

7th January 2009

Senate Economics Committee
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Dear Senators

TAX AGENT SERVICES BILL 2008 – Bookkeeper industry submission

Context: All comments herein are in respect to the “BAS Agent” provisions of the proposed law and not those specifically related to Tax Agents

A good thing! The concepts in the bill are in general a good development for the Bookkeeping Industry.

Who are we? A professional association of and for bookkeepers.
Background information on our organisation can be found at www.icb.org.au or by emailing Execofficer@icb.org.au
The ICB membership includes bookkeepers currently adherent to the existing Sn 251L and they are providing what will be termed BAS Services under the new regime.

As of 31 December 2008 ICB has total membership of 987 which we anticipate includes 500-600 future BAS Agents.

Things need thought: We provide this submission and related recommendations to highlight items that need to be considered carefully and amended prior to the passing of this legislation through parliament.

Submission: This legislation will NOT have the impact stated in the Explanatory Memorandum ([Submission paper “A” attached](#))

- Only 8% of small business use an external bookkeeper
Therefore the quantum of impact is small
- Impact statement is in part incorrect

This legislation will increase the cost and obligation to small business of meeting their compliance obligations ([Submission paper “B” attached](#))

- Costs of being a BAS Agent will have to be passed on to the taxpayer

The Code of Conduct must address; the competence of the “agent” to use the bookkeeping tool utilised by the client and also provide an obligation on the agent in respect to communication and in informing of adjustments to the business records. ([Submission paper “C” attached](#))

- The majority of business use software bookkeeping tools
- Most bookkeeping issues result from the agent’s degree of competence in those tools

The bookkeeper / BAS Agent community must be represented and managed by Board members and committees whom understand and work with this community and NOT seen as an adjunct to the Tax Agents. ([Submission paper "D" attached](#))

- Tax Agents are not bookkeepers

Government must actively and aggressively support the introduction of this legislation through advertising, education support, industry support, taxpayer information. ([Submission paper "E" attached](#))

- The proposed safe harbour provisions are an inadequate and ineffective incentive for business to use a BAS Agent
- Legislation will be pointless if "unenforced" or unknown

The obligation must be on the Board and not on the applying Agent to process the application within the required time frame. ([Submission paper "F" attached](#))

The recognition of BAS Agent Associations should only be those associations with sufficient numbers of actual BAS Agents. ([Submission paper "G" attached](#))

Important facets of the Bill must survive the parliamentary process ([Submission paper "H" attached](#))

Important questions that remain unanswered require practical and due consideration ([Submission paper "I" attached](#))

Perspective Notes

1. This legislation only affects a very small proportion of BAS preparers.
2. 4%¹ of small business use external contract bookkeepers to assist them with recording transactions, increasing to 8% assisting them with preparation of the BAS,
3. Generally speaking the bookkeeping industry is female, part-time and over 40:70+².
4. Generally speaking bookkeepers do not have formal qualifications but do have immense experience.
5. **Bookkeepers do not generally have ambitions to be accountants.**
6. Software solutions to bookkeeping have greatly assisted business to comply with reporting including GST & BAS obligations, (60% small business use computers and 60% of those use accounting software³)
7. The bookkeeping industry is largely unregulated; the concepts of the proposed bill will for the majority, aid the improvements occurring in the industry but at a cost.
8. With the demise of the number and therefore the capacity of Tax Agents to continue to assist businesses with Tax Matters let alone BAS matters, every encouragement & assistance must be provided to Bookkeepers to become BAS Agents
9. What is in the Bill:
 - 1) Creation of a National Tax Practitioners Board
 - a) replacing the current 6 state based tax agents boards
 - b) changes to legislation around tax agents
 - 2) Registration of BAS Agents
 - a) creates a new form of tax practitioner (BAS Agent)
 - b) registers bookkeepers for the first time
 - 3) Creates a legislated Code of Conduct for registered Agents

¹ MYOB Australian Small Business Survey July 2006 – refer Appendix 1

² ATO Bookkeeper Industry Surveys – various – Appendix 2 & others

³ Unreferenced

10. What's a BAS Agent? A contract bookkeeper (not an employee or owner of the taxpayer)
Who helps a client taxpayer with GST/BAS compliance
- understanding
 - interpretation
 - completion
 - lodgement
- And is relied on by the taxpayer for that help
11. Despite the increase in tax legislation and obligation over recent years the number of tax agents has decreased with 60% of tax agents now aged 60+ years.

This submission is from the perspective of the best implementation in the most effective manner so that business in Australia is assisted and benefits from this legislation. An incorrect implementation will unnecessarily increase the red tape burden and compliance cost to business. In these economic times of concern, we suggest that business and those that support them need appropriate support and not potentially further burdensome requirements.

In Conclusion

We have been asked and continually ask: Is this Bill justified?

If the new system brought into effect by this Bill is brought in appropriately with due consideration of real business operations then the formation of the Registered BAS Agent accreditation is a formal recognition of the good improvements occurring in the industry.

If the thought is that legislating and restricting BAS assistance is going to solve the complexities and concerns of record keeping (as alluded to in the EM) then it will not meet that intention.

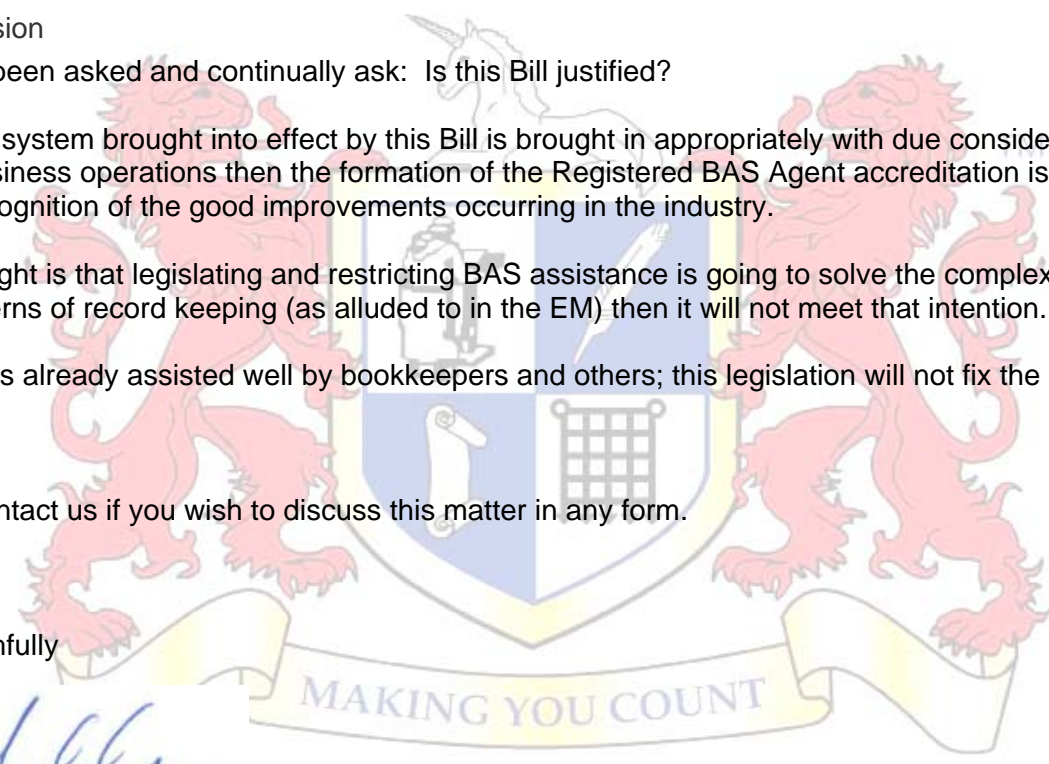
Business is already assisted well by bookkeepers and others; this legislation will not fix the errors occurring.

