

# 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

#### 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(15) of the *Tax Agent Services Act 2009* (TASA) which commenced on 1 January 2024.

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

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

While this 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 updates and amendments:

- additional guidance at paragraphs 9 to 26 in relation to ‘When is an entity employed or used to provide tax agent services ‘on your behalf?’
- additional guidance at Table 2 (at paragraph 32) in relation to what the TPB considers to be reasonable steps and enquiries to determine if an entity is a disqualified entity
- amendments to Table 3 (at paragraph 34) with regards to the steps and actions a registered tax practitioner should take to comply with Code item 15
- additional guidance at paragraphs 39 to 44 in relation to seeking TPB approval to employ or use (or continue to employ or use) a disqualified entity to provide tax agent services on behalf of a registered tax practitioner
- amendments to paragraphs 50 to 53 (including Table 4) with regards to the operation of the transitional provisions to the application of Code item 15 for registered tax practitioners
- additional guidance at paragraphs 56 to 61 in relation to the consequences for failing to comply with Code item 15
- additional guidance in Case study Examples 1 and 2 with respect to breaches and contraventions of the TASA which may arise in these scenarios
- additional Case study Examples 4, 5, 6 and 7, and
- miscellaneous amendments to the TPB(I) to 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.

On 14 October 2024 the TPB updated this TPB(I) to include references to the Administrative Review Tribunal which replaced the Administrative Appeals Tribunal on 14 October 2024.

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

## Introduction

1. The Code of Professional Conduct (Code) applies to all registered tax practitioners<sup>1</sup>. The Code is found in section 30-10 of the *Tax Agent Services Act 2009* (TASA).
2. This Information Sheet explains the obligations of registered tax practitioners under **Code item 15** (subsection 30-10(15) of the TASA) in respect of their employment, contracting with, or otherwise use of a 'disqualified entity' to provide tax agent services on their behalf.<sup>2</sup>
3. Code item 15 was enacted by the *Treasury Laws Amendment (2023 Measures No. 1) Act 2023*. Code item 15 applies from 1 January 2024, although transitional provisions may apply to some existing arrangements until 31 December 2024 (inclusive).
4. In this Information Sheet, you will find the following information:
  - what is Code item 15 (paragraphs 5 to 26)
  - how to comply with Code item 15 (paragraphs 34 to 44)
  - notification requirements for disqualified entities (paragraphs 45 to 48)
  - transitional provisions for registered tax practitioners (paragraphs 49 to 53)
  - consequences for failing to comply with Code item 15 (paragraphs 54 to 63).

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

<sup>2</sup> TPB 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](#) explains Code item 16 (subsection 30-10(16) of the TASA), which applies where a registered tax practitioner provides tax agent services connected with an arrangement with a disqualified entity.

## What is Code item 15?

5. Registered tax practitioners often use the services of employees and other entities to assist them in providing tax agent services and BAS services to their clients. However, Code item 15 states that as a registered tax practitioner, you must not employ, or use the services of, an entity to provide 'tax agent services' on your behalf if:
  - you know, or ought reasonably to know, that the entity is a 'disqualified entity', and
  - the TPB has not given you approval to employ, or use the services of, the 'disqualified entity' to provide tax agent services on your behalf.<sup>3</sup>
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 15 to:
  - ensure that the entities employed or used by registered tax practitioners in the provision of tax services, have the appropriate ethical and professional attributes to be employed in the tax profession<sup>4</sup>
  - facilitate compliance with, and preserve the integrity of, the taxation system<sup>5</sup>
  - reduce the possibility of tax fraud and evasion by or on behalf of taxpayers (for example, claiming unsubstantiated deductions)<sup>6</sup>
  - protect consumers from services being provided by inappropriate entities.<sup>7</sup>
7. Under Code item 15, registered tax practitioners will be required to consider:
  - who are the individuals (or other entities) employed or used, or seeking to be employed or used, by the registered tax practitioner to provide tax agent services on their behalf, and
  - whether any of those individuals (or other entities) meet the definition of a disqualified entity.<sup>8</sup>

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

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

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

<sup>6</sup> Ibid.

<sup>7</sup> Ibid.

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

8. For the purposes of this Information Sheet, unless otherwise stated, tax agent services include BAS services.<sup>9</sup>

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

9. The term ‘employ’ and phrase ‘use the services’ are not defined in the TASA and therefore take on their ordinary meaning.

10. The *Macquarie Dictionary* defines ‘employ’ (verb) as meaning:<sup>10</sup>

*1. to use the services of (a person); have or keep in one’s service; keep busy or at work.*

11. Similarly, the *Macquarie Dictionary* defines ‘use’ (verb) as meaning:<sup>11</sup>

*1. to employ for some purpose; put into service; turn to account.*

*2. to avail oneself of; apply to one’s own purposes.*

*3. to act or behave towards, or treat (a person) in some manner.*

12. The EM to the Bill provides the following non-exhaustive list of entities (including individuals) who are likely to constitute entities that are ‘used’ or ‘employed’ by a registered tax practitioner to provide tax agent services:

- Employees<sup>12</sup>
- Associates<sup>13</sup>
- Contractors<sup>14</sup>
- Individuals (or other entities) who share in the revenue and income received from the tax agent services provided under the registered tax practitioner.<sup>15</sup>

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<sup>9</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.

