

## Approved Issuer Levy/NRWT...

Changes are afoot to the rules imposing non-resident withholding tax (NRWT) on related party debt. The proposed changes principally target misuse of the approved issuer levy (AIL) regime. They also target misuse of existing exemptions from the NRWT rules.

These changes will have broad impact. Both legitimate and "devised" cross border funding arrangements will be affected. Hence, whatever cross border funding arrangement you presently have in place, take note.

The proposed changes to the AIL regime will limit their eligibility to securities where not less than 75% of the funding is expected to derive from either a financial intermediary or raised from a group of 10 or more non-associated persons. Further, back-to-back loans as a means of fitting into the AIL regime will no longer be permitted. Likewise, rules are to be introduced to address interest payments to non-associates but which would be made to an associate if lenders "acting together" were recognised.

As for the rate of AIL itself, no change is proposed. The 2% levy (technically not a tax, but a duty) is thought not to discourage foreign investment into New Zealand nor is it thought to be sufficiently high to impact on the borrower's cost of capital where the levy is grossed up and thereby effectively passed onto the New Zealand consumer.

The proposed NRWT changes are a tax advisor's dream. What is presently simple, will become complex (assuming the proposals are implemented). Gone will be the existing definitions of "interest" and "money lent". In their place will be extension of the existing financial arrangements rules to cross border funding and introduction of another tax acronym NRFAI, being Non Resident Financial Arrangement Income.

Lastly, the NRWT exemption for interest attributable to activities of an overseas branch of a New Zealand company and paid to a non-resident lender will be limited. Likewise in the case of the exemption for New Zealand branches of non-resident lenders.