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2 August 2021

Director
Sharing Economy Reporting
Corporate and International Tax Division
Treasury
Langton Cres Parkes ACT 2600

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

Dear Sir or Madam,

IMPLEMENTING A REPORTING REGIME FOR SHARING ECONOMY PLATFORM PROVIDERS – EXPOSURE DRAFT CONSULTATION

CPA Australia represents the diverse interests of more than 168,000 members working in over 100 countries and regions supported by 19 offices around the world. We make this submission on behalf of our members and in the broader public interest.

Consistent with our **submission** in response to the **2019 Consultation Paper** (**the Consultation Paper**) we are supportive of the introduction of a reporting regime for sharing economy platform providers (**SEPPs**) by the ***Treasury Laws Amendment (Measures for Consultation) Bill 2021: Introducing a sharing economy reporting regime*** (**the Exposure Draft**). The proposed amendment to Schedule 1 of the *Taxation Administration Act 1953* (**the TAA**) reflects Option 1: Reporting by sharing economy platforms in the Consultation Paper, which we believe to be a better solution than Option 2 – Reporting by Financial Institutions.

In relation to the proposed amendment, we suggest that the Treasury considers the inclusion of exemptions for small SEPPs and sharing economy participants (**participants**), in line with the optional provisions contained in the OECD's **Model Reporting Rules for Digital Platforms International Exchange Framework and Optional Module for Sale of Goods** (**the OECD Model Rules**). This provides a balance between addressing the risk to the revenue associated with the non-reporting of income facilitated by SEPPs, reducing the burden on small and start-up SEPPs, and having an appropriate focus on those who present a higher risk to the revenue.

We also provide comments in the Attachment on the information provided in the **Introducing a sharing economy reporting regime - Fact sheet for exposure draft legislation** (**the Fact Sheet**) and the potential challenges associated with implementation.

If you have any queries, contact Elinor Kasapidis, Senior Manager Tax Policy, at 0466 675 194 or **elinor.kasapidis@cpaaustralia.com.au**.

Yours sincerely,

Dr. Gary Pflugrath
Executive General Manager
Policy and Advocacy
CPA Australia

No reporting threshold exemptions

The proposed amendment does not include a threshold that would exempt smaller SEPPs or low-value participants from the reporting regime. We note that the OECD Model Rules have been amended to include:

- an optional provision to exclude platform operators that "*facilitate the provision of Relevant Services*[1] *or the sale of Goods for which the aggregate Consideration at the level of the Platform over the previous calendar year is less than EUR 1 million and that notifies the tax administration of [jurisdiction] that it elects to be treated as such*"
- an optional provision to exclude sellers "*for which the Platform Operator solely facilitated less than 30 Relevant Activities for the sale of Goods and for which the total amount of Consideration paid or credited did not exceed 2,000 EUR during the Reportable Period*".

In addition to our previously submitted view that new/emerging platforms should be given a period of time before they are required to commence reporting, we recommend that the optional provisions contained in the OECD Model Rules are adopted in the proposed amendment. Similar thresholds would be, say, A$2 million for platform-level aggregate consideration and A$5000 for a participant's total consideration. This would remove the burden on micro SEPPs and focus the ATO's data-matching on those participants who present a higher risk to the revenue.

Offshore participants and sharing economy platform providers

The proposed amendment will capture participants who provide, and SEPPs that facilitate, supplies to or in the indirect tax zone, regardless of where the SEP or SEPP is located.

Given the evolving and dynamic nature of the industry, it is likely there are SEPPs that facilitate transactions to or in Australia but that do not otherwise have any interaction with the Australian tax system. Unlike larger SEPPs such as Fiverr, AirTasker, Freelancer.com, AirBnB and Uber which are based, or have operations, in Australia, identifying and engaging with offshore SEPPs may be challenging, particularly those where Australia is not a major market for them.

Efforts should be made by the ATO to notify such SEPPs and participants of their reporting obligations prior to the start date and provide accessible reporting options, similar to the implementation of the Low Value Imports regime.

