



TPB Information Sheet

Safe harbour provisions and the Code of Professional Conduct

Disclaimer

This information sheet is intended as information only and to provide assistance. While it seeks to provide practical assistance and explanation of the safe harbour provisions, it does not exhaust, prescribe or limit the scope of the Tax Practitioners Board's powers provided in the *Tax Agent Services Act 2009* (TASA). This information sheet is not a formal Board Guideline and may be changed from time to time.

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When will the safe harbour provisions apply?

1. From 1 March 2010, the safe harbour provisions apply to administrative penalties in the *Taxation Administration Act 1953* (TAA) for:
 - false or misleading statements (subsection 284-75(1) of Schedule 1 to the TAA, and
 - failure to lodge (subsection 286-75(1) of Schedule 1 to the TAA).
2. The safe harbour provisions are administered by the Commissioner of Taxation (Commissioner) rather than the Tax Practitioners Board (Board).

What are the safe harbour provisions?

3. The safe harbour provisions in the TAA provide that, in general terms, where a taxpayer has engaged a registered tax agent or BAS agent, as long as the taxpayer can demonstrate that all relevant information required to enable the agent to make a statement or lodge a return was provided to their agent, the taxpayer will not be subject to an administrative penalty for:
 - making a false or misleading statement that results in a shortfall amount, or
 - failing to lodge a document

unless the shortfall amount, or failure, resulted from:

- an intentional disregard by the registered tax agent of a taxation law, or
 - recklessness by the agent as to the operation of a taxation law.
4. The Australian Taxation Office (ATO) has published information on the safe harbour provisions on its website at www.ato.gov.au



How will the Board administer the Code of Professional Conduct (Code) in relation to tax agents and BAS agents (registered agents) where a safe harbour from penalties is found to apply to a taxpayer?

5. Where the ATO, or a court or tribunal, makes a decision about the application of the safe harbour provisions to the circumstances of a taxpayer, that decision may involve a finding that an agent, in making a statement or failing to lodge a return on behalf of the taxpayer, has failed to take reasonable care.
6. Such a finding in relation to an agent's conduct, while not binding the Board, may be considered by the Board in assessing whether an agent has breached the Code, and in particular, Code Items 9 and 10 . (see Appendix 1)
7. Code Item 9 requires a registered agent to take reasonable care in ascertaining a client's state of affairs, to the extent that ascertaining the state of those affairs is relevant to a statement the agent is making or a thing the agent is doing on behalf of a client.
8. Code Item 10 requires a registered agent to take reasonable care to ensure that taxation laws are applied correctly to the circumstances in relation to which the agent is providing advice to a client.
9. Before the Board can determine if an agent has breached the Code, the Board must conduct an investigation. The Board will decide whether an investigation is required having regard to all the circumstances and will not necessarily conduct an investigation in every case. In the case of isolated mistakes, the Board may take no specific action.

The Board has published additional information and guidance about the obligations under Code Items 9 and 10 of the Code in the Board explanatory paper *TPB (EP) 01/2010 Code of Professional Conduct* available at www.tpb.gov.au.

More information

Further information can be found on our website at www.tpb.gov.au

The ATO has also published information on the safe harbour provisions located on their website at www.ato.gov.au and searching 'safe harbour'.