



Australian Government

The Board of Taxation

TAX AND THE SHARING ECONOMY

A REPORT TO THE GOVERNMENT

the **board** of **taxation**
www.taxboard.gov.au

The Board of Taxation
July 2017

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A REPORT TO THE GOVERNMENT**

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ISBN: 978-1-925504-61-3

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GLOSSARY AND TERMS USED IN THE REPORT

1936 Act	Income Tax Assessment Act 1936
1997 Act	Income Tax Assessment Act 1997
ABN	Australian Business Number
AML/CTF rules	Anti-Money Laundering and Counter-Terrorism Financing Rules
AIIR	Annual investment income report
ASIC	Australian Securities and Investments Commission
ATO	Australian Taxation Office
BEIR	Black Economy Taskforce Interim Report
B2C	Business-to-consumer
C2C	Consumer-to-consumer
CGT	Capital Gains Tax
B2B	Business-to-business
GST	Goods and Services Tax
IT	Information Technology
OECD/G20 BEPS	Organisation for Economic Co-operation and Development / G20 Base Erosion and Profit Shifting
TAA 1953	Taxation Administration Act 1953
TFN	Tax File Number
TPRS	Taxable payments reporting system

EXECUTIVE SUMMARY / RECOMMENDATIONS

The Board of Taxation is of the view that:

- The Australian income tax law should apply equally to activities conducted through the sharing economy to minimise distortions in the market-place;
- The current income tax law results in tax outcomes which are consistent with current tax policy settings; but
- The practical application of the current law to the sharing economy presents specific challenges for the Australian tax system.
- In particular:
 - 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.

To address these issues, the Board has made four recommendations:

- **Recommendation 1:** Additional advice and guidance, and a communication strategy to raise community awareness of tax obligations associated with sharing economy participation.
- **Recommendation 2:** An information reporting regime requiring sharing economy platforms that operate in Australia to provide information on income derived by participants to the ATO on a once-a-year basis.
- **Recommendation 3:** That the information reporting regime be implemented from a whole-of-Government perspective so that information is reported once and used as often as necessary.

- **Recommendation 4:** That the Government conduct further consultation on options to simplify the tax consequences on disposal of assets used to produce small amounts of income.

CHAPTER 1: INTRODUCTION

BACKGROUND

- 1.1 The Board of Taxation (the Board) conducted a self-initiated review to consider issues surrounding tax related to the sharing economy. In particular, the Board focused on two main areas:
 - a. Looking at the issues surrounding at what point sharing economy activities transition from a 'hobby' to a business; and
 - b. Taking a holistic look at the current income tax system to consider if it adequately addresses existing and potential future sharing economy enterprises.
- 1.2 This report makes recommendations to Government on modifications that can be made to simplify and improve tax compliance within the sharing economy.
- 1.3 Subsequent to the Board commencing its review, the Government announced the set-up and terms of reference of the Black Economy Taskforce (the 'Taskforce'). In conducting this review, the Board has co-ordinated with the Black Economy Taskforce to ensure that any overlaps are managed effectively.

REVIEW PROCESS

Board Working Group

- 1.4 The Board appointed a Working Group to examine the topic and form recommendations. This Working Group was chaired by Board member Neville Mitchell with assistance from Board member Peggy Lau Flux.
- 1.5 The Working Group also included:
 - a. Mark Chapman
 - b. Anthony Klein
 - c. Alia Lum
 - d. Stephen Southon
 - e. Chris Wilson

- f. Officials from the Australian Taxation Office and the Treasury.

Project objectives and guiding principles

1.6 The Working Group was guided by the following principles and objectives in formulating its recommendations:

- a. Considering the operation and adequacy of existing Australian income tax laws and guidance available to sharing economy participants (especially in relation to the technical and practical aspects of the hobby-business distinction);
- b. Reducing compliance costs while maximising voluntary tax compliance;
- c. Maintaining a level playing field between:
 - i. domestic and foreign platforms; and
 - ii. sharing economy participation and more traditional platforms.
- d. Permitting growth and development of the sharing economy.

Project scope

1.7 The scope of the Board's project has been targeted to focus on activities that:

- a. constitute new consumer behaviour enabled by the sharing economy paradigm; and
- b. represent areas of greatest uncertainty or concern in terms of application of the laws;

Within scope

1.8 The following 'sharing economy' activities were within the project's scope:

- a. Consumer-to-consumer (C2C) activities, that is, access to property (for example, accommodation, car parking spaces, storage space, vehicles (without a driver), tools and other goods) or provision of services (for example, personal transportation, delivery, household services, professional services) on a peer-to-peer basis.
- b. Some business-to-consumer activities, that is:

- i. Activities that may constitute an emerging or micro business being conducted (partially or entirely) via a sharing economy platform; and
- ii. Business activities conducted via a platform which also facilitates consumer-to-consumer activities, for example, platforms that facilitate accommodation sharing.

1.9 The following tax obligations were within the project's scope:

- a. Income tax

Out of scope

1.10 The following sharing economy activities were excluded from the project scope:

- a. The taxation of sharing economy platform providers (that is, operators of peer-to-peer marketplaces).
- b. The taxation of sales activities of the kind typically undertaken through exchange platforms (for example, eBay and Etsy).
- c. Business-to-Business (B2B) activities and Business-to-Consumer (B2C) activities (except as specifically included above).
- d. The taxation of fintech and collaborative finance activities (including crowdfunding, peer-to-peer lending, investment, money transfer and exchange).

1.11 The following obligations were outside the project's scope:

- a. Taxes other than income tax (for example, GST, employment taxes);
- b. Rates and thresholds already established in the tax law that are applicable to taxpayers in general.
- c. Interactions with State and Territory tax systems (such as land tax).
- d. Impact of income earned from sharing economy platforms on welfare payments.
- e. Competition and consumer policy impacts.
- f. The application of taxation and employment laws related to the employee / contractor distinction.

1.12 Where comments are made in this report in relation to any of the out of scope matters, they represent the Board's general observations only.

1.13 The recommendations in this report should be considered alongside other government policy settings relating to and/or regulation of the sharing economy, at the Federal, State and local level.

CONSULTATION

1.14 In undertaking its work and formulating its recommendations, the Working Group conducted consultations with:

- a. H&R Block
- b. Uber
- c. Airbnb
- d. Airtasker
- e. Collaborate Corporation
- f. VixVerify
- g. PwC/Airtax
- h. Various Australian Government Departments and Agencies

1.15 The Working Group also consulted with Mr. Paul Drum, Head of Policy, CPA Australia in the course of performing its work, and considered approaches in international jurisdictions where relevant.

1.16 The Working Group consulted with a broad range of stakeholders, including representatives from:

- a. a diverse mix of sharing economy activities (including provision of rental and access to property and provision of services such as transportation); and
- b. a diverse range of platforms in terms of residence (that is, domestic and foreign-based), ownership structure (privately and publicly owned platforms), size and maturity.

Themes from the Working Group's consultation

1.17 Key themes from the Working Group's consultation are set out below. This feedback was taken into account in formulating the Board's recommendations.

