

GST AND COLLABORATIVE CONSUMPTION: WHAT'S NEW UNDER THE SUN?

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1. Introduction

GST is, in simple terms, intended to be a tax on final private consumption in Australia.² However what happens where private consumption is not final but instead is repurposed towards an income generating purpose? This is the quandary faced by the GST system with the rise of "collaborative consumption", otherwise known as the "sharing economy".

Collaborative consumption is a worldwide phenomenon with significant and growing economic importance. In New South Wales alone, the sharing economy is estimated to be worth \$504 million per year, with an estimated 45,000 people earning income through the sharing economy in 2015.³ Many more people would be customers of the sharing economy.

With the growth in opportunity comes growing challenges in how existing laws are to be applied by regulators - and the GST law is no different. In particular, collaborative consumption brings more people and things to the periphery of the GST system, bringing with it administrative complexity and perhaps unintended consequences.

This paper explores collaborative consumption, the aspects of the GST system that may be placed under stress by collaborative consumption and the potential solutions - with a focus on the individuals making supplies in the sharing economy.

2. Just what is collaborative consumption?

The concept of collaborative consumption like most modern terms does not have a precise or comprehensive definition. Hamari et al define collaborative consumption as:

"...the peer-to-peer-based activity of obtaining, giving, or sharing access to goods and services, coordinated through community-based online services."⁴

The underlying philosophy of collaborative consumption may be illustrated by a completely unverifiable statistic - being that a power drill will be used around 12 to 15 minutes in its entire lifetime.⁵ Why not rent the drill to save some money, or as the owner, rent the drill to other people to share the cost? In this way, collaborative consumption enables resources to be shared and assets to be used more efficiently and sustainably within the "community".

The "community" in collaborative consumption is only made possible by advances in information and communications technology and online ratings/review systems. It is only through the

¹ The author gratefully acknowledges the assistance of Andrew Sommer, Partner, Clayton Utz. The views and opinions expressed in this paper are those of the author and do not represent the views of Clayton Utz.

² Explanatory Memorandum to the *A New Tax System (Goods and Services Tax) Bill 1998*, page 6.

³ 'The Collaborative Economy in NSW - position paper', State of New South Wales through the Department of Finance, Services and Innovation, November 2015.

⁴ Hamari, Sköklint and Ukkonen, 'The Sharing Economy: Why People Participate in Collaborative Consumption', *Journal of the Association for Information Science and Technology*, June 2015.

⁵ As stated by Rachel Botsman in her May 2010 TED talk at TEDxSydney (available at www.ted.com), and referred to in S. Kessler, 'The "Sharing Economy" Is Dead And We Killed It', *Fast Company*, 14 September 2015. In the author's case, this is likely to be a correct statistic.

technological platforms that the members of the "community" can "trust" other members who are little more than strangers and "share" goods and services with each other. Thus, the technological platforms are essential to collaborative consumption.

The concept of "sharing" in collaborative consumption is indicative of what some perceive collaborative consumption to be - a social response or cultural shift against excessive materialism and overconsumption in lead up to the global financial crisis in 2008.⁶

However, others see collaborative consumption as being less about sharing and more about economic opportunity following depressed labour markets resulting from the global financial crisis.⁷

Similarly, others see collaborative consumption as an economic exchange of purely utilitarian rather than social value - describing collaborative consumption as an "access economy" rather than a "sharing" economy.⁸ These commentators point in particular to the fact that the "sharing" is mediated by the platform operators.

The Commissioner's definition in his online guidance note appears to reflect collaborative consumption as an economic phenomenon rather than a cultural or social one:

"The 'sharing economy' (also referred to as collaborative consumption, peer-to-peer or similar terms) is a new way of connecting buyers ('users') and sellers ('providers') for economic activity."⁹

Irrespective of the potentially divergent motivations and philosophies that may be held by participants in the sharing economy and commentators, the common theme is that collaborative consumption involves the monetisation of excess private consumption (and in some cases, private time) by the general public.

Arguably, there is nothing new about this at all - unwanted or underused goods (e.g. power drills) have long been sold via print classifieds, lodgers for spare rooms and ad-hoc work have always been sought via advertisement on notice boards, telegraph poles or by a sign in the window. The ownership and cost of property or goods are often shared through "timeshare" arrangements.

