



## Edition 79

# The Sharing Economy

### INTRODUCTION

*The ATO has recently released guidance on the income tax and GST consequences of various sharing economy services including ride-sourcing. With this aspect of the economy growing at a rapid rate, it's important as a bookkeeper to have a working knowledge of this topic as supplies will have GST and record-keeping consequences.*

### OVERVIEW

The sharing economy describes an emerging business model that connects users and providers who wish to share resources including the provision of services. Sharing economy arrangements are generally booked through a facilitator (such as Uber or Airbnb, for example) using a website or phone 'app'. Sharing economy services include:

- Renting out or letting a room or other property for accommodation
- Using a car to transport members of the public for a fare (commonly referred to as ride-sourcing)
- Letting out a car-parking space.

These services may or may not have GST and income tax implications for both the user and the provider.

### RIDE-SOURCING

Ride-sourcing is a relatively new phenomenon and has for some commuters become an alternative to taxi travel. Ride-sourcing involves a driver (just a normal member of the public who has signed up with a facilitator such as Uber) making available their car for public hire. Users wanting a ride, make a request through a phone 'app' or website provided by a third-party facilitator such as Uber. The provider/driver of the car used to transfer the passenger is then paid a fare by the customer requesting the ride. The provider/driver then in turn may be charged a fee/commission by the facilitator.

#### Income Tax

The ATO is of the view that providers of ride-sourcing services are earning assessable income irrespective of whether or not they are carrying on a business.

Consequently, the driver will be required to declare the money earned in their tax return, but will be permitted to claim relevant deductions such as depreciation of their vehicle, running costs, facilitator commission etc. These costs must however be apportioned for any private usage of the vehicle.

#### GST

Under general GST law, you are only required to register for GST where you are [carrying on an enterprise](#) and your annual turnover is \$75 000 or more. However, where your enterprise involves providing 'taxi travel' you must register for GST irrespective of the level of turnover. The Government chose back in 2000 when the GST system was introduced to apply compulsory registration to taxi drivers for several reasons including:

- To avoid the confusion created if some taxis did not charge GST, but others did
- Avoiding the added problem that would arise if a passenger was using a taxi for a business trip (creditable acquisition). In such a case, the passenger would want to be able to claim GST credits for the GST component of all fares
- Meter rates are set by each State authority. After 1 July 2000, all meters were adjusted to reflect the GST. If some drivers were registered but others were not, all would be collecting the higher rate. This would disadvantage drivers who had to be registered if the standard \$75 000 turnover registration threshold applied.

The GST legislation defines 'taxi travel' as travel involving transporting passengers by taxi or limousine for fares. The ATO adopts a broad interpretation of 'taxi' to include cars made available for public hire to transport passengers in return for a fare (but not including trucks and bike courier services). Thus ride-sourcing drivers using cars are caught by the GST provisions, and thus must register for GST within

21 days or becoming a driver, irrespective of their level of turnover. Having registered, the following applies:

- GST must be charged on the full fare (before any fees or commissions are charged by the facilitator)
- If the fare exceeds \$82.50 (including GST), a tax invoice must be provided to the passenger if requested (usually the facilitator will provide the driver with the ability to create the tax invoice)
- GST credits can be claimed on purchases relating to the provision of the ride (including the car itself, and any GST contained in fuel or servicing costs). GST credits must however be apportioned to take into account any private use of the car. For instance, if you purchased a \$44 000 car (with \$4 000 GST), and used it 70% for ride-sourcing purposes, only \$2 800 GST could be claimed.

## APPEAL

The ATO's interpretation that ride-sourcing constitutes 'taxi travel' is currently on appeal to the Federal Court, with a directions hearing set down for 15 December 2015.

If the appeal is successful, only drivers with a turnover of \$75 000 or more would be required to register for GST, and then charge GST on the fares. If the appeal were successful and a driver's turnover was under \$75 000, non-reportable style tax codes could thus be used for all income and expenses as there will be no underlying GST reporting obligations.

An exception to this would be if the person was already GST registered due to the fact that quite aside from the ride-sourcing activities, there were other activities of the nature of an enterprise that gave rise to requiring a GST registration. In these cases, a GST supply tax code would need to be applied to the fare charged, and a GST purchase tax code would need to be applied to the expenses incurred by the driver.

