

# Exposure Draft TPB Information sheet TPB(I) D51/2023

## Code of Professional Conduct – Employing or using a disqualified entity in the provision of tax agent services without approval

### Tax Practitioners Board exposure draft

The Tax Practitioners Board (TPB) has released this draft Information Sheet (TPB(I) D51/2023) as an exposure draft and invites comments and submissions in relation to the information contained in it within 60 days. The closing date for submissions is **16 February 2024**. The TPB will then consider any submissions before settling its position, undertaking any further consultation required and finalising the TPB(I).

Written submissions should be made via email at [tpbsubmissions@tpb.gov.au](mailto:tpbsubmissions@tpb.gov.au) or by mail to:

Tax Practitioners Board  
GPO Box 1620  
SYDNEY NSW 2001

### Disclaimer

This document is in draft form, and when finalised, will be intended as information only. It provides information regarding the TPB's position on the application of subsection 30-10(15) of the *Tax Agent Services Act 2009* (TASA) which commences on 1 January 2024.

Subsection 30-10(15) of the TASA was introduced by Schedule 3 to the Treasury Laws Amendment (2023 Measures No. 1) Bill 2023 (the Bill).

Subsection 30-10(15) of the TASA contains a new obligation for registered tax agents and BAS agents (collectively referred to as 'registered tax practitioners') under the Code of Professional Conduct (Code).

While this draft Information Sheet seeks to provide practical assistance and explanation, it does not exhaust, prescribe or limit the scope of the TPB's powers in the TASA.

The principles, explanations and examples in this draft Information Sheet do not constitute legal advice and create no additional rights or legal obligations beyond those contained in the TASA or which may exist at law.

Please refer to the Bill and the TASA for the precise content of the legislative requirements.

**Document history**

This draft Information Sheet was issued on 18 December 2023 and is based on the TASA, as at the date of issue.

Issued: 18 December 2023

# Code of Professional Conduct – employing or using a disqualified entity in the provision of tax agent services without approval

## Introduction

1. The Code of Professional Conduct (Code) applies to all registered tax practitioners<sup>1</sup>. The Code is found in section 30-10 of the *Tax Agent Services Act 2009* (TASA).
2. This Information Sheet explains the obligations of registered tax practitioners under **Code Item 15** (subsection 30-10(15) of the TASA) in respect of their employment, contracting with, or otherwise use of a 'disqualified entity' to provide tax agent services on their behalf.<sup>2</sup>
3. Code Item 15 was introduced into the TASA by the Treasury Laws Amendment (2023 Measures No. 1) Bill 2023 (the Bill). Code Item 15 applies from 1 January 2024, although transitional provisions may apply to some existing arrangements until 31 December 2024 (inclusive).
4. In this Information Sheet, you will find the following information:
  - what is Code Item 15 (paragraphs 5 to 14)
  - how to comply with Code Item 15 (paragraphs 22 to 31)
  - notification requirements for disqualified entities (paragraphs 32 to 35)
  - transitional provisions for registered tax practitioners (paragraphs 36 to 39)
  - consequences for failing to comply with Code Item 15 (paragraphs 40 to 43)

## What is Code Item 15?

5. Registered tax practitioners often use the services of employees and other entities to assist them in providing tax agent services and BAS services to their clients. However, Code Item 15 states that as a registered tax practitioner, you must not employ, or use the services of, an entity to provide 'tax agent services' on your behalf if:
  - you know, or ought reasonably to know, that the entity is a 'disqualified entity', and
  - the TPB has not given you approval to employ, or use the services of, the 'disqualified entity' to provide tax agent services on your behalf.<sup>3</sup>

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<sup>1</sup> In this Information Sheet, 'registered tax practitioners' refers to tax agents and BAS agents and collectively.

<sup>2</sup> TPB Draft Information Sheet [TPB\(I\) D52/2023 Code of Professional Conduct – Prohibition on providing tax agent services in connection with an arrangement with a disqualified entity](#) explains Code Item 16 (subsection 30-10(16) of the TASA), which applies where a registered tax practitioner provides tax agent services connected with an arrangement with a disqualified entity.

<sup>3</sup> Section 30-10(15) of the TASA.

