

Exposure Draft TPB Information Sheet TPB(I) D47/2022

What is a BAS service?

Tax Practitioners Board exposure draft

The Tax Practitioners Board (TPB) has released this draft Information Sheet (TPB(I) D47/2022) as an exposure draft and invites comments and submissions in relation to the information contained in it within 42 days. The closing date for submissions is 12 September 2022. The TPB will then consider any submissions before settling its position, undertaking any further consultation required and finalising the TPB(I).

Written submissions should be made via email at tpbsubmissions@tpb.gov.au or by mail to:

Tax Practitioners Board

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Disclaimer

This document is in draft form, and when finalised, will be intended as information only. It provides information regarding the TPB's position on the application of subsection 90-10 of the *Tax Agent Services Act 2009* (TASA), containing the definition of a BAS service.

While it seeks to provide practical assistance and explanation, it does not exhaust, prescribe or limit the scope of the TPB's powers in the TASA.

In addition, please note that the principles, explanations and examples in this draft 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. Please refer to the TASA for the precise content of the legislative requirements.

Document history

This draft information sheet was issued on 1 August 2022 and is based on the TASA as at 7 February 2022 (latest version available at the time of publication).

Issued: 1 August 2022

Introduction

1. Entities that provide BAS services for a fee or other reward¹ must be registered with the Tax Practitioners Board (TPB).
2. The TPB has prepared this draft Information Sheet (TPB(I)) to assist entities to determine if they are providing a BAS service and whether they need to register with the TPB.
3. Whether a particular service is a BAS service is a question of fact. This means each service will need to be considered on a case-by-case basis having regard to the facts and circumstances surrounding the provision of the service.
4. There are significant civil penalties for anyone providing BAS services for a fee or reward or advertising BAS services, while unregistered.²

What is a BAS service?

Legislative background

5. A BAS service is defined in section 90-10 of the *Tax Agent Services Act 2009* (TASA) as:
 - (1) A **BAS service** is a *tax agent service³:
 - (a) that relates to:
 - i. ascertaining liabilities, obligations or entitlements of an entity that arise or could arise, under a BAS provision; or
 - ii. advising an entity about 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 Commissioner⁴ 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: for either or both of the following purposes:
 - i. to satisfy liabilities or obligations that arise, or could arise, under a BAS provision;
 - ii. to claim entitlements that arise, or could arise, under a BAS provision.
 - (1A) The TPB may, by legislative instrument, specify that another service is a **BAS service**.

¹ For more information on what is a fee or other reward, see [TPB\(I\) D49/2022 What is a fee or other reward?](#)

² Refer to section 50-5 of the *Tax Agent Services Act 2009* for further information.

³ The use of an asterisk "*" indicates that the term is a defined term in the TASA. For further information, see the 'Key terms' section of this TPB(I).

⁴ Commissioner of Taxation

BAS provision

6. The term 'BAS provision' is defined in the *Income Tax Assessment Act 1997* as meaning:
- (a) Part VII (collection and recovery only) of the *Fringe Benefits Tax Assessment Act 1986*; and
 - (b) The indirect tax law, including:
 - the goods and services tax (GST) law⁵
 - the wine tax law⁶
 - the luxury car tax law⁷
 - the fuel tax law⁸, and
 - (c) Parts 2-5 and 2-10 in Schedule 1 to the *Taxation Administration Act 1953* (which are about the PAYG system);
 - (d) Division 389 in Schedule 1 to the *Taxation Administration Act 1953*; and
 - (e) the *Major Bank Levy Act 2017*.
7. Not all items of work from the recording of a transaction to the preparation of an approved form (such as a BAS⁹) are BAS services. For example, entering data, coding transactions based on instructions provided, processing payments or preparing bank reconciliations are not BAS services because they do not require the interpretation or application of a BAS provision.¹⁰ Similarly, administrative duties such as paying tax and record-keeping are not BAS services.¹¹

Specified BAS Services

8. BAS services may also include services related to the superannuation guarantee charge and other specified services defined in the legislative instrument *Tax Agent Services (Specified BAS Services No. 2) Instrument 2020*.

