

Section 22

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From: Section 22
Sent: Wednesday, 18 November 2015 5:35 PM
To: Section 22
Cc: Section 22
Subject: Section 22
Attachments:

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Cheers
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Session 4 – 1.15pm

Uber

- Brad Kitchley, director public policy
- Opening statement – tech company, providing a global service, founded 5 years ago in the USA and still very much a start-up with a focus on investment
 - First entered Australia 3 years ago
 - 18 months ago launched UberX, creating more 15,000 economic opportunities for those who partner with Uber.
 - By years end on track to have created 100 jobs nationally
 - Not yet a profitable company, investing heavily to provide the service to more people
 - Lions share of revenue goes to the driver (at least 75% is kept by the Australian partner), vast majority of money stays local
 - Private company so do not provide public accounts
 - Global business, so business reflects that, i.e. users can register in Australia can travel to Singapore, USA, etc... and use the app without any changes. Structured business around this.

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- Uber in dispute with ATO re GST; disagree with the ATO's guidance and seeking Federal Court to resolve. Also have concerns with the ATO's process in issuing Guidance.
 - : GST is a 1999 law, ride sharing is not a 1999 concept
- Uber wants to work with the Government, as evidenced by recent dealing with the ACT Government, and wish to have the same type of discussions with the federal government
- Questions
 - 15,000 drivers
 - 1 million Australians side up to the platform
 - 1 million unique rides in NSW and Vic, approx. 10m rides this year
 - 11% of people in NSW used Uber (person may ride share for a few hours a week, whereas taxis are more of a full-time proposition)
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 - If I log in and book a taxi that transaction takes place in Netherlands Ireland for tax purposes?

: Yes

- Same as google booking to Singapore.
- I will get paid by Uber Netherlands?
 - Yes
- Significant tax area we need to look at, and a tax structure exists that has been taxed on a 1970s model of what is permanent. I don't dispute you aren't doing anything different to what google has done in the past, but is something that needs to be looked at
 - Response, 75% of profit goes back to Australia
- Yes, but they have earned it
 - You can be a business that contributes to the economy and pays tax.
- ATO Dispute – a lot was said at Senate Estimates, ATO put forward their case why they were in the right and that they have made a ruling and Uber is challenging it. It relates to GST collection. Dispute as to interpretation of law and the consultation process being inappropriate
 - Yes
 - People who participate on Uber's platform should participate in the tax system, it's no different to someone who mows your lawn on the weekend. Assume they collect GST if above the \$75,000 threshold
 - Not appropriate the ATO has applied a 1999 law to a brand new business model that it did not exist. Treats someone who wants to treat someone who does ride sharing for a week different to someone who mows lawn, or is an independent contractor, etc...
 - Should be looked at by the Government rather than the ATO
 - Dispute whether Uber is a taxi service. In ACT, ACT government has recognised that Uber is not a taxi service
 - Uber would not be making their concerns public or as strongly as they have, if they did not believe they were justified.
 - FOI requests showed a hierarchy with governments, taxis and Uber as primary stakeholders
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Section 22 – taxi industry association were afforded the opportunity to mark up draft guidance on ATO's tax position on Uber.
- : Misreported that Uber did not receive an appropriate level of consultation. Uber did have reasonable consultation, issue was consultation for tax association.

- : ATO advised after decision that ATO thought the issue was an uncertain area of the law. Wasn't about revenue, was about levelling the playing field – this is not appropriate, should be about applying the law correctly.
- : Government needs to lead this discussion and resolve issues
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 - if I pay \$100 where does it go:
 - Driver gets paid usually every Monday, will get \$75 (at a minimum)
 - Tax collected same way as any other small business, self-assessment by the driver
 - Not a cash business
 - The 25% (i.e. \$25) is taxed in Netherland
 - : But it occurred in Australia?
 - : No, it was a transaction between an international company and an Australian consumer
 - : So the \$25 revenue is never to be seen again by the ATO?
 - : Indirectly yes, Uber Australia is paid a fee by Dutch entity
 - : How much?
 - : Costs plus 8.5%
 - : \$100 fare what would be the cost?
 - : Wouldn't answer
 - : Australian division is paid by Uber Netherlands. You get paid
 - : Yes
 - : How much is it?
 - : I don't know. Uber pays tax in Australia
 - : Can you give an outline as you don't make a profit?
 - : Pay corporation tax
 - : How much?
 - : Don't have the specifics
 - : Where does the \$25 end up in your organisation?
 - : Uber Australia provides services to support Uber Netherlands. The costs are determined by accountants, plus an additional 8.5%.

