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Assistant Secretary  
The Treasury  
CANBERRA ACT 2600

**RE: New Business Tax System (Debt and Equity) Bill 2001**

Dear ,

Thank you for the opportunity to review and comment on the above draft legislation.  
My comments are outlined in the attachment to this letter.

Please let me know if you would like more information or clarification on any of the points raised.

Yours faithfully

Head of Group Taxation  
Westpac Banking Corp

## **25-85 certain returns in respect of debt interests in a company.**

Section 25-85 (2) is subject to the restrictions imposed by 25-85 (3).

There are a number of issues with the application of 25-85 (3).

1. I'm not sure of the intention or intended scope of this came out. However, the margin above the benchmark rate of return of 100 basis points appears to be too low. I would suggest that the margin be set in the range of 200-300 basis points. In the consultations between the ABA and Treasury a margin of 400 basis points was suggested.
2. The basis for determining the benchmark rate of return is too restrictive.

It will be very difficult for taxpayer's to satisfy all of the criteria in section 960-220 (1) (a) through to (f). Particularly, the requirements in paragraphs (e) and (f). If it is accepted that an instrument which would otherwise qualify as equity can be treated as debt, where the return payable on that instrument is within an acceptable range, it is likely that the instrument will have a different credit status and subordination.

This is to some extent dealt with in section 960-220 (2). However it is not clear how much variation from the criteria specified in section 960-220 (1) (a) through to (f) is acceptable.

## **Section 22**

