

9th August 2007

Mr Paul McCullough
Tax System Review Division
Treasury

Dear Paul

**BOOKKEEPERS SUBMISSION in relation to Exposure Draft
Tax Agent Services Bill & Related Regulations**

As a unified and significant proportion of the bookkeeper / future BAS Service Provider community we provide the following submission for your consideration. We provide this document to you as a true reflection of the bookkeeper and the business clients they service.

We make the following recommendations for the consideration of Treasury & Government in relation to the proposed system. We have confined our submission to areas relating to the BAS Service Provider (BSP) regime. We request that each matter be considered separately.

Attached to this submission is further detail behind each item.

- 1) Members of Recognised Professional Associations should neither be granted automatic registration as a BAS Service Provider nor the existing automatic concessional transition provisions. We submit that a BAS/GST competency proof and/or experience should be required as part of these provisions at least to the extent required of other persons seeking to register as a BSP.
- 2) The tax board should specifically consist of an appropriate representation from the BAS Service Provider/Bookkeeper community.
- 3) At least one member of the Board should be the chairman of a sub-committee which is delegated the responsibility for the implementation of the BAS Service Provider regime.
- 4) The explanatory memorandum (EM) (if not the legislation) must further clarify and define the meaning and extent of the term "ascertaining" in Sn 602-15. If "ascertaining" is to be defined as "calculating" or "working out" then the impact is too broad. If the term is defined as "providing certainty" or "confirming" we believe that this is consistent with positioning the BSP as an expert and interpreter.
- 5) The EM (if not the legislation) must further clarify and define the meaning and extent of the term "satisfying" in Sn 602-15. If "satisfying" is to be defined as "paying" then an accounts payable contract bookkeeper pays all bills other than the ATO, this does not appear to be logical.
- 6) The examples contained in the EM require clarification and simplification. We submit examples and information which provides appropriate guidance to the BSP and their clients as to what are services that are and are not considered "advice" or "confirming" in accordance with Sn 602-15.

- 7) Specifically we believe that parts of the EM do not accurately describe scope of BAS Services in accordance with the intent of government: provision of reports out of computer software should not be considered a BAS service, coding transactions into software should not be considered a BAS Service. Advising a business on the use of those reports or setting up a system as to how to use the software would be considered advising or confirming and therefore a BAS Service.
- 8) Consideration must be given to the additional cost being incurred by bookkeepers in the new BSP regime and that these costs will be passed on to their business clients. A minimum 20% increase in costs to business to achieve their compliance obligations. Government financial support of education recognition programs and continuing professional development schemes through the 5 year period up to renewal of registration must be considered. A nominal application fee should be considered.
- 9) The 1000 voting member requirement for the recognition of a BAS Service Provider association should be reconsidered. The relevant member requirement should be stipulated as registered BSP's. It is not logical that an association would be seen to be relevant to consult to government on behalf of registered BSPs because they have 1000 voting members who are not BSP's. The 1000 quantum should also be reconsidered given the government research indicates that the contract bookkeeper market is only 10,000 strong.
- 10) Confirmation is required that the shortfall penalty relief provided to business that use a BSP is not to be passed on to the BSP. We also believe that the legislation should specifically grant late lodgement penalty concessions.
- 11) We believe that a practical approach be taken to ensure that as the tax board provides detail and process to implement the "principle based" legislative framework that the tax board must provide opportunity for its determinations to be subject to public review prior to implementation and that decisions not be beyond practical and easy question or review. The legislation as proposed regulates the daily life and livelihood of tax practitioners and the principle based legislation provides the possibility of extensive impact due to the boards approach.

Please contact us if you require any further detail or discussion in relation to these matters.

Signed for and on behalf of each of the parties listed

Russell Smith
Chairman Bookkeeping Industry Group

Australian Bookkeepers Network Ltd (ABN)
Benchmark Bookkeeping Pty Ltd
Busy Bookkeeping
Franchised Bookkeeping Association of Australia Inc (FBAA)
Institute of Certified Bookkeepers Inc (ICB)
Institute of Computerised Accounting Ltd (IOCA)
Jim's Bookkeeping
Skilled Accountants Pty Ltd
Susana Bookkeeping Services

Detail to Submission on the Exposure Draft BSP Legislation

BACKGROUND PERSPECTIVE COMMENT

We understand that the intention of the legislation in relation to the proposed BSP regime is to provide “consumer protection” and to recognise that BAS Service Providers exist in the service provision to small business. Accordingly a system of regulation and recognition should be established to recognise such persons whom are competent and bring them into the tax system as appropriate.

It is appropriate to protect business from unscrupulous and incompetent bookkeepers, however not at the cost of driving the majority of current bookkeepers out of the industry. The loss of quantum of BAS lodgements, the increased cost to business of seeking the expertise of BAS service to be provided by the accounting industry or through penalty to business as the business owner being unable to obtain the expertise required and endeavouring to prepare the BAS themselves.

The risk of increased loss of revenue to government through owner unintentional mistake also exists.

