



Centre for
International
Corporate Tax
Accountability
and Research

Estimating Uber's tax gap in Aotearoa

By Jason Ward
Principal Analyst
Centre for International Corporate Tax
Accountability and Research

E tū
STAND TALL

WORKERS FIRST
**FIRST
UNION**

Introduction

In July 2021, FIRST Union and E tū announced they were taking a class action case on behalf a group of Uber drivers, seeking a declaration that they were employees and not independent contractors. A report was released at the same time, based on a survey of almost a hundred 'gig' workers, highlighting they were regularly being paid below the minimum wage, lacked access to sick and annual leave, had no industrial voice and weak health and safety.

And, while many people are aware of Uber's exploitative labour practices, few realise that, alongside this, Uber's global tax structure is designed to deprive governments of much-needed tax revenue to fund schools, hospitals, roads, public transport and other essential services. This is true in New Zealand – as it is in countries around the world – and it impacts everyone.

Uber's global tax structure is an example of a much broader problem with multinationals short-changing global governments, including New Zealand, by shifting their taxable profits offshore. The business model of Uber and other 'platform' or 'gig' corporations also has the potential to drive down wages and working conditions for everyone.

The New Zealand Government must develop stronger regulation and enforcement mechanisms to make sure multinationals do not shirk the obligation to pay taxes and provide fair wages and working conditions, which support the community rather than merely extract and offshore profits.

With international initiatives under negotiation to ensure that multinationals pay their fair share, there has never been a better time for New Zealand to look at what can be done to ensure 'gig' firms like Uber are paying their fair share.

While Uber's opaque financial reporting in New Zealand provides limited information, estimates based on Uber's Australian operations suggest Uber may have avoided between \$6.4 – 12.8 million in New Zealand company taxes in 2020¹ alone. As Uber's business continues to grow, so will the impact of Uber's tax avoidance. Uber, based in San Francisco, has yet to report a profit at the global level, but clearly makes significant profits in many countries, New Zealand included.

Uber's global operations outside of the US and China are structured via the Netherlands and intentionally designed to avoid taxes and other obligations. Uber's top Dutch shell company pulled in global revenues of over US\$5.8 billion in 2019. However, Uber has set up a sophisticated "tax shelter" that may help Uber – if left unchallenged – avoid income tax payments in the Netherlands and around the world for decades to come.

Local companies – that pay fair wages and income, sales payroll taxes and other taxes that support infrastructure and public services – face a major competitive disadvantage against the Uber model. If left unchecked, this model will be replicated by other corporations, drive a race to the bottom that erodes working conditions and public services for everyone.

As Uber workers take legal action to be recognised as employees and not independent contractors, it is also time to challenge Uber's tax avoidance schemes.² Uber's business model, through the abuse of Dutch shell companies, undermines working conditions for all workers and deprives New Zealanders of crucial revenue needed to recover from the global pandemic and fund essential public services into the future.

How does Uber operate in New Zealand?

revenues from where they are earned to where they are taxed the least, or not taxed at all.

