



**Treasury Laws Amendment (Making Sure
Multinationals Pay Their Fair Share of Tax in
Australia and Other Measures) Bill 2018 –
Submission of
Accommodation Association of Australia**

EXECUTIVE SUMMARY

- The Accommodation Association of Australia does not support the bill passing Parliament in its current form.
- This is because the additional tax GST on accommodation bookings the legislation seeks to impose will fall on operators of accommodation businesses – not online travel agencies – making it a virtual bed tax.
- Effectively, this legislation will impose a new bed tax on Australia’s accommodation businesses of 3.75 per cent.
- Expedia and Booking Holdings – and the many different online accommodation booking websites they own and control – command almost 85 per cent of online accommodation bookings in Australia.
- Because of the broad, global internet reach of Expedia and Booking Holdings and that they focus on achieving the highest rankings on major internet search engines, “Mum and Dad” (and even larger) accommodation operators have next to no bargaining power with these global giants.
- Unlike the accommodation industry which employs 88,800 people and pays hundreds of millions of dollars in tax to government in Australia, global, offshore-based online travel agencies employ virtually no-one in Australia and pay almost no tax in Australia.
- It is an unintended consequence of the legislation that global, offshore-based online travel agencies will pass on any increase in taxes to Australian accommodation operators, many of whom are small businesses which have no chance of negotiating a fair outcome with these global behemoths.
- This is because the online travel agencies will merely hike the commissions they charge operators of accommodation businesses to ensure the online travel agencies do not lose any income as a result of the change.
- Accommodation operators do not have the same luxury of increasing their room-rates to cover the new bed tax impost because agreements between Australian accommodation operators and global, offshore-based online travel agencies state that Australian accommodation operators are not permitted to advertise on their own websites a cheaper room-rate than online travel agencies (“price parity” requirement).
- Increasing room-rates at traditional accommodation houses will also push even more visitors to stay at Airbnb, another global sponge-like entity which also employs very few Australians and pays little or no tax in Australia.
- Unless price parity is banned immediately, Australian accommodation operators – including hard-working family-run motels in regional areas – will end up paying this new bed tax.
- Online travel agencies use two models for their Australian businesses – one where the online travel agency is the principal and the other where it is the agent.

- Despite the majority of accommodation bookings being made through the model where the online travel agency is the agent, this legislation will not capture bookings made through this model.
- Where the online travel agency is the principal, the tax will merely be passed on to the operator of the accommodation business through higher commissions or online travel agencies will elect to no longer be principals and entirely operate under the model where the online travel agency is the agency – because the new tax burden will, effectively, push them back offshore, instead of encouraging them to pay tax in Australia.

INTRODUCTION

1. The Accommodation Association of Australia is pleased to provide the following submission for the consideration of the Senate Economics Legislation Committee as part of its inquiry into the Treasury Laws Amendment (Making Sure Multinationals Pay Their Fair Share of Tax in Australia and Other Measures) Bill 2018, which is before Parliament.
2. This focus of this submission is the proposal to extend the GST by ensuring that offshore sellers of hotel accommodation in Australia calculate their GST turnover in the same way as local sellers, as announced by the Australian 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.
4. The Accommodation Association has previously lodged a submission (and met with) Treasury in relation to this reform.

KEY POLICY POSITION – ACCOMMODATION INDUSTRY OPPOSES THE LEGISLATION

5. On behalf of the accommodation industry, the Accommodation Association of Australia does not support the bill passing Parliament in its current form – and we are strongly urging the committee to make a recommendation which is consistent with this in the final report of this inquiry.
6. This is because the additional tax GST on accommodation bookings the legislation seeks to impose will fall on operators of accommodation businesses – not online travel agencies.
7. Effectively, this means the Federal Government is introducing a new bed tax – which will hurt tourism.

ABOUT THE ACCOMMODATION ASSOCIATION

8. The Accommodation Association of Australia (the Accommodation Association) is the national industry body for Australia's accommodation industry.
9. 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.
10. The Association's members include major hotel and motel chains, and serviced apartment groups.

11. 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

12. Tourism directly contributes \$55.283 billion to Australia's gross domestic product (GDP), 3.2 per cent of Australia's total GDP.¹
13. There are 598,200 people directly employed in the Australian tourism industry – 4.9 per cent of total employment.²
14. Accommodation businesses add \$8.008 billion of gross value to the Australian economy.³
15. There are 88,800 people employed in the accommodation industry.⁴
16. There are 4445 tourism accommodation establishments in Australia.⁵
17. There are 249,131 tourism accommodation rooms in Australia and 676,638 bed spaces.⁶
18. 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

19. 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.
20. 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).
21. The online travel agency market is one of the fastest growing, least regulated and most concentrated markets in Australia.
22. There are two principal players – Expedia Group (Expedia) and Booking Holdings (formerly known as the Priceline Group).
23. 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.

