

PCG 2018/D7 (Finalised) - GST - inbound tour operators and agency



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This document has been finalised by PCG 2018/6.



GST – inbound tour operators and agency

Relying on this draft Guideline

This Practical Compliance Guideline is a draft for consultation purposes only.
When the final Guideline issues, it will have the following preamble:

This Practical Compliance Guideline sets out a practical administration approach to assist taxpayers in complying with relevant tax laws. Provided you follow this guideline in good faith, the Commissioner will administer the law in accordance with this approach.

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What this draft Guideline is about

1. This draft Guideline describes circumstances in which the Commissioner will not apply his compliance resources to examine whether you act as an agent for your non-resident clients.
2. You may choose to self-assess in accordance with the requirements under this draft Guideline, whether you act as agent of non-resident travel intermediaries¹ and/or non-resident-consumers.
3. For the purposes of this draft Guideline we collectively refer to non-resident travel intermediaries and/or non-resident-consumers as non-residents.

Date of effect

4. The final Guideline is proposed to apply on and from its date of issue.

¹ These may include non-resident tour operators, non-resident tour wholesalers, non-resident travel agents, or any other non-resident travel intermediary.

Who this draft Guideline applies to

5. This draft Guideline applies to you if you are an inbound tour operator (ITO).
6. For the purpose of this draft Guideline, an ITO is an Australian entity that enters into agreements with non-residents to arrange the supply of an Australian tour packages including accommodation and non-accommodation components on behalf of non-residents.

Background

7. If you are an ITO, you provide or arrange tours in Australia for the benefit of non-residents. Your GST obligations depend on whether you are acting as an agent or principal.
8. Where you act as an agent of the non-resident to arrange an Australian tour package (when the non-resident is outside Australia), any commission you charge the non-resident in respect of that package will be GST-free.²
9. However, where you are acting as a principal the entire supply (which includes your mark-up or profit margin) may be subject to GST.
10. The Commissioner recognises the complexities for you in determining whether you act as an agent or principal. The purpose and intent of this draft Guideline is to reduce the complexity for you in determining whether you are acting as an agent for non-residents for the purposes of the GST law.

The approach under this draft Guideline

11. If this draft Guideline applies, the Commissioner will not apply his compliance resources to examine whether you act as an agent for the non-resident for the purposes of the GST law.
12. The draft Guideline applies where all of the following requirements are met:

	Category	Requirement
1	You have authority to act as agent	You must have a written agreement ³ with any non-residents which authorises you to book products on their behalf (as their agent).
2	Dealings with third parties / Exercise of agency authority	<p>Any agreement⁴ that you have with an Australian Product Provider (APP), such as a hotel, must acknowledge that:</p> <ul style="list-style-type: none"> (a) you have, or will have, the authority to act as an agent for non-residents (b) on confirming a booking, the APP enters into a contractual agreement with the non-residents, and (c) rights under the agreement (such as a right to be provided with an alternative product of the same or higher value if the requested product cannot be provided) are enforceable by the non-residents. <p>The APP must also be made aware of the identity of the non-residents through the booking process (or at another time during the booking process).</p> <p>Example: The following is an example of wording that the</p>

² Sub-section 38-190(1) table item 2 of the *A New Tax System (Goods and Services Tax) Act 1999*.

³ For example, a written contract or published terms and conditions.

⁴ These agreements may pre-date your agency agreements with the non-residents.

		<p>Commissioner considers would meet points (a)-(c) above. You are not required to adopt this wording and may adopt any alternative that meets (a)-(c):</p> <p><i>We will be acting as authorised agent for non-residents on all products sourced from you. This means that, upon confirming a booking, your contract will be with a non-resident and any rights you supply under that contract will be enforceable by that non-resident. However, under our agreement with the non-resident, we will be liable to pay you (on their behalf) for all products we source from you.</i></p>
3	Your commission	<p>Any non-resident who appoints you as their agent must either:</p> <p>(a) know any amount of the commission or fee it pays you for your services⁵, or</p> <p>(b) expressly allow you to retain, as your commission or fee, the difference between a purchase price and the amount you can negotiate with the relevant APP.</p>
4	Cancellation policy	<p>Any fees that you charge non-residents when they cancel their booking must not exceed the sum of your commission or fee (being the amount you would have received if the booking was not cancelled) and the costs you incur in processing the cancellation.</p>
5	Accounting / invoicing	<p>You must maintain capacity to provide to the non-residents, details of transactions entered into on their behalf (if you do not routinely advise them of these amounts).</p> <p>If the non-residents call for an account, you must provide a breakdown of the prices of all transactions, and cannot report the 'composite price' of two or more transactions (unless the non-resident permits you to do so).</p> <p>Example: If the cost of a product is \$500 and the cost of your services is \$40, you must (if the non-resident calls for an account) advise the non-resident of the separate prices for each transaction, and not just the composite price of \$540.</p>

13. This draft Guideline will not apply if you adopt a position (that is, whether you are an agent) for GST purposes that is inconsistent with a position you adopt for income tax purposes.

14. This draft Guideline will not apply where you also purport to be an agent of the APP and charge an APP a fee for agency services. Likewise, in circumstances covered by this draft Guideline, we expect the APP would not claim an input tax credit for GST on your margin or services.

15. As this is a draft Guideline which describes how the Commissioner will apply his compliance resources, you cannot seek a private ruling on whether the approach in this Guideline applies to you. However, you may seek a private ruling as to how the GST law applies to your specific facts.

Other supplies made by you

16. The Commissioner understands that you (having acted as an agent for a non-resident in arranging an Australian tour package) may also provide other services while the non-resident tourist is in Australia. The Commissioner considers that in providing these other services and/or products, you may act as a principal.

⁵ For example, the non-residents may agree to pay you a percentage of the price of the product.

17. These other services or products may include but are not limited to:

- meeting and greeting tourists on arrival in Australia
- customer assistance while tourists are in Australia including amending tourist itinerary
- bus / transit services
- guided tours (for example walking or shopping tours)
- provision of gifts.

18. The provision of these other services or products by you as a principal may be subject to GST.

19. As a result, your commission may not be wholly GST-free if it relates to both supplies of arranging services (GST-free) and supplies of other products or services (subject to GST). In these circumstances you may need to apportion your commission to taxable and non-taxable parts in accordance with Goods and Services Tax Ruling GSTR 2001/8 *Goods and services tax: apportioning the consideration for a supply that includes taxable and non-taxable parts*.

Commissioner of Taxation

23 August 2018

Your comments

20. You are invited to comment on this draft Guideline, including the proposed date of effect. Please forward your comments to the contact officer by the due date or join the conversation on this Guideline on the [Public Advice and Guidance Community](#) on Let's Talk.

Due date: 21 September 2018

Contact officer details have been removed following publication of the final guideline.

References

ATOlaw topic(s)	Goods and services tax ~~ International ~~ Resident agent for non-resident Goods and services tax ~~ Miscellaneous ~~ Agency
Legislative references	ANTS(GST)A 99 ANTS(GST)A 99 38-190(1)
Related Rulings/Determinations	GSTR 2000/37 GSTR 2001/8
BSL:	ITX
ATO references	1-E3CXH98