
TREASURY LAWS AMENDMENT (MEASURES FOR CONSULTATION) BILL
2021: INTRODUCING A SHARING ECONOMY REPORTING REGIME

EXPOSURE DRAFT EXPLANATORY MATERIALS

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Glossary

The following abbreviations and acronyms are used throughout this explanatory memorandum.

<i>Abbreviation</i>	<i>Definition</i>
ATO	Australian Taxation Office
Commissioner	Commissioner of Taxation
GST Act	<i>A New Tax System (Goods and Services Tax) Act 1999</i>
MEC Group	Multiple Entry Consolidated Group
TAA 1953	<i>Taxation Administration Act 1953</i>
TPRS	Taxable Payments Reporting System

Chapter 1

Sharing economy reporting regime

Outline of chapter

1.1 Schedule # to the Bill amends Schedule 1 to the TAA 1953 to require electronic platform operators to provide information on transactions facilitated through the platform to the ATO. This measure implements a recommendation of the report of the Black Economy Taskforce.

1.2 All legislative references in this Chapter are to Schedule 1 to the TAA 1953 unless otherwise stated.

Context of amendments

The sharing economy and tax

1.3 The Australian economy has fundamentally changed in recent decades. Traditional employment models have shifted in favour of more flexible options including contracting, self-employment and use of labour hire. Consumers are increasingly paying to ‘use’ rather than ‘own’ assets, creating new income opportunities for the owners of assets. These two trends have led to the emergence of the sharing economy, also sometimes known as the gig economy.

1.4 There is no universally accepted definition of the term ‘sharing economy’. The sharing economy involves two parties entering into an agreement for one to provide services and/or loan personal assets to the other, for a payment. Traditionally this kind of activity would occur between related parties and take place informally. The internet has helped to formalise this activity and created opportunities for parties to earn a regular income through these activities by making it easier for otherwise unrelated parties to identify one another and to facilitate these types of transactions. Many of these types of transactions are now facilitated through an electronic platform.

1.5 Australia’s sharing economy continues to grow and develop at a significant pace. However, this growth has resulted in a transparency gap because tax reporting systems currently do not adequately capture information about transactions in this part of the economy. This creates the risk of sellers not paying the right amount of tax. Lack of knowledge and understanding about tax and associated obligations, recent

formalisation of this income generating work, the electronic platform-seller relationship, and lax record keeping contribute to this problem.

1.6 On the other hand, non-compliance can also be deliberate. In this case it allows the black economy to thrive. Poor tax compliance, whether deliberate or unintentional, provides an unfair advantage against those who undertake similar activities in the economy and comply with their tax obligations, leading to an uneven playing field.

The Black Economy Taskforce

1.7 Treasury's Black Economy Taskforce (the Taskforce) was established in 2016 to develop an innovative, forward-looking, multi-pronged policy response to combat the black economy in Australia, recognising that these issues cannot be tackled by traditional law enforcement measures alone.

1.8 To combat the tax compliance risks posed by the sharing economy, the Taskforce's final report (the Report) recommended that a compulsory reporting regime be implemented. A regime where the operators of electronic platforms are required to report payments made to their users, to the ATO and other government agencies as appropriate.

1.9 The Report found that without a reporting regime in place, it would be difficult for the ATO to gain information on compliance of sharing economy participants unless targeted audits were used. It found that formalising reporting requirements would also send a clear signal to sharing economy participants that in most cases payments would be taxable. It also found that this would align Australia with international best practice, as working with sharing economy electronic platforms operating across multiple jurisdictions to bring them into domestic tax and regulatory frameworks was identified as a matter of international cooperation.

1.10 In response to the Report, the Government agreed to implement measures to ensure the integrity of the tax system, including introducing a third-party reporting regime requiring electronic platforms to report information to the ATO for data-matching purposes. The measure *Black Economy – introducing a sharing economy reporting regime* was included in the 2019-20 MYEFO.

The Taxable Payments Reporting System

1.11 The sharing economy reporting regime will be implemented by applying the TPRS to certain transactions undertaken through electronic platforms.

