

**Tax Laws Amendment
(2005 Measures No.1)
Bill 2005**

**IMPACT ON AUSTRALIAN TOURISM
EXPORTS OF THE APPLICATION OF GST
on FOREIGN TOUR OPERATORS.**

**Submission to the
Senate Economics Legislation Committee**



THE AUSTRALIAN TOURISM EXPORT COUNCIL

Contents

The Australian Tourism Export Council	3
The Bill	3
Information Failure	5
The Impacts	6
1.0 Price effects	6
2.0 Compliance costs	6
3.0 Distribution channel effects	8
3.1 Large wholesaler effects	8
3.2 Smaller wholesaler effects	9
4.0 Administrative efficiency of GST collection from FTOs.	10
5.0 Government agencies and the Rule of Law	11
6.0 Unintentional consequences for tourism product quality	12
7.0 ATEC's alternative proposals	13
Conclusion	18
Attachments	21

The Australian Tourism Export Council (ATEC)

ATEC is the peak industry body which represents the interests of over 1100 companies throughout Australia that provide tourism services to foreign visitors. It is important to note that while those services are consumed within Australia, they are purchased by foreigners and are therefore exports. The export tourism sector represented by ATEC is responsible for generating \$17 billion in export income annually and is growing at a significant rate.¹

The distribution chain for tourism services, in particular the export tourism sector, is characterised by a complex chain of commercial relationships, both on-shore and off-shore, which have developed in a dynamic and highly competitive global market.²

The export tourism sector returned to growth in 2004, following three years of negative growth due to the impacts of unexpected external events such as the Bali bombing and SARS. This was combined with the War on Terror within the context of low economic growth in our main trading nations (The UK, Europe, USA and Japan) and the underweight resourcing of Australia's international marketing effort.

The Bill

The Federal Government introduced the *Tax Laws Amendment (2005 Measures No.1) Bill 2005* into the House of Representatives on 10 February 2005. The Bill passed the House of Representatives on Wednesday 16 February. Schedule 3 of the Bill incorporates a new goods and services tax on the supply of rights or options offshore. The effect of this legislation will be to apply the GST to the business transactions of Foreign Tour Operators' (FTOs) that sell and re-sell Australian tourism products and services.

The legislation does not relate directly to the Australian Taxation Office's (ATO) reversal of its public and private rulings previously given, which relates to the application of the GST to Inbound Tour Operators' (ITOs)

¹ The Tourism Forecasting Council estimates that export receipts will grow at an annual average rate of 5% per annum (in constant 2004 dollars) to \$27.9 billion by 2013

<http://www.tourism.australia.com/Research>.

² See Attachment 4

margins. However, ATEC contends that there will be a cumulative impact that will significantly impact the profitability of Australian ITOs (see 3.1.1 below).

ATEC contends that this Bill, if enacted, will have a significant negative impact on the export of Australian tourism products and services, and on Australian tourism businesses, at a time when the national focus is on improving our national export performance. It may, in effect, provide another unexpected external shock to the tourism export sector at a time when it is just regaining its feet and looking forward with confidence. At the very least, it is a very business unfriendly piece of legislation that increases the red-tape burden and further distorts the tourism export sector.

ATEC believes that the intent of these measures as outlined by the Australian Government is unsubstantiated. During the Second Reading Debate, the Minister for Revenue and Assistant Treasurer, the Hon Mal Brough MP stated:

“This measure is very important. It is an integrity measure and it ensures that our home based businesses – and by that I mean our domestically based businesses – are not disadvantaged against those which may be selling products not only to overseas visitors but also to Australian residents. And that is a concern we have.”³

ATEC remains highly sceptical of this argument on the grounds that:

- (1) We can find no evidence of systemic rorting of the distribution system whereby domestic consumers are purchasing Australian product from foreign providers. We are not aware of any FTO that markets Australian tourism product to Australians.
- (2) The “concern” expressed by the Government through its Minister makes no commercial sense. In all normal, commercial and legal circumstances that we can envisage, it would be cheaper for Australians to purchase travel products direct from Australian providers.
- (3) The “domestically-based businesses” to which the Minister refers are, in large part, our members. The large majority of our supplier members (tourism operators) are active in both the international

³ Hansard, Wednesday 16 February, 2005, p72.

and domestic markets – indeed, most members rely on the domestic market for the majority of their income. ATEC takes great pride in vigorously representing the commercial interests of its members and we can confirm that no member has raised a concern that consumers are somehow short-changing them by purchasing their product from FTOs.

In other words, as a firm general rule, Australians access Australian product at cheaper rates than foreigners.

