

CPA Australia Podcast – Episode 17 - Transcript

Black Economy Taskforce

INTRO: Hello and welcome to the CPA Australia podcast. Your source for business leadership and public practice accounting information.

PAUL: Well good morning and welcome to this week's podcast. My name is Paul Drum. I'm the head of policy at CPA Australia. And today I'm joined by Michael Andrew the Chair of the Board of Taxation and the Chair of the Black Economy Task Force. Good morning Michael.

MICHAEL: Thank you for having me Paul.

PAUL: Well thank you for coming Michael and I'm as I said we're talking about the Black Economy Task Force at the moment. The government has released your interim report and it's open for comment. You've been recently undertaking a national road show but perhaps before we go into that perhaps we could just talk about you could give us an idea about what is the Black Economy and what is the actual problem. What have you been tasked to do here?

MICHAEL: The Black Economy essentially Paul is people who operate outside the regulatory and tax system and the government became very concerned about the competitive landscape where a number of people were basically circumventing particularly tax laws and gaining an unfair commercial advantage. Equally we saw a rapid decline in revenue in certain areas and we're actually seeing a trend as the economy changes its nature to more services based gig type domestic services economy and acceleration in the Black Economy.

PAUL: Sure. So you know certainly the government has and the prior government they've had a number of issues regarding budget repair. Some would say that this is the next step by the government of turning over every rock to look for every available dollar. And you know certainly I think there is an element of that but the extent of the Black Economy I think it certainly surprised me some of the things we found in the interim report. Perhaps if we start off one of the things that stood out to me was what seems to be the failure of the Australian Business Number System and the misuse of that. So could we talk about the ABN and what the findings have been so far on them.

MICHAEL: Well I think you've hit the nail on the head. Effectively the ABN system is not working as a result of which it's being issue by several government agencies there's very little control around it. And we have multiple ABNs which are very hard to verify. What that leads to situations where we have 3.5 million ABNs who have never lodged a tax statement or a tax return. We issue 180,000 ABNs last year to people on tourist visas who are not allowed to have an ABN. We issued 120,000 ABNs to apprentices who are not allowed to have an ABN. We're seeing secretaries and receptionists out there with a ABNs at the moment. So we have to basically work to put more integrity and governance around the issuing ABNs and make sure that they're something that is valued not something which is just automatically issued.

PAUL: OK. So we could just explore that a bit more because I guess the issue is the ease at which they're issued I guess it raises integrity issues. I'm not sure I'd be interested to see what the final report recommends in that regard but certainly one of the stories that that you mentioned recently at an event I was at was the the most quoted ABN in Australia and the misuse of other people's ABNs. Perhaps could you tell us about that Michael.

MICHAEL: Yes well it's a story that came out of the Northern Territory Paul where I think we found out that more than 40 percent of ABNs quoted in the Northern Territory were Bunnings and

when you start looking at that of course every tradesman goes to Bunnings they get an invoice, the ABNs up top, so people ask for an invoice or a valid receipt and they get the name of the company but they then get an ABN of someone else such as Bunnings the result of which you can't trace then where the money really went. And so part of the solutions we have here Paul is to make sure that we can verify ABNs on a real time basis and actually know that I'm dealing with Paul Drum Plumbing not Paul Drum and an ABN which is fictitious.

PAUL: Sure. Just regarding the report and the extent of the report and what you're looking at, the report doesn't look at what we'd call I guess more underworld-type criminal activities. It doesn't look at for example illegal tobacco, chop chop as it's known in the in the market. Meth, ice you know that kind of more underworld type activity. Can you talk a bit about that, about the extent to the terms of reference of why that would be.

MICHAEL: Essentially we started off as a tax-based project which then sort of expanded look at Fair Work, immigration issues increasing the customers issue so we are actually straying into a number of those areas as they come to us. So we do actually have a project on illegal tobacco and chop chop in particular which actually is about \$4 billion a year and basically costing the government about \$1.6 billion in excise so you'll hear more from us on that. We also have a project on illegal gambling at the moment which is costing the economy somewhere around \$2.5 billion a year. In terms of drugs, we are working with the National Crime Intelligence Commission AFP Border Force. They themselves seem to have a relatively good grasp of the subject. More so than we'll ever have but what we are trying to do is bring in some policy recommendations which would make their job much easier.

PAUL: Now Michael one of the other things is cash payments. So cash payments of ostensibly what would be wages. In one case. Can you talk a bit about that what you're finding with that. Are there particular trends that you've seen the task force found in industries or sectors. And what is your recommendation your interim recommendation on that.

