



The Truth About Providing BAS Services and How ABN Can Help

Introduction

For bookkeepers, providing BAS services can be a treacherous landscape.

For a start, it takes skill, knowledge and experience on the bookkeeper's part to be able to offer BAS services to their clients. But over and above this, bookkeepers have to contend with a range of other issues which include complying with existing BAS Service Provider laws, having an awareness of the impending BAS Agent laws, and dealing with the many myths and misconceptions that have developed in the industry.

In **Part 1** of this document, we'll give you the straight and narrow on the law as it stands, explain how the Tax Office interpret the law, and debunk the myths and misconceptions that have spread throughout the industry. We will also show you how compliance with the current law provides a smooth transition into the new BAS Agent Laws which commence on 1 March 2010.

In **Part 2** of this document, we'll show you how easy it is to get involved with ABN's solution to the problem, our *BAS Wizard Partner Program*.

Part 1 – The Lay of the Land

The Law As It Stands – Section 251L

Section 251L of the Income Tax Assessment Act (1936) was amended in 2000. The intention of the amendment was to alleviate Tax Agents of some of their workload by paving the way for BAS Services to be provided by non-tax agents.

S.251L allows the following persons to provide BAS Services:

1. A person who is a member of a recognised professional association (RPA) as defined under S.251LA. There are seven such RPAs, all of whom are accounting bodies. They are Association of Chartered Certified Accountants (ACCA), Association of Taxation & Management Accountants (ATMA), CPA Australia (CPA), Institute of Chartered Accountants in Australia (ICAA), National Institute of Accountants (NIA), Taxation Institute of Australia (TIA) and Chartered Institute of Management Accountants (CIMA).
2. A person who is working under the direction of a registered tax agent.
3. A payroll services provider preparing a BAS only for PAYG withholding obligations.
4. A licensed customs broker providing BAS services relating to imports or exports to which certain indirect tax laws applied.

Persons providing BAS services, other than registered tax agents or those qualifying for one of the above four exemptions, are liable to prosecution and fines of \$22,000 per offence.



What Is a BAS Service?

S.251L(7) defines a BAS service as any of the following:

- Preparing or lodging an approved form about a taxpayer's liabilities, obligations or entitlements under a BAS provision;
- Giving advice about a BAS provision (GST, WET, LCT, Fuel Tax, FBT and PAYG); or
- Dealing with the Commissioner or a person who is exercising powers or performing functions under a taxation law in relation to a BAS provision.

The following two documents provide the best reference on the ATO's current interpretation of what constitutes a BAS Service:

- A document entitled *Important information for bookkeepers providing BAS services*. This can be downloaded from the ATO website at <http://www.ato.gov.au/print.asp?doc=/content/40604.htm>
- *Taxation Determination TD 2005/16* which deals with services provided by a range of persons including non-tax agent accountants, real estate agents, financial planners and bookkeepers. The ruling is significant and should be read in conjunction with the aforementioned Fact Sheet. This can also be downloaded by searching for TD 2005/16 from the ATO legal database at <http://law.ato.gov.au/atolaw/browse.htm?ImA=MainMenu>

Common Myths & Misconceptions About Section 251L

The definition of a BAS service is a wide one. Some bookkeepers believe their services do not constitute BAS service when in fact they do. Some of the more common myths and misconceptions are detailed here.

"I don't actually lodge the BAS – the client signs off on it"

The ATO have made it very clear that they will look to the substance of the arrangement, not its strict form. If a bookkeeper represents to their client that their work can be used as a basis for preparing or lodging a BAS, then they have provided a BAS service. The fact that the client signs off on the BAS and may be the one that physically lodges the BAS is irrelevant.

"I produce BAS like reports from accounting software but then the client takes it from there. They complete the actual BAS themselves."

The ATO have a specific example on this on their website (the "Norm" example). If a bookkeeper represents to their client that the BAS like report should be used as a basis for completing the Tax Office supplied BAS, then they have supplied a BAS service.

"I provide a total bookkeeping service, but I don't charge a separate fee for doing the BAS"

If you provide BAS services, but do not explicitly or separately charge for it in your fee, you are still caught. The Tax Office takes the view that the fee for a total bookkeeping service includes a fee for providing a BAS service.

"I am on good terms with my client's accountant and I can run any questions I have past them. Therefore, I can provide BAS services using the "working under the direction" exemption".

