



Australian Government



TAX  
PRACTITIONERS  
BOARD

# Legislative changes and new Code items for disqualified entities

**Presented by**

Peter de Cure AM, Chair

Janette Luu, Assistant Secretary

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](https://tpb.gov.au/webinar-hub)

## What we will cover today

- ✓ Recent changes to the *Tax Agent Services Act 2009*
- ✓ Explanation of draft guidance to explain 2 new Code items (disqualified entities)
- ✓ Q&A

**Changes to the *Tax Agent  
Services Act 2009***



# Important changes to the TASA



1. Update the objects clause in the TASA to recognise the role of the TPB supporting public trust and confidence in the integrity of the tax profession and tax system.
2. Enhance the TPB's financial independence from the ATO.
3. Ensure TPB Board members are 'community representatives'.
4. Giving the Minister the power to expand the Code.
5. New Code items that prevent tax practitioners from employing or using a disqualified entity without TPB approval or entering into certain arrangements.
6. Change the registration period from 3 years to 1 year.
7. Breach reporting obligations.

# Disqualified entities – Code item 15

# Introduction

- The TPB has released the following draft guidance:
  - TPB(I) D51/2023: Code of Professional Conduct – Employing or using a disqualified entity in the provision of tax agent services without approval.
  - TPB(1) D52/2023: Code of Professional Conduct – Prohibition on providing tax agent services in connection with an arrangement with a disqualified entity.
- The consultation period closes on 16 February 2024.

## Code item 15

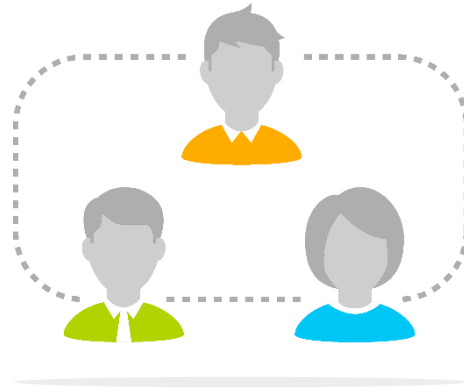


- Code item 15 applies from **1 January 2024 (with transitional arrangements)**.
- Tax practitioners must not employ, or use the services of, a disqualified entity to provide tax agent or BAS services on their behalf if they:
  - know, or ought reasonably to know, that the entity is a disqualified entity, and
  - the TPB has not given approval to employ or use the services of the disqualified entity to provide tax agent or BAS services on their behalf.



## Employing or using the services of an 'entity'

- An 'entity' includes employees, associates, contractors and individuals who share in revenue or income received from the tax services provided.
- Does not include those providing peripheral services (e.g. administrative support).



## ‘On your behalf’

- Means individuals who are employees or under the supervision and control of the registered tax practitioner.
- Similar to the operation of Code item 7 – you must ensure a tax agent service you provide, or that is provided on your behalf, is provided competently.



## ‘Disqualified entity’

- An entity that is **not** a registered tax agent, BAS agent, or a ‘qualified tax relevant provider’.
- They can be an employee, associate, contractor, individual or entity.
- An entity that has had a specified event occur within the last 5 years.



## Disqualified entity events



- Convicted of (a) a serious offence or serious taxation offence, or (b) offence involving fraud or dishonesty.
- Penalised for (a) being a promoter of a tax exploitation scheme or (b) implementing a scheme that is materially different from that described in a product ruling.
- Become an undischarged bankrupt or under external administration.
- Have had:
  - a TPB sanction imposed for a breach of the Code
  - TPB registration terminated
  - an application for registration or renewal rejected by the TPB
  - otherwise found to have breached the TASA.

# **‘Know or ought reasonably to know’ you are engaging a disqualified entity**

- You must take reasonable steps and make reasonable enquiries to determine if an entity is a disqualified entity, including checking the:
  - TPB Register
  - Financial Advisers Register.
- Once you have confirmed this, what a tax practitioner must do next will depend on the point in time:
  - Before employing or using an entity.
  - During employment or use of an entity.
  - Ceasing use or employment of the entity.

# 'Know or ought reasonably to know' you are engaging a disqualified entity

Point in time	Minimum steps
Before employing or using an entity	<ul style="list-style-type: none"><li>• Make appropriate proof of identity enquiries.</li><li>• Seek written confirmation.</li></ul>
During employment or use of an entity	<ul style="list-style-type: none"><li>• Have a written contract in place to ensure notification and to allow tax practitioner to cease engagement immediate (subject to contract and employment law).</li></ul>
Ceasing to use or employ	<ul style="list-style-type: none"><li>• Keep records of discussions about an entity's disqualified entity status.</li><li>• Retain records for 5 years after cessation.</li></ul>

## How to comply with Code item 15



- Determined on a case-by-case basis.
- How you comply with depend on the situation.

### Situation 1 – Want to employ or use an entity and their disqualified entity status is unknown

- Undertake appropriate proof of identity checks.
- Seek written confirmation.
- Conduct a search of the TPB's Public Register and Financial Adviser Register.

# How to comply with Code item 15



## Situation 2 – Currently employ or use an entity that is not a disqualified entity

Have a written contract in place to ensure notification and to allow the tax practitioner to cease engagement immediately (subject to contract and employment law obligations).

## Situation 3 – want to employ or use a disqualified entity

Seek TPB approval before engaging them.



# How to comply with Code item 15



**Situation 4 – Want to continue to employ or use an entity that has notified they are a disqualified entity**

- Seek TPB approval.
- Immediately cease using the entity until approved.

