

TPB Information sheet

TPB(I) D59/2024

Obligation to keep proper client records of tax agent services provided

Tax Practitioners Board exposure draft

The Tax Practitioners Board (TPB) has released this draft Information Sheet (TPB(I) D59/2024) as an exposure draft and invites comments and submissions in relation to the information contained in it within 28 days. The closing date for submissions is **21 November 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 or by mail to:

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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 section 30 of the Tax Agent Services (Code of Professional Conduct) Determination 2024.

While this draft TPB(I) seeks to provide practical assistance and explanation, it does not exhaust, prescribe or limit the scope of the TPB's powers in the TASA. In addition, please note that the principles, explanations and examples in this draft TPB(I) do not constitute legal advice and do not create additional rights or legal obligations beyond those that are contained in the TASA or which may exist at law. Please refer to the TASA and the Determination for the precise content of the legislative requirements.

Document history

This draft TPB(I) was issued on **24 October 2024** and is based on the TASA as at the date of issue.

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Obligation to keep proper client records of tax agent services provided

Introduction

1. This draft Information sheet (TPB(I)) has been prepared by the Tax Practitioners Board (TPB) to assist registered tax agents and BAS agents (collectively referred to as 'registered tax practitioners') understand their obligations under section 30 of the *Tax Agent Services (Code of Professional Conduct) Determination 2024* (Determination).
2. While the focus of this draft TPB(I) is on the obligations in section 30 of the Determination, it is important to note that there are also 17 obligations in the Code of Professional Conduct (Code),¹ additional obligations in the Determination, and further requirements that registered tax practitioners must comply with under the *Tax Agent Services Act 2009* (TASA). These include ongoing requirements in relation to maintaining registration under the TASA, including that a registered tax practitioner is a 'fit and proper' person.²
3. In this TPB(I), you will find information on:
 - Background to the legislative requirements (paragraphs 4 to 12)
 - Policy objective of the obligation (paragraphs 13 to 18)
 - Key elements of the obligation (paragraphs 19 to 72)
 - Interaction of the obligation with your client's obligations to keep and retain records under the taxation laws (paragraphs 73 to 85)
 - Related record keeping considerations (paragraphs 86 to 91)
 - Case studies (paragraph 92)
 - Consultation questions (paragraph 93).

Background

4. Section 30-10 of the TASA contains the Code, comprising of 17 obligations which regulate the personal and professional conduct of all registered tax practitioners.
5. One of these obligations is contained in subsection 30-10(17) of the TASA, which requires registered tax practitioners to comply with any obligations that the Minister determines, by legislative instrument, under section 30-12 of the TASA.

¹ The provisions of the Code are contained in section 30-10 of the TASA. The TPB has also published an explanatory paper that sets out its views on the application of the Code. Refer to TPB Explanatory paper [TPB\(EP\) 01/2010 Code of Professional Conduct](#).

² For further information, see TPB Explanatory paper [TPB \(EP\) 02/2010 Fit and proper person](#).

6. On 1 July 2024, the Minister determined 8 additional Code obligations, set out in the Determination. These additional Code obligations apply from:
 - **1 July 2025** – for registered tax practitioners with 100 or less employees as at 31 July 2024³
 - **1 January 2025** – for any other registered tax practitioners.⁴
7. The deferred application date provides registered tax practitioners time to understand their obligations, assess their own practice and implement changes, if required, to comply with their obligations under the Determination from the relevant application date under paragraph 6.
8. In the context of section 30 of the Determination, the obligation to keep proper client records applies in relation to tax agent services provided by registered tax practitioners on or after the relevant application date in paragraph 6. The TPB considers that a tax agent service is 'provided' when it is completed. The obligation therefore applies to services completed on or after the relevant application date. If a tax agent service has commenced before the application date but is completed after the application date, the record keeping requirements will apply to those services.
9. For further information on the Determination, refer to the TPB's website guidance titled [The Code Determination – Background and context](#). This document provides additional background information including in relation to:
 - the process to finalise the Determination
 - commencement and application date
 - the TPB's approach to support implementation.
10. The draft TPB(I) does not set out all the recordkeeping requirements prescribed under the taxation law that may apply to clients of registered tax practitioners. The Australian Taxation Office (ATO) is responsible for administering the taxation laws that impose obligations on clients to keep and retain certain tax records. As explained in paragraphs 73 to 85 of this draft TPB(I), clients are still required to comply with these recordkeeping requirements.
11. The obligation under section 30 of the Determination applies more broadly to the 'tax agent services' that registered tax practitioners provide to their clients, including former clients. However, some of the records that registered tax practitioners must keep under section 30 of the Determination could include records that a client is also required to keep under the taxation laws more generally.
12. As tax agent services include BAS services, the recordkeeping obligations apply equally to BAS services within the meaning of section 90-10 of the TASA.⁵

³ This includes new registered tax practitioners with 100 or less employees that register between 1 August 2024 and 30 June 2025 inclusive.

