

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

**Submission to the Senate Economics
Legislation Committee**

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Executive Summary

- Deloitte strongly urges the Senate to reject the amendments proposed in Schedule 3 to the *Tax Laws Amendment (2005 Measures No. 1) Bill 2005* (the Bill), as they are not an appropriate solution to the ‘deficiencies’ the Government believes exist in relation to the treatment of Australian tour packages sold by non-residents to non-residents
- Deloitte suggests that the Senate recommends that the Government, in conjunction with the Foreign Tour Operator (FTO) industry, explores alternative approaches to achieve a better model that meets the Government’s policy objectives without creating the massive compliance issues for FTOs which exist under the proposed model contained in the Bill
- The Bill will adversely affect international tourism numbers, either because Australian packages will become relatively more expensive than those to competing destinations (if the cost of the GST is passed on), or because Foreign Tour FTOs will redirect their marketing efforts to more profitable destinations (should the cost of the GST be absorbed)
- The Bill was introduced without consultation, thus denying FTOs the opportunity to minimise the loss of revenue which will result from fixed price contracts obliging them to absorb the new tourism tax
- The lack of transitional relief is a denial of procedural fairness and does not follow existing precedents within the GST law
- The lack of transitional relief means that FTOs will not have the benefit of ATO interpretive guidelines on technical issues, to assist them determine the retroactive exposures generated by the Bill
- The lack of transitional relief does not allow FTOs the time to implement the sophisticated compliance systems required to deal with Australian GST obligations
- The lack of transitional relief denies FTOs the opportunity to liaise with the ATO to determine pragmatic solutions to the technical difficulties which arise under a strict application of the GST law
- Compliance costs faced FTOs under the Bill, in its current form, are extreme and considerably higher than those faced by an equivalent Australian business
- The Bill, in its current form, will be difficult to police, should any FTO simply decide not to comply
- Potential exists for double taxation where a compliant FTO sources Australian land content from a non-compliant FTO, through a denial of input tax credits to the compliant FTO
- Double taxation will arise due to the difference in tax treatments between Australia and foreign jurisdictions. Australian GST will be taxed, without a deduction being available, in China. The same supply could be subject to Australian GST and UK VAT
- The Bill exposes FTOs to breaches of Australian and foreign consumer protection laws
- The impact of the Bill is contrary to the Government’s stated tourism policy objectives, as evidenced by the *Tourism Australia Act 2004*
- The Bill will adversely affect Australia’s competitive position as a conference venue

- The Bill will adversely impact regional Australia, as international tourism is a large contributor to regional GDP
- The Bill will probably result in a loss of jobs in regional Australia
- Better alternatives exist to achieve the Government's policy goals

Overview of the impact of the Bill

Deloitte recognises and accepts that it is the prerogative of the Parliament to enact laws as it sees fit.

However, it is our view that such laws should be enacted having full regard to their consequences, including the impact on the persons to whom the laws are directed.

In regard to the amendments contained in the Bill, we are of the view that they are harsh and iniquitous in their current form and that the Governments policy objectives can be achieved with less adverse impact on FTOs.

The amendments proposed by the Bill are such that the compliance impact on FTOs, both those which have previously been claiming credits and those which have never been within the Australian GST system, will be of a magnitude greater than those faced by all Australian businesses in the lead up to the introduction of GST in July 2000.

Further, in so far as FTOs are concerned, Australia is a commodity. As such it competes with other tourism commodities in the global market. At the present time FTOs face a cost structure which is being squeezed by a strong Australian dollar and increasing costs of basic land components, such as hotel accommodation. To compete, the Australian commodity must be price competitive, which makes it very difficult for FTOs to fully recover increased costs, including the additional GST which the Bill will make payable. The alternative will be that the FTO is obliged to absorb the GST, thus reducing their profit.

Many of our clients have advised that any reduction of profit margin will be treated in the same way as a loss of profitability for any other product in a range, that is the FTOs will redirect their efforts towards promoting more profitable destinations.

So, regardless as to whether tour prices rise, or the additional cost are absorbed by the FTO, Australia's competitive position in the global tourism market will be threatened. Although this will particularly be the case in price sensitive markets, such as China, it will also impact on tourist numbers from other established countries, such as Japan, where existing cost increases have resulted in some FTOs already having ceased to promote Australia as a destination.

In the balance of this submission we address these and other impacts of the Bill in more detail.

Background

Deloitte is proud to be the provider of GST assistance and advice to well over 100 GST registered Foreign Tour Operators (FTOs). These FTOs are based in countries all around the world, including:

- Argentina
- Belgium
- China
- France
- Germany
- Hong Kong
- India
- Japan
- Malaysia
- New Zealand
- Norway
- Singapore
- South Africa
- Taiwan
- The Netherlands
- United Kingdom
- United States of America

In addition, through our global network, we provide advice to a large number of tourism industry bodies and other FTOs in many countries.

Consequently, we are well placed to understand the impact of the proposed GST amendments contained in the Bill especially those contained in Schedule 3.

Further, given that the FTOs at whom the proposed amendments are targeted, by and large, do not carry on any business in Australia, they are not in a position to make direct representations to the Economics Committee in relation to the impact of the Bill.

Deloitte therefore is privileged to make representations on behalf of the global tourism industry, as many of the concerns held by our clients would also be concerns of other parties for whom we do not directly act.

When the *A New Tax System (Goods and Services Tax) Act 1999* (the GST law) was introduced it was framed in such a manner that foreign businesses could register, even though they were not carrying on a business in Australia.

In so far as the GST law was concerned then, and as will continue to be the case if the Bill is passed into law, a foreign business was perfectly entitled to recover input tax credits in respect of taxable acquisitions made in the course of carrying on its enterprise.

Consequently, many FTOs availed themselves of the opportunity, in full compliance with the GST law, to register for GST purposes for the sole reason of recovering input tax credits on acquisitions from Australian tourism suppliers.

Deloitte has actively assisted our clients meet their obligations and claim their entitlements under the GST law.

However, at all stages in the process Deloitte adopted a view that we would undertake a full consultation process with the ATO, to ensure that our clients were not seen to be taking advantage of a loophole in the GST law. In that regard, we had a series of detailed discussions with senior ATO officials over a period of approximately six months before we sought to register any client for the purpose of recovering input tax credits.

During that period we were aware that there were two schools of thought within the ATO on the issue of whether an FTO would have a liability to account for GST on sales of Australian holiday packages made outside Australia by an entity with no presence in Australia to another entity with no presence in Australia.

However, we were repeatedly advised that the formal ATO position was that an FTO was not making supplies connected with Australia and that, as a result, the FTO could claim all available input tax credits without having a liability to output tax. This position was also published by the ATO in numerous private rulings issued to FTOs.

Subsequently, as our clients' information was received, it was reviewed and input tax credit claims identified in appropriate Business Activity Statements. In addition, we assisted our clients through a large number of compliance audits undertaken by the ATO to verify the credit claim. Some of these ATO audits were conducted in great detail, with two lasting for approximately six months. However, in all cases, at the conclusion of the ATO audit the claims were accepted without alteration.

Throughout the period ending 28 November 2003, Deloitte had frequent discussions with the ATO to ensure that at all stages in the process we were complying with the administrative requirements of the ATO. This included acceding to requests by the ATO for claims to be allocated to the months in which the transactions originally occurred, in order to simplify the ATO audit procedures.

On 24 November 2003, Deloitte met with very senior ATO officers to discuss the ongoing compliance requirements for FTOs. At that meeting it was confirmed that the procedures we had adopted continued to be appropriate for the ATO.

On 28 November 2003, the ATO altered its interpretation of the GST law, by determining that, in its view, supplies of rights to accommodation in Australia were subject to GST when sold by an FTO. This is an interpretation which is still in dispute.

Since that time, and with the approval of the ATO, Deloitte has attempted to agree an appropriate methodology, pursuant to which FTOs could accurately identify and quantify the GST liability which would exist under the ATO's new interpretation of the GST law. This is an exceedingly difficult question, as there are many technical issues which need to be resolved.

In that regard, we recognise that the ATO has acted in good faith in trying to work with Deloitte to find a pragmatic solution to the existing technical issues.

Therefore, we utterly repudiate any suggestion that the justification for the amendments contained in the Bill are required to overcome an unrecognised consequence of the law, whether described as a 'loophole', a 'deficiency', or a 'quirk'.

Timing Issues

The introduction of the amendment with immediate effect will result in an unprecedented challenge in terms of each FTO complying with their Australian GST obligations.

Impact on Timing

Given that the Bill was introduced with no prior consultation, Deloitte has sought urgent clarification from the ATO regarding a number of technical compliance issues arising from the amendment. Attached, at Appendix 1, is a copy of our letter to the ATO, dated 18 February 2005, seeking clarification of a number of matters, including the following timing issues:

- The date of effect, as the amendment specifically relates to entities located in different time zones around the world;
- Transactions within scope; and
- The effective date of a tour package sale and the application of division 156 of the GST Act, which relates to progressive supplies.

As at 11 April 2005, we are yet to receive a response from the ATO. Accordingly we have been unable to conclusively advise our FTO clients as to the technical interpretation and resulting compliance mechanisms to be adopted to account for GST on those tours sold to non-resident customers from 10 February 2005.

This leaves FTOs in a 'Catch 22' situation, whereby the Bill creates a contingent exposure from 10 February 2005, but the ATO is unable to provide interpretation advice until the Bill becomes law. FTOs are left in an invidious and untenable situation.

No Transition for Fixed Pricing

The amendment in its current form has immediate effect from 10 February 2005.

Accordingly, FTO's have not been given an opportunity to either:

- recover the additional GST to be charged on these tours, or
- deal with the compliance complexities arising from the need to ascertain the taxable value of the tour content on which GST is to be imposed.

With respect to the recovery issue, the impact on the FTOs arises mainly from the operation of advance pricing arrangements associated with tourism marketing. As FTOs typically market their Australian tours, in brochures and other mediums, at least 6 months in advance of the tour actually taking place there is little or no opportunity for an FTO to increase the price of tours offered with a commencement date on or after 10 February 2005. Therefore, for the duration of the advance fixed price period, FTOs will, in all likelihood, need to absorb the impact of the GST.

It is both inequitable and impractical to impose an additional tax obligation on any category of taxpayer (Australian or non-resident) that has an immediate effect, without a period of transition to allow the taxpayer a reasonable period to comply with the new law. The transition period is necessary to prevent exposure to significant financial penalties.

The Bill, in its present form does not satisfy any concept of procedural fairness.

In support of the impact of fixed prices we attach, at Appendix 2, a chart evidencing the fact that FTOs in all regions market fixed price tours spanning periods of up to 12, or more, months in advance.

Further discussion on the compliance difficulties faced by FTOs is contained in the 'Compliance Issues' section of this submission.

With respect to the complexities of ascertaining the appropriate taxable value on which GST is to be levied we note that the GST liability on the sale of Australia bound tour packages, is not 10% of the price for which the tour is sold. The Bill only imposes a GST liability on the "value" of the rights to the Australian land content. Computing this value requires the FTO to apply the following formula:

$(\text{Cost of Australian Taxable Content} / \text{Total Tour Cost}) \times \text{Total Tour Price}$

However, it should be recognised that the above formula will not provide FTOs with a GST liability calculation that is a standard percentage of the packaged tour price.

A large number of factors will result in the GST value of a package varying from tour to tour and, more significantly, from tourist to tourist within a tour. These factors include, but are not limited to, the impact of:

- currency fluctuations
- single supplements
- optional tour components
- standard of airfare selected
- supplier rebates

Consequently, in many, if not all, cases the FTO will not be in a position to ascertain the 'Cost of Australian Taxable Content/Total Tour Cost' component of the formula until after the tour has been completed, making it impossible to identify the correct taxable value at the time the tour is supplied to the tourist.

A detailed description of this formula and its impact on the final tour price and resultant GST is contained in the 'Pricing' section of this submission.

Therefore, the administrative issues faced by FTO's in complying with the amendment are significant. In that regard we note that there are a number of precedents existing within the GST regime that support the concept of an extended transitional period accompanying significant changes to the law, or its administration. These have included:

- the treatment of long term contracts
- changes to the treatment of Inbound Tour Operator (ITO) margins.

When the GST regime was implemented, Australian businesses were protected from adverse pricing impacts linked to the imposition of GST. The *A New Tax System (Goods and Services Tax Transition) Act 1999* provided Australian business with a minimum 5 year GST-free concession to revise long term contract pricing.

Further, when the ATO reversed its position, in November 2003, by requiring all local tour operators to charge GST on their margin, it ultimately recognised the tourist industry pricing model (i.e. a model allowing ITOs to progressively change fixed priced contracts in order to account for GST on their margin). The ATO granted local tour operators a 15 month lead time to renegotiate pricing in order to accommodate the change to the previous GST free treatment of their margins, with an effective implementation date of 1 April 2005.

The transition period provided to local tour operators was recognition by the ATO that it was impractical from a compliance perspective to impose an immediate GST burden on a class of taxpayer in an industry where long term contracts are the norm.

The introduction of this new tax should be accompanied by a similar recognition of its impact as was provided for long term contracts and the changed ATO interpretation of the GST consequence of an ITO margin.

Attribution of GST as a result of the Amendment

Under the basic attribution rules in Division 29 of the GST law, where a supplier accounts for GST on the accruals basis, the GST payable on a taxable supply is attributable to the tax period in which any of the consideration is received for the supply. If a tax invoice is issued before any of the consideration is received then the GST is attributable to the tax period in which the tax invoice is issued.

The payment process for a typical tour package is an instalment plan. A tourist wishing to secure inclusion in an advertised tour will pay a deposit at the time of initial booking and then one or more instalment payments, with the final payment due at a date in advance of the commencement of the tour.

The payment arrangements for packaged tours raise obvious issues regarding attribution for GST purposes. These issues, identified in our letter to the ATO of 18 February 2005, include whether the:

- initial deposit constitutes a security deposit pursuant to Section 99 of the GST Act
- subsequent instalments also represent security deposits
- packaged tour is a progressive supply and, accordingly, whether GST is attributable on the basis provided by Section 156 of the GST Act.

The deposit will normally be a pre determined minimum percentage of the tour package price. Specified cancellation periods are attached to the deposit, after the expiry of which part or all of the deposit will be forfeited to the FTO. In respect of each individual deposit received, the FTO is required to determine whether the relevant amount gives rise to a GST liability

The attribution rules for security deposits (Division 99 of the GST law) state that the deposit is not treated as consideration for a supply unless it is forfeited because of a failure to perform the obligation, or is applied as all or part of the consideration for a supply. Therefore, in respect of all security deposits the FTO will have to closely monitor the receipt of these deposits to ensure that any GST payable is accounted for at the correct time.

The complexity faced by FTOs in respect to the GST treatment of deposits, instalments, cancellations and progressive supplies noted above is further exacerbated by the ATO's current unwillingness to provide guidance as to its interpretation of the amendment.

As the above issues are central to the FTOs day to day invoicing arrangements, it is both harsh and unjust to expect FTOs to commit funds to ensure compliance with the amendment with immediate effect if they are not provided certainty that their interpretation of the amendment conforms with the ATO's view.