Please contact us if you wish to discuss this matter in any form.

Yours faithfully



Matthew Addison
Executive Director



MAKING YOU COUNT

Submission paper “A”

This legislation will NOT have the impact stated in the Explanatory Memorandum

Context

The impact statement alludes to problems with bookkeepers causing issues for tax agents. These comments are both unfair and unwarranted.

The underlying problem is a lack of currency in the competence & education of many “intermediaries” (Accountants, Tax Agents & Bookkeepers) especially in relation to the use of bookkeeping/accounting tools (refer submission paper C for further elaboration on this point).

The impact statement does not adequately recognise the status, the segments, the cost structure nor the profile of the Bookkeeper industry.

We provide comment on the industry and then extract parts of the Explanatory Memorandum Impact Statement worthy of comment and correction.

Recommendations are made throughout.

Bookkeeper Industry Background

The bookkeeper community is made up by 3 distinct segments:

- 1) related or connected to the business.
- 2) employed by the business,
- 3) external or contract bookkeeper providing services to multiple businesses (includes within the accounting role),

The range of services provided vary from the keeping of the books (bookkeeping duties) to general administrative tasks, secretarial tasks, general office duties.

The term “Bookkeeping” does include: making and recording purchases and payments; payroll calculations, recording and reporting; Sales invoice generation, banking, receipting, reconciling bank statements, GST recording, reconciling and reporting; accounts payable; accounts receivable; inventory receiving, issuing, ordering, recording and reporting.

The Tax Agent Services Bill 2008 only relates to segment 3 “external or contract bookkeepers”

Only 8% of businesses indicating they use an external person (bookkeeper 4%, accountant 3%, other 1%) to enter transactions.⁴ (Most 83% of small business owners enter transactions themselves with 21% also using another person “related or connected” to the business. 15% use an employee to enter transactions.)

In relation to preparation and lodgement of the BAS (ignoring any definitional issues for the moment) 75% of businesses prepare and 72% lodge their own Business Activity Statement (“BAS”)⁵ with only 8% utilising a bookkeeper to prepare and 4% to lodge the statement.

⁴ MYOB Australian Small Business Survey July 2006 – refer Appendix 1

⁵ MYOB Australian Small Business Survey July 2006 – Appendix 2

Three observations

- 1) Businesses utilise different people to provide different aspects of their many record keeping and compliance duties
- 2) Businesses may engage a bookkeeper to assist them with entering transactions 4%, but then more businesses engaged a bookkeeper to prepare the BAS 8%; indicating the multifunction roles but also the different types of engagement of external bookkeepers
- 3) **Only 8% of small business engage an external bookkeeper to assist with preparation of the BAS.**

Assuming the number of small businesses in Australia can be accepted to be 1.7m this indicates 136,000 small businesses will be affected by this legislation.

ATO bookkeeper industry surveys (unreferenced) indicate that the professional bookkeeper works with between 15 & 20 clients on average resulting in an indicative number of external bookkeepers active in the Australian market of approximately 8,000.

The number of bookkeepers has been debated and estimated at anything from the above 8,000 to 35,000 external contract bookkeepers working with small business, and between 130,000 and 250,000 in the total industry as “bookkeepers” (excludes the owner, related bookkeeper segment.)

Therefore the Bill will only effect those external bookkeepers servicing 8% of small business and then only relates to those bookkeepers who advance their level of services to include “BAS Services”.

The profile of a bookkeeper is predominantly: female, part time, forty+ year olds who work by themselves without any real form of relevant interaction⁶

Their charge rates vary from \$15 per hour to in excess of \$200 per hour (for senior software consultants of management work) with the skill set and qualifications exhibiting the same degree of variation and range.

Explanatory Memorandum – Chapter 6 – Regulation impact statement – Extracts & Comments

The legislation has a basis and rationale based on the Regulation Impact Statement

Parts of the impact statement are accurate and represent a sound basis for change and for parts of the proposed legislation, however there are inaccuracies and misrepresentations contained therein that should be revised prior to accepting that the change in the way prescribed and for the reasons prescribed are appropriate.

Extract:

Inadequacy of consumer protection

6.16 For consumers, the narrow focus of the existing regulatory framework has two consequences:

- The first relates to quality of service provision. The different degrees of regulation under the current law for the provision of different types of tax agent services results in services of varying standards. For example, throughout consultation on these reform proposals, participants have communicated that the limited regulation of the provision of BAS services under the current law has allowed for a low standard of service provision, with tax agents frequently being required to re-perform work

⁶ ATO initiated research into Bookkeeper industry by TNS 2006 – Appendix 3

completed by bookkeepers to ensure its accuracy. The need for re-performance could cause inflation of costs to consumers and a decline in confidence in the industry.

COMMENT:

i) Earlier comment provided detail as to who businesses use to enter data into their accounting records and who businesses use to assist them with preparation and lodgement of their BAS.

92-96% of bookkeeping work is NOT performed by people who will be regulated by this legislation.

The basic recording of business transactions will continue to be performed in the majority by business owners themselves or their employees.

“The need for re-performance” is an education issue for all recorders of business records and the accountants who use those records.

Although the legislation seeks to address part of this issue it does not adequately address nor adequately provide for tax agents to enhance their communication with the taxpayer or their record keepers.

There is as much evidence of tax agents who refuse to use prepared records provided by businesses or who do not understand contemporary computer accounting programs and thereby insist on re-keying every transaction themselves for no other reason than they are not prepared to accept the records provided.

This legislation DOES NOT address the majority of record keepers being business owners themselves or their employees nor is it able to address the multiple record keeping mechanisms available nor the magnitude of alternate methods of business records keeping and hence this legislation is NOT ABLE to have the stated impact.

Also the existing regulatory framework has nothing to do with this alleged impact described in paragraph 6.16.

Accordingly this argument should be removed from the legislation, especially the statement that is a slight on bookkeepers.

RECOMMENDATION A1: The stated impact in paragraph 6.16 of the EM be removed.

ii) Inaccuracies in record keeping is a result of complexity of the systems enforced upon business and not as a result of “work performed by bookkeepers”.

The complexity of the BAS itself requiring classification of transactions into types of GST reporting complicates basic record keeping far beyond what could be required simply to report the GST collected and GST Input Tax credit entitlement.

RECOMMENDATION A2: That the Senate Committee recommends the review of the GST reporting obligations currently required on the Business Activity Statement with the aim of removing G1 to G20 reporting and hence the BAS would only require the reporting of GST Collected and GST Input Tax Credit claimed.

RECOMMENDATION A3: In order to state an impact that the legislation will have, the following should be included under a different heading of the impact statement “Positive effects of the legislation”

- Agents must be competent to provide the services for which they are engaged and be competent and qualified to utilise the record mechanism provided to them by the client. Agents must advise clients

of changes made to the business records. This will prevent the accountant or bookkeeper reworking the information into a different form and the business needing to recreate the adjustments provided by the agent. Hence these actions will remove the need for re-performance of part of the business records. Any need for re-performance or duplication of recording does cause additional cost to consumers..

Extract:

The second quoted paragraph of 6.16

- The second consequence relates to market competition which is affected by the presence of the inappropriate barriers to entry described above. The entry barrier for providers of BAS services, for example, is not aligned with the skills and knowledge required to provide BAS services. This misalignment allows certain unqualified people to provide BAS services while preventing other qualified people from providing BAS services. This disrupts the efficient operation of a competitive market which benefits consumers. Further, the fact that the requirement that an individual be working under the direction of a registered tax agent is rarely enforced (due to uncertainty as to its meaning) also creates incentive and opportunity for illegal operators in the market and exposes clients to risk.

