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# UBER + GST !

The Federal Court on 17 February 2017, in its decision in *Uber B.V v Commissioner of Taxation [2017] FCA 110* agreed with the view of the Australian Taxation Office ("ATO") that an UberX service constituted a supply of "taxi travel" within the meaning of section 144-5(1) (as defined in section 195-1) of the *A New Tax System (Goods and Services Tax) Act 1999 (Cth)*.

The Court noted at the outset of the judgement:-

> *"At the heart of this proceeding is the question whether persons who are Uber drivers are required to be registered for GST purposes. The issue is one of statutory construction. Enterprises with a turnover of less than $75,000 do not need to register for GST but there is a special rule or exemption, created by s 144-5 in Pt 4-5(1) of the A New Tax System (Goods and Services Tax) Act 1999 (Cth) (the GST Act), which has the effect that taxi and limousine operators are required to be registered, regardless of turnover. That provision requires a person who is carrying on an enterprise to be registered for GST purposes "if, in carrying on your enterprise, you supply taxi travel" (s 144-5(1)). The phrase "taxi travel" is defined in s 195-1 of the GST Act as meaning "travel that involves transporting passengers, by taxi or limousine, for fares". In simple terms, the core issue is whether, in carrying on the enterprise of providing UberX services to passengers (who are known as "UberX Riders"), UberX drivers (who are known as "UberX Partners") supply "taxi travel" as defined. If so, they must register for GST purposes."*

Uber B.V. mounted many technical and nuanced arguments, including a list of items that distinguished UberX from taxis. However, the Court rejected those arguments in favour of a more general and practical approach stating:-

> *"I consider that there is particular force in the Commissioner's submission that, in construing the phrase "taxi travel", it is relevant to take into account the fact that the legislation is directed to persons who supply "taxi travel", who need to understand whether or not they are obliged to register for GST, notwithstanding that their income does not reach the general statutory threshold. This reinforces the desirability of construing the legislation in a practical and common sense way and to avoid an approach which is "unduly technical or overly meticulous and literal.""*

Accordingly, the Court held that UberX fell within the ambit of the GST legislation and as a supplier of "taxi travel" was not entitled to the $75,000 threshold.

The ATO has quickly noted that this decision affirmed the ATO's views on "ride sourcing" services. There are other significant taxation issues that need to be considered by those contemplating the provision of "taxi travel" through ride sourcing. The ATO has provided on its website extensive, practical and easy to read assistance (click here).

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**Victor Hamit**
**Wentworth Lawyers Pty Ltd**
Level 40
140 William Street
MELBOURNE VIC 3000

Tel: +61 3 9607 8380
Mobile +61 408 590 706

Email: vhamit@wentworthlawyers.com.au
Website: www.wentworthlawyers.com.au