Can the Australian Government supply evidence of systemic activity of the nature referred to by the Minister?

Information Failure

The Government introduced this legislation into the House of Representatives on 10 February 2005. There was no consultation with the tourism sector either prior, or subsequent to, its introduction. There is no “notice period” incorporated in the legislation. Accordingly, it should come as no surprise that a very large number of Australia’s valued tourism trading enterprises and their international partners are unaware of the new tax, or of the fact that their liability for payment commenced on the date the Bill was introduced into the House of Representatives.

These enterprises are currently running up significant GST liabilities without, in many cases, knowing it.

Such an information failure may encourage many of these businesses to ignore the legislation when, eventually, they hear of its application to them, and the liabilities that they will have already unknowingly incurred.

This will be exacerbated when it becomes apparent that registration of FTOs under this legislation will create a retrospective tax liability (without access to input tax credits) going back to 1 July 2000, the date of effect of the original GST legislation. Such an oversight of this impact should, of itself, provide the rationale for Government to immediately withdraw the Bill.

How does the Australian Government propose to deal with this set of circumstances?

The Impacts

ATEC contends that this legislation will have serious and adverse impacts on the tourism export industry. This is not an exclusive list and it should be noted that ATEC is continuing to study the implications of the Bill. In assessing the impacts of this Bill, the Precautionary Principle should apply. Further, this submission should be read in company with the submissions of specialist legal and accounting intermediaries who provide advisory services to both ITOs and FTOs.

1.0. Price Effects.

ATEC estimates that the application of the GST to non-accommodation components of tour packages, accompanied by universal collection, could result in an overall increase in the price of tour packages of some 4% – 4.5% (all other things being equal). **We understand that the Australian Government undertook no analysis of the likely price and demand impacts of this legislation prior to its introduction into the Parliament.**

A price effect of this nature in the international market place will negatively affect demand. The magnitude of the drop in demand will vary from market to market. In some markets it may manifest as a reduction in the rate of growth, while in others it will show up as negative growth. Some markets (and segments) are very price sensitive. The “tipping point”, once reached, generates a rapid fall off in demand.

2.0. Compliance Costs.

It appears to ATEC that the provisions of this Bill will apply to all off-shore sellers and re-sellers of Australian tourism services (see 4.0 below). Application of the GST on FTOs will therefore necessitate FTOs reworking their business systems so that they can handle the preparation of the Business Activity Statements (BAS) that go hand-in-hand with the application of this new tax. This in turn will mean that the invoicing procedures for consolidators and ITOs will also need to change.

The complexity and the business unfriendly burden associated with working the Australian market will be significantly greater than other competitor destinations.

The highly complex aspects of this legislation include unworkable requirements in areas such as:

- The taxable value of tour packages
- The attribution rules
- Overpayments/underpayments dilemma
- Income recognition
- Validation of credit entitlements
- Double taxation
- Invoicing formats

This heavier compliance burden will be exacerbated by the differential GST charges that apply to different tourism products that make up the mix of standard tourism packages (see Attachment 1).

A full listing of the compliance issues is contained at Attachment 2

The total compliance burden to business (in addition to the GST impact) will be very significant and, depending on the size of the business, could amount to an extra 0.5% of the cost of tourism packages sold off-shore.

Associated with the compliance costs to the business are the costs to the taxpayer in enforcing this Bill. As noted below (in 4.0) the range of foreign businesses that appear to be brought within the scope of this Bill are extensive, encompassing a kaleidoscopic array of languages, cultures and corporate governance regimes.

ATEC understands that the Australian Government did not scope the compliance regime needed nor the associated costs to enforce the provisions of this Bill. No cost/benefit analysis was undertaken to assess the efficacy of its implementation in its current form.

Contrary to expectations, ATEC also understands that no Regulation Impact Statement was prepared as part of the Government's policy consideration. If such a statement had been prepared, ATEC

contends that it is far more likely that the business unfriendly compliance aspects of the legislation would have become apparent to both the Treasury officials and the Government.

3.0. Distribution Channel Effects.

This new tax will impact on the existing distribution system – a system that has been developed over time and is fundamental to the growth of Australian tourism exports. See Attachment 4.

To the extent that FTOs (whether they are wholesalers or retailers) are affected and decide to alter the scope of their Australian operations, the distribution system will be fractured, with concomitant reductions in tourism exports. The Commonwealth has been silent on the strategies it would propose putting in place to reduce the impact of the legislation on Australian businesses.

