

Comparison of Part 3 of the *Tax Agent Services Act 2009* with APES 110 “Code of Ethics for Professional Accountants

The *Tax Agent Services Act 2009* (the Act) received Royal Assent on 26 March 2009. The Act includes a Code of Conduct that governs the members of the three professional accounting bodies who are registered tax agents. Members of the accounting bodies are also bound by APES 110 *Code of Ethics for Professional Accountants* (APES 110) and APES 220 *Taxation Services* (APES 220).

A review was conducted, as shown in the table below, to ensure that the professional obligations imposed on Members by the Act are adequately addressed by APESB pronouncements. Analysis shows that the requirements of the Act are generally consistent (except for one issue which is addressed in the Annual Review) with those of APES 220 *Taxation Services*, APES 110 *Code of Ethics for Professional Accountants* and other APESB pronouncements.

Comparative Table

Part 3 of the <i>Tax Agent Services Act 2009</i> – <i>The Code of Professional Conduct</i>		APES 220 <i>Taxation Services</i>		APES 110 <i>Code of Ethics for Professional Accountants</i>	
30-10(1)	Must act honestly and with integrity.	3	<i>Fundamental responsibilities of Members.</i>	110	Integrity
		3.1	Requires services to be delivered in accordance with Section 100 of APES 110 and relevant Taxation Law.	120	Objectivity
		3.2	<i>Public Interest</i>	150	Professional Behaviour
			Members shall comply with their public interest obligations.	280	Objectivity All Services
		6	<i>Estimates</i>		
			Members shall not be associated with estimates that may be misleading.		
		7	<i>False or misleading information</i>		
			Members shall not be associated with false or misleading information.		

Part 3 of the Tax Agent Services Act 2009 – The Code of Professional Conduct		APES 220 Taxation Services		APES 110 Code of Ethics for Professional Accountants	
30-10(2)	Must comply with taxation law in the conduct of personal affairs.	3.3	<p><i>Integrity and professional behaviour</i></p> <p>Shall ensure that the Member’s personal tax obligations and those of any associated entities for which the Member is responsible are properly discharged.</p>	100 150	Fundamental Principles Professional Behaviour
30-10(3)	If you receive money or other property from or on behalf of a client and you hold the money or other property on trust, you must account to your client for the money or other property.	9	<p><i>Client Monies</i></p> <p>APES 220 is more detailed in relation to client monies. Professional obligations such as prompt transmission of monies, use and maintenance of separate bank accounts and appropriate use of tax refunds are addressed (Paragraphs 9.1 – 9.3).</p> <p>Further, Members of the professional accounting bodies who are in public practice will be subject to APS 10 and GN 3 dealing with Trust Accounts.</p>	100 150 270	Fundamental Principles Professional Behaviour Custody of Client Assets
30-10(4)	Must act lawfully in the best interests of your client.	3	<p><i>Fundamental responsibilities</i></p>	100 150	Fundamental Principles Professional Behaviour
		3.1	Safeguard the interests of the Client provided services are delivered in accordance with Section 100 of APES 110 and relevant Taxation Law.		
		3.4	<p>Recommend options that meet the Client’s or Employer’s interests consistent with the requirements of the law.</p> <p>When acting as an advocate for a Client or Employer, a Member has an obligation not to mislead the court or tribunal and to safeguard his or her own professional objectivity.</p>		

Part 3 of the Tax Agent Services Act 2009 – The Code of Professional Conduct	APES 220 Taxation Services	APES 110 Code of Ethics for Professional Accountants
	<p>3.14 <i>Professional competence and due care</i></p> <p>Advise Clients of rights, obligations and options under Taxation Law.</p> <p>4 <i>Preparation and lodgment of returns</i></p> <p>Lodge documents in accordance with information provided by a Client, their instructions and the relevant Taxation Law.</p> <p>5 <i>Tax schemes and arrangements</i></p> <p>5.2 A Member shall give the Client or Employer sufficient information to be fully informed of the details of a scheme, its current and future ramifications, particularly in relation to possible changes in taxation law.</p> <p>5.4 A Member shall not promote any tax schemes where the dominant purpose is to derive a tax benefit that is not available under taxation law. Where this is the case, the Member shall not provide advice except that it is not effective at law.</p> <p>7 <i>False or misleading information</i></p> <p>Members shall not deal or be associated with false or misleading information.</p>	
<p>30-10(5) Must have in place adequate arrangements for the management of conflicts of interest that may arise in relation to the activities that you undertake in the capacity</p>	<p>No specific paragraph. However, the following sections provide requirements and guidance for the most common situations where conflicts arise in Taxation Services.</p>	<p>100.5 Conceptual framework approach. Requires a Member to identify, evaluate and address threats to compliance with the fundamental principles.</p>

