KPMG submission

Treasury Consultation Paper

Implementing a reporting regime for sharing economy platform providers

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Executive Summary

KPMG welcomes the opportunity to comment on the Treasury Consultation Paper (CP) *Implementing a reporting regime for sharing economy platform providers.* Both KPMG and our clients that operate digital platforms are supportive of measures to support sharing economy platform users in paying the right amount of tax and being educated about their tax obligations.

Any reporting regime in respect of sharing economy platform users should be administered collaboratively and efficiently, without imposing unreasonable burdens on those with the reporting obligation.

Key KPMG submission points

1. Reporting requirements should be limited to the minimum amount of user information that would enable the Australian Taxation Office ("ATO") to carry out effective data-matching. Reporting should generally be required on no more than a quarterly basis.
2. The reporting requirement should be implemented using a phased approach, starting with payments that are wholly or predominantly for services (rather than for the supply of goods).
3. Treasury should consult with a wide range of potential reporting entities – platforms and financial institutions – to identify what data they are currently recording and to what extent there is a gap between that data and the minimum amount needed for ATO data-matching.
4. Potential reporters should have no greater obligation to verify the accuracy of user-provided data (including ABNs) than applies under existing regulation.
5. A reporting regime would need to be able to operate without causing the reporting entity to fall foul of Australian or overseas data privacy regulations, and so as to put overseas and domestic platforms and financial institutions on the same footing as regards the reporting burden.
6. Limiting the amount of data that is subject to reporting would be of benefit to start-up platforms. In addition the government could consider a "light-touch" penalty regime for non-compliance by very small platforms and start-ups.

7. Reporting should not be required where the platform plays no role in the financial transaction between users. For example a digital noticeboard connecting sellers with buyers, but not intermediating the transaction, should not have any reporting requirement.
8. The government should undertake a comprehensive public education campaign prior to the commencement of the first reporting period in order that sharing economy participants have the opportunity to be informed about the measure and to ensure that their tax affairs are in order prior to the ATO carrying out any data-matching.

Detailed comments

1. General

1.1 The Treasury Consultation Paper (CP) – *Implementing a reporting regime for sharing economy platform providers* – canvasses a measure that, if carefully implemented, should have a favourable impact on the government's ability to combat the black economy.

1.2 In principle, there is a potential role for sharing economy reporting by platforms or financial institutions in the effective administration of the tax system in Australia. The key questions are about how this can be achieved while minimising administrative costs (for both reporting entities and the ATO) and avoiding other detriments such as breaches of Australian or overseas privacy legislation.

2. Principles for a sharing economy reporting regime

Limit reporting volume and frequency to the minimum necessary for effective data-matching

2.1 We understand from our meeting with Treasury and the ATO that the objective of the reporting measure would initially be to enable the ATO to data-match with platform users' tax returns.

2.2 The reporting obligation, for either the platform or the financial institution, should therefore be limited to the minimum amount of information that would enable to carry out its data-matching program effectively.

2.3 This approach would minimise the additional administrative work that would be required of the reporting entity, and would be particularly beneficial in the case of a platform that is in the early stage of its commercial development and consequently has relatively few resources available to carry out additional reporting to government.

2.4 Reporting should be required no more frequently than quarterly, except in very limited circumstances, such as where the reported information was found to be of little compliance value due to changes in users' circumstances in the interim.

Implement reporting in phases

2.5 It is reasonable to expect that payments relating wholly to a platform users' services (rather than the supply of goods) would yield information which had a more direct relevance to the users' assessable income for tax purposes. Therefore the government could consider an initial phase where the reporting obligation only covered sharing economy services, or payments relating predominantly to services.

2.6 Following an initial two-year implementation period and a cost-benefit analysis, the government could make a decision on whether it would be beneficial to extend sharing economy reporting to payments predominantly for the supply of goods.

Consult with a wide range of potential reporting businesses

2.7 There is a wide range of both platforms and financial institutions who may fall into the scope of a potential reporting regime. It will be crucial for Treasury to consult with a wide range of potential reporting entities to identify what user-provided information they are obtaining already, and how they are storing this information. As important as the quantity of data requested is the ease of use of the data transfer mechanism that the ATO requires the reporting entity to use.

