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The law and policy of VAT tourist tax refund schemes: A comparative analysis

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Abstract

Many Value-Added Taxes (VATs) or Goods and Services Taxes (GSTs) include a tax refund scheme for goods acquired by tourists when they visit the jurisdiction, and then return home. The policy, design and operation of tourist tax refund schemes have not been widely researched in the literature. This paper fills this gap and provides a detailed discussion of the policy, legal design and administration of tourist tax refund schemes. The paper first explores the policy rationale for the establishment of tourist tax refund schemes. It identifies three main rationales: the destination principle which is the basis for most VATs; the goal of providing an incentive to the tourism industry; and the principle of equity, or fairness. The paper explores the policy issues and tax risks that should be considered by countries seeking to establish, or administer, such a scheme and compares key elements of the legal design of tourist tax refund schemes around the world. The paper does an analysis of the main elements of the European Union VAT tourism tax refund scheme and then focuses on a detailed comparative case study of the design and administration of the tourism tax refund schemes in the GST of Australia and the VAT of the People's Republic of China. The analysis reveals that different countries have different policy goals and design elements in their tourism refund schemes and face different operational challenges in their implementation. The authors recommend improvements to the design and administration of the schemes in Australia and China in light of the policy and comparative analysis.

Keywords: Value-Added Tax, Goods and Services Tax, tourist tax refund scheme, destination principle, European Union, China, Australia, tax administration

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1. INTRODUCTION

Since the middle of the 20th century, travel and tourism grew spectacularly, becoming one of the world's major economic and social forces. According to the World Tourism Organization, about 25 million tourists left their own country to visit other countries in 1950; this increased to 714 million in 2002 and in 2018 there was a record 1.4 billion international tourist arrivals.[1] The growing importance of tourism has not escaped the attention of policymakers. An ever-increasing number of destinations worldwide have opened to and invested in tourism, turning it into a key driver of socio-economic progress through the creation of jobs and enterprises, export revenues, and infrastructure development.[2] The coronavirus (COVID-19) pandemic which started in 2020 had a drastic negative impact on the travel and tourism sector, which was uniquely exposed because of border closures, business and travel restrictions, and the consequent global recession. Since widespread vaccination commenced in 2021, it seems likely that the tourism sector will gradually recover and countries will develop measures to re-activate the travel and tourism sector and to build a more resilient and sustainable tourism economy in the post-COVID environment.[3]

Just as the tourism and travel sector has expanded worldwide since the mid-20th century, so has the application of a broad-based consumption tax, such as a Value-Added Tax (VAT) or Goods and Services Tax (GST). A VAT/GST regime, albeit with diverse features in different countries, has now been adopted in 170 countries around the world. Today, it raises approximately 20 percent of total tax revenues in the OECD and worldwide.[4] An effective VAT or GST should generally apply to the tourist industry in a country and it can help to

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1 Blackall, Molly, 'Global Tourism Hits Record Highs - but Who Goes Where on Holiday?', *The Guardian* (online, 1 July 2019) <https://www.theguardian.com/news/2019/jul/01/global-tourism-hits-record-highs-but-who-goes-where-on-holiday>.

2 United Nations World Tourism Organization (UNWTO) (2016), *UNWTO Tourism Highlights, 2016 Edition* <https://www.e-unwto.org/doi/book/10.18111/9789284418145>.

3 OECD (2021) ,'Rebuilding Tourism for the Future COVID-19 Policy Response and Recovery - OECD' <https://read.oecd-ilibrary.org/view/?ref=137_137392-qsvjt75vnh&title=Rebuilding-tourism-for-the-future-COVID-19-policy-response-and-recovery>. We are conscious that just over half proportion of the total global population is vaccinated at present, see Josh Holder, 'Tracking Coronavirus Vaccinations Around the World', <https://www.nytimes.com/interactive/2021/world/covid-vaccinations-tracker.html>（Updated Nov.12, 2021）. Not surprisingly, the most vaccinated populations are in rich countries especially member states of the OECD and EU, and some parts of the Asia-Pacific region; we note that these are also the source of much global tourism.

4 OECD (2020), *Consumption Tax Trends 2020: VAT/GST and Excise Rates, Trends and Policy Issues* (OECD Publishing, Paris,2020)12< https://doi.org/10.1787/152def2d-en>.

ensure that tourists contribute by paying tax on the consumption of goods and services in the destination country, including the purchase of services such as hotel accommodation, transport, restaurant meals, entertainment and events, and the purchase of goods such as souvenirs, art work, electronics or clothing.

Unlike the purchase of services in the visited country, which is usually consumed in that country, the tourist usually takes goods purchased in the visited country with them when they depart to go elsewhere or return home. Some countries have established a Tourist Refund Scheme (TRS), also known as a Departure tax refund[5] or Retail Export Scheme (RES),[6] that allows the VAT or GST charged on goods sold to tourists in the jurisdiction to be refunded when they depart. The refund is usually processed by completing a formal process at the port of departure. In some schemes, the refund is processed either before or after departure by a refund agency, but it always depends on the departure of the tourist from the jurisdiction.

This paper examines the policy and legal design of a TRS, as implemented in various regions and countries around the world. We estimated that currently, 63 countries that have a VAT/GST system (about one-third) have established a TRS.[7] These countries are listed in Table 1:

Table 1. VAT or GST TRS refund countries

1. Ireland; 2. Austria; 3. Iceland; 4. Germany; 5. Republic of Korea; 6. Croatia; 7. Luxembourg; 8. Norway; 9. Switzerland; 10. Slovenia; 11. Spain; 12. Hungary; 13. Poland; 14. Bosnia & Herzegovina; 15. Denmark;16. Russia; 17. France; 18. Finland; 19. Kazakhstan; 20. Netherlands; 21.Czech Republic; 22. Latvia; 23. Lebanon; 24. Lithuania; 25. Macedonia; 26. Moldova; 27. Morocco; 28. Portugal; 29. Egypt; 30. Sweden; 31. Serbia; 32. Cyprus; 33. Slovakia; 34. Turkey; 35. Ukraine; 36. Uruguay; 37. Singapore; 38. Italy; 39.

[5] The TRS is known as a Departure tax refund in China as it allows tourists from overseas and from Hong Kong, Macao and Taiwan who leave the Chinese mainland from the port of departure to be refunded VAT on tax refundable goods they purchased at tax refund shops. See ‘A Guide to China’s Departure Tax Refund’ <https://govt.chinadaily.com.cn/s/201908/30/WS5d688674498ebcb190578fcc/a-guide-to-chinas-departure-tax-refund.html>.

[6] The TRS is known as a Retail Export Scheme (RES) in the European Union (EU).

[7] This estimate is confirmed by a recent study by the Australian National Audit Office (ANAO) of the law and policy of Australia’s TRS, which states that a TRS has been adopted by more than 60 countries around the world: Australian National Audit Office (ANAO) (2019), ‘Management of the Tourist Refund Scheme’, Auditor-General Report No. 8 2019-20,7<https://www.anao.gov.au/sites/default/files/Auditor-General_Report_2019-2020_8.pdf >.

United Kingdom; 40. China; 41. Belgium; 42. Bulgaria; 43. Estonia; 44. Greece; 45. Malta; 46. Romania; 47. Argentina; 48. Indonesia; 49.Jordan; 50. Lichtenstein; 51. Mauritius; 52. Mexico; 53. Namibia; 54. South Africa; 55. Thailand; 56. Fiji; 57. Sri Lanka; 58. India; 59. Laos; 60. Taiwan (China); 61. Vietnam; 62. Colombia; 63. United Arab Emirates.

Source: This information is obtained from a broad internet search during 2020-2021 including but not limited to the list of countries provided by Global Blue (the main global private provider of VAT refund services), PWC, IBFD and various national governments and tourism websites; however, this information may not be fully complete.

Of these countries, 27 are in the European Union (EU). The EU member states adopt a relatively harmonised VAT scheme and typically have high rates of VAT.[8] Outside the EU, there is a diversity of countries that have adopted a TRS; however, we note that twelve are in the Asia-Pacific region, even though VAT/GST rates in this region are generally much lower than in Europe. The countries in the Asia-Pacific region which have adopted a TRS include many of the important tourism economies. Clearly, a TRS scheme is not an essential feature of a VAT/GST, and its adoption is fairly widespread but is far from universal. Why, then, do countries introduce a TRS in their VAT/GST? What is its rationale and can it be justified as a matter of policy or theory? In Part 2 of the paper, we explore the rationales for a TRS adopted by countries and as a matter of theory or design of a VAT/GST. We identify three main rationales for a TRS. First, a TRS may be justified by the basic jurisdictional design of most VAT/GST systems around the world, being the destination principle for taxation of consumption within the jurisdiction. Second, the TRS may be considered as a tax incentive regime part of tourism policy. Third, the TRS may be justified when considering the allocation of a fair share of the tax burden among domestic and foreign consumers.

Part 3 of this paper explores the origins, development, and main features of TRS systems adopted in countries around the world. It then examines the standardised EU approach to the TRS, as Article 147 of the Principal VAT Directive requires a TRS to be established in all member states. This affects nearly half of the countries that have adopted a TRS. In Part 4, we summarise the key policy issues and risks in designing a TRS. We then turn to examine some

[8] The Council of the European Union (2006). *Council directive 2006/112/EC of 28 November 2006 on the common system of value added tax*. Official Journal of the European Union,11th, Dec. art 147. The average standard VAT rate of the 23 OECD countries that are members of the EU (including the UK until 1 February 2020) is 21.8%, above the OECD average of 19.3%, because the EU Member States are bound by common rules regarding VAT rates under Directive 2006/112/EC), which set the minimum level of the standard VAT rate at 15%: OECD (2020), above n 4. 42.

experiences with a TRS in the Asia-Pacific region, focusing on Australia and China.

In Part 5 we examine the Australian TRS, which dates to the introduction of the GST in 2000. Australia's TRS was subject to significant criticism by the Australian National Audit Office (ANAO) in a 2019 report, which we also explore in Part 5. In contrast, China has only recently introduced a TRS, through a pilot scheme which we discuss in Part 6. The pilot Chinese TRS was established under a regulatory framework issued by the Ministry of Finance. We consider the purpose and operation of the pilot TRS in the context of Chinese tourism and economic policy, the status of implementation, problems and possibilities for improvement. The different experiences of Australia and China concerning their TRS schemes may cause us to rethink the rationale of the TRS, analyse the associated problems and identify the optimal way to design the TRS to boost the tourism industry while controlling the unintended consequences and opportunities for fraud. Part 7 presents our general conclusions as to the best policy and design of a TRS, based on the experience of both older TRS regimes and more recent ones around the world.

2. THE THREE-DIMENSIONAL RATIONALE FOR TRS

2.1 The tax system design rationale: the destination principle

The purpose of a VAT or GST is to impose a broad-based tax on consumption, borne by the final consumer. A VAT may be levied on either an origin or destination basis. While the economic base of the VAT is consumption, legally, the territorial basis is focused on the location of elements of the VAT transaction, as the VAT applies to the supply through a transaction of a good or service. Where an element of a transaction takes place outside the jurisdiction of a state, it is necessary to provide rules to identify the location of the consumer; which country is entitled to levy tax; and who is responsible for collection and remittance of VAT/GST.[9]

In a destination-based VAT, exports are freed from tax in the supply chain ('exempted' or 'zero-rated') and enter world markets free from VAT of their country of origin, while imports bear the same tax as the equivalent domestically produced goods in the destination country. That is, goods and services should enter the world market free of tax, and nations

[9] David Williams (1996), 'Value-Added Tax' in Victor Thuronyi (ed) *Tax Law Design and Drafting Vol.1* (IMF), <https://www.imf.org/external/pubs/nft/1998/tlaw/eng/ch6.pdf>.

usually levy indirect taxes on imports.[10] Consistently with this free trade principle, VATs around the world generally are levied in the jurisdiction in which the consumption or usage of a good or service occurs. This is now the standard for cross-border sales of goods, providing full relief from taxation in the origin country and leaving room for taxation in the destination jurisdiction.[11]

The process of zero-rating the export of goods relies on the law and customs control processes of both the exporting (origin) and importing (destination) country. ensuring prevention of double taxation of a cross-border supply. These rules are, in a sense, two sides of the same coin.[12] The origin country should provide a full refund or rebate of VAT on the inputs for production of the good so that no tax is charged on export. For goods, this may be administered by transporting commercial quantities of goods destined for export markets to the export destination, generally a port, in a tax-free or 'bonded' state. This is verified through formal export verification and documentation processes. On import, the destination country if it chooses may apply a VAT (and possibly other customs tariffs) to the goods when they arrive at their destination port, in line with the relevant jurisdiction's policies.[13]

The *destination principal* rationale for the TRS operates by analogy to the VAT treatment of exported trade in goods. It assumes that tourists who acquire merchandise in a tourism destination to take home do not consume those goods in the tourism destination. On this rationale, the tourism country is not entitled to tax the consumption on the basis that the VAT should be levied where the good is consumed, not where it is produced or sold. The

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[10] Donald L.L. Bean (1993), 'Policy Perspective on International Taxation', in Cedric Sandford ed. *Key Issues in Tax Reform* (Fiscal Publications: UK) 238, 239.

[11] Yige Zu (2017), 'China's VAT on Exports: The Glacial Shift from a Heavy Hand to the Invisible Hand' *Tax Notes International* (20 November 2017), 767.

[12] Thanks to Richard Highfield for this phrase.

[13] A similar principle applies for the export of services; however, it may be more difficult to identify when services are supplied or consumed outside the jurisdiction, and a range of special rules are needed to establish. We do not address the export of services in this paper because in most cases, services consumed by tourists are consumed in the country to which they travel and are not 'exported'. In most of the countries where a TRS exists, it applies only to goods and not to services. However, there are exceptions. For example, in South Korea, a hotel tax refund is applicable to international tourists who stay in certified hotels within Korea for less than 30 days. To receive the tax refund, eligible recipients must be scheduled to leave Korea within three months from their check-out date. See 'Hotel Tax Refund : Visit Korea' <https://english.visitkorea.or.kr/enu/ACM/AC_ENG_4_2.jsp>. A cosmetic surgery tax refund is also applied in South Korea, International patients who have cosmetic surgery or procedures in South Korea can receive a VAT (10%) refund on their medical expenses. See 'Notices & News - Visit Medical Korea' <https://english.visitmedicalkorea.com/web/board/BD_board.view.do?domainCd=2&bbsCd=1001&seq=20160401141258262>. See Art.107-2,107-3 (Special Cases concerning Value-Added Tax for Foreign Tourists), Restriction of Special Taxation Act, Act No.14760, Apr.18, 2017.)

design of a TRS, which is mostly focused on goods and not services, is based on the same principle as zero-rating exports of goods. The retail of goods to tourists can be considered as a 'micro' export when the tourist departs from one country to their home country, or another destination, and brings the permitted goods with them.

The application of a TRS to relieve VAT on export is based on several assumptions. First, the VAT in the destination country must be passed on to the tourist, or consumer, in the price. That is, it is assumed that the full burden of the VAT is included in the final sale price and was not borne by the retailer or another intermediary business 'up the chain' of supply. Second, it is assumed that the consumer does not 'consume' the good in the tourism jurisdiction. This would usually be satisfied by an assumption that the tourist's residence is elsewhere, and not in the destination country; and further, that their stay in the destination country is not long enough to 'use up' the consumption of the good.

For example, if the tourist purchases an artwork in a country that they visit, and then keeps it wrapped up until they carry it home on the plane and put it on the wall, it can be assumed that the consumption of the good takes place in their home jurisdiction. If a tourist purchases an electronics item (like a camera) within some days of departure and opens and uses the camera before departing the jurisdiction and making the TRS claim, the TRS policy implicitly assumes that the camera has a longer life and most of its 'use' or consumption will take place outside the jurisdiction of purchase. In most systems, keeping the good wrapped in its packaging is not required to apply for the tax refund. However, a tourist who purchases consumable goods such as food, supplements, perfumes, or cosmetics may not be allowed to open or use these items before claiming the refund under the TRS. In general, the TRS aims to ensure that domestic consumption taxes do not apply to the 'micro' exports by tourists; as explained by Frédéric Dimanche: "Typically, sales taxes and value-added taxes are applied with the restriction that governments do not charge those taxes on exports to other countries. This principle can be applied to international tourists who make purchases and take them back home."[14]

Under a VAT system, the supplier of a good or service is required to impose tax at the relevant rate on taxable supplies which it collects from the purchaser. In accounting for VAT, the supplier remits to the tax authority the difference between the tax levied on their taxable

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[14] Frédéric Dimanche (2003), 'The Louisiana Tax Free Shopping Program for International Visitors: A Case Study' 41(3) *Journal of Travel Research* 311.

supplies and the tax already paid on relevant inputs (up the supply chain). In this way, the amount of tax in the remittance is akin to taxing the incremental “value-added”. In other words, the Government collects amounts of VAT on a fractional basis according to the amount of value-added at each point of the production chain. In the final (retail) transaction in the supply chain, the consumer pays the full amount of tax, as reflected in their invoice, while the Government will have received the same amount of tax, on a fractional basis from multiple suppliers up the chain. Consequently, under a TRS, the tourist pays VAT when purchasing goods and is then entitled to tax relief on eligible goods equivalent[15] to the amount of tax reflected on the invoice. For example, this would be 10% in the Australian context, being the flat GST rate.

The TRS lifts the tax on the ‘micro-export’ of the purchased good by the tourist, but it does not ensure that VAT will be levied on the ‘micro-import’ of the purchased good into the tourist’s home country. This will depend on the home country’s policies and its law regarding the declaration of goods being brought into the country by its residents, and also on the level of enforcement. It seems likely that many goods purchased by tourists while travelling are not declared or do not exceed the thresholds imposed by the home country (usually for administrative reasons). To ensure taxation of “both sides of the coin”, the tourist should be subject to VAT on *import* of the goods into their home country.

We return to the administrative elements of TRS schemes below. As an illustration, in Australia, if the total value of the goods a traveller is bringing into Australia that they have purchased overseas or for which they have claimed a refund under TRS is greater than their passenger concession of AUD 900, they must declare all of these goods on their incoming passenger card and are expected to repay the GST refund on the goods they claimed under the TRS. The GST will apply to all items purchased, not just goods over the limit of their passenger concession.[16] The dollar threshold means that goods with a value below that level will not be charged to GST on import, and the effectiveness of this arrangement depends on voluntary compliance and enforcement at the border.