COMMENT: The “entry barriers” exist and are substantial for providers of BAS services to adhere to the current Sn 251L.

Unfortunately what this paragraph indicates is that the current law is not enforced. “rarely enforced” is not a valid reason to create another piece of legislation.

Unless government provide sufficient market place information concerning businesses using only qualified and competent agents (and now under this legislation “registered” agents) their will be no change to the “consequence” listed.

Unless government provide sufficient resource in order to enforce the new legislation the system will have the same result as under the existing system – it will be criticised due to lack of regulation or lack of enforcement.

RECOMMENDATION A4: Government must be responsible for allocation of significant funding and resources to enable communication to all taxpayers concerning the use of registered Agents, including especially BAS Agents and to all intermediaries as to what functions require an entity to be registered.

Extract:

Threat to the integrity of the tax system

6.20 Increasing complexity in the taxation laws has corresponded with an increasing proportion of the taxpaying public engaging the services of tax specialists to assist them to comply. With a regulatory framework that is inflexible and too narrow, the risk of incompetent work being performed is high. This could lead to a lower level of compliance, thereby subjecting taxpayers to additional risk and impacting on revenue collection.

6.21 In addition, uncertainty in the current law, inflexibility in its administration and excess demand created by inappropriate entry barriers have allowed illegal operators in the market which undermines the integrity of the tax system. For example, anecdotally, some BAS services are currently being provided unlawfully by unregulated entities.

COMMENT: This legislation will not fix the wider issues noted here nor will it have an impact on them without adequate enforcement by the authority.

92-96% of business perform their own record keeping and lodge their own BAS.

RECOMMENDATION A5: Senate must ensure that adequate funding is provided for enforcement of the new legislation particularly in relation to the prosecution of “unregistered” entities.

RECOMMENDATION A6: the last line of 6.21 is offensive to a segment of the potential “Agent” population and should be removed as there is more far documented and proven evidence of unregulated tax agents.

Extract:

Impact group identification

6.33 The measure will impact on all taxpayer groups (including individuals and businesses which do or do not use the services of tax agents), tax agents, bookkeepers and other intermediaries, professional and para-professional associations, the state Boards, and the ATO. Many tax agents and bookkeepers operate as small businesses.

COMMENT: This legislation only provides regulation on entities providing Tax or BAS Services for a fee, therefore the width of this “group identification” is inaccurate..

RECOMMENDATION A7: Remove paragraph 6.33

Extract:

6.34 There are currently approximately 26,000 registered tax agents who will be directly impacted by these proposals. In addition, the ATO has advised that there are a further 11,000 nominees (of partnership and company registered tax agents) who will be affected. In terms of other intermediaries, there are over 120,000 people working in the bookkeeping industry, 10 to 15 per cent (12,000 to 18,000) of who are in business lodging BASs for clients for a fee.

COMMENT: The number of “in business lodging BASs for clients for a fee” is an estimate provided by the ATO in their compliance statements in 2006. It is our opinion and many others that this is excessive and does not indicate the size of the likely registered BAS Agent population.

COMMENT: Due to the lack of enforcement and lack of knowledge provided to taxpayers or intermediaries we believe many may be assisting business to complete the BAS to an extent that is not currently permitted due to a lack of knowledge of the current law.

RECOMMENDATION A8: Remove the final line of paragraph 6.34

Extract:

Analysis of costs

Compliance costs

6.42 The ATO has estimated that the potential transitional compliance cost impact of the measure (with a medium level of confidence) will be:

- a small cost for tax agents and BAS agents with the appropriate qualifications:
 - The requirements for registration as a tax agent will remain largely the same as under the existing law. On transition, registration under the current law will be taken as registration under the new law.
 - Although the measure represents a strengthening of the existing framework, there are likely to be some transitional compliance costs associated with learning about the changes. This could be partially offset by increased certainty about tax agents’ rights and responsibilities.
 - The ATO has advised that approximately 50 per cent of the bookkeepers who are currently in business lodging BASs for clients for a fee are expected to

already hold the required Certificate IV Financial Services qualification in either bookkeeping or accounting.

COMMENT: The committee should be aware that the bookkeeping industry believe this “50 per cent” to be grossly overstated

- New entrants seeking registration as BAS agents will need to pay a registration application fee, proposed to be \$100 or \$50 (depending on whether or not the agent is carrying on a business), and will also need to obtain professional indemnity insurance.

COMMENT: We fully support the low registration fee as the costs to be borne by the aspiring BAS Agent and therefore passed onto their clients are already significant.

The committee should be aware that while the level of professional indemnity insurance within the bookkeeping industry is increasing the relative portion of those holding appropriate insurance is likely to be around 1000 in total

- - a potentially large cost for those bookkeepers who are currently in business lodging BASs for clients for a fee (and who are expected to seek registration as BAS agents) but do not currently meet the minimum standard of qualification. The cost of obtaining the necessary qualification will crystallise after two years and may be spread over as many as five years for many bookkeepers, given the proposed transitional arrangements. As many bookkeepers operate as small businesses, these costs do reflect (at least in part) a cost of the measure to small business:
 - The transitional compliance cost for bookkeepers without the necessary qualifications is estimated to be up to \$15,000 each (\$110 million for a population of approximately 7,500), however 78 per cent of this cost estimate reflects the estimated opportunity cost of gaining the required qualification.
 - Many education providers grant credit (in some cases up to 100 per cent) for relevant prior study and/or work experience. It is anticipated that a large number of bookkeepers will be eligible for such credit, and this will significantly reduce the initial compliance costs. For example, if 50 per cent of the course is granted in recognition of relevant work experience, implementation costs are expected to be \$8,700 per bookkeeper (\$65 million for a population of 7,500).

6.43 Ongoing compliance costs are estimated to be:

- nil/minimal for tax agents; and
- small, at \$1 million per annum, for BAS agents (approximately \$67 each per annum):
 - The registration application fee will be payable at most once every three years. Other expected costs are those associated with continuing education.

COMMENT: Refer submission paper B – paragraph 6.43 of the impact statement is wrong.

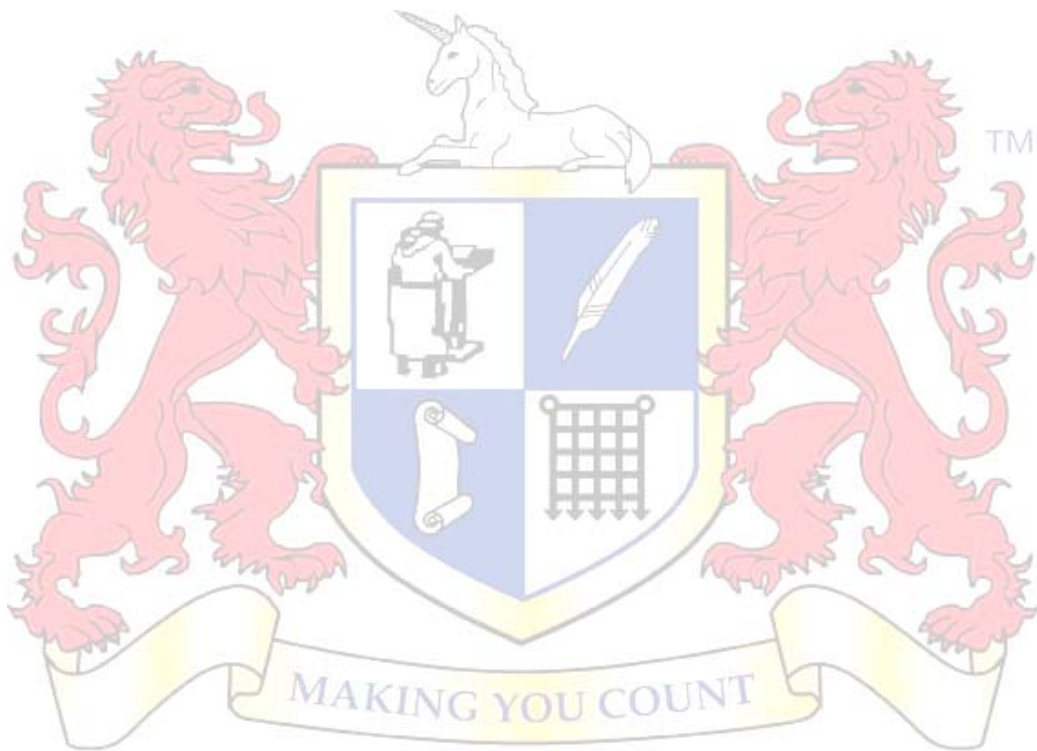
6.45 The introduction of the ‘safe harbour’ provisions may impose some costs on agents in terms of record-keeping.

