



## AUSTRALIAN BOOKKEEPERS NETWORK

9 January 2008

Committee Secretary  
Senate Economics Committee  
Department of the Senate  
PO Box 6100  
Parliament House  
Canberra ACT 2600  
Australia

By email: [economics.sen@aph.gov.au](mailto:economics.sen@aph.gov.au)

Dear Sir/Madam,

We welcome the opportunity to provide a submission to the Standing Committee on Economics regarding the *Tax Agent Services Bill 2008*. Our submission relates solely to BAS Agents (bookkeepers) as a subset of that Bill.

The legislation represents the first time that 'fee for service' bookkeepers are to be specifically regulated and as such will significantly impact this industry. Australian Bookkeepers Network (ABN) has been involved with 'fee for service' bookkeepers since 2001. ABN has grown a significant member base and is the largest organisation of its kind in the country. We have been actively involved in a number of consultative forums affecting this industry and are vitally interested in the outcome of this legislation and its impact on our members. Our members account for a significant percentage of the BAS service providers currently registered on the Tax Office ECI and Bookkeepers Portal and who are actively lodging BASs under the current legislative regime.

Our submission is centered around two areas:

1. Issues surrounding draft transitional provision 4 (3); and
2. Consideration of the operative date of the new legislation.

Our submission contains four parts:

1. This correspondence;
2. Letter to Treasury dated 26 June 2008 containing a submission regarding the draft transitional provisions to the new Tax Agent Legislation which at the time was

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P (07) 3290 4914 F (07) 3290 3851 E [info@austbook.net](mailto:info@austbook.net) [www.austbook.net](http://www.austbook.net)

termed the *Tax Agent Services and (Consequential and Transitional Provisions) Bill 2008*;

3. Discussion Paper titled *1400 Hours To a BAS Agent* which we presented to the Tax Office's Bookkeeper Advisory Group (BAG) in November 2008. This paper examines issues that we believe require urgent clarification in terms of the draft regulation requiring a BAS Agent to have 1400 hours of relevant experience;
4. Memo titled *Tax Practitioner Board Priority Issues* which was also presented to the Tax Office's Bookkeeper Advisory Group (BAG) in November 2008. This paper examines issues that ABN believes requires urgent clarification by regulators or a responsible governing authority such as the new Tax Practitioner Board.

### **Issues surrounding draft transitional provision 4 (3)**

Our correspondence to Treasury dated 26 June 2008 (attached) was directed at the draft transitional rules as they existed at that time. Given that the final transition rules have yet to be released to the public, references in this correspondence and our attached letter of 26 June 2008 are to the transitional rules as we know them.

Provision 4 (1) of the draft transitional rules provides transitional registration relief to a bookkeeper legally rendering a BAS service as defined by the predecessor section 251L immediately before the commencement of the new legislation. Provision 4 (2) allows transitional relief to a bookkeeper rendering a BAS service as defined by the new legislation immediately before the commencement of the new legislation. These were the two transitional options as we understood it at the time of our Treasury submission of 26 June 2008 (attached).

The issues raised in our correspondence of 26 June 2008, surrounding provision 4 (1) and 4 (2), present our view that that there are some minor drafting ambiguities surrounding the two apparent options (or limbs) for transitional entry as a BAS Agent. In addition to our view on these two provisions we would like to raise a third drafting ambiguity surrounding transitional provision 4 (3) reproduced below:

*“(3) If:*

*(a) an individual applies for registration as a registered BAS agent under section 20-20 of the new law before the end of the 3 year period beginning immediately after commencement; and*

*(b) the individual would be eligible for registration but for the operation of paragraph 20-5(1)(b) of the new law (which requires the Board to be satisfied that the individual meets requirements prescribed by regulations, including requirements in relation to qualifications and experience in respect of registration as a registered BAS agent); and*

*(c) the Board is satisfied that the individual had been providing BAS services to a competent standard for a reasonable period before making the application; then, despite paragraph 20-5(1)(b) of the new law, the individual is eligible for registration.”*

Our initial reading of this provision 4 (3) was that it was a qualifier of the first two limbs 4(1) and 4 (2). Thus, if a bookkeeper was legally rendering a BAS Service (as defined by either new or old legislation), they may take advantage of a transitional option for a period up to 2 years. Then, pursuant to 4 (3), they are eligible for registration for 3 years from date of commencement so long as the Board is satisfied that they have been providing BAS services to a competent standard for a reasonable period.