1.12 The TPRS is located in Subdivision 396-B and is a data matching mechanism that requires entities to report to the ATO information about transactions that they are a party to that may have tax consequences. The TPRS covers transactions in the building and construction industry, supplies of cleaning, security or surveillance services, supplies of information technology services and other transactions outlined in the table in section 396-55.

1.13 The information about certain transactions provided to the ATO under the TPRS helps identify entities that may not be meeting their tax obligations.

Summary of new law

1.14 Schedule # to the Bill makes amendments to Subdivision 396-B so that the TPRS applies to electronic platforms that facilitate supplies from an entity to another entity.

1.15 Generally, if an electronic platform facilitates a supply connected to Australia for consideration between two entities, then the operator of the platform is required to report information about the transaction to the ATO. The requirement will generally not apply if the transaction is only relates to a supply of goods where ownership of the goods permanently changed, where title to real property is transferred, or the supply is a financial supply. The requirement will also not apply if the transaction occurs within the same consolidated or MEC group. Platforms will also not be required to report transactions subject to another reporting or withholding obligation where those transactions are reported to the ATO.

Comparison of key features of new law and current law

<i>New law</i>	<i>Current law</i>
Entities that operate electronic distribution platforms are required to report details about transactions relating to supplies made through those platforms, to the ATO.	No equivalent.

Detailed explanation of new law

Entities required to report

1.16 The amendments require an entity that is the operator of an electronic distribution platform to report information to the Commissioner about certain transactions that are made through the platform. *[Schedule #, item 1, item 15 in the table in section 396-55 in Schedule 1 to the TAA 1953]*

1.17 For the purposes of the reporting regime, electronic distribution platform is defined by section 84-70 of the GST Act, disregarding paragraph 84-70(1)(c) of that Act.

1.18 This means that an electronic distribution platform is a service delivered by means of electronic communication (defined by the *Electronic Communications Act 1999*). It includes platforms operating over the internet; including through applications, websites, or other software.

1.19 To meet the definition of an electronic distribution platform, a platform must allow entities to make supplies available to an end-user consumer through the platform. A service is not considered an electronic distribution platform if it only advertises or creates awareness of possible supplies, operates as a payment platform, or provides a communications function.

1.20 The definition of an electronic distribution platform for the purposes of the sharing economy reporting regime carves out paragraph 84-70(1)(c) of the definition in the GST Act. This paragraph is carved out as it could have the effect of removing an entity (that would otherwise be an electronic distribution platform) from the regime if that entity supplies any inbound intangible consumer supplies and none of those supplies are made by means of electronic communications. The reporting regime is intended to apply to a wide range of entities and therefore the definition of an electronic distribution platform for this purpose carves out an otherwise limiting factor that may undermine the intent of measure.

1.21 In the sharing economy context, an electronic distribution platform can facilitate a transaction between two otherwise unrelated parties. These platforms, at the most basic level, play the role of an intermediary between the buyer and the seller. At a more complex level, the platform operator can assume much of the inherent risk in the transaction between the buyer and the seller, play a quality assurance role, and ensure a seamless experience for the buyer and seller. In some cases, the platform will also process the payment, however a platform will still meet the definition of an electronic distribution platform if it uses a third-party payment services provider for processing payments made in

connection with the platform. In most cases, there is no employer-employee relationship between the seller and the platform operator.

Transactions that are required to be reported

1.22 Generally, the amendments require transactions to be reported to the Commissioner if they involve the provision of consideration (within the meaning of the GST Act) by a buyer to a seller for a supply made through the platform by the seller. *[Schedule #, item 1, item 15 in the table in section 396-55 in Schedule 1 to the TAA 1953]*

1.23 Consideration includes any payment, act or forbearance that is connected to a supply (see section 9-15 of the GST Act). In the sharing economy platform context, consideration will usually be in the form of a monetary payment made to the seller via the platform.

1.24 A supply is any form of supply whatsoever, including the supply of goods, services, real property, or advice and information. Transactions that only involve the sale of goods or real property (the transfer of legal title to the goods or real property) or financial supplies are not intended to be captured by the reporting regime (see section 9-10 of the GST Act). Transactions that involve the rental of goods or real property that are made through an electronic distribution platform are captured by the reporting regime.

