

# TPB Information sheet

## TPB(I) 42/2024

### Code of Professional Conduct – Prohibition on providing tax agent services in connection with an arrangement with a disqualified entity

#### Disclaimer

This is a Tax Practitioners Board (TPB) Information sheet (TPB(I)). It provides information regarding the TPB's position on the application of subsection 30-10(16) of the *Tax Agent Services Act 2009* (TASA) which commenced on 1 January 2024.

Subsection 30-10(16) of the TASA was enacted by Schedule 3 to the *Treasury Laws Amendment (2023 Measures No. 1) Act 2023*.

Subsection 30-10(16) 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 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 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 *Treasury Laws Amendment (2023 Measures No. 1) Act 2023* and the TASA for the precise content of the legislative requirements.

#### Document history

This Information sheet was originally issued as an Exposure draft on 18 December 2023. The TPB invited comments and submissions in relation to the information contained in it by 16 February 2024. The TPB considered all the comments and submissions received and made changes to the Exposure Draft TPB(I) – in summary, the TPB made the following amendments:

- amendments to Table 4 (at paragraph 36) to enhance readability in relation to the operation of the transitional provisions to the application of Code Item 16, and

- amendments to Case study Examples 2, 3 and 4 to simplify and enhance readability.

The TPB published this finalised TPB(I) on 12 June 2024. This Information sheet is based on the TASA as at the date of issue.

Issued: 12 June 2024

# Code of Professional Conduct – prohibition on providing tax agent services in connection with an arrangement with a disqualified entity

## 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 16** (subsection 30-10(16) of the TASA) in respect of their arrangements with a 'disqualified entity'.<sup>2</sup>
3. Code item 16 was enacted by the *Treasury Laws Amendment (2023 Measures No. 1) Act 2023*. Code Item 16 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 16 (paragraphs 5 to 10)
  - tax agent services provided in connection with an arrangement (paragraphs 11 to 20)
  - how to comply with Code item 16 (paragraph 27)
  - notification requirements for disqualified entities (paragraphs 28 to 31)
  - transitional provisions for registered tax practitioners (paragraphs 32 to 36)
  - consequences for failing to comply with Code item 16 (paragraphs 37 to 39)

## What is Code item 16?

5. Code item 16 states that a registered tax practitioner must not provide 'tax agent services' in connection with an 'arrangement' with an entity that the tax practitioner knows, or ought reasonably to know, is a 'disqualified entity'.<sup>3</sup>
6. The Explanatory Memorandum (EM) to the Treasury Laws Amendment (2023 Measures No. 1) Bill 2023 (the Bill) includes the following guidance in respect of the intended operation of Code item 16 to:

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

<sup>2</sup> TPB Information [Sheet TPB\(I\) 41/2024 Code of Professional Conduct item 15 – employing or using a disqualified entity in the provision of tax agent services without approval](#) explains Code item 15 (subsection 30-10(15) of the TASA), which applies where a registered tax practitioner employs, contracts with or otherwise uses a disqualified entity to provide tax agent services on their behalf.

<sup>3</sup> Subsection 30-10(16) of the TASA.

- facilitate compliance with, and preserve the integrity of, the taxation system<sup>4</sup>
  - reduce the possibility of tax fraud and evasion by or on behalf of taxpayers (for example, claiming unsubstantiated deductions)<sup>5</sup>
  - protect consumers from services being provided by inappropriate entities.<sup>6</sup>
7. More specifically, the EM to the Bill explains that Code item 16 is intended to prevent arrangements where a disqualified entity is operating ‘through’ the registered tax practitioner.<sup>7</sup> For example, this may occur where a disqualified entity is using the registered tax practitioner’s credentials (such as their registration number and/or portal access) to provide tax agent services directly to their own clients while unregistered, without any involvement from the registered tax practitioner.<sup>8</sup>
8. Arrangements under Code item 16 are prohibited and **cannot** be approved by the TPB.<sup>9</sup>
9. 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>10</sup>
10. For the purposes of this Information Sheet, unless otherwise stated, tax agent services include BAS services.<sup>11</sup>

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<sup>4</sup> Paragraph 3.27 of the Explanatory Memorandum to the Treasury Laws Amendment (2023 Measures No. 1) Bill 2023 (the EM).

