

CHAPTER 7

Conclusions and recommendations

7.1 The Committee strongly supports the initiative in Schedule 3 to close the loophole in the GST legislation which allows certain foreign tour operators to register for GST and claim input credits without also being required to remit GST on their sales.

7.2 While the Committee understands that operators using this loophole were acting lawfully, it is clearly not within the policy intent of the GST legislation for this to happen. Use of this loophole disadvantages all registered tour operators, particularly those based in Australia, as well as those foreign operators who have not registered and have not been claiming input tax credits.

7.3 However, the Committee believes that the evidence it has received raises doubts about whether the model proposed in Schedule 3 is the best solution to the problem. In theory, it would produce the most equitable solution for both Australian and foreign operators if all operators who were required to comply with the requirements to register did so. However, the evidence received by the Committee indicates that there may be a number of practical difficulties with the approach that were not apparent when the bill was drafted.

7.4 The Committee notes that a number of witnesses have questioned whether the ATO will be able to administer the legislation efficiently if the schedule is passed without amendment. Doubts have been raised about whether the ATO would be able to enforce the requirement to register on foreign operators with no Australian presence.

7.5 If significant numbers of foreign operators ignore the legislation and fail to register, then it appears that those operators who do register will be in a less competitive situation than those who are registered. This is because those who do register will be required to meet the compliance costs associated with the schedule, which in some cases may be considerable, as well as being required to remit GST on their profit margins.

7.6 As shown in the examples put forward in submissions and in the examples in Chapter 6, this works in favour of the unregistered operators. Those who presented evidence agreed that many operators will choose not to register.

7.7 Compliance costs were a major concern to many who gave evidence. While compliance costs and their effects are difficult to quantify, there are clearly concerns held that in some markets, these costs may be such that the operators will either ignore the provisions or withdraw from the market. The effect on tourist numbers projected by the Econtech model may prove to be conservative. This would be an undesirable outcome for an industry which is an important source of employment and income for

many Australians, and which is also still recovering from a number of international shocks such as those caused by increases in international terrorist activity, and the SARS crisis.

7.8 With these issues in mind, the Committee has carefully considered whether any of the models put forward in submissions or evidence would provide a more satisfactory solution than that in Schedule 3. All have some advantages and disadvantages.

7.9 All of the models put forward close off the loophole that exists in the current legislation. None would require operators to account in full for the margins added to packages before the final sale of a tour to an incoming tourist. There are a number of perspectives on this. The first, as expressed in the schedule, is that margins should be fully accounted for. The second, as expressed by PricewaterhouseCoopers/ITSA (PWC/ITSA), is that it is not appropriate to tax value added offshore, and the appropriate tax to pay is that paid when the rights are initially sold to an offshore operator.

7.10 All of the models considered reduce or eliminate the disadvantage currently suffered by Australian registered tour operators. The Committee notes that ATEC is of the view that the other alternative models still place the Australian operators at a small disadvantage. However, the degree of this disadvantage, if it exists, is difficult to predict. It is also offset by the reality that most incoming tourists are likely to purchase tour packages from agents in their home countries, and these agents may be expected to be subject to the taxation arrangements of those countries. Further, Australian operators will have access to other input tax credits not available to FTOs, further eroding any likely disadvantage.

7.11 All of the models put forward are administratively simple compared to that in the schedule. Compliance costs for FTOs are minimal in all models, and there are no enforcement issues for the ATO. Of all the models, the Committee considered that the PWC/ITSA 'optional registration' model is superior in this regard, requiring minimal change to the GST legislation and presenting few compliance difficulties for either operators or the ATO.

7.12 This model does appear to leave Australian registered operators at a small disadvantage to FTOs. This is an unavoidable consequence of Australian operators being part of the GST system, whereas under the PWC/ITSA model, FTO margins are only taxed up until the point where the rights are sold overseas. The Committee is unconvinced that these disadvantages, though apparent in the limited worked examples in Chapter 6, would be significant in reality. If margins are less than in the examples, the difference diminishes. Further, it should be recognised that incoming tourists will generally buy tourism packages from agents in their home countries, and the slight price differential is unlikely to cause these tourists to buy their packages elsewhere. Lastly, the Committee is also persuaded by the PWC/ITSA argument above (see paragraph 7.9).

7.13 On balance, the Committee favours the PricewaterhouseCoopers/ITSA model. This model requires only a relatively simple amendment to the GST legislation, and is minimally disruptive, preserving the status quo for the very large number of FTOs that are not currently registered.

7.14 A further issue that the Committee considers requires attention is the commencement date for the legislation. If the legislation passes, it will inevitably result in some FTOs being required to raise prices when prices for the coming year have already been set. The Committee is of the view that if the model in schedule 3 is to be adopted, the start up date should be deferred until February 2006 to allow appropriate adjustments to be made. However, the Committee refrains from making a recommendation in this regard, as it is not in a position to judge whether there are other imperatives which demand an earlier commencement date.

Recommendation

7.15 The Committee **recommends** that Schedule 3 not proceed in its current form. The Committee **recommends** that the Government bring forward replacement amendments to implement the alternative model proposed by PriceWaterhouseCoopers and ITSA. The Committee has attached proposed amendments submitted for consideration by PriceWaterhouseCoopers/ITSA at Appendix 5 of this report.

