

## Tax Practitioners Board investigation checklist

### Extended Compliance Program

**Contact Vincent Licciardi to find out more (+61 3 8644 3522)**

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## 1. Introduction

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- 1.1 Thank you for reading our investigation checklist.
- 1.2 We have put together the checklist after acting for many accountants under investigation by the Tax Practitioners Board (**TPB**) and the professional bodies. We trust that it will be of assistance to your practice.
- 1.3 The questions are based on those that the TPB have asked, circumstances that have come up over the years, and our observations from cases that have proceeded through the Tribunal and the courts.
- 1.4 Please contact us with any queries. Our details are below.

## 2. 2023-2024 Commonwealth Budget

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- 2.1 The government increased the TPB's funding in the last Budget by over \$30 million. The initiative will enable the TPB to chase accountants that it feels are not meeting all their obligations to clients, the Australian Tax Office (**ATO**) and the community generally. This includes accountants who push the boundaries from time to time.
- 2.2 In the latest corporate plan, the TPB said:

*"In the budget...we were entrusted with implementing a program to enhance the integrity of the tax system and tax professionals by proactively addressing higher-risk tax practitioners who are driving non-compliance, including tax avoidance and evasion, profit shifting by large multinationals and shadow economy activities.*

*This program...[called the "Extended Compliance Program"]...is budgeted to run until 30 June 2027...We will...raise industry standards..."*
- 2.3 The TPB estimates it will review over 2,700 complaints and case leads, and complete over 850 investigations this year alone. It really is a matter of when, not if, an investigation will begin.

## 3. Legal professional privilege

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- 3.1 We request that you consider the points set out in the text box below in detail before completing the checklist. Please contact us first if you have any queries.

**WARNING:** The TPB and the ATO have broad information gathering powers. Careful consideration must be given to your right to claim Client Legal Privilege (also known as Legal Professional Privilege or "LPP") and/or other administrative concessions before this checklist is completed and circulated.

The contents of the checklist may not be privileged and may need to be provided to the TPB and/or the ATO unless the responses are prepared in conjunction with a letter of engagement / costs agreement with a law firm.

## 4. Contact us

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4.1 Please contact one of our team to find out more.

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## 5. The checklist in full

- 5.1 Our checklist is designed to provide you with an overview of the types of queries you may encounter when under investigation by the TPB. It does not include every possible query. However, assuming that you can answer these queries fulsomely and candidly, then your replies will assist to identify the real risk areas in your practice, that could otherwise be the target for the regulators.

No.	Item	Review Comments
1	<b>Registration with the TPB</b>  (a) Are you registered with the TPB?  (i) If so, provide registration numbers for yourself.  (ii) If not, have you previously been registered, wish to be registered in the future and/or have you ever assisted someone with their tax affairs while unregistered?  (b) Are you registered with a professional body? Which body?  (c) Have you previously been investigated by the TPB, State-based Board, or any professional body? Why and what was the outcome?	
2	<b>Business / practice structure</b>  Provide a chart (or similar document/s) showing the structure of your practice, including:  (a) business entities and owners;  (b) who are the registered tax agents or registered BAS agents in the business;  (c) hierarchy of staff, including qualifications, training and probity checks;  (d) for your staff and those you off-shore or outsource to, answer the same questions for them as specified in [1];  (e) have you have previously taken over someone else's practice or acquired clients lists, or sold your own?	

No.	Item	Review Comments
	Have you, any staff or contractors been committed, been prosecuted for or sentenced for any criminal offences? What were they and what was the outcome?	
3	<p><b>Your personal tax obligations and those of your associated entities</b></p> <p>(a) Are your personal tax obligations and those of your associated entities all up to date? If not:</p> <p>(i) Have you engaged with the ATO to resolve any outstanding matters?</p> <p>(ii) Is there a payment arrangement or lodgement extension in place? Is it current?</p> <p>(iii) Have you defaulted on any of these arrangements?</p> <p>If there are outstanding tax obligations, please itemise each of them (BAS/IT lodgement, tax liability, etc).</p>	
4	<p><b>Continuing professional development</b></p> <p>(a) Are you up to date with all CPD activities?</p> <p>(b) Do you have adequate records showing attendance?</p> <p>(c) When was the last time you completed a practice management course?</p>	
5	<p><b>Insurance policies</b></p> <p>(a) Do you have professional indemnity insurance? Is it fit for purpose?</p> <p>(b) Do you have other business insurances (eg, business continuity, cyber, public liability)?</p> <p>(c) Are all insurances current?</p>	