- **Australians are early adopters of the sharing economy** - the Australian population tend to be early adopters of sharing economy activities and, compared to other countries, sharing economy platforms have achieved relatively deep penetration in the Australian market – particularly within the major capital cities.
- **A level playing field** – Consultees were of the view that the taxation system should apply equitably between:
 - : Transactions intermediated by a sharing economy platform and other similar transactions conducted via the traditional economy; and
 - : Transactions intermediated by different sharing economy platform providers (for example, domestic and foreign, established operators and new entrants).
- **The existing income tax framework is appropriate** – consultees generally acknowledged that the existing Australian tax framework provided for appropriate outcomes for sharing economy participants.
- **The current ATO guidance is high-quality** – The guidance published by the ATO for sharing economy participants was acknowledged by consultees to be of a high standard and was regarded by some consultees as being best practice from a global perspective. Consultees often referred their customers directly to the ATO guidance when their customers raised tax questions. Professional advisors and tax agents were also playing a part in providing guidance in relation to participants’ tax obligations.
- **Operation within the rules and cooperation with taxation authorities** – sharing economy platform operators that were consulted by the Working Group in the course of its work expressed a general desire to operate transparently and abide by tax-related regulations and to act in a spirit of cooperation with Australian taxation authorities.
- **Regulatory burden** – participants in the consultation process expressed concerns about the potential for regulation to create strong disincentives for individuals to engage in the sharing economy, which could depress economic activity and mutually beneficial transactions that, absent the regulatory burden, would have taken place. It was noted that regulatory requirements were likely to impact relatively more heavily on smaller scale platform operators (and, consequently, their users).

BOARD'S REPORT

- 1.18 The Board considered the comments at consultation meetings and the views of the members of the Working Group, Treasury and the ATO. However, the Working Group's recommendations reflect its independent judgment.
- 1.19 The *ex officio* members of the Board – the Secretary to the Treasury, John Fraser; the Commissioner of Taxation, Chris Jordan AO; and the First Parliamentary Counsel, Peter Quiggin PSM – have reserved their final views on the recommendations in this report for advice to Government.
- 1.20 All legislative references in this Report are a reference to either the *Income Tax Assessment Act 1936* (1936 Act) or the *Income Tax Assessment Act 1997* (1997 Act), unless otherwise stated.

CHAPTER 2: BACKGROUND

WHAT IS THE SHARING ECONOMY?

- 2.1 The 'sharing economy' is a term that describes people using internet applications to rent out their property, resources, time and skills.
- 2.2 Sharing economy platforms allow users to monetise the value of surplus capacity in the use of assets or labour, for example, cars or transportation services. Users can either rent out owned assets or provide services for a fee, or pay to use assets or procure services on an 'as-needs' basis. For example, the owner of a car that holds a license to drive the vehicle can provide ride-sourcing services to consumers via platforms such as Uber.
- 2.3 Hence the sharing economy is based on the idea of 'access over ownership'.
- 2.4 The impact and use of the sharing economy has grown dramatically in recent years in Australia and other countries, with increasing availability and affordability of internet access, especially via smart phones.
- 2.5 Additional examples of sharing economy services include renting out a room or a whole dwelling on a short-term basis, renting out parking spaces, providing personal services (odd jobs, errands, deliveries, trades). Well known platforms for these activities include Uber, Airbnb, Airtasker and Taskrabbit. The sharing economy also goes by other names such as collaborative consumption, the gig economy, peer-to-peer market, mesh economy or peer production.

HOW DOES THE SHARING ECONOMY WORK?

- 2.6 Sharing economy activities are typically coordinated by way of applications running on individual participants' smartphones, which connect to a 'platform' hosted by an operator. The platform acts as an intermediary between the individual participants who may use the platform to agree and contract for the delivery of some services.
- 2.7 The intended operation of sharing economy platforms is that they do not employ any of the participants or own or control any of the assets shared over the platform. Rather, the platforms seek to facilitate the creation of arrangements between peers. The platform typically provides a payment mechanism and charges a fee or commission on a transaction-by-transaction basis.

THE SHARING ECONOMY VS. THE TRADITIONAL ECONOMY

- 2.8 The underlying activities facilitated by sharing economy platforms are typically not novel. However, through the use of technology, the sharing economy has facilitated the occurrence of such activities on a much more frequent, widespread and intermittent basis.
- 2.9 This is because the barriers to entry into the sharing economy are relatively low.

THE SHARING ECONOMY IN AUSTRALIA

- 2.10 The sharing economy has grown exponentially in the past decade. Since the emergence of the peer-to-peer economy in the United States in 2008/2009, popular platforms such as Uber and Airbnb have expanded world-wide and grown exponentially in a range of markets, across established and emerging economies.
- 2.11 The sharing economy has also expanded into a range of new sectors such as the provision of personal services.
- 2.12 The sharing economy is difficult to define and quantify, however publicly available data suggests that:
- Australia’s sharing economy¹ was worth approximately \$15 billion in February 2017.
 - An estimated 10.8 million Australians are set to earn extra money from sharing economy services in the next 6 months, representing roughly 60% of the nation’s entire working population.

Demographics of users (as at the time of writing):²

- The biggest earners from sharing services are single, independent adults, who earned \$158/month on average.

1 These statistics include data in relation to trading platforms such as Gumtree, eBay as well as the activities that are in the scope of this report. See: <https://www.canstar.com.au/news-articles/2-3-aussies-use-shared-economy-uber-ebay-airbnb/> (includes statistics from RateSetter’s report titled the *Sharing Economy Trust Index*, a bi-annual report which collects data on Australia’s use of and attitudes towards the sharing economy.)

2 These statistics include data in relation to trading platforms such as Gumtree, eBay as well as the activities that are in the scope of this report. See: <https://www.canstar.com.au/news-articles/2-3-aussies-use-shared-economy-uber-ebay-airbnb/> (includes statistics from RateSetter’s report titled the *Sharing Economy Trust Index*, a bi-annual report which collects data on Australia’s use of and attitudes towards the sharing economy.)

- The next highest-earning demographic is families with young children at \$125/month.
- Young families also spend the most on sharing services compared to any other life stage (\$134/month), with young couples and singles close behind.
- Participation is lowest among older Australians. Independent seniors are both the lowest earners and lowest spenders.

Key statistics in relation to popular platforms (as at the time of writing):

- As at June 2017 there were about 115,000 listings on Airbnb in Australia.³
- On average Australians hosting on Airbnb earn about \$4500 a year by listing their home for 28 nights a year. The average age of Australian hosts is 44 and the average stay per guest at an Australian Airbnb listing is 3.6 nights.⁴
- There are now 54,000 drivers across Australia and 2.4 million riders registered on the Uber app. More than 50 per cent of Uber drivers across Australia drive fewer than 10 hours a week.⁵
- There are roughly 320,000 members on Airtasker.⁶
- About 16 percent of Australians have used the sharing economy to get a job done, while 6.7 per cent of the population have used it to earn extra income.
- Most Airtasker workers use the platform as a side hobby to earn extra money. For example, the majority of workers use the platform to complete one or two jobs per month worth around \$40. More substantial earners may be generating income in the region of \$2,000 per month.

3 See: <http://www.abc.net.au/news/2017-06-18/airbnb-in-australia-the-sharing-economy-has-a-dark-side/8624122>.

4 See: <http://www.smh.com.au/business/sharing-economys-rise-1-in-6-aussies-have-an-airbnb-account-24m-with-uber-app-20170127-gztu6.html>.