<sup>5</sup> Ibid.

<sup>6</sup> Ibid.

<sup>7</sup> Paragraph 3.40 of the EM.

<sup>8</sup> Paragraph 3.40 of the EM. Note that providing a service which you know (or ought reasonably to know) is a tax agent service or a BAS service while unregistered is a contravention of section 50-5 of the TASA. Providing a service which you know (or ought reasonably to know) is a tax (financial) advice service, while unregistered (or not a qualified tax relevant provider), is a contravention of section 50-17 of the TASA. A disqualified entity which contravenes these provisions may be liable for civil penalties.

<sup>9</sup> This is in contrast to Code item 15, which allows the TPB to consider and approve applications to employ or use a disqualified entity to provide tax agent services on behalf of a registered tax practitioner. Refer to TPB Information [Sheet TPB\(I\) 41/2024 Code of Professional Conduct – Employing or using a disqualified entity in the provision of tax agent services without approval](#) for further guidance on the types of arrangements subject to Code item 15.

<sup>10</sup> Subsection 90-5(1) of the TASA. Note that services specified in section 26 of the Tax Agent Services Regulations 2022 (TASR), for the purposes of subsection 90-5(2) of the TASA, are not tax agent services.

<sup>11</sup> Refer to TPB Information Sheet [TPB\(I\) 38/2023 What is a BAS service?](#) for further information on what is considered a ‘BAS service’ as defined in section 90-10 of the TASA.

# Tax agent services provided in connection with an arrangement

## What is an 'arrangement' under Code item 16?

11. The term 'arrangement' is defined, for the purposes of the TASA,<sup>12</sup> as meaning “any arrangement, agreement, understanding, promise or undertaking, whether express or implied, and whether or not enforceable (or intended to be enforceable) by legal proceedings”.<sup>13</sup>
12. This is a wide definition and extends to formal and informal agreements or undertakings between a registered tax practitioner and a disqualified entity.<sup>14</sup> 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 the registered tax practitioner).
13. In the context of considering arrangements between two commercial entities under the former *Trade Practices Act 1974*,<sup>15</sup> the Federal Court of Australia has described the term 'arrangement' as something which may not necessarily constitute an enforceable agreement (i.e. a contract), but which nevertheless contains a 'level of mutual commitment' that each party will act in a particular manner,<sup>16</sup> rather than 'mere hope' that the parties will act in that manner.<sup>17</sup>
14. The circumstances which may constitute an 'arrangement' for the purposes of Code item 16 can vary significantly and will be considered on a case-by-case basis. To assist registered tax practitioners in identifying whether an arrangement exists, the TPB has formulated case studies (at paragraph 40) which highlight certain types of arrangements between registered tax practitioners and disqualified entities connected with the provision of tax agent services. These case examples are non-exhaustive and are intended as guidance only.

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<sup>12</sup> Subsection 90-1(2) of the TASA.

<sup>13</sup> Subsection 995-1(1) of the *Income Tax Assessment Act 1997* (ITAA 1997).

<sup>14</sup> Paragraph 3.39 of the EM.

<sup>15</sup> Note that the former *Trade Practices Act 1974* was repealed and replaced by the *Competition and Consumer Act 2010* on 1 January 2011.

<sup>16</sup> Refer to the judgment of Gray J in *Australian Competition and Consumer Commission (ACCC) v Leahy Petroleum Pty Ltd* [2007] FCA 794 at paragraph 26.

<sup>17</sup> *Ibid* at paragraph 36.