⁴ See the *Tax Agent Services (Code of Professional Conduct) Amendment (Measures No. 1) Determination 2024*.

⁵ Including those services that the TPB has declared, by legislative instrument, to be BAS services in accordance with subsection 90-10(1A) of the TASA, services covered by subsections 90-10(1AA) and (1AB), and excluding any services specified in the TASR as not being BAS services under subsection 90-10(2) of the TASA.

Policy objective

13. Proper and accurate recordkeeping is essential to maintaining the integrity of a registered tax practitioner's practice, as it explains and evidences the actions, decisions and advice of that registered tax practitioner in the course of providing tax agent services to their clients.
14. This is particularly important when disputes or queries arise in relation to the tax agent services provided, including, for example, the legality and accuracy of advice or calculation of tax related liabilities. Compliance with section 30 of the Determination provides a mechanism for registered tax practitioners to be able to refer to their records as clear evidence of their actions, including the decisions made and advice provided, and clarify any potential allegations of wrongdoing⁶.
15. It is expected that registered tax practitioners will have a clear understanding with their clients about what records the registered tax practitioner will keep in order to comply with their obligations under section 30 of the Determination, and what records their client must keep in order to comply with their obligations under the taxation laws more generally. This will help to ensure that clients are aware of their own record keeping obligations and avoid duplication of record keeping between the client and the registered tax practitioner.
16. The recordkeeping obligation under section 30 of the Determination aligns with the overarching object of the TASA to support public trust and confidence in the integrity of the tax profession and tax system by ensuring that tax agent services are provided to the community in accordance with appropriate standards of professional and ethical conduct⁷.
17. The obligation also complements the existing obligations imposed on registered tax practitioners under the Code relating to the core principle of 'competence'.⁸
18. The introduction of this obligation provides clarity on record-keeping requirements for registered tax practitioners and promotes consistency and certainty of practices across the sector, including what records they need to keep and for how long.

⁶ Page 12 of the Explanatory Statement to the Determination.

⁷ Section 2-5 of the TASA.

⁸ To ensure tax agent services they provide (or which are provided on their behalf) are provided competently (Code item 7); maintain knowledge and skills relevant to the tax agent services they provide (Code item 8); to take reasonable care in ascertaining a client's state of affairs, to the extent that ascertaining the state of affairs is relevant to a statement they are making or thing they are doing on behalf of the client (Code item 9); and to take reasonable care to ensure taxation laws are applied correctly to the circumstances in relation to which they are providing advice (Code item 10).

Obligation to keep proper client records

19. Section 30 of the Determination requires registered tax practitioners to keep records that correctly record the tax agent services they have provided, or that are provided on their behalf, to each of their clients, including former clients. The records must:

- be in English, or readily accessible and easily convertible into English
- be retained for at least 5 years after the service has been provided
- show the nature, scope and outcome of the tax agent service provided
- reference information reasonably considered in the provision of the tax agent service
- include all advice received from the client
- include all advice provided to the client, and for more complex matters:
 - the relevant facts
 - assumptions and reasoning underpinning any advice provided (including the basis on which, and the method by which, any calculations, determinations, or estimates used, have been made).

‘Records’

20. A key element of this requirement relates to ‘records’.

21. The term ‘records’ is not defined in the Determination or the TASA, and is therefore given its ordinary meaning, having regard to its statutory context.

22. The Macquarie Dictionary⁹ relevantly defines the term as meaning:

Record (verb)

1. *to set down in writing or the like, as for the purpose of preserving evidence.*

Record (noun)

11. *an account in writing or the like preserving the memory or knowledge of facts or events.*
12. *information or knowledge preserved in writing or the like.*

⁹ The Macquarie Dictionary, Macmillan Publishers Australia, 2024.

