

Meeting notes

Tax Agent Services – exposure draft legislation

When Wednesday 30 May 2007

Why Discuss the Tax Agent Services exposure draft legislation and capture issues and concerns from the perspective of bookkeepers.

Who ***Bookkeepers Advisory Group members***

Susan Abouav – Bookkeeper
Matthew Addison – Institute of Certified Bookkeepers (ICB)
Maria Benardis - Australian Association of Professional Bookkeepers (AAPB)
Roger Booker – Chartered Institute of Management Accountants (CIMA)
Kathie Collins – Bookkeeper
Susy Coslovich - Franchisor representative (FBAA and Busy Bookkeeping)
Robert Duncan - Association of Taxation & Management Accountants (ATMA)
Rick Freitag - Software products
Darren Hagarty - Australian Bookkeeper Network (ABN)
Maria Jowett – Bookkeeper
Winnie Kwok – Institute of Chartered Accountants in Australia (ICAA)
Peter McGinty – National Tax and Accountants Association (NTAA)
Maguy Nakhl – CPA Australia
Russell Smith – Bookkeeper

Guests

Emma Carroll – Quicken Australia
David Kettlestring - Association of Certified Bookkeepers Inc (CBK)
Alison Watts - MYOB Bookkeepers Club

Tax Office representatives

Karen Anstis
Kerrie Badger
Geoff Besgrove
Annamaria Carey
Rana Cobbin
Greg Lansdell
John Lindell
John Sullivan
Pam Shaw
Bernie Tappe
Terry Trewella
Rob Walsh

Facilitator

Julia Donohue



The views and/or opinions captured in the meeting notes are that of the Bookkeeper Advisory Group members and guests, the Tax Office did not participate in the discussion.

The notes captured in the discussion are not binding on the Tax Office or any of the persons referred to in these papers. The information captured in the meeting notes are not necessarily shared by all the attendees.

While every effort is made to accurately record views expressed, the wording necessarily represents a summary of statements of general position only, and care should be taken in interpreting those statements. These papers reflect the position at the date of release (unless otherwise noted) and readers should note that the position on any issue may subsequently change.

A summary of the issues and concerns discussed at the meeting is set out on the following pages.

Implementation

The following points were made regarding the implementation of the new arrangements:

- the Tax Office may wish to consider requiring BAS service providers to disclose their registration details on the BAS i.e. similar to the arrangements for tax agent details being disclosed on income tax returns
- there will be an expectation in the profession that the Tax Office will establish a lodgment program for BAS service providers
- it will be important for both consumers and practitioners to be well educated about the new arrangements and, in particular, the transitional arrangements
- the Bookkeepers Advisory Group would be happy to provide input to and feedback on any communication products//messages and education materials the Board and/or Tax Office prepare.

Tax practitioners

Reference	Issue/concern	Key points
Bill 602-15 EM Chapter 2 2.45	Definition of a BAS service Further examples are required in the explanatory memorandum to more clearly illustrate what is and isn't a BAS service.	The beginning to end process associated with meeting an obligation to lodge a BAS covers a wide range of activities and may involve a wide range of service providers. For example, developing software to record and report transactions, implementing software, establishing frameworks and policies, processing payrolls, data entry, reconciliations, preparation of a BAS and lodging a BAS. Further examples are required in the explanatory memorandum to clarify which of these services is a BAS service.
EM Chapter 3 3.51 to 3.53	Supervision and control Further examples are required in the explanatory memorandum to more clearly illustrate the concept of supervision and control and the circumstances in which an entity can and can not reasonable expect to rely on	Entities may use a variety of arrangements involving multiple services providers to meet their obligations to lodge a BAS. For example, an entity may use a bookkeeper to maintain records and a tax agent to prepare and lodge BASs and income tax returns. In some cases: <ul style="list-style-type: none"> • the bookkeeper, tax agent and the entity may all have different views about how a particular transaction should be recorded • the treatment of the transaction may be changed without the knowledge of the