## When is a tax agent service provided 'in connection with' an arrangement?

15. The phrase 'in connection with' and the term 'connection' also are not defined in the TASA, thus they take on their ordinary meaning. The Macquarie Dictionary<sup>18</sup> includes the following relevant definitions for the term 'connection':
- 3. anything that connects; a connecting part.
  - ...
  - 5. association; relationship.
  - 6. a circle of friends or associates, or a member of such a circle.
16. The EM to the Bill explains that Code item 16 is intended to prevent arrangements where the disqualified entity is operating 'through' the registered tax practitioner.<sup>19</sup> This may occur where the disqualified entity is acting as the 'controlling mind' of the registered tax practitioner and provides tax agent services (while unregistered) using the registered tax practitioner's credentials.<sup>20</sup> In effect, the disqualified entity is providing the tax agent service themselves and they are not, as is contemplated by the allowance of certain arrangements under Code 15, providing the tax agent services **on behalf of** the registered tax practitioner.
17. For example, a disqualified entity may prepare a taxpayer's income tax return (i.e. by ascertaining the taxpayer's liabilities, obligations or entitlements) and use the registered tax practitioner's registered agent number and systems to lodge the return. The registered tax practitioner has no involvement in the preparation or lodgment of the return, aside from their registered agent number being used.
18. An arrangement with a disqualified entity may also include arrangements where the disqualified entity prepares a specific component of a tax return (i.e. a schedule), or otherwise provides advice (i.e. an asset valuation),<sup>21</sup> which the registered tax practitioner uses to ascertain (or advise) a taxpayer about their liabilities, obligations or entitlements under a taxation law. These arrangements have been prohibited to ensure that tax agent services are provided to the community in accordance with appropriate standards of professional and ethical conduct,<sup>22</sup> which may be compromised if a tax agent service is provided in connection with a service provided by a disqualified entity.

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<sup>18</sup> The Macquarie Dictionary, [online version], *Macquarie Dictionary Publishers*, 2023.

<sup>19</sup> Paragraph 3.40 of the EM.

<sup>20</sup> Ibid and refer to the 'Example 1' of the Case studies at paragraph 40 of this Information Sheet.

<sup>21</sup> Generally, the TPB considers that where a 'valuer' only provides a valuation of, among other things, certain assets or liabilities, and the valuer is not applying or interpreting the taxation laws to determine a client's tax position, this is not a tax agent service. However, the use of that valuation by a registered tax practitioner in applying taxation laws will constitute a tax agent service. Refer to TPB Information Sheet [TPB\(I\) 16/2012 Do valuers need to register as tax agents](#) for further details.

<sup>22</sup> Subsection 2-5(1) of the TASA.

## Tax agent services which are not ‘in connection with’ an arrangement

19. Code item 16 is not intended to prevent arrangements between a registered tax practitioner and a disqualified entity where the arrangement is only administrative in nature, or unrelated to the provision of tax agent services.
20. Registered tax practitioners are required to use their professional judgment in considering their arrangements with other entities and whether these arrangements impact on their ability to provide tax agent services in accordance with appropriate standards of professional and ethical conduct, including under the Code.

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

21. Subsection 45-5(2) of the TASA provides that a ‘disqualified entity’ is:
- an entity<sup>23</sup>
  - neither a registered tax agent or BAS agent, nor a ‘qualified tax relevant provider’ (QTRP),<sup>24</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).<sup>25</sup></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.<sup>26</sup></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</li></ul>

<sup>23</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>24</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.

<sup>25</sup> Refer to the definition of ‘serious taxation offence’ as given by subsection 90-1(1) of the TASA.

<sup>26</sup> A ‘serious offence’ is defined in subsection 995-1(1) of the *Income Tax Assessment Act 1997* as having the meaning given by section 355-70 in Schedule 1 to the *Taxation Administration Act 1953*.

