

TAX PRACTITIONERS BOARD

Presented by: Ian Taylor, Chair
Tax Practitioners Board
Event: IPA National Congress
Date: 28 November 2014

PRESENTATION OVERVIEW

- Role of the Tax Practitioners Board
- Tax practitioner profile
- Your obligations
- Code of professional conduct
- Reasonable care
- Civil penalties
- Compliance
- Recent developments
- Regulation of tax (financial) advisers
- Registered agent symbol
- Future areas of focus

ROLE OF THE TAX PRACTITIONERS BOARD



3

ROLE OF THE TAX PRACTITIONERS BOARD

We:

- are an independent statutory body
- were created under the *Tax Agent Services Act 2009* (TASA)
- are separate to the ATO
- set policies to register and regulate tax practitioners
- work closely with the ATO to strengthen community confidence in the taxation system.

Our Tax Practitioner Service Charter outlines our commitment to tax practitioners including their rights and responsibilities.

4

ROLE OF THE TAX PRACTITIONERS BOARD

Our role:

- protect consumers using tax practitioner services
- assist practitioners to comply with their obligations in the TASA
- ensure tax practitioners have the necessary skills, experience and personal attributes
- ensure services are provided to the public in accordance with the appropriate professional and ethical standards
- deal with complaints about tax and BAS agents
- take action against unregistered agents who should be registered.

5

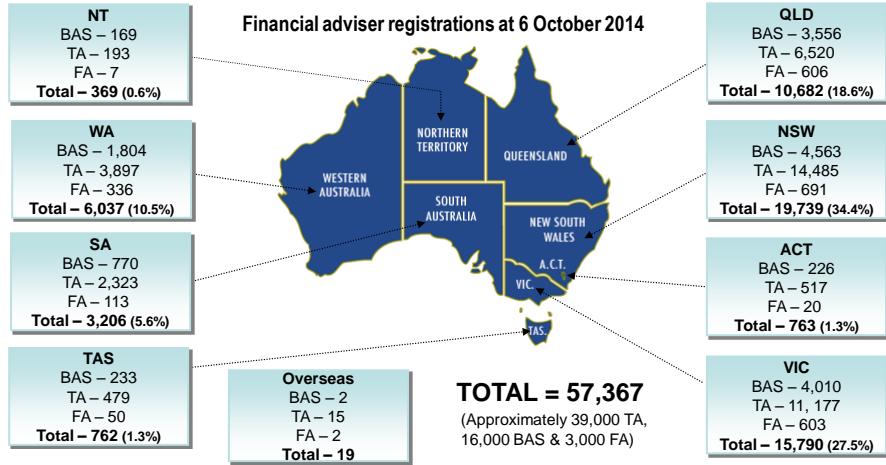
TAX PRACTITIONER PROFILE



TAX PRACTITIONER COMMUNITY

Tax and BAS registrations at 30 June 2014

Financial adviser registrations at 6 October 2014



YOUR OBLIGATIONS



OBLIGATIONS UNDER THE TASA

- Update changes in your circumstances, including PI insurance renewals, and notify us.
- Meet the ongoing eligibility criteria:
 - qualifications
 - relevant experience
 - fit and proper
 - CPE
- Adhere to the Code of Professional Conduct (Code).
- Not contravene the civil penalty provisions.

9

CODE OF PROFESSIONAL CONDUCT



10

CODE OF PROFESSIONAL CONDUCT

FIVE KEY PRINCIPLES

Honesty and integrity
Independence
Confidentiality
Competence
Other responsibilities

SANCTIONS

Written caution
Order
Suspension
Termination

11

CODE OF PROFESSIONAL CONDUCT

1. Act honestly and with integrity
2. Comply with taxation laws in conducting your personal affairs
3. Account to clients for money or property held on trust
4. Act lawfully in the best interests of your client
5. Manage conflicts of interest
6. Non-disclosure of client information without consent
7. Provide services competently

12

CODE OF PROFESSIONAL CONDUCT

8. Maintain skills and knowledge
9. Take reasonable care to ascertain client's state of affairs
10. Take reasonable care to apply tax laws correctly
11. Do not obstruct the administration of tax laws
12. Advise clients of their rights and obligations under the tax law
13. Maintain professional indemnity (PI) insurance
14. Respond to requests and directions from the Board

