

28 May 2014

Mr John Emerson AM
Chairman of Working Group
The Board of Taxation
By email: taxboard@treasury.gov.au

Dear Mr Emerson

RE: REVIEW OF TAX SYSTEM IMPEDIMENTS FACING SMALL BUSINESS

The Australian Taxi Industry Association (ATIA) is the national peak representative body for the taxi industry in Australia. Its membership comprises the following State/Territory taxi industry representative bodies –

- New South Wales Taxi Council;
- Victorian Taxi Association;
- Taxi Council of Queensland;
- Taxi Council of Western Australia;
- Taxi Council South Australia;
- Taxi Council of the Northern Territory; and
- Canberra Taxi Industry Association.

The ATIA accordingly represents every significant segment and occupation within the industry, including –

- taxi licence owners;
- taxi operators;
- taxi booking / dispatch companies (networks); and
- taxi drivers.

The ATIA has a proud record of working cooperatively with the Australian Taxation Office (ATO). The ATIA has played key roles in –

- coordinating the training of taxi drivers and taxi operators about their GST obligations;
- development of the ATO's Activity Statement Payment Card; and
- establishing and maintaining Industry Benchmarks for taxis.

Relevantly for the Review of Tax System Impediments Facing Small Business (the Review), the ATIA estimates that there are approximately 68,000 taxi drivers in Australia. Virtually all of these 68,000 drivers operate as discrete small or micro businesses – they are self-employed owners of businesses engaged in plying a taxi for-hire.

In the case of the overwhelmingly majority of taxi drivers, they provide all of the labour in their business (i.e. no employees per se) and the equipment for the business (i.e. the taxi) is bailed on a shift-by-shift basis. The bailment fee paid by these drivers ("bailee drivers") to taxi operators (i.e. the equipment bailors) may be for a set amount (often referred to as a "set pay-in") or a percentage share of the shift takings. Irrespective of the method of calculation of bailment fees, Australian courts have determined the normal relationship between a taxi driver and a taxi operator to be one of "joint adventurers". Accordingly, the bailee driver and bailor

taxi operator are each responsible for declaring and paying taxes applicable to their respective taxi businesses (and taxes applicable personally). Importantly then, the taxi operator is not responsible for PAYG or Superannuation Guarantee obligations in respect of their bailee drivers.

The ATIA strongly recommends no change to the common law position of distinguishing taxi bailment from employment (and contracts of service). Taxi bailment continues to work well in practice and any contemplation of a change would be manifestly inconsistent with the Review's priorities for simplification and regulatory burden reduction.

Non-bailee taxi drivers are typically either taxi licence owners or taxi licence lessees. For the purposes of the Review and this submission, it is relevant to note that both of these categories would still typically fall within the definition of small business. In the case of "lessee drivers", they supply the equipment (i.e. the taxi) for their business and control a taxi licence by way a lease or assignment. In the case of "owner drivers", they supply the equipment (i.e. the taxi) and the taxi licence for their business. Unlike bailee drivers then whose interest in a taxi exists only for the shift that they drive, the business of lessee drivers and owner drivers typically includes additional income from bailment fees for shifts when they are not driving the taxi.

Relevantly for this Review, the taxi industry offers a number of pathways for business progression or expansion. Historically, this was simply –

- bailee drivers moving to acquire a taxi licence (i.e. become an owner driver);
- taxi licence owners expanding to acquire a limited number of additional taxi licences (i.e. become an owner operator).

In recent years, the industry has seen stakeholders pursue additional business expansion paths to those noted above –

- bailee drivers moving to lease a taxi licence (i.e. become a lessee driver);
- lessee drivers expanding to lease additional taxi licences (i.e. become a small lessee operator) and/or acquire a taxi licence (i.e. become an owner driver or owner operator);
- lessee and owner operators expanding to lease significant numbers of additional licences (i.e. become a medium or large fleet operator);
- large fleet operators diversifying into taxi booking / dispatch businesses.

In addition to the 68,000 small businesses directly engaged in taxi driving, the ATIA estimates that there would be up to another 10,000 or so small businesses within the industry operating as bailors of taxis.

A Level Playing Field

As noted above, the ATIA has willingly worked with the ATO to assist industry members understand their tax obligations and comply with them. The ATIA has done so believing that responsible and proper compliance with tax obligations supports a level playing field for competitors within the industry. It is also consistent with the ATIA's promotion of high standards of behaviour for industry members in their business dealings – especially the services provided to taxi passengers.

Importantly, the ATIA's position has relied on an equivalency of treatment of taxi businesses and those of close substitutes such as limousine businesses. In the A

New Tax System (Goods and Services Tax) Act 1999 (the GST Act), “taxi travel” has been defined broadly as “travel that involves transporting passengers, by taxi or limousine, for fares”. Accordingly, the impost on taxi drivers under Division 144 to register for GST regardless of turnover or other considerations applies equally to limousine drivers.

The ATIA understands that the GST Act’s special rules applying to the supply of “taxi travel” were deliberately introduced to minimise tax avoidance. ATO officers have repeatedly advised the ATIA that these rules were necessary to prevent or limit taxi and limousine drivers supplying services within the Black Economy.

The Sharing Economy

Recently, the ATIA has become aware of a concerted push by a large foreign company, Uber Technologies Inc (Uber), to introduce its “uberX” ride-share product into Australia. Ride-Share Services (RSS) such as uberX are on-demand passenger transportation services, provided for fares (profit) by private drivers in their own vehicles (i.e. registered and insured only for private use). They are for all intents and purposes unlicensed taxi services. They are also currently unlawful in every Australian State and Territory. RSS are by definition then delivered in the Black Economy. (RSS are anywhere-to-anywhere exclusive hires and therefore are not “carpooling” or a variant thereof.)