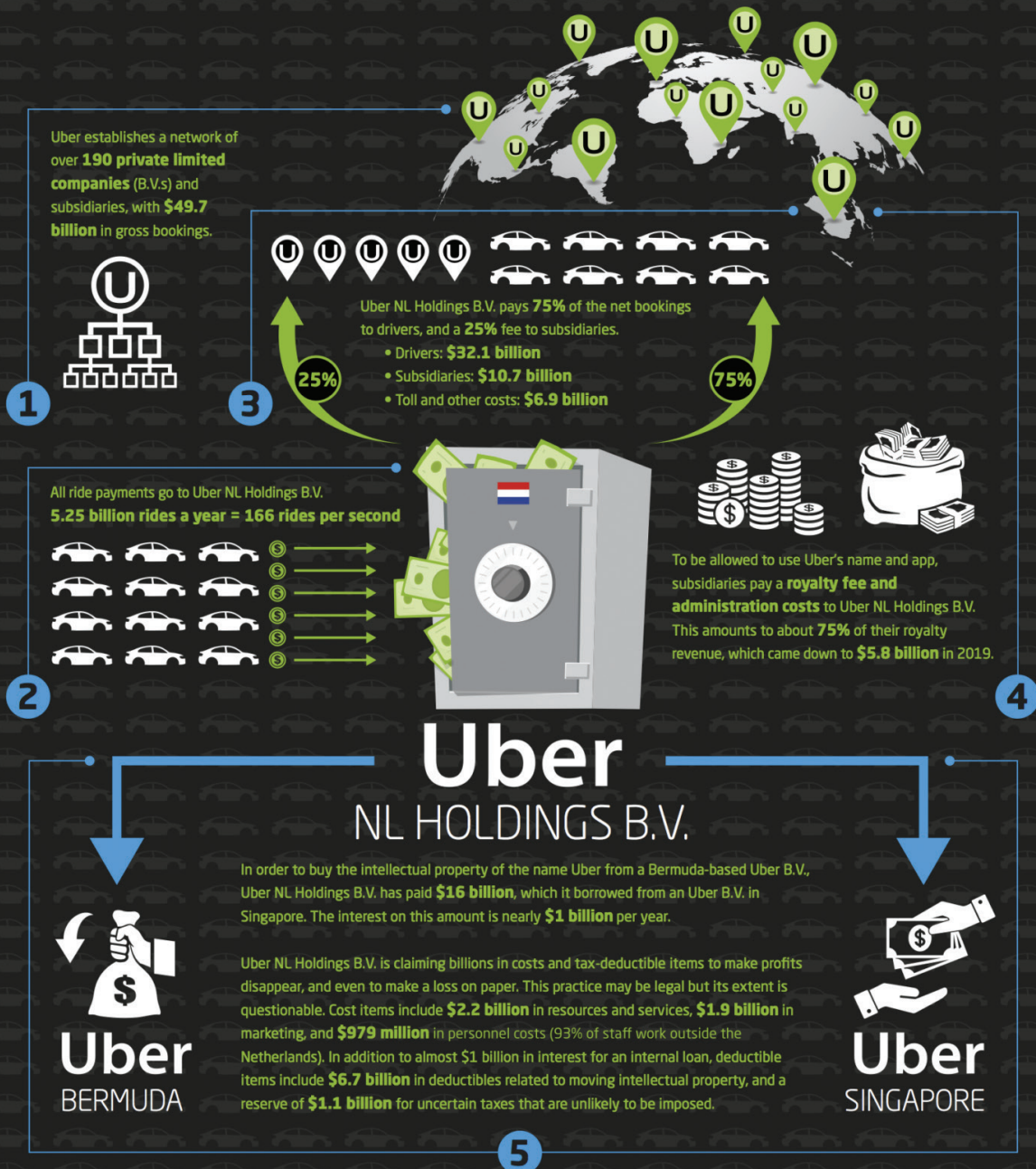
Understanding Uber's tax structure in New Zealand is far from straightforward. Uber began operating in New Zealand in 2014, soon after the incorporation in 2013 of Uber New Zealand Technologies Ltd ('Uber NZ'). Despite an array of other registered firms linked to Uber's major global subsidiaries, Uber NZ is the only Uber entity in New Zealand to file annual financial statements.

In addition to Uber NZ, other subsidiaries in New Zealand include Rasier New Zealand Ltd (ride-sharing) and Portier New Zealand Ltd (food delivery). While Uber's New Zealand reporting is somewhat inconsistent, all three companies are owned by Uber International B.V.⁷ or Uber International Holding B.V.⁸ Both of these parent companies are registered in the Netherlands, a renowned tax haven, and control Uber's operations in other countries around the world.

