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The Law and Policy of VAT Tourist Tax Refund Schemes: A Comparative Analysis

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Schedule for 2021 Tax Research Seminars Online

1. **25 February 2021**, A new-knowledge approach to corporate income tax efficiency – Associate Professor Mark Bowler-Smith (Deakin University), discussant Professor John Freebairn (University of Melbourne)

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3. **29 April 2021**

4. **27 May 2021,** History of Tax Reform in Australia: RATS – Mr Paul Tilley (University of Melbourne/ ANU TTPI), discussant Mr Greg Smith (University of Melbourne)

5. **29 July 2021**, The US Tax Cuts and Jobs Act – will it survive the new President and Congress? – Ms Viva Hammer (University of Melbourne)

6. **26 August 2021,** Characteristic of Tax Avoidant Companies – Dr Brown McCredie (QUT)

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9. **25 November 2021,** Excess Profit Tax – Professor Emeritus John Taylor (UNSW)

The Law and Policy of VAT Tourist Tax Refund Schemes: A Comparative Analysis

Tingting Wang[*] and Miranda Stewart[**]

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 tourism tax refund schemes has 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 then compares key elements of the legal design of tourist tax refund schemes around the world, including analysis of the main elements of the European Union VAT tourism tax refund scheme. The paper explores the policy issues and tax risks that should be considered by countries seeking to establish, or administer, such a scheme, focusing on a detailed 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 its implementation and operation. The authors recommend for improvements to the design and administration of the schemes in both 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 as an economic growth sector 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, travel restrictions and the consequent global recession. While a vaccine is in sight in 2021, it may take years before the sector recovers and continues to grow. Nonetheless, in the longer term, it seems likely that 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, so has the application of a broad-based consumption tax, such as a Value-Added Tax (VAT) or Goods and Services Tax (GST) which has now been adopted in 160 countries around the world.[4] An effective VAT or GST will help to ensure that tourists contribute to country revenues through 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 destination country, which are usually consumed in that country, the tourist usually takes goods purchased in the visited jurisdiction with them when they depart the jurisdiction to go elsewhere or return home. In recognition of this, a

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

[3] OECD, ‘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>.

[4] IMF, ‘Tax Policy Assessment Framework (TPAF)’ <https://www.imf.org/en/Data/TPAF>.

Tourist Refund Scheme (TRS), also known as a Departure tax refund or Retail export scheme, has been widely adopted by countries around the world. A typical TRS allows the VAT or GST that was charged on goods sold to tourists in the jurisdiction to be refunded to the tourist when they depart from the country, taking the goods with them. The refund is usually processed by completing a formal process at the port of departure; in some schemes, the refund is processed at another time either before or after departure by a refund agency, but it always depends on the departure of the tourist from the jurisdiction.

The first TRS was introduced in Sweden in 1980.[5] Sweden replaced its general sales tax with a VAT in 1966.[6] Under this innovative scheme, tourists "exporting" goods purchased in Sweden were able to claim a refund of Swedish VAT under certain procedures.[7] As a member of the European Union (EU) since 1995, Sweden is obliged to incorporate the rules of the EU VAT system contained within the EU VAT Directive.[8] After the TRS was established in Sweden, the model gradually spread to the other member states of the EU. The basic rules for a TRS were established in EU Directive 2006/112/EC, which states that travellers who do not reside within the EU can be granted a refund of the VAT when they carry goods in their personal luggage out of the EU before the end of three months from the date of the purchase in the country.[9] This directive is binding and directly applicable in all Member States; consequently, a visitor to the EU who is returning to a country outside the EU, or going on to another non-EU country, may be eligible for the VAT refund once they have complied with various formalities including showing proof of export.

A recent study by the Australian National Audit Office of Australia's TRS states that a TRS has been adopted by more than 60 countries around the world.[10] In the Asia-Pacific region,

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[5] It was recognized that the concept of 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 presenting their purchases at Customs. This was the birth of the modern Tax-Free Shopping concept, also called the tourist tax refund scheme. See 'Our History', *business* <https://www.globalblue.com/corporate/about-us/our-history/>. Accessed March 12, 2021.

[6] Norr, Martin, and Nils G. Hornhammar. *'The Value-Added Tax in Sweden'*, Columbia Law Review 70, no. 3 (1970),379-422. Accessed March 6, 2021.

[7] 'Document - 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>.

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

[9] The Council of the European Union. *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.,2006, art 147.

[10] Australian National Audit Office (ANAO), *Management of the Tourist Refund Scheme: Auditor-General*

this paper examines the TRS in Australia and compares it with the scheme recently established in China. Australia has had a TRS in its GST law since it was introduced in 2000.[11] However, in 2019 the ANAO issued a report in which it concluded that the Australian TRS was poorly run, with at least $240 million in fraudulent claims made over the last 20 years.[12] The Australian Treasurer has been urged to stop Australians claiming back GST through a scheme that is intended to give tax refunds only to tourists.[13] China introduced a VAT system since the country's bold reforms and opening up to the world economy in 1979, in VAT regulations legislated in 1993 (commencing 1994).[14] In 2011, a pilot TRS was started in Hainan Island. In 2015, with the goal of improving the competitiveness of the Chinese tourism industry, China sought to expand the TRS Pilot Program to various qualified national regions. However, the pilot scheme did not have a complete legal basis in the VAT regulations and has encountered institutional barriers and bottlenecks in its development. The different experiences of Australia and China with respect to 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.

Section 2 of this paper discusses three theoretical bases for a TRS. First, a TRS may be justified by the basic tax policy design of a VAT/GST, being the destination principle that is the basis for jurisdiction to tax, requiring consumption within the jurisdiction. Second, the TRS may be considered as a tax incentive regime as 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. Section 3 discusses the origin and development of TRS systems around the world and their main features. In this section, we particularly discuss the EU Countries' approaches to establish the TRS and the policy issues and risks management problems in relation to the design and the enforcement of TRS. After considering the EU experience,

Report No. 8 2019-20 (2019) ('*Management of the Tourist Refund Scheme*') , 7.

11 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>.

12 ANAO (n 10) 9.

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

14 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）].

Section 4 summarizes the key policy issues and risks in designing a TRS. Section 5 then examines in detail the Australian TRS including its origins, rules and procedures and risk management systems. This section also discusses the criticisms made by the ANAO in 2019. Section 6 examines the pilot Chinese TRS and its operation in the context of Chinese tourism policies. The analysis of the TRS will focus on the core provisions which are established in the regulatory framework issued by the Ministry of Finance of the People's Republic of China. We analyze the status of implementation and problems faced by China's TRS in detail, then present some proposals for improvement. Section 7 is the conclusion.

2. THE THREE-DIMENSIONAL RATIONALE FOR TRS

2.1 The tax system design rationale of the TRS: the destination principle

The overarching 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. The territorial basis of the VAT is focused on the transaction, as the VAT applies to the supply through a transaction of a good or service. Where there is an element of a transaction taking place outside the jurisdiction of a state, it is necessary to provide rules to identify who is responsible for payment of VAT/GST and which country is entitled to levy tax.[15] In a world of free trade, exports are freed from all tax in the supply chain ('exempted' or 'zero-rated') and enter world markets free of the VAT of their country of origin, while imports should 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, export taxes are anathema and nations usually levy indirect taxes on imports.[16] Consistently with this free trade principle, the destination principle has been adopted in VATs around the world today, which are generally 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 source country to leave room for full tax in the destination jurisdiction.[17]

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

[16] Donald L.L. Bean, Policy Perspective on International Taxation',in Cedric Sandford ed. Key Issues in Tax Reform, *Fiscal Publications*,1993.238,239.

[17] Yige Zu, China's VAT on Exports: The Glacial Shift from a Heavy Hand to the Invisible Hand, *Tax Notes International*,20 November 2017.767.

The destination principle is usually implemented in VAT or GST laws through rules enacted by separate rules in the two countries that aim to prevent double taxation of a cross-border supply. The process of zero-rating the export of goods in the VAT/GST relies on the law and customs control processes of both the exporting (origin) and importing (destination) country. The origin country should provide a full refund or rebate of VAT/GST 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 applies VAT (and possibly other customs tariffs) to the imported goods when they arrive at their destination port, in line with the relevant jurisdiction's policies.[18]

The *destination principle* rationale for the TRS operates by analogy to the VAT/GST 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 is a consumption tax levied on the destination principle, which should be levied where the good is consumed, not where it is produced or sold. The design of a TRS, which is only 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.

Applying the destination principle, the application of a TRS to relieve VAT/GST on export is based on several assumptions. First, the VAT/GST in the destination country must be passed

[18] 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 : VisitKorea' <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.)

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 will not ‘consume’ the good in the 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. Another example is that a tourist purchases an electronics item (like a camera) within certain days of departure and opens and uses the camera before departing the jurisdiction and making the TRS claim. It is implicitly assumed 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, the packaging is not required to apply the tax refund. However, if a tourist purchases consumable goods such as food, supplements, perfumes, or cosmetics, the tourist may not be allowed to open or use these items prior to claiming the refund under the TRS. In general, then, the aim of the TRS is 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.”[19]

However, there are several ways in which TRS schemes fail to completely ‘match’ the treatment of exported goods in VAT/GST systems. First, for a TRS to mirror fully the zero-rating of exported goods, the refund should apply to the entire VAT/GST on inputs up the supply chain, for the final product sold to the tourist. Usually, this is not done, and the refund applies only to the VAT charged at the final retail stage for the sale to the consumer. The TRS therefore applies only a partial exemption from VAT. It may be the case that, for the types of goods that tourists purchase and take home, the largest price markup takes place at the retail stage, in which case this could be seen as an approximation or estimate of the VAT/GST in the supply chain.

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

A more serious criticism is that the TRS addresses only one part of the two-part destination principle, as implemented in VATs/GSTs around the world. The TRS lifts the tax on the 'micro-export' of the purchased good by the tourist, but it does not ensure that VAT/GST 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 law regarding declaration of goods being brought into the country by its own residents, and on the level of enforcement. It seems very likely that many goods purchased by tourists while travelling are not declared and subject to VAT/GST on *import* in the home country.

