



Tax Agent Services (Code of Professional Conduct) Determination 2024

made under the *Tax Agent Services Act 2009*

Compilation No. 2

Compilation date: 9 October 2024

Includes amendments: *Tax Agent Services (Code of Professional Conduct)
Amendment (Measures No. 2) Determination 2024*

Prepared by The Treasury

About this compilation

This compilation

This is a compilation of the *Tax Agent Services (Code of Professional Conduct) Determination 2024* that shows the text of the law as amended and in force on 9 October 2024 (the *compilation date*).

The notes at the end of this compilation (the *endnotes*) include information about amending laws and the amendment history of provisions of the compiled law.

Uncommenced amendments

The effect of uncommenced amendments is not shown in the text of the compiled law. Any uncommenced amendments affecting the law are accessible on the Register (www.legislation.gov.au). The details of amendments made up to, but not commenced at, the compilation date are underlined in the endnotes. For more information on any uncommenced amendments, see the Register for the compiled law.

Application, saving and transitional provisions for provisions and amendments

If the operation of a provision or amendment of the compiled law is affected by an application, saving or transitional provision that is not included in this compilation, details are included in the endnotes.

Modifications

If the compiled law is modified by another law, the compiled law operates as modified but the modification does not amend the text of the law. Accordingly, this compilation does not show the text of the compiled law as modified. For more information on any modifications, see the Register for the compiled law.

Self-repealing provisions

If a provision of the compiled law has been repealed in accordance with a provision of the law, details are included in the endnotes.

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Part 1—Preliminary

1 Name

This instrument is the *Tax Agent Services (Code of Professional Conduct) Determination 2024*.

2 Commencement

- (1) Each provision of instrument specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Commencement information		
Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
1. The whole of this instrument	1 August 2024.	1 August 2024

Note: This table relates only to the provisions of this instrument as originally made. It will not be amended to deal with any later amendments of this instrument.

- (2) Any information in column 3 of the table is not part of this instrument. Information may be inserted in this column, or information in it may be edited, in any published version of this instrument.

3 Authority

This instrument is made under the *Tax Agent Services Act 2009*.

4 Definitions

Note: Expressions have the same meaning in this instrument as in the *Tax Agent Services Act 2009* as in force from time to time—see paragraph 13(1)(b) of the *Legislation Act 2003*.

In this instrument:

action, in relation to a client taking an action, includes the client failing to take an action.

at risk staff member, in relation to a registered tax agent or BAS agent, means:

- (a) an employee of the agent; or
- (b) where the agent is an employee or member of a partnership or company that is also a registered tax or BAS agent—a member or an employee of the partnership or company (or any other entity connected with, or an affiliate of, the partnership or company); or
- (c) an entity (other than one covered by a preceding paragraph) that provides tax agent services on behalf of the agent.

the Act means the *Tax Agent Services Act 2009*.

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Part 2—The Code of Professional Conduct

Division 1—Additional obligations of general application

Subdivision A—Preliminary

5 Additional obligations relating to the professional and ethical conduct of registered tax agents and BAS agents

Under section 30-12 of the Act, the obligations relating to professional and ethical conduct of registered tax agents and BAS agents set out in this Part are determined for the purposes of subsection 30-10(17) of the Act.

Note: Section 30-10 of the Act sets out the Code of Professional Conduct applying to registered tax agents and BAS agents. The Minister may determine further obligations under the Code which registered tax agents and BAS agents must comply with. This instrument sets out those further obligations.

Subdivision B—Honesty and integrity

10 Upholding and promoting the ethical standards of the tax profession

Independently, and in cooperation with other registered tax agents and BAS agents, you must:

- (a) uphold and promote the Code of Professional Conduct; and
- (b) *not* engage in any conduct that you know, or ought reasonably to know, may:
 - (i) undermine public trust and confidence in the integrity of the tax profession (including conduct that discredits the tax profession or brings the tax profession into disrepute); or
 - (ii) undermine public trust and confidence in the integrity of the tax system; and
- (c) *not* engage in any conduct that you know, or ought reasonably to know, may undermine the collective work of registered tax agents and BAS agents, as a tax profession, to uphold and promote:
 - (i) the Code of Professional Conduct; and
 - (ii) public trust and confidence in the integrity of the tax profession and tax system; and
 - (iii) each member of the profession being held accountable for their individual conduct.