However, the author submits that there are elements of collaborative consumption that are "new", by virtue of the online platforms and technology which make it possible:

- firstly, collaborative consumption involves monetisation of excess private consumption in a systematic, but simply way that is also highly scalable - sometimes with global reach (e.g. the letting of rooms to travellers visiting from overseas);
- secondly, collaborative consumption enables the monetisation of things that would not traditionally be committed to an income generating purpose (e.g. an individual's motor vehicle which is otherwise used for private purposes).

⁶ 'All eyes on the sharing economy', The Economist, 9 March 2013.

⁷ See K. Roose, 'The Sharing Economy Isn't About Trust, It's About Desperation', NYMag, 24 April 2014.

⁸ See G. Eckhardt and F. Bardhi, 'The Sharing Economy Isn't About Sharing at All', Harvard Business Review, 28 January 2015.

⁹ 'The sharing economy and tax', <https://www.ato.gov.au/Business/GST/In-detail/Managing-GST-in-your-business/General-guides/The-sharing-economy-and-tax/>, accessed 13 April 2016.

It is these "new" elements that bring members of the general public and more things to the periphery of the GST system, bringing with it administrative complexity and perhaps unintended consequences.

3. **Models of collaborative consumption**¹⁰

The examination of the impact of collaborative consumption on the GST system requires consideration of the models of collaborative consumption and the supplies and acquisitions involved.

Different models of collaborative consumption

Sharing through redistribution

Perhaps the earliest model of collaborative consumption is the online marketplace, where excess private consumption is "shared" through redistribution of the ownership of the asset. The asset is monetised through disposal of the asset. Well known examples of this model are eBay (www.ebay.com.au) and Gumtree (www.gumtree.com.au).

The nature of the community and trust in this model is limited to ensuring that: (i) goods supplied match the description; and (ii) payment and delivery of the goods is made.

As such, the platform operator's role in this model is to facilitate the supply of goods by the buyer to the seller by providing functionality in the online platform - e.g. by providing the ability to include pictures in sale listings, operating a seller and buyer ratings system, and in some cases providing a secure medium of payment (such as PayPal, which was acquired by eBay and later spun-off).

Another illustration of this model involves redistribution of small amounts of money from a large number of people to fund a project or venture – otherwise known as crowdfunding. Examples include:

- rewards-based crowdfunding such as Kickstarter (www.kickstarter.com) (a crowdfunding platform providing for creative projects), whereby "investors" are provided with a reward for their "investment" – usually involving an early release of the product in question at a reduced price;
- debt-based crowdfunding or P2P lending such as Ratesetter (www.ratesetter.com.au), whereby money is lent to borrowers directly by lenders through online services.

Sharing of private ownership

Collaborative consumption can also involve "sharing" excess private consumption without changing private ownership. In this model, the owner's "downtime" of the asset is monetised through "sharing" the asset for consideration.

The nature of the community and trust is similar to the first model involving "sharing" through redistribution – that is, ensuring that the thing supplied matches the description, and that payment and access to that thing is provided. As such, the platform operator's role in this model is again to facilitate supplies and payments between members of the community using similar if not the same methods as in the first model. Because ownership of the asset is not relinquished and the asset must be "returned", acting as a payment intermediary and "custodial"

¹⁰ This discussion regarding models of collaborative consumption is based entirely on non-confidential information available in the public domain.

duties (e.g. holding money in an “escrow account” pending completion of the transaction) takes on increased significance for platform operators under this model.

Collaborative consumption through sharing of private ownership can be done on a small scale – e.g. making an unused power drill available to rent for a day or a week at a time – or it can be done on a much larger scale, such as making premises available for use for weeks or even months. An example of smaller scale “sharing” of private ownership is Open Shed (www.openshed.com.au), where “idle” household goods such as power drills can be rented to members of that online community. Airbnb (www.airbnb.com.au) and Divvy (www.divvyparking.com) are larger scale examples of “sharing” of private ownership, whereby residential premises and parking spaces are made available for access, respectively.

The objective of this model is similar to the first model, although the things and manner in which excess private consumption is “shared” is different. As will be discussed this can and will give rise to differences in the GST outcomes.

Sharing of private time

Collaborative consumption not only addresses excess private consumption, but also excess of private time (or perhaps some combination of the excess consumption and time). That is, a person who is underemployed or who simply prefers to work on an ad hoc basis is able make their time (and assets) available for consumption by another party via an online platform without an ongoing commitment or contractual relationship.

