

Regulatory Impact Statement: Approved issuer levy retrospective registration

Coversheet

Purpose of Document	
Decision sought:	Analysis produced for the purpose of informing final Cabinet decisions
Advising agencies:	Inland Revenue
Proposing Ministers:	Minister of Revenue and Minister of Finance
Date finalised:	31 May 2024
Problem Definition	
<p>If a borrower does not register a security for approved issuer levy (AIL) before interest is paid, Inland Revenue does not currently have any administrative flexibility to allow AIL to be paid on that interest. This has significant implications for New Zealand borrowers that do not meet the AIL registration requirements on time, but would otherwise be eligible for AIL, as they are required to withhold non-resident withholding tax (NRWT) at 15% (or 10% under a double tax treaty) on interest payments to non-resident lenders, instead of paying AIL at 2%. This has the effect of increasing the cost of capital for some New Zealand borrowers that the AIL regime was intended to help. While this is not a widespread issue, there is a case to allow retrospective registration in some limited circumstances.</p>	
Executive Summary	
Background	
<p>The AIL regime was introduced in 1991 to help lower the cost of capital to New Zealand borrowers when borrowing from unassociated non-resident lenders.</p> <p>Where a New Zealand borrower pays interest to an unassociated non-resident lender, it would generally be required to withhold NRWT at 15% (or 10% if the lender is in a country that has a double tax treaty with New Zealand) on the interest payments and remit this to Inland Revenue. However, foreign lenders typically demand a certain after-tax return on their investment. Therefore, unless the lender can easily claim a full tax credit for New Zealand NRWT in its home jurisdiction, which can be relatively uncommon, it will likely require the borrower to 'gross up' their interest payments to cover the NRWT.¹ This increases the cost of capital for the New Zealand borrower.</p> <p>The AIL regime significantly reduces the tax cost for many New Zealand borrowers by providing them with the option to pay a 2% 'approved issuer levy' to Inland Revenue on the interest paid to the foreign lender, instead of having the interest subject to the NRWT regime at 10%/15%.</p>	

¹ This is where the interest rate is effectively increased so that after NRWT is withheld the lender still receives the amount it would require in the absence of NRWT.

There were approximately 1,200 taxpayers filing AIL returns and making AIL payments totalling \$153m for the year ended 30 June 2023.

Registration requirements

To be eligible to pay AIL on a particular security, the borrower is required: (i) to register as an approved issuer for AIL; and (ii) to register the security for AIL before an interest payment is made. This is appropriate as NRWT is required to be withheld from the interest payments to the borrower if the security is not registered, and it is much simpler to withhold NRWT at the point the interest is paid. However, most lenders require borrowers to either pay AIL or gross up their interest payments to cover the NRWT, such that the tax cost falls on the borrower and so AIL at 2% is preferred.

If a borrower makes a mistake by not registering for AIL in time, they are liable for NRWT on any interest paid on the security to date at 10%/15%. While late registration for AIL is not a common issue, Inland Revenue is aware of several borrowers that have found themselves in this situation and voluntarily disclosed it to Inland Revenue (or had it picked up on review upon registration) asking for the Commissioner to apply his 'care and management' discretion under section 6A of the Tax Administration Act 1994. Inland Revenue's practice in such cases has been to enforce collection of NRWT on any interest paid prior to registration as it does not have the administrative flexibility or discretion to allow retrospective registration for AIL.

The lack of administrative flexibility can be a problem for three main reasons:

1. It is contrary to the intent of the AIL regime which is designed to reduce the cost of capital for borrowers where the lender would otherwise pass the tax cost onto the borrower.
2. It provides outcomes in some circumstances that could be seen as unfair and incoherent. For example, a borrower who has registered a security but has not paid AIL or withheld NRWT is still permitted to pay AIL at 2% on the interest when the mistake is discovered (albeit with use of money interest and potential penalties). This can be contrasted with a borrower who has not registered a security but has paid AIL; they remain liable for NRWT at 10%/15%. The second borrower has a significantly higher tax cost even though they were arguably less non-compliant than the first borrower by advising Inland Revenue of the interest payments through the AIL return and paying AIL on time (albeit accepting they were not entitled to do so because of the failure to register the security).
3. If taxpayers know that informing Inland Revenue of an administrative mistake will result in a larger than expected tax bill, they may decide not to disclose it, undermining voluntary compliance in respect of AIL/NRWT.