Examples of records that must be kept

23. Having regard to the ordinary meaning of ‘records’, and without limiting the operation of section 30 of the Determination, the TPB considers that, at a minimum, registered tax practitioners must keep and retain the following types of records (where relevant) to comply with section 30:

- client details – name, contact information, date of birth, bank and employment details¹⁰
- letters of engagement (or other agreement setting out the terms and conditions of the engagement)¹¹
- file notes relating to proof of identity or client verification checks undertaken, including relevant authorising documentation for representatives of clients (noting that the TPB does not recommend that registered tax practitioners keep copies of identity documents)¹²
- client permissions (including consent to disclose client information)
- agreements to offshore or outsource services to clients, including confidentiality agreements
- records that explain or evidence an essential part or element of the tax agent service provided to the client, or steps taken to provide the service, including:
 - records that reference or describe information exchanged with the client
 - records of steps taken to ascertain the client’s state of affairs relevant to the tax agent services being provided
 - facts, assumptions and reasoning underpinning any advice provided to the client in complicated matters
 - how liabilities, obligations or entitlements of a client under a taxation law have been worked out, and any related advice provided to the client
 - any advice or opinion provided to the client on their rights and obligations under taxation laws
 - communications seeking review and approval/authority of the client of documentation prior to lodgement with the ATO

¹⁰ Registered tax practitioners must ensure that they comply with the [Privacy \(Tax File Number\) Rule 2015](#) in respect of records containing TFNs or TFN information (see paragraphs 70 to 73 of this TPB(I)).

¹¹ For further information on letters of engagement, see TPB Practice Note [TPB\(PN\) 3/2019 Letters of Engagement](#).

¹² For further information on the TPB’s proof of identity requirements, see TPB Practice Note [TPB\(PN\) 5/2022 Proof of identity requirements for client verification](#)

- any dealings with the ATO in which the registered tax practitioner has represented the client in relation to a taxation law (for example, records relating to the preparation and lodgement of returns, notices, statements and applications on behalf of the client and objections lodged against assessments, determinations and notices or decisions made under a taxation law)
- key client communications and records of discussion with the client, including requests for further information and responses
- key communications with third parties in connection with the provision of the service, including the ATO and other government agencies
- copies of advice received from third party advisers or consultants (for example, any advice the registered tax practitioner may have sought from lawyers or consultants on behalf of their client) relevant to the tax agent service provided
- tax invoices issued to the client evidencing the nature of tax agent services provided
- records that a client must keep and retain under a taxation law, where the record is:
 - essential to explaining or evidencing an essential part or element of the tax agent service provided to the client (or steps taken to provide the service); and/or
 - subject to a recordkeeping agreement between the registered tax practitioner and client, in which the registered tax practitioner has agreed to keep and retain the record for the client
- records evidencing the receipt and handling of money or property held in trust and disbursement instructions and authorities in connection with the provision of the tax agent service
- other records that evidence compliance or non-compliance with the Code as it relates to the provision of tax agent services to clients.

‘Keep’ records

24. Section 30 of the Determination draws a distinction between the ‘keeping’ and ‘retaining’ of records.

25. The term ‘keep’ is not defined in the Determination or the TASA, and is therefore given its ordinary meaning, having regard to its statutory context.

26. The Macquarie Dictionary¹³ relevantly defines the term as meaning:

Keep (verb)

2. to cause to continue in some place, position, state, course, or action specified...
3. to maintain in condition or order, as by care or labour...
13. to record (business transactions, etc) regularly; to keep records...
23. to continue to hold or have...

27. Consistent with its ordinary meaning, the TPB considers that the term 'keep', in the context of section 30 of the Determination, does not simply refer to the 'retention' of records already made, but also extends to the 'making' of records that can then be retained or held.

28. In some cases, the record may be created in the course of providing a tax agent service. In others, a registered tax practitioner may need to make a record before it is retained (for example, a file note about advice provided verbally).

29. If a record is created in the ordinary course of providing a service, it must still be retained for the specified 5-year period. If no record is created as part of providing the service, the registered tax practitioner should ensure a record is made, and then retain it.

30. Where possible, registered tax practitioners should 'keep' a timely and accurate record of the service (or parts of the service) that they provide to their clients, either as they deliver the service or as soon as practicable after they do so.

Records that 'correctly record' the service

31. The Determination does not define 'correctly'; nor does it explain when a record will 'correctly' record a tax agent service.