We can also compare tourist shopping to online shopping, which has exploded around

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[15] There are exceptions when the tourists need to bear the TRS cost through a fee or commission paid to a private refund company, they cannot get the equivalent GST/ VAT.

[16] Australian Taxation Office (ATO), ‘GST-Free Sales to Travellers Departing Australia’ <https://www.ato.gov.au/business/gst/in-detail/your-industry/travel-and-tourism/gst-free-sales-to-travellers-departing-australia/?=redirected_Touristrefundscheme&page=5>.

the world. The 'micro' export of a good purchased in a country by an individual who travels there as a tourist is somewhat analogous to the direct online purchase of that good by the same individual from an online store (supplied by the artist in the origin country), where the purchasing individual does not travel but stays at home. If we assume the home country VAT extends to online purchases of foreign goods (which is increasingly the case), then home country VAT will apply to the online purchase of an artwork from a store or artist in the origin country, and it may be collected and remitted by the online sales platform, to the home country tax authority. On the other side of the coin, the artwork has been exported and should be zero-rated in the origin country.

2.2 The tourism policy rationale: A tax incentive mechanism

As the international tourism industry developed over the last few decades, travel destinations saw tourism development as an attractive economic benefit, generating income, employment, foreign exchange, and tax revenues. The World Travel & Tourism Council (WTTC), a tourism advocacy group whose membership comprises some of the world's largest travel businesses, estimates that tourism accounts for more than 10% of the world's gross domestic product, 10% of worldwide employment, 6.6% of total world exports and almost 30% of total world services exports in 2016.[17] Over the past few years, the travel and tourism sector also experienced rapid development globally.[18] In 2019, the sector experienced 3.5% growth, outpacing global economic growth for the ninth consecutive year; over the five years to 2019, one in four new jobs were created in the sector, making it the best partner for governments to generate employment.[19]

However, we should bear in mind that tourism development comes with costs for the destination government, as well as benefits for its economy. The destination government must provide public goods and services to both residents and tourists, including more investment to upgrade tourism facilities and improve the quality of tourism products in the country, and more general services including basic infrastructure, which may be subject to a significant

[17] World Travel and Tourism Council, *Travel& Tourism Global Economic Impact & Issues 2017* <https://www.stb.gov.sg/content/dam/stb/documents/mediareleases/Global%20Economic%20Impact%20and%20Issues%202017.pdf>.

[18] World Travel and Tourism Council (2020), *Travel& Tourism Recovery Scenarios 2020 and Economic Impact From COVID-19*, Research Note,1.

[19] World Travel and Tourism Council, 'Economic Impact' <https://wttc.org/Research/Economic-Impact>.

burden by high levels of tourism. To produce tourism goods and services, the government needs to raise revenue, some of which will be derived from the tourism economy. It is likely that most taxes raised in a country from the economic contribution of tourism are derived from domestic businesses and workers who are engaged with the tourism sector. However, the growth of tourism has provided destination countries with an opportunity to broaden their tax base and extend taxation to tourists. It is both feasible and reasonable to collect a fair share of tax from tourists as beneficiaries of domestic goods and services. How a government designs its tourism tax system will have a direct effect on revenues and the tourism experience. Tourists contribute directly to tax revenues in the jurisdictions to which they travel, most commonly through paying VAT and other consumption taxes as well as fees or charges, such as those levied on supplies from hotels, restaurants, or shops. Some countries levy specific tourism taxes, such as hotel bed taxes.[20] More broadly, we may consider tourism taxation to include those indirect taxes, fees and charges that affect primarily tourism-related activities.[21] There has been a general increase in the number and scope of tourism-related taxes including night taxes, accommodation or occupancy taxes and environmental taxes.[22]

When the burden of a tax imposed by one country's government is shifted to a person who is resident outside the jurisdiction, it may constitute "tax exporting".[23] Two conditions should be satisfied for successful tax exporting of consumption taxes: (i) the tax must be passed on to the consumer; and (ii) the consumer must be someone who does not live in the jurisdiction.[24] From the destination country's perspective, the exportability of tourist taxes will promote revenue-raising and economic efficiency.[25] However, from the perspective of tourism industry development, if taxes levied on tourists are too high, this may discourage tourists from travelling to the country or may cause them to reduce their spending when they

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[20] UNWTO (1998), *Tourism Taxation: Striking a Fair Deal*, Madrid, Spain, 98.

[21] OECD (2014), *Tourism Trends and Policies 2014* (Paris: OECD), 76, <https://www.oecd-ilibrary.org/industry-and-services/oecd-tourism-trends-and-policies-2014_tour-2014-en>.

[22] OECD (2014), 'Taxation and tourism', in *OECD Tourism Trends and Policies 2014* ((Paris: OECD) 73 <https://doi.org/10.1787/tour-2014-6-en>.

[23] Matthew N. Murray (2006), 'Exporting State and Local Taxes: An Application to The State of Maine', *A Background Paper Prepared for the Brookings Institution*,1.

[24] L Dwyer and P Forsyth (2006), *International Handbook on the Economics of Tourism* (Edward Elgar, US), 254.

[25] Fujii, Edwin, Mohammed Khaled and James Mak, 'The exportability of hotel occupancy and other tourist taxes' *National Tax Journal* (1985) 38 (2).169, 170.

are in the country, thus hurting the industry and the local economy.[26]

As global competition between countries for tourism increases, taxes (or, more generally, high prices) in one destination may induce tourists to switch to other destinations.[27] Competition between destinations appears to become more intense over time and some suggest that the tax system is an important factor in tourism competitiveness.[28] Tourism taxes may therefore have advantages and disadvantages for tourism destinations. On the one hand, raising taxes on tourism can increase revenue but on the other hand, it may result in lower revenue. This will depend on the extent to which the taxes are passed on in the form of higher prices and on the price elasticity of demand for tourism activities, including shopping, in the destination country.[29] Some suggest that the increase or decrease of a tax rate may significantly influence the decisions of tourists regarding their holiday destination and accommodation.[30]

In response, many countries have established tax incentives to invest in tourism-related facilities or infrastructure as well as to encourage increased spending by tourists.[31] A tax incentive can be defined as any tax law and regulation that targets tax relief to specific activities.[32] The purpose is to provide a mechanism to stimulate only "additional" marginal spending or investment that would not occur in the absence of tax relief. The incentive policy will be successful if the lost revenue and indirect costs are more than compensated for by higher revenue and social benefits from the additional investment.[33]

Establishing a TRS may be an attractive policy option to improve the competitiveness and attractiveness of tourism destinations. Therefore, the second policy rationale for a TRS is to deliver a tax incentive to the tourism industry, and to increase the purchase of goods from

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[26] Dwyer and Forsyth (above n 24)251,253.

[27] Ksenija Vodeb (2012), 'Competition in Tourism in Terms of Changing Environment' *Procedia - Social and Behavioral Sciences* 44, 273.

[28] Bratić Vjekoslav, Predrag Bejaković and Devčić Anton (2012) 'Tax System as a Factor of Tourism Competitiveness: The Case of Croatia' *Procedia - Social and Behavioral Sciences* 44, 250, 251.

[29] Ramesh Durbarry (2008) 'Tourism Taxes: Implications for Tourism Demand in the UK: Tourism Demand in The UK' *Review of Development Economics* 12(1), 21.

[30] Deloitte & Touche (1998) *The economic effects of changing VAT rates on the British tourism and leisure industry* (British Tourist Authority, London).

[31] OECD (above n 21) 73.

[32] W. Steven Clark (2012), *Perspectives on tax incentives for investment* <https://www.oecd.org/ctp/49836864.pdf >

[33] Sebastian James (2013), 'Tax and Non-Tax Incentives and Investments: Evidence and Policy Implications' 63. < https://ssrn.com/abstract=2401905 >

the retail sector in the jurisdiction by tourists.[34] As the TRS reduces the tax collected from travellers, this constitutes an incentive and may help to promote tourism shopping or purchases in the jurisdiction. For example, this has been suggested as one justification for the TRS in Australia.[35] Responding to a survey on tourism taxation, approximately one-third of countries identified that they deliver tax incentives seeking to promote increased or additional investment in tourism enterprises (e.g.hotels), and to promote increased expenditure by those undertaking tourism-related activities, including the TRS to support shopping.[36] As a tax incentive seeking to increase economic activity, a TRS for international travellers can be seen as an element in a government's economic development strategy.[37]

The TRS considered as a tax incentive may be recognized as a "tax expenditure" that delivers a tax exemption or other tax preference, at a fiscal and, potentially, an economic cost. Tax expenditures are preferential tax treatment granted to specific individuals or categories of households, relative to a defined benchmark, to achieve social and economic goals.[38] The government should carry out a cost/benefit analysis of the incentive, identifying its fiscal cost (as such as tax expenditures reduce the public resources available for other projects) and its likely effect on tourist behaviour and expenditure and consequent economic benefit. This may not be easy to determine, so governments may face a dilemma as to whether to enact a TRS, as for other tax incentives.

There is some evidence about the effect of tourism taxes on tourist expenditure, from various country studies. One empirical study from Turkey reveals that tourists are more likely to pay an additional amount of tax when this is earmarked for improvements in their experiences, but they may be reluctant to take on liability concerning matters relating to destination sustainability.[39] A study of the effectiveness of the TRS pilot in China estimated that every time the government refunds 1 Yuan of VAT to travellers, there is a gain of 1.8

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[34] Tourism Shopping Reform Group, Federal Government Pre-Budget Submission 2016-17.8,11. <https://www.afta.com.au/uploads/432/160205_tsrg-16-pbs_2016-17_final.pdf>.

[35] ANAO (above n 7)7.

[36] OECD (above n 21) 73.

[37] Frédéric Dimanche (above n 14) 311.

[38] See, e.g. Salvador Barrios ,Francesco Figari, Luca Gandullia & Sara Riscado, 'The Fiscal and Equity Impact of Social Tax Expenditures in the EU' (2020) 30(3) *Journal of European Social Policy* 355 <https://doi.org/10.1177/0958928719891341>.

[39] Cetin, Gurel, Zaid Alrawadieh, Mithat Z. Dincer, Fusun Istanbullu Dincer& Dimitri Ioannides (2017), 'Willingness to Pay for Tourist Tax in Destinations: Empirical Evidence from Istanbul' *Economies* 5 (2), 21 < https://doi.org/10.3390/economies5020021>.

Yuan of profit and a further 4 yuan of additional profit of related industries through the increased consumption; this seems estimated positive effect may enhance the development of tourist industry.[40] An analysis of the VAT Refund for Tourists Policy in Thailand based on a sample of 32 quarters showed that after the Refund was provided, the shopping expenditure of foreign tourists in Thailand increased, implying that the policy was effective in encouraging foreign tourists to spend more on shopping in the destination.[41] It has also been suggested that in India, foreign tourists and non-residents visitors have reduced their purchases of gold jewellery because there is no mechanism to refund the GST on their purchases.[42]

2.3 The tax equality rationale: Tourists should bear a fair share"of tax

The principle of equity or tax fairness is fundamental to tax policy. We may consider two concepts of tax fairness: the benefit principle of taxation, and the ability-to-pay principle. The benefit principle states that taxpayers should be required to pay taxes following the benefit of the government. The ability-to-pay principle holds that taxpayers should pay taxes in accordance with their ability to pay. The latter is the dominant principle in taxation today, which is validated by the widely adopted graduated progressive income tax.[43] In the context of a consumption tax (usually flat rate), the principle of equity is most likely to apply in terms of horizontal equity or a level playing field, including the fair and even-handed treatment of travellers compared to locals, or fair treatment of businesses in the tourism sector compared to other sectors of the economy.[44] Perceived fairness of the tax system may also be important. Some tourism studies suggest that travelers' behavior may be influenced by their perception

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[40] 黄玉迎[Huang YuYing] (2005),《专家建议实施入境旅游购物退税》[Experts Suggest the Implementation of Inbound tourism tax refund for departure]北京日报 Beijing Daily, June23.

[41] Thanyakorn Chansarn (2009), 'Effectiveness of "VAT Refund for Tourists" Policy in Stimulating Expenditure of Foreign Tourists in Thailand' *Asia-Pacific Journal of Science and Technology* 14(4), 244 <https://so01.tci-thaijo.org/index.php/APST/article/view/83416>.

[42] Sutanuka Ghosal(2018), 'Absence of GST Refund Mechanism Hits Gold Demand from Tourists, NRIs', *The Economic Times* Mar 19.<https://m.economictimes.com>.

[43] HC Simons (1938), *Personal Income Taxation* (Chicago: University of Chicago Press); R Musgrave and P Musgrave (1959), *The Theory of Public Finance* (US: McGraw-Hill) and later editions. A useful discussion is in: John G. Head (1992), 'Tax Fairness Principles: A Conceptual, Historical and Practical Review' *Australian Tax Forum* 9, 65.

[44] Thomas C. Jensena and Stephen Wanhillb (2002), 'Tourism's taxing times: value added tax in Europe and Denmark' *Tourism Management* 23, 67, 68.

of fairness of taxes and charges levied on tourists.[45]

In the context of tourism taxes and the TRS, the question is whether it is fair to tax more or less heavily the goods that are purchased mainly by tourists? In an income tax law, for resident individuals, income tax is usually levied based on worldwide income, and this supports an analysis of the ability to pay. Usually, non-residents, which would include travellers, should pay tax only on income sourced in the jurisdiction. The destination principle in the consumption tax may imply a similar fairness rule: the traveller should only pay tax on goods or services consumed in the visited country and all other consumption is taxable in the location where they usually reside.

In a consumption tax context, the "benefit principle" of taxation may also be relevant. On this basis, taxpayers owe a duty to pay taxes based on their benefit from the government, and it is fair to ask those who benefit from infrastructure and other goods of a country to contribute to their provision or protection.[46] For citizens or residents, and their state we may accept that national tax policy is one element of the "social contract" between individuals and government.[47] Citizens and residents are members of their society, so they have a social obligation to pay taxes. A foreigner who is not a resident will not be a member of the society and they should not normally be taxed based on worldwide income.

The situation becomes more complicated for those who visit the destination country, but their purpose is not to reside permanently. Concerning the income tax, time has become an important yardstick: for those foreigners who travel to and reside in the destination country for an extended period (e.g., 183 days or more) may benefit from at least some of the same legal protections and public services provided by the government of that country, and may therefore expect to be taxed on a 'residence' basis on worldwide income. Those who visit for a relatively short time cannot be said to enjoy the same extent of public services by the destination country. Similarly, for goods they buy inside the destination country but only consume after returning home, they have not consumed the goods inside the country. Therefore, it is not fair for the destination country to tax those goods.

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[45] Jin Young Chung,Gerard T. Kyle,James F. Petrick&James D. Absher (2011), 'Fairness of Prices, User Fee Policy and Willingness to Pay among Visitors to a National Forest' *Tourism Management* 32(5), 1038.

[46] Josiah Stamp (2021) *The Fundamental Principles of Taxation in the Light of Modern Developments* (London: Macmillan & Co), 6.

[47] Allison Christians (2009), 'Sovereignty, Taxation, and Social Contract' *Minnesota Journal of Int'l Law* 18, 99.

Tourism taxes may be supported by the benefit principle where it is clear that they are needed to finance domestic infrastructure and tourism services or to protect the natural or cultural goods of a country that tourists seek out. Reasons for tourism-related taxation include funding environmental protection and infrastructure development, cost recovery and ensuring the safety and security of travelling; these reasons suggest that the cost should be borne by the tourists who are in the destination countries and have benefited from tourism public goods.[48] For retail purchases, a TRS relieves taxation for those who purchased goods in the destination countries but do not benefit from consuming them there. This may provide a 'benefit' theory justification for the TRS on 'micro-export' by tourists of goods purchased in the destination jurisdiction.

We could also consider equity arguments based on ability to pay, or 'vertical' equity (higher income people pay more tax). International tourists are likely to be relatively high income compared to fellow citizens of their home countries, and to the citizens of many tourism destination countries. On this basis, they have a relatively high ability to pay and it seems unfair to exempt their purchases from VAT, as they are likely to have the ability to pay it; it is also convenient to collect the tax from them at the time of purchase. A similar justification could be applied to airline taxes, which are highly progressive in general. In respect of horizontal equity, purchasers of goods in a jurisdiction may consider that tourists should pay tax on that good just as residents do; this suggests that TRS should not be justified on equity grounds. We therefore may see a potential conflict between different notions of tax equity in considering TRS policies. However, if we consider fairness across the life-course or in the context of an individual's life context, it is less likely that tourist taxation in the source country can be justified, as it is still fundamental to consider that fairness – whether vertical or horizontal – should mostly be delivered by the residence or 'home' country which can design a suitable tax rate on that basis.

3. THE DEVELOPMENT OF TRS AROUND THE WORLD

3.1 The origins and expansion of TRS in the EU

Tax-free shopping was pioneered on Monday 4 August 1980 when passengers sailing from Trelleborg, Sweden, to Germany were told they could receive a VAT refund in cash by

[48] OECD (above n 22) 73,74.

presenting their purchases at Customs; this was the first TRS, introduced by Sweden in 1980.[49] Sweden had previously adopted a VAT in 1966.[50] Under its innovative tax-free shopping scheme, tourists "exporting" goods purchased in Sweden were able to claim a refund of Swedish VAT under certain procedures.[51]

Today, a TRS is adopted throughout the EU and is an element of the harmonized VAT law of the EU.[52] In the harmonized system of VAT among the Member States of the EU,[53] governments must establish a TRS consistent with the guidelines provided in EU Directive 2006/112/EC, Article 147(1). As a member of the EU since 1995, Sweden is obliged to incorporate the rules of the EU VAT system contained within the EU VAT Directive.[54] The Directive allows a visitor to the EU who is returning home or going on to another non-EU country to be eligible for a refund of VAT on VAT-inclusive goods, on certain conditions. Specifically, it states:

> "Where the supply of goods referred to in point (b) of Article 146(1) relates to goods to be carried in the personal luggage of travellers, the exemption shall apply only if the following conditions are met:(a) the traveller is not established within the Community.(b) the goods are transported out of the Community before the end of the third month following that in which the supply takes place. (c) the total value of the supply, including VAT, is more than EUR 175 or the equivalent in national currency, fixed annually by applying the conversion rate obtaining on the first working day of October

[49] Global Blue, 'Our History', *business* <https://www.globalblue.com/corporate/about-us/our-history/>. Accessed March 12, 2021.

