

4 May 2022

C/- Deputy Commissioner,
Policy and Regulatory Stewardship,
Inland Revenue Department,
PO Box 2198,
Wellington 6140
New Zealand

Subject: Asia Internet Coalition (AIC) Comments on the Discussion Paper for the role of digital platforms in the taxation of the gig and sharing economy

Dear Deputy Commissioner,

On behalf of the Asia Internet Coalition (AIC) and its members, I am writing to express our sincere gratitude to Inland Revenue Department (IRD) for the opportunity to submit comments on the Discussion Document for the role of digital platforms in the taxation of the gig and sharing economy (“Discussion Document”). As an introduction, AIC is an industry association of leading Internet and technology companies in the Asia Pacific region with an objective to promote the understanding and resolution of Internet and ICT policy issues.

First and foremost, we commend New Zealand's efforts on developing the Discussion Document, with an aim to build a productive, sustainable and inclusive economy, while at the same time supporting a sustainable revenue base to fund improvements to the wellbeing of New Zealanders and their families. This means it is important for everyone to pay their fair share of tax in New Zealand.

We understand that there has been significant international concern over the perceived exclusion error of gig economy workers from a tax compliance perspective. It has been argued that this exclusion error is mostly caused by deficiencies in the current international tax rules, which have not kept up with digitalisation and other modern business developments. While the Discussion Document canvases the possibility of making it easier for people who earn income through digital platforms in the gig and sharing economy to comply with their tax obligations in New Zealand, in our view the Government of New Zealand would be better served devoting its efforts to formulating an internationally agreed solution at the OECD to update international tax rules to account for the challenges presented by the rapid digitalization of the economy. We therefore believe that the wider impacts, in terms of reputational damage of New Zealand as an open digital economy, and the chilling effect the tax may have on investment and the risk of retaliatory measures from other countries, will have long term negative consequences for the country's tech sector.

This public consultation is critical, particularly at a time when cross-border trade and data flows has taken a center stage in the digital economy ecosystem. As responsible stakeholders in the developmental progress, we appreciate the ability to participate in this discussion and the opportunity to provide input into the policy-making process. As such, please find attached to this letter detailed comments and recommendations, which we would like to respectfully request the IRD to consider and which could be useful feedback for future consultations to determine an optimal approach to implementing the upcoming taxation framework.

Should you have any questions or need clarification on any of the recommendations, please do not hesitate to contact our Secretariat Mr. Sarthak Luthra at Secretariat@aicasia.org or at +65 8739 1490. Furthermore, we would also be happy to offer our inputs and insights on industry best practices, directly through discussions and help shape the dialogue for the advancement of taxation in New Zealand.

Thank you
Sincerely,

Jeff Paine



Managing Director,
Asia Internet Coalition (AIC)

Detailed Comments and Recommendations

1. Introduction

In the backdrop of digitalization and growth of digital services across the world, the role of internet companies has become more and more significant. Given the diversity of policy motivations and challenges for jurisdictions, there is no one-size-fits-all response to the GST implications of the sharing/gig economy. It is reasonable to expect that the design and implementation of potential measures will reflect the differences in policy and legislative environments, tax authorities' distinct challenges and key policy objectives and the diversity of sharing/gig economy business models. These include possible options to simplify GST administration and compliance as well as approaches for the efficient and effective collection of tax relevant data and for the collection of the GST due on sharing/gig economy supplies.

2. Information reporting and sharing

implementation of the 'OECD Model Rules for Reporting by Platform Operators with respect to Sellers in the Sharing and Gig Economy'.

On following the OECD process, AIC Members would be agreeable to adopt the Model Rules for Reporting by Platform Operators and share the relevant data with tax authorities. However, there remains a concern with the implementation of the OECD Model is that the information reporting (done by calendar year) does not align with New Zealand's tax year (which ends on March 31). This presents issues with using gathered information to increase taxpayer compliance by pre-populating sellers' income tax returns. While the discussion document presents several possible solutions to this issue,

including the implementation of bespoke New Zealand rules, one significant negative identified with implementing bespoke New Zealand rules is the increased compliance costs to digital platforms in having to comply with New Zealand rules in addition to the OECD Model, on the basis that most jurisdictions are moving towards implementing the OECD model.

3. GST reform

- Lower the GST registration threshold for sellers operating through digital platforms in the gig and sharing economy to level the playing field with traditional operators.
- Require digital platforms to collect GST

Many GST regimes apply one or multiple thresholds typically aimed at small businesses below which such a business is relieved from the obligation to charge and remit GST on its outputs and from the associated reporting obligations. These thresholds are generally based on annual turnover. Broadly two categories can be distinguished: registration thresholds that relieve a business from both the requirement to register and to collect the GST; and collection thresholds where a business is required to register for GST, even when their turnover is below the threshold, but is relieved from collecting the GST until it exceeds the threshold. Thresholds may vary according to sector or type of activity and sector.

