

20 April 2022

Deputy Commissioner, Policy and Regulatory Stewardship
Inland Revenue Department

By email: policy.webmaster@ord.govt.nz

Re: The role of digital platforms in the taxation of the gig and sharing economy

1. The New Zealand Law Society | Te Kāhui Ture o Aotearoa (Law Society) welcomes the opportunity to comment on *'The role of digital platforms in the taxation of the gig and sharing economy – A Government discussion document'* (**Discussion Document**).
2. The Law Society has the following comments on chapters 3 and 4 of the Discussion Document.

Chapter 3: Information reporting and exchange

3. The Discussion Document states that obtaining platform seller income information, via an information request, is inefficient for both Inland Revenue and the platform. However, it would be surprising if implementing and running a continuous information reporting regime across all platforms would result in lower compliance costs for either platforms or Inland Revenue.
4. A possibly simpler approach would be to require New Zealand resident platform operators to collect basic information from all sellers including tax identification number (if they do not do so already), so that sales information about a seller can be readily provided to Inland Revenue if required for auditing.
5. If a continuous income information reporting regime is to be introduced, then a standardised approach to information collection, in line with the OECD's model rules, is preferable from a compliance cost standpoint, particularly given the impending implementation of the OECD's model rules in the European Union and the UK. Any implementation in New Zealand should include the ability for a platform operating in multiple jurisdictions through subsidiaries, to report all information on sellers in one jurisdiction that is applying the OECD's model rules.
6. While the Discussion Document states it is consulting on implementation of the OECD's extended model rules,¹ it does not ask questions on this topic, and does not discuss the pros and cons of such an extension or any possible exclusion. The OECD's extended model rules include an 'Excluded Seller' concept which applies to sellers of goods or a relevant service. That concept applies (in part) to any seller:
 - a. where the platform operator facilitated less than 30 sales in the calendar year and the total consideration paid for those sales did not exceed 2,000 EUR. Given the popularity among New Zealanders of selling personal items through online auction platforms,

¹ 'Extended' in that it also applies to the sale of goods.

thought should be given to a similar exclusion, if the extended model is introduced, since Inland Revenue should have no interest in such activity.

- b. for which the platform facilitated more than 2,000 services for the rental of immovable property in the reporting period. Given the smaller size of the New Zealand market, a lower threshold for exclusion could be considered.
- c. that is regularly traded on an established securities market or is related to such an entity. This exclusion is sensible so that reporting does not apply where, for example, a large multinational fast-food chain sells food through a delivery platform. Given the size and nature of the New Zealand market, a further exclusion for businesses that meet a minimum turnover threshold through the platform for a period of, say, three months, should also be considered. By their nature, larger businesses are likely to be tax compliant so would seem not to be the target of the reporting.

Chapter 4: Goods and Services Tax

7. The Discussion Document favours making digital platforms responsible for collecting GST on vehicle rental by a third party, rental of immovable property (both commercial and short-term residential) and the provision of 'personal services' (including, but not limited to, ridesharing, delivery services, housekeeping, gardening, renovation work, on-line tutoring, IT services, data entry and copywriting). The stated justification for this is that:

... viewed collectively, digital platforms facilitate millions of dollars of sales in New Zealand through individual sellers – most of which are not subject to GST. A competitive distortion therefore arises, as traditional suppliers who compete with digital platforms generally do charge GST.²

8. At paragraph 2.5 of the Discussion Document mentions the lack of available data about sellers in the gig and sharing economy. In the absence of data, it is not clear that non-GST registered sellers of a 'relevant service' are in fact creating a competitive distortion and undermining the GST base, or whether this is merely an anecdotal view. The Discussion Document states:³

*As the gig and sharing economy continues to grow and more people start to earn income through digital platforms, **there is a risk that this type of business model could erode the GST base** [emphasis added].*