<sup>10</sup> *Macquarie Dictionary* (online), Pan Macmillan Australia, 2024.

<sup>11</sup> *Ibid.*

<sup>12</sup> Paragraph 3.30 of the EM.

<sup>13</sup> *Ibid.*

<sup>14</sup> *Ibid.*

<sup>15</sup> Refer to paragraph 3.32 of the EM.

13. Registered tax practitioners will need to determine whether they are employing or using the services of an entity *to provide a tax agent service on their behalf*. To determine this, tax practitioners will need to consider whether the entity is:

- providing a ‘tax agent service’
- providing the service on behalf of the tax practitioner, and
- required to be under the supervision and control of the tax practitioner in providing the service.

### **Step 1: Is the entity providing a tax agent service?**

14. An entity will be providing a tax agent service if the service they provide meets the definition of a tax agent service. 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>16</sup>

15. The EM to the Bill makes it clear that the requirements of Code item 15 are not intended to apply in respect of individuals or other entities who only provide peripheral services to assist a registered tax practitioner, for example, administrative support staff who are only responsible for the administrative management of client files and data.<sup>17</sup>

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<sup>16</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>17</sup> Paragraph 3.31 of the EM.

16. For further information on what constitutes a tax agent service (including a 'BAS service') and what is *not* a tax agent service, registered tax practitioners should refer to TPB Information Sheets [TPB\(I\) 39/2023 What is a tax agent service?](#) and [TPB\(I\) 38/2023 What is a BAS service?](#).

## Step 2: Is the entity providing the service on behalf of the registered tax practitioner?

17. Under Code item 7, registered tax practitioners are required to ensure that tax agent services they provide, or that are provided 'on their behalf', are provided competently.<sup>18</sup> The TPB considers that the phrase 'on your behalf' carries the same meaning under Code item 15 as it does under Code item 7; that is, entities that registered tax practitioners employ or use to provide tax agent services on their behalf include any entities (or individuals) that are required to provide those services under their supervision and control.<sup>19</sup>

18. Examples of circumstances where the TPB considers entities to be providing tax agent services 'on behalf' of a registered tax practitioner include (but are not limited to) the following:

- any entity, whether employed or used, for which the registered tax practitioner is also required to exercise adequate supervision and control to meet their obligations under Code item 7,<sup>20</sup> and
- any entity with which a registered tax practitioner maintains (or is required to maintain, to comply with Code item 7) a 'remote' supervisory arrangement.<sup>21</sup>

19. The TPB considers that the phrase 'use the services' in Code item 15 is sufficiently broad to include services provided by an entity that is not in a direct contractual relationship with the registered tax practitioner.<sup>22</sup> This may include (but is not limited to) a contractor, subcontractor or employee of a contractor/subcontractor who is being used to provide services on behalf of the registered tax practitioner.<sup>23</sup>

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<sup>18</sup> Subsection 30-10(7) of the TASA.

<sup>19</sup> Paragraph 3.42 of the Explanatory Memorandum to the Tax Agent Services Bill 2008.

<sup>20</sup> Refer to paragraphs 29 to 40 of TPB Information Sheet [TPB\(I\) 36/2021 Supervisory arrangements under the Tax Agent Services Act 2009](#) (TPB(I) 36/2021) for further guidance.

<sup>21</sup> *Ibid* at paragraphs 41 to 48.

<sup>22</sup> Refer to paragraphs 37 and 43 of TPB(I) 36/2021, which note that an employer/employee relationship is not necessary for there to be adequate supervision and control; supervision and control may be exercised from a different location and/or by a separate entity.

<sup>23</sup> Refer to paragraph 57 of TPB(I) 36/2021 which states that "To ensure that a service provided on behalf of a registered tax practitioner is provided competently, the registered tax practitioner must be satisfied that the provider of the service, including any subcontractor, has the requisite skills and experience to provide the services on their behalf."



### Step 3: Is the entity required to be under the registered tax practitioner's supervision and control in providing the service?

20. Partnership and company registered tax practitioners are required to have a sufficient number of individual registered tax practitioners to provide tax agent services to a competent standard, and to carry out supervisory arrangements.<sup>24</sup>
21. For the purposes of Code item 15, the TPB considers that any individual or entity under the supervision and control of a registered tax practitioner, for the purposes of satisfying the sufficient number requirement, is providing a tax agent service on behalf of the company or partnership of the registered tax practitioner.
22. Additionally, registered tax practitioners are required under Code item 7 to ensure that tax agent services they provide, or are provided on their behalf, are provided competently.<sup>25</sup> Similar to the 'sufficient number' requirement, the TPB considers that any individual or entity that a registered tax practitioner is required to supervise and control for the purposes of Code item 7, is providing a tax agent service on behalf of that registered tax practitioner.
23. The TPB considers that an individual or entity required to be under supervision and control is providing tax agent services on behalf of the registered tax practitioner, even if supervision and control are exercised remotely. This includes arrangements where supervision and control are exercised from a different location, such as in an outsourcing and/or offshoring arrangement. It may also include arrangements where the supervisor and the supervised entity are employed by different entities.
24. Registered tax practitioners are liable for civil penalties if they sign a declaration (or other statement) for taxation purposes in relation to a document, prepared by an unregistered individual, that was not working under the supervision and control of an individual registered tax practitioner.<sup>26</sup> For the purposes of signing a declaration (or other statement), if the unregistered individual is required to be under the supervision and control of a registered tax practitioner in preparing the document, that individual is considered to be providing the tax agent service on behalf of that registered tax practitioner for the purposes of Code item 15.

