



Australian Government



TAX  
PRACTITIONERS  
BOARD

# Disqualified entities

**Presented by**

Peter de Cure, TPB Chair

Janette Luu, TPB Assistant Secretary

# Welcome

*'In the spirit of reconciliation, I respectfully acknowledge the Traditional Owners and Custodians of Country throughout Australia and their continuing connection to land, waters and community. I would like to pay my respect to them and their cultures, and Elders past and present'.*

Access the presentation slides : [tpb.gov.au/webinar-hub](https://tpb.gov.au/webinar-hub)

# What we will cover today

- ✓ Changes to the TASA
- ✓ Disqualified entities and how to identify them
- ✓ How to seek approval to use a disqualified entity
- ✓ Transitional provisions
- ✓ What types of arrangements are prohibited
- ✓ Notification requirements
- ✓ Scenarios and case studies
- ✓ Q&A

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



# Important changes to the TASA



These changes  
impact tax  
practitioners  
directly

Law change	Start date
1. Prevent the engagement of disqualified entities	1 Jan 2024
2. Giving the Minister the ability to expand the Code	
3. Move to annual registration period	1 July 2024
4. Breach reporting – self reporting	
5. Breach reporting – another tax practitioner	
6. Updating of the objects clause in the legislation	1 Jan 2024
7. Enhance the TPB's financial independence	1 July 2024
8. Board member appointments	1 Oct 2024

# Important changes to the TASA



Amendment	Start date
1. Expanding whistleblower protections	1 July 2024
2. Public register changes	
3. Extending TPB investigation powers	
4. Information sharing with Treasury	1 June 2024
5. Information sharing with prescribed disciplinary bodies	

**Disqualified entities – Code  
item 15 and 16**



## Code item 15 and 16

- **Code item 15** – you must not employ or use the services of an entity that you know (or ought reasonably to know) is a disqualified entity, to provide tax agent services (including BAS services) on your behalf, unless you have obtained our approval.
- **Code item 16** – prohibits you from having certain arrangements, with an entity that you know (or ought reasonably to know) is a disqualified entity, in connection with the provision of tax agent services, including BAS services.





# What is a disqualified entity?



A disqualified entity includes:

- individuals
- companies
- partnerships
- trusts
- superannuation funds.

## Disqualified entity events



- Convicted of a serious offence or serious taxation offence.
- Convicted of an offence involving fraud or dishonesty.
- Penalised for being a promoter of a tax exploitation scheme.
- Penalised for implementing a tax exploitation scheme in a product ruling.
- An undischarged bankrupt or under external administration.
- Contravening the TASA.
- Action taken against you under the TASA.
- Having your registration terminated.
- Application for registration or renewal rejected by us.

# Types of entities



- The types of entities ‘employed’ or ‘used’ to provide tax agent services, include:
  - Employees.
  - Associates.
  - Contractors.
  - Individuals who share in the revenue and income received from the tax agent services provided under a registered tax practitioner.
- Code item 15 does not apply to entities that provide:
  - administrative support only to a tax practitioner
  - tax agent services for no fee or reward.

## Arrangements prohibited by the code



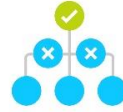
- Code item 16 prohibits you from having certain arrangements with a disqualified entity in connection with the provision of tax agent services.
- Code item 16 is intended to prevent arrangements where the disqualified entity is operating 'through' the registered tax practitioner.
- This may occur where the disqualified entity is acting as the 'controlling mind' and provides tax agent services (while unregistered) using the registered tax practitioner's credentials.

## Complying with Code item 16



- A 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’.
- If you want to enter an arrangement with an entity in connection with the provision of your own tax agent services, you need to determine if they are a disqualified entity first.
- You will need to:
  - Undertake appropriate POI checks.
  - Seek written confirmation that a disqualified entity event hasn’t occurred in the last 5 years.
  - Search our public register and the financial adviser register to verify whether the entity has been sanctioned and/or terminated.

