

20 February 2018

TAXATION LIABILITIES FOR UNREGULATED ACCOMMODATION

In response to recent media coverage relating to the capital gains tax liability of unregulated accommodation in the “sharing” economy, TAA wishes to update members on the status of the taxation obligations of unregulated accommodation properties.

For the past two years through our policy development and advocacy activities, TAA has been the lead voice in the accommodation sector on inequities in the taxation system for unregulated accommodation providers. TAA has made comprehensive formal submissions to the Commonwealth Government, and has had a number of meetings with the Australian Tax Office (ATO) and with senior members of the Commonwealth Government and the Opposition on this issue.

In summary, while TAA supports genuine sharing and hosted accommodation, we are concerned by commercial operators using online platforms to offer un-hosted residential properties exclusively for short-term accommodation, with no transparency. These residential properties compete directly with hotels, motels and serviced apartments but largely operate in an only partially defined regulatory environment. However, two areas where the regulatory and legislative obligations of these “commercial-residential” short-stay accommodation operators have become clearer due to the actions of the ATO are capital gains tax and income tax.

TAA continues to advocate for the equitable taxation requirements for all short-term accommodation operators, regardless of whether the stay is in a regulated hotel, motel or serviced apartment or in a residential property.

Income Tax

Official guidance from the Australian Tax Office is that ‘If you rent out all or part of your house or unit, the payments you received are assessable income.’¹ Therefore, income derived from the short-term letting of unregulated accommodation must be declared to the ATO for the purposes of remitting the appropriate level of income tax. The ATO has advised TAA that through its existing data-matching capabilities and access to electronic payment records, financial transactions and bank statements it is confident that it is collecting the appropriate level of income tax from unregulated accommodation.

Capital Gains Tax

As a background, residential properties are only exempt from capital gains tax liabilities where they are functioning as a primary residence and the primary residence has not been used to produce assessable income. Investment properties used for short-term accommodation are liable for capital gains tax.

¹ Australian Tax Office, 2016, *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/#1flamrentingoutaroomorawholehouseorunitd>

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Where a primary residence has been used to produce assessable income – such as through providing hosted or sharing accommodation – capital gains tax becomes liable and is calculated by determining the percentage of time a percentage of the property was used to generate assessable income.

Example: Chris purchases a three-bedroom inner city terrace in Sydney for \$1 million in January 2015. Chris uses one bedroom himself, and keeps the other two rooms available for short-term letting with an occupancy rate of 60%. When Chris sells for \$1.3 million in January 2017, he has made a capital gain of \$300,000. Two-thirds of the property has been used to produce assessable income 60% of the time Chris has owned it, and because Chris has held the asset for longer than a year he is also eligible for the 50% capital gains discount.

Chris' Capital Gains liability is therefore $\$300,000 \times 66\% \times 60\% \times 50\% = \$60,000$.

Given the 45% capital growth in residential housing markets across over the past five years² and that the annual turnover value of residential property is about \$300 billion³, maintenance of the current capital gains settings protects an important source of Commonwealth Government revenue.

Goods & Services Tax

Current guidance from the ATO is that renting or short-term letting a residential house or apartment is exempt from collecting and remitting GST, regardless of the occupation period. Conversely, short-term accommodation in hotels, motels, inns and boarding houses are liable for GST on all transactions. Members should be aware that while this implies a 10% cost-disadvantage for hotels and similar accommodation, it must be weighed against the ability for these businesses to claim GST credits on all business expenses. The ATO has expressed the preliminary view that, given the value of an ability to claim GST credits (particularly on new buildings), changing the GST legislation could have the capacity to incentivise unregulated accommodation.

Continued Advocacy relating to Taxation of Unregulated Accommodation

TAA, through its state branches, continues to advocate for increased transparency of unregulated accommodation supply and occupancy through mandatory registration of residential properties available for short-term let. A mandatory registration system recording properties available for short-term let, the frequency with which those properties are booked and the proportion of each property available for short-term let would make the enforcement of current taxation obligations much simpler.

Mandatory short-term letting registration systems have been implemented in San Francisco, New Orleans, Miami, London, Paris, Amsterdam, Vancouver, Montreal, Toronto, Berlin and Dublin.

More Information

If you have questions about the information provided in this overview, or would like further information, please email: taa@tourismaccommodation.com.au.

² <http://www.globalpropertyguide.com/Pacific/Australia/price-change-5-years>

³ <http://www.afr.com/real-estate/housing-turnover-hits-293b-but-the-number-of-sales-drops-20160301-gn7tl5>