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<sup>24</sup> TASA paragraphs 20-5(2)(c) (partnerships) and 20-5(3)(d) (companies).

<sup>25</sup> TASA subsection 30-10(7).

<sup>26</sup> TASA section 50-30.

25. The TPB provides more detailed guidance on the various circumstances where an entity or individual is required to be under the supervision and control of a registered tax practitioner. For further information, refer to the following documents:

- TPB Information Sheet [TPB\(I\) 36/2021 Supervisory arrangements under the Tax Agent Services Act 2009](#)
- TPB Practice Note [TPB\(PN\) 2/2018 Outsourcing and offshoring of tax services – Code of Professional Conduct considerations](#)
- TPB Information Sheet [TPB\(I\) 13/2012 Contractors.](#)

26. In addition, refer to Examples 4 and 5 in Case studies for an illustration of different scenarios where an entity is (or is not) required to be under a registered tax practitioner’s supervision and control for the purposes of the TASA.

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

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

- an entity<sup>27</sup>
- neither a registered tax agent or BAS agent, nor a ‘qualified tax relevant provider’ (QTRP),<sup>28</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 <b><i>serious taxation offence</i></b>	<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>29</sup></li> </ul>

<sup>27</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>28</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>29</sup> Refer to the definition of ‘serious taxation offence’ as given by subsection 90-1(1) of the TASA.

Event	Explanation
Has been convicted of a <b><i>serious offence</i></b>	A 'serious offence' means an offence against an Australian law that is punishable by imprisonment for a period exceeding 12 months. <sup>30</sup>
Has been convicted of <b><i>an offence involving fraud or dishonesty</i></b>	An 'offence involving fraud or dishonesty' takes its ordinary meaning and is determined by reference to community standards. For 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.
Has been penalised for being a <b><i>promoter of a tax exploitation scheme</i></b>	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> .
Has been <b><i>penalised for implementing a scheme</i></b> that has been <b><i>promoted on the basis of conformity with a product ruling</i></b> in a way that is <b><i>materially different from that described in the product ruling</i></b>	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> .
Has become an <b><i>undischarged bankrupt</i></b> or has gone into <b><i>external administration</i></b>	<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</li> </ul>

<sup>30</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>section 9 of the <i>Corporations Act 2001</i>,<sup>31</sup> which provides that a body corporate in external administration includes one that:</p> <ul style="list-style-type: none"> <li>○ is being wound up</li> <li>○ is under administration</li> <li>○ has had a receiver appointed</li> <li>○ has executed a deed of company arrangement that has not yet been terminated.</li> </ul> <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>32</sup></p>
<p>Has had <b><i>action taken</i></b> against it under <b><i>subsection 30-15(2) of the TASA</i></b> (sanctions for failure to comply with the Code)</p>	<p>The TPB has imposed one or more of the following sanctions:<sup>33</sup></p> <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>
<p>Has had <b><i>its registration terminated</i></b>, under <b><i>Subdivision 40-A of the TASA</i></b></p>	<p>The TPB has terminated the entity for:</p> <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>
<p>Has had an <b><i>application for registration or renewal of registration rejected</i></b> under section 20-25 of the TASA, other than a rejection on the ground that the TPB is not satisfied that the entity</p>	<p>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><i>except for</i></b> on the basis of failing to meet the qualifications or relevant experience requirements.</p>

<sup>31</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'.

<sup>32</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>33</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
meets the requirements in paragraph 20-5(1)(b) of the TASA	<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>
Has been <b><i>found by the TPB</i></b> , after being investigated under section 60-95 of the TASA, or by a Court, <b><i>to have contravened the TASA</i></b>	<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'?

28. 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>34</sup>

29. A registered tax practitioner must therefore take reasonable steps and make reasonable enquiries to determine if an entity is a disqualified entity. The level of assurance a registered tax practitioner should seek from those reasonable steps and enquiries is the same for Code item 15 as it is with respect to Code item 16.<sup>35</sup>

<sup>34</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>35</sup> Refer to 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](#).

30. The EM to the Bill states that 'tax practitioners are expected to implement new onboarding requirements, information gathering and employee reporting processes to determine whether their staff and people they use are disqualified entities and if notification and approval by the TPB is necessary'.<sup>36</sup>
31. 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>37</sup>
32. If they are not registered, the TPB considers that, at a minimum, reasonable steps and enquiries will include **each** of the following requirements outlined in **Table 2**.

