



## KPMG Australia submission

### Exposure Draft

# *Treasury Laws Amendment (Measures for Consultation) Bill 2021: Introducing a sharing economy reporting regime*

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## KPMG comments

### 1 General

- 1.1. KPMG Australia (KPMG) welcomes the opportunity to comment on the Exposure Draft of *Treasury Laws Amendment (Measures for Consultation) Bill 2021: Introducing a sharing economy reporting regime* and associated explanatory material as published by Treasury on 6 July 2021.
- 1.2. KPMG has acted as an advisor to a major platform in the sharing economy, as the ATO and Treasury are aware. That said, the views stated in this submission are those of KPMG independently of the views of this client.
- 1.3. The inclusion of the sharing economy reporting obligation in the table of reportable payments in section 396-55, Schedule 1 *Taxation Administration Act 1953* ("the Act") is an efficient method of legislating the regime.
- 1.4. We support Treasury's approach of requiring all electronic distribution platforms to report, regardless of their own revenues or of the value of the transaction. This should limit the opportunities for sellers to continue operating unreported. It should also limit the market distortions that might otherwise arise from applying platform revenue or seller transaction value thresholds.
- 1.5. However, there are some important differences between the information needs of sharing economy reporting and the needs underpinning the other reportable payment types in section 396-55.
- 1.6. Firstly, the sharing economy information relates to a party (the seller) who does not provide services to the reporting entity. The reporting entity has less of a possibility to verify certain information that the seller provides, compared to the situation where the reporting entity is the recipient of the services.
- 1.7. Secondly, there is a greater likelihood of certain reportable information being stored outside Australia and being subject to other jurisdictions' data protection laws.
- 1.8. For these reasons, we recommend that certain modifications to the application of Division 396 of the Act would be appropriate in the case of the sharing economy reporting requirements. We have set out these recommendations in Section 2 of this submission.



## 2 Recommendations

### *Allow a longer period for reporting entities to meet the obligation*

- 2.1. Paragraph 396-55(b) of the Act requires the reporting entity to submit the information to the Australian Taxation Office (“ATO”) within 31 days of the end of the reporting period, or by a later time that the Commissioner of Taxation specifies in a legislative instrument for that reportable item.
- 2.2. In light of the greater amount of information required for sharing economy reporting and the fact that the information is likely to be held outside Australia, we submit that either:
  - a) the legislation should specify that sharing economy reporting entities have at least 60 days following the end of the reporting period to submit information and that the Commissioner should additionally publish a legislative instrument allowing 90 days to submit the information for the first two reporting periods and in other specified circumstances; or
  - b) the Commissioner should publish a legislative instrument covering the scope of a) above.

### *Administrative penalties for false statements*

- 2.3. Sections 396-55 and 396-75 permit the imposition of an administrative penalty where a report includes a statement that is false, or the report is not submitted on time. Section 396-75 requires the reporting entity to correct a material error in a report within 28 days of becoming aware of the error.
- 2.4. In the context of the reporting requirements that currently exist in section 396-55, it is reasonable to expect that the reporting entity has first-hand evidence of the key data that it is reporting – name of supplier, ABN and amount paid for the services. This information would be evident from the supplier’s invoice.
- 2.5. A sharing economy seller may provide personal information that is subject to the reporting obligation (as envisaged in the Treasury fact sheet) but which is much harder for the reporting entity to verify. The seller may have no ABN to which certain personal information could be cross-referenced.
- 2.6. In the context of sharing economy reporting, it would be appropriate for the ATO to publish some commentary on how it proposes to administer the administrative penalty provisions and to set out its expectation of what constitutes “reasonable care” for this purpose.
- 2.7. In addition, the concept of a “material error” is not defined in the legislation. Due to the increased amount of information likely to be required for sharing



economy reporting, some of which would be of more material use to the ATO than the rest, it would be appropriate for either:

- a) the legislation to include a definition of “material error” with further explanation of the term in the Explanatory Memorandum; or
- b) the Explanatory Memorandum to state the parliament’s understanding of the term; or
- c) the ATO to publish its opinion on what constitutes a material error and what does not. This should occur immediately after the enactment of the legislation.