

10 August, 2018

The Manager  
Indirect Taxes and Not-for-profit Unit  
Commonwealth Treasury  
Langton Crescent,  
Parkes ACT 2600

By email: [GSTconsultations@treasury.gov.au](mailto:GSTconsultations@treasury.gov.au)

Dear Sir/Madam,

Thank you for the opportunity to provide feedback on the Exposure Draft of *Treasury Laws Amendment (2018 Measures No. 5) Bill 2018: Online hotel bookings*. As the peak industry association representing hotels, motels and serviced apartments in Australia's \$8 billion accommodation sector, we thank the Treasury Department and the Australian Tax Office for their consultation to date on this complex issue.

TAA is focused on and committed to the future development and growth of the accommodation sector within Australia's hospitality and tourism industries. One crucial element in the sustainability of Australia's accommodation sector is ensuring a level regulatory playing field between hotels, motels and serviced apartments and the offshore online travel agents with which they compete for customer bookings.

We understand that the 2018-19 Commonwealth Budget measure to extend the GST to offshore sellers of hotel accommodation (often online travel agents) in Australia is intended to level the playing field by ensuring the same tax treatment of Australian hotel accommodation, whether booked through a domestic or offshore company.

TAA welcomes this measure, pending clarity on the precise financial effect this measure will have on Australian hotels using offshore online travel agents.

Further to our teleconference with Treasury and the ATO, TAA understands that this legislation will only affect offshore OTAs that are acting as 'Principals' in the sale of hotel accommodation.

Given that a Principal relationship is a business-to-business transaction between a wholesaler and retailer and there is no commission involved in the transaction, this legislative change to extend GST will not mean that Australian hotels operators are paying more GST than previously (including paying additional GST on an commissions).

TAA would appreciate clarity on whether offshore OTAs in Australia affected by this measure will be eligible to claim GST input-tax credits. TAA would be significantly concerned if offshore sellers of hotel accommodation in Australia were excluded from accessing input tax credits, as we expect this would likely lead to all or a significant portion of the GST being indirectly passed on to Australian hotel operators through increased commissions.

Additionally, many contracts between Australian hotel operators and offshore OTAs in Australia include within their terms and conditions a "tax indemnity clause". Tax indemnity clauses involve

phrases such as “where any tax applies it shall be paid to [the offshore OTA] by you.” Following recent consultations, TAA has sent examples of these to the ATO for the advice on the legitimacy of these clauses and whether they apply in the proposed new arrangements.

TAA’s primary concern at this stage is that the GST liable by offshore OTAs is not indirectly or directly through tax indemnity clauses passed on to Australian hotel operators. By exacerbating an already uneven playing field, such a situation would defeat the intended purpose of the legislative amendments, effectively create double-taxation for Australian hotel operators and resemble Australian hotel operators paying GST on commission that doesn’t exist.

If this concern can be assuaged, TAA has no objections to the Exposure Draft in its current form.

TAA understands that the Treasury and ATO have not yet considered that online platforms such as Airbnb may be affected by this legislation. While residential properties marketed and distributed via Airbnb are not liable for GST, Airbnb is now actively acquiring boutique hotel listings and similar commercial-residential accommodation. Further investigation is required to ascertain whether there are instances of Airbnb acting as a Principal for hotel accommodation, particularly in its Business Portal for corporate bookings.

TAA thanks the Treasury and the ATO for their consultation on this issue. We again thank the Government for its eagerness to level the playing field in the accommodation sector. We look forward to ongoing discussions on this issue to clarify our remaining areas of concern.

Yours Sincerely,



Carol Giuseppi  
CEO  
Tourism Accommodation Australia