**Table 2:**

Point in time	Requirements
<p>Before employing or using an entity to provide tax agent services on behalf of the registered tax practitioner</p>	<ul style="list-style-type: none"> <li>• Undertake appropriate proof-of-identity enquiries in respect of the individual or entity, which are consistent with the minimum requirements contained in <a href="#">TPB(PN) 5/2022 Proof of identity requirements for client verification</a>.</li> <li>• Discuss the requirements of Code item 15 with the entity and obtain written confirmation from the entity that they have not had one of the events listed in <b>Table 1</b> (at paragraph 27) 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>38</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</li> </ul> </li> </ul>

<sup>36</sup> Paragraph 3.36 of the EM to the Bill.

<sup>37</sup> Subsection 45-5(2) of the TASA.

<sup>38</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.

Point in time	Requirements
	<p>Public Register for 12 months from the date of termination<sup>39</sup></p> <ul style="list-style-type: none"> <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>40</sup></li> <li>○ written cautions to an entity are sanctions that cannot be published on the TPB Public Register,<sup>41</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>42</sup></li> </ul> <ul style="list-style-type: none"> <li>● If commencing employment or using an entity to provide tax agent services on your behalf, ensure the contract with the entity: <ul style="list-style-type: none"> <li>○ requires notification by the entity to the registered tax practitioner as soon as practicable if an event listed in Table 1 (at paragraph 27) occurs, and</li> <li>○ ensures that if the individual or entity is (or becomes) a disqualified entity, they must not provide tax agent services on behalf of the registered tax practitioner, unless and until the registered tax practitioner has received TPB approval for them to do so.</li> </ul> </li> </ul> <p>The TPB strongly recommends seeking independent legal advice in relation to the tax practitioner's rights and obligations under contract law and employment law, if necessary.</p>
During employment or use of the entity to provide tax agent	<ul style="list-style-type: none"> <li>● Have a written contract in place with the entity to:</li> </ul>

<sup>39</sup> Subsection 60-135(3) of the TASA.

<sup>40</sup> TASA at subsection 25(2).

<sup>41</sup> Ibid at paragraph 25(1)(f).

<sup>42</sup> Ibid at subsection 25(1).

Point in time	Requirements
services on behalf of the registered tax practitioner	<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 27) occurs</li> <li>○ ensure that if the individual or entity is (or becomes) a disqualified entity, they must not provide tax agent services on behalf of the registered tax practitioner, unless and until the registered tax practitioner has received TPB approval for them to do so.</li> </ul> <p>The TPB strongly recommends seeking independent legal advice in relation to the tax practitioner’s rights and obligations under contract law and employment law.</p> <ul style="list-style-type: none"> <li>● If notified that an event listed in <b>Table 1</b> (at paragraph 27) has occurred in respect of the individual or entity, and the registered tax practitioner wishes to apply to the TPB for approval, follow the requirements outlined in paragraphs 37 to 44.</li> </ul>
Ceasing the use or employment of an entity who provided tax agent services on behalf of the registered tax practitioner	<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 27) occur within the last 5 years.</li> <li>● These records should be retained for 5 years after ceasing to use or employ that entity in providing tax agent services on behalf of the registered tax practitioner.</li> </ul>

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



# How to comply with Code item 15

34. The steps and actions a registered tax practitioner should take to comply with Code item 15 will depend on the circumstances surrounding their use or employment of an entity to provide tax agent services on their behalf. **Table 3** below provides a non-exhaustive explanation as to how registered tax practitioners can comply with Code item 15 in different circumstances.

**Table 3:**

Situation	How to comply
Registered tax practitioner wants to start employing or using an entity to provide tax agent services on their behalf. At this time, their disqualified entity status is unknown.	<ul style="list-style-type: none"> <li>Follow the steps outlined in <b>Table 2</b> (at paragraph 32) under ‘Before employing or using the entity’.</li> </ul>
Registered tax practitioner currently employs or uses an entity to provide tax agent services on their behalf, and the entity is not a disqualified entity.	<ul style="list-style-type: none"> <li>Follow the steps outlined in <b>Table 2</b> (at paragraph 32) under ‘During employment or use of the entity’.</li> </ul>
Registered tax practitioner wishes to employ or use a known disqualified entity to provide tax agent services on their behalf.	<ul style="list-style-type: none"> <li>Apply to the TPB for approval (see paragraphs 37 to 44).</li> <li>If approved by the TPB, update the TPB if there are any relevant changes to the disqualified entity’s status as a disqualified entity or role in providing tax agent services on behalf of the registered tax practitioner.</li> </ul>
Registered tax practitioner is notified or otherwise becomes aware that an entity it employs or uses has become a disqualified entity, and the registered tax practitioner wants the entity to continue providing tax agent services on their behalf.	<ul style="list-style-type: none"> <li>Apply to the TPB for approval (see paragraphs 37 to 44).</li> <li>If approved by the TPB, update the TPB if there are any relevant changes to the disqualified entity’s status as a disqualified entity or role in providing tax agent services on behalf of the registered tax practitioner.</li> </ul>
Registered tax practitioner is notified or otherwise becomes aware that an entity it employs or uses has become a disqualified entity, and the registered tax practitioner either:	<ul style="list-style-type: none"> <li>You will be in breach of Code item 15 if the entity provides tax agent services on your behalf. Consider your options to cease employing or using the entity to provide those services (i.e. reassigning their duties to non-tax agent services). If</li> </ul>

