

Sunday 11 January 2009

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

Dear Committee,

Tax Agents Services Bill 2008

Thank you for the opportunity to make a submission.

I believe that the Terms of Reference are only to ensure that all stakeholders effected by the bill have been heard.

Enclosed are the following -

Copy of my Submission to Treasury dated 15 June 2008
(including copy of Submission to Treasury dated 10 July 2007)

Copy of my Letter to Mr Bob Duncan President ATMA dated 30 November 2008
(including copy of Letter to Mr Bob Duncan President ATMA dated 15 October 2008)

Copy of pages 6-8 of ATMA Submission to Treasury dated 27 June 2008
(sourced from treasury.gov.au)

Please read the above and incorporate the contents into the enquiry.
At this time, no reply has been received from the ATMA to either letter.

The Hon Chris Bowen MP in Press Release 99 of 13 November 2008 states -

“The introduction of the Bill indicates the Government’s commitment to strengthening the tax industry and the integrity of the tax system by improving the registration and regulation of tax agent service providers, thereby giving greater protection and certainty to taxpayers” followed by “Reform in this area is long overdue. An updated regulatory regime that is appropriate for the modern tax environment has been on the drawing board for almost 15 years”.

Page 6 of the ATMA submission states “The ATMA still holds the view that a member of an RPA with that RPA’s PPC should be eligible for registration as a tax agent subject to the “fit and proper person” test determined by the Board“ and “it is disappointing that this proposal has been removed from the draft legislation and is one of the reasons that many members of RPA’s feel disgruntled and let down by their respective professional associations”.

The second last paragraph on page 1 of my Submission dated 15 June 2008 states -

“Has Treasury reviewed the industry acknowledged shortage of tax agents”

A recent article suggested that the average age of a tax agent is 58. My view is that the tax agent profession is in a state of turmoil. Tax Law is constantly changing - how can taxpayers and the Australian Taxation Office (ATO) expect their tax agent service provider to be up to date when retirement is approaching and there has been no formal education requirements for over 30 years?

Fresh newcomers willing to learn and willing to share experiences are vital to the profession.

In my letter to the ATMA, I questioned why my clients return Income Tax Returns to tax agents because of errors. My view is that a practitioner in say their 33rd tax season would be somewhat inflexible to new methodologies - the ATO repealed/replaced the Simplified Tax System because a majority of tax agents do not utilise the benefits for their clients.

Why is it that the ATO gives small businesses some fourteen (14) benefits yet the tax profession, in general, omitted to utilise them - the small business proprietor deserves much better.

Younger tax agents who are willing to implement change are urgently needed.

As the ATMA has not yet replied to my letter of 30 November 2008, can the Committee please investigate how the experience criteria is to be met if a tax agent firm will not give prospective newcomers to the tax profession the opportunity to gain experience. I fully understand that an existing tax agent may be fearful of losing clients but how is the tax profession to progress if suitable newcomers are excluded because they are not given the opportunity to gain experience.

I can only conclude that the view held by the ATMA and, I believe most accountancy bodies, that the experience criteria cease to exist is of great benefit to the tax profession, taxpayers and the ATO.

The Hon Chris Bowen states that the new legislation should provide greater protection and certainty to taxpayers. I believe that the tax profession to meet this expectation (or it is a requirement) must be vibrant, youthful and not overworked.

My last paragraph of page 2 of the Submission dated 15 June 2008 refers to the Code of Professional Conduct and the improvement that this will bring to the profession. Protection of taxpayers and the expectation that their experiences with tax agents are better than satisfactory is a government responsibility - it is paramount that tax agents are required to have more than a reasonable basis for the work they perform.

Many clients question me as to why a tax agent would not review the Receivables and Payables Reports and Bank, Credit Card, Loan Statements/Reconciliations. These are the cornerstone of accounting and the Financial Statements must be erroneous if these Reports and Reconciliations are not in a proper state. Those who prepare a BAS would be expected to review these - why would tax agents not be expected to as well (a copy of my BAS Checklist is enclosed for your reference). A competent BAS preparer should be examining all Balance Sheet and Profit & Loss accounts quarterly. Income Tax Preparation should then be somewhat simple. The fact that many tax agents do not agree the MYOB/QuickBooks file to the Financial Statements/Income Tax Return is totally unsatisfactory to the taxpayer. There are many more instances where tax agents have not acted in the best interest of their clients. I believe that the government should review the practical operation of the tax profession as well as the legal requirements so as to act in the best interests of the taxpayer/small business proprietor.

