

# EXPOSURE DRAFT



EXPOSURE DRAFT

## Tax Agent Services (Code of Professional Conduct) Determination 2023

---

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

Dated 2023

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

---

EXPOSURE DRAFT



# EXPOSURE DRAFT

---

## Contents

<b>Part 1—Preliminary</b>	1
1 Name .....	1
2 Commencement .....	1
3 Authority.....	1
4 Definitions .....	1
<b>Part 2—Code of Professional Conduct for Registered Tax Agents and BAS agents</b>	2
<b>Division 1—Additional obligations of general application</b>	2
<b>Subdivision A—Preliminary</b>	2
5 Additional obligations relating to the professional and ethical conduct of registered tax agents and BAS agents.....	2
<b>Subdivision B—Honesty and integrity</b>	2
10 Upholding and promoting the ethical standards of the tax profession.....	2
15 False or misleading statements.....	2
<b>Subdivision C—Independence</b>	3
20 Conflicts of interest in dealings with government.....	3
<b>Subdivision D—Confidentiality</b>	3
25 Maintaining confidentiality in dealings with government.....	3
<b>Subdivision E—Competence</b>	4
30 Keeping of proper client records.....	4
35 Ensuring tax agent services provided on your behalf are provided competently .....	4
<b>Subdivision F—Other responsibilities</b>	4
40 Quality assurance and other internal controls .....	4
45 Keeping your clients informed of all relevant matters .....	5
<b>Part 3—Application and transitional provisions</b>	6
<b>Division 1—Application</b>	6
100 Application .....	6
<b>Division 2—Transitional</b>	7
151 Transitional—keeping clients informed of all relevant matters .....	7



# EXPOSURE DRAFT

Preliminary **Part 1**

Section 1

## Part 1—Preliminary

### 1 Name

This instrument is the *Tax Agent Services (Code of Professional Conduct) Determination 2023*.

### 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	The later of: (a) the day after this instrument is registered; and (b) immediately after the commencement of Part 1 of Schedule 3 to the <i>Treasury Laws Amendment (2023 Measures No. 1) Act 2023</i> .	

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:

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

# EXPOSURE DRAFT

**Part 2** Code of Professional Conduct for Registered Tax Agents and BAS agents

**Division 1** Additional obligations of general application

Section 5

---

## **Part 2—Code of Professional Conduct for Registered Tax Agents and BAS agents**

### **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**

Both as a registered tax agent or BAS agent, and in cooperation with other registered tax agents and BAS agents, you must:

- (a) uphold and promote the Code of Professional Conduct; and
- (b) protect public trust and confidence in the integrity of the tax profession and tax system; and
- (c) as a member of the tax profession, working collectively with other registered tax agents and BAS agents, take reasonable steps to hold each other accountable:
  - (i) for compliance with the Code; and
  - (ii) to protect public trust and confidence in the integrity of the tax profession and tax system.

**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 make a statement to the Board or the Commissioner that you knew, or ought reasonably to have known, is false, incorrect 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.

# EXPOSURE DRAFT

- (2) You must take all necessary steps to correct any statement you have given to the Board or the Commissioner, in any of your capacities, as soon as possible after you become aware that the statement was false, incorrect or misleading in a material particular, or omitted any matter or thing without which the statement is misleading in a material respect.

*Statements made to other Australian government agencies*

- (3) You must not make a statement to an Australian government agency (other than the Board or the Commissioner) that you knew, or ought reasonably to have known, is false, incorrect 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.
- (4) You must take all necessary steps to correct any statement you have given to an Australian government agency (other than the Board or the Commissioner), in your capacity as a registered tax agent or BAS agent, as soon as possible after you become aware that the statement was false, incorrect or misleading in a material particular, or omitted any matter or thing without which the statement is misleading in a material respect.

## **Subdivision C—Independence**

### **20 Conflicts of interest in dealings with government**

In relation to any activities you undertake for an Australian government agency in your capacity as a registered tax agent or BAS agent, you must:

- (a) take reasonable steps to identify and avoid any material conflict of interest (real or apparent) in connection with an activity undertaken for the agency (except to the extent that the agency has expressly provided otherwise); and
- (b) disclose the details, to the agency, of any material conflict of interest (real or apparent) that arises in connection with an activity undertaken for the agency as soon as you become aware of the conflict.

## **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 your capacity as a registered tax agent or BAS agent 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 was done consistently with the agency's authorisation.

# EXPOSURE DRAFT

**Part 2** Code of Professional Conduct for Registered Tax Agents and BAS agents

**Division 1** Additional obligations of general application

## Section 30

---

*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 your capacity as a registered tax agent or BAS agent for your personal advantage, or for the advantage of an associate, employee, employer or client, except to the extent that all of the following apply:
  - (a) it is reasonable to conclude that the that the information received from the agency was authorised by that agency to be used in a way that may provide for such a personal advantage; and
  - (b) any further use of the information was done consistently with the agency's authorisation.

## Subdivision E—Competence

### 30 Keeping of proper client records

- (1) You must keep complete and accurate records relating to the tax agent services you have provided 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) provide adequate details of all services provided (including information exchanged with the client, advice provided to the client, and for more complex matters: the relevant facts, assumptions and reasoning underpinning any advice provided to the client).

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

- (1) You must ensure that those providing tax agent services on your behalf maintain knowledge and skills relevant to the tax agent services they are providing.
- (2) You must ensure that those providing tax agent services on your behalf are appropriately supervised.

## Subdivision F—Other responsibilities

### 40 Quality assurance and other internal controls

You must maintain adequate internal control procedures, in relation to your provision of tax agent services, to ensure your compliance with the Code of Professional Conduct.

**Note:** Adequate internal controls procedures could include a system for the quality assurance of the tax agent services being provided, and controls to maintain the proper keeping of records, protect confidentiality of information and the management of conflicts of interest.



# EXPOSURE DRAFT

Code of Professional Conduct for Registered Tax Agents and BAS agents **Part 2**  
Additional obligations of general application  
**Division 1**

Section 45

---

## **45 Keeping your clients informed of all relevant matters**

You must advise all current and prospective clients, in writing and in a clear and unambiguous way, of all of the following:

- (a) any matter that could be reasonably relevant and material to a decision by a client to engage you, or to continue to engage you, to provide a tax agent service, as and when a matter arises;
- (b) upon engaging (or re-engaging) a client—that the Board maintains a register of tax agents and BAS agents and how they can access and search the register;
- (c) upon engaging (or re-engaging) a client—how they can make a complaint about a tax agent service you have provided, including the complaints process of the Board.

# EXPOSURE DRAFT

**Part 3** Application and transitional provisions

**Division 1** Application

Section 100

---

## **Part 3—Application and transitional provisions**

### **Division 1—Application**

#### **100 Application**

Except as otherwise provided in this instrument, the obligations included in this instrument on the day it is made, apply on or after the day this instrument commences.

# EXPOSURE DRAFT

Application and transitional provisions **Part 3**

Transitional **Division 2**

Section 151

---

## **Division 2—Transitional**

### **151 Transitional—keeping clients informed of all relevant matters**

Despite section 100, section 45 applies in relation to matters that have arisen on or after 1 July 2022. However, clients should be advised of a matter that arose on or before the day this instrument commenced within 90 days from that day.