COMMENT: Refer submission paper “E” in relation to the effectiveness of the safe harbour provisions.

Administrative costs

COMMENT: Paragraphs 6.46 through 6.49 deal with the administrative costs of the proposed legislation. The paragraphs appear to omit any reference to the actual costs of the members of the Tax Practitioners Board and the respective subcommittees.

RECOMMENDATION A9: A full estimate of Board personnel and committee members, together with time and therefore cost estimates be provided and included in the Administrative Cost impact.



Submission paper “B”

This legislation will increase the cost to small business of meeting their compliance obligations

Context

Most of the aspiring BAS agents will progress from the ranks of the bookkeeper or (software) consultants.

Although this industry is developing, the legislation will enforce those that choose to be BAS agents to undertake education or have previous education updated, to obtain or enhance infrastructure and embrace appropriate Professional Indemnity Insurance. Both the cash cost and the opportunity cost indicated in the impact statement are real but they will have to be passed onto the consumer if the BAS Agent is to remain a viable business.

The vast majority of bookkeepers do not have professional indemnity insurance and this must be taken into account.

The vast majority do not have current qualifications to the required level and this must be taken into account.

Approximate costs of entering the system as a Registered BAS Agent

The typical subcontract bookkeeper works part-time, 3 days a week 6 hours a day for 38 weeks of the year. They charge around \$45 per hour.

Total available working hours 684
Their gross earnings are \$ 30,780

Based on the requirements stated in the exposure draft the Costs of being a Registered BAS Service Provider are estimated as follows:

	First year	Ongoing Direct Costs
Proving education level or competence	\$ 1,600	
Professional Indemnity Insurance	\$ 600	\$ 600
Continuing Professional Development 15 hours	\$ 1,000	\$ 1,000
Computerisation – Hardware	\$ 1,000	\$ 1,000
Computerisation – Internet Access	\$ 500	\$ 500
Application Fee	\$ 30	
Total	\$ 4,730	\$ 3,100
Revised Gross income to provide equivalent earnings	\$ 35,510	\$ 33,880

Loss of Billable Time	First year	Ongoing
Proving education level	24 hours	-
Ongoing CPD	-	12 hours
Administration	6 hours	6 hours
Total	30 hours	18 hours

Revised available billable hours	654	662
Therefore revised charge rate must increase to	\$ 54.30	\$ 51.17

The increased cost to each business of having the bookkeeping work provided by persons who must register as a BSP is an **increase of 20% in cost to business** in the first year (13.7% thereafter).

It is therefore essential that government embrace every support to the aspiring BAS Agent.

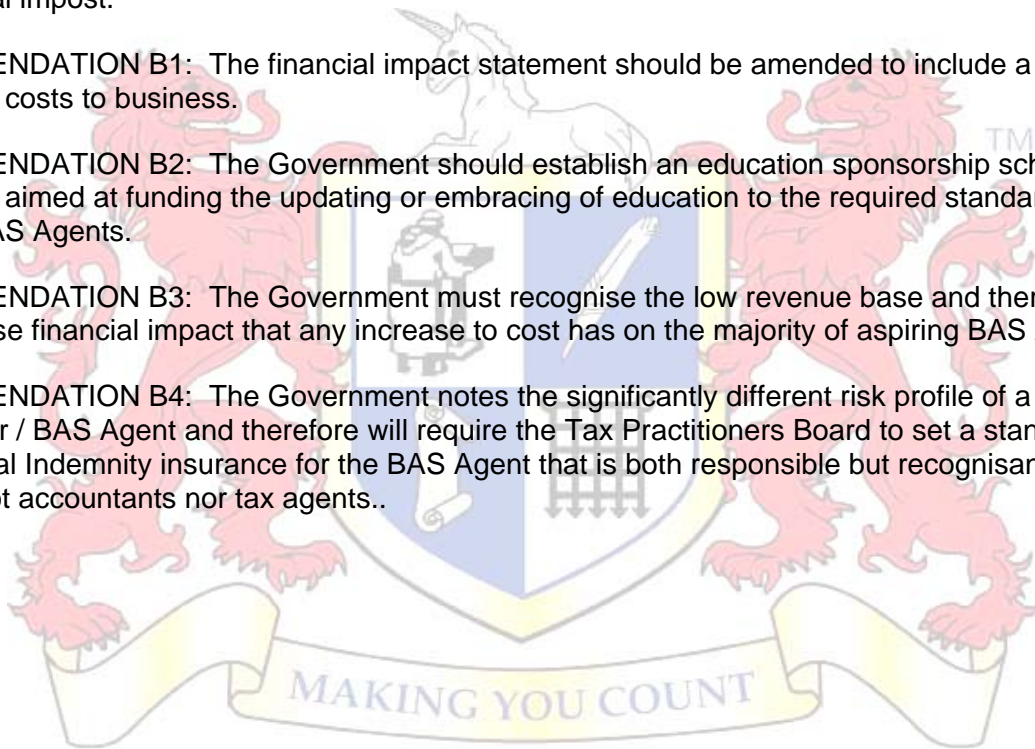
COMMENT: Due to these costs and the reluctance or inability to incur these additional costs: many bookkeepers will embrace this regime by working with other bookkeepers who are the Registered BAS Agent. The costs of being registered will restrict the entry of many bookkeepers from becoming BAS Agents in their own right – not due to competence of qualification but due to the financial impost.

RECOMMENDATION B1: The financial impact statement should be amended to include a 20% increase in costs to business.

RECOMMENDATION B2: The Government should establish an education sponsorship scheme specifically aimed at funding the updating or embracing of education to the required standard by aspiring BAS Agents.

RECOMMENDATION B3: The Government must recognise the low revenue base and therefore the immense financial impact that any increase to cost has on the majority of aspiring BAS Agents.

RECOMMENDATION B4: The Government notes the significantly different risk profile of a bookkeeper / BAS Agent and therefore will require the Tax Practitioners Board to set a standard of Professional Indemnity insurance for the BAS Agent that is both responsible but recognisant that they are not accountants nor tax agents..



Submission paper “C”

The Code of Conduct must be enhanced in respect to communication of the competence of the “agent” to use the bookkeeping tool utilised by the client and in informing of adjustments in order to achieve part if the intended impact.

Context

The problems indicated in the impact statement with bookkeepers significantly result from the lack of skills and currency demonstrated by many tax agents in the use of current computer accounting software programs and their lack of communication of the limits of those skills.