The current position reinforces the argument for a transition period to be adopted in order to allow FTOs and the ATO to work together to ensure FTOs are provided definitive advice regarding the ATO's interpretation of the amendment.

Pricing

The amendment in its current form will significantly impact on FTOs pricing decisions for Australian tour packages. This is due to the complex issues arising in relation to:

- the variable taxable value of tour packages
- the variation of package profiles
- the impact of currency fluctuations on the tour price
- the attribution of GST
- the impact of adjustment events such as rebates
- the decision to pass on or absorb the new tax payable under the amendment

These pricing issues may force many FTOs to reconsider the viability of Australia as a tour destination, given the complexities involved in determining the taxable value under the amendment and the compliance costs to accurately capture and attribute GST to appropriate tax periods.

Variable Taxable Value

GST liability on tours is calculated by reference to the ratio of the cost of the taxable Australian ground content to the total cost of the tour. The taxable value is the ratio times the selling price and is stated in the following formulae:

$(\text{Cost of Australian Taxable Content} / \text{Total Tour Cost}) \times \text{Total Tour Price}$

The ratio of the taxable component (usually priced in AUD) will vary with exchange rate fluctuations as the non taxable components are generally priced in currencies other than AUD.

It is readily apparent that the GST liability will not be a standard percentage of the packaged tour price. The GST liability will vary depending upon the ratio of Australian costs to non-Australian costs and also the exchange rates applicable when the FTO converts its AUD tour costs to its local currency. These issues are discussed in more detail subsequently.

As the amendment taxes the rights and options to acquire a supply which would be connected with Australia to highlight the complexity of the calculations we list below several categories of supplies that will require different tax treatments in different circumstances. (Deloitte has sought confirmation from the ATO regarding the GST treatment of these issues in light of the amendment. As of 11 April 2005 we have not received a response from the ATO):

- Travel Insurance – To what extent will claims under a travel insurance policy relate to supplies connected with Australia and, as a result, give rise to a potential GST issue? Travel Insurance can compensate travellers for a range of events. Cancellation due to poor health (either prior to or during the tour), emergency medical assistance, lost luggage (lost in transit overseas or locally), monetary compensation to cover theft or unfavourable events which occur during the tour, etc.

- Domestic Airfares- These are invariably GST Free when pre booked by foreign travellers. Would the right or option for a domestic airfare also be GST Free? It is our view that this is the case. Section 9-30(1) of the GST Act confirms that a supply is GST Free if it is GST Free under Division 38 or it is the supply of a right to receive such a GST Free supply.
- Input Taxed Accommodation - Likewise, would a right or option to input taxed accommodation be treated as input taxed? In this event, would FTO's be required to apply an apportionment methodology for acquisitions which indirectly relate to the acquisition of the input taxed accommodation?
- Supplies from Unregistered Vendors - It is envisaged that certain suppliers to the tourism industry may be unregistered because their annual turnover is below the GST Registration threshold. These supplies are neither taxable, input taxed nor GST free. We have sought confirmation from the ATO as to whether the supply of a right or option to these supplies would be considered taxable for the amendment.
- Tour Incidentals - Tourists may be supplied with distinctive bags, shirts, hats and other incidentals. The supply may occur prior to departure from the country of origin or after arrival at their destination in Australia, or a combination of both. It is our view that the supply of these incidentals prior to the tourists arrival in Australia would be "out of scope" but the supply after arrival would be a supply connected with Australia. Accordingly, only the supply of rights to the latter would give rise to a GST liability under the amendment.

These issues highlight how each sale of a tour requires additional compliance measures to ensure the GST liability is correctly determined. Even adopting a case by case approach will not assist the FTO in fulfilling their GST obligations as the GST liability is payable to the ATO before the taxable ratio can be determined. The "attribution rules" under the GST law require the FTO to pay GST at the time of sale but the taxable ratio cannot be determined until after the conclusion of the tour when the actual AUD\$ costs of the tour are determined by the FTO.

Until the ATO confirms the GST treatment of the above and other variables it is unreasonable to compel FTOs to incur compliance costs to amend systems in an attempt to comply with Australian GST requirements. In that regard, we understand the ATO's reluctance to give any guidance until the amendment becomes law. However, without guidance FTOs are exposed in that they are forced to comply with the law from 10 February 2005 without understanding how the amendment applies to their day to day operations. Accordingly, in the interests of fairness it is essential that a transition period be implemented in order to allow in the ATO to issue guidance on its interpretation of the law and to allow FTOs to comply with the ATO's interpretation of the law.

Variation of Taxable Components between Tourists

As mentioned above, the relative ratio of taxable components to non-taxable components would vary within a tour group. Some tourists would travel as couples and share a room, some would be single travellers and some tourists would elect to have premium rooms. Further, flights may be first, business or economy class. Some tourists would elect to partake in optional tours, others would choose a "free day". Tour companies generally deal with these options as a surcharge to the quoted price of the tour.

The impact of changing tourist profiles on GST is demonstrated in the table below, which shows the changing ratio arising from tourists with different profiles. It should be noted that on any single tour, there are likely to be multiple tourist profiles, each with a different GST impact. The FTOs compliance systems need to be sufficiently robust to cope with these variations.

Table 1: Tourist Profile and GST impact

Tour price [^]	Hotel class/cost	Air class/cost	Optional land costs	Ratio*	GST
2500	Std 1000	Econ 1000	Nil	1250	113.63
4500	Std 1000	1 st 3000	Nil	1125	102.27
4500	1 st 2000	Econ 1000	1000	3375	306.81

[^] Tour price is taken to be GST inclusive

* $(\text{Cost of Australian Taxable Content} / \text{Total Tour Cost}) \times \text{Total Tour Price}$

The changing ratio of the taxable components to non-taxable components when calculating the taxable value will make it extremely difficult to project pricing in tour brochures for these options because the GST liability would not vary in a lineal way. Accordingly, this will impact on the FTO's profitability and viability in the long term.

This situation is exacerbated in that it is not permissible under Australian law to quote GST exclusive prices within the retail market. Such an approach would also contravene the consumer protection laws in many other jurisdictions.

We have submitted to the ATO in our letter of 18 February 2005 that the only practical mechanism to resolve this valuation dilemma is for the Commissioner to approve a predictive valuation methodology based upon either the historic data compiled by a client or upon the methodology used by a client when initially settling the tour pricing. Given that the ATO would need to approve hundreds of predictive models if this valuation method is adopted, it is imperative in the interests of fairness that a transition period be provided to allow the ATO to approve each FTOs valuation methodology.

Currency fluctuations

Compliance costs for FTOs are further complicated due to the impact of currency fluctuations. The majority of inbound tours are invariably priced in the currency applicable to the market in which the tour is sold. The FTO will make a commercial decision as to whether they hedge any part of that exposure. The Australian land content component of a tour is generally contracted in Australian dollars.

Consequently, it is the FTO which bears the foreign exchange rate risk, as the quoted price of the tour is calculated at a time well before the tours are sold, usually 12 months. As the price of the tour is fixed in the local currency the relative ratio of Australian cost to foreign currency price would vary with exchange rate fluctuations. The formula prescribed in section 9-75(2) of the GST Act requires the taxable value to be separately calculated for each tour package which is sold using the appropriate currency exchange rate at the date of the

transaction. Hence, given the impact of exchange rate fluctuations, the GST liability will need to be determined on a daily basis when the tour is sold. This introduces an additional compliance cost in terms of the additional labour hours required to undertake GST calculations on a daily basis in relation to each tour package sold.

The impact of varying exchange rates and the FTOs resulting profit margin is illustrated in Appendix 3 which depicts the impact of currency fluctuations in a particular period and its correlation with the amount of GST attributed to a particular tour. As can be seen from the table below, which is an extract from Appendix 3, currency fluctuations play a significant role in the determination of not only the taxable value but also the FTOs margin.

Table 2: Impact of exchange rates on GST

DAILY 4PM	United States Dollar	\$1500 airfare	Profit	SAUD3000 land content converted to SUS
1/03/2005	0.7869	1500	1139.30	2360.70
2/03/2005	0.7830	1500	1151.00	2349.00
3/03/2005	0.7818	1500	1154.60	2345.40

Variation in the margin will change the GST payable on the transaction, as adverse movements in currency will reduce the margin, causing a reduction in GST payable on the part of the margin applicable to Australian land content and vice versa.

It is not uncommon for tour prices to include a currency fluctuation clause. These clauses allow for the upwards or downwards variance in price if exchange rate fluctuations exceed a predetermined percentage. However, frequently these clauses have no application after part of the consideration has been paid.

Timing of Output Tax Liability

The Australian Taxation Office published, on 28 November 2003, an Interpretive Decision, *ATO ID 1058/2003 GST and supply of accommodation rights by a non-resident tour operator*.

The Interpretive Decision states that the ATO is of the view that the supply of rights to accommodation in Australia, by a non-resident tour operator to a non-resident tourist, is a supply of real property connected with Australia under the Australian GST law. As such, the ATO has determined that non-resident tour operators are required to account for GST on sales of tour packages that include rights to accommodation.

Conceptually, the compliance challenge faced by FTOs may seem equivalent to the requirements under the proposed amendment however there is one significant difference. The pre 10 February 2005 position meant that almost all FTO's were net credit taxpayers. Their entitlement to input tax credits from accommodation and other Australian ground costs exceeded the output tax liability on the accommodation.

The ATO has, we understand, allowed some FTOs to calculate the GST liability after the conclusion of the tour. This overcomes the currency fluctuation issues and the tour profile variance complexities.

As the majority of FTOs will, subsequent to the amendment will now be net debit taxpayers, they cannot delay the payment of output tax without the risk of General Interest Charge being imposed by the ATO.

Rebates

The Australian suppliers to FTOs (and overseas suppliers) often provide FTOs with volume based incentive rebates. A hotel chain may provide a rebate to the FTO if a predetermined number of room rights are used in a particular 12 month period.

These arrangements are not uncommon between Australian businesses and the GST aspects of such arrangements are dealt with via increasing and decreasing adjustments between the registered enterprises. However, the GST position for these arrangements between on-shore and off-shore entities is far more complex, particularly in light of the amendment.

For example, if a hotel chain does provide a rebate to the FTO, they would treat this as an adjustment event under Division 19 of the GST Act. As the consideration for the supply has been reduced, there would be a decreasing adjustment for the Australian supplier and an increasing adjustment for the FTO (because, in effect, they claimed a higher input tax credit to that which they were entitled).

The change of consideration, as a result of the rebate, will also impact on the ratio of the cost of the taxable components to the overall cost of the tour package. The Australian land content value will reduce and the margin will increase while the price remains the same.

Consequently, the FTOs GST liability on the value of rights to the Australian land content will change.

However, although the taxable component may have actually reduced as a percentage of the tour price there is no opportunity for the FTO to adjust downward the GST initially paid when the tour was sold. This is because no GST refund entitlement is available unless the GST overcharged is reimbursed to the tourist. Consequently, the amendment will permit the unjust enrichment of the Federal Government as it will retain (albeit on behalf of the States and Territories) GST which has been incorrectly overpaid and which it will not refund.

The outcome of the above is double taxation.

These issues also demonstrate that the FTO will need to have in place a compliance system sufficiently sophisticated to recognise the impact of these adjustment events.

Given that the Australian GST compliance system of FTOs is likely to be an overlay on the existing accounting system, which is probably already accounting for a local GST/VAT, it is likely to be a manual system.

It would be naive in the extreme to believe that an FTO that is obliged to comply with all the complexities of the Australian GST law, will not face a significant compliance cost, just for the dubious right to pay tax in Australia.

Pricing to sustain competitiveness

The economic concept of supply and demand is no more evident than in the marketability of international tourist destinations. All things being equal, to maintain or increase the number of tourists to Australia, prices have to reduce or remain constant relevant to comparable international destinations.

An increase in tour prices as compared to other international destinations must have the affect of reducing tourist numbers. Any loss in tourist numbers will have a direct impact on Australia's GDP, through the loss of revenue to Australian suppliers of tour package content and through loss of the tourists discretionary expenditure for the period during which they would have been in Australia.

Other flow on effects will include the impact on employment, especially in regional Australia. These issues are discussed further in the 'Economic Impact' section of this submission.

Accordingly, in order for FTO's to maintain the competitive position of Australia as a destination they would prefer to sell tours to, the existing price of Australian tours should remain stable or decrease. To do so, the FTO's will need to absorb the GST that will be payable as a result of the amendment. Only doing this would ensure that Australia continues to remain a competitively priced destination for the FTO.

However, it is also recognised that any compulsion felt by an FTO to absorb part, or all, the GST will result in a reduction in the FTOs profit margin. Not only would this impact upon the calculation of the ratio (because the tour price will be GST inclusive), it will result in FTOs re-examining their commitment to Australia as a destination, given that other opportunities may deliver the FTO a greater return on their investment.

In that regard, anecdotal evidence from our clients indicates that reduced profitability from a destination will result in a redirection of advertising expenditure to more profitable destinations. These FTOs have ample experience to know that there is a direct correlation between advertising and the number of tour packages sold for a destination.

Currently, many FTOs work with Tourism Australia, under joint marketing initiatives, to promote Australia. We have been advised that these arrangements will be set aside if Australia ceases to generate adequate returns for the FTOs.

Compliance Issues

The introduction of the amendment with immediate effect has resulted in an unprecedented challenge in terms of each FTO complying with their Australian GST obligations. A detailed discussion of the particular compliance difficulties faced by FTOs as a result of the amendment is noted below.

Technical Compliance with the Amendment

Given that the amendment was introduced with no prior warning, we sought urgent clarification from the ATO regarding a number of the technical aspects of the amendment that would impact on the ability of FTO's to comply with the amendment. We have attached at Appendix 1 the letter sent to the ATO on 18 February 2005 seeking urgent clarification of a number of GST technical issues concerning the amendment.

Further, we had previously sought clarification from the ATO on 8 September 2004 regarding the operation of Interpretive Decision, *ATO ID 1058/2003 GST and supply of accommodation rights by a non-resident tour operator* and the ATO's preferred methodology for overcoming the procedural difficulties faced by FTOs in calculating output tax liabilities on the accommodation component of tour packages. We have attached that letter at Appendix 4.

As at 11 April 2005, we had yet to receive a response from the ATO, to our letter dated 18 February 2005, nor has the ATO issued any public statements on the content of the Bill.

While we have received requests for further information in respect to our letter dated 8 September 2004, we note that the ATO has yet to issue publicly any workable guidelines in respect to the imposition of GST on the accommodation element of a tour package sold by an FTO.

In our view, the lack of public guidance from the ATO is indicative of the compliance and technical difficulties created by changes to the treatment of supplies made by FTOs, both under the Bill and as a result of the ATO's policy about face in November 2003.

Consequently, we have not been in a position to conclusively advise our FTO clients as to the technical interpretation and resulting compliance mechanisms to be adopted to account for GST on those tours sold to non-resident customers from 28 November 2003 in the first instance and then from 10 February 2005. In our view this is not acceptable, especially when FTOs are faced with retrospective compliance exposures.