5 See: <http://www.smh.com.au/business/sharing-economys-rise-1-in-6-aussies-have-an-airbnb-account-24m-with-uber-app-20170127-gztu6.html>.

6 See: <http://blog.airtasker.com/news/australias-first-sharing-economy-study-airtasker/>.

BENEFITS AND COSTS OF THE SHARING ECONOMY

The potential economic benefits of the sharing economy include:

- The creation of new wealth and generation of jobs through additional economic activity;
- The opening up of new markets and increase in the products and services available;
- Reduced transaction and entry costs through use of technology; and
- Putting previously under-used resources to work and utilising existing infrastructure and assets more efficiently.

It has also been suggested that non-economic benefits can accrue to sharing economy participants (for example, by providing opportunity for increased social inclusion and interaction).

The potential downsides of the sharing economy include:

- Potential for social and community disruption through making dwellings unavailable to long term renters (as dwellings are rented out on a short-term basis through sharing economy platforms);
- Unfair competition through operating in an unregulated space and avoiding existing regulations and consumer protection mechanisms that may apply to the same service offered through the traditional economy;
- Creation of negative externalities (such as reducing amenity for neighbours of individuals who choose to use accommodation sharing); and
- Providing unsustainable outcomes for participants (for example, through controlled prices being set at uneconomic levels or charging of excessive fees).

The Board's report focuses on the matters within scope, that is, issues surrounding income tax related to the sharing economy, and does not otherwise seek to comment on the benefits or costs of the sharing economy. As such, the Board's report is premised on the basis that the income tax system should neither preference nor dissuade sharing economy activities.

CHAPTER 3: CURRENT LAW AND ADMINISTRATION

INCOME TAX

- 3.1 The Australian income tax law does not contain any special regimes that are designed to apply specifically to sharing economy participants.
- 3.2 Individual sharing economy participants must therefore apply the general income tax law to their individual circumstances. This includes rules as to allowable deductions and the tax treatment of assets used to produce income (including via the sharing economy) such as the CGT and capital allowances rules.
- 3.3 An overview of the current income tax law as it relates to sharing economy participants is set out at [Appendix A](#).
- 3.4 By way of summary:
 - Most receipts from sharing economy activities are likely to be in the nature of assessable income, as the activity is typically primarily undertaken for the purposes of generating income (as opposed to being a hobby).
 - Sharing economy participants can deduct outgoings to the extent they are incurred in gaining or producing assessable income such as depreciation, operating costs etc. Where deductions exceed income from sharing economy activities, the resulting loss may be quarantined under existing non-commercial losses legislation.
 - Where assets are used to generate income through the sharing economy, a proportion of the gain on disposal of the asset may be taxable, and in some circumstances losses may be deductible. This is because exemptions related to (for example) private or domestic use or main residence exemptions may not apply.
 - The income tax-free threshold for individuals is currently \$18,200 per financial year. Taxable income in excess of this threshold will attract income tax. Notably, income in excess of approximately \$6,000 per financial year can cause a reduction in transfer payments in certain circumstances.

ATO VIEW

- 5.5 The ATO view is broadly that in most cases sharing economy participants' activities will be giving rise to assessable income. That is, participants in the sharing economy even if operating at a relatively small scale would generally have a requirement to treat their receipts as assessable income and be entitled to deduct the costs related to earning this income.
- 5.6 However, the ATO encourages all taxpayers to self-assess their tax liability in accordance with their own circumstances and acknowledges that some people are genuinely receiving amounts through a hobby such as craft, and that these amounts are not assessable.
- 5.7 Given the special rules for GST registration applying to the specific industry, the ATO has undertaken targeted compliance activities in the sharing economy space, including with respect to GST registrations by drivers engaging in ride-sourcing activities.

CHAPTER 4: SUITABILITY OF THE CURRENT LAW

THE LAW

- 4.1 The Board is of the view that the Australian income tax law should apply equally to activities conducted through the sharing economy and through other avenues/platforms so as to minimise distortions in the market-place.
- 4.2 The Board considers that the current law as it relates to sharing economy participants results in outcomes which are consistent with current tax policy settings.

Income

- 4.3 The Board considers that, in most cases, sharing economy participants are undertaking activities which generate receipts that are income in nature, either as business income, income from services or income from use of property. Receipts are unlikely to be hobby receipts. In these instances self-assessment is still the most appropriate method to identify hobby receipts.
- 4.4 This is because through the consultation process, the Working Group was informed that, in the majority of cases, sharing economy participants were:
- looking to generate income or profit from their activities;
 - using commercial platforms (and paying platform fees) to access customers;
 - were providing their services (or access to their assets) to third parties; and
 - were undertaking regular activities (for example, transporting people in their car, performing house maintenance or removalist services) that could not be plausibly described as a hobby or pastime. Typically sharing economy participants would not go through the compliance burden of registering with a platform for a hobby activity.
- 4.5 While there may be greater pressure on the application of the hobby / business distinction in the context of the sharing economy, the Board nevertheless

considers that the current law itself appropriately delineates between 'business income' and 'hobby' related receipts.⁷

Deductions

4.6 The Board considers that the current law applies appropriately to allow deductions for expenses incurred in producing sharing economy income.

4.7 In particular:

- Where deductions relate to a proportion of the holding or operating costs in relation to an underlying asset, the Board considers that the current law allows for an appropriate percentage of those costs to be deducted. That is, the Board does not envisage integrity risks when the percentage is calculated according to existing laws.
- Where participants' deductions exceed income, the Board considers that the existing non-commercial loss rules apply. In certain circumstances this may result in the quarantining of these losses.

Consequences on disposal of an asset used to produce sharing economy income

4.8 Where participants dispose of an asset used to produce income in the sharing economy, the Board considers that the current law allowing a percentage of the resulting gain or loss to be brought to account for income tax purposes is appropriate. That is, the Board does not see specific integrity risks or inappropriate outcomes when the percentage is calculated according to existing laws.

DIFFICULTIES IN APPLICATION OF THE LAW

4.9 The Board notes that there may be practical difficulties in the application of these laws for:

- Participants due to complexity and confusion about the rules. In addition, compliance costs are a consideration; and

⁷ However, the practical application of these laws may result in sub-optimal outcomes – see further below.

- The ATO in ensuring compliance in respect of sharing economy income, related deductions and subsequent impact on disposal of assets. However, this is no greater than when participants engage in these activities outside the sharing economy.

4.10 This view is consistent with feedback obtained during consultation.

4.11 In particular, the Board considers that the application of the current law results in the following risks / problems.

#1: Lack of sufficient appreciation of tax obligations amongst participants

4.12 In light of feedback during consultation, the Board considers that at present, there is likely to be a lack of sufficient appreciation among sharing economy participants (that is, platform users) as to their tax obligations associated with undertaking sharing economy activities.

4.13 Consultees broadly praised the quality of ATO guidance⁸ and noted that platforms frequently refer participants to the ATO's website when tax questions arise. However, awareness of the existence and relevance of the ATO's guidance appears to be limited.