MICHAEL: We've seen very, very substantial cash payments made at various levels the most simplest it's the tradesman being forced to give a discount or offering a discount for cash. The shopkeeper who is running two tools or it's basically paying people cash who want to maintain their welfare, their visa status or avoid their child maintenance. That is widespread in certain areas particularly as I said with the services based economy, security industry, hospitality cleaning, couriers, personal trainers, hairdressing and nail salons for example. So one of the underlying macro-strategies here is to shift from a cash-based economy into a non-cash economy by way of offering incentives and disincentives for people to operate in the cash system.

PAUL: And what about labour hire. I mean that's been a big focus on that and I think some of the some of the comments in the report on that are quite startling. Can we talk about that?.

MICHAEL: Essentially there are two things happening I think Paul. The macro level first one is Australia has labour shortages in certain segments and certain geographies. What that does is open up an opportunity for organized crime to take a lot of illegal labour into Australia, offer substantial discounts because they pay cash or below award wages substantially, to pick fruit or to basically operate in security areas or where there is a major issue like the Commonwealth Games or the NDIS. You know there is huge demands put all of a sudden on the economy where we just don't have people to do it. So that's an area we have to basically look at. The second one is there's this fundamental change in the future of work and whether it's a shared economy with its domestic base services there's this huge shift from employment to contracting where we are actually seeing people now basically incorporate entities and operate as an independent contractor, avoid superannuation guarantee, payroll tax get lower tax rates and fundamentally there's very little regulatory framework

or governance around this.

PAUL: You mentioned contracting I mean this has been a grey area for many years as you'd appreciate I mean we don't have clear tests between employee / contractor. I mean I know the ATO to the best of their ability and within the laws as they currently exist they've got a little test you can do online say you can get an indication but it's not I guess it's not definitive. So I think that's that is an area a fertile area for discussion and whether something should be done there. So what have you what have you said about that so far what are your thoughts on that at the moment about a bright-line test for that. And would if there was such a thing would it create other problems.

MICHAEL: That's a key subject for the task force. Paul and I think at one end it's very clear that contractors who supply their own tools, operate for multiple customers, should be able to operate as legitimate contractor. Equally at the other end when there's clear employees they are obligated to withhold, to pay their superannuation guarantee and payroll tax so there is this grey area in the middle where frankly a number of the existing laws are being ignored. But we have to find some solutions so a bright-line test would be a good thought. The other way of looking at this is to say how can we equalize the basis of those sort of grey contractors. So should they be liable for superannuation guarantee. Should they be liable for payroll tax. In other words take the model that we've used in Canada and in the UK. So there's really no economic difference to the way these people are actually taxed. Then the third item is to say well we need at least a reporting regime in place so when you're looking particularly at the shared services model, the Airtaskers the Ubers, the Sidekickers, you know they've got an obligation to provide the information to the regulatory authorities as to who they engaged and what they earned during the year.

PAUL: Well speaking of bright-line tests one of the other things that caught our attention was in respect of this hobby or business. Am I carrying on a business or is this still a hobby and it reminds me of the days of KW Ryan when I was a young undergraduate Michael and the badges of business and those cases from way back in the 1970s. Anyway, but here we are some 40 years later where we don't have bright-line tests on these things and certainly I think there is some upside to give clarity to the market, so you can decide when is your Sunday market activity or you're thinking of the more modern economy you might be something you're doing online, Internet gaming. Some of these things that could be the big thing of tomorrow. Where does it cross over from some hobby something you just do in your spare time to actually becoming a business. And you know perhaps there could be some clarity there.

MICHAEL: Yeah. It's one of the areas we have been looking at Paul and I start off on the same basis as you thinking a bright-line test say below \$5000 you're deemed to be a hobby above \$5000 there's a presumption that you're a business but then you can argue that you may not in your particular circumstances. When we actually come and talk to the people who are operating large technology platforms they would find that very, very difficult to enforce and provide the information. So we're more likely to land in the space that if you are basically operating through the shared economy through one of these business platforms such as an AirBnB, Deliveroo, then the presumption will be that that's business income and that income will then basically be reported to the ATO. It will appear on your portal. You will then be able to claim a tax deduction or argue that you're a hobby in those circumstances.

PAUL: OK well you know it just it struck me that you know in some other jurisdictions I'm thinking in particular of something I saw in a UK budget just a couple of years ago, not on the bright-line test but where in the UK they've said that they've brought in a rule to say look if you lease out your garage or you might lease out a room we're going to disregard your first 2000 quid from that operation. Have you thought of those types of things. De minimus or a carve out that you know the tax office would not be interested in it up to a certain amount.