For example, 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 (exceeds AUD$900),they must declare all of these goods on your incoming passenger card and need to repay the GST refund back on the goods they claimed under the TRS, duty and GST will apply to all items purchased, not just goods over the limit of their passenger concession.[20]

In this regard, it is also interesting to compare the 'micro' export of a good purchased in a country by an individual who travels there as a tourist, with the online purchase of that good by the same individual, while staying in their own home. Again, consider the example of an artwork. For the online purchase, if the home country VAT law extends to online purchases of foreign goods – which is increasingly the case – then the home country VAT will apply to the purchase, and it may be collected and remitted by the online sales platform; while the good should be zero-rated in the exporting country under the general export rule. For the tourist purchase, VAT/GST will be charged by the exporting country, unless a TRS applies to permit a refund of VAT. When returning home, only if the tourist is required to, and does, declare the import and pay VAT on it, will there be tax at the home country tax rate.

2.2 The tourism policy rationale of the TRS: 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

[20] 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>.

(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.[21] Over the past few years, the travel and tourism sector also experienced rapid development in the global economy.[22] 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.[23]

However, we should bear in mind that tourism development is not a free good. The destination government needs to 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. To produce tourism goods and services, the government needs 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, tourists also contribute directly to tax revenues in the jurisdictions to which they travel. Consumption taxes and fees on the purchases by tourists in the jurisdiction are most applicable. Broad-based consumption taxes, such as the VAT or GST, retail sales taxes, levied by restaurants or shops, or specific consumption taxes of direct relevance to the tourism industry, such as hotel bed taxes, may all apply to international tourists on their purchase of goods and services in the destination economy. How a government designs its tourism tax system may therefore have a direct effect on revenues and on the tourism experience.

The growth of tourism has provided destination countries with an excellent opportunity to broaden their tax base and extend taxation to tourists. Because tourists may become the primary beneficiaries of certain services provided in the travel destinations, it is possible and reasonable to collect a fair share of tax from them as non-resident, but visiting, beneficiaries. Tourism taxes have been defined as taxes that are applicable specifically to tourists and the

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[21] 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>.

[22] World Travel and Tourism Council, *Travel& Tourism Recovery Scenarios 2020 and Economic Impact From COVID-19,* Research Note, June 2020.

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

tourism industry.[24] More broadly, we may consider tourism taxation to include those indirect taxes, fees and charges that affect primarily tourism-related activities.[25] When the burden of a tax imposed by one country government is shifted to a person who is resident outside the jurisdiction, it may constitute “tax exporting”.[26] We could consider two conditions that may 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.[27] From the destination country’s perspective, the exportability of tourist taxes will promote revenue-raising and economic efficiency.[28]

In principle, a VAT or GST taxes the valued added at every stage of distribution from the producer to the intermediary businesses and finally to the consumers. It is intended that the economic burden of VAT is shifted to the consumer in the price. From the perspective of tourism industry development, if the taxes levied on tourists are high, this may discourage tourists from travelling to the country, or may cause them to reduce their spending when they are in the country, thus hurting the industry and the local economy.[29]

As competition in the tourism industry increases,[30] taxes (or, high prices) in one destination may induce tourists to switch to other destinations. In this context, establishing a TRS is seen as an attractive policy option to improve the competitiveness and attractiveness of tourism destinations. Many countries have established tax incentives to invest in tourism-related facilities or infrastructure as well as to encourage increased spending by tourists.[31] Although the development of tourism is expected to expand the tax base, the competition between different destinations becomes more intensive over time and some suggest that the tax system is an important factor in tourism competitiveness.[32] Tourism taxes may have

24 UNWTO, *Tourism Taxation: Striking a Fair Deal*, Madrid, Spain,1998, 98.

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

26 Matthew N. Murray, ‘Exporting State and Local Taxes: An Application to The State of Maine', *A Background Paper Prepared for the Brookings Institution*, October 2006, 1.

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

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

29 Dwyer and Forsyth (n 27), 251, 253.

30 Ksenija Vodeb, ‘Competition in Tourism in Terms of Changing Environment’, (2012) 44 *Procedia - Social and Behavioral Sciences* 273.

31 OECD (n 25) .73.

32 Bratić Vjekoslav, Predrag Bejaković and Devčić Anton, ‘Tax System as a Factor of Tourism

advantages and disadvantages for tourism destinations; on the one hand the taxes levied on tourism and the raising rate of taxation can increase revenue, but on the other hand, taxes may have distortionary effects upon the economy and may even result in a lower level of revenue. This may 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 in the destination.[33] The increase or decrease of a tax rate has been suggested to significantly influence the decisions of tourists regarding their holiday destination and accommodation.[34]

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 the retail sector in the jurisdiction by tourists.[35] 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.

A tax incentive for investment can be defined as any tax law and regulation that targets tax relief to specific activities.[36] 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. For example, the most effective way to stimulate investment may be to increase the after-tax return on investment, 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.[37] 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 also to promote increased expenditure by those undertaking tourism-related activities, including the TRS to support shopping.[38] 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.[39]

Competitiveness: The Case of Croatia' (2012) 44 *Procedia - Social and Behavioral Sciences* 250,251.

[33] Ramesh Durbarry, 'Tourism Taxes: Implications for Tourism Demand in the UK: TOURISM DEMAND IN THE UK' (2008) 12(1) *Review of Development Economics* 21.

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

[35] 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>.

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

[37] Sebastian James, 'Tax and Non-Tax Incentives and Investments: Evidence and Policy Implications' 63.

[38] OECD (n 25), 73.

[39] Frédéric Dimanche (n 19), 311.

The TRS considered as a tax incentive may be recognized as a ‘tax expenditure’ that aims to deliver a tax exemption or other tax preference, at a fiscal and, potentially, an economic cost.[40] 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 effects of a TRS in encouraging 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.[41] 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 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.[42] In the case of Thailand, an analysis based on the sample of 32 quarters shows that after the VAT Refund for Tourists (VRT) Policy was imposed, shopping expenditure of foreign tourists in Thailand increased, implying that the VRT is effective in encouraging foreign tourists to spend more on shopping.[43] It has been suggested that in India, foreign tourists and non-residents visiting India have reduced their purchases of gold jewellery because there is no mechanism to refund the GST on their purchase.[44]

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[40] Tax expenditures are the preferential tax treatments granted to specific individuals or categories of households, relative to a defined benchmark, with the aim of achieving social and economic goals. See Salvador Barrios et al, ‘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>.

[41] Zaid Alrawadieh et al, ‘Willingness to Pay for Tourist Tax in Destinations: Empirical Evidence from Istanbul’ (2017) 5 *Economies* 1 (‘Willingness to Pay for Tourist Tax in Destinations’).

[42] 黄玉迎[Huang YuYing]《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 , 2005.

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

[44] ‘Absence of GST Refund Mechanism Hits Gold Demand from Tourists, NRIs’, *The Economic Times* <https://m.economictimes.com>.

2.3 The tax equality rationale of the TRS: Tourists should bear a "fair share" of the VAT burden

Behind the practical purpose of tax incentive policies to promote exports and tourism, there is a concept of "fairness" that should be considered. The principle of equity or tax fairness is a natural line of thought for the ordinary taxpayer. We could consider two concepts: the benefit principle of taxation, and the ability-to-pay principle. The benefit principle states that taxpayers should be required to pay taxes in accordance with the benefit of 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 income tax system.[45] In the present context of a consumption tax (usually flat rate), the principle of equity can be translated into the fair and even-handed treatment of travellers compared to locals, and perhaps of businesses in the tourism sector compared to other sectors of the economy.[46]

Perceived fairness with regard to tourism tax seems to be of a particular importance if it is true that travelers' behavior may be significantly influenced by their perception of fairness.[47] The crucial question is, whether it is fair to tax more heavily on 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 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; all other consumption is taxable in the location where they usually reside.

However, fairness is more likely to be supported, in a consumption tax context, by the "benefit principle" of taxation. On this basis, taxpayers owe a duty to pay taxes based on their benefit from government. To evaluate that benefit, it would be fair to ask for a contribution in

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

[46] Thomas C. Jensena, Stephen Wanhillb, 'Tourism's taxing times: value added tax in Europe and Denmark', 23 (2002) *Tourism Managemen*t 67,68.

[47] Jin Young Chung et al, 'Fairness of Prices, User Fee Policy and Willingness to Pay among Visitors to a National Forest' (2011) 32(5) *Tourism Management* 1038.

proportion to the benefit.[48] For citizens, or residents, and their state we may accept that there is a kind of "social contract". National tax policy is usually one product of the classic Lockean social contract between individuals and government.[49]As citizens and residents are considered as "members" of their society, so they have a social obligation to pay tax.

A foreigner who does not habitually inhabit in the country will not be a member of that society, and they should not be a taxpayer in the country. The situation becomes more complicated for those who come to the destination country, but their purpose is not to reside permanently. Again, in relation to 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 therefore may be expected to be taxed on a 'residence' basis on worldwide income. But for those who come to visit and only stay for a short time cannot be said to enjoy the same extent of public services by the destination country. Nor, for goods they buy inside the destination country, but only consume after returning home, can they be said to have consumed the goods inside the country. Therefore, it is not fair for the destination country to tax on those goods borne by the tourists.

Consequently, the principle underpinning the VAT/GST in general (applied to consumption) and justifying the TRS for the 'micro-export' by tourists of goods purchase in the jurisdiction, is the benefits principle. On this basis, it is unfair to tax goods that are primarily purchased by tourists, consumed after departure from the destination country; therefore, the VAT/GST paid on these goods should be refunded to the tourists on their departure from the jurisdiction.

A different equity argument may apply if we consider ability to pay in the sense of 'vertical' equity (higher income people pay more tax) and 'horizontal' equity (sectors, or taxpayers, are treated fairly or equally). In particular, if we consider the ability to pay of international travellers or tourists, it is likely that many will be relatively high income, indeed be higher income, both than their fellow citizens of their home countries, and of many of the citizens of their tourism destination countries. On this basis, it seems unfair to exempt their purchases

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[48] Sir Josiah Stamp, K.B.E., D.Sc., *The Fundamental Principles of Taxation in the Light of Modern Developments* (London: Macmillan & Co.1921.) 6.