[50] Norr, Martin and Nils G. Hornhammar (1970), 'The Value-Added Tax in Sweden' *Columbia Law Review* 70 (3) 379-422.

[51] Sweden - VAT-Free Sales for Non-Scandinavian Tourists, Tax Research Platform - IBFD <https://research-ibfd-org.eu1.proxy.openathens.net/#/doc?url=/data/tns/docs/html/tns_1989-01-31_se_1.html>.

[52] The common system of VAT is in the interests of the internal market and of Member States to adopt a common system which also applies to the retail trade.According to Article 146,1(b) of the Council Directive 2006/112/EC,the Member States shall exempt the following transactions:"the supply of goods dispatched or transported to a destination outside the Community by or on behalf of a customer not established within their respective territory, with the exception of goods transported by the customer himself for the equipping, fuelling and provisioning of pleasure boats and private aircraft or any other means of transport for private use;" See The Council of the European Union (above n 8)art 146.

[53] The European Union (EU) comprises 27 countries including: Austria, Belgium, Bulgaria, Croatia, Republic of Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Poland, Portugal, Romania, Slovakia, Slovenia, Spain and Sweden. See 'Countries in the EU and EEA', *GOV.UK* <https://www.gov.uk/eu-eea>. The United Kingdom formally ceased to be a member of the EU at 11pm GMT 31 January 2020. 'UK Decision to Leave the EU – Brexit | DFAT' <https://www.dfat.gov.au/geo/united-kingdom/Pages/brexit>.

[54] Sweden VAT Guide - Avalara', VAT live, <https://www.avalara.com/vatlive/en/countryguides/europe/sweden.html>. EU COUNCIL DIRECTIVE 2006/112/EC.

with effect from 1 January of the following year.”[55]

The TRS consistent with Article 147(1) is prescribed within each country’s framework of export tax exemptions in their VAT law.[56] The European Commission (EC) has provided a guide to VAT refunds for visitors to the EU.[57] The Directive does not require all the member states to apply the same design of TRS, as long as they satisfy the specified criteria. This enables the member countries to maintain some legislative sovereignty and choose the most appropriate TRS that suits their preferences.

3.2 Adoption of a TRS elsewhere in the world

Elsewhere in the world, governments have introduced a TRS at various times and with diverse features. Some countries have had a TRS since establishing their VAT. For example, Australia has had a TRS in its GST and Wine Equalisation Tax (WET) since these laws were introduced in 1999 (commencing 2000).[58] The Australian TRS allows the tourists to claim a refund of the GST that they pay on certain goods purchased in Australia.[59] The scheme applies to goods purchased at prices that include GST from a retailer with an ABN and registered for GST, excluding GST-free goods or services such as accommodation. Crew members of an aircraft or ship are not eligible to claim refunds, but residents of Australia's external territories can get a GST refund if they export the goods to their home territory as

[55] The Council of the European Union (above n 8).

[56] See, e.g., Section 58(2) ——Retail export scheme, Value-Added Tax Consolidation Act 2010(Ireland Number 31 of 2010). It states “The Revenue Commissioners shall, subject to and in accordance with regulations (if any), allow the application of section 46(1)(b) (in this section referred to as “zero-rating”) to—(a) the supply of a traveller’s qualifying goods, and(b) the supply of services by a VAT refunding agent consisting of the service of repaying the tax claimed by a traveller in relation to the supply of a traveller’s qualifying goods or the procurement of the zero-rating of the supply of a traveller’s qualifying goods”.< https://www.irishstatutebook.ie/eli/2010/act/31/enacted/en/html>; Also see Article 70b,Value Added Tax Act 1993(Finland).It sates “Tax is not payable on sales of goods to travellers, whose domicile is not in the Community, nor in Norway, to be taken away in their luggage, if it is established, by means to be defined by administrative decree, that the travellers have exported the goods in an unused state to a destination outside the Community within three months following the month in which the sales were effected and if the consideration charged from the traveller is not less than EUR 40”.<https://www.finlex.fi/fi/laki/kaannokset/1993/en19931501_20021071.pdf>.

[57] Taxation and Customs Union, ‘Guide to VAT Refund for Visitors to the EU’, <https://ec.europa.eu/taxation_customs/individuals/travelling/travellers-leaving-eu/guide-vat-refund-visitors-eu_en>.

[58] Division 168—Tourist refund scheme, See Treasury, ‘A New Tax System (Goods and Services Tax) Act 1999’ <https://www.legislation.gov.au/Details/C2020C00143/Html/Volume_1, http://www.legislation.gov.au/Details/C2020C00143>. Division 25--Tourist refund scheme, See Treasury, ‘A New Tax System (Wine Equalisation Tax) Act 1999’ <https://www.legislation.gov.au/Details/C2017C00327/Html/Text, http://www.legislation.gov.au/Details/C2017C00327>. We focus on the GST TRS in this paper.

[59] Australian Taxation Office (above n 16).

accompanied or unaccompanied baggage or as cargo. Unusually, the Australian TRS also applies to Australian residents who travel abroad, as well as tourists; we return to this feature of Australia's TRS in our discussion in Part 5.

China introduced a VAT in 1993, commencing 1994.[60] It was not until 2011 that China commenced a pilot TRS in Hainan Island. On 6 January 2015, the Ministry of Finance issued an announcement (Gong Gao [2015] No. 3) extending to the whole country the pilot program of a VAT refund for foreign visitors on consumer goods purchased in China, to improve the competitiveness of the Chinese tourism industry.[61] The facility allows tourists (foreign passport holders) to claim back VAT on goods purchased in any store registered as a "Tax Refund for Tourists" participant. However, the pilot did not have a completely legal basis in the VAT regulations and has encountered institutional barriers and bottlenecks in its development.

The adoption of a TRS is relatively common in the main Asia-Pacific tourist destination economies with a VAT/GST including South Korea, Singapore, India, Sri Lanka, Australia, Thailand, Indonesia, Fiji, China (the mainland and Taiwan).[62] For example, Singapore enacted the Goods and Services Tax Act in 1993 and established the TRS under reg 48–51 of its GST (General) Regulations commencing 20 December 1993.[63] In South Korea, Article 107-2 of the Restriction of Special Taxation Act of 1998 stipulated the departure tax refund system for foreign tourists, to promote the development of the tourism economy.[64] In Thailand, Revenue Code Amendment Act 34 of 1998 entitles tourists to a VAT refund on goods purchased in Thailand when they take the goods out of the country.[65] In 2007,

[60] State Council of China,《中华人民共和国增值税暂行条例(已修订)》(中华人民共和国国务院令[第134号])[Provisional Regulations of the People's Republic of China on Value-added Tax（Revised）（Order No. 134 of the State Council）].

[61] 'Document - China (People's Rep.) - VAT Refund for Foreign Visitors – Extended Country-Wide - Tax Research Platform - IBFD' <https://research-ibfd-org.eu1.proxy.openathens.net/#/doc?url=/data/tns/docs/html/tns_2015-01-20_cn_1.html>.

[62] PWC, 'A guide to VAT/GST in Asia Pacific 2019', < https://www.pwc.com/sg/en/tax/assets/vat-gst-guide-2019.pdf>.

[63] 'IRAS | Goods and Services Tax Act' <https://www.iras.gov.sg/irashome/Quick-Links/Tax-Acts/Goods-and-Services-Tax-Act/>; 'Goods and Services Tax (General) Regulations - Singapore Statutes Online' <https://sso.agc.gov.sg/SL/GSTA1993-RG1?DocDate=20180329>.

[64] 'Statutes of the Republic of Korea' <https://elaw.klri.re.kr/eng_service/lawView.do?hseq=43262&lang=ENG>.

[65] 'Document - Thailand - VAT and Business Tax Changes - Tax Research Platform - IBFD' <https://research-ibfd-org.eu1.proxy.openathens.net/#/doc?url=/data/tns/docs/html/tns_1999-03-03_th_1.html>.

Indonesia's Taxation Arrangements and Procedures Bill was enacted which established a VAT refund for tourists upon leaving the country.[66] In Fiji, a Tourist VAT Refund Scheme was implemented on 1 February 2010 to provide departing tourists with a refund of 12.5% VAT on purchases exceeding FJD 500.[67] On 15 November 2016, Sri Lanka introduced a refund mechanism at ports and airports for foreigners who stayed in Sri Lanka for no longer than 30 days on the VAT paid by them in purchasing goods in Sri Lanka.[68] In India, GST was introduced with effect from 1 July 2017 including an enabling mechanism whereby an international tourist procuring goods in India, may seek a refund of the tax paid while leaving the country.[69]

Several other countries around the world have adopted a TRS relatively recently. In Colombia, article 39 of Law 300 of 1996 (as amended by article 14 of Law 1101 of 2006), and article 28 of Law 191 of 1995 (as amended by article 70 of Law 1607 of 2012), the tax authority shall reimburse the total amount of VAT paid in Colombia by foreign tourists for acquiring goods in the country or special border zones.[70] The Decree 2498 of 6 December 2012 regulates the scheme for the full refund of VAT paid by non-resident foreign tourists on the purchase of specific goods within the Colombian territory.[71] In Argentina, Decree 1,043/2016 establishes a VAT reimbursement for hotel services (including breakfast) billed and rendered to foreign tourists in Argentina (in contrast to most TRS rules, this concession applies to services consumed *in* the jurisdiction, not taken 'home' by the tourist). On 27 November 2017, Russia published federal law No. 325-FZ to amend article 88 and chapter 21 of the Tax Code, which allowed foreign citizens to claim a refund of the VAT paid when buying goods in retail stores listed in the special register approved by the Ministry of Industry

[66] 'Document - Indonesia - Taxation Arrangements and Procedures Bill – Details - Tax Research Platform - IBFD' <https://research-ibfd-org.eu1.proxy.openathens.net/#/doc?url=/data/tns/docs/html/tns_2007-11-05_id_1.html>.

[67] 'Document - Fiji - Budget for 2010 – Details - Tax Research Platform - IBFD' <https://research-ibfd-org.eu1.proxy.openathens.net/#/doc?url=/data/tns/docs/html/tns_2009-12-10_fj_1.html>.

[68] 'Document - Sri Lanka - Budget 2017 – Value Added Tax and Nation Building Tax - Tax Research Platform - IBFD' <https://research-ibfd-org.eu1.proxy.openathens.net/#/doc?url=/data/tns/docs/html/tns_2016-11-15_lk_4.html>.

[69] PWC (above 62)70.

[70] 'Document - Colombia - Decree 1903 of 2014 – VAT Refund for Foreign Tourists - Tax Research Platform - IBFD' <https://research-ibfd-org.eu1.proxy.openathens.net/#/doc?url=/data/tns/docs/html/tns_2014-10-16_co_1.html>.

[71] 'Document - Colombia - VAT Refund to Non-Resident Foreign Tourists – Regulations Issued - Tax Research Platform - IBFD' <https://research-ibfd-org.eu1.proxy.openathens.net/#/doc?url=/data/tns/docs/html/tns_2012-12-21_co_1.html>.

and Trade.[72] The Federal Tax Authority of the United Arab Emirates (UAE) approved the decision on 20 November 2019 to allow tourists to collect VAT refunds on their purchases within 1 year from the date of their departure from the UAE.[73] On 15 June 2020, the Ministry of Finance of Egypt announced that the draft amendment to the VAT law (Law 67 of 2016), which established a VAT refund procedure for goods purchased by non-resident individuals staying in Egypt for a maximum period of 3 months.[74]

However, it is also interesting to observe, first, that more than two-thirds of VAT/GST countries have not adopted a TRS, and second, that TRS regimes vary widely in their administrative and legislative details. In general, as already noted, the TRS has only been adopted by jurisdictions that have introduced a broad-based consumption tax, such as a VAT or GST, based on the destination principle. The United States (US) has not adopted a VAT; instead, the US states levy retail sales taxes of various kinds. In this context, only two states, Louisiana and Texas, have established a statewide tax-refund program for international visitors based on their sale tax.[75]

A TRS may be considered as a mutually complementary mechanism to duty-free shopping providing 'tax-free' purchases for tourists. However, duty-free shopping is different in that duty-free goods purchases are tax-free at the point of sale. Some countries with a VAT or GST apply the duty-free or exemption approach as an alternative approach to the TRS, for certain eligible purchases. Under the Japanese consumption tax, introduced in 1989, tourists cannot get a refund by purchasing general items but they can purchase tax-exempt commodities at an export shop under certain conditions.[76] New Zealand introduced the Goods and Services Tax Act with effect from 1986, but it does not have any mechanism to

[72] 'Document - Russia - Introduction of Tax-Free VAT Regime for Foreign Tourists – Law Published - Tax Research Platform - IBFD' <https://research-ibfd-org.eu1.proxy.openathens.net/#/doc?url=/data/tns/docs/html/tns_2017-12-22_ru_2.html>.

[73] This measure applies for applicants who have completed the refund application procedures but were unable to collect the cash immediately when leaving the United Arab Emirates. 'Document - United Arab Emirates - New VAT Refunding Procedures for UAE Nationals and Tourists - Tax Research Platform - IBFD' <https://research-ibfd-org.eu1.proxy.openathens.net/#/doc?url=/data/tns/docs/html/tns_2019-11-22_ae_1.html>.

[74] 'Document - Egypt - Egyptian Ministry of Finance Publishes Draft Amendment to VAT Law for Public Comments – Law Published - Tax Research Platform - IBFD'<https://research-ibfd-org.eu1.proxy.openathens.net/#/doc?url=/data/tns/docs/html/tns_2020-06-18_eg_2.html.>

[75] 'Individuals - Louisiana Department of Revenue' <https://revenue.louisiana.gov/Individuals>. 'Sales Tax Refunds' <https://comptroller.texas.gov/taxes/sales/refunds/>.

[76] PWC (above n 62) 88, 101.

enable tourists to obtain a refund of GST paid on goods and services purchased in New Zealand.[77] However, a system applies where some retailers sell zero-rated goods to be purchased by departing travellers and the goods are collected at the airport at the time of departure.[78]Tourists can also purchase goods at a duty-free shop, free of GST, which may have a similar effect in boosting domestic purchases of goods by tourists.[79]

Some countries initially implemented a TRS but later abolished it. Canada established the Visitor Rebate Program for GST which came into effect in 1991 but abolished it in 2007. It was replaced with the Foreign Convention and Tour Incentive Program which targets tour packages, foreign conventions, and non-resident exhibitor purchases.[80] As of 31 December 2020, the UK government abolished the VAT Retail Export Scheme which had previously been implemented in Great Britain (England, Scotland, and Wales).[81]

3.2 The common features of TRS

The VAT is a multi-stage tax on domestic consumption, charged on all taxable supplies of goods and services in one country except those that are specifically exempted. The VAT is also charged on the importation of goods and services into the destination country and the payment of VAT is made in stages by the intermediaries in the production and distribution process. Although the tax is paid throughout the production and distribution chain, it is ultimately passed on to the final consumer. Therefore, the tax itself is not a cost to the

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77 PWC (above n 62) 159.

78 The New Zealand Customs Service states that "You can't get GST refunds on items you purchased in NZ. If you want to buy something and not pay GST on it, you must:1） buy it from a duty-free shop; 2） arrange for the retailer/supplier to export your item; 3）arrange for the retailer/supplier to deliver your item to an airside location – i.e. a place in an international terminal after Customs and security – for departing travellers". See 'Leaving NZ' <https://www.customs.govt.nz/personal/travel-to-and-from-nz/leaving-nz/>.

79 What is different from the duty free and tax refunds is that in duty free shops, no tax is applied to the price of the item, so the tourists are able to purchase in particular circumstances without paying taxes, in comparison, tax refund is a system where tourists buy items at full price, including tax, then apply for a refund on the paid tax before leaving the country. See 'Difference between DUTY FREE and TAX FREE' <https://www.kixdutyfree.jp/en/useful/useful2.aspx?src=side>.

80 Canada Revenue Agency, 'Program History - from VRP to FCTIP', (service description, 28 June 2012) <https://www.canada.ca/en/revenue-agency/services/tax/businesses/topics/gst-hst-businesses/gst-hst-rebates/program-history-foreign-convention-tour.html>.

81 VAT RES allows non-EU visitors to the EU to recover the VAT on purchases they make on the high street which they take home with them in their luggage. According to the UK government's announcement, this scheme will be withdrawn in Great Britain but retailers in Northern Ireland, including those at ports or airports, will continue to be able to offer VAT RES to non-EU visitors to Northern Ireland, under the terms of the Northern Ireland Protocol. See 'Revenue

intermediaries and does not appear as an expense in their financial statements. If a TRS is to be provided, it makes sense for travelers who have paid the final price and tax on the goods to get the tax refund when they depart the destination countries. In this part, we summarise common design elements of a TRS that apply in most countries.

3.2.1 Definition of "tourist", "traveller" or "visitor" eligible for a tax refund

All TRS regimes are aimed at visitors with a residence outside the destination countries. A visitor is usually defined as a person who permanently or habitually lives in a country outside the destination countries. To decide eligibility, the destination country will review the passport or other identity document to determine the visitor's permanent address or habitual residence. For example, in China, tourists classified under the TRS are foreign tourists who are eligible to claim VAT refunds and who hold a valid international passport. In Thailand, individuals who are not Thai nationals, do not have a domicile in Thailand, are not an airline crew member departing Thailand on duty, and depart Thailand from an international airport can claim a VAT refund.[82]

The EC Directive 2006/112 requires that 'the traveller is not established within the Community'. This means that an eligible traveller is a natural person who is not a citizen of an EU member state and who has no right of permanent residence in any member state; or who is a citizen of a member state but who has a permanent address or habitual residence outside the territory of the EU. Member states interpret this in various ways in their domestic TRS laws. In Ireland, any Irish or EU citizens who are departing to take up residence outside the EU for at least 12 consecutive months can use the TRS scheme.[83] Belgium also provides that a Belgian citizen who lives permanently in a country outside the EU can have a right to a VAT refund. For example, Paula is a Belgian citizen but lives permanently in Canada; she returns to Belgium to visit her parents once a year. On this occasion, Paula can be deemed as a 'visitor' of Belgium and can apply for a refund on a basis of her Canadian residence.[84] Thus, the eligibility extends beyond simply 'tourists' or 'travellers' in some cases. The broadest eligibility category is in Australia. While nominally a "tourist refund scheme", the Australian TRS is not restricted to "tourists" but includes international travellers visiting

[82] 'Vat, Tax Refund' <https://www.tourismthailand.org/Articles/plan-your-trip-vat-tax-refund>.

