

TPB Information Sheet

TPB(I) 26/2016

Labour hire/on-hire firms

Disclaimer

This is a Tax Practitioners Board (TPB) Information sheet (TPB(I)). It is intended to be for information only. While it seeks to provide practical assistance and explanation, it does not exhaust, prescribe or limit the scope of the TPB's powers provided in the *Tax Agent Services Act 2009* (TASA).

In addition, please note that the principles and examples in this TPB(I) do not constitute legal advice and do not create additional rights or legal obligations beyond those that are contained in the TASA or which may exist at law.

Document history

The TPB released this document as a draft Information sheet in the form of an Exposure draft *TPB(I) D28/2015 Labour hire firms* on 22 May 2015. The TPB considered the comments and submissions received and issued a second exposure draft *TPB(I) D29/2015 On-hire firms* on 20 October 2015. The closing date for submissions was 4 December 2015.

The TPB considered the comments and submissions received and now publishes the following TPB(I).

Issued: 8 January 2016

Labour hire/on-hire firms

Introduction

1. This Information Sheet (TPB(I)) has been prepared by the Tax Practitioners Board (TPB) to assist labour hire/on-hire firms involved in the provision of tax related services to understand the operation of the tax agent services regime and whether or not they need to register with the TPB. A labour hire/on-hire firm is broadly defined as an entity that provides labour hire/on-hire employee services, labour hire/on-hire contractor services, contracting services and/or permanent placement services.¹
2. Ultimately, whether a labour hire/on-hire firm needs to register with the TPB is a question of fact. This means that each situation will need to be considered on a case-by-case basis having regard to the facts and circumstances of the labour hire/on-hire firm.
3. In this TPB(I), you will find the following information:
 - key terms (paragraph 4)
 - background about the tax agent services regime (paragraphs 5 to 7)
 - meaning of 'tax agent service' (paragraphs 8 to 11)
 - meaning of 'fee or other reward' (paragraphs 12 to 16)
 - information about whether labour hire/on-hire firms need to register with the TPB (paragraphs 17 to 20)
 - information about registering with the TPB (paragraphs 21 to 22)
 - examples of circumstances involving labour hire/on-hire firms and whether they need to register with the TPB (**Appendix 1**).

¹ See 'key terms' in paragraph 4.

Key terms

4. The following is a list of key terms and the meaning they have in this draft TPB(I):

Candidate	A person seeking work through a labour hire/on-hire firm, whether as an employee, independent contractor, or otherwise.
Client	An entity engaging and utilising the services of a labour hire/on-hire firm.
Contracting services	A service where an entity, in return for a fee or other reward, completes a defined scope of work for a third party (client). Such services may be performed using employees or independent contractors employed or engaged by the entity.
Independent contractor	An individual who operates their own business and who is engaged under a contract for service (rather than an employment contract).
Labour hire/on-hire contractor services	The provision of services by an entity that on-hires independent contractors to clients to perform work under the client's general guidance and instruction at a place nominated by the client.
Labour hire/on-hire employee services	The provision of services by an entity that on-hires one or more of its employees to clients to perform work under the client's general guidance and instruction at a place nominated by the client.
Labour hire/on-hire firm	This term takes a broad interpretation and includes, but is not limited to, an entity that provides labour hire/on-hire employee services, labour hire/on-hire contractor services, contracting services and/or permanent placement services.
Permanent placement services	A service where an entity, in return for a fee or other reward, recruits on behalf of a third party (client) candidates that match a desired profile for employment or engagement by the client.
TASA	<i>Tax Agent Services Act 2009.</i>
Tax agent service	See the definition in paragraph 8 of this TPB(I).
TPB	Tax Practitioners Board.

Background

5. The TPB administers a system for the registration of tax agents, BAS agents and tax (financial) advisers under the TASA. Being subject to the TASA means that individuals and entities providing certain services for a fee or other reward are required to register with the TPB.
6. In particular, an individual, partnership or company must be registered as a tax agent, BAS agent or tax (financial) adviser to provide a 'tax agent service', 'BAS service' or 'tax (financial) advice service' for a fee or other reward.
7. There are no separate or specific legislative provisions relating to whether labour hire/on-hire firms need to be registered under the TASA.