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

from VAT, as they are likely to have the ability to pay it. A similar justification could be applied, for example, to airline taxes which are highly progressive in general. We therefore may see a potential conflict between different notions of tax equity in considering tourist tax refund schemes. On the other hand, the taxation of tourists or even consumption of more expensive goods may not be a good indication of fairness across the life course. It is easier to consider whether travelers have enjoyed public goods during the time they are present in one country and to design a suitable tax rate on that basis.

3. THE DEVELOPMENT OF TRS AROUND THE WORLD

3.1 The global expansion of the TRS and its limits

A recent report of ANAO states that a TRS is adopted by more than 60 countries around the world, or about one third of countries that levy a VAT or GST.[50] A TRS is adopted throughout the EU and is an element of the harmonized VAT law of the EU.[51] According to Article 147 of Directive 2006/112/EC, EU retailers can provide a VAT refund for goods sold to non-EU tourists when exporting them. This Retail Export Scheme in many EU countries is referred to as TRS.

The adoption of a TRS is also widespread in Asia Pacific countries which have adopted a VAT or GST, including South Korea, Singapore, India, Sri Lanka, Australia, Thailand, Indonesia, Fiji and China.[52] For example, Singapore enacted the Goods and Services Tax Act in 1993 and established the TRS under the reg 48–51 of GST (General) Regulations).[53] 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.[54] the TRS is established as a special tax measure to promote the development of tourism economy. In Thailand, Revenue Code Amendment Act 34 of 1998 entitles tourists to a

[50] ANAO (n 10), 7.

[51] The Council of the European Union (n 9).

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

[53] ‘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>.

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

VAT refund on goods purchased in Thailand when they take the goods out of the country.[55] Australia introduced the Goods and Services Tax in 2000 and included the TRS in the GST Act. In 2007, Indonesia's Taxation Arrangements and Procedures Bill (the Bill) was enacted on 19 June 2007 and came into force on 1 January 2008, which established a VAT refund scheme available to a tourist upon leaving the country.[56]In Fiji, a Tourist VAT Refund Scheme has been implemented on 1 February 2010 to provide departing tourists with a refund of 12.5% VAT on purchases exceeding FJD 500.[57] 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 value added tax (VAT) refund for foreign visitors on consumer goods purchased in China.[58] 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.[59] In India, GST was introduced with effect from 1 July 2017 and includes an enabling mechanism whereby an international tourist procuring goods in India, may seek a refund of the tax paid while leaving the country.[60]

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.[61] 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

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55 '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>.

56 '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>.

57 '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>.

58 '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>.

59 '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>.

60 PWC (n 52).70.

61 '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>.

specific goods within the Colombian territory.[62] 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 and Trade.[63] 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.[64] 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.[65]

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 of different countries vary widely in both their principled design and 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.[66]

A TRS may be considered as a mutually complementary mechanism to duty-free shopping

[62] '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>.

[63] '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>.

[64] 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>.

[65] '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.>

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

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.[67] New Zealand introduced the Goods and Services Tax Act with effect from 1986, but it does not have any mechanism to enable tourists to obtain a refund of GST paid on goods and services purchased in New Zealand.[68] 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.[69]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.[70]

There is no scheme which allows tourists to recover VAT spent on their purchases in Cambodia.[71] There are also some countries which initially implemented a TRS but later abolished it. For instance, 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.[72]Also on 18 September 2020, the UK government has decided to abolish the VAT Retail Export Scheme (VAT RES) which had previously implemented in Great Britain, leaving Britain as the only country in Europe without a Tax-Free shopping scheme for

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67 PWC (n 52) 88, 101.

68 PWC (n 52) 159.

69 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/>.

70 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>.

71 PWC (n 52) 39.

72 Canada Revenue Agency, ‘Program History - from VRP to FCTIP’, *aem* (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>.

international visitors.[73]

3.2 The EU Tourist Refund Scheme

In the harmonized system of VAT among the Member States of the EU,[74] governments may choose to establish a TRS consistent with the guidelines provided in EU Directive 2006/112/EC, which allow a visitor to the EU who is returning home or going on to another non-EU country to be eligible for a VAT refund for VAT-inclusive goods, on certain conditions. The TRS is prescribed within each country's framework of export tax exemptions in their VAT law, in line with the provisions of the EU Directive. Article147(1) of EU Directive 2006/112/EC states that:

> "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 with effect from 1 January of the following year."[75]

Based on this article, the European Commission (EC) also released a guide to VAT refunds for visitors to the EU.[76] 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

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73 'Our Response to the UK Government's Decision on VAT RES' <https://www.planetpayment.com/en/about-us/in-the-news/2020-news-archive/our-response-uk-vat-res/>.

74 European Union includes Austria, Belgium, Bulgaria, Cyprus, Czech Republic, Denmark, Estonia, Finland, France (including the French overseas departments of Guadeloupe, Guiana, Martinique and La Réunion); Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, the Netherlands, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden, and including the Isle of Man. It is wealth to note that at 11pm GMT 31 January 2020, the UK formally ceased to be a member state of the EU. 'UK Decision to Leave the EU – Brexit | DFAT' <https://www.dfat.gov.au/geo/united-kingdom/Pages/brexit>.

75 ANAO (n 10).11.

76 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>.

TRS that suits their preferences. For example, Ireland has established a retail export scheme in its Value-Added Tax Consolidation Act 2010, which permits any Irish or EU citizens who are departing to take up residence outside the EU for at least 12 consecutive months to use the TRS; the minimum purchase threshold in Ireland is EUR 75, which is lower than the threshold of EUR 175 in EU Directive.[77] Poland has implemented special measures to harmonize the Polish VAT legislation with that of the EU and specified rules for VAT refunds to non-EU tourists; the refund rate ranges from 13.2% to 16.5% of the purchase amount, with a minimum purchase amount of 200 PLN (47 EUR) per receipt.[78] There are some key design elements of a TRS in most EU countries which we identify below.

3.2.1 Tourists eligible for a tax refund

All TRS regimes are aimed at visitors with a residence outside the visited EU member states. The eligible subjects who are enabled to claim a tax refund are typically overseas tourists but are not always limited to this category, as Directive 2006/112 only requires that 'the traveller is not established within the Community'. Broadly speaking, an eligible traveller is a natural person who is not a citizen of any Member State and 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 EC.

To decide who constitute an eligible traveller, the Member State will review the passport, identity card or other document recognized as an identity document to determine 'permanent address or habitual residence' within whose territory the supply takes place.[79]In most EU countries, the person who wants to apply tax refund should be a resident of a "third country" not belonging to the EU. Some TRS regimes have other requirements. In France, travellers who are not citizens or permanent residents of an EU country can claim their VAT refund in France before leaving for their home countries and must be at least fifteen years old to be eligible for a tax refund.[80] For example, assume Eduardo lives and works in Brazil but spends three

[77] 'Value-Added Tax Consolidation Act 2010' <https://www.lawreform.ie/_fileupload/RevisedActs/WithAnnotations/HTML/en_act_2010_0031.htm#SEC58>

[78] Poland, Journal of Laws No. 54 of 5 April 2004 'Document - Poland - New Polish VAT Law Effective Re EU Accession - Tax Research Platform - IBFD' <https://research-ibfd-org.eu1.proxy.openathens.net/#/doc?url=/data/tns/docs/html/tns_2004-05-20_pl_1.html>

[79] Council of the European Union (n 9).

[80] Discover France, 'Applying for Tax Refunds When Leaving France'

months every summer in France, where he has a time-share in a villa. Eduardo's permanent address is in Brazil, so he is a 'visitor' to the EU while in France.

There are some exceptions to the general rule regarding permanent residence outside the territory of the EC. 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.[81] 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.[82] Thus, the eligibility extends beyond simply 'tourists' or 'travellers' in the EU in some cases.

3.2.2 Goods eligible for a tax refund

To be eligible for the TRS, an eligible traveller must acquire 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. In all countries, although VAT applies to services and goods, the TRS does not permit refunds of VAT that travellers have spent on hotels and meals or other services, so these remain taxable under member state VATs according to the destination principle. Further restrictions on eligible goods may also apply, including four main conditions, as set out below.

1. The exported goods should not be prohibited or restricted goods. Eligible travellers may obtain a refund of VAT on acquisition of all merchandise except those on an "excluded" list. To achieve this, most EU countries establish a "Negative list" to regulate ineligible goods. For example, in France, tobacco products, firearms and unset precious stones are not eligible for the TRS.[83] In Belgium, tobacco and non-EU exports are also not possible or a tax refund.[84]

<https://www.discoverfrance.net/France/Paris/Shopping/Paris_VAT.shtml>.

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

82 Taxation and Customs Union (n 77).

83 Discover France (n 81).

84 'Tax Refund Process in Belgium', *TAX FREE EASY* <https://www.tax-free-

2. The exported goods should not be VAT-free already. An example is purchased food and medicine which are VAT-free in many EU countries.
3. The exported goods should not be consumed in EU countries. If goods have been partly consumed at the time the acquirer leaves one jurisdiction, the TRS cannot apply. For example, the Hungarian VAT law sets out as an additional condition for tax exemption with respect to the product that within the time limit of 90 days the goods supplied may not be used or consumed with the exception of sampling and trial production.[85]
4. The goods cannot be purchased for commercial purposes, such as resale. Given that the VAT Directive does not define the concept of personal or travel luggage, the meaning of this term shall be construed in the light of its ordinary meaning. For the purposes of TRS, the item of the luggage shall be considered to be a product which is supplied or exported on an occasional basis as shown by its nature and quantity, and should be considered to be for private and/or personal use, for family purposes, or be a gift. If it is reasonable to believe the tourist does not intend the goods for personal use, there will be no refund for the tax paid.

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 EUR 175 or the equivalent in national currency. However, the price of each product does not need to be higher than EUR 175, and different countries may apply different minimum amounts. Member states may also exempt a supply with a total value of less than the amount specified.[86] Typically, to get a refund, the tourists' purchase has to be above a certain amount and they must reach the minimum threshold through purchases at a single retailer (adding up all purchases from various shops to reach the required amount is not allowed). The minimum amount for each EU country is set out in Table 1. For example, the total value of the goods must exceed 50 Euro (including VAT) per invoice

easy.com/en/portfolios/belgium/>.

