

[Table of contents](#)▼

Reform measures

What are the new Code Determination requirements?

Under the *Tax Agent Services Act 2009* (TASA), the Australian Government has issued the [Code Determination](#) which extends the ethical obligations of tax practitioners under the Code of Professional Conduct (Code).

Back to top

Why was a Determination issued to create new Code obligations on tax practitioners?

Recommendation 5.1, which was accepted by the Australian Government, from the 2019 [independent review](#) into the effectiveness of the Tax Practitioners Board (TPB) and the *Tax Agent Services Act 2009* (TASA) recommended:

The relevant Minister be given a legislative instrument power to be able to supplement the Code of Professional Conduct to address emerging or existing behaviours and practices. The legislative instrument process would also ensure appropriate consultation with key stakeholders and parliamentary oversight.

Further, on 6 August 2023, the government announced a significant package of reforms that would crack down on misconduct and rebuild people’s confidence in the systems and structures that would keep our tax system and capital markets strong. These reforms were aimed at strengthening the integrity of the tax system, increasing the powers of our regulators and strengthening regulatory frameworks to ensure they are fit for purpose.

One element of the package was supplementing the [Code](#) – which the new Code items give effect to.

What is the purpose of these law reforms?

The government has an ongoing program of tax and regulatory reforms to address tax practitioner misconduct and to improve community confidence in the integrity of the system. These reforms support a level playing field for the majority of tax practitioners doing the right thing.

How were these new obligations developed?

In December 2023, the government released a draft [Tax Agent Services \(Code of Professional Conduct\) Determination 2023 \(the draft determination\)](#) and explanatory materials for a 6-week public consultation period.

Discussions with a range of stakeholders were also undertaken after release of the exposure draft, including with [TPB Governance and Standards Forum](#) and [Consultative Forum](#).

Following consideration of all feedback, the Tax Agent Services (Code of Professional Conduct) Determination 2024 (Determination) was registered on 2 July 2024, which included 8 additional obligations for tax practitioners under the Code.

On 8 October 2024, following additional stakeholder feedback, the government [amended](#) the Determination to provide greater certainty on certain Code obligations and to clarify the intent and scope of the new obligations.

Where can the Determination be found?

The [Determination](#) is available on the Federal Register of Legislation.

What do the new ethical requirements address?

The new ethical requirements address a range of professional standards, including:

- Upholding and promoting the ethical standards of the tax profession.
- Addressing false or misleading statements.
- Managing conflicts of interest when undertaking activities for government and maintaining confidentiality in dealings with government.
- Keeping proper client records.
- Ensuring competency of services provided and having quality management systems in place.
- Keeping clients informed.

When do these new obligations commence?

The new Code obligations commence on:

- 1 July 2025 - for tax practitioners with 100 or less employees as at 31 July 2024, including new tax practitioners (with 100 or less employees) that register between 1 August 2024 and 30 June 2025 inclusive; and
- 1 January 2025 - for any other tax practitioners.

The delayed commencement date provides time for tax practitioners to develop, implement and update systems and processes necessary to meet their obligations by the relevant commencement date.

The deferred application date is based on staff numbers – with the limit of 100 staff, does that include only people that are employed by you, or does it cover contractors and support people who you may not hire directly as an employee?

The 100-person test is limited to *employees*, which takes its common law meaning.

Why are these reforms necessary when the majority of registered tax practitioners comply?



The purpose of the recent reform is to ensure there is consistency in standards across the profession and to ensure a level playing field for all registered tax practitioners. Many tax practitioners are doing the right thing. For those trying to do the right thing, these new requirements, along with our guidance, help lift processes and practices to best practice, which will help protect tax practitioners and their business.

Do the new obligations conflict with the existing Code items?



No, the new obligations complement and do not conflict with the existing Code obligations, noting that tax practitioners can disclose a client’s information to a third party where there is a legal duty to do so.

There are a range of existing circumstances where disclosure of information to regulatory agencies takes priority over tax practitioners’ obligations to maintain client confidentiality. These circumstances are the exception, but reflect situations where tax practitioners’ duty to maintain public trust in the tax system, and tax profession, is more critical than their duty to their clients. This will also best protect you and your practice.

Guidance

What guidance is available to support tax practitioners comply with these new ethical obligations?



We have issued the following suite of information sheets covering all the new obligations, following public consultation and working closely with our stakeholders, including professional associations and the tax practitioner community:

- [Upholding and promoting the ethical standards of the tax profession \(TPB\(I\) D44/2024\)](#).
- [False or misleading statements \(TPB\(I\) 45/2024\)](#).
- [Managing conflicts of interest when undertaking activities for government and maintaining confidentiality in dealings with government \(TPB\(I\) 46/2024\)](#).
- [Obligation to keep proper client records of tax agent services provided \(TPB\(I\) 47/2024\)](#).
- [Supervision, competency and quality management system under the *Tax Agent Services Act 2009* \(TPB\(I\) 48/2024\)](#).
- [Keeping your clients informed TPB\(I\) 49/2024](#).

We will complement the information sheets (which includes practical case studies), with [webinars](#) and factsheet summaries, to ensure tax practitioners can review and update their systems and process, as necessary.