The ATMA on page 8 of their submission states "Bookkeepers have for too long being, unrepresented, unregulated and unrecognised for the valuable work that most of them do" I understand that being, should be been.

One of the difficulties facing tax agents is the 'poor' standard of work performed by some/most bookkeepers. The new legislation addresses this issue. It is hoped that tax agents to comply with the Code of Professional Conduct ensure that BAS Agents and Bookkeepers engaged by their clients are knowledgeable, competent are meeting their legal requirements.

The safe harbour provisions are paramount in protecting the taxpayer/small business proprietor.

In summary, a vibrant tax profession is necessary and I trust that the Committee will consider all views and ensure that persons suitable to the profession, and with the required knowledge and skills, are encouraged to participate and not excluded for the reason of not being able to meet an experience criteria.

Regards



Duncan Smith FTMA FFin
PO Box 1238 Neutral Bay NSW 2089

~~The General Manager
Business Tax Division
The Treasury
Langton Crescent
PARKES ACT 2640~~

Ms Wang

Sunday 15 June 2008

mq?
20/6

Revised Exposure Draft Tax Agent Services Bill

Thank you for the email from Courtney Cleary advising of Public Consultation until 27 June 2008.

Please find enclosed a copy of my submission dated 10 July 2007.

In that submission, I quoted from the ABC News where Mr Ali Norozzi Tax Counsel for the Institute of Chartered Accountants stated "We want more tax agents out there and we don't want to create unnecessary work for them or put undue pressures on them".

I have read a number of the Submissions of July 2007 made available on your website. Many of these commented on the shortage of tax agents.

The Winter 2008 edition of Tax Practice published by the ATMA included an article titled "GST - Burning Down the House". The survey states that up to 61% of respondents have considered leaving public practice during the past 8 years since the implementation of GST and that burnout rates are significantly higher.

My understanding is that the average age of a tax agent is 54 and expected to climb further. I would suggest that the industry would be in turmoil if the average age of a participant is over 55.

Has Treasury reviewed the industry acknowledged shortage of tax agents?

From the current Exposure Drafts and Explanatory Material, I cannot locate any evidence of encouragement of competent accountants to become tax agents.

Page 6 of 2

Following my submission in July 2007, there was a telephone conference with Treasury. I referred the 3 people in Treasury to the question in my submission -

Why did Treasury ignore the recommendations of all accountancy bodies to remove the experience criteria to become a tax agent?

The response was that there was no such recommendation. This is in contrast to information provided to me by the President and Vice-President of the ATMA.

Who am I meant to believe?

Was there such a recommendation from all the accountancy bodies?

If yes, why would Treasury ignore the recommendation to remove the experience criteria.

Given the shortage of tax agents, why would Treasury not allow the accountancy bodies to ensure that their members are knowledgeable, capable and competent in tax matters.

The requirement for accountancy bodies to examine annually (or at least every 3 years) their members in these three criteria should be legislated. Use of the internet would enable this to be done with moderate ease.

In point 3.35 of the Explanatory Material, it is acknowledged that a person can obtain knowledge and skill through private study and research. There is an immense amount of material made publicly available by the Australian Taxation Office (ATO) eg website, emails, telephone assistance etc, tax publications, the accountancy bodies and others.

All of these sources appear to have been ignored in the Exposure Draft.

The only two ways to become a tax agent is to meet the qualifications and experience criteria. A person with substantial knowledge and skill obtained by means of those mentioned in the above point 3.35 is ignored.

Many of my clients comment to me that they have great difficulty in finding a tax agent who is competent, knowledgeable and capable.

Has the qualifications and experience criteria 'let' down the business proprietor along with other users like the ATO? Has the non-continual testing of tax practitioners knowledge 'let' down the above parties?

Given the tax industry push for change in registration requirements why has this not occurred?