[85] 'Document - Hungary - Act CXXVII of 2007 on Value Added Tax - Tax Research Platform - IBFD' <https://research-ibfd-org.eu1.proxy.openathens.net/#/doc?url=/linkresolver/static/vatleg_hu_01_eng>.

[86] The Council of the European Union (n 9).

in Belgium. The threshold in Spain was initially set at 90.16 Euro, but in 2018, the Spanish government removed the minimum threshold.[87] This means whatever the value of the goods purchased by an eligible traveller in Spain, they have the right to claim back the VAT.

The VAT rate for various goods in the EU ranges from 8 to 27 per cent, and the eligible tourist will be able to obtain a VAT refund, minus any service charge for processing the refund. For example, Belgium's refund rate ranges from 7.8% to 15.5% of purchase amount, with a minimum purchase amount of 50 EUR per receipt.[88]

Table 1 VAT Rates and Minimum Purchases Required to Qualify for Refunds in Europe

(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
Great Britain	20%	£30(Withdraw from 31 December 2020)
Greece	24%	€50
Hungary	27%	54,001 HUF
Iceland	24% (11% on food and books)	6,000 ISK
Ireland	23%	€75.01
Italy	22%	€155
Latvia	21%	€44
Lithuania	21%	€55
Luxembourg	17%	€74
Malta	18%	€100
Netherlands	21%	€50
Norway	25%	315 NOK
Poland	23%	200 PLN
Portugal	23%	€61.35
Romania	19%	250 RON
Slovakia	20%	€100

87 'Minimum Purchase Amount Removed in Spain', *business* <https://www.globalblue.com/corporate/market-insights/minimum-purchase-amount-removed-in-spain>.

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

Slovenia	22%	€50.01
Spain	21%	€90.16(€0 from 2018)
Sweden	25%	200 SEK
Switzerland	8%	300 CHF
Turkey	18%	118 TRY

* EU VAT standard rates are set by member countries and can fluctuate. Your refund will likely be less than the rate listed above, especially if it is subject to processing fees.

*The information has referenced to the summary of travel agencies; we cannot be held responsible for its accuracy or completeness.

*Source: https://www.ricksteves.com/travel-tips/money/vat-rates-in-europe.

3.2.4 Exporting goods as accompanied baggage

In general, to be eligible for the TRS, the goods must be ‘exported’ or taken out of the EU before the end of the third month following the month in which they were purchased.[89] For example, 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 goods must be taken out of the EU by the visitors when they depart, as accompanied baggage.

The tourist may leave the EU directly via the airport or fly from the airport of departure to a country outside the EU but have an intermediate stop in the EU.[90] In the former case, the tourist can transport the goods in their hold luggage. Another option is to transport the goods in hand luggage through the security check and passport control. For example, a tourist departing from Brussels to New York who uses Paris as an intermediate stop should have the hold baggage goods checked in Brussels or have the hand luggage goods checked at the local Customs office in the transit airport of Paris, where they leave EU.

3.2.5 Paying the refund in a specified manner and period

Eligible travellers 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 four stages.

[89] Taxation and Customs Union(n 77).

[90] ‘How and When Do You Get a VAT Refund on the Export of Goods?’, *FPS Finance* (6 September 2018) <https://finance.belgium.be/en/customs_excises/private-individuals/travelling/vat-refund-export-goods>.

First, the visitors should have paid the full, VAT-inclusive price for the goods in the travel destination countries in specified time zones. In most EU countries, the visitors should verify with the stores before purchase to make sure the stores participate 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.

Secondly, they should have complied with the formalities and can show proof of export when departure. In this stage, the goods exported under the retail export scheme can be certified by customs or the other officials at the final point of departure.

Thirdly, upon presentation of the tax receipt and export verification, the visitors will be refunded the amount of the tax paid on the purchase. The refund operator must refund the VAT payable on a taxable supply to the tourist from 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. In France, the 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.[91]

4. POLICY ISSUES AND RISKS FOR A TRS

4.1 Targeting efficiency

To evaluate whether to adopt or extend a TRS in one country and which model should be adopted, we should consider a range of policy and design issues. These include the effectiveness of the TRS in achieving policy goals, and its efficiency; the administrative features of the TRS, including the agency or operator of the refund scheme, eligibility conditions and ease of compliance; and minimizing 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 target of the TRS is giving up a short-term revenue yield in return for long-term economic benefits. The

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

use of TRS involves a loss of revenues, as there will likely be a fiscal cost to this 'tax expenditure' (although it is difficult to quantify, if tourists would acquire fewer goods within the jurisdiction if they were not eligible for the refund). The TRS also increases 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.

Since the introduction of a TRS, some countries have sought to increase its efficiency and targeting to provide a successful tax incentive for tourists. For example, South Korea introduced a Tour that provides international visitors on tour with discounts on transport, attractions, shopping, dining, and entertainment. South Korea has also automated its TRS, applying 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.[92] In 2017, the Inland Revenue Authority of Singapore (IRAS) issued three e-Tax guides for its TRS, which aim to make it more transparent for the retailers and visitors to participate in the TRS.[93] The eTRS system that Singapore has introduced is intended to ensure eligible tourists enjoy a seamless and hassle-free shopping and GST refund experience in Singapore.[94]

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".[95] The Canadian Government clearly concluded that the fiscal saving from cancelling the GST rebates and removing its administrative cost outweighed the economic benefits generated by granting this relief to visitors. The benefit of abolishing the visitor rebate was estimated to be equal to the saving in GST refunds, around CAN$78.8 million, plus the

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

93 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).

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

95 Ronald Pasquariello, Tax Justice, (University Press of America,1985) 91,94.

savings in the cost of administering the system, around CAN$7.5 million a year.[96] The decision 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.[97] It was 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.[98]

According to the UK Her Majesty’s Revenue and Customs (HMRC), The Guidance of Retail Export Scheme (VAT Notice 704) was withdrawn on 31 December 2020, it was recently announced that the tourists can no longer obtain refunds under the Retail Export Scheme from 1 January 2021.[99] The direct reason would be Brexit, as the UK left the European Union (EU) and entered a transition period up to 31 December 2020. Therefore, the UK Government should review the excise duty and VAT treatment of goods purchased by individuals for their own use and carried across borders in their luggage. Another reason would be the high cost of the Retail Export Scheme. HMRC had previously reviewed the UK Retail Export Scheme in 2013 and found that many criticized the refund process as taking too long, the burden on retailers unreasonable and the customer’s TRS experience was negative.[100]And there was a consultation holding that the Retail Export Scheme should be withdraw because it was a costly tax relief which does not benefit the whole of the UK equally, with use of the scheme largely centered in London.[101]

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

[97] Ibid.

[98] Crowley and Blvd (n 97)16, 20.

[99] ‘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)*’).

[100] HM Revenue& Customs, ‘VAT: Retail Export Scheme, Summary of Responses’, December 2013.

[101] 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 >

4.2 Administration and operator of the TRS

The TRS may be administered by the government, through the tax agency; or the administration may be contracted out to private companies who are responsible for the costs of running the scheme and charge a commission on refunds paid to tourists; or the retailers, or shopping mall operators, may be contracted to deliver the TRS. To improve the experience of tourists, some suggest that refund operators can offer a range of services to retailers and to tourists that have the objective of increasing tourist spending.[102]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 around the world that provide a TRS do so through private providers within an open market. These countries include most members of the EU, Argentina, Switzerland, Turkey, and the UK (although notably, it has abolished the scheme). Government-run schemes are less common than open market schemes; for example, the government tax agency operates the scheme in Australia, Indonesia, Thailand and Chinese Taipei. The different models are set out in Table 2.

Table 2 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, Japan, 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

[102] Crowley and Blvd (n 97)12.

Source: Tourism shopping Reform Group (n 35).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.[103] Innova Tax free Group is a company specialized in VAT refunds for foreign tourists which is originally Spanish and operates in major European countries.[104] Travel Tax-Free is another private company established in Spain which claims to provide innovative solutions to the merchants in order to facilitate their tax-free sales activities.[105] 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, who 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.[106]

[103] '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/>.

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

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

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

4.3 The challenge of refund fraud

Tourist refund schemes may be vulnerable to fraud by retailers, tourists, and the private intermediary companies, if the operator of the TRS is a private company. From the supplier side, most countries where a private company operates the TRS, such as Singapore, have authorized the refund retailer to be responsible for checking the eligibility of the claimant. Nonetheless, the pursuit of profits determines the possibility of retailers engaging in risk management. For example, in Singapore, one case involved six employees of a local jeweller were convicted for conspiring in GST Tourist Refund Fraud.[107]

From the visitor side, there is a risk of engaging in fraudulent claims by providing false information or failing to declare when goods are reimported. 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.[108] The TRS is available only to bona fide visitors for the claiming of GST refunds on goods they have purchased and brought out of the travel destination. It will be an offence for a person to obtain GST refunds if the person does not meet the qualifying criteria. Retailers may also be complicit or negligent in the issuing of TRS documents leading to the abuse of the TRS.

Most countries have established penalties to deter TRS fraud. In Singapore, the failure to register, providing incorrect information or knowingly obtaining a false refund will lead to penalties that range from 100% to 300% of the tax, plus potential jail sentences.[109] In Australia, the uniform penalty regime under the Tax Administration Act 1953 (Cth) covers GST and other Australian taxes, and provides the authority for the Australian Taxation Office (ATO) to recover incorrectly paid TRS refunds. This power was delegated to Home Affairs officers so that they could apply an 'on the spot' penalty where they detect attempts to smuggle.[110] 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.

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

[108] '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>.

[109] PWC (n 52) 196.

[110] ANAO (n 10) 50.

5. THE TRS IN AUSTRALIA

5.1 Legislative framework

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 per cent of total international visitor spend.[111] Not surprisingly, the tourism development level in Australia is lower when compared to Australia's key competitor tourism destinations such as Singapore.[112] A well-designed tourism shopping policy, with a 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.[113] In contrast to Australia, countries such as Singapore have integrated 'tax-free shopping' for tourists into the general retail experience for international visitors.