Issue 1: Lack of an experience requirement for RPA members

Section 602-30 (1) provides 3 eligibility criteria:

- a) Fit and proper person;
- b) Experience and qualifications; and
- c) Carrying on a business.

Section 602-30 (1) (b) specifically provides that “the individual meets the requirements prescribed by the regulations (including, but not limited to, requirements relating to qualifications and experience) in respect of registration as a BAS service provider”

Regulation 44 J (b) notes that an individual is only required to satisfy one of the requirements in Schedule 1 Part 2 and the Schedule lists two requirements being:

1. The holding of a Certificate IV Financial Services (Accounting) or (Bookkeeping) and 1400 hours of relevant experience (item 201); or
2. Being a voting member of an RPA (item 202).

Clearly the legislation intends to offer entry to an RPA member without the need to satisfy the experience requirement as the Explanatory Statement Statutory Rules 2007 No. in item 3 notes:

“Also, for BAS service providers, item 202 of Schedule 4 provides that Voting members of an RPA do not need to comply with the prescribed academic qualifications and relevant experience requirements and are automatically eligible for registration by virtue of their membership”.

We would suggest that there are a number of compelling reasons to consider imposing either the same experience requirements contained in item 202 or a compensating equivalent to RPA applicants.

1. BAS services and BAS preparation is not to be taken lightly. There are a **myriad of routinely encountered complexities** that a BSP could address when rendering a BAS service, including a thorough working knowledge of the indirect taxes being administered on the BAS as well as FBT, PAYG Withholding and PAYG Instalments. A BAS service provider could be called upon to exercise judgement on a number of complex issues such as:
 - a. Increasing adjustments on GST cancellation;
 - b. Decreasing adjustments for non-creditable percentage of part business use assets;
 - c. Deferred GST on imports;
 - d. Property developers applying the margin scheme;
 - e. Treatment of wine equalisation tax (WET);
 - f. Treatment of luxury vehicle tax (LCT);
 - g. Treatment of Fuel Tax credits;
 - h. The myriad of circumstances that could affect registration or the need to cancel registration;
 - i. Reduced input tax credits for entities making financial supplies;
 - j. GST reporting alternatives for entities making financial supplies;
 - k. GST connotations of cost limit vehicles;
 - l. Distinction between GST accounting for Hire Purchase and Chattel Mortgage contracts;
 - m. Change in creditable use of capital assets and the need to make increasing or decreasing adjustments;
 - n. Understanding the basis of a particular entities fringe benefits tax liability in order to form a view as to whether an entities FBT instalments should or could be varied;
 - o. Understanding the basis of a particular entities income tax liability in order to form a view as to whether an entities FBT instalments should or could be varied;
 - p. Payment types that could be subject to PAYG Withholding including which allowance ought be subject to withholding and which should not and those that must be disclosed on a BAS and which should not;
 - q. Treatment of contractors subject to a PAYG voluntary agreements;
 - r. Treatment of PAYGI variations;

With all due respect to the education requirements, ongoing CPE, ethical constraints etc imposed by RPA's, on the job experience earned on the above issues is invaluable in taming such issues faced on the second and subsequent occasion. Does membership on an RPA grant some other tangible trait that could substitute on an equivalent basis for actual experience on the above real world issues?

2. The draft legislation carries some very positive traits including the "safe harbour" provisions for using an appropriately qualified tax practitioner. This is a tremendous step forward and gives the consumer a level of comfort when using a tax practitioner and strengthens the **consumer protection** element inherent in the draft legislation. Importantly from the Tax Office's perspective it ought only be conferred where the tax practitioner is highly capable and deserving of the responsibility being conveyed under the legislation; otherwise the effectiveness of the safe harbour provisions are being eroded What element of consumer protection is being served when a potentially inexperienced RPA can be legally permitted to ascertain taxation liabilities without any prior experience?;