Improvements in the Exposure Draft include the Code of Practice. It is absolutely essential that a Tax Agent/BSP Agent be competent, maintain knowledge and skills, take reasonable care in ascertaining a clients state of affairs and apply the taxation laws correctly to the circumstances.

Page 2 of 3

The inclusion of 'specialist' tax agents in the legislation is an improvement. It is my experience that many Tax Agents believe GST is a nuisance and have not undertaken sufficient training in GST. It may be that Treasury should examine whether a Tax Agent automatically has the required skills and knowledge to be a BAS Agent.

One area of concern is that a Tax Agent/BAS Agent that operates as a company must have "sufficient number of individuals". Does that mean that an agent who is the sole director of a company and has no other associates/staff in the company does not now meet the requirements of the law. Many potential BAS Agents may be affected by this legislation and be forced to trade as a sole trader (and thus take extra business risks).

My previous submission raised the point that a tax agent can practise for up to 50 years and never have their knowledge tested - the President of the ATMA when questioned on this believed that it is "silly". Treasury appears not to have addressed the issue of continued 'testing' of tax practitioners - my view is that this is essential for satisfying the needs of users of our services.

The low uptake of the concessions available in STS/SBTC warrants the question whether the tax industry can be trusted to self regulate under the Code of Professional Conduct. From my experience of the past 10 years dealing with tax agents, it is highly unlikely that a dissatisfied business proprietor will "complain" to the new Board.

I propose that the concentration on qualifications and experience be amended to incorporate what I believe are the requirements of the users of tax practitioner services being knowledge, competence and capability.

It is my view that the tax industry be modernised and younger people with the required abilities be encouraged to join and participate in the industry's continued development.

Regards



Duncan Smith FTMA FFin

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General Manager
Tax System Review Division
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Tuesday 10 July 2007

Submission Tax Agent Services - Exposure Draft Legislation

Thank you for the opportunity to present this submission.

I enclose a copy of my letter to Hon Joe Hockey dated 24 June 2007 and his replies dated 27 June 2007 and 09 July 2007. The first reply states that he had "forwarded to Minister Dutton asking him to give consideration to the points you raised".

Please consider all the issues raised in the above correspondence in reviewing the above Draft Legislation.

The Treasury's initiative to improve Consumer Protection is welcomed. Some industry participants might suggest the bookkeeping industry is in turmoil and some industry participants might suggest the tax agent industry is in turmoil.

Mr Ali Norozzi Tax Counsel on the ABC News of 22 June 2007 stated "We want more tax agents out there and we don't want to create unnecessary work for them or put undue pressures on them". Has Treasury considered the views of the ICAA?

Mr Gary Townsend of the ATO's BSP Unit rang me on Wednesday 04 July 2007 in response to the letter of 24 June 2007 to Annamaria Carey of the ATO. My recollection is that he commented that the ATO receives regular feedback about the perceived inadequacies of the experience criteria and also feedback about why knowledge tests are not utilised.

Did Treasury consult with the ATO regarding this feedback? I believe that this feedback should be important to Treasury in formulating the Legislation.

In my view, every Tax Agent and BSP should be tested, at least, every three years on their registration renewal. My preference would be to test annually (like MYOB). I raised the question as to why a tax agent can practice for up to 50 years and never have to undertake formal testing of their knowledge with Mr Bob Duncan President of the ATMA - his reply was "it is silly". Can Treasury please address this issue.

In my letters to the ATMA and ICAA (both of which did not receive a reply) the following question was asked -

Why did Treasury ignore the recommendation of all accountancy bodies to remove the experience criteria to become a tax agent?

Treasury wishes to offer consumer protection to the business owner. I believe that the current environment of the tax agent industry needs more participants with good knowledge and initiative. In recent days, the STS has had to be repealed - why would less than 50% of eligible taxpayers be entered into the concessional environment by tax agents? I suggest that the small business owner has a right to feel "let down" by the tax agent industry.

What can Treasury and the ATO do to ensure that the small business owner, who places great faith in their tax practitioners, has the resources to ensure that the practitioner is competent, knowledgeable and capable of preparing proper Financial Statements>Returns?