32. The Macquarie Dictionary¹⁴ relevantly defines the term 'correct', from which the adverb 'correctly' is derived, as meaning:

Correct (adjective)

1. Conforming to fact or truth; free from error, accurate: a correct statement

33. Having regard to the ordinary meaning of the term, the TPB considers that records will 'correctly record' a tax agent service for the purposes of section 30 of the Determination if they accurately reflect, without error to the extent possible, the tax agent service provided to the client.

34. However, the obligation extends beyond simply ensuring the accuracy of records in the strict sense of them being free from error. When considered in the context of the provision's policy intent, it requires registered tax practitioners to keep records that 'correctly' reflect the service in a broader sense.

¹³ The Macquarie Dictionary, Macmillan Publishers Australia, 2024.

¹⁴ The Macquarie Dictionary, Macmillan Publishers Australia, 2024.

35. For records to 'correctly' record the service, and conform to fact or truth, they need to cover all relevant details sufficient to explain and/or evidence the service (i.e. the essential aspects and elements of the service), such that it enables a complete and accurate record of that service to be kept.
36. As explained at paragraph 46 of this draft TPB(I), the requirements in section 30 of the Determination that the records must show the nature, scope and outcome of the tax agent service provided, and include all reference information reasonably considered in the provision of the tax agent service supports this conclusion. These requirements must be met for the records to correctly record the service.
37. The TPB expects registered tax practitioners to take reasonable steps, and make reasonable enquiries where appropriate, to ensure that the records kept for the purposes of complying with section 30 of the Determination correctly record the tax agent service provided.

Records of the 'tax agent services' provided

38. The obligation in section 30 of the Determination applies in relation to **each** [tax agent service](#) provided by a registered tax practitioner to their client.
39. Having regard to the meaning of 'tax agent service', as defined in section 90-5 of the TASA, the obligation therefore applies in relation to each service that relates to one or more of the following:
- ascertaining liabilities, obligations or entitlements of an entity that arise, or could arise, under a taxation law; or
 - advising an entity about liabilities, obligations or entitlements of the entity or another entity that arise, or could arise, under a taxation law; or
 - representing an entity in their dealings with the Commissioner; *and*

provided in circumstances where the entity can reasonably be expected to rely on the service for either or both of the following purposes:

- to satisfy liabilities or obligations that arise, or could arise, under a taxation law; or
- to claim entitlements, that arise or could arise under a taxation law.

Services provided by the tax practitioner, or 'on their behalf'

40. The obligation to keep and retain certain records applies in relation to tax agent services provided by the registered tax practitioner personally and/or 'on their behalf'.
41. The TPB considers that the phrase 'on your behalf' carries the same meaning under section 30 of the Determination, as it does for Code items 7 and 15. That is, it includes (but is not limited to) services provided by entities that a registered tax practitioner employs, uses or otherwise engages to provide tax agent services on their behalf.

42. The obligation therefore covers records of tax agent services provided by:

- employees and other entities (including contractors) in relation to which the registered tax practitioner is required to exercise adequate supervision and control
- entities with which they maintain (or are required to maintain) a:
 - supervisory plan in connection with the employment of, or use of, one or more nominated supervising tax practitioners¹⁵
 - remote supervisory arrangement, as is the case with an outsourcing or offshoring arrangement¹⁶.

43. If a registered tax practitioner employs, uses or otherwise engages another entity to provide tax agent services to a client on their behalf, the registered tax practitioner remains responsible for ensuring the obligation in section 30 of the Determination is complied with. However, the registered tax practitioner should ensure:

- those entities understand the requirements of section 30 of the Determination and have the requisite skills, knowledge and resources to comply with those requirements; and
- there is adequate processes and procedures, and supervisory and review arrangements, in place to ensure proper records are kept that correctly record the tax agent services provided.

Services provided to ‘clients, including former clients’

44. The obligation under section 30 of the Determination applies to all tax agent services provided to each client, including former clients. Therefore, the obligation continues even after an individual or entity ceases to be a client.

Minimum requirements for records

45. To meet the requirements of section 30 of the Determination, the records must, at a minimum:

- be in English, or readily accessible and easily convertible into English
- show the nature, scope and outcome of the tax agent service provided
- reference information reasonably considered in the provision of the tax agent service
- include all advice received from the client

¹⁵ [TPB\(I\) 36/2021 Supervisory arrangements under the Tax Agent Services Act 2009 | Tax Practitioners Board.](#)

¹⁶ [TPB\(PN\) 2/2018 Outsourcing and offshoring of tax agent services – Code of Professional Conduct considerations.](#)

- include all advice provided to the client, and for more complex matters:
 - the relevant facts
- assumptions and reasoning underpinning any advice provided (including the basis on which, and the method by which, any calculations, determinations, or estimates used, have been made).