Cost of Complying with the Amendment

The costs associated with complying with the new amendment will vary from country to country and will be dependant on a number of interrelated factors, including the FTOs:

- familiarity with the Australian GST regime and accordingly the ATO's GST reporting requirements;
- ability to communicate in English and to interpret GST related documentation issued by the ATO;
- need to obtain ongoing Australian GST advice and Business Activity Statement lodgement assistance;
- ability to comply with GST requirements (i.e. generate tax invoices in English); and
- FTOs ability to track Australian GST in their existing accounting system.

FTOs have little or no understanding of the operations of the Australian GST regime. They have either engaged Australian GST advisers, if they have had previous exposure to Australian GST, or they have never, previously, been exposed to the Australian GST system. This is usually because they don't operate through a permanent establishment in Australia or they are not familiar with the English language.

Accordingly, those FTOs that are registered and those that will be forced to comply with the amendment and register for GST will invariably need to engage Australian GST advisers to ensure they are meeting their GST reporting obligations as a result of the amendment. This in turn creates significant short-term and ongoing compliance costs that are peculiar to Australia, given that we are the only member of the OECD that imposes a consumption tax on supplies made by FTOs to foreign tourists.

This additional cost of compliance is a particular burden on FTOs which have only a small percentage of their total business comprised of Australian tours. This is due to the fact that the costs associated with implementing a comprehensive compliance system to track Australian GST will be similar for FTOs with either a small and large volume of Australian business.

In order to comply with the new amendment it is imperative that FTOs have a system in place to track all supplies connected with Australia and the associated input and output tax attributable to these supplies. In this regard, it is highly unlikely that FTOs had accounting systems in place as at 10 February 2005 to track their Australian GST liability. Further, there is no information to suggest that "off the shelf" software is available to FTOs in their home jurisdiction in order to calculate the variable GST liability that arises under this amendment.

In those countries where English is not the official language, there are additional compliance issues in terms of obtaining a software program in the home country's language that will enable them to track their Australian GST liability.

Further, given that many FTOs operate out of countries that already have GST/VAT regimes, these FTOs will need to implement parallel clearing accounts. As many accounting systems operate with one VAT/GST clearing account (i.e. that of the home country), FTOs will incur additional costs for the development of a specific Australian GST clearing account within the confines of the existing system.

The GST law imposes a number of GST compliance obligations on suppliers that make taxable supplies. These include the requirement that suppliers issue valid tax invoices within 28 days of a tax invoice being requested by a customer. One of the requirements of a valid tax invoice is the requirement that the tax invoice be issued in English (according to the ATO's current interpretation of the GST law) and contain other information as specified in the GST Regulations.

From a compliance perspective, FTOs will need to have accounting systems developed that will allow them to produce valid tax invoices on demand. This is a particular problem for FTOs who firstly don't know what the requirements are for a valid tax invoice, and secondly, where English is not the main language the ability to generate a tax invoice in English within the confines of the existing foreign language accounting system.

The costs associated with complying with the amendment are even more extreme for those FTOs in jurisdictions where consumption spending is currently not taxed. For example, the United States of America does not have a consumption tax regime and therefore FTOs in the United States will need to start from first principles in order to acquire an adequate knowledge of the workings of a consumption tax regime and implement an accounting system that would allow the tracking of inputs and outputs for the purposes of Australian GST law.

The above discussion has highlighted the significant compliance costs to be absorbed by FTOs in order to comply with the amendment. At the time of the introduction of GST on 1 July 2000, Australian businesses were provided with a minimum 12 month transition period to incorporate appropriate systems that would allow them to track their GST liability and to meet their GST reporting obligations. FTOs on the other hand have been given no advance warning in order to comply with the new amendment nor is there scope within the amendment for a compliance transition period for FTO's.

Impact of Currency Fluctuations

All inbound tours are priced in the currency applicable to the market in which they are sold with the Australian land content generally contracted in Australian dollars and the FTO bearing the foreign exchange rate risk.

As previously mentioned, for a tax invoice to be valid it must meet certain requirements (as stipulated by the GST law), one of which is the requirement that the invoice be issued in Australian dollars. When invoicing a foreign tourist the FTO will raise an invoice requiring payment in the currency in which the FTO operates and not in Australian dollars.

However, in order to comply with the GST law, the FTO will be required to raise a tax invoice, when requested, in Australian dollars which if issued to their customers may possibly breach domestic laws in that payment is required in a currency other than the local currency. The amendment does not provide a mechanism to overcome this dilemma with the only option for FTOs to ensure compliance with both Australian and foreign laws is to have the ability to raise two invoices, one a tax invoice in Australian dollars and the other in the local currency. This additional obligation will increase the paperwork and resultant cost of compliance for FTOs.

Enforcing Registration

The amendment in its current form seeks to impose GST on the total taxable proportion of inbound tours sold to non-residents by FTOs. Accordingly, it is incumbent on those FTOs that are not already registered for GST to register if they make supplies that are connected with Australia.

Whilst there is a requirement to register, the ability of the ATO to enforce compliance of the law in this situation is questionable given that FTOs not registered for Australian GST at 10 February 2005 will invariably be in a tax payable position and accordingly will have no incentive to register for Australian GST.

The fundamental scheme of GST law is to tax the value added at each stage of the distribution chain in respect of supplies which are consumed in Australia. The supply of rights to the components of an Australian tour will, pursuant to the amendment, be regarded as supplies connected with Australia even though the supply transaction occurs entirely in a foreign jurisdiction.

The fundamental legislative scheme dictates that the value which is added by the FTO to the elements of the tour should be taxed by a mechanism which, when added to GST remittances by earlier links in the chain, ultimately leads to a GST liability of 10% of the value of the taxable supply. This mechanism is achieved by crediting the GST paid by the FTO when acquiring the right and requiring output tax when the FTO supplies the right.

The credit mechanism is based upon the evidence chain of tax invoices. Generally, suppliers to the business community will issue tax invoices which are, in turn, used as the basis for their customers claiming input tax credits.

Any break in this evidence chain leads to double taxation as the credit entitlement is dependent upon the procurement of the fundamental evidence, the tax invoice.

The problems associated with non compliance with the amendment and the resultant double taxation dilemma are best exemplified in situations where a supply of an Australian tour package is made by an unregistered non-resident tour operator to another registered non-resident tour operator. The result being that the registered tour operator is forced to remit GST on 100% of the value of the taxable supply, without having recourse to input tax credits that would have been attributable to the supplies made by the first tour operator had the first tour operator been registered and charged Australian GST in relation to the taxable supplies made to the registered tour operator.

This is double taxation, without relief.

Enforcement Mechanisms

Whilst it is acknowledged that the ATO has a number of avenues by which to serve and enforce a judgement debt, the enforceability of such a debt by the ATO against an FTO will in most cases result in a minimal net revenue gain. This is because the ATO will in the first instance deny an FTOs entitlement to input tax credits attributable to the acquisition of rights connected with Australia, and accordingly the ATO will only have recourse to pursue that part of the FTOs margin that is taxable.

Therefore, whilst the amendment seeks to tax all FTOs that make supplies of rights connected with Australia, it is conceivable that the ATO will only target those FTO's with higher Australian profits as the costs associated with enforcing the debt outside the jurisdiction will not result in a net benefit to the ATO in the vast majority of cases.

This could result in the discriminatory application of the GST law by the ATO to a particular class of taxpayer. We note that any such discrimination would be against the intent of the *Taxpayer's Charter*. Legislation which through its fundamental precept promotes such potentially discriminatory practices should be resisted by the Parliament.

Compliance with the Trade Practices Act

The application of the amendment with immediate effect will result in many FTOs potentially being in breach of various provisions of the *Trade Practices Act 1974 (Cth)*. The Federal Court in *Australian Competition & Consumer Commission v Signature Security Group Pty Limited [2003] FCA 3* held that advertisements which specified prices without stating that an additional GST component was payable were false or misleading and deceptive conduct under the applicable provisions of the Trade Practices Act.

Accordingly, if at 10 February 2005 FTOs did not correct their advertised tour prices to incorporate an additional GST component (presuming they are able to pass the cost on), case law would suggest that the FTO will breach of the Trade Practices Act, if they include an additional component in respect of GST without making this additional component known to the consumer in the advertised price.

It appears that FTOs would only escape being in breach of the Trade Practices Act if they absorb the GST component within their advertised prices. However, this will have the affect of minimising the FTO's profit margin and accordingly, making Australia a less profitable market in which to market tours to non-resident tourists.

From a compliance perspective, the majority of FTOs are not familiar with Australia's consumer protection laws nor would they have had time to change their quoted prices to incorporate an additional GST component. Further, if FTOs are to comply with the new amendment, FTOs will need to print updated brochures to reflect the price change and also update all television, newspaper and internet advertisements to reflect the new GST-inclusive prices in order to ensure they are not in breach of the provisions of the Trade Practices Act.

The recall and re-issue of new advertising material pertaining to an Australian tour is a significant compliance cost for FTOs but is necessary as a result of the amendment if the FTO wishes to ensure it does not breach particular sections of the Trade Practices Act.

We have been advised by a significant Japanese FTO that withdrawing and reprinting all current brochures would cost approximately \$1,800,000. This is a substantial cost for the Australian Parliament to impose simply as a result of the absence of a transitional provision in the Bill, especially when it is recognised that, at the time of printing the original brochures, the FTO was complying with Australian law.

An ancillary consideration for FTOs is to ensure they also comply with consumer protection laws of their jurisdiction. Whilst we have not provided an analysis of the laws of overseas jurisdictions applicable to non-resident consumers, the majority of common law countries have laws similar to Australia to protect consumers from false, misleading and deceptive conduct in relation to product pricing. Therefore, the amendment in its current form may have the unintended affect of exposing FTOs to a breach of the consumer protection laws not only in Australia but also in their own jurisdiction.

In summary, in order to avoid being in breach of the Trade Practices Act or an equivalent regime overseas, the FTO can either pass the GST on (if possible), and bear the cost of recalling and reprinting all advertising material or alternatively, absorb the GST into the price, thereby reducing profitability and the competitive position of Australia as an international tourist destination.

Impact on SMEs

The above compliance issues impact all FTOs to varying degrees. However, the greatest impact will be on SMEs who operate with smaller margins and in highly competitive markets.

The compliance costs associated with meeting their Australian GST obligations as a result of the amendment will force many SMEs to reconsider their involvement in the Australian market, given the high costs associated with complying with the amendment and the corresponding lower profit margin attainable from the marketing of Australian tours as compared to other tourist destinations.

Whilst many of the larger FTOs have the financial ability to absorb the compliance costs over the short term, it is the SMEs who will be most adversely affected as, given their smaller profit margin, they will be restricted in their ability to absorb these compliance costs.

Further, we have been advised that a number of SMEs in Europe and the United States will re-direct their advertising spend currently committed to marketing Australian tours to alternative destinations. The sole reason for this business decision appears to be a result of the amendment and the impact the amendment has on the profitability of FTOs Australian tours as well as the difficulty in marketing Australia against cheaper tourist destinations.

We have also been advised that a number of Japanese tour operators have already ceased the promotion of Australia as a tourist destination due to the existing high costs and adverse exchange rates. The GST impact can only exacerbate that situation and cause it to be repeated in other countries.

Compliance with the Revenue Laws of the FTO's Home Country

We note that when GST was first introduced in Australia, a number of consequential amendments were required to the Income Tax legislation, to ensure that GST output tax was not assessable income and that input tax credits were not tax deductible.

We are unaware as to whether any analysis has been undertaken regarding the consequences of imposing Australian GST on foreign transactions subject to the income tax regime in other countries.

However, we are aware that the amendment in its current form has revenue implications in the home country of a number of jurisdictions with the effect that the imposition of Australian GST may result in multiple jurisdiction double taxation.

For example, some UK tour operators will pay both UK VAT and Australian GST in relation to the same tour where the 'cost apportionment method' is used to calculate UK VAT.

A further example of the possibility of double taxation is in the People's Republic of China. Business tax in China is assessed on gross receipts without deductions for expenses. Accordingly, if the Chinese tour operator collects an amount from a Chinese customer with the Australian GST component factored into the tour price, the receipt of monies (including the Australian GST component) from the Chinese customer will be assessable income in the hands of the Chinese tour operator.

Given that Tourism Australia has recognised that China will be the largest growth market for inbound tourism numbers over the next decade, the double tax dilemma as a result of this amendment will have the affect of forcing FTOs in China to increase the cost of the average Australian tour, thereby making Australia a less attractive option from a cost perspective for potential tourists. This in turn will significantly impact on Australia's ability to compete in the Chinese market given the availability of cheaper tours to comparable tourist destinations.

Given that Chinese travellers are historically highly price conscious, Chinese FTOs have advised that the impact of the amendment will make the Australian market less attractive to Chinese tourists as compared to other international destinations.

Economic Impact

The amendment in its current form will have the following unintended effects on the Australian economy:

- If FTOs pass on the GST to foreign tourists, Australia will become a less price competitive tourist destination;
- Australia would be a lower margin segment for FTOs to operate in if they are forced to absorb the GST as a result of the amendment. This could also force many FTOs with a small to medium level of Australian businesses out of the Australian tourism market;
- a reduction in tourist numbers will lead to tourists discretionary spend being forgone;
- regional Australia's economy will be adversely affected due to a reduction in the significant contribution made by tourism to regional GDP; and
- any decline in tourist numbers may result in loss of employment within the tourism industry as well as those industries dependant on tourism spend (i.e. cafes and restaurants).

Price Sensitivity and the Impact on the Economy

As mentioned above, the tourism industry is a price sensitive and, accordingly, when prices are increased due to a new tax, corresponding demand decreases, resulting in Australia becoming a less competitive place to travel compared to other tourist destinations.

Pursuant to the new amendment, FTOs would need to either absorb the GST into their existing prices or pass on the GST to their customers via higher prices. Either of these scenarios will result in reduced demand, or reducing offerings of, Australian tours.

Table 3: Additional GST expense to be passed on or absorbed by FTOs (based on no change to tourist numbers as a result of the measures contained in the Bill). See Appendix 5 for source data and assumptions

11/03-1/05	Post 10/2/05	
No. Visitors x Total GST	No. Visitors x Total GST	Total additional GST to be absorbed
71,938,670	119,897,783	\$47,959,113

Anecdotal evidence from FTOs suggests that the amendment will result in:

- higher prices at a time when the cost of hotels and coaches for FTOs has already risen by 13% in April 2005;
- some operators having to stop selling Australian tours when combined with existing economic conditions, eg adverse exchange rates;
- demand will decrease by about 20% to 30% as a result of the amendment;
- tourists may choose to travel elsewhere if Australia is deemed too expensive compared to comparable destinations; and
- FTO's will need to reduce their margins in order to stay competitive.

In *"The Canadian Goods and Services Tax: History, Policy and Politics"* by Neil Brooks for the Australian Tax Research Foundation, the Canadian Federation of Independent Business (Canada's largest small business lobby group) estimated from a survey of their members that the ongoing compliance cost of the GST in Canada would be \$6.6 billion a year, in addition to \$3 billion in start up costs. Anticipated GST revenue was \$22 billion. This equates to:

- start up costs being 3/22% of anticipated revenue
- ongoing compliance costs being 6.6/22% of anticipated revenue.