The implications are as follows:

3.1. Large Wholesaler Effects.

Large wholesalers (FTOs) and resellers generally work with top-end, generic type Australian product in the main tourism destinations. These FTOs are unlikely to absorb the financial penalties and continue to sell Australian product when there are other international destinations that can deliver a better return on investment. Rather, they are likely to respond in any combination of the following three ways:

3.1.1. Squeeze the supply chain: FTOs may pressure ITOs and product suppliers to cut their yield to minimise reduction in the FTO's yield and the price increase to the consumer. If this strategy were applied exclusively, then the legislation does no more than transfer (expropriate) the yield from Australian businesses to the Government as additional GST collected by the FTOs. As noted above, this will have a cumulative impact on ITOs' profitability, on top of the current proposal to apply GST to ITO margins and the fact that many ITOs (as well as their suppliers) are currently absorbing some of the negative impacts of exchange rate movements. This concerted pressure on ITOs' and suppliers' profitability is counter-productive at a time when there is a national effort to improve export sector performance.

3.1.2. Increase the price to the consumer in full: The combined cost to the FTOs of the GST and compliance will lift the cost of packages (and any tourism product component purchased through an FTO equivalent enterprise) by 4.5% - 5.0%, if it is universally collected. Concomitant decreases in demand can be expected.

3.1.3. Abandon the sale of Australian product for more profitable destinations: To the extent that FTOs are unable to achieve the outcomes described in (3.1.1) and (3.1.2), they will substitute alternative destinations where the transaction costs give them a better return on investment. As far as we can ascertain to date, Australia will be the only country in the world that will be demanding this compliance.

3.2. Smaller Wholesaler Effects.

Smaller wholesalers and resellers may find that the transaction costs of selling Australian niche product exceeds their international benchmarks.

The smaller FTOs source niche product to meet special consumer needs. This product tends to be relatively small scale, regional and rural in nature (eg. B&Bs, camel rides, tag-a-long tours, farm tourism and farm stays, quad-bike excursions, indigenous product etc). The increased costs associated with this Bill will mean that smaller wholesalers are likely to respond in any combination of the following ways:

3.2.1. Squeeze the small scale rural and regional niche operators: If the Australian niche suppliers want international business then they will need to reduce the price of their product or lift the commission paid to the FTOs that deal in their product in the international market-place so that the FTO is able to maintain its yield after meeting the requirements of this new tax. Again, this, in effect, is no more than a covert expropriation by the Commonwealth, of legitimate business profits.

3.2.2. Abandon regional and rural niche product and source generic product from large wholesalers: This strategy will remove the higher transaction costs associated with sourcing small scale regional and rural specialist product that generally has lower margins in any case. It will result in much less differentiation in the international offering and will, in turn, have broader domestic

effects. It should be noted that this runs counter to the stated aims of the Australian Government in its Tourism White Paper and in the Tourism Australia Act (2004).⁴

3.2.3. Abandon Australian rural and regional destinations for higher yielding competitor destinations: Should smaller wholesalers (FTOs) be unable to differentiate their offerings or their prices as a result of drawing product from larger wholesalers, they will abandon Australia as a destination and transfer their operations to other, more competitive destinations (e.g. New Zealand, South Africa etc).

4.0 Administrative Efficiency of GST Collection from FTOs.

Unless otherwise informed by the Australian Government, ATEC contends that the Explanatory Memorandum, released in conjunction with the introduction of the Bill, makes it clear with its example 3.2 on page 19, that all distributors of Australian tourism goods and services in the export distribution channel, that exceed the \$50,000 threshold, will be subject to the application of the legislation.

This, in effect, means that every retail travel agent in every hamlet, town, or city in every country in the world that sells Australian tourism product will be required to fill out a BAS and remit the GST relevant to the sale for the period to the ATO. The same will apply to every on-line operator.

ATEC believes that this fact may lead to three possible outcomes:

1. Some FTOs and their associated business entities in the supply chain to the consumer will comply with the legislation, because they are ethical businesses.

⁴ The Objects of the Tourism Australia Act 2004 are:

- (a) to influence people to travel to Australia, including for events; and
- (b) to influence people travelling to Australia to also travel throughout Australia; and**
- (c) to influence Australians to travel throughout Australia, including for events; and
- (d) to help foster a sustainable tourism industry in Australia; and
- (e) to help increase the economic benefits to Australia from tourism.

In the USA, such an outcome may be driven by the application of sections 302 and 906 of the *Sarbanes-Oxley Act, 2002*, (Attachment 3) if business entities wish to present a clean balance sheet and be seen as an ethical company that pays its taxes. The Sarbanes-Oxley Act (SOA) applies to USA listed companies. However, it should be noted that it has reputedly already generated a spate of voluntary delisting to avoid the application of its provisions.

