



Australian Government



TAX
PRACTITIONERS
BOARD

Ethics

Presented by Debra Anderson, Board Member,
Tax Practitioners Board

Welcome

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

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

What we will cover today

- ✓ What 'Ethics' means in a professional context
- ✓ Why professions or organisations set ethical standards or codes
- ✓ Fundamental principles of ethics
- ✓ TPB's Code of Professional Conduct
- ✓ Questions

What is ethics?

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Poll 1

What is ethics?

1. Behavioural standards.
2. Concepts of right and wrong.
3. Moral principles.
4. A combination of the above.



What is ethics?



- Macquarie Dictionary definition:

A system of moral principles, by which human actions and proposals may be judged good or bad or right or wrong.

- There's a difference between morals and ethics.
- Ethics in a professional context can be defined as standards or principles set by agencies or professional organisations to define the conduct of people associated with the organisation or the profession.


**Why does a profession
need standards?**

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

Why does a profession need standards?

- Every profession requires a set of rules that govern the appropriate conduct for the profession.
- Professionals are in a privileged position of trust in the eyes of the community.
- We must act in the right way to protect this trust, applying a sense of fairness and professional judgement in our actions and decisions.
- The ethical standards define behaviours that serve the interest of and help to build the trust of the community.

Fundamental principles defining ethics



Fundamental principles defining ethics

- The ethical standards are generally shaped through code of professional conduct or code of ethics set by agencies or professional organisations for their members.
- Code of conduct encompasses ethical ideals and provide the framework to ensure decisions made are rational and can stand the test of scrutiny.
- Code of conduct provides assurance to the public, clients and third-party stakeholders that the profession or organisation is reliable and all its members are bound by certain fundamental principles.

TPB's defined standards for tax practitioners

TPB's defined standards for tax practitioners

- The TPB has an important role to play in protecting consumers of tax practitioner services.
- The TPB has to ensure the community has trust and confidence in the tax profession and the integrity of the tax system.
- The Code of Professional Conduct (Code) in the *Tax Agent Services Act 2009* (TASA) was created to assist the TPB in achieving this objective.
- The Code establishes the ethical and professional standards for tax practitioner behaviour.

Code principles



Five key principles



Honesty & integrity



Independence



Confidentiality



Competence



Other
responsibilities

Principle 1 – Honesty and integrity



Code item 1

You must act honestly and with integrity.

Code item 1



- Honesty and integrity helps build the trust of clients and the community.
- To determine if a tax practitioner has acted with honesty and integrity, we consider a range of matters, including if the tax practitioner has:
 - acted without deceit and demonstrated honesty
 - acted without intent to gain an improper benefit for themselves or others
 - genuinely attempted to carry out their lawful duties and obligations
 - notified regulatory authorities of any fraudulent activity that posed a risk to taxpayers or in the integrity of the tax system.

Code item 2

You must comply with the taxation laws in the conduct of your personal affairs.

Poll 2



What entities are covered when the TPB refers to ‘your personal tax affairs’?

1. The tax affairs of the registered tax practitioner (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 only a minority shareholder.
4. The tax affairs of your spouse.
5. All of above.

Code item 2



- You must ensure your personal tax obligations (which includes your related entities) are in order.
- This includes timely lodgment and payment of:
 - income tax returns
 - activity statements
 - superannuation guarantee contributions
 - PAYG withholding and instalment payments
 - debt due to the ATO (or payment arrangements in place).

Code item 3

If you:

- receive money or other property from or on behalf of a client, and
- hold the money or other property on trust

you must account to your client for the money or other property.

Code item 3



To comply with Code item 3, you must:

- keep money or property held on trust for a client separate from your personal money or other property
- apply the money or property for the purpose it was intended or authorised
- maintain records for any money or property held on trust
- comply with all laws and regulations relating to the custody and accounting for assets.

Poll 3



- Megan, a registered BAS agent, prepares a BAS for her client John's business.
- She advises John that a net amount of \$4,300 would be payable to the ATO in 2 weeks' time.
- John transfers this amount to Megan's business account to pay to the ATO when she lodges.
- Megan keeps John's money in her business bank account and she lodges the BAS and pays this amount to the ATO within a week.
- In this case scenario, has Megan complied with her obligations under Code item 3?

Principle 2 – Independence



Code item 4

You must act lawfully in the best interest of your client.

Poll 4



- Robert is a tradesman employed full-time by an engineering company.
- He travels to work in his own car and carries bulky tools required for work.
- Robert instructs his tax agent, Melissa, to claim deductions in his tax return for car expenses incurred for travelling to and from work.
- She asks questions of Robert as his deductions are higher than expected.
- He advises Melissa his employer provides secure facilities for equipment, but he chooses to transport the equipment.
- Should Melissa act in her client's best interest to reduce his taxable income and claim the deduction as instructed?

Code item 4



- You must advance and protect the lawful interests of your clients.
- Acting in the best interests of clients is not a justification for you to contravene or disregard the relevant laws.

Code item 5

You must have in place adequate arrangements for the management of conflicts of interest.

Code item 5

- A conflict of interest arises where you have a personal interest or duty to another person, which conflicts with the duty owed to your client.
- There are a number of mechanisms to manage conflicts of interest:



Disclose



Control



Avoid

Case scenario



- Christine is a registered tax agent who works for a large accounting firm.
- The firm has a tax audit insurance policy with AXY that covers clients who sign up for professional fees.
- Employees of the firm receive a commission if clients are added to the policy.
- A new client Terry, is assigned to Christine for managing his tax affairs.
- Christine discusses Terry's state of affairs and recommends that he signs up to the policy.
- Christine advises Terry she will receive a commission if he takes out the tax audit insurance. Terry agrees to be added to the policy.

