



Black Economy Division  
The Treasury  
Langton Crescent  
Parkes Act 2600

1 March 2019

*By email: BlackEconomy@treasury.gov.au*

Dear Sir/Madam,

### **A Sharing Economy Reporting Regime**

1. PricewaterhouseCoopers (**PwC**) welcomes the opportunity to make a submission to Treasury in relation to the issues and questions outlined in the consultation paper released for comment in January 2019, titled “A sharing economy reporting regime” (**Consultation Paper**), which was prepared by Treasury in response to the Black Economy Taskforce Final Report.
2. Our submission outlines policy considerations and also raises some practical challenges based on our experience advising clients in the sharing economy (also known as the gig economy).
3. For the purposes of our comments and the design of any regime in respect of the sharing economy, we consider it is appropriate to limit the definition of a sharing economy to the OECD definition (which would provide a consistent concept that is common across various jurisdictions).

### **Executive Summary**

4. We acknowledge that the sharing economy has presented issues in the past in relation to participation in the tax system and whether or not participants (as distinct from the platforms) meet their tax obligations. The primary response should be education and awareness. However, given the difficulties in identifying participants in the sector, we consider it appropriate for Treasury and the Black Economy Division to consult on further reforms in this area.
5. There are features of the sharing economy and digital platforms that are less problematic than the issues highlighted about the black economy more generally by the Black Economy Taskforce. Importantly, participation in the sharing economy via digital platforms is expected to be accompanied by electronic records.
6. The tax payments reporting system (**TPRS**) is designed to deal with inherent risks of the cash-in-hand high tax risk industries where there are typically no records kept. Given the feature of electronic records for sharing economy platforms, we submit that it is inappropriate to extend the TPRS to the

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sharing economy. Accordingly, a reporting regime for the sharing economy should be designed which recognises that difference and avoids imposing regulatory burdens that are not warranted.

7. It is appropriate to consider whether a simplified reporting regime for sharing economy platforms, based on reporting the identity of platform participants, may have both economic and policy advantages, as compared with a comprehensive reporting regime which requires ongoing transaction-by-transaction data reporting.
8. As we discuss in further detail below, an identification process could involve reporting by the platform provider to the Australian Taxation Office (**ATO**) of the new participants to the platform as part of its registration/onboarding process, accompanied by the participant's Tax File Number (**TFN**) or Australian Business Number (**ABN**) information as relevant. Before such limited reporting is introduced, there should be appropriate industry consultation.
9. Where the ATO has participant identification information reported by the platforms, then any failure by the sharing economy participants to meet their tax obligations can be addressed through the ATO's ordinary risk review and audit activity (given their participation is expected to be accompanied by electronic records).
10. The Consultation Paper suggests that there should be a comprehensive reporting regime which captures information on a transaction-by-transaction basis, which could be onerous and disproportionate to the policy issues that we submit can be addressed through a simplified identification reporting mechanism.
11. A reporting regime which instead places the regulatory burden on platforms would not address the more important policy issue of how cash flow for tax liabilities is managed for sharing economy participants.
12. We agree that reforms in this sector should not include a regime that imposes withholding obligations. However, we submit that the question of the tax collection strategies should also be considered at the same time as considering a new tax reporting mechanism for the fast growing sharing economy.
13. We recommend that Treasury should also simultaneously consider how the Pay-As-You-Go income tax instalment (**PAYGI**) regime could apply or its application be modified to apply to be a simple fit for purpose tax payment system for sharing economy workers or hosts. The design of such a system should be focussed on creating a positive user experience that encourages participation and is easy to use on a regular basis (and from the time that participants commence activities in the sharing economy).
14. We would not support the alternative reporting model outlined in the consultation paper which would involve placing a significant regulatory reporting burden on Financial Institutions.
15. We highlight there are also potential employment law and tax considerations (for example, associated with the characterisation of employees vs contractors) in the sharing economy. These issues are outside the scope of the Consultation Paper and our comments in this submission. However, we consider that these broader issues are important and that the Government should adopt a holistic approach when considering these broader issues and approaching the design of new laws in the unique context of the gig economy.

