

Plenary Origination Pty Ltd

Level 43, Rialto South Tower
525 Collins Street
Melbourne VIC 3000 Australia

Telephone +61 3 8888 7700
Facsimile +61 3 8888 7701

www.plenarygroup.com

18 April 2017

Hon Steven Joyce – Minister of Finance
Hon Judith Collins – Minister of Revenue

Inland Revenue
PO Box 2198
Wellington 6140

Dear Hon Steven Joyce, Hon Judith Collins,

Plenary's submission on "BEPS – Strengthening our interest limitation rules" Discussion Document

Through our engagement with Dan Marshall and Treasury's PPP unit, we welcome the opportunity to make a submission in relation to Inland Revenue's discussion document around the strengthening of New Zealand's interest limitation rules from the perspective of a long term infrastructure investor. Plenary has reviewed the document and notes the following:

- i. Plenary primarily invests in availability infrastructure PPPs which is typically more highly geared than other 'real' asset classes and as such we will always need to consider rules around interest limitation and denial in each specific jurisdiction in which we operate. We positively view the NZ Government acknowledging the need to treat qualifying infrastructure projects as needing a special thin cap rule due to the potential gearing outcomes.
- ii. Plenary agrees with 5.7; non-recourse, third-party project financing used in funding infrastructure projects presents minimal risk of BEPS.
- iii. A minor comment in relation to 5.10 and 3.8 around the "commerciality" of debt and debt terms specific for infrastructure project investment – infrastructure investments typically have a defined maximum investment horizon, ie the concession term. As such, an infrastructure investor may elect to pay a premium for extending the tenor of debt which de-risks the investment from a refinancing point of view, closer aligning assets and liabilities.
- iv. In relation to 5.12 and noting the current framework described in 5.8, 5.9, 5.10, and 5.11, Plenary welcomes the proposed carve-out for infrastructure projects with third-party financing. Reliance on an overarching and blunt instrument such as a worldwide gearing test (at the current threshold) may in some circumstances result in suboptimal outcomes if as a result of interest limitation or denial (as a result of infrastructure related genuine, third-party, non-recourse financing), projects are forced to de-leverage beyond what could be commercially achieved given its risk profile.

This infrastructure carve-out will address current issues around thin capitalisation in relation to investments controlled by a single non-resident, levelling the playing field and making New Zealand an even more attractive investment destination. It will also ensure New Zealand infrastructure is delivered with optimal capital structures. This proposal ultimately gives

greater flexibility than at present and also assists with the secondary market for equity transfers.

Also in relation to 5.12, we recommend that the proposal should be implemented to ensure Limited Partnerships undertaking a qualifying infrastructure project to be the tested entity rather than tracing through and testing the individual partners comprising the Limited Partnership.

On a connected note, in relation to 5.13 we acknowledge the proposal that the thin capitalisation exemption is limited to third party debt and would not apply to non-qualifying debt such shareholder loans.

- v. In response to 5.17, the conditions contained in 5.12 are sufficient from Plenary's point of view to very precisely define the form of project where the proposed carve-out would apply. We do note that the criteria should be should be sufficiently wide to include Local Authorities as well as Central Government.
- vi. Further to our above point (v), in relation to 5.15, 5.20, and 5.21, we understand that for a group of non-residents holding a controlling interest acting together are already 'effectively exempt' from thin capitalisation rules. Given the clear conditions proposed in 5.12 and how the proposed carve-out would operate, Plenary's position with respect to infrastructure projects is that for clarity and simplicity of application of intent, the carve-out should extend to all infrastructure projects which meet the conditions in 5.12 irrespective of equity holding structure.

This should not contravene the intention of guarding against BEPS while ensuring government sanctioned infrastructure projects are not incorrectly penalised.

- vii. There are instances for infrastructure projects where at the suggestion of the procuring government authority, all senior debt is replaced with the full use of government funding on the basis that the government can borrow at cheaper rates than the private sector. In this circumstance, a superior outcome for government would be achieved if there was no interest limitation on related party non-recourse financing – in the context that the government would be the ultimate beneficiary of a more cost effective offering from the private sector.

Plenary appreciates the constructive steps Inland Revenue is taking to strengthening New Zealand's interest limitation rules in a considered manner with reference to international best practice and guidance, and we see the positions put forward in the Discussion Paper with respect to infrastructure project finance as positive for direct inbound investment into New Zealand.

Please do not hesitate to contact me on 9(2)(a) [REDACTED] should you wish to discuss our submission further.

Yours sincerely,



Paul Crowe
Executive Director
Head of Origination
Plenary Group