



Australian Government



TAX
PRACTITIONERS
BOARD

Code Determination guidance:

conflicts of interest and confidentiality with government,
keeping proper client records, competency, and quality
management systems

Presented by
Peter deCure, TPB Chair

Welcome

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

Access the presentation slides: tpb.gov.au/webinar-hub

What we will cover today



- ✓ The reason for the new Code obligations
- ✓ When the obligations come into effect
- ✓ Maintaining conflicts of interest and confidentiality in dealings with government
- ✓ Keeping client records
- ✓ Competency and quality management systems
- ✓ Panel and Q&A

New legislation



New Code obligations



- Upholding and promoting the ethical standards of the tax profession.
- Requirements relating to false or misleading statements.
- Managing conflicts of interest when undertaking activities for government and maintaining confidentiality in dealings with government
- Obligation to keep proper client records of tax agent services

provided.

- Supervision, competency and quality management under the *Tax Agent Services Act 2009*.
- Keeping your clients informed.




The obligations align with the existing 5 key principles in the Code and leverage material of other existing bodies, such as the APES Board.

Application date

- For **larger tax practitioner firms**, with more than 100 employees, the new obligations commenced from **1 January 2025**.
- For all other **smaller tax practitioners**, with 100 or less employees, the new obligations commence from **1 July 2025**.



**Managing conflicts of interest when
undertaking activities for government
(s20)**



Managing conflicts of interest with government (s20)

If a tax practitioner undertakes activities, in a professional capacity, for an Australian government agency, they must:

(1)

Identify and document
any material conflicts of
interest

(2)

Disclose the details of
any material conflict of
interest to the agency

(3)

Manage, mitigate and,
where appropriate and
possible avoid material
conflict of interest

Case study 1



- Ann is a registered tax agent and a tax partner at a large tax consulting firm.
- She is asked to participate in a confidential consultation led by an Australian government agency in relation to proposed draft legislation.
- If implemented, these rules would apply to her and the firm's clients.
- Ann identifies from the confidential papers that if the new integrity measures took effect, they would adversely impact the tax affairs of some of her clients.
- She identifies a material conflict of interest.
- Ann does not document this conflict of interest, nor disclose it to the government agency.
- She takes no steps to manage, mitigate or avoid the conflict of interest.

Case study 1 outcome



- Ann has breached her obligation under section 20 of the Determination.
- She failed to document and disclose a material conflict of interest identified to the government agency.
- In addition, it cannot reasonably be concluded the government agency gave permission for Ann to continue to participate in the confidential consultation.
- In breaching section 20 of the Determination, she is in breach of the TASA for failing to document and disclose the conflict of interest to the government agency.
- Further, if Ann used the confidential information to benefit financially, the TPB may also find she is no longer a fit and proper person.

Maintaining confidentiality in dealings with govt (s25)

Maintaining confidentiality in dealings with government (s25)

When undertaking an activity with an Australian government agency in a professional capacity, a tax practitioner must

(1)

Not disclose information received

(2)

Not use information received for personal advantage (including personal advantage of others)

Keeping proper client records (s30)

Keeping proper client records (s30)

A tax practitioner must keep records that correctly record the tax agent services they have provided to all current and former clients. The records must:

(1)

Be in English (easily convertible to English)

(2)

Retained for at least 5 years after the service has been provided

(3)


- Show the nature, scope & outcome of the tax agent service provided.
- Reference information reasonably considered.
- Include all advice received from, & provided to, clients.

Case study 2



- Sandra is a registered tax agent who was previously engaged by Rick to complete his income tax return.
- Sandra received a letter from another registered tax practitioner advising that Rick had engaged them to complete tax agent services on his behalf and requested all Rick's records.
- Sandra obtains Rick's consent before providing his records to the new tax practitioner.
- To meet her obligations under the Determination she must also:
 - retain copies of records relating to the tax agent services she provided
 - securely store Rick's records for 5 years
 - ensure the records are readily accessible.