Government intervention is required if the Government wishes for Inland Revenue to have administrative flexibility to allow retrospective registration in some limited circumstances.

Two options are considered:

Option 1: Status quo

Borrowers who mistakenly do not register securities for AIL before making the first interest payment would generally continue to have NRWT applied to the interest paid prior to AIL registration once the mistake was discovered by Inland Revenue.

Option 2: Retrospective registration (preferred option)

Legislative provision would be made for a borrower who had not met the AIL registration requirements for the security (or itself) to be able to register retrospectively with Inland Revenue in limited circumstances. The security could therefore be treated as registered before the first interest payment was made, and accordingly, the borrower would be entitled to pay AIL on the interest payments made up to the date of retrospective registration, rather than NRWT. Use of money interest and penalties could still apply.

Conditions should be imposed on retrospective registration to ensure that it is:

- available only to borrowers who failed to register the security at the outset due to a genuine error; and
- not available indefinitely (e.g. the taxpayer may need to apply for registration within a certain period (say 1-2 years) after the first interest payment).

On balance Inland Revenue's preferred option is Option 2. This is primarily because it provides the administrative flexibility for the Commissioner to subject borrowers to the appropriate tax impost when they borrow from an unassociated non-resident but do not register the security for AIL before they make interest payments. This may be AIL in some circumstances and NRWT in other circumstances.

The key risk is that allowing retrospective registration for AIL could undermine the integrity of the NRWT and AIL regimes. However, this risk should be mitigated by the conditions imposed on retrospective registration, which would target it at cases of genuine error, and limit it to a particular time window.

Stakeholder views

There has been limited consultation on allowing retrospective registration, although private sector stakeholders have previously sought it as a solution. The limited consultation was broadly supportive of the concept.

Fiscal cost

Extrapolating from a few past cases, allowing retrospective registration of securities for AIL is estimated to have a fiscal cost of \$200,000 per year. This estimate is primarily based on infrequent larger cases being averaged to this amount per year rather than smaller cases in each year totalling to this amount.

Limitations and Constraints on Analysis

The scope of the options considered was limited to comparing the status quo to allowing retrospective registration in some limited circumstances. This is because that was the simplest way to allow administrative flexibility to deal with late registrations.

There were other options that could potentially have dealt with late registrations, including: (i) universal or targeted exemptions for NRWT on interest paid to unassociated non-resident lenders; or (ii) changing the default position for borrowing from unassociated non-

resident lenders to AIL (instead of NRWT). Such wholesale changes to the AIL/NRWT rules were not considered.

The preferred option has not been tested in detail with private sector stakeholders, since retrospective registration is what stakeholders have themselves suggested. In our view, the bill process will provide sufficient opportunity for stakeholders to comment on the detail of the proposal.

There is no central list of cases of borrowers not registering securities for AIL on time. Therefore, the impact analysis and fiscal cost has been based on various internal discussions and correspondence to understand the cases that some who have worked closely with AIL are aware of. This may not be complete, but should provide a reasonable picture of the scale of the issue (i.e. relatively few cases but some with significant NRWT costs for the taxpayer).

Responsible Manager(s) (completed by relevant manager)

s 9(2)(a)

Sam Rowe
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31 May 2024

Quality Assurance (completed by QA panel)

Reviewing Agency:	Inland Revenue
Panel Assessment & Comment:	<p>The Quality Assurance panel at Inland Revenue has reviewed the regulatory impact statement (RIS) prepared by Inland Revenue. The panel considers that the information and analysis summarised in the RIS <i>Approved issuer levy retrospective registration</i> partially meets the quality assurance criteria.</p> <p>The RIS sets out the problem with the status quo and provides a convincing argument that retrospective registration should be available in certain circumstances. The RIS only partially meets the complete criteria as it does not consider situations where AIL would not be available even under the proposed retrospective registration but there are no deliberate non-compliance concerns. The preferred option in the RIS will reduce the instances of the problem arising but there is a risk that it does not remove it from all potentially valid circumstances.</p>

Section 1: Diagnosing the policy problem

What is the context behind the policy problem and how is the status quo expected to develop?