Also the lack of communication of adjustments that the accountant has performed in order to bring the clients records into line with the finalised accounts.

COMMENT: These issues apply to all books provided by all businesses, while this legislation addresses the BAS Agent/Bookkeeper in their preparation of the books, it also addresses all Tax Agents who use those books for end of year tax purposes and therefore this legislation has the opportunity to create an improved position for all Agents in interacting with all providers of the books and records.

As the code of conduct is being brought into place to enhance the behaviour and professionalism of all agents we believe it should specifically address the major issues between bookkeepers and accountants:

The use and ability to use the bookkeeping mechanism (software) of the client
The communication of adjustments or issues with any bookkeeping

The Code of Conduct includes a principle of Competence however all provisions of this part of the code are made in terms of their technical or tax knowledge.

There is no mention of communication obligations nor competence in utilising the bookkeeping mechanism.

The Bill contains

- (8) You must maintain knowledge and skills relevant to the *tax agent services that you provide.

The EM contains

- 3.43 To ensure that services provided on their behalf are provided competently, tax agents and BAS agents must ensure that the provider of the service has appropriate skills and experience, and that their work is adequately supervised or otherwise reviewed.

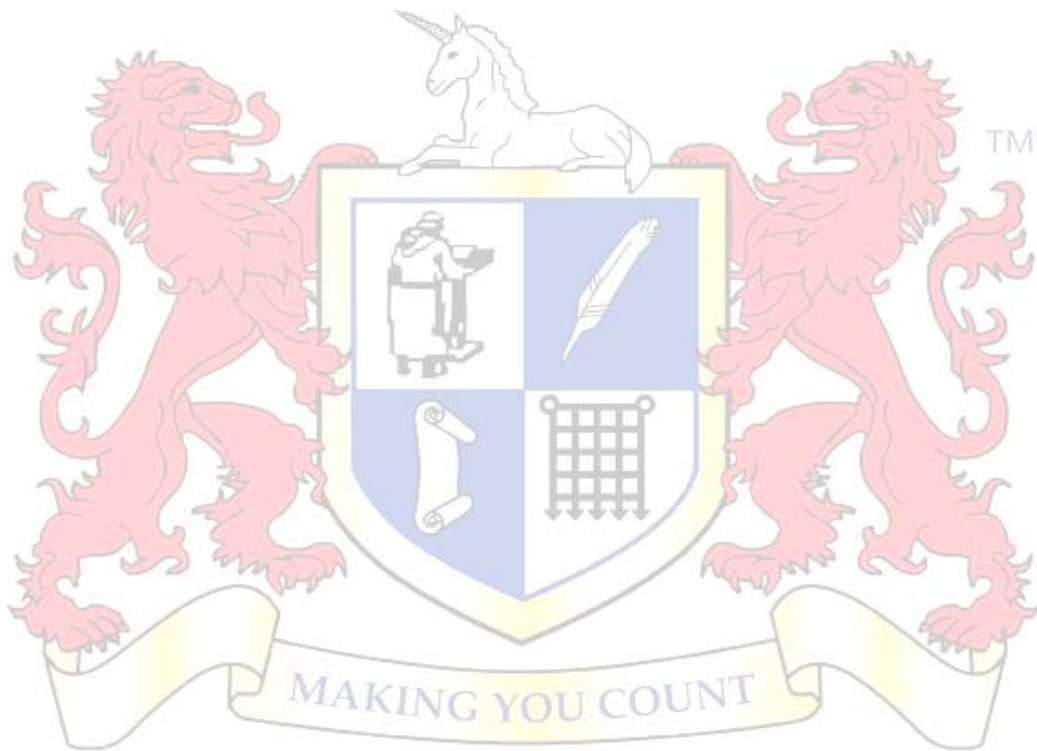
RECOMMENDATION C1: The Bill be amended to include a Code of Conduct requirement for the Agent to communicate with the client or other intermediaries working with the client in relation to record keeping matters and the notification of adjustments made to the records of the business.

RECOMMENDATION C2: The Bill be amended to include a Code of Conduct requirement for the Agent to “Maintain knowledge and skills relevant to the method of record keeping utilised by their clients”

RECOMMENDATION C3: The EM be amended to include specific requirement and description of the obligation on the agent to either provide notification of the types of adjustments made to the information provided in forming the end of year financial statements (or for any other financial

period), or to work directly with the client or other intermediary in ensuring the clients books of record are amended to include the adjustments.

RECOMMENDATION C4: The EM be amended to include specific requirement and obligation on the Agent to either; have the skills and bookkeeping tools in house in order to utilise the bookkeeping mechanism of the client, or to ensure the agent does not undertake work which relies on a bookkeeping mechanism that they do not have the requisite skills and competence.



Submission paper “D”

The bookkeeper / BAS Agent community must be represented and managed by Board members and committees whom understand and work with this community and NOT seen as an adjunct to the Tax Agents.

Context

Bookkeepers/BAS Agents are not Tax Agents nor accountants, nor do they have aspirations to be. They assist businesses primarily in a different form and operate in more detail and typically with more regularity than the accountants.

The bookkeeper industry has developed (until relatively recently) informally but assists the majority of businesses in meeting their compliance obligations.

The industry, background, context is different and accordingly the regulatory body must consider their introduction into a regulatory framework differently.

The BAS services including all the work, recording and reporting required to provide the assistance to business to meet their BAS obligations while overlapping with the work required to be provided for income tax purposes is by definition different and more related to the detail of each and every transaction, requiring a different set of understanding by the Board in their provision of guidance and determinations.

COMMENT:

The bookkeeping industry has been consulted and involved in reviews of the proposed system.

The Bill & EM in its current form contains consideration of much of that process.

Due to the “principle” nature of the legislation and the extensive reliance on the new Tax Practitioners Board to bring this legislated system into being it is essential that the Board comprises of members of the BAS agent community and that the committees formed to implement and administer the system are established with a view to the differences between Tax Agents and BAS Agents and therefore there may be distinctions between committees for the different segments.

Extract from the EM:

Functions

5.34 the functions of the Board are to:

- administer the system for the registration of tax agents and BAS agents — registration of agents is discussed in detail in Chapter 2 of this explanatory memorandum;
- investigate applications for registration and conduct that may breach the Bill, including non-compliance with the Code — investigations are discussed in more detail below, and the Code is explained in Chapter 3 of this explanatory memorandum;
- impose administrative sanctions for non-compliance with the Code;
- issue guidelines, which are legislative instruments, to assist in achieving the functions outlined above;
- undertake other functions conferred on the Board by the Bill, the regulations, or any other law of the Commonwealth; and

- do anything else related to the performance of its functions.

[Section 60-15]

5.35 Guidelines issued by the Board are legislative instruments that bind the Board and those to whom they apply. Under the *Legislative Instruments Act 2003*, legislative instruments are generally required to be exposed for consultation with relevant parties, including those proposed to be affected by the instrument. They must be tabled in both Houses of Parliament and entered onto the Federal Register of Legislative Instruments by a specified date.

RECOMMENDATION D1: The Tax Practitioners Board must include members of the BAS Agent / Bookkeeper community.

RECOMMENDATION D2: The Boards delegated committees must consult include members of the BAS Agent / Bookkeeper community.

RECOMMENDATION D3: The Board and its committees must work with the BAS Agent / Bookkeeper community prior to issuing legislative determinations that effect the operations of the BAS Agent.



Submission paper “E”

Government must actively and aggressively support the introduction of this legislation through advertising, education support, industry support, taxpayer information.