#2: Possible confusion over the business activity / hobby activity distinction

4.14 Some participants in the consultation process submitted that there was a degree of community confusion about whether sharing economy activities are to be regarded as a hobby or a taxable activity.

4.15 This confusion appears to originate from the relatively unique nature of participation in the sharing economy, that is, intermittent provision of services, use of private property, receipts usually supplementing other sources of income, etc.

4.16 This confusion likely contributes to under-reporting of income.

8 The ATO has a dedicated web page on the sharing economy and tax which provides a general overview of the potential GST and income tax obligations for those involved in sharing economy activities. Additional guidance is available in relation specifically to ride-sourcing activities and using a home to produce income. <https://www.ato.gov.au/Business/GST/In-detail/Managing-GST-in-your-business/General-guides/The-sharing-economy-and-tax/>.

#3: Difficulties in tracking expenses

- 4.17 Consultees also noted that sharing economy participants were likely to be either under-reporting deductible expenses or not be meeting the record-keeping and substantiation requirements to support deductions claimed due to the difficulty around tracking expenses incurred in undertaking sharing economy activities.⁹
- 4.18 Where only a percentage of certain costs is deductible (for example, depreciation), there are practical difficulties in determining the appropriate proportion to apply, especially when income from sharing economy activities is derived intermittently.
- 4.19 The ATO's capability to perform risk assessments on and test the veracity of deduction claims may also be constrained to the limited data available in relation to sharing economy income.

#4: Risk for intentional non-reporting and black economy activity

- 4.20 There are a large number of high volume / low value transactions within the sharing economy. Many individuals participate in the sharing economy intermittently and also have other sources of income. This implies a relatively lower chance of detection for each individual participant and therefore brings a higher risk of intentional non-reporting.
- 4.21 The Black Economy Taskforce Interim Report (BEIR) dated March 2017 notes that the sharing economy opens up new vulnerabilities and may increase the size of the black economy as it "operates in an immature and developing regulatory framework and is built on a new business model which relies on a large number of self-employed workers."
- 4.22 In the ATO's view, it is at present too early to make a reliable assessment of the level of voluntary tax compliance by sharing economy participants in general. However, information available to the ATO suggests that some drivers providing in ride-sourcing services are failing to register for GST purposes despite ATO reminders. This suggests that there is a section of sharing economy participants that either neglect or intentionally disregard their tax obligations.

⁹ Note, some platform providers have been looking at options to assist participants in tracking certain types of expenses.

#5: Tax consequences on disposal of private assets used to generate income

4.23 When private assets are used for income generating purposes, a proportion of any gain or loss on the disposal of that asset must also be brought to account for income tax purposes. These taxing events may occur many years after an individual ceases participation in the sharing economy.

4.24 Consultation feedback suggests that:

- Many participants are likely to be unaware that a proportion of the gain or loss on the disposal of the underlying asset needs to be brought to account;
- There are practical difficulties in calculating the appropriate proportion to use, especially when income from sharing economy activities is intermittent; and
- As a consequence of the above factors, it is common for individuals to fail to bring the delayed tax consequences of disposing of assets used to generate income to account.

CHAPTER 5: BOARD RECOMMENDATIONS

- 5.1 The Board considers that the sharing economy presents specific administration risks, challenges and opportunities.
- 5.2 This is because the technology enabling sharing economy activities has significantly lowered the barriers to entry into participation in commercial activities and (according to consultation feedback):
- many individuals participate in the sharing economy without considering or understanding the tax consequences (including potential impacts on transfer payments); and
 - where participants consider tax consequences, there is significant scope for misunderstanding or misapplication of concepts.
- 5.3 Accordingly, the Board's recommendations are focussed on promoting:
- compliance simplicity for participants;
 - compliance integrity for Government;
 - alignment with the direction of Australian tax policy and administration;
 - flexibility to apply to potential future evolutions in sharing economy business models;
 - a level playing field; and
 - avoiding excessive regulatory imposts which may discourage participation in the underlying economic activities.

GUIDANCE AND EDUCATION

- 5.4 In order to address lack of awareness and confusion as to tax obligations among sharing economy participants, the Board makes the following recommendation, and recommends implementation as soon as practicable.

RECOMMENDATION 1

The Board recommends that the Government develops and implements strategies to raise community awareness of tax obligations associated with sharing economy participation.

Such a strategy should build on the range of activities the ATO is already undertaking¹⁰ and harness networks available to other key Government agencies.

In particular, the Board recommends that:

- The ATO enhance its existing guidance in relation to the sharing economy to set out common circumstances where sharing economy receipts are likely to be assessable income. The revised ATO guidance should note that factors such as intermittent participation in the sharing economy, having other sources of income etc do not prevent receipts from being assessable income. A clear statement in this regard would reduce confusion, for example, about the hobby / business distinction.
- The ATO enhances its existing guidance to include additional information around the types of outgoings that may (and may not) be claimed as deductions in deriving sharing economy income, and the potential requirement to quarantine losses from such activities under the non-commercial losses legislation. This revised guidance should include examples of common circumstances.
- The ATO enhances existing guidance to include additional information in relation to the tax consequences of disposing of an asset used to produce sharing economy income. This revised guidance should include examples of common circumstances.
- The ATO enhances existing guidance to include additional information in relation to the tax consequences of disposing of an asset used to produce sharing economy income. This revised guidance should include examples of common circumstances.
- The ATO undertakes to keep its guidance up-to-date with emerging changes and new types of platform offerings in the sharing economy.
- The ATO continues to proactively identify issues that appear to be contentious in the application of the tax law to sharing economy activities and publish clear views on such issues.

¹⁰ For example, videos, webinars, forum discussions, flyers and social media – delivered directly and through partnerships with key stakeholders including sharing economy platforms.

RECOMMENDATION 1 (CONTINUED)

- Greater prominence be given to the ATO guidance available for sharing economy participants on other key Government websites (for example, www.business.gov.au, the Centrelink website). This could be done by including links that are intuitive to find, which guide users to the comprehensive guidance material on the ATO webpage.
- The Government continues to work closely with sharing economy platforms to inform participants as to their tax obligations at key junctures, for example, at tax time. Such a strategy would build on educational material developed by established sharing economy platforms develop (in partnership with tax professionals).¹¹
- If funding permits, paid advertising and/or social media could be utilised to inform sharing economy participants of their tax obligations and the impending capacity / ability for the ATO to pre-fill sharing economy income into the taxpayer's income tax return (if Recommendation 2 is implemented).

Time frame: As soon as practicable.

5.5 The implementation of this recommendation will build on existing ATO marketing and communication activities to increase awareness of the tax implications of participating in the sharing economy.¹²

INFORMATION REPORTING REGIME FOR PLATFORM PROVIDERS

5.6 The Board considers that there is scope to further improve compliance outcomes and the compliance experience for sharing economy participants by implementing the following recommendation.

11 Examples include H&R Block which publishes information and runs information sessions and the Airtax service (developed by PricewaterhouseCoopers and National Australia Bank) which provides digital lodgement assistance services.

12 Such as publishing of web content, videos, webinars, forum discussions on uberpeople.net, targeted flyers provided at community engagement events, media, social media, articles in small business and tax professional newsletters and tax time activities, ATO collaborations with other government departments such as Centrelink to include information in their publications and collaborations with MyGov.