In 2011, the Australian Treasury initiated a consultation process that sought to improve the TRS and provide greater flexibility to tourists, to benefit tourist shopping.[114] Following this consultation, 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 or Wine Equalisation Tax (WET) through the TRS was extended from 30 days to 60 days. The amendments also allowed international travellers to aggregate multiple invoices from different retailers to meet the AUD $300 threshold (including GST) which is required for a TRS claim.[115]

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

[112] 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, 'Creating the Garden City: The Singapore Experience' (1996) 33(6) *Urban Studies* 955.

[113] Tourism shopping Reform Group (n 35).12.

[114] 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>

[115] 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'

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.[116] Obviously, the strategy has been placed on hold because of COVID-19 border closures and travel restrictions; in future, presumably, the strategy will be revitalized.

The TRS is established in Division 168 of the *A New Tax System (Goods and Services Tax) Act 1999 (Cth)* ("GST Act") and accompanying regulations, now included in s 168-5 of the *A New Tax System (Goods and Services Tax) Regulations 2019* (Cth) ("GST Regulations").[117] These special rules apply to goods supplied for consumption outside the "indirect tax zone" of Australia.[118] In relation to the specific taxes applicable to Australian wine, called the "Wine Equalisation Tax" (WET), the TRS regime applies for travellers who purchase wine and take it with them on departing Australia.[119]

Section 168-1 of the GST sets out the eligible subjects of the TRS. Tourists who take goods acquired in Australia overseas as accompanied baggage may be entitled to a refund of GST or WET paid by the supplier of those goods. Residents of Australia's external territories can also claim refunds under the TRS on goods that are exported otherwise than as accompanied baggage. 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)

<https://treasury.gov.au/sites/default/files/2019-03/Consultation_summary_TRS.pdf>.

[116] It requires to continue reforming the Tourism Refund Scheme (TRS) to make it easier to claim back the GST.Net Tourism 2020 - Implementation Plan 2015–2020, Whole of Government Working with Industry to Achieve Australia's Tourism Potential.

[117] A New Tax System (Goods and Services Tax) Act 1999 (the Act) provides the administrative framework for the goods and services tax (GST) law. Section 177-15 of the Act provides that the Governor-General may make regulations prescribing matters required or permitted by the Act to be prescribed, or necessary or convenient to be prescribed for carrying out or giving effect to the Act.

[118] Indirect tax zone means Australia (within the meaning of the *ITAA 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 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").

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 of the GST Regulations 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 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 "business traveller" and must leave the indirect tax zone

[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>.

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, where 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. For payment of the refund, 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. Thirdly, 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. Under s 168-5(1A) (c) of the Act, a person must either reside in the external territory or have their domicile in the external

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

territory, or have been in an external territory, continuously or intermittently, during more than half of the last 12 months before the time of acquisition of the goods. Where a refund is paid under s 168-5(1A) for unaccompanied goods, and the supply has become a GST-free supply, the recipient of the refund is required to repay that amount. 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.

5.2 Key features of the Australian TRS

In this part, we summarise the key features of the Australian TRS, established under the above legislation and regulations. Under the Australian GST, the benchmark tax treatment is that the GST applies to all supplies of goods and services at the rate of 10 per cent. The refund of GST under the TRS is treated as a 'tax expenditure'. 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] The fiscal cost is not very large, but it is not negligible, and so this may be a relevant factor in considering the policy and design of the TRS.

One possible reason for the relatively high fiscal cost of the TRS in Australia is that the scope of eligible travellers for the Australian TRS is broad. While nominally a "tourist refund scheme", the TRS is not restricted to "tourists" but includes international travellers visiting Australia and Australians travelling overseas, as well as residents of Australia's external territories. It has been suggested that Australia is the only country that allows its own citizens and residents to participate in the TRS.[124]

Second, the Australian TRS is administered by government, specifically by the Department of Immigration and Border Protection through the Australian Border Force (ABF),

[123] Australian Treasury, *Tax Benchmarks and Variations Statement 2019* p. 138, Item H9, available <https://treasury.gov.au/publication/p2020-51153>.
[124] ANAO (n 10).14.

together with the Australian Taxation Office (ATO). This takes place under a Memorandum of Understanding between the ATO and the Department of Home Affairs signed in 2017, which provides a basis for the administration of TRS at the border.[125] Unlike TRS systems administered by private companies, the ABF directly administers both the export verification function and the refund payment function. 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 a customer service and a relatively simple compliance function.

Third, taxpayer bears the administrative cost of operating the TRS, rather than requiring the claimant tourists to bear the cost through a fee or commission paid to a private refund company. 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.[126]

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 bringing 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. 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.[127]

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

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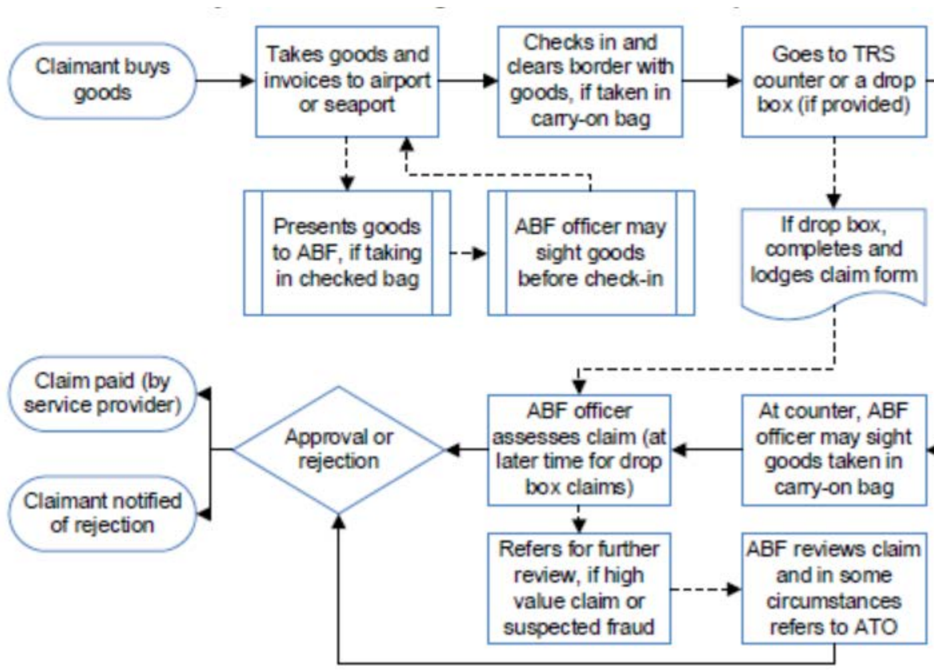
[125] ANAO (n 10).24.

[126] 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>.

[127] 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>.

the claim, which may include asking to see the goods. Around 98 per cent 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.

Figure 1 The process of TRS in Australia



Source: ANAO Report, Summary of TRS claim lodgement and assessment process, p.20.

5.3 Effectiveness and problems of the TRS in Australia

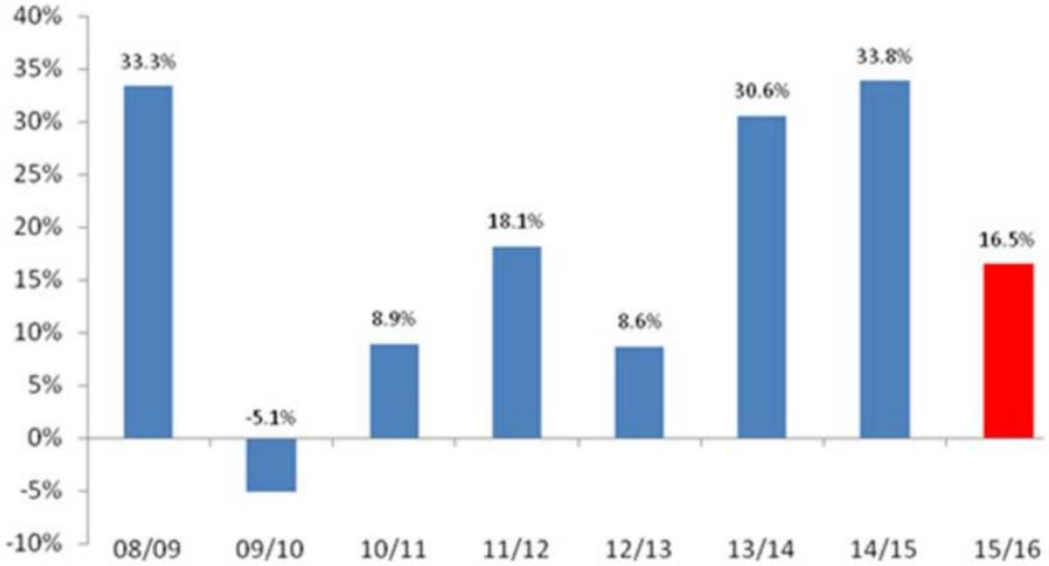
In 2019, ANAO published a detailed report examining the effectiveness, process and administration of the TRS. The ANAO Report found some positive results from the TRS, but also identified several problems with the TRS as currently designed.

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.[128] Sales of tax-free goods through the Australian TRS scheme have increased by 269 per cent, a compound annual growth rate of 17.4 per cent since the global financial crisis in September 2008. Based on the 10 per cent GST rate, this implies annual tax-free sales of more than AUD$2

[128] ANAO (n 10), 50.

