2 relates to fit and proper requirements
- ✓ Consequences for failing to comply with the Code
- ✓ Case studies
- ✓ Q&A

Poll 1

Are you a:

- > tax agent
- > BAS agent; or
- > other?



Meet your presenter



Debra Anderson

- > Board Member
- > Tax Practitioners Board

Code of Professional Conduct overview



Five key principles



Honesty & integrity



Independence



Confidentiality



Competence



Other
responsibilities

Code of Professional Conduct

1

Act honestly and with integrity

2

Comply with taxation laws in the conduct of your personal affairs

3

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

4

Act lawfully in your client's best interest

5

Manage conflicts of interest

6

Do not disclose information without client permission

7

Ensure tax agent services are provided competently

8

Maintain knowledge and skills relevant to the services you provide

9

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

10

Take reasonable care to ensure taxation laws are applied correctly

11

Do not obstruct the proper administration of taxation laws

12

Advise your client of their rights and obligations

13

Maintain professional indemnity insurance

14

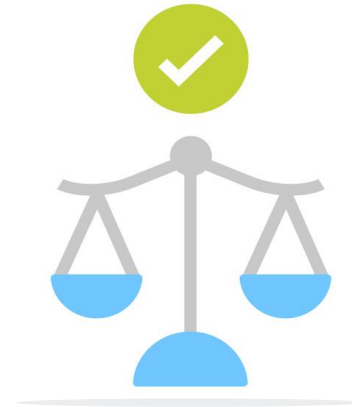
Respond to requests and directions from the Board

Code item 2



Complying with taxation laws

- One of your obligations under the Code is to comply with the tax in the conduct of your personal tax affairs.
- This includes timely lodgement of personal income tax returns and activity statements, payment of super guarantee contributions and Pay as you go withholding and instalment payments.



Poll 2



What entities are covered when we refer to ‘your personal tax affairs’?

1. The tax affairs of registered tax practitioners (individual or non-individual).
2. The tax affairs of related entities of which you are a director, partner or trustee.
3. The tax affairs of related companies of which you are a minority shareholder.
4. The tax affairs of your spouse.
5. All of above.

What are personal tax affairs?

- Your personal tax affairs include the accurate and timely lodgement of personal income tax returns, activity statement, instalment payments and employer obligations.
- It also includes the affairs of all your associated entities and any entity that you have direct or indirect control over.



The importance of complying

- Tax practitioners play a crucial intermediary role between taxpayers and the ATO.
- You are critical in facilitating a more efficient administration of the tax system.
- It's important to lead by example by ensuring that you comply with your personal tax obligations.



What you need to do to comply



- You must ensure you take care of any debt owed to the ATO, which may include having payment arrangements in place.
- We ask you to declare if you have any outstanding personal tax obligations in your registration renewal and annual declaration forms.
- While it's important to ensure your personal tax obligations (including those of related entities) are up to date, it is equally important that you disclose any outstanding obligations to us in these forms.
- In the case of company or partnership registrations, the company or partnership must ensure it meets its taxation obligations.

Poll 3



Who must satisfy the fit and proper person requirement in the TASA?

- A. Individual tax practitioners
- B. Directors of a company tax practitioner
- C. Directors of a company partner of a partnership tax practitioner
- D. Individual partners of a partnership tax practitioner.

HINT: There is more than one correct answer.

Who must be 'fit and proper'?



- All individuals must satisfy our fit and proper person requirement to be registered and remain registered as tax and BAS agents.
- In the case of a company, the fit and proper person requirement applies to each director of the company.
- For a partnership, the fit and proper person requirement applies to:
 - each individual partner
 - each director of company partners.

How Code item 2 relates to fit and proper requirements

Professional conduct of tax practitioners

- ‘Professional conduct’ means the way in which you act in your professional capacity.
- It includes attributes such as competence, good fame, integrity and character.
- Your conduct should be such that the TPB, ATO and the public can have the confidence that you perform your role competently and with integrity.
- Matters affecting fitness and propriety may also lead to a breach of the Code of Professional Conduct or civil penalty provisions in the TASA.

Fit and proper - Overview



To be satisfied that an individual is a fit and proper person, the TPB must consider if the individual:

- is of good fame, integrity and character
- any event described in s20-45 of the TASA has occurred in the previous 5 years
- the individual had the status of an undischarged bankrupt during the previous 5 years
- the individual served a term of imprisonment, in whole or in part, during the previous 5 years.

Events affecting registration



1. You are convicted of a serious taxation offence.
2. You are convicted of an offence involving fraud or dishonesty.
3. You are penalised for being a promoter of a tax exploitation scheme.
4. You are penalised for implementing a scheme that is materially different to that described in the product ruling.
5. You become an undischarged bankrupt or go into external administration.
6. You are sentenced to a term of imprisonment.

Determining fitness and propriety



- There is no formula for determining if a person is a fit and proper person for the purpose of registration as a tax practitioner.
- We are required to make a judgement in the context of the activities in which a person is, or will be engaged, considering all the circumstances of a given case.
- We must weigh the public interest in the tax practitioner continuing in practice against the public interest in protecting clients from a recurrence of the relevant conduct.