6. The Explanatory Memorandum (EM) to the Bill includes the following guidance in respect of the intended operation of Code Item 15 to:
- ensure that the entities employed or used by registered tax practitioners in the provision of tax services, have the appropriate ethical and professional attributes to be employed in the tax profession<sup>4</sup>
  - facilitate compliance with, and preserve the integrity of, the taxation system<sup>5</sup>
  - reduce the possibility of tax fraud and evasion by or on behalf of taxpayers (for example, claiming unsubstantiated deductions)<sup>6</sup>
  - protect consumers from services being provided by inappropriate entities.<sup>7</sup>
7. Under Code Item 15, registered tax practitioners will be required to consider:
- who are the individuals (or other entities) employed or used, or seeking to be employed or used, by the registered tax practitioner to provide tax agent services on their behalf, and
  - whether any of those individuals (or other entities) meet the definition of a disqualified entity.<sup>8</sup>
8. A 'tax agent service' is any service:
- that relates to:
    - i. ascertaining liabilities, obligations or entitlements of an entity that arise, or could arise, under a taxation law; or
    - ii. advising an entity about liabilities, obligations or entitlements of the entity or another entity that arise, or could arise, under a taxation law; or
    - iii. representing an entity in their dealings with the Commissioner; and
  - that is provided in circumstances where the entity can reasonably be expected to rely on the service for either or both of the following purposes:
    - i. to satisfy liabilities or obligations that arise, or could arise, under a taxation law;
    - ii. to claim entitlements that arise, or could arise, under a taxation law.<sup>9</sup>
9. For the purposes of this draft Information Sheet, unless otherwise stated, tax agent services include BAS services.

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<sup>4</sup> Paragraph 3.26 of the Explanatory Memorandum to the Treasury Laws Amendment (2023 Measures No. 1) Bill 2023 (the EM).

<sup>5</sup> Paragraph 3.27 of the EM.

<sup>6</sup> Ibid.

<sup>7</sup> Ibid.

<sup>8</sup> Paragraph 3.30 of the EM.

<sup>9</sup> Subsection 90-5(1) of the TASA. Note that services specified in section 26 of the Tax Agent Services Regulations 2022, for the purposes of subsection 90-5(2) of the TASA, are not tax agent services.

## What constitutes employing or using the services of an entity to provide tax agent services?

10. The terms ‘employ’ and ‘use the services’ are not defined in the TASA and as such take on their ordinary meaning.
11. The EM to the Bill provides the following non-exhaustive list of entities who are likely to constitute entities that are ‘used’ or ‘employed’ by a registered tax practitioner to provide tax agent services:
- Employees<sup>10</sup>
  - Associates<sup>11</sup>
  - Contractors<sup>12</sup>
  - Individuals (or other entities) who share in the revenue and income received from the tax agent services provided under the registered tax practitioner.<sup>13</sup>
12. The EM to the Bill makes it clear that the requirements of Code Item 15 are not intended to apply in respect of individuals or other entities who only provide peripheral services to assist a registered tax practitioner, for example, administrative support staff who are only responsible for the administrative management of client files and data.<sup>14</sup>

## When is an entity employed or used to provide tax agent services ‘on your behalf’?

13. Under Code Item 7, registered tax practitioners are required to ensure that tax agent services they provide, or that are provided ‘on their behalf’, are provided competently.<sup>15</sup> The TPB considers that the phrase ‘on your behalf’ carries the same meaning under Code Item 15 as it does under Code Item 7; that is, entities that registered tax practitioners may employ or use to provide tax agent services on their behalf includes (but are *not* limited to) individuals who are their employees or under their supervision and control.<sup>16</sup>

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<sup>10</sup> Paragraph 3.30 of the EM.

<sup>11</sup> Ibid.

<sup>12</sup> Ibid.

<sup>13</sup> This is intended to avoid imposing sanctions on those providing tax agent services for no fee or reward under paragraph 50-5(1)(c) of the TASA. Refer to paragraph 3.32 of the EM.

<sup>14</sup> Paragraph 3.31 of the EM.

<sup>15</sup> Subsection 30-10(7) of the TASA.

<sup>16</sup> Paragraph 3.42 of the Explanatory Memorandum to the Tax Agent Services Bill 2008.

14. Examples of circumstances where the TPB considers entities to be providing tax agent services ‘on behalf’ of a registered tax practitioner include, but are not limited to, the following:

- any entity, whether employed or used (i.e. as a contractor), for which the registered tax practitioner is also required to exercise adequate supervision and control to meet their obligations under Code Item 7,<sup>17</sup> and
- any entity with which a registered tax practitioner maintains (or is required to maintain, to comply with Code Item 7) a ‘remote’ supervisory arrangement.<sup>18</sup>

## What is the meaning of ‘disqualified entity’?

15. Subsection 45-5(2) of the TASA provides that a ‘disqualified entity’ is:

- an entity<sup>19</sup>
- neither a registered tax agent or BAS agent, nor a ‘qualified tax relevant provider’ (QTRP),<sup>20</sup> and
- within the last 5 years, has had one or more of the events listed in **Table 1** occur.