<ul style="list-style-type: none"> <li>• no longer wants the entity to provide tax agent services on their behalf, or</li> <li>• the TPB rejects their application for the entity to provide tax agent services on their behalf.</li> </ul>	<p>you wish to cease their employment or contractual engagement, have regard to your obligations under employment and contract law. You may wish to seek independent legal advice. Refer to Case study – Examples 6 and 7 for an illustration.</p>
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## Other considerations

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

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

36. Having regard to the above considerations and any other considerations that will inform the tax practitioner's professional judgment, the tax practitioner may decide to consider their options to cease the contractual engagement or employment with the disqualified entity. Registered tax practitioners may wish to seek independent legal advice or guidance from workplace law regulators (such as the Fair Work Ombudsman) as appropriate.

## Seeking approval from the TPB

37. If a registered tax practitioner intends to employ or use (or continue to employ or use) a disqualified entity to provide tax agent services on their behalf, the registered tax practitioner must apply to the TPB for approval.

38. In addition to Code item 15, a registered tax practitioner will not contravene subsection 50-25(1) of the TASA, relating to employing or using the services of deregistered entities, if:

- the deregistered entity is a disqualified entity, and
- the TPB has given approval to employ or use the services of the disqualified entity to provide tax agent services on the registered tax practitioner's behalf.<sup>43</sup>

39. An application to the TPB to approve employing or using a disqualified entity, to provide tax agent services on behalf of a registered tax practitioner, must be made in the approved form, accessed by logging in to [My Profile](#) and accompanied by relevant information relating to:

- the reasons why the entity is a disqualified entity and the circumstances relating to those reasons
- the role (or the proposed role) that the entity is performing (or would perform) in providing the tax agent services on your behalf
- the extent to which the reasons why the entity is a disqualified entity are relevant (or not relevant) to the entity's ability to perform the proposed role to an appropriate standard of professional and ethical conduct.

40. An application to the TPB for approval should also include any additional information that you consider relevant to the TPB's consideration of the application. In deciding whether to approve an application, the TPB must consider the factors at paragraph 39 and any other matters that the TPB considers relevant.<sup>44</sup> Other matters may include information which is not contained within the application for approval, such as information contained within records held by the TPB and other government agencies.

41. Registered tax practitioners should ensure that the disqualified entity has provided written consent for the registered tax practitioner to make an application for approval to the TPB.

42. The TPB must decide an application for approval within 60 days of receiving the application, or within a longer period agreed between the TPB and registered tax practitioner.<sup>45</sup> If the TPB does not make a decision within 60 days (or agreed longer period) the application will be taken to be rejected.<sup>46</sup>

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<sup>43</sup> Subsection 50-25(3) of the TASA.

<sup>44</sup> Paragraph 45-5(6)(d) of the TASA and paragraph 3.53 of the EM to the Bill.

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

<sup>46</sup> Subsection 45-5(5) of the TASA.

43. The TPB will, within a reasonable time after making its decision in respect of an application for approval, notify the registered tax practitioner in writing of:

- the decision; and
- if the TPB rejects the application – the reasons for the decision.<sup>47</sup>

44. Decisions to reject an application for approval to employ or use a disqualified entity, to provide tax agent services on behalf of a registered tax practitioner, are reviewable<sup>48</sup> by the Administrative Review Tribunal.<sup>49</sup>

## Notification requirements for disqualified entities

45. A disqualified entity must notify a registered tax practitioner in writing that they are a disqualified entity *before* the registered tax practitioner enters into a contract, or renews / agrees to extend an existing contract, to employ or use the services of the disqualified entity to provide tax agent services on the registered tax practitioner's behalf.<sup>50</sup>

46. If an entity is employed or used to provide tax agent services on behalf of a registered tax practitioner and then *becomes* a disqualified entity, they must provide written notice to the registered tax practitioner they are a disqualified entity within 30 days of the day on which they become, or ought to have become, aware that they are a disqualified entity.<sup>51</sup>

47. Transitional provisions may apply to entities who are already disqualified entities, and are being employed, or used, to provide tax agent services on behalf of the same registered tax practitioner.<sup>52</sup> For transitional provisions to apply, the disqualified entity must be:

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

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<sup>47</sup> Subsection 45-5(7) of the TASA.

<sup>48</sup> Paragraph 70-10(ha) of the TASA.

<sup>49</sup> The Administrative Review Tribunal replaced the Administrative Appeals Tribunal on 14 October 2024.

<sup>50</sup> Subsection 45-10(1) of the TASA.

<sup>51</sup> Subsection 45-15(2) of the TASA.

<sup>52</sup> Section 45-20 of the TASA.

48. 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

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

50. Transitional provisions apply to the obligations under Code item 15 if a registered tax practitioner has commenced employing or using a disqualified entity to provide tax agent services on their behalf before 1 January 2024.