## The challenges of taxing workers in the sharing economy

16. The Black Economy Taskforce has stated that the black economy could be as large as 3 per cent of GDP (as large as \$50bn based on 2017 numbers, including both cash and criminal and illegal components).<sup>1</sup> Acknowledging those amounts as an economic risk (and in considering the challenges of taxing participants in the sharing economy, and considering ways to close the tax gap identified) it is important to distinguish specific operational issues associated with the sharing economy that are distinct from the black economy more generally.
17. It is our experience that the non-reporting of cash transactions, which is a feature of the black economy, is typically not relevant to the sharing economy. Specifically, the sharing economy encapsulates digital booking platforms (e.g. ride sharing or delivery services) or gig platforms (e.g. service providers) where there is an electronic record of the service and the parties involved, which is unlike traditional work or service provider situations where work is undertaken and cash payment can be received without any record of the payment or of the service actually provided.
18. Accordingly, given the foundations upon which the sharing economy operates, a system such as the TPRS, that is designed to address traditional “black economy” trademarks of “cash-in-hand” and where there is no record of the transaction(s) are not considered appropriate here.
19. There are two key issues that we see as relevant to address tax risks associated with the sharing economy and that should also inform the design of any reporting regime. These are discussed in further detail later in our submission, but can be summarised as follows:

- i) Non-participation in the tax system by sharing economy workers:

This issue may arise from wage earners transitioning out of the Pay-As-You-Go withholding (**PAYGW**) system or from a lack of awareness by sharing economy participants of their tax obligations. We submit that education of the sharing economy participants of their tax obligations must be the primary response to address non-participation in the tax system (i.e. the “**Education Issue**”). As a secondary response, the platforms could have a role to play in assisting the ATO to identify new participants in the sharing economy on their particular platforms (i.e. the “**Identification Issue**”), which then could also inform participant’s education and awareness of their income tax and GST obligations.

- ii) Collection of taxes from sharing economy workers:

Cash flow and payment issues arise as the traditional PAYGW regime does not apply easily to sharing economy workers, not just due to the complexity of the employee-contractor distinction but also given the fragmented nature of their work or service, which can arise across multiple platforms. The challenge is to have an appropriate cash collection mechanism for the ATO to collect taxes from sharing economy workers at regular intervals throughout the income year (i.e. the “**Collection Issue**” and the “**Reporting Issue**”).

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<sup>1</sup> Taskforce, *Black Economy Taskforce: final report–October 2017*, op. cit., p. 35.

## **Ultimate burden of tax compliance rests with the income earner**

20. In considering the challenges in taxing participants in the sharing economy and considering the design of a regime to address such challenges, it is important to have regard to the fundamental way in which the Australian tax system is currently structured and how it operates. Australia does not have a final withholding tax system for any form of assessable income derived by an Australian resident. In this regard, Australia's self-assessment system places the primary tax compliance burden on the taxpayer who is required to lodge annual income tax returns reporting their taxable income (i.e. assessable income and allowable deductions), and if applicable, lodge Business Activity Statements to report GST obligations, together with PAYG instalment income. As the administrative body responsible for Australia's tax system, the ATO administers the tax laws, including as they apply to sharing economy participants.
21. It is clear that for traditional workers whose primary (or sole) source of income is salary and wages, the PAYGW system is an efficient tax collection mechanism. It also enables periodic tax collection, which smooths the collection of tax liabilities from employees throughout the income year and also ensures that employees are not faced with a large lump sum tax liability after assessment. The PAYGI system enables those taxpayers who have not insignificant income derived from non-PAYG withholding sources to pay income tax during the year, but there is an inherent time lag between entering the PAYGI system and first deriving income that is not subject to the PAYGW system (ie. a lump sum tax liability arises after the first income tax return disclosing non-PAYG withholding income is assessed and only after that, is the taxpayer subject to the regular PAYG instalments).
22. Participants in the sharing economy can be distinguished from traditional salary and wage earners, and sharing economy workers may not be employees at common law and as such, not subject to PAYGW. Their work is typically fragmented and it is possible to work across multiple platforms within an industry and potentially across multiple industries. If PAYGW did apply, it is unlikely to be an effective tax collection mechanism where work is fragmented and sharing economy participants may not rely on any one platform as their primary source of income.
23. In our view, it would not be appropriate for sharing economy platforms to have the comprehensive compliance burden placed on them (in a non-employment context), and to report ongoing transactions to the ATO and to also withhold and remit tax from payments made to the platform participants. We note that there would also be challenges in creating an appropriate level of withholding as sharing economy platforms have no visibility into the individual circumstance of the participants on their platform (for example, the fragmented nature of operations or the deductible costs that the participant might encounter in providing the service) and any withholding by them would be onerous for little gain across the economy.
24. As noted earlier, if sharing economy participants' awareness of their tax obligations is insufficient, to address and increase voluntary and willing tax participation by sharing economy participants, it may be appropriate for sharing platforms to have a role to play in the identification of sharing economy participants. For example, a reasonable role that a ride sharing platform could play is when a new driver signs-up on a ride-share platform, the ABN /TFN of the driver could be obtained as part of the onboarding process and those details reported to the ATO. This would provide the ATO with information to identify and engage with the individual as a sharing economy worker, including for example, providing the first time sharing economy participant with relevant information and tools to

assist them in meeting their tax obligations as close as possible to their commencement as a sharing economy participant.