RECOMMENDATION 2

The Board recommends that the Government legislates to create an obligation for sharing economy platform operators to collect and report key information (that is, identity details and earnings amounts) in relation to sharing economy participants to the ATO.

Reported information could be used to undertake data-matching and to pre-fill data into the income tax returns of sharing economy participants.

In considering this recommendation, the Government should also consider any related recommendations of the Black Economy Taskforce (when available) in relation to the reporting of information more broadly.

Timeframe: Commencing on the later of 1 July 2019 or 12 months after Royal Assent of the relevant legislation.

Key benefits

- 5.7 **Better quality data** - at present, the ATO has powers to compel the provision of data on participants' activities. However, this power applies to information that has already been collected by platforms, which typically only includes information which the business requires, for example, bank details, but may not include other personal identifiers required for effective data matching or pre-filling. A comprehensive information reporting regime would allow the recovery and use of high quality data for data matching purposes and pre-filling of income tax returns. Information on receipts by sharing economy participants can also be used by the ATO to perform risk assessments on deductions claimed in deriving that income, including in testing whether the non-commercial loss rules are being appropriately applied.
- 5.8 **More predictable data collection and reporting systems** - at present, information collection by the ATO occurs on an as-required basis, and platforms may be subject to a notice for information at any stage throughout the year. An information reporting regime with parameters that are known well in advance will allow platforms to build more cost-effective systems to collect and transfer information to the ATO.
- 5.9 **Behavioural outcomes & clarity** - community awareness of the information reporting regime¹³ is expected to contribute positively to sharing economy participant expectations and behaviours. The reporting of sharing economy

¹³ It is expected that sharing economy platform operators would draw their users attention to the regime.

participants' receipts by platforms to the ATO should help create the presumption that receipts generally constitute assessable income and result in income tax obligations. Expectations may similarly be set in relation to the effect of sharing economy activity receipts on welfare payments.

- 5.10 The reporting of receipts is also expected to lead to an increased degree of voluntary tax compliance by sharing economy participants. In this regard, the Board notes that the ATO has estimated that in the first year of operation of the Taxable Payments Reporting System (TPRS) in relation to the building and construction industry, improved voluntary compliance has increased net revenue collections.¹⁴
- 5.11 **Compliance cost benefits for participants** – the Board expects that following the full implementation of the information reporting system the ATO will obtain sufficient and timely data in order to be able to pre-fill taxpayer's income tax returns with sharing economy revenue (similar to what is currently done for dividend, interest and trust distribution income), and that pre-filling will represent a significant compliance cost saving, especially for individuals that engage in sharing economy activities intermittently.
- 5.12 **Level playing field between Australian and foreign platform operators** – the Board notes that in order to maintain competitive neutrality and system integrity, it is desirable for any information reporting obligations to apply effectively to any sharing economy platform operator that enables Australian residents to participate. This will ensure that no incentive exists for sharing economy participants to use platforms that are not required to share information.
- 5.13 The Board understands that the Black Economy Taskforce is currently considering a range of matters in relation to the reporting of data, including options to ensure the equitable application of information reporting requirements to domestic and foreign entities. The Government should consider the recommendations of the Black Economy Taskforce in evaluating implementation options to ensure the proposed information reporting regime applies effectively to domestic and foreign platform operators.
- 5.14 In this regard, experiences gleaned in the application of the GST to offshore digital products and services (due to apply from 1 July 2017) may be relevant.
- 5.15 **Fit-for-purpose approach** – by its nature, sharing economy operations tend to occur on a relatively small scale and at a relatively low value for each transaction (and for each participant, cumulatively across an income year). However, as there are numerous participants, across the Australian economy, sharing economy

14 This included income tax, GST, PAYG withholding and PAYG instalments.

activities represent a collection of high-volume / low-value transactions. The Board considers that an automated information reporting system is an appropriate means of supporting tax compliance outcomes in this context.

5.16 **Leveraging existing information and systems** – Consultation with sharing economy platform operators revealed that operators already routinely collect information on Australian participants’ earnings (and in some cases platform fees), which is made available to participants either periodically (after the financial year end) or on demand. The Board also understands that some platform operators have implemented jurisdiction-specific tax reporting capabilities. The proposed information reporting system would leverage the existing financial data, effectively requiring reporting to the ATO, as well as each participant.

Impact on tax outcomes

5.17 Notably, the proposed information reporting regime does not change the fundamental architecture of the income tax system, that is:

- That sharing economy participants (like all other taxpayers) are entitled to self-assess their own tax liability, including by determining whether their receipts are income or receipts from a hobby. Pre-filling of data does not impact on the character of the receipts;
- That sharing economy participants (like all other taxpayers) are entitled to claim deductions incurred in deriving assessable income from the sharing economy, and are required to meet substantiation requirements in respect of those deductions; and
- That income earned from the sharing economy may impact on eligibility for transfer / welfare payments.

Scope and operation of the proposed information reporting regime

5.18 The Board recommends a phased introduction of the reporting regime in order to:

- Minimise compliance costs;
- Achieve optimum compliance outcomes (including via pre-filling of income tax returns and obtaining a useful data set for high-quality data-matching); and
- Allow time for systems changes / upgrades.

5.19 The Board recommends that the information reporting regime be designed in consultation with the ATO, sharing economy platforms and participants, but recommends the following broad parameters.

<p>Who should be required to report?</p>	<p>All sharing economy platform operators facilitating the earning of income by Australian residents, for example, platforms that facilitate:</p> <ul style="list-style-type: none"> • Transactions that: <ul style="list-style-type: none"> – Are consumer-to-consumer in nature;¹⁵ – Facilitated via a website and/or mobile device application; – Involve an electronic payment mechanism; and – Include the imposition of a fee or commission on a transaction-by-transaction basis.¹⁶ • Transactions that involve: <ul style="list-style-type: none"> – the transfer of possession of an asset other than money (without transfer of ownership); or – the provision of services. <p>The Board understands that difficulties may arise in the application of this criteria to platforms that also act as internet-based advertising boards, labour-hire firms etc. Furthermore it is likely that the sharing economy marketplace will continue to evolve rapidly.</p> <p>As such, the Board also recommends that the Commissioner be given the power to prescribe additional criteria or features as required to ensure appropriate application of the reporting regime to the evolving sharing economy.</p> <p>.</p>
<p>How often?</p>	<p>Annually, on commencement. Frequency of reporting should be reviewed 2 – 3 years after commencement to determine if more frequent reporting is necessary / appropriate.</p>
<p>What should be reported?</p>	<p>Phase 1: from 1 July 2019 (or 12 months after Royal Assent of the relevant legislation)</p> <ul style="list-style-type: none"> • Gross revenue earned by each participant for the period; and • All key personal information for each participant that is available / has already been collected by the platform (for example, full name, address, date of birth, ABN). <p>Phase 2: from 1 July 2021 (or 24 months after the start of Phase 1, following consideration of what further information the ATO requires</p>

15 Platforms that require at least one party to the transaction to be a business should not fall within the scope of this regime.

16 Note, this requirement is intended to exclude platforms that currently operate as an advertising service only, and do not receive a fee or commission on a transaction-by-transaction basis.