[83] 'Retail export scheme', <https://www.revenue.ie/en/vat/retail-export-scheme/who-can-use-the-scheme.aspx>.

[84] Taxation and Customs Union (above n 57).

Australia and Australians travelling overseas, as well as residents of Australia’s external territories.

3.2.2 Goods eligible for a tax refund

A TRS requires a definition of eligible goods. Rules defining such goods may specify retailers or retail agents who have been authorized to provide the TRS scheme so that any purchases of goods that come within the definition of eligible goods and are purchased from eligible retailers are allowable under the system. Although VAT/GST applies to services and goods, most TRS rules do not permit refunds of VAT that travellers have spent on hotels and meals or other services (there are exceptions in South Korea). There are also some restrictions on eligible goods.

Most TRS systems establish four rules for eligible goods: 1. The exported goods should not be prohibited or restricted goods; 2. The exported goods should not be VAT-free; 3. The exported goods should not be consumed in the destination countries; 4. The goods cannot be purchased for commercial purposes, such as resale. Countries also have additional restrictions. Most EU countries have established a “Negative list” to regulate ineligible goods. In France, tobacco products, firearms, and unset precious stones are not eligible for the TRS.[85] In Belgium, tobacco and non-EU exports are also not eligible for a tax refund.[86] In Australia, a refund will not be paid on alcohol, tobacco, and other dangerous goods[87].

In general, to be eligible for the TRS, the goods must be ‘exported’ or taken out of the destination countries within the required time and accompanying the tourist. For example, in the EU, the goods must be ‘exported’ or taken out before the end of the third month following the month in which they were purchased.[88] This means if a tourist in France purchases a watch from an eligible retailer on 15 January (invoice date), they must apply for a refund and take it out of the EU no later than 30 April. The Australian rules require that goods are purchased within 60 days of departure, and the traveller must carry or wear the goods on

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[85] Discover France, ‘Applying for Tax Refunds When Leaving France’ <https://www.discoverfrance.net/France/Paris/Shopping/Paris_VAT.shtml>.

[86] ‘Tax Refund Process in Belgium’, *TAX FREE EASY* <https://www.tax-free-easy.com/en/portfolios/belgium/>.

[87] ‘Tourist Refund Scheme (TRS)’ <https://www.abf.gov.au/entering-and-leaving-australia/tourist-refund-scheme>.

[88] Taxation and Customs Union (above n 57).

board the aircraft or ship as cabin baggage unless they are oversized or subject to aviation security measures and the airline requires them to be checked in as hold luggage.[89] Unaccompanied goods (including goods sent by cargo or international mail) are not eligible for the TRS.

3.2.3 Threshold and time limit for a tax refund

Under normal circumstances, there will be a threshold purchase price required before a TRS refund is available. The EU has established a standard that the total value of the consideration, including VAT, should be more than €175 or the equivalent in national currency. However, the price of each product does not need to be higher than €175, and different countries may apply different minimum amounts. Member states may exempt a supply with a total value of less than the amount specified.[90] Typically, the purchase must reach the minimum threshold at a single retailer (adding up all purchases from various shops to reach the required amount is not allowed). However, this also may vary. In Singapore, to be eligible for a GST refund under the eTRS, the visitor should spend at least SGD100 (including GST) in up to three same-day invoices from retailers bearing the same GST registration number and same shop name to meet this minimum purchase amount.[91] In Thailand, goods must be purchased at least 2,000 baht (VAT included) per day per store.[92] The threshold may be adjusted to encourage consumption. For example, the threshold in Spain was initially set at €90.16 but in 2018, the Spanish government removed the minimum threshold.[93] Table 2 presents the EU rates and TRS minimum thresholds.

[89] Australian Taxation Office (above n 16).

[90] The Council of the European Union (above n 8).

[91] 'Electronic Tourist Refund Scheme (ETRS)' <https://touristrefund.sg/en/about-eTRS-eligibility.page>.

[92] See above n 82.

[93] 'Belgium VAT Refund Guide and Calculator - Upon' <https://upon.io/vat/countries/belgium>.

Table 2 VAT Rates and Minimum Purchases Required to Qualify for Refunds in EU plus Northern Ireland

(As at 1 March 2021)

Country of Purchase	VAT Standard Rate	Minimum in Local Currency
Austria	20%	€75.01
Belgium	21%	€50
Bulgaria	20%	250 BGN
Croatia	25%	740 HRK
Czech Republic	21%	2,001 CZK
Denmark	25%	300 DKK
Estonia	20%	€38.01
Finland	24%	€40
France	20%	€175.01
Germany	19%	€25
Northern Ireland	20%	£30
Greece	24%	€50
Hungary	27%	54,001 HUF
Cyprus	19%	€50
Ireland	23%	€75.01
Italy	22%	€155
Latvia	21%	€44
Lithuania	21%	€55
Luxembourg	17%	€74
Malta	18%	€100
Netherlands	21%	€50
Poland	23%	200 PLN
Portugal	23%	€61.35
Romania	19%	250 RON
Slovakia	20%	€100
Slovenia	22%	€50.01
Spain	21%	€90.16(€0 from 2018)
Sweden	25%	200 SEK

Note. EU VAT standard rates are set by member countries and can fluctuate. The refund will likely be less than the rate listed above, especially if it is subject to processing fees. This information was sourced from travel agencies summaries: https://www.ricksteves.com/travel-tips/money/vat-rates-in-europe.

3.2.5 Paying the refund in a specified manner and period

Eligible tourists may request the VAT refund after the exportation of the goods, by submitting the documents required for the tax refund and supporting the lawfulness of the exemption. Usually, the procedure of TRS will experience three stages.

First, the tourists should have paid the full, VAT-inclusive price for the goods in the travel destination countries in specified time zones. In most countries, the tourist should verify with the stores before purchase to make sure the stores participating in the TRS scheme because not all the stores can be authorized. Tourists purchasing goods at retail outlets anywhere in the country can obtain a tax receipt showing, among other things, the amount of the purchase, a description of the item and the amount of tax paid.

Second, tourists should have complied with formalities and show proof of export on departure. Usually, this requires the presentation of tax invoices, goods, passports and boarding passes and requesting sales assistants or customs officers to issue the VAT/GST refund. At this point, the goods exported are certified by customs officials at the final point of departure.

Third, upon presentation of the tax receipt and export verification, the refund operator must refund to the tourist the VAT payable on a taxable supply, usually at facilities located inside the international departure areas of airports or seaports and land border exits. Refunds can be paid in cash (local or foreign currency), credited electronically to the tourist's bank account or credit card or by cheque mailed to the tourist's home address. For example, in France, visitors can choose to get cash or in some cases an electronic refund in supporting stores or downtown refund points; they can also choose to get cash at refund kiosks at the airport after stamping forms, or else they can get an electronic refund by credit card or bank account.[94] Refunds are increasingly processed electronically.

4. POLICY ISSUES AND RISKS FOR A TRS

4.1 Targeting efficiency

To evaluate whether to adopt or extend a TRS and which model should be adopted, we must consider a range of policy and design issues. These include the effectiveness and efficiency of the TRS in achieving policy goals; the administrative features of the TRS, including the agency or operator of the refund scheme, eligibility conditions and ease of compliance; and how to minimise the risk of fraud. We discuss these issues in general terms here, before analyzing in detail the TRS in Australia and China in the next parts of this paper.

We first consider targeting efficiency:'Lose at sunrise and gain at sunset'. The TRS gives up a short-term revenue yield in return for long-term economic benefits. There is a fiscal cost

[94] 'France VAT Refund Guide and Calculator - Upon' <https://upon.io/vat/countries/france>.

arising from this 'tax expenditure', but this may be difficult to quantify, as tourists may acquire fewer goods within the jurisdiction if they were not eligible for the refund. The TRS also increases the administrative burden for the tax agency to realize that goal. The designer of a TRS should therefore aim to achieve the expected benefits of the scheme in the least costly manner, with minimum revenue loss. On the assumption that some economic benefits are generated by a TRS, simplicity and administrability constitute two fundamental criteria for judging the design of a TRS.

Automation of the TRS may pay dividends. South Korea has largely automated its TRS, applying for a Tax Refund Automated System and an Immediate Tax Refund Policy that enables swift refunds and facilitates the purchase of certain items exclusive of tax.[95] In 2017, the Inland Revenue Authority of Singapore (IRAS) issued three e-Tax guides for its eTRS, which aim to make it more transparent for the retailers and visitors to participate.[96] The eTRS is intended to ensure eligible tourists enjoy a seamless and hassle-free shopping and GST refund experience in Singapore.[97]

On the other hand, difficulties with ensuring targeting efficiency are one reason why some countries, such as Canada, have abolished their TRS. Clearly, the Canadian Government concluded, as one academic has written, that "many tax incentives pay taxpayers for doing what they would otherwise do, while many tax incentives waste money because of fundamental flaws in design".[98] The benefit of abolishing its visitor rebate was estimated to be equal to the saving in GST refunds, around CAN$78.8 million, plus the savings in the cost of administering the system, around CAN$7.5 million a year.[99] The decision to abolish Canada's rebate scheme was criticized by some economists as a "false economy", suggesting that the benefits of abolishing the rebate do not exceed the cost of abolishing the rebate, once the impact on tourist behaviour is taken into account. It was

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[95] OECD (2018), *Tourism Trends and Policies 2018* (Paris: OECD,) 55. <https://www.oecd-ilibrary.org/urban-rural-and-regional-development/oecd-tourism-trends-and-policies-2018_tour-2018-en>.

[96] The three e-Tax guides of TRS includes GST: For retailers participating in Tourist Refund Scheme (Fifth edition) (GST Retailer); GST: Guide for visitors on Tourist Refund Scheme (Fourth edition) (GST Visitor); and GST: The electronic Tourist Refund Scheme (eTRS) (Tenth edition).

[97] 'Electronic Tourist Refund Scheme (ETRS)' <https://touristrefund.sg/en/index.page>.

[98] Ronald Pasquariello (1985), Tax Justice, (University Press of America) 91,94.

[99] Peter Crowley and Clark Blvd, 'The GST Visitor Rebate Program for Individual Travellers: An Economic Impact Analysis' Page ii.

suggested that the abolition of the visitor rebate would lead Canada to become a more expensive destination relative to competing tourist destinations. Given a degree of response to higher prices, fewer tourists would visit Canada and those who did visit would spend less when in the country, leading to an estimated loss in annual GDP of CAN$238 million from cancelling the scheme.[100]

In the UK, Her Majesty's Revenue and Customs (HMRC) Guidance of Retail Export Scheme (VAT Notice 704) was withdrawn on 31 December 2020 and tourists can no longer obtain refunds under the Retail Export Scheme from 1 January 2021.[101] This decision was made in the context of the UK Government reviewing its approach to excise duty and VAT on exiting from the EU. The UK also identified a high administrative cost of its Retail Export Scheme. A review in 2013 found that many criticized the refund process as taking too long, the burden on retailers was unreasonable and the customer's TRS experience was negative.[102] Finally, it was considered after consultation that the scheme should be withdrawn because it was a costly tax relief which did not benefit the whole of the UK equally, with use of the scheme largely centered in London.[103]

4.2 Administration and operator of the TRS

The TRS may be administered by the government through its tax or customs agency, or the administration may be contracted out to private companies. Where TRS administration is privatised, the contracted operators are responsible for the costs of running the scheme and charge a commission on refunds paid to tourists; a TRS may alternatively be administered directly by retailers or shopping mall operators. To improve the experience of tourists, some suggest that refund operators can offer a range of services to retailers and to tourists that have

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[100] Crowley and Blvd (above n 99)16, 20.

[101] 'Revenue and Customs Brief 21 (2020): Withdrawal of the VAT Retail Export Scheme and the Tax-Free Shopping Concession', *GOV.UK* <https://www.gov.uk/government/publications/revenue-and-customs-brief-21-2020-withdrawal-of-the-vat-retail-export-scheme-and-the-tax-free-shopping-concession/revenue-and-customs-brief-21-2020-withdrawal-of-the-vat-retail-export-scheme-and-the-tax-free-shopping-concession> ('*Revenue and Customs Brief 21 (2020)*').

[102] HM Revenue& Customs, 'VAT: Retail Export Scheme, Summary of Responses', December 2013.

[103] HM Treasury and HM Revenue & Customs,'A consultation on the potential approach to duty- and tax-free goods arising from the UK's new relationship with the EU: Summary of responses'11 September 2020.< https://www.gov.uk/government/consultations/a-consultation-on-duty-free-and-tax-free-goods-carried-by-passengers >

the objective of increasing tourist spending.[104] These services could include the installation of computer software at the point of sale to produce documents for use by the tourist, the production of tourist information brochures for distribution both before travel and in the country, co-operative marketing activities with retailers, sales staff education and incentives to increase spending, stimulus and promotional campaigns and the provision of benchmarking data. In the process of providing refunds, refund operators can collect valuable data on the spending patterns of international tourists that can be used by retailers and others to promote tourism and to increase tourism spending.

Most countries that provide a TRS do so through private providers within an open market, including most members of the EU, Argentina, Switzerland and Turkey. Government-run schemes exist in Australia, Indonesia, Thailand and Chinese Taipei. A third, hybrid model is contracting to selected private providers, as is done in China PRC> The different models are set out in Table 3.

Table 3 The Different Models of the TRS

Open market model countries or districts	Government-run model countries or districts
Argentina, Austria, Belgium, Bosnia & Herzegovina, Bulgaria, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Hungary, Iceland, Ireland, Italy, Jordan, South Korea, Lebanon, Latvia, Lichtenstein, Lithuania, Luxembourg, Mauritius, Mexico, Namibia, Netherlands, Norway, Poland, Portugal, Serbia, Singapore, Slovakia, Slovenia, South Africa, Spain, Sweden, Switzerland, Turkey, United Kingdom, China, Russia	Australia, Indonesia, Taiwan (China), Thailand

Source: Tourism shopping Reform Group (above n 34).12.

For the open market model countries, several competing refund operators servicing the market will determine the size of the TRS market. For example, Tax-Free Easy is a tax refund service brand under Travel Easy Innovation GmbH in Germany which claims to have the highest tax refund rate and the fastest refund process in Europe.[105] Innova Tax-free Group is a company specialized in VAT refunds for foreign tourists which is originally Spanish and

[104] Crowley and Blvd (above n 99)12.

[105] ‘TAX FREE EASY-Imprint TRAVEL EASY Makes Every Effort to Ensure the Accuracy and Actuality of Recommendations and Information Appearing on This Website’ <https://www.tax-free-easy.com/en/imprint/>.

operates in major European countries.[106] Travel Tax-Free is another private company established in Spain which claims to provide innovative solutions to the merchants to facilitate their tax-free sales activities.[107] Those companies are all able to provide TRS services in Europe, where there is significant competition for the business.

Private TRS operators usually make money by charging a commission, often a percentage of the refund amount. Accordingly, the refund provider has an economic incentive to increase tax-free sales (increase take-up rates) and to expand the footprint of the TRS among international travellers. Under an open market arrangement, private operators are free to compete to provide tax-free shopping services to consumers and retailers alike. The existence of multiple providers in the marketplace can create a competitive dynamic and further incentive for TRS providers to promote their schemes and enhance product offerings to consumers and retailers.

Under a government-run model, the government provides both the export verification service and coordinates the refund service for consumers. This is a service offered by government agencies, which pay the administrative cost of running the system. It was traditionally cheaper for public agencies to undertake such a service in-house rather than outsourcing to the private sector with the addition of irrecoverable VAT costs. However, it may be unduly complex and administratively burdensome.[108]

4.3 The challenge of refund fraud

A TRS may be vulnerable to fraud by retailers, tourists, and private intermediary companies; this may be more common if the operator of the TRS is a private company. From the supplier side, most countries where a private company operates the TRS have authorized the refund provider to be responsible for checking the eligibility of the claimant. This may provide an opportunity for fraud. Retailers may also be complicit or negligent in the issuing of TRS documents leading to the abuse of the TRS. For example, in Singapore, one case involved six employees of a local jeweller who were convicted for conspiring in GST Tourist Refund Fraud.[109] From the visitor side, there is a risk of engaging in fraudulent claims by

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106 'About Us | *Innova Tax Free*'<https://www.innovataxfree.com/en/about-us/>.

107 'About Us | *Travel Tax Free*'<https://www.traveltaxfree.com/en/about-us/>.

108 'Reforms to Public Sector VAT Refund Scheme | Accountancy Daily' <https://www.accountancydaily.co/reforms-public-sector-vat-refund-scheme>.

109 'IRAS | Employees of Jeweller Convicted for Conspiring in GST Tourist Refund Fraud'

providing false information or failing to declare when goods are reimported, or by claiming the TRS when the traveller is not a genuine visitor or fails the eligibility conditions. In Australia, the ANAO report found that the TRS regime was widely abused and may have triggered up to AUD 557 million in lost GST over 19 years; most abuse may be by Australian residents, as discussed in Part 5.[110]

Most countries have established penalties to deter TRS fraud. In Singapore, the failure to register, provide incorrect information, or knowingly obtain a false refund will lead to penalties that range from 100% to 300% of the tax, plus potential jail sentences.[111] However, in most countries, detections of significant instances of fraud have been ad hoc rather than because of systematic data analysis. The effectiveness of these penalties will depend on enforcement.

5. DETAILED CASE STUDY 1: AUSTRALIA

5.1 TRS framework in Australia

Australia's GST is levied on supplies of goods and services at the rate of 10 percent. Australia's TRS regime was established in its GST law, applicable from 2000. As in other jurisdictions, the Australian TRS was motivated by the goal of developing Australia's tourism industry, including retail shopping as an essential component of the overall tourism experience. One study suggests that tourist shopping generates significant direct and indirect benefits for the Australian economy, of over AUD 3.5 billion per annum comprising AUD 2.40 billion shopping to take home and AUD 1.13 billion shopping for use in Australia; retail shopping accounts for 10 percent of total international visitor spend.[112] Not surprisingly, the tourism development level in Australia is lower when compared to Australia's key competitor tourism destinations such as Singapore.[113]A well-designed tourism shopping policy, with a

<https://www.iras.gov.sg/irashome/News-and-Events/Newsroom/Tax-Crime/2019/Employees-of-Jeweller-Convicted-for-Conspiring-in-GST-Tourist-Refund-Fraud/>.