1.25 The supply must be a supply connected to the indirect tax zone to be covered by the reporting regime. For the purposes of the reporting regime, the meaning of indirect tax zone includes Australia's external territories.

1.26 Among other examples, a supply of goods is connected to the indirect tax zone if, broadly, goods are delivered in, made available in or removed from the indirect tax zone (see subsections 9-25(1) to (3) of the GST Act). A supply of goods is also connected with the indirect tax zone if it is an offshore supply of low value goods to a consumer (see subsection 9-25(3A) of the GST Act).

1.27 Similarly, cases where supplies of things other than goods or real property are connected with the indirect tax zone include where, broadly, the acts to complete the supply are done in the indirect tax zone or the supplier carries on that enterprise in the indirect tax zone (see subsection 9-25(5) of the GST Act).

1.28 A supply must be made through the platform for the related transaction to be captured within the scope of the TPRS. This ensures that the requirement only applies to a transaction when the platform has a greater level of involvement in the transaction than merely advertising the opportunity, referring the buyer to the seller, or processing a payment.

1.29 Similar to other items in the table in section 396-55, transactions where the seller and the operator of the platform are members of the same

consolidated or MEC Group, or where a portion of the consideration has been withheld in accordance with the withholding regime in Division 12, are not required to be reported. In the case of consolidated or MEC Groups, intra-group transactions are generally disregarded for tax purposes. In the case of payments of consideration subject to Division 12 withholding obligations, these payments have existing reporting obligations within the TAA 1953, so there is no need to include those in the TPRS.

Reporting transactions

1.30 Operators are required to report information in the approved form to the Commissioner either annually, or at such other times as the Commissioner determines by legislative instrument. Operators must give the report to the Commissioner on or before the 31st day after the reporting period ends, or at another time as the Commissioner determines by legislative instrument (see section 396-55).

1.31 The Commissioner may inform an operator in writing that it is not required to report transactions made through its platform under the third-party reporting regime, or that it is not required to report specified classes of transactions (see subsections 396-70(1) to (3)). An operator who is dissatisfied with a decision of the Commissioner to exercise or not exercise this discretion may object under the procedures set out in Part IVC of the TAA 1953. Merits review is available under Part IVC. Any notice of a decision to exempt an operator generally or for a class of transactions is not a legislative instrument. The Commissioner may also, by legislative instrument, exempt a class of entity from reporting, either generally or in respect of a specific class of transaction (see subsection 396-70(4)).

1.32 The Commissioner may specify the information required to be reported in the approved form, but all such information must relate to the identification, collection, recovery, or reduction of a possible taxation liability. It is expected that the Commissioner will typically request the identifying information of the seller and the details of their transactions made through the platform.

1.33 The general rules that apply to information that must be reported under Division 396 will apply to the operators of electronic distribution platforms. This means that if an operator has given the Commissioner a report and they subsequently become aware that it contains a material error, they must give the Commissioner an updated report within 28 days of becoming aware of the error. Similarly, if an operator has failed to give a report, or a corrected report, to the Commissioner by the time required, an administrative penalty applies (see subsection 286-75(1)). An administrative penalty also generally applies if a report includes any false

or misleading statements (see subsection 284-75(1)). However, an administrative penalty will not apply where the operator can show it took reasonable care in making the false or misleading statement. (see subsection 284-75(5)).

Application and transitional provisions

1.34 The amendments contained in Schedule # apply from 1 July 2022 for transactions in relation to the supply of taxi travel (within the meaning of the GST Act) and short-term accommodation; and 1 July 2023 for all other transactions. [*Schedule #, item 2*]

1.35 The different application dates are warranted because data matching protocols already exist between the ATO and the operators of platforms that commonly facilitate taxi travel (this includes ride sharing services see *Uber V.B. v Federal Commissioner of Taxation* [2017 FCA 110]) and short-term accommodation transactions. Therefore, these entities do not need a lengthy lead time to ensure compliance.