46. Having regard to the ordinary meaning of the terms ‘nature’¹⁷, ‘scope’¹⁸ and ‘outcome’¹⁹, the record must evidence the:

- kind or type of tax agent service provided
- extent or range of the tax agent service and what it inherently involves or comprises
- result and consequence of the tax agent service and issues involved.

47. Section 30 of the Determination requires that the records must reference information reasonably considered in the provision of the tax agent service. This includes information the registered tax practitioner has relied on including, for example, legislative references, case law references and references to other relevant materials. Naturally, the extent of this obligation will depend on the complexity of the matter.

48. In addition, section 30 of the Determination requires that the records must include all advice received from the client and provided to the client, in writing and orally.

49. In relation to advice provided to the client, for more complex matters, the records must include the relevant facts and assumptions and reasoning underpinning any advice provided (including the basis on which, and the method by which, any calculations, determinations, or estimates used, have been made).

50. When considered in the context of the broader view that records need to cover all relevant details sufficient to explain the tax agent service provided and enable a complete and accurate record of that service, the TPB considers the following minimum details need to be captured:

- who the service was provided to (details of which client or former client)
- the terms and conditions of the engagement for the service, which may be evidenced by, amongst other things, a letter of engagement
- why the service was provided, including details of relevant tax obligations involved

¹⁷ (*noun*) 1. The particular combination of qualities belonging to a person or thing by birth or constitution; native or inherent character; 3. Character, kind or sort.

¹⁸ (*noun*) 1. Extent or range of view, outlook, application, operation, effectiveness, etc.

¹⁹ (*noun*): that which results from something; the consequence or issue.

- what the service involved, sufficient to explain the:
 - scope of the engagement
 - relevant fee arrangements, including for example authorising the tax practitioner to withhold fees from a tax refund
 - key parts, elements or features of the service, including the outcome
 - relationships between parties to transactions
 - reasons for decision(s) made, as applicable
 - advice provided to the client
- who the service was provided by, which may be the registered tax practitioner, employees under their supervision and control, contractors, or entities to which tax agent services are outsourced
- how the service was provided, including details of client communications and interactions with other entities relevant to providing the service, including the ATO and other government agencies
- when the service was provided, including key dates
- date that the record was made and the date of any modifications to the record.

51. The records that must be kept and the level of detail required will vary depending on the nature of the service, including the complexity of the matters involved.

52. The details that are considered sufficient, necessary and appropriate to ensure compliance with section 30 of the Determination will be more wide-ranging and comprehensive for complex taxation affairs and transactions when compared to more simple matters.

53. If a registered tax practitioner provides a client with a range of services of varying complexity, the level of detail that needs to be captured for each service may also differ.

54. The TPB does not expect registered tax practitioners to record every detail relating to a tax agent service. When deciding what records to keep and whether they contain adequate detail, a registered tax practitioner must exercise their professional judgment, having regard to the facts and circumstances, balancing the need to comply with the obligation under section 30 of the Determination with ensuring the recordkeeping is not overly burdensome, onerous and costly.

55. It is not necessary for separate records to be kept and retained for different services if the same record explains more than one service (or part of a service) provided to a client. It is also not necessary to duplicate the general accounting records of a client that a registered tax practitioner obtained in order to provide a tax agent service.

How records should be kept

56. To comply with the obligation under section 30 Determination, the records must be in English, or readily accessible and easily convertible into English.
57. The records can be kept and retained in paper or electronic format²⁰, provided they meet the requirements of section 30 of the Determination as detailed in the draft TPB(I).
58. Electronic records must be in a form that is readily accessible and able to be retrieved as required. It is generally not necessary to retain a hard copy of the information contained in an electronic record unless a particular law or regulation requires registered tax practitioners to retain a paper copy.
59. If a registered tax practitioner makes copies of paper or electronic records, they must be a true and clear copy of the original record.
60. If the service is provided in Australia, the records should be kept in English. However, if the service is provided in a country outside Australia (for example, in the case of outsourcing and offshoring), the records can be in an alternative language to English, provided they are readily accessible (that is, they can be accessed promptly, quickly and easily) and easily convertible to English.
61. Registered tax practitioners should have adequate procedures, policies, systems and controls in place to protect the security and confidentiality of client records, ensure client information is not comprised and mitigate the risk of identity theft, fraud, financial loss and reputational damage.²¹ This is particularly important with the changing landscape of tax agent services and how they are provided, including developments in technology, reliance on [cloud computing](#), threat of cyber-attacks and increase in [outsourcing and offshoring](#) of tax agent services.
62. Records should also be made and stored in a way that protects the record and information from being changed or damaged.