[110] 'Over $500 Million Lost as Australians Rort Tourist GST Refund Scheme', *SBS News* <https://www.sbs.com.au/news/over-500-million-lost-as-australians-rort-tourist-gst-refund-scheme>.

[111] PWC (above n 62) 196.

[112] Tourism Research Australia, International Visitor Survey, September 2015, Table 5a.

[113] In order to attract foreign tourists to Singapore, Lee Kuan Yew, the Prime Minister of Singapore, put forward the idea of building a market-oriented tourism economy and attracting foreign tourists' interests through developing tourism strategies that meet the needs of the market from the 1990s.See Belinda Yuen (1996), 'Creating the Garden City: The Singapore Experience' 33(6) *Urban Studies* 955.

sophisticated TRS as its centerpiece, has been argued to be a critical component of the overall tourism offering within Australia's key competitor visitor destinations across the Asia-Pacific.[114]

In 2011, the Australian Treasury initiated a consultation process that sought to improve the TRS and provide greater flexibility to tourists.[115] The government made two minor amendments to the TRS. The period during which travellers could purchase goods and be eligible to claim a refund of GST was extended from 30 days to 60 days and international travellers were permitted to aggregate invoices from different retailers to meet the AUD 300 threshold (including GST) which is required for a TRS claim.[116] Today, the TRS has been incorporated into the implementation plan for Australia's whole-of-government strategy, *Tourism 2020*, to build the resilience and competitiveness of Australia's tourism industry.[117] The strategy has been placed on hold because of COVID-19 border closures and travel restrictions; in the future, presumably, the strategy will be revitalized.

The Australian TRS is established in Division 168 of the *A New Tax System (Goods and Services Tax) Act 1999 (Cth)* ("GST Act") and accompanying regulations in s 168-5 of the *A New Tax System (Goods and Services Tax) Regulations 2019* (Cth) ("GST Regulations"). These special rules apply to goods supplied for consumption outside the "indirect tax zone" of Australia.[118] In relation to the "Wine Equalisation Tax" (WET), the TRS regime applies

[114] Tourism shopping Reform Group (above n 34)12.

[115] Australian Government (The Treasury), 'The Tourist Refund Scheme and Sealed Bag Scheme: Summary of Consultation Process'<https://treasury.gov.au/consultation/tourist-shopping-review-the-sealed-bag-scheme-and-the-tourist-refund-scheme>

[116] These amendments are contained in A New Tax System (Goods and Services Tax) Amendment Regulation 2013 (No.1) and the Excise Amendment Regulation 2013 (No.1), which make amendments to the Excise Regulations 1926 and the A New Tax System (Goods and Services Tax) Regulations 1999. See 'The Tourist Refund and Sealed Bag Scheme: Summary of Consultation Process' <https://treasury.gov.au/sites/default/files/2019-03/Consultation_summary_TRS.pdf>.

[117] The plan proposes further reform of the TRS to make it easier to claim back GST: Net Tourism 2020 - Implementation Plan 2015–2020, Whole of Government Working with Industry to Achieve Australia's Tourism Potential.

[118] Indirect tax zone means Australia (within the meaning of the Income Tax Assessment Act 1997), but does not include any of the following:

(a) the external Territories.

(b) an offshore area for the purpose of the Offshore Petroleum and Greenhouse Gas Storage Act 2006.

(c) the Joint Petroleum Development Area (within the meaning of the Petroleum (Timor Sea Treaty) Act 2003).

other than an installation (within the meaning of the Customs Act 1901) that is deemed by section 5C of the Customs Act 1901 to be part of Australia and that is located in an offshore area or the Joint Petroleum for travellers who purchase wine and take it with them on departing Australia.[119]

Section 168-1 of the GST Act enables tourists who take goods acquired in Australia overseas as accompanied baggage to be entitled to a refund of GST paid by the supplier of those goods. Section 168-5 provides that the Commissioner must refund the GST payable on the taxable supply or such proportion of that amount as is specified in the GST Regulations within the period and manner specified in the Regulations, where a person: (a) make an acquisition of goods the supply of which to you is a taxable supply[120] to the person; (b) the acquisition is of a kind specified in the regulations; and (c) the person leave the indirect tax zone, and export the goods from the indirect tax zone as accompanied baggage, in the circumstances specified in the regulations.

Section 168-10 of the GST Act relates to supplies later found to be GST-free supplies. If the goods have already been exported from the indirect tax zone but then they are reimported later, they will not continue to be GST-free and the person who obtained the refund will be liable to repay the tax, as well as the general interest charge to the Commonwealth. In this situation, the rationale of export competitiveness will have fallen away because of the re-importation.

The operative provisions of TRS are under the GST Regulations.[121] Regulation 168-5 provides the following guidelines for refunds to a qualified person.

1.Regulation 168-5.01 explains that a person's eligibility for the TRS involves making an acquisition: (a) the supply of which is a taxable supply; and (b) that is of a kind specified in this instrument. Regulation 168-5.02 refers to an acquisition of goods and excludes (a) tobacco; (b) tobacco products; (c) alcoholic beverages, except wine on which wine tax is taken to have been borne; (d) goods that have been partly consumed at the time at which the acquirer leaves the indirect tax zone.

2.Regulation 168-5.03, 168-5.04 and 168-5.05 set the threshold of the total purchase

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Development Area. See GST Act s195-1.

[119] Section 25 of the A New Tax System (Wine Equalisation Tax) Act 1999 ("WET Act"); A New Tax System (Wine Equalisation Tax) Regulations 2000 ("WET Regulations").

[120] Taxable supply has the meaning given by s 9-5, s 78-50, s 84-5 and s 105-5.

[121] References to Australia in the 1999 Regulations have been replaced in sections relating to Division 168 with a reference to the indirect tax zone that is now used in the Act. See Treasury, 'A New Tax System (Goods and Services Tax) Regulations 2019' <http://www.legislation.gov.au/Details/F2019L00417/Explanatory Statement/Text>.

price from a registered entity of at least AUD 300, the acquisition consisting of one or more acquisitions from the same registered entity for which the acquirer holds one or more tax invoices.

3.Regulation 168-5.05A and 168-5.06 established that the purchaser must leave the “indirect tax zone” of Australia (and its territories) other than in the course of their employment as a person in charge or command of an aircraft or ship, or as a member of the crew of an aircraft or ship. The eligible traveller, therefore, need not necessarily be a “tourist” and might be a resident leaving the country for a period of time, or a “business traveller”, and must leave the indirect tax zone at an airport, or seaport, at which the tourist refund scheme is administered according to Regulation 168-5.07.

4.Regulations 168-5.08 and 168-5.09 provide that the goods must be exported within 60 days from the indirect tax zone as accompanied baggage. Regulation 168-5.10 requires that to verify the export, the acquirer of goods should present to a Customs officer, on request, the tax invoice relating to the goods and, were also requested, the goods, the acquirer’s passport and boarding pass or ticket. Where the goods cannot be presented because they have already been checked in as accompanied baggage, the tax invoice must be endorsed by the customs agency with a statement that the goods have been checked in.

5.Once the verification process is complete, the Customs officer must give the acquirer a “payment authority” according to Regulation 168-5.12 that includes information identifying the acquirer and the amount to which the acquirer is entitled. Regulation 168-5.14 provides authority to process the refund to a Customs officer at a TRS verification facility at an airport that has cash payment facilities where the amount payable is AUD 200 or less, and this amount may be paid in Australian currency before the acquirer leaves Australia. Alternatively, a Customs officer may require the acquirer to lodge the payment authority at a TRS verification facility before leaving Australia under Regulation 168-5.15, which instructs that the amount payable be credited to a nominated account or be paid by cheque posted to a nominated address. In this case, the refund must be paid following the acquirer’s instructions within 60 days of lodgment. Under Regulation 168-5.16, if an acquirer posts a payment authority from outside Australia and the Comptroller-General of Customs receives the authority not later than 30 days after it was given to the acquirer, the amount must be paid in accordance with the acquirer’s instructions within 60 days of the Comptroller-General’s receipt of the authority.

6.Since 1 July 2010, a resident of an external territory of Australia can claim a refund under the TRS for unaccompanied baggage.[122] These territories include Norfolk Island, the Cocos Islands, and Christmas Island. When making a claim, Australian external territory residents must show evidence of exportation or evidence that they have put in place arrangements so that the goods will be exported from Australia to an Australian external territory within 60 days after they were acquired. The documentary evidence includes a tax invoice, proof of Australian external territory residence and proof that the goods have been exported or arrangements have been put in place for the goods to be exported. This evidence must either be presented to a Customs officer at a TRS verification facility if requested or lodged along with a claim for payment at the facility for departure.

The refund of GST under Australia's TRS is identified and estimated as a 'tax expenditure' in an annual Treasury report. The Treasury estimates the annual revenue foregone from the TRS to be $335 million in the year 2020-21, increasing to $445 million in 2022-23.[123] According to the ANAO report, the costs of administering the TRS were AUD 16.1 million in 2017–18.[124] The GST in Australia is fully paid over by the Commonwealth Government to the State and Territory governments; consequently, the cost of the TRS is indirectly met by those State and Territory governments.[125]

The end-to-end process of the Australian TRS is illustrated in Figure 1. At the TRS counter, an officer manually enters the claim details into the TRS system and assesses the validity of the claim, which may include asking to see the goods. Around 98 percent of claims are approved or rejected on the spot, but in some cases, the officer may refer the claim to the Tourist Refund Office in Canberra for further scrutiny.

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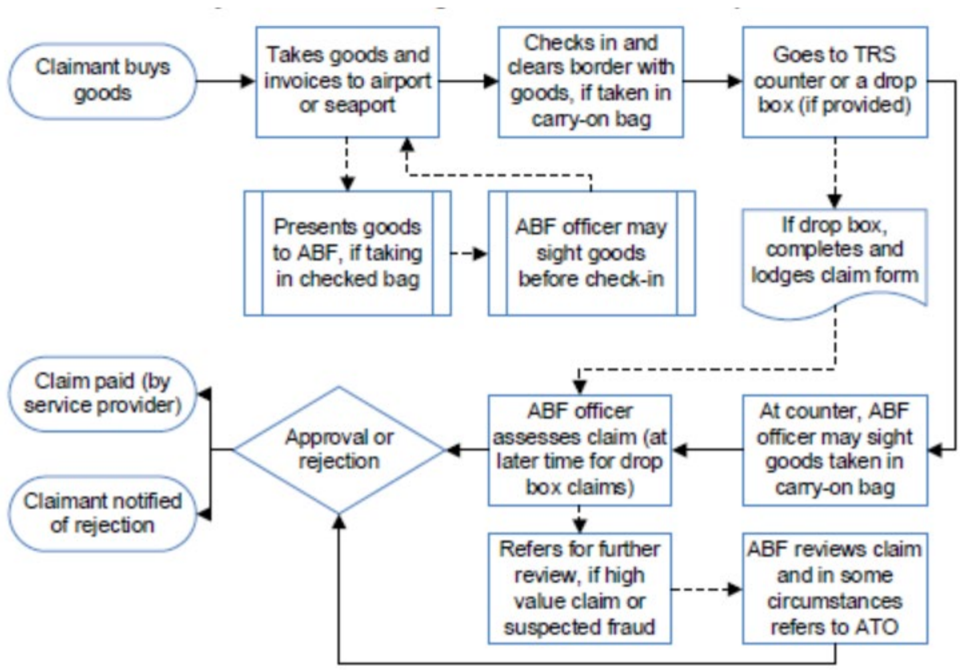
[122] GST Act s168-5(1A) and GST Regulation 168-D.

[123] Australian Treasury (2019), *Tax Benchmarks and Variations Statement.*138, Item H9, available <https://treasury.gov.au/publication/p2020-51153>.

[124] ANAO (above n 7)26.

[125] Under the terms of the GST Agreement, the Federal Government deducts administrative costs relating to the GST before GST revenues are allocated to state and territory Governments. See 'Council on Federal Financial Relations - Intergovernmental Agreement on Federal Financial Relations' <https://www.federalfinancialrelations.gov.au/content/intergovernmental_agreements.aspx>.

Figure 1 The process of TRS in Australia



Source: ANAO (above n 7)20.

5.2 Data about operation of the TRS in Australia

In 2019, the ANAO published a detailed report examining the effectiveness, process and administration of the TRS. The ANAO Report found some positive results from the TRS, and also identified several problems with the TRS as currently designed. Australia's TRS has some unique features, of which the most significant is the broad scope of travellers eligible for the TRS. The scope can include any departing travellers with no exclusion for Australian citizens or residents. It has been suggested that Australia is the only country that allows its citizens and residents to participate in the TRS.[126]

The Australian TRS is one of relatively few such schemes administered by the government, specifically by the Department of Home Affairs through the Australian Border Force (ABF),[127] with the ATO. A Memorandum of Understanding between the ATO and the

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126 ANAO (n 7)14.

127 Prior to the creation of the Department of Home Affairs in July 2015, the Department of Immigration and Border Protection and the Australian Customs and Border Protection Service existed as separate entities. At integration, the Australian Border Force (ABF) was created and it assumed the operational responsibilities of the Australian Customs and Border Protection Service. The ABF is part of Home Affairs, functioning as a separate operational unit. See ANAO (n 7)18.

Department of Home Affairs signed in 2017 provides a basis for the administration of TRS at the border.[128] Unlike TRS systems administered by private companies, the ABF directly administers both the export verification and refund payment functions. These functions occur sequentially in the 'airside' departure area of Australia's international airports as well as at international cruise terminals. Fully qualified ABF officers are required to administer TRS booths at airports/ports, fulfilling what is essentially customer service and a relatively simple compliance function. The ANAO concluded in its report that the TRS system is fragmented, inefficient and costly and unnecessarily draws on the resources of the Department of Home Affairs staff.

The ANAO found that between July 2000 and June 2018, the Australian TRS received more than 9.6 million claims and paid out more than AUD 1.6 billion in GST and WET refunds in Australia.[129] Sales of tax-free goods through the Australian TRS scheme have increased by 269 percent, a compound annual growth rate of 17.4 percent since the global financial crisis in September 2008. Based on the 10 percent GST rate, this implies annual tax-free sales of more than AUD 2 billion, dwarfing duty-free sales at airports by a factor of more than two. The average tax refund was $235 per claim, suggesting an average transaction value through the TRS of more than $2,000, which is likely to be more than ten times the average transaction value in duty-free stores around the country. Consequently, one study identified the TRS as a major factor in boosting Australian retail sales to international travellers which provides an incentive for visitors to purchase goods in Australia. [130]

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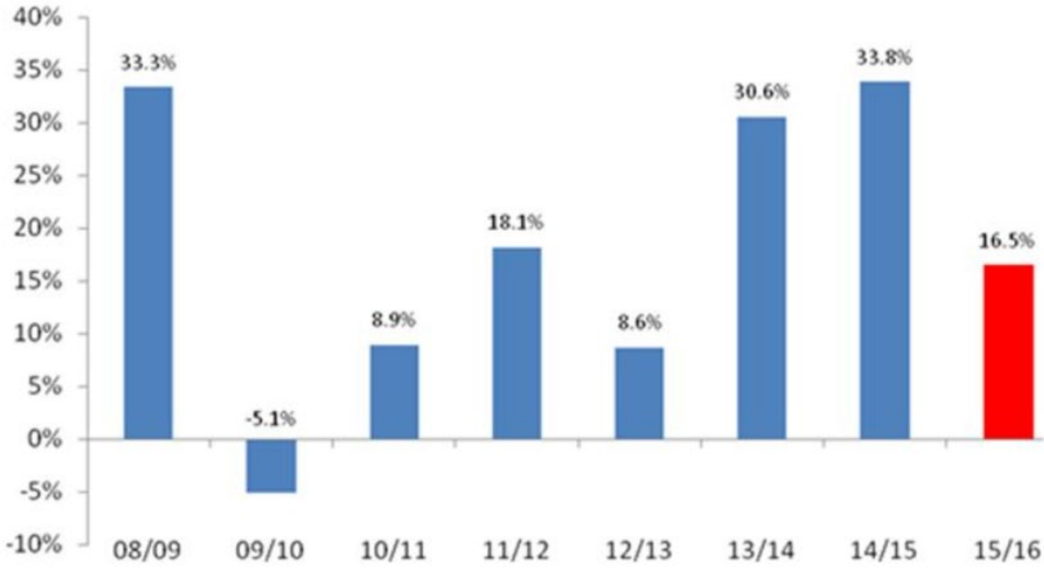
[128] ANAO (n 7)24.

[129] ANAO (n 7) 50.

[130] 'The Analyst – Tax Free Shopping Continues Powerhouse Growth in Australia', *The Moodie Davitt Report* (31 October 2016) <https://www.moodiedavittreport.com/the-analyst-tax-free-shopping-continues-powerhouse-growth-in-australia/>.

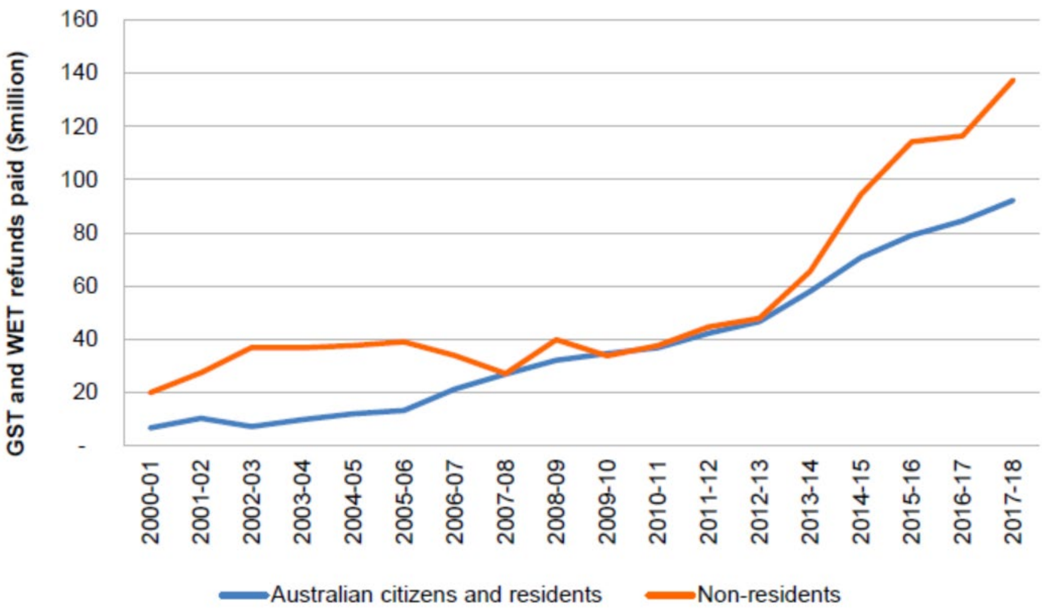
Figure 2 Growth rate of TRS GST claims, 2008-09 to 2015-16



Source: Australian Customs and Border Protection Service Annual Report and The Mercurius Group analysis.

