



AUSTRALIAN BOOKKEEPERS NETWORK

26 June 2008

The General Manager
Business Tax Division
The Treasury
Langton Crescent
PARKES ACT 2600

By email: taxagentservices@treasury.gov.au

Dear Sir/Madam,

We welcome the opportunity to submit feedback to Treasury on the Revised Exposure Draft Tax Agent Services Legislation and Explanatory Materials.

Australian Bookkeepers Network (ABN) is Australia's largest body of self-employed and contract bookkeepers with over 800 members. We represent the very style of bookkeeper that this legislation is aimed at governing.

ABN was formed in 2001 and for the past seven years has been at the forefront of industry discussion. We have been involved in the ATO's Bookkeeper Advisory Group since its inception and in various confidential Treasury discussions on this Exposure Draft. We are also part of the Bookkeeping Industry Group (BIG) chaired by Russell Smith. The BIG made a submission to the first Exposure Draft, (with ABN being instrumental to its compilation).

Overview of this Submission

ABN believes that Treasury have listened to the industry closely over the past 12 months. Through the first round of submissions and various confidential discussions – including those held in Sydney in October 2007 – we now have a second Exposure Draft which is largely reflective of what the industry thinks.

At this late juncture, we are of the view that no fundamental or sweeping change is required to the Exposure Draft. In fact, our only remaining observations surround the subtleties of the wording contained within the Transitional Provisions.

Notwithstanding, we take the view that the effectiveness of the Transitional Provisions is crucial to the success of the new regime. They will, in many respects, be industry's first touch point with the new regulatory environment and it is vital they adequately meet the sometimes competing needs of industry, government and the taxpayer community at

large. Well constructed Transitional Provisions will foster the general intent of the new rules while importantly guarding against flight from the industry by bookkeepers currently bolstering the pool of capable Tax Professionals filling the BAS Service needs of small and medium enterprises (SMEs) in this country.

The transitional provisions provide two avenues under which a person can, for the first two years, be taken to be a BAS agent. While we support the intent behind each of these avenues, we believe that the manner in which they are currently drafted leaves them open for abuse. We will examine each in turn.

Schedule 2, Provision 4, Subitem 1

(1) If:

(a) *immediately before commencement, an individual:*

(i) *was a person referred to in subsection 251L(6) of the old law; and*

(ii) *was providing BAS services within the meaning of subsection 251L(7) of the old law; and*

(b) *during the 2 year period beginning immediately after commencement, the individual provides a BAS service within the meaning of the new law;*

the individual is taken to be a registered BAS agent within the meaning of the new law for the 2 year period.

Clearly the intent behind this Subitem is to provide continuity of business for industry incumbents who are providing BAS services within the meaning of s.251L(7). This is a common sense approach and one which mitigates the risk of there being flight from the industry.

However, we believe there is a further, vital condition that needs to be attached to this section: a person who avails themselves of this transitional path and provides BAS services within the meaning of the new law should need to provide those services in the same manner in which they provided those services under the old law.

In practice this means:

- If a person was providing BAS services within the meaning of s.251L(7) of the old law by virtue of them being a voting member of an RPA, they would need to retain that RPA membership for the two year transition period, or until such time that they seek registration as a BAS agent, whichever comes first; or
- If a person was providing BAS services within the meaning of s.251L(7) of the old law by virtue of them working under the direction of a registered tax agent, they would need to remain under the direction of a registered tax agent for the two year transition period, or until such time that they seek registration as a BAS agent, whichever comes first.

Without imposing this additional condition, there is a great risk of abuse. Here are a couple of examples.

1. A week before commencement of the new legislation, a bookkeeper could put in place an arrangement whereby they were deemed to be working under the

direction of a registered tax agent. The bookkeeper could lodge one (1) BAS for a client under this arrangement. Then, a week later when the legislation commences, the bookkeeper could sever all ties with the tax agent and for the next two years, provide BAS services with complete independence. This bookkeeper may be providing BAS services in areas that he or she has little or no knowledge in. For that matter, the bookkeeper may be new to the industry – the one BAS they lodged prior to commencement of the legislation (in order to crystallise their transitional relief) may well have been the one and only BAS they have prepared in their life. Without the safety net of working under the direction of a registered tax agent during the transitional period, neither the bookkeeper, the Tax Office nor the taxpayer have any protections against the standard of work being performed.

2. A bookkeeper may hold an RPA membership prior to commencement of the new legislation and provide a BAS service in order to crystallise their transitional relief. Then, upon commencement of the new legislation, they let their RPA membership lapse, or immediately cancel it. Without the backing of their RPA, this bookkeeper could now be providing BAS services in total isolation. Neither the bookkeeper, the Tax Office, the taxpayer nor the bookkeeper's former RPA, have any protections against the standard of work being performed.

Schedule 2, Provision 4, Subitem 2

(2) *If:*

- (a) *an individual is not a person mentioned in subitem (1); and*
- (b) *immediately before commencement the individual provides a BAS service within the meaning of the new law; and*
- (c) *during the 2 year period beginning immediately after commencement, the individual provides a BAS service within the meaning of the new law;*

the individual is taken to be a registered BAS agent within the meaning of the new law for the 2 year period.

