

5 May 2005

The Secretary  
Senate Economics Legislation Committee  
Suite SG.64  
Parliament House  
CANBERRA ACT 2600

Dear Sir

### **Inquiry into the Tax Laws Amendment (2005 Measures No.1) Bill 2005 (the Bill)**

The Queensland Tourism Industry Council (QTIC), and Ernst & Young, on behalf of QTIC, would like to thank the Committee for accepting our submission at this point in time.

#### **Background to this submission, and the role of QTIC in particular**

QTIC is the State peak body for tourism in Queensland. It is a not for profit membership organisation representing Tourism Industry members' interests – both large and small. QTIC provides a broad range of membership services and maintains strong industry representation in all relevant forums. By way of example, we have provided a list of the corporate members in *Appendix 1* and an indication of the nature and breadth of QTIC's membership.

QTIC is owned and governed by its members through member based Councils, Boards and Committees, and as such truly reflects the views of the Tourism and Hospitality industry at all levels throughout Queensland.

In pursuance of this role, QTIC is dedicated to:

- Promoting a wider understanding of travel, tourism and events as major activities that contribute substantially to the economic and social well-being of the State;
- Uniting Queensland's tourism industry;
- Advocating policies and initiatives that are responsive to the needs of tourism and related industries with federal, state and local governments and their agencies' programs;
- Assisting in the promotion and development of quality experiences for visitors;

- Developing and presenting unified policy positions and encouraging the adoption of regional and national policies that facilitate travel for visitors;
- Promoting a profitable and professional travel and tourism industry in Queensland;
- Promoting, undertaking and disseminating research and information relating to the business of travel and tourism.

## Executive summary

QTIC, like a number of other tourism and hospitality industry related bodies, believes that the proposed amendments go beyond the Government's policy requirement to deal with the perceived 'revenue leakage' that had been identified by the Australian Taxation Office (the ATO), and in doing so will have a substantial impact on tourism to Australia.

In this context, QTIC firmly believe that there is a practical alternative, consistent with the existing GST framework, and the policy objectives of the Government, which can address the revenue leakage without the adverse consequences flowing from the current form of Schedule 6 of *Tax Laws Amendment (2005 Measures No. 1) Bill 2005 ('TLAB 1')*.

In the view of QTIC, this alternative, if implemented, would also address the jurisdictional difficulties posed by TLAB 1, and ensure the equality of treatment of taxpayers engaged in the same or largely similar activities.

QTIC believes that the Government's objectives in the context of the domestic tourism and hospitality industry can be achieved by treating the supply of the rights to Australian domestic tourism product, by foreign tour operators (FTO's), to non-resident tourists **as an input taxed supply**.

In the body of this submission QTIC has sought:

- By way of illustration, to identify how this approach would address the Government's concerns about the current leakage of revenue;
- To identify the rationale for the concerns that it has for both the measures proposed in TLAB 1, and certain of the alternatives proposed by other interested parties; and
- To propose a form of words that could be adopted (or modified as necessary) to effect to the input taxing of supplies by FTO's to non-residents.

## Concerns with current approach

QTIC is aware that the Committee has received a number of submissions on this matter. These clearly express a range of concerns about the likely impact that TLAB 1, will have on tourism to Australia, and upon the Australian suppliers of tour package components in particular.

We understand that some of those submissions have also highlighted the potential jurisdictional difficulties arising from TLAB 1, and the practical problems likely to face the ATO in ensuring compliance by FTO's on-supplying rights to Australian tourism in general, depending upon whether those FTO's have previously chosen to register in Australia for GST, or have not done so.

In making this submission, we have used the following abbreviations in an attempt to aid the reader:

- Foreign Tour Operators, (*FTO's*) refer to and include enterprises that exist outside the Australian jurisdictional limits, and which typically act as intermediaries in the sale of rights to hotel accommodation, tours, travel, events and hospitality services etc to foreign tourists intending to visit Australia;
- Inbound Tour Operators (*ITO's*) include domestic based intermediaries responsible for collating various tourism industry products into tour packages for supply to either FTO's, or direct to non-resident tourists;
- rights to hotel accommodation, tours, travel, events and hospitality services etc have been referred to throughout as the supply of '*Australian tourism*';
- Domestic suppliers of Australian tourism, (as distinct from the ITO's and FTO's on-supplying the Australian tourism), have been referred to as 'Tourism and Hospitality Service Providers' (*THSP*).

