Australian Government

TAX PRACTITIONERS BOARD

Breach reporting

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, 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

- ✓ Consultation
- ✓ The objective of breach reporting
- ✓ Key points of our draft guidance.
- ✓ CPA discussion on breach requirements
- ✓ CPA member feedback
- ✓ Q&A

Public consultation

- We've released draft guidance to help tax practitioners understand the additional breach reporting obligations.
- This guidance is currently open for public consultation, and we welcome submissions on our 3 products by **28 May** at tpbsubmissions@tpb.gov.au.
- Submissions will be considered prior to the guidance being finalised.

Objective of breach reporting obligations

- Breach reporting was introduced as part of recommendations from the TPB and TASA review and Government's response to the PwC matter.
- The focus of the reporting regime is on identifying, managing and targeting risk of non-compliance to:
  - improve the conduct of tax practitioners in providing services
  - enhance the protection of clients; and
  - increase community confidence in the integrity of the system that regulates those services and the tax industry.
- The expanded regime seeks to uphold and enhance professional and ethical standards across the tax practitioner sector.

What is breach reporting?

- Breach reporting obligations apply from **1 July 2024**.
- There are 2 types of breach reporting:
  - self-reporting
  - reporting another tax practitioner.

The registered tax practitioner must have reasonable grounds for the belief that they, or another tax practitioner, have breached the Code and that the breach is significant.

Breach reporting notifications

- **Before 1 July 2024**, tax practitioners **must notify us** of their change in circumstances in writing **within 30 days**.
- **After 1 July 2024, ta**x practitioners **must also notify us** (and the professional association if applicable) **within 30 days** of the day they first have, or ought to have had, reasonable grounds to believe that they, or another registered tax practitioner, have **breached the Code and that the breach is significant**.

Under the new breach reporting obligations – the breach must have occurred on or after 1 July 2024.

How to notify us

Notifications must be made using the following methods:

Reporting another tax practitioner
Use our *online complaints form*

Self-reporting
Use the *notify a change in circumstances form*

We will acknowledge receipt of a report. This does not mean we are confirming a tax practitioner has met their obligations, or that we will be commencing a formal investigation.

How to notify recognised professional associations

- The obligation to notify the recognised professional association (RPA) only applies if you are 'aware' of the other tax practitioner's membership.
- You must take reasonable steps and make reasonable enquiries to establish if another tax practitioner is a member of a RPA.

- You can go to our website to find a list of RPAs and to check our Register (it may include RPA membership).
- Check the RPA's website to see if they provide a list of members or make direct enquires with the RPA.

What is a ‘significant breach’?

A ‘significant breach of the Code’ is a breach that:

- ✓ constitutes an indictable offence, or an offence involving dishonesty under an Australian law
- ✓ results, or is likely to result, in material loss or damage to another entity (including the Commonwealth)
- ✓ is otherwise significant
- ✓ is a kind prescribed by the Tax Agent Services Regulations 2022.

Reasonable grounds to believe

Consider relevant factors

- Solid foundation or basis for the belief (conclusive proof not required)
- Supported by facts and evidence
- Verified or corroborated (as required)
- Would a reasonable person in the same position and circumstances form the belief? (objective test)

Frivolous, vexatious or malicious claims will not be accepted

Making an assessment 

- Tax practitioners should be aware of the standards of professional and ethical conduct expected of them under the TASA, including the Code.
- You should be well-positioned to make an assessment about whether a breach is ‘significant’ in relation to your own conduct, and you need to report it.
- We recognise that establishing if a breach is ‘significant’ in relation to the conduct of another tax practitioner may be more difficult.

Our approach to investigating notifications

We'll take a risk-based approach to investigations and will consider:

- ✓ the nature of the breach
- ✓ the risk involved
- ✓ the number and frequency of breaches
- ✓ if there is sufficient evidence
- ✓ the relationship between parties
- ✓ the compliance history
- ✓ if the breach has been rectified
- ✓ the nature and scale of the business
- ✓ the number of clients involved
- ✓ the impact or harm to clients and the tax system
- ✓ if the notification is vexatious
- ✓ the reasons for any delay in reporting.

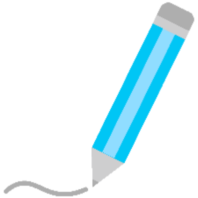
Consequences for failing to comply

- Our initial focus is on consultation, education and improving voluntary compliance, supervisory and regulatory systems.
- We'll be alert and responsive to high-risk misconduct and breaches.

Termination

Suspension

Order



Caution

Example

- Ivan, a tax practitioner and sole director of a tax agent company lodged false BAS without the knowledge or authorisation of clients.
- The ATO cancelled the lodgements to prevent BAS credits being paid when the entities were not carrying on an enterprise for GST purposes.
- Ivan misappropriated client refunds and put clients at risk when he shared his ATO credentials with another individual.
- Ivan was aware he had made a significant breach of the Code and is under an obligation to notify us, within 30 days.

Recognised professional associations

Membership requirements:

- ✓ Refer to organisation's Constitution and By-laws
- ✓ CPD obligations including mandatory ethics requirements
- ✓ Public practice accreditation and review
- ✓ Conduct and discipline
- ✓ Guidance

Engagement and advocacy:

- ✓ Consultation
- ✓ Engagement with Government, Parliament, Treasury, TPB and ATO
- ✓ Representation on key forums including Tax Practitioner Governance and Standards Forum
- ✓ Communication and education

Professional accountants

Accounting Professional & Ethical Standards Board (APESB) standards:

- APES 110 Code of Ethics for Professional Accountants:
  - S210 and 310: Conflicts of interest
  - s260 and s360: Responding to non-compliance with laws and regulations.
- APES 220 Taxation Services.
- APES 305 Terms of Engagement.
- APES 310 Dealing with Client Monies.
- APES 320 Quality Control for firms.

Professional accountants

International Code of Ethics for Professional Accountants:

- s280 and s380: Tax planning and Related Services (new).
- Consequential exposure draft amendments to APES 110 and APES 220.

Issues raised by tax practitioners

- Law isn't well written and introduces uncertainty for tax practitioners.
- Information sheet is a start, but we need more clarity.
- How far do tax practitioners need to investigate?
- What are the practical thresholds for reporting?
- What will the TPB do with the reports and what is the compliance approach?
- Governance expectations.
- 30-day reporting timeframe.
- Gaps in whistleblower protection.
- Impacts on:
  - insurance
  - buying or selling a practice
  - undertaking review or remediation work for clients
  - clients of tax practitioners reported for breaches.

Questions

Stay in touch with the TPB

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tpb.gov.au/contact

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