The nature of the community and trust in this model is more complex, given that this model involves supplies of services and the consequential risks and liabilities that are attached. In this regard, platform operators under this model not only facilitate the contract between the contracting parties, but may take additional steps to foster community and trust by mitigating risk, such as: (i) requiring parties wishing to provide services to undertake background checks (in addition to user reviews) or to warrant compliance with law; and (ii) obtaining public liability insurance to cover a service provider’s liability for personal injury or property damage, or requiring the service provider to have insurance in order to continue use of the online platform.

A “pure service” example of this model is Airtasker (www.airtasker.com), a community “marketplace” where people and businesses can outsource work and service providers can find flexible work comprising basic household and office tasks (e.g. handyman services, cleaning, delivery, IT support). There are also platforms that enable more complex work to be outsourced, such as Expert360 (expert360.com) which links businesses with business consultants.

Uber (www.uber.com), or more precisely the uberX ridesharing service, involves the “sharing” of both excess private consumption (i.e. the driver’s vehicle) and excess private time (i.e. the availability of the driver).¹¹

Sharing through centralisation of ownership

Finally, another model of collaborative consumption involves “centralisation” of ownership of the underlying asset that is being consumed. An example of this model is the car sharing service, GoGet (www.goget.com.au).

¹¹ It is beyond the scope of this paper to examine whether or not ridesharing drivers provide “taxi travel” for the purposes of Division 144 of the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) (**GST Act**). It is understood that this issue will be considered by the Federal Court in *Uber B.V. v The Commissioner of Taxation of the Commonwealth of Australia* NSD 904/2015, which is scheduled to be heard in late July 2016. For further reading on this issue, see the author’s article, ‘GST and Uber: An application of the Duck Test?’, *Australian Tax Law Bulletin*, LexisNexis, December 2015.

The operator runs a membership model whereby members are provided with rights to access the underlying asset in consideration for membership and access fees. Instead of private ownership of the asset, members anticipate how much they wish to consume the asset and how much they wish to spend on that consumption.

Because ownership is centralised, the nature of the community and trust in this model is more dependent on the operator than the individual members. This model is perhaps closest to the concept of collaborative consumption being a social and cultural response to overconsumption.

Common characteristics in models of collaborative consumption

Although there are different models of collaborative consumption, these models (with the exception of a centralised ownership model) all share the following common characteristics:

- co-ordination through an online platform (website and/or app);
- membership of the online platform by individuals who will make supplies (as independent contractors) and individuals who will consume those supplies;
- the supply of goods and services pursuant to contracts formed between members of the online platform;
- the ability of individuals making supplies to control when their supplies of goods and services will be offered;
- the platform operator supplies services to facilitate the formation of those contracts, and charges fees to either the supplying individual or the consuming individual (or both) in consideration for those services;
- in most cases, payment for supplies between members is made via the platform operator (who may charge additional fees for facilitating payment); and
- complex structures involving tripartite or multi-party arrangements designed to foster community and trust between the members of the community.

Thus, from a GST perspective, collaborative consumption models involve a web of supplies and acquisitions between members of online platforms and also with the platform operator.

4. Collaborative consumption and challenges faced by the GST system

In his online guidance note,¹² the Commissioner states that the tax laws apply "in the same way to activity conducted in the sharing economy" as they do to "activity conducted in a conventional manner". However, the simplicity in the principle belies potential complexity in its application to collaborative consumption models.

Some models of collaborative consumption would not pose real or new issues for the GST system. A centralised ownership collaborative consumption model would simply be characterised as a business supplier providing a service to a user for final private consumption. For example, a centralised car sharing service such as GoGet would be expected to be treated in a similar way to a traditional car rental service for GST purposes.

In an online marketplace where excess private consumption is redistributed by the sale of goods, the application of general GST principles should be relatively simply.

¹² Note 9 above.

However, as can be observed, other models of collaborative consumption involve both the monetisation of excess private consumption in a systematic and scalable way, and the monetisation of things that would not ordinarily be committed to an income generating purpose.

The application of the GST law to such models is more complex – for example, should the “sharing” of a vehicle otherwise used for private purposes by an individual (e.g. ridesharing or peer-to-peer car sharing via Car Next Door (www.carnextdoor.com.au) be treated differently to a centralised car sharing service for GST purposes?

Collaborative consumption and the gateway of “enterprise”

The concept of an “enterprise” may be described as a gateway to the GST system. That is, the concept of enterprise distinguishes between entities who remit GST on their supplies on the one hand and entities who consume those supplies and bear the economic burden of that GST on the other.