⁵ For further information refer to the *A New Tax System (Goods and Services Tax) Act 1999*.

⁶ For further information refer to the *A New Tax System (Luxury Car Tax) Act 1999*.

⁷ For further information refer to the *A New Tax System (Luxury Car Tax) Act 1999*.

⁸ For further information refer to the *Fuel Tax Act 2006*.

⁹ Business Activity Statement.

¹⁰ See paragraph 2.42 of the Explanatory Memorandum to the Tax Agent Services Bill 2008.

¹¹ See paragraph 2.41 of the Explanatory Memorandum to the Tax Agent Services Bill 2008.

Services relating to the superannuation guarantee charge and other services

9. From 6 November 2020, BAS agents can provide the following additional services¹²:
- services under the *Superannuation Guarantee (Administration) Act 1992* to the extent that they relate to a payroll function or payments to contractors
 - a service under the *Superannuation Guarantee Charge Act 1992* that is related to determining and reporting the superannuation guarantee (SG) shortfall amount and any associated administrative fees
 - a service under Part 3B of the *Superannuation Industry (Supervision) Act 1993* related to dealing with superannuation payments made through a clearing house
 - a service under Part 5-30 in Schedule 1 to the *Taxation Administration Act 1953*, that relates to completing and lodging the Taxable payments annual report to the Australian Taxation Office (ATO), on behalf of a client
 - a service under sections 202CD and 202CF of the *Income Tax Assessment Act 1936* that is related to sending a tax file number declaration to the ATO, on behalf of a client
 - a service under section 9 of the *A New Tax System (Australian Business Number) Act 1999* that relates to applying to the Register for an Australian Business Number (ABN), on behalf of a client.
 - advising about a superannuation guarantee charge (SGC) liability, including calculating SGC and preparing the SGC statement
 - advising about the offsetting of late payments of superannuation contributions against the SGC, including completing the late payment offset election section of the SGC statement
 - representing a client in their dealings with the ATO relating to the SGC, including:
 - lodging of SGC statements
 - accessing the SG and SGC accounts in online services for BAS agents
 - being an authorised contact for the SG and SGC account
 - being an authorised contact for payment arrangements and requesting penalty remissions relating to the SGC account
 - being an authorised contact for any audit or review activity undertaken by the ATO relating to the SGC.

¹² For further information refer to the [Tax Agent Services \(Specified BAS Services No. 2\) Instrument 2020](#).

Elements of a BAS agent service

10. The definition of a BAS service can be explained by way of three elements. One of the first two elements (Element 1 or 2) and Element 3 must be satisfied in order to meet the definition of a BAS service.

<p>Element 1</p> <p>Service relates to ascertaining or advising a client about liabilities, obligations or entitlements under a BAS provision</p>	<p>To be a BAS service, the service must relate to:</p> <ul style="list-style-type: none"> • ascertaining liabilities, obligations or entitlements of an entity (or client) that arise, or could arise under a BAS provision, or • advising an entity (or client) about liabilities, obligations or entitlements of the entity (or client) or another entity that arise, or could arise, under a BAS provision.
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OR

<p>Element 2</p> <p>Representing a client in their dealings with the Commissioner</p>	<p>To be a BAS service, it must be a service relating to representing an entity (or client) in their dealings with the Commissioner.</p> <p><i>Note:</i> A BAS agent's authority to act for an entity (or client) is much more restricted than a registered tax agent's authority and is limited to dealing with the Commissioner in relation to a BAS provision.</p>
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AND

<p>Element 3</p> <p>Client relies on the service</p>	<p>A service will be a BAS service only if it is provided in circumstances where the entity (or client) can reasonably be expected to rely on the service:</p> <ul style="list-style-type: none"> • to satisfy liabilities or obligations that arise, or could arise, under a BAS provision, and/or • to claim entitlements that arise, or could arise, under a BAS provision.
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When will a client be reasonably expected to rely on a service?