To the extent that similar legislation exists in other countries then similar outcomes could be expected.

2. Some FTOs (rather than break the law) will cease selling Australia because they are ethical businesses and the Australian product, as a result of this new tax, delivers a lower yielding business outcome relative to alternatives.

In the USA the application of the SOA may also be a strong driver of this outcome. This also applies to other countries with similar legislation.

3. Some FTOs will continue to sell Australian product while ignoring the application of the new tax and see how the Australian Government proposes to bring them to book.

There is a view in some quarters of the tourism industry that this new tax on FTOs is **unenforceable** and accordingly, this will provide the basis for business as usual. As a peak national industry association, ATEC will not be party to disseminating such views and will continue to deal with the Australian Government in good faith and according to our legal and ethical obligations.

5.0 Government Agencies and the Rule of Law.

In the enforcement of Australian law it is presumed Commonwealth departments and agencies have responsibilities and obligations to not deal with business entities that ignore the application of Australian law in their operations. Presumably, any overseas business entity that failed to remit the relevant amount of GST from sales of Australian product would be, in effect, a tax evader.

In this regard, the Government's new statutory tourism marketing authority, Tourism Australia, has a highly developed and very effective international system of "**Aussie Specialists**" that retail Australian travel and tourism product in many of Australia's most important international markets. Significant investments of taxpayers' and tourism industry funds have developed this system over a long period of time. Indeed, it has been one of the winning strategies that have helped Australia grow its tourism exports at an above average rate. This new tax applies to these business partners.

Similarly, Tourism Australia runs one of the World's largest tourism trade shows every year. This trade show, known as the "**Australian Tourism Exchange**" (ATE) brings together overseas buyers and Australian sellers of Australian tourism product. The overseas buyers' costs are met by Tourism Australia and the industry. ATE is reputed to generate some \$2 billion in sales of Australian tourism product every year. This new tax applies to the business entities of these overseas buyers.

While the desire to continue to be part of these increasingly successful strategies may be seen as a reason why these business entities would decide to submit to the requirements of the new tax, this is far from certain. It is far more likely that the fundamental business decision will be driven by the commercial benefit to be gained, rather than some emotional commitment to continue to sell Australia when it has become a lower yielding product in their product range.

To the extent that overseas buyers at ATE and Aussie Specialist business partners decide to cease their Australian operation the distribution system will be fractured, with concomitant reductions in tourism exports.

Has the Australian Government identified mechanisms or strategies that it would implement to mitigate these outcomes?

Does the Australian Government require its departments and agencies to not deal with businesses that are not tax compliant and do not uphold Australian law?

6.0 Unintentional consequences for tourism product quality

As noted above in 3.1.1, one of the consequences of this legislation will be to encourage FTOs to "squeeze the supply chain", i.e., to transfer costs

to ITOs and Australian product suppliers. This will place pressure on suppliers and retailers to cut costs, thereby potentially reducing the quality of the Australian tourism experience.

Alternatively, FTO's, in order to protect their margins, may be further encouraged to deal with unrealistically cheap and unethical ITOs and product suppliers, many of them engaged in allegedly illegal consumer practices. This is a very real current threat to the Australian tourism industry, particularly in important emerging markets such as China and Korea. Indeed, the Queensland Government recently enacted the Tourism Services Act, 2003 to deal with this problem and is vigorously enforcing its provisions. It has the strong support of ATEC and the Commonwealth via the Inbound Tourism Compliance Taskforce.

ATEC is most concerned about any development that compromises the quality of the Australian tourism product. This impacts the long-term sustainability of our industry and thus our members' profitability and runs counter to the "Platinum" objective contained in the Government's Tourism White Paper.

7.0 ATEC's alternative proposals

7.1 Overview

ATEC proposes two Models as alternatives to the current unworkable legislation. These are both Input Tax Models that treat the supply of holiday packages to any foreign resident as an input taxed supply under Division 40 of the GST Act. Under these models the supply of accommodation, transport, meals attractions etc will continue to be a taxable supply irrespective of whether the recipient is a resident or non-resident. Essentially only the supplier of a third party right to an underlying holiday related supply will be subject to Input Taxing. ATEC's Model will only treat the direct costs of providing the rights to holiday packages as being subject to input taxing. The indirect costs (the operational costs of a resident tour operator) will be fully creditable.

