



THE TAX INSTITUTE

25 February 2019

Ms Kathleen de Kleuver
Black Economy Division
The Treasury
Langton Crescent
PARKES ACT 2600

By email: BlackEconomy@treasury.gov.au

Dear Ms de Kleuver,

A Sharing Economy Reporting Regime

The Tax Institute welcomes the opportunity to make a submission to Treasury in relation to the *A Sharing Economy Reporting Regime* Consultation Paper (**Consultation Paper**). Please find below our responses to the consultation questions.

Existing arrangements

1. *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?*

See response to Questions 7 and 8 below.

2. *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?*

In requiring sharing economy platforms to report information to the Australian Taxation Office (**ATO**) about the activities of platform sellers, there is a need to balance between the compliance burden that will be imposed on platforms and the additional revenue that may be collected from encouraging compliance among sellers.

3. *Should marketplaces, including those for goods, be included in a reporting regime for the sharing economy?*

No comments provided.

International experience

4. *Are there reporting regimes or elements of reporting regimes from other countries that should be considered in the Australian context? If so, why?*

No comments provided.

5. *Are there other lessons that can be learnt from experiences in other jurisdictions?*

No comments provided.

What should a reporting regime for sharing economy platforms look like?

6. *Are these factors relevant considerations in the design of a sharing economy reporting regime?*

Yes, these factors are all relevant to designing a reporting regime for sharing economy platforms.

7. *Are there any other factors that should be considered in the design of a sharing economy reporting regime?*

8. *What information should be provided to the ATO and potentially shared with other agencies by the ATO?*

Response for Questions 7 and 8:

It is difficult to design a reporting regime for sharing economy platforms without also taking into account what compliance and reporting requirements are imposed on individuals participating in the sharing economy. A balance needs to be struck between these.

The ATO has issued guidance on its website to assist participants in the sharing economy to meet their obligations¹. In essence, payments received by participants in the sharing economy are subject to income tax and must be included in the participant's tax return. Equally, the taxpayer is able to claim relevant expenses. This is based on the main principles in the tax laws.

Participants are also required to obtain an Australian Business Number (**ABN**) and register for GST if they meet the relevant turnover threshold of \$75,000 (with special rules applying to ride-sourcing enterprises). It is noted on the ATO website that services provided for a fee or commission by facilitators, that is the platforms, are potentially subject to GST. The GST component may be creditable to a participant that is registered for GST.

¹ <https://www.ato.gov.au/General/The-sharing-economy-and-tax/Income-tax-and-GST-in-the-sharing-economy/>

The reporting regime for the sharing economy platforms could align with the registration and reporting requirements for participants in the sharing economy. For example, participants need to report and pay income tax on payments received for the services they provide. To assist, it would be useful if these payments are reported to the ATO for data matching purposes. That way, the ATO will be able to match data received from the sharing economy platform with data provided by participants to ensure relevant compliance obligations are being met.

Option 1 Reporting by sharing economy platforms

9. Does Option 1 address the factors listed on page 7?

Option 1 addresses some of the factors listed on page 7 of the Consultation Paper including ensuring a level playing field and ensuring sufficient and reliable information being provided to the Government.

10. 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?

Generally, activities for which a payment is received should be reported. As all the activities usually pass through the platform in some way, for example where the platform enables buyers to connect with sellers, where a record of these transactions is kept by the platform, the platform is in the best position to provide this information to the ATO.

However, consideration needs to be given to the frequency with which sellers are providing their goods or services through the platform which goes to the issue of whether the seller may be deriving a regular income through the platform or is just engaging in a hobby / ad hoc activity. It may only be necessary for the platform to report transactions of sellers which occur on a frequent and regular basis. Note, though, that sellers may operate across a number of platforms. This may make it difficult to identify whether a seller is operating infrequently.

11. What transaction and identification details may need to be included in a reporting regime?

Information about the seller's identity, unique identifier (see below), products or services sold and the price paid for the products or services including any GST component.

12. 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?

Reporting should occur on a regular basis that aligns with the compliance obligations of the seller. In line with the ordinary rules, sellers will need to pay income tax annually through their tax return (unless a PAYG Instalment applies to them). Sellers that are

registered for GST will generally either need to report annually or quarterly through their own Business Activity Statements.

For data matching purposes, it would be useful if the platform reported on a similar basis. However, to ensure that the reporting obligations imposed on platforms are not too onerous, bearing in mind the balance that should be struck between the potential compliance impost and ensuring revenue collection, it would be preferable that the platforms be required to report annually.

13. Should it be a requirement that sharing economy platforms also provide this information to their sellers?

Yes, it would be useful for the platform to provide a copy of the information to the seller that they provide about the seller to the ATO, similar to the obligation on an employer to provide employees with a Payment Summary. This will assist with ensuring compliance obligations are also met by the seller as the seller will be made aware of information that is conveyed to the ATO.