This emphasises the argument that the GST is an "enormous burden on business, particularly small business."

Conferences

A particular problem that will arise as a result of the amendment is the impact the GST would have on the promotion of Australia in the competitive global conference market. Given that this market is highly price sensitive, a conference organiser would not want to bear the GST compliance costs noted above for a conference that may only last a few days.

Prospective conference delegates, although probably attending in a business capacity, will find the cost of trying to recover the GST imbedded in the conference subscription disproportionate to the benefit. This will act as a disincentive.

The amendment in its current form does not make concessions for the conference market and accordingly, Australia's ability to act in this market may be severely affected.

Federal Government Tourism Policy

As published by the Australian Tourist Commission in its June 2003 facts sheet, travel and tourism directly contributed 4.7% to GDP in Australia in 2001. This is significantly higher than the travel and tourism industry global average of 3.7%. Furthermore, tourism accounted for 6% of total employment in 2001 whereas the global average was 2.9%. These figures emphasise the importance of international tourism to Australia.

It is unchallenged that tourism is a significant part of the Australian economy and successive Federal Governments have made significant investments in promoting Australia as an international destination. Most recently the Federal Parliament enacted the *Tourism Australia Bill 2004*, the key objectives of which were:

- a commitment to build a policy framework to assist the tourism industry grow and prosper;
- overcoming the long standing concerns of the tourism industry such as insufficient effort made to attract international and domestic travellers to regional and rural Australia; and
- to assist the growth of business tourism.

The introduction the Bill less than one year on from the enactment of the Tourism Australia Act serves as an example of the incongruous nature of the amendment in its current form. In effect, the amendment has the, presumably, unintended effect of being diametrically opposed to Parliament's goals for the Australian tourism industry as espoused in 2004.

The enactment of the Bill is a contradiction of the government's objectives for the tourism industry and could severely damage the past work and investment to promote the Australian tourism industry.

Employment and SARS

Material published by Tourism Australia has noted that

- compared to the world average, Australia has a higher economic and employment reliance on the travel and tourism industry;
- the tourism industry (servicing both domestic and international visitors) directly employs 549,000 people, or 6% of total employment in 2000-01;
- directly plus indirectly, tourism employed about 900,000 people, or 10.4% of total Australian employment;
- tourism has a relatively high proportion of part-time and casual jobs, particularly in retail trade, accommodation, cafes and restaurants;
- tourism tends to be more labour intensive compared to other industries; and
- tourism in regional Australia directly employs around 185,000 people, or equivalent to over one-third of direct employment in the tourism industry.

Based on these facts it can be concluded that a large number of jobs and businesses are highly dependent on tourists, especially in regional Australia.

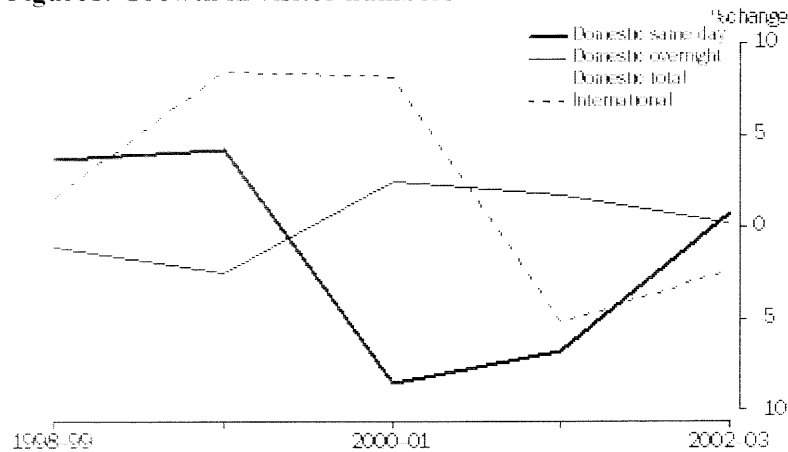
Tourism employment is vulnerable to international effects, with the two most significant recent events being September 11 (2001) and the SARS outbreak in 2003. These highlighted the immediate impact one event could have in reducing tourist numbers and ultimately on tourism related employment. In support of the above statistics, the Tourism Australia data below highlights the decline in international tourist numbers in 2002 and 2003.

Table 4: Number of international tourists for the periods 2001-2004

Year	2001	2002	2003	2004
Number of International Tourists	4,475,400	4,462,800	4,290,900	4,675,000

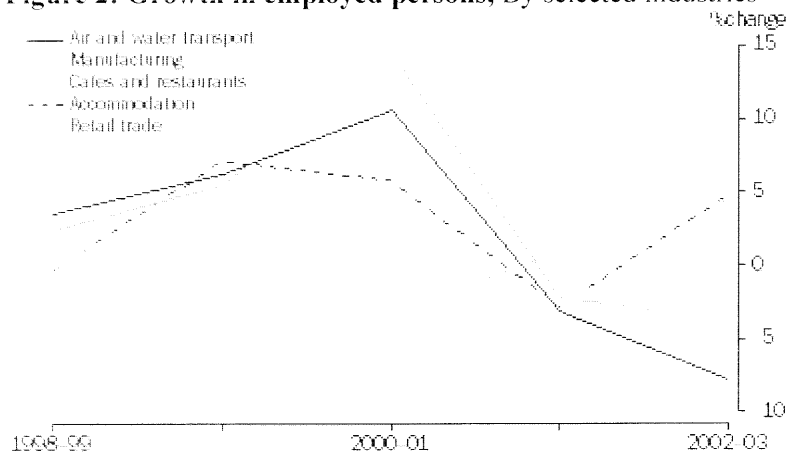
The chart below produced by the Australian Bureau of Statistics (“ABS”) separates the different types of visitors and shows changes in numbers over the same period. Regardless of the category, the negative growth following 2001 and late 2002 is apparent. The drop is particularly dramatic in relation to international visitors.

Figure 1: Growth in visitor numbers



As mentioned above, the Australian economy is reliant on tourists, since 6% of the Australian labour force is directly employed by the tourism industry and 10.4% of the labour force is either directly and indirectly employed in the tourism industry. The below chart illustrates a corresponding decline in employed persons in all of the following industries except retail trade between late 2001 and 2003.

Figure 2: Growth in employed persons, By selected industries



The foregoing information supports the proposition that a natural or economic event can significantly influence tourism numbers and accordingly tourism related employment and is indicative of the potential impact of this new tourism tax (although, hopefully, on a more restricted scale).

We have attached at Appendices 6 and 7 the Tourism Australia publications from which the above facts were extracted.

The Role of Natural and Economic Disasters on Tourism

In relation to the SARS epidemic in 2003, the International Labour Organisation (“ILO”) stated that:

- countries directly affected by SARS could have their tourism workforce reduced by a third, while the Asia Pacific region, including Australia, could lose 15 per cent of its tourism workers;
- even if domestic travel remained strong, jobs would still be lost;
- skilled or socially weaker workers are the most vulnerable; and
- damage to the tourism sector is long term and the longer the decline continues, the greater the possibility that jobs would be lost permanently.

The above discussion also reflects the impact the amendment could have on the Australian tourism industry, with those concerns remaining, if the amendment is passed in its current form.

The long term impact is that jobs may be lost.

Regional Australia and GDP

In the Australian Tourism Commission’s ‘Market insights tourism facts’ sheet of June 2003 it was stated that:

- international tourism has a significant effect on regional Australia; and
- 30% of expenditure by international visitors was spent in regional Australia in 2000-01, thereby making a positive effect on regional economies and employment.

As noted above, promoting tourism in regional Australia is aligned with the Australian government’s policy objectives, as highlighted in the *Tourism Australia Bill 2004*. In that regard the following table illustrates the importance of international tourism to regional Australia.

Table 5: Estimated contribution to regional Australia GDP by source country of international tourists (assumes 30% of package cost and discretionary spend) is incurred in regional areas as per Tourism Australia report called "The Economic Value of Tourism" dated June 2003

Country of residence	Total GST spend per country in regional area during 2004 (est. 30%) (\$)
New Zealand	6,315,419
Japan	29,389,775
Hong Kong	3,143,894
Singapore	3,621,175
Malaysia	3,714,656
Indonesia	1,482,626
Taiwan	3,490,964
Thailand	1,740,560
Korea	9,177,347
China	10,623,395
Other Asia	1,820,520
USA	10,925,151
Canada	1,518,873
United Kingdom	11,575,143
Germany	4,200,449
Other Europe	9,094,446
Other Countries	2,761,886
Total	114,596,286

As can be seen, regardless of whether we take the average, 30% or percentage of dispersed nights beyond major destinations, the GST collection in regional Australia is substantial, reflecting the value of tourism to those economies.

In 2001-02, international visitors consumed AUD\$17.1 billion worth of goods and services produced by the Australian economy. This represented 11.2 percent of Australia's total exports and services. Further, the combined direct and indirect contribution of tourism to the Australian economy was \$59 billion or 9% of Australian Gross Domestic Product in 2000-01.

Self evidently, the impact of tourism on Australia's GDP is significant.

The Tourism Australia publications from which the above facts were extracted are attached at Appendix 7.

According to the ABS, the tourism industry's gross value added grew by 2.6% in 2002-03, compared with 5.4% for the whole economy. The following graphs demonstrate the impact of the September 11 2001 catastrophe. Even though more recent data is not readily available, it is apparent that the slow recovery after that event was inhibited by the SARS epidemic. A similar stunting of the Australian tourism market could be anticipated from this new tourism tax.

Figure 3: Growth in industry gross value added, Current prices

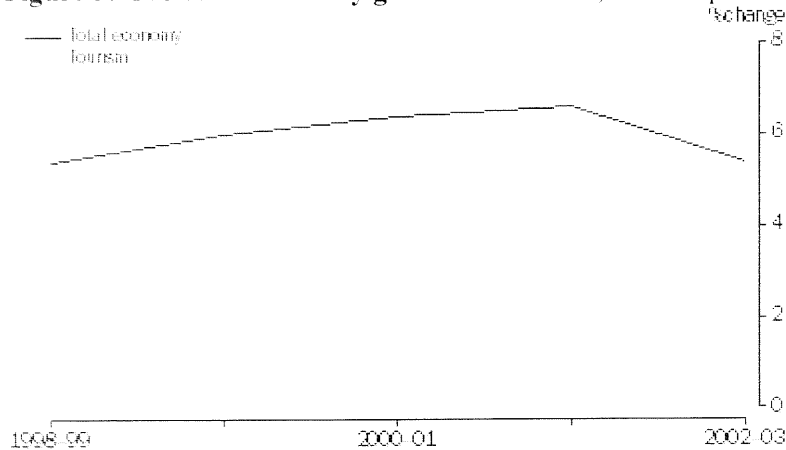
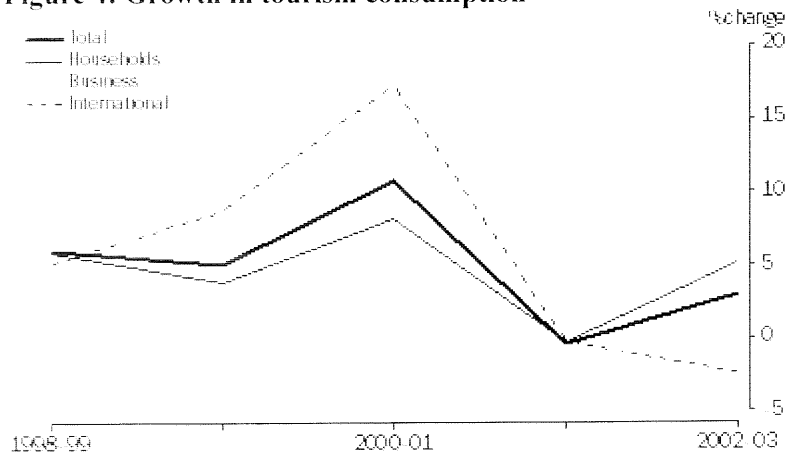


Figure 4: Growth in tourism consumption



The impact of GST

Below are a series of examples that demonstrate how the amendment would affect the Australian economy. These are based on material contained in Appendix 7, which includes details of the amount tourists, originating from the 14 major countries which deliver tourists to Australia, spend on their package tour.

Period 1:

This is the pre November 2003 position when none of the of package tour price was subject to GST.

Period 2:

Reflects the period November 2003 to January 2005 and assumes the following composition of a tour package:

50% of package tour price is for airfare (GST free)

30% of package tour price is for accommodation (taxable according to ATO)

20% of package tour price constitutes other land cost (out of scope)

Period 3:

This is the post 10 February 2005 position based on the assumption that 50% of package tour price is subject to GST.

GST collected from package tours and discretionary spending

We have been advised by an FTO, based in Hong Kong that on average tours are booked 45 days in advance and once the tour is booked the price cannot be changed. Further, the imposition of GST as a result of the amendment was likely to raise tour package prices by 5% and reduce demand by 20-30% (refer to Appendix 8). These assumptions are built into the following calculations.

By incorporating the above effects into Period 3, the aggregate GST collection, based on no change in tourist numbers, is \$1,735,907. However, when the anticipated reduction in demand is factored in, estimated GST revenue will be \$1,367,026. Therefore, it is likely that actual revenue generated by the Bill will be less than projected, due to a reduction in tourist numbers.

Table 6: Anticipated impact of the Bill on GST revenue from Hong Kong tour packages with GST cost passed on. See Appendix 9

	Pre Amendment	Post Amendment (tourist numbers stable)	Post Amendment (tourist numbers reduced)
Annual visitors numbers	31252	31252	23439
Anticipated tour package price	1222	1283	1283
GST on package price	33.33	58.33	58.33
Estimated GST collection	1041629	18287629	1367197

The more complete data in Appendix 9 makes it clear that should the FTO be required to absorb the cost of the GST their average margin per tourist will fall, as will total profit. Equally, if the cost of the GST is passed on, then average margin per tourist will be maintained, but total profit will fall due to a decline in the absolute number of tourist packages sold.

Upon further analysis using New Zealand (refer to table below) as an example, each package tour visitor will generate any additional \$12.07 of GST if the amendment is in place. However, if a tour package is lost as a result of the amendment, then existing GST revenue of \$18.11 on the tour package price and \$114.09 from discretionary spend is lost.

Therefore, for a potential gain of \$12.07 in GST, \$132.20 of GST revenue will be lost for each tour package foregone.

Tourism trends

Referring to Appendix 8, it is evident that prior to this amendment Australia is already experiencing a negative trend in tourist numbers from some countries. The amendment will escalate the reduction in numbers of tourists originating from those and, possibly, other countries.

Based on the data contained in Appendix 8, tourist numbers were already in decline from Hong Kong, Singapore, the USA and Germany, before the introduction of this new tourism tax.

Anecdotal evidence from FTOs in Japan, China and the USA indicates that the new tourism tax will have an adverse affect on tourist numbers bound for Australia.

Referring to table 6 below, it is in Australia's interest to reverse the downward trend in these countries, both for revenue and other economic reasons.