**Table 1:**

Event	Explanation
Has been convicted of a <i>serious taxation offence</i>	<ul style="list-style-type: none"> <li>• A ‘serious taxation offence’ is one of a number of offences specified in the Criminal Code (if it relates to a tax liability) or a taxation offence that is punishable by a fine exceeding 40 penalty units or imprisonment (or both)</li> </ul>
Has been convicted of a <i>serious offence</i>	<ul style="list-style-type: none"> <li>• A ‘serious offence’ means an offence against an Australian law that is punishable by imprisonment for a period exceeding 12 months</li> </ul>
Has been convicted of <i>an offence involving fraud or dishonesty</i>	<ul style="list-style-type: none"> <li>• An ‘offence involving fraud or dishonesty’ takes its ordinary meaning and is determined by reference to community standards. For example, the Criminal Code defines</li> </ul>

<sup>17</sup> Refer to paragraphs 29 to 40 of TPB Information Sheet [TPB\(I\) 36/2021 Supervisory arrangements under the Tax Agent Services Act 2009](#) for further guidance.

<sup>18</sup> Ibid at paragraphs 41 to 48.

<sup>19</sup> For the purposes of the TASA, an entity is defined under subsection 960-100(1) of the *Income Tax Assessment Act 1997* (ITAA 1997) as meaning any of the following: an individual, a body corporate, a body politic, a partnership, any other unincorporated association or body of persons, a trust, a superannuation fund, and an approved deposit fund.

<sup>20</sup> Section 910A of the *Corporations Act 2001* defines ‘qualified tax relevant provider’ as an individual, who is an Australian financial services licensee (AFSL) (or an authorised representative, employee, director, or employee/director of a related body corporate of an AFSL), and who is authorised to provide personal advice to retail clients as (or on behalf of) the licensee, in relation to relevant financial products; and who has met the education and training requirements set out in the Corporations (Relevant Providers—Education and Training Standards) Determination 2021.

Event	Explanation
	<p>'dishonest' as dishonest according to the standards of ordinary people in circumstances where the defendant is aware of these standards</p>
<p>Has been penalised for being a <i>promoter of a tax exploitation scheme</i></p>	<ul style="list-style-type: none"> <li>An entity is considered to have been 'penalised for being a promoter of a tax exploitation scheme' if they have been ordered to pay a civil penalty for engaging in conduct that results in the entity (or another entity) being a promoter of a tax exploitation scheme as defined in Division 290 of Schedule 1 to the <i>Taxation Administration Act 1953</i>.</li> </ul>
<p>Has been <i>penalised for implementing a scheme</i> that has been <i>promoted on the basis of conformity with a product ruling</i> in a way that is <i>materially different from that described in the product ruling</i></p>	<ul style="list-style-type: none"> <li>An entity is considered to have been 'penalised for implementing a scheme' as described if they have been ordered to pay a civil penalty for engaging in such conduct as defined in Division 290 of Schedule 1 to the <i>Taxation Administration Act 1953</i>.</li> </ul>
<p>Has become an <i>undischarged bankrupt</i> or has gone into <i>external administration</i></p>	<ul style="list-style-type: none"> <li>An <b>individual</b> 'become(s) an undischarged bankrupt' if they have been declared bankrupt under the <i>Bankruptcy Act 1966</i> and have not been discharged from the bankruptcy. Note that even if an individual is no longer an undischarged bankrupt, that individual will remain a disqualified entity for the period within five years of the date they became an undischarged bankrupt.</li> <li>A <b>company</b> 'go(es) into external administration' if it goes into external administration as defined in section 9 of the <i>Corporations Act 2001</i>,<sup>21</sup> which provides that a body corporate in external administration includes one that: <ul style="list-style-type: none"> <li>is being wound up</li> <li>is under administration</li> <li>has had a receiver appointed</li> <li>has executed a deed of company arrangement that has not yet been terminated.</li> </ul> </li> </ul>

<sup>21</sup> Note that section 9 of the *Corporations Act 2001* defines an entity which has gone into external administration as a 'Chapter 5 body corporate'.

Event	Explanation
	<p>Note that even if a company is no longer under external administration, that company will remain a disqualified entity for the period within five years of the date the company went into external administration.<sup>22</sup></p>
<p>Has had <b>action taken</b> against it under <b>subsection 30-15(2) of the TASA</b> (sanctions for failure to comply with the Code)</p>	<ul style="list-style-type: none"> <li>• The TPB has imposed one or more of the following sanctions:<sup>23</sup> <ul style="list-style-type: none"> <li>○ A written caution</li> <li>○ An order</li> <li>○ Suspension of registration</li> <li>○ Termination of registration</li> </ul> </li> </ul>
<p>Has had <b>its registration terminated</b>, under <b>Subdivision 40-A of the TASA</b></p>	<ul style="list-style-type: none"> <li>• The TPB has terminated the entity for: <ul style="list-style-type: none"> <li>○ <a href="#">An event affecting continued registration</a> has occurred</li> <li>○ Ceasing to meet a tax practitioner registration requirement (see the <a href="#">tax agent registration requirements</a> and <a href="#">BAS agent registration requirements</a>)</li> <li>○ Breaching a <a href="#">condition of registration</a>.</li> </ul> </li> </ul>
<p>Has had an <b>application for registration or renewal of registration rejected</b> under section 20-25 of the TASA, other than a rejection on the ground that the TPB is not satisfied that the entity meets the requirements in paragraph 20-5(1)(b) of the TASA</p>	<ul style="list-style-type: none"> <li>• The TPB has rejected an application for registration or renewal of registration for failing to meet an eligibility requirement for <a href="#">tax agent</a> or <a href="#">BAS agent</a> registration, <b>except for</b> on the basis of failing to meet the qualifications or relevant experience requirements.</li> </ul> <p>Note: if an entity's application for registration or renewal of registration was rejected by the TPB on the basis of failing to meet the qualifications and/or relevant experience requirements only, the entity does not meet the disqualified entity requirements.</p> <p>However, if an application for registration or renewal of registration is rejected on the basis of one or more of the other eligibility requirements that applies to that kind of registration, the entity will be a disqualified entity.</p>