Uber International Holding B.V. is owned by Uber International B.V. which is, in turn, owned by another shell company, Uber NL Holdings 1 B.V. This Dutch entity, now at the heart of Uber's global tax avoidance schemes, is owned via Uber Singapore Technology Pte Ltd in Singapore. This Singapore entity is ultimately owned by the parent company, listed on the New York Stock Exchange, headquartered in San Francisco, but incorporated in Delaware.⁹ Uber uses this complex corporate structure of tax havens to avoid paying tax, shifting

HOW UBER EVADES PROFIT TAX

Uber operates worldwide, and has expanded significantly in recent years. In 2019, gross bookings, the total amount customers worldwide paid Uber for its services, amounted to \$65 billion, all while Uber employs hardly any staff. Drivers and meal deliverers are self-employed, and in many countries lawsuits have been filed against this bogus self-employment scheme. However, despite earning billions in revenue, Uber has shown a loss on paper for a number of years. This has been done by cleverly circulating money around the world and claiming many disputable cost items, with the sole purpose of minimising profits and paying as little tax as possible. This activity may be legally permissible but it is morally wrong. In this document, we focus on Uber Tax cash flows, which account for 76% of all gross bookings.



We opted for 2019 because most of the figures for that year are available, and it involved the pre-corona situation. For this purpose, we made use of Uber's own figures as well as those from the 'Taken for a Ride' investigation conducted by global corporate tax research centre CICTAR. This publication has been drawn up with the utmost care. However, due to Uber's complicated structure and limited transparency, it was impossible to retrieve all the figures.

Uber across the Tasman

While company filings in New Zealand often provide more disclosure than in Australia, particularly with regards to related party transactions, this is not the case with Uber. In Australia, the local entities which contract directly with drivers (Rasier) and with food delivery people (Portier) are subsidiaries of the primary Uber entity in Australia, Uber Australia Holdings Pty Ltd (“Uber Australia”). This parent entity is then owned through Uber’s same Dutch, Singapore and Delaware structures as the New Zealand companies.

The reporting of all the Australian entities is consolidated under the immediate Australian parent company. The consolidated reporting allows for some analysis of Uber’s actual operations in Australia. This is not the case in New Zealand, where the only revenue reported is service fees from related companies. The Uber NZ filing does not correspond with Uber’s actual operations in New Zealand and very little can be derived about Uber’s New Zealand business.

Despite the pandemic, or perhaps driven by it, Uber’s business in Australia grew dramatically from 2019 to 2020. While ridesharing revenue in most jurisdictions has declined or remained flat due to lockdowns, the growth in Uber Eats has more than compensated. Uber NZ has not released specific information to corroborate this in New Zealand, however there is evidence of similar dynamics.

In Australia, it appears that revenue from end users increased from AUD\$3,073 million in 2019 to AUD\$5,969 million in 2020.¹⁰ This near doubling of payments from end users, if treated as revenue, would rank Uber in the top 50 largest businesses in Australia. Correspondingly, the reported revenue (mostly service fees collected from drivers and delivery people) in Australia increased from AUD\$906 million in 2019 to AUD\$1,009 million in 2020.¹¹

In New Zealand, the service fee income (made up entirely of payments from related companies, not service fees collected from workers) dropped dramatically from \$12.8 million in 2019 to NZ\$3.7 million in 2020.¹² This appears to reflect an increase in the amount of money shifted offshore to the Netherlands, presumably in order to reduce tax obligations, rather than actual operations in New Zealand. For 2020, Uber NZ even reported an income tax benefit of \$199,802.¹³ The tax benefit was driven by an adjustment for prior years.¹⁴

As the other Uber entities in New Zealand do not file financial statements, there is no way to know if they paid any income tax in New Zealand or not. As is the pattern with Uber globally, payments by end users in New Zealand were most likely collected by, or immediately shifted to, shell companies in the Netherlands. A portion of payments from end users in New Zealand is returned to pay the workers who directly provide the services and generate Uber’s profits.

Uber NZ did report income tax paid of \$235,658 in 2020, but this is less than 3.7% of the estimated income tax payments Uber should have paid. Uber's New Zealand workers are losing out, along with the rest of the New Zealand community.