In order for a bookkeeper to be 'working under the direction of a registered tax agent', the registered tax agent must have a risk-based quality assurance process in place to review the BAS services provided by the bookkeeper for accuracy and completeness, and be satisfied



with the standard of BAS services provided. The ATO have a comprehensive document *Guidelines for 'working under the direction of a registered tax agent'* which sets out the requirements of such a process. The process is a comprehensive one which requires a great deal of interaction between tax agent and bookkeeper. There is also a significant investment of time for the bookkeeper and tax agent alike to formulate an arrangement which complies with the ATO requirements. Being able to refer any questions to a client's tax agent falls well short of the onerous requirements of the ATO risk-based quality assurance process.

"I am a member of a large franchise group. Therefore, I can provide BAS services using the "working under the direction" exemption".

Simply becoming a member of a franchised group doesn't allow a bookkeeper to prepare a BAS on behalf of their clients and charge for the service. Even if the head of the franchise group were themselves a registered tax agent, this would still not be enough unless an ATO-compliant risk-based quality assurance process were in place between each specific bookkeeper and the registered tax agent.

"I have a verbal or written agreement with my client which absolves me of liability, because they are stipulating that they do not rely on my work"

Again, the ATO will look to the substance of the arrangement, rather than the form. Notwithstanding that there may be a written agreement in place between bookkeeper and client, if the client is - for all intents and purposes – using the bookkeeper's work as a basis for preparing their BAS, then the existence of a waiver will make no difference. The agreement would need to stipulate who the client is relying on if not the bookkeeper. If the answer to this question was the client's tax agent, then the Tax Office would be expecting that the client's tax agent reviewed the bookkeeper's work as part of a risk-based Quality Assurance framework.

What Legislative Changes Are Taking Place?

Before examining the changes that are taking place, it is useful to understand the passage that this legislation has taken thus far.

On 7 May 2007, the then Minister for Revenue and Assistant Treasurer, Peter Dutton, released an exposure draft of the Tax Agent Services Bill 2007 and two related pieces legislation often referred to as the "Regulations" and the "Transitional Rules".

Following its release, Treasury sought and received considerable public industry feedback and made a number of modifications. On 13 November 2008 the Tax Agent Services Bill and Explanatory Memorandum – but not the "Regulations" and the "Transitional Rules" -were introduced to Parliament.

Parliament then referred the Bill to the Standing Committee on Economics for further discussion. The Standing Committee invited further industry feedback and, on 6 February 2009, held a Senate Enquiry on the subject. On 12 March 2009 the Senate approved the Tax Agent Services Act 2009 without amendments.

The "Transitional Rules" and "Regulations" which broadly speaking deal with the practicalities of the main Act were subject to an extensive process of public consultation.

The Transitional Provisions were introduced into the Lower House of Parliament on 24 June 2009 following reference to a Senate Standing Committee who modified the Bill following industry submissions. These Provisions were passed by Parliament on 29 October 2009 and then received Royal Assent on 16 November 2009.

The Regulations were released in exposure draft form for public and industry feedback on 2 August 2009. Key elements of the exposure draft Regulations included:



- The qualifications and relevant work experience requirements for registration as a BAS Agent
- The application fees for registration as a BAS Agent, and
- The requirements for recognition as a recognised professional association (RPA) or recognised BAS Agent association.

The Regulations, which do not require Parliamentary approval, were finalised on 13 November 2009.

The new BAS Agent Laws were to commence no later than nine months following the granting of Royal Assent to the Transitional Bill (which, as stated, was 16 November 2009).

On Thursday 26 November 2009, the Assistant Treasurer, Nick Sherry, announced the commencement date of the BAS Agent Laws. Despite industry speculation that it would begin in January, the Act will in fact commence on 1 March 2010.

An Overview of the BAS Agent Laws

The legislation calls for the introduction of a national Tax Practitioners Board who, among other things, will oversee and regulate the supply of BAS Services to the public. Only bookkeepers who have applied to the Board for registration as a BAS Agent will be permitted to render BAS services to their clients. BAS services have been more stringently defined and capture the majority of services provided by most bookkeepers. The legislation imposes a range of civil penalties ranging from \$5,500 to \$137,500 (per offence) for illegally providing, representing that you provide, or advertising that you provide, BAS services.

