



**Accommodation
Association
of Australia**

GST on offshore hotel bookings legislation –
Submission of
Accommodation Association of Australia

Accommodation Association of Australia – Principal Contact
Mr Richard Munro
Chief Executive Officer
Phone: +61 2 8666 9015

EXECUTIVE SUMMARY

- Expedia and The Priceline Group – and the many different online accommodation booking websites they own and control – command almost 85 per cent of online accommodation bookings in Australia.
- The Accommodation Association of Australia strongly supports the Australian Government making it unlawful for online travel agencies to impose price-parity clauses on tourism accommodation businesses in Australia.
- The accommodation industry strongly supports the introduction of measures which ensure that large, offshore-based online travel agencies pay their fair share of taxation in Australia.
- The Accommodation Association of Australia opposes any legislative change whereby the burden of additional tax is passed back to bricks-and-mortar accommodation businesses which are located in Australia, who employ Australians and are already paying their fair share of tax to government in Australia.
- Under the changes proposed in the exposure draft legislation which has been released, it is unlikely that any additional GST will be collected by the Australian Government.
- Online travel agencies are controlling accommodation room-rate amounts paid by consumers in many instances and only remunerating the net rate amount back to the accommodation operator, therefore the online travel agency acts as a principal and the accommodation operator does not control the amount the consumer pays for a room (or rooms).
- The Accommodation Association of Australia submits that online travel agencies act, in many cases as a principal, as opposed to an agent.
- Legislative changes which are intended to ensure that offshore sellers of tourism accommodation in Australia calculate their GST turnover in the same way as tourism accommodation businesses which are located in Australia should specifically deem online travel agencies as principals, not agents.
- The Australian Government should consider inflicting a withholding tax on online travel agencies, rather than extend the GST to them to ensure there is a level-playing field between bricks-and-mortar travel agents operating from within Australia who comply with Australian taxation laws.
- Any operator of an accommodation business who applies a withholding tax on an overseas-based online travel agency and remits that tax to government should be protected by legislation from any further claim from the overseas online travel agency for increased commissions to compensate the online travel agency for the tax withheld.

INTRODUCTION

1. The Accommodation Association of Australia is pleased to provide the following submission to the Treasury relating to exposure draft legislation to introduce GST on offshore hotel bookings (and associated documentation), the Treasury Laws Amendment (2018 Measures No. 5) Bill 2018: Online hotel bookings.
2. The purpose of this legislation is to give effect to an announcement by the Federal Government on 8 May 2018, as part of the 2018/19 Federal Budget.
3. Insights provided by the Accommodation Association of Australia in this submission are drawn from feedback from our members, who are operators of accommodation businesses in every state and territory of Australia, and our engagement on tourism issues with the Federal Government and all state/territory governments.

ABOUT THE ACCOMMODATION ASSOCIATION

4. The Accommodation Association of Australia (the Accommodation Association) is the national industry body for Australia's accommodation industry.
5. Members of the Accommodation Association include major hotels, resorts, motels, motor inns, serviced and holiday apartments, bed and breakfasts, guesthouses, backpackers and timeshare establishments in metropolitan, regional and rural Australia, across all states and territories.
6. The Association's members include major hotel and motel chains, and serviced apartment groups.
7. The Association's membership base includes almost 2000 properties and more than 110,000 guest rooms, many of which are located in regional and rural parts of Australia.

TOURISM AND ACCOMMODATION – OVERVIEW

8. Tourism directly contributes \$55.283 billion to Australia's gross domestic product (GDP), 3.2 per cent of Australia's total GDP.¹
9. There are 598,200 people directly employed in the Australian tourism industry – 4.9 per cent of total employment.²
10. Accommodation businesses add \$8.008 billion of gross value to the Australian economy.³
11. There are 88,800 people employed in the accommodation industry.⁴

¹ Tourism Satellite Account 2016-17, Australian Bureau of Statistics

² Ibid

³ Ibid

⁴ Ibid

12. There are 4445 tourism accommodation establishments in Australia.⁵
13. There are 249,131 tourism accommodation rooms in Australia and 676,638 bed spaces.⁶
14. These figures do not include properties listed on Airbnb and other sharing economy accommodation providers, despite Airbnb claiming to be a part of Australia's tourism industry.