During this time, the ANAO found that the number and value of claims increased rapidly for both non-residents and residents. Non-residents made 5.9 million claims, accounting for 61.1 percent of the total 9.6 million claims, and generating $989.5 million, or 59.2 percent of the total $1.67 billion refunds. Australian citizens and residents made 3.7 million claims, or 38.9 percent of the total, receiving $683.4 million or 40.8 percent of refunds (see Figure 3). In the 2017–18 financial year, non-residents spent more than $1.5 billion on goods for which they received a GST refund through the TRS, and Australian residents spent more than $1 billion on goods for which they received a GST refund.

Figure 3 Value of TRS refunds paid, 2000–01 to 2017–18



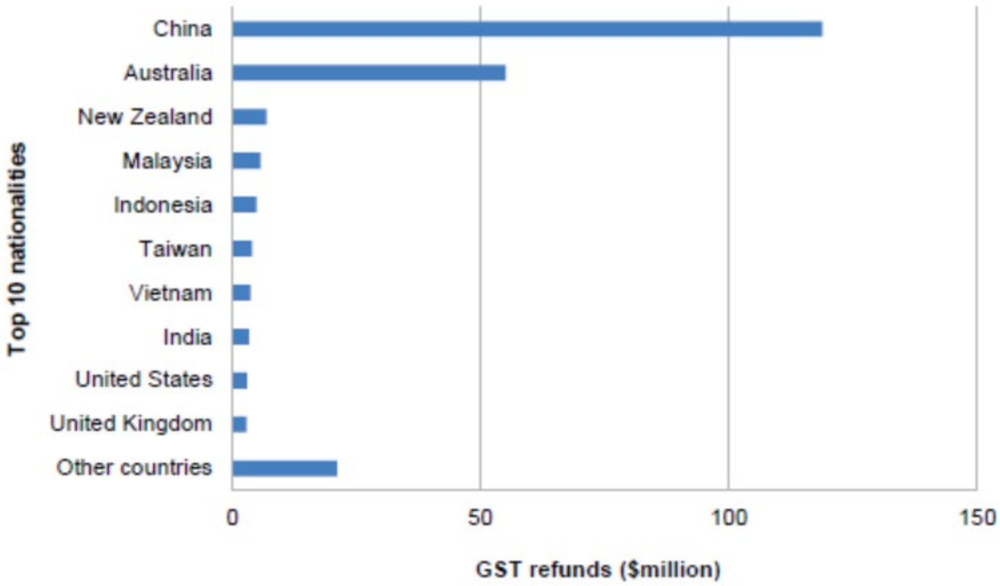
Source: ANAO analysis of TRS data.

According to Tourism Research Australia's June 2018 International Visitor Survey, shopping was the second most popular activity undertaken by international visitors and accounted for $4.1 billion in spending in the year ending 30 June 2018.[131] Chinese tourists are the most significant claimants of refunds under the Australian TRS regime (Figure 4). China has become the world's largest source of outbound tourists, in terms of both quantity of trips abroad and expenditure. China became the world's top spender in international tourism in 2012 and has since led global outbound travel following ten years of double-digit growth. With an expenditure of $261 billion worldwide in 2016, tax-refund specialist Global Blue's figures show that Chinese shoppers have been a global powerhouse, growing from 21% of tax-free shopping spending in 2010 to 43% in 2017. Chinese visitors to Australia have grown at an annual compound rate of 18.2% since 2010 and by 22.2% in 2015. Visitors from China spent $1 billion in Australia on shopping for items to take home in the year ending 30 June 2018. The data shows that travellers (mostly Chinese) regard Australia as a desirable place to purchase high-value goods, where consumers are confident that luxury purchases are genuine brand-name goods, and this will attract the customers abroad to purchase more in Australia. The next largest category of claimants was Australians travelling abroad; together, these two

[131] 'Tourism Industry | Tourism Research Australia' <https://www.tra.gov.au/economic-analysis>.

countries dominate all other countries.

Figure 4 Top 10 Nationalities of TRS Claimants, 2017–18



Source: ANAO analysis of TRS data.

The goods for which refunds are claimed under the TRS are concentrated on the top ten retailers. Tourism lobby groups suggest that Australia has an extensive range of well-known brands, including many luxury brands, easily accessible and available to international shoppers.[132] Goods purchased from the top 10 retailers for luxury goods accounted for almost 40 percent of all TRS refunds in 2017–18. From Table 4, we can see that luxury items, clothing and electronic goods are the most common types of goods for which a GST refund is claimed through the TRS. More than AUD 50.6 million in GST refunds are related to luxury items, including jewellery, bought from top 10 retailers and almost AUD 27 million in GST refunds are related to the purchase of consumer electronics bought from the top 10 retailers.

[132] Tourism Shopping Reform Group (above n 34), 19.

Table 4 Top 10 retailers for TRS claiming, 2017–18

Retailer	**Type of goods**	**Value of approved GST refunds ($million)**
Apple	Consumer electronics	17.2
Louis Vuitton Australia	Luxury goods	13.8
Gucci Australia	Luxury goods	10.1
David Jones	Merchandise including clothing	10.0
JB Hi Fi	Consumer electronics	9.8
Chanel Australia	Luxury goods	9.1
Richemont Australia	Luxury goods	7.2
Myer	Merchandise including clothing	6.4
Hermes Australia	Luxury goods	6.2
Tiffany & Co.	Jewelry	4.3
Total	**94.1**	

Source: ANAO analysis of TRS data.

Most refunds are claimed at the main international airports. In Australia, the number of total passengers at airports increased rapidly from 1985 to 2019 and reached 1,481,689 movements in the year 2019.[133] The top 10 airports include the Sydney Airport, Melbourne Airport (the top 2 departure points), Brisbane Airport, Perth Airport, Adelaide Airport, Gold Coast International Airport, Cairns International Airport, Canberra Airport, Hobart International Airport and Darwin International Airport. Claims lodged at Sydney and Melbourne airports comprised more than 75 percent of TRS refunds paid in 2017–18 (Figure 5).[134]

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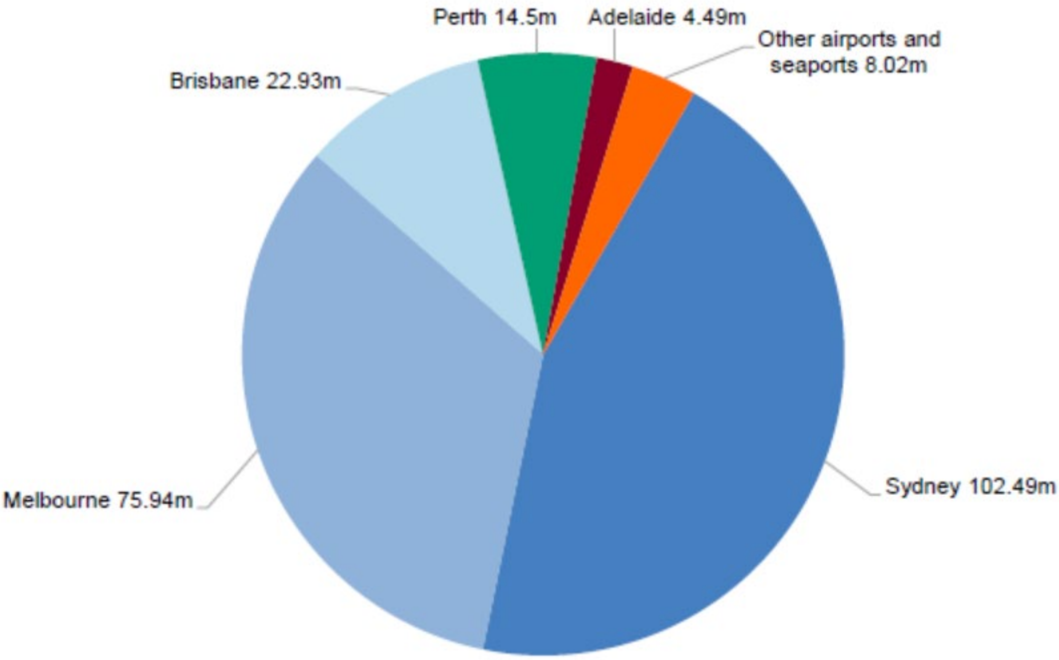
[133] 'Airport Traffic Data 1985–86 to 2019–20', <https://www.bitre.gov.au/publications/ongoing/airport_traffic_data>.

[134] ANAO (above n 7) 18.

Figure 5 Refunds Paid by Departure Point, 2017–18



Source: ANAO analysis of TRS data.

5.3 Problems of the Australian TRS and proposals for improvement

5.3.1 Criticisms of the TRS

The ANAO Report and stakeholders criticize several aspects of the Australian TRS regime. As noted above, the TRS is administered by the ABF and ATO. From an administrative perspective, the continual increases in the use of the TRS by departing travellers, along with a range of entitlement changes implemented in 2013, have put increasing strain on TRS processes at Australian airports. The government-administered TRS regime's antiquated, paper-based administration is inconsistent with the Government's long-standing objectives to move to digitalized government and to enhance passenger facilitation and improve the airport visitor experience. In addition, the Department of Home Affairs has expressed concern that the funding it receives from the ATO was no longer commensurate with its increasing TRS workload and identified a shortfall in funding for 2017–18 of $5.3 million and a projected shortfall of $5.6 million for 2018–19 and 2019–20 (this may have been affected by the near-complete halt in travel in 2020 because of covid-19).[135] That is because the Home Affairs need funding from the ATO to administer the TRS, which aims to facilitate internal controls and procedures, to ensure framework integrity. However, the cost to administer the TRS functions has for several years exceeded the financial amount received through the ATO, with increasing divergence.[136] The Department argued that a one-off injection of AUD 1 million was needed to help clear the backlog of unprocessed claims.[137] It seems clear that the funding of the TRS is not sufficient to support the integrity and effective administration of the TRS programs.

The Australian TRS is also criticized for its lack of resilience and competitiveness. Without commission-based incentives, government agencies have little motivation to market or promote a TRS to tourists. Indeed, any increase in uptake could be viewed as a cost to the government, in terms of tax revenue lost and program administrative costs, rather than as a financial opportunity.[138] Many have argued that the TRS would be better administered by private refund providers, which may operate competitively to improve the refund service. There is a lack of automatic digitally based tax refund processing (as in Singapore), and of an immediate Tax Refund Policy (as in South Korea), which enables swift tax refunds for certain purchases.

Most significantly, the ANAO report identified a high risk of non-compliance and revenue leakage in the TRS and questioned the management of the scheme, observing that both the Department of Home Affairs and the ATO had made it a low priority of risk prevention.[139] The power and responsibility to administer the scheme and detect fraud is in the hands of the ABF, and there is a requirement on travellers who claim a refund and then bring goods back into Australia to declare those goods and pay GST. If the total value of the goods a traveller brings back into Australia that they have purchased overseas or for which they have claimed a refund under TRS is more significant than their passenger concession (exceeds AUD 900), they must declare all of these goods on their incoming passenger card.

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[135] ANAO (above n 7)28, 29.

[136] Australian Taxation Office, 'GST Administration Annual Performance Report 2018-19' <https://www.ato.gov.au/About-ATO/Commitments-and-reporting/In-detail/GST-administration/GST-administration-annual-performance-report-2018-19/?page=16>.

[137] ANAO (above n 7)28, 29.

[138] KPMG, 'Economic Analysis of the Impacts of Using GST to Reform Taxes' (September 2011) <https://www.cpaaustralia.com.au/~/media/corporate/allfiles/document/professional-resources/taxation/kpmg-econtech-final.pdf>.

[139] ANAO (above n 7)36.

The ABF may detect fraudulent or misleading tourist refund claims. The ABF may also decide to review the claim, even if the traveller did not get a refund, and the traveller may be penalized even if a refund was not received. If a tourist breaches the TRS rules, they need to repay the GST refund on the goods they claimed under the GST duty and the GST will apply to all items purchased, not just goods over the limit of their passenger concession.[140] The ABF may also decide to review the claim, even if the traveller did not get a refund, and the traveller may be penalized even if a refund was not received. If a tourist breaches the TRS rules, they need to repay the GST refund on the goods they claimed under the GST duty and the GST will apply to all items purchased, not just goods over the limit of their passenger concession.[141]

However, compared with other administrative priorities, the TRS is only a small part of the operations of both the ABF and ATO. For example, TRS refunds represent less than one-quarter of one percent of the total tax refunds the ATO pays out each year.[142] Since 2006, estimates of the numbers of Australian citizens and residents who did not declare, on their return to Australia, goods for which they have received a GST refund through the TRS, also suggest a significant risk of fraud or non-compliance. The ANAO Report estimated revenue leakage of about AUD 244.3 million to AUD 556.6 million over the life of the scheme.[143] Those who claim they are taking goods out of the country then bringing them back after international travel are believed to be partly responsible for this figure, but limited systems and processes are in place to manage the scheme or detect suspect claims.

There is also a low probability of imposing penalties on unlawful acts to get a refund. Under the Taxation Administration Act 1953, the ATO can impose a penalty for making a ‘false and misleading statement’ in a claim for a TRS refund. However, the evidence reviewed by the ANAO states that the ABF instructed officers to stop issuing penalties in 2013 because of policy and system changes required to implement new penalties and this situation continued until 2018. After 1 September 2018, Home Affairs only imposed a penalty on 54 Australian citizens and residents for a total of $63,850.48.[144] This is despite the ATO

[140] Australian Taxation Office (above n 136).

[141] Australian Taxation Office(above n 136).

[142] ANAO (above n 7) 7.

[143] ANAO (above n 7) 8.

[144] ANAO (above n 7) 8.

and Home Affairs estimates of non-compliance of between 36% and 82%. While the ultimate sanction for deliberate non-compliance with the GST law is prosecution, there has never been a prosecution for TRS fraud.

While the TRS regime appears to have been widely used, it was not used by a significant proportion of international visitors. While over $5.2 billion was spent by international visitors to Australia on shopping, gifts, and souvenirs in 2017-18, amounting to $520 million of GST, the ANAO Report found that the TRS refunded only AUD 229.6 million in 2017-18, of which only 49% was claimed by non-residents.[145] This was made worse by the "30 minutes" rule regarding the time for international travellers to queue in the TRS claim process before their flights in Australia. The Commonwealth Ombudsman revealed that this requirement for departing passengers who wish to claim a refund to present themselves at the airport's TRS counter at least 30 minutes before their flight's scheduled departure time resulted in several complaints from people who said they were unfairly denied the refund, and either had to wait for hours to process their claim or choose to forgo the refund altogether.[146]

There are several ways in which Australia's TRS regime could be improved to provide a reasonable balance between providing flexibility to support tourist shopping and avoiding adverse impacts on retailers as well as minimizing the cost of administering a TRS claim.

5.3.2 Prevent Australian citizens or residents from using the scheme

When we consider the underlying policy rationale for the TRS, discussed in part 2 above, there is no strong policy rationale for allowing Australian citizens or residents to access this scheme.[147] The States and Territories have expressed unanimous interest in exploring the exclusion of access to the TRS by Australian residents taking goods out of the country, noting that this group accounts for approximately 41 percent of the value of GST refunds and that, to the best of their knowledge, the TRS is the only scheme of its kind in the world that can be accessed by domestic residents.[148] Excluding Australian citizens and residents from the

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145 Australian Chamber of Commerce and Industry(2019), 'Opportunity Missed in Tourist Refund Scheme Report',<https://www.australianchamber.com.au/news/opportunity-missed-in-tourist-refund-scheme-report/>.

146 The Commonwealth Ombudsman (2016), Investigation into the Tourist Refund Scheme and the application of the 30-minute rule (Report No.03) 2.

147 ANAO (above n 7) 56.

148 The Treasury, extract of the minutes of the meeting of the GST Policy and Administration Sub-group, December 2016, agenda item 2.1, the Treasury, Canberra. See ANAO (above n 7) 56.

scheme would prevent the majority of fraudulent claims. It may enable the collection of as much as $440 million additional GST revenue from 2018-19 to 2020-21.[149] Closing this loophole would also reduce administrative and enforcement costs.

5.3.3 Improving user experience and administration of the TRS

The ANAO Report and Ombudsman Reports reveal that passengers using Australia's TRS may face lengthy waits to have their claims processed; this is a cause of frustration and leaves a poor last impression of Australia before departing the country. Airport operators expressed concerns that drawbacks and inefficiencies are detrimental to the passenger experiences at Australian airports. Australia's TRS lags in digital development compared to other schemes in the Asia-Pacific and the EU. The government should aim to transition the TRS to a more straightforward online process and establish a digital visitor processing platform that could enable Australia to better capitalize on tourism investment.

Australia's $300 minimum claim threshold is also one of the highest in the world. Although the amount is not restricted to one acquisition and tourists can sum prices paid for the tax refund items, this still constitutes a relatively high threshold for international visitors. Based on the EU experience, we can see more and more countries apply a minimum TRS threshold lower than the EU suggested standard. The reduction of the minimum threshold may provide an incentive to increase the use of the TRS and tourist shopping. Based on the advice submitted by the TTF to the Productivity Commission in June 2011, we propose that all purchases made in Australia with a value of $50 or more throughout the stay of international visitors should be eligible for a TRS refund.[150]

Thirdly, although the Australian TRS announced in 2011 has extended the time from 30 days to 60 days available for international visitors to present their receipts, this may be inadequate in mitigating the full impact of the GST on retail exports. Part of the reason is that Australia represents a long-haul destination. The length of stay in Australia is generally higher than most international destinations. Many countries allow international visitors to claim a TRS refund at any time within three months immediately before the date of purchase.