- : So Dutch Parent in Netherlands determines your profits?
- : Correct
- : Is the 25% the same rate globally?
- : Depends on the product (i.e. Uber black, Uber X) – average is 25%
- : How many people work for Uber Australia (Separate to drivers)
- : 100
- : Uber Australia pay tax on that?
- : Yes
- : How much?
- : Don't know
- : You came to a senate inquiry on tax and didn't look that up?
- : I will get it back to you
- : Is it fair to say there is scope to manipulate the money coming back
- : It needs to be in Netherlands to service 64 countries the service is provided
- : What is tax rate in Netherlands
- : Don't know
- : Do you see the public policy problem here? The concern is you have one industry paying tax in Australia (taxis) and another not (Uber). Do you at least acknowledge it's an issue that this may lead to erosion of tax base
- : Issue for Government to resolve

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- : Uber – why don't you collect the profit on behalf of Uber Netherlands? Because the value is provided from the platform.
 - (i) Does cost + % doesn't equal 25% what happens to the balance of the money?

1. Resides with the entity providing the service (the Dutch entity)

- Section 22 - this is ridiculous that it's not taxed in Australia. This is a transaction that for all intents and purposes has occurred in Australia, but because of the way in which your platform is structured, this transaction is deemed to occur in your parents jurisdiction (which just happens to be in a low tax jurisdiction).
 - These transactions are structured in a way that these people have not visited and unlikely to visit.
 - Laws need to be structured and policy settings need to be changed so as to ensure the entire transaction is taxed in Australia.
- Di Natale → Uber and Air BnB started in San Francisco – doesn't it tell you something that you both landed in low taxing jurisdictions. Not suggesting anything illegal, but they have happened to end up in low taxing jurisdictions.
 - Number 1 reason why Ireland – because of access to great talent.
 - Corporate tax rate in Ireland had nothing to do with it? Air BnB do not have make any long-term structure based on tax.
 - : Refused to state what the Irish tax rate was
 - Uber – Netherlands had highly skilled work-force and a place to launch the business globally.
 - Who set the rate at 25% for Netherlands? Netherlands company based on cost of running and investing the technology.
 - : Are you a transport or software company?
 - : We are a technology company – provide a piece of technology to connect you to a person to take you for a lift
 - : Air BnB are certainly a technology company.
- Uber claim ATO use cost + 7.5% as safe harbours
 - (a) Free to list, 3% fee to hosts (\$100 booking - \$97 to host and \$3 to Air BnB Ireland)
 - (i) Air BnB reminds hosts to pay tax – but no mechanism to force them
 - (ii) Air BnB hosts not required to charge GST – so no dispute as to GST with the ATO.
 - : Senator – tech company that repatriates 25% of profit offshore, which is murky and only sends back your wages and costs plus 8.5%.
 - (1) Ato uses a 7.5% safe harbour, so Uber is at 8.5% so is okay.

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Uber – any additional comments

- If standing back from it, Uber wants a change in the law. Classic example of challenging the process where you don't like the outcome.
- ATO views it a relatively straightforward thing that the drivers provide taxi services and should pay GST.
- Uber make a number of misleading statements – i.e. we are treated different from anyone else in the community. Not correct – they are treated like every other hire car driver.
- Uber play David and Goliath argument, but they are the Goliath – operate in 64 countries with over \$50bn wealth created, and very aggressive tax practices.
- Adopt the classic structure of booking profit off-shore, with people who apparently provide very little value (but if in Singapore would be significant value)
- Consult all the time and Uber have nit-picked at selected consultation