²⁰ Section 2B of the *Acts Interpretation Act 1901* defines the word 'record', where it appears in any Act, as including information stored or recorded by means of a computer.

²¹ For further information, see TPB Information [Sheet TPB\(I\) 21/2014 Code of Professional Conduct – Confidentiality of client information](#).

How long records need to be kept

63. Registered tax practitioners must retain the records for at least 5 years after the tax agent service has been provided. In this context, the TPB considers a tax agent service to have been 'provided' from the date the service is considered complete. This will be determined based on the facts and circumstances including the scope of the engagement, including any ancillary or subsequent reviews, audits, objections or appeals. It is recommended that engagement letters clearly stipulate the scope of services and a clearly defined timeframe. Registered tax practitioners should reconfirm or review the arrangements with clients regularly (preferably annually) for recurring or ongoing engagements.²²
64. In some cases, the scope of the engagement and term of retention may be extended by virtue of the relevance of prior financial year records to a subsequent financial year's tax documentation, such as in the case of carried forward losses or depreciating assets.
65. Subject to paragraphs 69 to 72 below, there are no mandatory requirements imposed on registered tax practitioners under the TASA to return, destroy or de-identify client records or information after a certain period or an engagement has ended.
66. However, once the 5-year period has lapsed, registered tax practitioners should consider whether they need to take steps to return²³, de-identify and/or destroy records (as appropriate), having regard to any recordkeeping arrangement with the client and relevant privacy laws.
67. If the *Privacy Act 1988* (Privacy Act) applies to a registered tax practitioner, the Australian Privacy Principles (APPs) in the Act may require them to destroy or de-identify client information in certain circumstances.
68. Registered tax practitioners should refer to guidance provided by the [Office of the Australian Information Commissioner](#) (OAIC) in respect of their obligations under the Privacy Act and APPs.

Records containing Tax file numbers (TFNs) and TFN information

69. Registered tax practitioners who receive, keep and retain records that include TFNs and TFN information must ensure that they comply with the requirements of the *Privacy (Tax File Number) Rule 2015* (TFN Rule) issued under the Privacy Act.

²² [TPB\(PN\) 3/2019 Letters of engagement](#).

²³ For further information about whether the registered tax practitioner or client owns particular documents, including whether a registered tax practitioner can claim a lien over client property, see [TPB\(I\) 02/2011 Claiming a lien over client property](#).

70. The TFN Rule regulates the collection, storage, use, disclosure, security and disposal of individuals' TFN information by 'TFN recipients' (such as registered tax practitioners). It requires that TFN information must only be used or disclosed (including for matching personal information about individuals) by TFN recipients:

- for a purpose authorised by taxation law, personal assistance law or superannuation law' or
- for the purpose of giving an individual any TFN information that the TFN recipient holds about that individual.²⁴

71. The TFN Rule further requires that TFN recipients must take reasonable steps to protect TFN information from, amongst other things, unauthorised access, use, modification or disclosure.²⁵ TFN recipients are also required to take reasonable steps to:

- ensure that access to records containing TFN information is restricted to individuals who need to handle that information for taxation law, personal assistance law or superannuation law purposes²⁶
- securely destroy or permanently de-identify TFN information where it is no longer required by law to be retained, or necessary for a purpose under taxation law, personal assistance law, or superannuation law (including the administration of such law)²⁷
- ensure that all staff are aware of the need to protect individuals' privacy when handling TFN information.²⁸

72. Registered tax practitioners should refer to guidance provided by the [OAIC](#) for further information relating to collection, storage, use, disclosure, security and disposal of clients' TFN information.

Interaction with client obligations to keep and retain tax records

73. Clients of registered tax practitioners are required to comply with obligations under the taxation law to keep and retain certain records relating to their tax affairs.

74. The records that must be kept, how long they need to be kept, and when that time runs from, varies depending on the type of client, record and taxation law involved. However, in many cases the records are required to be kept for 5 years.

²⁴ See section 10 of the TFN Rule.

²⁵ See paragraph 11(1)(a) of the TFN Rule.

²⁶ See paragraph 11(1)(b) of the TFN Rule.