I believe that a Code of Best Practice should be developed and adopted by all tax practitioners. One aspect of this may be that the MYOB/Quickbooks data file agrees with the Financial Statements before lodging of the Income Tax Return.

Why is it that up to 80% of Income Tax Returns prepared for my clients are returned to the Tax Agent for correction? Please examine this along with the quote from the ABC News "the new legislation follows years of concern by the tax office about incorrect tax returns". What faith can the business owner place in their tax practitioner if indeed the ATO has been concerned about incorrect tax returns for many years?

One aspect of the legislation that needs addressing is the employee exception. A contract bookkeeper may have ten clients and become an employee for each client - this would appear to be outside the intent of the legislation and open to 'abuse' by bookkeepers/BSP.

I believe that progression from bookkeeper to BSP to Tax Agent should be possible over time without the need to cease having a client base because one is required to work for/ under the direction of a Tax Agent/BSP. The Registered Professional Accountancy Bodies should be in a position to provide this progression by providing appropriate training. The ATO stated to me that if I went to a Tax Agent and said can I work for you for twelve months to meet the experience criteria and that I would then start my own practice that is extremely unlikely that any tax agent would be forthcoming - I agree.

All business proprietors in placing their faith in a tax practitioner have a right to expect that the end result meets their needs and those of the ATO.

Regards



Duncan Smith FTMA FFin
Accountant in Public Practice
PO Box 1238 Neutral Bay NSW 2089

✓ Sunday 30 November 2008

✓ Mr Bob Duncan
✓ President
ATMA
PO Box 1185
Burwood North NSW 2134

✓ Dear Bob,

✓ Tax Agent Services Legislation

✓ A copy of my letter dated 15 October 2008 is enclosed.

✓ It appears that the above legislation is to be enacted with the experience criteria intact (against the suggestions of the ATMA in both submissions).

✓ Can you please address the 3rd and 4th paragraphs of my letter dated 15 October 2008.

✓ Given that it appears that no tax agent in Sydney wishes to engage my services - can the ATMA suggest what happens next. Given that the ATMA may be able to solve this dilemma what is a reasonable reward for my skill and knowledge.

✓ My knowledge and experience in tax return preparation became more evident to you during the completion of the Individual Tax Preparation Workshop.

✓ Would you agree that it was evident during the Workshop that my knowledge and abilities are equal to if not more than many/most registered tax agents?

My clients question me why I review Income Tax Returns prepared by tax agents and they have to be returned because of errors. Why is there so many instances of this?
There appears to be no Quality Assurance of the standard of Tax Return Preparation - if there is why do I have to return so many Tax Returns to Tax Agents for improvements.

✓ What happens if my clients instruct me to prepare an Income Tax Return due to their unsatisfactory experiences with Tax Agents and it was agreed that no fee would be charged and they are fully aware that I am not a Tax Agent.

A reasonable man may offer the opinion that The Institute of Chartered Accountants acted with dishonesty and a lack of integrity in discussions with Treasury regarding the re-insertion of the experience criteria. Why would the Institute and Treasury come to an agreement and not inform all the other industry bodies involved in the decision making process? Am I at liberty to write to my local member and ask this question of him and enquire whether he believes whether the Institute of Chartered Accountants acted with honesty and integrity?

Once again, how am I meant to meet the experience criteria if there is no tax agent who is prepared to engage my services (at a rate representing my skills). It would be extremely cumbersome and frustrating for all concerned if a tax agent employed me at a junior level with the sole intention to take advantage of my circumstances - does the ATMA believe this is a likely course of action.

It is obvious to all in the profession that there is an urgent need for more registered tax agents - why is it that Treasury has not addressed this issue?

What other avenues are available to prove to the Registration Board that I have the skills and experience to competently prepare Income Tax Returns other than meeting the experience criteria.

Regards



Duncan Smith FTMA FFin

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Mr Robert Duncan
President
ATMA
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Wednesday 13 October 2008

Dear Bob,

Tax Agent Services Legislation

The ATMA made a submission in July 2008 once again supporting "the view that a member of a RPA with that RPA's PPC should be eligible for registration as a tax agent subject to the fit and proper person test determined by the Board".

Can the ATMA please provide an update on the progress of the legislation and whether Treasury has considered the above view of the ATMA.

