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Mr. Peter Hallahan  
Committee Secretary  
Senate Economics Committee  
Department of the Senate  
PO Box 6100, Parliament House  
Canberra ACT 2600

Email: [economic.sen@aph.gov.au](mailto:economic.sen@aph.gov.au)

Dear Mr Hallahan,

**Senate Economics Committee Inquiry into Tax Laws Amendment (2006 Measures No. 3) Bill 2006 – Schedule 15**

The Taxation Institute of Australia wishes to express to the Committee our strong concerns about the retrospectivity of the schedule 15 of the Tax Laws Amendment (2006 Measures No. 3) Bill 2006, which proposes to amend the GST Act to effectively continue the ATO's approach to the tax treatment of property (set out in GSTR 2000/20) that existed prior to the Court's decision in *Marana Holdings*.

We are concerned that this retrospective approach flies in the face of the rule of law. Where a court has interpreted a provision of the law in a particular way, citizens who have followed that decision should not find themselves subsequently in breach of the law by virtue of retrospective legislation. This is not a case of tax avoidance or evasion and therefore the retrospective nature of this change would seem to stand contrary to successive governments' approach to limit retrospective laws only to those types of situations.

If the legislation is to proceed it should contain transitional provisions that ensure that taxpayers who have structured their transactions in accordance with the decision of the Full Federal Court in *Marana* prior to the Government's announcement of the proposed changes on 27 February 2006 are grandfathered under these measures. This would only apply where taxpayers have indicated that they have adopted this approach by the lodgement of Business Activity Statements consistent with *Marana*. This would ensure equity which currently does not exist.

Should you have any queries in relation to the matters raised in this submission, please contact the Taxation Institute's Senior Tax Counsel, Dr Michael Dirkis, on 02 8223 0011.

Yours faithfully

A handwritten signature in black ink, appearing to read 'Andrew Mills', is written over a light blue horizontal line.

Andrew Mills  
President