

27 September 2019

Treasury  
Langton Crescent  
PARKES ACT 2600

By email: [MiscAmendments@treasury.gov.au](mailto:MiscAmendments@treasury.gov.au)

Dear Sir/Madam

### Miscellaneous Amendments to Treasury Portfolio Laws 2019

1 The Taxation Committee of the Business Law Section of the Law Council of Australia (the **Committee**) welcomes the opportunity of responding to the Treasury consultation on the 'Miscellaneous amendments to Treasury portfolio laws 2019' package of measures that was released for comment on 6 September 2019.

#### *The definition of 'taxi' for fringe benefit tax (FBT) purposes*

- 2 The Committee's submission concerns only the proposed amendment to the definition of 'taxi' in the *Fringe Benefits Tax Assessment Act 1986 (FBT Act)* which, in the Committee's view correctly, is being made to resolve administrative difficulties with the former definition which resulted from ride sharing providers entering into the market. Taxpayers were left in the ridiculous position of a ride sharing service constituting a 'taxi' for GST purposes<sup>1</sup> but not a 'taxi' for FBT purposes (in the view of the Australian Taxation Office (**ATO**)).
- 3 Paragraph 1.63 of the Exposure Draft Explanatory Memorandum, reflecting Item 70 in the Exposure Draft Legislation, provides that this amendment applies in relation to the provision of a fringe benefit on or after the day of Royal Assent.
- 4 With respect, given that the purpose of the amendment is to correct an anomaly<sup>2</sup> with the definition of a taxi, the Committee see no reason why the effective date of the amendment cannot be made retrospective and apply to FBT years starting on 1 April 2014 and later FBT years. This makes the amendment retrospective but only as far back as the FBT amendment period extends.

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<sup>1</sup> As established by the Federal Court in *Uber B.V. v FCT* [2017] FCA 110 by reference to the definition of "taxi travel" in s.144-5(1) of the *A New Tax System (Goods and Services) Act 1999*.

<sup>2</sup> See comments at paras 1.61 and 1.62 of the Exposure Draft Explanatory Memorandum, referring to a "highly contentious" interpretation issue, and the legislative change being one that "preserves the existing policy". Many practitioners remain of the view that ride sharing arrangements are within the existing definition, notwithstanding the website guidance published by the ATO.

- 5 The other amendment to the FBT Act contained in the proposed measures is expressed to be retrospective on this basis<sup>3</sup> and the Committee see no policy basis for distinguishing the two.
- 6 A retrospective amendment would avoid any confusion with how the ATO might be required to apply the relevant FBT provisions in the period prior to the amendment being made. The issue was the subject of a long consultation process with the ATO, with the ATO ultimately forming the view that has led to the proposed changes and updating guidance on their website in early July 2019.
- 7 Thank you again for the opportunity, and the additional time afforded to the Committee, to prepare this submission. Should you wish to discuss further any aspects of the submission please do not hesitate to contact Clint Harding, Chair of the Taxation Committee ([charding@abl.com.au](mailto:charding@abl.com.au) or 02 9226 7236).

Yours Sincerely,



**Rebecca Maslen-Stannage**  
**Chair, Business Law Section**

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<sup>3</sup> See paragraph 168 of the Exposure Draft Explanatory Memorandum and Item 70 of the Exposure Draft Legislation.