## Carve Out

Despite the ATO's strict approach in this area, there will be no income or GST consequences in any of the following situations:

- Non-commercial car-pooling arrangements where passengers contribute 'petrol money'
- Car sharing arrangements where multiple users have access to the same car which they use to drive from one location to another
- Arrangements using vehicles other than cars (such as those designed to carry nine or more passengers, or vans or utilities with a carrying capacity of more than one tonne)
- Arrangements where a car is used to transport passengers for a particular purpose e.g. to funerals or weddings and is not available to the public at large.

## Super and PAYG?

The ATO generally considers providers/drivers to be independent contractors (as distinct from employees) for the purposes of Superannuation and PAYG withholding. Hence there are no employer obligations in these areas on the part of facilitators such as Uber.

## EXAMPLE

Jake works in hospitality and sees a newspaper advertisement about how he can earn extra money by transporting passengers in his car. The service is operated by Uber which notifies Jake of the location of the passengers and provides a phone 'app' through which passengers can request transportation to their chosen destination.

Jake charges a commercial fare based on distance and time. Uber then charge Jake a facilitator fee. The frequency of these jobs varies, with Jake averaging between 6-8 rides per week, but some weeks zero.

## INCOME TAX

The fares are part of Jake's income and must be declared in his tax return at year-end, irrespective of whether he is deemed to be carrying on a business. He can also claim a deduction for the facilitator fee charged by Uber, and also deduct any associated motor vehicle expenses.

## GST

As his activities are done for a profit-making purpose, and they are reasonably frequent and regular, Jake would be deemed to be carrying on an enterprise. Even though his turnover may be below \$75 000, Jake must register for GST as he is providing 'taxi travel'. Assume for instance he charged a passenger \$99 for a fare. In that case, he remit 1/11<sup>th</sup> GST (\$9) to the ATO on his BAS for the relevant tax period. As the fare is more than \$82.50, the passenger can request a tax invoice which must then be provided on the spot by Jake (usually with the assistance of the facilitator). If the travel is work-related, the passenger can claim a GST credit using their tax invoice, with the remaining amount of the fare claimed as a tax deduction.

## LETTING OUT CAR-PARKING SPACES

Particularly popular in City areas and around major event stadiums, is the practice of individuals letting out car-parking spaces e.g. in front yards or in proper commercial spaces that are privately owned by individuals. This may or may not be done through a facilitator who may arrange for the spaces to be rented periodically.

### Income Tax

According to the ATO, amounts received by taxpayers engaged in the sharing economy from letting out car-parking spaces will generally be regarded as assessable income irrespective of whether a business is being carried on. This is due to the fact that they exhibit the indicators of income according to ordinary concepts (e.g. regular, expected, profit making purpose etc.). Consequently, amounts must be declared on tax returns as assessable income.

### GST

Car-parking spaces rented out on a regular basis to make money will generally constitute an [enterprise](#) for GST purposes. Therefore, where the turnover exceeds \$75 000, GST registration is mandatory. Taxpayers will then be required to remit GST on the full amount received, and will be entitled to claim GST credits on any expenses related to the making the space available.

### ATO EXAMPLE

John is a GST-registered painter. He owns a residential unit with a car-parking space in the same building. He rents out the car-parking space for \$330 a week through a facilitator who arranges for people to rent it periodically. The supply of the parking space is subject to GST even though it's located on private residential property.

John receives \$297, net of the facilitator's commission of \$33 (including \$3 GST). John must pay GST of \$30 (i.e.  $1/11^{\text{th}} \times \$330$ ), and may claim a GST credit of \$3 on the facilitator's commission.

We note that if John was not already registered for GST by virtue of his painting business, he would have no GST obligations with respect to the amounts received from the rental of the car-parking space unless his combined annual GST turnover from his painting business and the car park rental is at least \$75 000.

John must also include the rent in his tax return, but can claim a deduction for the facilitator's commission, in addition to any other allowable expenses (e.g. a portion of his mortgage on the unit).

## RENTING OUT A ROOM OR HOME

The sharing economy provides a great opportunity for individuals with spare rooms or spare entire properties to rent out space and earn rental income using facilitators such as Airbnb.

It's the ATO's view that the tax law applies in the same way to income received in this way as it does to a standard rental arrangement through a real estate agent. That is, the amounts received from the customers must generally be declared as income. Deductions relating to making the room/property available can also be claimed, such as all or part of the interest on a mortgage, insurance, council water and rates etc. Note that if the room/property is let out at less than commercial rates, deductions may be capped by the ATO to the amount of rental income received.