**Situation 5 – Cease employing or using someone who has notified you they are a disqualified entity**

Immediately cease using the entity (subject to contract and employment law obligations).

# Seeking approval to use a disqualified entity



- Log into your My Profile account and complete the relevant form.
- Include the following information:
  - the reasons why the entity is a disqualified entity and the circumstances relating to those reasons
  - the role (or the proposed role) that the entity is performing (or would perform) in providing the tax agent services on your behalf
  - the extent to which the reasons why the entity is a disqualified entity are relevant (or not relevant) to the entity's ability to perform the proposed role to an appropriate standard of professional and ethical conduct
  - any additional information that you consider to be relevant for our consideration of the request.

# Disqualified entities – Code item 16

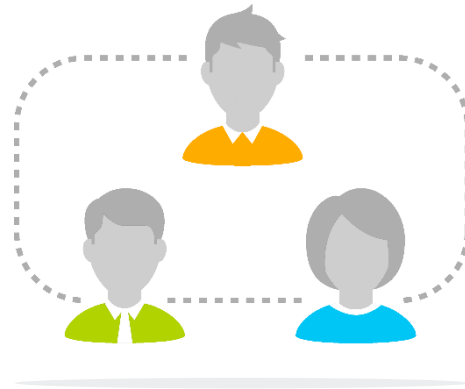
## Code item 16



- Code item 16 applies from **1 January 2024** although transitional provisions may apply to some existing arrangements until **31 December 2024**.
- It states that a registered tax practitioner must not provide tax or BAS agent services in connection with an ‘arrangement’ with an entity that the tax practitioner knows, or ought reasonably to know, is a ‘disqualified entity’.
- Arrangements under Code item 16 are **prohibited** and cannot be approved by the TPB.

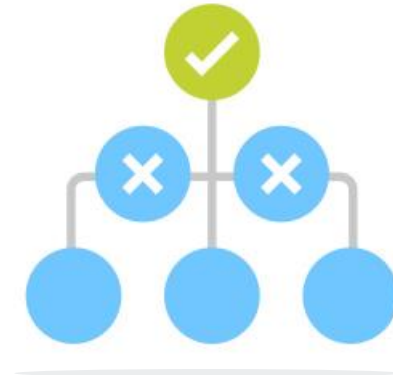
# What is an 'arrangement'

- 'Any arrangement, agreement, understanding, promise or undertaking, whether express or implied, and whether or not enforceable (or intended to be enforceable) by legal proceedings'.
- This may include arrangements where there is no amount payable by the disqualified entity, or arrangements that are not in writing (i.e. an oral agreement between the disqualified entity and a registered tax practitioner).



# Services provided 'in connection with' an arrangement

- A disqualified entity is operating 'through' the registered tax practitioner.
- For example, the disqualified entity is acting as the 'controlling mind' of the registered tax practitioner and provides tax or BAS agent services (while unregistered) using the registered tax practitioner's credentials.
- Excludes arrangements that are administrative in nature or unrelated to the provision of tax or BAS agent services provided.
- Use your professional judgment when considering your arrangements with other entities.



## How to comply with Code item 16



- Determined on a case-by-case basis.
- How you comply with depend on the situation.

### Situation 1 – tax practitioner wants to enter into an arrangement with an entity and their disqualified entity status is unknown

- Under appropriate proof of identity checks.
- Seek written confirmation.
- Conduct a search of the TPB's Public Register and Financial Adviser Register.

## How to comply with Code item 16



**Situation 2 – tax practitioner is in an arrangement with an entity and the entity is not a disqualified entity**

Have a written contract in place for the entity to notify the tax practitioner if they are a disqualified entity and to allow the tax practitioner to immediately cease the arrangement.

**Situation 3 – tax practitioner wishes to enter into an arrangement with a disqualified entity**

This conduct is prohibited and TPB approval cannot be sought.



## How to comply with Code item 16



Situation 4 – tax practitioner is in a current arrangement with an entity and is notified or becomes aware that the entity is a disqualified entity

- Must cease arrangement immediately.
- Conduct is prohibited and TPB approval cannot be sought.

# Notification obligations on disqualified entities

# Notification requirements for disqualified entities

- Notify the registered tax practitioner in writing that you are a disqualified entity **before** they enter into a contract, renew or agree to extend an existing contract, or employ or use your services to provide tax or BAS agent services on their behalf.
- If you are employed or used to provide tax practitioner services on behalf of a registered tax practitioner and you **become** a disqualified entity, you must provide written notice to the registered tax practitioner **within 30 days** that you became aware of being a disqualified entity.



# Transitional arrangements



# Transitional arrangements

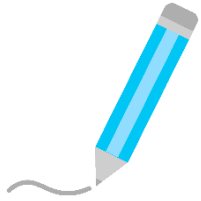


- Both Code items do not apply to tax practitioners between 1 January 2024 and 31 December 2024 **unless** during that period, the registered tax practitioner enters into, renews or extends a contract to use or employ a disqualified entity.
- If transitional arrangements apply to a disqualified entity, the entity must provide written notice to the registered tax practitioner that they are a disqualified entity by no later than 30 January 2025.
- From **1 January 2024** you can't enter, renew or extend a contract to employ or use a disqualified entity to provide services on your behalf, without TPB approval.

# Consequences for failing to comply



# Consequences for failing to comply



Written  
caution



Order



Suspension



Termination



**Questions**



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1300 362 829

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