7.2 The mechanics of the ATEC's preferred model (Model 1)

ATEC's Model 1 has the following characteristics:

7.2.1 Supplies subject to input taxing

Input taxing will apply to the sale of rights to a non-resident which entitle the recipient of the right to acquire a holiday related supply from an Australian resident enterprise. This will only apply where the supplier of the right is a separate and distinct enterprise to the ultimate supplier of the underlying supply.

A hotel that supplies a room night will not be making an input taxed supply as that entity is the enterprise that will make the underlying supply of accommodation. Similarly, a restaurant that supplies a right to a meal will not be making an input taxed supply as it is the entity that will supply the actual meal to the tourist.

All Australian based Inbound Tour Operators will be input taxed when supplying holiday packages to a foreign entity as they supply rights which are exercisable in exchange for supplies of accommodation, meals, transport, etc from separate and distinct enterprises. A foreign tour operator will also be input taxed when wholesaling or retailing the package to another FTO or tourist as they do not make the underlying supplies when the holiday rights are exercised.

An amendment to Division 40 of the GST Act can achieve this outcome and utilise the existing framework of the GST Law to effectively deny an input tax credit when the ITO or the FTO acquire the rights from the resident enterprise which will be the ultimate supplier of the underlying supply to which the right relates.

This mechanism will overcome concerns from Treasury regarding WTO protocols for treating a foreign taxpayer less favourably than a resident taxpayer. Both the ITO (the resident enterprise) and the FTO (the non-resident enterprise) are treated equally under the GST Law.

Wording along the following lines may provide the appropriate amendment to Division 40:

40-XX Holidays sold to non-residents

The supply of a right to a holiday is input taxed if;

- (a) the supply is to an entity which is not carrying on an enterprise in Australia and;*
- (b) no declaration is received from that entity confirming that the supply should be treated as taxable.*

For the purposes of this sub section, the supply of a right to a holiday means:

- (a) the supply of a right to transport, accommodation, meals, attractions, and other holiday related supplies where the supplier of the right is an entity which will not be making the underlying supplies to which the right relates, and*
- (b) the underlying rights will be ultimately used for the purposes of recreation or entertainment not connected with the carrying on of an enterprise.*

7.2.2 The denial of input tax credits

Denial of input tax credits should be limited to the direct acquisitions of holiday supplies. The acquisition of hotel room nights, transport costs, meals, and other direct costs of the tour package will not be creditable to the ITO or FTO. Indirect costs such as office costs, travel for staff, motor vehicles, etc will need to continue to be fully creditable to the registered enterprise. This approach has precedence in the existing framework of the GST Act, as follows.

Section 11-15 (4) states:

An acquisition is not treated, for the purposes of paragraph 2 (a), as relating to making supplies that would be input taxed if:

- (a) the only reason it would (apart from this subsection) be so treated is because it relates to making financial supplies; and*
- (b) you do not exceed the financial acquisitions threshold.*

Section 11-15 (5) states:

An acquisition is not treated, for the purposes of paragraph 2(a), as relating to making supplies that would be input taxed to the extent that:

- (a) the acquisition relates to making a financial supply consisting of a borrowing; and*
- (b) the borrowing relates to you making supplies that are not input taxed.*

Both these subsections represent modifications to the input taxed rule to minimise the compliance costs that would otherwise arise for all enterprises operating within Australia.

A TEC proposes that an amendment to section 11-15 would similarly provide compliance efficiency for ITOs that would be otherwise required to apportion the GST payable on operating costs. Wording along the lines of the following is suggested:

An acquisition is not treated, for the purposes of paragraph 2 (a), as relating to the making of supplies that would be input taxed if;

- (a) the only reason it would (apart from this subsection) be so treated is because it relates to making holiday supplies; and*
- (b) the acquisition is not an acquisition cost directly related to the acquisition of holiday rights which are input taxed pursuant to Division 40 XX.*

This modification is necessary in order for Australian based ITOs to remain competitive with FTOs in respect of the services provided in organising a holiday package. The FTO, although input taxed under this model will not effectively incur any non-creditable acquisitions in respect of operating costs as their business operations are based in foreign jurisdictions.

ITOs that have domestic subsidiary entities that sell a proportion of supplies to local resident entities will remain taxable in respect of these supplies because the immediate buyer, or a local resident tourist are resident entities.

7.2.3 Consequential amendments

It is recognised by A TEC that this model and the suggested definitional framework needs to be further worked through. For example, there would be a requirement to provide some consequential amendments to other aspects of the GST Act in order to ensure that the model does not produce unintended consequences.