1. Where a New Zealand borrower pays interest to an unassociated non-resident lender, they are generally subject to non-resident withholding tax (NRWT) by default at 10% or 15%.² However, they can instead opt to pay a 2% (or in certain cases 0%³) 'approved issuer levy' (AIL) which reduces the NRWT liability to zero.
2. The AIL regime was introduced in 1991 to reduce the cost of third-party debt provided by non-residents to New Zealand borrowers. Foreign lenders can typically demand a certain after-tax return on their investment. Therefore, unless the lender can easily claim a full credit for New Zealand NRWT in its home jurisdiction⁴, it will typically require the borrower to gross up their interest payments to cover the NRWT, which increases the cost of capital for the New Zealand borrower. If the borrower is not willing to do this, then the lender will simply take its investment elsewhere, limiting the pool of capital available to New Zealand. The AIL regime significantly reduces the tax cost to the borrower in situations where the lender would pass the tax cost onto the borrower.⁵
3. To be eligible to pay AIL rather than NRWT on a particular security, the borrower is required to be registered as an approved issuer and to register the security for AIL before an interest payment is made. If the borrower does not register the security for AIL at the outset and sometime later the Commissioner of Inland Revenue becomes aware of the mistake (whether through audit, review, or a voluntary disclosure by the borrower), the borrower can register the security at that later time, but on a prospective basis, meaning they continue to have an NRWT liability on any interest payments already made. The Commissioner does not have the administrative flexibility to allow retrospective registration for AIL.⁶
4. While not common, Inland Revenue has dealt with several cases of borrowers mistakenly not registering securities for AIL on time. In some cases the borrower realised the mistake and disclosed it to Inland Revenue; in other cases the mistake was discovered on review. Regardless, Inland Revenue's practice is to enforce the existing NRWT obligation on the interest payments made prior to registration, in accordance with the AIL/NRWT legislation.

² The rate of NRWT depends on whether New Zealand has a double tax treaty with the country in which the lender is resident. The standard non-treaty rate of interest NRWT is 15%, whereas many treaties provide for a 10% rate.

³ The 0% rate is applicable to certain widely held retail bonds.

⁴ This will generally only be the case where the lender is taxable in its own jurisdiction at a rate high enough that the full amount of NRWT can be applied to reduce its domestic tax liability.

⁵ AIL is set at 2% rather than 0% to preserve the incentive for a borrower to withhold NRWT where the lender will be able to fully credit it in its own jurisdiction and therefore does not require a gross-up. If AIL were 0%, there would be no reason for either party to prefer NRWT in this scenario, so New Zealand would miss out on revenue.

⁶ This position, which follows from the drafting of section 86I(1) of the Stamp and Cheque Duties Act 1971, is made explicit in Tax Information Bulletin, Volume 7, No. 5 (November 1995). The TIB states that only interest paid to the non-resident from the date the security is registered for AIL can be subject to AIL instead of NRWT; the Commissioner does not have a discretion to alter the date of registration.

5. If no action is taken, borrowers that fail to register for AIL within the timeframe specified under the law will continue to be subject to NRWT. At the margin, this may discourage a borrower from disclosing a mistake to Inland Revenue, if they know that doing so will significantly increase their core tax liability. However, it can also be assumed that most borrowers know they could face substantial penalties if found to be non-compliant in this way.

What is the policy problem or opportunity?

6. The policy problem is that the Commissioner does not have the administrative flexibility to allow a borrower to retrospectively register a security for AIL in any circumstances. Consequently, the core tax liability of any borrower who is discovered not to have registered a security for AIL before making the first interest payment increases from 2% to 10% or 15% on the interest paid. This is a problem for three main reasons.
7. First, it is contrary to the intent of the AIL regime, which is designed to reduce the cost of capital for borrowers where the lender would otherwise pass the tax cost onto the borrower.
8. Second, it provides outcomes in some circumstances that could be seen as unfair and incoherent. For example, consider a borrower who has registered a security but has not paid AIL or withheld NRWT; such a borrower is still permitted to pay AIL at 2% rather than NRWT on the interest when the mistake is discovered (albeit with use of money interest and potential penalties).⁷ This can be contrasted with a borrower that has not registered a security but has paid AIL; such a borrower continues to be liable for NRWT at 10%/15% when the mistake is discovered. The second borrower has a significantly higher tax cost even though they were arguably less non-compliant than the first borrower by advising Inland Revenue of the interest payments through the AIL return and paying AIL on time.
9. Third, there is a risk that if taxpayers know that informing Inland Revenue of an administrative mistake will result in a larger than expected tax bill, some may decide not to disclose it, undermining voluntary compliance in respect of AIL/NRWT.
10. Inland Revenue guidance⁸ states that a security will be registered if the registration form is duly completed and the security relates to money lent to an approved issuer after 1 August 1991. No further requirements for approval of registrations are stipulated. One security can be registered online through MyIR with other securities registered separately by completing the registration form (IR 396/397). The form contains various fields in which information about the issuer and the securities is to be recorded. Only one field contains a criterion for declining a registration – ‘Is interest being paid to an associated person or persons?’ Next to the ‘Yes’ box is a note stating