<sup>22</sup> Note that an entity operating within the 'safe harbour' provisions under section 588GA of the *Corporations Act 2001* is not considered to be under external administration for the purposes of the TASA.

<sup>23</sup> Note that an entity cannot be considered a disqualified entity while they are a registered tax agent, BAS agent or 'qualified tax relevant provider' in accordance with subsection 45-5(2) of the TASA.



Event	Explanation
<p>Has been <b><i>found by the TPB</i></b>, after being investigated under section 60-95 of the TASA, or by a Court, <b><i>to have contravened the TASA</i></b></p>	<ul style="list-style-type: none"> <li>• The TPB (after conducting an investigation) has found the entity to have contravened the TASA, including by: <ul style="list-style-type: none"> <li>○ breaching the <a href="#">Code of Professional Conduct</a></li> <li>○ failing to notify the TPB as required under the TASA of changes to registration details or circumstances.</li> </ul> </li> <li>• A Court has found the entity to have contravened the TASA, for example, the civil penalty provisions.</li> </ul>

## What does it mean to ‘know or ought reasonably to know’?

16. The phrase ‘know or ought reasonably to know’ has two elements. The term ‘know’ refers to actual knowledge. The phrase ‘ought reasonably to know’ extends to constructive knowledge, where a person is taken to have knowledge about a matter, if the existence of that matter could be discovered by a reasonable person in the same position as the person, making reasonable enquiries.<sup>24</sup>
17. A registered tax practitioner must therefore take reasonable steps and make reasonable enquiries to determine if an entity is a disqualified entity. The level of assurance a registered tax practitioner should seek from those reasonable steps and enquiries is the same for Code Item 15 as it is with respect to Code Item 16.<sup>25</sup>
18. The EM to the Bill states that ‘tax practitioners are expected to implement new onboarding requirements, information gathering and employee reporting processes to determine whether their staff and people they use are disqualified entities and if notification and approval by the TPB is necessary’.<sup>26</sup>
19. The first step is to check whether the entity is registered on the [TPB Public Register](#) as a registered tax agent or BAS agent, or registered on the [Financial Advisers Register](#) as a QTRP. If they are, that entity is not a disqualified entity at that time.<sup>27</sup>

<sup>24</sup> For example, in *Le'Sam Accounting Pty Ltd and Tax Practitioners Board* [2021] AATA 1593 (21 May 2021) the Administrative Appeals Tribunal considered circumstances where a registered tax practitioner was aware, or ought reasonably to have been aware, of certain actions taken by an employee engaged in the provision of tax agent services.

<sup>25</sup> Refer to TPB Draft Information Sheet [TPB\(I\) D52/2023 Code of Professional Conduct – Prohibition on providing tax agent services in connection with an arrangement with a disqualified entity](#).

<sup>26</sup> Paragraph 3.36 of the EM to the Bill.

<sup>27</sup> Subsection 45-5(2) of the TASA.

20. If they are not registered, the TPB considers that, at a minimum, reasonable steps and enquiries will include **each** of the following requirements outlined in **Table 2**.