51. Code item 15 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 their contract (or other agreement) to employ or use a disqualified entity to provide tax agent services on their behalf.<sup>53</sup>

52. In those circumstances, the obligations under Code item 15 will apply on and after the date of entering, renewing or extending the contract (or other agreement) for the employment or use of the disqualified entity to provide tax agent services on behalf of the registered tax practitioner.

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

**Table 4:**

Scenarios	No.	If Stuart...	... then Sarah, to comply with Code item 15...
<p>Before 1 January 2024, Sarah (a registered tax practitioner) enters into a contract to employ Stuart to provide tax agent services on her behalf.</p> <p>Stuart becomes a disqualified entity after 1 January 2024 and notifies Sarah of this immediately.</p>	1	remains employed by Sarah (under a contract that has not been renewed or extended) to provide tax agent services on her behalf as of 1 January 2025	<ul style="list-style-type: none"> <li>• must ensure that Stuart ceases providing tax agent services on her behalf from 1 January 2025 onwards</li> <li>• may apply to the TPB for approval to employ Stuart as a disqualified entity to provide tax agent services on her behalf at any time after Stuart becomes a disqualified entity, and</li> </ul>

<sup>53</sup> Subsection 9(3) in Schedule 3 to the Treasury Laws Amendment (2023 Measures No. 1) Act 2023.

Scenarios	No.	If Stuart...	... then Sarah, to comply with Code item 15...
			<ul style="list-style-type: none"> <li>if TPB approval is not given, Sarah will need to consider her options to ensure Stuart ceases providing tax agent services on her behalf by 1 January 2025, having regard to her obligations under employment law and contract law. Sarah should seek independent legal advice. Refer to Case studies – Examples 6 and 7 for an illustration.</li> </ul>
	2	<ul style="list-style-type: none"> <li>had his contract with Sarah renewed or extended after 1 January 2024, and</li> <li>is employed by Sarah to provide tax agent services on her behalf when he becomes a disqualified entity.</li> </ul>	<ul style="list-style-type: none"> <li>will need to consider her options to ensure Stuart ceases providing tax agent services on her behalf, once she is notified that he is a disqualified entity, having regard to her obligations under employment law and contract law, and</li> <li>may apply to the TPB for approval to employ Stuart as a disqualified entity to provide tax agent services on her behalf. Refer to Case studies – Examples 6 and 7 for an illustration.</li> </ul>
	3	<ul style="list-style-type: none"> <li>has his current contract (entered into prior to 1 January 2024) with Sarah expiring after he notifies Sarah that he is a disqualified entity, and wishes to have this contract renewed or extended</li> </ul>	<ul style="list-style-type: none"> <li>must not renew or agree to extend Stuart's contract, to provide tax agent services on her behalf, unless she has obtained TPB approval to employ Stuart to provide those services as a disqualified entity, and</li> <li>should seek independent legal advice on her obligations under contract law and employment law.</li> </ul>
After 1 January 2024, Sarah (a registered tax practitioner) enters into a contract to employ Stuart to provide tax	4	<ul style="list-style-type: none"> <li>is employed by Sarah to provide tax agent services on her behalf when he becomes a disqualified entity.</li> </ul>	<ul style="list-style-type: none"> <li>will need to consider her options to ensure Stuart ceases providing tax agent services on her behalf, once she is notified that he is a disqualified entity, having</li> </ul>

Scenarios	No.	If Stuart...	... then Sarah, to comply with Code item 15...
<p>agent services on her behalf.</p> <p>Stuart becomes a disqualified entity after 1 January 2024 and notifies Sarah of this immediately.</p>			<p>regard to her obligations under employment law and contract law, and</p> <ul style="list-style-type: none"> <li>• may apply to the TPB for approval to employ Stuart as a disqualified entity to provide tax agent services on her behalf. Refer to Case studies – Examples 6 and 7 for an illustration.</li> </ul>

## Consequences for failing to comply with Code item 15

54. If a registered tax practitioner employs or uses the services of a disqualified entity to provide tax agent services on their behalf without the TPB's approval, the TPB will find that the registered tax practitioner has breached the Code and may impose sanctions for that breach.
55. Ultimately, whether a registered tax practitioner has complied with their obligations under Code item 15 is a question of fact. This means that each situation will need to be considered on a case-by-case basis having regard to the particular facts and circumstances of that case.
56. As noted at paragraph 33, registered tax practitioners will need to use their professional judgment in determining what steps and actions are reasonable to ensure they comply with Code item 15. These may include considering other legal obligations and seeking independent legal advice, or guidance from workplace law regulators. Registered tax practitioners may also seek the TPB's approval for a disqualified entity to continue providing tax agent services on their behalf.
57. In some circumstances it may not be reasonable for an entity to immediately cease providing tax agent services on behalf of a registered tax practitioner. For example, where an existing employee becomes a disqualified entity, there may be circumstances where the tax practitioner cannot immediately reassign the employee to duties unrelated to tax agent services and will require time to consider their options to comply (i.e. termination of employment, or changes to the services they provide), whilst seeking TPB approval for the entity to continue providing tax agent services on their behalf.

