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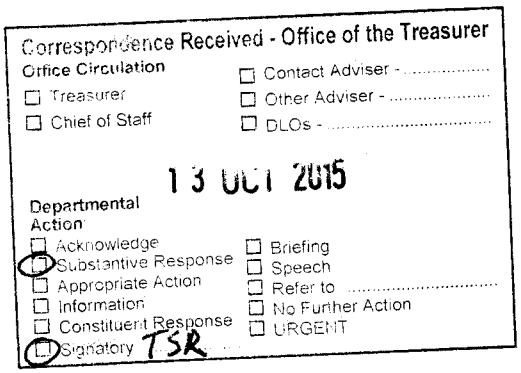
Wednesday, 7 October 2015

The Hon Scott Morrison M.P.
Treasurer
PO Box 6022
House of Representatives
Parliament House
CANBERRA ACT 2600




Dear Treasurer,

I write about the interpretation of the *A New Tax System (Goods and Services Tax) Act* by the Australian Taxation Office (ATO) in relation to ridesharing activities. I would also like to foreshadow Uber's desire to enter into a meaningful policy discussion with Government about the regulation of the sharing economy and play a cooperative role in shaping the Government's policy approach.

Uber would like to make it abundantly clear that we believe that our driver-partners should be captured by the taxation system like any other individual in Australia. We do not, however, believe that ridesharing drivers should be singled out because the taxation system and the current policy settings are out of step with the evolution of the modern economy.

**Background.**

For many months Uber worked cooperatively with the ATO about how it could help to ensure the compliance of Uber partners with their tax obligations.

As the discussions progressed the Australian Taxation Office decided that it would treat ridesharing as if it was 'taxi travel' for the purposes of the application of the GST. This position appeared to represent a retreat from earlier public statements and recognition by the ATO that *"participation in these new business models varies, and tax obligations and entitlements will reflect this".*

s.47

s.47 A great many only do it for a few hours a week in order

to supplement their income. Very few drive every week of the year. Most are drawn from areas of high unemployment or underemployment and not from other driving industries like taxi or bus drivers.

Requiring collection and remittance responsibilities for GST before the first dollar earned imposes an unreasonable burden that is not imposed on other individuals or small or micro businesses. Indeed, it is not in the spirit of the policy reason why a threshold exists in the first place. Secondly, the ATO is ignoring the second threshold test for the application of the GST that the activity is considered an enterprise. One cannot consider someone working a few hours a week for some extra income to be considered an enterprise.

It is unreasonable that someone who runs a market stall on the weekends and earns $60,000pa or someone who is an independent contractor who uses their vehicle for pizza or flower deliveries and earns $30,000pa is not required to register for GST, s.47 s.47 has to register. The burden far outweighs the benefit and singles out these people unfairly.

The GST threshold was created because the Commonwealth Parliament determined that the imposition of the collection and remittance and registration requirements on individuals whose revenue was below the relevant threshold (currently, $75,000) would be a net cost to both the taxpayer and business, and to ATO administration costs, and deliver no net benefit. That is what the ATO's interpretation of the *GST Act* in relation to ridesharing does. Delivers no net benefit.

The threshold was set at zero for the taxi industry at time when fares were set by governments, and where cash transactions still dominated. Neither of these conditions apply to ridesharing. Comments from the Commissioner for Taxation that there would be confusion at taxi ranks should different rules apply demonstrates the lack of understanding of how ridesharing technology works, specifically that ridesharing doesn't use ranks or accept street hails. To apply a decision from 1999 to a vastly different and new industry in 2015 is not the best approach to regulation or public policy.

After the ATO published its decision to treat ridesharing as "taxi travel" in May 2015, the Deputy Commissioner of Taxation, Mr James O'Halloran then wrote to Uber on 10 June and stated that this matter was an "uncertain area of the law."

Uber is confused as to why the ATO would take a decision to disadvantage s.47 s.47 with no direct taxation benefit, when the matter was so uncertain. A better way to

proceed would have been to refer the matter to Government for an appropriate policy response that could deal with the changes in the economy.

**Consultation with the Taxi Industry.**

Under a *Freedom of Information Act* application Uber obtained documents relating to the ATO's consultation with the taxi industry about its decision and believes that these matters require investigation.

The documents reveal that the Australian Taxi Industry Association (ATIA) was provided with advance copies of the ATO's guidance note and information relating to its decision. The ATIA was given the opportunity to mark up the proposed guidance note and afforded the opportunity to make changes to it, some of which were reflected in the final version.

The ATO also coordinated the release of its decision and the guidance note with the public relations agency retained by the ATIA. Media and communications activities were coordinated with the ATIA, which involved alignment on messaging and statements. We consider this highly irregular and inappropriate.