## **Designing a fit-for-purpose regime for the sharing economy**

### ***Key objectives***

25. When designing a fit-for-purpose regime, it is important to balance the potential compliance burden being placed on the platforms with the efficient administration of the tax laws as they apply to the sharing economy participants. We consider the critical factors that the regime should address are:
  - I. Appropriate identification of sharing economy participants
  - ii. Determining the correct taxable income of the sharing economy participant
  - iii. Efficient reporting of income and collection of the tax payable

### ***The Identification Issue***

26. There are specific issues associated with the sharing economy which can cause non-participation by sharing economy workers in the tax system. As mentioned above, these factors may be distinguished from challenges associated with tax collection in the black economy more generally where there is deliberate non-participation, avoidance or under-declared income.
27. Lack of participation in the tax system may arise from wage earners transitioning out of the PAYGW system or from a lack of awareness by sharing economy workers of their broader tax obligations. We understand that the ATO has issued Division 353 notices (which broadly compels the recipient to provide information and/or documents in their possession as required by the Commissioner for the purpose of administration of the tax law) to ride-sharing platforms and others that were predominantly aimed at increasing GST participation. We agree that this should very much be a last resort approach by the ATO and it would be preferable for voluntary participation by the sharing economy participants, which will more likely arise through appropriate education. This may be in the form of directly targeted fact sheets, website guidance, advertising campaigns, seminars or online modules provided by the ATO and shared by the platforms as part of onboarding processes.
28. The Consultation Paper seems to suggest that the party responsible for the identification of sharing economy participants is the platform/business. If this is the case from a policy perspective, we submit that this should be limited to identifying new participants in the sharing economy on their particular platforms as part of their onboarding process, i.e. when a participant is first onboarded, there should be no ongoing transaction-by-transaction reporting obligation in relation to that participant by that platform.
29. A system where the sharing platform has a role in reporting the identity of its new participants to the ATO as part of its onboarding process would provide sufficient information to the ATO to enable it to further review or audit the income tax and/or GST obligations of the participant. The ATO would also have the participant's details to allow it to provide as early as possible, relevant information to assist the taxpayer in understanding their obligations.

### *Ongoing Activities and the Collection Issue*

30. The Consultation Paper suggests a comprehensive reporting regime which requires the platforms to report to the ATO the detailed transaction data in relation to its participants. We submit that this is a significant compliance burden on the platform providers and arguably with little additional gain to the broader economy. As mentioned above, the taxpayer will always have the obligation to lodge relevant tax returns. A reporting system that identifies new platform participants should be sufficient for the ATO to cross-check, audit and review those participants who it identifies have not engaged in the tax system appropriately.
31. We submit that reporting the identity of the sharing economy participant by the platform provider to the ATO and the participant's knowledge of that reporting should be sufficient to encourage willing and voluntary engagement with the tax system. In the absence of evidence to the contrary, we do not believe that comprehensive reporting to the ATO of all transactions would encourage any greater participation in the tax system by sharing economy workers than a reporting of the participant's identity.
32. In addition, comprehensive reporting of transactions to the ATO by the platform provider would not solve one of the key issues in respect of taxing sharing economy workers - the Collection Issue. In this respect, we would recommend that an appropriate efficient mechanism is designed that enables the periodic collection or taxing of sharing economy worker's earnings on a non-final instalment basis.
33. As discussed earlier, we do not support a system that requires the platform provider to deduct and remit tax on any payments that are made to the participants in the sharing economy as they do not operate in the same way as traditional employer-employee relationships and payments.
34. A system such as the PAYGI system could be modified to deal with the circumstances of sharing economy workers. The details of such a system would need to be considered further, including the level of detail appropriate for the nature of activities in the sharing economy, tax instalment rates depending on the type of activities and level of involvement in the sharing economy.

### *The Reporting Issue*

35. Once an appropriate system is in place to address and report the identification of sharing economy workers to the ATO, the reporting of income in the individual's income tax return and if applicable, Activity Statements, should be sufficient level of detail for the ATO.