### **QTIC's objective in making a submission**

QTIC shares the concerns expressed above on three levels:

- Firstly it is concerned that any changes to the legislation take account, not only of the revenue leakage that has been identified, but also provide its members with a workable solution which does not adversely impact on their, already significant, compliance obligations;
- Secondly, the solution adopted should provide an outcome which does not favour one part of the supply chain over any other part i.e. it should be consistent with the concept of a 'level playing field' as between participants in the industry; and,
- Thirdly, the solution adopted should not adversely impact on the ability of Australian domestic tourism to compete internationally by imposing additional taxation obligations in a situation where no equivalent obligations exist for international competitors for international tourism.

### **QTIC's alternative – Input taxing all domestic tourism supplies made by FTOs**

In line with these fundamental objectives, QTIC wishes to propose an alternative approach which:

- It believes will deliver the key outcomes being sought by the Government, whilst having minimal impact on existing industry practices;

- Will ensure that industry participants are provided with a solution that places them in the position that they had, relative to each other, prior to the inception of GST; and,
- Will not result in additional Australian taxation obligations resulting in Australian tourism being perceived as more expensive relative to its international competitors.

QTIC also venture to suggest that this is consistent with its understanding of the Government's key objectives, as expressed in the accompanying Explanatory Memorandum (EM) to TLAB 1. That is that the intention is to plug the revenue leakage that has arisen from some FTOs exploiting a perceived gap in the existing GST legislation.

Conceptually, QTIC believe that the operation of the GST is intended to conform to the Government's entitlement to raise tax within the jurisdictional limits of Australia (as defined in *A New Tax System (Goods and Services Tax) Act 1999* ('the GST Act')).

Accordingly, QTIC believe that many of the concerns raised about the breadth and [unintended] impact of the Government's proposal can be overcome by simply input taxing the supply of Australian domestic tour packages by FTO's to non-residents. QTIC therefore seeks to propose this as the correct solution to the issues that the Government has sought to deal with by way of introducing TLAB 1.

### ***Addressing the imbalance***

As illustrated in the table attached as ***Appendix 2***, the concerns about revenue leakage under the exiting GST Act is that some FTO's have registered for GST largely in order to be able to claim back the GST charged to them either by ITO's as domestic intermediaries, or direct by Australian THSP on their acquisition of Australian tourism for on-sale to tourists intending to visit Australia.

At one level, this has the effect that Australian tourism that is supplied by domestic THSP, and upon which GST may currently be charged (depending upon whether it constitutes the supply of goods in Australia, or the right to services being made while the purchaser is not in Australia), is being supplied by these FTO's to the ultimate consumer of those services without being subject to Australian GST.

At an industry level, however, this also has an impact on the relative profitability of these FTO's by comparison to both Australian THSP's and other FTO's that have not registered for GST, in that the latter are required to include the impact of GST in their pricing, while the registered FTO's have not been required to do so.

The effect has then been that the registered FTO's are able to exclude the impact of GST from the price of Australian tourism, and either:

- set their prices lower than the GST-inclusive amounts charged by an Australian domestic THSP and unregistered FTO's; or

- maintain prices equivalent to that of the Australian domestic THSP's, while achieving an enhanced return, (enhanced by the value of the input tax credits that they are claiming from the ATO).

### ***Solution proposed***

QTIC is of the view that this issue can be eliminated by treating the supply of all Australian tour packages by FTO's, (regardless of whether an FTO is registered or not), to non-residents as an input taxed supply. This has the following effect:

- Supplies of Australian tourism direct by THSP's, or through ITO's, would continue to be subject to GST;
- Whether an FTO is registered for Australian GST, or not, they will not be able to claim back any input tax credits on GST on their purchase of Australian tourism.