58. The TPB will consider the object of the TASA and the Code in determining whether a registered tax practitioner has complied with their obligations under Code item 15.<sup>54</sup> In circumstances where it is not reasonable for an entity to immediately cease providing tax agent services on behalf of a registered tax practitioner, the TPB expects that the registered tax practitioner will take reasonable steps and actions to ensure that tax agent services are provided in accordance with appropriate standards of professional and ethical conduct.

59. These steps and actions may include (but are not limited to):

- limiting the scope, type or amount of tax agent services provided by the disqualified entity on their behalf, and
- increasing the level of supervision and control over the tax agent services provided by the disqualified entity.

60. However, the TPB still expects registered tax practitioners to commence taking what reasonable steps and actions are necessary to ensure compliance with Code item 15. Registered tax practitioners should retain records of what steps and actions have been taken to ensure compliance with Code item 15, and to ensure that the disqualified entity provides tax agent services in accordance with appropriate standards of professional and ethical conduct.

61. In considering whether a registered tax practitioner has complied with the Code, the TPB will consider the steps taken by the registered tax practitioner to mitigate any risk of harm to the community, the tax system, and the tax profession.

62. Conduct that leads to a breach of Code item 15 could also impact on a registered tax practitioner meeting the fit and proper person requirement<sup>55</sup> and other Code items, such as Code item 1, which relates to honesty and integrity, and Code item 7 which relates to ensuring tax agent services provided on a registered tax practitioner's behalf are provided competently.

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<sup>54</sup> The object of the TASA, as provided by subsection 2-5(1) of the TASA, is to "support public trust and confidence in the integrity of the tax profession and of the tax system by ensuring that tax agent services are provided to the community in accordance with appropriate standards of professional and ethical conduct".

<sup>55</sup> For more information about the fit and proper requirement, see [TPB Explanatory Paper TPB\(EP\) 02/2010 Fit and proper person](#).



63. If a registered tax practitioner breaches the Code, the TPB may impose one or more of the following sanctions:<sup>56</sup>

- a written caution
- an order requiring the tax practitioner to do something specified in the order
- suspension of the tax practitioner's registration
- termination of the tax practitioner's registration
- a period within which a terminated tax practitioner may not re-apply for registration.

## Case studies

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

65. Note that these case studies are based on scenarios where the transitional provisions are no longer in effect. Refer to **Table 4** (at paragraph 53) for scenarios which illustrate the operation of the transitional provisions.

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

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

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

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

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

Brendan is in breach of Code item 15. Brendan may also be liable for civil penalties for contravening section 50-25 of the TASA, which prohibits registered tax practitioners from employing or using the services of deregistered entities within 12 months of termination of their registration.

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<sup>56</sup> Subsection 60-125(2) of the TASA.

In addition, Chelsea may be liable for civil penalties for failing to notify Brendan that she is a disqualified entity before commencing employment to provide tax agent services on Brendan's behalf.

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

Trent, a registered tax practitioner, seeks to use Winnie's services as a contractor to provide tax agent services on his behalf.

Trent undertakes proof-of-identity enquiries in respect of Winnie. Trent also advises Winnie that he cannot use her services without TPB approval if she is a disqualified entity. Trent discusses the events listed in **Table 1** (at paragraph 27) of this Information Sheet and receives a written declaration from Winnie that none of these events apply to her.

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

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

Trent has undertaken reasonable enquiries and met the TPB's minimum requirements, as outlined in **Table 2** (at paragraph 32) of this Information Sheet.

During the period of his contract with Winnie, Trent learns that Winnie was convicted of a serious taxation offence 3 years ago, making her a disqualified entity.

Upon learning that Winnie is a disqualified entity, Trent immediately ceases using Winnie to provide tax agent services on his behalf.

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

However, Winnie may be liable for civil penalties for failing to notify Trent that she is a disqualified entity before entering into the contract to provide tax agent services on Trent's behalf.

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

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

Brian notifies Betty that he is a disqualified entity. Betty advises Brian that she cannot employ him to provide tax agent services on her behalf until she has received approval from the TPB to do so.

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

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

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

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

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

#### **Example 4 – Registered tax practitioner contracts with a company that employs a disqualified entity to provide tax agent services on their behalf**

Sebastian, a registered tax practitioner, wishes to enter into a contract with Head Pty Ltd for the provision of tax agent services on his behalf. Specifically, Sebastian will use Head Pty Ltd to provide tax agent services relating to transfer pricing for some of his clients, which he will then use to finalise and lodge those clients' tax returns.

Head Pty Ltd provide a range of professional services and are expanding these services to include services relating to transfer pricing. However, Head Pty Ltd is not a registered tax practitioner company.

Head Pty Ltd has two employees and directors, Mark and Nancy, who are also not registered tax practitioners. Nancy is the only employee who will be involved with the transfer pricing services. Head Pty Ltd will invoice in the name of the company for the services provided on behalf of Sebastian.

