

Senate Economics Legislation Committee

ANSWERS TO QUESTIONS ON NOTICE

TREASURY

Australian Taxation Office

(Budget Estimates 2 June 2005)

Outcome 2

Topic: 'Residential accommodation'

Written Question Supp W14

Senator Watson asked:

Marana Holdings Pty Ltd v Commissioner of Taxation [2004] FCAFC 307 (25 November 2004) Full Federal court

It was decided by the Full Federal Court in this case that the words "residential accommodation" imply that the premises be lived in on a permanent or long term basis. By default this would exclude residences offered to the public for short term occupation which did not fall into the definition of commercial residential. As a result, taxpayers are denied input tax credits if they purchased property units that they rent on a short term occupancy basis.

The current ATO ruling still treats such supplies as residential and therefore input taxed. There does not appear to have been any official statement made by the ATO since the outcome of this case. As such, taxpayers are uncertain as to whether they should follow the court's decision or adopt the current ATO view.

- Does the ATO intend reviewing its current ruling on the subject matter to remove this uncertainty amongst taxpayers?

Answer: Yes.

We are currently reviewing Public Ruling *Goods and Services Tax Ruling 2000/20 Goods and Services Tax: commercial residential premises* (the ruling). This ruling provides guidance, amongst other things, on what is meant by 'residential premises'. The Federal Court decision in *Marana Holdings Pty Ltd v Commissioner of Taxation [2004] FCAFC 307 (Marana Holdings)* is being taken into account during the review of the ruling. The Tax Office is consulting with the Indirect Taxes Rulings Panel, industry groups, tax professionals and the Treasury.

Due to the ongoing consultation, the expected release date of the draft ruling has been postponed a number of times and the current expected date for the release of the draft is November 2005.