This would have exactly the same impact as that on the sale of Australian tourism by an ITO, or THSP. This is because GST charged at this level would need to be built into the FTO's pricing of Australian tourism that it sell offshore. It would also place GST registered FTO's in the same position as those that have not registered;

- As the supplies being made by FTO's would effectively be disregarded from a GST perspective, by being input taxed, the FTO's that have not previously been registered for GST purposes, would not be required to register for GST, as input taxed supplies are excluded when assessing the GST registration turnover threshold; and
- FTOs could still voluntarily register for GST if they so wish, but it is difficult to envisage why they would do so commercially. Alternatively, those FTOs currently registered for GST could apply to have their registration cancelled on the basis that they no longer make taxable supplies, placing them on an equal footing with other FTO's not registered for Australian GST.

### **The impact of alternative approaches that have been suggested**

In support of the proposal made by QTIC, on a simplified level, we have sought to illustrate (in *Appendix 2*) the impact from a GST perspective of the various positions adopted by proponents of alternative solutions in the context of the conceptual approach originally envisaged, and the solution proposed by Treasury in TLAB 1.

### ***Illustration of outcomes***

To do so, we have illustrated the impact on the GST ultimately collected by the ATO from the two distinct types of supply, being both accommodation and 'other' tour components (eg car hire, theme park entrance). This distinction has been made because of the different GST treatment currently being applied by the ATO to supplies of accommodation rights (taxable) and 'other' tour components (GST-free).

To replicate a ‘normal process’ we have assumed a further mark-ups at each level in the supply chain as the content (or rights to the supplies) flows through the distribution chain from Australian content supplier to ITO to FTO to non-resident tourist.

Again to allow for reasonable comparison, we have assumed that the end price asked by an FTO will remain the same, essentially meaning that the FTO’s margin bears the benefit, or brunt, of any changes in the tax impost as between the following:

- A ‘base case’, which addresses the position that was originally assumed to be the correct treatment, whereby FTO’s were essentially outside the GST jurisdiction;
- The situation under the proposed TLAB 1 option, and
- The situation should the QTIC proposal be adopted.

It may also be noted that the revenue loss, and potential gain under the various scenarios has been identified, again, indicating that, under the QTIC proposal, there is no loss or gain by comparison to the ‘base case’.

It should be noted that the model we have used is for illustrative purposes only and represents a very simplified flow of transactions and assessment of GST impacts. More complex modelling of the scenario will, we believe, support the illustration of outcomes in *Appendix 2*.

### ***Observations on alternative outcomes***

The key points to note from *Appendix 2* are:

#### *General comments*

- Under the current GST framework, FTOs that are registered for GST are generally at a competitive advantage to those that are not, and could also be at an advantage compared to THSP’s and ITO’s;
- There is a leakage in GST revenue when comparing the treatment of the supply of Australian tourism as between an unregistered FTO, or an ITO or THSP, and an FTO that is registered where the clear beneficiary is the registered FTO;

#### *TLAB 1*

- The amendments suggested by Treasury redress this loss in revenue in TLAB 1, by requiring all FTO’s to register for GST, and treating all supplies of Australian tourism by them as taxable for GST purposes.
- It attempts to treat all FTOs on the same basis despite the likely inability of the ATO to enforce compliance for any FTO’s that are not already registered, as well as for FTO’s that may currently be registered, but have chosen to cease submitting BAS’s. As a result, it potentially creates a situation whereby an FTO can elect to be subject to Australian GST or not.

### *QTIC proposal*

- The QTIC proposal of input taxing those FTO's that may have already registered for GST, and not attempting to require those FTO's that have not previously registered to register, also restores the GST revenue position and treats all FTOs the same whether they choose to register voluntarily for GST or not;
- Even where an Australian content provider deals directly with an FTO rather than selling their product via a resident Inbound Tour Operator (ITO), there is no adverse impact on GST revenue;
- The compliance requirements associated with the QTIC proposals are minimal, and in fact provide, in some instances, relief for FTO's that may have registered under the existing situation, but will no longer derive any benefit from being registered.

