

8 January 2008

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

Dear Sir

Submission to the Senate Inquiry into the Tax Agents Services Bill 2008

My comments focus on the proposals to establish a registration regime for persons providing services described therein as BAS Services. In the main my comments are toward the overall ambition and implications rather than the detailed elements, although I have a couple of points to make on these too.

I am extremely concerned about the merits of the proposed registration process and what is really intended to be achieved by it. It is not surprising that the professional bodies support it – it creates a source of new membership for them – so their views may be compromised by their conflict of interest in the matter.

Under the previous Federal Government, the then Minister for Health, Tony Abbott, claimed the Federal Government did not support unnecessary regulation of activities – regulation was to be a last resort and only taken when it is proven it will be effective. More recently the head of Treasury and the Government's Tax System Review, Ken Henry, when addressing a Press Club luncheon, lamented how the tax system expected so many people to turn to tax agents instead of being able to complete returns themselves (which in my view they could but they are led to believe otherwise). He advocated less reliance on tax agents. To create employment and productivity, Governments have been backing processes to deregulate labour markets as far as possible.

So why then do we have this attempt to regulate this part of our business life and an important source of part time or self employment?

In conversation, Treasury has said the aim of the legislation it is to protect the consumer and the Senate website claims the Bill is aimed at protecting the customers of tax agents. But here we are dealing with business not individual consumers. Everyday businesses engage a range of service providers on contractual terms, with all the related rights of recovery for poor service or breach of contract. What is the need for this element of the legislation? What is the problem, if any that is supposed to be addressed by the registration regime? This is not a physical safety issue, like those affected by builders or electricians. If it is a matter of their being a few poor service

providers, existing laws give business the remedies they need. If it is compliance with GST related laws then this is not the solution. Businesses have no legal obligation to hire a qualified BAS contractor or even a tax agent for that matter. Even if they do hire them, professionals typically disclaim much responsibility. If training and compliance reviews are needed to address GST tax law compliance issues then the allocated resources for this regime should be put elsewhere.

There are a number of implications of this proposal that will impact negatively on the operations of Australian small business and individual's employment – both general business and those providing book keeping services on a part time or contract basis:

1. In an article in the Institute of Chartered Accountants in Australia's magazine "Charter" it is recognised that there are a great many self employed, part time bookkeepers serving the needs of small business at a reasonable cost to meet their BAS reporting and provide bookkeeping services. These are not full time, complex business operations.

This registration process risks unnecessarily raising the cost of these services or pushing people out of employment for no real gain. They will have to deal with the complexity and cost of registration and insurance – versus contracting on a basis that limits their liability. The proposal assumes a deep, affordable insurance market is available to small operators.

These are not in the main complex tax areas but the definition of BAS Service is so wide that, despite the Treasury offices saying otherwise, the regular completion of a BAS, typically using software such as MYOB, would be caught, especially for the initial set up. The interpretation of what is giving advice is too wide.

2. Treasury says it wants to protect business from liability for wrong acts/advice of advisors. This is an overstepping of government in acting to protect people from themselves.

I point out that what a bookkeeper does as an employee is not caught, but when a person does the same tasks as a sub-contractor they would have to register and operate under the new regime and face the threat of criminal penalties. A contractor would quite reasonably want a significant compensation increase to take on that sort of business risk.

Often small business prefers to engage people on part time contracts rather than on a permanent or casual basis as a recognised employee. We can debate the merits of this but this is how small business chooses to operate. Why complicate the matter just because the government proposes to shift business risk to the lowly paid book keeper instead of leaving it with the business operator? – who typically also hires a registered tax agent to give advice on complex matters – the book keeper often also referring to them. Potentially the business is left paying for multiple layers of attempted risk shifting.

I expect this regime would see a number of current capable service providers cease operation – which resulting in an increase in costs to business as market supply diminishes or is only supplemented by much higher cost service providers entering the market.

If Government insists on implementing this regime, why make it illegal to provide the equivalent of BAS Services on an unregistered basis? Why not leave it to the buyer to choose whether they hire a Registered Bas Service provider or an unregistered? – Just prohibit saying you are registered and educate business on the difference when the new regime is introduced. This would

meet Treasury's aim of giving business assurance of who they hire, if they so choose. What choices the business owners actually make would be a test of how big an issue this is to them.

A few other observations:

1. The current exemption for members of professional bodies does not appear to be clearly extended, although Treasury says it is – but members would still need to go through the registration process, incurring costs to business for no gain.
2. Our community groups operate with a number of volunteer treasurers handling GST compliance matters. If unfortunately this regime is introduced the legislation should make sure such persons could not be held liable as BAS Service providers. (They are not necessarily viewed as employees).
3. As I understand the “relevant experience” criteria, it does not clearly provide for experience gained while employed by a corporate or from pre-legislation self employed experience handling GST/BAS related matters – unfortunately the focus tends to be on expecting all knowledge to have been gained in public practice but this is not the only way to gain experience to be able to handle these matters.

Providing these services is an important potential source of income particularly to capable female accountants who need to give up full time employment to care for young families. I again stress these people valuable contribution to small business by being willing to provide low cost services to small business, with more than ample skills. In times of high employment and skills shortages their participation should be encouraged not made difficult.

Finally I encourage the Senate to seriously reconsider the merits of this registration regime – they need to consider what the issue is that really needs addressing and whether a registration regime is the only and best solution available to the Australian business community. I doubt it. If it is pursued then give the business the freedom to choose what service provider it wants – a registered BAS provider, an unregistered contract provider or an employee of self assessed skill – do not presume that business needs to be protected from itself. If that is the view then logically you should also set up a process to vet the hiring and firing of employees by business.

Yours faithfully,

Ian Steward