Event	Explanation
	<p>example, the Criminal Code defines '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>27</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> </ul> </li> </ul>

<sup>27</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
	<ul style="list-style-type: none"> <li>- has executed a deed of company arrangement that has not yet been terminated.</li> </ul> <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>28</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>29</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>28</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>29</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
Has been <i>found by the TPB</i> , after being investigated under section 60-95 of the TASA, or by a Court, <i>to have contravened the TASA</i>	<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’?

22. 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>30</sup>

23. 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 16 as it is with respect to Code item 15.<sup>31</sup>

24. 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>32</sup>

25. 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
Before entering into an arrangement with an entity in connection with	<ul style="list-style-type: none"> <li>Undertake appropriate proof-of-identity enquiries in respect of the individual or entity, which are consistent with the minimum</li> </ul>

<sup>30</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>31</sup> Refer to TPB Information sheet [TPB\(I\) 41/2024 Code of Professional Conduct item 15 – Employing or using a disqualified entity in the provision of tax agent services without approval](#).

<sup>32</sup> Subsection 45-5(2) of the TASA.

<p>the provision of tax agent services by the registered tax practitioner</p>	<p>requirements contained in <a href="#">TPB(PN) 5/2022 Proof of identity requirements for client verification</a>;</p> <ul style="list-style-type: none"> <li>• Discuss the requirements of Code item 16 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 21) occur within the last 5 years. The TPB has published a <a href="#">Disqualifying events declaration and consent form</a> to assist registered tax practitioners in meeting this requirement.</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>33</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>34</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>35</sup></li> <li>- written cautions to an entity are sanctions that cannot be published on the TPB Public Register,<sup>36</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>37</sup></li> </ul> </li> </ul>
<p>During the course of an arrangement with an entity in connection with the provision of tax agent services by the registered tax practitioner</p>	<ul style="list-style-type: none"> <li>• Have written arrangements 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 21) occurs</li> <li>- enable the registered tax practitioner to immediately cease providing tax agent services in connection with the arrangement with the entity, if the entity is (or becomes) a disqualified entity</li> </ul> </li> </ul>
<p>Ceasing an arrangement with an entity in connection with the provision of tax agent services by 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 21) occur within the last 5 years.</li> <li>• These records should be retained for 5 years after the cessation of the arrangement.</li> </ul>

<sup>33</sup> The [Treasury Laws Amendment \(Tax Accountability and Fairness\) Act 2024](#) received Royal Assent on 31 May 2024. Part 1 of Schedule 3 to this Act includes amendments to the TASA which will require additional information, to be specified in proposed amendments to the TASR, to be published on the TPB Public Register. This Information Sheet will be updated to reflect any relevant amendments to the TASR as they come into effect.

<sup>34</sup> Subsection 60-135(3) of the TASA.

<sup>35</sup> TASR at subsection 25(2).

<sup>36</sup> Ibid at paragraph 25(1)(f).

<sup>37</sup> Ibid at subsection 25(1).

26. **Table 2** contains the minimum requirements for most arrangements between registered tax practitioners and entities in connection with the provision of tax agent services by the registered tax practitioner. However, registered tax practitioners should exercise their professional judgment when determining the processes to undertake 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 lesser standard.

### How to comply with Code item 16

27. The steps and actions a registered tax practitioner should take to comply with Code item 16 will depend on the circumstances surrounding the arrangement with an entity in connection with the provision of tax agent services by the registered tax practitioner. **Table 3** below provides a non-exhaustive explanation as to how registered tax practitioners can comply with Code item 16 in different circumstances.