Some suggestions for consequential amendments include:

Section 11-15 (3)- this section requires amendment to ensure that non-resident enterprises are not otherwise excluded from the model because

the supplies that they make are made through an enterprise which is not carried on in Australia;

Section 9-25 (5)- this section requires amendment to ensure that the supply of a holiday right is defined as connected with Australia. Failure to do so would render the Input Tax amendment inoperative; and,

Section 9-30 (4)- requires modification to extend restriction to the supply of holiday rights in addition to the existing restriction relating to financial supplies.

7.3 ATEC's second option (Model 2)

Should Government be concerned about the mechanism of narrowly focussed definitions such as the suggested wording we have provided for holiday supply Model 2 provides an alternative approach.

However, a broader definition of Holiday Right, one not focussed on purely recreational travel by individuals, carries the risk of extending beyond the scope of the intention of the amendment. If a broader definition is favoured, ATEC suggests the following mechanism to achieve the desired restriction in scope.

40-XX Holidays sold to non-residents

(1) The supply of a right to a holiday is input taxed if;

- (a) the supply is to an entity which is not carrying on an enterprise in Australia and;*
- (b) no declaration is received from that entity confirming that the supply should be treated as taxable, and*
- (c) the entity making the supply of the right to a holiday has not chosen to have its supplies of such rights treated as taxable supplies.*

(2) An entity which chooses to have its supplies treated as taxable pursuant to sub paragraph (1) c cannot revoke this choice within 12 months after the day on which it made this choice.

For the purposes of this sub section, the supply of a right to a holiday means:

(a) the supply of a right to transport, accommodation, meals, attractions, and other holiday related supplies where the supplier of the right is an entity which will not be making the underlying supplies to which the right relates.

This “optional taxing approach” has precedence in the existing GST Law and is not dissimilar to section 40-130 that provides school tuck shops with the option to choose not to be input taxed.

Under this alternate Model 2 the scope of holiday right is extended to business related travel (conventions, business trips, incentives, trade missions). Optional taxing provides the tour operator (local or foreign) with the option to elect to be taxable both in respect of the acquisition of the right and in respect of the on-supply.

ATEC considers that those entities that carry on their enterprise in these market segments will choose the taxing option and thus overcome any unintended consequence of applying the input tax model to a definitional framework broader than the recreational travel market.

Conclusion

ATEC considers the current legislation that has been introduced into the House of Representatives to be fundamentally flawed, business unfriendly, economically unsound and unnecessarily burdensome to Australia’s tourism trading partners.

A price increase to the international consumer of 4.5 - 5% on Australian tourism product will, depending on the elasticities, reduce international demand for travel to Australia, reduce the GST generated from tourism exports, and add to the record current account deficit currently dogging the Australian economy.

At the same time, educating the market and enforcing this measure would seem to ATEC to demand a significant investment of taxpayer’s funds. The Government has not analysed the efficacy of its proposed approach. ATEC’s analysis shows that the Government’s current approach is fundamentally flawed. Alternatives exists and provide a far more efficient and business friendly outcome.

The fact that the Government would pursue its presently proposed course of action when tourism exports continue to make a positive contribution

to the overall Balance of Payments is difficult to understand, particularly when the justification of the measure is so questionable.

Further, ATEC believes that many of the impacts of this Bill will be disproportionately felt in rural and regional Australia at a time when these areas are seeking ways to diversify their local economies.

The Government's proposed measures will disproportionately impact on the small and medium-sized businesses that dominate the structure of the Australian tourism sector. The already thin margins of most tourism businesses will be further eroded as pressure is applied to reduce prices in an effort to hold market share. In order to remain profitable, these businesses may well be forced to increase the price of tourism services to the domestic market. This will discourage Australians from travelling domestically and thus sacrifice the attendant socio-economic and cultural benefits of travel, while at the same time adding to inflationary pressures. To the extent that it encourages outbound travel by Australians, it will also add to the growing size of imports on the current account. This outcome flies in the face of the recent announcements by the Minister for Tourism, the Hon Fran Bailey MP, encouraging Australians to reduce their level of outbound travel by holidaying in Australia.

All this comes at a time when the labour market is tightening, skill shortages are impacting on costs, fuel prices are spiralling and the Australian dollar is strengthening in terms of both the Trade Weighted Index and the \$US.

In summary, this Bill:

- is based on a doubtful justification
- was introduced without industry consultation
- will add to the cost of tourism exports by 4% to 4.5%
- will add compliance costs of 0.5% on sales
- adds a high compliance burden on Australia's foreign tourism trading entities
- will incur significant compliance costs for the Commonwealth
- will encourage foreign sellers of Australian product to pressure Australian suppliers to bear the cost, at a time when Australian suppliers will be struggling with the GST on ITO margins, fuel costs, labour costs and high exchange rates, or;

- will encourage foreign sellers to pass on the cost in full to consumers and thus reduce the competitiveness of Australia as a destination, or;
- will encourage foreign sellers to abandon the sale of Australian product, or;
- encourage non-compliance and thus unlawful activity. It will also
- disproportionately negatively impact smaller, regional and niche Australian product suppliers
- have unintended consequences in terms of the quality of the Australian tourism product.