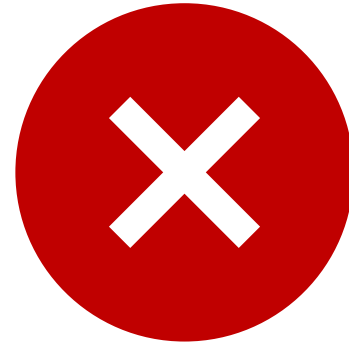
## Complying with Code item 16



- If you are a registered tax practitioner in an arrangement with an entity in connection with the provision of your tax agent services, and the entity is not a disqualified entity
- You must have a written arrangements in place with the entity to:
  - require notification as soon as practicable if a disqualified entity event occurs
  - 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.

## Complying with Code item 16

- If you are a registered tax practitioner who wishes to enter an arrangement with a known disqualified entity in connection with the provision of your tax agent services Code item 16 prohibits this arrangement.
- This cannot be approved by the TPB.



## Complying with Code item 16



- If you are notified or become aware you are providing tax agent services in connection with an arrangement with an entity that is (or has become) a disqualified entity and you want the arrangement to continue, Code item 16 prohibits this.
- You will need to consider your options to cease providing tax agent services in connection with the arrangement, considering your legal obligations.
- You should seek independent legal advice.



## Example 1



- Kim is a disqualified entity. She wishes to enter into an arrangement with Matt, a registered tax practitioner.
- Kim uses Matt's tax agent registration number and ATO Online Services access credentials to lodge.
- Matt isn't involved in the preparation or lodgement of the returns, has no contact with Kim's clients and doesn't receive payment from the clients.
- Matt receive a payment from Kim.
- Matt doesn't conduct POI prior to entering into the arrangement with Kim and fails to check the TPB Register.
- Matt is in breach of Code item 16.

## Identifying a disqualified entity



- You must take reasonable steps and make reasonable enquiries to determine if an entity you employ or use to provide tax agent services on your behalf is a disqualified entity.
- These reasonable steps and enquiries are expected to include new information gathering processes for entities providing tax agent services on your behalf, such as:
  - onboarding requirements for new employees or other entities
  - employee reporting processes or contractual notification requirements for other entities.

## Step 1. Check registration status



- Check if the entity is (or was previously) registered with us or ASIC.
- You can use our Public register to check an entity's registration status as a tax practitioner, including if the entity has been sanctioned and/or terminated by us.
- You can also use the ASIC's Financial Advisers Register to check if the entity is currently registered as a qualified tax relevant provider (QTRP).
- If the entity is currently registered as a tax practitioner, or as a QTRP, then the entity is not considered a disqualified entity at this time.

## Step 2. Before employing, using or entering into an arrangement with an entity

- Undertake appropriate POI checks.
- Discuss the requirements of Code items 15 and 16 and obtain written confirmation that they have not had a disqualifying event occur within the last 5 years.
- Written confirmation should be provided using our Disqualifying events declaration and consent form.
- Ensure that you have a written contract or arrangement in place with the entity.



## Step 3. During employment, use of or an arrangement with an entity to provide tax agent services

- Where you have an existing contract or arrangement with an entity, follow the steps 1 and 2 (excluding POI checks, if these have already been undertaken).
- You should also consider the transitional provisions for Code items 15 and 16.



# How to comply with Code 15



- The transitional period is in place from 1 January 2024 to 31 December 2024.
- The steps to comply during the transitional period will depend on the stage you are at.
- First, if a contract was entered into on or before 31 December 2023 and not renewed or extended during the transitional period you will need to:
  - Apply for our approval during the transitional period if you want to continue to employ or use the disqualified entity to provide tax agent services on your behalf after 31 December 2024.
  - If you do not receive our approval, you will need to consider your options to cease employing or using the disqualified entity to provide tax agent services on your behalf.