TPRS data will also likely identify offshore SEPPs and participants who may have Australian tax obligations. The ATO should therefore provide guidance on non-resident tax issues that may be identified through taxable payments reporting system (**TPRS**) data. This should address examples such as:

- whether a non-resident SEPP with no physical presence in Australia may have Australian tax obligations including scenarios where contracts are concluded offshore or where there is no double tax agreement (**DTA**), and whether they may be required to register for GST due to a virtual or electronic permanent establishment
- whether a non-resident participant supplying services to Australian consumers via a SEPP may be subject to tax on Australian source income including where there is no DTA, and whether they may be required to register for GST where supplies are connected with Australia.

Impact of the Automatic Exchange of Information Agreement

Further clarity on the interaction between the proposed amendment and the Multilateral Competent Authority Agreement on Automatic Exchange of Information on Income Derived through Digital Platforms (**the Agreement**), as contained in the OECD Model Rules, will also be required.

Where SEPPs operate across jurisdictions that are signatories to the Agreement, reporting requirements should be consistent. The transfer of information should be facilitated by tax administrations with SEPPs only being required to report once in a singular format.

TPRS reporting should be consistent across industries

The administrative approach to the **TPRS** for **SEPPs** should be consistent with other TPRS reporters. Current TPRS reporters are required to lodge a **Taxable Payments Annual Report** (**TPAR**) by 28 August each year with standardised fields.

However, the **Introducing a sharing economy reporting regime - Fact sheet for exposure draft legislation** (**the Fact Sheet**) states that the ATO has indicated that it intends to request information on a biannual basis. We do not consider that sufficient evidence has been presented that would justify a different approach to SEPPs.

[1] The Model Rules define the term "Relevant Service" to mean a) the rental of immovable property; or b) a Personal Service for Consideration, which are the transactions covered by the Exposure Draft.

It is our understanding that TPRS data is primarily used for post-lodgment compliance activity by the ATO to check that income has been correctly reported on annual tax returns. As such, biannual reporting is unnecessary to support this approach, which occurs months after the income year has ended.

We therefore recommend an annual reporting cycle for SEPPs through the TPAR.

If a biannual reporting cycle is progressed, we recommend that the ATO shares TPRS data proactively with taxpayers to help them monitor their tax affairs throughout the year, for example, through pre-fill or real-time notifications. Education and engagement should be undertaken prior to each year-end to assist taxpayers understand their obligations and determine whether they are in business and/or need to register for GST. This will enable taxpayers to seek advice early, improve the accuracy of reporting and remove their exposure to penalties and interest. It will also allow taxpayers to correct errors in the data or explain the amounts to the ATO prior to lodging their returns.

Data collection, specifically date of birth as part of required information

The Fact Sheet states that the ATO intends to require that SEPPs collect, and report to it, the date of birth of participants who are individuals. Many platforms do not currently collect this information as it is not necessary for their business. Also, the current TPAR does not require this information to be collected by TPRS reporters. We also note that current data-matching protocols related to these activities reflect a more tailored approach, with the ATO negotiating with selected data providers individually to obtain data held within their systems[2].

Unlike other TPRS reporters such as financial institutions, SEPPs are not subject regulatory requirements that mandate the collection and verification of this type of information. Therefore, this requirement will place a significant compliance, security and privacy burden on SEPPs. This burden is compounded by the requirement contained in the Fact Sheet that "platform operators will be required to take reasonable care to ensure the information they report is not false or misleading". This suggests that SEPPs will be required to undertake client verification/proof-of-identity processes on all their participants, which is a significant shift from their current operations.

While we understand that using an individual's name and date of birth that has been verified by a third party will enhance the accuracy of data-matching results, ease of tax administration should be balanced against the increased compliance costs imposed on SEPPs and concerns by their participants about providing sensitive personal data to a business that does not require it, other than to meet the ATO's demands.

The ATO should consult further with SEPPs and participants when preparing the legislative instrument to ensure the requirements are appropriate.

Interaction with Division 12 withholding obligations

No ABN withholding

Section 12-190 in the TAA obliges businesses to withhold and remit to the ATO where the participant does not quote an ABN, with certain exceptions. As a result of the proposed amendment, the ATO will be better able to identify participants that are in business and should be quoting an ABN.