The ATIA understands from media reports that the Victorian Taxi Services Commission acted quickly after the introduction of RSS in Melbourne to issue some 30 to 50 uberX drivers with fines of \$1720 (each) for contravening Victorian Transport Laws. Again from media reports, Uber apparently responded by declaring that it will pay the fines on behalf of the respective drivers and continue undaunted to operate RSS. To date, there has been no enforcement action taken by the State Governments in New South Wales or Queensland. Relevantly for the Review, there has also been no action taken by the ATO, such as investigating RSS drivers in relation to registration for GST.

Typical of companies operating in the so-called Sharing Economy or Peer-to-Peer Economy, Uber appears to display little appetite for compliance with regulatory rules. This is hardly surprising because in the absence of consistent and determined enforcement by regulators of their rules, Sharing Economy disrupters can enjoy significant strategic competitive cost advantages over incumbent service providers. Moreover, in the absence of effective enforcement, it can be expected that the Black Market will over time spawn more RSS operators (i.e. uberX clones or direct competitors). This has certainly been the case in the USA over the last 3 years.

It is therefore a very real concern of the ATIA that Australian taxi businesses may in the short to medium term be placed at a severe and unsustainable cost disadvantage vis-à-vis RSS drivers if the latter are allowed to continue operating in the Black Economy.

The ATIA strongly recommends a change to the definition of “taxi travel” in the GST Act so that it clearly and unequivocally includes all travel that involves transporting passengers, demand-responsively, for fares or reward. The ATIA recommends rewording the definition in terms of outcomes rather than listing modes. Both of these recommendations are consistent with the Review’s focus on simplification and removing regulatory distortions that impede survival or growth of small businesses.

Fuel Excise & Import Duty

The Australian taxi industry plays a unique and pivotal role in the overall public transport system. Taxis operate on-demand, 24 hours a day, 365 days a year, offering door-to-door transportation services. Each year Australia's 20,000 taxis collectively travel over 3 billion kilometres and transport over 350 million passengers. Taxis play a major role in servicing the needs of the community in general and key sections of the community in particular. These include -

- the elderly;
- people with disabilities;
- the young or vulnerable;
- disadvantaged socio economic groups: and
- business travellers.

In rural Australia, taxis are often the only form of public passenger transport available. This is also effectively true for many fringe suburbs and the conurbations surrounding major cities where low density development contributes to chronic under-servicing by mass transit (bus and rail) public transport options. Taxis also fill the void in public transport systems everywhere when travel is required outside mass transit providers' normal business hours (e.g. most days between midnight to 5am) or between service intervals that are too infrequent.

Taxis are quite literally for many Australians, at some time or other, an essential service that must remain both available and affordable. The characteristics of Australia's urban form(s) and the aging of the population will likely see this reliance on taxis increase in the future. If the Commonwealth Government wants Australia to retain its equalitarian values and aspirations for social inclusion, it will need to do more than it has done in the past to support the Public Passenger Transport (PPT) system.

Taxis are a key contributor to the effectiveness and efficiency of the PPT system and its capacity to significantly reduce traffic congestion and road infrastructure costs associated with inefficient private car transits. Such cost savings would more than compensate the Commonwealth Government offering Public Passenger Transport (PPT) providers, including small business taxi drivers and operators, meaningful incentives and assistance in relation to –

- the adoption of cleaner, more environmentally sustainable technology; and
- the provision of wheelchair accessible services.

The ATIA recommends adoption by the Commonwealth Government of the following measures as part of its overall strategy for addressing sustainability and climate change –

- ***exempting hybrid (and equivalently fuel efficient) vehicles going into service as taxis from import duty;***
- ***exempting hybrid (and equivalently fuel efficient) vehicles in service as taxis from fuel excise.***

The ATIA also recommends adoption by the Commonwealth Government of the following measures as part of its overall strategy for supporting the Disability Discrimination Act 1992 and Disability Standards for Accessible Public Transport 2002 –

- ***exempting vehicles going into service as Wheelchair Accessible Taxis from import duty;***
- ***exempting vehicles in service as Wheelchair Accessible Taxis from fuel excise.***

Each of these recommendations is consistent with the Review's aim of proposing solutions for impediments to small business growth, sustainability and innovation in the Tax System.

Conclusion

The ATIA estimates the revenues from taxi fares to be in the order of \$5 billion per annum. Accordingly the contribution by Australia's 78,000 or so small business taxi drivers and operators to the Government's revenue base through GST collection, fuel excise, and personal taxes is definitely significant.

Critically, the growth and survival of those small taxi businesses along with the direct and indirect revenues they generate for the Government will be at risk if the Commonwealth and State Governments do not adapt their regulatory instruments to deal with the Sharing Economy. In the case of RSS, their avoidance of State laws that are not effectively enforced is completely indicative of their approach to properly declaring and paying taxes. In such circumstances, and in the absence of effective enforcement by the ATO, RSS operators can be expected to illegitimately enjoy significant cost advantages over legitimate taxi drivers and operators. If left unchecked, taxation and other regulatory compliance costs will inevitably force small business taxi drivers and operators out of business – or at least from operating passenger transportation in the White Market for such services.

The ATIA strongly recommends that the Review, in its report to the Government, highlight in detail the unfair and undesirable distortions in taxation and regulatory burden created by Sharing Economy actors operating in the Black Economy.

Finally, should you require any further information or clarification in regard to any matter raised in this letter, please do not hesitate to contact me directly on (07) 3467 3560.

Yours sincerely



Blair Davies
Chief Executive Officer