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. [129]

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



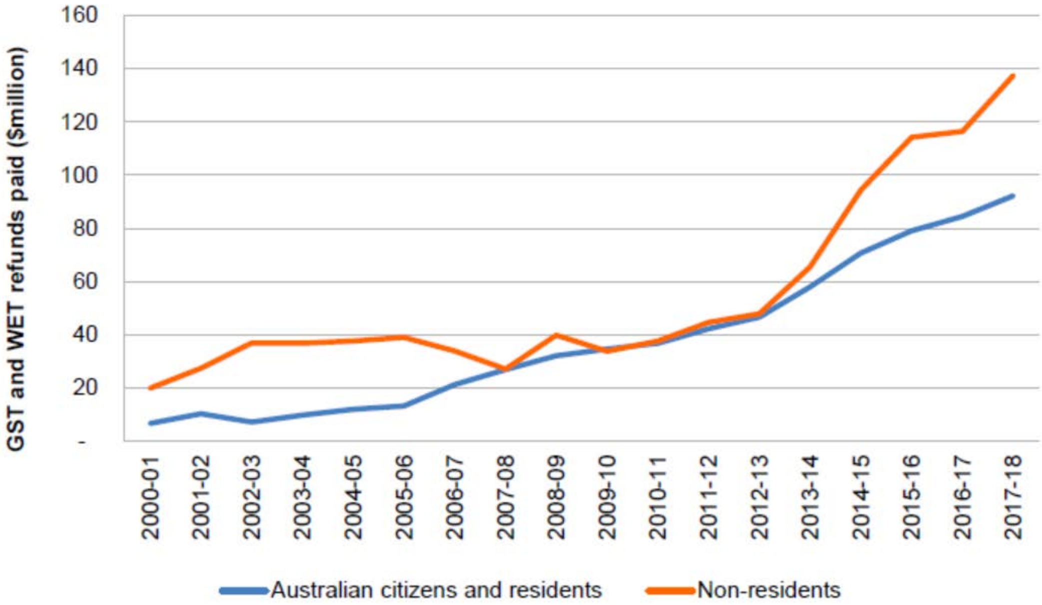
Source: Australian Customs and Border Protection Service Annual Report and The Mercurius Group analysis.

It was also found that the number and value of claims increased rapidly. Because of the broad scope of the TRS system, including Australian residents who travel abroad, many people are eligible for tax refunds. From July 2000 to June 2018, the number of TRS claims and the value of TRS refunds increased rapidly for both non-residents and residents. Non-residents made 5.9 million claims, accounting for 61.1 per cent of the total 9.6 million claims, and generating $989.5 million, or 59.2 per cent of the total $1.67 billion refunds. Australian citizens

[129] '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/>.

and residents made 3.7 million claims, or 38.9 per cent of the total, receiving $683.4 million or 40.8 per cent 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.

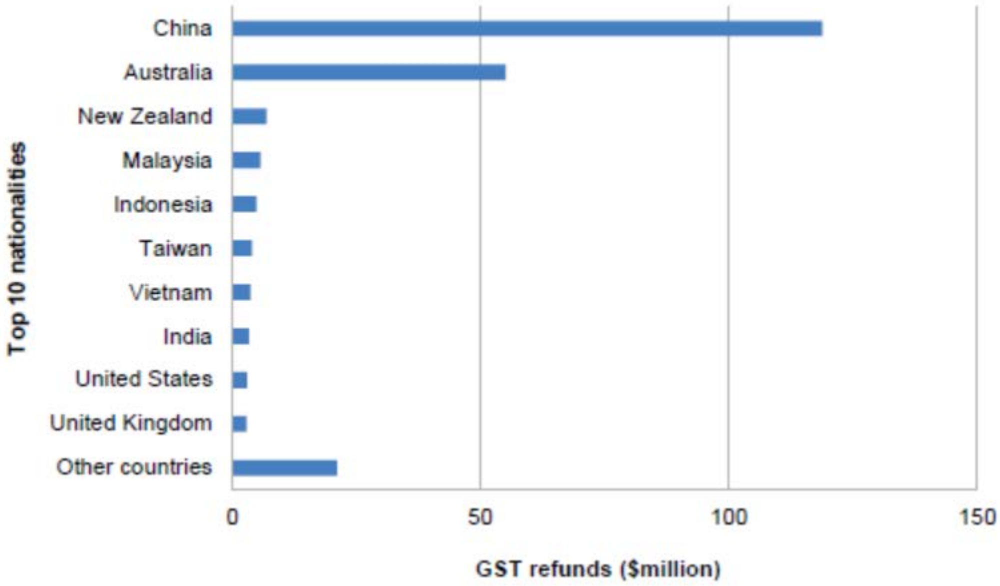
According to Tourism Research Australia’s June 2018 International Visitor Survey, shopping was the second most popular activity undertaken by international visitors and accounted for $4.1 billion in spending in the year ending 30 June 2018.[130] Chinese tourists are the most significant claimants of refunds under the Australian TRS regime. 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 spend in 2010 to 43% in 2017. Chinese visitors to Australia have grown at an annual

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

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. Data shows that Chinese passport holders are the most significant users of the TRS (see Figure 4).

It seems that travellers 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.

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 top ten retailers. Although Australia currently lags competitor destinations, such as Singapore, as a tourism shopping destination, it is well-placed to reap immediate benefits from an increase in retail shopping by travellers. 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.[131] Goods purchased from top 10 retailers for luxury goods accounted for almost 40 per cent of all TRS refunds in 2017–18. From Table 3, 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

[131] Tourism Shopping Reform Group (n 35), 19.

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.

Table 3 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	

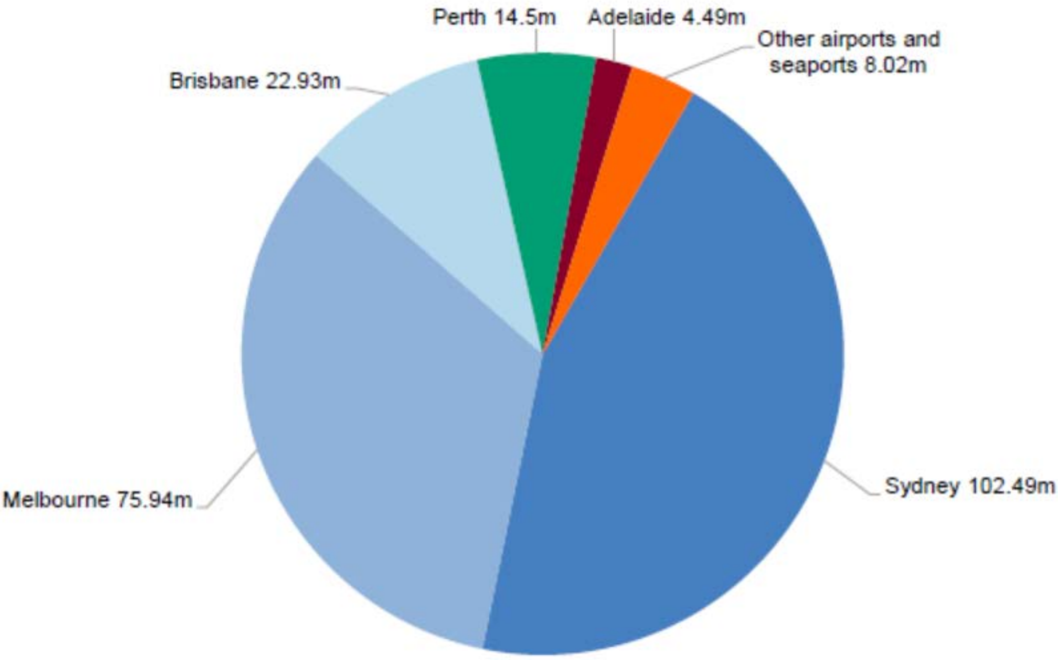
Source: ANAO analysis of TRS data.

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.[132] 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 per cent of TRS refunds paid in 2017–18 (Figure 5).[133]

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

[133] ANAO (n 10), 18.

Figure 5 Refunds Paid by Departure Point, 2017–18



Source: ANAO analysis of TRS data.

5.4 The defects of the Australian TRS

Despite its wide use, 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 use of the TRS by departing travellers, along with a range of entitlement changes implemented in 2013, have put increasing strain on the existing TRS 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).[134] That is because the Home Affairs need the funding from the ATO to administer the TRS, which aims to facilitate internal controls and

[134] ANAO (n 10), 28, 29.

procedures, to ensure framework integrity. However, the cost to administer the TRS functions has for a number of years exceeded the financial amount received through the ATO, with an increasing divergence.[135] The Department argued that a one-off injection of AUD$1 million was needed to help clear the backlog of unprocessed claims.[136] It seems clear that the funding of the TRS is not sufficient to support the integrity and effective administration of the TRS programs.

As one of the few known government-run TRS systems in the World, the Australian TRS is also criticized for 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 government, in terms of tax revenue lost and program administrative costs, rather than as a financial opportunity.[137] 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 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.[138] Compare with other administrative priorities, the TRS is only a small part of the operations of both the ABF and ATO. For example, TRS refunds represents less than one-quarter of one per cent of the total tax refunds the ATO pays out each year.[139] 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 suggests 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.[140] Those who claim they

[135] Australian Taxation Office(n 128).

[136] ANAO (n 10). 28, 29.

[137] 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>.

[138] ANAO (n 10). 36.

[139] ANAO (n 10). 7.

[140] ANAO (n 10). 8.

are taking goods out of the country then bring 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 claim.

There is also a low probability of imposing penalties on the unlawful act to get the refund. Under the Taxation Administration Act 1953, the ATO can impose a penalty of the non-compliant unlawful acts for making a 'false and misleading statement' for the claim of TRS which is used to recover incorrectly paid TRS. This power was delegated to Home Affairs officers so that they could apply an 'on the spot' penalty where they detect attempts to smuggle goods for which a TRS refund had been paid. However, penalties are relatively rarely used as a method to deal with non-compliance to TRS. 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.[141] This is despite the ATO 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 actually 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.[142] 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.[143]

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[141] ANAO (n 10). 8.

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

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

5.5 Reforms for the TRS in Australia

We propose the following recommendations to improve Australia's TRS regime, with the aim of providing a reasonable balance between providing flexibility for tourist shopping, avoiding adverse impacts on retailers as well as minimizing the cost of administering a TRS claim.

5.5.1 Plugging the loophole of allowing Australians to access the scheme

When we consider the underlying policy of tourist refund schemes, as discussed in Part 2 above, there is no strong policy rationale for allowing Australian citizens or residents to access this scheme; further, most countries do not provide such a generous provision to their own citizens or residents. Excluding Australian citizens and residents from the scheme would prevent fraud and is likely to enable the collection of increased GST revenue in Australia (it has been estimated that it may generate as much as $440 million additional GST revenue from 2018-19 to 2020-21.[144] Closing this loophole will also reduce administrative and enforcement costs.

