

TPB Practice Note

TPB(PN) 5/2022

Proof of identity requirements for client verification

Tax Practitioners Board Practice Note

The Tax Practitioners Board (TPB) has released this Practice Note (PN) to provide practical guidance and assistance to registered tax practitioners in relation to verifying client identities.

Disclaimer

This is a TPB practice note (TPB(PN)). It is intended to be for information only. While it seeks to provide practical assistance and explanation, it does not exhaust, prescribe or limit the scope of the TPB's powers in the *Tax Agent Services Act 2009* (TASA) or the Tax Agent Services Regulations 2022(TASR).

In addition, please note that the principles and examples in this TPB(PN) do not constitute legal advice and do not create additional rights or legal obligations beyond those that are contained in the TASA or which may exist at law.

Document history

The TPB originally released this document as a draft practice note in the form of an exposure draft on 17 February 2021. The closing date for the submissions was 31 March 2021.

The TPB considered the comments and submissions received and now publishes the following TPB(PN) based on the TASA as at 17 February 2021.

On 1 April 2022, the TPB updated this TPB(PN) to replace references from the repealed Tax Agent Services Regulations 2009 to Tax Agent Services Regulations 2022.

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Introduction

1. Tax practitioners (registered tax agents and BAS agents¹), like many professionals are working in an environment which requires an increasing reliance on technology, remote work practices, and changing methods to engage with new and existing clients. As such, it is increasingly important that tax practitioners manage their practices in a way that minimises the risk of their practice being the target of fraudulent activities against themselves, their business, clients, taxpayers and/or the government.
2. In this Practice Note, tax practitioners will find the following information:
 - relevant provisions of the *Tax Agent Services Act 2009* (TASA) including the Code of Professional Conduct (Code) (paragraphs 5 to 6)
 - the Tax Practitioners Board's (TPB) minimum requirements (paragraphs 7 and 33)
 - identifying discrepancies (paragraph 34)
 - consequences of non-compliance under the TASA (paragraphs 35 to 39)
 - case studies (paragraphs 40 to 53)
 - further information (paragraph 54).
3. In developing the TPB's proof-of-identity (POI) requirements for clients and representatives of clients, the TPB has been informed by a number of relevant considerations, including:
 - the relevant provisions under the TASA, including the Code, and caselaw
 - the Australian Taxation Office's (ATO) recommendations in relation to establishing a client's identity, particularly when accessing the ATO's online channels
 - the Accounting Professional Ethics and Standards Body's (APESB)² guidelines that broadly require accounting firms to consider the integrity of a client upon accepting or continuing an engagement. The client's identity must be established and understood to meet this requirement
 - the [Anti-Money Laundering and Counter-Terrorism Financing Act 2006](#), and the [Anti-Money Laundering and Counter-Terrorism Financing Rules](#) (collectively referred to as AML/CTF legislation).³ While most tax practitioners are not being governed by

¹ From 1 January 2022, tax (financial) advisers are no longer tax practitioners under the TASA.

² APESB is an independent standard-setting body, with the primary objective of developing and issuing, in the public interest, professional and ethical pronouncements. These pronouncements apply to the members of the following Australian professional accounting bodies: CPA Australia (CPA), Chartered Accountants Australia and New Zealand (CA ANZ) and the Institute of Public Accountants (IPA).

³ The AML/CTF legislation aims to prevent money laundering and the financing of terrorism by imposing a number of obligations on the financial sector, gambling sector, remittance (money transfer) services, bullion dealers and other professionals or businesses that provide particular services, including the collection and verification of certain 'know your customer' information about customer identities.

AML/CTF legislation, it outlines a structured and consistent customer verification process

- the State-based requirements for legal practitioners and conveyancers to undertake identity verification in certain circumstances.
4. This Practice Note addresses the TPB’s POI requirements for tax practitioners. However, tax practitioners need to also recognise that they may be subject to other related regulatory requirements as required by other organisations, such as the ATO or their professional association.

Relevant provisions of the TASA including the Code of Professional Conduct

5. While there are no specific POI requirements in the TASA, there are a number of provisions that a tax practitioner may breach if they fail to take appropriate POI steps to verify a new or ongoing client’s identity, any representative of new or ongoing clients, and the representative’s authority to represent the client (if applicable). These include:⁴

Code item 1	You must act honestly and with integrity.
Code item 7	You must ensure that a tax agent service that you provide, or that is provided on your behalf, is provided competently.
Code item 9	You 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.
Fit and proper requirement	It is an ongoing tax practitioner registration requirement that: <ul style="list-style-type: none"> • individual tax practitioners are fit and proper • all directors of tax practitioner companies are fit and proper • all individual partners in a tax practitioner partnership are fit and proper • all directors of company partners in a tax practitioner partnership are fit and proper.
Section 50-20	You contravene this civil penalty provision if you are a registered tax agent or BAS agent and you make or prepare a statement to the Commissioner of Taxation that you know or are reckless as to whether the statement 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.