**Table 2:**

Point in time	Requirements
<p>Before employing or using an entity to provide tax agent services on behalf of the registered tax practitioner</p>	<ul style="list-style-type: none"> <li>• Undertaking appropriate proof of identity enquiries in respect of the individual or entity, which are consistent with the minimum requirements contained in <a href="#">TPB(PN) 5/2022 Proof of identity requirements for client verification</a>;</li> <li>• Discussing the requirements of Code Item 15 with the entity and obtain written confirmation from the entity that they have not had one of the events listed in <b>Table 1</b> (at paragraph 15) occur within the last 5 years.<sup>28</sup></li> <li>• Conduct a search of the <a href="#">TPB Public Register</a> using the name and/or ABN of the entity to verify whether the entity has been sanctioned and/or terminated by the TPB. Note that the TPB has limited powers to publish information on the TPB register.<sup>29</sup> These limitations include: <ul style="list-style-type: none"> <li>○ details of an entity that had its registration terminated by the TPB must only be kept on the TPB Public Register for 12 months from the date of termination<sup>30</sup></li> <li>○ details of a sanction imposed on an entity (other than a written caution or termination) must only be kept on the TPB Public Register for the longer of 12 months from the date of the sanction, or the duration of the sanction<sup>31</sup></li> <li>○ written cautions to an entity are sanctions that cannot be published on the TPB Public Register,<sup>32</sup> and</li> <li>○ the TPB cannot publish details of an investigation under section 60-95 of the TASA which did not result in a sanction or termination of an entity.<sup>33</sup></li> </ul> </li> </ul>
<p>During employment or use of the entity to provide tax agent services on behalf of the registered tax practitioner</p>	<ul style="list-style-type: none"> <li>• Have a written contract in place with the entity to: <ul style="list-style-type: none"> <li>○ require notification by the entity to the registered tax practitioner as soon as practicable if an event listed in <b>Table 1</b> (at paragraph 15) occurs</li> <li>○ enable the registered tax practitioner to immediately cease using or employing an individual or entity in the provision of</li> </ul> </li> </ul>

<sup>28</sup> The TPB has published a Disqualifying events declaration and consent form to assist registered tax practitioners in meeting this requirement.

<sup>29</sup> The [Treasury Laws Amendment \(Tax Accountability and Fairness\) Bill 2023](#) was introduced to Federal parliament on 16 November 2023. Part 1 of Schedule 3 to this Bill proposes amendments to the TASA which would require additional information to be published on the TPB Public Register. If passed, these amendments will commence no earlier than 1 July 2024. This Information Sheet will be updated to reflect any amendments to the TASA that come into effect.

<sup>30</sup> Subsection 60-135(3) of the TASA.

<sup>31</sup> Tax Agent Services Regulations 2022 (TASR) at subsection 25(2).

<sup>32</sup> Ibid at paragraph 25(1)(f).

<sup>33</sup> Ibid at subsection 25(1).

Point in time	Requirements
	<p>tax agent services on their behalf, if the individual or entity is (or becomes) a disqualified entity.</p> <p>The TPB strongly recommends seeking independent legal advice in relation to the tax practitioners rights and obligations under contract law and employment law.</p> <ul style="list-style-type: none"> <li>• If notified that an event listed in <b>Table 1</b> (at paragraph 15) has occurred in respect of the individual or entity, and the registered tax practitioner wishes to apply to the TPB for approval, follow the requirements outlined in paragraphs 25 to 31.</li> </ul>
<p>Ceasing the use or employment of an entity who provided tax agent services on behalf of the registered tax practitioner</p>	<ul style="list-style-type: none"> <li>• Keep records of any discussion or documentation completed by the entity confirming that they have (or have not) had one of the events listed in <b>Table 1</b> (at paragraph 15) occur within the last 5 years.</li> <li>• These records should be retained for 5 years after ceasing to use or employ that entity in providing tax agent services on behalf of the registered tax practitioner.</li> </ul>

21. **Table 2** contains the minimum requirements for most standard employments or engagements between registered tax practitioners and entities used to provide tax agent services on behalf of the registered tax practitioner. However, registered tax practitioners should exercise their professional judgment when determining the processes to undertake in circumstances where the above are not practical or applicable to a particular circumstance. While processes may be different to those outlined above, they must not be of a lower standard.

## How to comply with Code Item 15

22. The ways in which a registered tax practitioner will comply with Code Item 15 will depend on the circumstances surrounding their use or employment of an entity to provide tax agent services on their behalf. **Table 3** below provides a non-exhaustive explanation as to how registered tax practitioners can comply with Code Item 15 in different circumstances.

**Table 3:**

Situation	How to comply
<p>Registered tax practitioner wants to start employing or using an entity to provide tax agent services on their behalf. At this time, their disqualified entity status is unknown.</p>	<ul style="list-style-type: none"> <li>• Follow the steps outlined in <b>Table 2</b> (at paragraph 20) under 'Before employing or using the entity'.</li> </ul>
<p>Registered tax practitioner currently employs or uses an entity to provide tax agent services on</p>	<ul style="list-style-type: none"> <li>• Follow the steps outlined in <b>Table 2</b> (at paragraph 20) under 'During employment or use of the entity'.</li> </ul>