²⁷ See subsection 11(2) of the TFN Rule.

²⁸ See section 12 of the TFN Rule.

75. The ATO is responsible for administering the taxation law that imposes these requirements. For more information about recordkeeping obligations, refer to the ATO's website.
76. The TPB expects that registered tax practitioners have an understanding of the recordkeeping obligations that apply to their clients.
77. The recordkeeping obligation under section 30 of the Determination applies more broadly to registered tax practitioners in relation to the 'tax agent services' provided to a client (or former client). Although still relevant, this is to be distinguished from the obligations that apply under the taxation law for clients to keep and maintain certain records.
78. The records that a registered tax practitioner must keep to comply with section 30 of the Determination could, and may inevitably, include the records that a client must keep and retain under the taxation law (for example, records that have been reviewed or taken into account by the registered tax practitioner in undertaking the tax agent service). However, the scope of the obligation extends to cover all aspects of the services provided, including the terms of engagement, advice given, decisions made and client communications.
79. Importantly, the obligation under section 30 of the Determination does not replace or override the separate obligations imposed on clients to keep and retain records under the taxation law. This means that clients cannot rely on section 30 to absolve them of their own recordkeeping responsibilities.
80. Whilst registered tax practitioners play a crucial role in ensuring that their clients comply with their recordkeeping obligations under the taxation laws, the ultimate responsibility for complying with those laws still rests with the client to whom the obligation applies.
81. There may also be other laws that require clients of registered tax practitioners to satisfy particular recordkeeping requirements. For example, the Australian Securities and Investments Commission (ASIC) requires companies to keep 'financial records' for 7 years.

Recordkeeping arrangements with clients

82. Registered tax practitioners should discuss recordkeeping arrangements with their client to ensure they understand their obligations to keep and retain certain records under the taxation laws, and the consequences of not keeping adequate records.
83. The letter of engagement between the registered tax practitioner and the client may cover arrangements for the keeping of client records and/or the making of copies of records that registered tax practitioners need to follow.

84. In the context of section 30 of the Determination, the TPB considers that a letter of engagement serves as an important and effective mechanism for documenting the agreement between a registered tax practitioner and client about what records need to be kept and by whom, to ensure:

- the registered tax practitioner complies with their obligation under section 30 of the Determination
- the client meets their recordkeeping requirements under the taxation laws.

85. It may also cover recordkeeping arrangements at the end of an engagement. When an engagement ends, registered tax practitioners should discuss the arrangements for recordkeeping and return of client records with the client, keeping in mind that:

- the obligation under section 30 of the Determination applies to tax agent services provided to clients, including former clients, which extends beyond records that clients must keep under the taxation law; and
- to comply with the obligation, the records must be retained for at least 5 years after the service has been provided.

Related recordkeeping considerations

86. In addition to the requirements of section 30 of the Determination, the TPB also requires registered tax practitioners to keep the following records:

Proof of identity records

87. The TPB does not require, or recommend, that tax practitioners keep and retain originals or copies of any identification documents of clients and/or their representatives due to the risks of physical and cyber identity theft.²⁹ However, the TPB requires records of proof of identity checks undertaken in relation to each client (for example, by way of a checklist) for a minimum of 5 years after the engagement has ceased.³⁰

Records held outside of Australia

88. If records are being held outside of Australia as part of an outsourcing or offshoring arrangement, tax practitioners may also need to ensure they comply with any requirements relating to the use, storage and disclosure of client information in that jurisdiction.

²⁹ This is consistent with the guidance provided by the Office of the Australian Information Commissioner (OAIC).

³⁰ For further information on proof of identity requirements, see [TPB\(PN\) 5/2022 Proof of identity requirements for client verification](#).

Confidentiality of client records

89. When keeping and retaining records of tax agent services provided to clients (and former clients), registered tax practitioners must ensure they comply with their obligations under the Code and other privacy and confidentiality laws, including the Privacy Act.
90. Under Code item 6, registered tax practitioners must not disclose information relating to a client (or former client) to a third party unless they have obtained the client's permission, or they have a legal duty to do so. A 'third party' is any entity other than the registered tax practitioner and the client.
91. The TPB expects registered tax practitioners to have appropriate arrangements in place for keeping, storing and disposing of client information to prevent any inadvertent disclosure and ensure that registered tax practitioners comply with their obligations under Code item 6 in relation to the [confidentiality of client information](#).