Context

This legislation will not make any difference unless adequate communication is provided by government to the taxpayer community

COMMENT: Many of the above recommendations address this issue

COMMENT: The safe harbour provisions provided in the legislation as follows

Extract:

Safe harbour from penalties

1.24 taxpayer who uses a tax agent or BAS agent will benefit from a safe harbour from certain administrative penalties in certain circumstances. Penalties will no longer apply:

- where a false or misleading statement is made carelessly, provided the taxpayer has taken reasonable care to comply with their tax obligations by giving their tax agent or BAS agent the information necessary to make the statement; and
- where a document (such as a return, notice or statement) is not lodged on time in the approved form due to the tax agent’s or BAS agent’s carelessness, provided the taxpayer gave the agent the necessary information, in sufficient time, to lodge the document on time and in the approved form.

EM: 6.52 There is expected to be a cost to revenue associated with the introduction of ‘safe harbour’ provisions which exempt taxpayers from administrative penalties in certain circumstances.

6.53 The safe harbour from tax shortfall penalty will apply if taxpayers demonstrate that they took reasonable care by engaging a registered agent and providing them with all necessary tax information, but the agent carelessly made a false or misleading statement that resulted in a shortfall amount. The cost of this safe harbour is unquantifiable (meaning that there will be a cost, but that it cannot be measured reliably) due to a lack of data on the percentage of penalties raised due to careless tax agent errors, where the taxpayer has provided them with the correct information.

6.54 The safe harbour from administrative penalty for failing to lodge a document on time and in the approved form is proposed to apply if taxpayers establish that they engaged a registered agent, gave their agent all relevant information to enable the lodging of a document on time in the approved form and the agent carelessly failed to do so. The cost of this safe harbour is unquantifiable due to a lack of data on the percentage of penalties raised due to tax agent carelessness, as well as the unknown impact of the exemption on the behaviour of taxpayers and their agents.

6.55 In both cases, the sensitivity analyses suggest that a small change in the assumed percentage of tax agent errors can have a large impact on the cost estimates.

OBSERVATION: 6.53 states “the cost of this safe harbour is unquantifiable...cannot be measured reliably” and 6.54 states the same

COMMENT: The safe harbours have been established with the intention to provide incentive to businesses to use a “registered” and therefore “legal” agent to assist them rather than to continue to use “unregistered” assistance.

No evidence has been provided at any stage of development to quantify the total penalty amounts received by Revenue in relation to these penalties. We would understand that they are rarely applied and accordingly not understood nor known by the taxpayer community.

It is our contention that these safe harbours will be totally ineffective in achieving this result and are substantially inadequate as an incentive to business to incur additional cost to engage a “registered” agent.

RECOMMENDATION E1: Government must seek to establish further incentives to business to utilise the services of a registered BAS Agent

RECOMMENDATION E2: A system of BAS liability concession should be implemented whereby each business who utilises a registered BAS Agent is permitted to deduct \$200 from each BAS reviewed and lodged by that Agent.

RECOMMENDATION E3: That lodgement timeframes are extended for registered BAS Agents thereby allowing further incentive for businesses to use a BAS Agent and to allow levelling of the workload for BAS Agents over a greater period of time.



Submission paper “F”

The obligation must be on the Board and not on the applying Agent to process the application within the required time frame.

Extract
Bill:

20-25 Registration

- (3) If the Board does not decide your application within 6 months of receiving it, the Board is taken to have rejected your application.

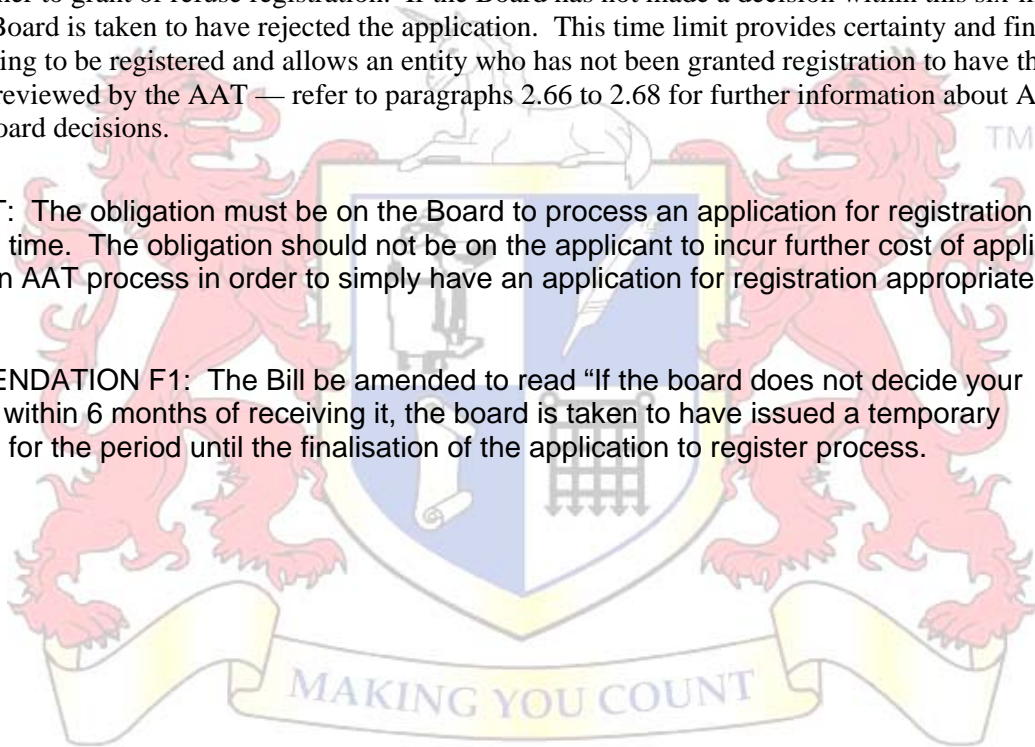
However, this does not apply if your application is for renewal of your registration.

Note: For renewals of registration, see section 20-50.

EM 2.23 The Board has a period of six months from receiving an application for registration in which to decide whether to grant or refuse registration. If the Board has not made a decision within this six-month period, the Board is taken to have rejected the application. This time limit provides certainty and finality for entities seeking to be registered and allows an entity who has not been granted registration to have their application reviewed by the AAT — refer to paragraphs 2.66 to 2.68 for further information about AAT review of Board decisions.

COMMENT: The obligation must be on the Board to process an application for registration within a reasonable time. The obligation should not be on the applicant to incur further cost of application to initiate an AAT process in order to simply have an application for registration appropriately processed.

RECOMMENDATION F1: The Bill be amended to read “If the board does not decide your application within 6 months of receiving it, the board is taken to have issued a temporary registration for the period until the finalisation of the application to register process.”



Submission paper “G”

The recognition of BAS Agent Associations should only be those associations with sufficient numbers of actual BAS Agents.

Context

While this matter is related to detail that is yet to be provided within the Regulations, it relates to provisions of the Bill

The draft regulations provided during 2007 indicated the following provision in relation to recognition of BAS Agent Associations:

- 209 Each voting member of the organisation has been awarded at least a Certificate IV Financial Services (Bookkeeping), or a Certificate IV Financial Services (Accounting), from:
- (a) a registered training organisation; or
 - (b) an equivalent institution.

An earlier paragraph required the following

- 202 The organisation has:
- (a) at least 1 000 voting members; or
 - (b) at least 500 voting members who are BAS agents registered under the Act; or both.

COMMENT: a Recognised BAS Agent Association will continue a role with all bookkeepers many of whom will not seek the level of education prescribed in 209 yet wish to be validated at a membership level appropriate to their skills and otherwise proven competence. They also wish to contribute to the association as voting members.