DESTRUCTIVE IMPACT OF ONLINE TRAVEL AGENCIES

15. Australia's accommodation industry, including owners, investors, operators and the 88,800 people who are employed in the industry, is the subject of significant disruption from online travel agencies which have their headquarters overseas.
16. The direct results of this disruption have been fewer jobs in the accommodation industry and less taxation returns to government in Australia (government at all levels – federal, state/territory and local government).
17. The online travel agency market is one of the fastest growing, least regulated and most concentrated markets in Australia.
18. There are two principal players – Expedia Inc. (Expedia) and The Priceline Group (Priceline).
19. Between them, these two companies – and the many different online booking websites they own and control – command almost 85 per cent of online accommodation bookings in Australia.
20. What started out as websites which were designed to fill empty hotel rooms have become offshore leviathans who are slowly strangling Australia's accommodation industry.
21. In addition to its own brand, Expedia acquired Australian-based Wotif in late 2014 and its other online travel agency brands include Hotels.com, Trivago and Orbitz.
22. Expedia is listed on the US NASDAQ Stock Market and its revenue is reported to be in excess of \$US 8 billion.
23. The dominant online travel agency operated by Priceline in Australia is Booking.com. It is also listed on the NASDAQ.
24. Expedia and Priceline are thought to be generating millions of dollars in profits each year from Australian tourism consumers yet both pay little or no tax to government in Australia.
25. Online travel agencies are known to structure their businesses in tax havens to avoid any payment of taxation in other jurisdictions, including Australia.
26. Profits generated by Expedia and Priceline are directly drawn from consumers booking a room or rooms at a hotel, motel, serviced apartment or other accommodation establishment which is listed on the websites of Expedia and Priceline-owned online travel agencies.

⁵ Tourist Accommodation, Australia, 2015-16, Australian Bureau of Statistics

⁶ Ibid

27. Expedia and Priceline receive a commission on the rate of the room booked.
28. When online travel agencies first entered the Australian market in the 2000s, commissions were 5-10 per cent, but as the online reach of Expedia and Priceline has increased – they are now two of the largest and most sophisticated e-businesses in the world – so have commissions.
29. Despite the accommodation industry sounding a warning to the Australian Competition and Consumer Commission (ACCC) about rising commissions in the lead-up to Expedia’s acquisition of Wotif in 2014, in July 2015, operators of accommodation businesses received written correspondence from Booking.com that as of July 2015, it would be lifting the commission rate that it charges operators from 12 per cent to 15 per cent.⁷
30. Since then, commissions have increased even further, such that they are now in the order of 20-25 per cent.
31. In addition, because of the broad, global internet reach of Expedia and Priceline and that they focus on achieving the highest rankings on major internet search engines (by, among other things, buying out the names of Australian accommodation businesses on Google), “Mum and Dad” accommodation operators have next to no bargaining power with these global giants.
32. This is because if accommodation operators choose not to list their properties on these websites, then they risk losing a significant amount of their business, such is the reach and market dominance of Expedia and Priceline.
33. The result for many operators is they are forced to swallow constant increases in commissions as they attempt to remain profitable.

PRICE PARITY MUST BE BANNED

34. The biggest concern, by far, among members of the Accommodation Association about the conduct of online travel agencies centres on room-rates.
35. One of the standard clauses in commercial agreements which exist between a hotel (for example) and either Expedia or Priceline is that the hotel must not publicly advertise – including on its own website – a room-rate which is lower than that which is being displayed for their property on Expedia or Priceline online travel agency websites. This is known as “price parity”.
36. Such a requirement is hindering consumers from accessing lower room-rates from hotels, motels, serviced apartments and other tourism accommodation properties.
37. Given this, the Accommodation Association strongly supports the Australian Government making it unlawful for online travel agencies to impose price-parity clauses on tourism accommodation businesses in Australia.

⁷ “Change in Commission Rate”, communication from Booking.com, July 2015

38. Several European countries have either banned price parity or are giving strong consideration to banning it.
39. If parity-pricing was to be outlawed in Australia, another consequence is that more bookings would be made directly through the websites of accommodation operators, resulting in local jobs being created and more taxation being paid in Australia.
40. This is because Expedia and Priceline pay little or no tax in Australia and they directly employ very few people who are based in Australia.