**Table 3:**

Situation	How to comply
Registered tax practitioner wants to enter an arrangement with an entity in connection with the provision of tax agent services by the registered tax practitioner. At this time, their disqualified entity status is unknown.	<ul style="list-style-type: none"> <li>Follow the steps outlined in <b>Table 2</b> (at paragraph 25) under 'Before entering into an arrangement with an entity in connection with the provision of tax agent services by the registered tax practitioner'.</li> </ul>
Registered tax practitioner is in an arrangement with an entity in connection with the provision of tax agent services by the registered tax practitioner, and the entity is <b>not</b> a disqualified entity	<ul style="list-style-type: none"> <li>Follow the steps outlined in <b>Table 2</b> (at paragraph 25) under 'During the course of an arrangement with an entity in connection with the provision of tax agent services by the registered tax practitioner'.</li> </ul>
Registered tax practitioner wishes to enter an arrangement with a <i>known</i> disqualified entity in connection with the provision of tax agent services by the registered tax practitioner	<ul style="list-style-type: none"> <li>Code item 16 prohibits arrangements with disqualified entities in connection with the provision of tax agent services by the registered tax practitioner. These arrangements <b>cannot</b> be approved by the TPB.</li> </ul>
Registered tax practitioner is notified or otherwise becomes aware that it is providing tax agent services in connection with an arrangement with an entity that is (or has become) a disqualified entity. The registered tax practitioner wants the arrangement to continue.	<ul style="list-style-type: none"> <li>Code item 16 prohibits arrangements with disqualified entities in connection with the provision of tax agent services by the registered tax practitioner, including any pre-existing arrangements. These arrangements <b>cannot</b> be approved by the TPB.</li> <li>The registered tax practitioner will need to consider their options to cease providing tax agent services in connection with the</li> </ul>

	<p>arrangement with the entity, having regard to their legal obligations, including under contract or employment law. The registered tax practitioner should seek independent legal advice.</p>
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## Notification requirements for disqualified entities

28. A disqualified entity has an obligation to notify a registered tax practitioner in writing that they are a disqualified entity before entering into an arrangement, or renewing / agreeing to extend an existing arrangement, in connection with the provision of tax agent services by the registered tax practitioner.<sup>38</sup> This is a separate obligation to that provided by Code item 16, which prohibits the registered tax practitioner from entering into such an arrangement, or renewing / agreeing to extend such an existing arrangement, with the disqualified entity.<sup>39</sup> Both the disqualified entity and the registered tax practitioner may be liable for civil penalties separately for a contravention of their respective obligations.

29. If an entity *becomes* a disqualified entity whilst in an arrangement with a registered tax practitioner, and that arrangement is connected with the provision of tax agent services by that registered tax practitioner, they must provide written notice to the registered tax practitioner that 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>

30. Transitional provisions may apply to entities who are disqualified entities, are in an existing arrangement with a registered tax practitioner, and that arrangement is connected with the provision of tax agent services by that registered tax practitioner.<sup>41</sup> For transitional provisions to apply, the disqualified entity must be:

- at the start of the day on 1 January 2024:
  - i. in an existing arrangement connected with the provision of tax agent services by the registered tax practitioner
  - ii. a disqualified entity, and
- at the end of the day on 31 December 2024:
  - i. in the same arrangement connected with the provision of tax agent services by the same registered tax practitioner.

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<sup>38</sup> Subsection 45-10(2) of the TASA.

<sup>39</sup> Subsection 30-10(16) of the TASA.

<sup>40</sup> Subsections 45-15(1) and (2) of the TASA.

<sup>41</sup> Section 45-20 of the TASA.

31. 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

32. To allow registered tax practitioners a reasonable amount of time to ensure compliance with the requirements of Code item 16, transitional provisions apply in certain circumstances.

33. Transitional provisions apply to the obligations under Code item 16 if a registered tax practitioner is in an arrangement with a disqualified entity, in connection with the provision of tax agent services by the registered tax practitioner, before 1 January 2024.

34. Code item 16 will not apply to registered tax practitioners from 1 January 2024 until 31 December 2024 (inclusive) unless, during this period, the registered tax practitioner enters into, renews or agrees to extend an arrangement with the disqualified entity in connection with the provision of tax agent services by the registered tax practitioner.<sup>42</sup>

35. In those circumstances, the obligations under Code item 16 will apply on and after the date of entering or renewing the arrangement, or the date of the agreement to extend arrangement.

