
TREASURY LAWS AMENDMENT (2018 MEASURES NO. #) BILL 2018

EXPOSURE DRAFT EXPLANATORY MATERIALS

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Glossary

The following abbreviations and acronyms are used throughout this explanatory memorandum.

| <i>Abbreviation</i> | <i>Definition</i> |
|----------------------------|---|
| Bill | Treasury Laws Amendment (2018 Measures No. #) Bill 2018 |
| GST | goods and services tax |
| GST Act | <i>A New Tax System (Goods and Services Tax) Act 1999</i> |

Chapter 1

Online hotel bookings

Outline of chapter

1.1 Schedule # to this Bill amends the GST Act to require offshore suppliers of rights or options to use commercial accommodation in Australia to include these supplies in working out their GST turnover.

1.2 All legislative references in this Chapter are to the GST Act unless otherwise stated.

Context of amendments

1.3 There are a number of requirements for a supply of commercial accommodation to be a taxable supply. These include that the supply is connected with the indirect tax zone, that the supply is made by an entity that is registered, or required to be registered, for GST and the supply is not GST-free or input taxed (section 9-5).

1.4 An entity will be required to be registered for GST if it is carrying on an enterprise and its GST turnover equals or exceeds the registration turnover threshold (section 23-5).

1.5 In determining GST turnover, prior to the amendments, certain supplies were disregarded and therefore not used in working out whether an entity's GST turnover exceeds the registration turnover threshold (sections 188-15 and 188-20). This included any supply that satisfied both of the following conditions:

- the supply was of a right or option to use commercial accommodation (broadly a right to occupy all or part of a hotel or other commercial residential accommodation) in the indirect tax zone;
- the supply was not made:
 - in the indirect tax zone; or
 - through an enterprise that the supplier carried on in the indirect tax zone.

1.6 This exception was originally introduced when the GST Act was amended in 2005 to clarify how it applied to supplies of rights and options concerning intangible supplies.

1.7 Because the supplies mentioned in paragraph 1.5 are not included in GST turnover, entities that make those supplies are not required to register for GST if their GST turnover does not exceed the relevant threshold. This also means that GST is not charged on these bookings, which advantages these overseas operators.

Summary of new law

1.1 Schedule # to this Bill amends the GST Act to require offshore suppliers of rights or options to use commercial accommodation in the indirect tax zone (broadly Australia) to include these supplies in working out their GST turnover. If the GST turnover of such offshore suppliers equals or exceeds the registration turnover threshold then GST must be remitted for their taxable supplies.

Comparison of key features of new law and current law

| <i>New law</i> | <i>Current law</i> |
|---|--|
| Offshore suppliers of rights to use commercial accommodation (eg hotels) in the indirect tax zone must include these supplies in working out their GST turnover. If the supplier's GST turnover equals or exceeds the registration turnover threshold then GST must be remitted for supplies that are taxable supplies. | Off shore suppliers of rights to use commercial accommodation in the indirect tax zone are not required to include these supplies in working out their GST turnover. |

Detailed explanation of new law

1.8 The amendments include in an entity's GST turnover supplies of a right or option to use commercial accommodation in the indirect zone, even where that supply is not made in the indirect tax zone and is made through an enterprise that the supplier does not carry on in the indirect tax zone. *[Schedule #, item 3, paragraphs 188-15(3)(c) and 188-20(3)(c) of the GST Act]*

1.9 This ensures that entities that supply rights to use Australian commercial accommodation, such as hotels, motels, hostels, student accommodation, or caravan parks but carry on their business offshore are still required to register for GST if their GST turnover, including those supplies, equals or exceeds the relevant GST turnover threshold.

1.10 Currently, the GST registration threshold is \$75,000 or \$150,000 if the entity is a non-profit organisation.

1.11 The amendments recognise that both Australian and overseas consumers now increasingly book Australian hotels and similar accommodation using online service providers that are based overseas. Accordingly, the amendments ensure that there is neutrality in the GST treatment of Australian hotel and similar accommodation regardless of whether the right to use the accommodation is purchased directly through an Australian supplier or from an offshore supplier.

1.12 The amendments apply to supplies where the offshore entity acquires rights or options to use commercial accommodation in the indirect tax zone and on-sells those rights to a customer (guest). In those circumstances the offshore entity is contracting with the customer in its own right, as principal.

1.13 The amendments do not apply to supplies of rights to hotel accommodation that are merely facilitated by an offshore entity acting as an agent on behalf of a hotel. Under an agency arrangement the hotel is the supplier to the customer and, as such, has the obligation to account for the GST on the total amount paid by the customer.

1.14 Whether the offshore supplier is the agent of the hotel or a principal requires the consideration and balancing of various factors. A critical indicator of an agency arrangement is the requirement that the agent account to its principal for monies had and received on its behalf.

Consequential amendments

1.15 Consequential amendments are made to remove references to the repealed paragraphs from other provisions. *[Schedule #, items 1 and 2, paragraph 83-5(2)(c) and subsection 151-5(2) of the GST Act]*

Application and transitional provisions

- 1.16 The measure applies in relation to either:
- supplies for which any of the consideration is first provided on or after 1 July 2019; or
 - supplies where the invoice is issued on or after 1 July 2019.

[Schedule #, item 4]

1.17 If an invoice is issued before 1 July 2019, then the measure does not apply in relation to the supply even if consideration is first provided after 1 July 2019, or vice versa.

1.18 This application generally aligns with the attribution rules for GST.