On closer scrutiny of the drafting and a literal reading of provision 4 (3), it could be interpreted as a third limb for registration as a transitional bookkeeper. If so, it would seem to make somewhat redundant the first two limbs for transitioning and render the two year timeframe mentioned in the first two limbs quite confusing. Additionally, and depending on the interpretation of the Board of this provision, it would lessen the appeal for initial registration with qualifications and experience. As a minimum, this transitional provision requires further clarification.

### **Consideration of the operative date of the new legislation**

We understand the *Tax Agent Services Bill 2008* legislation is to be considered by the Standing Committee on Economics and debated in the Autumn sitting of Parliament. Assuming the legislation is passed, it then moves through to Royal Assent and an operative date of the new legislation is set.

Sometime thereafter, the Tax Agent Services (Transitional Provisions and Consequential Amendments) Bill will be introduced and upon it receiving Royal Assent, a period of 9 months is said to be the likely timeframe before the operative date of the legislation.

We believe that due consideration needs to be given to the amount of time allocated between Royal Assent and the operative date insofar as it affects BAS Agents (bookkeepers). We believe there is good argument for allowing a longer period than 9 months following the passing of the Transitional Bill. We hold this view for the following reasons:

### **The need to maximise the number of BAS Agents that register**

Bookkeepers currently fill a valuable role in the tax practitioner industry by dealing with a significant percentage of the BAS preparation workload (disturbingly though, many do so in breach of the current Section 251L of the Act). If we don't see significant numbers of bookkeepers take up BAS Agent registration, then there will be some consequences that will have negative impact. The workload for BAS preparation services will in part fall back onto Tax Agents who are currently struggling to stay on top of an ever increasing workload. Some of the workload will fall back onto the taxpayer with the resultant risk to quality of BAS lodged and revenue collected. No doubt some part of the workload will fall on unregistered bookkeepers who through either ignorance or wilful non-compliance, will continue to render BAS services to taxpayers. In addition, the cost to business will likely increase due to the fee differential charged by Tax Agents and bookkeepers.

There are two ways in which a BAS Agent can register under the new provisions, either:

- By meeting the requirements in the regulations – in essence, holding a Certificate IV and demonstrating 1400 hours of relevant experience; or
- By being eligible for the transitional registration provisions.

In order to meet the registration requirements in the regulations, BAS Agents will need time to gain the Certificate IV qualification. There are numerous issues surrounding the 1400 hours of relevant experience registration requirement that are exacerbated by a short time frame between Royal Assent and operative date. See detailed discussion on this issue in the enclosed discussion paper titled *1400 Hours To A BAS Agent*.

The transitional registration provisions are logically included in the new legislation to allow industry incumbents time to come to terms with the new legislation and thus guard against a flight from the industry, while ensuring that all participants adopt the educational and experience requirements (over time) necessary to meet the level of consumer protection intended by the legislation. Industry statistics and independently commissioned research into the size of the population of prospective BAS Agents put numbers at between 10,000 and 20,000 participants. With perhaps only 10% of this number currently registered with the Tax Office ECI or Bookkeeper Portal, it would seem that the numbers of transition-ready BAS Agents are currently quite low. Time is needed to make potential transition bookkeepers aware of the transitional rules to maximise its uptake.

There are large numbers of prospective BAS Agents who are currently ignorant of the current section 251L requirements or the pending BAS Agent legislation. Industry research shows that these people often operate in isolation and are not exposed to quality information about their legal obligations. Certainly this has been our experience over the last few years where we have seen a rapid growth in membership, many of whom were unaware of their legal obligations surrounding BAS or the pending legislation. Sadly there is still a massive percentage of the industry that has not been exposed to the new legislation either through the Tax Office or industry bodies like ours. Time is needed to reach these people and properly educate them such that the industry is not faced with mass exodus or a continuation of illegal practitioners.

