National Tourism Alliance

2 February 2012

Business Tax Working Group Secretariat
The Treasury
Langton Crescent
PARKES ACT 2600
Via email: BTWG@treasury.gov.au

To whom it may concern,

Tax Treatment of Losses

The National Tourism Alliance (NTA) welcomes the opportunity to respond to the Business Taxation Working Group's Interim Report on the tax treatment of losses. This issue is of significance to the tourism sector, given its highly seasonal nature and the preponderance of small and medium enterprises, and the impact of these structural features on the profitability of tourism businesses. The NTA supports what is identified in the Interim Report as Combination 3, including Elements A, C and D. In formulating its assessment, the NTA has consulted with leading tax advisory firm, KPMG Australia.

The NTA provides a forum for advocating to the Federal Government on issues of common interest for Australian tourism and hospitality businesses. Membership comprises the major associations within tourism including the Australian Tourism Export Council, AAA Tourism, Australian Federation of Travel Agents, the Victoria Tourism Industry Council, Business Events Council of Australia, Restaurant & Catering Australia, Accommodation Association of Australia, Board of Airline Representatives, Bus Industry Confederation, Australasian Casino Association, Caravan, RV & Accommodation Association of Australia, Tourism & Transport Forum, Tourism Accommodation Australia, Winemakers' Federation of Australia, the Australian Regional Tourism Network, as well as all of the state Tourism Industry Councils who together represent almost 60,000 tourism businesses across Australia.

Tourism contributes over $34 billion to Australia's GDP and employs over 500,000 Australians. Tourism is Australia's largest services export industry, providing 9.0 per cent or $22.8 billion of Australia's total exports in 2009-10. Australia is also a significant beneficiary of global tourism spending, ranking 8th globally and receiving 3.3 per cent of global tourism receipts.[i]

In many parts of Australia, tourism is a highly seasonal industry, dependent on high volumes at particular times of the year. This seasonality makes tourism operators highly vulnerable to external shocks that may reduce profitability or lead to losses in a given year. The shocks may

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be global (Global Financial Crisis) or localised (2011 Queensland floods), and they may be natural or man-made.

At an aggregate level, real tourism consumption in Australia declined significantly in 2001 (end of the dotcom boom and the 9/11 terrorist attacks), 2003 (start of the Iraq War and SARS) and 2009 (depths of the Global Financial Crisis [GFC]). In light of the ongoing GFC, and the natural disasters in Australia and overseas in 2011, the tourism and hospitality industries have been negatively affected. Being closely related, it would be expected that if the tourism industry suffers, the hospitality industry would be impacted in the same manner.

The Standing Committee on Infrastructure, Transport, Regional Development and Local Government has analysed the impact of the GFC on the tourism industry and has stated at paragraph 2.35 in their report:

> *The tourism industry has certainly felt the impact of the GFC, declining at a worse rate than the rest of the economy. Data presented to the Committee in August 2009 indicated that there was a real deterioration in the domestic tourism market – the backbone of the Australian tourism industry. International visitor numbers were also down nearly two per cent in the first half of 2009. This has resulted in a marked lack of profitability for the industry as individuals have delayed holidays and business travel has been reduced.*[ii]

Since the Standing Committee provided this analysis, further data and analysis from the tourism Forecasting Committee has been published by Tourism Research Australia[iii]. It states:

> *The forecasts indicate growth in total visitor consumption [...] could remain low in 2011 (up 0.4 percent) and in the longer term is forecast to reach [...] a compound annual growth rate (CAGR) of 1,1 percent over the 2010-2020 period.*
> *However, the total consumption forecast does suggest that if growth in the Australian economy averages near its long-run average of just over 3 percent, then Australian tourism's share of GDP is likely to fall further over the period to 2020.*

In addition to these forecasts, the Australian Bureau of Statistics (ABS) released data on Australian business numbers on 1 February 2012 that showed that exit rates for microbusinesses (which form a large proportion of tourism businesses) were higher for non-employing businesses, at 16.9 percent, although it does not specify the cause of the exit. The ABS also found that survival rates for new businesses were significantly lower than those that are already established.[iv] Within this context, the proposed reforms could assist small and microbusinesses to increase their survival rate, and provide them the opportunity to strengthen and grow. According to the ABS, the longer a business survives, the greater its chances of continued survival.[v] In this light it is also important that any reforms are not short term or temporary.

The BTWG Report provides that one of the possible approaches to reform would be to remove the existing Continuity of Ownership (COT) and the Same Business Test (SBT) and introduce an alternative integrity test (Element A). The National Tourism Alliance supports this proposed reform. Removing the COT and SBT would increase the potential for a business to use its carried forward losses to reduce its current year taxable income, regardless of whether the business experiences a change in ownership or a change in the nature of its business. An alternative integrity test would be required to replace the COT and SBT to limit any inappropriate loss trading and international arbitrage opportunities.

Removal of the COT and SBT would assist those growing and expanding business that are taking on new business ventures, by allowing any losses from previous years to be utilised early in future income years. Given that the tourism and related hospitality industries have been affected by the GFC, it would not be surprising that many tourism and hospitality businesses would be experiencing fluctuating years of profits and losses. A result of the evolving tourism industry and expanding hospitality industry, it would be expected that many businesses are restructuring during these economically adverse times and developing new business ideas and strategies to expand and grow.

Under Element A, the removal of the COT and SBT would be replaced with alternative integrity rules. Such integrity rules should not be so restrictive that they result in difficultly for business to utilise their losses for future income years. The existing tax anti-avoidance provision in the tax laws will be sufficient to protect against any abuse of the new rules.

The BTWG Report provides that another possible reform solution would be to allow business to carry current year tax losses to be offset against previous year's profits; however the refund would be limited the amount of taxes that was paid in the previous year.

In other jurisdictions around the world, this ranges from one year to three years. For example, Canada has a loss carry back year limit of 3 years, the UK and Netherlands have a loss carry back limit of one year, and the USA has a limit of 2 years. The Australia's Future Tax System Review has recommended a one- year carry back of losses for Australia. Given the structure of the tourism and hospitality industries, the NTA supports a longer timeframe on the number of years losses can be carried back than that recommended in the BTWG Report.

With reference to tourism and hospitality businesses, many businesses have made profits during some years but losses during the GFC. As such, this option and extending the number of years losses can be carried back would assist those businesses. It is noted that this option would only benefit those businesses that have had a profit in previous years, and not start-up businesses or businesses that have had only losses in prior years.

The current Australian tax system allows for losses to be carried forward and deducted against future income. However the real value of those losses diminishes over time. The BTWG Report provides that an uplift factor should be applied to losses as they are carried forward to maintain the value of the tax losses (Element D).

This reform option would mostly benefit those tourism and hospitality businesses that are taking on long term projects, have paid upfront capital and have revenue consequences. Any start-up businesses, businesses undergoing restructuring, or recovering businesses will also benefit from this option.

NTA members appreciate the opportunity to provide feedback in relation to Interim Report. If you have any questions in relation to our letter please do not hesitate to contact me on (02) 9264 2185.

Yours sincerely

Juliana Payne
Chief Executive

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[i] *Tourism Satellite Account (cat. No. 5249.0)*, Australian Bureau of Statistics
[ii] http://www.aph.gov.au/house/committee/itrdlg/financialcrisis/report/GFC%20Final%20Report.pdf
[iii] *State of the Industry 2011*, Tourism Research Australia, October 2011
[iv] *SmartCompany*, 1/2/12
[v] *SmartCompany*, 1/2/12