Table 7: Trend Analysis

Country of residence	GST from package tour (Nov 03 – Jan 05)	GST from expenditure	Total GST	% of total international tourism GST
Hong Kong	\$1,041,543	\$9,438,104	\$10,479,648	2.74
Singapore	\$1,191,253	\$10,879,330	\$12,070,584	3.16
USA	\$9,332,393	\$27,084,776	\$36,417,171	9.53
Germany	\$2,756,836	\$11,244,663	\$14,001,500	3.67

Considering the existing negative growth in the Singapore market, for example, (-6%) this amendment will further impact GST revenue from Singaporean tourists.

The table below allows us to compare the GST (%) contribution with other countries and therefore to appreciate the potential damage which the amendment could do to our international tourism market.

Table 8: International GST revenue sourced by country (prior to the impact of the Bill). See Appendix 5)

Country of residence	Total GST (package tour plus discretionary spend)	% of total international tourism GST revenue
New Zealand	21051396	5.511015173
Japan	97965919	25.64635956
Hong Kong	10479648	2.743452229
Singapore	12070584	3.159941084
Malaysia	12382188	3.241515507
Indonesia	4942087	1.293781856
Taiwan	11636548	3.046315482
Thailand	5801871	1.518863686
Korea	30591157	8.008415678
China	35411318	9.270278813
Other Asia	6068403	1.588638607
USA	36417171	9.533599659
Canada	5062910	1.325412077
United Kingdom	38583813	10.10080185
Germany	14001500	3.665432909
Other Europe	30314822	7.936074514
Other Countries	9206289	2.410101318
Total	381987622	100

In summary, the imposition of the new tourism tax proposed by the Bill will have significant negative affects on the Australian economy. Care needs to be taken to ensure that the view of the Bill's impact is not too narrow. The potential damage to employment and regional Australia must be addressed in determining whether the cure is worse than the disease.

Alternate Solutions

The GST amendment proposed in the Bill is intended to correct a deficiency which has been identified in the GST Legislation. The Explanatory Memorandum states that the policy intent of the GST Law is to tax the supply of a right or option by a non-resident where the underlying supply will be consumed in Australia.

The mechanism chosen to resolve this deficiency in the GST Legislation is to extend the scope of GST to transactions which are concluded outside of Australia. This expansion to the jurisdictional scope of GST necessarily requires an extension of the GST registration provisions. This amendment requires that a range of taxpayers not previously required to register as GST taxpayers are now obliged to register.

Every other VAT/GST jurisdiction deals with this issue by restricting the input tax credit entitlement of non-resident entities. This approach can also have unintended consequences and these are often resolved by special narrowly focused refund/reclaim mechanisms. In this way the respective VAT/GST jurisdictions achieve their policy intent of taxing the private consumption of goods and services within their country.

The Explanatory Memorandum for *Indirect Tax Legislation Amendment Bill 2000* outlined the initial policy intent regarding non-resident enterprises. Paragraph 3.30 stated:

“The Government’s policy objective is to ensure that services provided to businesses overseas should not be subject to GST in the same way that exported goods are GST Free. In addition, the Government wants to ensure it does not unnecessarily draw non-residents into the GST system.”

The costs and benefits commentary at paragraph 3.38 of the Memorandum further elaborates on this policy intent:

“Extending the GST Free provisions will keep overseas entities out of the GST system. This will have compliance benefits for them as they will not need to become part of the Australian GST and keep records and lodge returns consistent with the system. It will be less costly for administrators as they may otherwise, if no change is made, need to examine and possibly audit a wider range of transactions occurring outside of Australia.”

We submit that the GST amendment contained in the Bill, while purporting to resolve one policy ‘deficiency’, clearly contradicts the policy intent outlined in 2000 and will now oblige foreign entities to register for GST.

The compliance cost impact outlined in the current Explanatory Memorandum states:

“The amendments are not expected to impact significantly on compliance costs of Australian enterprises”

This statement is not incorrect but it is misleading. The amendment contained in the Bill does not apply to resident taxpayers and thus would not have any significant direct compliance cost for Australian resident enterprises. It only applies to non-resident enterprises and it will have a significant compliance cost for these taxpayers.

This was an issue recognised in 2000 and which influenced the amendments introduced in the *Indirect Tax Legislation Amendment Bill 2000*.

The revenue impact of the Bill is estimated at \$150 million in 2005-2006. If Australia were to adopt a similar mechanism to restrictive input tax entitlements employed by all other VAT/GST jurisdictions, the revenue impact would, we suggest, be at least 85% of the Treasury estimate of \$150 million in a full year. This would be approximately \$138 million. This revenue protection would be achieved without the need for non-residents to register for GST. We submit that the marginal revenue cost of \$22 million does not justify the extension of the jurisdictional scope of GST in the manner proposed in the Bill.

We urge the Senate to:

- reject the GST amendments which have been proposed in the Bill
- refer the Bill back to the Government for revision, to ensure that the initially stated policy intent is not compromised.

Appendices

Appendix 1 - Deloitte letter dated 18 February 2005 to Mr Steve Vespermann, Senior Assistant Commissioner GST, ATO

Mr Steve Vesperman
Senior Assistant Commissioner GST
Australian Taxation Office
Level 35, Central Plaza 1
345 Queen Street
BRISBANE QLD 4000

18 February 2005
Our Ref: NH/DT/mc/435679.160891

Dear Mr Vesperman

Re: Tax Laws Amendment (2005 Measures No 1) Bill 2005 – Schedule 3

We are writing on behalf of all of our clients to seek urgent clarification on a number of technical aspects of the above Bill.

The date of effect of the Bill is immediate and thus our clients face an unprecedented challenge in complying with their GST obligations. In this regard we note that Australian businesses had 18 months advance notice of the GST to implement systems and procedures and to seek ATO clarification of technical aspects of the GST Law. In light of this, we seek you urgent attention to the interpretative issues we detail below.

Date of Effect

Clause 17 of the Bill states that the application date is the date on which the Bill was introduced to Parliament (10 February 2005). The Explanatory Memorandum states that the date of effect is “on or after” the date of introduction of the Bill.

We seek clarification of the exact date (and time) of effect. In this regard, please note that many of the transactions impacted by the Bill would have occurred in foreign time zones and thus although the Bill was introduced after business hours in Australia it was during business hours in other countries.

Transactions within Scope

The Bill seeks to tax rights or options to acquire another thing the supply of which would be a supply connected with Australia.

It is our view that the supply of these rights prior to the date of effect will be outside of the scope of the amendment. Accordingly, the amendment will only seek to tax tour packages

sold after the date of effect. Tours sold prior to the date of effect but occurring after the date of effect will be outside scope.

We seek confirmation of our interpretation regarding this matter.

Date of Sale

The terms and conditions governing the sale of tour packages vary from country to country and are influenced by the consumer protection laws in the respective jurisdictions. In some cases, a customer will not be committed until the "cooling off" period has elapsed.

We seek confirmation as to which date will be applicable for ascertaining whether a sale is within or beyond scope.

Application of Section 156 of the GST Act

Although the actual tour package sold to a tourist would satisfy the requirements of section 156 (progressive or periodic supplies) it would seem that the supply of a right to these supplies would not be a progressive or periodic supply pursuant to this provision. In this regard, we note that an absolute right to the tour package crystallises at the date of sale (subject to the cooling off period referred to above).

Please note that it is common practice for tourists to pay for their tours by instalment plan arrangements.

Can the Commissioner please confirm whether the sale of the rights or options will be a supply pursuant to section 156.

GST Treatment of Deposits

It is common practice for Tour Operators to seek a deposit from the customer at the time of booking a tour package. The terms and conditions for deposits vary from tour operator to tour operator and are influenced by local jurisdiction regulations. Deposits are rarely "fully refundable", partial refunds are permitted where a customer cancels their booking but the refund amount can vary depending upon the time frame between cancellation and commencement date of tour.

It is our view that the deposits received from tourists to secure a holiday booking are security deposits pursuant to section 99 of the GST Act. We note that the deposit is held by the Tour Operator as security for the customer performing their obligation to undertake the booked tour and would be fully or partially refundable in the event that the customer cancels the tour.

We seek confirmation as to whether these deposits constitute "security deposits" under section 99 and, if so, the attribution rules applicable pursuant to section 99-10. In respect of attribution, does the GST attribute progressively as the customers refund entitlement diminishes.

We also seek confirmation as to the GST treatment of deposits which are forfeited in the event of cancellation. The underlying purpose of cancellation fees is to compensate the Tour Operator for the administration costs of cancelling the right which was otherwise granted.

Taxable Components

The Bill taxes rights or options to acquire another thing the supply of which would be connected with Australia. Can the Commissioner confirm the GST treatment of the following:

Travel Insurance- Travel insurance can compensate travellers for a range of events. Cancellation due to poor health (either prior to or during the tour), emergency medical assistance, lost luggage (lost in transit overseas or locally), monetary compensation to cover theft or unfavourable events which occur during the tour, etc.

Domestic Airfares- These are invariably GST Free when pre booked by foreign travellers. Will the right or option for a domestic airfare also be GST Free. It is our view that this is the case. Section 9-30(1) of the GST Act confirms that a supply is GST Free if it is GST Free under Division 38 or it is the supply of a right to receive such a GST Free supply.

Input Taxed Accommodation- Likewise, will a right or option to input tax accommodation be treated as input taxed. In this event, will Tour Operators be required to apply apportionment methodology for acquisitions which indirectly relate to the acquisition of the input taxed accommodation.

Supplies from Unregistered Vendors- It is envisaged that certain suppliers to the tourism industry may be unregistered because their annual turnover is below the GST Registration threshold. These supplies are neither input taxed nor GST Free. We seek confirmation as to whether the supply of a right or option to these supplies will be considered taxable for the purposes of Schedule 3.

Tour Incidentals- Tourists may be supplied with distinctive bags, shirts, hats and other incidentals. The supply may occur prior to departure from the country of origin or after arrival at their destination in Australia, or a combination of both. It is our view that the supply of these incidentals prior to the tourists arrival in Australia would be "out of scope" but the supply after arrival would be a supply connected with Australia. Accordingly, only the supply of rights to the latter will give rise to a GST liability under Schedule 3.

ITO Service Fees- These fees are currently GST Free and will remain so until 1 April 2005. However, although this is a cost of acquiring the underlying tour components the tour operator does not confer on the tourist any specific right in respect of the service fee element. Accordingly, although this is a GST Free supply that is in connection with the Australian Land content of the package, it would seem that this aspect should be ignored by the foreign tour operator in determining the taxable components of the tour package. We seek your confirmation or alternate views on this matter.

Valuation and Apportionment

The supply of rights or options by the tour operator will, we believe, be treated as a mixed supply for GST purposes. The rights will be either taxable, GST Free, Input Tax or “not connected with Australia”.

Although sections 9-75 and 96 of the GST Act provide a mechanism for apportioning the value between the taxable components of the supply and those components which are not taxable, there are some unique difficulties that will be faced by foreign entities in undertaking this apportionment exercise.

Foreign Exchange Rate Fluctuations

All inbound tours are priced in the currency applicable to the market in which they are sold. The Australian land content is generally contracted in Australian dollars. It is the foreign tour operator that bears the foreign exchange rate risk.

The quoted price of the tour is calculated at a time well before the tours are sold, 12 months to 15 months. Although the price of the tour is fixed in the local currency, the relative ratio of Australian cost to foreign currency price will vary with global exchange rate fluctuations. The formulae prescribed in section 9-75(2) requires the taxable value to be separately calculated for each tour package which is sold using, we presume, the appropriate currency exchange rate at the date of the transaction.

We seek clarification as to whether the original ratios of Australian cost to tour price can be used as a benchmark basis for ascertaining the taxable proportion of tours sold. We believe that this approach is the only practical methodology for these foreign taxpayers to deal with the GST obligations, particularly given the short implementation time frame which has been made available to them.

We do note that it is not uncommon for tour prices to include a currency fluctuation clause. These clauses allow for the upwards or downwards variance in price if exchange rate fluctuations exceed a predetermined percentage. We would propose that these adjustments in price be considered if and when such a fluctuation arose.

Variation of Taxable Components between Tourists

Within a tour group, the relative ratio of taxable components to non-taxable components will vary. Some tourists will travel as pairs and share a room, some will be single travellers. Some tourists will elect to have premium rooms. Some will fly business class, others economy. Some will elect to partake in optional tours, others will choose a “free day”. Tour companies generally deal with these options as a surcharge to the quoted price of the tour.

Although the majority of the additions referred to above will be rights to taxable supplies in Australia and thus be taxable, the ratio of the taxable components to non-taxable components will vary. This would make it extremely difficult to project pricing in brochures for these options because the GST liability will not vary in a lineal way.

It is not permissible under Australian law to quote GST exclusive prices within the retail market. Such an approach would also contravene the laws in many other jurisdictions.

We believe that the only practical mechanism to resolve this valuation dilemma is for the Commissioner to approve a predictive valuation methodology based upon either the historic data compiled by a client or upon the methodology used by a client when initially setting the tour pricing.

We seek your confirmation as to whether this type of valuation approach would be sanctioned.

Rebates

The Australian suppliers to foreign tour operators (and overseas suppliers) will often provide volume based incentive schemes to tour operators. A hotel chain may provide a rebate to the tour operator if a predetermined number of room nights are used in a particular 12 month period. These arrangements are not uncommon between Australian businesses and the GST aspects of such arrangements are dealt with via increasing and decreasing adjustments between the registered enterprises. The GST position for these arrangements between on-shore and off-shore entities is far more complex.

If the hotel chain referred to above does provide a rebate to the tour operator, they will treat this as an adjustment event under Division 19 of the GST Act. It will be a decreasing adjustment for the Australian supplier and an increasing adjustment for the foreign tour operator. However, this will also impact on the ratio of the cost of the taxable components to the overall cost of the tour package.

Although the taxable component has reduced as a percentage of the tour price there is no opportunity for the foreign tour company to adjust the GST initially paid when the tour was sold. This is because no refund entitlement is available unless the GST overcharged is reimbursed to the tourist.

The outcome of the above is double taxation.

We submit that tour operators be permitted to estimate their expected rebate entitlements when calculating the taxable value of the tour price. We seek confirmation that this approach is acceptable.

Communication

You may be aware that many foreign suppliers are yet to register for GST and that there is a reasonable level of off shore wholesaling that occurs in respect of supplies which will be affected by the new amendment. We anticipate that it will take some time for the Commissioner to communicate and enforce compliance with the new law.

This poses a significant financial burden on those foreign entities that are registered for GST. The GST liability for rights and options arises irrespective of whether the foreign tour operator has been able to secure a valid tax invoice from the supplier of the right.

We anticipate that it will take some time for the on-shore and off-shore industry to register and implement procedures to ensure that appropriate tax invoices are issued on a timely basis. In the interim, there is a very high likelihood that double taxation will occur.

We seek confirmation from the Commissioner of what sort of transitional arrangements are being contemplated to alleviate the financial burden that may arise where such a significant change in legislation occurs immediately. In this regard, we note that various concessions, both lodgement arrangements and payment of tax, were introduced in the lead up to July 2000 in recognition of the difficulties that many businesses faced at that time to be fully GST compliant at date of introduction.

Summary

We recognise that we are seeking clarification on a large number of issues and that some of these matters can be quite complex from a legislative interpretation standpoint. Be this as it may, you will no doubt appreciate the urgency in dealing with these matters so that our clients can commence the process of adjusting systems and procedures to achieve compliance with the GST Law.