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

² Ibid

³ Ibid

⁴ Ibid

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

⁶ Ibid

24. 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.
25. 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.
26. Expedia is listed on the US NASDAQ Stock Market and its revenue is reported to be in excess of \$US 8 billion.
27. The dominant online travel agency operated by Booking Holdings in Australia is Booking.com. It is also listed on the NASDAQ.
28. It is believed that Booking.com employs around 100 people in Australia.
29. Expedia and Booking Holdings 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.
30. Online travel agencies are known to structure their businesses in tax havens to avoid any payment of taxation in other jurisdictions, including Australia.
31. Profits generated by Expedia and Booking Holdings 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 Booking Holdings-owned online travel agencies.
32. Expedia and Booking Holdings receive a commission on the rate of the room booked.
33. 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 Booking Holdings has increased – they are now two of the largest and most sophisticated e-businesses in the world – so have commissions.
34. 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
35. Since then, commissions have increased even further, such that they are now in the order of 20-25 per cent.
36. In addition, because of the broad, global internet reach of Expedia and Booking Holdings 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" (and even larger) accommodation operators have next to no bargaining power with these global giants.

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

37. 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 Booking Holdings.
38. The result for many operators is they are forced to swallow constant increases in commissions as they attempt to remain profitable.
39. Unlike the accommodation industry which employs 88,800 people and pays hundreds of millions of dollars in tax to government in Australia, global, offshore-based online travel agencies employ virtually no-one in Australia and pay almost no tax in Australia.
40. In short, global, offshore-based online travel agencies are a wrecking ball for the Australian accommodation industry.

WHY THE INDUSTRY OPPOSES THE LEGISLATION

41. On Federal Budget night earlier this year, the Government announced it would “extend the GST by ensuring that offshore sellers of hotel accommodation in Australia calculate their GST turnover in the same way as local sellers from 1 July 2019”.⁸
42. The Budget papers also stated: “This measure is estimated to have a gain to revenue of \$15.0 million, and an increase in GST payments to the states and territories of \$15.0 million, over the forward estimates period.”⁹
43. It is an unintended consequence of the legislation that global, offshore-based online travel agencies will pass on any increase in taxes to Australian accommodation operators, many of whom are small businesses which have no chance of negotiating a fair outcome with these global behemoths.
44. This is because the online travel agencies, which are, effectively, global sponge-like entities on Australia’s accommodation industry, will merely hike the commissions they charge operators of accommodation businesses to ensure the online travel agencies do not lose any income as a result of the change.
45. Accommodation operators do not have the same luxury of increasing their room-rates to cover the new bed tax impost for two reasons:
 - Agreements between Australian accommodation operators and global, offshore-based online travel agencies state that Australian accommodation operators are not permitted to advertise on their own websites a cheaper room-rate than online travel agencies – this requirement is known as “price parity”; and

⁸ “Budget 2018-19 – Budget Measures, Budget Paper No. 2, 2018-19”, Page 29

⁹ Ibid

- Increasing room-rates at traditional accommodation houses will push even more visitors to stay at Airbnb, another global sponge-like entity which also employs very few Australians and pays little or no tax in Australia.
46. Unless price parity is banned, Australian accommodation operators – including hard-working family-run motels in regional areas – will end up paying this new bed tax.
 47. The legislation has our members asking “whose side is Canberra on – hard-working local accommodation operators or global, offshore-based online travel agencies who are sponge-like entities on Australia’s accommodation industry?”.
 48. The bed new tax will not capture Booking.com at all, a point Treasury has confirmed to the Accommodation Association.
 49. Despite making millions of dollars in profits in Australia, Booking.com manages its Australian online travel agency business almost exclusively from offshore (in the Netherlands).
 50. This means it doesn’t pay GST – even though when an Australian consumer books an accommodation room with Booking.com, the way it displays its pricing gives the impression that it pays GST.
 51. Booking.com’s Australian online travel agency business operates under the agency model where it is the agent and the operator of the accommodation business is the principal.
 52. The new bed tax will not reap one extra dollar from online travel agencies under the agency model, which the overwhelming majority of Expedia and Booking Holdings’ Australian online travel agency businesses operate under.
 53. If this new tax proceeds in its current form, it will be a huge disincentive for all offshore-based online travel agencies to come onshore and start paying tax in Australia.
 54. The alternative model that a very small percentage of Expedia and Booking Holdings’ Australian online travel agency businesses operate under is where the online travel agency is the principal (and not the agent).
 55. It is under this model that the intention of the legislation was generate more taxation revenue from Expedia and Booking Holdings.
 56. However, it is fanciful in the least to believe that imposing a new tax on Expedia and Booking Holdings will serve as a greater incentive to Expedia and Booking Holdings to “come onshore”.
 57. If there is any risk these two global giants will pay more tax to the Australian Government, the likely outcome is that Expedia and Booking Holdings will simply ensure all of their Australian online travel agencies businesses operate under the agency model, where online travel agencies will not be subject to this taxation change.
 58. The end result of this is Australian-based accommodation operators will bear the direct cost of this taxation change, which is entirely unacceptable.