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[149] Katie Burgess (2019), 'Treasurer Urged to Plug $440 Million GST Hole', The Canberra Times (9 September) <https://www.canberratimes.com.au/story/6374372/treasurer-urged-to-plug-440-million-gst-hole/>.

[150] Tourism & Transport Forum (TTF,2011), 'Economic Structure and Performance of the Australian Retail Industry', Submission to the Productivity Commission, 9 December. < https://www.pc.gov.au/inquiries/completed/retail-industry/report/retail-industry.pdf>.

Therefore, it is recommended to extend the claim period from 60 days to 90 days. Lastly, the travel environment and convenient tax refund facilities are essential for tourists to increase their purchases in reliance on the TRS. The distinctive Australian luxury retail market could be enhanced through partnerships with industry, website promotion and online guides to provide attentive services for international visitors.

Currently, the funding provided by the ATO to Home Affairs to administer the TRS was not adjusted to reflect the significantly increased level of tourist shopping in Australia since the GST was introduced. Over the five years from 2013–14, the number of TRS claims had increased by 43 % while the funding provided by the ATO had fallen by 4%.[151] As noted, saving will be achieved by removing the TRS for Australian citizens and residents. It is important to increase the funding for Home Affairs to provide more human resources to ensure the speedy provision of the TRS service and support compliance of the TRS options to consider modifying the scheme.

5.3.4 Introducing an open market private provider system

Australia is one of the few countries which adopted a government-run TRS. An alternative is to outsource the administration of the TRS in an open market model, whereby private companies may compete to provide refunds for travellers. It is important to distinguish between government contracting to a single private provider, which we would not support, and enabling an open market in which multiple providers (with experience managing tourism refunds in countries around the world) may compete to provide this service and earn a commission from tourists.

The National Tourism Alliance has recommended that the Australian government meeting 100 percent of the administrative costs associated with providing this service to departing international travellers is an antiquated practice by international standards and that it is advisable to outsource TRS administration to experienced private sector operators with travellers meeting the cost of the scheme through a commission levied on the GST refund amount.[152] In 2019, tourist lobby groups advocated for the introduction of private providers

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[151] ANAO (above n 7)29.

[152] National Tourism Alliance, Submission to Productivity Commission Study into Barriers to Growth in Australian Services Exports, May 2015.13.

arguing that this will provide significant administration benefits.[153] By freeing up resources, it would assist ABF to manage better arrivals, including the monitoring of the $900 threshold for tax-free imports.

The National Tourism Alliance identifies three advantages of introducing private providers, although it will reduce the net refund received by travellers, as private providers are funded by commission from claimants. Private providers operate globally and will be more professional in dealing with increased claims. Second, private refund companies would run on a user-pays basis funded through a modest commission from the traveller on the refunded amount. Thirdly, the adoption of a private refund model requires consumers to provide the correct information to the private refund companies. This data can be collected on an electronic distribution platform allowing review by the retailer and potentially by the ATO and ABF. This would support the detection of potential risks in a short time in the context of information symmetry.[154]

5.3.5 Adopting a better mechanism of risk prevention and control

To provide a better mechanism of risk prevention for the TRS, the ABF and the ATO should develop a joint risk assessment. Under this scheme, the administrative agencies can identify all risks and take appropriate treatments to review the assessment of TRS annually. Oversight agencies, such as the ANAO in its recent, valuable report, the Ombudsman and Inspector-General of Taxation, could monitor the operation of the TRS. This can provide information to the government and an incentive for the improvement of the TRS management.

Information asymmetry is one of the reasons why the risk of TRS is hard to prevent. To solve this problem, the ABF should utilize data analytics to identify trends and anomalies in TRS claims that support further analysis to identify suspected fraudulent transactions. For example, the ABF could develop traffic light dashboards that provide information about which is “high-level risk”, which is “Medium level risk” and which is “low-level risk”. An electronic system, such as eTRS, would provide better compliance and facilitate detection of revenue risk,[155] enhance fraud protection and provide savings.[156] This could be introduced

[153] ANAO (above n 7)28.

[154] National Tourism Alliance (above n 152).

[155] Tourism Shopping Reform Group (above n 34)11.

by the government or private providers; the difference lies in who bears the cost of processing the refund. In Australia, the ABF has established a web APP and a Mobile phone APP that help to save time for a claim, but these APPs do not lodge the claim online.[157]

Finally, the ABF should apply penalties to non-compliant behaviours in a timely fashion, if it is identified that consumers have provided false information to the suppliers or the goods are reimported without declaration. However, we note that it would be better to prevent, or close off, opportunities for fraud, rather than seeking to respond to these "after the fact" through enforcement action and imposition of penalties – the most important way is to remove the rule permitting Australian citizens or residents to utilize the scheme.

5.3.6 Sealed Bag scheme should be maintained to give concession for the tourists

In addition to the TRS, Australia also offers some duty-free shopping in retail stores at airports and in the city. If the retailer sells goods to travellers before they reach the ABF border clearance area, including from a duty-free or tax-free shop not at an airport, the goods must be placed in a sealed bag, under the "sealed bag scheme".[158] Duty-free purchases are tax-free at the point of sale. In contrast, a TRS purchase is inclusive of tax at the point of sale and gains tax-free status at the border only once ABF has issued the refund.[159] However, duty-free purchases are also exclusive of excise duties on excisable goods such as alcohol and tobacco. The Sealed Bag Scheme is beneficial to the Australian retail and tourism industry because it disperses the opportunities and benefits of tourist shopping beyond airports and into key retail destinations within the community.[160]

6. DETAILED CASE STUDY 2: THE TRS IN CHINA

6.1 TRS framework in China

China's TRS is comparatively recent but there is an emerging desire for the Chinese

[156] National Tourism Alliance (n 152)14.

[157] TRS, *Use Our TRS apps*, <https://www.abf.gov.au/entering-and-leaving-australia/tourist-refund-scheme/use-our-trs-apps .>

[158] Australian Taxation Office (above n 16).

[159] James Richardson, Duty Free, Submission in response to the Treasury's Excise Equivalent Goods Administration Consultation Paper. 21. <https://treasury.gov.au/sites/default/files/2019-03/JR_Group.pdf>

[160] Matthew N. Murray (above n 23).

government to give full effect to the TRS to support the development of the tourist industry. Tourism has played a key role in China’s national economy and has strong momentum for economic development. International inbound tourism plays an indispensable role in foreign exchange, cultural communication, and national influence. Since the reform and opening-up in 1978, China’s tourism industry has experienced a process of stable growth. However, there is still an inconsistent development of the flows of inbound tourism to various regions and relatively low growth in tourist shopping.

To stimulate tourist consumption and increase tourism foreign exchange earnings, on 21 December 2011, the Ministry of Finance (“MOF”) announced to launch of a pilot program of tax refund policy for overseas tourists in its tropical island province of Hainan.[161] The purpose of the TRS pilot was to promote the construction of Hainan International Tourism Island. Subsequently, the State Taxation Administration (“SAT”) issued an administrative announcement to ensure the implementation of the TRS.[162] However, the tax refund in Hainan faced a slow start and the pilot program did not run well. Two months after Hainan inaugurated the tax refund program, businesses at three designated shopping centers had not experienced the expected increase in trade.[163] From 2011 to April 30, 2015, only 1443 tax refund claims were made, involving total tax refunds of 582,487.76 Yuan.

There are two main reasons for the failure of the TRS in Hainan province. First, Hainan's overseas tourist market was not well developed at the time. In 2010, Hainan received 25.87 million overnight tourists, of which only 660,000 were international inbound tourists, accounting for only 2.56% of the market share.[164] The pilot TRS only applied a

[161] 《关于在海南开展境外旅客购物离境退税政策试点的公告》(财政部公告2010年第88号)[Announcement on Launching in Hainan Province a Pilot Program of the Tax Refund Policy for Purchases of Overseas Tourists Leaving China(Announcement No.88 [2010])], (People's Republic of China) Ministry of Finance, 21 December 2011.

[162]《境外旅客购物离境退税海南试点管理办法》（国家税务总局公告2010年第28号）[Announcement about Promulgating the Administrative Measures for Piloting in Hainan the Policy of Tax Refund for Purchases of Overseas Travelers Leaving China(Announcement No.28 [2010])], (People's Republic of China)The State Administration of Taxation, 28 December 2011.

[163] ‘Tax Refund in Hainan Faces Gloomy Start’ <http://www.chinadaily.com.cn/bizchina/2011-03/07/content_15942289.htm>.

[164] 海南省旅游和文化广电体育厅[Provincial Department of Tourism and Culture, Radio, Television and Sports], 《海南省旅游发展委员会2010年度信息公开报告》[2010 Information Disclosure Report of Hainan Tourism Development Commission]<http://lwt.hainan.gov.cn/xxgk_55333/0200/0204/201903/t20190320_2445564.html>.

refund to 21 categories of article,[165] and most tax-free shops sold high-end imported goods, which were not attractive to the foreign tourists. The top three sales of tax refund items were textile raw materials and finished products, leather, fur and their finished products, shoes and boots.[166]

Subsequently, the Chinese government decided to improve the policy and expand its scope to other qualified regions. The State Council ("SC") released several Opinions on Promoting the Reform and Development of the Tourist Industry on 9 August 2014. China expanded the TRS pilot nationwide through three main announcements (See Table 5), including in Beijing and Shanghai, and more than 26 provinces. It is expected that the policy will come into effect in more Chinese regions and cities.

Unlike most countries, which have incorporated the TRS into the GST or VAT legislation, China has not established legislation to support the TRS. The implementation of TRS is carried out through the issue of departmental regulatory documents. The administrative measures were developed by the SAT together with the MOF and the GAC, and were issued and implemented by the SAT. The measures for customs supervision of departure tax refund were developed by the SAT in conjunction with the MOF and the SAT and issued and implemented by the CAC.

For a region to launch a pilot TRS program, the Provincial Department of Finance is required to report a plan to the MOF, GAC and SAT for the implementation of the export tax refund policy including the date of implementation, the departure port, the tax refund agency, the place where tax refund is handled, the mechanism for the assumption of tax refund handling charges, the selection of tax refund stores and the pilot operation of the departure tax refund information management system. Currently, under the pilot scheme, the administrative cost is jointly borne by the central government and the place where the TRS is implemented.

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[165] "Tax refundable goods" refers to goods for daily use which can be taken out of China and may enjoy the tax refund policy. Tax refundable goods in Hainan include clothing, shoes and hats, cosmetics, watches, jewelry, electrical appliances, medical and health care and beauty equipment, kitchen and bathroom appliances, furniture, air conditioning, refrigerators, laundry equipment, television, photography (like) equipment, computers, video and audio appliances, bicycles, tricycles and their accessories and accessories, stationery, sporting goods, musical instruments and other listed articles. Food, cigarettes, alcohol, cars, motorcycles are not included: MOF, Annex, List of Tax Refundable Goods, see above n 161.

[166] 何伟[He Wei], 《海南离境退税缘何遇冷》[Why the Policy of Tax Refund is hard to promote?] 经济日报 *Economic Daily* ,13 May 2015.

Table 5 Regulatory Documents of Tourist Tax Refund in China

Issuing Authority	Document Title	Document Number	Level of Authority	Date Issued
State Council (SC)	Opinions of the State Council on Promoting Reform and Development of the Tourism Industry	No.31 [2014] Issued by the State Council	Regulatory Documents of the State Council	9 August 2014
Ministry of Finance (MOF)	Announcement on Implementing the Tax Refund Policy for Purchases of Overseas Tourists Leaving China	Announcement No. 3 [2015] of the Ministry of Finance	Departmental Regulatory Documents	6 January 2015
State Administration of Taxation (SAT)	Announcement on Issuing the Measures for the Administration of Tax Refunds for Purchases of Overseas Visitors Leaving China (for Trial Implementation)	Announcement No. 41 [2015] of the State Administration of Taxation	Departmental Regulatory Documents	2 June 2015
General Administration of Customs (GAC)	Announcement on the Customs Supervision Provisions on the Tax Refund for Purchases of Overseas Tourists Leaving China	Announcement No. 25 [2015] of the General Administration of Customs	Departmental Regulatory Documents	8 May 2015

6.1.1 Eligibility requirements

Travellers from foreign jurisdictions, Hong Kong, Macau and Taiwan who stay in China for no more than 183 continuous days are eligible for the TRS when they depart from China.[167] In contrast to Australia, Chinese citizens or residents are not eligible for the TRS.

An eligible international traveller is only eligible for a refund under the TRS for the purchase of articles that satisfy the tax refund conditions for personal use, in designated

[167] 'China Tax Refund Policy for Overseas Traveler' <https://www.chinadiscovery.com/travel-guide/tax-refund.html>.

tax-free stores, and exclude articles prohibited and restricted by PRC from importing and exporting. The conditions are as follows:

(1) The amount of tax refundable articles except the prohibited and restricted Articles (See Table 6),[168] purchased by the same overseas tourist from the same tax refund store on the same day reaches 500 yuan.

(2) Tax refundable articles have not been unpacked or used before departure;

(3) The tourist has purchased the tax refundable articles not more than 90 days before he or she leaves China.

(4) The purchased tax refundable articles are carried by the overseas tourist himself or herself or with his or her luggage when he or she leaves China.

(5) The Designated port for tax refund includes the airport and the other Port of departure; travelers can also enjoy the tax refund policy at Hainan, the first province to promote the tax refund policy. The designated ports in Hainan are Haikou Meilan International Airport and Sanya Phoenix International Airport. In Beijing and Shanghai, the overseas travelers can handle the tax refund process at Beijing Capital International Airport, Shanghai Pudong International Airport and Shanghai Hongqiao International Airport.

Table 6 Prohibited and Restricted Articles for Export

Prohibited Articles	**Restricted Articles**
1.Arms, simulation arms, ammunition, and explosives of all kinds. 2.Counterfeited currencies and counterfeited negotiable securities. 3.Printing materials, films, photographs, records, cinematographic films, audio tapes, video tapes, laser disc, computer storage media and other articles which are detrimental to the political, economic, cultural, and moral interests of China. 4.Deadly poison of all kinds. 5.Opium, morphine, heroin, marihuana and other narcotics and psychoactive drugs which cause addiction. 6.Fresh fruit, solanaceous vegetables, live animals (except dogs and cats), animal products, pathogens of animals and plants, pests and other harmful organism, carcasses, soil, transgenic organism materials, relevant animals and plants, their products and other objects from countries or regions	1.Radio transceiver and communication security machines 2.Alcohol and tobacco 3.Endangered and rare animals, plants (including animal and plant specimen) and their seeds and propagation materials. 4.National currencies 5.Other articles restricted by the Customs

[168] In accordance with the law of China, there are some articles prohibited or restricted to bring out of China. See ‘China Exit Regulation: Custom Declaration, Items & Tips’ <https://www.chinadiscovery.com/travel-guide/exit-regulation.html>.

with prevalent epidemic animal or plant diseases. 7.Foodstuff, medicine and other articles coming from epidemic stricken area or harmful to man and livestock or those which might spread disease. Food, medicine, or other articles which are harmful to the health of man and livestock or coming from epidemic stricken area or spreading disease.	

Source: 《中华人民共和国海关总署公告(中华人民共和国禁止进出境物品表)》[Announcement of the Customs of the People's Republic of China on Lists of Articles Prohibited and Restricted from Import and Export] Customs General Administration, November 1, 1987.

6.1.2 Qualified stores and tax refund agencies

A qualified store may be a tax refund store once it is reported to the provincial tax authority. The specific conditions for tax refund stores shall be determined by the SAT through consultation with the MOF. To be qualified, an enterprise that meets the following conditions can become a tax refund store after undergoing the recordation formalities with a provincial tax administration:

(1) It is qualified as a general VAT taxpayer;

(2) Its tax credit rating is Grade B or above;

(3) It has agreed to install and use the departure tax refund management system and ensure that the system shall have the operation conditions and can submit the relevant information to the state tax authority in a timely and accurate manner.

(4) It has installed and used the upgraded VAT invoice system; and

(5) It has agreed to prepare a separate ledger for the sales amount of tax refundable articles and conduct accurate accounting of the sales amount.[169]

China has adopted a model of market-oriented tax refund agencies, enabling private providers to administer the TRS and provide VAT refunds. According to Announcement No.41 [2015], provincial tax authorities shall, in conjunction with public finance, customs and other related departments, select tax refund agencies under the principles of fairness,

[169] 《境外旅客购物离境退税管理办法(试行)》(国家税务总局公告2015年第41号) [Announcement on Issuing the Measures for the Administration of Tax Refunds for Purchases of Overseas Visitors Leaving China (for Trial Implementation)(Announcement No. 41 [2015] of the State Administration of Taxation)], (People's Republic of China) 2 June,2015.

openness and impartiality, maximize the market role, introduce the competition mechanism, and improve the services provided by tax refund agencies. The specific conditions for tax refund agencies shall also be determined by the SAT through consultation with the MOF and the GAC. If the tax refund agency is not selected, the tax authority shall directly handle VAT refund. Almost all of the provincial tax authorities have chosen commercial banks to be the tax refund agency. For example, the Guangdong Branch of Agricultural Bank of China has been selected as the tax refund agency in Guangdong Province and the Industrial and Commercial Bank of China of Chongqing Branch has been selected as the tax refund agency in Chongqing municipality.