New Zealand tax gap estimate

While data, as explained above, is not publicly available to determine Uber's actual profits and expected tax payments in New Zealand, a relatively conservative estimate suggests that Uber's tax payments should have been close to **\$6.4 to \$12.8 million** in 2020. As Uber's business continues to grow, so will the scale of tax avoidance and the impact on the broader community.

This estimate is based on Australian end user payments and adjusted to reflect the smaller scale of the New Zealand economy. Using this method, end user payments in New Zealand are estimated to be \$919 million and Uber's revenues (from collections of service fees paid by Uber workers) would be approximately \$230 million, or 25%.¹⁵ This 25% figure is consistent with international reports of the percentage of fares paid by Uber drivers to Uber in the form of service fees and other charges. The estimate of \$230 million in revenue would rank Uber in the top 200 companies operating in New Zealand in 2020.¹⁶ As in Australia, Uber's estimated end user payments of \$919 million would likely rank Uber in the top 50 of all companies in New Zealand, but complete information on revenues is not available.

Uber makes substantial profits in many countries, including Australia, even though the multinational has yet to report profits at the global level. Conservatively, assuming a profit margin of 10% in New Zealand, profits

would be an estimated \$23 million. Applying the corporate tax rate of 28% would result in an estimated tax bill of \$6.4 million in New Zealand in 2020. Uber's actual profit margin in New Zealand is likely to be far higher than 10% as it has very few actual operational costs beyond advertising and marketing, and legal and professional fees (Uber NZ reported these costs as \$1.1 million and \$0.4 million, respectively, in 2020).¹⁷ For this reason, we believe the Uber's profits could easily be double this amount, meaning the tax gap could be as high \$12.8 million.

A relatively conservative estimate suggests that Uber's tax payments should have been close to \$6.4 to \$12.8 million in 2020.

The estimate of a tax bill of \$6.4 million contrasts starkly with both the reported current year tax benefit of nearly \$200,000 and the income tax payment of under \$236,000 in 2020. Interestingly, Uber NZ also reported \$6,052 in interest income "on tax pool account at the Inland Revenue Department ("IRD") of New Zealand" in 2020.¹⁸ Separately, Uber NZ also reports interest expense of \$16,483 "on IRD account" in 2020.¹⁹ No further explanation is provided on the interest income or expense with New Zealand's tax authority.

Cash pools

Like elsewhere in the world, Uber's New Zealand subsidiaries utilise Uber's global treasury or banking function in the Netherlands. The 2020 Uber NZ filing states that: "There is no cash and cash equivalents as at year end as the Company has a cash pooling arrangement with a related corporation, Uber B.V., and all cash is transferred..."²⁰ A recent article in Australia entitled, How Uber Australia fills a Dutch 'cash pool' and why it is fighting an \$81.5m payroll tax bill, outlined the same practices in Australia.²¹

In 2020, Uber NZ made net payments of over \$5.3 million to Uber B.V. under the cash pooling arrangement, in contrast to net payments from Uber B.V. of over \$5.6 million in 2019.²² Related to these net payments, Uber NZ reported just over \$0.4 million as "payable due to a related company on cash pooling arrangement" in 2020 and \$5.7 million in 2019.²³

Uber B.V. is another key Dutch subsidiary which accumulates revenues in service fee payments from countries where Uber operates (outside of US and China), creating a cash pool of undertaxed profits. Contracts with the national subsidiaries in countries where Uber operates, allow Uber B.V. to provide ride-sharing and meal delivery services directly to end-users.

Dutch tax shelter

Uber's network of shell companies in the Netherlands, directly tied to each of the Uber entities in New Zealand, is designed to help the company avoid global tax payments now and into the future as profits continue to grow.²⁴

Uber's top Dutch shell company, Uber NL Holdings 1 B.V., controls over 50 other Dutch subsidiaries. In 2019, it pulled in US\$5.8 billion in revenue, service fees paid by drivers and delivery people from around the world, excluding the US and China. Most payments from the end-users of Uber services are shifted directly to the Netherlands. Very little taxable profits, if any, are left behind in countries around the world where payments for Uber services are made and services delivered.

