



The Fourth Wave

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INQUIRY INTO THE TAX AGENT SERVICES BILL 2008.

UNINTENDED CONSEQUENCES OF THE BILL.

A. Non-alignment of the definition of tax agent services and the qualifications of those capable of delivering those services.

The unintended consequence of the Bill is the proposed enshrinement of a static “one size fits all approach” to tax agent registration in an ever changing and expanding taxation environment.

The Explanatory Memorandum states that the new definition of tax agent service will “ensure that the scope of the services being regulated is clear and sufficiently flexible to include newly emerging services as the tax system evolves”. Yet the narrow definition of who is eligible to provide these services, although clear in its self, is not sufficiently flexible to evolve with the tax system.

The Bill envisages the registration of accountants and lawyers as tax agents but the definition proposed for tax agent services (S90-5) is much broader than the services that can be ethically and professionally provided by such accountants and lawyers

Hence there is a fundamental non-alignment of the definition of tax agent services and the qualifications of those capable of delivering those services.

B. Penalisation of providers of technical services not covered by existing registered tax agents.

The Bill as proposed is clearly structured to protect the interests of two professions at the expense of all others irrespective of the ability of those two professions to provide the full range of services covered by the expanded definition of a tax agent service.

It is recognised that there is a high degree of comfort to work with two well established professions with large professional representative bodies; especially when such bodies provide the very training and set the very professional standards mirrored in the mind sets of the drafters of the Bill. However, the tax field is not a static one. The Explanatory Memorandum and press releases talk of flexibility, partial registration for specific sections of the tax act and inclusiveness for those who do not fit the full tax agent mould.

The regulations are the exact opposite to this rhetoric. R&D Consultants have worked in their field of expertise in open collaboration with the **ATO** for 23 years yet are denied any access to transitional provisions and offered registration on terms akin to asking a leopard to change its spots to tiger stripes before being acceptable.

C. Limit to flexibility in an evolving tax system.

The very structure of the bill makes a lie of the concept of flexibility. The bill and its regulations is totally inflexible to two identified existing professional groups; (Quantity surveyors and R&D Consultants) the latter who came into being 23 years ago because of an anomaly created by an evolving tax system that introduced joint administration of a technical program between the ATO and the Industry Department.

If it is not possible for the Bill to adopt an inclusive approach to recognised and identified professional groups that the drafters of the Bill see as not fitting in the existing tax agent registration process, what hope is there for new groups who at this point in time are not even recognised?

D. Reduction in professional services to the public.

The Explanatory Memorandum to the Bill states that “broadly the new legislative regime to govern the provisions of tax agent services is intended to ensure that tax agent services and BAS services provided to the public are of an **appropriate ethical and professional standard.**” The tax agent providing such advice may well be ethical and have a profession standard of delivery. But if the advice given is inappropriate or, as proven by the ATO with respect to R&D schedules, is incorrect, the value to the public of that service is questionable at best. The exclusion of providers of technical services either by denying them transitional arrangements or imposing inappropriate registration requirements would leave the public exposed to generalist advisors with an overall decline in the quantum and quality of specialist advice.

I put it to the Committee that they would not consult a gynaecologist in the event of their suffering from a bout of gout.

E. Inappropriate registration requirements.

Please be assured that I am in favour of registration, the setting of standards, professionalism and discipline. For years I continually raised the issue of registration with AusIndustry. Each time I was rejected on the grounds that there were too few consultants and that there was no administrative process or departmental will to consider the implementation of such registration.

What I am opposed to is the setting of registration conditions that somehow try to mould the individual to something that they are not and that have little relevance to the field of specialisation or the section of the tax act for which partial registration may be sought.

Professional conduct and ethics are more than membership of a large professional body. I have been in business for 28 years and have had up to 8 consultants working for me. I have been an advisor to numerous household name companies. The business has been profitable for each of those 28 years. I would not have stayed in business without being ethical, professional and of value to my clients. Yet my academic qualifications do not allow me to be a member of a “professional” body.