The concept of “enterprise” is also used to define the scope of acquisitions to which an entity may be entitled to claim an input tax credit.

“Enterprise” is exhaustively defined in section 9-20 of the GST Act. For relevant purposes, an enterprise is defined to include an activity, or series of activities, done:

- in the form of a business; or
- on a regular or continuous basis, in the form of a lease, licence or other grant of an interest in property.¹³

However, excluded from an enterprise is an activity or series of activities done as a private recreational pursuit or hobby, or by an individual “without a reasonable expectation of profit or gain”.¹⁴

It is submitted that collaborative consumption has the potential to cause particular stress on the concept of enterprise.

“In the form of a business”

The term “business” is in fact defined in section 195-1 of the GST Act as including “any profession, trade, employment, vocation or calling, but does not include occupation as an employee”.

This is the same definition in the income tax law,¹⁵ and thus the principles developed in the income tax law as to “business” is relevant in determining whether an entity carries on an enterprise “in the form of a business”.

The Commissioner’s refers to these principles as providing the indicators of business in his ruling concerning “enterprise” - Miscellaneous Taxation Ruling MT 2006/1.¹⁶ At paragraphs 178

¹³ Sections 9-20(1)(a) and (1)(c) of the GST Act.

¹⁴ Subsection 9-20(2) of the GST Act.

¹⁵ Subsection 6(1) of the *Income Tax Assessment Act 1936* (Cth) and Section 995-1 of the *Income Tax Assessment Act 1997* (Cth).

¹⁶ MT 2006/1 sets out the Commissioner’s views as to when an entity carries on an enterprise for the purpose of entitlement to an Australian Business Number under the *A New Tax System (Australian Business Number Act) 1999* (Cth). In GSTD 2006/6, the Commissioner confirms that MT 2006/1 has equal application to the meaning of “enterprise” (and “entity”) for the purposes of the GST Act.

and 179 of that Ruling, the Commissioner states as follows (referring to an income tax ruling discussing "carrying on a business" of primary production (Taxation Ruling TR 97/11)):

"TR 97/11 discusses the main indicators of carrying on a business. Based on that discussion some indicators are:

- *a significant commercial activity;*
- *a purpose and intention of the taxpayer to engage in commercial activity;*
- *an intention to make a profit from the activity;*
- *the activity is or will be profitable;*
- *the recurrent or regular nature of the activity;*
- *the activity is carried on in a similar manner to that of other businesses in the same or similar trade;*
- *activity is systematic, organised and carried on in a businesslike manner and records are kept;*
- *the activities are of a reasonable size and scale;*
- *a business plan exists;*
- *commercial sales of product; and*
- *the entity has relevant knowledge or skill.*

There is no single test to determine whether a business is being carried on. Paragraph 12 of TR 97/11 states that 'whilst each case might turn on its own particular facts, the determination of the question is generally the result of a process of weighing all the relevant indicators'. TR 97/11 can be referred to for a fuller discussion on whether a particular activity constitutes the carrying on of a business."

However, in *Commissioner of Taxation v Swansea Services Pty Ltd*,¹⁷ it was observed by McKerracher J that the words "in the form" (at paragraph 99):

"...have the effect of extending the reach of 'enterprise' to those activities which are in the form of a business but would not, in the ordinary meaning of 'business' be considered such."

McKerracher J went on to explain that:

"But the activity must still be reasonably intended to be profit making in the case of an individual and cannot for any entity simply be a private recreational pursuit or hobby. That this is so is clear from the exclusions to s 9-20 of the GST Act which, relevantly, rules out private recreational pursuits or hobbies or, in the case of individuals, (other than a charitable trustee) an activity or activities done without a reasonable expectation of profit or gain."

In the context of collaborative consumption, the issue is at what point the activity or activities of an individual are to be considered to be done "in the form of a business". The possibility that an individual making supplies in the sharing economy may be carrying on an enterprise is acknowledged in the Commissioner's online guidance note, however the Commissioner's examples focus upon whether the income from those activities exceeds the registration turnover threshold or whether the individual in question is already registered for GST (as a result of a "conventional" enterprise).¹⁸

¹⁷ [2009] FCA 402.