## How to comply with Code 15 cont.



Second, if entering into a new, extended or renewed contract during the transitional period:

- You must obtain our approval before entering into, extending or renewing a contract to employ or use the disqualified entity to provide tax agent services on your behalf during the transitional period.
- If our approval is not obtained, you must not enter into, extend or renew the contract with the disqualified entity.
- If the entity becomes a disqualified entity after you have entered into a new, extended or renewed contract, you need to consider your options to immediately cease employing or using the disqualified entity.
- You must obtain our approval before continuing to employ or use the disqualified entity to provide tax agent services on your behalf.

# How to comply with Code 16



- The action required depends on the stage of the arrangement with the disqualified entity in connection with tax agent services you provide.
- If the arrangement was entered into on or before 31 December 2023 and not renewed or extended during the transitional period, you need to consider your options to cease the arrangement with the disqualified by 1 January 2025.
- If you are entering into a new, extended or renewed arrangement during the transitional period, you must not enter into, extend or renew the arrangement with the disqualified entity.
- If the entity becomes a disqualified entity after you have entered into a new, extended or renewed arrangement, you will need to consider your options to cease the arrangement.



## What happens after the transitional period?

- From 1 January 2025 the transitional arrangements cease.
- To comply with Code item 15, you must not employ or use a disqualified entity to provide tax agent services on your behalf without having obtained our approval.



# Disqualified entities notification



- A disqualified entity must notify you in writing of their disqualified status, if they are seeking to:
  - be (or are currently being) used or employed to provide tax agent services on your behalf
  - enter into (or are currently in) an arrangement with you in connection with tax agent services you provide.
- If they fail to give notice, they may be subject to civil – the maximum penalty is 250 units for an individual and 1,250 units for a body corporate. The current value of a penalty unit is \$275.

# Notification obligations



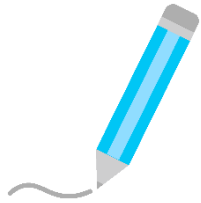
## Seeking or approval



- You must obtain written consent from the disqualified entity before applying to us for approval.
- To lodge an application, simply login to My Profile to access our approved.
- We must make a decision within 60 days of receiving the application, unless we have agreed on a longer period.
- If we reject your application, we will provide you with the reasons for the decision.
- If we do not make a decision within 60 days (or the agreed longer period), your application is taken to be rejected.
- If your application is rejected, you can apply to the Administrative Appeals Tribunal for a review .

# Consequences for failing to comply

# Consequences for failing to comply



Written  
caution



Order



Suspension



Termination

## Case study 1



- Brendan wants to employ Chelsea to provide tax agent services on his behalf under his supervision.
- Brendan asks Chelsea to confirm that she is not a disqualified entity, but she advises she is not sure.
- Brendan has no further discussions with and employs her without receiving any further information.
- Brendan also does not conduct a POI check or search the Register to check if Chelsea was terminated or previously sanctioned.
- Brendan has not made reasonable enquiries and has not received our approval for Chelsea's employment and is in breach of Code item 15.

## Case study 2

- Trent seeks to use Winnie's services as a contractor to provide services on his behalf.
- Trent undertakes POI and advises Winnie he cannot use her services without approval if she is a disqualified entity.
- He discusses the disqualified entity events and receives a declaration from Winnie that none of these events apply. Trent also searches our Register.
- The contract with Winnie contains provisions requiring her to declare if she is (or becomes) a disqualified entity.
- During the contract period, Trent learns Winnie was convicted of a serious tax offence 3 years ago, making her a disqualified entity.
- Upon learning Winnie is a disqualified entity, Trent immediately ceases her contract.



## Case study 3



- Frank had his registration terminated 2 years ago for ceasing to be a fit and proper person.
- Bonnie, is a tax practitioner, the sole director and supervising agent of Bonnie's Tax Pty Ltd.
- She is aware of Frank's termination.
- We discover Frank is meeting clients of Bonnie's Tax Pty Ltd and uses the company's systems access credentials to prepare income tax returns.
- By allowing Frank to do this Bonnie's Tax Pty Ltd are providing tax agent services in connection with an arrangement with a disqualified entity.
- Bonnie's Tax Pty Ltd is in breach of Code item 16.



# Questions

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