Accordingly not all voting members may have the required educational level to be a BAS Agent yet the regulations would require that to be a voting member of such an association they would need to.

COMMENT: We anticipate that professional associations will maintain members at different levels and will accredit BAS Agent registered members separately from non BAS Agents.

RECOMMENDATION G1: that paragraph 209 only apply to part (b) of paragraph 202

Alternatively the numbers listed in paragraph 202 should be “at least 1000 voting members with the education requirements stipulated in paragraph 209; or....”

Submission paper “H”

Important facets of the Bill must survive the parliamentary process.

Comment

Important facets of the legislation

These significant items were either included in the drafts of the legislation and must survive the parliamentary process:

A: Delayed start to the imposition following it becoming law

This is required to allow positive progression of the bookkeepers into the formalisation and regulation now being brought to them; allows logical and effective adoption decisions to be made, preventing exploitation of the bookkeepers and to prevent mass exit from the industry. The new Board has significant work to undertake to bring into place all the infrastructure, systems and policies required

B: Transitional provisions allow progressive entry and development

Once the board is able to provide definitive direction and systems, the bookkeepers must be given time to implement the systems required. If the new system as drafted were to be imposed with immediate “no transitional” time frame then many bookkeepers would be unable to legally provide the assistance they have been providing to their business clients and many many Activity Statements would either not be lodged or be lodged incorrectly.

C: Educational provisions at Certificate IV level including the new “Bookkeeping” accreditation are essential

The law requires BAS Agents to obtain at least by the time of renewal of their registration educational qualification to at least Financial Services Certificate IV (Accounting) or (Bookkeeping). The “Bookkeeping” Cert IV is an absolutely appropriate development and qualification for the industry and proposed BAS Agent)

D: Bookkeepers (BAS Agents) must be represented on the board and have its own appropriate committees for registration, discipline, education.....

Bookkeepers and therefore the majority of BAS Agents are not accountants and do not have the ambitions, position nor perspective of the accounting profession. It would be inappropriate for the bookkeeping industry to be governed only from the same perspective that exists for the tax agent industry. BAS agents must have their own representation

E Accountants who want a BAS Agent licence must have proven relevant experience

The latest draft included provisions that Accountants (who did not have a full Tax Agents licence) would NOT be allowed to automatically receive a BAS Agents licence unless they had sufficient proven relevant experience. This requirement is a must if the competency and professionalism of the BAS Agent is to retain its integrity. Too many accountants have not had relevant experience nor exposure to the appropriate laws in order to adequately continue to act as a BAS Agent.

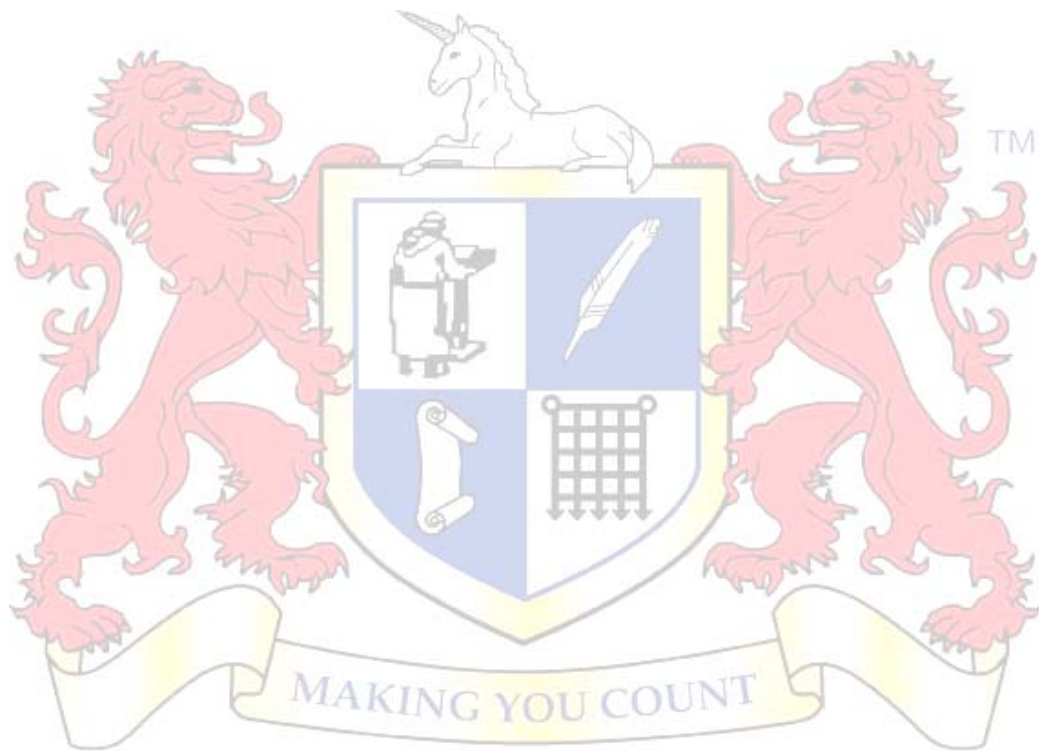
F: Not all bookkeeping work should require registration under this law

The new system will impose a cost and infrastructure obligation on those wishing to be BAS Agents (Professional Indemnity Insurance, Cost of initial education, cost of meeting registration obligations, cost of ongoing professional development) which is appropriate. However many businesses engage bookkeepers to perform processing tasks that do not require the higher levels of education, insurance and resource. Therefore the law MUST be very clear that ordinary bookkeeping work does not require a registered BAS Agent whereas GST/BAS interpretation, certainty and ATO representation does.

G: The Explanatory Memorandum must be very clear as to what duties/functions of a bookkeeper are to be defined as BAS Services only to be performed by a registered BAS Agent.

H: Specialist registrations must be embraced

The Bill & EM allow for the existence of specialty registrations which we envisage will be a significant component of registrations: For instance payroll operators whom have a responsibility for generating the PAYG Withholding numbers for the BAS but are not involved in any other segment of the BAS.



Submission paper “I”

Important questions remain unanswered that require practical and due consideration

Context

Many issues are contemplated to be considered and determined by the Tax Practitioners Board. However we note that due to the functions of the Board as prescribed in the Bill & EM that it would appear there are some definitional issues that will revert back to the ATO.

ISSUES FOR THE BOARD TO ISSUE IMMEDIATE GUIDANCE

Transitional provisions:

Definition of

“Relevant Experience”

“Reasonable period”

“Competent standard”

Parameters and guidance around 1400 hours

Requirements and specifications of PI policies

Further guidance as to educational qualifications:

currency of required qualification

guidance as to “course in basic GST/BAS taxation principles”

ISSUES THAT MUST RECEIVE FINAL GUIDANCE

We are not certain that the provision of final guidance on some definitional issues under the Bill fall within the role of the Tax Practitioners Board, however they require final clarification:

Understanding & confirmation of the definition of BAS services especially with recognition that not all bookkeeping functions nor are all bookkeepers going to be BAS Agents