14. What would make it easier for sharing economy platforms to provide accurate information in a standard format?

A standardised format that fits in with a platform's natural business systems so that businesses are not required to make major system changes in order to comply.

15. 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?

16. Is there a need for an exemption for businesses in the "start-up phase" of their development? If so, how could this be implemented?

Response to Questions 15 and 16:

Exemptions generally add complexity to a regime. In our view, an exemption for start-ups is not necessary and would add an unnecessary complexity to this reporting regime. However, consideration needs to be given to whether it may be appropriate for the platform to be exempt from reporting certain transactions that are minor, infrequent and irregular in nature. Such transactions may indicate that the seller is just engaged in ad hoc activity or a hobby, rather than deriving a regular (and therefore assessable) income. It may be useful to apply some form of 'minor, infrequent and irregular' rule or de minimis exception from the reporting requirements depending on the number of transactions a seller engages in.

17. *Would a reporting regime as described in Option 1 give rise to any issues beyond those identified?*

No comments provided.

18. *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?*

'Failure to lodge on time' penalties could apply to this reporting. It is assumed that this reporting will be a requirement that is separate to any compliance the platform must meet in its own right as a business complying with Australian tax law and therefore penalties such as general interest charges could not apply as there is no tax required to be remitted.

Option 2

19. *Does Option 2 address the factors listed on page 7?*

While Option 2 is a 'light touch' option, it won't necessarily address all the factors listed on page 7 for the reasons listed in the Consultation Paper on page 10.

20. *Would Option 2 be an efficient alternative to Option 1 (reporting by sharing economy platforms)?*

Option 2 would be an easier alternative than Option 1, but would not be more efficient overall. While it would be easy for financial institutions to pass over the information they have, which they would be doing anyway, the Consultation Paper notes that suitable datasets would not be available and the financial institutions would not be able to determine what they have to report on without making individual enquiries. It would not be more efficient overall as inconsistent data would be provided to the ATO making it much more difficult for the ATO to utilise the data and consequentially inefficient for the ATO.

There will also be a significant cost to the financial institutions to try and provide this sort of information to the ATO. This is quite different information to determine than say information related to interest earned on accounts held with the financial institution.

21. *Is it possible to overcome the issues identified with Option 2, or are there other reasons why it may be preferable?*

No comments provided.

22. *What other reporting regime options could be utilised to input into the ATO's data matching activities?*

No comments provided.

Education and awareness initiatives

23. *What further engagement campaign activity could be done to raise awareness amongst sharing economy sellers about their tax obligations?*

24. *What else could be done to educate sellers in the sharing economy to better understand their tax obligations?*

Response to Questions 23 and 24:

An education campaign will need to be run to educate platforms on their reporting obligations in the lead up to the implementation of the proposed reporting regime. Sellers will also need to be advised that the platforms they operate through will have reporting obligations imposed on them and what those reporting obligations are.

It would also be useful if information regarding the seller's own compliance obligations were included on the platform's website eg a link to the ATO's website through to the relevant information for the seller (including their own registration requirements).

Other Options

While the Consultation Paper makes it clear that consideration of a withholding regime is out of scope of the Consultation Paper, Treasury should consider making use of an 'identifier' within the proposed reporting regime. The effectiveness of data matching is significantly enhanced with the use of a unique identifier, as was the case with the introduction of the Tax File Number (**TFN**) legislation in 1988.

Where the platform is required to report all transactions, they will likely also be reporting transactions which involve 'hobby' activity of sellers which is not necessarily assessable. While the onus rests with the seller to appropriately comply and report all assessable income, it may cause additional unnecessary work for sellers to dispute information that has been reported to the ATO that may not be assessable.

To assist with preventing this kind of situation from arising, we suggest that sellers should have the option to advise the platform of their ABN or TFN. This will require sellers to determine whether the income they are earning is from a hobby or is an income-producing activity. There should be an obligation on the seller to declare to the platform if they consider that the amounts are not assessable. This declaration would be passed on to the ATO by the platform. When neither an ABN or TFN is provided, or a declaration is not made, there should be a positive obligation on the platform to withhold (and remit to the ATO) an amount at the top marginal rate in respect of payments made through the platform to a particular seller. Where a TFN or ABN is provided, this will help to match the data provided by the platform to the correct seller. Incorporating a feature like this would make the reporting regime more effective.

If you would like to discuss any of the above, please contact either myself or Tax Counsel, Stephanie Caredes, on 02 8223 0059.

Yours faithfully,

A handwritten signature in black ink that reads "Tim Neilson". The signature is written in a cursive, slightly slanted style.

Tim Neilson
President