Situation	How to comply
their behalf, and the entity is not a disqualified entity.	
Registered tax practitioner wishes to employ or use a known disqualified entity to provide tax agent services on their behalf.	<ul style="list-style-type: none"> <li>• Apply to the TPB for approval (see paragraphs 25 to 31).</li> <li>• If approved by the TPB, update the TPB if there are any relevant changes to the disqualified entity's status as a disqualified entity or role in providing tax agent services on behalf of the registered tax practitioner.</li> </ul>
Registered tax practitioner is notified or otherwise becomes aware that an entity it employs or uses has become a disqualified entity, and the registered tax practitioner wants to continue to use or employ the entity.	<ul style="list-style-type: none"> <li>• Apply to the TPB for approval (see paragraphs 25 to 31).</li> <li>• If approved by the TPB, update the TPB if there are any relevant changes to the disqualified entity's status as a disqualified entity or role in providing tax agent services on behalf of the registered tax practitioner.</li> </ul>
Registered tax practitioner is notified or otherwise becomes aware that an entity it employs or uses has become a disqualified entity, and the registered tax practitioner wants to cease using or employing the entity.	<ul style="list-style-type: none"> <li>• Consider your options to cease the engagement or employment, having regard to your obligations under contract and employment law. You may wish to seek independent legal advice.</li> </ul>

## Other considerations

23. In considering how to proceed to ensure compliance with Code 15 and their obligations under the TASA more generally when employing or using the services of a disqualified entity, registered tax practitioners should also have regard to additional practical considerations, including but not limited to:

- compliance with other requirements including obligations under the TASA (including supervision and control and professional indemnity insurance requirements) and other legal requirements (for example under employment and contract law)
- seeking additional information and clarification of the relevant facts and circumstances, including the attributes of the disqualified entity
- cultural, human resources and management issues, and
- general principles of fairness, transparency, and ethics.

24. Having regard to the above considerations and any other considerations that will inform the tax practitioner's professional judgment, the tax practitioner may decide to consider their options to cease the engagement or employment with the disqualified entity. Registered tax practitioners may wish to seek independent legal advice or other assistance as appropriate.

## Seeking approval from the TPB

25. If a registered tax practitioner intends to employ or use (or continue to employ or use) a disqualified entity to provide tax agent services on their behalf, the registered tax practitioner must apply to the TPB for approval.
26. In addition to Code Item 15, a registered tax practitioner will not contravene subsection 50-25(1) of the TASA, relating to employing or using the services of deregistered entities, if:
- the deregistered entity is a disqualified entity, and
  - the TPB has given approval to employ or use the services of the disqualified entity to provide tax agent services on the registered tax practitioner's behalf.<sup>34</sup>
27. An application to the TPB to approve the employment or use of a disqualified entity must be made in the approved form, accessed by logging in to [My Profile](#) and accompanied by relevant information relating to:
- 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 to the TPB's consideration of the request for the TPB's approval.
28. Registered tax practitioners should ensure that the disqualified entity has provided written consent for the registered tax practitioner to make an application for approval to the TPB.
29. The TPB must decide an application for approval within 60 days of receiving the application, or within a longer period agreed between the TPB and registered tax practitioner.<sup>35</sup> If the TPB does not make a decision within 60 days (or agreed longer period) the application will be taken to be rejected.<sup>36</sup>
30. The TPB will, within a reasonable time after making its decision in respect of an application for approval, notify the registered tax practitioner in writing of:
- the decision; and
  - if the TPB rejects the application – the reasons for the decision.<sup>37</sup>

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<sup>34</sup> Subsection 50-25(3) of the TASA.

<sup>35</sup> Subsection 45-5(4) of the TASA.

<sup>36</sup> Subsection 45-5(5) of the TASA.

<sup>37</sup> Subsection 45-5(7) of the TASA.

31. Decisions to reject an application for approval to employ or use the services of a disqualified entity are reviewable by the Administrative Appeals Tribunal.<sup>38</sup>

## Notification requirements for disqualified entities

32. A disqualified entity must notify a registered tax practitioner in writing that they are a disqualified entity *before* the registered tax practitioner enters into a contract, or renews / agrees to extend an existing contract, to employ or use the services of the disqualified entity to provide tax agent services on the registered tax practitioner's behalf.<sup>39</sup>

33. If an entity is employed or used to provide tax agent services on behalf of a registered tax practitioner and then *becomes* a disqualified entity, they must provide written notice to the registered tax practitioner they are a disqualified entity within 30 days of the day on which they become, or ought to have become, aware that they are a disqualified entity.<sup>40</sup>

34. Transitional provisions may apply to entities who are already disqualified entities, and are being employed, or used, to provide tax agent services on behalf of the same registered tax practitioner. For transitional provisions to apply, the disqualified entity must be:

- at the start of the day on 1 January 2024:
  - i. employed or used by the registered tax practitioner to provide tax agent services on their behalf
  - ii. a disqualified entity, and
- at the end of the day on 31 December 2024:
  - i. remain employed or used by the same registered tax practitioner to provide tax agent services on their behalf.

