Senate Economics Committee inquiry into

Treasury Laws Amendment (2021 Measures No. 7) Bill 2021

Introductory Statement

The Tax Institute

We wish to thank the Committee for inviting The Tax Institute to appear in this hearing today. We have provided our opening statement in writing. Attached at Appendix A are other comments and observations which we will not specifically cover in this opening but to which we draw the Committee's attention.

The Tax Institute broadly supports the measures contained in Treasury Laws Amendment (2021 Measures No. 7) Bill 2021 (**the Bill**). The most noteworthy change being the implementation of mandatory reporting by sharing economy platform providers.

Protecting the integrity of our tax system from those who do not willingly participate in it, is crucial. Increasing transparency goes a long way to achieving this. We consider that Schedule 1 to the Bill enhances the transparency of the tax system and facilitates increased tax compliance. The reporting requirements should assist the Australian Taxation Office (**ATO**) to understand the current level of compliance by sharing economy participants and optimally apply its resources accordingly.

Transparency also goes a long way towards building trust. However, to build trust not only do we need transparency over taxpayer information, we also need transparency in respect of our regulators, for example, in relation to how they are performing and how they are using data to achieve relevant outcomes. We trust that there will be enduring and heightened transparency of the ATO's performance commensurate to the increased data being made available to it by operation of this measure.

Sharing economy platforms are inherently digital. Accordingly, in our opinion, they are well-equipped to collect, store and report the data required under the Taxable Payment Reporting System (**TPRS**).

We acknowledge that some operators may have to collect additional information from participants on their platforms which they do not already collect. However, when balanced against the need for integrity in the tax system, we consider this is an appropriate step. This is not a requirement unique to electronic distribution platforms; other industries are also experiencing increased safeguards in this regard. One example is the client verification procedures very recently imposed on tax agents.

In discussions with our members, industry and other professional associations, we have heard requests for specific exemptions to be included in the provisions. It is our opinion that the broad drafting of the provision contained in the Bill is appropriate to reduce complexity in the system. It also reduces the incidence of loopholes which can be managed or manipulated over time as technologies evolve and the ways in which goods and services are delivered adapt.

Any carve-out can be provided by the ATO where it can be demonstrated that inclusion is inconsistent with the policy intent, and the data collected not being useful in the administration of the taxation laws. We do not consider that exemptions for certain providers should be contained

within the law itself. We are of the view that this would add complexity to the system and create opportunities for platforms providers to structure their arrangements to circumvent reporting obligations.

We acknowledge that if data is being reported elsewhere in the system, it is not necessary to capture it twice. We consider that the law adequately addresses this.[1]

However, to provide an exemption based on size, either of the operator or of the participant, creates undue risk in the system. This risk can arise by way of structuring and/or operation. Thresholds invite manipulation which ensure that one can remain safely out of scope.[2]

The existing TPRS rules provide the ATO with scope to exclude particular entities, or groups of entities, which are impacted by the rules, where they are not otherwise intended to be captured. This discretion is a key power for the Commissioner as the administrator and custodian of our system.[3]

With regard to the exclusions, we have included some comments at Appendix A on the clarity of the words used in the proposed provisions. For completeness, we note that the accompanying ATO guidelines and support material should make abundantly clear all relevant exclusions.

Finally, in discussions with the community, we have observed commentary regarding the frequency of reporting the required information. The *Taxation Administration Act 1953* imposes an annual reporting requirement unless a legislative instrument is issued prescribing a shorter time. The Treasury Factsheet observes the ATO's desire for a 6-monthly reporting requirement. We consider that this should be debated by the Senate at the time of introduction of a relevant legislative instrument. Any reporting timeframe should align with natural business systems and not impose a greater burden to participants in the tax system.

In closing, we ask this Committee, and indeed all politicians, as representatives of the Australian people, to plan today for the future of tax compliance. In a continuously changing and increasingly digitalised world, our tax system needs to remain agile. To be on the forefront in managing this, in our view, the Commissioner's power to issue legislative instruments should be extended to bring in new groups of reporting entities, rather than adding new items to the table in section 396-55 by continued legislative amendment. Further, having regard to the data to which the ATO currently has and will, with the passing of this Bill, have access, it is important to consider what this means for the future of tax compliance; a facilitated shift away from self-assessment to fully pre-filled tax returns.