	<p><i>(if any)</i></p> <ul style="list-style-type: none"> • Gross revenue earned by each participant for the period; and • The full required data set of participant personal information, as determined by the Commissioner in consultation with key stakeholders. Platforms should take all reasonable steps to verify the identity of the participant. <p>In setting the scope of the data set the Commissioner should balance the need for data integrity (for the purposes of data matching and pre-filling), with compliance costs incurred in collecting and managing sensitive data.¹⁷</p>
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WHOLE-OF-GOVERNMENT APPROACH AND USE OF TECHNOLOGY

5.20 The Board understands that there are a number of other Australian regulators and agencies that are currently evaluating the impact of the sharing economy in their space, and that many of these agencies would benefit from additional information on the sharing economy platforms and participants.

5.21 The Board recommends that information collection be approached from a whole of Government perspective, so that information is ideally collected once and used as often as necessary.

5.22 The Board also understands that regulators in comparable international jurisdictions, such as Germany use internet scraping technology to identify suspicious ‘patterns’ of on-line activity. The Board understands that the Black Economy Taskforce is considering the role that emerging analytic tools can play in combatting the black economy.

RECOMMENDATION 3

The Board recommends that in designing the information reporting regime, the ATO consults with and incorporates (to the extent possible) information requirements of other key Government regulators and agencies such as ASIC, Centrelink, etc.

The Board recommends that the Government also considers any recommendations of the Black Economy Taskforce (when available) in relation to the sharing of information and use of technologies such as internet scraping, when evaluating the implementation options for this recommendation.

¹⁷ Notably, collection, reporting and storage of TFN data is likely to require legislative change and impose significant compliance costs.

Alignment with policy direction

5.23 This recommendation aligns closely with the Government's recent policy direction towards increased collection and better sharing of data.

5.24 Recent examples of this policy direction include:

- The taxable payments reporting system ('TPRS') which requires reporting of sales and purchases by construction and building industry participants – this system was introduced in 2012 and was announced, in the 2017 Budget to be extended to courier and cleaning industry participants;
- The 2014 amendment to the AML/CTF rules¹⁸ which were in part intended to prevent tax leakages;¹⁹
- Australia's participation in the multilateral agreement supporting Action 13 of the OECD/G20 BEPS Action Plan which will require the exchange of taxpayer Country-by-Country reports between the ATO and other revenue authorities; and
- The recently introduced third party reporting rules²⁰ and the AIIR.²¹

Implementation

5.25 The Board recommends that the Government considers adapting either the TPRS or the third party reporting regime to include the sharing economy.

5.26 The Board recommends further consultation on implementation options to ensure that information is collected in a way that minimises compliance cost for platforms.

5.27 In making this determination, consideration should be given to the types of information that platforms may be able to request when a new user first commences using the platform and additional information platforms will be required to seek from existing users.

18 Also referred to as the 'Know Your Customer' rules.

19 Refer http://www.austrac.gov.au/sites/default/files/documents/cdd_ris_may2014.pdf, page iv.

20 See Subdivision 396-B of Schedule 1 to the *Taxation Administration Act 1953*. This regime requires Government entities, ASIC, trustees of unit trusts, listed companies and administrators of payment systems to report on payments of government grants, financial benefits provided for services to government entities, transfers of real property, transfers of securities transfers of units in unit trusts and business transactions made through payment systems.

21 <https://www.ato.gov.au/business/third-party-reporting/annual-investment-income-report/>.

Consultation feedback on information reporting regime

5.28 Consultees were broadly accepting of the possibility of an information reporting regime, but raised some concerns. These concerns and the Board's view in relation to the same are set out below.

Issue	Board response
<p>Operations of a sharing economy platform are a modern equivalent to a traditional phone directory or newspaper classifieds (as each one is a tool for a consumer to find a provider of services) and it is not appropriate to implement an information reporting system for sharing economy platform operators just as it is unreasonable to implement an information reporting system for phone directory publishers or newspaper classifieds.</p>	<p>The Board does not agree for the following reasons:</p> <ul style="list-style-type: none"> • A sharing economy platform operator which connects consumers to providers is remunerated primarily on a transaction-by-transaction basis, often by way of a fee calculated by reference to the value of each transaction (for example, as a percentage - rates between 10% and 25% are frequently observed). • Sharing economy platforms tend to prevent off-platform transactions. By way of contrast, a telephone directory publishing business obtains revenue from publishing service provider advertising and is subsequently unaware (and effectively indifferent) as to whether the service provider transacts any business as a result of the advertising.
<p>It may be more appropriate for any information reporting requirements to be attached to the banks or payment processors involved in sharing economy transactions.</p>	<p>The Board does not agree, as consultation revealed that an optimal information set for the purposes of promoting tax compliance would combine transaction level data (that is, amount paid) with a personal identifier (for example, TFN; ABN; name, address and date of birth), however the information that could be sourced from banks or payment processors had the drawback of being comingled with a large volume of other payment information²² and could be lacking or have a low quality personal identifier.²³</p> <p>Sharing platform operators may also have the capacity to effectively pass this cost onto users.</p>
<p>The types of information that would likely be required to be reported through the information reporting system is either not collected by the sharing economy platform operators</p>	<p>The Board considers that lack of quality of information and the relative anonymity of participants is a key risk factor to ongoing non-compliance for sharing economy participants.</p>

22 The volume and co-mingling of various types of transactional data was one of the reasons that the operation of the third party reporting regime in Subdivision 396-B of the TAA has, for now, been limited to exempt payments processed by participants in the Bulk Electronic Clearing System and the New Payment Platform: *Classes of Electronic Payment System Transactions Exempt In The 2017/18 Year From Providing Third Party Reports Determination 2016* <https://www.legislation.gov.au/Details/F2016L00530>.

23 This issue could be exacerbated in situations where sharing economy platforms did not validate sufficiently (or at all) participant identity information.

Issue	Board response
<p>or, if collected, not verified (for example, across different platforms this could include date of birth, address, ABN).</p> <p>Concerns were also voiced in relation to associated issues of potential penalties in relation to incorrect information/liability for errors.</p>	<p>The Board notes the concern and therefore recommends a phased introduction of the information reporting system (that is, in the first phase of the system's operation sharing economy platforms will need to report the currently held/available data on an as-is basis. In the second and subsequent phase of operation, sharing economy platforms will need to report a standard data set. The lead time should allow platform operators to remedy any information gaps).</p> <p>A phased introduction would allow sufficient time for transition required to upgrade systems and collect data.</p>
<p>Some consultees noted that one of the main tenets of sharing economy operation was a peer-to-peer trust model, whereby participants are accustomed to providing as much or little information as they wish about themselves. It was asserted by some consultees that requiring significant amounts personal information from users joining a platform could significantly discourage user participation and thereby reduce the economic activity and mutually beneficial transactions that, absent this requirement, would have occurred.</p>	<p>The Board notes that each jurisdiction must strike an appropriate balance between the competing considerations of reaping the benefits of the sharing economy and law enforcement.</p> <p>The Board's considers that the proposed information reporting regime should achieve this balance by requiring only basic identification information, which can be collected in a streamlined fashion.</p> <p>It is not expected that such information collection or reporting would materially jeopardise sharing economy participation among individuals who intend to comply with their taxation obligations.</p> <p>Notably, some platform operators already collect significant personal data from their platform participants (including address and driver's license details) and do not consider information collection to pose an impediment to operation.</p>
<p>Some platform operators voiced concern about the possibility that complying with an information reporting regime could put them at a competitive disadvantage against other platforms that chose to be non-compliant (for example, platforms that chose not to collect or not to report the required data set).</p>	<p>The Board agrees that compliant sharing economy platform operators should not be put at a commercial disadvantage as a result of their positive approach to playing by the rules and meeting community expectations.</p> <p>To address this concern, a key design feature of the Board's recommended information reporting regime is that it applies to all sharing economy platforms that operate in Australia or that enable Australian residents to participate as well as any potential future entrants.</p> <p>The Board considers non-compliance should initially be addressed via penalties. If penalties are insufficient, a withholding regime could also be considered in due course.</p>

