



Australian Government
Inspector-General of Taxation

Presentation to the 13th International Conference on Tax Administration

**Ensuring appropriate revenue authority
scrutiny in the age of the sharing economy**

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INTRODUCTION

1.1 Thank you for the invitation to speak to you today. It is always a pleasure to participate in this conference, which has become a mainstay of academic and professional calendars worldwide. It is certainly an important conference for my office given its tax administration focus.

1.2 I have been asked to speak to you today on revenue authority scrutiny in the age of the sharing economy. It is a timely topic and one that touches on some of the work of my office over the past year in our review into the *Future of the Tax Profession*¹.

1.3 I propose to address the topic along three streams. Firstly, I want to discuss the sharing economy, not in isolation, but as one manifestation of the many changes which are afoot in the tax profession and indeed all professions. Secondly, the need for action and response by revenue authorities, such as the Australian Taxation Office (ATO). And finally, the role of scrutineers such as my office and taxpayer advocates and ombudsmen in other jurisdictions.

THE SHARING ECONOMY

1.4 Technology is the primary driver for change within the professions.² Many stakeholders have accepted and welcomed recent technological advances such as cloud technologies, robotic processing automation (RPA), artificial intelligence (AI), FinTech and blockchain. They are either already making use of them or actively testing proofs of concept with a view to implementing them.

1.5 Larger tax practices, for example, have implemented RPA and AI in dealing with Goods and Services Tax (GST) and Business Activity Statement (BAS) preparation as well simple audits and lodgments. In contrast smaller firms appear to still be coming to terms with the challenges and opportunities presented by technological advancement. Some feel that their clients would not readily embrace technological self-service channels at the expense of face-to-face interactions whilst others have explored options such as offshoring or merging with other practices to offer a broader range of services. Many of them also believe that the ATO does not adequately support them and is, in fact, using technology to displace them. These concerns have been exacerbated by recent comments of the Commissioner regarding work-related expense deductions being incorrectly claimed by tax practitioners.³

1.6 Elsewhere, technological advancements are providing the basis upon which developments in cryptocurrency, such as Bitcoin, and patterns of work such as the sharing and gig economies. The terms 'sharing economy' and 'gig economy' have at times been used interchangeably but they are not one and the same. The former denotes an economy in which idle assets are shared in return for economic benefits,

¹ Inspector-General of Taxation (IGT), *The Future of the Tax Profession* (2017 – in progress).

² Richard Susskind and Daniel Susskind, *The Future of the Professions: How technology will transform the work of human experts* (Oxford University Press, 2017).

³ Commissioner of Taxation, *Commissioner's address to the Tax Institute National Convention 2018* (15 March 2018) <www.ato.gov.au>.

e.g. AirBnB, while the latter enables work to be undertaken on short-term, discrete contracts rather than through traditional employment channels, e.g. Uber, Deliveroo, Foodora, AirTasker.

1.7 The largely decentralised and unregulated nature of these new approaches to work creates a degree of uncertainty and concern. These concerns were highlighted in a 2017 report of the Senate Education and Employment References Committee:

There is also no security of income, no insurance for the worker in case of accident, no superannuation, no personal, annual or paid leave of any description. An entrepreneur with specialised, in-demand skills may agree to sell their expertise for a handsome fee. An entrepreneur with less specialised skills can secure a short-term job, a 'gig', by selling their labour for less than their competitors. And there is no limit to how low fees can go; no minimum amount a person can be paid to do a job, as long as they agree, because—as far as the platform and customer are concerned—the entrepreneur is not an employee. The worse or more desperate a person's financial circumstances, the less they might agree to work for.⁴

THE CHALLENGE FOR REVENUE AUTHORITIES

1.8 For revenue authorities, such as the ATO, emerging technologies and platforms present a two-pronged challenge. The first is, of course, to ensure that tax and superannuation obligations are met and workers are appropriately classified and treated for tax purposes. The second is to discharge these obligations in a manner which does not hamper innovation.

1.9 These challenges are highlighted by some of the more recent experiences of the ATO and other regulatory bodies. Let's take the case of Uber. On the one hand, we had taxi drivers who have complained that (at the time) the ATO was not actively enforcing GST obligations on Uber drivers leading to an uneven playing field. On the other hand, Uber drivers argued that it was unfair and unjust that they should be registered for GST as many worked part time and earned less than the requisite \$75,000 threshold applicable to other small businesses.

1.10 Of course, the question of whether Uber drivers are taxi drivers and therefore needed to be registered for GST was settled by the Federal Court.⁵ However, some challenges were evident. Firstly, while the ATO issued its initial directive for Uber drivers to register for Australian Business Numbers (ABN) and to charge and pay GST, the position was not officially settled until February 2017. In the intervening period, many drivers registered and charged GST while others chose not to do so despite the ATO messaging.

⁴ Senate Education and Employment References Committee, *Corporate Avoidance of the Fair Work Act 2009* (September 2017) p 85.

⁵ *Uber B.V. v Commissioner of Taxation* [2017] FCA 110.

1.11 Secondly, once the position was settled by the Federal Court, a number of drivers who had not registered for ABNs or charged GST found themselves in the position of potentially needing backdated registrations, lodgments and payments of GST shortfall. This would not be an easy feat for someone who did not otherwise operate a business or who merely worked as an Uber driver on an ad hoc basis.