BAS Agents under the new system will be subject to a Code of Professional Conduct which imposes a range of obligations, one of which is the compulsion to hold Professional Indemnity Insurance to a Board-specified level. BAS Agents will also be subject to a range of administrative sanctions and civil penalties. Clients of BAS Agents will benefit from so-called safe harbour provisions which provide relief from penalties in the case of error or late lodgement by the BAS Agent.

In order to become registered as a BAS Agent, a bookkeeper must satisfy the Board that they meet certain criteria. Firstly, the applicant must be a “fit and proper person”. Secondly, the applicant must satisfy an educational criterion, which at a minimum requires the attainment of a Certificate IV Financial Services (Accounting) or Certificate IV Financial Services (Bookkeeping). Thirdly, the applicant must demonstrate some 1400 hours of “relevant experience” in the past three years.

An alternative means by which one can be a BAS Agent is to be a member of a Recognised Professional Association (RPA), which refers to seven accounting bodies being the ICAA, CPA, TIA, NIA, ATMA, CIMA and ACCA. RPA Members must also demonstrate some 1000 hours of “relevant experience” in the past three years.

The new regime also contemplates the emergence of BAS Agent Associations who may assist the Board by providing Board-recognised courses for ongoing professional education and disciplinary purposes. Importantly, being a member of a BAS Agent Association will not in and itself confer BAS Agent status on a person unless the earlier requirements regarding fit and proper person, education and experience are all implicit in that membership.

The Transitional Rules, broadly, provide an opportunity for bookkeepers who are already providing exempt BAS services under the existing s.251L to continue to do so for up to two years after the transition date. They also provide the same period for bookkeepers who are providing services that under the current laws do not constitute a BAS Service, but under the new laws, will. An example of this is the installation, configuration and training of accounting



software. Transitioned bookkeepers can also attain an initial BAS Agent registration within the two year transition period by meeting fewer requirements than would ordinarily be the case, however a year after that initial registration, they will be required to renew their BAS Agent registration and demonstrate that they meet all criteria.

The new BAS Agent era is likely to polarise the bookkeeping industry and will create two distinct strata of bookkeepers. One stratum will comprise those who can legally provide BAS services to the public; the other will comprise those who cannot. This is expected to lead to differences across the bookkeeping industry in terms of what services can be provided and at what cost. While it will likely result in some industry flight or, at the very least, the reshaping of some bookkeeper's business models, it may also attract new entrants to new opportunities in what will be a forever changed industry.

Part 2 – ABN's Solution: the BAS Wizard Partner Program

What is the BAS Wizard Partner Program?

ABN's BAS Wizard Partner Program is a structured quality assurance framework that provides a bookkeeper with a legal means of lodging a BAS under s.251L. It is the largest program of its type and accounts for a significant percentage of those bookkeepers who deal electronically with the Tax Office for BAS lodgement. ABN's BAS Wizard Partner Program has been in place since 2001 and is used by over 700 of ABN's members Australia wide.

How exactly does the process work?

In short, ABN acts as the registered tax agent and assumes responsibility for a quality assurance framework. Bookkeepers operate under the ABN quality assurance framework and are then "working under our direction" for the purposes of Section 251L.

At the heart of the BAS Wizard Partner Program is *BAS Wizard*, software that has been developed in-house by ABN's team of CAs and CPAs. BAS Wizard is a sophisticated Microsoft Excel spreadsheet that guides you step-by-step through the process of preparing Business Activity Statements for your clients.

There are three main steps:

1. When you have completed entering source data into a particular accounting software package and are ready to prepare your client's BAS, key totals are entered into the BAS Wizard software and you must complete a number of worksheets and proofs;
2. BAS Wizard produces key reconciliations based on these numbers and gives you the opportunity to make any additional adjustments relating to GST and various other taxes;
3. The BAS Wizard file is then emailed or uploaded to ABN. If the submitted data is in order, ABN emails back to you our certification (in most cases, within 24 hours). Upon receipt of this certification, you may lodge the BAS and render a fee to your client.

ABN's Commitment to Quality Assurance and the Law

We have specially annotated the ATO document *Guidelines for 'working under the direction of a registered tax agent'* so as to explain, in context, exactly how the BAS Wizard Partner Program complies with each facet of the Tax Office guidelines. This document can be downloaded from our website.

