

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

18 OCTOBER 2021

Question 1 (Transcript p. 17)

The CHAIR: If you are ever tempted to adopt our SO 52 framework as the basis of your audit program, let us know. I am glad we could be of some assistance. But to be clear, you have completed nine audits and have commenced 13 more since?

Mr JOHNSTON: There were 13 in train before. There are currently 13 in train, and they have been for a period of time. My response to the question on notice previously quoted that same number.

The CHAIR: Of those nine, have any of them led to the issuance of any additional notices of assessment for unpaid payroll tax?

Mr JOHNSTON: I would have to take that on notice, just to be clear in terms of where they were based on the timing of my response. But there has been issues of assessment provided [disorder].

Question 1 Response:

Of the 9 payroll tax investigations completed, Revenue NSW has issued notices of assessment for unpaid tax to 3 customers, totalling \$84,560,612.97 (including interest and penalty).

Question 2 (Transcript p. 18)

The CHAIR: On notice, can you provide us with the latest information you have about the status of this particular dispute, especially if it is now surfacing in tribunals and/or Supreme Court matters?

Mr SMYTHE: Yes.

Question 2 Response:

Uber lodged an objection to the Notices of Assessment on 26 April 2021. The objection was disallowed on 31 August 2021. Uber has since filed an appeal with the NSW Supreme Court.

Question 3 (Transcript p. 19)

The CHAIR: So I am not too far off. Bear in mind that if this audit covers two years, which is 2018-19 and 2019-20, if it resulted in an \$81.5 million assessment over two years, I can infer—this is not exact, but let us just be conservative here—that it is fifty-fifty per year. Although, it could be higher in some years or lower in the next. Assuming it is \$40 million per year, that is 20 per cent of your compliance activities arising from one audit. Is this the biggest variation to the payroll tax assessments you have issued as a result of an audit in the last five years?

Mr JOHNSTON: It is a very good question, Mr Mookhey, which I could not answer on the spot. It is a significant—

Mr SMYTHE: [Disorder].

The CHAIR: Have you ever issued a notice of assessment for more than this as a result of an audit?

Mr SMYTHE: Can you hear me?

The CHAIR: Yes.

Mr SMYTHE: My apologies. I was trying to answer. The first thing, we would need to take on notice. I do not have the details here at the moment as to whether or not the assessment that you are referring to was in fact just for two years. Under our legislation, when we are undertaking audit activity, we will look back up to five years. But one of the interesting things with payroll tax is the position that a particular taxpayer or group may find themselves in one year may change from year to year depending on a change in the arrangements or contractual relationships, particularly with contractors.

The CHAIR: I agree with those caveats. But let's even accept that it is \$81.5 million over five years, which I think is the statute of limitations or thereabouts.

Mr JOHNSTON: That is right.

The CHAIR: That is still a lot of money per year. That is more than \$15 million per year, so it is close to 10 per cent of your annual collections, even if you want to use the conservative scenario. Would you agree that this is a pretty big correction for a taxpayer to receive?

Mr JOHNSTON: Yes, absolutely. It is a significant assessment and a very large correction, as you described. Whether it is our largest, I could not speak to.

The CHAIR: If you could, on notice, that would be helpful. But can you be clear, is this just the rideshare component of Uber's activities or does it cover Uber Eats as well?

Mr SMYTHE: I will take that on notice.

Question 3 Response:

Notices of Assessment were issued to Uber covering 6 years, for the financial years ending 30 June 2015 to 30 June 2020.

The notices of assessment issued to Uber are the highest amount identified as a result of a payroll tax audit over the last five years.

Revenue NSW's investigation into Uber reviewed both the rideshare business and the food delivery business, Uber Eats. Payments made by Uber to rideshare drivers and food delivery workers were found to be made under relevant contracts. However, payments to the food delivery workers were found to be wholly exempt as the services provided were ancillary to the conveyance of goods (refer to section 32(2)(d) of the *Payroll Tax Act 2007*). As such, the Notices of Assessment only included payroll tax on omitted payments to rideshare drivers and did not include any payments made to food delivery workers.

Question 4 (Transcript p. 20)

The CHAIR: Can I just put it to you that you considered the drivers to be contractors or employees for the purposes of the payroll tax?

Mr JOHNSTON: Again, I appreciate that this probably does feel like we are being evasive, but I will confirm that on notice.

Mr SMYTHE: I believe that would be a fair assumption, subject to confirmation.

The CHAIR: So we can proceed on the next set of questions on the basis that that is the conclusion that you reached?

Mr JOHNSTON: Which we will confirm

Question 4 Response:

Revenue NSW's investigation determined that rideshare drivers were contractors of Uber, for payroll tax purposes.