Likewise, the GST rules apply in the same way as conventional residential property. Renting out a residential property is an input taxed supply, so no GST is charged on the rent, and no GST credits can be claimed on any associated expenses in making the room/property available for rent (e.g. electricity). Input taxed supplies do not count toward the \$75 000 GST registration threshold. This means that the person, persons or entity holding the residential rental property are not required to be GST-registered. Non-reportable style tax codes could thus be used for all income and expenses as there will be no underlying GST reporting obligations.

An exception to this would be if the person, persons or entity holding the residential rental property was already GST registered due to the fact that quite aside from the residential rental property, there were other activities of the nature of an enterprise that gave rise to requiring a GST registration. In these cases, an input taxed supply tax code would need to be applied to the residential rent, and an input taxed purchase tax code would need to be applied to the expenses of the property. The GST-inclusive amount of the expense would remain in the profit and loss statement, with no allocation of GST to the GST control account/s taking place.

Input taxed supplies (e.g. rent) would appear at labels G1 and G4 on the BAS, but would not contribute to any GST liability that may be in existence at label 1A.

input taxed purchases would appear at labels G11 and G13 on the GST calculation worksheet. They would therefore play a role in the G11 number that appears on the BAS itself, but would not contribute to any GST credit that may be in existence at label 1B.

If a capital purchase was made for the property, you would need to assign to it a specific “Input Taxed Capital Purchase” tax code. Such items would appear at labels G10 and G13 on the GST calculation worksheet. They would therefore play a role in the G10 number that appears on the BAS itself, but would not contribute to any GST credit that may be in existence at label 1B. The reason why a separate tax code is needed in this instance is so that you could delineate those input taxed purchases that need to be grossed-up at label G11 from those that need to be grossed-up at label G10.

### Residential v Commercial?

Although in most cases it will be clear-cut, if you are uncertain as to whether property is commercial or residential, it is the physical characteristics of the property that are determinative. In distinguishing between the two styles of property, GST Ruling **GSTR 2012/5** makes it clear that you must look to the physical characteristics of the premises – is it suitable or capable of providing residential accommodation? Does the property have basic living facilities (e.g. toilet)? And is the property fit for human habitation? Premises that do not have such physical characteristics are not residential premises even if the premises are actually occupied as a residence. The physical characteristics of the premises are the key consideration.

Previously, under **GSTR 2000/20**, the actual use of the premises was taken into account as a relevant factor in determining if the premises were residential premises. The current interpretation as outlined in **GSTR 2012/5** can lead to some strange results whereby premises that have for years been used as commercial (e.g. as office space) but were originally constructed for residential accommodation and have never been significantly modified, can be classified as a residential premises and thus be input taxed when sold, and no GST charged on the rent.

### EXAMPLE

Brock is an employee teacher who is not otherwise registered for GST. He enters into an arrangement with Airbnb to have two spare rooms in his house advertised to guests who can rent the rooms on a nightly basis. The tenants also have access to the toilet and shower in the house. In return, Airbnb charge Brock a facilitator fee.

For GST purposes, the rent of each room is an input taxed supply – the nature of the property is residential (it has shower, sleeping and cooking facilities). Therefore, no GST is charged on the rent, and no GST can be claimed on expenses incurred in renting out the rooms (e.g. linen, electricity etc.). Indeed, even where the rental income exceeded \$75 000, there is no requirement for Brock to even register for GST, as the rental income does not count towards the turnover threshold.

Brock must however include the rental income in his tax return as it constitutes assessable income. Offsetting this, deductions can be claimed for the Airbnb facilitator fee, and a proportion of other expenses incurred in letting out the rooms such as mortgage interest and electricity.

When Brock eventually comes to sell the property, he will only be entitled to a partial Main Residence CGT exemption – this is irrespective of whether he actually claims deductions for any interest on a mortgage held over the property while the rooms are being rented.

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**Disclaimer**—The information contained in this edition is current as at time of writing (December 2015). Information contained herein is general in nature and is intended to provide guidance to bookkeepers in providing bookkeeping services for their clients. It is not intended to be taken as a substitute for you or your clients seeking professional advice in relation to their own specific circumstances.

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