MICHAEL: Yeah well we've thought about it and the one recommendation we are making for example is a lot of people in AirBnB and rental properties don't understand the capital gains tax consequences associated with leasing out one of their rooms or their facility. Now we're saying that's fine in principle but it's impossible to enforce. And it would be arduous for everyone to keep records accordingly. So as I said to the government we think you should actually modify the CGT rules to ensure that just because you're an AirBnB user, part of your domestic residence, you shouldn't be caught. But I don't think we're at the stage where we're going to exempt income which is taxable from being not within the framework of the tax system. Indeed, a lot of people actually worried about the non-commercial loss consequences of that.

PAUL: Of course. Of course then there's a very good point about the non-commercial losses and I must say you've gazumped me on my capital gains tax point. I was going to make that to you but you're well on top of it which is good to see now. Michael there are 35 recommendations in the initial report. The government has already adopted two of them, announced they are going to adopt two of them in the Federal Budget and one of them is in respect of the TPRS or the Taxpayer Payment Reporting System. Can we perhaps can I get you to talk a bit, tell us a bit about that about why the government has moved swiftly enmass who it applies to and what might happen next.

MICHAEL: Right. As you're aware the TPRS is reporting system which currently applies in the building construction sector between B2B transactions. That's proved to be very very successful in actually raising the level of tax compliance within that particular industry sector. When the ATO did a study last year of all the audits that they were doing to sectors stood out which were non-compliant - cleaning and couriers. So in the budget this year we basically added those two industries to the TPRS. As our work's gone on in the Black Economy the other areas that are looming large for us. First of all the security sector where we're seeing some very aberrant behaviour at the subcontractor level in particular. The second one is in the housing sector where we're seeing owner builders and the home improvement sector in particular gain a competitive advantage because they're not subject to the current TPRS. And when you actually talk to the insurance bodies and the Housing Industry Association, a multiple of their claim are coming from those particular sectors we're basically there's pretty shoddy work that's being done which ultimately is causing a great cost to themselves. So these are the sectors we're looking at in particular at the moment. There's also a view about the IT contracting sector where I'm surprised at the level of non-compliance at the moment. But I find this a little hard, intuitively, that people who basically operate online would actually believe that they can actually avoid the existing system so I'm yet to be convinced on that one. But there are others who have a very strong view that should be extended into this sector.

PAUL: Well look another thing that caught my attention I really couldn't let this opportunity go by Michael without covering this one, you know as a professional accounting member organization, a recent newspaper report referred to the need for a tax blitz on lawyers and accountants. And in that piece you were quoted as saying we need to get a lot tougher and tax agents are either assisting their clients to make fraudulent claims or are blind to the techniques and systems they use in the Black Economy. Can I get you to elaborate on that please?

MICHAEL: Yeah. Look Paul first of all we've looked at a number of egregious situations a lot of the Phoenix thing that's happening at the moment a lot of the structure of illegal labour hire which has basically been owned by organized crime. We've seen situations of significant money laundering occurring in some of the sectors looking for. Behind every single one of those there's an accountant or a lawyer which is basically orchestrating the action and particularly in what they call pre-insolvency consulting area there is a whole industry that's grown up of former liquidators and

receivers who are actually actively causing public companies to avert their debts which ultimately flows through to ATO and us as taxpayers or to the employees. There's a second category we've come across where a number of people, a number of agents have come to us to talk about the competition they have and it's well known in their areas that there are agents who are fraudulently making claims and in particular the ATO has more than 700 tax agents under review at the moment for basically falsifying I say or making up article claims. Then there's a third category Paul where frankly it's hard to believe that some of the people who are doing the tax returns at the moment for some of these organizations would not know the basis of the income and the assets that are actually being generated by their clients and where they relate to tax return, there's just a huge gap and you know obviously it would be unreasonable for every agent to have to understand that but there are some examples. I saw one yesterday, of a tobacconist who owned 17 investment properties, three Mercedes Benz, had two million dollars of cash in his safe and was returning \$30,000 dollars a year and his agent is his cousin. So you know there are situations like that which clearly are showing that people are not living up to their ethical responsibilities around that so it's like any profession, I don't single out lawyers and accountants. It's labour higher security. Unfortunately, there's a very bad segment which is giving the industry a very bad name and reputation the moment.

PAUL: I've noted also that you're speaking, you accepted our invitation to speak at CPA Congress later this year, which will be closer to the timing of your final report. And you've also been doing roadshows so we're looking forward to hearing about the final report later in the year. What have you found out since your interim report. What's really struck you in those roadshows that you've been running around the country.

