

**Comments on revised draft legislation *New Business Tax System (Debt and Equity) Bill 2001***

1. **Section 25-85** – the reference to “return” should be clarified. Return for the purposes of section 153(10)(1) includes a return of an amount invested in the interest or right. Perhaps it should be made clear in section 25-85 that the reference to “return” in section 25-85 does not include a return of an amount invested in the interest or right. There should also be similar wording to that in section 25-85 in the previous draft legislation which provides that a dividend paid in relation to a non equity share which is treated as a debt interest should be deductible under section 8-1.
2. **Section 25-85(2)** – this subsection refers to a return which is contingent on economic performance. It would be consistent if this subsection also included returns which are at the discretion of the company or a related entity or returns on converting or convertible interests.
3. **Section 25-85(3)** – it is unreasonable to impose an arbitrarily determined maximum return for the purposes of subsection 25-85(2) if the interest satisfies the basic debt test.

Section 22