5.5.2 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. Compared with neighboring Singapore, which has adopted an electronic Tourist Refund Scheme (eTRS),[145] Australia's TRS lags the digital development of TRS. The government should aim to transition the TRS to a more straightforward online process and establish a digital visitor processing platform which could enable Australia to better capitalize on tourism investment. Another good example is South Korea, which has implemented the automatic tax refund equipment and immediate Tax Refund Policy.

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[144] Burgess (n 13).

[145] eTRS, which connects multiple Central Refund Agencies and retailers on a single platform, offers tourists a seamless and hassle-free experience when they shop in Singapore and seek refunds for the GST paid before leaving Singapore. 'IRAS | Tourist Refund Scheme' <https://www.iras.gov.sg/IRASHome/GST/Consumers/Tourist-Refund-Scheme/>.

Secondly, Australia's $300 minimum claim threshold is one of the highest in the world. Although the amount is not restricted to one acquisition and tourists can add up the 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. In July 2018, Spain removed the minimum amount of €90.16 that previously applied. The reduction of the minimum threshold can have an incentive to increase the use of TRS as well as the development of the tourist industry. 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.[146]

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. However, compared with Singapore and other EU countries, most of the countries allowed international visitors to claim for refund at any time within three months immediately before the date of purchase. Therefore, it is recommended to extend the claim period from 60 days to 90 days. Lastly, the travel environment and the tax refund facilities are essential for the tourists to purchases good and increase spending in retails, we should take greater emphasis on developing the distinctive Australian luxury retail market, including enhancing partnerships with industry, website promotion and online guides to provide attentive services for the international visitors, then the TRS can continue to develop in a more inclusive and comprehensive way.

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%.[147] 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

[146] Tourism & Transport Forum (TTF), 'Economic Structure and Performance of the Australian Retail Industry', Submission to the Productivity Commission, June 2011.

[147] Anao and Office (n 12). 29.

the scheme. If the administration is to continue to be done by government agencies, it is recommended that there be an investment in electronic tax refund mechanisms, to be more efficient for both consumers and administrators. For example,

5.5.3 Introducing an open market private provider system

An alternative is to out-source the administration of the TRS in an open market model, whereby private companies may compete to provide refunds for travellers. Australia is one of the few countries which adopted a government-run TRS. 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 Australia government meeting 100 per cent of the administrative costs associated with providing this service to departing international travellers is an antiquated practice by international standards, it is advisable 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.[148] In 2019,Tourist lobby groups also have advocated for the introduction of private providers in Australia arguing that this will provide significant administration benefits.[149] By freeing up resources, it would assist ABF to manage better arrivals, including the monitoring of the $900 threshold for tax-free imports.

The introduction of private refund operators has three advantages. First, the private refund operators will be more professional in dealing with the increasing claims and can provide innovative systems that streamline airport refund claim times and passenger processing. This will support Australia’s tourism and retail industries. 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 and this data can be collected

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

[149] Tourism and Transport Forum Australia and Australian Retailers Association, joint letter of submission to the ANAO 1, 25 January 2019.

on an electronic distribution platform allowing review by the retailer and potentially by the ATO. This would support the Department of Home Affairs in detecting potential risks in a short time in the context of information symmetry. Thus, Private refund providers in tourism destinations are vital in the promotion of shopping as a key aspect of the tourism experience for international travellers.[150]

5.5.4 Adopting a better mechanism of risk prevention and control

Compared with the other risks the ATO and Department of Home Affairs manage in their general operations, the TRS is a low priority. To provide a better mechanism of risk prevention for the TRS, we advise the administrative agencies to take the following measures.

First, the ABF and the ATO should develop a joint risk assessment of the TRS, which would take advantage of joint supervision to facilitate better understanding and management of shared risk. Under this scheme, the administrative agencies can identify all risks and take appropriate treatments to review the assessment of TRS annually.

Secondly, oversight agencies – such as the ANAO in its recent, valuable report, the Ombudsman and Inspector-General of Taxation – could investigate operation of the TRS. This can provide information to government and an incentive for the improvement of the TRS management.

Thirdly, 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”.

In addition, an electronic system, such as eTRS, would provide better compliance and facilitates detection of revenue risk,[151] enhance fraud protection and provide savings.[152] An e-system could be introduced by 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

[150] National Tourism Alliance (n 149).13.

[151] Tourism Shopping Reform Group (n 35).11.

[152] National Tourism Alliance (n 149).14.

a Mobile phone APP which help to save the time for claim. What needs to be improved is that the current APPS‘do not lodge a claim but they can reduce the time you spend at TRS Facility as the officer won't have to type in your details. Our apps allow you to store details in a Quick Response (QR) code which can be scanned at some TRS Facilities. Scanners are not available at all times.’[153] So, tourists still cannot claim a refund online.

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.

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

Australia also offers some duty-free shopping in retail stores at airports and in the city. If the retailer sell 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”.[154] The duty-free shopping is essentially different to a ‘tax free’ purchase under the TRS in that duty free good 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.[155]The Similarity is that like TRS purchases which generally refund only GST and WET, duty-free purchases are also exclusive of excise duties on excisable goods such as alcohol and tobacco, both are of great concession to tourists and good for the development of Australia’s tourism industry. For example, The Sealed Bag Scheme is highly beneficial to the Australian retail and tourism industry because it disperses and spreads the opportunities and benefits of tourist shopping beyond airports and into key retail destinations within the community.[156] Consequently, the existing Sealed Bag scheme

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

[154] Australian Taxation Office (n 30).

[155] 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>

[156] Ibid.20.

should be maintained to attract the foreign tourists who do not want to claim tax refund on queue but want to buy the duty-free goods. In addition, with the reform proposal of Opening the TRS to private sector providers, it is also advisable to make the TRS export verification incorporate into the export verification for sealed bag duty free purchases and outsource to a single private provider.

6. THE TRS IN CHINA

6.1 TRS framework in China

Compared with Australia, China's TRS is comparatively recent. However, there is an emerging desire for the Chinese government to give full effect of the TRS to achieve the development of tourist industry. Tourism has played a key role in China's national economy and has strong momentum for economic development. The market consists of the outbound tourism, inbound tourism, and domestic tourism. International inbound tourism plays an indispensable role in foreign exchange, cultural communication, and national influence. Since 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 around the world, and relatively low growth in tourist shopping. To stimulate tourist consumption and to increase tourism foreign exchange earnings, China launched a pilot program to experimentally implement TRS in Hainan Island in 2011, and in 2015, China sought to extend the TRS policy nationwide.

On 21 December 2011, the Ministry of Finance of the People's Republic of China ("MOF") issued an announcement to launch a pilot program of tax refund policy for the oversea tourist in Hainan Province.[157] The purpose of the TRS pilot was to promote the construction of Hainan International Tourism Island. Subsequently, the State Taxation Administration of the People's Republic of China ("SAT") issued an administrative announcement to ensure the implementation of the TRS.[158] However, the tax refund in Hainan faced a slow start and the

[157] 《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.

[158]《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

pilot program did not run well. Two months after South China's tropical island province of Hainan inaugurated a tax refund program to woo foreign tourists, business at three designated shopping centers did not experience the expected increase in trade.[159] 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. One reason is that 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.[160]Another factor is that the pilot TRS only can applied a refund to 21 categories of article[161], most of the tax-free shops sold high-end imported goods, some of which were not attractive to the foreign tourists. For example, according to the previous Hainan Pilot, the top three sales of tax refund items are textile raw materials and their finished products, leather, fur and their finished products, and shoes and boots[162], many of them are of very limited value and lack of Lack of brand effect and national features, which narrowed the scope of application of TRS.

To promote the reform and development of the tourist industry, the Chinese government carried out further work to improve the tax refund policy and decided to expand its scope to other qualified regions around the nation. The State Council (“SC”) released several Opinions on Promoting the Reform and Development of the Tourist Industry on 9 August,2014. Based on this, China continued to carry out the TRS pilot programs nationwide, through three main announcements (See table 4). China launched a new round of TRS schemes, starting in Beijing

Administration of Taxation, 28 December 2011.

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

[160] 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.>

[161] “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 are restricted to 324 species in 21 categories, including: 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 ,but food, cigarettes, alcohol, cars, motorcycles are not included.

See Annex: List of Tax Refundable Goods, (People's Republic of China) Ministry of Finance (n 160).

[162] 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.

and Shanghai, and expanding the scheme to more than 26 provinces recently.

Table 4 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	9Auguest,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	6January,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	2June,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	8May,2015

Unlike most countries, which have incorporated the TRS into the GST or VAT Act, China has not established legislation to support the TRS. The implementation of TRS is carried out through the issue of departmental regulatory documents. To promote the efficiency of the TRS and simplify procedures while strengthening the administration, the MOF, SAT, and the General Administration of Customs (GAC) have issued some announcements to regulate the TRS.

6.1.1 The TRS administrative structure

The administrative measures for tax refund under the departure tax refund policy 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 programs, 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.

6.1.2 Eligible subjects of tax refund

According to the above three announcements in Table 4, travellers from foreign jurisdictions, Hong Kong, Macau and Taiwan who stay in China no more than 183 continuous days are eligible for the TRS when they depart from China.[163] In contrast to Australia, Chinese citizens or residents are not eligible for the TRS.

6.1.3 Tax refund requirements

An eligible international traveller is only eligible for a refund under the TRS for the purchase of articles which satisfy the tax refund conditions for personal use, in designated tax-free stores, and excluding 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 5)[164] purchased by the same overseas tourist from the same tax refund store on the same

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

[164] 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>.

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 including 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 5 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 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.	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

Source:

6.1.4 Qualified stores and tax refund agencies

A qualified store may be a tax refund store once it is reports 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 ensures 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.[165]

China has adopted a model of market-oriented tax refund agencies, enabling private providers to directly 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, 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. According to the provincial TRS practice, almost all of the provincial tax authorities have chosen the commercial banks to be the tax refund agency, for example , Guangdong Branch of Agricultural Bank of China has selected as the tax refund agency in GuangDong Province and Industrial and Commercial Bank of China of Chongqing Branch has selected as the tax refund agency in Chongqing municipality.