Will the TPB run webinars on the new Code obligations?

+

Will the TPB’s guidance recognise the differences in how a small practice and a large firm operates?

+

Compliance

How can tax practitioners comply with the new obligations?

–

The [8 additional obligations](#) build on the existing principles of the Code, including honesty and integrity, independence, confidentiality and competence. Most tax practitioners, acting professionally and ethically, will readily comply with the new Code obligations.

We have issued [information sheets](#), which provide detailed information about how the new Code obligations operate and will also help you improve your services to clients and systems to comply with the law. To complement the information sheets, we have published a summary of these obligations on our website as web content which can be accessed via tpb.gov.au/code. A suite of factsheets on the new obligations will also be available on our website early in the new year.

The additional obligations also leverage material from the work of other existing bodies, such as the [Accounting Professional & Ethical Standards Board](#), which has developed and released substantial guidance material. Other elements of the Code build on well-known and understood tax and corporate law concepts that tax practitioners will be regularly advising clients on.

What is the TPB’s approach to enforcing the new obligations?

–

The government introduced a rule to delay the commencement of the new obligations to provide time for you to develop, implement and update systems and processes necessary to meet your obligations by the relevant commencement date.

Our priority is to educate tax practitioners so you understand what is required of you prior to commencement of the new obligations.

Upon commencement of the new obligations, we will continue to educate and support tax practitioners, with investigations and sanctions reserved for the higher risk and serious cases of non-compliance.

Upholding and promoting ethical standards (s10)

When you spoke about upholding and promoting the Code you mentioned implementing practical measures in your practice. Could you provide examples?

+

When it comes to engaging in conduct that undermines the tax profession and tax system, what would the TPB consider a breach of the Code?

+

False or misleading statements (s15)

If I engage a new client and identify issues, am I obligated to report the client to the ATO or TPB?

+

How do these obligations impact on the sufficient number individuals of a larger tax agent?

+

What is a reasonable period?

+

What does 'substantial harm' mean?

+

How do I assess what is in the public interest?

+

What is considered 'reasonable grounds'?

+

Is materiality based on impact of client tax position, or materiality in relation to the transaction size?

+

What if we advise a client of the need for an amendment for a significant matter but they say they will take care of it later?

+

Who determines if it is material?

+

How do you determine ‘reasonably ought to know’

+

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

Could you briefly clarify what constitutes a conflict of interest?

+

What do you mean by informing an Australian government agency of a conflict of interest prior to the engagement?

+

Managing conflict of interest when undertaking activities for government (s20)

+

Can you outline what the TPB would consider reasonable steps to identify and document material conflicts of interest?

+

Can you explain what is meant by personal advantage?

+

How can a tax practitioner safely manage and mitigate a conflict of interest?


+


Maintaining confidentiality when dealing with government (s25)

What government agencies are captured under the definition of ‘Australian government agency’?


+




Is it okay to share government information with my employees if they keep it confidential and don't use the information for personal gain? 


Could you provide some examples of situations where further disclosure of government information is permitted? 

Keeping proper client records (s30)


What are the record keeping requirements in order to comply with the new Code obligations? 


Should I to retain client proof of identity records? 

In what format should records be kept? 

To meet the obligations for keeping proper records, can I use Microsoft Excel or software like MYOB, QBO or Xero? 

Competence (s35)

Does the new obligation to ensure tax agent services being provided on your behalf are provided competently require your staff to have formal training? 

Are tax practitioners required to undertake police checks on current or potential staff? 

Does a supervising tax practitioner have to review every return that is lodged by their firm, or do they simply need to ensure the processes are followed and each person is capable of preparing the returns accurately?

If I offshore work to an overseas bookkeeper, who is doing work on my behalf what responsibilities do I have to supervise their work to ensure it is competent?

Do the new requirements around staff providing services competently require us to provide staff with formal training?

Quality management systems (s40)

Is the quality management system for a sole trader the same as a large firm?

What is a ‘Quality Management System’?

Keeping clients informed (s45)

Do I need to inform current and potential clients that I have a physical or mental health issue?

Can you elaborate on the requirements of ‘keeping clients informed?’

How do I keep my clients informed?

Do we need to let clients know if a complaint has been lodged with TPB even if there was no investigation or no sanctions was imposed?

-
- What is a prospective client?
- Do the new Code obligations apply to BAS agents as well?
- If an unregistered staff member in my practice becomes an undischarged bankrupt which is a prescribed event, do I need to inform my clients?
- From what date do notifications of a prescribed event start?
- What is a reasonable timeframe to notify clients of a prescribed event?

Last modified: 23 December 2024



GET THE LATEST UPDATES IN YOUR INBOX

Sign up to receive our eNewsletter and we will send you information about important new developments and timely reminders relevant to tax practitioners

Subscribe



Access to
information

Collection of
personal
information

Accessibility

Model litigant
obligations

Social media
terms of use

Privacy

Disclaimer

Copyright

Sitemap



We respectfully acknowledge the Traditional Owners and Custodians of Country throughout Australia and their continuing connection to land, waters and community. We pay our respects to them and their cultures, and Elders past and present.

What do you think of our website? [Tell us your experience](#)