

## We are now to be called **“BAS Agents”**

For the ease of consistency and reference the proposed law has moved to referring to practitioners as the “Tax Agent” or the “Bas Agent”. The previous title of “BAS Service Providers” may in time cease to exist but for the moment will continue its use by the tax office to provide services to bookkeepers.

Currently the term “BAS Service Provider” is not a registration that gives any sanction, authority or licence to the holder.

### **Who does the new law apply to?**

Persons or Entities providing bookkeeping or accounting services as a contractor to clients for reward. The “BAS Agent” registration is specifically where that work includes anything to do with GST advice and BAS preparation (“BAS Provisions” see below)

The law does not apply to employees or the owners of the business. The law can only seek to regulate contract bookkeepers that provide BAS Services to their clients.

If you are employed then you are under the direction of the employer and they are ultimately liable for your actions, whereas a contractor is deemed to be ultimately liable for their personal actions hence government seeks to provide this new regime to protect the clients.

### **When does it start?**

Not before late 2009, possibly start date of 1 January 2010 (this has been advised but is not draft legislated)

### **What do I have to do when?**

**( from now untill estimated start date of 1 Jan 2010)**

(Refer more complete explanation at Appendix 1)

If you are currently legally and competently providing BAS services, this includes

- 1) Being directed by a Tax Agent, or
- 2) providing services in accordance with the Barry & Norm examples provided by the tax office (Installing, setting up and using commercially available accounting software to provide BAS like reports)

then you are allowed to keep providing those BAS services for a Transitional 2 years after the start date.

If you are not currently legal then you must stop providing any BAS service immediately.

## What then?

Before the expiry of the transitional 2 years (**before 31 Dec 2012 estimated**)

- 1) register under the new law, which then provides a 3 year initial registration you remain legally able to provide BAS Services for the next 3 years.

or

After the 2 years you must

- 2) stop providing BAS Services
  - a. you must not provide BAS Services
  - b. you must not advertise that you can provide BAS Services
  - c. you must not pretend to be registered

## Then

Within that first 3 year registration period but before renewal (**before estimated 31 Dec 2015**)

you must

- remain a fit and proper person and
- obtain the required “educational qualification” and
- have at least 1400 hours “relevant experience” in the preceding 3 years

## What “educational qualification”?

- An existing legal contract bookkeeper will require this within 5 years of the start date of the new law
- Or
- A new contract bookkeeper, will require this immediately

You will be required to have at least

- Certificate IV Financial Services (Bookkeeping), or
- Certificate IV Financial Services (Accounting)

Including completion of a course in basic GST/BAS taxation principles

The course must have been provided by a Registered Training Organisation (RTO) or equivalent.

Previous qualifications will be recognised or those qualifications will be compared to the current qualifications and possible GAP education will be required for any missing or new components.

The GST/BAS taxation principles unit will be required by most as this unit is only recently specified and described. We expect that this unit as with all of the course will be open to Recognition of Prior Learning.

Refer to the “ICB Whitepaper guide to Certificate IV Bookkeeping” for an outline of **all** providers of this course and further details on obtaining the qualification.

## What “relevant experience”?

Relevant experience is:

- Work in the role of a BAS agent (or tax agent) or
- Work under the supervision and control of another registered “agent” or
- Work of a type approved by the board

All of which includes substantial involvement in BAS Services

In ICB’s view there is more work to be done here. It is possible the new Tax Board will be left to provide clarification on what is to be included. 1400 hours of BAS Services as described would be nearly impossible for even fulltime people to achieve.

## New bookkeepers or what is the story in 5 years time?

For a new BAS Agent to obtain registration

- 1400 hours relevant experience within the last 3 years
- Have the required “educational qualification” as above

## What are “BAS Services”?

### Draft Sn. 90-10 Meaning of *BAS service*

- (1) A *BAS service* is a \*tax agent service:
  - (a) that relates to:
    - (i) ascertaining the liabilities, obligations or entitlements of an entity that arise, or could arise, under a \*BAS provision; or
    - (ii) advising an entity about the liabilities, obligations or entitlements of the entity or another entity that arise, or could arise, under a BAS provision; or
    - (iii) representing an entity in their dealings with the Commissioner in relation to a BAS provision; and
  - (b) that is provided in circumstances where the entity can reasonably be expected to rely on the service.
- (2) A service specified in the regulations for the purposes of this subsection is not a *BAS service*.