LEGISLATION WILL NOT ACHIEVE ITS OBJECTIVES

41. The Accommodation Association is supportive of the Federal Government's focus on ensuring large multinational corporations are paying tax on profits earned in Australia, including online travel agencies.
42. However, if it is introduced to Parliament in its current form, the draft legislation will not "...level the playing field by ensuring the same tax treatment of Australian hotel accommodation, whether booked through a domestic or offshore company" despite this being the Government's intention.⁸
43. This is because in the exposure draft explanatory materials, it states:

"1.13 The amendments do not apply to supplies of rights to hotel accommodation that are merely facilitated by an offshore entity acting as an agent on behalf of a hotel. Under an agency arrangement, the hotel is the supplier to the customer and, as such, has the obligation to account for the GST on the total amount paid by the customer.

1.14 Whether the offshore supplier is the agent of the hotel or a principal requires the consideration and balancing of various factors. A critical indicator of an agency arrangement is the requirement that the agent account to its principal for monies had and received on its behalf."
44. Online travel agencies are controlling accommodation room-rate amounts paid by consumers in many instances and only remunerating the net rate amount back to the accommodation operator, therefore the online travel agency acts as a principal and the accommodation operator does not control the amount the consumer pays for a room (or rooms).
45. Online travel agencies act, in many cases, as a principal, as opposed to an agent.
46. Regulatory and legislative changes which are intended to ensure that offshore sellers of tourism accommodation in Australia calculate their GST turnover in the same way as tourism accommodation businesses located in Australia should specifically deem online travel agencies as principals, not agents.

⁸ Consultation – GST on offshore hotel bookings, <https://treasury.gov.au/consultation/c2018-t310492/>, accessed 8 August 2018

47. If current agreements between accommodation operators and online travel agencies do not specifically seek to avoid any notion of on-selling from being taken to have occurred, the exposure draft will ensure that this happens in the very short term if it has not already been undertaken.
48. Online travel agencies will ensure that irrespective of whether the guest pays the online travel agency in full, or alternatively, at the time of arriving and checking in at the selected hotel or other accommodation business, the online travel agency will be doing so as the hotel's agent.
49. Any attempt in the past by the hotel or other accommodation business to obstruct or amend agreements with online travel agencies has been quickly and effectively shut down by the online travel agency by threatening that the hotel or other accommodation business in question would go to the bottom of the search results obtained by the potential guest when the potential guest is seeking an accommodation provider at a particular location.
50. For this reason alone, hotels and other accommodation businesses are effectively obliged or forced to adhere to the agreements provided to them by the online travel agency, particularly when in excess of 30 per cent-plus of the annual revenue of hotels and other accommodation businesses is derived through the distribution channels offered by online travel agencies.
51. The hotel or other accommodation business, despite being the supplier as principal under the online travel agency agreement, does not have any ability to negotiate the manner in which the online travel agency completes agency services on its behalf.
52. It is generally acknowledged and accepted by the accommodation industry that the guest pays for approximately 80 per cent of all bookings made through these online travel agencies in full, with the remaining 20 per cent paying the hotel or other accommodation business directly.
53. The online travel agencies will, where the full payment is delayed until the guest's arrival at the hotel or other accommodation business, generally seek a deposit from the guest at the time of booking which is commensurate with their calculated commission, as detailed within their agreement with the hotel.
54. The proposed change that is "...estimated to increase GST payments to the States and Territories by \$15 million over the forward estimates"⁹ is, in the opinion of the Accommodation Association, well below what could and should be achieved if a different approach to that outlined in the exposure draft is designed and implemented.
55. Importantly, the agreements that detail the terms and conditions of use between the online travel agencies and the Australian resident individual consumer allow for payment to be debited from credit cards outside of the indirect tax zone in foreign currency; for example, in United States dollars.

⁹ Exposure draft legislation: GST on offshore hotel bookings, Hon Scott Morrison MP Media Release, 20 July 2018

56. If it is accepted that the online travel agency is considered to be the agent of the Australian resident individual consumer who is seeking to locate and then book accommodation in Australia, no additional GST will be collected unless the online travel agency is a principal.

CONCLUSION

57. The Accommodation Association would be pleased to provide the Treasurer and/or the Treasury with further information in relation to our submission through a meeting and/or further engagement, as appropriate.

Date: 10 August 2018