If the Bill seeks to correct a revenue dilemma created from poor initial drafting of the GST legislation then ATEC contends that the new proposal creates even more problems than it seeks to correct. On the other hand the ATEC Model:

- resolves the Government's revenue problem
- produces only nominal compliance issues
- is consistent with the way other tax jurisdictions deal with the tourism sector, and
- does not expand the scope of the GST to other industry sectors in foreign jurisdictions.

ATEC strongly believes that its alternative proposal would far better achieve the objectives of the Government and mitigate the serious business unfriendly aspects inherent in this Bill.

Attachment 1**Differential GST Charges on Tourism Goods and Services.****Accommodation**

There are a variety of GST rates applicable to accommodation. The ATO's advice at: ato.gov.au/SearchResults.asp?si=&kw=accommodation; and at: law.ato.gov.au/atolaw/view.htm?docid=GST/GSTR200020/NAT/ATO/0005, for example outlines the application of GST under a variety of circumstances including:

- Lodgers
- Houseboats and ships
- Farm stays and home stays
- Weekend cottages
- Serviced apartments
- Strata titled apartments
- Caravan parks and camping grounds

There are, of course, examples where accommodation in the same resort attracts different GST rates depending on whether the visitor is staying in a hotel room, a villa or in the camping ground.

Museums

According to the ATO's Media Release - NAT 01/9 no GST is applicable to museum entry fees.

Attachment 2**Compliance Issues**Timing

<p>Commencement date of 10 February effectively prohibits FTOs from recovering the additional GST until next pricing adjustment</p>	<p>Tourism calendar general runs 1 April to 31 March. Brochures for 1 April 05 through 31 March 06 have already been printed and distributed to the Travel Agent network. Many FTOs are constrained in respect of pricing adjustments where price guidelines have already been established.</p> <p>The GST law, when tabled in December 1998, contained transitional pricing provisions which protected vendors from GST related price increases.</p>
<p>Time frame for compliance is inadequate.</p>	<p>The establishment of appropriate systems and procedures for computing output tax is a time consuming and costly process. It is impractical to expect businesses to implement simple compliance systems overnight, it is unrealistic to expect complex compliance systems to be implemented without an appropriate compliance time frame.</p> <p>Australian businesses were given a minimum 12 month time frame for compliance system set up and review.</p>

Complexity

Taxable Value of Tour Packages	<p>Section 96 stipulates the formulae for computing the taxable value of a supply which is partially connected with Australia. Taxable value is derived from the ratio of taxable costs to total costs. Accurate calculation of the GST payable is not possible until after all costs associated with a tour package have been incurred.</p> <p>The taxable value also varies between tourists depending upon the profile of tour that they choose (single room v shared room, room upgrade, business class travel, optional tours selected)</p>
Attribution Rules	<p>Division 29 requires the output tax to be attributed to the tax period where either the invoice is raised or consideration is received.</p> <p>These attribution rules make it impossible for a FTO to accurately account for their GST obligations as currency fluctuations cannot be predicted.</p>
Overpayments/Underpayments	<p>Any underpayment of GST arising from an inaccurate assessment of GST exposes the FTO to penalties and GIC.</p> <p>An overpayment of GST does not give rise to an automatic refund entitlement. Section 39 of Taxation Administration Act requires overpayment to be reimbursed to recipient in order for refund entitlement to arise.</p>
Compliance Complexity	<u>Identification of sales.</u>

	<p>Reservation systems are not linked to accounting systems.</p> <p><u>Income Recognition.</u></p> <p>Tour operators do not recognise assessable income from tours until commencement of holiday but GST will be payable at time of sale.</p> <p><u>Invoicing Format</u></p> <p>Off shore wholesaling will require revision of invoicing format to comply with “tax Invoice” requirements under the GST Act. English Language, exchange rate, ABN, etc all require stationery and format adjustments.</p> <p><u>Validation of Credit Entitlements</u></p> <p>Validation processes are particularly complex for tour operators in non English speaking countries.</p> <p><u>Parallel Clearing Accounts.</u></p> <p>FTOs operating in VAT/GST jurisdictions will require parallel clearing accounts for capturing output tax and input tax.</p> <p><u>Double Taxation</u></p> <p>Overall system requires all FTOs to register and account for GST on outputs. Failure for participants in distribution chain to register creates double taxation.</p> <p><u>Identification of Taxable</u></p>
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	<p><u>Components</u></p> <p>Not all Australian ground costs are taxable (domestic airfares, some categories of accommodation, non-registered suppliers). Identifying taxable and non-taxable components of Australian ground costs is problematic, particularly for non English speaking accounting staff.</p> <p><u>Cut Over</u></p> <p>Tax liability arises for supplies from 10 February 2005. Identification of taxable and non taxable sales requires detailed analysis of past sales and deposits.</p>
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Attachment 3**Sarbanes-Oxley Act, 2005 (USA)**

