

## **IMPACT OF TECHNOLOGICAL AND OTHER CHANGE ON THE FUTURE OF WORK AND WORKERS IN NEW SOUTH WALES**

### **Question 1 (page 46 of the Transcript)**

The CHAIR: Without identifying any particular taxpayer, in the past 12 months have you proactively approached any of these platforms or anything that remotely resembles a gig economy to notify them that they might have a liability under payroll tax?

Mr SMYTHE: That is a question I will need to take on notice. Because I am not personally aware of it, I am not able to answer the question.

### **Question 1 Response:**

In the last 12 months, Revenue NSW has commenced investigations into three groups, comprising 13 entities in total, considered to operate in the gig economy.

### **Question 2 (page 49 of the Transcript)**

The CHAIR: I appreciate that, Mr Johnston. I accept that you take your responsibilities under the tax law seriously, as does all of Revenue NSW, which you should be complemented for as well, particularly the statutory secrecy provisions outside of parliamentary settings. But it is on the public record that you did investigate Foodora, you did issue them with a liability, and they did leave without paying it. At the time we learnt about the Foodora investigation we also discovered that two other investigations were underway. We learnt that two years ago. I am not asking you to identify the taxpayer, but I am asking you to identify two things: Are those investigations complete and, if so, what were the outcomes?

Mr JOHNSTON: I will have to take that on notice and come back to the Committee.

### **Question 2 Response:**

The impact of COVID-19, complex tax technical issues and large volumes of customer data delayed the finalisation of the two investigations.

One investigation was completed in February 2021 and assessments issued for a significant amount of additional payroll tax.

The second investigation is currently being completed and Revenue NSW expects to issue assessments for additional payroll tax by the end of April 2021.

### **Question 3 (page 53-54 of the Transcript)**

The CHAIR: And, to be fair, you pretty well are new to the job, so I understand that. Can I ask what I think will be my final question—let's see? Equally one point that the Victorian revenue office makes about a difference in law is that they say their Act extends their obligation:

... around payroll tax by providing that businesses are 'taken to be employers' when they engage independent contractors under 'relevant contracts', which are defined to include certain arrangements for the supply of services.

All contracts for service are considered relevant contracts unless an exemption applies. Effectively this means that, unless an independent contractor fits within an exception, they are treated the same as an employee for the purpose of payroll tax.

That is different to how we do it, is it not?

Mr SMYTHE: It is similar.

The CHAIR: But there are differences.

Mr SMYTHE: It is largely similar. Actually, I believe those, without having the two Acts before me, the description you just gave outlines the way that we would look at it as well.

The CHAIR: Okay.

Mr SMYTHE: Hence—sorry.

The CHAIR: You can conclude.

Mr SMYTHE: Hence the legislative exemptions, so providing services to the general public and whatnot.

The CHAIR: On notice, is it possible that you can provide us with a bit of a comparison between how the Victorian obligations work versus ours and whether they are harmonised? I ask because you do make a good point about the need for harmony, particularly between those two States. It would be helpful if we just get some insight as to the similarities and differences, if there are any.

Mr JOHNSTON: Yes. We can take that on notice.

### **Question 3 Response:**

The contractor provisions in the *Payroll Tax Act 2007 (NSW)* are harmonised with those in the *Payroll Tax act 2007 (Vic)*. Therefore, the provisions are the same, and interpreted and implemented in the same way.

It is noted that the Hon. Daniel Mookhey said that in Victoria:

“All contracts for service are considered relevant contracts unless an exemption applies. Effectively this means that, unless an independent contractor fits within an exception, they are treated the same as an employee for the purpose of payroll tax”.

That is how Revenue NSW also administers the contractor provisions in NSW. However, one amendment to the above statement is that unless a contractor fits within the exemption, they are a “deemed employee” and therefore treated the same as an employee for the purposes of payroll tax.