¹⁸ Note 9, above. In Example 2 "Renting out a car parking space subject to GST", John is a painter who is registered for GST purposes and who earns additional income by renting out a car parking space periodically via a facilitator. In

Determining whether an enterprise is being carried on will always be a matter of fact and degree. However, it is submitted that in many cases, the models of collaborative consumption will involve an individual making supplies in the sharing economy undertaking an activity (or series of activities) that is sufficient to constitute an “enterprise” for GST purposes.¹⁹ That is, the systematic and scalable monetisation of excess private consumption made possible by collaborative consumption models would arguably satisfy traditional indicators of a business, in particular:

- *“an intention to make a profit from the activity”* – in most cases, individuals become members of the online platform with the intent of earning additional income. In some cases, individuals leave existing employment to earn a living solely via making supplies in the sharing economy;
- *“the recurrent or regular nature of the activity”* – in and of itself, the online platform operates and enables supplies to be made by individuals using the online platform on a recurrent if not regular basis - albeit perhaps in an ad hoc manner from time to time depending upon the work preferences of the individual;
- *“activity is systematic, organised and carried on in a businesslike manner and records are kept”* – record keeping is a standard function of online collaborative consumption platforms. The online platform may also provide other back-office functions (e.g. payment receipts are automatically issued to the passenger after an uberX trip). The imposition of conditions of membership by the platform operator may also involve an individual organising their affairs in a businesslike manner – for example, where applicable, uberX drivers are required to obtain and maintain appropriate registration / accreditation.²⁰

These indicators of business would also militate against a finding that individuals making supplies in the sharing economy would be excluded from carrying on an enterprise by reason that their activity or activities are merely private recreational pursuits and hobbies, or are conducted without a reasonable expectation of profit or gain.

This is not to say that an individual who merely registers with an online collaborative consumption platform automatically carries on an enterprise. However, registering with the platform with the intention of earning income, and continuing to be on that platform with continued but small scale if sporadic activity would seem to be sufficient to constitute an enterprise.

The above would be consistent with the conclusions of the European Commission in a working paper considering the VAT treatment of the sharing economy.²¹ In that working paper, the European Commission stated that:

“Given the very wide understanding of the concept of economic activity...it can be therefore concluded that the supplies of goods and services made through sharing economy platforms, such as driving customers to requested destinations or renting

Example 3 “Doing odd jobs”, Karen is a retired but experienced gardener who may be carrying on an enterprise in providing garden advice via a website, but whose income from that advice is only about \$10,000.

¹⁹ Indeed, “enterprise” is all the more significant for ridesharing drivers, given that there is mandatory GST registration where a person supplies “taxi travel” in carrying on an enterprise.

²⁰ From 18 December 2015, rideshare drivers in NSW are required to obtain and hold a current Private Hire Vehicle driver authority and register the vehicle for business use.

²¹ Value Added Tax Committee Working Paper No 878, ‘VAT treatment of sharing economy’, 22 September 2015.

out immovable property may qualify as an economic activity in the sense of the VAT Directive irrespective of whether such supplies are delivered with clear continuity or on a more occasional basis.”²²

“Grant of an interest in property”

Under s 9-20(1)(c) of the GST Act, all that is required for an activity (or series of activities) to constitute an enterprise is a grant of an interest in property on a “regular or continuous basis”.

In MT 2006/1, the Commissioner considers that (at paragraph 306):

“An activity will be ‘continuous’ if there is no significant cessation or interruption to the activity. An activity is ‘regular’ if it is repeated at reasonably proximate intervals. The intervals need not be fixed. Whether an activity is repeated over time on a regular basis is a question of fact and degree.”

Thus listing premises available on a platform like Airbnb (residential premises) or Divvy (parking spaces) and maintaining that listing (even if availability of the premises may at times be sporadic) would likely be activity qualifying as an enterprise in most if not all cases under s 9-20(1)(c) of the GST Act, even if it is not in the “form of a business” nor conducted in a businesslike manner.²³ This would also be the case in respect of platforms that enable members to make personal property available for rent, such as Open Shed and Car Next Door.

In such circumstances, the exclusion in s 9-20(2) requiring individuals to have a reasonable expectation of profit or gain would need to be considered in particular, given that the income generated from renting real or personal property would likely be a small proportion of the cost of the property. However, it is submitted that making the property available at “market” rates on the online platform (even if it is only a power drill for a few dollars a day) would of itself demonstrate a reasonable expectation of profit or gain over time.

Collaborative consumption, input tax credits and adjustments for shifting “creditable purpose”

Many individuals making supplies in the sharing economy may not generate sufficient income to cause them to exceed the registration turnover threshold of \$75,000 and become required to be registered for GST purposes.²⁴

However, an individual carrying on an enterprise in the sharing economy may register for GST purposes on a voluntary basis,²⁵ including for the purposes of claiming input tax credits on acquisitions (and also importations).