3. **Not all RPA members have a practitioner background.** In fact many have any taxation experience at all and come from backgrounds that include banking and finance, stockbroking, audit and liquidation. Does it seem reasonable that a member of an RPA who has spent several years as a junior and intermediate auditor should be allowed under the Act to provide BAS services (some quite complex) without any prior experience in taxation let alone the more narrow BAS service disciplines?
4. **Not all members even have Australian experience.** Most RPA's have reciprocal arrangements that permit membership where overseas memberships of a similar type are held. Presumably this could pave the way for a newly arrived foreign practitioner (with no understanding of Australian taxation let alone GST, PAYG, FBT etc) to render BAS services.
5. **Not all RPAs require a member to have had current experience.** Some who have had experience may have emerged from semi-retirement or have returned from an extensive stint overseas and have little understanding of current tax laws including those needed to render an effective BAS service;
6. The **general thread of the new legislation** insofar as it pertains to tax practitioners (tax agents and BAS service providers) carries with it the requirement of a **composite blend of qualification and experience.** The only exception seems to be this particular class of tax practitioner. Is there a chance that allowing entry to an inexperienced RPA member trivializes the skill and expertise required when correctly rendering a BAS service?
7. **Preliminary consultation** at BAG forums and advice from Treasury indicated that experience was envisaged as a central plank to a BSP registration particularly as it was identified that there was a shortage of BAS centric educational qualifications;
8. BAS services normally culminate in the preparation of the BAS. In terms of the **percentage of total revenue collected** in this country we would expect that by far most is collected as a result of properly prepared BASs in the form of GST, PAYG Instalments and PAYG Withholding. It would seem ludicrous that an inexperienced person should be empowered to complete such a document;
9. Draft Section 602-30 (1), which stipulates **registration requirements for a PSP implies an experience requirements** when it states at subsection (b) "requirements prescribed by the regulations (including, but not limited to, requirements relating to qualifications and experience)". However reference to the regulations (Part 2 Division 1 item 202) does not actually require any experience;
10. Much is made of both the **quantum and type of experience required by a non-RPA applicant** in the legislation and regulations. The quantum was increased from 700 to 1400 hours. Division 2 of Part 2 item 203 gets into some detail as to the type of experience that is considered to be relevant. Relevant experience can only include higher level experience (i.e. as a tax agent/BSP or under the supervision of a Tax Agent/BSP or higher level reconciliation or liability determining activities that are acceptable to the Board). There is no question that this experience is indeed relevant but what traits are brought to the table by virtue of RPA membership that negates 1400 hours of relevant experience?

RPAs can compel the completion of a Practice Certificate before practitioners commence a practice dealing with the general public. It would be of assistance that RPAs did compel a Practising Certificate that included a compulsory practical BAS service module for potential practitioners that possessed no relevant experience. It would be of more comfort however, if the act compelled some minimum level of relevant experience for such applicants. Perhaps RPA membership ought confer some reduction in the 1400 hour requirement (maybe 700 would be more appropriate), but a reduction to nil would seem imprudent.

Issue 2: Tax Board should comprise representatives of the BSP/Bookkeeper community

Issue 3: BSP responsibilities should be delegated to a sub-committee of the full board

We submit that at least one member of the board be a member representing the BSP/bookkeeper community. The reason for one is that proportionately in relation to the matters to be considered by the board that bookkeeper matters are considerably less than that of the tax agents.

We also submit that the board should form a Committee (in accordance with 608-10(2) specifically to deal with the implementation of the new regulations in relation to BSPs and RPA (BSP). This subcommittee would be chaired by that member forming part of The Board, and its members would be more closely aligned and involved in the bookkeeper industry.

The current RPA's more appropriately represent the accountant/tax agent component of this legislation. It would be appropriate that the different perspective and role of the BSP be truly recognised and appreciated through the creation of the sub-committee.

If more appropriate possibly the creation of a separate BSP Board.

Issue 4: Clarify the term “ascertaining”

In accordance with the explanations below in relation to the examples and definition of the term “BAS Service” we seek a greater degree of clarity be provided around the term “ascertaining”. “Ascertaining” should not be left open to be interpreted widely, nor interpreted as “processing” or “calculating”.

Issue 5: Clarify the term “satisfying”

Also in accordance with the explanation below we seek a greater degree of clarity be provided around the term “satisfying”. This term should not be interpreted as “payment” as this precludes an accounts payable person from being able to make payments to the ATO.

Issue 6: Clarify the examples in the EM

Commentary - Explanatory Memorandum Bookkeeping Examples

S:602-15 of the proposed legislation prescribes what is a BAS service using terms such as “ascertaining”, “satisfying” & “advising”. The examples provided in the EM seek to clarify the application of these provisions

While the Penny and Francisca examples are relevant in that they attempt to mimic mainstream bookkeeping scenarios they suffer by having too many indicators and just one conclusion (either BAS Service being rendered and BSP registration required or not). This means that it is not clear exactly what indicator determined the bookkeeper to be a BSP. Additionally, the Penny and Francisca examples do not cover the full range of BAS services that could be rendered by a bookkeeper.

Penny Example

“Penny operates a mobile bookkeeping service for a number of clients. She charges a fee for her services which include entering and coding client’s transactions into a commercial accounting computer programme. Penny uses the accounting software to produce a variety of reports, including those that assist clients in determining their BAS liability.”

Penny’s clients rely on the information she provides to complete their regular business activity statements. They do not expect to have to re-work reports and are paying Penny to provide a service that allows them to complete the BAS with information she provides. The act of coding the transactions constitutes the interpretation or application of a BAS provision.

In undertaking either function Penny has provided a service that the client can be expected to rely on and she would be required to register as a BAS service provider.”

If we look at Penny, the crucial indicators seem to be:

- “uses accounting software to produce a variety of reports, including those that assist clients in determining their BAS liability”;
- “Penny’s clients rely on the information she provides to complete their regular business activity statements”;
- “The act of coding the transactions constitutes the interpretation or application of a BAS provision”.

One could interpret the example as saying the act of coding transactions equates to a BAS service; as could the use of accounting software to produce reports including those that assist with a BAS. The question that is left unanswered of course is whether either of these bookkeeping functions would be a BAS service if the client was not relying on Penny coding transactions or producing reports from software to complete their BAS (for example if the client has a registered tax agent or a BSP preparing the BAS).