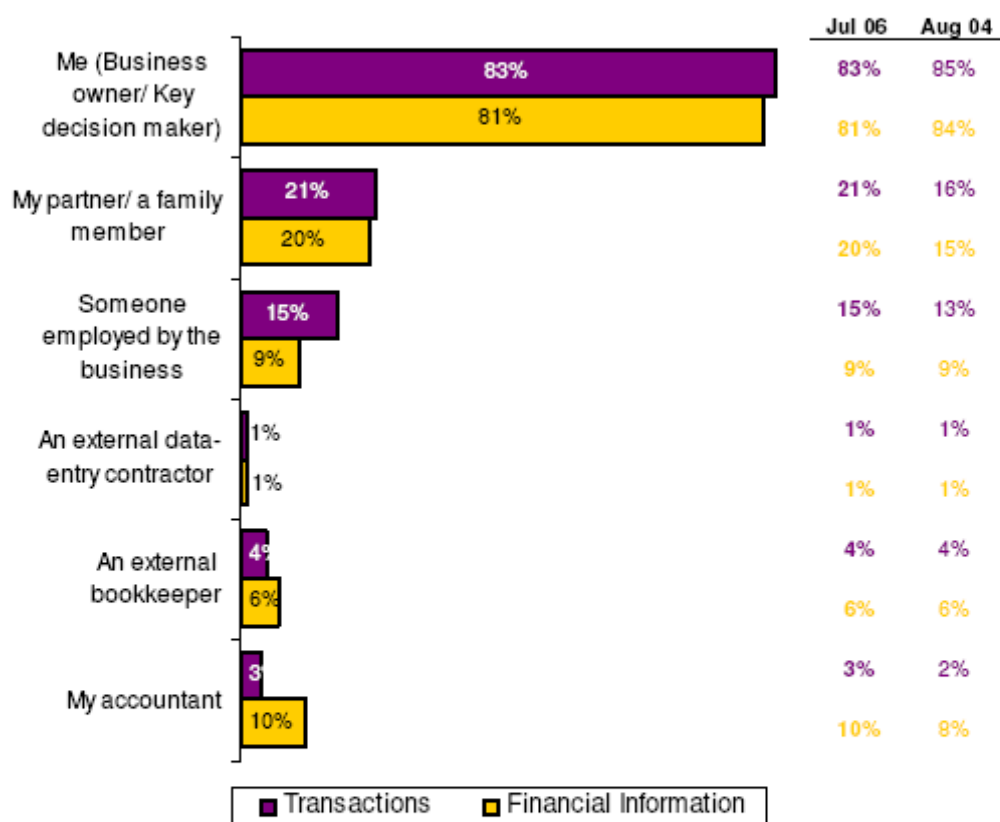
The issue around what is and isn't a BAS service has been the topic of many submissions to the process leading to the current versions of the Bill & EM. We are able to provide further information if required.

Appendix 1 – Extract from MYOB Australian Business Survey July 2006

Persons Recording Transactions and Financial Information

Most Small business owners record transactions and financial information themselves

Figure 8: Personnel who record transactions and financial information (%)



Base: Online small businesses

Q: Who records the transactions and your business's financial information? (Multiple responses)

AMR Interactive, July 2006 (n=1189)

Consistent with the 2004 study, the majority of small business owners record transactions and financial information themselves (83% and 81% respectively, compared to 85% and 84% respectively, August 2004).

Two in ten business owners employ their business partners and/or family members to keep their records (21% for transactions and 20% for financial information).

One in 10 (10%) small businesses have their accountant record financial information.

Refer

http://myob.com/servlet/Satellite?cid=1113874823750&pagename=MYOB%2FPage%2FContentPageWithNav&site=en_AU&c=Page

Appendix 2 – ATO Bookkeeper Industry Surveys

<http://www.ato.gov.au/businesses/content.asp?doc=/content/00126348.htm>

&

<http://www.ato.gov.au/businesses/content.asp?doc=/content/62441.htm&page=4&H4>

State of the industry research - understanding the bookkeeping profession (summary) - 2005



Key findings

The following list contains the key findings of the research.

The majority of bookkeepers are:
female (77%), and at least 40 years of age (71%)
sole practitioners/contractors (77%), and
comfortable with their working hours (61%) – the mean number of hours worked
per week is 32.4.

Sixty-five per cent of bookkeepers did not attend any workshops, courses or seminars conducted by the Tax Office or professional associations over the past year.

Bookkeeping is a diverse industry in terms of client numbers. The median number of bookkeeper clients is 10 with a standard deviation of 52.7 – 48% reported no growth in client numbers over the past 12 months.

Word of mouth is the major source of new business for bookkeepers, followed by direct referrals from tax agents.

The vast majority (80%) of bookkeepers are satisfied with their job – only 4% are dissatisfied.

Around 57% of bookkeepers are highly optimistic – only 2% are very pessimistic.

Motivational factors cited by bookkeepers revolve around flexible working arrangements and client relationships.

De-motivating factors cited by bookkeepers include the complexity of tax legislation, the Tax Office's approach to deadlines and penalties and the poor quality of some bookkeepers' work.

While most bookkeepers generally have a low level of contact with the Tax Office, the relationship between bookkeepers and the Tax Office is quite positive, with 64% satisfied with the overall level of service.

The major issues bookkeepers want the Tax Office to address are:

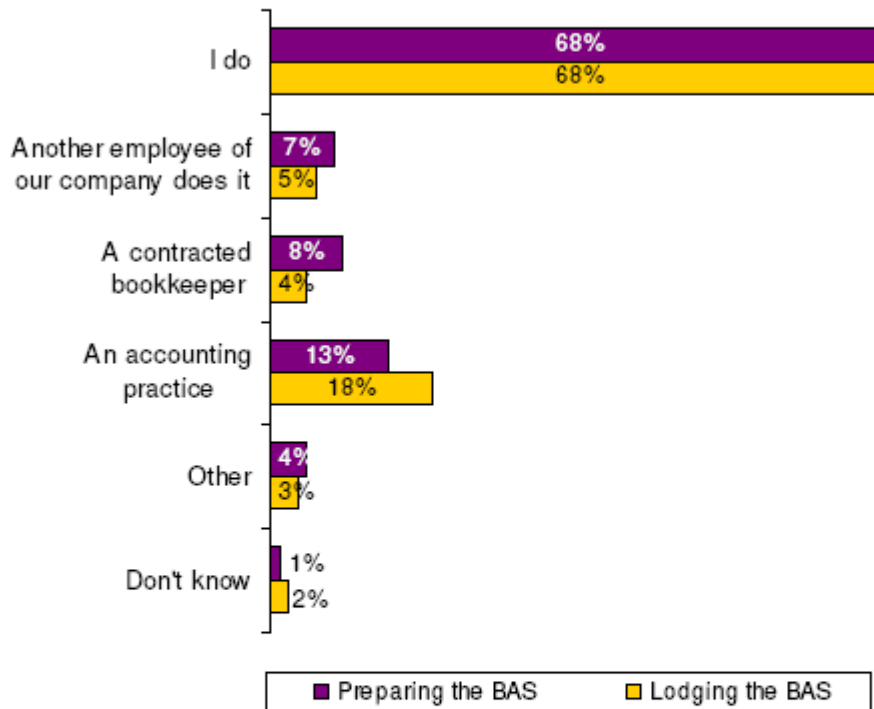
- lack of recognition for bookkeepers
- the complexity of the tax legislation
- Tax Office telephone services for bookkeepers, and
- BAS lodgment deadlines.

The products and services most desired by bookkeepers are:

- more flexible, staggered BAS deadlines
- information seminars
- a bookkeepers' portal
- a dedicated phone line for bookkeepers, and
- a dedicated bookkeeper section on Tax Office website.

Most small business owners prepare and lodge the BAS themselves

Figure 10: Personnel preparing and lodging the Business Activity Statement (BAS) (%)



Base: Online small businesses
Q: Who prepares your company's Business Activity Statement (BAS)?
Q: Who lodges your company's Business Activity Statement (BAS)?

AMR Interactive, July 2006 (n=1189)

More than two thirds (68%) of small business owners prepare and/or lodge the Business Activity Statement (BAS) themselves.

A few businesses have their accountant prepare and/or lodge the BAS (13% and 18% respectively).



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