### ***Key principles***

36. The Consultation Paper outlined five important factors/principles to consider in relation to any new reporting regime or specific requirement.
  - *Promotes a positive user experience*
  - *Influences behavioural change in reporting taxable income*
  - *Adopts a light touch regulatory approach*
  - *Ensures a level playing field*
  - *Ensures sufficient and reliable information is periodically received by the Government in a standardised format*

The comments outlined earlier in this submission have been raised with these principles in mind.

### ***The role of financial institutions***

37. As an alternative, the consultation paper note that financial institutions and/or payment service providers may have a role to play in reporting to the ATO on sharing economy transactions. It is acknowledged that financial institutions and/or payment service providers will have significant amounts of transactional data that relate to participants in the sharing economy.
38. Requiring all financial institutions and/or payment service providers to identify transactions that arise from the sharing economy and report those transactions to the ATO is not recommended.
39. It is difficult to see how obtaining transactional data in this way would improve participation in the tax system by sharing economy workers or enable to ATO to periodically collect taxes from workers in the sharing economy on a non-final instalment basis.

### **Other considerations**

40. As mentioned above, we consider that it is important for the Government to design any new regimes and laws related to the sharing economy in a holistic way, including having regard to the employment law and tax considerations issues that are relevant to this sector. Whilst these broader issues are outside the scope of this submission, we make some brief observations.
41. Currently, these issues are being grappled with by bodies such as the ATO and the Fair Work Commission (who administer the relevant employment taxes and obligations).
42. The issue being presented is that the conclusions through the Fair Work Commission, the Administrative Appeals Tribunal and the ATO often differ in applying common law principles in the employee-contractor analysis (the multi-factorial approach). In a recent Fair Work Commission decision, *Mr Michail Kaseris v Rasier Pacific V.O.F* [2017] FWC 6610, the Deputy President noted the challenge of applying the multi-factorial approach and highlighted the need for Government intervention to clarify the employee-contractor assessment in the sharing economy:

*“The multi-factorial approach to distinguishing an employee from an independent contractor, developed and evolved at a time before the new “gig” or “sharing” economy. It may be that these notions are outmoded in some senses and are no longer reflective of our current economic circumstances. These notions take little or no account of revenue generation and revenue sharing as between participants, relative bargaining power, or the extent to which parties are captive of each other, in the sense of possessing realistic alternative pursuits or engaging in competition. Perhaps the law of employment will evolve to catch pace with the evolving nature of the digital economy. Perhaps the legislature will develop laws to refine traditional notions of employment or broaden protection to participants in the digital economy. But until then, the traditional available tests of employment will continue to be applied”.*

43. Such legislative intervention may include laws that adopt a light touch regulatory approach and are harmonised between federal and state regulators, and harmonised across income tax, indirect taxes, fringe benefits taxes, other employment taxes and the fair work regimes. To this end, it is relevant to note that some of our sharing economy clients have expressed considerable frustration with the lack of certainty when determining whether a worker is an employee or a contractor for tax purposes with some commenting that the tax outcomes should not turn on whether a worker is wearing such things as a tee shirt with a company logo (which would ordinarily form part of the multi-factorial test). We submit that this important issue requires Government focus.

## Responses to consultation paper questions

Question	PwC Comments
<p>1. <i>Does there need to be changes to existing reporting requirements as they relate to sellers in the sharing economy? Is a separate reporting regime required?</i></p>	<p>As outlined above, if the goal of the reporting regime is to increase compliance and participation in the tax system and education by the ATO on its own is not expected to achieve that outcome, the relevant “requirements” may warrant further investigation.</p> <p>We submit that a fit-for-purpose regime is required that is specifically designed for the new world of sharing economy participants.</p>
<p>2. <i>In what circumstances would it be appropriate to require sharing economy platforms to regularly report information about the activities of platform sellers to the ATO?</i></p>	<p>As outlined above, where education and measures by the ATO is not sufficient to address the issues, we consider that it may be appropriate for platform to have a role to play by reporting information about the identity of participants obtained from the onboarding process (subject to further consultation).</p>
<p>3. <i>Should marketplaces, including those for goods, be included in a reporting regime for the sharing economy?</i></p>	<p>The original Taskforce report does not outline the role of marketplaces in any detail. The role of marketplaces is a different issue and there is an existing regime in place (i.e. the ATO’s online selling data matching program) so concerns arise that any additional reporting requirements placed upon marketplaces would be a duplication of existing approaches. This issue appears to be out of scope with reference to the original Taskforce recommendation.</p>
<p>4. <i>Are there reporting regimes or elements of reporting regimes from other countries that should be considered in the Australian context? If so, why?</i></p>	<p>We are aware that certain jurisdictions allow platforms/businesses to “opt in”, i.e. reporting by platforms is not mandated.</p>