We would suggest that the conclusion be amended and the example expanded
:

Current Paragraph:

“In undertaking either function Penny has provided a service that the client can be expected to rely on and she would be required to register as a BAS service provider.”

Suggested Paragraph:

The circumstances of the relationship between Penny and the client are such that the client has engaged Penny to provide GST & BAS interpretive expertise and assurance that the completed BAS is correct, accordingly this type of reliance on Penny means that Penny is providing a BAS service.

If the circumstances of the relationship between Penny and the client are such that the client has engaged Penny to provide services to enter and code transactions into a commercial accounting computer programme and use the software to produce reports, however the client understands that Penny is implementing a system and not providing GST & BAS interpretive expertise, accordingly this different relationship means that Penny is not providing a BAS service

Suggested Additional Examples:

Tracey operates a mobile bookkeeping service for a number of clients. She charges a fee for her services which include entering and coding client's transactions into a commercial accounting computer programme. Tracey uses the accounting software to produce a variety of reports, including those that assist clients in determining their BAS liability.

Tracey's clients do not rely on the information she provides to complete their regular business activity statements. The client seeks confirmation and advice from a registered tax practitioner.

In undertaking either function Tracey's work is not relied upon as advice nor providing certainty about a BAS provision and therefore she would not be required to register as a BAS service provider."

John operates a mobile bookkeeping service for a number of clients. He charges a fee for his services, which include entering and coding client's transactions into a commercial accounting computer programme. John uses the accounting software to produce a variety of reports, including those that assist clients in determining their BAS liability.

John's clients engage John on an agreement that his work is that of data entry, accordingly, they understand that the work provided by John is not to be relied upon as John does not provide "advice" or "provide certainty" that the BAS provisions are correct. John is charging a fee for providing ordinary bookkeeping work, which includes end of period reconciliation tasks.

The client undertakes preparation of their own BAS based on their own review.

John would not be required to register as a BAS service provider.

Francisca Example

"Francisca is a bookkeeper. She follows instructions from Chris, a registered BAS service provider, to code invoices and transfer data onto a computer programme for her clients. Francisca's work is then reviewed by Chris to check its accuracy. Francisca is not required to register as a BAS service provider as following instructions to code and transfer data onto a computer programme does not constitute a BAS service and, also, her work is reviewed by a BAS service provider."

If we look at Francisca the crucial indicators seem to be:

- "she follows instructions from Chris";
- "code invoices and transfer data onto a computer programme";
- "her work is reviewed by a BAS service provider".

One could interpret the example as saying the presence of any of the above three indicators means that Francisca is not rendering a BAS service thus has no obligation to register. Additionally there is no specification made as to the type of instructions or review conducted by Chris. Has Chris accepted responsibility for the BAS output as part of a contractual relationship with the client or is Francisca engaged by Chris or simply under a loose arrangement for the guidance of Francisca.

We would suggest that the conclusion be amended:

Current Paragraph:

“Francisca is not required to register as a BAS service provider as following instructions to code and transfer data onto a computer programme does not constitute a BAS service and, also, her work is reviewed by a BAS service provider.”

Suggested Paragraph:

“Francisca is not required to register as a BAS service provider because the client is not relying on Francisca’s work. Francisca follows instructions to code and transfer data and her work is reviewed by Chris. Chris is being relied on by the client to provide certainty of liability under a BAS provision”.

While the Penny and Francisca examples are useful, we have already seen in the marketplace different interpretations being put on them. Some say that Penny means that the mere coding of a transaction into a computer programme constitutes a BAS service without consideration of the determinative indicator in that example which is the client’s reliance on Penny. This causes confusion as to who should register and why. In the post-section 251L era, and given the somewhat ‘loose’ interpretation previously placed on it by many, we think any ambiguity should be avoided. Thus we think the examples could be reworded to eliminate as much as possible, the ability to put differing interpretations on what constitutes a BAS service in terms of section 602-15. The inclusion of additional examples would also assist in clarifying whether other services typically offered by bookkeepers are also BAS services that would require the bookkeeper to register. Additionally/alternatively it may be possible to tabulate the types of services that are commonly rendered by bookkeepers and provide an indication as to whether that service constitutes a BAS service or not.

Section 602-15

602-15 What is a BAS service?