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	the services.	<p>bookkeeper</p> <ul style="list-style-type: none"> the entity may not wish to pay for a service which can be relied upon i.e. only want to purchase the doing of the task. <p>In situations such as these it will be difficult to determine which service provider is responsible for providing the advice that the entity relied on.</p> <p>Further examples are required in the explanatory memorandum to illustrate the:</p> <ul style="list-style-type: none"> responsibilities of each party in these types of arrangements type of evidence a bookkeeper needs to have to demonstrate that the entity could not reasonably have expected to rely on the services.
Bill 602-30	<p>Eligibility requirements – individuals</p> <p>Individuals should be subject to the same sufficient resources requirements as other entities.</p>	<p>Section 602-30(1) does not require an individual to meet the same sufficient resources test as partnerships and companies even though the individual could be running a business and employing other people.</p> <p>An individual running a business and employing people presents the same risk from a consumer protection perspective as a partnership and company.</p>
Bill 602-35 EM Chapter 2 2.81 and 2.82	<p>Registration as a nominee</p> <p>It is not clear whether a nominee must be an employee.</p>	<p>Section 602-35 is silent on the nature of the relationship between the nominee and the registered BAS service provider.</p> <p>All the commentary and examples dealing with the registration of nominees in the explanatory memorandum refers to nominees being employed by the registered BAS service provider.</p> <p>Does this mean that a nominee must be an employee?</p> <p>Can the nominee be a contractor to the registered BAS service provider?</p> <p>Can a nominee be conducting a business? e.g. a contractor providing services as a nominee to a number of registered BAS service providers.</p>
Bill 604-10(9) EM Chapter 3 3.42	<p>Code of Professional Conduct - continuing professional development</p> <p>The specific requirements for continuing professional development need to be more clearly defined.</p>	<p>While it is recognised that there are benefits associated with not legislating the specific number of hours of continuing professional development required to maintain registration, the exposure draft does not provide certainty for service providers or consumers.</p> <p>It will be critical that the Board issues guidelines on the Code of Professional Conduct including a clear statement of continuing professional development</p>

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Bill 602-60(5) 604-10(15)	<p>Professional indemnity insurance</p> <p>The law needs to clearly stipulate that BAS service providers must have professional indemnity insurance.</p>	<p>requirements.</p> <p>Section 602-60(5) states that upon registration the Board may require you to maintain professional indemnity insurance.</p> <p>Section 604-10(15) states that you must maintain any professional indemnity insurance that the Board requirement you to maintain.</p> <p>In the absence of the Board requiring someone to maintain professional indemnity insurance there will be no requirement for a BAS service provider who is not a member of a RPA to have professional indemnity insurance.</p> <p>It should be a requirement of the law for a BAS service provider to have professional indemnity insurance. The explanatory memorandum and education material should clearly explain why professional indemnity insurance is required. This will reinforce the message to BAS service providers that they do have a duty of care when providing services.</p>
Regs Schedule 3 Part 1, 102	<p>Eligibility requirements – RPAs</p> <p>The term ‘voting member’ is not defined.</p>	<p>The majority of the requirements for recognition as a RPA are quite specific. However, the term ‘voting member’ in regulation 102 is not defined and is too loose. There is a risk that membership numbers will be manipulated to meet the eligibility requirements.</p>
Regs Schedule 4 Part 2, Div 1 201	<p>Qualifications – GST/BAS content</p> <p>The structure of regulation 201(a) could be improved to make it clearer that the successful completion of a course in basic GST/BAS taxation principles is required.</p>	<p>The Certificate IV Financial Services (Bookkeeping) course was developed in response to feedback that the content of the Certificate IV Financial Services (Accounting) course was income tax focused i.e. did not adequately cover GST/BAS taxation principles.</p> <p>The structure of the regulation needs to make it clearer that the institutional and course content requirements apply to both Certificate IV courses and not just the Bookkeeping course.</p>
Regs Schedule 4 Part 2, Div 1 202	<p>Qualifications – RPA members</p> <p>The lack of competency or experience requirements for a member of recognised professional association (RPA) to be eligible to become a BAS</p>	<p>The educational qualifications required to join a RPA vary from association to association – a member of a RPA may not have been required to study taxation law.</p> <p>A member of a RPA may become a BAS service provider even though they have no</p>

