

Chapter 1

Introduction

1.1 The Tax Agent Services Bill 2008 aims to improve regulation of tax agents and other intermediaries in the tax field. It is the culmination of a process dating back to 1992, when a working party was first established to review the regulatory arrangements and professional standards for tax agents. Tax agents have been regulated under Part VIIA of the *Income Tax Assessment Act 1936* since 1943.¹

Conduct of the inquiry

1.2 The bill was introduced into the House of Representatives on 13 November 2008. On 26 November, on the recommendation of the Senate Selection of Bills Committee, the Senate referred the provisions of the bill to the Economics Committee for inquiry and report by 12 February 2009.

1.3 The committee advertised the inquiry in *The Australian* and on its website and wrote to many peak organisations inviting submissions. The committee received 36 submissions (listed in Appendix 1), and held a public hearing in Canberra on 6 February 2009 (see Appendix 2). Submissions are available on the committee's website at http://www.aph.gov.au/senate/committee/economics_ctte/index.htm. The Committee thanks submitters and witnesses for their contribution.

The bill

1.4 The bill will replace the existing law regulating tax agents in Part VIIA of the *Income Tax Assessment Act 1936*. According to the Government's second reading speech, the bill has three objects:

- to improve consistency in the registration of tax agents and other intermediaries in the tax field and to regulate the provision of tax agent services;
- to enhance the protection of consumers of tax agent services, thereby reducing the level of uncertainty for taxpayers and the risks associated with the self-assessment tax system;
- to strengthen the integrity of the tax system and the tax industry.

1 Treasury, *Submission 17*, pp 2,4.

1.5 The bill -

- establishes a national Tax Practitioners Board as a statutory authority within the Australian Taxation Office to replace the existing state-based Tax Agents' Boards;
- requires that certain entities who provide tax agent services or Business Activity Statement (BAS) services for a fee must be registered;
- introduces a legislated Code of Professional Conduct to govern provision of tax agent services by tax agents and BAS agents;
- provides for a wider and more flexible range of administrative sanctions which the Tax Practitioners Board may impose for non-compliance with the code of conduct;
- introduces civil penalties and injunctions to replace criminal penalties for certain misconduct by registered agents and unregistered entities.

Previous consultation on drafts of the bill

1.6 The bill is the culmination of a process dating back to 1992, when a working party was first established to review the regulatory arrangements and professional standards for tax agents. In November 1994 a National Review of Standards in the Tax Profession made a number of recommendations. In 1998 the then government intended a new regime to start on 1 July 1999. However its introduction was delayed at the request of the tax profession to allow practitioners to focus on preparing for the reforms introduced with A New Tax System from 1 July 2000. Confidential consultation on a detailed discussion paper occurred in 2005 and confidential consultation with professional bodies representing tax agents and bookkeepers occurred in 2006. Draft legislation and regulations were exposed for public comment for three months in mid-2007 (114 submissions were received) and for four weeks in mid-2008 (45 submissions were received).²

1.7 In response to the 2007 consultation, the 2008 draft bill made changes including:

- the independence of the Tax Practitioners Board was enhanced;
- adjustments were made to the definitions of 'tax agent service' and 'BAS service' to clarify their scope;
- certain aspects of the registration system were adjusted and simplified;

2 *Explanatory Memorandum* par. 1.9ff. Treasury, *Submission 17*, p 4. *Tax Services for the Public - Report of the National Review of Standards for the Tax Profession*, Canberra 1994. Hon R Kemp, Assistant Treasurer, *New Legislative Framework for Tax Agent Services*, press release 14 of 1998, 6 April 1998. Public submissions in response to the exposure drafts are available at the Treasury's website.

- the wording of several of the provisions in the Code of Professional Conduct were narrowed or otherwise adjusted to make clearer the obligations of tax agents and BAS agents;
- arrangements relating to the provision of continuing professional education for the purposes of complying with the Code were revised;
- consequential and transitional provisions include an additional ‘safe harbour’ from administrative penalty for taxpayers for the late lodgement of a document in the approved form resulting from a tax agent’s or a BAS agent’s careless error.³

1.8 The 2007 consultation included draft regulations, and the 2008 consultation included draft regulations and an incomplete draft consequential and transitional provisions bill. This has not been introduced to parliament with the present bill. According to Treasury it is not yet finalised and is expected to be introduced in 2009 (see paragraph 1.14 below).⁴

1.9 The 2008 draft regulations contain qualification requirements for tax agents and BAS agents, and requirements for associations to become a recognised professional association or a recognised BAS agent association.⁵

1.10 The consequential and transitional bill contains ‘safe harbour’ provisions which protect the taxpayer from administrative penalties if their contravention was caused by the carelessness of the tax agent.⁶

1.11 The Government has promised a post-implementation review after three years, although this is not written in the bill.⁷

3 Hon C. Bowen, Assistant Treasurer and Minister for Competition Policy and Consumer Affairs, *Government releases draft legislation for tax agent services regime*, press release 39 of 2008.