⁴ See [TPB\(EP\) 01/2010: Code of professional conduct](#), [TPB\(EP\) 02/2010: Fit and proper person](#) and [TPB\(I\) 17/2013: Code of Professional Conduct – Reasonable care to ascertain a client’s state of affairs](#).

6. Examples of cases where the TPB, Administrative Appeals Tribunal (Tribunal) and/or Federal Court have found that tax practitioners have breached the above provisions by, amongst other matters, failing to undertake appropriate POI identity measures are provided at paragraphs 40 to 53.

The TPB’s minimum requirements

7. The TPB requires that tax practitioners take appropriate POI steps prior to providing tax agent services and BAS services, and on an ongoing basis, as appropriate. Similarly, in circumstances where an individual is representing a client (including individual and non-individual clients) in engaging a tax practitioner (an individual representative), the tax practitioner must also take steps to ascertain and verify the individual representative’s identity, and the authority for the individual representative to engage the tax practitioner on behalf of the client.
8. In determining what steps are appropriate in any given circumstances, the TPB requires that, at a minimum, tax practitioners comply with the requirements contained in Table 2 below.

Table 2 – Minimum requirements for verifying a client’s identity

Scenario	Required information	Required evidence to be sighted
<p>Individual seeking to engage the tax practitioner in their own right</p>	<ul style="list-style-type: none"> • The Individual’s full name and either: <ul style="list-style-type: none"> ○ residential address; or ○ date of birth 	<ul style="list-style-type: none"> • An original or certified copy of a primary photographic identification document, or both of the following: <ul style="list-style-type: none"> ○ an original or certified copy of a primary non-photographic identification document; and ○ an original or certified copy of a secondary identification document.

Scenario	Required information	Required evidence to be sighted
<p>Individual representative seeking to engage the tax practitioner on behalf of an individual client</p>	<ul style="list-style-type: none"> • Both the individual representative and individual client's full names and either: <ul style="list-style-type: none"> ○ residential addresses; or ○ dates of birth; <p>and</p> <ul style="list-style-type: none"> • Authority of the individual representative to engage the tax practitioner on behalf of the individual client. 	<ul style="list-style-type: none"> • For both the individual representative and the individual client, an original or certified copy of a primary photographic identification document, or both of the following: <ul style="list-style-type: none"> ○ an original or certified copy of a primary non-photographic identification document; and ○ an original or certified copy of a secondary identification document; <p>and</p> <ul style="list-style-type: none"> • a legal document demonstrating the authority of the individual representative to engage the tax practitioner on behalf of the individual client, including in relation to parental, guardianship or power of attorney representation.
<p>Individual representative seeking to engage the tax practitioner on behalf of a non-individual client</p>	<ul style="list-style-type: none"> • The individual representative's full name and either: <ul style="list-style-type: none"> ○ residential address; or ○ date of birth; <p>and</p> <ul style="list-style-type: none"> • The non-individual client's full name and either: <ul style="list-style-type: none"> ○ Australian Business Number (ABN); 	<ul style="list-style-type: none"> • For the individual representative, an original or certified copy of a primary photographic identification document, or both of the following: <ul style="list-style-type: none"> ○ an original or certified copy of a primary non-photographic identification document; and ○ an original or certified copy of a secondary identification document.

Scenario	Required information	Required evidence to be sighted
	<ul style="list-style-type: none"> ○ Australian Company Number (ACN); or ○ any other additional detail in order to make a reasonable assessment⁵ of the legitimacy of the non-individual's identity; <p>and</p> <ul style="list-style-type: none"> ● authority of the individual representative to engage the tax practitioner on behalf of the non-individual client. 	<ul style="list-style-type: none"> ● For the non-individual client, documentation or data that verifies the existence of the non-individual client; and <ul style="list-style-type: none"> ○ a legal document demonstrating the authority of the individual representative to engage the tax practitioner on behalf of the non-individual client.

9. Examples of the types of evidence that need to be sighted to satisfy the above requirements are contained in Table 3 below.

