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Submission to Treasury: Exposure draft – Implementing a reporting regime for sharing economy platform providers

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Treasury

By email: sharingeconomyreporting@treasury.gov.au

Dear Sir / Madam

Exposure Draft – Implementing a reporting regime for sharing economy platform providers

The Institute of Public Accountants (IPA) welcomes the opportunity to make a submission in relation to the Exposure Draft – Implementing a reporting regime for sharing economy platform providers.

The IPA is one of the three professional accounting bodies in Australia, representing over 40,000 accountants, business advisers, academics and students throughout Australia and internationally. Three-quarters of the IPA's members work in or are advisers to small business and SMEs.

We are supportive of the endeavors 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 implement one of the Taskforce's recommendations to proceed with a reporting regime for those individuals who participate in and who derive income from the sharing economy. It is important for small businesses that compete with service providers operating on sharing economy flatforms that they are not disadvantaged by competing against those who undertake similar activities in the economy and are not complying with their tax obligations. Without a reporting regime, it is acknowledged that the ATO would find it difficult to measure compliance of sharing economy participants. The sharing economy continues to grow and develop at a significant pace, posing a risk to revenue if this part of the economy does not comply with their tax obligations. The lack of transparency around transactions taking place on digital platforms, is at the heart of what this sharing economy reporting regime is trying capture. Once this transparency gap is addressed, we expect that there will be a structural shift in attitudes around participants mindset towards tax compliance on income generated from activities conducted on digital platforms.

Whilst we recognise that there will be significant challenges with implementation, this should not be a reason to delay a staged rollout of the reporting regime. Ride-sourcing and short-term accommodation will be the first platform operators to report as from 1 July 2022 followed by all other platform operators (asset sharing, food delivery, tasking-based services etc.) as from 1 July 2023. This is a first important step in the process which we believe may take years to refine to ensure we achieve a

reasonable level of assurance as to the seller's identity and transactions pertaining to each seller. Once the robustness of the data has been tested, and the necessary checks and balances have been put in place, the ultimate end game is for this data to pre-populate a taxpayer's pre-fill information where possible. We envisage more changes may be required for client verification and data capture going forward to achieve the policy intent of the proposed reporting regime. 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 particularly for personal services (where relevant)
- allow for certain transactions to be flagged to the individual and for them to decide whether any income derived through the platform should be included in their assessable income, and
- allow the ATO to undertake effective data matching activities to ensure compliance.

If these objectives cannot be achieved, then further changes will be necessary going forward to ensure the compliance burden imposed on the sector and its participants is warranted.

The IPA has previously responded by lodging a submission to the "Sharing economy reporting regime" consultation paper in January 2019.

We are pleased that some of the suggestions contained in our submission have been reflected in the draft exposure draft legislation for implementing a reporting regime for the sharing economy platform providers.

In particular, we are pleased that option 1 was chosen as the preferred model. Option 1 entailed the sharing economy platforms directly reporting the relevant information to the Australian Taxation Office (ATO). We considered this to be the most appropriate and accurate "source of truth" for reporting purposes as opposed to option 2, which looked at using financial intermediaries to report such information.

Also, exemptions from reporting for smaller or new start-up platforms is no longer part of draft legislative framework. 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. We did not consider that there should be exemptions for any sharing economy platform (even if they were in a "start-up "phase) as this would have encouraged participates to gravitate to non-reporting platforms and create an unlevel playing field. We do not believe that small

entities would be disadvantaged from having the reporting obligation imposed given their abilities to deal with data digitally.

Whist the original consultation paper recommended that reporting be conducted annually, the draft legislation provides scope to increase the reporting frequency by sharing economy platforms given that the relevant data is typically captured and stored digitally. Again, this was something we thought would be useful and we are pleased that biannual reporting basis is been considered as part of the reporting frequency for the new regime.

The appendix contains the main points we wish to make in relation to Exposure Draft – Implementing a reporting regime for sharing economy platform providers.