11. To determine circumstances in which a client can reasonably be expected to rely on a service being provided, it is necessary to consider the facts and circumstances surrounding the provision of the service. Some of the key facts and circumstances to consider, as taken from relevant legislative guidance and case law, include:

- whether the provider of the service has to interpret or apply a BAS provision and therefore requires a certain level of knowledge about a BAS provision
- whether the provider of the service applies knowledge of the BAS provision to a client's individual circumstances
- whether the client, or another entity, checks or reviews the work before relying on it
- whether the provider of the service intends for the client to rely on the advice or information provided
- whether the client has a relative lack of knowledge or prior experience in relation to the service, perhaps indicating that the client regards the skill and experience of the entity providing the service as superior to their own
- the availability of other experts and the ability of a client to form their own judgement or rely on their own knowledge
- the circumstances surrounding the provision of the service, including the nature of the relationship/dealing between the parties (for example, whether the service is provided as part of a formal consultation or merely during the course of a casual conversation/engagement)
- whether the client has specifically requested the service or has paid for the service
- the level of complexity surrounding the service
- whether the provider of the service suggested or encouraged the client to seek further advice in relation to the matter
- the nature of the advice or information given – for example, it is not reasonable to expect a client would rely on a provisional opinion in speculative circumstances of an 'off-the-cuff' statement
- whether the service provider gave an indication that they possessed greater knowledge or skill in relation to the matter
- whether the provider of the service has provided an effective disclaimer against responsibility for the service. However, the existence of a disclaimer does not automatically absolve the entity providing the service from registration. Additionally, the effect of such a disclaimer will generally depend on all the circumstances of the case, including the relative knowledge and skill of the provider and the complexity and/or significance of the service provided.¹³

¹³ Use of the word 'disclaimer' in this paragraph means a general disclaimer.

Summary

12. Whether a particular service falls within the definition of a BAS service for the purposes of the TASA is a question of fact and will depend on the elements identified in this TPB(l). For the service to be a BAS service, it must satisfy at least one of Element 1 or Element 2, and must satisfy Element 3.
13. A list of indicative BAS services can be found in **Appendix A – Examples of BAS services**.

Key Terms

Tax agent service	<p>Tax agent service is defined in section 90-5 of the TASA as any service:</p> <ul style="list-style-type: none">a) that relates to:<ul style="list-style-type: none">i. ascertaining liabilities, obligations or entitlements of an entity that arise, or could arise, under a taxation law; orii. advising an entity about liabilities, obligations or entitlements of the entity or another entity that arise, or could arise, under a taxation law; oriii. representing an entity in their dealings with the Commissioner; andb) 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:<ul style="list-style-type: none">i. to satisfy liabilities or obligations that arise, or could arise, under a taxation law;ii. to claim entitlements that arise, or could arise, under a taxation law. <p>Note: subsection 90-5(2) of the TASA provides that a service specified in the Tax Agent Services Regulations 2022 for the purposes of this subsection is not a tax agent service.</p>
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Appendix A

Examples of BAS services

The following table contains a non-exhaustive list of the types of services commonly provided and whether they constitute a BAS service.

	Service	BAS service	Not a BAS service
1	Ascertaining the withholding obligations for employees of your clients, including preparing income statements.	X	
2	Dealing with the Australian Taxation Office (ATO) on behalf of clients in relation to a BAS provision	X	
3	Providing a payroll service which involves interpreting and applying a taxation law, including reporting of employee payroll information through the use of or set up of single touch payroll (STP) enabled software.	X	
4	Applying to the Registrar for an ABN on behalf of a client.	X	
5	Advising a client on fuel tax credits	X	
6	Advising or acting on behalf of clients on tax debts (i.e. payment plans, remission of debt or interest, winding-up matters initiated by the ATO.	X	
7	Installing computer accounting software and determining default goods and services tax (GST) and other codes tailored to clients.	X	
8	Reconciling BAS provision data entry to ascertain the figures to be included on a client's activity statement.	X	
9	Completing activity statements on behalf of a client or instructing them which figures to include.	X	
10	Confirming figures to be included on a client's activity statement.	X	
11	Coding transactions, tax invoices and transferring data onto a computer program for clients through processes that require the interpretation or application of a BAS provision.	X	
12	Providing advice about or confirming a client's withholding tax obligations in relation to the client's employees.	X	

