

**Senate Economics Legislation Committee**

**ANSWERS TO QUESTIONS ON NOTICE**

**Treasury Portfolio**

Budget Estimates 30 May – 1 June 2006

**Question: bet 52**

**Topic:** GST on Commercial/Residential Premises

**Hansard Page:** **Written**

**Senator SHERRY asked:**

**Background –**

Following the decision of the Full Federal Court in *Marana Holdings Pty Ltd v Commissioner of Taxation*, the government has proposed to retrospectively amend the goods and services tax (GST) law with effect from 1 July 2000 to ensure that supplies involving properties such as serviced apartments and strata titled units leased to guests or hotel operators are treated as input taxed.

The Federal Court decision effectively allowed all investors, including mum and dad investors who were operating short stay accommodation properties on a commercial basis, to claim an input tax credit in respect of any GST paid upon the purchase, management or maintenance of their property.

Hotel operators providing identical supplies, but in their own right, were previously able to claim an ITC and were not affected by the Federal Court's decision.

Considering the lag time between the Federal Court decision of 15 March 2004 and the introduction of amending legislation into Parliament on 25 May 2006, there are likely to be affected investors who became eligible to claim an ITC, investors who are have made a claim for an ITC, investors who entered into arrangements on the understanding that they could claim an ITC and investors who may have subsequently received an ITC.

**Questions –**

- (1) Why has the government decided to continue the differential taxation of some forms of commercial residential accommodation?
- (2) How will the government's retrospective change to the GST Act affect persons who have entered into an investment in good faith after the Federal court's decision and prior to the Minister's announcement?
- (3) How will the amendment affect persons who have an ITC claim pending with the ATO?
- (4) Will the government seek to 'claw back' ITCs which have been previously granted to affected investors by the ATO?

**Answer:**

See answer to Parliamentary Question on Notice number 3763 recorded in the House of Representatives Hansard of 12 October 2006 on pages 105 to 106.