We would be happy to meet with you as soon as possible to discuss these issues and hopefully reach a resolution (whether interim or long term) so that we can provide further definitive advice to our clients. Please call either myself or Doug Tredinnick on 02 9322 7101 should you have any questions regarding the matters we have raised in this submission.

Yours faithfully

Nick Hill
Director, Deloitte Touche Tohmatsu Ltd

Appendix 2 - FIO Formulation Exercise Comments

Appendix 2: FTO forward fixed price commitments

Forward fixed prices to:	Country	FTO entity
December 2006	USA	Brendan
December 2006	USA	Grand Circle
October 2006	New Zealand	Holiday Shoppe
September 2006	USA	STA Travel
September 2006	USA	Intrepid
July 2006	Spain	Viajes El Corte Ingles
May 2006	USA	Pleasant Holidays
April 2006	USA	Abercrombie a& Kent
March 2006	United Kingdom	Kuoni
March 2006	United Kingdom	Thomas Cook
March 2006	United Kingdom	Thompson
March 2006	New Zealand	Infinity Holidays
March 2006	New Zealand	Go Holidays
December 2005	Japan	Club Med
December 2005	Spain	Catai
November 2005	United Kingdom	Saga
November 2005	New Zealand	Oaks Plaza
October 2005	USA	Australian Pacific Touring
October 2005	Japan	KNT
October 2005	New Zealand	Flight Centre
October 2005	Japan	Yomiuri
October 2005	Germany	TUI
October 2005	Japan	Holiday Shoppe
October 2005	New Zealand	United Travel
September 2005	Japan	JTB
September 2005	Japan	Trapics
September 2005	Japan	Continental Holidays
September 2005	Japan	Jalpak
September 2005	Japan	Happy Tour
September 2005	New Zealand	House of Travel
August 2005	New Zealand	P&O

Appendix 5 - Company Information
FOs

Appendix 3: Currency fluctuation impact on FTOs

US\$5000 package tour price, with profit variation arising from exchange rate movements

RBA daily 4pm rate	AUD/US\$	US\$1500 airfare	\$US value of Australian content	Profit US\$
1/03/2005	0.7869	1500	2360.70	1139.30
2/03/2005	0.7830	1500	2349.00	1151.00
3/03/2005	0.7818	1500	2345.40	1154.60
4/03/2005	0.7826	1500	2347.80	1152.20
7/03/2005	0.7897	1500	2369.10	1130.90
8/03/2005	0.7928	1500	2378.40	1121.60
9/03/2005	0.7971	1500	2391.30	1108.70
10/03/2005	0.7960	1500	2388.00	1112.00
11/03/2005	0.7899	1500	2369.70	1130.30
14/03/2005	0.7929	1500	2378.70	1121.30
15/03/2005	0.7894	1500	2368.20	1131.80
16/03/2005	0.7901	1500	2370.30	1129.70
17/03/2005	0.7926	1500	2377.80	1122.20
18/03/2005	0.7929	1500	2378.70	1121.30
21/03/2005	0.7915	1500	2374.50	1125.50
22/03/2005	0.7844	1500	2353.20	1146.80
23/03/2005	0.7802	1500	2340.60	1159.40
24/03/2005	0.7734	1500	2320.20	1179.80
25/03/2005	Closed			
28/03/2005	Closed			
29/03/2005	0.7707	1500	2312.10	1187.90
30/03/2005	0.7733	1500	2319.90	1180.10
31/03/2005	0.7719	1500	2315.70	1184.30

Assumptions:
 tour package price US\$5,000
 airfare US\$1,500
 Australian land content cost AUD\$3,000

Since a proportion of the profit is subject to GST, GST collection would also fluctuate accordingly.

Appendix A - Deloitte letter dated 8 September
2004 to Mr. Steve Manning, Assistant Secretary
Commissioner, GST, ATO

Mr Steve Howlin
Assistant Deputy Commissioner
Interpretation Large Enterprise Compliance
Goods and Services Tax
Australian Tax Office
PO Box 9990
PARRAMATTA NSW 2123

8 September 2004
Our Ref: NH/DT/mc/53813

Dear Mr Howlin,

**Re: FOREIGN TOUR OPERATORS: CALCULATION OF OUTPUT TAX
LIABILITY**

On 10 March we met with yourself and other ATO representatives to discuss certain aspects of Interpretative Decision ID 1058/2003 and related guidelines. One of the matters discussed was the procedural difficulties for Foreign Tour Operators in calculating output tax liabilities on the accommodation component of tour packages. At the conclusion of our meeting we agreed to prepare a detailed submission explaining these technical difficulties and seeking a ruling on the methodology for complying with the Interpretative Decision.

We recognise that it has been six months since our meeting but the delay in preparing the requested submission has been very much due to difficulties in compiling the information regarding the accommodation component. In this regard, some of our clients have not maintained trading relationships with all suppliers and retrospectively assessing the level of output tax is understandably problematic. We have also found a high level of reluctance from some suppliers to undertake retrospective data compilation exercises.

The following submission outlines the technical issues which we consider are relevant to establishing a practical methodology for the calculation of output tax for Foreign Tour Operators. We believe that the only appropriate methodology is to utilise an ATO approved "safe harbour" taxable value using a percentage of the advertised tour price. We have also taken the opportunity to outline the technical obstacles to assessing output tax so that you can appreciate the problems that would arise with alternate computation methods.

The technical matters which we outline in our submission relate primarily to assessing output tax for the period 1 December 2003 onwards. We have also addressed some additional technical concerns which are specifically relevant to clients which are currently required to account for output tax retrospectively to 1 July 2000. These issues are raised at the

conclusion of the submission and we make specific recommendations concerning this category of taxpayer. You no doubt appreciate that we have separately requested an independent review of the ATO decision to require a 1 July 2000 application date for these clients. At this time we have not received a formal response to our request.

Background

Foreign Tour Operators (FTOs) sell packaged tours and tailored itineraries to non-resident tourists.

A Packaged Tour will generally be advertised in a FTO brochure or other tourist publication for a set price. The price will usually be quoted in the currency of the target country. The advertised price of a Packaged Tour normally includes airfares (international and domestic), hotel accommodation, meals, transfers, attractions and transport. Price variations may be incorporated within the advertised price to allow for significant foreign exchange rate fluctuations.

A tailored itinerary may be structured to the specific needs of the tourist or may be an amalgamation of more than one standard tour package. A tailored itinerary will also include many of the components that a packaged tour contains and can be distinguished from travel itineraries arranged through a travel agent.

FTOs rely on their volume of business to secure competitive pricing on all tour components and then pass these through to the customer under a packaged discount. Most tour packages are wholesaled through Travel Agents but a reasonable percentage are also sold through corporate retailers who focus more on the convention/trade show marketplace.

Interpretative Decision ID 1058/2003

The 28 November 2003 ATO guideline states that the accommodation element of a tour package will be regarded as a supply connected with Australia and that the non-resident FTO must account for output tax on this element of the supply made to the foreign tourist.

As we discussed there are many issues and complexities associated with accounting for GST in respect of this element of the tour package. These are summarised below:

The ratio of the value of accommodation to the other components of the tour package will vary from tourist to tourist and over time. A precise computation of the GST liability can only be undertaken after the tour has occurred.

The GST attribution rules require output tax to be paid at a time when it is impossible to ascertain the amount of output tax payable.

Most, if not all, FTOs do not process GST output tax and input tax through their accounting systems in the same manner as resident Australian suppliers. The output tax is computed manually and thus the time frames for BAS lodgement are problematic.

The actual value attributed to the accommodation component cannot be readily ascertained.

In certain cases, accommodation rights may be secured through non-resident suppliers that are not registered for Australia GST. This leads to double taxation.

In many cases, securing valid tax invoices for supplies which occurred three or four years ago is impossible. Once again, this leads to double taxation.

We expand upon these issues below and then outline our proposals for determining a fair and equitable "safe harbour" taxable value for prospective, and where necessary, retrospective use by our clients.

Attribution

Under the basic attribution rules in Division 29 of the GST Act 1999, where a supplier accounts for GST on the accruals basis, the GST payable on a taxable supply is attributable to the tax period in which any of the consideration is received for the supply. If an invoice is issued before any of the consideration is received then the GST is attributable to the tax period in which the invoice is issued.

The payment process for a typical tour package is an instalment plan. A tourist wishing to secure inclusion in an advertised tour will pay a deposit at the time of initial booking and then a series of instalment payments, the final payment due at a date in advance of the commencement of the tour. In some cases, the instalment plan only includes one payment following the payment of the deposit.

The payment arrangements for packaged tours raises obvious issues regarding attribution for GST purposes. These issues are:

Will the initial deposit constitute a security deposit pursuant to Section 99 of the GST Act?

Will the subsequent instalments also represent security deposits?

Is the packaged tour a progressive supply and, accordingly, will GST be attributable on the basis provided by Section 156 of the GST Act?

Security deposits

The inbound tourist will usually pay a deposit to the FTO to secure the purchase of a tour package. The deposit will usually be a pre determined minimum percentage of the scheduled holiday cost. A specified cancellation period will usually be attached to this deposit, after which time if the tourist cancels the tour package the deposit will be forfeited by the FTO. In respect of each individual deposit received, the FTO will have to determine whether the relevant amount gives rise to a GST liability. To do this, the FTO will firstly need to determine whether the deposit qualifies as a 'security deposit' for GST purposes – the type of forfeitable deposit outlined above would generally qualify as a security deposit under the guidelines provided in GSTD 2000/1.

The attribution rules for security deposits (Division 99 of the GST Act 1999) state that the deposit is not treated as consideration for a supply unless it is forfeited because of a failure to perform the obligation or is applied as all or part of the consideration for a supply. Therefore in respect of all security deposits the FTO will have to closely monitor the receipt of these deposits to ensure that any GST payable is accounted for at the correct time.

Generally, the tourist will be required to forfeit some element of the initial deposit should they subsequently elect to cancel the tour booking. This cancellation fee is intended to compensate the FTO for the administrative costs associated with arranging the tour components. The cancellation fee will be greater for a tailored itinerary than for a packaged tour. In the event of cancellation, the fee is, in our view, consideration for a supply which is not connected with Australia. Accordingly, we do not consider that the derivation of cancellation fees will give rise to a GST liability for the FTO.

Other Instalments

The arrangements from FTO to FTO regarding the method for paying the holiday and the rules for cancellation vary. A common practice is to require payment of the full price by a designated pre departure date (say 30 days prior to departure). Cancellations after this date will still carry a refund entitlement for the tourist but the cancellation fee will be more than the initial deposit amount. There will generally be a cancellation matrix included within the terms and conditions of the tour.

The cancellation fee will also be influenced by the decision by the tourists to elect travel insurance cover within the pricing model for a typical tour package.

The cancellation policies of many FTOs enable cancellation to be exercised at any time up to the date of departure. Cancellation Fees could be a significant percentage of the tour price for last minute cancellations.

A tourist that does elect to cancel a tour will be levied with a cancellation fee and be repaid the balance of the instalments paid up until the date of cancellation. The consideration charged by the FTO in these circumstances will not relate to a supply connected with Australia and will not be subject to GST.

It is our view that all payments made by the tourist in respect of a scheduled tour can be categorised as security deposits as a refund matrix exists up to and including the date of departure. Although certain pre determined percentages will be retained by the FTO in the event of cancellation, the instalments paid can still be objectively viewed as deposits.

We note that the Commissioner has issued some guidance concerning the application of Section 99. We do not believe that any of the published guidelines is contradictory to the proposals we suggest for the treatment of the initial deposit or any instalments paid. We do note that the term "deposit" would not normally be applicable where a tourist has paid the full amount of the tour package, even though this full amount is substantially refundable in the event of cancellation.

Submission

We seek a written ruling confirming that payments made by a tourist to an FTO will constitute security deposits pursuant to section 99 until such time that the cancellation fee equates to 100% of the consideration payable for the tour.

Alternative Argument

Periodic supplies

Pursuant to Division 156 of the GST Act 1999, the GST payable on a taxable supply that is made for a period or on a progressive basis and for consideration that is to be provided on a progressive or periodic basis, is attributable as if each progressive or periodic component of the supply were a separate supply.

All packaged tours are progressive supplies. In accordance with ID 1058/2003 only one component of a packaged tour constitutes a supply connected with Australia. This component is the supply of the right to accommodation. Although the right is clearly exercised over a period of time, the period of occupancy at the specified hotel, the GST Law is not clear regarding the nature of the supply of the right itself. The right is provided at a point in time but can be exercised over a period of time.

GSTR 2000/35 provides no definitive guidance on the categorisation of the supply of rights. It is certainly our view that the package of rights which are supplied to a tourist (one right for each hotel, or each night) can be exercised over a period of time and thus would seem to satisfy the conditions necessary for section 156 to apply.

Submission

We request that should the Commissioner reject the above arguments concerning the status of payments as deposits then this alternative argument be considered. We request confirmation that the supply of a right to hotel room nights will constitute a supply pursuant to section 156 where payment for the tour is made by two or more instalments (including the initial deposit).

In amplification of the attribution issues we have commented on above, we reiterate that cancelled tours do not result in the FTO making supplies connected with Australia. If GST is to be accounted for on a section 156 basis then cancellations will give rise to GST refund entitlements. The amount of the refund will be equal to the total GST accounted for in respect of the cancelled tour. This raises two possible issues. Is the cancellation of a tour an adjustment event pursuant to section 19 of the GST Act. Alternatively, does a cancellation give rise to a GST refund pursuant to section 35 of the GST Act. In respect of the latter provision, will the Commissioner require a reimbursement of the GST pursuant to section 39 of the Taxation Administration Act.

We elaborate on these technical issues later in our submission but take this opportunity to highlight their relevance at this juncture as they are significant complications where attribution will occur at a point prior to the tour departure.

Valuation of supply

Once the relevant attribution rule has been determined, the FTO will then need to determine the value of the supply of rights to accommodation to determine the amount on which GST is due.

Where the consideration is expressed in monetary terms, the value of a taxable supply under subsection 9-75 of the GST Act 1999, is the price multiplied by the fraction 10/11. The price is the amount of the consideration for the supply. As in the ATO's view, the FTO is making a supply partly connected with Australia, we need to consider the valuation rules set out in Division 96 of the GST Act 1999. Under these rules, in order to calculate the value of the supply of rights to accommodation, the FTO must:

- a) work out the value of the actual supply as if it were solely a taxable supply;
- b) work out the proportion of that value that the taxable supply represents; and
- c) multiply that value by the proportion in paragraph (b).

Difficulties will be encountered by the FTO in working out the proportion of the total supply that relates to the rights to accommodation. These issues fall into two main areas – costing and classification of rights to accommodation.

Costing

If the value of the taxable component is to be calculated based on the proportion which this cost element bears in relation to the total cost to the FTO, then obviously the FTO needs to be certain of the total cost before this value can be ascertained. However, in many cases the actual cost of the supply to the FTO will not be known until some time after the attribution date for GST purposes. Some of the reasons for this are outlined below.