The impact of sharing/gig economy growth on GST policy and administration on a lower GST threshold, may face the administrative challenge of large numbers of small and new economic operators entering the GST system as the consequence of sharing/gig economy growth, often with a limited capacity to understand and comply with their GST obligations. This may also increase the number of taxpayers entitled to input GST deduction (e.g. GST incurred on fuel costs by drivers in the transportation sector) with a correspondingly high administrative burden and potential revenue risks, as the assets used (e.g. cars or houses) will often be used also for private purposes. Furthermore, lowering the threshold for businesses is typically seen as an inefficient way to garner more income for the country and may have larger implications that can also stifle the growth of SMEs in the country.

A number of factors need to be considered by a jurisdiction when setting the level of threshold. The level of the threshold will typically be the result of a trade-off between minimising compliance and administration costs, and the need to protect revenue and avoid competitive distortion.

When considering the use of GST thresholds as a tool to manage the GST impact of sharing/gig economy growth, the following factors may be considered:

- the core features of the relevant sharing/gig economy sector, particularly its size and growth perspective and the typical profile of the (new) economic operators that will become active as sharing/gig economy providers (such as the median annual income earned by those operators, and whether they would otherwise be construed as carrying on a taxable activity). The answer to these questions may help to indicate whether the revenue risks and the risks of competitive distortion are considered sufficiently important to warrant policy action – and to what extent a shift of activity from traditional economy operators to sharing/gig economy operators can lead to such loss of revenue and competitive distortion and to increased pressure on tax administration. The outcome of this analysis may for instance be different for a sector that is labour-intensive and requires limited financial investment (e.g. “gig-work”), than for a sector

that is more capital intensive (e.g. short-term rental). The former may attract high numbers of new economic operators with perhaps less capacity to comply with GST requirements and challenging for tax administrations to track. The latter may be less numerous and relatively easier to track, and could be presumed to have a higher capability to comply with their tax obligations;

- the complexity of the GST regime and compliance obligations and the associated compliance costs for sharing/gig economy operators;
- the availability of a simplified accounting and reporting regime for small businesses, including a simplified regime for calculating GST liability. The availability of such simplification measures could for instance justify a relatively low threshold for a given sharing/gig economy sector;
- the capacity of the tax administration to manage and monitor a large(r) number of GST-registered taxpayers, including the administration costs connected with tax supervision and collection;
- the tax morale in the population of (small) businesses.

On whether digital platforms should be required to collect and remit GST on the value of transactions facilitated (or intermediated) via their platform for New Zealand sellers, we wish to stress that doing so would create a number of significant complexities:

- the activities of online marketplaces have often been misconstrued as the activities of a ‘seller’ by local tax agencies. Even if the online marketplace’s involvement in the transaction is limited to packing, repacking and forwarding the consignment to the buyer, the authorities often insist that the e-commerce player is the ‘dealer’ that is liable to pay taxes and undertake all related compliance. Thus, the intermediary role played by online marketplaces needs to be acknowledged. We believe there are likely to be flow-on implications (e.g. fundamental employment legal concerns) should the GST burden be shifted from New Zealand sellers to platforms;
- the technical engineering build and maintenance of the systems and processes required to facilitate the collection and remittance of GST for New Zealand sellers is significantly difficult and costly for platforms. This complexity increases exponentially as the rules become more complex (e.g. having different rules for GST-registered vs non-GST registered sellers, or requiring platforms to return an amount to sellers in lieu of input GST, leading potentially to double taxation with other countries/regions if the place of supply rules would differ from the current GST treatment of remote digital services). Since the large majority of OECD countries have not implemented such a regime (rather, they are moving towards implementing the OECD model to assist with tax compliance of local sellers), the inconsistency of this regime will add to the complexities and costs of this build. The greater the complexity and risk of double taxation, the more likely that non-resident platforms outside the enforcement of the New Zealand authorities could take a calculated business decision to not comply with these rules;
- since most platform sellers are currently not GST registered (since either they do not carry on taxable activities, or those activities are below the NZD60,000 p.a. registration threshold), subjecting those activities to an additional 15% GST could well have a detrimental impact to the sharing economy and would not be ‘channel neutral’ if offline sales would not be subject to GST. For example, if the cost of ride-sharing, home-sharing or ‘gig’s performed via taskrabbit were to increase in cost by 15%, this could well dampen demand for these activities at a time where New Zealand’s economy begins facing pressures (such as recovering from covid, managing cost-of-living inflationary issues, or rebuilding a crippled tourism industry).

- given the platform ecosystem is complex with various platforms and payment service providers active on other platforms it may not always be clear to define which platform in the supply chain would be liable to collect and remit the GST as it may process the bookings, collect payments or not have data on who the ultimate New Zealand sellers are.

Conclusion

The direction in which any reforms proceed will be of interest to those operating in the gig and sharing economy, both sellers and digital platforms. New Zealand has a history of closely following OECD model reforms, recently with many of the OECD base erosion and profit shifting measures being implemented into domestic law. We would suggest that New Zealand continue to follow the majority views of OECD member countries, such as implementing the OECD model and not proceeding with the proposed GST reforms until further detailed consideration and research has been undertaken.