Tax agent service

8. A 'tax agent service' is any service that relates to:
 - ascertaining liabilities, obligations or entitlements of an entity that arise, or could arise, under a taxation law²; or
 - advising an entity about liabilities, obligations or entitlements of the entity or another entity that arise, or could arise, under a taxation law; or
 - representing an entity in their dealings with the Commissioner; and

that is provided in circumstances where the entity can reasonably be expected to rely on the service for either or both of the following purposes:

- to satisfy liabilities or obligations that arise, or could arise, under a taxation law
 - to claim entitlements, that arise or could arise under a taxation law.³
9. A tax agent service includes, but is not limited to:
 - preparing or lodging a return, notice, statement, application or other document about a taxpayer's liabilities, obligations or entitlements under a taxation law
 - giving a taxpayer advice about a taxation law that the taxpayer can reasonably be expected to rely upon to satisfy their taxation obligations
 - dealing with the Commissioner on behalf of a taxpayer.
 10. A BAS service is similarly defined, however is limited in scope to obligations, liabilities or entitlements that arise, or could arise, in relation to a BAS provision.⁴

² 'Taxation law' has the meaning as defined in subsection 995-1(1) of the *Income Tax Assessment Act 1997*.

³ See section 90-5 of the TASA.

⁴ A 'BAS provision' is any one of the provisions defined as *BAS provisions* in section 995-1 of the *Income Tax Assessment Act 1997*.

11. A tax (financial) advice service is a tax agent service provided in the course of giving advice that is of a kind usually provided by an Australian financial services (AFS) licensee or a representative of an AFS licensee.⁵

Fee or other reward

12. The phrase 'fee or other reward' is not defined in the TASA. As a result, it takes on its ordinary meaning.

Fee

13. The Macquarie Dictionary (2009) defines fee, among other things, as:

- 'A payment for services: *a doctor's fee*'.

14. A service is taken to be provided for a fee even if the fee is bundled with other fees for other services.

Other reward

15. The Macquarie Dictionary (2009) defines reward, among other things, as:

- 'Something given or received in return, or recompense, for service, merit, hardship, etc.'
- 'To recompense or requite (a person, etc.) for service, merit, achievement, etc.'

16. The phrase 'or other reward' recognises situations where services are provided for a reward other than a financial reward, for example when bartering for goods or other services.

Do labour hire/on-hire firms need to register with the TPB?

17. Generally, the TPB considers that where a labour hire/on-hire firm is merely sourcing a candidate for a client and the client is fully responsible for the employment or engagement of the candidate (including remuneration), then the labour hire/on-hire firm does not need to register with the TPB. This is because the labour hire/on-hire firm is providing a person rather than a tax agent service. This scenario would likely include labour hire/on-hire firms that provide permanent placement services (see example 1 in **Appendix 1**).
18. On the other hand, if the labour hire/on-hire firm is involved in placing a candidate with a business client to provide tax agent services, and the labour hire/on-hire firm is responsible for the remuneration of the candidate and also for ensuring that the end client is satisfied with the services provided by the candidate, then the labour hire/on-hire firm will most likely need to register with the TPB. In this case, the labour hire/on-hire firm is considered to be providing a tax agent service rather than merely providing a person. This scenario would likely include service trust arrangements (see example 6 in **Appendix 1**).

⁵ For more information on the meaning of 'tax (financial) advice service', see the TPB's Information Sheet [TPB\(I\) 20/2014 What is a tax \(financial\) advice service?](#)

19. As noted in paragraph 2 above, whether a labour hire/on-hire firm needs to register with the TPB is a question of fact. This means that each situation will need to be considered on a case-by-case basis having regard to the facts and circumstances of the labour hire/on-hire firm. This will usually involve an examination of the contracts and arrangements between the labour hire/on-hire firm, client and candidate. Another element to consider is the form of marketing and/or advertising by the labour hire/on-hire firm.
20. **Appendix 1** contains examples of circumstances involving labour hire/on-hire firms and whether they need to register with the TPB.

Registering with the TPB

21. If a labour hire/on-hire firm wishes to become registered as a tax agent, BAS agent or tax (financial) adviser, they will need to meet certain legislative requirements, including a 'fit and proper person' requirement and, in respect of individual applicants, qualification and experience requirements.
22. Further information about the registration requirements is available on the TPB's website at www.tpb.gov.au

Appendix 1 – Examples of circumstances involving labour hire/on-hire firms and whether they need to register with the TPB

