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A Sharing Economy Reporting Regime

February 2019

Introduction

The Institute of Public Accountants (IPA) welcomes the opportunity to offer our '**A sharing economy reporting regime**' submission. We look forward to working with the Government in providing feedback on possible design characteristics of a reporting regime for individuals who derive income from sharing economy websites.

The IPA is one of the three professional accounting bodies in Australia, representing over 36,000 accountants and students throughout Australia and internationally. The IPA prides itself in not only representing the interests of accountants but also small business and their advisors.

We look forward to discussing in more detail the IPA's submission and its recommendations. Please address any further enquires to Tony Greco, General Manager Technical Policy via tony.greco@publicaccountants.org.au

22 February 2019

Black Economy Division
The Treasury
Langton Crescent

PARKES ACT 2600

Via email: BlackEconomy@treasury.gov.au

Dear Sir/Madam

A sharing economy reporting regime

The IPA welcomes the opportunity to provide this submission in response to the “A sharing economy reporting regime” consultation paper (the consultation paper).

We are supportive of the endeavours of the Black Economy Taskforce to tackle the issues arising from black economy activities to level the playing field for taxpayers. In this regard, we welcome the Government’s initiative to explore options for a reporting regime for those individuals who participate in and who derive income from the sharing economy.

The comments contained in our submission addresses a significant number of questions posed in the consultation paper which impact our members. Our detailed analysis and discussion is contained in **Appendix 1** of this submission.

Executive summary

Our observations and comments in relation to the salient queries posed in the consultation paper is summarised as follows:

- In principle, we strongly support the introduction of a reporting regime for sharing economy platforms. With such platforms now a societal and economic norm, the necessity for a reporting regime to tackle the underreporting of income by participants is, in our view, long overdue. Further, such a regime

will also level the playing field for small businesses that compete against those participants in the sharing economy whose activities may not necessarily be captured as a result of non-compliance.

- Our preferred option for introducing a reporting regime, as considered in the consultation paper, is for the sharing economy platforms to directly report the relevant information to the Australian Taxation Office (ATO) (ie Option 1). We consider this to be the most appropriate and accurate “source of truth” for reporting purposes.
- As such, we do not believe that the alternative option proposed of having financial institutions report such information would be appropriate (ie Option 2). We concur with the views outlined in the consultation paper that the relevant information and data sets required from financial institutions in identifying the source and nature of the income credited to an individual from transacting in the sharing economy may not be available or are not appropriate. In any case, any banking transaction data could still be obtained through the Commissioner of Taxation’s current information gathering powers to support any data matching activities.
- We believe that the reporting regime should extend to all sharing economy platforms, which not only includes the provision of services (such as Airtasker and Uber) and rental of assets (such as Airbnb), but also include platforms which allow for the sale of goods online (such as eBay or Gumtree). This would make the reporting obligation fair and equitable across all sharing economy platforms.
- While there is a keen desire for the data obtained from the sharing economy platforms to be pre-filled in an individual’s tax return, such data obtained must be sufficiently robust so as to provide confidence in the reporting regime. Requiring the taxpayer or tax agent to amend incorrect or incomplete labels creates a “reverse workflow” and an unnecessary compliance burden. Tax

agents can seldom charge for this service as clients invariably do not believe it is a cost they should incur.

- As such, it would be only appropriate for transactional data from the provision of services to be included for tax return pre-filing purposes. The same cannot be said for those who sell goods online or who derive income from the use of assets, which will require additional information and an assessment of the individual's circumstances. In some cases, it would be more appropriate to flag transactions in the tax return rather than to pre-fill labels so as to allow for discretion to be exercised by the taxpayer or their tax agent as to its tax treatment.

- Rather than a single standardised form to collect the necessary data, we would envisage that there may be a number of standardised forms to account for the type of activities which are being conducted by the sharing economy platform (eg services rendered vis-à-vis goods sold).

- Other aspects of a reporting regime under *Option 1* which warrant consideration include:
 - While the consultation paper recommends that reporting be conducted annually, there is scope to increase the reporting frequency by sharing economy platforms given that the relevant data is typically captured and stored digitally. The benefits of increased compliance costs must be weighed against the reporting costs to the platforms.
 - We do not consider that there should be exemptions for any sharing economy platform (even if they were a “start-up”). We do not believe that small entities would be disadvantaged from having the reporting obligation imposed given their abilities to deal with data digitally.
 - While this is outside the scope of the consultation paper, we believe that a withholding regime may be warranted where the sharing economy participant fails to disclose their Tax File Number to the platform. This would be most relevant for platforms where the participant is a service provider.