Given that collaborative consumption enables more people to carry on an enterprise and thereby become entitled to be registered for GST purposes, collaborative consumption thereby increases the scope of input tax credit claims in respect of private consumption that would not ordinarily be thought to be available.

²² Ibid. at page 6.

²³ Interestingly, the issue as to whether making premises available on Airbnb amounts to a lease or licence of those premises was the subject of a recent Victorian Civil and Administrative Tribunal decision (*Swan v Uecker (Residential Tenancies)* [2016] VCAT 483 (24 March 2016).

²⁴ Subsection 23-15(1) of the GST Act and regulation 23-15.01 of the *A New Tax System (Goods and Services Tax) Regulations 1999* (Cth).

²⁵ Section 23-10 of the GST Act.

Can I claim an input tax credit for the acquisition of my power drill?

Under s 11-20 of the GST Act, an entity is entitled to an input tax credit for any “creditable acquisition” the entity makes. A creditable acquisition is an acquisition, which amongst other things, is acquired solely or partly for a “creditable purpose”.²⁶ An entity will acquire a thing for a “creditable purpose” to the extent that it is acquired in “carrying on” the enterprise in question.²⁷ However, an entity will not acquire a thing for a creditable purpose to the extent that the acquisition:

- relates to making supplies that would be “input taxed”; or
- the acquisition of the thing is of “a private or domestic nature”.²⁸

Inherently, the acquisition of many assets used by individuals carrying on an enterprise in the sharing economy would be of a “private or domestic nature” – such as a power drill. However, where the acquisition is made by an individual that is registered on an online platform and for GST purposes, and with the intention at the time of acquisition²⁹ of “sharing” the asset via the platform (and the cost of it), it is submitted that the acquisition would also be made partly in the course of carrying on an enterprise. As explained by Senior Member O’Loughlin in *Davsa Forty-Ninth Pty Ltd as Trustee for the Krongold Ford Business Unit Trust and Commissioner of Taxation*³⁰ (at paragraph 40):

“Private use of assets acquired does not preclude those assets being assets acquired in carrying on an enterprise. What it does prevent is full ITCs being allowed given the apportionment rules. The extent to which ITCs are allowable is a question of appropriate apportionment.”

The author is in fact aware of ridesharing drivers intentionally purchasing or leasing vehicles for the purposes of providing ridesharing services.

An unexpected consequence of the rise of collaborative consumption may be a rise in disputes and litigation regarding input tax credit claims by individuals in the sharing economy.

Take for instance the scenario in *Rendyl Properties Pty Ltd and Commissioner of Taxation*.³¹ In *Rendyl*, the taxpayer company, whose sole director was involved in the game fishing industry, had sought to claim an input tax credit in respect of the importation of a boat which was alleged to be imported for use in a fishing boat charter enterprise. The taxpayer was unsuccessful, due mainly to the lack of appropriate records evidencing that enterprise. In finding as such, the Tribunal remarked that (at paragraph 39):

“Our general impression is that the boat’s revenue-generating opportunities were thought of more as a means of defraying some of the costs of ownership and operation of the boat than as essential elements of establishing a viable, profit-making

²⁶ Section 11-5 of the GST Act. See also ss 15-5 and 15-10 regarding “creditable importations”.

²⁷ Subsection 11-15(1) of the GST Act. See also s 15(2) of the GST Act.

²⁸ Subsection 11-15(2) of the GST Act.

²⁹ See for example, the Commissioner’s view in paragraph 17 of GST Ruling GSTR 2006/4.

³⁰ [2014] AATA 337.

³¹ [2009] AATA 177 (*Rendyl*).

business. The activity was entered into, and then carried on, in a haphazard and unbusinesslike way...

“Defraying” the costs of private ownership is, as discussed, a motivation behind many individuals making supplies in the sharing economy (i.e. monetising excess private consumption). If the situation in *Rendyl* occurred in the context of a taxpayer registered with a sharing economy platform enabling the “sharing” of boats, the outcome may well be different – at the least, the platform would assist with providing records to evidence the taxpayer’s enterprise.

Shifting creditable purpose

Further, there is complexity in how changes in creditable purpose are to be addressed in the context of excess private consumption.