ABN takes Section 251L very seriously and has a number of measures in place to ensure that



appropriate quality assurances and direction are provided. Our quality assurance is based across three fronts:

1. The worksheets within BAS Wizard, together with the accompanying user manual, guides you through the completion of a BAS and provides numerous key checklists and reconciliations which serve as excellent work papers and a trail of the steps you have taken;
2. For each client BAS prepared, we certify the BAS based on a number of key reconciliations which are produced including control account proofs. The certification is also premised on your attesting to the fact that you have worked through the various checklists contained in BAS Wizard;
3. From time to time, we will perform a more thorough quality assurance spot check. This will entail choosing a client BAS which we certified for you during the previous six months, and requesting the accounting data underlying that BAS. The data can be made anonymous before submitting it to us.

What are the Benefits of being Part of the BAS Wizard Partner Program?

1. **Compliance with Section 251L.** You can legally charge a fee for preparation of the BAS. Lodging BASs in contravention of Section 251L exposes you to fines of \$22,000 per offence.
2. **Allows You to Provide the Complete Service.** By providing a BAS arm to your business, you have added value to the services that you can offer your clients. Clients will not need to seek out another bookkeeping firm or accounting firm to augment your bookkeeping work and turn it into a BAS.
3. **Additional revenue stream.** For those clients for whom you have already prepared their books, the additional fee that you levy for BAS preparation will stem from a minimal amount of additional work. But it is absolutely a service that warrants an additional fee, as the client's alternative is to self-prepare or see their accountant. The first option is not appealing to most clients, while the second option will invariably prove more expensive.
4. **Peace of mind** gained by knowing your BAS preparation has been subject to the rigours of the BAS Wizard and our certification process, which picks up a number of errors in BASs prior to lodgement. Many members of the program learn a great deal from operating under ABN's Quality Assurance framework.
5. **ATO Lodgement Extensions through the BAS Service Provider Portal.** The BAS Wizard Partner Program enables you to apply for access to the Tax Office's "BAS Service Provider Portal", which among other things entitles you to a two-week lodgement extension for many of your clients.
6. **Support is close at hand.** ABN's qualified team are available to assist with BAS-related questions that you may encounter, including issues relating to GST, FBT, PAYG Withholding and PAYG Instalment.
7. **Locks in transitional relief under the BAS Agent Laws.** Transitional relief under the BAS Agent laws requires, among other things, that bookkeepers be legally lodging BASs under Section 251L at the so-called "transition time". Bookkeepers making use of ABN's BAS Wizard Partner program will therefore satisfy this limb of the transitional provisions.
8. **Assists in gaining experience to satisfy the BAS Agent Laws.** For those bookkeepers who are transitioned into the new system, they must demonstrate to the Board that they have been providing BAS services to a competent standard for a reasonable period of time. In addition, when the first renewal of one's BAS Agent registration falls due, it will be necessary to show 1400 of hours of BAS experience over the preceding three years. Participation in the ABN BAS Wizard Partner Program will assist on both fronts.



What are the Costs?

The BAS Wizard software, and participation in the BAS Wizard Partner Program, is included with your ABN membership. A certification fee of \$33 (plus GST) will be charged for each Business Activity Statement that you send to us for certification. The certification fee is \$16.50 (plus GST) in the case of Instalment Activity Statements.

If you are a member of the Institute of Certified Bookkeepers (ICB) but not a member of ABN, you can still participate in the program for a cost of \$165 per year, plus the abovementioned certification fees.

Other Questions or Concerns About the BAS Wizard Partner Program

The Process Seems Too Difficult

Far from it! Having processed your application form to join the BAS Wizard Partner Program, we email you step-by-step instructions on how to get up and running. But in a nutshell, you will download the BAS Wizard software from our website, submit to us some fictional data (so that we can ensure you are comfortable using the software), and very shortly thereafter, you will start submitting actual BASs to us for certification. You can be up and running in a matter of hours.

“Once you are familiar with the BAS Wizard program it is quite simple and easy to use. I can complete a BAS Wizard in as little as 5 minutes. After the first couple of times the process will become second nature and you will find it an invaluable asset.”

My clients already have their own tax agents. Won't this be a problem?

Section 251L allows a bookkeeper to work under the direction of a registered tax agent, but it does not require that this be the same tax agent that manages a client's tax affairs. ABN has a legal relationship with you to provide a QA program that meets the Tax Office guidelines. We have no legal relationship with your client.

Will my using ABN erode my relationship with my client's accountant?