### **The impact of 1400 hour Relevant Experience criteria in the regulations**

The 1400 hours of relevant experience over the preceding 3 years is arguably the strongest registration criterion contained in the regulations, as a Certificate IV is not an overly searching educational requirement. A short time frame between Royal Assent and commencement of the legislation will present the yet-to-be-formed Tax Practitioner Board with a number of dilemmas:

- There is retrospective nature of the 1400 hours of relevant experience over preceding 3 years registration criteria. This will present prospective BAS Agents with difficulty in quantifying the “1400 hours” and qualifying the “relevant experience”. This issue is detailed in the enclosed discussion paper *1400 Hours To a BAS Agent*;

- Because of the relatively low levels of numbers of bookkeepers currently able to demonstrate compliance with section 251L, many bookkeepers will be gaining experience illegally. Given that such a breach would be a serious taxation offence, the issue of whether such experience should be allowed in the 1400 hour registration requirement will have to be dealt with by the board. ”. This issue is detailed in the enclosed discussion paper *1400 Hours To a BAS Agent*.

Should the yet to be formed Tax Agent Board go easy on what seems to us to be the strongest registration criterion? If they do so, there is a resultant risk to consumer protection which is a tenet of the new legislation. If they do not, there is a risk that a lesser number of bookkeepers will be able to satisfy a robust interpretation of the 1400 hours of relevant experience with the resultant loss from the industry. Giving bookkeepers more time between passage of the legislation and the operative date will mean that more bookkeepers can move to satisfy the 1400 hour requirement and the board can take a reasonable approach to the interpretation of the 1400 hour requirement.

### **Time for the National Tax Practitioner Board to implement**

The National Tax Agent Board formed as a consequence of this legislation will be very busy. Once they have administratively established themselves, they will have to form positions on a myriad of issues contained in the legislation, regulations, transitional provisions and explanatory memorandum. In addition, they will need to establish registration procedures and articulate these to prospective BAS Agents (many of whom are very difficult to locate). There are currently a significant number of issues that need urgent clarification that will impact prospective registrants and transitional registrants (see enclosed discussion paper *Tax Practitioner Board Priority Issues*). The memo concentrates on initial priority issues (mostly registration issues) but there are plenty of others. Giving the Tax Practitioner Board more time between the passage of the legislation and the operative date will mean that greater clarity can be provided by the board on registration and other issues.

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

Yours faithfully,



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Darren Hagarty  
Director



## AUSTRALIAN BOOKKEEPERS NETWORK

26 June 2008

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

By email: [taxagentservices@treasury.gov.au](mailto:taxagentservices@treasury.gov.au)

Dear Sir/Madam,

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

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

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

### **Overview of this Submission**

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

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

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

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

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

#### **Schedule 2, Provision 4, Subitem 1**

(1) If:

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

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

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

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

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

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

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

In practice this means:

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

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

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

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

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

#### **Schedule 2, Provision 4, Subitem 2**

(2) *If:*

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

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

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

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

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



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

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

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

### **Proposed Drafting**

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

- (1) If:
- (a) immediately before commencement, an individual:
    - (i) was a person referred to in subsection 251L(6) of the old law; and
    - (ii) was providing BAS services within the meaning of subsection 251L(7) of the old law; and
  - (b) during the 2 year period beginning immediately after commencement, the individual provides a BAS service within the meaning of the ~~new~~ old law;

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

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

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

## **Conclusion**

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

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

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

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

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

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

Yours faithfully,



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Darren M. Hagarty  
Director



## Discussion Paper: 1400 Hours to a BAS Agent

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### Introduction

The new legislation requires satisfaction of both qualification and experience criteria before gaining BAS Agent registration. Arguably the qualification criteria pitched at the Certificate IV level is not an overly searching benchmark, thus it is presumed considerable weighting will be placed by the Tax Practitioners Board on the experience criterion. This synopsis explores the unanswered questions surrounding the 1400 hour experience criterion for registration as a BAS Agent.

### Legislative Background

The BAS Agent registration requirements contained in the Tax Agent Services Bill 2008 (section 20-5), includes an obligation to meet “experience” requirements as prescribed under the Regulations.