The ATO has defended itself by stating that Uber was provided with the same opportunity and that it was normal practice for the ATO to consult with industry stakeholder bodies. Uber does not accept the ATO's response for the following reasons:

A. The ATO did not consult with any other stakeholder organisations or any other industry bodies affected by its guidance note regarding the sharing economy in general, which was released contemporaneously with the guidance that was specific to ridesharing. Under a *Freedom of Information Act* application Uber has uncovered that the ATO did not consult with any bodies that represent the tourism or hospitality industry such as, the Australian Hotels Association (AHA), the Accommodation Association of Australia, or Tourism Accommodation Australia. This is despite the sharing economy guidance note specifically referring to AirBnB. These industry stakeholder bodies represent the accommodation sector that is potentially impacted by AirBnB. If it was normal practice and proper to consult with industry bodies on matters concerning their competitors, then these organisations should have been contacted and given the same opportunity as the ATIA. They were not. We therefore believe that the ATO's consultation with the ATIA was highly irregular and its excuse that consultation was within normal accepted practice appears to be convenient and is not backed up by evidence we have been able

to obtain that demonstrates equal (or any) consultation with other industry sector representatives.

B. The ATIA does not represent Uber or any ridesharing participants. The ATIA is not a party to the matter and its members were not impacted by the decision. Indeed, the ATIA is waging a campaign to have Governments outlaw Uber. To offer the organisation opportunities to influence taxation guidance for Uber driver-partners in these circumstances is extremely inappropriate.

C. The ATO does not consult with and has never consulted with Uber about the taxation affairs of the taxi industry. Uber sees no reason for it to consult with the ATIA about the tax affairs of Uber or its partners. Since the release of the ridesharing guidance, the ATO has not taken any steps to involve Uber in any discussions about the tax affairs of the taxi industry.

D. The ATO did not provide the same opportunity to coordinate media and communications with Uber or any other stakeholder groups as it provided the ATIA. We do not understand why the ATIA needed to be pre briefed and why statements and messaging needed to be aligned if there was no agenda other than making a decision on the facts.

Uber had previously raised concerns with the ATO about the level of engagement afforded to the ATIA. At the time the Deputy Commissioner of Taxation Mr James O'Halloran advised representatives of Uber in a meeting words to the effect that, "whatever decision was taken the taxi industry needs to be happy with it." Uber strongly objected to this at the time, however its concerns were ignored. We consider this to be highly irregular and not an appropriate basis on which to make decisions.

In public statements, the Deputy Commissioner Mr James O'Halloran has also said that *"This is not a revenue issue, it's a level playing field issue"*. If it is not about revenue, Uber is unsure why the ATO would issue the guidance. Uber believes that the law should be appropriately applied rather than be interpreted in such manner as to level competitive "playing fields" and in order to satisfy the concerns of an industry lobby that is a direct competitor to Uber.

**Media Engagement.**

The documents relating to Uber's most recent *Freedom of Information Act* application were made publicly available by the ATO prior to their release to Uber.

Uber was contacted by a journalist at the *Australian Newspaper* about the content of these documents before the documents were provided to Uber. The journalist has covered this story extensively.

In addition, an internal memo from the Commissioner of Taxation to ATO staff addressing Uber's concerns about the ATO was apparently leaked to the same journalist at the *Australian Newspaper*. The Commissioner Mr Jordan then provided on record comments for the story.

Following the publication of the story about the leaked internal memo in the *Australian Newspaper* the Commissioner of Taxation gave an interview on the Ray Hadley radio programme where he referred to Uber as bullies. The Commissioner said on the programme, "it's just like I tell my kids, to stand up to bullies," and "bullying tax authorities may work in other countries but mate I will tell you it won't work in Australia."

Mr Hadley is a publicly declared opponent of Uber who has called on Governments to shut down our business. We think these matters deserve review and call for an independent investigation of how the internal ATO memo found its way into the media.

The materials requested by Uber under FOI were due to be provided by the ATO before the commencement date of enforcing its GST decision. Despite acknowledging to Uber that it was in breach of its statutory obligations the material was not provided by the ATO until one day after the commencement date of the GST decision taking effect.

Uber has made a complaint to both the Commonwealth Ombudsman and the Office of the Australian Information Commissioner about the ATO's handling of its Freedom of Information applications. However we believe this requires further independent investigation by Government.

The Commissioner of Taxation has also claimed that correspondence from Uber was not received prior to its release to the media. He made this claim on the Ray Hadley programme on the 14th of August, despite his Deputy Mr O'Halloran providing a reply to the correspondence one week before on the 7th of August. Uber would like to make it clear that the correspondence was sent to the Commissioner. Copies were also provided to the offices of the then Treasurer and Assistant Treasurer by email. We are confused as to how the correspondence could be replied to when it was claimed a week later that the Commissioner had not seen it.

Some months after the correspondence was sent, Uber strangely received an emailed acknowledgement of the correspondence followed by receipt of a hard copy of the same

acknowledgement. Uber has no explanation for this but is concerned at the delays and the Commissioners public statements that he did not receive it and his public condemnation of Uber about this matter.