2.8 Any gap that may exist between what would be required to be reported, and what is currently being recorded by platforms may differ based on the nature of the platform's role. For example a platform whose users may be subject to other, non-tax regulatory obligations may obtain more data than a platform through which users buy and sell goods.

2.9 In cases where the gap may currently be larger, a deferred start date could apply to enable platforms to make commercially reasonable adjustments to their data collection practices to fall into line with any reporting regime.

2.10 In any event, reporting entities should be consulted about what reasonable lead-time is required in order to implement systems changes that will enable the reporting entity to report efficiently and securely to the ATO. Treasury should also consider and consult on the most practical mechanisms by which data could be collected, with a preference for widely-available and secure systems.

No additional obligation to verify user-provided data

2.11 Reporting entities should be required to take reasonable care to ensure that internally-generated data (for example, the amount it has paid to a particular user) is accurately reported to the ATO.

2.12 However, the tax reporting rules should not impose any additional obligation on reporting entities to verify the data that they are receiving from users. Some potential reporting entities (for example financial institutions) would already be subject to verification obligations in relation to certain user data.

2.13 In instances where platforms require users to provide ABNs, it would support the integrity of the data provided to the ATO if the platform were required to verify these at the "on-boarding" stage using the Australian Business Register.

2.14 However, the benefit for the tax system of timely verification of a supplier's ABN is not limited to the sharing economy. Sharing economy platform providers should not be subject to any greater ABN verification obligations than any other entity, including those that are subject to the Taxable Payments Reporting System, or who rely on ABNs quoted by service providers when not withholding PAYG income tax from payments.

Compliance with privacy laws

2.15 In many cases, the reporting entity may hold user-provided data in an overseas jurisdiction, where foreign privacy laws may impact the ability of the reporting entity to either obtain or supply certain data items in relation to the platform user. Reporting entities holding data in Australia would be subject to Australia's own privacy legislation in terms of what they could obtain or supply.

2.16 Any reporting requirements would therefore need to allow the reporting entity to continue to comply with privacy obligations in Australia and overseas.

2.17 The reporting requirements should be structured so as to not adversely impact a level playing field between Australian and offshore platforms. The scope and substance of the information that is subject to reporting requirements should be consistent regardless of a platform's location.

Start-ups should have a less onerous penalty regime rather than a reporting exemption

2.18 The burden of the reporting obligation should be kept to a minimum by only requiring the reporting entity to report the information that is absolutely necessary for effective data-matching. This would be particularly important in relation to less established platforms with fewer administrative resources.

2.19 The risk of allowing a reporting exemption for platform "start-ups" could be the perception that use of those platforms would be more advantageous for those who do not fully disclose their income to the ATO. A knowledgeable black economy participant might therefore have an incentive to jump from start-up to start-up in order to avoid having their payments reported.

2.20 Rather than allow a reporting exemption for start-ups, we recommend that any platform reporting requirements should incorporate only very modest initial penalties for non-compliance by very small platforms and start-ups. Penalties could be increased in cases of persistent non-compliance.

Noticeboard / advertising platforms should not be required to report

2.21 The reporting regime should only be considered for businesses that have visibility of sharing economy transactions, insofar as they directly facilitate the transfer of funds in a sharing economy transaction.

2.22 It would be a major administrative burden for transactions conducted "offline" to be subject to the reporting requirements. This could occur for example where a platform sells digital advertising to private individuals in order for those individuals to find a buyer for personal use assets.

User education

2.23 The government should undertake a comprehensive public education campaign prior to the commencement of the first reporting period in order that sharing economy participants have the opportunity to be informed about the measure and to ensure that their tax affairs are in order prior to the ATO carrying out any data-matching.

2.24 There would be some benefit in requiring the reporting entity to give the user a summary of the information reported to the ATO. It would complement the public

education campaign and increase the likelihood of the platform user completing their tax return correctly.

2.25 However many platform users have a transient relationship with the platform, such that user contact information may be out of date by the time that the reporting entity does its report. Therefore the overall level of benefit to be obtained from sharing the reported data with the user should be evaluated against platform and financial institution feedback on the additional administrative time that it would require.

ATO reviews of compliance with the reporting obligation

2.26 In time it would be reasonable to expect that the ATO would undertake reviews of platforms' or financial institutions' compliance with the reporting obligations. It would be important for this to be done in a measured and proportionate way, having regard to the reasonable expectation of the amount of potentially assessable income of users that might have been under-reported.