Part 3 of the Tax Agent Services Act 2009 – The Code of Professional Conduct	APES 220 Taxation Services	APES 110 Code of Ethics for Professional Accountants
of a registered tax agent or BAS agent.	<p>3.4 When providing Taxation Services Members shall be objective in accordance with Section 120 Objectivity of the Code. They shall maintain an impartial attitude and recommend options that meet the Client’s or Employer’s interests consistent with the requirements of the law.</p> <p>3.6 -3.10 <i>Confidentiality</i></p> <p>3.11 – 3.17 <i>Professional Competence and due care</i></p> <p>5 <i>Tax Schemes and arrangements</i></p> <p>6 <i>Estimates</i></p> <p>7 <i>False or misleading information</i></p> <p>8 <i>Professional engagement matters</i></p>	<p>210 Professional appointment</p> <p>220 Conflicts of Interest</p> <p>220.1 A Member in Public Practice should take reasonable steps to identify circumstances that could pose a conflict of interest.</p> <p>220.2 A Member in Public Practice should evaluate the significance of any threats. If threats are other than Clearly Insignificant, safeguards should be considered and applied as necessary to eliminate them or reduce them to an acceptable level.</p> <p>220.4 Where a Firm becomes aware of a possible conflict between the interests of two or more Clients, all reasonable steps should be taken to manage the conflict and thereby avoid any adverse consequences.</p> <p>240 Professional Fees</p>
30-10(6) Unless you have a legal duty to do so, you must not disclose any information relating to client’s affairs to a third party without your client’s permission.	3.7 Confidentiality – unless there is a legal obligation to do so, information relating to a client’s or employers affairs shall not be communicated to a third party without the client’s or employer’s permission.	140 Confidentiality
30-10(7) Must ensure that a tax agent service that you provide, or that is provided on your behalf, is provided competently.	3.11 – 3.17 <i>Professional competence and due care</i> Members shall maintain professional competence and take due care in the	130 Professional competence and due care

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	<p>performance of their work in accordance with Section 130 <i>Professional Competence and Due Care</i> of the Code.</p> <p>4.3 Where work associated with revenue returns is not performed under the supervision of the Member, the Member shall perform sufficient reviews prior to the lodgment of the returns.</p>	
30-10(8) Must maintain knowledge and skills relevant to the tax agent services you provide.	3.11 – 3.17 <i>Professional competence and due care</i>	130 Professional competence and due care Refers to the attainment and maintenance of professional competence.
30-10(9) Must 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 you are making or a thing you are doing on behalf of the client.	<p><i>Refer discussion in APES 220 Annual Review</i></p> <p>3.11 – 3.17 <i>Professional competence and due care</i></p> <p>4 <i>Preparation and lodgment of returns to Revenue Authorities.</i></p> <p>4.2 States that a Member should obtain information sufficient to allow the Member to form a view as to the application of the law to that information and to be able to recommend the options available on how the information may be reflected in the relevant return or other document to be lodged.</p> <p>5 <i>Tax schemes and arrangements</i></p> <p>5.2 A Member shall give the Client or Employer sufficient information to be fully informed of the details of a scheme, its current and future ramifications, particularly in relation to possible changes in Taxation Law.</p>	130 Professional competence and due care

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	<p>5.3 A Member shall not knowingly or recklessly be associated with any arrangement which involves entries that are intended to misrepresent a transaction.</p> <p>7 <i>False or misleading information</i></p> <p>7.6 Also Members in Public Practice are subject to quality control requirements of APES 320 <i>Quality Control for Firms.</i></p>	
<p>30-10(10) Must take reasonable care to ensure that taxation laws are applied correctly to the circumstances in relation to which you are providing advice to a client.</p>	<p><i>Refer discussion in APES 220 Annual Review</i></p> <p>3.4 <i>Objectivity</i></p> <p>Members shall maintain an impartial attitude and recommend options that meet the Client’s or Employer’s interest consistent with the requirements of the law.</p> <p>3.11-3.17 <i>Professional competence and due care</i></p> <p>As per paragraph 3.14, Members shall maintain open, frank and effective communications with a client or employer when providing advice in relation to rights, obligations and options under taxation law and the application of taxation law.</p> <p>4 <i>Preparation and lodgment of returns to Revenue Authorities</i></p> <p>Members shall prepare and lodge returns in accordance with information provided, client</p>	<p>130 Professional competence and due care</p> <p>150 Professional behaviour</p>