Division 1 paragraphs 201 and 202 of Part 2 of Schedule 2 to the draft Regulations (Tax Agent Services Regulations 2008) prescribe ...“that an individual has undertaken at least 1400 hours of *relevant experience* in the preceding 3 years”.

Paragraph 203 defines relevant experience as follows:

“For Division 1 of this Part, *relevant experience* means:

- a) work by an individual as a tax agent registered under the Act or a BAS agent registered under the Act; or
- b) work by an individual under the supervision and control of a tax agent registered under the Act or a BAS agent registered under the Act; or
- c) work by an individual of a kind approved by the Board;  
in the course of which the individual’s work has included substantial involvement in one or more of the kinds of *BAS services* described in section 90-10 of the Act.”

Section 90-10 of draft Tax Agent Services Bill 2008 defines a *BAS service* as follows:

- 1) A *BAS service* is a tax agent service:
  - a) That relates to:
    - i. ascertaining the liabilities, obligations or entitlements of an entity that arise, or could arise, under a BAS provision; or
    - ii. advising an entity about the liabilities, obligations or entitlements of the entity or another entity that arise, or could arise, under a BAS provision; or
    - iii. representing an entity in their dealings with the Commissioner in relation to a BAS provision; and
  - b) that is provided in circumstances where the entity can reasonably be expected to rely on the service.

The 1400 hours of relevant experience must be demonstrated by prospective BAS Agents at one of two registration points:

1. **Initial registrant** in terms of section 20-20;
2. **Transitional registrants** upon renewal of their initial registration 3 years after being granted initial registration terms of Schedule 2 to draft Tax Agent Services and (Consequential and Transitional Provisions) Bill 2008.

## **Issues To Be Clarified Surrounding The 1400 Hour Requirement**

Initial registrants that wish to register from the commencement date of the legislation may have to satisfy the 1400 hour requirement as soon as January 2010 assuming legislation receives Royal Assent in approximately March 2009. Transitional registrants may enjoy a timeframe as far away as January 2015, making the same timeframe assumption for Royal Assent.

There are a number of questions for aspiring BAS Agent registrants that need clarification. Many of these questions are time critical, particularly for first time registrants looking to register without the benefit of the extra time afforded under the transitional provisions:

1. Most of the 3 years preceding application for **initial registrants** (assuming the above timeframe) has now passed, which limits a prospective registrant's ability to comply with any procedural or evidentiary obligation surrounding the 1400 hours imposed by the yet to be formed Tax Practitioners Board. **Will** latitude be given to bookkeepers surrounding evidentiary requirements given compliance may need to be demonstrated with retrospective effect to both legislation and any Tax Practitioners Board guidelines? If latitude is to be given, **should** this be the case given that the relevant experience criterion is arguably a stronger registration criterion than the Certificate IV qualification?
2. Legislation could still be changed surrounding the 1400 hours relevant experience requirement between now and Royal Assent. Given this could further increase the component of the 3 years that may need to be satisfied "retrospectively", will latitude be given to bookkeepers surrounding evidentiary requirements given compliance may need to be demonstrated with retrospective effect to both legislation and any Tax Agents Practitioners guidelines?
3. What work of an individual will be of "a kind approved by the Board" in terms of Division 1 paragraphs 203 c) of Schedule 2 to the draft Regulations (Tax Agent Services Regulations 2008)?
4. What evidentiary requirement (standard of proof) will be imposed surrounding the satisfaction of the 1400 hours of relevant experience?
5. What discrete functions carried out by a bookkeeper will be deemed as "**ascertaining** the liability, obligation or entitlement under a BAS provision" for the purposes of Section 90-10 1) a) i) of draft Tax Agent Services Bill 2008? The Explanatory Memorandum, through its various examples, draws conclusions as to which attendances are BAS services, however it draws these conclusions through a focus on issues such as the degree of reliance and the

outcomes of the service. These examples are therefore helpful in determining which attendances are BAS services, but are not instructive as to which of the discrete tasks underlying these services would and would not count toward the definition of “relevant experience”.