Foreign exchange impact

Although certain components of the tour package such as air travel may have been costed in the currency of the supplier, the accommodation element will invariably be priced in Australian dollars. In our experience, most Australian suppliers pass the currency risk to the FTO. Therefore, due to foreign currency exchange fluctuations, the FTO will not know the final cost (i.e. in local currency) of the accommodation component until the date that the supplier invoices have actually been issued.

It is only once all Australian dollar invoices have been received that the FTO can assess the actual relative proportion of the supply of rights to accommodation as compared to the total value of the supply of the tour package. The tour package price will, of course, be denominated in the domestic currency of the FTO.

Rebates/discounts

FTOs will sometimes receive rebates or discounts from suppliers based on, for example, the value of bookings, the number of tourists, total room nights actually taken compared to initially secured, etc. These rebates will be paid or credited at a date subsequent to the attribution date. The expected rebates received from suppliers are generally factored into the price of a packaged tour (and tailored itineraries) but the exact quantum of the rebate, and their relevant impact on the cost of a tour (or tours) cannot be accurately determined. Rebates are also received for supplies made by the FTO which are not connected with Australia. The most common rebate in this category will relate to international airfares charged by the carrier. These also directly impact the total cost of the tours sold by the FTO.

Tour Profile

The price of a tour sold to a single tourist (one that requests a hotel room for their sole use) is different to a tour package sold to a couple that travel together. Tour operators generally deal with this fluctuation in pricing by incorporating a single room supplement in the options for a packaged tour. A single room supplement is generally based upon the number of room nights required and is designed to offset the additional cost of a tourist occupying a room exclusively.

Most tour groups will include a certain number of tourists who elect to pay single room supplements. The GST impact on valuation is significant. GST will not be a standard percentage of the packaged tour price. The GST liability will vary depending upon the ratio of tourists paying single room supplements to those paying the standard shared room cost. The ratio of singles to doubles will not be known until the date of departure and will differ for each Tour Group.

Tour Package Adjustments

In our experience, all packaged tours have an accommodation standard built into the tour price. Variances from the prescribed accommodation standard (five star accommodation to four star accommodation) will result in pricing adjustments. If a tour brochure prescribes a certain standard of accommodation and such accommodation is not available, the tourist will be rebated a certain component of the price for a downgrade. Upgrades do not carry a price surcharge.

These variances in the relative cost of the accommodation to the other tour components do not crystallise until after departure. Accordingly, the variances are post attribution events.

Classification of rights to accommodation

An additional complication is created by the uncertainty surrounding the types of services which are included in the supply of a right to accommodation. If the supply of a right to accommodation is a supply of real property, the FTO needs to determine how to treat, for GST purposes, the right to the other services supplied with the right to accommodation, such

as meals. It seems likely that such supplies should be separated from the right to occupy land in which case they will not be connected with Australia and will not form part of the value of the supply for GST purposes.

Hotels will regularly quote room nights at a rate which is either inclusive of exclusive of meals. The inclusive rate may not actually specify that proportion of the consideration which is attributable to the meal. We do not believe that it is appropriate to treat the provision of breakfast in a hotel as merely incidental to the supply of the accommodation as industry practice clearly treats the provision of room and breakfast as a more expensive option than room only.

There are other service offerings by hotels that are also difficult to separately value but are nevertheless the supply of something which could not, in our view, be fairly described as a right to occupy real property. Nor would it be appropriate to describe them as incidental to the supply of a right to occupy real property. These supplies could include access to pool and gymnasium, business centre facilities, and other supplies which are complementary.

The Commissioner has provided no written guidance to assist FTOs in the determination of the obligations under the GST Act.

Submission

We seek written confirmation as to whether the provision of meals and other services such as those referred to above can be excluded from the charge levied by the hotel for the purpose of determining the value attributable to the accommodation component.

Apportionment Methodology

The discussion above highlights the practical difficulties facing the FTO in dealing with an output tax liability required under ID 1058/2003. These practical difficulties are summarised below.

Assuming, as mentioned above, that the value of the accommodation rights is to be calculated on a cost basis, i.e. based on the proportion which this cost element bears in relation to the total cost to the FTO, then a workable methodology must be devised by the FTO to calculate the relevant proportion. However, any method which is based on 'actuals' will be a practical impossibility as the actual costs will not be known until a date after the tax period in which the output tax is attributable.

The actual cost ratio will vary not only between each tour but for each category of tourist on the tour. It is likely that there would be a large number of different 'tourist types' within an individual tour package, for example the GST ratio would vary depending on whether the tourist had opted for a premium, standard or economy option within an individual package tour. Variations associated with single supplements and discounted child pricing also need to be considered. The ratio of actual accommodation cost to total tour package cost will also be influenced by the class of airline flight chosen, surcharges for foreign connections and single room supplements.

A further complication arises in respect of determining the actual cost ratio where the estimated cost varies from the actual cost because of post attribution events such as foreign currency fluctuations, supplier rebates and tour package adjustments.

Finally, there is no clear guidance yet provided by the Commissioner which addresses the valuation of the rights to accommodation.

Submission

We believe that the only practical valuation methodology will be a “safe harbour” taxable value based upon the initial costing for the advertised tour. The factors which will influence the safe harbour are complex and we request an opportunity to meet with selected ATO representatives to establish acceptable parameters for safe harbour values.

In amplification of our request for safe harbour guidelines we note that any methodology not based upon an arbitrary valuation will create under/over payment complexities under the GST Law. We have briefly referred above to the complications associated with the adjustment and refund provisions of the GST Law. Determining the GST liability on the accommodation element of tour packages on an actual cost ratio basis must lead to over/under payments because of the fact that the tax period for attribution precedes the time when actual cost data is available. Those tours where GST was underpaid presumably give rise to a further GST liability and would require the lodgement of an amending BAS. In this case it is noted that the FTO contract with the tourist would, usually, not permit any recovery of further GST liabilities. In this case it is noted that the FTO contract with the tourist would, usually, not permit any recovery of further GST liabilities. The converse (an overpayment) does not necessarily lead to an entitlement to lodge an amending BAS with a credit adjustment. This is because the restrictions of section 39 of the Taxation Administration Act which require over payments to be reimbursed to the recipient of the supply. This produces a “one way street” anomaly which, in our view, is an unacceptable outcome of ID 1058/2003.

Double Taxation

The fundamental scheme of GST is to tax the value add at each stage of the distribution chain in respect of supplies which are consumed in Australia. The supply of rights to Australian accommodation are now regarded as supplies connected with Australia even though the supply transaction occurs in foreign jurisdictions. The fundamental scheme dictates that the value which is added by the FTO to the accommodation element should be taxed by a mechanism which ultimately leads to a GST liability of 10% of the margin added by the FTO on this particular supply. This mechanism is achieved by crediting the GST paid by the FTO when acquiring the right and requiring output tax when the FTO supplies the right.

The credit mechanism is based upon the evidence chain of tax invoices. Generally, suppliers to the business community will issue tax invoices which are, in turn, used as the basis for their customers claiming input tax credits. Any break in this evidence chain leads to double

taxation as the credit entitlement is dependent upon the procurement of the fundamental evidence, the tax invoice.

Prospective Application of ID 1058/2003

FTO's source room nights from local Australian hotels directly and through intermediaries, both in Australia and in other jurisdictions. Intermediaries will include ITOs in Australia, other FTO's and room brokers. The room brokers primarily operate off shore and, to our knowledge, are unregistered for GST.

Acquisitions made directly from Australian Hotels will normally be supported by an appropriate tax invoice to substantiate the GST credit entitlement. In our experience, Australian hotels do not make mixed supplies and the GST is 1/11th of the invoice total. This does make computation of the input tax credit entitlement a less problematic exercise than otherwise arises with mixed supply documentation.

Australian ITO's generally issue mixed supply invoices and this position will continue until April 2005. Please refer to the ruling issued to ATEC governing the GST Free treatment of the administrative charges levied by ITOs. Many of these ITOs will be required to undertake substantial systems adjustments in order to compute GST and change invoicing format to comply with the ATO ruling. The implicit recognition of these systems complexities was one of the primary reasons for deferring the initial application date of the ATO's revised position on ITO administration fees.

The consequence of this is that many FTOs have difficulty in assessing the GST credit entitlements relevant to supplies sourced through ITOs and these difficulties will persist through to April 2005. In our experience many ITOs still do not provide sufficient information on existing invoice formats to readily enable the FTO to establish GST credit entitlements.

The other practical compliance concern is that nearly all FTOs compute the GST credit entitlement manually. This is because their accounting systems are presently engineered to deal only with local VAT/GST. The manual compilation of GST input tax credit entitlements is an extremely time consuming exercise, made even more onerous because of the existence of mixed supplies and a lodgement time frame of 21 days.

Where a registered FTO sources room nights from unregistered FTOs or room brokers they will not receive a tax invoice and thus no credit entitlement will arise. This will have no impact on the obligation to account for output tax on the accommodation element of the tour package.

In all cases where room nights are sourced from unregistered foreign suppliers or local suppliers who provide inadequate documentation, double taxation will arise. GST will be recovered on the supply by the Australian supplier and will also be payable by the FTO. It is our view that this is contrary to the fundamental scheme of GST.

Retrospective Application of ID 1058/2003

You may be aware that many FTOs that are currently registered for GST are required to retrospectively account for output tax in respect of supplies made from 1 July 2000. This policy was confirmed in an ATO FTO bulletin released on 18 December 2003.

We have explained above the practical difficulties associated with locating and collating tax invoices for the post 30 November 2003 period. The challenges faced in securing valid tax invoices for a retrospective period to 1 July 2000 are monumental. The documents may not have been retained by some of the FTOs which will require the securing of copies from the Australian suppliers. A number of the suppliers that would have provided taxable supplies during this period are no longer in business. In this regard, please be cognisant of the significant level of business failures in the Tourism Industry occasioned firstly by the events of September 11 2001 and then compounded by the 2002 SARS outbreak in Asia. Additionally, businesses have been sold to new owners or trading arrangements have been terminated. We are sure that you will appreciate the difficulties that arise for the retrospective compilation exercise which is now required.

Please also note that ITOs in Australia have been operating under a mixed supply ruling since 30 June 2000. In most circumstances, the original documentation issued by the ITO did not represent a valid tax invoice. Initially, this was not a problem as FTOs were unaware of firstly, their entitlement to claim input tax credits in respect of acquisitions from Australian suppliers and secondly, the more recent but retrospective obligation to account for output tax. Because many of the initial documents issued did not satisfy the "valid" tax invoice requirements it is necessary to approach suppliers to now obtain a tax invoice. The issues of business continuity and trading relationship continuity mentioned above are of even more significance when the initial documentation was not satisfactory for input tax credit verification.

Our experience in the initial computation of tax credit entitlements for a range of our clients has highlighted the difficulties of securing valid tax invoices to support credit claims. In many cases, it was not possible to obtain sufficient documentation to support a full credit entitlement and only partial credits were claimed. The ATO implicitly recognised these difficulties by granting Deloitte the nil BAS lodgement arrangement in November 2003. This agreement allowed for the BAS to be lodged as a nil pending compilation of the necessary documentation to support the credit claim.

To now require FTOs to account for GST retrospectively on supplies which were never regarded by the ATO (nor any segment of the Tourism Industry) as taxable supplies is clearly inequitable unless some level of concession is conferred upon these taxpayers regarding the necessary documentation for supporting offsetting input tax credit entitlements. The compilation of a "full set" of tax invoices to offset the output tax liability on the supply of room night is, in our view, a practical impossibility.

A further complication arises where room nights have been secured by other GST registered FTOs that have a claims history pursuant to the 18 December 2003 FTO bulletin. These FTOs will not be required to retrospectively account for output tax on room nights which have been sold to other FTOs. However, where these other FTOs are not conferred the same

concession regarding retrospective output tax they will have a liability from 1 December 2003 without any recourse to the foreign supplier of the room nights.

Submission

We believe that the only way to limit the inequitable double taxation consequences outlined above is to confer a retrospective relaxation of tax invoice requirements on those FTO's that are required to account for output tax on the supply of accommodation rights for the period 1 July 2000 through to 30 November 2003.

Conclusion

We strongly believe that the matters raised in our submission demand an innovative and pragmatic administrative solution. This solution will require the Commissioner to confirm an appropriate safe harbour taxable value for the supply of room nights for post 30 November 2003 supplies and to also allow a pragmatic approach to input tax credit computation for both the pre 1 December period and also for the immediate future until such time as the entire distribution chain relevant to inbound tour supplies can accommodate the necessary systems and procedural changes to comply with the revised ATO views on output tax liabilities.

We look forward to an opportunity to discuss the details of our submission with you and to work collaboratively to achieve a solution that is equitable and workable for this Industry sector.

Should you have any questions in relation to this matter, please do not hesitate to contact me on (02) 9322 7350.

Yours faithfully
DELOITTE TOUCHE TOHMATSU LTD

Nick Hill
Director - Indirect Tax Group

*Appendix 5 - Average expenditure for
visitors, by country of residence*

Appendix 5: Average expenditure for package tourists, by country of residence
Year ended 30 June
2001

Country of residence	Number of visitors (2004)	Package tour and prepaid international airfares (GST inclusive as appropriate)	Year ended 30 June 2004		Year ended 30 June 2003		Year ended 30 June 2002		Year ended 30 June 2001		
			GST per tour package	Aggregate GST	GST	Aggregate GST	GST	Aggregate GST	Average spend per tourist	GST	Aggregate GST
New Zealand	1 592 59	664	0	0	18 11	286 373 53	30 18	480 622 55	1255	114 09	1816 722 27
Japan	46 536	2016	0	0	54 98	2 588 019 35	91 64	4 244 698 91	1711	155 55	72 386 897 64
Hong Kong	3 152	1 232	0	0	33 33	104 154 93	55 55	1 735 906 55	3 322	302 00	94 381 041 00
Singapore	18 158	907	0	0	24 74	1 191 353 80	41 23	1 985 423 00	2 485	225 91	108 793 330 00
Malaysia	4 004	879	0	0	23 97	95 988 00	39 95	1 599 780 00	3 138	285 27	114 232 040
Indonesia	1 2165	956	0	0	26 07	31 714 73	43 45	52 862 455	4 182	380 18	46 249 118 2
Taiwan	4 011	1 429	0	0	38 97	1 910 092 34	64 95	3 183 487 23	2 183	198 45	97 264 55 73
Thailand	16 500	1 163	0	0	31 72	523 253 09	52 86	875 421 82	3 505	318 64	52 766 18 18
Korea	1 002 66	1 587	0	0	43 28	43 969 478	72 14	723 282 64	2 880	261 82	262 514 61 82
China	874 02	1 739	0	0	47 43	41 453 38 49	79 05	60 087 082	3 935	357 73	312 607 09
Other Asia	2 011	1 294	0	0	33 29	70 735 47	58 82	1 182 892 45	2 931	266 45	53 866 7 36
USA	11 2896	3 031	0	0	82 66	932 293 89	137 77	1 553 989 82	2 659	239 91	2 708 176 73
Canada	1 5948	2 327	0	0	63 46	101 218 07	105 77	1 686 863 45	2 794	254 00	40 507 92 00
United Kingdom	10 9565	2 599	0	0	70 88	776 616 41	118 14	1 294 610 68	3 094	281 27	36 817 66 36
Germany	3 4130	2 960	0	0	80 73	2 756 836 36	134 55	4 894 227 27	3 622	329 27	112 446 63 64
Other Europe	76 114	2 817	0	0	76 83	384 763 04	128 05	974 651 73	3 536	321 45	24 467 191 27
Other Countries	3 2734	1 809	0	0	49 34	161 476 53	82 23	2 091 627 55	2 351	231 91	75 913 12 18
Total	141 0947		0	0	719 386 69 80	11 989 7783 00					310 048 952 09

Package taken to be made up as follows:

- 50% airfare
- 30% accommodation
- 20% other land cost

Reference

- Number of visitors: Refer to Appendix 8
- Package tour and prepaid: Table 8, Inbound tourism trends, Year ended 30 June 2004, Tourism Australia
- Expenditure in Australia: Table 8, Inbound tourism trends, Year ended 30 June 2004, Tourism Australia

Explanation of calculations

Inbound Tourism Trends (Year ended 30 June 2004) by Tourism Australia disclosed the 'total visitors' during 2004 in table 1 (refer to Appendix 11) and the percentage of 'non package tour visitors' in table 6 (refer to Appendix 11). We assume that the percentage of non-tour visitors plus the percentage of package tour visitors would equal 100%. With this figure we can estimate how much GST each country contribute into the Australian economy due to package tours.