Part 3 of the Tax Agent Services Act 2009 – The Code of Professional Conduct	APES 220 Taxation Services	APES 110 Code of Ethics for Professional Accountants
	<p>instructions and relevant taxation law.</p> <p>4.2 A Member should obtain information sufficient to allow the Member to form a view as to the application of the law to that information and to be able to recommend the options available on how the information may be reflected in the relevant return or other document to be lodged.</p> <p>5 <i>Tax schemes and arrangements</i></p> <p>5.4 Where the dominant purpose is to derive a tax benefit which is not reasonably arguable under taxation law, the Member shall not provide advice except that it is not effective at law.</p> <p>7 <i>False or misleading information</i></p> <p>Members shall not be associated with false or misleading information.</p>	
<p>30-10(11) Must not knowingly obstruct the proper administration of the taxation laws.</p>	<p>3.2 <i>Public interest</i></p> <p>Members shall comply with their public interest obligations when they provide Taxation Services.</p> <p>4 <i>Preparation and lodgment of returns</i></p> <p>Members shall prepare and lodge returns in accordance with information provided, client instructions and the relevant taxation law.</p> <p>5.4 <i>Tax schemes and arrangements</i></p> <p>The Member shall not promote or encourage</p>	<p>100 Fundamental principles</p> <p>110 Integrity</p> <p>150 Professional behaviour</p> <p>220 Conflicts of interests</p> <p>220.1 A Member in Public Practice should take reasonable steps to identify circumstances that could pose a conflict of interest. Such circumstances may give rise to threats to compliance with the fundamental principles.</p> <p>220.2 A Member in Public Practice should</p>

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	<p>arrangements where the dominant purpose is to derive a tax benefit and it is not reasonably arguable that the tax benefit is available under Taxation Law.</p> <p>6 <i>Estimates</i></p> <p>Members shall not be associated with estimates that may be misleading.</p> <p>7 <i>False or misleading information</i></p> <p>Members shall not be associated with false or misleading information.</p>	<p>evaluate the significance of any threats. If threats are other than Clearly Insignificant, safeguards should be considered and applied as necessary to eliminate them or reduce them to an acceptable level.</p> <p>220.4 Where a Firm becomes aware of a possible conflict between the interests of two or more Clients, all reasonable steps should be taken to manage the conflict and thereby avoid any adverse consequences.</p> <p>280 Objectivity All Services</p>
<p>30-10(12) Must advise your client of the client’s rights and obligations under the taxation laws that are materially related to the tax agent services you provide.</p>	<p>3.14 <i>Professional competence and due care</i></p> <p>Members shall maintain open, frank and effective communications with a client or employer.</p> <p>Having regard to the Member’s agreed scope of work, a Member shall advise a Client or Employer of both the Member’s and the Client’s or Employer’s rights, obligations and options available under the Taxation Law.</p> <p>A Member shall also advise the Client or Employer of their rights or options available under Taxation Law with respect to the seeking of a private ruling and the lodging of objections and appeals against adverse positions adopted by the Revenue Authorities;</p>	<p>130 Professional competence and due care</p> <p>150 Professional behaviour</p>

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	<p>5 <i>Tax schemes and arrangements</i></p> <p>5.2 Member shall give sufficient information to the client or employer to enable the client or employer to be fully informed of current and future ramifications of tax schemes or arrangements.</p> <p>7 <i>False or misleading information</i></p> <p>Members shall not be associated with false or misleading information. Where the Member identifies that this is an issue they need to inform the Client or Employer.</p>	
<p>30-10(13) Must maintain professional indemnity insurance that the Board requires you to maintain</p>	<p>No specific paragraph in APES 220.</p> <p>However, APES 305 Terms of Engagement paragraph 6.1 and 6.2 addresses this in terms of the Professional Standards Legislation.</p> <p>APES 305 states that a Member in Public Practice who is participating in a limitation of liability scheme shall be familiar with the relevant Professional Services Legislation. Further a Member in Public Practice, who incorporates a limitation of liability provision in the Engagement Document, shall comply with the legislation and the relevant obligations (e.g. insurance, business assets, risk management, quality control etc.), imposed.</p> <p>Further, it is a requirement for Members of the three professional accounting bodies who are in public practice to hold professional indemnity insurance.</p>	<p>150 Professional behaviour</p>

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30-10(14)	Must respond to requests and directions from the Board in a timely, responsible and reasonable manner.	1.6	<i>Scope and application</i> APES 220 is not intended to detract from any responsibilities which may be imposed by law.	110 140 150	Integrity Confidentiality Professional behaviour

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Subdivision 30-B	Your liability for administrative sanctions		APESB is an independent body that sets professional and ethical standards for the accounting profession. The disciplinary processes for non-compliance with such standards are administered by the professional accounting bodies under their respective quality review programs.		
Subdivision 30-C	Notifying a change of circumstances	1.6	<i>Scope and application</i> APES 220 is not intended to detract from any responsibilities which may be imposed by law.	150	Professional behaviour. The principle of professional behaviour imposes an obligation on Members to comply with relevant laws and regulations.