6. What discrete functions carried out by a bookkeeper will be deemed as “**advising** an entity about the liability, obligation or entitlement under a BAS provision” for the purposes of Section 90-10 1) a) ii) of draft Tax Agent Services Bill 2008? The Explanatory Memorandum, through its various examples, draws conclusions as to which attendances are BAS services; however it draws these conclusions through a focus on issues such as the degree of reliance and the outcomes of the service. These examples are therefore helpful in determining which attendances are BAS services, but are not instructive as to which of the discrete tasks underlying these services would and would not count toward the definition of “relevant experience”.
7. What discrete functions carried out by a bookkeeper will be deemed as “**representing** an entity in their dealings with the Commissioner” in relation to a BAS provision” for the purposes of Section 90-10 1) a) iii) of draft Tax Agent Services Bill 2008? The Explanatory Memorandum, through its various examples, draws conclusions as to which attendances are BAS services, however it draws these conclusions through a focus on issues such as the degree of reliance and the outcomes of the service. These examples are therefore helpful in determining which attendances are BAS services, but are not instructive as to which of the discrete tasks underlying these services would and would not count toward the definition of “relevant experience”.
8. What **volume** of a bookkeepers work will deemed to be “**substantial**” in terms of Division 1 paragraphs 203 c) of Schedule 2 to the draft Regulations (Tax Agent Services Regulations 2008)?
9. What **breadth of exposure** to different kinds of BAS services of a bookkeepers work will deemed to be “**substantial**” in terms of Division 1 paragraphs 203 c) of Schedule 2 to the draft Regulations (Tax Agent Services Regulations 2008)?
10. With limited **breadth of exposure** to different kinds of BAS services by a bookkeeper in terms of Division 1 paragraphs 203 c) of Schedule 2 to the draft Regulations (Tax Agent Services Regulations 2008); would it be expected that a BAS Agent registration have qualifications placed on their registration in terms of section 20-25 5), 6) and 7)?
11. If qualifications are to be placed on registration qualifications in terms of section 20-25 5), 6) and 7), what form would such qualifications take?
12. Will experience gained in providing BAS services illegally under the predecessor régime (s.251L) be expressly excluded? Unless this is the case, those currently complying with the law and incurring costs in doing so are at a disadvantage compared with those who are flagrantly disregarding it.

## **Conclusion**

The 1400 hours of relevant experience is perhaps the strongest registration criterion under the new legislation. The fact that it also now applies to those seeking BAS Agent registration as an RPA member speaks to its importance. As such it would not seem prudent to compromise the effectiveness of this registration criterion. However, there are serious issues that need to be clarified in terms of the 1400 hour relevant experience registration criterion before aspiring BAS Agents can reasonably demonstrate that they meet this criterion. The sooner these issues are answered the better especially as there is likely to be a retrospective effect for some.



## Discussion Paper: Tax Practitioner Board Priority Issues

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The purpose of this paper is not to provide a listing of all issues that the new Board will have to formulate positions on; they will no doubt do this in the fullness of time. Rather the purpose is to provide a concise list of priority issues that will affect bookkeepers initial obligations under the Tax Agent Services Bill 2008, Tax Agent Services Regulations 2008 and Tax Agent Services and (Consequential and Transitional Provisions) Bill 2008. Thus this paper has focused on issues that deal with Board interpretative Issues that affect:

- Transitional Registrations;
- Non-transitional registrations; and
- Code of Professional Conduct.

### Transitional Registrations

Absolute clarity of the transitional registration provisions to bookkeepers should be a priority of the new board. Without such clarity there are impediments to industry incumbents transitioning safely into the new regime. This brings with it the resultant risk of a loss to the industry of skilled bookkeepers or a shortage of able bookkeepers willing to fill the BAS Agent space.