<p>5. <i>Are there other lessons that can be learnt from experiences in other jurisdictions?</i></p>	<p>N/A</p>
<p>6. <i>Are these factors relevant considerations in the design of a sharing economy reporting regime?</i></p>	<p>See comments in submission.</p>
<p>7. <i>Are there any other factors that should be considered in the design of a sharing economy reporting regime?</i></p>	<p>See comments in submission.</p>
<p>8. <i>What information should be provided to the ATO and potentially shared with other agencies by the ATO?</i></p>	<p>See comments in submission.</p>
<p>9. <i>Does Option 1 address the factors listed on page 7?</i></p>	<p>See comments in submission.</p>
<p>10. <i>What types of activities and transactions undertaken through a sharing economy platform should be reported? Should it be the responsibility of the platform to report this information?</i></p>	<p>See comments in submission.</p>
<p>11. <i>What transaction and identification details may need to be included in a reporting regime?</i></p>	<p>See comments in submission.</p>

<p>12. <i>When and how should reporting by platforms take place? Is there any particular consideration that needs to be given to arrangements for specific industries or business models?</i></p>	<p>See comments in submission.</p>
<p>13. <i>Should it be a requirement that sharing economy platforms also provide this information to their sellers?</i></p>	<p>See comments in submission.</p>
<p>14. <i>What would make it easier for sharing economy platforms to provide accurate information in a standard format?</i></p>	<p>See comments in submission.</p>
<p>15. <i>Would having no exemptions be a desirable outcome? If not, what exemption(s) would be appropriate and why? What benefits would they bring and what risks or issues would need to be considered?</i></p>	<p>If a light touch proposal is implemented in a simple way for the platforms then the exemptions may not be needed, but it is not possible to conclude a view on this aspect as yet.</p>
<p>16. <i>Is there a need for an exemption for businesses in the “start-up phase” of their development? If so, how could this be implemented?</i></p>	<p>See above at Q15.</p> <p>However, we would recommend specific processes to be put in place so that start-ups do not face unnecessary burdens. However, there may be practical challenges in defining when the “start-up phase” ends - platforms need to have certainty as to when any rules requiring reporting would apply.</p>

<p>17. <i>Would a reporting regime as described in Option 1 give rise to any issues beyond those identified?</i></p>	<p>A comprehensive reporting regime as described in the Consultation Paper does not resolve any tax cash collection issues for sharing economy participants during the year.</p>
<p>18. <i>What type of compliance framework would be appropriate for the reporting obligations? Should financial penalties be imposed? What penalties should apply for aggravated non-compliance?</i></p>	<p>The tax law currently provides a system for the imposition of penalties for failure to comply with reporting obligations. Whilst it may make sense for penalties to be applied in circumstances of aggravated non-compliance, we consider that, at least initially, it may be better to set up a system that increases participation, rather than using penalties as a “stick.</p>
<p>19. <i>Does Option 2 address the factors listed on page 7?</i></p>	<p>As outlined above, it would be unreasonable to impose an additional compliance burden on the financial institutions.</p>
<p>20. <i>Would Option 2 be an efficient alternative to Option 1 (reporting by sharing economy platforms)?</i></p>	<p>See comments in submission.</p>
<p>21. <i>Is it possible to overcome the issues identified with Option 2, or are there other reasons why it may be preferable?</i></p>	<p>See comments in submission.</p>
<p>22. <i>What other reporting regime options could be utilised to input into the ATO’s data matching activities?</i></p>	<p>See comments in submission.</p>
<p>23. <i>What further engagement campaign activity could be done to raise awareness amongst sharing economy sellers about their tax obligations?</i></p>	<p>Examples could include advertising campaigns, online modules, seminars co-developed and deployed by the ATO and sharing platforms.</p>

<p>24. <i>What else could be done to educate sellers in the sharing economy to better understand their tax obligations?</i></p>	<p>As above for Q23.</p>
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We look forward to the opportunity of discussing our submission with you in further detail. In the interim, if you have any questions please contact either Adrian Abbott or myself.

Yours sincerely,



Jonathan Malone  
Partner, Global Tax