### *Classroom or onsite training*

- general training on the use of software is NOT a BAS Service
- general training around how GST works or is reported in the software is NOT a BAS service
- training that relates to exactly how GST works for a specific business – IS a BAS service

### Install and configure software

- general software / bookkeeping / accounting configuration – No
- specifically determining what GST codes apply when – yes
- advising on legal compliance of the business tax invoice – yes
- configuring how a BAS like report is to be produced – yes
- implementing a default GST code list provided by a registered Agent to the business – No

If the client is relying on this install and configuration service to help that client ascertain their future GST/BAS obligations then it is a BAS Service.

## Bookkeeping

- following instructions – no
- transfer data onto a computer program - no
- enter data – no
- code transactions (based on instructions) – no
- process payments – no
- prepare bank reconciliations - no

## Advanced Bookkeeping

- If the client is relying on another registered BAS/Tax agent – no otherwise
- preparing an approved form – Yes
- lodging an approved form – yes
- giving advice about a BAS provision – yes
- “transacting” with the ATO on behalf of a client – yes
- Anything and everything where work is reviewed by another registered BAS agent – no
- Reconciling facets of the accounting records for a period – no
- Providing generic reports – no
- Preparing a report that is used to prepare the BAS – yes

## What is a “BAS Provision”?

You must be a registered BAS Agent if you are providing BAS services which means helping a client with completion or understanding of a BAS Provision.

BAS Provisions can be understood to be completion of the Payable amount boxes on the BAS.

- GST amount collected or paid
- FBT Instalment amount or credit claim
- WET payable or refundable amounts
- Luxury Car Tax payable or refundable amounts
- Fuel Tax Credit amounts
- PAYG Withholding amount payable
- PAYG Instalments amount payable

BAS provisions is defined in section 995-1 of the ITAA 1997 to mean:

- collection and recovery of tax provisions in Part VII to the *Fringe Benefits Tax Assessment Act 1986*;
- the indirect tax law (which means the GST law, the wine tax law, the luxury car tax law or the fuel tax law, as defined in section 995-1 of the ITAA 1997); and
- Parts 2-5 and 2-10 in Schedule 1 to the *Taxation Administration Act 1953* (TAA 1953) (the pay as you go system).

As *taxation law* includes *BAS provisions*, by definition tax agent services include BAS services.

### **What if I ignore this law?**

If you provide a BAS service for reward then Civil penalty of currently \$27500 units (\$137,500 for companies)

If you advertise that you provide a BAS Service and you aren't legal or you pretend to be a BAS Agent and you aren't then Civil penalty of \$5500 (\$27,500 for companies)

### **Does my client care?**

Your client will not pay penalties if they have used a Registered BAS Agent and

- false or misleading statement is made carelessly, provided the taxpayer has taken reasonable care to comply with their tax obligations by giving the tax agent or BAS agent the information necessary to make the statement;
- 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.

These penalties do not revert, as such, back to the Agent but if an agent is at fault they may be referred to the Board for further action.

### **When it is up and running what does it mean?**

- 1) You must be registered to provide BAS Services
- 2) Registered BAS Agents must comply with law and the Code of Professional Conduct

### **Why have they bothered?**

The mantra as far as BAS Services are concerned has been "Consumer Protection"

Other purposes:

- Consolidate into one national governing Tax Board to register tax agents and now BAS agents
- Legislate a Code of Professional Conduct
- Legislate sanctions to discipline agents

### **Who is allowed to be registered?**

Individuals who are

- 18years or more
- A fit and proper person
- Meets the requirements of the regulations including
  - Qualifications
  - Experience

Companies and partnerships may register if

- Each director/individual partner is a fit and proper person
- not under external administration
- has not been convicted of a serious tax offence
- has sufficient no of individuals who are registered, to adequately provide BAS services competently and to supervise others

Individuals may register as a trustee

Pre 1988 tax agents and nominees get automatic registration

### **So what is “Fit and Proper”?**

Good fame, integrity and character

NOT a person who:

- (a) you are convicted of a \*serious taxation offence;
- (b) you are convicted of an offence involving fraud or dishonesty;
- (c) you are penalised for being a promoter of a \*tax exploitation scheme;
- (d) you become an undischarged bankrupt or go into external administration;
- (e) you are sentenced to a term of imprisonment.