4 Treasury, *Submission 17*, p 5. Exposure draft Tax Agent Services (Consequential and Transitional Provisions) Bill 2008.

5 Draft Tax Agent Services Regulations 2008, schedule 2, clauses 104 and 202. The status ‘recognised professional association’ is referred to in the ‘work experience’ test for registered agents: to satisfy the work experience test a person must be a voting member of an RPA (among other things). The status ‘recognised BAS agent association’ appears to have no legal significance as it is not mentioned elsewhere in the bill or 2008 draft regulations. The explanatory memorandum of the bill suggests recognised BAS agent associations as a possible source of professional development (par. 3.46), advice (par. 3.57), Tax Practitioners Board committee members (par.5.39), or nominations to the Board (par. 5.55). It suggests that the recognised status will give them ‘an opportunity to market themselves with a view to increasing their membership numbers’, and ‘gives them an incentive to offer a variety of services to members’: (par 6.37).

6 Exposure draft Tax Agent Services (Consequential and Transitional Provisions) Bill 2008, schedule 1, clause 4.

7 *Explanatory Memorandum*, par. 6.71

1.12 Witnesses were generally happy with the level of consultation on the bill:

...a good example of effective consultation...⁸

We appreciate the extensive and detailed consultation process that Treasury has undertaken.⁹

1.13 However, some witnesses were concerned that the transitional provisions bill had not been introduced to parliament at the same time. The Committee is also disappointed about this. The parts of the main bill which commence on proclamation (the main provisions about registration, civil penalties, and the Board's power of investigation) cannot commence before the transitional provisions bill has received Royal Assent (see clause 1-5). Thus the transitional bill must come to parliament and be passed before the new scheme can start.

1.14 Treasury accepted it would have been desirable for the transitional provisions bill to be available contemporaneously, but claimed that the limitations of drafting resources, and the need to act at a suitable stage in the tax cycle, meant that waiting for it would probably have led to a year's delay. They promised the transitional provisions bill would be available soon:

I understand that it is the intent to release it very shortly so that it will be before the parliament when the parliament is debating the main bill¹⁰

Comment of Scrutiny of Bills Committee

1.15 The Senate Standing Committee for the Scrutiny of Bills has a standing brief to consider whether bills unduly trespass on personal rights and liberties and related matters. It noted that Parts 2 to 5 of the bill are to commence on Proclamation, but in any event within nine months after Assent.¹¹ The Scrutiny Committee takes the view that the parliament is responsible for determining when laws come into force. Where commencement is delayed more than six months, the Scrutiny Committee expects that the explanatory memorandum to the bill will provide an explanation, which is not provided in this case. The Scrutiny Committee drew Senators' attention to the provision, as it may be considered to delegate legislative powers inappropriately.¹²

1.16 At the Economic Committee's hearing Treasury explained that the commencement provisions are arranged so that the Tax Practitioners Board can be

8 Ms Joan Roberts, Taxation Institute of Australia, *Proof Committee Hansard* 6 February 2009, p 36.

9 Ms D. Bagnall, Institute of Chartered Accountants in Australia, *Proof Committee Hansard* 6 February 2009, p 22.

10 Mr Paul McCullough, Treasury, *Proof Committee Hansard* 6 February 2009, pp 43-44.

11 The reference is to nine months after the assent of the *Tax Agent Services (Transitional Provisions and Consequential Amendments) Act 2008*. This is the transitional provisions bill which has not yet been introduced to parliament.

12 Senate Scrutiny of Bills Committee, *Alert Digest*, no.13 of 2008, 26 November 2008, p 25.

appointed immediately on Assent. There must then be a delay for the Board to do what is necessary (for example, producing guidelines) before the provisions concerning registration can start. The Government considers that up to nine months is a reasonable time for this.¹³

13 Mr Paul McCullough, Treasury, *Proof Committee Hansard* 6 February 2009, p 42-43.

