

EXPOSURE DRAFT



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

I, Stephen Jones, Assistant Treasurer and Minister for Financial Services, make the following determination.

Dated 2024

Stephen Jones **[DRAFT ONLY—NOT FOR SIGNATURE]**
Assistant Treasurer
Minister for Financial Services

EXPOSURE DRAFT

EXPOSURE DRAFT

Contents

1 Name	1
2 Commencement	1
3 Authority	1
4 Schedules	1
Schedule 1—Amendments	2
Part 1—Amendments relating to false and misleading statements	2
<i>Tax Agent Services (Code of Professional Conduct) Determination 2024</i>	2
Part 2—Amendments relating to keeping your clients informed of relevant matters	6
<i>Tax Agent Services (Code of Professional Conduct) Determination 2024</i>	6
151 Transitional—instrument as originally made	7
Part 3—Other amendments	8
<i>Tax Agent Services (Code of Professional Conduct) Determination 2024</i>	8

EXPOSURE DRAFT

1 Name

This instrument is the *Tax Agent Services (Code of Professional Conduct) Amendment (Measures No. 2) Determination 2024*.

2 Commencement

- (1) Each provision of this 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	The day after this instrument is registered.	

Note: This table relates only to the provisions of this instrument as originally made.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 Schedules

Each instrument that is specified in a Schedule to this instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms.

EXPOSURE DRAFT

Schedule 1 Amendments

Part 1 Amendments relating to false and misleading statements

Schedule 1—Amendments

Part 1—Amendments relating to false and misleading statements

Tax Agent Services (Code of Professional Conduct) Determination 2024

1 Section 4

Insert:

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; and
- (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); and
- (c) an entity (other than one covered by a preceding paragraph) that provides tax agent services on behalf of the agent.

2 Subsection 15(1)

Omit “, incorrect”.

3 Subsection 15(2)

Repeal the subsection, substitute:

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:

EXPOSURE DRAFT

Amendments **Schedule 1**

Amendments relating to false and misleading statements **Part 1**

- (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 was materially false or misleading, 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.
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 not taking action to correct the statement; (c) your responsibilities under the taxation laws (including the Act and Code of Professional Conduct), relating to false or misleading statements, and what steps you may be required to take in order to fulfil those responsibilities. 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 a reasonable 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	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.

EXPOSURE DRAFT

Schedule 1 Amendments

Part 1 Amendments relating to false and misleading statements

Responding to a false or misleading statement		
Item	Column 1	Column 2
	In this situation:	You must take all reasonable steps to:
	<p>(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</p> <p>(c) either subparagraphs (2)(d)(ii) or (iii) are satisfied in relation to the false or misleading nature of the statement; and</p> <p>(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)</p>	<p>However, this item does <i>not</i> apply to the extent that:</p> <p>(a) doing so would pose a reasonable risk to your personal safety, or the safety of a member of your family or an at risk staff member of yours; or</p> <p>(b) doing so would be unlawful under another Australian law.</p>
5	the same as for item 4	<p>any further action as you reasonably consider is needed in the public interest.</p> <p>However, this item does <i>not</i> apply to the extent that:</p> <p>(a) doing so would pose a reasonable risk to your personal safety, or the safety of a member of your family or an at risk staff member of yours; or</p> <p>(b) doing so would be unlawful under another Australian law.</p>
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 <i>Taxation Administration Act 1953</i> .	
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:	
	<p>(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</p> <p>(b) your client's obligations under the taxation laws, and your obligations under the taxation laws (including your obligations under the Act (particularly, the Code of Professional Conduct)); and</p> <p>(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</p> <p>(d) the urgency of the situation.</p>	

EXPOSURE DRAFT

Amendments **Schedule 1**
Amendments relating to false and misleading statements **Part 1**

- (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.

4 Subsection 15(3)

Omit “, incorrect”.

EXPOSURE DRAFT

Schedule 1 Amendments

Part 2 Amendments relating to keeping your clients informed of relevant matters

Part 2—Amendments relating to keeping your clients informed of relevant matters

Tax Agent Services (Code of Professional Conduct) Determination 2024

5 Section 45 (heading)

Omit “of all relevant matters”.

6 Subsection 45(1) (including the heading)

Repeal the subsection, substitute:

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) 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.
 - (d) 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.

EXPOSURE DRAFT

Amendments **Schedule 1**

Amendments relating to keeping your clients informed of relevant matters **Part 2**

7 Paragraph 45(2)(b)

Repeal the paragraph, substitute:

- (b) for information mentioned in a paragraph in subsection (1) (other than paragraph (1)(a) and (b)):
 - (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

8 Paragraph 45(2)(c)

Omit “paragraph (1)(b) or (1)(c)”, substitute: “paragraph (1)(a) or (1)(b)”.

9 Section 151

Repeal the section, substitute:

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.

EXPOSURE DRAFT

Schedule 1 Amendments
Part 3 Other amendments

Part 3—Other amendments

Tax Agent Services (Code of Professional Conduct) Determination 2024

10 Section 20 (heading)

Omit “dealings with government”, substitute “activities undertaken for government”.

11 Paragraph 20(a)

Omit “in connection with an activity undertaken for the agency”, substitute “you have in connection with the activity”.

12 Paragraph 20(b)

Omit “that arises in connection with an activity undertaken for the agency”, substitute “identified in relation to steps undertaken under paragraph (a)”.

13 Paragraph 20(c)

Omit “that arises in connection with an activity undertaken for the agency”, substitute “identified in relation to steps undertaken under paragraph (a)”.

14 At the end of subsection 25(1)

Add:

Example: Where a tax agent or BAS agent receives information from an Australia 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 disclose to the client.

15 Paragraph 30(2)(d)

Repeal the paragraph, substitute:

- (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).

16 Section 40 (note)

Omit “Note”, substitute “Note 1”.

17 At the end of section 40

Add:

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>).