My issue is with the scope, relevance and time commitment to registration requirements other than the speciality for which the individual is seeking limited registration.

PROPOSALS FOR TRANSITIONAL AND REGISTRATION PROVISIONS

Again, I want to assure the Committee that I am not opposed to registration. I support the intent of the legislation to ensure that services provided to the public are of an appropriate ethical and professional standard.

My challenge is that there is no recognition that the nature of R&D Consulting is fundamentally different to that of accountancy/legal skilled tax agents and that as a result of the nature of the work being different, the operating environment is also different.

There is no industry body to which we can collectively belong. To become a voting member of one of the Recognised Professional Associations is a virtual impossibility. Theoretically I can become a member over an extended period of time by sitting for “entrance exams” of no relevance to the services for which I would seek registration. (See Attachment 1.)

The following mirrors the proposals made by the R&D Consultants group submission.

I propose that the Bill be amended and that existing consultants who meet the qualifications set out in the proposed grandfather clause be registered as tax agents restricted to providing services in relation to Section 73 ITAA.

I propose that the Bill be amended to provide registration opportunities for new consultants wishing to provide services in relation to Section 73 ITAA as set out in the section titled New Entrant Practitioners (non accounting).

Proposed Grandfather Clause

Without a grandfather clause, I will not be able to transition to registered tax agent status without catastrophic interruption to my businesses. If one were to observe the law as proposed, without a transitional provision, one would have to cease trading until the new registration Board became operative. At that point registration could be sought but the prerequisites for the successful completion of courses in basic accounting, taxation law and commercial law could not be met.

The alternative approach of obtaining registration via work experience is not available to me. I am not a member of an RPA and could not get timely membership by sitting an “entrance exam”. In addition, my experience is not recognised, as it is not “relevant experience” in that the experience gained was not gained under the supervision of a registered tax agent.

I therefore propose that the following transitional provisions be adopted:

Qualifications for Existing Practitioners

Education:

A degree or diploma or certificate from a tertiary institution.

Work Experience or Number of Applications Prepared:

Has been engaged in the equivalent of 5 years full-time relevant experience in the preceding 10 years
OR

Has been involved in the preparation of at least 100 applications within the preceding 10 year period

Professional education (if not previously qualified):

Will commit to undertaking an approved course in basic accounting principles relevant to the operation of that section of the ITAA (in this case Section 73 ITAA) for which registration is sought and within two years of registration being granted.

Will commit to undertaking an approved course in tax law relevant to the operation of that section of the ITAA (in this case Section 73 ITAA) for which registration is sought and within two years of registration being granted.

Continued Professional Development:

Will commit to undertaking 120 hrs over a three year period of approved professional development. Such development may include attendance at technology focussed expositions, fairs or conferences and/or the undertaking of courses that would increase the individual's technical knowledge; or appropriate training courses (CPD) provided by the Taxation Institute of Australia or similar organisations.

I propose that the following provisions for new entrants as R&D Consultants be adopted.

New Entrant Practitioners (Non Accounting)

Education:

A degree or diploma or certificate from a tertiary institution.

Has successfully completed an approved course in basic accounting principles relevant to the operation of that section of the ITAA (in this case Section 73 ITAA) for which registration is sought.

Has successfully completed an approved course in Australian taxation law relevant to the operation of that section of the ITAA (in this case Section 73 ITAA) for which registration is sought.

Has successfully completed an approved course in commercial law relevant to the operation of that section of the ITAA (in this case Section 73 ITAA) for which registration is sought.

