



Prepared by Maria Benardis

Bag Issues Log Item 07-001

- Current BAS electronic lodgement facility available to bookkeepers and the associated "feedback" form completed after BSP visit
- The Business Portal and lodgement of BAS's

Log Item sent: 20/04/2007

1. Current BAS electronic lodgement facility available to bookkeepers and the associated "feedback" form completed after BSP visit

(1) Bookkeepers currently have the ability to lodge BAS's electronically. They are asked two questions 1. to select a recognised professional association that they are a member of for example the Taxation Institute of Australia or if they are not a member to provide a tax agent number (TAN). The ATO is stating that they do not need to use a different TAN for each client but to just select one and this will suffice for all BAS's lodged by them. This is even though the client they are lodging for bears no relation to that particular TAN selected. Third party TAN's were also encouraged and are considered acceptable by the ATO. An example of private company that sits on the BAG committee was recommended as (and appeared to strongly recommended) as an option. The conclusion drawn was that this would ensure from an ATO perspective a bookkeeper is in compliance with section 251L of the ITAA 1936. It was also stated that the ATO did not cross reference or check the TAN's so there would be no issues arising from this practice.

AAPB finds these instructions and comments extremely concerning and seeks clarity as to whether this is the current ATO policy? If so, it would appear to be in breach of section 251L and it appears to make a mockery with the aims of the new tax agent integrity line. Can the ATO please comment.

(2) At the end of the BSP visit bookkeepers are asked to complete a form. They are asked to specify which "association" they are a member of. The form lists some non-associations. It would appear that the ATO has extended its definition of an association to include private companies. Can the ATO please clarify? According to one member the form also outlines an additional association " Australian Bookkeepers Association". This association does not appear to be represented on the BAG committee. AAPB would like to recommend that perhaps it may be appropriate for the ATO to extend an invitation to this association to attend the next BAG meeting?

2. The Business Portal & Lodgment of BAS's

The ATO officers are also recommending that in instances where a bookkeeper cannot comply with 1(1) above that they should be getting their client to add them on as a secondary contact on the Business Portal and to get them to provide them with to their business portal. They can then lodge the BAS form this way. It was stated that the ATO considers this an acceptable practice as well.

This statement and instruction appears to be at odds with the ATO position communicated to BAG members that it is not acceptable. In AAPB's opinion this practice may be breaching section 251L of the ITAA 1936.

Can the ATO please clarify what their position is on this issue?

The ATO's encouragement of such practices appear to show little and in some cases no regard for consumer protection. They also appear to be encouraging and instructing in AAPB's view "anti-avoidance" type practices.



To date we have been promoting and encouraging members and non-members to participate in the BSP project. In light of the above AAPB is reluctant to promote to its members to take up the offer of a BSP visit until these questions are clarified and responded to.

We are seeking an urgent response to these issues out of session. We would also like for the responses to be published on the ATO web-site in Q&A form to ensure there is no confusion. This has created great angst and confusion amongst our members and we would like to also publish the ATO positions on these issues on our web-site.

Response from ATO received on 19 September 2007

"Dear Maria,

Thank you for raising your concerns with me in relation to the BAS Service Provider (BSP) Advisory Program.

I have prepared the following response on the basis of reinforcing the Tax Office's intentions in delivering the advisory visit service. There has been widespread acclaim for the service to date, and I am somewhat surprised that the experience of your members has not been a positive one. There may be occasions when information may be misinterpreted, and where the information provided to BSPs is outside the context of the following response I will be keen to address the issue on production of the staff members name and the details of the incident.

In specifically addressing the contents of your email I would like to advise:

(1.1) The guidelines issued to support the application of s251L (of the ITAA 1936) do not require the BSP to 'work under the direction of' each and every registered tax agent for whom a client's BAS is lodged. I can confirm that each application as a BSP to access the ECI lodgment facility is checked to confirm the eligibility of the applicant satisfying the s251L(6) requirements relating to working under the direction of a registered tax agent or membership of a recognised professional association (RPA).

(1.2) The authorised BSP advisory program visit evaluation form does not request the name of an 'association'. However, as part of our session with the BSP they are invited to provide the staff member with a range of information that assists our understanding of the issues and challenges facing BSPs in their business. One of our enquiries in this regard seeks to identify if the BSP is a member of an association - in the same way that our bookkeeper research seeks the same information.