1.12 Whereas Uber drivers are required to register and pay GST, riders for delivery services such as Deliveroo and Foodora need not, subject to some conditions, namely if they earn less than \$75,000 per year and are not carrying on another enterprise. However, for a time, the question of whether Deliveroo and Foodora riders were employees or contractors was a topic of discussion.

1.13 The contractor and employee distinction is important and one which was examined in the IGT review into the ATO's approach to employer obligations.⁶ The distinction is important as it presents obligations for both parties. Elsewhere in the world, we have been made aware that revenue authorities are making use of smart contracts on blockchain to easily access and assess the status of the relationship and to determine tax implications.

1.14 The use of blockchain is something that is being tested by government agencies in Australia, including the ATO and it may yield some benefits yet for this area of tax. As part of the IGT's review into the *Future of the Tax Profession*, we are also considering how different jurisdictions, such as the Netherlands, are using blockchain and whether these may be usefully adopted in Australia.

1.15 A final challenge faced by the ATO, and perhaps the Tax Practitioners Board (TPB), is the risk of freelancers using platforms such as AirTasker to offer services which they are not permitted. A simple search of the term 'tax' yields a lengthy list of services requested ranging from basic bookkeeping to tax advice and return preparation. This may appear innocuous enough but few jurisdictions have the same comprehensive regulatory regime that Australia has around the provision of tax advice services. It is unlikely that the requester is aware that they may be exposing themselves to risks of receiving advice from unregistered practitioners, not shielded from errors or other misstatements and unlikely to be covered by professional indemnity insurance. The regulation of services offered on such platforms requires significant consideration, input and cooperation from the platform itself.

1.16 The above are not intended to be criticisms of the status quo but rather illustrations of challenges we are facing and are only likely to escalate in the future. As issues emerge, uncertainty is created and the ability to respond to such issues quickly and effectively is important for encouraging voluntary compliance and fostering confidence in the system.

⁶ IGT, *Review into the ATO's employer obligations compliance activities* (2017).

THE ROLE OF TAX SCRUTINEERS

1.17 As tax administration changes with technological developments, so too will the role of tax scrutineers such as my office. We have been approached by a number of taxpayers expressing concern about the ATO's approach to the gig economy as it has affected them personally.

1.18 In the main, many of the complaints to the IGT have been general in nature, arguing that the policy and administrative approach should be adopted one way or the other. Some stakeholders have made more specific complaints such as ATO delays or refusals to issue ABNs where there is a concern about whether the person is in fact carrying on an enterprise. They may not be carrying on an enterprise in the strict sense, however, when faced with mandatory requirements by platforms such as Deliveroo and Foodora to hold an ABN before they are able to commence work, the taxpayer is invidiously caught between two conflicting requirements.

1.19 Our role, through complaints, is to investigate each individual case on its own circumstances and to facilitate outcomes where possible. Sometimes we may not be able to do so because the law does not permit the desired outcome. In such cases, assurances that the ATO or the TPB have done all that they are able to within the confine of the applicable law may be a powerful element in assuaging concerns that taxpayers were being inappropriately targeted or denied their rights to earn income.

1.20 Our review function too is an important element in this space. While complaints handling addresses issues at a micro level, seeking to deliver specific outcomes for certain taxpayers, reviews are macro in nature and aimed at broad improvements for the community as a whole. Our *Future of the Tax Profession* review is a prime example.

1.21 The review is being conducted in response to a request from the Commissioner of Taxation as well as concerns raised by tax professionals with the IGT. The review has attracted significant interest with submissions received from a diverse range of stakeholders. What has emerged from the submissions are some very clear themes on areas of change that are likely to affect the manner in which work is undertaken, how taxpayers are choosing to engage with each other and the Government and, correspondingly, the services that are demanded of the ATO and tax professionals.

1.22 The above review will also address the issue of emerging technologies, work patterns and other opportunities as well as exploring the roles of the ATO and TPB into the future. We aim to deliver a report that is balanced and informative, taking into account the views of all professionals working in the tax system, in order to plan for the challenges ahead and implement strategies to reap the benefits of opportunities that are presented.

CONCLUSION

1.23 A critical consideration in facing the challenges ahead is communication and collaboration to ensure that there is a common understanding of what is to be expected in the future, what changes are forecasted and what initiatives will be implemented.

1.24 At its core, the work of everyone in the system should be geared towards fairness, equity and confidence. Ensuring that all participants voluntarily comply with their tax obligations is a primary obligation for all tax administrators. The Uber-Taxi debate has highlighted this need. So too has the AirBnB-Hotel debate which is not as settled. There will undoubtedly be others.

1.25 As technologies and platforms emerge or augment, there may be a need for a holistic response encompassing policy, administrative and advisory actions to ensure that the community as a whole is aware of the risks, their obligations and where they may seek advice. It will be a task for not only the ATO, but also Government, the TPB, my office, tax professionals and the professional bodies, and the tertiary institutions.

1.26 This conference, with its present theme, will no doubt provide significant food for thought on that front and I welcome your input.