- The first limb of the transitional provisions {Schedule 2 (4) (1)} allow a bookkeeper to provide BAS Services as defined under the new legislation for a period of 2 years, so long as they were persons permitted to do so under the old legislation section 251L(6). ***What is not clear is do the conditions that conferred eligibility under section 251L (6) need to be maintained during the 2 year transition period (specifically membership of an RPA or “working under the direction”)?***
- The second limb of the transitional provisions {Schedule 2 (4) (2)} allows for a bookkeeper that is providing “BAS Services” (as defined under the new law) just prior to commencement of the new law to provide “BAS Services” as defined under the new law for a period of 2 years. The second limb was no doubt created to ensure certain bookkeepers were not excluded from transitioning because of the definitional differences in a “BAS Service” that would exclude them from the first limb. A classic example would be a Leonard in Example 2.2 to the Explanatory Material to the legislation who installs and configures software for clients. This is not a BAS service within the meaning of s.251L(7) of the old law, but will be a BAS service under the new law. Thus Leonard may qualify to transition under the second limb of the transitional provisions. ***What is not clear is whether Leonard could expand his range of services during the transition timeframe to include any “BAS service” as defined under the new law.*** If this were the case a single occurrence of software configuration prior to commencement may entitle Leonard to commence a BAS preparation service (an activity in which he may have absolutely no experience) rather than being limited

to the BAS Service he was skilled in prior to the new legislation i.e. software configuration.

- Clarification of issues surrounding the initial registration requirements for transitional bookkeepers needs to be spelled out including:
  - *Do transitional bookkeepers apply for transitional bookkeeper status or is it self-assessment?*
  - *Who polices a transition bookkeeper's eligibility to transition?*
  - *How does a taxpayer identify that their transition eligible bookkeeper is an appropriately registered person such that they are assured of access to 'safe harbour'?*
  - *Do transition bookkeepers hold the same registration identifier (number designation etc) as non-transition bookkeepers during the 2 year transition time?*
  - *When is the last date by which a bookkeeper can transition i.e. can they transition after commencement date of the new law?*
- Transitional provision 4 (3) says that a transition bookkeeper may apply for registration within 3 years of the commencement date without the need to satisfy qualification and experience requirements of section 20-5 (1) (b). The provision in sub-paragraph c) also requires that the Board must also be "satisfied that the individual has been providing BAS Services to a competent standard for a reasonable period". *Clarification as to the likely parameters that will be applied to "competent standard" and "reasonable period" is necessary* as it may affect the requirement to document the 1400 hours of relevant experience and the timeframe by which the BAS Agent will need to satisfy the Certificate IV obligation.

## **Non-transitional Registrations**

### **1400 Hours**

Reproduced from 1400 hours to a BAS Agent paper as follows:

"There are a number of questions for aspiring BAS Agent registrants that need clarification. Many of these questions are time critical, particularly for first time registrants looking to register without the benefit of the extra time afforded under the transitional provisions:

1. Most of the 3 years preceding application for *initial registrants* (assuming the above timeframe) has now passed, which limits a prospective registrant's ability to comply with any procedural or evidentiary obligation surrounding the 1400 hours imposed by the yet to be formed Tax Practitioners Board. *Will* latitude be given to bookkeepers surrounding evidentiary requirements given compliance may need to be demonstrated with retrospective effect to both legislation and any Tax Practitioners Board guidelines? If latitude is to be given, *should* this be the case given that the relevant experience criterion is arguably a stronger registration criterion than the Certificate IV qualification?
2. Legislation could still be changed surrounding the 1400 hours relevant experience requirement between now and Royal Assent. Given this could further increase the component of the 3 years that may need to be satisfied