- While it is critical that sharing economy participants understand their tax obligations, we have observed that some participants may be conducting activities unaware that they are prohibited under some law or regulation. The tax obligations of a participant would not be a relevant consideration if such activities were curtailed through education campaigns from platform providers.

We trust that you will find our submission of value. Please feel free to contact us directly should you require further clarification on any of the issues raised or other questions related to our submission.

Yours sincerely



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Appendix 1: Detailed discussion

1. The basis for a sharing economy reporting regime

The consultation paper highlighted the basis for a reporting regime across sharing economy platforms following the Black Economy Taskforce's report that:

“there is a risk that sharing economy sellers may not be paying the right amount of tax either due to a lack of awareness of associated tax obligations, or because they are deliberately under reporting their activities in the sharing economy”.

Anecdotal evidence from our members support the Taskforce's observations that there is low-level compliance in declaring sharing economy income and misconceptions that any income derived could be ignored because it has not been detected by the Australian Taxation Office (ATO).

Given that the sharing economy is now a societal and economic norm whose growth will not abate, voluntary compliance from participants will suffer if there was no active compliance action taken by the Government. In turn, this will only magnify the leakage in the tax system.

For these reasons, we consider that that a sharing economy reporting regime is long overdue and strongly support the development and implementation of such a regime to ensure that participants report their income and comply with their tax obligations. The presence of a sharing economy reporting regime will also level the playing field for small businesses which currently compete against those who participate in the sharing economy who are not complying with their tax obligations.

2. Establishing an appropriate reporting regime

Models for a reporting regime

The consultation paper suggests two possible options for a reporting regime to include:

- **Option 1:** Reporting by the sharing economy platform, or

- **Option 2:** Reporting by the financial institutions.

Having considered the pros and cons of both options, we concur with the Board of Taxation's view that Option 1 would be the most appropriate in obtaining the necessary information to ensure compliance by participants in the sharing economy.

Notwithstanding that the information required may vary depending on the platform and the goods and services it provides, in our view, this is the best option as the platform (ie the entity making the payments) is best placed to provide the transactional data. This would be analogous to obtaining payroll data from the employer and in our view would represent the "source of truth".

Option 2 (ie information from financial institutions) is not preferred as obtaining data which is contained in banking records would not arguably be sufficient in detail for the ATO to determine if a transaction from a sharing economy platform should be accounted for as being in the participant's assessable income. This would also be a convoluted way in obtaining data that may not be exact or useful for data matching purposes as the data could be intermingled with other datasets.

In any case, if certain bank transaction data was required as part of any data matching process, the Commissioner of Taxation can still exercise his information gathering powers under the current laws to request for that data. Further, the ATO could also obtain information from payment systems which facilitate the sharing economy platform (such as PayPal).

3. Information requirements under an "Option 1" reporting regime

Scope of application

Based on discussions below, we believe that the reporting regime should extend to all sharing economy platforms, which not only includes the provision of services (such as Airtasker and Uber) and rental of assets (such as Airbnb), but also include platforms which allow for the sale of goods online (such as eBay or Gumtree). This

would make the reporting obligation fair and equitable across all sharing economy platforms.

Purpose of the information collected

The consultation paper indicated that an objective, amongst others, of implementing a reporting regime would be for the income information collected to be ultimately pre-filled in the individual's tax return. Further, the information would need to be in a standardised format to ensure sufficient and reliable data is received by the ATO.

In that sense, the development and implementation of an appropriate reporting regime for the sharing economy under Option 1 will not be without its challenges.

In our view, the information which needs to be disclosed by sharing economy platforms to the Australian Taxation Office (ATO) must at least achieve one of the following objectives:

- allow for any income derived by an individual through the relevant platform to be pre-filled in an individual's tax return (where relevant)
- allow for certain transactions to be flagged to the individual and for them to decide whether any income derived through the platform which should be included in their assessable income, and
- allow the ATO to undertake effective data matching activities to ensure compliance.

Apart from identifiers such as the user's Tax File Number (TFN) and/or Australian Business Number (ABN), the type of information that is required from users is largely dependent on the nature of the goods and services provided through the platform (ie the source of the income derived). For example, the information required for someone who lists their property on Airbnb would be different to those who provides cleaning services as the tax implications will vary.