At the last training seminar that I attended, you mentioned that the ATMA can support an application for registration as a tax agent by a member of the ATMA (my memory is that you mentioned that the Tax Agent Registration Board has not rejected such a supported application).

In what circumstances does the ATMA support an application by a member?

Can you please explain the operation of Part 2 Registration Section 20-10 of the new legislation.

Would it be necessary for me to sell my business, substantially let-down my clients, and work in a tax agents office to gain relevant experience. That is, if I could find a tax agent who would want to employ me - recent applications to join firms have been unsuccessful.

My clients have engaged me to review their Financial Statements and Income Tax Returns for many years. Many discussions have eventuated with clients and their tax agents where the Financial Statements and Income Tax Returns could be improved. My position has to be one of absolute certainty otherwise my reputation with my client may be decimated by the tax agent. Even so, I believe that I must act in the best interest of my clients - indeed my clients instruct me to do so.

I have been an active member of the accountancy/finance profession since commencing my business in 1998. The Securities Institute/Finsia/Kaplan has engaged me as a marker, QA Reviewer/ Forum Co-ordinator since 1999. This month I was invited to be a Task Force Member in the subject Analysing Financial Statements - I was very pleased as it is fair to say that only the industry elite are invited to be a Task Force Member. Kaplan believes that my knowledge and experience in reviewing Financial Statements is of a very high standard.

My involvement as a Tax Agent would be as a Specialist Tax Practitioner in the areas of Individuals and Companies that qualify for the Small Business Tax Concessions ie \$2 million turnover or less. I have taken an active involvement in STS/SBTC with my clients explaining the advantages to them (and at times, at the request of the client, explaining the advantages to the tax agent).

I note that the ATMA is running a course Certificate of Tax Preparation 2008 - Individuals commencing Friday 31 October. Would completion of this course be sufficient to obtain support from the ATMA in any application as a tax agent.

Thank you for your assistance with these matters.

Regards



Duncan Smith FTMA F Fin
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Neutral Bay NSW 2089

27th June 2008

In previous formats of the proposed draft the role of Recognised Professional Associations (RPAs) was enhanced so that members of RPAs with the appropriate Public Practising Certificate (PPC) were deemed to be eligible for registration as a tax agent and their registration was to be certain.

The ATMA has always agreed with this proposal with the exception of the satisfaction of the "fit & proper person" test. The ATMA has always considered the "fit & proper person" test should always remain with the Board as they were privy to information that was not available to the RPAs.

It was at one time proposed that if a member of an RPA with a PPC from his/her RPA applied for registration as a tax agent with a supporting letter from the relevant RPA, registration as a tax agent would be certain.

At more recent meetings with Treasury some of the professional accounting bodies backed away from this "certainty" of registration process for members of RPAs with the relevant PPC. This was in fear of possible litigation where the relevant RPAs supported the application of an individual who subsequently was shown to be unfit for registration. This was despite assurances from Treasury that it would be the Board that approved the registration of a person and not the relevant professional association.

The ATMA still holds the view that a member of an RPA with that RPA's PPC should be eligible for registration as a tax agent subject to the "fit & proper person" test determined by the Board.

Further the ATMA considers that all the existing requirements as to experience etc apply to those applicants **who are not members of an RPA.**

It is disappointing to see this proposal has been removed from the draft legislation and is one of the reasons that many members of RPAs feel disgruntled and let down by their respective professional associations.

Basically the requirements for eligibility for registration as a tax agent remain the same as stated in the existing legislation.

The only departure from the existing legislation has been the relaxing of the employment requirements for members of RPAs. Under the existing legislation it is necessary to be employed by a registered tax agent in order to gain registration. Under the draft legislative proposals experience gained as a contractor to a tax agent is now taken into account.

This is an improvement over the existing requirements but is far removed from the original proposals for members of RPAs with PPCs.

Part 2 Registration Section 20-10 states that ***"The regulations may provide a system to allow the Board to accredit professional associations for the purpose of recognition of professional qualifications and experience that are relevant to the registration of individuals as "registered tax agents and BAS agents."***

The EM at Para 2.47 states that ***"The regulations may provide a system to allow the Board to accredit professional associations for the purpose of recognition of professional qualifications and experience for registration purposes" (Section 20-10)***

Does this mean that membership of an RPA (with a PPC) would meet the prescribed qualifications in Paragraph 20-5(1) (b)?