Fundamental concepts in assessing fitness & propriety

Some relevant factors that help determine fitness and propriety include:

- conduct that indicates a lack of fitness and propriety
- management of personal tax obligations
- relationship with clients, the TPB and the ATO
- previous conduct issues
- conduct that is not directly related to registration.



Conduct indicating lack of fitness and propriety



- Conduct that falls short of professional standard expected of tax practitioners such that the public, the TPB and ATO can no longer have confidence in the tax practitioner.
- Examples of significant offences or misconduct relating to Code item 2:
 - tax evasion
 - fraud or dishonesty, especially those involving payment of taxes
 - failure to take steps to protect the integrity of the tax system.

Poll 4



- Veronica is a BAS agent. She lodges her personal income tax returns for herself and her business by the due dates.
- She also lodges her BAS on time.
- Veronica receives a notification from the ATO advising she has an outstanding tax bill to pay.
- She contacts the ATO and comes to an arrangement with them to pay the amount owing.
- Has Veronica met her obligations as a registered BAS agent?

Consequences for failing to comply with the Code

Penalties and sanctions



- If we find that a tax practitioner has failed to comply with the Code, we may impose one or more administrative sanctions:
 - a written caution
 - an order
 - suspension of registration for a certain period
 - termination of registration.
- The severity of a sanction depends on the circumstances of each case.

Sanction considerations



- The number of outstanding lodgements.
- How late the lodgements are.
- The amount of the tax debt.
- The period of time over which the tax debt arose.
- The circumstances in which the outstanding personal tax obligations arose.
- What steps have been taken to resolve the outstanding personal tax obligations.
- The tax practitioner's compliance with any payment arrangements.
- If the tax practitioner has a history of non-compliance, and
- Any other mitigating circumstances raised by the tax practitioner.

Case studies

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.

Case study 1

- A tax agent and their company failed to:
 - declare outstanding tax debts
 - lodge super guarantee (SG) statements
 - pay employee SG contributions by the due dates.
- In relation to another company they were the sole director of, they failed to:
 - lodge an SG statement and pay SG contributions by the due date
 - pay the companies tax debt or arrange a payment plan
 - report and withhold a PAYG withholding.
- The tax agent and the company received a written caution and the agent was ordered to complete a course in the TASA.

Case study 2



- A tax agent engaged in multiple serious breaches of the Code and ceased to meet the ongoing registration requirement to maintain professional indemnity (PI) insurance.
- The BCC found the tax agent:
 - failed to pay or enter into a payment arrangement to pay personal tax debts over \$250,000
 - did not maintain PI insurance that meets the Board's requirements
 - Did not to respond to requests from the Board during its enquiries and investigation.
- The BCC terminated the tax agent's registration and prohibited them from applying for registration for 12 months.

Case study 3



- A tax agent breached Code items 1 and 2 when they:
 - claimed unsubstantiated deductions over \$100,000 which resulted in a tax shortfall of \$60,000 and a penalty for recklessness.
 - failing to lodge 13 BAS and pay an income tax debt.
- They also breached Code items 7 and 10 by lodging income tax returns on behalf of clients in which deduction were overclaimed or incorrect.
- In addition, they breached Code item 14 by failing to respond to requests from the Board during its enquiries and investigation.
- The BCC found the agent had ceased to be a fit and proper person and terminated their registration.

Case study 4

- A BAS agent breached multiple Code items 2 and ceased to be a fit and proper person to be registered due to:
 - their extensive non-compliance with their taxation obligations
 - providing bookkeeping services to several entities prior to their registration as a BAS agent
 - incorrectly reporting in their BAS and fabricating invoices and supporting documents through their related entities to obtain GST refunds.
- The agent showed a lack of integrity and an ongoing pattern of behaviour that was inconsistent with the standards expected of a tax practitioner.
- The BCC terminated their registration and imposed a 4-year ban from reapplying.

Case study 5



- A tax agent was found to have engaged in serious misconduct by breaching multiple items of the Code. Investigations found they:
 - provided false and misleading information to the Commissioner of Taxation when they failed to declare significant amounts of assessable income
 - did not lodge multiple BAS by their due dates and failed to pay or enter into a payment arrangement for outstanding tax debts of more than \$10 million
 - the agent ceased to be a fit and proper person.
- The BCC noted the agent's conduct had undermined the integrity of the tax system, and the professional standards expected of tax practitioners so terminated their registration and imposed a 5-year ban from re-applying.

Poll 5



- A tax agent breached:
 - Code item 1 by making fraudulent claims to the ATO and supplying misleading documents in an audit.
 - Code items 1 and 9 by preparing and lodging clients' BAS to gain the Cash Flow Boost when they were not eligible.
 - Code item 2 when they failed to lodge 2 income returns and 3 BAS and did not arrange to pay their tax debts.
- In addition, they did not inform us of a professional association disciplinary hearing which found they failed to act in the best interests of their client.



Questions

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