Work Experience:

Has been engaged in the equivalent of 2 years full-time relevant experience under the supervision of a registered Tax Agent Specialist in the section of the ITAA (Section 73) for which registration is sought. (or was supervised by someone who is eligible under the grandfather clause even before the supervisor obtained tax agent status)

Continuation Training:

Will commit to undertaking 120 hrs over a three year period of approved professional development. Such development may include attendance at technology focussed expositions, fairs or conferences and/or the undertaking of courses that would increase the individual's technical knowledge; or appropriate training courses (CPD) provided by the Taxation Institute of Australia or similar organisations.

PERSONAL OBSERVATIONS

Naturally I am concerned about losing my source of income.

I am also concerned that the situation in which R&D Consultants now find themselves will be repeated as the coverage of the tax act expands for other groups who do not fall readily into a very inflexible and limited Treasury mindset of what they see is required to qualify as a tax agent.

Effectively the tax agent world is seen as being comprised of persons with accounting or legal skill sets. This is an easy world to define with well established professional bodies and a history of professional development and controls. However, the tax act to which tax agent services are linked, now covers topics, including technical ones that require different mind sets and operating conditions that do not necessarily fit the Treasury's picture of the established professional world.

A case in point are programs associated with climate change. Currently there are grant programs to fund some of the technical developments. As part of this discipline there will, in time, be a carbon credit/trading scheme. Such a scheme will undoubtedly have tax implications. The value of any credit will be predicated on the assessment and valuation of an entity's carbon footprint. Understandably such assessment will require the expertise of an Environmental Scientist; not an accountant. Should the concept of a carbon footprint make its way into the tax act, the Environmental Scientists will find themselves in the same position as R&D Consultants today.

My personal concern is that I have worked openly and closely with the **ATO** and AusIndustry for 23 years. I openly advertise that I am involved with the Taxation Concession for R&D. The concept of registration has been openly discussed and rejected. I follow the guidelines and public tax rulings with respect to R&D expenditure. I have a raft of correspondence with AusIndustry that debates the interpretation of technical issues and introduces concepts and systems to assist in interpretation, reporting and assessment.

AusIndustry has adopted most of these over the years.

It is obvious that tax agent registration has occurred since at least 1988. Yet nothing has been said until the introduction of this bill. There has been absolutely no attempt by the drafters of the bill to include people like myself in the drafting process. The contrast is stark as I have been involved in the drafting process of every single change to Section 73 ITAA and the related IR&D Act 1986 by both the **ATO** and AusIndustry since 1985.

I understand that because of changes in the taxation landscape and the increased reliance of the public on the services of tax and BAS agents there may be cause to review the registration of those providing such services. That is the government's prerogative.

However, to increase the scope of services to be covered and to talk about increased flexibility and then name quantity surveyors and R&D consultants as providers that now fall within the scope, yet deny them any participation in the drafting process and any transitional provisions, is pure and simple hypocrisy.

I have worked hard to collaborate with the **ATO** and AusIndustry all these years to promote Australian innovation and to have company managers and boards take R&D seriously as a key ingredient in their company's strategy. I find it personally insulting to be sidelined by Treasury bureaucrats in the manner proposed in the bill.

I sincerely believe that you, as Members of Parliament are being unwittingly used as tools to support the Treasury's agenda to protect the accountant/lawyer status quo under the guise of protection of the public and increased professionalism. The rhetoric is not supported by the facts.

ABOUT THE FOURTH WAVE

The Fourth Wave (Australia) Pty Ltd (TFW) is a consultancy that specialises in advising companies on the role of innovation in their corporate strategies, scenario planning, the design of supporting in-house systems; and funding for research and development activities including government grants and taxation concessions. Our bread and butter work relates to Section 73 ITAA 1936.

At present I am the only employee of TFW working full time with R&D grants and the taxation concession for R&D activities. Hence I will represent myself as synonymous with TFW.