The introduction of registration of BAS agents is a recent innovation and is designed to bring into the framework those suitably qualified bookkeepers to assist those overworked accountants and taxpayers to meet their tax obligations.

The ATMA supports this proposal but stipulates that BAS agents (usually Bookkeepers) are not tax agents and usually do not generally have the same qualifications as tax agents and accountants.

The ATMA understands that if an applicant for registration as a BAS agent is a voting member of an RPA and met the conditions of subsection 251L(6) and 251L(7) of the old law that there is no further need for that applicant to produce educational qualifications.

Schedule 2 Transitional Provisions Paragraph 4 (1-3) provides special rules relating to the provision of BAS services by certain individuals so that they are deemed to be registered as BAS agents for the transitional period.

Bookkeepers have for too long being, unrepresented, unregulated and unrecognised for the valuable work that most of them do. Certainly there are unscrupulous bookkeepers just as there are unscrupulous accountants and tax agents.

As a result the proposed legislative requirements for registration as a BAS agent are not as onerous as those for tax agent registration. Nor should they be.

The proposed legislative framework recognises that there are professional associations of bookkeepers or BAS agents and that these associations must meet certain criteria for recognition.

In a previous submission with the other accounting bodies it was suggested that the minimum required voting members of a Recognised BAS agent Association be set at 1000 members (or a lesser number) at the discretion of the Board. The draft Tax Agent Services Regulations 2008 in Part2 para 202(b) expands this definition further by stating **“at least 500 voting members who are BAS agents registered under the Act; or both.**

The ATMA recommends that the minimum number of voting members of a Recognised BAS Agents Association be amended further by the addition of a subparagraph allowing the Minister, or at the discretion of the Board, to approve a lesser number of voting members or registered BAS agents during the transition period. This will allow the BAS Associations that meet all of the other requirements except for the required number of voting members to be approved in the short term.

BAS/GST CHECKLIST

Period ended

GST Cash/Non-Cash Monthly/Quarterly Actual/ATO Estimate
PAYG - W Yes/No Monthly (above \$25,000 threshold)/ Quarterly
PAYG - I Yes/No Actual/ATO Estimate based on last year

Completed Tick

Reconcile Bank Account(s)/ Credit Card(s)
Reconcile Tax Accounts(s)/Loan Account(s)

Reconcile Accounts Receivable/ Accounts Payable/ Inventory

Print and Review Accounting Records for Quarter

Review General Ledger
GST Detail Report (Cash/Non-Cash) check use of Tax Codes
Clear Suspense Account
Run Tax Code Exception Reports

Balance Sheet do GST Collected/Paid ledgers reconcile

Last Quarter payment/refund allocated correctly?

If Debt to ATO, reconcile Integrated Client Account/ Income Tax Account

Profit and Loss is GST Collected 10% of Taxable Supplies?

PAYG Withholding ledger reconcile

Adjust for private expenditure/non-deductible expenditure

Use of Annual Election is preferred

Petty Cash entered/ Trade Accounts reconciled

Receipts - has GST been charged on all relevant supplies?

Disbursements - is a compliant Tax Invoice/Invoice/Adjustment Note held?

46.5% penalty may be imposed by ATO if not on hand!

Check Leases and HP/Rent/ new cars etc

Advise insurance company of business usage before any claim

GST treatment of second hand goods - bought and sold

Complete BAS Refer ATO Leaflet - Activity Statement Update Q2 2008-2009

Copy and send, with payment if required, by due date (28th + extensions)

File copy of BAS with working papers

Compare Financial Results to budget and last year Trends!

Print Cash Flow Statement Run and print Company Data Auditor Summary

Lock period at end of quarter Pay Super by 28th Back up file and take offsite

This Checklist is of a general nature.

*Specific issues should be addressed to Business Accounting & Strategies Pty Ltd
(telephone 02 ~~9904 3672~~) your tax agent or the ATO (telephone 13 2866)*