**Ensuring tax agent services provided
on your behalf are provided
competently (s35)**



Ensuring tax agent services provided on your behalf are provided competently (s35)

A tax practitioner must ensure that each entity providing tax agent services on their behalf:

(1)

Maintains knowledge and skills relevant to the tax agent services provided

(2)

Is appropriately supervised, having regard to the knowledge/skills of the entity, the tax agent services provided and their system of quality management

Competent standard



‘Competence, with respect to tax practitioners and those who provide tax agent services on their behalf, can be defined as a state of being capable, fitting, suitable or sufficient to provide a tax agent or BAS service to the appropriate professional and ethical standards’.



A partnership or company must have a sufficient number of registered individuals to provide tax agent or BAS services to a competent standard and to carry out supervisory arrangements.

Case study 3

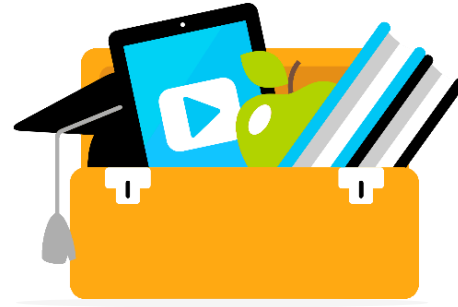


- Steven, a registered tax agent, is the sole director and nominated supervising agent of registered tax agent company XYZ
- Amanda provides tax agent services on behalf of XYZ and is not a tax or BAS agent.
- As the supervising agent, Steven is responsible for the supervision and control of Amanda who is located interstate.
- Steven undertakes spot checks of her work intermittently, has infrequent online check-ins, has provided a suite of training material but has not undertaken training or mentoring of Amanda himself.
- He also does not have a remote supervisory arrangement plan in place.

Case study 3 – outcome

The TPB is unlikely to be satisfied that XYZ has met the requirements of section 35 of the Code Determination as:

- there is no plan setting out the nature of the remote supervisory arrangement
- contact with Amanda is irregular and insufficient; and
- there is no agreed schedule for check-ins, training or review of work undertaken on behalf of XYZ.



Quality management systems (s40)

Quality management systems (s40)

A tax practitioner must establish and maintain a system of quality management in relation to the tax agent or BAS services provided, with reasonable confidence you are complying with the Code, and you must:

Document and enforce policies and procedures of your system, which may include:

- Governance and leadership
- Monitoring of performance
- Adherence to the Code
- Client engagement
- Proper record keeping
- Protecting confidentiality of information
- Management of conflicts of interest
- Recruitment, training and management of employees

Policies and procedures



You also need to consider broader organisational policies and procedures on compliance with the Code, the Determination, and integrity, including:

- recruitment
- training
- supervision
- information sharing
- reporting
- record-keeping
- security
- information technology
- human resources
- dealing with complaints
- workplace culture.



Exercise professional judgment in determining the appropriate controls for your circumstances.

Case study 4



- Koality a medium registered tax agent company, employs registered tax agents and those who are not registered with the TPB.
- Koality last reviewed and updated quality management policies and procedures 5 years ago – they are now out-of-date.
- They don't provide in-house training to any staff on their obligations under the Code.
- Koality expects employees who are registered tax agents to complete relevant professional education activities from external providers, but don't require employees to maintain a record of the activities completed.
- They also don't conduct internal audits or reviews to assess if expectations are being met.

Case study 4 – outcome



The TPB is unlikely to be satisfied Koality is meeting the requirements of the Determination as they:

- don't actively enforce its expectation that registered tax agent employees complete professional education activities from external providers regarding their Code obligations; and
- employees who are not registered tax agents are not provided training, or expected to complete professional education activities, regarding how the Code applies to tax agent services they provide on Koality's behalf.
- have not adequately maintained their policies and procedures regarding adherence to the Code, which are now out-of-date.

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