### **How to behave**

The Legislated code of professional Conduct requires the following

#### *Honesty and integrity*

Includes personally complying with tax laws and have correct trust accounts for any clients money.

#### *Independence*

includes acting lawfully in the best interests of your client and must have in place adequate arrangements for the management of conflicts of interest. Avoid conflicts of interest between clients otherwise written consent of the relevant clients is required.

#### *Confidentiality*

All client information is to be confidential and not made available to any other person without the clients specific instruction.

#### *Competence*

You must maintain knowledge and skills relevant to the services that you provide.

You must take reasonable care in ascertaining a client’s state of affairs, to the extent that ascertaining the state of those affairs is relevant to a statement you are making or a thing you are doing on behalf of the client.

You must take all reasonable steps to apply the \*taxation laws correctly to the circumstances in relation to which you are providing advice to a client.

If you don't know then don't pretend to know, obtain expert advice.

#### *Professional Indemnity Insurance, as prescribed*

#### *Other*

You must not knowingly obstruct the proper administration of the \*taxation laws.

You must advise your client of the client’s rights and obligations under the \*taxation laws that are materially related to the \*tax agent services you provide.

You must respond to requests and directions from the Board in a timely, responsible and reasonable manner.

### **If you don't behave**

- you may be cautioned in writing
- suspend your registration
- terminate your registration
- direct you to undergo a course of education or training
- direct you to be supervised
- restrict your level of service

### **If you really behave badly**

If you are a BAS Agent:

- 1) Making false or misleading statements is a no no. If you make or prepare a statement that you ought to know is going to the tax office and you recklessly allowed it to be false, incorrect, misleading or omits anything (\$27500 or \$137500 for companies)
- 2) Use the services of a deregistered entity to provide BAS services (same)
- 3) You sign a tax declaration relating to BAS Services and it wasn't prepared by you or another BAS agent or someone under the supervision and control of you or another BAS agent (Same)

### **What role do Professional Associations have under the legislation?**

In respect to BAS Agents:

The Board "may" accredit professional associations for purpose of recognising qualifications and experience that are relevant for registration.

However membership of recognised BAS Agent Associations will not give you automatic registration as a BAS Agent.

You should join a Professional Association that actually represents and assists you in your role.

### **How do I apply to be a BAS Agent?**

- 1) Apply to the Board
- 2) on the prescribed form
- 3) with the fee (non refundable after 30 days)
- 4) with additional paperwork the board may want

### **Registration details**

- Apply
- Board must answer within 6 months
- A Registration lasts for at least 3 years
- Conditions may apply
- Board may set a prescribed level of Professional Indemnity Insurance
- Registration is conditional on remaining fit and proper

### **Renewal**

Renewal of your registration is automatic following your application to renew, unless the Board decides otherwise.

## **ICB comments**

ICB believes this new system will assist in raising the profile and recognition of the bookkeeping profession. Too many bodies in the accounting and bookkeeping sector, as well as too many facets of government have not understood the important role contract bookkeepers have in assisting businesses to meet their compliance obligations.