Poll 5



Has Christine acted ethically and met her Code obligations by having Terry sign up to be covered by the audit insurance policy?

1. Yes, Christine has discussed Terry's state of affairs and she must have recognised the need for Terry to be covered by the audit insurance policy. She has also advised that she will receive a commission.
2. No, Christine has not disclosed the amount of commission she will receive if Terry signs up to take out the tax audit insurance.
3. Yes, as Terry did not ask Christine about the amount of commission she will receive from the policy.

Principle 3 – Confidentiality



Code item 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.

Code item 6



- A ‘third party’ is anyone other than you and your client.
- You must:
 - obtain your client’s written permission **before** disclosing their information to a third party
 - clearly inform the client about the information you are disclosing
 - advise your client to whom and where the disclosure will be made.

Poll 6



- Money & Tax is a registered tax agent partnership and provides tax agent and BAS services to a large client base.
- In its engagement letter to its clients, Money & Tax includes a general statement that they may be outsourcing some of their BAS services to an external provider.
- Money & Tax considers the signed engagement letter of clients as permission from clients to outsource some BAS services to the external provider.
- Did Money & Tax meet its obligations by making a general disclosure about their outsourcing arrangements through a signed letter of engagement?

Principle 4 – Competence



Code item 7

You must ensure that a tax agent service that you provide, or that is provided on your behalf, is provided competently.

Code item 7



- You are accountable for tax practitioner services provided on your behalf, and you need to ensure they are provided competently.
- You need to ensure you maintain adequate knowledge and skills.
- Do not accept to provide services where you have insufficient knowledge.
- Set out and agree on the scope and cost of your services.
- Obtain expert advice and assistance, where appropriate.
- Have adequate supervision and control arrangements in place.

Code item 8

You must maintain knowledge and skills relevant to the tax agent services that you provide.

Code item 8

- You must complete continuing professional education (CPE) that meets our requirements.
- When renewing your registration, you must have completed CPE that meets our requirements.

CPE hours

- Tax agents should complete a min. of 120 hours of CPE over a 3-year period, with a min. of 20 hours each year.
- BAS agents should complete a min. of 90 hours of CPE over a 3-year period, with a min. of 20 hours each year.

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.

Case scenario



- Mike engages Tina, to prepare and lodge his income tax return.
- Mike is a new client. He is a sole trader under the GST registration threshold and has no employees.
- Mike indicates his turnover was \$40,000 and his expenses were \$28,000.
- Mike has been running his tiling business for 4 years and is kept busy.
- After consulting the ATO Small Business Benchmarks, Tina notices Mike's turnover appears to be low and his expenses are high for the industry.
- Tina finds that Mike has not kept proper records, he uses his personal bank account to receive business income and pay for business expenses.

Poll 7



How should Tina act to be ethically right and comply with her Code obligations?

1. Tina should lodge the return with the information that has been provided by Mike.
2. Tina should ask further questions about his business and work with Mike to best estimate his cash income for the year using the ATO Small Business Benchmarks as a guide. She should review his bank statements to verify and revise the business expenses amount, excluding any personal expenses that may have been incorrectly included. Tina should also get Mike to obtain copies of invoices for business expenses as best as he can.
3. Tina should refuse to act for Mike.

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.

Case scenario



- Ben runs a boutique wine bar and prepares his own accounts.
- Ben engages Sarah, a registered BAS agent to provide advice and to prepare and lodge his BAS.
- Ben buys some wine to celebrate the purchase of his new home, but he claims the cost of the wine as a business expense in his accounts.
- Ben says to Sarah he wishes to claim a GST credit for the cost of the wine, even though it was purchased for private use.

Poll 8



In the case scenario just discussed, what should Sarah do to meet her obligations?

1. Sarah should decline to act for Ben.
2. Sarah should act as instructed by Ben as it's in the best interest of the client to claim GST.
3. Sarah should advise Ben that the GST credit for wine cannot be claimed in these circumstances and that she would prepare and lodge the BAS accordingly.

Principle 5 – Other responsibilities



Code item 11

You must not knowingly obstruct the proper administration of the taxation laws.

Code item 11

- The ‘proper administration’ of taxation laws refers to the statutory duties and functions performed by the administrators of taxation laws – for example, the ATO and the TPB.
- You will breach the Code if you knowingly obstruct the ATO or the TPB in performing their statutory duties and functions as required by the taxation laws.

Code item 12

You must advise your client of their rights and obligations under the taxation laws that are materially related to the tax agent services you provide.

Code item 13

You must maintain the professional indemnity insurance that the Board requires you to maintain.

Code item 13



- You must maintain professional indemnity insurance that meets our requirements.
- Professional indemnity insurance protects your clients in the event you cause them to suffer a loss due to an act, error or omission.

Code item 14

You must respond to requests and directions from the Board in a timely, responsible and reasonable manner.

Conclusion



Key considerations



- ✓ Aim to be a role model as a tax practitioner.
- ✓ Be aware of your obligations and values, and embody them in your everyday work.
- ✓ Put your clients before your own interests, within the boundaries of the law.
- ✓ Keep up to date – technically and technologically.
- ✓ Take due care in understanding your clients and the relevant facts.
- ✓ Make rational, considered and well-thought-out decisions.



Questions

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