- I have specialised exclusively in this program since its inception in 1985. (ie 23 years)
- I was engaged in the earlier years of the program by Business Law to educate lawyers and accountants.
- I have provided continuous professional development training (CPD) to chartered accountants until some three years ago.
- I authored the only non government text as a self help manual. ISBN No 0 646 23607. This handbook was used by both the staff of the ATO and AusIndustry as reference material prior to the publication of the current Guidelines.
- I have developed training materials and presented such materials to and on behalf of AusIndustry in public forums.
- I have been invited on numerous occasions by both AusIndustry and the ATO to participate in innovation related forums.
- I have represented industry groups to effect R&D related legislative changes including the newly introduced Premium Concession for Multi National Enterprises.
- I was a member of the R&D forum for the current Cutler review of innovation.
- I have an Arts degree from the Australian National University.
- One of my majors is in industrial psychology
- In a prior life I was a senior school Maths and Science master.
- I am a regular and active attendee of Innovation Australia's R&D Tax Concession Administration Consultative Group and have provided input over many years at the formal request from the senior management of AusIndustry to operational issues affecting the Concession.
- I have owned and operated a company for more than 28 years with up to eight consultants in this field.
- I am not a member of any professional association and know of none relevant to my field of work.
- I am totally dependant on continuing to provide services in this field to obtain my income.
- I do my company's book keeping and BAS statements and am more than familiar with the principles of accounting but with no formal qualifications.
- During the 23 years that I have worked in this field I have worked for literally hundreds of Australian and foreign owned companies that were or still are household names

APPENDIX ONE.
SAMPLE COURSE CONTENT FOR BASE LEVEL MEMBERSHIP OF
RPA FOR APPLICANTS NOT POSSESSING TERTIARY
QUALIFICATIONS IN ACCOUNTING OR LAW.

TAXATION INSTITUTE OF AUSTRALIA

Membership Eligibility Criteria

Membership of the Tax Institute is open to all tax professionals and individuals interested in tax who meet any of the following criteria.

Fellow

A person will be eligible to apply to be admitted as a Fellow of the Institute if he or she:

has passed the Advanced Tax assessment and
has at least five years' relevant experience.

Associate

A person will be eligible to apply to be admitted as an Associate of the Institute if he or she:

Has at least three years' relevant experience and is a:

- Graduate of a university or other tertiary education institution with a degree in Taxation, Law, Commerce or Accounting or such other degrees as the National Council may approve; or
- Registered Tax Agent; or
- CPA Member; or
- Member of ICAA; or
- Member of NIA; or
- Solicitor or Barrister; or
- Lecturer or teacher in a prescribed subject at a tertiary level; or

Has passed the Applied Tax assessment. (See Box 2 below)

Affiliate

A person will be eligible to apply to be admitted as an Affiliate of the Institute if he or she satisfies one or more of the following criteria:

Has passed the Foundation Tax assessment; (See Box 1 below) or

- does not have three years' relevant tax experience but would otherwise qualify for admission as an Associate; or
- is enrolled in the Applied Tax course; or
- an employee of a Commonwealth or State revenue authority; or
- is a person having an interest in the affairs of the Institute who National Council resolves to admit as an Affiliate.

(Does an Affiliate have any voting rights as required for membership criteria of an RPA in the proposed legislation.)

AUTHOR'S COMMENT. *In reviewing the course content for entry to base level membership into any of the current 7 listed RPAs for those not possessing a tertiary qualification in Accounting or Law, there is no mention of any knowledge requirement of Section 73B ITAA.*

FOUNDATION TAX LEVEL 1. BOX 1.