35. If the transitional provisions 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.

## Transitional provisions for registered tax practitioners

36. To allow registered tax practitioners a reasonable amount of time to ensure compliance with the requirements of Code Item 15, transitional provisions apply in certain circumstances.

37. Code Item 15 will apply on and after the date of entering into or renewing the contract, or the date of the agreement, if a registered tax practitioner enters into, renews, or agrees to extend a contract to employ or use a disqualified entity to provide tax agent services on their behalf, between 1 January 2024 and 31 December 2024 (inclusive).

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<sup>38</sup> Paragraph 70-10(ha) of the TASA.

<sup>39</sup> Subsection 45-10(1) of the TASA.

<sup>40</sup> Subsection 45-15(2) of the TASA.

38. A registered tax practitioner will not be required to have received TPB approval for their employment or use of a disqualified entity to provide tax agent services on their behalf from 1 January 2024 until 31 December 2024 (inclusive), unless during this period the registered tax practitioner enters into, renews, or agrees to extend a contract to employ or use a disqualified entity to provide tax agent services on their behalf.<sup>41</sup>

39. The scenarios in **Table 4** illustrate the operation of the transitional provisions to the application of Code Item 15 for registered tax practitioners. These scenarios are equally applicable whether the registered tax practitioner employs, or use the services of, the individual or entity to provide tax agent services on their behalf.

**Table 4:**

Scenarios	No.	If Stuart...	... then Sarah, to comply with Code Item 15...
<p>On 30 December 2023, Sarah (a registered tax practitioner) enters into a contract to employ Stuart to provide tax agent services on her behalf.</p> <p>Stuart becomes a disqualified entity on 1 February 2024 and notifies Sarah of this immediately.</p>	1	<ul style="list-style-type: none"> <li>remains employed by Sarah (under a contract that has not been renewed or extended) to provide tax agent services on her behalf as of 1 January 2025</li> </ul>	<ul style="list-style-type: none"> <li>is not required to cease employing Stuart to provide tax agent services on her behalf until 1 January 2025</li> <li>may apply to the TPB for approval to employ Stuart as a disqualified entity to provide tax agent services on her behalf at any time after Stuart becomes a disqualified entity, and</li> <li>if TPB approval is not given, Sarah will need to consider her options to cease employing Stuart to provide tax agent services on her behalf by 1 January 2025, having regard to her obligations under employment law and contract law. Sarah should seek independent legal advice.</li> </ul>
	2	<ul style="list-style-type: none"> <li>had his contract with Sarah renewed or extended on 15 January 2024, and</li> <li>is employed by Sarah to provide tax agent services on her behalf when he becomes a disqualified entity on 1 February 2024</li> </ul>	<ul style="list-style-type: none"> <li>will need to consider her options to cease employing Stuart to provide tax agent services on her behalf immediately on 1 February 2024, having regard to her obligations under employment law and contract law, and</li> <li>may apply to the TPB for approval to employ Stuart as a disqualified entity to provide tax agent services on her behalf.</li> </ul>
	3	<ul style="list-style-type: none"> <li>has his current contract (entered into prior to 1 January 2024) with</li> </ul>	<ul style="list-style-type: none"> <li>must not renew or agree to extend Stuart's contract, to provide tax agent services on her behalf, unless she has</li> </ul>

<sup>41</sup> Subsection 8(3) of the TASA.

Scenarios	No.	If Stuart...	... then Sarah, to comply with Code Item 15...
		Sarah expiring on 1 March 2024 and wishes to have this contract renewed or extended	obtained TPB approval to employ Stuart to provide those services as a disqualified entity, and <ul style="list-style-type: none"> <li>should seek independent legal advice on her obligations under contract law and employment law.</li> </ul>
On 15 January 2024, Sarah (a registered tax practitioner) enters into a contract to employ Stuart to provide tax agent services on her behalf.  Stuart becomes a disqualified entity on 1 February 2024 and notifies Sarah of this immediately.	4	<ul style="list-style-type: none"> <li>is employed by Sarah to provide tax agent services on her behalf when he becomes a disqualified entity on 1 February 2024</li> </ul>	<ul style="list-style-type: none"> <li>will need to consider her options to cease employing Stuart to provide tax agent services on her behalf immediately on 1 February 2024, having regard to her obligations under employment law and contract law, and</li> <li>may apply to the TPB for approval to employ Stuart as a disqualified entity to provide tax agent services on her behalf.</li> </ul>

## Consequences for failing to comply with Code Item 15

40. If a registered tax practitioner employs or uses the services of a disqualified entity to provide tax agent services on their behalf without the TPB's approval, the TPB will find that the registered tax practitioner has breached the Code and may impose sanctions for that breach.
41. Ultimately, whether a registered tax practitioner has complied with their obligations under Code Item 15 is a question of fact. This means that each situation will need to be considered on a case-by-case basis having regard to the particular facts and circumstances of that case.
42. Conduct that leads to a breach of Code Item 15 could also impact on a registered tax practitioner meeting the fit and proper person requirement<sup>42</sup> and other Code items, such as Code Item 1, which relates to honesty and integrity, and Code Item 7 which relates to ensuring tax agent services provided on a registered tax practitioner's behalf are provided competently.