13

CODE OF PROFESSIONAL CONDUCT

- The Board has released a number of Information Sheets which provide guidance to practitioners on their obligations under particular Code items, including:
 - Code item 3 – money or other property received on trust
 - Code item 5 – managing conflicts of interest
 - Code item 6 – confidentiality of client information
 - Code item 9 – reasonable care in ascertaining a client's state of affairs
 - Code item 10 – reasonable care to ensure that taxation laws are applied correctly

14

CODE EXAMPLE 1

Scenario

- Agent lodged 340 income tax returns that were cancelled by the ATO due to fictitious payment summaries.
- Agent aware that payment summaries may have been fictitious.
- Information on the ATO tax agent portal indicated that the TFNs of some of the taxpayers did not match.
- Excessive work related expenses/rebates claimed.
- Agent charged more than normal for lodgment of these returns.

15

CODE EXAMPLE 1 (cont.)

Code breaches

- Did not act honestly and with integrity.
- Services were not provided competently.
- Did not maintain their knowledge and skills.
- Did not take reasonable care to ascertain client state of affairs.

Sanction

- We terminated the agent's registration.
- The agent cannot apply for registration for a period of three years.
- We also found the agent not to be fit and proper.

16

CODE EXAMPLE 2

Scenario

- A registered BAS agent failed to lodge 5 of his personal income tax returns and 6 business activity statements.

Code breaches

- Did not comply with the taxation laws in the conduct of his own affairs.
- Ceased to meet the fit and proper person requirement.

Sanction

- The agent's registration was terminated.

17

REASONABLE CARE



18

REASONABLE CARE

Code item 9

- Must take reasonable care in ascertaining a client's state of affairs if it is relevant to a statement you are making or thing you are doing on behalf of a client.

Code item 10

- When providing advice to a client, must take reasonable care to ensure tax laws are applied correctly.

19

REASONABLE CARE

Steps to take to assist in compliance with the Code

- Exercise professional judgement taking into account relevant factors
- Signed written agreements (e.g. letters of engagement)
- Adequate supervision and control
- Take appropriate relevant positive steps (e.g. further enquiries, ask relevant questions, request further information, seek guidance)
- Continuing professional education

20

CODE ITEM 9 – FACTORS TO CONSIDER

Reasonable care to ascertain client's state of affairs

- Does agreed scope of services exclude examination of particular information or require relying on another expert?
- Are there other relevant circumstances requiring consideration? (e.g. changes in law, unusual/complex examples)
- Does the statement provided seem credible, consistent (if existing client) and no basis to doubt the information?
- Has the client's relevant circumstances been considered, including knowledge, experience and sophistication?

21

CODE ITEM 10 – FACTORS TO CONSIDER

Reasonable care to apply tax laws correctly.

- Have relevant circumstances been considered? (e.g. terms of engagement, complexity of transaction, client's level of knowledge, experience and sophistication)
- Has adequate research been undertaken and/or referral to other specialists?

22

REASONABLE CARE EXAMPLE

Scenario

A tax agent applied to renew their registration.

An ATO audit showed many tax agent errors including:

- no evidence for claims for work-related expenses and deductions on tax returns
- no evidence of working papers
- travel claims mislabelled and private expenses incorrectly claimed.

The audit of 20 clients resulted in adjustments of more than \$390k.

- A further complaint was received that the tax agent had accessed and changed family trust records through the portal without authorisation.

23

REASONABLE CARE EXAMPLE

Code breaches

The agent failed to:

- act with honesty and integrity
- act lawfully in the best interests of clients
- ensure that tax agent services were provided competently
- take reasonable care in ascertaining a client's state of affairs
- take reasonable care to ensure taxation laws were applied correctly.

Sanction

The TPB did not renew the tax agent's registration.

24

CIVIL PENALTIES



25

CIVIL PENALTY PROVISIONS

Conduct prohibited without registration

- Receive a fee or other reward for providing a tax agent service.
- Advertising that the entity will provide tax agent services.
- Entity represents itself as a registered agent.

	INDIVIDUAL	BODY CORPORATE
PENALTIES UP TO	\$42,500 (250 penalty units)	\$212,500 (1,250 penalty units)

26

CIVIL PENALTY PROVISIONS

Conduct prohibited by registered agents

- Entity makes a false or misleading statement.
- Entity uses or employs the services of a deregistered agent.
- Signing declarations/statements prepared by prohibited persons.