Note: A registered tax agent or BAS agent has an obligation to notify the Board of significant breaches of the Code—see Subdivision 30-C of the Act.

15 False or misleading statements

Statements made to the Board or the Commissioner

- (1) You must *not*:
 - (a) make a statement to the Board or the Commissioner; or

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- (b) prepare a statement that you know, or ought reasonably to know, is likely to be made to the Board or Commissioner by an entity; or
- (c) permit or direct someone else to make or prepare such a statement; that you know, or ought reasonably to know, is false or misleading in a material particular, or omits any matter or thing without which the statement is misleading in a material respect, in your capacity as a registered tax agent or BAS agent or in any other capacity.

Note: For further obligations relating to false or misleading statements to the Commissioner see section 50-20 of the Act.

Responding to a false or misleading statement made to the Board or Commissioner

- (2) Where:
 - (a) a statement has been given to the Board or Commissioner; and
 - (b) one of the following applies:
 - (i) you made the statement, or permitted or directed someone else to make the statement, other than for a client; or
 - (ii) for an entity that was your client at the time the statement was given to the Board or Commissioner, you made or prepared the statement, or permitted or directed someone else to make or prepare the statement; and
 - (c) at a time after the statement was made, you have reasonable grounds to believe that the statement:
 - (i) was false or misleading in a material particular at the time it was made; or
 - (ii) omitted any matter or thing, at the time it was made, without which the statement at that time is misleading in a material respect; and
 - (d) you also have reasonable grounds to believe that the false or misleading nature of the statement resulted from:
 - (i) a failure to take reasonable care in connection with the preparation or making of the statement; or
 - (ii) recklessness as to the operation of a taxation law; or
 - (iii) intentional disregard of a taxation law;

within a reasonable period of time after you come to believe that the statement given satisfies paragraph (c), you must take each of the actions set out in an item of the following table when the situation described in that item of the table applies:

Responding to a false or misleading statement		
Item	Column 1 In this situation:	Column 2 You must take all reasonable steps to:
1	where you made the statement or permitted or directed someone else to make the statement (other than a statement made for a client)	have the statement corrected.

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Responding to a false or misleading statement		
Item	Column 1 In this situation:	Column 2 You must take all reasonable steps to:
2	where you made or prepared the statement, or permitted or directed someone else to make or prepare the statement, for a client	advise your client about all of the following: (a) that the statement should be corrected; (b) the possible consequences of <i>not</i> taking action to correct the statement. However, this item does <i>not</i> apply to the extent that doing so would be unlawful under another Australian law.
3	where: (a) you made or prepared the statement, or permitted or directed someone else to make or prepare the statement, for a client; and (b) after a reasonable period of time after taking the steps mentioned in item 2 of this table, you are <i>not</i> reasonably satisfied that your client has corrected the statement or otherwise adequately explained the basis for the statement; and (c) either subparagraphs (2)(d)(ii) or (iii) are satisfied in relation to the false or misleading nature of the statement	withdraw from the engagement, and professional relationship, with your client (including no longer providing any further tax agent services to your client). However, this item does <i>not</i> apply to the extent that: (a) doing so would pose an unreasonable risk to your personal safety, or the safety of a member of your family or an at risk staff member of yours; or (b) doing so would be unlawful under another Australian law.
4	where: (a) you made or prepared the statement, or permitted or directed someone else to make or prepare the statement, for a client; and (b) after a reasonable period of time after taking the steps mentioned in item 2 of this table, you are <i>not</i> reasonably satisfied that your client has corrected the statement or otherwise adequately explained the basis for the statement; and (c) either subparagraphs (2)(d)(ii) or (iii) are satisfied in relation to the false or misleading nature of the statement; and (d) you have reasonable grounds to believe your client's actions have caused, are causing, or may still cause, substantial harm to the interests of others (including investors, creditors, employees, or the public)	notify the Board or Commissioner (as the case requires) that you have advised your client that a statement made to the Board or Commissioner should be corrected and you are <i>not</i> reasonably satisfied that your advice was acted upon. However, this item does <i>not</i> apply to the extent that: (a) doing so would pose an unreasonable risk to your personal safety, or the safety of a member of your family or an at risk staff member of yours; or (b) doing so would be unlawful under another Australian law.
5	the same as for item 4	take any further action as you reasonably consider is needed in the public interest. However, this item does <i>not</i> apply to the extent that:

Responding to a false or misleading statement

Item	Column 1	Column 2
	In this situation:	You must take all reasonable steps to:
		<ul style="list-style-type: none"> (a) doing so would pose an unreasonable risk to your personal safety, or the safety of a member of your family or an at risk staff member of yours; or (b) doing so would be unlawful under another Australian law.

- Note 1: There may be other situations where you will need to withdraw from a client engagement to avoid potential exposure to civil or criminal penalties—see, for example, section 50-20 of the Act and sections 8K and 8N of the *Taxation Administration Act 1953*.
- Note 2: There may be other situations where you will need to report an identified false or misleading statement to the Board—see Subdivision 30-C of the Act.
- Note 3: The obligations in the table have been informed by standards issued by the Accounting Professional & Ethical Standards Board (including the Code of Ethics). In 2024, the standards could be viewed on the Accounting Professional & Ethical Standards Board website (<http://apesb.org.au>).
- Note 4: In determining whether a client’s actions have caused, are causing, or may still cause, substantial harm to the interests of others (including investors, creditors, employees, or the public), regard is expected to be had to all relevant matters, including:
- (a) whether the client’s actions have resulted, are resulting, or may result, in serious adverse consequences to others in either financial or non-financial terms; and
 - (b) any of the rights and obligations under the taxation laws (as are relevant); and
 - (c) the appropriateness and timeliness of your client’s response to your advice that the statement should be corrected (including any information that would lead you to conclude that your client lacks integrity); and
 - (d) the urgency of the situation.

(2A) For the purposes of subsection (2), in determining what is a reasonable period of time, you should have regard to the nature of the statement, the circumstances of your client, the details that were false or misleading, how long ago the statement was made, the relevant period of review, any timeframe set out in a taxation law for the lodgement of the statement or a correction to the statement, and any other relevant matter.

Statements made to other Australian government agencies

- (3) You must not:
- (a) make a statement to an Australian government agency (other than the Board or the Commissioner); or
 - (b) prepare a statement that you know, or ought reasonably to know, is likely to be made to an Australian government agency (other than the Board or the Commissioner) by an entity; or
 - (c) permit or direct someone else to make or prepare such a statement; that you know, or ought reasonably to know, is false or misleading in a material particular, or omits any matter or thing without which the statement is misleading in a material respect, in your capacity as a registered tax agent or BAS agent or in any other capacity.

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Subdivision C—Independence

20 Conflicts of interest in activities undertaken for government

In relation to any activities you undertake for an Australian government agency in a professional capacity, you must:

- (a) take reasonable steps to identify and document any material conflicts of interest (real or apparent) you have in connection with the activity; and
- (b) disclose the details of any material conflict of interest (real or apparent) identified in relation to steps undertaken under paragraph (a) to the agency as soon as you become aware of the conflict; and
- (c) take reasonable steps to manage, mitigate, and where appropriate and possible, avoid, any material conflict of interest (real or apparent) identified in relation to steps undertaken under paragraph (a) (except to the extent that the agency has expressly agreed otherwise).