In this regard, particularly for tax purposes, we consider that income derived by individuals from the sharing economy can be classified into three distinct categories:

- income from personal exertion (eg provision of services)
- Income from providing for the use of assets (eg rental of a room in a house), and
- income from the sale of goods (e.g. sale of goods).

Given that the tax implications will vary depending on the type of income derived, it is apparent that it would not be possible for the Government to design a single use template for reporting purposes. The challenges with the collection of information for each of these income categories is examined in detail below.

Category 1: Income from personal exertion

From an income tax perspective, income which is derived from personal exertion, say from the provision of services, is ordinarily assessed in the hands of the individual providing the service.

Examples abound under the sharing economy. The provision of services, such as cleaning homes or assembling furniture through Airtasker is a prime example of income derived through personal exertion. The provision of a taxi service through ride sharing platforms like Uber is another common example, where the ATO has made significant efforts in ensuring that drivers fully understand their tax and non-tax obligations.

Where the platform allows for an individual to render services for a fee, the information that would need to be reported to the ATO is typically straight forward. We would envisage the relevant information to include but not limited to such things as the individual's TFN, the service provided, the amount charged and any GST applicable. This information is capable of forming the basis for pre-filling an individual's tax return for services rendered.

Further, for those who provide taxi services, additional information is required such as whether the individual holds an ABN and/or is registered for GST. This is because taxi drivers cannot avail themselves of the \$75,000 turnover threshold for

registration and must be registered for GST from the first dollar of income which they derive from the provision of the service. In that regard, due consideration must be given by the Government to the information required on an industry by industry basis.

Category 2: Income from providing for the use of assets

This particular income category is problematic when it comes to ascertaining the necessary data points under a proposed reporting regime. This is due to complexities involved in obtaining the correct information, particularly where the objective is to correctly pre-fill an individual's income tax return.

Ordinarily, income which is derived from the use of an asset, such as rental income, is assessable in the hands of the owner of the asset. Special tax rules apply in apportioning income derived where an asset is owned jointly or in different proportions (such as real estate held as tenants in common).

Under the sharing economy, the most recognisable example of income derived from the use of an asset is the short-term rental of a residential dwelling. The hiring of equipment such as a baby stroller or portable cot is another example. When dealing in real estate, sharing economy platforms such as Airbnb and Parkhound enable participants to rent out their entire dwelling, a part of their dwelling or a car parking spot in return for a fee. In some cases, additional services may be provided such as a 'bed and breakfast'.

Under a proposed reporting regime, merely obtaining the details of the individual who had registered the advertisement of the property and any income received from it would not be sufficient in fully determining the tax implications on the income derived.

As noted above, there are special rules in determining who is to be assessed on income where there are co-owners in a property. For example, taxation ruling TR 93/32 provides the generally accepted proposition that the net income or loss from a property must be shared in accordance with the legal interest that the owner has in the property (unless there is evidence to show otherwise) (para. 6).

The following scenarios provide a sample of the difficulties which may be encountered in formulating an appropriate list of data points for collation under any reporting regime:

- **Scenario 1:** A dwelling is listed on short-term rental on Airbnb by Sue with any income derived credited to her bank account. The dwelling itself is legally held by Sue and her husband Dave.
- **Scenario 2:** A car parking space is listed for short-term rental on ParkHound by Roger with any income to be credited to a joint bank account held with his partner Laura. Parking spot is on a property which is solely owned by Laura.
- **Scenario 3:** A room in Lisa's house is listed on short-term rental on Airbnb with any income to be credited to her bank account. Lisa is only a lessee of the dwelling with the property legally owned by her landlord Stacy.

In light of the above, if the desire remains for the government to pre-fill income derived from such sharing economy activities in an individual's tax return, then it would also be necessary for the relevant platform to obtain information with respect to the legal owners of the property and the proportions in which it is held.

Further consideration should also be given to other arrangements that may be in place (such as the sub-letting arrangement in Scenario 3), or situations where the activities amount to a business (such as the running of a 'bed and breakfast') where GST would typically need to be charged because it is a taxable supply (rather than an input-taxed supply).

In addition, in some cases, a platform like Airbnb may solely be used as a tool for advertising a property with a separate rental arrangement being entered into outside of the platform.