Most accountants do not want to be preparing BASs. If they know that a bookkeeper is legally preparing BASs to a high standard, this suits the accountant down to the ground. They know they can place a high reliance on the data that you provide them for the annual tax return. Many accountants will use the time they save from not having to prepare their client's BAS on other value added services for their clients.

Will my using ABN erode my client's relationship with their accountant?

No. The accountant should feel safe in the knowledge that there is no direct relationship between ABN and their client. The only relationships are between you and the client, and between you and ABN. ABN is merely providing a supervisory and control arrangement over the BAS services you provide to the client.

How can I recover the certification fee per BAS?

BAS services are a valuable service. As a bookkeeper who has formed a professional affiliation with ABN to have your work certified, you should be demanding a reasonable fee from your client. Many accountants charge in the hundreds or thousands of dollars to prepare BASs. As a bookkeeper, you can charge a good price for these services, one that covers your certification fee to ABN as well as providing you with a tidy reward for your services.

“By making BAS certification a separate service to the data entry/bookkeeping you can on charge the costs at a premium rate. If you explain to clients the legal requirements to using BAS Wizard most will be happy to pay an extra fee for the added security of knowing their BAS has been completed correctly.”

***How can I introduce the notion of ABN to my clients?***

It's easy. In the member's section of our website, we provide two Word templates for letters which you can send to your clients. The templates introduce ABN, explain our role in the marketplace, explain Section 251L in lay terms and explain why you, as their bookkeeper, require our services.

"BAS Wizard is an assurance for myself and my clients that all BAS data is validated, prior to lodgement. BAS Wizard data validation presents our bookkeeping practice as a professional business. With my clients' BAS data going through BAS Wizard, the income stream generated from this service is now a significant part of my business services ancillary income."

I have always prepared my clients BASs and to date have not been questioned by the Tax Office. I may as well just keep doing what I'm doing.

This is an intolerable stance to take as a professional bookkeeper. Aside from the risk of massive fines being levied against you by the Tax Office (\$22,000 per offence), you also risk being sued by your client or third parties relying on your work (e.g. banks). If you hold PI insurance, this will also be invalidated if you are illegally preparing BASs. Moreover, under the BAS Agent Laws, you will miss out on qualifying for the all important transitional rules. It also goes without saying that illegal BAS preparation would not count toward the 1400 hours experience criterion which has been prescribed by the new laws.

I'll do something one of these days.

Why wait? If you become part of the Program, you can start promoting your BAS services, rather than being prevented from providing them or providing them illegally. Furthermore, being Section 251L compliant also promises to open up many doors for you following the commencement of the BAS Agent Laws.

I'll approach a local tax agent and we'll put our own "working under the direction model" in place.

This rarely proves economically viable for the tax agent due to the rigours of the quality assurance guidelines espoused by the Tax Office. It is simply not commercially viable for a tax agent to go to these lengths for a small number of bookkeepers. ABN, by contrast, has the ability to leverage the quality assurance framework that it has built and maintained over several hundred bookkeepers. The ABN model is also a far less threatening one to your client's regular tax agent due to the fact that ABN is not a rival or competitor.

Will my client's data be treated confidentially?

We have a strict privacy code which we must abide by and this is explained on our website. In any event, you retain the ability to withhold client names and identifiers on the information that you supply us.

How long does it take to complete a BAS Wizard file and submit it for certification?

The vast majority of accounting files have few complexities and if it is in good order before you start posting totals to BAS Wizard, you should find about 15 minutes per file is all you need. Combine this time with our certification turnaround target of 24 hours and the Tax Office electronic lodgement facility available to you if you are on the BAS Wizard Program, and you will find that you can submit client Activity Statements quite quickly after completion of a bookkeeping assignment.

Is it easy to use?

Extremely. BAS Wizard follows a structured, logical process within an environment that we are all used to – Microsoft Excel. It guides you step-by-step from the point that your accounting file is complete right through to a completed BAS. It also has in-built integrity



checks to alert you to items that require correction before you submit the file to us for certification.

How do I become part of the BAS Wizard Partner Program?

If you're already an ABN member, you can start right now. Simply contact ABN on (07) 3290 4914 or download a BAS Wizard Partner Program Agreement from the Member's Area of our website. If you're not already an ABN member, you can [join](#) online. Once we have processed your application, we will email you the BAS Wizard Partner program Agreement.

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