Excess private consumption that is monetised in the sharing economy can give rise to decreasing adjustments under Division 129 of the GST Act. This is because an adjustment can arise under Division 129 even if the acquisition or importation in question is not a creditable acquisition or creditable importation.³² The potential scale and quantum of decreasing adjustment claims in respect of assets formerly acquired for private or domestic purposes is moderated by s 129-10(2), which prevents adjustments from arising in respect of acquisitions or importations (not relating to business finance) that have a GST exclusive value of less than \$1,000. However, there would still be many potential decreasing adjustment claims in respect of assets such as motor vehicles which are brought into the sharing economy.

There is also significant difficulty for taxpayers in assessing change in creditable purpose for assets used in the sharing economy, and in the resulting administrative tasks.

How will an individual using an asset to makes supplies in the sharing economy (irrespective of whether the asset was initially acquired in the course of carrying on an enterprise) assess changes in creditable purpose? For example, a ridesharing driver may acquire a vehicle with the intention that the vehicle will be applied equally to providing ridesharing services and equally for private purposes. However, due to the flexible nature of working as an independent contractor, the actual use of the vehicle may change on a weekly basis, if not a day-to-day basis. It would seem necessary that a taxpayer in such circumstances would need to keep a detailed logbook of their day-to-day activity.

It should also be noted that under Division 129, the application of an acquisition or importation (not relating to business finance) and creditable purpose must be tracked, and adjustments made, for significant periods of time – effectively periods of 2, 5 or up to 10 years, depending upon the value of the acquisition or importation.³³

The practical difficulties in assessing creditable purpose of acquisitions and importations used in the sharing economy, and the length of time over which changes creditable purpose must be tracked, therefore creates an onerous task for individuals involved in the sharing economy that choose to or are required to be registered for GST purposes. It not clear that such taxpayers, let alone taxpayers in the conventional economy, would be able to meet their full compliance obligations under Division 129.

³² Subsection 129-5(1) of the GST Act.

³³ See s 129-20(3) of the GST Act – 2 adjustment periods for acquisitions or importations with a GST exclusive value of less than \$5,000; 5 adjustment periods for acquisitions or importations with a GST exclusive value of between \$5,000 to \$500,000; 10 adjustment periods for acquisitions or importations with a GST exclusive value greater than \$500,000. An adjustment period is a tax period usually ending on 30 June that starts at least 12 months after the end of the tax period in which the acquisition or importation in question is or would be attributable.

Increased administrative burden and compliance costs for the Commissioner

As can be observed, with more people being brought to the periphery of the GST system and perhaps choosing to enter into the GST system, collaborative consumption may result in increased administrative burden and compliance costs for taxpayers.

Further, the Commissioner will be required to process more GST registration applications, assess an increasing number of input tax credit (and decreasing adjustment) claims, and in addition enforce collection of GST revenue from an increasing number of taxpayers in the sharing economy.

Thus the rise of collaborative consumption will also give rise to an increased administrative burden and compliance costs for the Commissioner and not just taxpayers.

5. What can be done?

The challenges brought by collaborative consumption may, but need not, be addressed by changes to the GST system. Some potential changes to the GST system in this regard are discussed below. These potential changes are conceptual and by no means comprehensive.

Any changes to be made to the GST system to address collaborative consumption would need to be carefully examined and undertaken in consultation with taxpayers and other stakeholders. This is even more important given that many individuals involved in the sharing economy are members of the general public and not sophisticated businesses.

Changing the entitlement to voluntary registration

Changing the registration turnover threshold would do little to manage the potential influx of suppliers in the sharing economy being brought into the GST system where such suppliers may wish to register for GST on a voluntary basis. Changing the registration threshold may also have unintended consequences for conventional small businesses and the revenue.

However, a minimum turnover threshold for voluntary registration may be effective in limiting the number of suppliers in the sharing economy that may wish to enter into the GST system. For example, a minimum turnover threshold of \$5,000 per annum for voluntary registration would help ensure that small scale sharing economy enterprises would not enter the GST system, lowering the administrative burden and compliance costs for taxpayers and the Commissioner alike.

South Africa provides an overseas example of such a measure. In South Africa, only enterprises with turnover in excess of Rand 50,000 per annum (approximately \$4,500),³⁴ or with a reasonable expectation that turnover of Rand 50,000 will be exceeded within 12 months of registration, are entitled to register for South African VAT on a voluntary basis.³⁵

Any change to voluntary registration would also need to take into account the impact on conventional small businesses, as well as non-residents that incur GST costs but do not otherwise make supplies connected with Australia.