9. In its April 2021 publication, *The Impact of the Growth of the Sharing and Gig Economy on VAT/GST Policy*,⁴ the OECD comments that a jurisdiction may wish to 'first monitor evolutions across sharing/gig economy sectors so as to allow fast and targeted policy action when needed' and may opt for a 'sequenced strategy, focusing their policy action first on the dominant sharing/gig economy sectors that may create the most immediate risks to VAT/GST revenue and/or competitive neutrality.'
10. This monitoring and sequenced approach appears sensible and should be considered by Inland Revenue. For example, if there is real evidence that ride sharing and short-stay residential accommodation supplies by non-GST registered persons are causing a competitive distortion, then policy action should perhaps be focused first on those sectors, rather than extending the net more widely. The Discussion Document notes that this is the approach adopted in Canada.

² Discussion Document, paragraph 4.3.

³ Paragraph 2.15.

⁴ <https://www.oecd.org/ctp/consumption/the-impact-of-the-growth-of-the-sharing-and-gig-economy-on-vat-gst-policy-and-administration-51825505-en.htm>, Chapter 3.

11. Further, there are other options not canvassed in the discussion document which could be considered include:
- a. Mandatory GST registration for vehicle rental by a third party and rental of immovable property (both commercial and short-term residential), so that the sellers of such services would be required to charge and account for GST directly.
 - b. Enabling a platform to 'opt out' of the GST collection obligation if the operator only allows GST-registered sellers (who provide evidence of such registration) to trade through the platform.
 - c. Use by Inland Revenue of the income information reported under its chapter 3 proposal to first monitor the use by non-GST registered sellers of relevant services to determine whether, and in what areas, GST charging and collecting is required to ensure competitive neutrality and protect GST revenue.
12. The Discussion Document⁵ suggests that the definitions used in the OECD's model rules for information reporting could be adapted for the charging and collection of GST by platform operators. In particular, the Discussion Document refers to the definition of 'personal services,' generally being on-line or off-line services whose supply is facilitated by a platform (that is, the seller and buyer contract through the platform), that are performed by one or more individuals at the request of the purchaser of the services. The OECD definition of 'personal services' excludes:
- ... a service provided by a Seller pursuant to an employment relationship with the Platform Operator or a related entity of the Platform Operator.*
13. Although the Discussion Document quotes the OECD definition, there is no comment on this exclusion.
14. The OCED states that the assessment of whether services were performed under an employment relationship is *'to be made on the basis of the applicable labour laws, which in general include the labour law of the jurisdiction in which the Seller physically performs the services.'*
15. This makes sense in the context of rules for income-reporting since, as the OECD notes, *'the development of the gig economy entails a shift from traditional work relations under employment contracts to the provision of services by individuals on an independent basis, which is not typically subject to third-party reporting.'* Accordingly, services provided to a platform operator by its employees are excluded from the OECD's reporting model because the platform operator, in its capacity as employer, would most likely already report to the local tax authority about its employees' income from employment.
16. However, in the context of proposals to require platform operators to charge and collect GST, there is little purpose served in charging GST on services contractually provided by persons outside of an employment relationship to a GST-registered platform operator. This is the case where, for example, delivery services provided by independent contractors are 'received' by an underlying customer of either the platform or a third-party vendor selling goods through the platform, but which delivery services, under the platform operator's arrangements, are contracted for and paid for by the GST-registered platform operator itself. Any output tax attributable to the independent contractor's supply which is accounted for by the platform operator in this scenario should also be recoverable as input tax by the platform operator, resulting in no net gain to the GST base.

⁵ At paragraph 4.12.

17. Consequently, it may be that if the OECD's 'personal services' definition is to be applied to the GST proposals, the exclusion should be widened to exclude all services contractually provided by sellers to a GST-registered platform operator.
18. Thank you again for the opportunity to provide feedback on this Discussion Document. If you have any questions or wish to discuss the Law Society's feedback, please contact aimee.bryant@lawsociety.org.nz.

Nāku noa, nā



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