To meet his obligations under Code item 7, Sebastian is required to provide adequate supervision and control over the services provided by Head Pty Ltd and its staff on his behalf. For example, he must review the documents prepared by Nancy on behalf of Head Pty Ltd before using these to prepare his client's tax returns.

Sebastian is also required to ensure that he has TPB approval to use any disqualified entities in providing tax agent services on his behalf. In this scenario, Sebastian is using two entities: Head Pty Ltd (the contracted entity) and Nancy (the employee of Head Pty Ltd being used to provide services).

Prior to commencing the contract with Head Pty Ltd, Sebastian requests that Head Pty Ltd complete a [Disqualifying events declaration and consent form](#). In the form, the entity notes that Nancy is employed and will provide the tax agent service on Sebastian's behalf. Nancy completes a separate 'Disqualifying events declaration and consent form' and declares that she is a disqualified entity.

Sebastian makes an application to the TPB for approval to use Nancy, as an employee of Head Pty Ltd, to provide tax agent services relating to transfer pricing on his behalf. In the application, Sebastian provides further details on the limited services Nancy will be providing and the level of supervision and control.

The TPB approves the application for Sebastian to use Nancy, as employee of Head Pty Ltd, to provide the tax agent service on his behalf. Sebastian and Head Pty Ltd commence their contractual arrangement and Nancy commences providing transfer pricing services for Sebastian's use in preparing his client's tax returns.

### **Example 5 – Registered tax practitioner company uses employees and contractors in the provision of various professional services**

Uni Pty Ltd is a registered tax practitioner company that provides a variety of professional services, including some tax agent services and other unrelated services, including audit and assurance services. Uni Pty Ltd uses a variety of employees and contractors to provide these professional services.

Tania is a registered tax practitioner and the sole director of Uni Pty Ltd. Tania is aware of the company's obligations under Code items 15 and 16 and is looking to take steps to ensure that Uni Pty Ltd is not employing or using any disqualified entities in providing tax agent services.

Uni Pty Ltd employs the following persons in a variety of roles:

- Michaelia is employed as an administrative assistant to perform duties including file management, internal payroll administration and secretarial duties for Tania.
- Narelle is employed to prepare income tax returns for clients, which she does under supervision from Tania.

Michaelia's duties are considered peripheral in nature and are not related to tax agent services. Michaelia is not providing tax agent services on behalf of Uni Pty Ltd and therefore Uni Pty Ltd is not required to ensure that Michaelia is not a disqualified entity.

Narelle is providing tax agent services on behalf of Uni Pty Ltd. Uni Pty Ltd is required to take reasonable steps and make reasonable enquiries to ensure that Narelle does not provide these services as a disqualified entity without approval.

Uni Pty Ltd also has a contract with Edge Pty Ltd to provide specialised tax agent services to Uni Pty Ltd relating to the calculation of research and development (R&D) tax offsets. Edge Pty Ltd is a registered tax practitioner company with a sole director, Graham, who is also a registered tax practitioner.

Uni Pty Ltd is not required to ensure that either Edge Pty Ltd or Graham are not disqualified entities, as both the company and the individual are registered tax practitioners. Registered tax practitioners are excluded from the definition of a disqualified entity.

### **Example 6 – Registered tax practitioner is notified that an employee providing tax agent services on their behalf has become a disqualified entity**

A registered tax practitioner currently employs Xavier to prepare income tax returns and business activity statements (BAS) for the tax practitioner's clients. Xavier completes this work under the tax practitioner's supervision and the work is reviewed by the tax practitioner before lodgment. Xavier is not a registered tax practitioner.

Xavier notifies the tax practitioner that he has become a disqualified entity. To comply with Code item 15, the tax practitioner directs Xavier to cease preparing income tax returns and BAS, and instead perform other work for them that doesn't include tax agent services.

The tax practitioner makes an application to the TPB for approval for Xavier to provide tax agent services on their behalf as an employee. After considering the facts and circumstances, the TPB decides to approve the application and notifies the tax practitioner of its decision.

The tax practitioner directs Xavier to return to preparing income tax returns and BAS for the tax practitioner's clients, in a role consistent with the information provided by the tax practitioner with their application for TPB approval. The tax practitioner has complied with Code item 15 with respect to Xavier.

### **Example 7 – Registered tax practitioner is notified that a contractor they use to provide tax agent services on their behalf has become a disqualified entity**

A registered tax practitioner currently uses the contractor Yolanda to prepare Research and development (R&D) schedules for some of the tax practitioner's clients, which are then reviewed and lodged by the tax practitioner with the client's income tax returns. Yolanda is not a registered tax practitioner.

Yolanda applies for registration with the TPB as a tax practitioner but is rejected on the grounds that she is not a fit and proper person. Yolanda immediately notifies the tax practitioner of this rejection.

To comply with Code item 15, the tax practitioner ceases using Yolanda to prepare R&D schedules for their clients. The tax practitioner makes an application to the TPB for approval for Yolanda to provide tax agent services on their behalf under the contract.

After considering the facts and circumstances, the TPB decides to reject the application and notifies the tax practitioner of its decision. The tax practitioner considers the terms of their contract with Yolanda and seeks independent legal advice before terminating the contract with Yolanda.