If you have any queries or require further information, please don't hesitate to contact Tony Greco, General Manager, Technical Policy, either at tony.greco@publicaccountants.org.au or mobile: 0419 369 038

Yours sincerely

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Appendix 1: Detailed discussion

1. Strong case that underlies the basis for a sharing economy reporting regime

The original 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 Black Economy Taskforce's observations that there is low-level compliance in declaring sharing economy income. This may be partly a result of misconceptions that any income derived could be ignored. Whether this is unintentional or deliberate is unclear, but the lack of transparency about transaction in this part of the economy can allow this situation to manifest itself and prohibits the ATO from understanding the true level of compliance. Whilst Australia enjoys high levels of voluntary compliance, there may be different attitudes applied to income earnt on sharing platforms particularly if it is additional to one's ordinary income. A reporting regime would send a strong message to the community that most payments received by sharing economy participants would be taxable. The fact that transactions by sellers will be reported, will result in a structural shift in community attitudes and will go a long way to stamp out deliberate non-compliance. We cannot rely on self-assessment to do the heavy lifting when there is a large transparency gap about transactions occurring in this part of the economy. To this end the ATO have done their best in providing guidance on the tax implications for sharing economy participants. There is also a warning when individuals lodge their income tax return about including income you earn through the sharing economy which is linked to a webpage clearly explaining the tax implications of various transactions that are common on platforms.

Given that the sharing economy is now a societal and economic norm whose growth would not abate, voluntary compliance from participants would suffer if there was no active compliance action taken by the Government. In turn, this would 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 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 and may not be complying with their tax obligations.

The Board of Taxation (the Board) conducted a self-initiated review to consider issues surrounding tax related to the sharing economy which was tabled in July 2017. It also recommended a reporting regime but acknowledged the practical application of the current law to the sharing economy presents specific challenges for the Australian tax system. The Board of Tax report noted that most receipts from sharing economy activities are likely to be in the nature of assessable income as the activity is typically principally undertaken for the purposes of generating income. The following points we noted which are still relevant:

- Participants likely do not fully appreciate the tax consequences and obligations of participating in the sharing economy.
- There is confusion about whether receipts from sharing economy activities constitute taxable income or hobby receipts due to the intermittent nature of participation in the sharing economy and frequent use of personal assets to derive receipts.
- Participants have difficulties in tracking expenses related to sharing economy income.
- There is increased risk for black economy activity, that is, intentional non-reporting of sharing economy income.
- There is confusion and lack of awareness about the tax consequences on disposal of assets that have been used to produce sharing economy income.

2. Information requirements under for the reporting regime

Given that the tax implications will vary depending on type of income derived, it is apparent that it would not be possible to design a single use template for reporting purposes. We envisage different templates for the various types of transactions that are required to be reported. 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 (e.g. provision of task based services)
- Income from providing for the use of property (e.g. rental of a room in a house, asset sharing), and
- income from the sale of goods . This category has been exempted from the reporting regime

The draft legislation does not specifically detail what information will need to be reported. The “Introducing a sharing economy reporting regime-Fact sheet for exposure draft legislation” (factsheet) states that the ATO will specify what information will be required relating to the seller’s identification and the consideration/money exchanged in the transaction that is to be reported. Whilst the factsheet outlines a “minimum” level of information that will be required, there is no

certainty been given on what information will ultimately be required once reporting commences. The minimum information is based on OECD Model Rules for Reporting by *Platform Operators with respect to Sellers in the Sharing and Gig Economy* ("Model Reporting Rules for Digital Platforms" or "MRDP"). These rules were developed in light of the rapid growth of the digital economy and in response to calls for a global reporting framework in respect of activities being facilitated by such platforms, in particular in the sharing and gig economy. Whilst these rules provide a good starting point, they need to be adapted to the Australian environment.

For rental of real property, the property address is required as well as the period for which the property is booked. 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. 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). 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.

Transaction data which relates to the rendering of services would lend itself to accurately being pre-filled a tax return. The same cannot be said for those 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.

Consideration should also be given to including the type of service provided as part of the minimum information captured. There are many services that are regulated and require registration. Two examples are: electrical work and tax advice. Both these types of services are highly regulated and require either State or National registration. This information would help regulators monitor compliance with registration requirements and assist in stamping out individuals providing unregulated services.

Platforms located outside of Australia that provide services in Australia are rightfully included in the reporting regime. There is however the practical difficulty of platforms

located outside of Australia adhering to these proposed reporting obligations as well as other laws such as the *Privacy Act* 1988.