No.	Item	Review Comments
6	<p><b>Letter of engagement / retainer / costs agreement</b></p> <p>(a) Do you prepare a letter of engagement for every client? Is it signed and kept on file?</p> <p>(b) Do you carry out conflict checks before taking on a client?</p> <p>(c) How do you deal with scope creep and out of scope work?</p>	
7	<p><b>Keeping your TPB up to date</b></p> <p>(a) Is your registration with the TPB current? This includes all aspects of the registration (registered tax agents, CPDs, insurance, etc).</p> <p>(b) Does the TPB have a copy of your PI insurance?</p> <p>(c) Have you "ticked the box" confirming your tax affairs are up to date and there were no other disclosable events? Was this always accurate?</p> <p>(d) Have you notified the TPB of any ongoing or resolved investigations of you conducted by other professional bodies?</p>	
8	<p><b>ATO reviews, audits, litigation, debt-collection, etc</b></p> <p>(a) Have you or your clients been the subject of any ATO activity? If so:</p> <p>(i) What was the activity?</p> <p>(ii) What were the issues and how were they identified? What was the outcome?</p> <p>(iii) How many clients were involved?</p> <p>(iv) Did you or your business contribute in any way to the ATO activity?</p> <p>(b) How were the issues resolved (if at all)?</p>	

No.	Item	Review Comments
9	<b>Complaints by clients to the TPB, the ATO and/or the professional bodies</b> (a) Have you received complaints by clients? Were these escalated to the TPB, ATO and/or professional bodies? (b) How was the complaint resolved?	
10	<b>Referrals and cross-referrals</b> (a) Do you refer or cross-refer clients to other businesses? If so: (i) What's the quid-pro-quo with that business? (ii) Do you have an interest or a family member have an interest (directly or indirectly) in that business?	
11	<b>Security checks</b> (a) How do you share client files in the business and also with the client? (b) Are you doing VOI for clients before taking the client on? How about cases involving powers of attorney and Estates? (c) Who has access to ATO and client systems in the practice? How is that regulated? Would you know if someone went rogue?	
12	<b>Oversight in the business</b> (a) What oversight, checks and balances do you have in your business? (i) Checklists for different types of clients? (ii) Are work papers adequately prepared and maintained for each client? Are they checked and by who? (iii) Do you keep records of clients' claims, do you check and verify those claims? (iv) How do you know or ensure what is lodged with the ATO is accurate?	



No.	Item	Review Comments
	<ul style="list-style-type: none"> <li>(v) What practice management software do you use?</li> <li>(vi) Are you employing enough registered tax agents in your business relative to the number of clients?</li> <li>(b) Do you off-shore or outsource tax work or tax-related work? If so, does your client know?</li> <li>(c) Do you obtain approval from all clients before carrying out work and lodging any material with the ATO? Do you obtain approval through an related-person (eg, the husband arranges for the wife to sign tax returns, but you never meet the wife)?</li> <li>(d) Do you tend to keep records of interactions with clients and "put things in writing", or are interactions not recorded?</li> <li>(e) What reference checks do you do for potential new staff?</li> <li>(f) How does your business help staff members keep up-to-date with changes in the tax law?</li> </ul>	
13	<p><b>Is your firm a one stop shop for your clients?</b></p> <ul style="list-style-type: none"> <li>(a) Do you prepare or amend trust deeds, trust resolutions, Division 7A agreements, or other legal work (such as shareholders agreements, partnership agreements, business sales, etc)?</li> <li>(b) Do you do corporate secretarial work?</li> <li>(c) Do you assist clients with Duty, Payroll tax, QBCC, employment awards?</li> <li>(d) Do you prepare bank / finance letters?</li> </ul>	
14	<p><b>Unusual client circumstances / out of the box cases</b></p> <ul style="list-style-type: none"> <li>(a) How do you deal with clients leaving your firm?</li> <li>(b) How do you deal with clients who have a relationship breakdown, or business breakdown?</li> </ul>	

No.	Item	Review Comments
15	<p><b>Interactions with clients and the ATO</b></p> <p>(a) Do you operate a trust account and/or receive refunds from the ATO on behalf of your clients? Do you have adequate records to support every transaction in the trust account?</p> <p>(b) Do you ever use bank account numbers or carry out transactions not expressly authorised by the client?</p> <p>(c) Do you advise your clients on matters that could go either way (ie, might be in the 'grey zone' or on the ATO's hit list), or where they don't have adequate paperwork?</p> <p>(d) Have you participated in any activities previously identified by the ATO and the TPB as warranting further analysis (eg, use of SAN numbers, cash-flow boost registration, or any anti-avoidance rules)?</p>	

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