**Ridesharing is not taxi travel.**

Ridesharing is not taxi travel and when the legislation was passed by the Parliament it could not have envisaged ridesharing as a concept and could not have foreseen it being captured by it.

State and Territory regulations clearly define taxis and hire cars and do not define ridesharing. Indeed, every State and Territory in Australia is undertaking reviews because the laws of those states do not define or cover the field of ridesharing.

The recent announcement by the Australian Capital Territory to create regulations specifically for ridesharing makes it clear that ridesharing is not a taxi or hire car service and recognises that it is not taxi travel. We currently expect other governments to follow suit in the near future.

If State and Territory transport regulations do not define ridesharing as taxis, and if jurisdictions are moving to regulate ridesharing as a distinct and separate service to taxis and hire cars, then the ATO is out of step with contemporary understanding of what constitutes taxi travel.

**Sharing economy policy and taxation.**

Uber would like to move forward with a policy discussion with Government about the sharing economy and believes that the regulatory framework has not kept pace with changes in the market. The place for these matters to be considered is at the policy level and not at the regulatory level or through the courts.

Unfortunately, the previous leadership of the Government did not want to involve itself in setting a policy direction for the sharing economy. We believe that this is still a decision that can be made at the policy level, without the need for the matter to proceed through the courts.

We note that the Prime Minister and the Treasurer have made strong statements about the need to review tax policy and consider the implications of an innovative and disruptive economy. This is welcomed.

New business models, innovative ideas and the incubation of start-ups and talent in Australia is currently hampered by the approach of regulators at both a State and Commonwealth level. Governments appear to allow regulators to lead the initial response to a new idea, classifying it within the confines of the existing regulatory regime and not allowing proper consideration of all the issues at a policy level. We think this needs to change. We think that a policy led response by governments is needed.

New business models should not need to litigate in order to simply secure an environment where their ideas can be tested and where new markets can be fostered. There are many more ideas waiting to be fostered and more change to the economy on the way.

The current distraction of lengthy and costly litigation will not solve the problem or generate new ideas or policy solutions for the future. The Government has an opportunity to set the right policy foundation for changes to the economy and help foster new business and economic development.

We would welcome the opportunity to partner with the Government and the ATO. For example, we believe the ATO could deliver a much better outcome if it worked cooperatively with Uber rather than seeking to penalise s.47 and create red tape that will damage the growth of the sharing economy. The end game for the ATO should be to ensure that the tax obligations of sharing economy participants are met, and that there is a net benefit to the economy. At present the current approach of the ATO does not achieve this.

We seek your support in reviewing these issues and developing an appropriate policy and regulatory responses to the sharing economy. We are confident that, if given the opportunity, we can collaborate with your Government to ensure that our partners are compliant with their taxation obligations without the imposition of burdensome 20th century regulatory responses, which do not benefit the individual or the economy as a whole. We seek your support in having the Government's approach to resolving the GST issue reviewed.

The recent announcement by the Australian Capital Territory to create regulations for ridesharing is evidence of Uber's ability to partner with Governments to achieve goals that are in the best interest of those who wish to participate in ridesharing, whether as a driver or rider.

Given that the ACT Government will create a regulated environment from 30 October we also seek your support in creating the appropriate permission to allow Commonwealth public servants, parliamentary and ministerial staff and Members of Parliament to use ridesharing and claim the expense.

We would like to meet with you to discuss these issues, to brief you fully about our business and to work together to develop an approach that meets the needs of the entire economy and makes Australia a world leader.

Yours sincerely,

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TREASURER

Ref: MC15-000427

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23 NOV 2015

Dear Mr Kitschke

Thank you for your correspondence of 7 October 2015 to myself and the Minister for Small Business and Assistant Treasurer concerning the Australian Taxation Office's (ATO) interpretation of the *A New Tax System (Goods and Services Tax) Act* and ride-sourcing services.

As you are aware, the ATO has publicly released guidance confirming that people who provide ride-sourcing services are providing 'taxi travel' under the Goods and Services Tax (GST) law. The ATO advised that from 1 August 2015, any enterprise which provides taxi travel by way of ride-sourcing services is required to register and charge GST regardless of turnover, lodge business activity statements and report the income in their tax returns.

The stated purpose of this public tax guidance was to confirm that the existing taxation law applies to ride-sourcing activities as detailed in the advice. I understand the guidance was prepared using the same rules of statutory interpretation as used by the Courts in coming to the view that ride-sourcing activity falls into the category in the law covered by 'taxi travel'. This guidance outlines that enterprises involving ride-sourcing are treated the same as traditional taxi drivers and are subject to the same tax provisions.

I appreciate that Uber disputes the Commissioners application of the GST provisions and is currently engaged in litigation before the Federal Court which in due course will determine the matters. As this matter is now the subject of litigation it is not appropriate for me to comment further.

I trust this information will be of assistance to you.

I have copied this response to the Minister for Small Business and Assistant Treasurer for her information.

Yours sincerely

The Hon Scott Morrison MP

18 /11/2015

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