

EXPLANATORY STATEMENT

Issued by authority of the Assistant Treasurer and Minister for Financial Services

Tax Agent Services Act 2009

Tax Agent Services (Code of Professional Conduct) Amendment (Measures No. 1) Determination 2024

The *Tax Agent Services (Code of Professional Conduct) Amendment (Measures No. 1) Determination 2024* (the Instrument) is a legislative instrument made under section 30-12 of the *Tax Agent Services Act 2009* (the Act). Section 30-12 of the Act provides that the Minister may, by legislative instrument, determine obligations that elaborate or supplement any aspect of the Code of Professional Conduct (the Code). The Code is set out in section 30-10 of the Act and establishes ethical principles that apply to all registered tax agents and business activity statement (BAS) agents (together referred to as ‘tax practitioners’).

The Code is administered by the Tax Practitioners Board (the Board), which regulates tax practitioners across Australia, including their compliance with the Code. Under subsection 30-10(17) of the Act, a tax practitioner must comply with any obligations the Minister determines under section 30-12 of the Act. Where the Board finds a failure to comply with the Code or finds that the conduct constitutes a breach of the Act under section 60-125 of the Act, the Board is able to take a range of actions including making orders or suspending or terminating tax practitioners’ registration. These actions are available to ensure that tax agent services are provided to the community in accordance with appropriate standards of professional and ethical conduct, which supports public trust and confidence in the integrity of the tax profession and of the tax system.

On 2 July 2024, the *Tax Agent Services (Code of Professional Conduct) Determination 2024* (the Determination) was registered. The Determination sets out additional professional and ethical obligations of tax practitioners under section 30-10 of the Act. These additional obligations are built upon the existing principles of the Code as set out in the Act, including honesty and integrity, independence, confidentiality and competence. The Determination commenced on 1 August 2024.

Following the registration of the Determination, the Board began consulting with industry on guidance materials to provide further detail on the Determination obligations to help tax practitioners to understand and comply with their obligations. The Board communicated to stakeholders that it would continue to take a pragmatic and practical approach in enforcing compliance with the additional obligations for all tax practitioners trying to do the right thing. This included providing a reasonable time for tax practitioners to understand their obligations, assess their own practices and implement changes, if required, to comply with the new obligations.

This Instrument amends the application provision in the Determination to codify and provide further assurance to tax practitioners of the Board’s approach to transition and implementation of the new obligations. It ensures that tax practitioners have a reasonable period of time in which to prepare for, and be ready to comply with, the new Code obligations.

The delayed application will provide tax practitioners a transitional period in which to develop, implement and update systems and processes necessary to meet their obligations by the end of their transition period. There is an expectation that tax practitioners will be compliant with the new obligations at the end of their transition period, so those practitioners who do not take genuine steps during their transition period towards compliance will not be provided a further period of permitted non-compliance.

The length of the transition period for a tax practitioner depends on the size of the firm or practice in which they work to provide tax agent services, as this has a bearing on the systems and processes they would already have in place and recognising that small businesses may need longer to implement and update processes. For smaller tax practitioner firms and their tax practitioner employees and members, compliance with the new obligations is required from no later than 1 July 2025. For larger tax practitioner firms and their tax practitioner employees and members, compliance with the new obligations is required from no later than 1 January 2025.

The Act does not specify any conditions that need to be satisfied before the power to make the Instrument may be exercised.

The Instrument responds to stakeholder views provided following the registration of the Determination.

This Instrument is a legislative instrument for the purposes of the *Legislation Act 2003*.

This Instrument is disallowable and is subject to sunseting.

This Instrument commences on the day following registration of the Instrument. The amendments to the Determination apply from 1 August 2024.

Details of the Instrument are set out in Attachment A.

A Statement of Compatibility with Human Rights is at Attachment B.

The Office of Impact Analysis (OIA) has been consulted (OIA ref: OIA24-07286) and agreed that an Impact Analysis is not required. The measure is estimated to have no/a low impact on compliance costs.

Details of the *Tax Agent Services (Code of Professional Conduct) Amendment (Measures No. 1) Determination 2024*

Part 1 – Preliminary

Section 1 – Name

This section provides that the name of the instrument is the *Tax Agent Services (Code of Professional Conduct) Amendment (Measures No. 1) Determination 2024* (the Instrument).