- (1) ***A BAS service is a *tax agent service that relates to:***
- (a) *ascertaining or satisfying the liabilities, obligations or entitlements of an entity under a *BAS provision; or*
 - (b) *advising an entity about the liabilities, obligations or entitlements of the entity under a BAS provision;*
- and that is provided in circumstances where the entity can reasonably be expected to rely on the service.*

Services that are typically provided by bookkeepers are tabulated below together with an interpretation as to whether the service constitutes a BAS service, and hence the need to register as a BAS service provider. In order for a service provided by a bookkeeper to be a BAS service, there must be both the provision of certainty of a BAS provision liability **AND** reliance on the bookkeeper for that certainty.

| Typical Bookkeeper Service | BAS Service or Not |
|---|---|
| Operate business equipment to produce a tax invoice where that system has been established by another, for example cash register operator or accounts receivable clerk generating a tax invoice from accounting software. | This is not a BAS service as the bookkeeper does not ascertain a BAS provision liability; the liability is ascertained by another. |
| Configure software to establish or produce a tax invoice that complies with provisions of the Tax Act that will be issued to customers of a client and determines the amount of GST that will be collected. | This is a BAS service as the bookkeeper has provided advice about a liability under a BAS provision and the client relies on the services of the bookkeeper. |
| Code and post transactions in circumstances where a prescribed system is being followed regarding GST treatment of particular items. A tax agent, BSP or client has established an accounting system that predetermines GST treatment and provides instruction on coding. | This is not a BAS service as the bookkeeper is not being relied upon. |
| Code and post transactions in circumstances where the bookkeeper makes decisions regarding GST treatment of particular items BUT a Tax Agent or BSP takes final responsibility for the client's BAS provision liability. | This is not a BAS service as while the bookkeeper does assist in ascertaining a BAS provision liability; the bookkeepers work is not being relied upon. |
| Code and post transactions in circumstances where the bookkeeper makes decisions regarding GST treatment of particular items BUT no Tax Agent or BSP takes responsibility for the client's BAS provision liability. | This is a BAS service as the bookkeeper does ascertain a BAS provision liability and the client relies on the services of the bookkeeper. |
| Review transactions posted by a client or their staff and review for correctness including the treatment of any item that determines a liability under a BAS provision such as GST, PAYG Withholding, PAYG Instalment, FBT, LCT, WET and Fuel tax. | This is a BAS service as the bookkeeper has provided advice about a liability under a BAS provision and the client relies on the services of the bookkeeper. |
| Prepare client BAS or represent totals that a client could use in compilation of a client's BAS. | This is a BAS service as the bookkeeper has ascertained or provided advice about a liability under a BAS provision and the client relies on the services of the bookkeeper. |
| Reconciliation of GST and PAYG Withholding control accounts and representation to client that these balances are correct. | This is a BAS service as the bookkeeper has ascertained or provided advice about a liability under a BAS provision and the client relies on the services of the bookkeeper. |
| Produce reports from accounting software including a BAS like report where that accounting system was not established or configured by the bookkeeper. No representation by the bookkeeper is made to the client about the accuracy of the reports or what to do with the reports. A registered tax agent or BSP prepares or reviews the client's BAS | This is not a BAS service as the bookkeeper has not ascertained or provided advice about a liability under a BAS provision and the client does not rely on the services of the bookkeeper to ascertain their liability. |

| Typical Bookkeeper Service | BAS Service or Not |
|--|---|
| Produce reports from accounting software including a BAS like report. Representation is made by the bookkeeper to the client about the accuracy of the reports or what to with the reports to discharge their BAS obligations. | This is a BAS service as the bookkeeper has ascertained or provided advice about a liability under a BAS provision and the client relies on the services of the bookkeeper. |
| A bookkeeper establishes a client accounting system either using commercially available software (or any other system) including making decisions about the GST treatment of particular transactions of a client. | This is a BAS service as the bookkeeper has provided advice about a liability under a BAS provision and the client relies on the services of the bookkeeper. |
| A bookkeeper provides general advice to multiple students in a classroom or training environment about software and its configuration that will outline a system to determine a taxation liability under a BAS provision. | This is not a BAS service as the bookkeeper has not ascertained or provided advice about the liability of a taxpayer in particular. |
| A bookkeeper provides client specific advice in a classroom or training environment about software and its configuration that will determine a taxation liability under a BAS provision. | This is a BAS service as the bookkeeper has provided advice about a liability under a BAS provision and the client relies on the services of the bookkeeper. |
| A bookkeeper provides advice and guidance to a client to troubleshoot the correct treatment of an item that will affect a BAS provision. | This is a BAS service as the bookkeeper has provided advice about a liability under a BAS provision and the client relies on the services of the bookkeeper. |
| A bookkeeper operates commercially available accounting software to process a client's payroll. The bookkeeper does not configure the software or maintain any part of the software that determines the amount of the PAYG Withholding liability. The Bookkeeper seeks advice from a registered tax practitioner before processing any pay that is an exception to normal. | This is not a BAS service as the bookkeeper has not ascertained or provided advice about a liability under a BAS provision and the client does not rely on the services of the bookkeeper to ascertain their liability. |
| A bookkeeper operates commercially available accounting software to process a client's payroll. The bookkeeper configures the software and maintains the software so that it correctly determines the amount of the PAYG Withholding liability. | This is a BAS service as the bookkeeper has ascertained or provided advice about a liability under a BAS provision and the client relies on the services of the bookkeeper. |
| A bookkeeper deals with the Tax Office in a representational capacity on behalf of their client in respect of a liability under a BAS provision. | This is a BAS service as the bookkeeper has provided advice about a liability under a BAS provision and the client relies on the services of the bookkeeper. |

We would suggest inclusion of the following examples:

Specific Software Training

Susanna provides accounting software training and support to her clients. Susanna helps her clients install software, determines GST codes and shows her clients how to produce a BAS from the reports inherent in the software.

