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22 February 2019

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Tackling the black economy - A sharing economy reporting regime

The Housing Industry Association (HIA) refers to the consultation paper released by The Treasury on 23 January 2019 titled '*A sharing economy reporting regime*' (Consultation Paper) which responds to a recommendation of the Black Economy Taskforce to develop a more comprehensive reporting regime to improve compliance by those operating in the 'sharing economy' with their taxation obligations. The Federal Government agreed that there should be greater transparency of payments made through sharing economy websites.

HIA is the leading industry association in the Australian residential building industry. HIA supports and represents the views and interests of over 40,000 members. HIA members comprise a diversity of residential builders, including the Housing 100 volume builders, small to medium builders and renovators, residential developers, trade contractors, major building product manufacturers and suppliers and consultants to the industry. HIA members construct over 85 per cent of the nation's new building stock.

Please find HIA comments outlined below.

General Comments

HIA does not accept that a new reporting regime is required to gain greater transparency for payments made through the sharing economy. The Consultation Paper highlights that existing regimes are working to capture this information.

Existing, well established legal and other arrangements apply to those operating in the 'sharing economy'. Irrespective of commentary otherwise, evolving case law confirms that those operating in the sharing economy can be classified as either 'employees' or 'independent contractors'.

HIA is concerned that a response to the sharing economy may have unintended consequences for other sectors of the economy, including the residential building industry.

A long standing feature of the residential building industry is its reliance on independent contractors as a way of productively managing the needs of building businesses, especially smaller businesses.

HIA estimates that over 80% of the work completed in the sector is performed by independent contractors. Independent contracting is a quintessential part of the residential building industry and is a legitimate business model which needs to be preserved for workers, businesses, and consumers within the industry.

For residential builders, it provides a flexible, workable and efficient model for engaging workers. Builders rely on access to good and reliable trade contractors to maintain competitiveness. For contractors it is a pathway to business ownership, career flexibility and entrepreneurship.

An independent contractor has the ability to choose his or her own hours, clients and manner in which the work is completed. Since they choose their own jobs and clients, the quantity and quality of work (in theory) is better related to the amount of money they make. Highly motivated, efficient and productive contractors are likely to earn more money than regular employees. For home buyers, independent contracting also helps housing affordability.

Independent contracting also provides a platform on which new and innovative businesses emerge. Many thousands of new contracting businesses start in domestic building each year; some prosper into growing enterprises and some fail.

HIA does not want to see measures targeted at the 'sharing economy', a largely undefined sector, adversely impacting well established modes of engagement.

What is the Sharing Economy?

The Consultation Paper variously describes the 'sharing economy' as:

- Ride sharing or short-term accommodation services that are facilitated through a website or application software operated by the platform provider.
- Involving the consumer and online seller getting in contact with each other and entering into an agreement for the online seller to provide a service and/or a good online and then payment by the consumer being facilitated by the platform.
- The 'gig economy' where the online seller is predominantly offering a service on a short term basis.

The various descriptions¹ of the arrangements captured by the 'sharing economy', the 'gig economy' or the 'on-demand economy' provides little comfort as to the scope of any potential reporting regime. As identified in the Consultation Paper, the possibility of overlap is a real concern:

'Consideration should be given to an appropriate approach for situations where sharing economy activities are already subject to existing reporting mechanisms.'

These circumstances mitigate against further regulation.

Existing Arrangements

Existing taxation rules and arrangements are appropriate to capture those operating in the 'sharing economy'.

As identified in the Consultation Paper, the ATO have effectively been using their formal information gather powers contained in section 353-10 of Schedule 1 of the *Taxation Administration Act 1953* to obtain information from ride sharing and rental platform. The ATO has also developed protocols in response to ride-sourcing and sharing economy accommodation.

Public and private rulings, determinations, practical compliance guidelines and protocols are well established methods used by the ATO. For example, the ATO has developed a comprehensive protocol to respond to online selling requesting a range of data from online selling sites including account names and identification, addresses, telephone numbers and information on sales transactions.

There is nothing to suggest that these are not the most appropriate tools to respond to the sharing economy in light of existing arrangements.

¹ See for example, European Agency for Safety and Health at Work, *Protecting Workers in the Online Platform Economy: An Overview of Regulatory and Policy Developments in the EU* (2017) and Productivity Commission (2016), *Digital Disruption: What do governments need to do?* Pg.149

In addition, claims that some may not understand their tax obligations does not justify the creation of a new reporting regime. It signals the need for better education.

Existing rules outline the difference between an employee and an independent contractor and a business and a hobby, for example the ATO suggests asking the following questions in relation to the latter:

*'Is the activity being undertaken for commercial reasons?
Is your main intention, purpose or prospect to make a profit?
Do you regularly and repeatedly undertake your activity?
Is your activity planned, organised and carried out in a businesslike manner?*

If you answered yes to most of these questions, you're likely to be running a business, although it depends on your individual circumstances²

When you are 'carrying on an enterprise' you are required to obtain an ABN. Once established the entity is considered to be running a business and their activity will be monitored as the individual:

- will need to declare income to the ATO in an annual return;
- can claim for deductions on expenses; and
- will need to keep business records for tax and other obligations.

On the other hand, if the individual is an 'employee' existing PAYG and personal income tax arrangements capture reportable income earned by these individuals and those that engage them. Under those circumstances it is also likely that Single Touch Payroll (STP) will be required. If not reporting through STP then the arrangement may need to be re-examined.

Options for a reporting regime

If a view persists that 'something is needed' to increase the transparency of transactions in the sharing economy, HIA's preference is to expand the current Taxable Payment Reporting System (TPRS).

As noted, the TPRS applies to contractors who hold ABN's. If the seller does not have an ABN the individual may not be a 'contractor'. In this case they may be an employee and thus captured elsewhere.

The Consultation Paper provides little basis on which to disregard expanding the TPRS. In HIA's view this is the most viable and appropriate option.

Yours sincerely
HOUSING INDUSTRY ASSOCIATION LIMITED



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² <https://www.business.gov.au/planning/new-businesses/a-business-or-a-hobby> <accessed 040219>