³⁴ Based on the Rand to Australian dollar exchange rate in April 2016.

³⁵ South African Revenue Service website (<http://www.sars.gov.za/TaxTypes/VAT/Pages/default.aspx>). The mandatory registration threshold for South African VAT is Rand 1 million (approximately \$89,000).

Increasing the adjustment threshold for change in creditable purpose

The complexity of administering creditable purpose of acquisitions and importations in the sharing economy may be avoided altogether by increasing the adjustment threshold for change in creditable purpose.

In light of the rise of the sharing economy, it may be worthwhile revisiting the Board of Taxation's recommendation that amendments should be made to the GST provisions relating to adjustments for change in use by providing higher thresholds and fewer and shorter adjustment periods.³⁶ The example provided in the Board of Taxation's recommendation was for adjustment periods of 2 years for acquisitions less than \$100,000 and 5 years for those over \$100,000.

Deeming platform operators to be the supplier

The administrative burden and compliance costs of registering and then collecting GST from thousands of suppliers in the sharing economy may be streamlined by deeming platform operators be the supplier and making them responsible for remitting the GST payable.

Such a measure, if practically workable, would have significant efficiencies given that the platform operators already have a key role in facilitating payments in the sharing economy and have access to the transaction and financial information on the online platform.

Such a measure would be consistent with the approach taken in provisions (proposed Subdivision 84-B of the GST Act) that were to be introduced as part of the changes imposing GST on digital products and other offshore intangible supplies ("inbound intangible consumer supplies"). Proposed Subdivision 84-B deemed the operator of an "electronic distribution platform" (e.g. an online store or portal) in certain circumstances to be responsible for the GST payable instead of the entity making the underlying supply (e.g. the app developer).³⁷

There is risk in such a measure, given that it relies on compliance of the platform operator - that may be located overseas. However, collecting tax from one taxpayer is more efficient than collecting tax from thousands. Further, the collection of taxes by platform operators is not unprecedented and may in fact be welcomed by platform operators – for example, Airbnb has reached agreements to collect tourism and occupancy taxes with cities and other jurisdictions around the world.³⁸

Does anything need to be done?

It could also be argued that the GST law is sufficiently flexible and equipped to deal with the impact of collaborative consumption, and already does so effectively.

³⁶ Recommendation 4 in the Board of Taxation's 'Review of the Legal Framework for the Administration of the Goods and Services Tax', December 2008. This recommendation was initially supported by the (then Labour) Government in 2009, with the intention that the measure would be implemented and take effect from 1 July 2010. However in 2013, the Government announced that this recommendation would no longer proceed.

³⁷ These changes were to be introduced by the *Tax and Superannuation Laws Amendment (2016 Measures No. 1) Bill 2016*. That Bill lapsed as a result of the proroguing of parliament on 15 April 2016.

³⁸ A. Griswold, 'Why Airbnb Desperately Wants to Pay Hotel Taxes - And why some cities won't let it.', Slate, 13 February 2015.

C. Rodriguez, 'Airbnb Pays Paris \$1.3 Million in Taxes And the Hotel Industry is Freaking Out', Forbes, 5 February 2016.

The application of existing principles and notions of enterprise will always depend upon the particular circumstances of the taxpayer. This is reflected in the Commissioner's online guidance note on the sharing economy. For now, these principles and the Commissioner's online guidance may be sufficient to inform suppliers in the sharing economy as to their GST obligations. However, further guidance from the Commissioner would likely be welcomed by most taxpayers.

It would also be expected that the Courts will, over time, inform us as to how existing principles apply to the sharing economy.

In any case, like many small businesses, suppliers that do carry on an enterprise in the sharing economy may avail themselves of the current GST registration turnover threshold and choose not to enter the GST system to simplify their tax affairs.

6. **Conclusion**

Collaborative consumption is an economic and social phenomenon that brings challenges to the GST system. In particular, the sharing economy will place stress on aspects of the GST system and the administration of the GST law.

The application and interpretation of GST principles must evolve with the sharing economy, as the models in the sharing economy themselves evolve. This will be particularly important as the economic contribution and importance of collaborative consumption continues to grow.

Changes to the GST law may be required to address collaborative consumption, however any such changes would need to be carefully examined and undertaken with consultation with stakeholders in the sharing and conventional economies. In the meantime, the Commissioner, taxpayers, and other stakeholders must continue to engage with one another regarding application of the GST law to collaborative consumption.