Subdivision D—Confidentiality

25 Maintaining confidentiality in dealings with government

Disclosure

- (1) Unless you have a legal duty to do so, you must *not* disclose any information you have received, directly or indirectly, from an Australian government agency, in connection with any activities you undertake with the agency in a professional capacity, except to the extent that all of the following apply:
 - (a) it is reasonable to conclude that the information received from the agency was authorised by that agency for further disclosure; and
 - (b) any further disclosure of the information is done consistently with the agency's authorisation (whether express or implied, and as reasonably concluded).

Note: This subsection would not prohibit disclosure information released by an agency to the general public as it would be reasonable to conclude that such information was authorised for further disclosure. However, further disclosure of that information may be subject to conditions that are expressly imposed by an agency (such as limits on how the information is to be reproduced if attributed to the agency).

Example: Where a tax agent or BAS agent receives information from an Australian government agency, when engaging with that agency for and on behalf of a client, it would be reasonable to conclude that the information received from the agency was authorised for disclosure to the client.

Use for personal advantage

- (2) You must *not* use any information you have received, directly or indirectly, from an Australian government agency, in connection with any activities you undertake with the agency in a professional capacity, for your personal advantage, or for the advantage of an associate, employee, employer or client of yours, except to the extent that all of the following apply:

- (a) it is reasonable to conclude that the information received from the agency was authorised by that agency to be used in a way that may provide for such an advantage; and
- (b) any further use of the information was done consistently with the agency's authorisation (whether express or implied, and as reasonably concluded).

Subdivision E—Competence

30 Keeping of proper client records

- (1) You must keep records that correctly record the tax agent services you have provided, or that are provided on your behalf, to each of your clients, including former clients.
- (2) The records must:
 - (a) be in English, or readily accessible and easily convertible into English; and
 - (b) be retained for at least 5 years after the service has been provided; and
 - (c) show the nature, scope and outcome of the tax agent service provided; and
 - (d) reference information reasonably considered in the provision of the tax agent service; and
 - (e) include all advice received from the client; and
 - (f) 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).

35 Ensuring tax agent services provided on your behalf are provided competently

- (1) You must ensure that each entity providing tax agent services on your behalf maintains knowledge and skills that are relevant to the tax agent services the entity is providing.
- (2) You must ensure that each entity providing tax agent services on your behalf is appropriately supervised, having regard to knowledge and skills of the entity, the tax agent services being provided by the entity, and your system of quality management.

Subdivision F—Other responsibilities

40 Quality management systems

- (1) You must establish and maintain a system of quality management, in relation to the provision of tax agent services by you, or on your behalf, which is designed to provide you with reasonable confidence that you are complying with the Code of Professional Conduct.
- (2) You must document and enforce the policies and procedures of your system of quality management.

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Note 1: A system of quality management includes policies and procedures relating to governance and leadership, monitoring of performance, adherence to the Code of Professional Conduct, client engagement, proper keeping of records, protecting confidentiality of information, the management of conflicts of interest, and the recruitment, training and management of employees.

Note 2: The obligation in this section have been informed by standards issued by the Accounting Professional & Ethical Standards Board. In 2024, the standards could be viewed on the Accounting Professional & Ethical Standards Board website (<http://apesb.org.au>).

45 Keeping your clients informed

Obligation

- (1) You must advise all current and prospective clients, in the manner, form and timeframes set out in subsection (2), of all of the following:
 - (a) that the Board maintains a register of tax agents and BAS agents and how they can access and search the register;
 - (b) how they can make a complaint about a tax agent service you have provided, including the complaints process of the Board;
 - (c) the following general information:
 - (i) your rights, responsibilities and obligations as a tax agent or BAS agent, including to your client, under the taxation laws (including the Act and Code of Professional Conduct);
 - (ii) what obligations your clients have to you as their tax agent or BAS agent;
 - (d) if any of the following events have occurred within the last 5 years:
 - (i) your registration was suspended or terminated by the Board;
 - (ii) you were an undischarged bankrupt or went into external administration;
 - (iii) you were convicted of a serious taxation offence;
 - (iv) you were convicted of an offence involving fraud or dishonesty;
 - (v) you were serving, or were sentenced to, a term of imprisonment in Australia for 6 months or more;
 - (vi) you were penalised, subject to an injunction, or been subject to an order for breaching a voluntary undertaking, for being a promoter of a tax exploitation scheme;
 - (vii) you were penalised, subject to an injunction, or been subject to an order for breaching a voluntary undertaking, for implementing a scheme that has been promoted on the basis of conformity with a public ruling, private ruling or oral ruling in a way that is materially different from that described in the ruling;
 - (viii) you were penalised, subject to an injunction, or been subject to an order for breaching a voluntary undertaking, for promoting on the basis of conformity with a public ruling, private ruling or oral ruling a scheme that is materially different from that described in the ruling;
 - (ix) the Federal Court has ordered you to pay a pecuniary penalty for contravening a civil penalty provision under the Act.
 - (e) if any of the following matters currently apply to you:

- (i) your registration as a tax agent or BAS agent is subject to conditions.

Note: There may be other matters for which you will need to advise your clients under other laws, for example where you have failed to comply with the Code of Professional Conduct and you are ordered by the Board to advise your clients of one or more matters under section 30-20 of the Act.

Manner and form requirements

- (2) Where you are required to advise clients of information covered by subsection (1), you must do so:
- (a) by giving the information mentioned in a paragraph in subsection (1), in writing, to current and prospective clients in a prominent, clear and unambiguous way; and
 - (b) for information mentioned in a paragraph in subsection (1) (other than paragraph (1)(a), (b) or (c)):
 - (i) if a client makes inquiries to engage or re-engage you to provide tax agent services—at the time of the inquiry; and
 - (ii) for an existing client *not* previously advised of the information—within 30 days of the event; and
 - (c) for information covered by either paragraph (1)(a), (1)(b) or (1)(c)—upon engagement or re-engagement of a client (as the case requires), or upon receiving a relevant request.

Example Whilst not limiting the ways in which a registered tax agent or BAS agent could satisfy subsection (2), an agent who does all of the following, in the form and within the times mentioned in subsection (2), will have given information to all their current and prospective clients as required under this section:

- (a) the agent publishes the information on a publicly accessible website that they use to promote the tax agent services they offer, and
- (b) the agent includes the information in letters of engagement or re-engagement (as case the requires) given to each of their clients; and
- (c) the agent provides their clients, upon engagement or re-engagement (as case the requires), with a copy of the Board's factsheet on general information for clients.

Part 3—Application and transitional provisions

Division 1—Application

100 Application—instrument as originally made

Application

- (1) Except as otherwise provided in this instrument, the obligations included in this instrument on the day it commences (the **commencement day**), apply on or after:
 - (a) in relation to a registered tax agent or BAS agent, that has 100 employees or less as at 31 July 2024—1 July 2025;
 - (b) otherwise—1 January 2025.

Employee count to be undertaken at the practice or firm level

- (2) For the purposes of paragraph (1)(a), where a tax agent or BAS agent is an employee or member of a partnership or company that is also a registered tax or BAS agent, the employees of the partnership or company (or any other entity connected with, or an affiliate of, the partnership or company) are to be counted in determining how many employees a registered tax agent or BAS agent has.
- (3) If a registered tax agent or BAS agent stops being an employee or member of a partnership or company that is also a registered tax or BAS agent (**old firm**), and starts being an employee or member of another partnership or company that is also a registered tax or BAS agent (**new firm**) during the period starting on the commencement day and ending on 30 June 2025, then whether paragraph (1)(a) or (1)(b) applies to a tax agent or BAS at a particular time is to be determined based on whether they were an employee or member of the old firm or new firm at that time.

Record-keeping and false or misleading statements

- (4) To avoid doubt, section 15 (about false or misleading statements) applies to statements made, and section 30 (about the keeping of proper client records) applies to tax agent services provided, on or after the day the sections begin to apply to the registered tax agent or BAS agent under subsection (1).