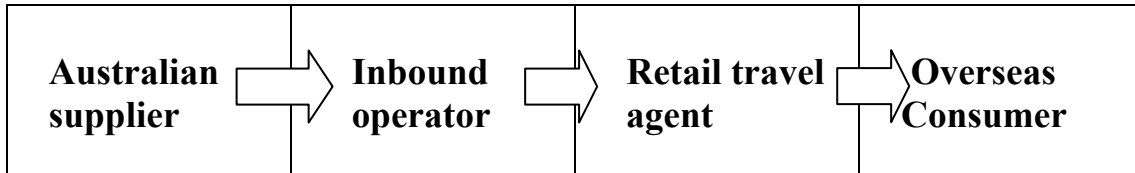
Section 302 of the Act requires the principal executive and financial officers of a United States of America company filing periodic reports to certify in each quarterly and annual report, among other things, that the report does not contain any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements made, in light of the circumstances under which such statements were made, not misleading, and the financial statements, and other financial information included in the report, fairly present in all material respects the financial condition and results of operations of the company.

Section 906 of the Act adds a provision to the US criminal code that contains a separate certification requirement. This provision expressly creates new criminal penalties for a knowingly or wilfully false certification.

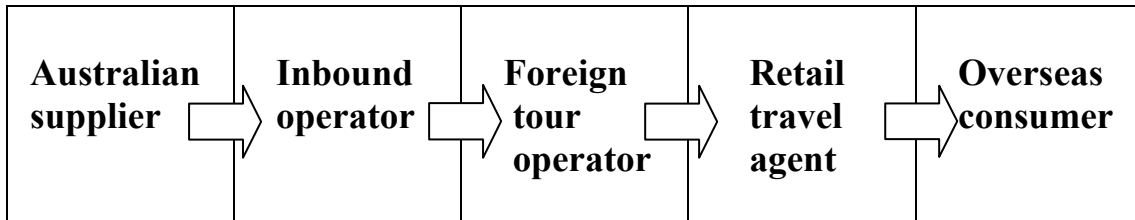
Attachment 4

Some Examples of Tourism Export Distribution Channels.

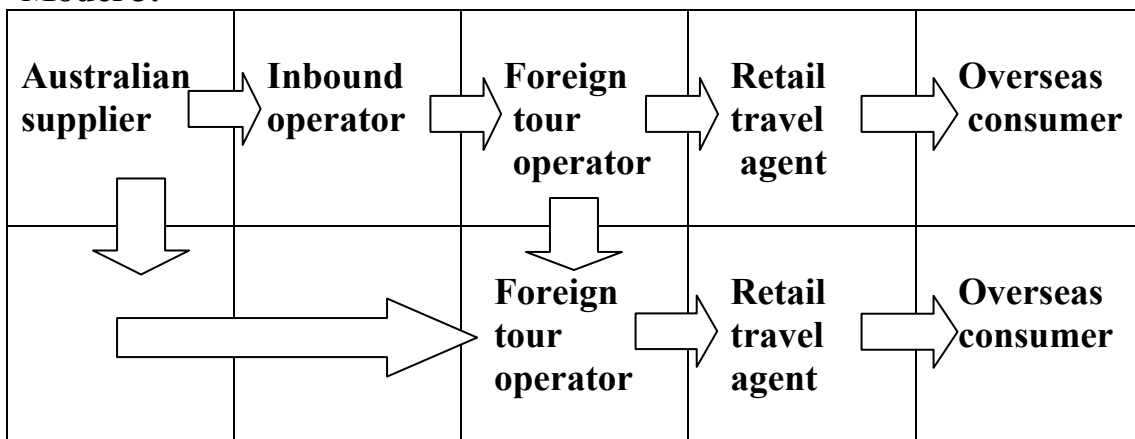
Model 1.



Model 2.



Model 3.



Model 4.