At present, for any rental property owner, the onus is placed on the individual to properly account for their share of the net income or loss from their interest in the property. Therefore, given some of the complexities involved, it may be more

appropriate for such transactions to be flagged to the affected taxpayer in place of having the income pre-filled in an individual's return where, for whatever reason, it may not necessarily be assessable. As a case in point, the ATO currently flags transactions related to CGT events happening to certain listed securities and places the onus on the taxpayer to determine whether a capital gain or loss, or alternatively whether a nil amount should be included in the tax return.

Category 3: Income from the sale of goods

Platforms which allow individuals to sell goods online, whether new or second hand, are the most established of the platforms in the sharing economy. Common examples include eBay and Gumtree, with Facebook marketplace being a more recent addition for users to sell their used goods.

As noted above, to level the playing field for all participants across the various sharing economy platforms, we are of the view that any reporting regime should also extend to platforms which allow for the sale of goods. We do concede however that capturing the appropriate information for the purposes of pre-filling an income label of an individual tax return with respect to the sale of goods can be problematic for tax purposes.

One of these problems is in establishing whether there is any business being conducted or profit-making intention arising from the sale; or whether they have been sold as part of a mere realisation (or hobby).

While case law has provided a range of indicia to consider in establishing whether a business is being carried on (such as regularity, frequency, size, etc.), not one factor is determinative and varies based on the facts. There are then those who actively spot bargains online and purchases those items with the intention of selling them online again at a profit (ie a flipper).

In our view, making a distinction between whether transactions are undertaken in the form of a business or for a profit-making purpose based on transaction data alone is

near impossible. For example, an individual who regularly posts used goods online in an effort to declutter their home is not necessarily conducting a business. However, an individual who purchases a product to opportunistically make a profit should be assessed on the amount derived; notwithstanding, that the sale is irregular and infrequent.

In light of the above, we do not believe that pre-filing income tax returns for an individual who make a sale of goods on an online platform would be appropriate nor would it be viewed favorably by the community. In most cases, items realised online would be sold at a loss unless there is a profit-making intention or the level of activity amounts to the individual conducting a business.

A better approach may be for the tax return preparation software to flag that a transaction has occurred on that platform and to leave it to the taxpayer and/or their tax agent to exercise their judgment as to whether the amount received should be included in assessable income. Where any amounts have been accounted for as income, the taxpayer would also need to ascertain the cost of the goods sold in order to derive a taxable profit or loss. Again, this is something that only the taxpayer or their advisor can decide upon having consideration of the law.

Notwithstanding that the consultation paper is premised on the reporting mechanism for the sharing economy and has excluded bright-line tests from its scope, we note that it may be worthwhile for the Government to evaluate the merits of having such a test.

Having an exemption threshold before an individual's transactions must be reported to the ATO (say, \$10,000 in income) could assist in reducing the compliance burden of online selling platforms given the volume of transactions that they deal with. As noted in the consultation paper, this could help delineate between activities that constitute a hobby and that of a business.

Nonetheless, a limitation of such an approach is that it could capture a solitary disposal of an expensive asset that exceeds the exemption threshold (such as a boat, motorcycle, watch or jewelry). Such a transaction in itself would not ordinarily constitute a business activity but would still require reporting by the platform because the threshold is exceeded. However, it is worth being mindful that the CGT provisions could still apply in certain circumstances where, amongst other things, the asset is a “personal use asset” and it was acquired for \$10,000 or greater.

Observations

While the objective to obtain sufficient information for prefill purposes is admirable, we believe that this would be difficult to apply in practice given the range of circumstances that could apply to participants in the sharing economy.

Some general observations in this regard include:

- Any information obtained for the purpose of pre-filling an individual’s tax return from the sharing economy must be sufficiently robust to be included in the individual’s tax return with a high level of certainty. A failure to do so would reduce the confidence that taxpayers have in the reporting regime. The last thing that a tax agent or self-preparer would want is to “reverse workflow” because the information contained in the pre-filled label is incorrect.
- Transaction data which relates to the rendering of services would lend itself to accurately pre-filling a tax return. The same cannot be said for those who sell goods online or who derive income from the use of assets, which will require additional information and assessment of the individual’s circumstances.
- Rather than the pre-filling of a tax return label, a better approach for the former may be to flag that the transaction has arisen and for the taxpayer to then exercise their judgment as to whether the relevant transaction should be accounted for income tax purposes.
- It has also become apparent that the reporting regime may require platforms to complete a number of standardised forms rather than simply, a “one size fits all” form. The forms to be completed will depend on the types of activities

being conducted (ie whether the income derived by the participant is from personal exertion, rental of assets or from the sale of goods). In our view, this is the only way for the ATO to be able to obtain sufficient, relevant and reliable data.