Given that the proposed amendment exempts amounts required by Division 12 of the TAA to be withheld from the payment of the consideration, further clarity on whether SEPPs, in particular those facilitating payments, will be required to address the distinction between participants that are actually in business and should be quoting an ABN (including those who may be unaware that the ATO would consider them to be in business) and those who are not (e.g. investors renting our property or individuals who do not properly satisfy the elements of being in business).

While the no ABN withholding obligation may not fall on the SEPP itself, for business-to-business transactions where the purchaser is required to withhold when no ABN is quoted, SEPP payment and clearing processes may need to be adjusted to allow the purchaser to comply with tax laws. That is, to withhold 47 per cent of the payment from the participant and remit it to the ATO. These transactions would then be exempted from reporting under the TPRS.

The ATO should also address this issue by proactively contacting participants who should be quoting an ABN, and businesses purchasing their services, to inform them of their obligations before considering penalties and/or prosecution.

[2] See **Sharing Economy Accommodation 2016-17 to 2019-20 financial years data matching protocol**, **Online selling – 2014–15 to 2022–23 financial years** and **Ride sourcing 2015-16 to 2021-22 financial years data-matching program protocol**, Australian Taxation Office

Employees and labour hire arrangements

Like the "no ABN withholding obligation", the issue of whether or not there may be, in fact, an employment relationship or labour hire arrangement may arise. Determining this turns on many factors. SEPPs and participants may assume that the existence of TPRS requirements means there is no employment relationship or labour hire arrangement without considering the necessary factors.

Potential impacts include employers failing to withhold PAYG and pay superannuation, as well as employees establishing structures or purporting to income split.

While the **Exposure Draft Explanatory Materials** state, "in most cases, there is no employer-employee relationship between the seller and the platform", to encourage consideration of the issue and for the avoidance of doubt, a note could be included under proposed amendment 15(b) such as "For example, a requirement to withhold under Division 12 may arise for payments to employees or under labour hire arrangements and payments where a TFN or ABN is not quoted".

Checking reported income against TPRS data

We anticipate there will be challenges in ensuring data integrity and correct tax treatment when matching TPRS data. For example:

1. Once participants are matched to a tax account, further investigation is required to ensure that the data-matched income is actually derived by and assessable to them. For example, often one person will register a property on an accommodation platform but shares the revenue with a property co-owner. Alternatively, they may not, in fact, be the property owner. We would expect that the ATO would not require that participant details on SEPPs are changed, but rather that they work with the taxpayer/s to ensure that income is correctly treated for tax purposes.
2. When checking data-matched income, some taxpayers will report income from accommodation as business income and others as rental income, and it may form part of a total amount that includes other income streams. Further clarity on how the ATO makes such distinctions and its compliance approach would assist taxpayers and their advisers, recognising that processes are likely to have been established as a result of existing data-matching protocols.

Education and communication

Given the Consultation Paper's estimate that 10.8 million Australians were predicted to earn money from the sharing economy in 2017, the target group of this reporting regime is expansive.

We would expect that the ATO will provide guidance to taxpayers using SEPPs, including that the correct person/entity is registered for the activity and that income is recorded in the correct place in the tax return.

Tax agents will also be able to provide advice on where to record the income in the tax return, identify whose income it is, determine whether there is a business activity and when property is available for rent, if claiming deductions across vacant periods.

As suggested earlier, the ATO should proactively make TPRS information available to taxpayers and their tax agents as soon as it is available and before tax return lodgment due dates. Where TPRS data identifies taxpayers who are not properly registered for an ABN, or who may not be complying with other taxation laws, direct communication should be issued as soon as possible, including to their advisors, to inform them of their obligations.

ATO reporting on the program

The ATO should release aggregated figures annually on:

- the number of reported participants
- the total and average value of reported transactions
- the percentage of data-matched participants
- the total value of data-matched transactions
- the amount of tax revenue recovered.

This information will provide insights into the effectiveness of the policy and the efficiency of its administration, and will inform future policy discussions related to the sharing economy.