However, Uber's corporate restructuring avoids any substantial current and future tax payments in the Netherlands as well. In 2019, Uber "sold" its intellectual property from a subsidiary in Bermuda to Uber NL Holdings 1 B.V. The "cost" of the sale from one branch of the company to another created an immediate US\$8 billion tax shelter in the Netherlands.

While the tax rate in Bermuda – on current profits – is zero, the Dutch tax shelter enables Uber to avoid global tax into the future. The "sale," from one branch of the multinational to another, was financed with a US\$16 billion loan from another Uber subsidiary in Singapore. The Singapore subsidiary is the direct parent of Uber NL Holdings 1 B.V. Annual interest, due to the immediate parent company in Singapore, further reduces taxable income in the Netherlands by another billion dollars, every year for two decades. This trick prevents future global tax payments as Uber's profits rise.

Putting the Brakes on Uber's Tax Avoidance

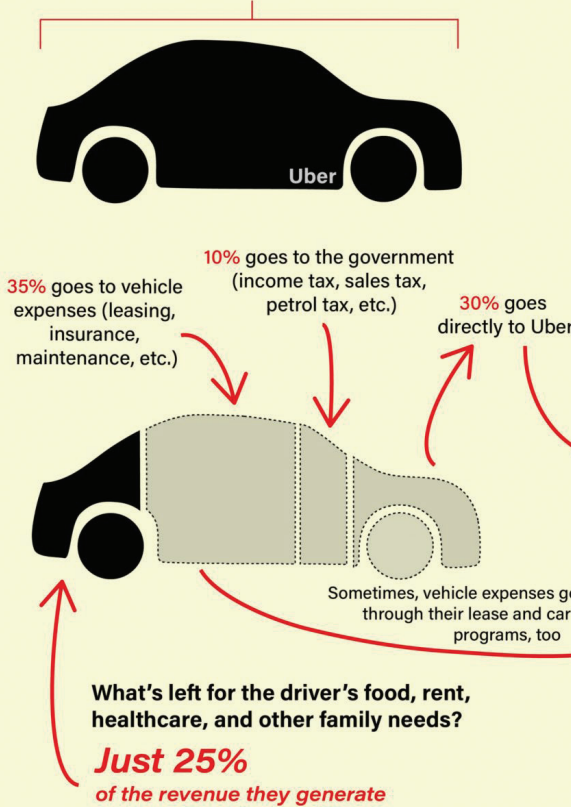


A Dutch shell company is at the heart of global tax avoidance by Uber. In 2019, Uber created an **\$8 billion Dutch tax shelter** that, if unchecked, may eliminate tax liability on profits shifted to the Netherlands for decades to come.

Let's compare what happens to money earned by **millions of global UBER drivers** to the money flows at Uber's top Dutch shell company:

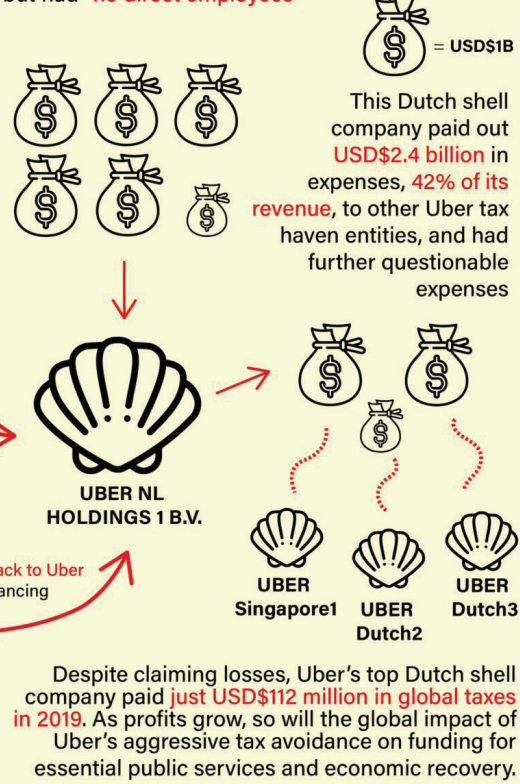
The Driver

If this is a driver's total monthly revenue generated...