No	Service	Consideration to labour hire/on-hire firm	Who is responsible for the employment of the candidate / employee / independent contractor?	Who is responsible for the services provided by the candidate / employee / independent contractor?	Who needs to be registered?
1	<p>Permanent placement service</p> <p>Client engages labour hire/on- hire firm to recruit on behalf of the client a candidate that matches a desired profile for employment or engagement by the client.</p>	Client pays labour hire/on-hire firm a fee for recruiting the candidate.	Client is fully responsible for the employment or engagement of the candidate, including remuneration.	Client is responsible for any services provided by the candidate on behalf of the client.	<p>Neither the labour hire/on-hire firm nor the candidate, assuming the candidate is an employee of the client.</p> <p>However, the client needs to be registered if they are providing tax agent services for a fee or other reward.</p>
2	<p>Contracting service</p> <p>Labour hire/on-hire firm completes a defined scope of work for the client using employees or independent contractors employed or engaged by the labour hire/on- hire firm.</p>	Client pays labour hire/on-hire firm a fee for the defined scope of work.	Labour hire/on-hire firm is fully responsible for the employment or engagement of the individuals performing the defined scope of work, including remuneration.	Labour hire/on-hire firm.	<p>Labour hire/on-hire firm.</p> <p>However, this will require an examination of the contracts and arrangements between the labour hire/on-hire firm, independent contractors and client to determine if any other party is required to be registered.</p>

No	Service	Consideration to labour hire/on-hire firm	Who is responsible for the employment of the candidate / employee / independent contractor?	Who is responsible for the services provided by the candidate / employee / independent contractor?	Who needs to be registered?
3	<p>Labour hire/on-hire employee service</p> <p><i>(to a registered tax practitioner client (RTPC))</i></p> <p>Labour hire/on-hire firm on-hires one or more of its employees to a RTPC to perform work under the RTPC's general guidance and instruction at a place nominated by the RTPC.</p>	RTPC pays labour hire/on-hire firm a fee for providing the employees.	Labour hire/on-hire firm is fully responsible for the employment of the employees, including remuneration.	<p>Labour hire/on-hire firm is responsible for ensuring that the RTPC is satisfied with the overall quality of the services provided by the employees.</p> <p>However, the RTPC is responsible for the services provided by the employees on behalf of the RTPC to the end client.</p>	Neither the labour hire/on-hire firm nor the employees.
4	<p>Labour hire/on-hire employee service</p> <p><i>(to a non-tax practitioner client (NTPC) - i.e., a client other than a registered tax practitioner)</i></p> <p>Labour hire/on-hire firm on-hires one or more of its employees to a NTPC to perform work under the NTPC's general guidance and instruction at a place nominated by the NTPC.</p>	NTPC pays labour hire/on-hire firm a fee for providing the employees.	Labour hire/on-hire firm is fully responsible for the employment of the employees, including remuneration.	Labour hire/on-hire firm is responsible for the services provided by the employees to the NTPC.	<p>Labour hire/on-hire firm if the work undertaken by the employees constitutes a tax agent service. In this case, the labour hire/on-hire firm is considered to be providing tax agent services to the NTPC for a fee.</p> <p>If the work undertaken by the employees is not a tax agent service, then the labour hire/on-hire firm does not need to register.</p>

No	Service	Consideration to labour hire/on-hire firm	Who is responsible for the employment of the candidate / employee / independent contractor?	Who is responsible for the services provided by the candidate / employee / independent contractor?	Who needs to be registered?
5	<p>Labour hire/on-hire contractor service</p> <p>Labour hire/on-hire firm on-hires independent contractors to the client to perform work under the client's general guidance and instruction at a place nominated by the client.</p>	<p>Client pays labour hire/on-hire firm a fee for introducing the independent contractors.</p>	<p>Client is fully responsible for the engagement of the independent contractors, including remuneration.</p>	<p>Independent contractors are responsible for the services they provide to the client.</p>	<p>Independent contractors, if the work performed constitutes a tax agent service.</p> <p>However, the client also needs to be registered if they are providing tax agent services for a fee or other reward.</p>
6	<p>Service trust arrangement</p> <p>Zara Service Trust (ZST) employs and supplies professional staff as contractors to a registered tax practitioner client (RTPC).</p> <p>The arrangement between ZST and the RTPC is such that it is reasonable to expect that the RTPC or its end clients would rely on the services provided by the professional staff of ZST, and the RTPC does not check or review the work performed by the professional staff.</p>	<p>ZST charges a fee for providing services, via the professional staff to the client.</p>	<p>ZST is fully responsible for the employment or engagement of the professional staff, including remuneration.</p>	<p>ZST is responsible for the services provided by the professional staff to the client.</p>	<p>At least one of the trustees of ZST, if the services provided by the professional staff constitute a tax agent service. In this case, ZST is considered to be providing tax agent services to the client for a fee.</p>