COURSE CONTENT	Relevance to work of an R&D Consultant
<p>Introduction to the Australian Tax System</p> <ul style="list-style-type: none"> * Apply the characterisation and treatment of income and expenses, including the distinction between ordinary and statutory income and general and specific deductions. * Apply the requirements for a taxpayer to claim an amount as a general deduction, including the connection requirement and the impact of the four negative limbs. * Recognise the impact of an amount being characterised as capital in nature (both from an income and deductibility perspective). * Pinpoint the limitations placed on an employee with respect to the deductibility of certain costs (e.g. Motor vehicle expenses). * Calculate the impact of tax offsets in a taxpayer's tax liability. 	<p>NONE</p>
<p>Individuals</p> <ul style="list-style-type: none"> * Identify and apply relevant legislation and guidelines as they apply to the completion of individual income tax returns * Effectively and comprehensively extract all data from a client interview * Prepare accurate and compliant basic individual income tax returns using source data * Complete compliant individual income tax returns in a timely and accurate manner * Differentiate between simple tasks and those that require referral to supervisors. 	<p>NONE</p>
<p>Businesses</p> <ul style="list-style-type: none"> * Determine whether the activity undertaken is a business or a hobby * Correctly calculate income derived by the taxpayer * Determine eligibility for entry into the simplified tax system and identify benefits * Correctly claim a loss on a non-commercial business activity * Correctly apply the special derivation rules * Identify deductions particular to a business as well as specific deductions 	<p>NONE Except identify specific deductions associated with R&D activities as prescribed by published ATO rulings and guidelines.</p>

<ul style="list-style-type: none"> * Recognise and apply capital allowance provisions, pre-payment rules, trading stock and bad debts * Apply the special rules that relate to primary producers. 	
<p>Structures</p> <ul style="list-style-type: none"> * Identify and apply relevant taxation legislation and guidelines in relation to the choice of business structures * Apply these legislative rulings and guidelines in differing circumstances * Interpret the consequences of each structure for the client. 	NONE
<p>Loans</p> <ul style="list-style-type: none"> * Investigate facts to determine that a loan exists * Apply the correct tax treatment to loans * Determine whether interest is deductible * Determine the tax treatment of borrowing costs, leases and hire purchase agreements * Determine the tax treatment of loans provided by a private company to its shareholders * Apply the debt/equity rules and the effect on the characterization of a loan. 	NONE
<p>Goods and Services Tax</p> <ul style="list-style-type: none"> * Explain how GST works for both the consumer and the GST registered entity * Identify when to apply relevant GST legislation and guidelines * Calculate GST using the legislation and guidelines to complete transactions that involve GST * Recognise the impact of GST on a business. 	NONE
<p>Capital Gains Tax</p> <ul style="list-style-type: none"> * Determine whether an asset is subject to CGT * Determine whether a CGT exemption applies * Identify the circumstances in which capital gains or losses can be deferred * Calculate the amount of a capital gain or loss. 	NONE
<p>Fringe Benefit Tax</p> <ul style="list-style-type: none"> * Determine whether the FBT liability applies * Calculate FBT liability in relation to car fringe benefits * List common exemptions from FBT * Recognise the interaction between FBT and GST * List the types of state taxes, identify current rates and identify when the liability for each tax applies. 	NONE

APPLIED TAX LEVEL TWO. BOX 2.

COURSE CONTENT	Relevance to work of an R&D Consultant
<p>Ethics & Integrity in Tax Compliance</p> <ul style="list-style-type: none"> * Understand and apply ethical principles. * Tools to integrate ethical principles into professional practice and build an appreciation of the breadth of ethics. 	YES
<p>Capital Gains Tax (CGT) Fundamentals</p> <ul style="list-style-type: none"> * Examine the relatively complex but common CGT provisions: small business CGT concession; rollover relief (same asset, replacement asset and de-merger). 	NONE
<p>Corporate Tax Fundamentals</p> <p>Part A</p> <ul style="list-style-type: none"> * Calculate the taxable income of a company using financial statement and supplementary information. * Calculate the tax payable of a company and explain how and when this tax is paid. * Determine whether an interest in a company is classified as debt or equity for income tax purposes. * Explain the tax treatment of amounts connected with debt interests and equity interests in a company from the perspective of the holder of the interest and the company. * Apply the provisions for allowing a deduction for carried-forward tax losses and bad debt deductions in a given situation. <p>Part B</p> <ul style="list-style-type: none"> * Prepare a franking account. * Explain the taxation treatment of distributions from a company from the perspective of the company and the shareholder. * Identify circumstances in which amounts will be treated as a deemed dividend for income tax purposes (and explain the resulting income tax treatment of the deemed dividend for both the company and the recipient of the deemed dividend). * Identify who is eligible to form a tax consolidated group, and the implications of operating a simple tax consolidated group. * Calculate the allocable cost amount (ACA) for the purpose of entering and exiting a tax consolidated group in a simple situation. 	NONE