59. Accommodation operators strongly support global, offshore-based online travel agencies paying their fair share of tax – but this new bed tax legislation will not achieve this goal.

EXAMPLES – IMPACT OF THE LEGISLATION

Where the online travel agency is the principal

60. The following example is when the online travel agency is the principal.
61. It is understood this is the model which global online travel agencies use for a small percentage of their Australian online travel agency businesses.
62. The example shows that if the legislation passes in its current form, the reduction in income for the hotel (the operator of the accommodation business) will be \$4.50 (the amount the hotel receives will drop from \$120 to \$115.50), which is the equivalent of a 3.75 per cent drop.
63. Effectively, this legislation will impose a new bed tax on Australia's accommodation businesses of 3.75 per cent.
64. If there is any risk Expedia and Booking Holdings will pay more tax to the Australian Government, Expedia and Booking Holdings will move all of their Australian online travel agencies businesses to the agency model (where the online travel agency is defined as the agent), meaning the online travel agencies will not be subject to this taxation change.

Currently	Proposed in the legislation	What will actually happen - because online travel agencies will hike their commission
Guest pays = \$165	Guest pays = \$165	Guest pays = \$165
Hotel receives = \$120	Hotel receives = \$120	Hotel receives = \$115.50
Online travel agency receives = \$33	Online travel agency receives = \$28.50	Online travel agency receives = \$33
GST paid = \$12	GST paid = \$16.50	GST paid = \$16.50

(Accommodation operator room-rate = \$165 including GST; rate of GST = 10%; commission charged by online travel agency = 20%)

Where the online travel agency is the agent

65. The following example is when the online travel agency is the agent.
66. As the hotel (accommodation business) is the principal, it collects and pays the GST to the Australian Government.
67. For global, offshore-based online travel agencies, the vast majority of their Australian business is conducted under this model.
68. The taxation change proposed in this legislation will not capture online travel agencies operating under this model.
69. Should the legislation pass in its current form, it will result in all global, offshore-based online travel agencies using this agency model to ensure they do not pay any more tax in Australia.

Currently	Proposed in the legislation	What will actually happen - no change
Guest pays = \$165	Guest pays = \$165	Guest pays = \$165
Hotel receives = \$120	Hotel receives = \$120	Hotel receives = \$120
Online travel agency receives = \$33	Online travel agency receives = \$33	Online travel agency receives = \$33
GST paid = \$16.50	GST paid = \$16.50	GST paid = \$16.50

(Accommodation operator room-rate = \$165 including GST; rate of GST = 10%; commission charged by online travel agency = 20%)

PRICE PARITY MUST BE BANNED IMMEDIATELY

70. As stated above, without price parity being banned immediately, the accommodation industry will directly bear the financial burden of this new bed tax impost.
71. Price parity has already been banned in many other countries, including France, Belgium, Austria, Germany, Italy and Sweden, and it should also be banned in Australia – immediately.

72. One of the standard clauses in commercial agreements which exist between a hotel (for example) and either Expedia or Booking Holdings 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 Booking Holdings online travel agency websites. This is known as “price parity”.
73. Such a requirement is hindering consumers from accessing lower room-rates from hotels, motels, serviced apartments and other tourism accommodation properties.
74. Therefore, 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.
75. In the context of the taxation legislation which is before Parliament, banning price parity would enable operators of accommodation businesses to better compete with global, offshore-based online travel agencies, helping the operators to offset the impost of the new tax.
76. If price parity 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.
77. This is because Expedia and Booking Holdings pay little or no tax in Australia and they directly employ very few people who are based in Australia.

CONCLUSION

78. The Accommodation Association would be pleased to provide further information about our submission to the committee by appearing at a public hearing and/or through other engagement with the committee, as appropriate.

Date: 6 November 2018