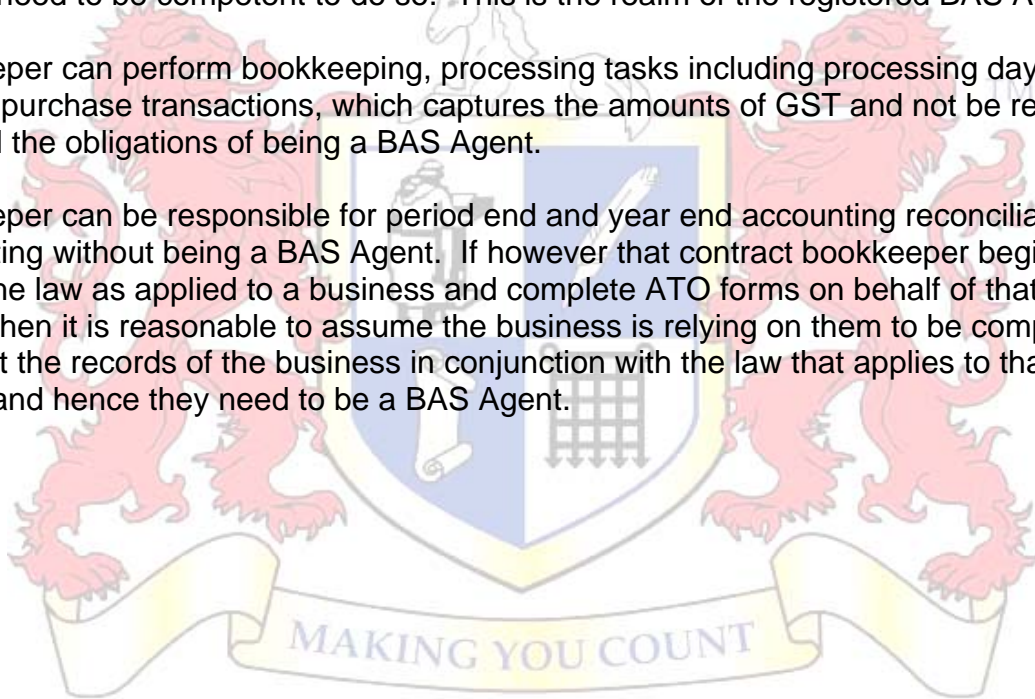
ICB believes this system will also help formalise the professionalism of bookkeepers. Creditable, competent, professional bookkeepers should be recognised as such and distinguished from those who are not.

We also believe that Treasury has recognised that there are many good bookkeepers doing good work in a system that has not been regulated as tightly as now proposed. Treasury have allowed a suitable time for established and competent bookkeepers to have their knowledge and skills appropriately assessed to the required standard to permit their inclusion in the new system.

If a bookkeeper is providing interpretation of legal compliance obligations to a business then they need to be competent to do so. This is the realm of the registered BAS Agent.

A bookkeeper can perform bookkeeping, processing tasks including processing day to day sales and purchase transactions, which captures the amounts of GST and not be required to meet all the obligations of being a BAS Agent.

A bookkeeper can be responsible for period end and year end accounting reconciliations and reporting without being a BAS Agent. If however that contract bookkeeper begins to interpret the law as applied to a business and complete ATO forms on behalf of that business then it is reasonable to assume the business is relying on them to be competent to interpret the records of the business in conjunction with the law that applies to that business and hence they need to be a BAS Agent.



## APPENDIX 1 – When do I have to do what?

Various Options for the start of the new system:

- 1) If you comply with current law Sn 251L(6) as at start date
  - a. Member of a Recognised Professional Association, or
  - b. Payroll service or
  - c. Customs broker or
  - d. Bookkeepers working under the direction of a registered tax agent (Refer other papers in relation to the full extent of what this entails).

Valid option is the ICB/ABN Strategic BAS Wizard Partnership.

- and you provide BAS services during the next 2 years
- then you are considered as though you were registered in the new system and you may legally continue doing BAS work for that 2 years.

Or, an additional position

- 2) If you currently “legally” provide a BAS service as now defined, including: (more detail below)
  - a. Installing and configuring software including GST codes
  - b. Using software to generate a BAS like report

Noting that the above two examples are specifically made legal today due to ATO advice provided to bookkeepers on the ATO website.

- And you provide BAS services during the next 2 years
- then you are considered as though you were registered in the new system and you may legally continue doing BAS work for that 2 years.

Current Treasury advice is quoted here

The draft “...now provide a two year transitional period for individuals who are currently legally providing BAS services as defined under the draft Bill, that is those exempted from the requirement to register under existing subsection 251L(6) of the ... (tax act)...and those that currently do not need to be registered , but who will be required to register under the draft Bill (Such as some Bookkeepers).”

ICB is seeking clarification of this extension to the previous draft of the transition provisions. We believe it means that if you are legal under Sn 251L(6) or legally acting due to ATO interpretation of what is and isn't a BAS service as currently publicly made known, then you are able to continue in your current duties for 2 years. (i.e. the Barry & Norm examples provided by the ATO remain valid for 2 years after the start of this new system)

or

- 3) If you apply for registration
  - a. Within 3 years of start date
  - b. You don't yet have the required education qualification
  - c. You are a fit and proper person
  - d. You convince the board you provide BAS services to a competent standard

The you are eligible to be registered.