Question 5 (Transcript p. 20)

The CHAIR: Is it the case that the complexity is added to by each taxpayer changing their arrangements year to year as well? It is not just new platforms arriving with new business models. Each platform also changes its business model relatively frequently. Would you agree?

Mr JOHNSTON: Yes. It is not static. One year's assessment may be different to the following year's because of business models changing. The CHAIR: I am going to pass to my colleagues now.

Mr SMYTHE: My apologies, Mr Mookhey. If I could just add one thing in support of the chief commissioner—

The CHAIR: Sure, Mr Smythe.

Mr SMYTHE: The challenges that we face here in New South Wales are not only the same challenges faced by all of the other jurisdictions around the country but, as I know you are aware, similar challenges are faced right around the world [audio malfunction] trying to deal with this rapidly changing [audio malfunction] fair work decisions in the United Kingdom, similar issues around [audio malfunction] in California [audio malfunction].

The CHAIR: I am really disappointed, Commissioner Smythe, but you are coming through intermittently. It is going to be very difficult for Hansard to record your answer. I do not know whether you are in a position to change your microphone or not, but we are hearing every second word. On notice, can you provide us with the additional detail that you wish to refer to there? Thank you. Mr Smythe has indicated "yes" in the absence of his audio working properly.

Question 5 Response:

To fill in the gaps during the audio malfunction, please see wording in red:

*'The challenges that we face here in New South Wales are not only the same challenges faced by all of the other jurisdictions around the country but, as I know you are aware, similar challenges are faced right around the world with **regulatory authorities** trying to deal with this rapidly changing **environment, including** fair work decisions in the United Kingdom, similar issues around **employers and employees** in California **and elsewhere**.*

Question 6 (Transcript p. 21-22)

The Hon. ADAM SEARLE: Could I ask this question then. I think this was touched on in your submission. Do you have any data or any strong appreciation of how many workers—which is a term I use to cover everybody from whom you collect payroll tax—are covered by the current payroll tax regime? How many of those are employees and how many are other kinds of workers? Do you have a sense of that?

Mr SMYTHE: I do not believe that is a level of data that we collect. One of the issues around that being the types of payments that can be subject to payroll tax can at times include payments to directors, for example. It is not something that, to the best of my knowledge, we have a level of detail that we have previously collected.

The CHAIR: But there are 52,000 businesses in New South Wales registered for payroll tax on an annual basis or thereabouts?

Mr JOHNSTON: Yes, that is correct.

The CHAIR: That is out of a pool of generally 750,000 businesses in New South Wales, according to other figures.

Mr JOHNSTON: That sounds about right. The CHAIR: We know how much the wages are that are covered because that is how much we collect. Is that fair?

Mr JOHNSTON: Yes.

The CHAIR: You would have some data on employees. Having read a lot of your reports, Mr Searle's question—you do have some data. You might not have it in an aggregate form, but you would have—

Mr SMYTHE: We have access to significant data from other jurisdictions, including the Australian Taxation Office [ATO]. We utilise that for our assessments and our compliance program. I think both of us took the question from Mr Searle as an aggregate view, and it is not something that we naturally—

The CHAIR: Are we taxing our friendship if we were to ask you to provide some top level numbers on notice?

Mr JOHNSTON: I am happy to take that on notice and see what we can do to provide support to the Committee.

The Hon. ADAM SEARLE: Thank you for that. In terms of payments to directors, obviously some directors are what you might call working directors, for want of a better phrase. They are working in the business and they are, for all intents and purposes, an employee of the business. It is not inappropriate that you would be collecting payroll tax in respect of those workers in that situation. So yes, taking Mr Mookhey's suggestion, if you could interrogate the data you have got to provide us some answers on notice, that would be very useful.

Mr JOHNSTON: Yes, we will [disorder].

Question 6 Response:

Payroll tax is a self-assessed tax on the wages paid or payable by an employer to employees, including directors and contractors, regardless of the number of employees a business engages. Employers are not required to disclose the number of employees and Revenue NSW does not collect data on the number of employees.

Question 7 (Transcript p. 22)

The CHAIR: Can you provide us with an update as to whether or not you shared with those other jurisdictions the result of your decision to issue the Uber-related group of companies with a notice of assessment?

Mr JOHNSTON: I would have to take that on notice unless Commissioner Smythe has a response. I am not sure.

Mr SMYTHE: In relation to your specifics, Mr Mookhey, we take that on notice.

Question 7 Response:

Specific details of Revenue NSW's investigation into Uber, and the associated Notices of Assessment, have not been shared with other Australian jurisdictions. However, Revenue NSW has provided regular updates on the issues identified during the audit to all jurisdictions via the interjurisdictional compliance working group.