3. Onus on the reporting entity for assurance of the seller's identity

For the reporting regime to achieve its primary objective, it requires robust data to be captured and reported. Our main concern here is the obligation on the platform operator to exercise a reasonable level of assurance as to the seller's identity. Without undertaking verification processes, this becomes problematic. Sellers who wish to remain anonymous once the reporting regime commences will want to circumvent data matching attempts by the ATO and will try to submit false or misleading details as to their identity. There is no obligation on the reporting platform to validate and verify identity information if there is no reasonable grounds to question the validity of such data. The platform operator has no stick to wield to ensure sellers are truthful in disclosing their identity. Without an obligation to verify seller's identity, we may find that robustness of the data reported may lead to poor data matching. Platform operators do not have proof of identity protocols similar to tests widely used by financial institutions. It is acknowledged that the reporting regime creates an implicit requirement on the platform operator to have reasonable assurance as to the accuracy of identity information and show that they have exercised reasonable care. If the platform operator is deemed not to have exercised reasonable care, the ATO could theoretically apply an existing administrative penalty for the provision of false and misleading information. Without a mandated verification process, this safeguard is insufficient to ensure a high level of assurance of the data captured.

Whilst we acknowledge that a verification service will be burdensome on platform operators in the initial stage of implementing the proposed reporting, it may need to be considered in the future, especially if it is found that the ATO has difficulty performing its data matching, undermining the principal intent of the reporting regime. A government provided verification service could significantly reduce the compliance burden on platform operators. Commercially available document verification providers currently exist but come at a cost.

ABN information if supplied is part of the minimum data capture requirements, however not all sellers need to have an ABN and it is more likely that if you have an ABN then there is a greater likelihood that you are tax compliant as opposed to someone who does not have an ABN. The minimum requirements coincidentally do not mandate that the seller provides their ABN details. Presumably this is due to the fact that not all sellers need to have an ABN and therefore the platform operator would not know whether the seller is or is not registered to carry on a business. Other options to consider are requesting the TFN of participants which would greatly assist the ATO with high quality data matching. We understand the collection of TFN imposes privacy concerns on platform operators including the need to upgrade their

systems to prevent cybersecurity threats from crime syndicates. The added compliance burdens need to be weighed up against the benefits of improving the data quality. The provision of a unique identifier such as an ABN or TFN would enhance the data quality surrounding the seller's identity.

4. Frequency of Reporting

We support more than annual reporting and the factsheet contemplates a biannual requirement. More frequent reporting also allows more time particularly for new participants to understand their tax obligations and seek advice and/or retain documentation well before they are required to lodge their income tax return. 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 bi-annual or even quarterly).

The factsheet outlines that only the aggregate total of transactions relating to the seller over the reporting period are required. One can only assume that if a seller has concerns over the accuracy of the information that they will need to go back to the source to ascertain the makeup of what has been included in the aggregate total. There will need to be a mechanism for the seller or their intermediary, to communicate incorrect data back to the ATO if what has been previously submitted is incorrect for whatever reason particularly if a seller's identity has been compromised by another participant.

5. Education

Prior to the start date for implementation, there needs to be education for sellers on sharing economy platforms in relation to their tax obligations. Some of the noncompliance can be attributed to lack of awareness by sellers of their tax obligations. In addition, as soon as the ATO becomes aware that an individual is participating in the sharing economy, it should send information products it has already developed to help educate participants well before they need to lodge their tax return. This way they are prepared for the impact of tax on cash flow and the need to retain documentation to claim any deductions associated with the derivation of income generated from sharing economy activities. There will be participants that may not realise they are operating a business or realise that the services they perform represents the derivation of assessable income. This will be particularly important in shifting attitudes in the community around the fact that such services are generally assessable income, similar to wages. The existence of the reporting regime will prompt participants to rethink their attitude to tax compliance, when they are aware that this information is readily available to the ATO.

6. Only services included in reporting regime

The Taxable Payments Reporting Scheme (TPRS) covers the provision of services but only operates in relation to Business-to-Business (B2B) transactions. TPRS has an annual reporting requirement. It is intended that the reporting regime will be implemented by applying the TPRS to certain transactions undertaken through electronic platforms regardless of whether the service is B2B or not. It is quite likely that transactions will encompass B2B, business to consumer, consumer to business, and/or consumer to consumer.

The reason why the data captured currently under TPRS is robust, is due to the integrity of the contractor's identity when an ABN is provided. If a contractor does not provide an ABN, then the payer is required to withhold under Div 12. As the withholding tax rate is tied to the highest marginal tax rate, this encourages contractors to comply with providing ABN details. Platform operators do not wield any such powers. It is unclear if the platform operators have an ABN withholding obligation if a B2B transaction occurs. Unless other high quality identification information can assist the ATO in its data matching, then we will need to look at least one unique identifier such as ABN or TFN. 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 Rule) 2015* (as issued under 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 under certain circumstances. We understand this obligation would be onerous on platform providers and recommend that this should only be considered if data matching proves problematic for the ATO.