Susanna is providing a BAS service and is required to register as a BAS service provider as she is advising her clients about their liability under a BAS provision and her client is relying on this advice.

General Software Training

Coralie provides classroom and onsite training about the use of accounting software including the determination of liability under a BAS provision. Coralie does not provide specific advice about a client's liability nor does she help configure a client's accounting software.

Coralie is not providing a BAS service and is not required to register as a BAS service provider as she has not provided advice to her client about a BAS provision in a circumstance where it can be reasonably be expected that the client would rely on it to determine their liability.

GST Support

Debbie provides back-up and support to her clients and their staff about their posting of transactions into commercial accounting software. She also reviews their postings and makes changes where necessary to the accounting file so that the accounting file can be used as a reliable source from which to prepare the BAS for her clients.

Debbie is providing a BAS service and is required to register as a BAS service provider as she has provided advice about a BAS provision that her clients are relying on.

Representational Role - Tax Office

Leanne is nominated as Tax Office contact for her clients in relation to her client's BAS. She provides information to and seeks information from the Tax Office in relation to her client's BASs on request by the Tax Office/client and provides the resultant interpretation to her client.

Leanne is providing a BAS service and is required to register as a BAS service provider as she is providing advice to her clients about their liability under a BAS provision and her client is relying on this advice.

CLARIFICATION & CERTAINTY

The understanding between the client and the bookkeeper

The requirements must include the necessity for there to be an agreement between bookkeeper and client attesting to the identity of the party being relied upon. We don't believe that a client "waiving" their reliance on a bookkeeper by signing an agreement is effective, unless the agreement says who is being relied upon (i.e. tax agent, another BSP, etc). Nor do we accept it is reasonable for the client and bookkeeper to be silent on this issue with a presumed non-reliance.

Issue 7: "BAS Service" clarification

In addition to the above comments in relation to the examples we provide the further comment to present the need for clarification around the term "BAS Service"

CONTEXT

A bookkeeper may be subcontracted by a business to provide a large variety of services:

DAILY PROCESSING

At the most basic processing end that bookkeeper is following a system of coding transactions into software or writing up transactions into a cashbook.

That system has been prescribed to them by either the business owner or a registered tax practitioner.

If the system, that should be applied, is designed by a person external to the business, for instance a sub-contract bookkeeper, then that person must be a registered tax practitioner as that system design would be “advising” on tax law or creating the infrastructure to “ascertain the obligations and liabilities” of a business. Alternatively if the specific system is uniquely approved by a registered tax practitioner then the designer could be prescribed as working under review of a registered tax practitioner (or supervision and control of that tax practitioner) and the business owner has relied on the registered tax practitioner, not the sub-contract bookkeeper.

The bookkeeper that attends a business and follows that system to code or write up the transactions should not be required to be a registered BAS Service Provider. They are simply following a prescribed system.

Processing Explanation

At its core for most businesses the processing of transactions does not require a high level of GST or BAS interpretation, but is following a system prescribed by others..

An expense or purchase is documented by a Tax Invoice and if the Tax Invoice has an amount of GST included then the amount of GST is captured during processing (either by utilisation of a GST tax code in software or by allocation to the GST paid column of a manual cash book). A bookkeeper who is processing those transactions should not be required to be a registered BSP.

A business makes sales either over the counter or possibly through issuance of tax invoices. We presume that every person making a sale where the cash register (however simple or complex) generates a tax invoice is not required to be a registered BSP. This would be because a prescribed system has established what the issued tax invoice would look like and established whether GST had to be attached to the sale, therefore the creation of each tax invoice is by following a prescribed system (whether manual or computerised). The cash register or point of sale system is a mechanical transaction processor following a procedure.

The person who prescribed (interpreted) the system (setup the cash register) for issuing tax invoices or making sales for a business **MUST** have appropriate knowledge and therefore be a registered BSP. The person who makes those sales on a daily basis (implements the system) does not need to be a BSP.

The person who prescribed how a purchase (suppliers) invoice is to be recorded for a particular business should have appropriate knowledge and therefore be a BSP. The person who records those invoices into a cashbook (manual or computerised) does not need to be a BSP.

Recommendation

Therefore we are seeking specific clarification in the EM that a person who is processing daily business transactions according to a prescribed system does not need to be a BSP. This would require an alteration to the example 2.4

Therefore we are seeking clarification that the person whom the client relies on to prescribe the system should be a registered BSP.

PAYROLL

Similarly is the practical process of payroll administration. We seek clarification that if a business contracts an external advisor to prescribe their payroll system then it is that person who is required to be a BSP. That person has “advised” business and prescribed a system as to how to “ascertain” its “obligations” in relation to PAYG withholding.