The Company

In 2019, the top Dutch shell company took in \$5.8B from drivers and delivery people around the world¹, but had **"no direct employees"**



(Without the elaborate path of ride share revenue from a driver's time on the road to Uber's Dutch tax shelter, it is estimated the company would have paid **an additional half a billion dollars in 2019 taxes.**)

¹Excluding the U.S. and China

Conclusion and recommendations

The business model of Uber and other multinationals, built on worker exploitation and aggressive tax avoidance, must be challenged both in New Zealand and globally. Current international tax reform proposals through the OECD, while long overdue and much delayed, do not go far enough and may not impact the business model of Uber and others. While further international reforms are required, the New Zealand Government must immediately implement reforms and regulations, so 'platform' or 'gig' companies contribute to the communities where their profits are generated by paying both fair wages and taxes.

As in New Zealand, Uber's business model is being successfully challenged by courts and governments around the world. Uber's assertions that it is a tech company and not a transport company and that workers are independent contractors are being rejected by workers everywhere and in court after court. This is a convenient but false narrative that allows Uber to shirk its responsibility for the welfare of workers and its obligation to pay taxes on the profits workers generate by providing Uber services.

The New Zealand Government must:

- Require full reporting from Uber and other 'platform' or 'gig' multinationals on the total payments from end users, service fees paid by workers, number of workers employed as either drivers or delivery people, total hours worked and full disclosure of all offshore related party transactions. This may require all Uber subsidiaries to file financial statements in New Zealand or require a local holding company which includes consolidated reporting of all subsidiaries, as in Australia.
- Support robust international efforts to reform the global tax system so that these types of artificial structures for tax avoidance purposes are no longer permissible.
- Investigate the possible impact of the proposed OECD Pillar One and Pillar Two global tax reforms on tax collections in New Zealand from large multinationals, including Uber, Amazon and others. If local revenue collections are not increased in line with genuine economic activity, then explore alternative proposals at both national and international levels to make sure multinationals pay their fair share and support the communities where profits are generated.
- Follow the recent lead of the European Union and implement full public country by country reporting for all multinationals.
- Follow Australia's practice of annually disclosing the total income, taxable income and taxes paid by the largest companies operating in New Zealand.
- Ensure that the Inland Revenue Department is sufficiently staffed and resourced by dedicated public servants to investigate routine tax avoidance by multinationals and high-net-worth individuals.
- Enact legislation to ensure that all workers have rights and are not denied employment rights and benefits through misclassification as independent contractors.

Endnotes

¹ New Zealand Dollars, unless otherwise stated. The sources and calculations for this estimate are explained below.

² Eva Corlett, 14 July, 2021, “New Zealand Uber drivers launch class action against ride share company”, The Guardian. See here:

<https://www.theguardian.com/technology/2021/jul/14/new-zealand-uber-drivers-launch-class-action-against-ride-share-company>

³ New Zealand Companies Register, Uber New Zealand Technologies Ltd as last filed on 3 June, 2021. See here:

<https://app.companiesoffice.govt.nz/companies/app/ui/pages/companies/4451818/detail?backurl=%2Fcompanies%2Fapp%2Fui%2Fpages%2Fcompanies%2F4451818%2Fshareholdings>

There appears to be an error in the filing which mentions Uber International B.V. as the immediate parent company as opposed to Uber International Holding B.V.

⁴ <https://www.linkedin.com/in/yoke-fah-chong-85411739/?originalSubdomain=sg>

⁵ See here:

<https://www.pkf.com.au/people-search/nicholas-falzon>

⁶ Anuja Nadkarni, 28 May 2019, Stuff, “Uber closing Auckland office moving 20 jobs to Sydney”.