(2) The Tax Office's preferred position with regard to the electronic lodgment of activity statements is that BSPs should use ECI as the channel available to them. Where this is not practicable, an arrangement with the business client to use the Business Portal is an option. Use by the BSP of the primary certificate (allocated to the business entity's ABN) is not appropriate. The authorisation to issue a secondary certificate for a BSP to use is legal, but not a simple process for most to put in place.

The application of s251L (of the ITAA 1936) has no authority over which channel is used for electronic lodgment. The provision identifies the requirements for bookkeepers to be eligible to charge fees for the provision of BAS services.

I hope this response clarifies the Tax Office position on the specific issues raised.



Following a meeting between yourself (on behalf of AAPB) and our BSP Advisory Program representatives I can endorse:

- The following adjustments will be made to the BSP Advisory Program interview sheets:
 - (1) The section that asks which bookkeeper associations the BSP is a member of will be reworded to reflect "which organisations is the BSP represented by".
 - (2) The interview sheet will be revised to ensure all only legitimate organisations are included.
- It will be re-emphasised to BSP Advisory Program staff that they are not to leave the interview sheet with the BSP - as this a document for internal purposes only.
- Explore the option to include an article in the 'Online BAS notification' in relation to the use of secondary digital certificates as well as the promotion of online lodgment options for BSPs (both ECI and the proposed Portal solution for BSPs)
- It will be re-emphasised to BSP Advisory Program staff that they are not to suggest or advocate the use of the Business Portal to lodge their clients' activity statements.

The introduction of the BSP Advisory Program is a significant opportunity for Tax Office to engage with BSPs to address the current environment and in preparation for the new regulatory regime. As stated earlier, feedback to date has been overwhelmingly positive in relation to content provided and the professionalism of our staff.

Rob Walsh
Assistant Commissioner
Tax Practitioner and Lodgment Strategy "

Further email sent by AAPB on this issue on 24 September 2007

"Dear Greg

Thank you for your email and responses.

On behalf of AAPB I am extremely pleased to see the positive action taken by the ATO. We do however have the following comments to make:

1. In relation to your comment "I will be keen to address the issue on production of the staff members name and the details of the incident". Please note that all contact details and a name were provided to Rana and Anna Maria Carey on an email forwarded 23/5/2007. I have attached all previous correspondence on these issues log items at the end of this email.

2. 1.1 - We continue to be of the view as previously expressed that there should be checks for each and every client the bookkeeper performs work for to ensure there tax agent is aware that they are "working under the direction of a tax agent" i.e. the clients respective tax agent. The ATO could also consider implementing a procedure where the bookkeeper provides their AAPB membership number as an alternative check. We request that a letter be provided to us as a condition of their membership that is signed by a tax agent outlining that they are working under their direction and this could provide a further level of comfort that there is compliance with the section 251L requirement.

1.2 - "The authorised BSP advisory program visit evaluation form does not request the name of an 'association'". Our members have indicated that a form is provided for them to complete as previously outlined asking this information.



The form was also faxed to the ATO. The form was called the "BAS Service Provider Intelligence Sheet". We welcome the ATO's move to not hand this form out anymore.

In our original agenda item we also raised the following questions.

"The form lists some non-associations. It would appear that the ATO has extended its definition of an association to include private companies. Can the ATO please clarify? According to one member the form also outlines an additional association " Australian Bookkeepers Association". This association does not appear to be represented on the BAG committee. AAPB would like to recommend that perhaps it may be appropriate for the ATO to extend an invitation to this association to attend the next BAG meeting?"

Can the ATO please provide a response.

2. - "an arrangement with the business client to use the Business Portal is an option i.e. secondary certificate ". We welcome the ATO comment " It will be re-emphasised to BSP Advisory Program staff that they are not to suggest or advocate the use of the Business Portal to lodge their clients' activity statements".

We are still however concerned with the suggestion to allow a bookkeeper the ability to apply for a secondary certificate. We do not believe this should be an option. It was a point discussed at an ATPF meeting that I was present at and the general consensus at the forum was that a bookkeeper should not have access at all in light of the fact that the business portal also shows income tax matters, can perform transfers and has functionality that is for a tax agents/business owners use only. CPA Australia was also quite vocal at our May 2007 BAG meeting and expressed that a bookkeeper should not be using the business portal. We recommend that this issue be tabled at the next ATPF meeting for a formal response from that forum. Could you please advise when this issue is tabled.

Thank you again for your responses to these issues.

It would be appreciated if our comments could be added at the end of the issues log item before it is finalised and published on the ATO web-site.

Kind Regards
Maria Benardis"

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April 2007