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	<p>service provider may compromise the consumer protection intent of the new measures.</p>	<p>practical experience in the application of GST law.</p> <p>Being a member of a RPA is not relevant for determining a person's eligibility to be a tax agent – there is a separate and additional process required – why isn't this case for BAS service providers?</p> <p>There is a risk that people will become a member of a RPA to obtain registration as a BAS service provider and then discontinue their membership of the RPA until it is time to renew their registration i.e. drop in and out of being a member of a RPA.</p> <p>Allowing a member of a RPA who has no practical experience to become a BAS service provider means there is no consumer protection at the point of engagement i.e. consumer is only afforded protection after services are provided via the code of professional conduct.</p> <p>Adding a competency test (e.g. hours of relevant experience) for a RPA under paragraph 202 would easily rectify this situation.</p>
<p>Regs Schedule 4 Part 2, Div 1 202</p>	<p>Other qualification or standard</p> <p>Other qualification or standard requirement includes an individual who is a member of a RPA but does not include an individual who is a member of a recognised BAS service provider association.</p>	<p>Is it the government's intent to make it easier to become a BAS service provider if you are a member of a RPA?</p> <p>As outlined above, this seems anomalous given that a member of a RPA may not have any knowledge or practical experience of GST/BAS taxation principles.</p> <p>There does not appear to be any direct benefit in terms of being eligible for registration as a BAS service provider of being a member of a recognised BAS service provider association.</p> <p>Adding a recognised BAS service provider association to paragraph 202 would easily rectify this situation.</p>
<p>Bill Schedule 2 3(3)</p>	<p>Consumer protection during transition time</p> <p>There will be insufficient information available to consumers for them to make informed purchasing decisions during transition.</p>	<p>The lack of a mechanism to identify BAS service providers who have not yet registered but are covered by the transitional rules will mean that consumers have no way of determining whether a BAS service provider is, in fact, covered by the transitional rules.</p> <p>There will be valid cases where a BAS service provider does not wish to seek registration at the beginning of the transitional time e.g. they know they will need to provide services for a period of time to meet the experience requirements.</p>

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		<p>However, there is a risk that someone who is not covered by the transitional rules (i.e. not providing BAS services immediately prior to transition commencing) will provide services during the transition time.</p> <p>How will a consumer know it is OK to use a particular bookkeeper during transition?</p>
Bill Schedule 2 3(3)	<p>Anomaly with transitional rules for eligibility requirements – RPA members</p> <p>The transitional rules for eligibility requirements are different for RPA members who were providing exempt BAS services before the transition time and those who were not.</p>	<p>A member of a RPA providing exempt BAS services immediately before the transition time will need to satisfy the Board of two things to be eligible – fit and proper person and competency.</p> <p>A member of a RPA who was not providing exempt BAS services immediately before transition time will only need to demonstrate they are a fit and proper person.</p> <p>It is anomalous that a lower level of eligibility requirement is applied to a member of a RPA who has no experience in the provision of BAS services.</p> <p>Adding a competency test (e.g. hours of relevant experience) for a RPA would easily rectify this situation.</p>
EM Chapter 3 3.54	<p>Audits of trust accounts</p> <p>There is no requirement for a tax practitioner who is not a member of a RPA to have trust accounts audited.</p>	<p>A requirement to audit trust accounts is not stipulated in all the relevant State laws referred to in paragraph 3.54 of the explanatory memorandum. Queensland is the only state which has State laws that require a trust account to be audited.</p> <p>In addition to closing this loophole, the Board should also require tax practitioners to make a number of declarations regarding trust accounts in applications for registration and re-registration e.g. do you hold money on behalf of your clients? do you have a trust account? is the trust account audited?</p>

Tax Practitioners Board

Reference	Issue/concern	Key points
EM Chapter 5 5.27	<p>Nomination of Board members</p> <p>Recognised BAS service provider associations are not included as one of the organisations which may nominate a candidate for appointment to the Board.</p>	<p>Paragraph 5.27 specifically includes a recognised professional association as an organisation which may nominate a candidate for a Board appointment whereas recognised BAS service provider associations are not included.</p> <p>The exclusion of recognised BAS service provider associations from this paragraph unnecessarily diminishes the role of recognised BAS service provider associations.</p>

Bill Div 608	<p>Composition of Board and committee structure</p> <p>The exposure draft is silent on the specific membership and committee structure of the Board.</p>	<p>A Board that is regulating a profession must have a sound understanding of the profession it is regulating. For this reason, it is considered critical that at least one member of the Board be a direct representative of the BAS service provider profession.</p> <p>Similarly, any committees established by the Board to regulate BAS service providers (i.e. registration, investigation and discipline matters) will need to comprise representatives from the BAS service provider profession.</p>
Bill Div 608	<p>Establishment of a national Board</p> <p>There is a risk that a national Board will not understand the state-based context in which tax practitioners must work.</p>	<p>It will be important for the Board to ensure that it has mechanisms to understand local state-based issues as there will be different compliance issues in each state.</p> <p>It would be beneficial for the Board to establish consultation forums to provide a mechanism for consumers and practitioners to provide feedback on the operation of the law and the Board's administration of that law.</p>

Relief from certain tax shortfall penalties

Reference	Issue/concern	Key points
EM Chapter 6	<p>Extent of relief provided</p> <p>The relief provided does not go far enough.</p>	<p>A shortfall penalty is only one of many penalties a taxpayer may be liable for. It is disappointing that other penalties (e.g. failure to lodge) have not been included in the relief measures set out in the Bill.</p> <p>There is also insufficient disclosure in the explanatory memorandum about who has the liability in these circumstances.</p>