Service		BAS service	Not a BAS service
13	Services declared to be a BAS service by way of a legislative instrument issued by the TPB.	X	
14	Preparing and providing an income statement that may include reportable fringe benefits amounts and the reportable employer superannuation contributions.	X	
15	Registering or providing advice on registration for GST, PAYG withholding, or FBT.	X	
16	Services under the <i>Superannuation Guarantee (Administration) Act 1992</i> to the extent that they relate to a payroll function or payments to contractors.	X	
17	Advising about a superannuation guarantee charge (SGC) liability, including calculating the liability and preparing the SGC statement.	X	
18	Advising about the offsetting of late payments of superannuation contributions against the SGC.	X	
19	Completing the late payment offset election section of an SGC statement.	X	
20	Representing a client in their dealings with the ATO relating to the SGC – lodging SGC statements, being an authorised contact relating to SG and SGC, and accessing these accounts in the ATO’s online services for BAS agents.	X	
21	Being an authorised contact with the ATO for payment arrangements relating to SGC account.	X	
22	Being an authorised contact with the ATO for requesting penalty remissions relating to SGC.	X	
23	Being an authorised contact for any audit or review activity undertaken by the ATO relating to SGC.	X	

Service		BAS service	Not a BAS service
24	Determining and reporting the superannuation guarantee shortfall and associated administrative fees.	X	
25	Dealing with superannuation payments made through a clearing house.	X	
26	Completing and lodging the Taxable payments annual report to the ATO on behalf of a client.	X	
27	Sending a tax file number (TFN) declaration to the ATO on behalf of a client.	X	
28	Undertaking a payroll compliance review, providing an assessment and/or opinion whether the client is compliant with one or more BAS provisions.	X	
29	Providing a payroll service which involves interpreting and applying a BAS provision, including reporting of employee payroll information through the use of or set up of STP enabled software.	X	
30	Installing computer accounting software without determining default GST and other codes tailored to the client.		X
31	Providing non-tax advice relating to salary sacrificing arrangements and salary packaging.		X
32	Transmission of data to the ATO through STP enabled software, where the data transmission does not require the interpretation or application of a taxation law or a BAS provision.		X
33	Coding tax invoices and transferring data onto a computer program for clients under the instruction and supervision of a registered tax or BAS agent.		X

Service		BAS service	Not a BAS service
34	Performing data entry for clients through processes that do not require the interpretation or application of a taxation law and/or BAS provision.		X
35	Contracting the services of a specialist to provide advice about an area of taxation law that you have no expertise and cannot review for accuracy.		X
36	Services provided by an auditor of a self-managed superannuation fund under the <i>Superannuation Industry (Supervision) Act 1993</i> .		X
37	Providing general taxation advice to clients that does not involve the application or interpretation of a taxation law and/or BAS provision to the client's personal circumstances.		X
38	General training (such as a classroom) in relation to the use of computerised accounting software not related to particular situations.		X
39	Performing bank reconciliations.		X
40	Entering data without involvement in or calculation of figures to be included on a client's activity statement.		X

Appendix B

Historical Provisions: COVID-19 stimulus measures

From 16 April 2020, BAS agents can legally provide advice and assist eligible businesses to claim their entitlements under the JobKeeper Payment and Cashflow support for business initiatives. The *Tax Agent Services (Specified BAS Services No. 1) Instrument 2020*, declares the following to be a BAS Service:

- (a) a service under the *Boosting Cash Flow for Employers (Coronavirus Economic Response Package) Act 2020*
- (b) a service under the *Coronavirus Economic Response Package (Payments and Benefits) Act 2020*
- (c) a service under any rules that the Treasurer may, by legislative instrument, make pursuant to section 20 of the *Coronavirus Economic Response Package (Payments and Benefits) Act 2020*
- (d) a service under any legislative instrument made under subsections (b) and (c).¹⁴

This Legislative Instrument also allows registered BAS agents to legally provide services under the JobKeeper Payment extension rules and the JobMaker Hiring Credit rules.

¹⁴ For further information refer to the [Boosting Cash Flow for Employers \(Coronavirus Economic Response Package\) Act 2020](#) and [Coronavirus Economic Response Package \(Payments and Benefits\) Rules 2020](#).