<https://www.stuff.co.nz/business/113050510/uber-closing-auckland-office-moving-20-jobs-to-sydney> : <https://www.rideshareunz.com/permanent-close-uber-greenlight-hubs-australia-nz/>

⁷ New Zealand Companies Register, Uber New Zealand Technologies Ltd as on July 16th 2020. See here:

<https://app.companiesoffice.govt.nz/companies/app/ui/pages/companies/4451818/shareholdings?backurl=H4sIAAAAAAAAAAFxKQQRcMmBBG4dtk4yInCClobroQqwcYOz82EJM4Myn29jpS0e33nq90hfqYOU6RGyWvIBnG9T2cL5CVk5JwmivCpuvca9tIiza%2FRRfaRumRnOn%2F87G9IFa%2FpR9%2FV%2BKJ8gA%2BUEYKJg3uVhhhcYdHpczgl7Ql0%2FAETcndNg4AAAA%3D>

⁸ 2019 Annual Financial Report Uber New Zealand Technologies Ltd for the year end 31 December 2019, page 32, Note 18.

⁹ Centre for International Corporate Tax Accountability and Research (2021), Taken for a Ride. See here:

<https://cictar.org/taken-for-a-ride/>

¹⁰ Uber Australia Holdings Pty Ltd and its subsidiaries, Annual report for the year ended 31 December 2020, p.41 Note 23. (as obtained from ASIC) These figures are reported under related party transactions as “Collection on behalf by a related company”.

¹¹ Ibid, p.5 Income Statement

¹² Uber New Zealand Technologies Ltd, Annual Financial Report of for the year end 31 December 2020, p.5 Income Statement;

<https://app.companiesoffice.govt.nz/companies/app/service/services/documents/F1BC2ACEAD0BE5AF783B66E554BF687B>

¹³ Ibid, p.5 Income Statement

¹⁴ Ibid, p.22 Note 9

¹⁵ The exchange rate is assumed to be equal. This assumes that Uber’s market presence and penetration in New Zealand is equivalent to Australia. Actual market presence could vary significantly, but this is the best estimate based on existing information as Uber’s financial data reported in New Zealand do not appear to reflect actual economic activity but merely artificially constructed related party transactions. The Australian end user payments of \$5,969 million are adjusted by 15.4% (the percentage of New Zealand 2020 GDP compared to Australian GDP) to get estimated end user payments of \$919 million. Consistent with reported figures of service fees and other charges paid by Uber workers it is estimated that revenue for Uber is 25% of end user payments of \$230 million.

¹⁶ Scott Technology (NZX:SCT) with \$225m in revenue is ranked 182nd and Seeka (NZX:SEK) with \$237m is ranked 175th.

<https://www.timmccready.nz/2020/12/03/deloitte-top-200-light-in-a-dark-year-for-nzs-top-200-companies/>

¹⁷ Uber New Zealand Technologies Ltd, Annual Financial Report of for the year end 31 December 2020, p.5 Income Statement.

¹⁸ Ibid, p.20 Note 6

¹⁹ Ibid, p.21 Note 8.

²⁰ Ibid, p.17 Note 2.12

²¹ Nassim Khadem, 8 September 2021, ABC News, “How Uber Australia fills a Dutch ‘cash pool’ and why it is fighting an \$81.5m payroll tax bill”.

<https://www.abc.net.au/news/2021-09-08/uber-dutch-tax-profit-payroll-ridesharing-delivery-gig-economy/100438398>

²² Uber New Zealand Technologies Ltd, Annual Financial Report of for the year end 31 December 2020, p.30 Note 18.

²³ Ibid, p.27 Note 15

²⁴ Uber’s corporate structures in the Netherlands and the global impact are detailed in CICTAR’s March 2021 report entitled “Taken for a Ride: Uber’s Global Tax Dodging Through Dutch Shell Companies”. All original source materials for this section, and much more detail, can be found in that report. The report was written for FNV, the Dutch trade union federation, and was submitted to an Australian Senate inquiry. The report can be obtained through the Australian Senate website here:

<https://www.aph.gov.au/DocumentStore.ashx?id=ba6dc46e-b31e-4a32-b3a8-c84fa0e51964&subId=706633>



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