<ul style="list-style-type: none"> * Calculate the available fraction for a tax loss and explain the relevance of the available fraction when calculating the amount of losses available as a deduction. 	
<p>Goods and Services Tax (GST)</p> <ul style="list-style-type: none"> * Determine the conditions to be registered under the GST. * Identify when supplies are being made, examining whether a particular supply is a taxable supply, a GST-free supply or an input-taxed supply, and calculate the liability to GST. * Identify when acquisitions are being made in a particular transaction, and determine whether and to what extent there is an entitlement to claim an input tax credit. * Identify when supplies constitute GST-free exports and whether there is a liability to GST with respect to imports and the application of the deferral scheme. * Identify when financial supplies are made and calculate the amount of input tax credits available on acquisitions made by a taxpayer making financial supplies. * Determine when entities may form a GST group, and understand the impact of grouping on intra-group transactions. As well as calculate the impact of registration on typical transactions for non-profit bodies. * Identify the main GST issues relating to employees, supply of real property, margin schemes and sale of businesses (including qualifying/non qualifying for GST-free treatment). 	NONE
<p>Superannuation</p> <ul style="list-style-type: none"> * Identify for which employees an employer is required to make superannuation contributions and the amount and conversely the consequences of not fulfilling employer obligations. * Identify eligibility for an income tax deduction for superannuation contributions, calculate the amount of the entitlement and determine the income tax treatment of the payment of lump sum and pension benefits from a superannuation fund. * Calculate and explain the taxable income and tax payable of a superannuation fund. * Identify the main characteristics of a complying superannuation fund and the requirements to maintain compliance. 	NONE
<p>Fringe Benefits Tax (FBT)</p> <ul style="list-style-type: none"> * Determine when a fringe benefit arises, its category and exemption status, and the taxable value of the benefit. * Determine the records that need to be kept. 	NONE
<p>International Tax Fundamentals</p> <ul style="list-style-type: none"> * Determine resident or non-resident taxpayers for Australian taxation purposes * Identify what income is subject to tax in Australia, by virtue of its 	NONE

<p>source.</p> <ul style="list-style-type: none"> * Understand and apply the various exemptions available from income tax in Australia in a range of circumstances and determine a taxpayer's withholding tax liability. * Understand double tax agreements with Australia's domestic tax laws and calculate a taxpayer's foreign tax credit entitlement. * Understand the various attribution systems (CFCs, FIFs and transferor trust measures). 	
<p>Tax Strategy: Entities & Structures</p> <ul style="list-style-type: none"> * Examine various structures from a commercial and tax perspective. * Draw on the taxation and commercial knowledge of various structures. 	NONE
<p>Tax Strategy: Losses & Other Liabilities</p> <ul style="list-style-type: none"> * Interpret client information and predict future outcomes ensuring that missing client information is captured to give complete and appropriate advice. * Select and apply appropriate tests and outline the steps required to determine the extent of income tax deductibility of losses for income tax purposes including a tax consolidated group environment. * Advise what actions should or should not be taken to preserve an entitlement to deductibility of carried forward tax losses determine whether outgoings are deductible for income tax purposes and when those deductions arise. * Identify other tax related issues relating to liabilities incurred by a company in relation to employees. 	NONE
<p>Tax Strategy: Year End</p> <ul style="list-style-type: none"> * Examine a number of case studies considering the end of the income year tax issues. 	NONE