Where payroll is being processed weekly, fortnightly etc and the process person is following a prescribed system we do not believe that processor needs to be a BSP.

Whether the process is manual or computerised the week to week process is a mechanical process that does not require the standards attributed to a BSP.

EACH QUARTER

Businesses may typically process their transactions themselves and then contract a bookkeeper to attend periodically for the purpose of reconciling the bank accounts, credit cards, loan accounts, debtors, creditors, control accounts for GST & PAYG.

The example provided (ex 2.4) states “Similarly the act of generating the reports constitutes ascertaining liabilities”

We remain comfortable that a bookkeeper who is attending a business for the purpose of checking that GST has been charged correctly throughout a period and that the entitlement to GST input tax credits has been interpreted and applied correctly throughout that period should be a BSP. They are “advising” and “confirming” the obligation or entitlement.

Where the reconciliation process is a typical mechanical bookkeeping process, or addition, subtraction, divide by 11 or allocation to the correct account: we would propose that the process can be performed by a person who is not a BSP.

That person performing the reconciliations would need to refer interpretive decisions to the business owner or a registered tax practitioner. The business owner would understand that the bookkeeper is performing mechanical bookkeeping processes and reconciliations and that the result of their services is not able to be relied on as interpretations of law.

Also we do not believe that “generating reports” which is simply a computerised version of adding up a number of columns requires the services of a BSP.

Provision of reports from software can be equated to the tallying of a cashbook and does not require the skills of a BSP, accordingly example 2.4 overstates the requirement to be a BSP.

Clarification Around the Degree of Reliance

We believe that a greater level of understanding between the role of an interpreter (system designer, legal interpreter, advisor) and the implementer (bookkeeping processor) is required:

A business owner should be able to contract the services of an external entity “bookkeeper” to follow a prescribed system and provide reports as a result of that system. The provision of reports does not infer that the reports are technically “interpretatively” correct and therefore the business owner knows and realises that the degree of reliance is only to the extent that the transactions have been processed, totalled and reconciled according to the system.

If a business owner seeks the interpretive services of an external entity to provide a system or explanation to that business as to how the law is to be applied to that business or as to how a bookkeeping process should be applied in that business then that person must be a registered BSP.

If a business owner seeks the interpretive services of an external entity to review a periods process with a review to providing an opinion that the reports produced as a result of their systems are correct within the obligations of the law, then that review is being relied on and the person providing that higher level of review should be a registered BSP.

If a business owner seeks an external entity to process and reconcile transactions including provision of reports according to a system but chooses to do their own review then the external entity does not need to be a registered BSP.

If a business owner designs their own systems and engages an external person to process and reconcile transactions according to that system then the external person does not need to be a registered BSP.

If a bookkeeper attends a business and performs a review of the periods transactions, reconciles the accounts and prints out reports (Balance Sheet, Profit & Loss, GST Summary Reports, Payroll Summary Reports), providing them to the owner then they have not “ascertained an obligation” for a “BAS Provision” but have performed accounting and bookkeeping work. To this point the bookkeeper would not need to be a registered BSP.

The provision of a software generated BAS like report is no more than pointing to the boxes on the form and that if the bookkeeper is stating that the calculation of the numbers is correct they are not required to be a registered BSP, but If they then suggest to the client that the numbers can be relied on as a correct ascertainment of the BAS obligations then they have moved into the area of needing to be a registered BSP.

Issue 8: Cost of being a BSP – impact of the legislation

We are concerned that if the strict and very broad interpretation of the legislation as provided in the explanatory memorandum is brought into effect that the impact on the business community will be negative in a number of manners:

- 1) Cost of compliance to business will increase
- 2) Bookkeepers will exit the industry
 - a. Less capacity for businesses to be assisted with preparation of reports required for preparation of the BAS
 - b. Increased demand on the services of few BSPs or Accountants leading to further increased charges
 - c. Increase in the backyard undisclosed assistance
- 3) Increased error rate as businesses seek to prepare the BAS themselves
- 4) Increased hassle to accountants as the errors are detected as part of year end procedures and charges to clients must therefore increase.

1) Cost of compliance to business will increase

The legislation is aimed at regulating the sub-contract bookkeeper. Consistent with ATO research, the typical subcontract bookkeeper works part-time, 3 days a week 6 hours a day for 38 weeks of the year. They charge around \$45 per hour.

Total available working hours 684
Their gross earnings are \$ 30,780

Based on the requirements stated in the exposure draft the Costs of being a Registered BAS Service Provider are estimated as follows:

| | First year | Ongoing |
|---|-------------------|-----------------|
| Direct Costs | | |
| Proving education level or competence | \$ 1,600 | - |
| Professional Indemnity Insurance | \$ 600 | \$ 600 |
| Continuing Professional Development 15 hours | \$ 1,000 | \$ 1,000 |
| Computerisation – Hardware | \$ 1,000 | \$ 1,000 |
| Computerisation – Internet Access | \$ 500 | \$ 500 |
| Application Fee | \$ 30 | - |
| Total | \$ 4,730 | \$ 3,100 |
| Revised Gross income to provide equivalent earnings | \$ 35,510 | \$ 33,880 |

| | First year | Ongoing |
|--|-------------------|----------------|
| Loss of Billable Time | | |
| Proving education level | 24 hours | - |
| Ongoing CPD | - | 12 hours |
| Administration | 6 hours | 6 hours |
| Total | 30 hours | 18 hours |
| Revised available billable hours | 654 | 662 |
| Therefore revised charge rate must increase to | \$ 54.30 | \$ 51.17 |

The increased cost to each business of having the bookkeeping work provided by persons who must register as a BSP is an **increase of 20% in cost to business** in the first year (13.7% thereafter).