Table 3 – Examples of required evidence

Required evidence to be sighted	Examples
Primary photographic identification document	<ul style="list-style-type: none"> ● A driver licence or permit from Australia or overseas, including a digital driver licence ● An Australian passport ● A government proof of age card issued in Australia ● A foreign passport issued by a foreign government or the United Nations ● International travel documents issued by a foreign government or the United Nations ● A national identity card issued by a foreign government or the United Nations ● An ImmiCard provided by the Department of Home Affairs

⁵ A reasonable assessment means an assessment made by a tax practitioner exercising their own professional judgment taking into account relevant factors, including those listed at paragraph 21 of this Practice Note, in relation to the legitimacy of an identity.

Required evidence to be sighted	Examples
Primary non-photographic identification document	<ul style="list-style-type: none"> • An Australian birth certificate, birth extract or citizenship certificate⁶ • A foreign birth certificate or citizenship certificate⁷ • A government issued concession card, such as a pensioner concession card, a health care card, or a senior's health care card.
Secondary identification document	<ul style="list-style-type: none"> • A notice from the ATO or other government agency, such as Centrelink, that contains the individual's name and residential address, issued in the past 12 months • A municipal council rates notice or a utilities bill (such as a water, gas or electricity bill) that contains the individual's name and residential address, issued in the past three months • A Medicare card • For an individual aged under 18, a letter from a school principal issued in the past three months that details the individual's name, residential address and when they attended the school, or a student card if available • Electoral roll details (checked against www.aec.gov.au/).
Documentation or data that verifies the existence of non-individual clients	<ul style="list-style-type: none"> • Extracts issued by the Australian Securities and Investments Commission (ASIC) or other Australian Government body • Constituting or governing documentation (for example, trust deed or partnership agreement) • Proof of the non-individual client's business address • Invoices issued/received in the non-individual client's name.

⁶ If the individual has had a legal change of name, the practitioner should request primary non-photographic identification in relation to the name change, for example, a marriage certificate.

⁷ If a foreign birth certificate or citizenship certificate is in a foreign language, the tax practitioner must require that the client (or individual representative of the client) provides an accredited English translation if the tax practitioner, or person verifying the documents on behalf of the tax practitioner, does not understand the foreign language used.

Required evidence to be sighted	Examples
<p>Legal document demonstrating the authority of an individual representative to engage a tax practitioner on behalf of an individual client</p>	<ul style="list-style-type: none"> • Official or legal documents demonstrating parental, guardianship or power of attorney representation, for example: <ul style="list-style-type: none"> ○ enduring power of attorney or similar document ○ birth certificate ○ adoption paper ○ court order ○ letter of authority (see paragraphs 13 and 14) ○ signed doctor's letter with explanation of circumstances. • Verbal authority after verifying the individual client and individual representative's identities in accordance with the requirements of Table 2.
<p>Legal document demonstrating the authority of an individual representative to engage a tax practitioner on behalf of a non-individual client</p>	<ul style="list-style-type: none"> • An Annual Company Statement or current company extract from Australian Securities & Investment Commission (ASIC), identifying the individual as an officeholder • Confirmation from ASIC that the individual is an officeholder; for example, through the ASIC registered agent portal if you are also an ASIC registered agent • A trust deed • A partnership agreement • The constitution • The constitution of a registered cooperative • Copies of board meeting minutes documenting the appointment • Verbal authority from an existing authorised representative or officeholder (after verifying that person) • ABR details • Employment contract indicating position; for example, tax manager • The representative is clearly identified on the business's website as holding a relevant role to the management of the business's taxation, superannuation or finance functions.

10. When sighting verification documents to confirm the identity of a client and/or individual representative, tax practitioners must have regard to the following considerations:
- whether the photo in any identification document appears to match the details that have been provided by the individual (for example, age and gender)
 - whether the name, address and date of birth match when comparing documentation.
11. The requirements contained in Table 2 and Table 3 are consistent with the POI requirements that may also apply to tax practitioners under various regimes, including the requirements of the ATO and AUSTRAC (in relation to the AML/CTF legislation). In situations where a tax practitioner undertakes POI steps that vary from the requirements contained in Table 2 and Table 3, however comply with the requirements of the ATO and/or AUSTRAC, including by using any electronic/technological solutions accepted by the ATO and/or AUSTRAC, the TPB will generally consider these POI steps to also meet the TPB's requirements.
12. If a tax practitioner is engaged by multiple related clients (or an individual representative of multiple related clients), the TPB requires the tax practitioner to undertake the verification steps outlined in Table 2 and Table 3 in respect of each of the clients and individual representative/s (for example, husband and wife, a partnership and individual partners, a company and its directors, trustees of a trust and its beneficiaries).