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the economic value of tourism

june 2003

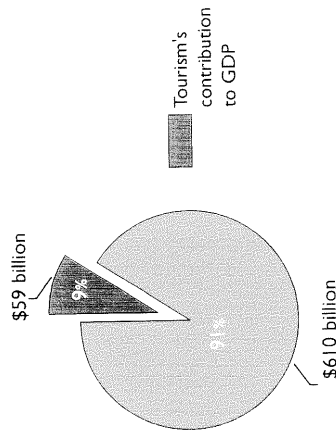


directly employed 549,000 people, or 6% of total employment². Directly plus indirectly, tourism employed about 900,000 people, or 10.4% of total Australian employment³.

Tourism has a relatively high proportion of part-time and casual jobs, particularly in retail trade, accommodation, cafes and restaurants.

How much does Tourism contribute to the Australian Economy?

The combined direct and indirect contribution of tourism to the Australian economy was \$59 billion, or about 9% of Australian Gross Domestic Product (GDP), in 2000-01.¹



How important is tourism to Australian employment?

Tourism is a labour intensive activity overall, employing proportionally more people per dollar of GDP than most other industries. In 2000-01, tourism

industries that benefit most from tourism's economic contribution are transport, accommodation, cafes and restaurants, manufacturing, retail and property and business services.

International tourism also has a significant effect on regional Australia. 30% of expenditure by international visitors was spent in regional Australia in 2000-01, having a positive effect on regional economies and employment.⁴

How does Australia compare to the rest of the world?

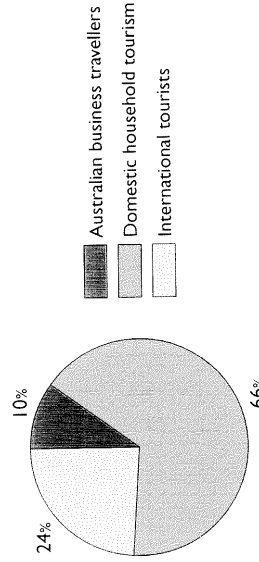
Compared to the world average, Australia has a higher economic and employment reliance on the travel and tourism industry.

Travel and tourism directly contributed 4.7% to GDP in Australia in 2001.¹ Comparatively, the travel and tourism industry directly contributed 3.7% to the world's GDP.²

In Australia, tourism accounted for 6% of total employment in 2001 whereas the world average was 2.9%.

How significant is international tourism?

The majority of total tourism GDP is generated by domestic household travellers. International tourists accounted for 24% of tourism GDP.¹



Tourism impacts across industries and regions...

Tourism generated over \$17 billion in exports in 2001-02.¹ Tourism exports are larger than coal exports, wool exports and most other categories, but lower than food and live animals.

Sources used in this fact sheet:

- 1 The Economic Value of Tourism, Access Economics/Australian Tourist Commission, May 2002 and Research Paper No. 6, Tourism's Indirect Economic Effects, Bureau of Tourism Research, 1998
- 2 Occasional Paper No. 32, Bureau of Tourism Research, 1998
- 3 The Impact of Travel & Tourism on Jobs and the Economy, World Travel & Tourism Council, 2002
- 4 Australian National Accounts: Tourism Satellite Account 5249-0, 2001-02 Australian Bureau of Statistics

7 - The Commission, in its 2004 report, 'Market Access: A New Approach', proposed a 'Market Access' principle. This principle would require that any trade agreement should not be less favourable than the most favourable treatment granted to any third country. This principle would be applied to all trade agreements, including those concluded before the entry into force of the Treaty of Lisbon.

Inbound tourism

Market Insights Tourism Facts April 2004

Tourism Australia 

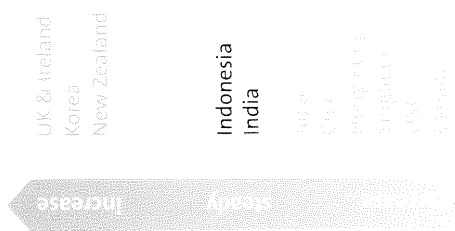
This fact sheet includes:

- Key arrival trends
- Main purpose of journey
- Duration of stay and expenditure
- Economic contribution
- Forecasts

Main purpose of journey

During the year ended 31 December 2003, there were 4.4 million visitors to Australia aged 15 years and over.

Key 2003 Arrival Trends by market include:

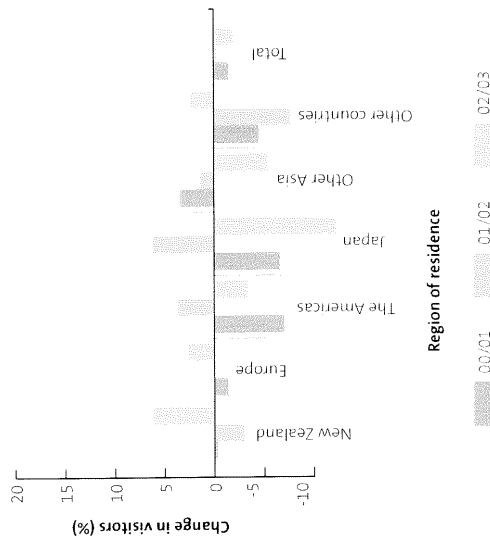


For more information about visitor arrivals

More than half (54 per cent) were holiday visitors, 21 per cent were visiting friends and relatives and 15 per cent were business visitors, as shown in Chart 1.

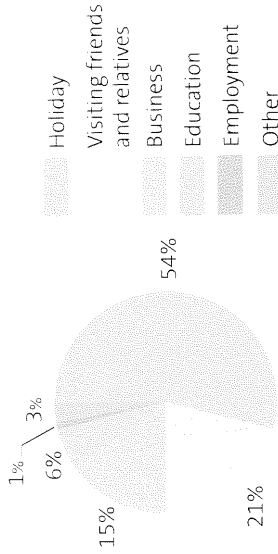
The proportion of visitors to Australia who had holiday as the main purpose of journey ranged from 43 per cent of visitors from The Americas to 80 per cent of visitors from Japan, as shown in Table 1. The highest proportions visiting friends and relatives were from New Zealand (28 per cent) and Europe (27 per cent), while the highest proportions of business visitors were from New Zealand and The Americas (both 22 per cent).

Chart 2 Change in visitors by region of residence
Year ended 31 December 2001 to 2003



Source: Australian Bureau of Statistics, Overseas Arrivals and Departures

Chart 1 Visitors by main purpose of journey
Year ended 31 December 2003



Source: Bureau of Tourism Research, International Visitor Survey.

Table 1 Visitors by region of residence & main purpose of journey
Year ended 31 Dec 2003

Region of residence	Holiday		Visiting friends and relatives		Business		Education		Employment	
	%		%		%		%		%	
New Zealand	44	28	22	22	1	2				
Europe	55	27	9	4	2					
The Americas	43	21	22	9	1					
Japan	80	5	7	4	0					
Other Asia	52	16	17	11	1					
Other countries	41	26	16	6	1					
Total	54	21	15	6	1	1				

Base: All visitors aged 15 years and over.

Source: Bureau of Tourism Research, International Visitor Survey

Inbound tourism

Market Insights Tourism Facts April 2004

Tourism Australia 

Duration of stay and expenditure

The average duration of stay in Australia was 27 nights and the average trip expenditure in Australia per international visitor was AUD\$2,498, as shown in Table 2 below.

Visitors from Europe had the longest average duration of stay (39 nights), while visitors from Japan had the shortest average duration of stay (13 nights).

The average trip expenditure in Australia per international visitor ranged from \$1,292 for visitors from New Zealand to \$3,268 for visitors from Europe.

Economic contribution

In 2001-02, international visitors consumed AUD\$17.1 billion worth of goods and services produced by the Australian economy. This represented 11.2 per cent of total exports of goods and services.

Exports of tourism products are greater than coal, or iron, steel and non-ferrous metals, but lower than food and live animals.

The tourism industry (servicing both domestic and international visitors) employed 549,000 people in 2001-02.

Retail trade generated the most tourism employment. Retail trade,

accommodation, and cafes and restaurants account for more than half of the employment generated by tourism.

For more information about the economic value of tourism, visit www.tourism.gov.au.

Source: Australian Bureau of Statistics, Australian National Accounts: Tourism Satellite Account, 5,249.0, 2001-02.

Table 2 Visitors, visitors nights, duration of stay and expenditure by region of residence Year ended 31 December 2003

Region of residence	Nights in Australia		Expenditure in Australia (a)	
	Visitors	Total	Average per visitor (\$million)	Average per night (\$million)
New Zealand	763,000	10,384,000	1,292	95
Europe	1,148,000	44,941,000	3,268	84
The Americas	479,000	12,983,000	2,643	98
Japan	588,000	7,352,000	1,343	107
Other Asia	1,166,000	33,792,000	3,040	105
Other countries	241,000	7,553,000	2,549	81
Total	4,385,000	117,005,000	2,498	94

Base: All visitors aged 15 years and over.

(a) Total expenditure in Australia and pre-paid expenditure on goods and services in Australia - excludes pre-paid inclusive package tours and pre-paid international airfares
Source: Bureau of Tourism Research, International Visitor Survey

Inbound tourism

Market Insights Tourism Facts April 2004



Forecasts

The first half of 2004 is expected to experience strong year-on-year visitor arrivals growth, partly as a result of the significant decline in arrivals due to the Iraq War and SARS in the first half of 2004. The second half of 2004 and 2005 are also expected to show robust growth, with long term forecasts expecting a return to trend growth.

Consumer confidence in many of Australia's main markets is also growing, driven by a more optimistic economic outlook. Marketing campaigns aimed at Australia's main markets, as well as promising and higher yielding markets, are well underway and showing positive results. After suffering significant falls in revenue, the airline industry is reported to be recovering. For a destination such as Australia where most arrivals originate from markets at least seven hours away, airlines play a crucial

role in assisting tourism industry growth. Since December 2004, there have been air capacity increases for a number of main markets such as New Zealand, United Kingdom and North America. The move by some airlines in the Asia-Pacific region to start up low cost airlines may also provide an opportunity for future growth.

Table 3 International visitor arrivals by country of residence 2004 - 2013

Country of residence	2004	04/03 % change	2005	05/04 % change	2006	06/05 % change	2013	Average annual growth 2003-2013 % change
New Zealand	963,000	15	992,000	3	1,023,000	3	1,162,000	3
Japan	703,000	12	733,000	4	758,000	3	915,000	4
China	220,000	25	268,000	22	317,000	18	960,000	19
Singapore	276,000	9	295,000	7	310,000	5	406,000	5
South Korea	230,000	11	260,000	13	285,000	10	462,000	8
Other Asia	733,000	12	805,000	10	885,000	10	1,444,000	8
United Kingdom	703,000	4	741,000	5	780,000	5	1,019,000	4
Other Europe	560,000	4	592,000	6	625,000	6	869,000	5
North America	538,000	5	578,000	7	618,000	7	915,000	6
Other Countries	296,000	10	317,000	7	338,000	7	511,000	7
Total	5,217,000	10	5,573,000	7	5,930,000	6	8,652,000	6

Source: Tourism Forecasting Council, April 2004 Forecasts.

Appendix 8 - Package recommendations, 2011-12, 2012-13
of residence

Appendix 8: Package tourism data, by country of residence

Country of residence	Total visitors 2004	Number of package tour visitors	Holiday % change: 2003 to 2004	Package tour visitors %	Non package tour visitors %	Median nights in Australia
New Zealand	838100	159239	17	19	81	7
Japan	646300	465336	4	72	28	5
Hong Kong	120200	31252	-11	26	74	9
Singapore	218900	48158	-6	22	78	7
Malaysia	154000	40040	28	26	74	8
Indonesia	81100	12165	7	15	85	12
Taiwan	96100	49011	39	51	49	6
Thailand	72000	16560	9	23	77	9
Korea	196600	100266	11	51	49	5
China	208100	87402	24	42	58	8
Other Asia	118300	20111	17	17	83	11
USA	403200	112896	-6	28	72	12
Canada	88600	15948	1	18	82	15
United Kingdom	644500	109565	4	17	83	21
Germany	136600	34150	-3	25	75	24
Other Europe	400600	76114	1	19	81	22
Other Countries	251800	32734	9	13	87	13
Total	4675000	1410947				

Reference

- Total visitors 2004 Table 1, inbound tourism trends, Year ended 30 June 2004, Tourism Australia
- Holiday % change Table 1, inbound tourism trends, Year ended 30 June 2004, Tourism Australia
- Non - package tour % Table 6, Inbound tourism trends, Year ended 30 June 2004, Tourism Australia
- Dispersed nights Table 6, Inbound tourism trends, Year ended 30 June 2004, Tourism Australia
- Median nights Table 1, Inbound tourism trends, Year ended 30 June 2004, Tourism Australia

Package tour visitor numbers are calculated as the balance of all visitors after deducting non-package visitors

Appendix A – A Summary of the Key Findings of the Study

Appendix 9: _____

An example: impact of the Bill on the Hong Kong tourism market (based on data supplied by a single Hong Kong FTO)

	pre amendment tourist		post amendment scenarios	
	tourist numbers	(1) tourist numbers stable, GST passed on	(2) tourist numbers fall, GST passed on	(3) tourist numbers stable, GST absorbed
Annual visitors numbers	31252	31252	23439	31252
Anticipated tour package price	1222	1283	1283	1222
GST on package price	33.33	58.33	58.33	55.55
Estimated GST collection	10416	18229	1367197	17360

(1) ideal world for FTO, with additional GST cost fully recoverable from tourists, without any loss of demand. This is naive and unrealistic.

(2) FTO passes on GST cost and tourist demand drops due to price sensitivities

(3) FTO absorbs GST, so tourist numbers remain stable, but profitability drops by the amount of the GST cost. FTO prefers to promote more profitable destinations.