36. The scenarios in **Table 4** illustrate the operation of the transitional provisions to the application of Code item 16 for registered tax practitioners.

**Table 4:**

Scenarios	#	If Sophie...	... then Sam, to comply with Code item 16...
Before 1 January 2024, Sam (a registered tax practitioner) enters into an arrangement with Sophie, in connection with tax agent services provided by Sam.	1	<ul style="list-style-type: none"> <li>remains in an arrangement with Sam (which has not been renewed or extended) in connection with tax agent services provided by Sam, as of 1 January 2025</li> </ul>	<ul style="list-style-type: none"> <li>is not required to cease the arrangement with Sophie, in connection with tax agent services Sam provides, until 1 January 2025.</li> </ul>
Sophie becomes a disqualified entity after 1 January 2024 and notifies Sam of this immediately.		2	<ul style="list-style-type: none"> <li>had her arrangement with Sam renewed or extended after 1 January 2024, and</li> <li>is in an arrangement with Sam, in connection with tax agent services Sam provides, when she becomes a disqualified entity.</li> </ul>

<sup>42</sup> Subsection 9(3) in Schedule 3 to the *Treasury Laws Amendment (2023 Measures No. 1) Act 2023*.

			employment law. Sam may wish to seek independent legal advice.
	3	<ul style="list-style-type: none"> <li>has her arrangement with Sam terminating after she becomes a disqualified entity and wishes to have this arrangement renewed or extended</li> </ul>	<ul style="list-style-type: none"> <li>must not renew or agree to extend the arrangement with Sarah that is in connection with tax agent services Sam provides.</li> </ul>
<p>After 1 January 2024, Sam (a registered tax practitioner) enters into an arrangement with Sophie, in connection with tax agent services provided by Sam.</p> <p>Sophie becomes a disqualified entity after 1 January 2024 and notifies Sam of this immediately.</p>	4	<ul style="list-style-type: none"> <li>is in an arrangement with Sam, in connection with tax agent services provided by Sam, when she becomes a disqualified entity.</li> </ul>	<ul style="list-style-type: none"> <li>will need to consider their options to cease providing tax agent services, in connection with the arrangement with Sophie, immediately after being notified that Sophie is a disqualified entity, having regard to their obligations under contract law and employment law. Sam may wish to seek independent legal advice.</li> </ul>

## Consequences for failing to comply with Code item 16

37. If a registered tax practitioner enters or maintains an arrangement with a disqualified entity, in connection with tax agent services provided by the registered tax practitioner, the TPB will find that the registered tax practitioner has breached the Code and may impose one or more of the following sanctions<sup>43</sup> for that breach:

- 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.

38. Ultimately, whether a registered tax practitioner has complied with their obligations under Code item 16 is a question of fact. This means that each situation must be considered on a case-by-case basis having regard to the particular facts and circumstances of that case.

39. A breach of Code item 16 could also impact on a registered tax practitioner meeting the 'fit and proper person' requirement,<sup>44</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 are provided competently.

## Case studies

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

<sup>44</sup> For more information about the fit and proper requirement, see [TPB Explanatory Paper TPB\(EP\) 02/2010 Fit and proper person](#).

40. These case studies provide general guidance only. In all cases, consideration will need to be given to the specific facts and circumstances.
41. These case studies are based on scenarios where the transitional provisions are no longer in effect. Refer to **Table 4** (at paragraph 36) for scenarios which illustrate the operation of the transitional provisions.

### **Example 1 – Registered tax practitioner enters into an arrangement with a disqualified entity who provides services using the registered tax practitioner’s registration number and access credentials**

Kim had her registration terminated by the TPB nine months ago for ceasing to be a fit and proper person, making her a disqualified entity. Kim wishes to enter into an arrangement with Matt, a registered tax practitioner, in connection with tax agent services provided by Matt.