Division 2—Transitional

151 Transitional—instrument as originally made

Keeping your clients informed

- (1) Despite the reference to events that have occurred within the last 5 years in paragraph 45(1)(c), section 45 applies only in relation to events that have arisen on or after 1 July 2022.
- (2) Where:
 - (a) section 45 applies to require a registered tax agent or BAS agent to advise an existing client of information within 30 days of an event; and
 - (b) that event occurs before section 45 begins to apply to the registered tax agent or BAS agent under subsection 100(1);

then despite subparagraph 45(2)(b)(ii), clients should instead be advised of the information by no later than 30 days after section 45 begins to apply to the registered tax agent or BAS agent under subsection 100(1), if section 45 still applies to require a client to be advised of that information at that time.

Endnotes

Endnote 1—About the endnotes

The endnotes provide information about this compilation and the compiled law.

The following endnotes are included in every compilation:

Endnote 1—About the endnotes

Endnote 2—Abbreviation key

Endnote 3—Legislation history

Endnote 4—Amendment history

Abbreviation key—Endnote 2

The abbreviation key sets out abbreviations that may be used in the endnotes.

Legislation history and amendment history—Endnotes 3 and 4

Amending laws are annotated in the legislation history and amendment history.

The legislation history in endnote 3 provides information about each law that has amended (or will amend) the compiled law. The information includes commencement details for amending laws and details of any application, saving or transitional provisions that are not included in this compilation.

The amendment history in endnote 4 provides information about amendments at the provision (generally section or equivalent) level. It also includes information about any provision of the compiled law that has been repealed in accordance with a provision of the law.

Misdescribed amendments

A misdescribed amendment is an amendment that does not accurately describe how an amendment is to be made. If, despite the misdescription, the amendment can be given effect as intended, then the misdescribed amendment can be incorporated through an editorial change made under section 15V of the *Legislation Act 2003*.

If a misdescribed amendment cannot be given effect as intended, the amendment is not incorporated and “(md not incorp)” is added to the amendment history.

Endnote 2—Abbreviation key

ad = added or inserted	orig = original
am = amended	par = paragraph(s)/subparagraph(s) /sub-subparagraph(s)
amdt = amendment	pres = present
c = clause(s)	prev = previous
C[x] = Compilation No. x	(prev...) = previously
Ch = Chapter(s)	Pt = Part(s)
def = definition(s)	r = regulation(s)/rule(s)
Dict = Dictionary	reloc = relocated
disallowed = disallowed by Parliament	renum = renumbered
Div = Division(s)	rep = repealed
exp = expires/expired or ceases/ceased to have effect	rs = repealed and substituted
F = Federal Register of Legislation	s = section(s)/subsection(s)
gaz = gazette	Sch = Schedule(s)
LA = <i>Legislation Act 2003</i>	Sdiv = Subdivision(s)
LIA = <i>Legislative Instruments Act 2003</i>	SLI = Select Legislative Instrument
(md not incorp) = misdescribed amendment cannot be given effect	SR = Statutory Rules
mod = modified/modification	Sub-Ch = Sub-Chapter(s)
No. = Number(s)	SubPt = Subpart(s)
o = order(s)	<u>underlining</u> = whole or part not commenced or to be commenced
Ord = Ordinance	

Endnotes

Endnote 3—Legislation history

Name	Registration	Commencement	Application, saving and transitional provisions
Tax Agent Services (Code of Professional Conduct) Determination 2024	2 July 2024 (F2024L00849)	1 August 2024	—
Tax Agent Services (Code of Professional Conduct) Amendment (Measures No. 1) Determination 2024	9 September 2024 (F2024L01118)	10 September 2024	—
Tax Agent Services (Code of Professional Conduct) Amendment (Measures No. 2) Determination 2024	8 October 2024 (F2024L01276)	9 October 2024	—

Endnote 4—Amendment history

Provision affected	How affected
s 4	ad F2024L01276
s 15	am F2024L01276
s 20	am F2024L01276
s 25	am F2024L01276
s 30	am F2024L01276
s 40	am F2024L01276
s 45	am F2024L01276
s 100	rs F2024L01118
s 151	am F2024L01118; rs F2024L01276