

14 July 2020

Mr Ian Klug
Chair
Tax Practitioners Board
By email: tpbsubmissions@tpb.gov.au

Dear Ian

Comment on proposed extension of BAS services - Tax Agent Services (Specified BAS Services No. 2) Instrument 2020

CPA Australia represents the diverse interests of more than 166,000 members working in over 100 countries and regions around the world. We make this submission to the Tax Practitioners Board (TPB) on the draft Legislative Instrument, [Tax Agent Services \(Specific BAS Services No. 2\) Instrument 2020](#) (the draft LI) on behalf of our members and in the broader public interest.

Providing certainty

We welcome the certainty provided by the draft LI following the TPB's identification that the *Tax Agent Services (Specific BAS Services) Instrument 2016 (the 2016 LI)* did not adequately define the scope of services provided by BAS agents. We understand that the draft LI seeks to clarify the definition of BAS agent services, extending it beyond the confined definition in section 90-10 of the *Tax Agent Services Act 2009 (TASA)*.

In the 2016 LI certain activities in relation to superannuation guarantee administration, the superannuation guarantee charge (SGC), taxable payment annual reports, TFN declarations and ABN registrations were established to be services able to be provided by BAS agents. This draft LI proposes to clarify these activities as being lawful. Such certainty benefits all tax agents and we support the TPB's effort in addressing this issue.

Expanding definition of BAS agent services

We acknowledge that the Explanatory Statement to the 2016 LI stated that consensus was reached on the scope of the 2016 LI¹. However, we remain concerned about the expansion of the definition of BAS agent services beyond that prescribed in the TASA, particularly in relation to legislation that was in force when the TASA was originally passed by Parliament. In this regard, we note that superannuation guarantee provisions in force at the time were not included within the legislated scope of BAS agent services. Scope exclusions encompassed services in the draft LI such as ascertaining (calculating), and advising on liabilities, obligations or entitlements,

¹ Paragraph 43, *Consultation, Tax Agent Services (Specified BAS Services) Instrument 2016 Explanatory Statement*, Tax Practitioners Board, 2016

and representing a client in dealings with the Taxation Commissioner in relation to superannuation guarantee provisions.

Education requirements

While there has been an expansion of the BAS agent role over time, the training and education requirements for BAS agents have not increased at the same rate. It is our view that the educational qualifications and requirements for BAS agents should be commensurate to the range and complexity of services they are permitted to provide, and that relying on the Code of Conduct to maintain standards is insufficient.

The education and experience requirements for BAS agents in the *Tax Agent Services Regulations 2006 (the Regulations)* are based on the TASA's original scope with only Certificate IV level (Australian Qualifications Framework level 4 criteria) education required and approximately half the relevant experience required for a registered tax agent².

We have previously expressed concerns about the risks associated with the addition of further permissible tax services to both the BAS agent services and tax (financial) advice service categories as we are not confident that these practitioners have the requisite academic qualifications, experience and skill-sets to provide advice on the expanded tax subject matters and issues. For example, Part 1 of Schedule 2 to the Regulations currently requires completion of only basic GST/BAS taxation principles for BAS Agents, and these should be amended to include qualifications related to the expanded services permitted by this draft LI.

Expanded scope of activities in the draft LI

When comparing the Explanatory Statements for the 2016 BAS LI and the present draft LI, we note the addition of functions such as being an authorised contact and representative of the client, having access to SGC accounts in online services and defending the client in audits and reviews.

It is our view that the representation of clients in relation to reviews, audits and penalties, as reflected in sections 33 (e) and (f) of the draft LI Explanatory Statement, should not be included as a BAS agent service. These activities should remain the role of registered tax agents given the legislative complexity and administrative knowledge required to deal with such issues.

Conclusion and recommendations

So as to provide ongoing flexibility, we understand that the TPB has been given a power to declare, by way of legislative instrument, certain services to be BAS services. However, we remain concerned that expanding the scope of BAS services introduces compliance risks to consumers and potential risks to superannuation payments that are not sufficiently mitigated by the current educational and experience requirements placed on BAS agents.

In balancing consumer and BAS agent convenience against maintaining the integrity of the tax and superannuation systems, we believe that further enhancements to the regulatory framework are required to ensure that BAS agents have sufficient expertise and experience to provide the services outlined in the draft LI.

² Compare [Part 1 – BAS agents and Part 2 – Tax agents, in Schedule 2 of the Tax Agent Services Regulations 2009](#)

While we agree that the draft LI should be issued to provide clarity and certainty for the tax profession, we recommend that:

1. Future proposals to expand the definition of BAS agent services should consider the increasing potential risks to consumers and the tax and superannuation systems, as well as the burden on the TPB to ensure compliance with the Code of Conduct
2. Part 1 of Schedule 2 to the Regulations be amended to address the increasing scope of BAS agent services
3. Sections 33 (e) and (f) of the draft LI Explanatory Statement be removed, and
4. BAS agent educational requirements be reviewed and enhanced to reflect the increasing complexity, consumer risk and scope being permitted by this draft LI.

If you have any queries, contact Elinor Kasapidis, Tax Policy Adviser, at elinor.kasapidis@cpaaustralia.com.au or 03 9606 9666.

Yours sincerely



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