The arrangement involves Kim using Matt’s tax agent registration number and ATO Online Services access credentials to lodge income tax returns. Matt is not otherwise involved in the preparation or lodgment of these income tax returns. Matt has no contact with Kim’s clients and does not receive any payment from Kim’s clients. Matt receives a payment from Kim based on the amount of fees she renders each month.

Matt does not conduct a proof-of-identity check prior to entering into the arrangement with Kim. Matt also fails to check the TPB Public Register to enquire as to whether Kim has been previously terminated or sanctioned by the TPB.

Matt has not made reasonable enquiries prior to entering into the arrangement with Kim.

Matt is in breach of Code item 16. Note that Matt may also be in breach of other items in the Code and the civil penalty provisions due to the nature of the arrangement with Kim. Further, Kim will also be in breach of section 45-10(2) for failing to notify Matt that she is a disqualified entity.

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

Cheryl is a disqualified entity. Cheryl sought to enter into an arrangement with James, a registered tax practitioner, in connection with the tax agent services provided by James.

James undertook proof-of-identity enquiries in respect of Cheryl. James discussed the events listed in **Table 1** (at paragraph 21) and received a written declaration from Cheryl that none of these events applied to her. James also conducted a search of the TPB Public Register for Cheryl and her details did not appear on this register.

James ensured that the arrangement with Cheryl included terms requiring Cheryl to immediately disclose whether she is (or becomes) a disqualified entity.

James has undertaken reasonable enquiries and met the TPB’s minimum requirements, despite Cheryl being a disqualified entity.

During the period of the arrangement, James discovers that Cheryl is a disqualified entity. Upon discovering that Cheryl is a disqualified entity, James immediately ceases providing tax agent services in connection with the arrangement with Cheryl.



James has not breached Code item 16, however Cheryl is in breach of section 45-10(2) for failing to notify James that she is a disqualified entity.

### **Example 3 – A registered tax practitioner provides tax agent services in connection with an arrangement with an entity that is not a disqualified entity**

Jeremy had his registration terminated by the TPB four years ago for a breach of the Code, with a non-application period of 2 years. One year ago, he reapplied for registration and his tax agent registration was reinstated by the TPB.

Jeremy no longer has an office or his own staff, so he enters into a verbal arrangement with Joe, who is a registered tax practitioner and an old friend. Jeremy agrees to let Joe practice from his offices, including use of a computer and access to all his systems. Jeremy meets with clients and uses Joe's staff to assist him to prepare tax returns, which Joe reviews and lodges under his own registration number. Joe does not receive any payment from Jeremy.

As Jeremy is presently a registered tax agent, he is not a disqualified entity and Joe is not prohibited from entering into this arrangement.

### **Example 4 – Registered tax practitioner company enters arrangement with terminated practitioner**

Frank had his registration terminated by the TPB two years ago for ceasing to be a fit and proper person, making him a disqualified entity. Bonnie is Frank's wife, and she is aware of his termination.

One year after Frank's termination, Bonnie became a registered tax practitioner and at the same time also registered her company, Bonnie's Tax Pty Ltd as a tax agent. Bonnie is the company's sole director and supervising tax agent.

It comes to the TPB's attention that Frank is meeting Bonnie's Tax Pty Ltd's clients in the office and preparing their income tax returns. These clients have only interacted with Frank. Frank is also contacting the Australian Taxation Office on behalf of Bonnie's Tax Pty Ltd's clients to arrange lodgement deferrals and debt payment arrangements.

Bonnie's Tax Pty Ltd is in breach of Code item 16 as Bonnie, the sole director of Bonnie's Tax Pty Ltd, is aware that her husband's registration was terminated, and Bonnie's Tax Pty Ltd has provided tax agent services in connection with an arrangement with Frank, a disqualified entity.