Section 2 – Commencement

Schedule 1 to the Instrument commences on the day after the instrument is registered.

Section 3 – Authority

The Instrument is made under the *Tax Agent Services Act 2009* (the Act).

Section 4 – Schedule(s)

This section provides that each instrument that is specified in the Schedules to this instrument are amended or repealed as set out in the applicable items in the Schedules, and any other item in the Schedules to this instrument has effect according to its terms.

Schedule 1 – Amendments

Item 1 repeals and replaces section 150, the application provision of the Determination.

Currently, the default application provision in the Determination under subsection 100(1) is that the obligations apply on and from commencement of the Determination, which was on 1 August 2024. Under new section 150, the obligations in the Determination will instead apply to tax practitioners from one of 2 later dates. That is, the Determination will apply from, and will always have been taken to have applied from, a time later than the instrument's 1 August 2024 commencement date.

A different timeframe for compliance with the new obligations in the Determination applies depending on the size of the tax practitioner and their firm or practice. The size of the tax practitioner is based on the number of employees that the tax practitioner or related tax practitioner firm or practice had on 31 July 2024. For tax practitioners eligible for the extended timeframe, under paragraph 151(1)(a) of the Determination, obligations apply in full on and from 1 July 2025 for:

- a tax practitioner individual (other than one covered by the third dot point) that had 100 or fewer employees (including if they have no employees);
- a tax practitioner company or partnership that had 100 or fewer employees; and
- a tax practitioner individual that is an employee or member of a tax practitioner company, or an employee or member of a tax practitioner partnership, that had 100 or fewer employees.

Employees for these purposes has its ordinary common law meaning, and *member* has the meaning given by the *Income Tax Assessment Act 1997*. For simplicity, the number of employees is to be calculated using a total headcount methodology, rather than on the basis of full-time equivalency or similar methodology.

For all other tax practitioners, the new obligations apply from 1 January 2025 under paragraph 151(1)(b). New registered tax practitioners will also benefit from the transitional arrangements – but the new obligations for a new registered practitioner apply on the later of the relevant transitional period applying to them and their registration date. For example, a newly registered tax practitioner on 30 November 2024 will need to comply with the new obligations from 1 January 2025 if they join an existing large firm, or 1 July 2025 if they join an existing small firm or start a new practice.

If a tax or BAS agent moves firms or practices during the transitional period, the relevant transitional timeframe that applies to that agent may change to reflect the timeframe generally applying to that firm or practice. For example, if a tax agent moves from a large practice to a small practice, the transitional timeframe will move from 1 January 2025 to 1 July 2025 from the time the tax agent moves practices.

Item 1 also clarifies that, for the avoidance of doubt, the obligations in relation to false and misleading statements apply to statements made on or after the relevant transition period ends.

Item 2 alters the existing transitional rule from when section 45 begins to apply, in relation to pre-1 August 2024 events to 30 days after the end of the relevant transitional period, rather than 90 days after 1 August 2024 – if the matter still remains relevant at that time.

Statement of Compatibility with Human Rights

Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011

Tax Agent Services (Code of Professional Conduct) Amendment (Measures No. 1) Determination 2024

This Legislative Instrument is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Overview of the Legislative Instrument

The *Tax Agent Services (Code of Professional Conduct) Amendment (Measures No. 1 Determination 2024* (the Instrument) amends the *Tax Agent Services (Code of Professional Conduct) Determination 2024* (the Determination). The Determination contains obligations that apply to tax agents and Business Activity Statement agents (collectively referred to as tax practitioners). These obligations supplement the existing obligations in section 30-10 of the *Tax Agent Services Act 2009* and together form the Code of Professional Conduct (the Code). The Determination commenced on 1 August 2024.

The Instrument provides that the obligations in the Determination will apply from 1 July 2025 for tax practitioners (including individuals, companies or partnerships) with 100 or less employees and tax practitioners that are part of those entities, provided that the tax practitioner and any related firm. The Instrument also provides that the obligations in the Determination will apply from 1 January 2025 for all other tax practitioners – namely tax practitioner individuals, companies or partnerships with over 100 employees on 1 July 2024.

All section references are references to the Instrument, unless otherwise stated.

Human rights implications

This Legislative Instrument does not engage any of the applicable rights or freedoms.

Conclusion

This Legislative Instrument is compatible with human rights as it does not raise any human rights issues.