4. Other attributes for a sharing economy reporting regime

Other salient aspects in the development of the reporting regime include:

Frequency of reporting

The consultation paper suggests that reporting could be undertaken by platforms on an annual basis. This would be akin to the requirements under the current taxable payments reporting regime which applies to certain contractor payments in a number of various industries.

In our view, given that data for these platforms would be captured and stored digitally, there is a basis to argue that the necessary data could be provided on a more frequent basis (such as half-yearly or even quarterly). It would be expected that any increased reporting frequency would lead to increased ATO compliance; otherwise, it would place an unnecessary compliance burden on sharing economy platforms.

Exemptions from reporting

The consultation paper also discussed whether it would be appropriate to exempt certain sharing economy platforms on the basis of size, turnover, seller numbers, jurisdiction or business model. Specifically, feedback is being sought on whether “start-ups” should be granted a grace period. In our view, to ensure a level playing field, we consider that there should be no grace period or exemptions be applied to any entity.

As noted above, given that much of the information captured from participants for reporting purposes should be contained in a digital format, we do not envisage that

this would pose issues for smaller platforms as such data is readily available and can be manipulated for reporting purposes.

Of course, further consultation should be undertaken by the Government with the various sharing economy platforms, large and small, to ensure that the reporting of such data does not unduly increase the compliance burden for these entities.

Tax File Number disclosure and withholding obligations

It is envisaged that it would be mandatory for those participants in the sharing economy to provide to the platform provider at least one identifier such as the individual's TFN. This should allow the ATO to pre-fill a tax return or to flag a transaction on the platform to the taxpayer for consideration.

If such information is required to be provided under the reporting regime, then it would be necessary for the Government to amend the legislation so that platform providers are recognised as 'TFN recipients' for the purposes of satisfying the *Privacy (Tax File Number) 2015* (as issued on the *Privacy Act 1988*). This is no different to employers and other recipients who are required to protect sensitive TFN data.

While it is generally not mandatory for individuals to provide their TFN to certain TFN recipients, the law does provide for a withholding regime in certain cases. We note that the consultation paper flagged that a withholding regime would not be contemplated for the sharing economy, citing that it would be onerous on platform providers and instead would be considered where there remains non-compliance after the reporting regime is introduced.

Notwithstanding this, we consider that the introduction of such a "no TFN" withholding regime, specifically for those rendering services, warrants consideration. This is particularly so since other jurisdictions have adopted a withholding regime (such as in Spain).

In these circumstances, a failure to provide a TFN by a service provider to the platform would attract withholding no differently to an employee who has failed to provide their TFN to their employer (ie at 47%). We acknowledge however that a withholding regime with respect to the provision of goods or for the use of an asset may prove more challenging.

5. Education and awareness initiatives

We note that the consultation paper has sought views on ways in which sellers on sharing economy platforms should be educated and made aware of their tax obligations.

In this regard, we note that the ATO has made considerable strides in educating taxpayers participating in the sharing economy about their tax obligations, particularly with respect to those providing ride sourcing (ie Uber). It is certainly not easy in providing guidance where the tax implications for certain sharing economy activities are not firmly established. The ATO establishing relationships with and working closely with platform providers, such that the relevant tax obligations are highlighted on the platform, is one way that participants could be educated and informed.

Notwithstanding that there is need for sharing economy participants to be aware of their tax obligations, an overarching concern for those participating in the sharing economy is their ignorance to the regulatory requirements imposed on the activities which they conduct through the platform. In some cases, existing laws and regulations would actually prohibit the individual from undertaking these activities.

To illustrate these issues, examples which we have encountered include:

- An individual providing tax return preparation services on Airtasker not fully aware that they must be registered with the Tax Practitioners Board as a registered tax agent before they can do so
- A tenant sub-letting a room in their apartment to an individual unaware that their lease agreement expressly prohibits the sub-letting of the property to someone else

- An individual who leases their street parking permit on Parkhound to an individual unaware that their local council prohibits such activity

In some of the above cases, the tax obligations of the sharing economy participant would not even be a relevant consideration had they known that the relevant activity was prohibited for whatever reason. Education campaigns from platform providers would assist in that regard.

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