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[1] Refer also Treasury's comment in its factsheet (Treasury Factsheet) highlighting the relevant exclusion – "Transactions subject to another tax reporting requirement, such as employer-employee withholding, or the Taxable Reporting Payments System (TPRS)".

[2] This can occur, for example in the context of operators, through the maintenance of multiple entities, all of which remain below the relevant threshold; or, in the case of entities participating on the relevant platforms, by simply utilising the relevant platform only for new business introductions, then taking continued activities off the platform and potentially into the cash economy.

[3] Section 396-70 of Schedule 1 to the Taxation Administration Act 1953 provides the Commissioner with two powers. These are broadly to:

1. notify a particular entity that it is not required to report. An entity has the power to object against the Commissioner's decision in this regard; and
2. provide a legislative instrument to exempt specified classes of entities from reporting. The Senate has the power to review and block such instruments within specified timeframes.

Legislative change would accelerate the system and behavioural changes required to achieve this. We need to plan today for the tax system we want to achieve tomorrow.

Thank you.

Appendix A

Other Comments & Observations

Clarity of Exclusions

With regard to the exclusions from reporting, we have considered how the proposed legislation might apply to an example of common platforms which provide for the hire of e-scooters and e-bikes. The Treasury Factsheet states that "[t]ransactions where the seller is also the operator of the platform" are not required to be reported. While the proposed provision is clear that this is the case for tax consolidated groups (refer proposed item 15, column 2, paragraph c), we have debated this and are of the view that it is not entirely without doubt for other entities given the design of this provision. To ensure the avoidance of such doubt, we would recommend inserting the words "not being the operator" in the introduction to column 2 of the proposed item 15 as follows: [***emphasis added***]

> "… by an entity to another entity (the ***supplier***), ***not being the operator***, …"

Educating sharing economy platform participants

With an increasing number of Australians participating in the "gig economy", the reporting requirements for platform providers should be complemented by programs to educate them on their tax obligations.

It is crucial that the ATO provides education and support for platform providers and users alike. The Bill is focussed on the reporting obligations of providers. However, individuals may not be aware of their own related reporting obligations. This includes the requirement to include amounts received through the use of sharing economy platforms in their tax return or the tax consequences associated with disposing of assets which were used in producing assessable income through these channels.

Further Enhancements

The ways in which businesses and individuals interact and use new and emerging technologies to improve and enhance their activities continue to change and evolve. Our tax laws struggle to keep up with such changes, a problem which will be exacerbated over time.

Our tax laws would be more dynamic and responsive if section 396-55 of Schedule 1 to the *Taxation Administration Act 1953* were restructured.

Although we have no material concerns with the current drafting of Schedule 1 to the *Taxation Administration Act 1953*, we consider there is a more dynamic and proactive approach to expanding the scope of reporting entities under section 396-55. This could be achieved by extending the Commissioner's power to issue legislative instruments to bring in new groups of reporting entities. This is, in our view, a more efficient alternative to adding new items to the table in section 396-55 by continued legislative amendment.

Allowing the Commissioner to make improvements to TPRS via legislative instrument allows the ATO to react to issues or trends in the system more readily. It helps to prevent our tax laws from becoming long and unwieldy, eliminates the need to occupy drafting resources and bypasses the lengthiness of the legislative process. At the same time, Parliament, most particularly the Senate, will still ultimately remain in control. The Senate retains the power to disallow any legislative

instruments that are deemed inappropriate or harmful to the system. To avoid any doubt, the provision could state that the Commissioner may issue a disallowable legislative instrument.

The future of tax reporting

This Bill highlights the continued importance of data and the ATO's ability to access information from business systems. The ATO is already able to pre-fill much of the data on individual tax returns and following this change it takes another step forward. However, we remain in a self-assessment tax system where the onus is on the taxpayer to 'get it right' and taxpayers can suffer significant consequences for making errors.

It is our opinion that the Australian tax system can commence a transition away from self-assessment where a taxpayer's return is fully pre-filled by existing ATO data. This data may be derived from such sources as TPRS discussed today, or receipts uploaded through the ATO's own app/user portal. This is particularly achievable for those taxpayers with simple tax affairs. Individuals should only need to verify that the assessment is correct and contact the ATO if they disagree with the assessment. Legislative change would accelerate the system and behavioural changes required to achieve this.