### *Other Options suggested*

- It is suggested that the other options could possibly favour one sector of the tourism industry over another by retaining elements of the beneficial aspects of the FTO's current position (ie allowing them input tax credits on the supply of Australian tourism other than hotel accommodation); or
- Is likely to create a significant compliance impost on THSP and ITO's that may be required to distinguish between aspects of Australian tourism supplied where subject to GST, or input taxed, in a situation where that decision may be made on the basis of the acquirer of the Australian tourism. (e.g. supplies to Australian resident purchasers would be taxable, while supplies to FTO's or non-resident purchasers may be input taxed).

As has been illustrated, QTIC's proposal to input tax FTO's will achieve the Government's objective on plugging the leakage to revenue whilst treating all FTO's equally and applying an equivalent outcome to supplies made by all FTO's, ITO's and THSP's. This approach will also address many of the concerns raised by the Government's approach of requiring all FTOs to register for GST and account for GST on their supplies of Australian tours to non-residents as provided for in TLAB 1.

## **Suggested legislative amendment**

As a basis for enacting the QTIC proposal, the Government may wish to consider the following changes to the existing GST Act to give effect to the above outcome:

1. Changes proposed to Section 9-25(5) to proceed as set out in TLAB 1;
2. Insert into Division 40 – Input Taxed Supplies, an new subdivision 40-G in the following terms:

### **“Subdivision 40-G – Non-resident suppliers of rights**

- (1) A supply connected with Australia under section 9-25(5)(c) is input taxed if:

- a) the supply is made by a non-resident through an enterprise that is not carried on in Australia other than in accordance with section 9-25(5)(c); and
  - b) the recipient of that supply is a non-resident.
- ...”
3. Remaining changes to TLAB 1 to be withdrawn as appropriate to achieve the objectives consistent with the QTIC proposal.

**Conclusion**

There would appear to be a general consensus from submissions to the Senate Committee that the Government’s proposed changes, if enacted on the basis set out in TLAB 1, will have a number of adverse or unintended consequences, both in terms of its impact on international tourism to Australia and to those within the industry. In addition, it is likely to create significant additional issues from an administrative compliance point of view, as well as posing questions about the ATO’s ability to exercise certain powers in other sovereign jurisdictions.

QTIC, along with others, believe that there are alternatives available which should be explored further.


QTIC has proposed what it believes to be a simple and practical solution that:

- is consistent with the existing GST framework;
- is consistent with existing industry practice;
- is enforceable by the ATO; and
- that achieves the Government’s key objectives of plugging the leakage to the revenue.

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Should you have any questions with regard to the above submission, please do not hesitate to contact myself, on **(07) 3011 3206**, or Mr Daniel Gschwind – Chief Executive of QTIC, on **(07) 3236 1445**.

Yours sincerely



Bruce Hamilton  
Principal



## Appendix 1

### QTIC's Corporate Partners in the Tourism Industry

**CONRAD JUPITERS**

**WARNER VILLAGE THEME PARKS**

**QUEENSLAND RAIL**

**BRISBANE AIRPORT CORPORATION**

**BRISBANE CONVENTION AND EXHIBITION CENTRE (BCEC)**

**CAIRNS PORT AUTHORITY**

**DREAMWORLD**

**HAMILTON ISLAND**

**QANTASLINK**

**SKYRAIL PTY LTD**

**SUSTAINABLE TOURISM CRC**

In addition to these corporate members QTIC's membership covers the following categories:

- Adventure
- Airports
- Attractions
- Associations
- Destination Promotion
- EcoTourism

- Three to Three and a Half Star Accommodation
- Four to Four and a Half Star Accommodation
- Five Star Accommodation
- Hosted Accommodation
- Local Government Authorities (LGAs)
- Media and Publishing
- Professional Services
- Restaurants
- Recruitment and Training
- Superannuation
- Tour Operators - Land
- Tour Operators - Sea
- Tourism Consultants
- Tourist and Caravan Parks
- Travel Services
- Venues
- Wineries

A list of members can be found on QTIC's website at [www.qtic.com.au](http://www.qtic.com.au)