	INDIVIDUAL	BODY CORPORATE
PENALTIES UP TO	\$42,500 (250 penalty units)	\$212,500 (1,250 penalty units)

27

MISCONDUCT RESULTS IN \$70,000 PENALTY

In July 2014 the Federal Court ordered Tsu Chien Su to pay \$70,000 for committing 50 breaches of the TASA.

- Mr Su admitted to 50 breaches
 - 25 relating to false information in returns derived from false payment summaries
 - 25 relating to the falsity of the tax agent certificate contained in each return.
- This is the first time the Federal Court has imposed a pecuniary penalty on a registered agent for breaches of the TASA.
- TPB terminated Mr Su's tax agent registration, imposing a period of three years before he could re-apply for registration.

28

\$43,000 PENALTY FOR UNREGISTERED AGENT

In May 2014, Zada Dedic was ordered by the Federal Court to pay \$43,000 for breaches of the TASA.

- Ms Dedic prepared and lodged 86 income tax returns for a fee when she was a registered BAS agent, not a registered tax agent.
- The court found the conduct was deliberate. Ms Dedic had previously applied to be a registered tax agent but the tax agent application was refused due to lack of relevant experience.
- An injunction was imposed for three years.
- The TPB terminated the BAS agent registration.

29

COMPLIANCE



30

POSSIBLE TRIGGERS FOR AN INVESTIGATION

- Complaint by a client or former client
- ATO audit report indicating one or more of the following:
 - a tax shortfall amount
 - penalties or general interest charges
 - a failure on behalf of the registered agent to provide records to substantiate amounts claimed.
- Other relevant complaints referred from other bodies

31

POSSIBLE TRIGGERS FOR AN INVESTIGATION

- The outcome of any ATO proceedings in relation to the relevant conduct
- Whether the registered agent, or another party, derived a personal gain from the relevant conduct
- Whether the registered agent has breached any other Items of the Code
- Consideration will be given to evidence

32

COMPLAINTS STATISTICS

Complaints and referrals (July 2013 - June 2014)	
EXTERNAL	
Public	1050
Registered agent	158
ATO	129
Professional Associations	7
ASIC	9
Ombudsman/ministerial	8
Total external	1361
INTERNAL	
TPB	1243
Total number of complaints	2604

33

RECENT DEVELOPMENTS



34

REGULATION CHANGES

- The amount of relevant experience you need to demonstrate to be eligible for registration, including renewal of registration, as a BAS agent is:
 - 1,400 hours in the past four years, or
 - 1,000 hours in the past four years if you are a voting member of a recognised professional association.
- We are able to declare certain services, by way of a legislative instrument, as BAS services.

35

TPB POLICY CHANGES

- From 1 July 2015 your PI insurance policy must include 'retroactive' cover. Retroactive cover provides insurance for any claims which may arise prior to the start date of your current policy.
- We have approved Skill Sets for commercial law and Australian taxation law, creating additional pathways to meet the Board approved course requirements for tax agents.

36

REGULATION OF TAX (FINANCIAL) ADVISERS



37

TAX (FINANCIAL) ADVISER

- New type of registered entity called **registered tax (financial) adviser**
- From 1 July 2014:
 - Australian financial services (AFS) licensees and authorised representatives who provide a tax (financial) advice service may seek registration with the Board
 - entities who provide a tax (financial) advice service and charge a fee or receive a reward and who have not registered with the TPB in the notification period must accompany their services with a relevant disclaimer.

38

REGISTERED AGENT SYMBOL



39

REGISTERED AGENT SYMBOL

- Tax and BAS agents can now download the Registered agent symbol (symbol) at www.tpb.gov.au/symbol
- The symbol can be used to promote your agent services and assures your clients you are registered with us.
- The symbol can be used on a range of business materials, including websites, stationery, email signature blocks, brochures and business cards.



40

FUTURE AREAS OF FOCUS



41

FUTURE AREAS OF FOCUS

- Assisting financial advisers to register/renew
- Professional practice guidance
- Registered agent symbol for tax (financial) advisers
- Meeting Government's deregulation agenda

42

MORE INFORMATION

For more information and to keep up to date:

- visit www.tpb.gov.au
- email enquirymanagement@tpb.gov.au
- Twitter [tpb.gov.au @TPB_gov_au](https://twitter.com/TPB_gov_au)
- read TPB eNews. Subscribe at www.tpb.gov.au/newsroom
- read the TPB messages in our newsroom

43

QUESTIONS

Any questions?

44