Case studies

92. These case studies provide general guidance only. In all cases, consideration will need to be given to the specific facts and circumstances.

Case study 1 – tax practitioner responsible for records of services provided by employee

ABC Pty Ltd is a registered tax agent. Michael, also a registered tax agent, is the sole director of ABC Pty Ltd and the nominated supervising agent.

Lisa is employed by ABC Pty Ltd and undertakes services related to the preparation of income tax returns and BAS for clients on behalf of the company. She is not registered as a tax practitioner with the TPB.

As the nominated supervising agent for the company, Michael is responsible for the supervision and control of Lisa in undertaking these services and ensuring the services she provides on behalf of the company are provided competently. Relevantly, Michael is responsible for ensuring that ABC Pty Ltd keeps records that correctly record the tax agent services provided on behalf of ABC Pty Ltd (including by Lisa) to each of its clients and former clients, and that all of the records:

- are in English, or readily accessible and easily convertible into English
- are retained for at least 5 years after the tax agent services have been provided
- show the nature, scope and outcome of the tax agent services provided
- reference information reasonably considered in the provision of the tax agent service

- include all advice received from the client
- include all advice provided to the client, and for more complex matters:
 - the relevant facts
 - assumptions and reasoning underpinning any advice provided (including the basis on which, and the method by which, any calculations, determinations, or estimates used, have been made).

In this case, examples of records that correctly record the tax agent services provided include, but are not limited to:

- file notes and records of conversations with the client in relation to the client's instructions on the matter
- working papers generated by ABC Pty Ltd (including by Lisa) in relation to tax agent services provided
- documents provided to the client including, for example, completed ATO forms for the client's review and signature.

Case study 2 – tax agent retaining records of a former client

Sandra is a registered tax agent who was previously engaged by Rick to complete his income tax return last year.

Recently Sandra received a letter from another registered tax practitioner advising that Rick had engaged them to complete tax agent services on his behalf, and requesting all of Rick's records held by Sandra.

Sandra obtains Rick's consent before providing Rick's records to the new registered tax practitioner. She meets her obligations under Section 30 of the Determination by:

- retaining copies of records (including, for example, working papers) relating to the tax agent services she provided to Rick in preparing and lodging his income tax return last year
- securely storing Rick's records in order to retain the records for 5 years
- ensuring the records are readily accessible should she need to recover or access them later.

Knowing that she is required to retain the records for 5 years, Sandra takes steps to securely store Rick's records for this entire period, and ensure they are readily accessible should she need to recover and/or access them.

Sandra has complied with her obligations under section 30 of the Determination.

Case study 3 – subsequent review of income tax return creates new record keeping requirements

Carla is a registered tax agent who provides tax agent services through her company Helpful Tax Pty Ltd. Carla, on behalf of the company, prepared and lodged Dean's income tax return 4 years ago, and kept relevant records of these services in accordance with the requirements of section 30 of the Determination.

Recently, the ATO undertook a review of Dean's income tax return completed 4 years ago. Dean engages Helpful Tax Pty Ltd to represent him in the ATO review. Carla on behalf of Helpful Tax Pty Ltd represents Dean in the ATO review, which is ultimately finalised 12 months later.

While the 5-year recordkeeping period has now expired for the initial tax agent services provided to Dean in lodging his income tax return, the company has provided new tax agent services to Dean in representing him in the ATO review.

As such, the company takes steps to ensure that it keeps records that correctly record the tax agent services provided to Dean in connection with the ATO review for 5 years from the date that the services are completed, which was when the ATO communicated that the review had been finalised. Given their relevance to the ATO review, these records include documentation relating to the income tax return completed 4 years ago.

Helpful Tax Pty Ltd has complied with its obligations under section 30 of the Determination.

Consultation questions

93. The TPB welcomes submissions addressing all aspects of this draft TPB(I). The following consultation questions may assist you in providing feedback:

Consultation questions	
Q1	Are there additional examples of types of records that should be included at paragraph 23?
Q2	Are the minimum details listed at paragraph 50 appropriate? If not, what should or should not be included and why?
Q3	Are there additional relevant record keeping obligations than those listed at paragraphs 86 to 91 that have not been addressed by this TPB(I)?
Q4	Are there additional case study scenarios that would assist registered tax practitioners in understanding how the obligations apply practically? If so, what types of scenarios should be addressed?
Q5	Are there additional practical considerations for registered tax practitioners relevant to the obligations in section 30 of the Determination that should be addressed in the guidance?