Letter of authority

13. A letter of authority is a legal letter (including an email or emails) authorising a third party (agent) to act on an individual's (principal) behalf in respect of discrete matters that are listed in the letter. Upon receipt of a letter of authority, the TPB expects that it may be appropriate, depending on the circumstances, for a tax practitioner to take additional steps to confirm the principal's authorisation of the agent to act on the principal's behalf, including for example, by following up with a telephone, videoconference or face-to-face conversation with the principal.
14. Tax practitioners may wish to seek legal advice or make additional enquiries if they are unsure whether to accept a letter or email purporting to authorise an individual representative to act on behalf of a client or potential client.

Clients without conventional identity documents

15. Some clients may not be able to provide the identity documents listed in Table 3, including:
- some Aboriginal or Torres Strait Islander clients
 - clients living in remote areas
 - clients who have been affected by a natural disaster
 - clients who have come to Australia as refugees
 - clients who have limited access to identity documents (for example, due to experiencing family or domestic violence or homelessness)

- clients who have identity documents that have recently expired (for example, an elderly client who has not renewed their driver licence).
16. In these circumstances, the TPB would expect tax practitioners to take a flexible approach to undertaking POI steps in relation to such clients, which may be different to, and sometimes less than, the minimum requirements outlined in Table 2 and Table 3 above. Tax practitioners in these circumstances would be expected to complete detailed contemporaneous records to outline their client's circumstances and details of the steps taken to establish the client's identity (refer to paragraph 23).⁸

Well-established clients

17. It may not be practical or necessary for a tax practitioner to undertake the POI steps outlined in Table 2 and Table 3 for clients and/or individual representatives whose identity the tax practitioner considers to be well-established. In order to protect themselves, their business and the government from fraud occurring in connection to identity theft, tax practitioners are required to exercise their professional judgement when making an assessment about whether a client or individual representative is a well-established client and whether or not it remains appropriate to undertake the POI steps outlined in this Practice Note.⁹
18. If a tax practitioner makes an assessment that it is not appropriate or necessary to undertake the POI steps outlined in this Practice Note in relation to a well-established client, the TPB still requires that the tax practitioner retains a record of their assessment about the appropriateness of undertaking the steps outlined in Table 2 and Table 3, which should, at a minimum, address the matters listed at paragraph 21 below.
19. If a tax practitioner makes an assessment that it is not appropriate to undertake the POI steps outlined in Table 2 and Table 3 in relation to an individual representative of a client, the TPB still requires that the tax practitioner sights evidence that demonstrates the authority of the individual representative to engage the tax practitioner on behalf of the client, before providing tax agent services or BAS services.
20. Furthermore, if a tax practitioner has made an assessment that a client is a well-established client, the TPB requires that the tax practitioner adheres to the TPB's requirements in relation to [frequency](#) and [record-keeping](#).

⁸ Additional guidance that may be of assistance to tax practitioners dealing with clients without conventional identity documents can be found at [AUSTRAC](#).

⁹ The requirements in relation to well-established clients also apply to the provision of advice and services to new entities created, established or acquired in connection to the provision of advice and services by a tax practitioner to a well-established client.

Further information

54. Outlined below is a listing of reference material that may provide further guidance in relation to issues to consider in relation to verifying a client's identity:

Agency	Information product	Purpose of document
Tax Practitioners Board	<i>TPB(EP) 01/2010: Code of professional conduct</i>	Further information regarding the Code of Professional Conduct in the TASA
	<i>TPB(EP) 02/2010: Fit and proper person</i>	Further information regarding the fit and proper person requirement in the TASA
	<i>TPB(I) 17/2013: Code of Professional Conduct – Reasonable care to ascertain a client's state of affairs</i>	Provides guidance for tax and BAS agents in relation to the requirement to take reasonable care to ascertain a client's state of affairs
Australian Taxation Office (ATO)	Security advice for tax professionals	Provides security information and guidance for tax professionals.
	ATO online services for agents terms and conditions	Provides the ATO's terms and conditions for using the online services for agents
AUSTRAC	AML/CTF programs	Information on the requirements of the AML/CTF legislation
	Customer identification and verification	Provides guidance on the customer identification and verification requirements under the AML/CTF legislation.
Australian Securities and Investments Commission (ASIC)	Regulatory Guide 244: Giving information, general advice and scaled advice	Provides ASIC's requirements in relation to giving information, general advice and scaled advice, including requirements regarding identifying a client's relevant circumstances.
Office of the Australian Information Commissioner (OAIC)	Australian Privacy Principles (APPs) Guidelines	Outlines the mandatory requirements of the APPs , how the OAIC interpret the APPs, and matters the OAIC may take into account when exercising its functions and powers under the Privacy Act 1988 .