<sup>42</sup> For more information about the fit and proper requirement, see [TPB Explanatory Paper TPB\(EP\) 02/2010 Fit and proper person](#).



43. If a registered tax practitioner breaches the Code, the TPB may impose one or more of the following sanctions:<sup>43</sup>
- a written caution
  - an order requiring the tax practitioner to do something specified in the order
  - suspension of the tax practitioner's registration
  - termination of the tax practitioner's registration
  - a period within which a terminated tax practitioner may not re-apply for registration.

## Case studies

44. These case studies provide general guidance only. In all cases, consideration will need to be given to the specific facts and circumstances.
45. Note that these case studies are based on scenarios where the transitional provisions are no longer in effect. Refer to **Table 4** (at paragraph 39) for scenarios which illustrate the operation of the transitional provisions.

### **Example 1 – Registered tax practitioner fails to make reasonable enquiries about an entity that they employ to provide tax agent services on the registered tax practitioner's behalf**

Registered tax practitioner Brendan wanted to employ Chelsea to provide tax agent services on his behalf and under his supervision. Impressed by Chelsea's resume and LinkedIn profile, Brendan offers Chelsea a role within his practice. Brendan asks Chelsea to confirm that she is not a disqualified entity, but Chelsea advises that she is not sure. Brendan has no further discussions with Chelsea regarding this question and employs her without receiving any further information from Chelsea.

Brendan also does not conduct a proof of identity check or search the TPB Public Register to check if Chelsea's name appears as a terminated or previously sanctioned tax practitioner.

Chelsea is a disqualified entity as her registration as a tax agent was terminated by the TPB 6 months prior to being employed by Brendan.

Brendan has not made reasonable enquiries prior to employing Chelsea and has not received TPB approval for Chelsea's employment.

Brendan is in breach of Code Item 15.

### **Example 2 – Registered tax practitioner makes reasonable enquiries about an entity who fails to notify the registered tax practitioner that they are disqualified**

Winnie was convicted of a serious taxation offence 3 years ago, making her a disqualified entity. Trent, a registered tax practitioner, sought to use Winnie's services as a contractor to provide tax agent services on his behalf.

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<sup>43</sup> Subsection 60-125(2) of the TASA.

Trent undertook proof of identity enquiries in respect of Winnie. Trent also advised Winnie that he could not use her services without TPB approval if she was a disqualified entity. Trent discussed the events listed in **Table 1** (at paragraph 15) of this Information Sheet and received a written declaration from Winnie that none of those events applied to her.

Trent also undertook a search of the TPB Public Register to confirm whether Winnie's name appears as a terminated or previously sanctioned tax practitioner.

The contract with Winnie contained provisions requiring Winnie to declare if she is (or becomes) a disqualified entity immediately.

Trent has undertaken reasonable enquiries and met the TPB's minimum requirements, despite Winnie being a disqualified entity.

During the period of his contract with Winnie, Trent learns of Winnie's status as a disqualified entity through a newspaper article. Upon learning that Winnie is a disqualified entity, Trent immediately ceases using Winnie to provide tax agent services on his behalf.

Trent has met his obligations and has not breached Code Item 15.

### **Example 3 – Registered tax practitioner receives approval from the TPB to employ a disqualified entity to provide tax agent services on the registered tax practitioner's behalf**

Betty, who is a registered tax practitioner, wants to employ Brian to provide tax agent services on her behalf. Brian is not a registered tax practitioner or a qualified tax relevant provider.

Brian notifies Betty that he became an undischarged bankrupt 12 months ago and as such, he is a disqualified entity. Betty advises Brian that she cannot employ him to provide tax agent services on her behalf until she has received approval from the TPB to do so.

With Brian's written consent, Betty makes an application to the TPB in the approved form for Brian to provide tax agent services on her behalf by assisting her in her practice. In her application, Betty explains (with supporting documentation):

- the reason why Brian is a disqualified entity and the circumstances relating to Brian's bankruptcy
- the proposed role/s that Brian would be performing for Betty in providing the tax agent services
- the reasons why Brian's bankruptcy is not relevant to his ability to perform the proposed role to an appropriate standard of professional and ethical conduct, and
- any other additional facts she considers relevant to the TPB's consideration of her request for approval.

Based on the information Betty provides in her application for approval, the TPB considers and approves her request to employ Brian to provide tax agent services on her behalf, in the proposed role/s that Brian would be performing.

Brian commences providing tax agent services on Betty's behalf as her employee after TPB approval is received.

Betty has met her obligations and has not breached Code Item 15.