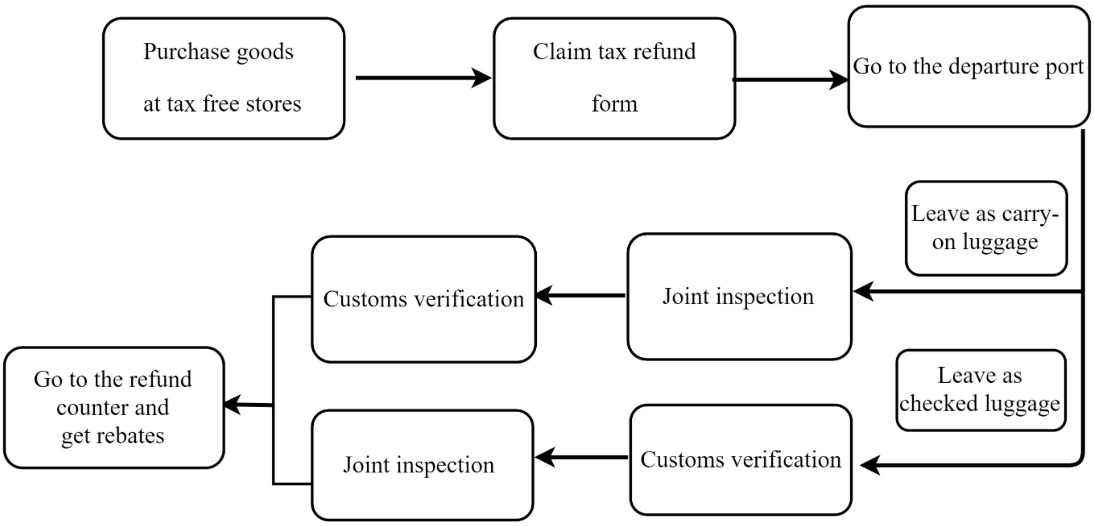
6.1.3 Tax refund process

An eligible traveller, after purchasing tax refundable articles from a tax refund store, must obtain an application form for a tax refund, together with the sales invoice from the tax refund provider. The traveller must satisfy the examination and confirmation by the GAC. When the international tourist leaves China from a departure port, they should declare to the Customs Office the tax refundable articles, the application form for tax refund on purchases of overseas tourists leaving China and the sales invoice of tax refundable articles. The Customs Office shall, if finding no error upon verification, affix a signature and seal to the application form for a tax refund on purchases of overseas tourists leaving China.

The third step is to get the tax refund through the refund agencies. This is uniformly handled by the tax refund agency in the departure port. An eligible traveller applies to the tax refund agency for handling VAT refunds based on his or her valid identity certificate, the stamped and signed application form for a tax refund on purchases of overseas tourists leaving China and the sales invoice of tax refundable articles. The tax refund agency provides the tax refund if eligibility is established. The agency may deduct necessary handling charges from the VAT refund.

The last step is to make a settlement with the tax authorities. A tax refund agency shall, on a periodical basis, apply to the provincial (i.e., a province, autonomous region, municipality directly under the Central Government, or city under separate state planning, here and below) for handling the settlement of the tax refund. The provincial tax authority shall, if finding upon examination no error in the materials submitted by the tax refund agency, refund the VAT refund prepaid by the tax refund agent as required, and notify the refund information to the provincial public finance department (Figure 6).

Figure 6 Tax Refund Process in China



Source: Tax Refund Process, https://www.travelchinaguide.com/essential/tax-refund.htm.

6.1.4 Tax refund amount

In the first half of 2019, China reduced its VAT rates. The special rate of 16% for some taxable sales was reduced to 13% and the general VAT taxpayers who were subject to a 10% VAT rate for taxable sales or importation now enjoy a reduced rate of 9%.[170]

Initially, the TRS refund was based on the plain invoice amount (including VAT), and the rebate rate is 11%. However, with the reform of the VAT, the tax refund rate has been adjusted to 11 % for goods subject to the VAT rate of 13% and 8% for goods subject to the VAT rate of 9%.[171] The calculation formula is:

Refundable Tax = Invoice Amount (including VAT) of the Tax-Free Articles ×11%.

However, the tax rebate will charge 2% of the invoice amount as a commission fee,[172] thus the calculation formula is:

[170] Lorenzo Riccardi and Giorgio Riccardi, *China VAT: Regulations and Reforms* (Springer Singapore, 2020)50,51.

[171] ‘Tax Free Shopping in China’, *globalblue* <https://www.globalblue.com/tax-free-shopping/china/>.

[172] Processing fee will be deducted from refund amount, and rate varies in different cities, e.g., 2% of VAT invoice charged in Shanghai.

Actual VAT Rebate = Invoice Amount of the Tax-Free Articles × (11%/9% − 2%).

6.2 The achievements of China's TRS

In the past ten years, the design of China's legal system of tax refund for departure, which started at Hainan Province has gradually improved. The scope of implementation has expanded, and improved performance has emerged, as the TRS plays an increasingly important role in the tax law, as well as promoting the development of the tourism economy.

With the expansion of the TRS, the designated Tax-Free Stores are increasing at great speed. By the end of 2019, there were over 200 designated tax-free stores in Beijing, about 180 in Shanghai, 33 in Chengdu of Sichuan, 69 in Shenzhen, 34 in Tianjin, 33 in Qingdao, 10 in Xiamen of Fujian, 9 in Qinhuangdao of Hebei, 2 in Haikou and 3 in Sanya.[173] These stores cover many items that foreign travelers want to purchase in China, including jewelry (excluding gold and silver), needles textiles, digital products, health products, household appliances, artworks, books, audio and video. Most tax-free stores are in the downtown business district, tourist shopping area and residential and business community of foreigners.

In Beijing, from 1 July 2015 to 1 November 2016, the sales volume of outbound tax refund products in Beijing exceeded 100 million yuan. Beijing issued 3,464 tax refund documents in 2016, with a tax refund rate of 8.38 million yuan, and an application rate of over 64%.[174] The purchase of commodities by international tourists appears to have driven up the sales of 18 categories of commodities in Beijing.[175] In Shanghai, from 1 July 2016 to 1 July 2018, there were 49,000 tax refund applications for more than 48,000 overseas passengers, and the refund scheme handled 70 million yuan in tax refunds, while the sales volume of tax refund items reached 650 million yuan. Shopping tourists in Beijing and Shanghai are from 125 countries and regions on five continents. Compared with the backdrop of a persistently sluggish inbound tourism market, the implementation of the TRS for outbound tourists seems to have injected new vitality into the growth of Beijing's tourist consumption and so it may become an important engine to boost the tourism economy.

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173 'Tax Refund in China, VAT Rebate' <https://www.travelchinaguide.com/essential/tax-refund.htm>.

174 赵婷婷[Zhao Tingting],《北京离境退税商品销售额破亿》, [Beijing's Sales of goods with tax rebates on departure exceeded 100 million yuan] 北京青年报 *Beijing Youth Daily* 10 November 2016.

175 赵婷婷（above n 174）.

To accelerate the progress of tax refunds, and further support the tourist industry in China, the Chinese government has continued to improve the convenience of the TRS scheme. The WeChat, Alipay "Tax-Free Pass" program has been added with the introduction of multilingual tax refund shop list, navigation, and consumption guidelines. Using only a mobile phone, international tourists can easily understand the process for obtaining a tax refund on leaving China and can inquire about the tax refund guidelines. According to sources with the Beijing Taxation Bureau, since the launch of the service, overseas travellers can handle tax refunds through "convenient payment",[176] It means the tourists can get the TRS refund through the phone app directly - “Get refund when you buy”. This service is for foreign tourists and Hong Kong, Macao and Taiwan compatriots who meet the conditions of TRS. This accounted for 10.72% of tax refunds, with an immediate tax refund of 80,500 yuan.[177]

An Immediate Tax Refund Policy has also been introduced to enhance the shopping experience of visitors to Beijing in 2019 and Shanghai in 2020. This simplifies the tax refund procedure and enables international tourists to purchase products up to a particular value, exclusive of tax. This policy provides a more pleasant and convenient experience by saving travellers the time and effort of claiming tax refunds.

6.3 Problems of the Chinese TRS and proposals for improvement

6.3.1 The legal basis for the TRS

The TRS system has not been well established in China, partly because the current

[176] This is derived from the Pilot Program of Facilitating the Tax Refund Service, Where an eligible foreign traveller purchases in the tax refund stores covered by the pilot program, he or she shall, after obtaining an Application Form for Tax Refund for Purchases of Foreign Travellers Leaving China, obtain the RMB in cash equivalent to the actual refunded VAT on tax refundable articles in advance, the amount of tax refundable articles shall not be more than 30,000 yuan in Shanghai and 50,000 yuan in Beijing, and the foreign traveler should hold a pre-authorized credit card. See《国家税务总局上海市税务局关于开展境外旅客购物离境退税便利服务试点工作的通知》（沪税函[2019]9号）[Notice of the Shanghai Municipal Tax Service of the State Taxation Administration on Conducting the Pilot Program of Facilitating the Tax Refund Services for Purchases of Foreign Travellers Leaving China]（Letter No. 9 [2019] of the Shanghai Municipal Tax Service of the State Taxation Administration）;《国家税务总局北京市税务局关于开展离境退税便利化试点的通告》（国家税务总局北京市税务局通告2019年第6号）[Notice of the Beijing Municipal Tax Service of the State Taxation Administration on Conducting the Pilot Program of Facilitating the Tax Refund Services for Purchases of Foreign Travellers Leaving China](Letter No. 6 [2019] of the Beijing Municipal Tax Service of the State Taxation Administration)

[177] 张钦[ZhangXin],《北京实现离境退税实时到账》[Beijing realizes the real-time receipt of tax refund for departure] 北京青年报*Beijing Youth Daily* 25 October 2019.

operation of the system lacks a legislative basis. There is no provision for the TRS in the VAT legislation, and no provisions in the Soliciting Public Comments on the Value-Added Tax Law of the People's Republic of China at present.[178] It, therefore, may be suggested that the Chinese TRS lacks legitimacy and operates outside the rule of tax law.

China could establish the TRS in its VAT legislation, perhaps by adopting the Australian legislation model which puts the TRS in a list of special rules relating to refunds. On this basis, the departure tax refund legal system is legislated as a particular rule of export tax rebate systems in the VAT Law.

6.3.2 The scope of eligible travellers should be increased

The scope of travellers eligible for the Chinese TRS should be expanded to include international students or international workers who stay in China for more than the specified 183 days. Currently, these people are not eligible for the tax refund when they depart from China. It would also be advisable to expand the scope to include those tourists who have a Chinese census register but have lived in foreign countries for a long time. For example, in Singapore, a student pass holder who have purchased the goods in the last 4 months before the expiry of the student pass, is eligible for a refund for goods purchased in the last four months before leaving the country, and they are required to stay outside of Singapore for a minimum period of 12 months before 2019.[179] China could classify the tourists into different categories including "Qualifying as a Tourist" and "Qualifying as a Special Person". Students or workers who have stayed in China more than 183 days, will purchase goods in the last 90 days before leaving the country, and will stay outside of China for more than 1 year, can be deemed to be a Special Person and set an exception for them to apply for TRS. However, in consideration of the costs of tax refund and to control fraud, China should not apply the Australian model which extends to citizens and residents who depart overseas.

178《中华人民共和国增值税法（征求意见稿）》[Soliciting Public Comments on the Value-Added Tax Law of the People's Republic of China (Exposure Draft)], <https://www.pkulaw.com/en_law/999eef653cb3621f96442a289e81b57fbdfb.html>.

179 Appendix 1 – Conditions of the Tourist Refund Scheme 3(f)'If he is a student pass holder, he must have fulfilled all the above criteria, purchased the goods in the last 4 months before the student pass expiry date and intend to depart with the goods and remain outside Singapore for a minimum period of 12 months.' See Inland Revenue Authority of Singapore, GST: The Electronic Tourist Refund Scheme(eTRS) (Thirteenth edition) Published on 17 July 2018. However, it has changed after 4 April 2019, also see Appendix 1 – Conditions of the Tourist Refund Scheme. Inland Revenue Authority of Singapore, GST: The Electronic Tourist Refund Scheme (eTRS) (Refund claims made on or after 4 April 2019), Published on 13 September 2019.

6.3.3 Measures to increase the flexibility of China's TRS

In China, the threshold for eligibility for refundable tax articles was reduced from RMB800 in the initial pilot, to RMB500 in the 2015 expansion of the TRS. This threshold is higher than Singapore but lower than Australia, and most countries in the EU. Nonetheless, China's tax refund threshold is relatively high relative to prices and expenditure, especially in the poor regions. Consequently, this tax threshold for the TRS lacks flexibility and applying a single threshold is not suitable for different provinces of China.

For example, only 32 overseas tourists received a tax refund of 15,500 yuan in Yunnan Province, which is very low compared to the refund levels in developed cities like Shanghai and Beijing. Further, the three conditions that "the same overseas passenger buy the amount of tax refund 500 yuan on the same day and in the same tax refund shop" may make it difficult for tourists to become eligible for the refund. It is recommended that these "three conditions" should be removed, to give more incentives to tourists to increase shopping in China, which would be eligible for a refund.

China's tax refund rate is also not consistent with the VAT rate. China's Standard VAT rate for goods is 13% for general goods and 11% for agricultural products, edible vegetable oil, books. But the refund amount is 11% or 8%, so does not reflect the full VAT payable on these articles. With the expansion of the departure tax refund scale, China should adjust our domestic refund rate to the actual VAT rates applicable to eligible goods.

6.3.4 Improvements for tax refund stores and agencies

In China, the "tax credit administration" refers to the tax authorities' collection, evaluation, determination, issuance, and application of taxpayers' tax credit information. Tax refund stores must reach the standard of above level B of taxpaying credit[180] before they are

[180] According to Article 10 of Measures for Tax Credit Administration (for Trial Implementation) of People's Republic of China 2013, tax credit grades are set as A, B, C and D. A taxpayer is rated as Grade A if its annual evaluation indicator score is 90 points or more; it is rated as Grade B if its annual evaluation indicator score is no less than 70 points and less than 90 points; it is rated as Grade C if its annual evaluation indicator score is no less than 40 points and less than 70 points; and it is rated as Grade D if its annual evaluation indicator score is less than 40 points or is determined through direct rating. Tax credit rating indicators shall be otherwise prescribed by the SAT. It is worth to mention that the SAT has adjusted the tax credit rates into five level A, B, M,C and D, Grade M was added to the following enterprises which have not committed the unfaithful acts as listed in Article 20 of the Measures for Credit Administration shall be rated as Grade M in tax credit rating: (1) Newly-formed enterprises. (2) Enterprises which have no production and operation income during the tax credit rating year, and whose annual tax credit rating indicator score is 70 or more. See《国家税务总局关于纳税信用

eligible to participate in the TRS.[181] This means the tax refund stores should have good tax compliance and payment records but will limit the number and category of tax refund stores in some cases. As a result, a newly formed enterprise, although its annual tax credit rating indicator score is 70 or more, cannot become a tax refund store.

In contrast, in Australia, the retailer only needs to have an ABN and to be registered for GST and no further registration is required for eligibility for the TRS. This can operate because of the mature credit system; it may bring greater tax refund risk, but it is easier for the stores to participate in TRS on an equal footing. With the improvement of regulatory technologies, it is not necessary to have a specific regulation on the credit rating of designated TRS stores and this requirement should be abolished.

Although China operates a market-oriented private TRS refund scheme, the application for TRS agencies is restricted to banks rather than other companies. This causes some monopoly effects in the tax refund market. Therefore, we suggest easing the restrictions for the tax refund agencies and permitting the expansion of tax refund activities by other companies, which will improve the competitiveness of the TRS markets.

6.3.5 Scope and conditions of the tax refund articles

According to the announcement issued by the GAC, goods eligible for a tax refund refer to unique articles purchased by inbound tourists at designated stores, excluding items on the prohibited or restricted lists (Table 6 above). It is suggested that this exclusion is too wide; for example, precious metals such as gold and silver and their products, as well as valuable Chinese medicinal materials, are all restricted from leaving the country. Yet, gold and jewellery, as for other luxury goods, as well as Chinese patent medicine, may be attractive to inbound tourists. China should examine the rationality of the existing restrictions or prohibitions on outbound items and aim to expand the scope of eligible items.

On the other hand, the TRS applies to exported goods—not goods or services consumed in China, for the items for a refund, the goods cannot be consumed or partly consumed (eg.in

评价有关事项的公告》(国家税务总局公告2018年第8号)[Announcement of the State Administration of Taxation on Matters concerning Tax Credit Rating Partially Invalid](Announcement No. 8 [2018] of the State Administration of Taxation).

181 According to Article 3 of Announcement No. 41 [2015] of the State Administration of Taxation, to be a tax refund store, it should meet the following conditions: 1. it is qualified as a general value-added tax (“VAT”) taxpayer;2. its tax credit rating is Grade B or above; …. See State Administration of Taxation (n 168).

the case of perfume or chocolates). However, we can see that it is permissible for specific items such as camera, laptop or clothes to be used in Australia before departure. This approach would give the tourist more opportunities to gain early access to the desired items while travelling and also be eligible for a refund. This would also be a useful improvement to the China TRS.

6.3.6 Regulating TRS fraud risk more comprehensively

The management responsibilities of the MOF, STA, and GAC and the penalties for departure tax refund fraud are not set out in the VAT legislation and regulations. This makes it hard for the administrators to handle complex and varied situations of fraud. Compared to Australia, China has not faced the problems of citizens or residents who are eligible to get the tax refund, but a risk of fraud remains and China should prepare for the risk management of TRS. To strengthen the supervision and protection of tax refund departure systems in China, we should first incorporate the legal responsibilities of TRS fraud provisions in the law, which will effectively deter and regulate fraudulent behaviour. Secondly, for those who get a refund on departure from China but then return in a short time, we should implement a mandatory declaration system and require the returning travellers to repay VAT. Lastly, for those who have participated in tax fraud, the regulatory agencies should actively apply the penalties to protect the tax base.

7. CONCLUSION

This paper has surveyed the principles, policy, and design features of tourist refund schemes in VATs or GSTs around the world, with a particular focus on the rules in the EU, Australia and China. It is noteworthy that only about one-third of countries that have a VAT or GST has implemented a TRS. However, many countries with significant tourist economies have long had a stable TRS regime and some, such as China, are seeking to expand the TRS. There are noticeable similarities as well as differences in the design of the TRS among the countries which have adopted it. In general, the introduction of TRS in these countries is perceived to be an important element in promoting the tourist industry and local retail sector. It also helps to ensure a fair balance of tax liabilities between residents and non-residents in the VAT. Despite border closures and travel freeze during the covid-19 pandemic, it is expected that international tourism will resume in the future and TRS schemes will continue to be important for many countries.

In our detailed case study of the TRS in each of Australia and China, we find that each system has some advantages, but also some defects in design and administration. We therefore recommend improvements to the TRS in each of these countries, according to the context of the different countries. For Australia, the potential risk of regulatory inefficiency and tax fraud should be brought to the forefront. In particular, it is important to end the provision enabling Australian residents to benefit from the TRS, and to upgrade the administration and user experience through better funding, a market-oriented approach to tax refund agencies and digitalization of the system. For China, the pilot scheme although initially slow to start has achieved significant gains especially in the big cities of Beijing and Shanghai. However, the TRS suffers from a lack of legitimacy and is too limited in scope in terms of travellers, stores, goods and refund agencies. We recommend some simple improvements to expand the TRS to support increased tourist shopping and optimize its efficiency and fairness.