INCOME TAX CONSEQUENCES ON DISPOSAL OF THE UNDERLYING ASSET

- 5.29 Typically, the gain or loss on the disposal of an asset that has been used to generate income needs to be brought to account for income tax purposes, whereas losses and some gains on disposal of a personal-use asset is disregarded (see **Appendix A** for details).
- 5.30 Many sharing economy participants generate income by monetising excess capacity of their assets such as their home, car, tools. As a consequence, the participant may be entitled to depreciation deductions, and may be required to bring a proportion of the gain or loss on disposal of that asset to account for income tax purposes.
- 5.31 The calculation of this taxable proportion is usually complex and requires significant additional record keeping. The gain or loss may need to be calculated many years after the first income producing use of the asset and may require information that the taxpayer has failed to keep record of (for example, valuation of the asset at the first relevant time; the percentage of income producing-use for each year), or the records have been lost.
- 5.32 Notably, while the sharing economy facilitates the earning of small amounts of income of this nature more easily and at lower cost, these concerns are equally relevant in relation to small amounts of income earned via the traditional economy.
- 5.33 Anecdotal feedback suggests that it is common for individuals to fail to bring these delayed tax consequences of disposing of income-generating assets to account.

RECOMMENDATION 4

The Board recommends that:

1. the Government includes a specific focus on the tax treatment of the gain or loss on disposal of such assets in its advice and guidance efforts (see **Recommendation 1**); and
2. the Government undertakes further consultation on potential options to simplify the treatment of the gain or loss on disposal of assets used to produce small amounts of income (through either the sharing economy or the traditional economy). Potential options include:
 - Extending the application of the 6-year exemption for the application of the primary-residence CGT exemption (for example, by allowing property owners to 'rent' their primary residence for a designated proportion of time before

forfeiting the primary-residence CGT exemption);

- A *de minimis* exemption.

CHAPTER 6: POLICY OPTIONS CONSIDERED BUT NOT RECOMMENDED

6.1 The Board also considered but does not recommend the following policy options:

- Use of existing ATO powers of general administration of the tax law to simplify compliance for sharing economy participants, that is, administrative safe harbours.
- Legislative tax exemption for sharing economy income up to threshold, that is, a legislative safe harbour.
- A withholding tax applied to sharing economy income by sharing economy platforms. The Board considers that a withholding tax regime should be considered more closely if there is evidence of widespread non-compliance despite the implementation of the information reporting regime.

6.2 Analysis supporting the Board's decision not to recommend these options at this time is set out at [Appendix B](#).

APPENDIX A: INCOME TAX LAWS RELEVANT TO THE SHARING ECONOMY

INCOME

Whether receipts connected to sharing economy activities constitute 'assessable income' under the tax law is determined by considering a number of factors including the conduct of the sharing economy participant and the nature of the receipt. The rules must be applied to each individual's set of circumstances separately, however, the key principles are that:

- **Income from property** - receipts in connection to use of property, including real property and goods (for example, for leasing, subleasing, licensing or otherwise permitting use) are generally income for tax purposes.
- **Income from services** - receipts for actions that were done with the intention of receiving reward or profit are usually income for tax purposes.

Business vs. hobby income

Income earned from carrying on a business is assessable whereas occasional receipts incidental to hobby, pastime or recreational activities are **not** income for tax purposes.

Carrying on a business

Whether a taxpayer is carrying on a business depends on their individual circumstances. While there is no single factor that determines if a person is in business, some of the factors that should be considered are:

- He/she has made a decision to start a business and has done something about it to operate in a business-like manner, such as
 - registered a business name, or
 - obtained an ABN.
- He/she intends to make a profit - or genuinely believes he/she will make a profit from the activity - even if unlikely to do so in the short term.
- The person repeats similar types of activities.

- The size or scale of the activity is consistent with other businesses in that industry.
- The activity is planned, organised and carried out in a businesslike manner. This may include:
 - keeping business records and account books
 - having a separate business bank account
 - operating from business premises
 - having licenses or qualifications
 - having a registered business name.

In contrast, hobby receipts might include receipts of amateur artists who occasionally sell their works or junior league sports referees who receive token recompense. As the activities change or grow, it is important to reassess them for the business determinant factors for possible qualification as a business.

Hobby receipts will generally not extend to circumstances where parties are making arrangements through sharing economy platforms (regardless of the nature of the asset or service that is the subject of those arrangements).

Deductions

The income tax law generally allows deductions for outgoings to the extent they are incurred in gaining or producing assessable income (or in conducting a business for such a purpose).

Capital costs (for example, the cost of purchasing assets to be used in producing income) are generally not immediately deductible (but may be deducted over time – see further below).

Where costs relate both to income earning activities and other purposes (for example, services procured for income earning and for private purposes), only an appropriate portion may be deducted. Typically this proportion is calculated with reference to the extent that the asset is used to produce income, as compared to being used privately.

Where the individual's net taxable income is higher than the tax free threshold in an income year (currently \$18,200 for Australian residents, \$0 for non-residents), an income tax liability arises.

Under the non-commercial loss rules, where deductions from sharing economy activities exceed income, the net loss may be quarantined if the participant was carrying on a business and either has income of \$250,000²⁴ or more or the operation is small in scale, that is:

- The business has assessable income of less than \$20,000;
- The business has made net losses in 3 of the previous 5 income years;
- The business has less than \$500,000 in real property assets; or
- The business has less than \$100,000 in non-real property assets.

... and the Commissioner chooses not to exercise his discretion (if applied for).

Where only a proportion of the asset is used in the business, only that percentage of the value of the asset is taken into account when applying these tests. For example, where a car with a market value of \$50,000 is used to produce income for 30 days in the income year, the participant is only considered to have \$4,110 of non-real property assets engaged in that business.

Assets used to produce sharing economy income

Where the underlying asset is reasonably likely to decline in value, the owner may be entitled to capital allowances (that is, depreciation) deductions in relation to the asset and may have to recognise a balancing adjustment on the disposal of the asset (that is, bring a proportion of the gain or loss to account for income tax purposes).

To the extent the capital allowance regime does not apply to the asset and the asset cannot be classified as a personal use asset,²⁵ sharing economy participants are liable to bring a proportion of the capital gain or loss on disposal of that underlying asset to account for income tax purposes.