- “retrospectively”, will latitude be given to bookkeepers surrounding evidentiary requirements given compliance may need to be demonstrated with retrospective effect to both legislation and any Tax Agents Practitioners guidelines?
3. What work of an individual will be of “a kind approved by the Board” in terms of Division 1 paragraphs 203 c) of Schedule 2 to the draft Regulations (Tax Agent Services Regulations 2008)?
  4. What evidentiary requirement (standard of proof) will be imposed surrounding the satisfaction of the 1400 hours of relevant experience?
  5. What discrete functions carried out by a bookkeeper will be deemed as “**ascertaining** the liability, obligation or entitlement under a BAS provision” for the purposes of Section 90-10 1) a) i) of draft Tax Agent Services Bill 2008? The Explanatory Memorandum, through its various examples, draws conclusions as to which attendances are BAS services, however it draws these conclusions through a focus on issues such as the degree of reliance and the outcomes of the service. These examples are therefore helpful in determining which attendances are BAS services, but are not instructive as to which of the discrete tasks underlying these services would and would not count toward the definition of “relevant experience”.
  6. What discrete functions carried out by a bookkeeper will be deemed as “**advising** an entity about the liability, obligation or entitlement under a BAS provision” for the purposes of Section 90-10 1) a) ii) of draft Tax Agent Services Bill 2008? The Explanatory Memorandum, through its various examples, draws conclusions as to which attendances are BAS services; however it draws these conclusions through a focus on issues such as the degree of reliance and the outcomes of the service. These examples are therefore helpful in determining which attendances are BAS services, but are not instructive as to which of the discrete tasks underlying these services would and would not count toward the definition of “relevant experience”.
  7. What discrete functions carried out by a bookkeeper will be deemed as “**representing** an entity in their dealings with the Commissioner” in relation to a BAS provision” for the purposes of Section 90-10 1) a) iii) of draft Tax Agent Services Bill 2008? The Explanatory Memorandum, through its various examples, draws conclusions as to which attendances are BAS services, however it draws these conclusions through a focus on issues such as the degree of reliance and the outcomes of the service. These examples are therefore helpful in determining which attendances are BAS services, but are not instructive as to which of the discrete tasks underlying these services would and would not count toward the definition of “relevant experience”.
  8. What **volume** of a bookkeepers work will deemed to be “**substantial**” in terms of Division 1 paragraphs 203 c) of Schedule 2 to the draft Regulations (Tax Agent Services Regulations 2008)?
  9. What **breadth of exposure** to different kinds of BAS services of a bookkeepers work will deemed to be “**substantial**” in terms of Division 1 paragraphs 203 c) of Schedule 2 to the draft Regulations (Tax Agent Services Regulations 2008)?

10. With limited *breadth of exposure* to different kinds of BAS services by a bookkeeper in terms of Division 1 paragraphs 203 c) of Schedule 2 to the draft Regulations (Tax Agent Services Regulations 2008); would it be expected that a BAS Agent registration have qualifications placed on their registration in terms of section 20-25 5), 6) and 7)?
11. If qualifications are to be placed on registration qualifications in terms of section 20-25 5), 6) and 7), what form would such qualifications take?
12. Will experience gained in providing BAS services illegally under the predecessor regime (s.251L) be expressly excluded? Unless this is the case, those currently complying with the law and incurring costs in doing so are at a disadvantage compared with those who are flagrantly disregarding it.”

#### **Certificate IV Qualifications**

- Schedule 2 Part 2 Regulation 201 prescribes that an individual has been awarded at least a Certificate IV (accounting/bookkeeping) that required the successful completion of a course in basic GST/BAS taxation principles. *What process will be required of individuals completing older courses that did not incorporate a course in basic GST/BAS taxation principles? Will a higher qualification than Certificate IV (diploma or degree) that did not incorporate a course in basic GST/BAS taxation principles satisfy this requirement?*

#### **Fit And Proper Person**

- *Will a bookkeeper who has been preparing client BASs in breach of section 251L (i.e. they are not an RPA member or not working under the direction of a Tax Agent) still be considered as a fit and proper person in terms of Section 20-5 (1) (a) when applying for registration.* The prescribed penalty for breach of S:251L is 200 penalty units and the threshold of “a serious taxation offence” (see 2.43 of the explanatory memorandum) is 40 units. The explanatory memorandum (2.41) also prescribes “conviction” of such an offence. *In the absence of conviction will the illegal acts be a valid contribution toward the 1400 relevant experience criteria?*

#### **Conditions On Registration**

Section 20-25 (5), (6) and (7) make it clear that the Board may impose conditions on a registration including the subject area that the individual may render services. Since any qualifications that may be imposed on a BAS Agent will affect the structure of their business it would be very important for a pending registrant to understand the likely qualifications that may be imposed on their registration. *What registration conditions and service area limitations do the Board initially intend to impose on BAS Agents?*

#### **Code Of Professional Conduct**

- *What would the board consider to be “adequate arrangements” to manage conflicts of interest that may arise in relation to the activities undertaken as a BAS Agent in terms of Code Of Professional Conduct item 5?*

- ***What Professional Indemnity cover will the Board require to be maintained (terms, conditions, amount etc) in terms of Code Of Professional Conduct item 13?***