MICHAEL: Well first thing I'd say is just how endemic the issue is. Everywhere you go everyone has a story to tell about their particular industry, their town, and some of the illegal operators that actually occur there particularly in rural Australia, you know I think where there are labour shortages. You know there are great margin pressure coming on to producers and farmers. There is a large amount of cash that occurs because there's lack of Internet connectivity, it's very hard to bank online and in these scenarios. So the cultural sector is one in particular we've had to pay some pretty close attention to and you would have seen in one of my articles recently, Paul, we've recently come across a phenomenon of overseas investors coming in buying crops for cash off straight off the farm and then using a van load of illegal workers to come and pick them and export them and therefore not going through the export controls, not contributing to the local licensing. We're working very hard to try and find a way in which we can certify legitimate labour hire firms. We're seeing an incredible number of Fair Work breaches right across Australia at the moment and some very disadvantaged people being exploited around this as well as those who are deliberately avoiding the rules. We are seeing in particular a tremendous support from the industry associations to clean this up because they are finding that their members are being considerably disadvantaged with the issue at the moment. There's a real sort of community outrage that it has been allowed to get to the situation that it has. I suppose the final thing I'd say is the lack of enforcement that's actually coming through is actually causing a few of these problems. And you know I'm sort of sympathetic, I'm not being critical of the tax office because they're resource bound and also I think they have taken the commercial view - let's try and settle as many of these audits as possible. Let's try and do this in a much more constructive form. And we're also seeing a lot of resources sucked into counter-terrorism which would normally be pursuing some of these things so we need to raise the visibility of the prosecutions and enforcement because that will soon get people's attention. So there are a number of things in our report that we're looking at around that at the moment.

PAUL: Well Michael the report's out, there's submissions due by the 31st of July. But I guess the bigger question is how could CPA Australia members help with the review. Certainly responding to the initial report the interim report is one way that was how could we how could our members help the task force in their ongoing inquiry.

MICHAEL: For some of the best submissions we've had are from accountants and some of your members who have said look we specialize in a particular industry segment or geographic region in which I operate. This is actually what's happening. You're members are at the coal face. They actually see what's happening. And they generally have some pretty practical ideas as to how you might go about addressing some of those particular issues. You know very good examples that have been brought to our attention about tap and go for example and the fact that tap and go defaults to credit so there's large merchant fees whereas if you can actually change that across to credit, cheque or savings, then the merchant is much more obliging to move from a cash-based restaurant to a non-cash based restaurant. How can you actually get about digital invoicing. For example, what sort of registration procedures exist for the mail and beauty segment for example. You know, how can we actually deal with this issue of contractors personal services income. What suggestions do you have around that. Those are like gold. When we actually receive that type of information.

PAUL: So Michael at the very highest level how would you fix this.

MICHAEL: Well Paul I think there are four or five things that need to be done. The first one is we have to hardwire government. Government has a lot of data at the moment but not matching it very very well. So that's a work stream. The second one is to say can we actually shift from a cash to a non-cash society where we can therefore monitor and measure people's activities so we have to provide incentives and disincentives for people to operate a cash model. Thirdly, there has to be a commercial consequence or a commercial outcome to this so we are looking at the supply chain, ethical sourcing and ways of actually certifying those reputable organizations doing the right thing so the market can select those things. Fourth how do you change behaviours? How do you actually tell people you're part of the problem? You're paying cash to your your nanny, your personal trainer, your gardener, your window cleaner, and how can we actually stop tradies offering discounts for cash and make it a socially undesirable issue and then the final thing is how do you look at enforcement and visibility to show people the consequences of what they do and do that in a very efficient way rather than having to go through the long court process as we have at the moment. And I think if we do those five things, well I'm very confident we're going to eliminate most of the opportunities for the Black Economy.

PAUL: Is Minister O'Dwyer excited about this?

MICHAEL: Minister O'Dwyer has been incredibly supportive. When I first took the concept to her, she said look this is far larger than tax and we really need to have a whole of government approach here. And I meet with her once a month, a Cabinet paper goes up once a month on progress to date. And it's quite likely that a number of the recommendations that we have will flow into my statement in December this year.

PAUL: Well Michael we could talk all day about the Black Economy task Force - it's very fertile ground and it's commendable the fist you've made of it, the task force. You put together a good group of people. Certainly the job's not done. It's not a new issue but I think some of the initial recommendations and findings are quite novel. And then addressing the opportunities, I guess that the digital economy provide to prevent the Black Economy but they also show the risks that the digital economy actually has opened up as well. So look thank you very much for joining us today and we look forward to engaging with you more, to seeing you at CPA Congress and and seeing what the final report brings. Thanks very much.

MICHAEL: Thanks Paul. Thank you for the opportunity today and I think when the CPA conference comes along I'll be able to do a lot more candid about some of the specific recommendations.

PAUL: Thanks again Michael.

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