Generally, the taxable proportion is calculated with reference to:

- The value of the asset when it was first used to produce income;
- The portion of the asset used to produce income (for example, floor space apportionment - this may vary over time); and

24 The amount includes taxable income, reportable fringe benefits, reportable superannuation contributions and total net investment losses: see section 35-10(2E) of the *Income Tax Assessment Act 1997*.

25 This typically includes assets used or kept mainly for personal enjoyment, for example, boats, artwork. In some circumstances, the capital gain on disposal of a personal use asset nevertheless needs to be brought to account.

- The length of time that the portion of the asset was used to produce income (for example, time-based apportionment).

While capital gains in respect of primary places of residence are generally not subject to CGT, where an individual's residence has previously been rented out in whole or part in the course of sharing economy activities, part of the capital gain (or loss) on a later sale of the residence will be subject to CGT.

Where a private vehicle or any other such asset has been used in carrying passengers or goods in the course of sharing economy activities, a later sale of the vehicle can result in the realisation of assessable income or deductions under the depreciation rules.

APPENDIX B: ANALYSIS OF POLICY OPTIONS CONSIDERED BUT NOT RECOMMENDED

OPTION 1: ADMINISTRATIVE OR LEGISLATIVE SAFE HARBOURS

DESCRIPTION

Administrative safe harbours

The ATO could consider creating an administrative safe harbour by committing to where it would generally not undertake compliance activity in relation to taxpayers that participate in the sharing economy and satisfy certain publicised conditions (for example, whose deductions do not exceed a certain percentage of their income).

Legislative safe harbour

Amending the income tax law to permit a certain level of income (for example, \$2,000) to be derived from sharing economy activities without attracting an income tax liability.

Similar arrangements have been announced in the UK, allowing the first £1,000 of either trading and/or property income to be exempt from income tax (not limited to the sharing economy, although the measure was seen as supporting growth of the sharing economy). This UK policy aims to reduce the complexity for some individuals who will no longer have to decide if the activity amounts to a trade or not.

Analysis

The Board is of the view that this approach should not be progressed at this stage for the following reasons.

Alignment with policy direction – A cornerstone design feature of the modern Australian personal income tax system is the broad base (that is, comprehensive inclusive definition of ‘income’, including capital gains) coupled with progressive marginal tax rates and a universal tax-free threshold for Australian residents,²⁶ which already effectively exempts earnings from small-scale activities. The specific exemption of certain sharing economy activities or general trading/property income from taxation constitute a narrowing of the tax base or the creation of a variable-level tax free threshold which is not considered to be in accordance with the architecture of the personal income tax system.

Level playing field and equity – the exclusion of a class of sharing economy income from the tax base would result in individuals performing the same activities being taxed differently on their income (for example, traditional hire car drivers and participants in sharing economy ride-sourcing platforms). As a result, enabling certain activities to be performed tax-free for reward in the context of the sharing economy could result in unfair competition and undermining of existing commercial businesses.

Similar considerations could encourage fragmentation of activities between taxpayers (for example, spouses each benefitting from the exclusion) and suboptimal utilisation of skills and resources in the economy (for example, a skilled tradesperson choosing to spend a week providing general handyman services through a sharing economy platform to earn tax-free income rather than engaging in the skilled trade and earning a taxable income).

Interaction with other regulation and technical complexity – a specific tax exemption for certain sharing economy activities would require the eligible ‘sharing economy activities’ to be defined. The special treatment of this class of activities for tax purposes may create significant confusion in relation to other aspects of government regulation that are income-linked. Examples exist in relation to payments provided or administered by the Department of Human Services (for example, Newstart Allowance, child support payments).

²⁶ Presently \$18,200.

OPTION 2: A WITHHOLDING INCOME TAX APPLIED TO SHARING ECONOMY INCOME BY SHARING ECONOMY PLATFORMS

Withholding taxes are frequently used as a mechanism in situations where there are challenges associated with collecting tax in other ways (for example, where the recipient of income is non-resident or for Pay-As-You-Earn withholding on wages).

Examples of this system include:

- A flat-rate non-final (creditable) withholding system, where top up tax is required to be paid or refunds are able to be claimed; and
- A flat-rate final withholding system, where no top-up tax or credits are available.
- A variable-rate withholding system (either final or non-final), where the rate varies depending on the class of activity or marginal rate of the individual participant.

At least one sharing economy platform currently collects local taxes on behalf of local tax authorities in an overseas jurisdiction (typically city taxes but not personal taxes). The Belgian government has introduced a special tax regime specifically for the sharing economy, which taxes sharing economy income below a 5,000 euro threshold at a reduced tax rate of 10% on gross income, where the tax is withheld and remitted by the platform and the resulting data then filled into the individual's income tax return.²⁷ The 10% rate factors in a deemed deduction such that no further deductions are available.²⁸

While at face value, a mandatory flat withholding tax appears to be an attractive option to ensure compliance and timely collection of taxes in the sharing economy, The Board is of the view that this approach should not be progressed at this stage for the following reasons.

27 See: <http://www.ey.com/be/en/newsroom/news-releases/tax-alert---program-law-on-various-tax-measures;>

28 See: [http://www.decree.belgium.be/en/belgian-government-approves-simple-and-low-tax-rates-sharing-economy.](http://www.decree.belgium.be/en/belgian-government-approves-simple-and-low-tax-rates-sharing-economy)

Level playing field – A withholding tax regime would act as a discriminatory tax collection mechanism imposed on sharing economy participants that traditional businesses would not be subject to. While such selective treatment may be appropriate in the context of significant levels of non-compliance/evasion, there is no evidence at this stage of widespread non-compliance in the sharing economy. On the other hand, if a withholding tax system applies using a concessional flat rate, it would likely need to be limited to income below a certain threshold to ensure the provision of goods and services through sharing economy is not more favourably taxed than through traditional delivery models (noting an income threshold may also result in complexity or integrity risks where participants provide services on multiple platforms).

Compliance costs – a withholding regime could impose change costs upon platform providers as they would need to alter business processes to incorporate a tax calculation and remission step into each transaction. If the withholding tax operated based on actual marginal rates (similar to the Pay-As-You-Earn system), compliance costs and complexity would likely be significant. Some or all of these costs are likely to be passed onto users which could discourage participation in the sharing economy.

Rate setting –The Board also notes the difficulty of selecting an appropriate withholding tax rate (given the different profitability levels of different sharing economy activities, including potential future sharing economy activities, as the sector continues to evolve). In the context of a final withholding tax, a withholding regime could arbitrarily create winners and losers, whereas in the context of a non-final withholding tax it could inappropriately impact participant cashflows. To encourage participation, the rate would likely need to be set below the average marginal rates which may result in a cost to revenue for this option (which may or may not be offset by the additional tax collected on those who might otherwise under-declare their income).

Interaction with other regulation – it was noted that the operation of a withholding regime would not necessarily simplify regulatory compliance for sharing economy participants (unless it operated as a flat rate). Notably, sharing economy income could continue to need to be separately accounted for, for the purposes of the transfer system and GST (unless the withholding was significantly complicated by including specific interactions with these other systems).

The Board considers that it may be appropriate for Government to consider the introduction of a withholding tax regime in the future, if there is evidence of significant non-compliance or tax evasion by sharing economy participants or non-compliance with the reporting regime by platforms.