2) Bookkeepers will exit the industry

Many bookkeepers that are currently performing bookkeeping services that assist in the preparation of the BAS for on average between 12 to 20 businesses will exit the industry. They will not seek to prove their competence in the proposed regulated environment nor be prepared to work in an environment where their services may be defined to be in breach of the regulations and therefore subject to penalties.

Some will convert to being employed bookkeepers where they may work for 2 or 3 businesses but typically will not be employed by the 12 to 20 businesses to which they were previously providing subcontract services.

2b) Increased demand on BSP's and Accountants leading to further increased charges

The increased demand for services will be provided by the existing or reduced number of legitimate tax practitioners. Accountants charge rates begin at a level of the highest bookkeeper's \$130/hr (typically only the consulting systems bookkeeper) accordingly businesses will be paying more due to needing the work to be performed and the only registered tax practitioners available will be the higher rate accountants.

2c) Increase in the backyard undisclosed assistance

Due to the increased level of regulation and requirement in the new regime many will seek to provide the services in an unregulated manner. As they will not be prepared to comply with the system they will seek to act entirely outside of all systems.

3) Increased error rate as businesses seek to prepare the BAS themselves

Business will not be prepared to incur the increased charge rate of their bookkeeper who has now increased their charge rate due to the extra obligations placed upon them, nor will they be prepared to engage their accountants at their increased charges.

Therefore they will seek to prepare the BAS themselves without seeking external professional advice, thereby increasing the likely error rate

4) Increased hassle to accountants....

When the accountant finally becomes involved in year end tax procedures due to their professional standards they will seek to make their clients aware of GST errors and advise accordingly. The clients may or may not wish to engage their accountants in this regard.

The charges to clients will increase to remedy these errors.
Alternatively the client may instruct the accountant to do no work in this regard

Recommendation

The government should seek methods to lower the barrier to entry for the bookkeeper into being recognised as a BSP.

The costs in relation to obtaining or being recognised to Certificate IV should be subsidised.

Appropriate continuing education programmes should also be subsidised in the early years

The cost of application for BSPs should be nominal.

Issue 9: Recognition of BSP Associations

We are concerned that the intention of enabling associations to adequately and appropriately represent BSPs is not provided for in the legislation. The current draft would permit an association with 1000 people who may not be BSPs but hold at least the same educational qualifications to be recognised as representing BSPs.

The work requirements and environment of a BSP are not the same as accountants nor employed bookkeepers and therefore the recognised BSP association should only be an association with a representative membership of BSPs.

Disagreement with the premise of the legislation

We do not believe that the explanatory memorandum and regulations provide the detail of the legislation, address the source of the issues surrounding the BAS: the lodgement of incorrect BAS forms.

The impact of the legislation will fall directly on sub-contract bookkeepers providing assistance to businesses in processing their accounts.

Based on current ATO & ABS statistics there are an estimated 132,000 bookkeepers in Australia with 10,000 sub-contractor bookkeepers.

The number of BAS's prepared and lodged is within the multi-millions. Many of those BAS's are prepared by the business owners themselves without any consultation with an external advisor. Many are lodged by the already regulated tax agents sector.

There are no reliable statistics or proven evidence of the cause of errors in the BAS forms. However it is the subcontract bookkeepers, to the exclusion of all others, who are being regulated by this legislation. Of the BAS forms that are prepared by sub-contract bookkeepers, in the majority of cases, it is with the specific review of the taxpayer or with the knowledge that a registered tax agent will review the work in due course. It is the interpretation of "ascertaining" or "satisfying" that cause a widening of the impact.

We note that already there are explanations being provided that indicate that every person who processes a transaction in any form of keeping books is required to be a registered BAS Service Provider i.e. every bookkeeper will need to be a registered BAS Service Provider.

We do not believe it is reasonable to expect every bookkeeper to register as a BSP and we did not believe it was the intention of the Assistant Treasurer to have a system that would result in that outcome. We do not believe that every bookkeeper will register.

There is a definite cost of conservatively \$4000 per year in being a BSP. Given the stereotypical subcontract bookkeeper would earn approximately \$35000 per year this cost will either be passed on to their business clients or the bookkeeper will exit the industry leaving a larger gap in the lodgement of the BAS with government. Neither of these outcomes would appear favourable.

We do not believe it is the intention of government to increase the cost of complying with law which will be an outcome of this legislation.