



## May Tax Bill reported back

### Snapshot

The Finance and Expenditure Select Committee ("FEC") has reported back the May 2016 **Taxation (Annual Rates for 2016-17, Closely Held Companies, and Remedial Matters) Bill** (the "Bill"). Our previous **taxmail** discusses the Bill as introduced.

The FEC's recommendations include:

- Leaving the Approved Issuer Levy ("AIL") eligibility requirements unchanged. The Bill proposed allowing AIL only if the NZ borrower or foreign lender were financial institutions or widely-held companies, or if total interest payable to non-residents was at least NZ\$500k per annum.
- Including an intention test for "back-to-back loans", and other indirect associated lending, so that AIL continues to apply to genuine commercial arrangements.
- Redrafting the "related parties debt remission" provisions in the Bill to make those rules clearer. The broad substance, no debt remission income in certain circumstances, is largely unchanged.

The other changes to the Bill are mainly clarifications. It now awaits enactment.

Those interested in what submitters on the Bill suggested can read the 270 page Officials' Report

While only a fraction of those submissions were accepted by Officials, and ultimately the FEC, the AIL change illustrates the continuing importance of the submissions process

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## What are the key changes in the reported back Bill?

The reported back Bill:

### NRWT and related-party lending

- Removes restrictions on who can apply the AIL. The existing eligibility requirements continue to apply. (The Bill proposed limiting AIL to NZ borrowers or foreign lenders that are financial institutions or widely-held companies, or if the NZ borrower pays interest of at least NZ\$500k per annum to non-residents.)
- Requires the parties to back-to-back loans, and other indirect associated lending arrangements, to meet an intention test for NRWT (and not AIL) to apply. This is designed to exclude genuine commercial arrangements from the scope of the new rules.
- Stops double inclusion for NRWT purposes – i.e. as both Non-resident Financial Arrangements Income (“NRFAI”), under the new rules, and when interest is paid. (A similar change applies for NRWT/AIL on notional loans.)
- Excludes NRFAI arising when the foreign lender is acting through a NZ branch.
- Excludes amounts payable to non-related lenders from the calculation of NRFAI.
- Confirms that AIL is refundable to the extent a transfer pricing adjustment reduces NZ deductible interest.
- Contains a new “outlines and concepts” section for the new NRFAI rules.

### Related-parties debt remission

- Explicitly excludes “nominal” shareholdings when calculating ownership and debt percentages under the new rules.
- Clarifies a step up in Available Subscribed Capital (“ASC”) on debt capitalisation. Retained earnings are not converted to capital gains on a debt remission subject to the new rules.
- Limits the denial of a bad debt deduction (to the creditor) to when the debtor has obtained a NZ tax deduction.

### GST on capital raising costs

- Replaces zero-rating of financial services on capital raising with a deduction rule. (This is to remove the need to value financial services in the GST return.)
- Extends the ability to claim GST on capital raising costs to include unsuccessful capital raising attempts. (This change was recommended by KPMG.)

### Closely-held companies

- Contains various amendments to the Look Through Company (“LTC”) eligibility changes to clarify the grandfathering of Maori authorities and charities as LTC counted owners, and to count multiple trustees as individual owners (when no distribution is made to their beneficiaries). Otherwise, the changes confirm the proposals rather than altering their substance.

### Other

- Clarifies that the time bar for ancillary taxes and AIL applies from the end of the period in which the relevant return is filed.

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## Our view

The FEC's changes are largely aimed at clarifying the rules, and correcting drafting errors, rather than substantive. This is consistent with past submission processes.

A welcome exception is the FEC agreeing with submitters (including KPMG) that changes to restrict AIL were not justified. Accordingly, the current eligibility requirements for AIL will remain. This should provide certainty that current lending arrangements, which rely on the AIL concession, are unaffected.

Those interested in what submitters on the Bill suggested can read the 270 page [Officials' Report](#). While only a fraction of those submissions were accepted by Officials, and ultimately the FEC, the AIL change and the detailed technical amendments illustrate the continuing importance of the submissions process. The result should be better and clearer legislation.

## For further information

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