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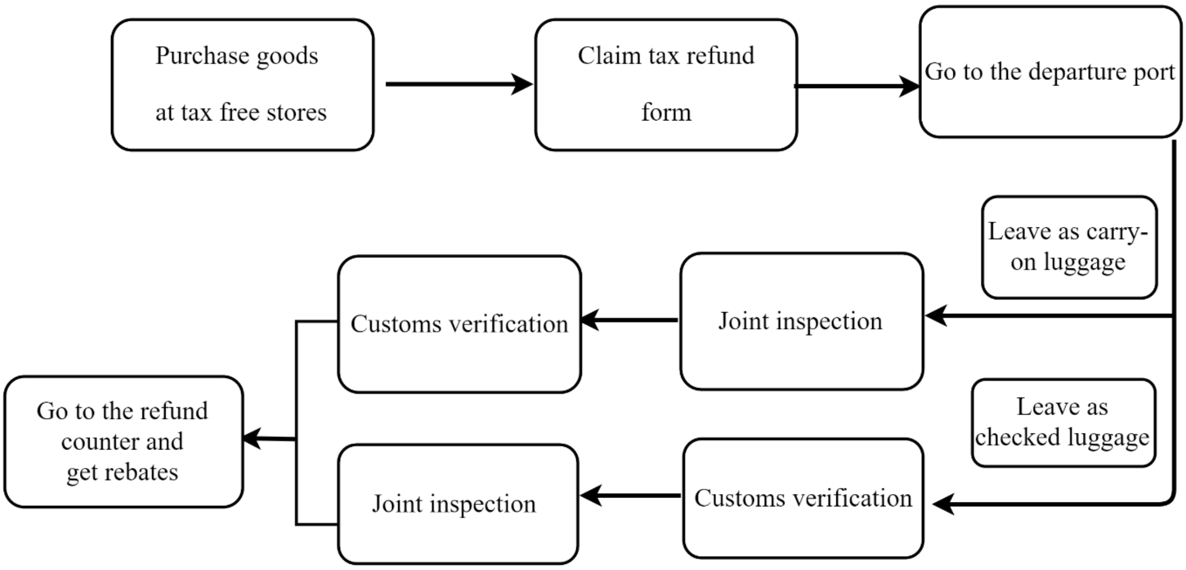
[165] 《境外旅客购物离境退税管理办法(试行)》（国家税务总局公告2015年第41号）[Announcement on Issuing the Measures for the Administration of Tax Refunds for Purchases of Overseas Visitors Leaving China (for Trial Implementation)(Announcement No. 41 [2015] of the State Administration of Taxation)], (People's Republic of China) 2 June,2015.

6.1.5 Tax refund process

There are specific procedures, documents and customs verification needed for obtaining a tax refund in China. An eligible traveller, after purchasing tax refundable articles from a tax refund store, must obtain an application form for tax refund, together with the sales invoice from the tax refund provider. Second, the traveller must satisfy the examination and confirmation by the GAC. When the international tourist leaves China from a departure port, they should take the initiative to declare to the customs 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 tax refund on purchases of overseas tourists leaving China. The third step is to get the tax refund through the refund agencies. No matter whether a tourist purchases articles and departures from the same place or purchases articles in a place and departures from another place, the departure tax refund shall be uniformly handled by the tax refund agency in the departure port. An international tourist shall apply to the tax refund agency for handling VAT refund based on his or her valid identity certificate, the stamped and signed application form for tax refund on purchases of overseas tourists leaving China and the sales invoice of tax refundable articles. The tax refund agency shall, if finds there is no error in the relevant information upon examination, give the tax refund to the tourists.

The tax refund agency may deduct necessary handling charges from the VAT refund. The last step is to make a settlement of 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 VAT 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 Tax Refund Process in China



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

6.1.6 Tax rebate amount

In the first half of 2019, China reduced its VAT rates in the face of a worsening global outlook and an escalating Sino-American trade war. The most significant VAT decrease was the VAT at 16% for taxable sales being reduced to a 13% VAT rate, 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%.[166]

Initially, the tax rebate under the TRS is based on the plain invoice amount (including VAT), and the rebate rate is 11%. However, with the reform of the VAT, the tax rebate rate of China's TRS tax rates have been adjusted to 11 % for goods subject to the VAT rate of 13% and 8% for goods subject to the VAT rate of 9%.[167] 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 commission fee,[168] thus the

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

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

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

calculation formula is:

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 the 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.

At present, the implementation of TRS has expanded to 26 provinces, among these Beijing, Shanghai, Guangdong, and Fujian. It is expected that the policy will come into effect in more Chinese regions and cities. With the expansion of the TRS, the designated Tax-Free Stores are also 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.[169] These stores cover many items that the 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 and so on. 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 has 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%.[170] The purchase of commodities by international tourists appears to have driven up the sales of 18 categories of commodities in Beijing.[171] 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

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invoice charged in Shanghai.

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

170 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.

171 赵婷婷（n 171）.

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.

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 have handled 457 tax refunds, 49 of which have been dealt through "convenient payment".[172] This means the tourists can get 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%, with an immediate tax refund of 80,500 yuan. [173]

The 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

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172 It 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)

173 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.

travellers the time and effort of claiming tax refunds.

6.3 The drawbacks of the Chinese TRS and proposals for improvement

6.3.1 The legal basis for the TRS

According to the research of KPMG, factors influencing the availability of tax-free shopping are heavily influenced by the governing legislative and regulatory framework.[174] China is making significant efforts to encourage the development of tourism. However, the TRS system has not been well established in China, partly because the current operation of the system lacks a legislative basis. Most of the rules for the TRS regime are issued under government administrative documents and the TRS no legal basis in the VAT law or regulations. There is no provision in the VAT legislation, or any provisions in the Soliciting Public Comments on the Value-Added Tax Law of the People's Republic of China at present.[175] It therefore may be suggested that the Chinese TRS lacks legitimacy and operates outside the rule of tax law.

To improve the legitimacy of China's TRS, we suggest including the departure tax refund into VAT tax legislation. To achieve this, China can draw some lessons from the Australian legislation model which puts the "Tourist refund scheme" in the 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. China can thereby establish some reasonable design elements of the departure tax refund system in law, so as to support economic development.

6.3.2 The number of eligible visitors should be encouraged

It is recommended that the eligible travellers 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, they are not eligible for the tax refund when they depart from China. Further, it is advisable to expand the scope of the tourists eligible for a tax refund to those tourists who have a Chinese census register but have lived in foreign countries for a long

[174] KPMG (n 138).

[175]《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>.

time. For example, in Singapore, a student pass holder who have purchased the goods in the last 4 months before the expiry of 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.[176] From the tax incentive perspective, China can classify the tourists into different categories including"Qualifying as a Tourist"and "Qualifying as a Special Person", and learn from Singapore' s experience for the international students and workers to establish a special rule for TRS. For those students or workers who have stayed in China more than 183 days and are going to purchase in the last 90 days before leaving the country and will stay outside of China for more than 1 year, we can deem them as a Special Person and set an exception for them to apply for TRS. and However, in consideration of the costs of tax refund and to control fraud, China should not apply the Australia model which extends to citizens and residents who depart overseas.

6.3.3 Measures to increase the flexibility of China's TRS

In China, the amount of refundable tax articles was reduced from RMB800 in the initial pilot, to RMB500 in 2015. This threshold is higher than Singapore but lower than the EU and Australia. However, depending on the lowest consumption amount, China's domestic tax refund standard is relatively high, 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 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, so as to give more incentives to tourists to increase shopping in China,

[176] 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.

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 product, 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. Concerning TRS, tax refund stores must reach the standard of above level B of the taxpaying credit[177] before they are eligible to participate in the TRS[178]. 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. For example, for those newly formed enterprises, although its annual tax credit rating indicator score is 70 or more, it 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. This paper holds that with the improvement of the regulatory technologies, it is not needed to make specific regulation on the credit rating of the designated stores in the future.

Further, although China operates a market oriented private TRS refund scheme, there is a

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177 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).

178 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).

defect because the application of TRS agencies is restricted to banks rather than other companies. This will cause 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 the unique articles purchased by inbound tourists at designated stores, excluding items on the list of the People's Republic of China of Articles Prohibited from Import and Export and the list of the People's Republic of China of Articles Restricted from Import and Export. 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, kinds of gold and jewellery, as for other luxury goods, as well as Chinese patent medicine, may be attractive to inbound tourists. Therefore, while formulating the negative list, China should also 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 the case of perfume or chocolates). However, we can see that it is permissible for the specific items such as camera, laptop or clothes to be used in Australia before departure; this will give the tourist more opportunities to gain early access to the desired items while travelling, and also be eligible for the 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 clearly 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 still 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 have implemented a TRS. However, many countries have long had a stable TRS regime and some, such as China, are seeking to expand the TRS further. The paper finds that there are noticeable similarities as well as differences in 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 the border closures and travel freeze of covid-19, it is expected that international tourism will resume in future, and TRS schemes will continue to be important for many countries.

Whether a country should adopt a TRS depends on its own conditions, legislative structure of the VAT, administrative approach and risks of the TRS. In our detailed study of the TRS in 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, and 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 automation or 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 rationality. There are also some simple improvements that would expand the application of the TRS to support increased tourist shopping and would optimize the design of TRS and improve the efficiency and fairness of it.

Appendix1: The countries that have adopted a tourist tax refund scheme

All VAT or GST refund Destinations
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. Greek;38. Singapore;39. Italy;40.United Kingdom;41. China;42. Belgium;43. Bulgaria;44. Estonia;45. Greece;46. Malta;47. Netherlands;48. Romania;49. Argentina;50. Indonesia;51.Jordan;52. Lichtenstein;53. Mauritius;54. Mexico;55. Namibia;56. South Africa;57. Thailand;58. Fiji;59. Sri Lanka;60. India;61. Laos.62. Taiwan (China);63. Vietnam;64. Colombia;65. United Arab Emirates;

Source: This information is obtained from the open network including but not limited to the Global Blue Website, IBFD Website, National Tourism Sites, this information may not be accurate and complete.