Question 8 (Transcript p. 22)

The CHAIR: At various times in the past drivers have been contracted directly with the Netherlands outfit. I think that has changed, to be fair. It may have been covered, particularly if you are looking over a five year period of time. I am wondering whether or not, as a result of the decision to engage drivers with the Netherlands outfit—particularly when Uber was setting up—that may have resulted in an under-declaration wages or, equally, an incorrect assessment as to their status. Are you able to shed any light on that?

Mr SMYTHE: To the extent that we would have any knowledge of that, that is something that we would need to take on notice. I can say that I am not aware of any international aspects related to payroll tax in recent times having a negative impact on our ability to collect.

Question 8 Response:

As a technical matter under the payroll tax legislation, the issue of whether drivers were engaged by overseas entities or Australian entities does not impact the amount of taxable wages paid by a group (Uber or otherwise) to rideshare drivers, nor does it influence the question of whether the drivers are contractors or employees. It only determines which entity in a particular group of companies is liable for payroll tax.

Question 9 (Transcript p. 23)

The CHAIR: Are those tools in the Tax Administration Act fit for purpose or is there a suite of additional tools that exist in other jurisdictions in Australia or elsewhere that might be of assistance that we should consider recommending we put into the Tax Administration Act?

Mr SMYTHE: I believe that the tools we have at the moment are good, but we are constantly reviewing them, as we are constantly reviewing the powers that are exercised by authorities both within Australia and overseas. There are some issues with attempting to enforce tax debts or to try to attain additional information from jurisdictions overseas. While I have dealt with those in many cases—viewing court decisions, for example—it is not something that I have had to deal with directly in recent years.

The CHAIR: Chief Commissioner, do you wish to add anything to that?

Mr JOHNSTON: No, that was a fair response. There is nothing clearly obvious for us to suggest from experience with other jurisdictions that will make a fundamental difference to what we are trying to do.

The CHAIR: If you wish to provide any further detail on notice, please do. W

Question 9 Response:

In addition to improving the accessibility of Revenue NSW to taxpayers and their advisors, we aim to keep the administration legislation modern and fit for purpose at all times. With this in mind, there is a current focus on modernising our penalty regime, both as to the quantity of financial penalties, and the strengthening of consequences for attempts to mislead or provide false information to the Chief Commissioner.

While the vast majority of taxpayers are genuine and upfront in their dealings with Revenue NSW, we do need a robust regime that disincentivises those unwilling to contribute their fair share.

Legislation is currently before Parliament that contains provisions aimed at updating these provisions.

Question 10 (Transcript p. 23)

The CHAIR: Equally, what about Ola? Again, have you completed your investigation into them or have you had investigation into them?

Mr JOHNSTON: I would have to take that on notice.

Question 10 Response:

Revenue NSW is planning to investigate Ola.

Question 11 (Transcript p. 23)

The CHAIR: Chief Commissioner or Commissioner, can you describe how you audit for compliance with the passenger service levy?

Mr JOHNSTON: The passenger service levy—we actually do not conduct the compliance effort for that. That falls to the Point to Point Transport Commissioner. Our function for this is the collection of the levy via direct debit, customer bank accounts and debt recovery. We have a very limited functioning in this space. The CHAIR: Have you had to have any debt recovery actions in respect to that levy?

Mr JOHNSTON: I would have to take that on notice as to the specifics. I was more prepared for payroll tax discussions today.

The CHAIR: To be fair, Mr Shoebridge was asking these questions this morning so I felt that if we have you here, we should put them to you too. Are you in a position to tell us how much you have collected in the last three months?

Mr JOHNSTON: I would have to take that on notice.

The CHAIR: Fair enough. Equally, we heard about an underpayment by GM Cabs. Have you recovered or collected that money?

Mr JOHNSTON: I would have to take that on notice as well.

The CHAIR: Do you maintain [inaudible] collection for the next year?

Mr JOHNSTON: We would, yes. What that is, I have not got that in front of me [disorder].

The CHAIR: Can you take that on notice?

Mr JOHNSTON: Yes.

Question 11 Response:

Revenue NSW undertakes debt recovery actions in respect to the Passenger Service Levy.

Details on the amount of Passenger Service Levy collected quarterly is available on Revenue NSW's website. The data provided is based on the total net levy received as at the end of each quarter and is available since inception of the levy. For the quarter, 1 July 2021 to 30 September 2021, Revenue NSW collected \$11,543,156.

Regarding GM Cabs, Revenue NSW is unable to comment on individual taxpayer matters due to the secrecy provisions of the *Taxation Administration Act 1996*.

Revenue NSW is not responsible for forecasting collection for the Passenger Service Levy.