

Part C Lodgment of Documents and Notification of Liabilities**53 THE ROLE OF INTERMEDIARIES**

The policy in this chapter is to be followed by Tax Office staff. We have made every effort to ensure it is technically accurate, but in the interests of clarity it has been written in 'plain English' and should not be read or interpreted like legislation. If you feel that something in the chapter is wrong or misleading, please advise the Tax Office.

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53.1 PURPOSE

53.1.1 This chapter outlines the role and obligations of various intermediaries involved in the preparation and lodgment of approved forms.

53.2 LEGISLATION

53.2.1 A person must be a registered tax agent to be able to charge or receive a fee for the provision of tax agent services. Under subsection 251L(1) of the *Income Tax Assessment Act 1936* (ITAA 1936) it is an offence to provide these services for a fee without being registered. Tax agent services include:

- (i) preparing and lodging returns and other documents on behalf of a taxpayer;
- (ii) giving advice about taxation laws on behalf of the taxpayer;
- (iii) preparing and lodging objections and applying for reviews on objection decisions on behalf of a taxpayer; and
- (iv) transacting any business with the Commissioner on behalf of a taxpayer.

53.2.2 There are two exclusions to the restriction on who can charge a fee for certain tax agent services.

53.2.3 Under section 251L(8) of the ITAA 1936 legal practitioners can charge a fee for providing certain tax agent services as part of legal services provided to a taxpayer without having to be registered as tax agents. These services include:

- (i) giving advice about taxation laws;
- (ii) preparing and lodging objections and apply for reviews on objection decisions; and

in their capacity as trustee for a trust or deceased estate:

- (iii) preparing and lodging returns and other documents;
- (iv) transacting any business with the Commissioner on behalf of a taxpayer.

53.2.4 Subsection 251L(7) of the ITAA 1936 outlines the concept of a BAS service, which includes:

- (i) preparing or lodging an approved form about a taxpayer's obligations under a BAS provision;

- (ii) giving advice about a BAS provision; and
- (iii) transacting any business with the Commissioner on behalf of a taxpayer in relation to a BAS provision.

53.2.5 Subsection 251L(6) of ITAA 1936 allows people other than registered tax agents and legal practitioners to charge a fee for providing a BAS service. These people are:

- (i) members of a recognised professional association;
- (ii) bookkeepers working under the direction of a registered tax agent; and
- (iii) entities that provide payroll services to employers.

53.2.6 A recognised professional association is an organisation that represents accountants and tax professionals. To qualify as a recognised professional association an organisation must satisfy nine criteria concerning professional standards, education requirements, disciplinary procedures and not for profit character. Refer to subsections 251LA (1) to (10) of the ITAA 1936.

53.2.7 Where a BAS service relates to imports or exports to which an indirect tax law (GST, WET or LCT) applies, a customs broker licensed under Part XI of the *Customs Act 1901* may provide the BAS service.

53.3 INTRODUCTION

53.3.1 Section 251L of the ITAA 1936 previously restricted a person from demanding or receiving a fee for the preparation of an income tax return or objection, or the transaction of any business in income tax matters, on behalf of a taxpayer, unless the person was a registered tax agent.

53.3.2 Parallel restrictions applied to fringe benefits tax work under section 119 of the *Fringe Benefits Tax Assessment Act 1986* (FBTAA 1986). As the activity statement contains information about income tax and FBT matters, those restrictions meant that only registered tax agents would be allowed to charge a fee to prepare and lodge a BAS on behalf of taxpayers.

53.3.3 Concerns about the ability of tax agents to meet the demand for this work and the consequences for small businesses of not having an agent to assist in meeting their obligations could have led to taxpayers falling outside the tax system.

53.3.4 Legislation was introduced in 2000 to address those concerns, allowing either members of a recognised professional association, or bookkeepers working under the direction of registered tax agents, to charge a fee for providing BAS services on behalf of taxpayers. Entities that provide payroll bureau services to employers are also able to charge a fee for providing BAS services in relation to PAYG withholding matters.

53.4 POLICY

53.4.1 Alternative lodgment arrangements (programs) are developed and granted annually to registered tax agents. Programs are structured to allow agents to better manage their workload throughout the year, and take into account the Commissioner's obligation to collect revenue and information in a timely manner. The lodgment program adopts a

combined lodgment approach (that is all lodgment obligations to the Tax Office are covered).

- 53.4.2 The program also extends more flexibility by recognising a whole of tax agent practice workload.
- 53.4.3 Practitioners can negotiate an individual program if their circumstances are exceptional and warrant special consideration.
- 53.4.4 Program end dates are not due dates. Progressive lodgments are required and in some circumstances are indicated within the program details.
- 53.4.5 The Commissioner may respond to representations from associations representing registered tax agents and allow further time to lodge certain categories of approved forms where the circumstances warrant such action.
- 53.4.6 Lodgment programs are only available to registered tax agents.
- 53.4.7 Where client circumstances prevent the intermediary from meeting lodgment due dates, deferrals will be considered in line with the section 'requests for deferrals based on factors affecting the taxpayer' in the policy chapter entitled - *'Deferral of the due date for lodgment and suspension of lodgment action'*.
- 53.4.8 Where other circumstances prevent an intermediary from meeting lodgment due dates, deferrals will be considered in line with the section 'requests for deferrals based on factors affecting registered tax agents and bookkeepers providing a BAS service' in the policy chapter entitled - *'Deferral of the due date for lodgment and suspension of lodgment action'*.
- 53.4.9 Clients of recognised intermediaries will also be contacted in accordance with the publication *'Tax Office guidelines when contacting clients of tax practitioners'*.

53.5 TERMS USED

- 53.5.1 'Activity Statement' (AS) - See 'business activity statement' and 'instalment activity statement' for further details.
- 53.5.2 'BAS service' is any of these:
- (i) preparing or lodging an approved form about a taxpayer's liabilities, obligations or entitlements under a BAS provision;
 - (ii) giving advice about a BAS provision; or
 - (iii) dealing with the Commissioner or a person who is exercising powers or performing functions under a taxation law in relation to a BAS provision.
- 53.5.3 'Business activity statement' (BAS) – an 'approved form' lodged by those taxpayers who have an ABN and are registered or required to register for GST. Other obligations may include WET, LCT, PAYG instalments, PAYG withholding, FBTI and DCIN.
- 53.5.4 'Electronic Lodgment Service' (ELS) - used by tax agents for the lodgment of income tax returns for individuals, partnerships, trusts and companies (current year and immediate prior year).

53.5.5 'Instalment activity statement' (IAS) – an 'approved form' lodged by taxpayers who are either not registered or required to be registered for GST, or are not required to report GST in the particular reporting period, but may have PAYG instalment, PAYG withholding, FBTI and DCIN obligations.