The intent behind this Subitem is to ensure that a narrow band of individuals are not prevented from availing themselves of the transitional provisions merely because the BAS services they provide were not held to be BAS services under the old law including bookkeepers rendering software training and client implementation.

However, we believe there is a vital condition that needs to be attached to this section. A person who avails themselves of this transitional path and provides BAS services within the meaning of the new law, should be precluded from using it as an avenue to commence providing BAS services of a kind that fall within the meaning of s.251L(7) of the old law.

Without imposing this additional condition, there is a great risk of abuse. Here is an example. An individual currently runs a business of installing and configuring accounting software (including determining tax codes) – vis-à-vis Leonard in Example 2.2 of the Explanatory Material. This is not a BAS service within the meaning of s.251L(7) of the old law, but will be a BAS service under the new law. This individual will qualify under Subitem 2. Once the transition period commences, this individual could – as the Subitem is currently worded – immediately cease providing accounting software services (to

which they are experienced) and commence providing BAS preparation services (to which they hold no experience whatsoever). In other words, by providing a single BAS service of the “new kind” pre-transition, the individual has opened up the door to provide BAS services of the “old kind” for up to two years in a totally unregulated and unsupervised manner.

In the current environment, BAS services that are not within the meaning of s.251L(7) may be provided without regulation and, logically, that should be the case for the 2 year transition period. But only insofar as those style of services are concerned. These services should not be allowed to provide a surreptitious access route for providing all services. To allow as much would be to dilute the intent of Subitem (1).

Moreover, Subitem 1 provides an incentive for individuals to become s.251L compliant now, as it opens up a transitional pathway. However, if the same transitional pathway could be opened up an individual merely provide one solitary BAS service of the new kind, then the incentive to become s.251L compliant under the current environment is lost. This would seem to foster an environment of exploitation and loophole, rather than the more preferable environment whereby the new regulatory regime was being foreshadowed by the need to become compliant with the existing regulatory regime.

Proposed Drafting

Only very small wording changes are required to close these gaps. We propose that Subitems (1) and (2) of Section 4 be changed as follows (we have used a red font colour to denote the proposed change). This will preserve the intent of the Transitional Provisions, while at the same time, closing the door on the potential for abuse and the aforementioned anomalies.

(1) If:

(a) immediately before commencement, an individual:

(i) was a person referred to in subsection 251L(6) of the old law; and

(ii) was providing BAS services within the meaning of subsection 251L(7) of the old law; and

(b) during the 2 year period beginning immediately after commencement, the individual provides a BAS service within the meaning of the ~~new~~ old law;

the individual is taken to be a registered BAS agent within the meaning of the new law for the 2 year period provided the individual remains a person referred to in subsection 251L(7) of the old law.

(2) If:

(a) an individual is not a person mentioned in subitem (1); and

(b) immediately before commencement the individual provides a BAS service within the meaning of the new law; and

(c) during the 2 year period beginning immediately after commencement, the individual provides a BAS service within the meaning of the new law;

the individual is taken to be a registered BAS agent within the meaning of the new law for the 2 year period but may not provide BAS services within the meaning of subsection 251L(7) of the old law.

Conclusion

The transition provisions, at their very heart, are intended to provide a way for individuals to “continue doing business” the way they are now for up to two years or until such time that seek registration as a BAS agent in their own right. Although the transitional provisions as they are currently drafted do provide for this, they also provide for abuse and/or exploitation from unscrupulous or reckless operators and could result in an unintended entrance point for less capable BAS Agents and poor consumer protection.

The Exposure Draft of the Tax Agent Services Bill has, since its first drafting, placed a strong emphasis on the need for “relevant experience”. The recent inclusion of an experience criterion for RPA members in the revised draft speaks further to this. Unfortunately, the Transitional Provisions – as they are currently drafted – compromise the importance of experience by providing means by which individuals can perform fleeting acts to crystallise a two year period of self-regulation. This poses risks both to revenue and the community at large.

However, by enacting our proposed revisions, such actions could be circumvented and we can assure outcomes that are consistent with legislative intent, specifically:

- Individuals providing s.251L(7) exempt BAS services under the old law can continue to provide these services during the transition period provided they preserve the relationship that enabled their exemption under that old law; and
- Individuals who were providing services that were not BAS services under the old law can continue to provide these services during the transition period.

In some ways, our approach provides for an “overlapping” of the old and the new during transition time, as opposed to a hard and fast line in the sand. This would seem to provide the best of both worlds – a reasonable and robust pathway for individuals incumbent in the industry, but with no loss of community protection over the two year period when compared to the current s.251L regime.

Should you wish to discuss any aspects of this submission, please do not hesitate to contact the author on (07) 3290 4914 or by email at info@austbook.net

Yours faithfully,



Darren M. Hagarty
Director