⁷ Note: when the AIL regime was first introduced, late payment of AIL on a registered security generally resulted in a reversion to NRWT. This was changed in 2001 as one of three amendments to the AIL regime, with the commentary to the Taxation (Beneficiary Income of Minors, Services-related Payments and Remedial Matters) Bill noting that: “A reversion to NRWT was not originally considered a penalty, as in 1991 NRWT was the norm and AIL was a concession. Over time, however, as the payment of AIL has become the norm, the imposition of NRWT has become to be seen as a penalty for late payment out of line with other penalties for late payment. Thus for consistency with all other revenues administered by Inland Revenue, an amendment is being made to incorporate AIL within the compliance and penalty rules.”

⁸ IR 395 (‘Approved issuer levy – A guide for payers’) and Tax Information Bulletin Vol. 3, No. 2 (August 1991) refer. The relevant legislation is section 86H of the Stamp and Cheque Duties Act 1991.

that AIL is not applicable in that case, and NRWT must be deducted.⁹ Thus, if the borrower fills out all the fields of the form, indicates they are unassociated with the lender, and the security relates to money lent to them after 1 August 1991, then the security will be registered (unless there is cause for Inland Revenue to question the validity of the registration).

11. It is preferable that registration occurs at the time the security is entered into, and before the borrower makes an interest payment to the lender (as required under the status quo) because it gives Inland Revenue oversight of the securities being registered and provides some level of assurance that the borrower is eligible for AIL before they start paying it in lieu of NRWT. It importantly also means that the borrower is aware of their AIL/NRWT obligations and allows Inland Revenue to set up the borrower as an approved issuer (if this is the first security they are registering) before the first payment is due. But requiring an otherwise-eligible borrower to pay NRWT for neglecting to observe this reporting requirement at the outset could be seen as harsh in some cases.

Reasons for failure to register

12. There are a number of possible reasons why a borrower might neglect to register a security for AIL. These reasons fall on a spectrum between genuine error and deliberate non-compliance.
13. Examples of genuine error could include:
 - i) The taxpayer has a strong history of AIL compliance, but omits to register a particular security which the taxpayer still includes in its AIL returns such that AIL was filed and paid on time (just not registered for the security).
 - ii) The taxpayer has a strong history of AIL compliance, but omits to register a security and pay AIL for a short period of time because of a change in personnel, or temporary lack of coordination between those responsible for treasury and tax.
 - iii) Incorrect understanding of compliance obligations at the relevant time (primarily individuals and small businesses that are new to borrowing from foreign lenders).
14. Examples of deliberate non-compliance could include:
 - i) The issuer not wanting to bear any tax cost so not registering the security or paying any AIL (or NRWT).
 - ii) The issuer being an approved issuer but not eligible for AIL on the particular security (e.g. because they are associated with the lender) but not wanting to deduct NRWT, so simply paying AIL without registering the security.
15. There could also be examples that fall somewhere between genuine error and deliberate non-compliance.

⁹ The legislative basis for this is section RF 12(1)(a)(ii) of the Income Tax Act 2007, which provides that the lender must not be associated with the borrower if NRWT is to be zero rated.

16. The boundary between genuine error and other reasons is important in designing a response to the policy problem.

Scale of the problem

17. There were approximately 1,200 taxpayers filing AIL returns and making AIL payments totalling \$153 million for the year ended 30 June 2023. This represents annual interest of approximately \$7.7 billion subject to the 2% rate.
18. Inland Revenue has dealt with several cases in which a corporate borrower neglected to register a new security for AIL and notified the Commissioner of the mistake sometime later. In one case this resulted in the borrower incurring an additional \$2 million in NRWT. In other cases, the amounts of additional NRWT were less than \$1 million. The corporate cases appear to be sporadic; only a few have been identified over the last fifteen years. However, they contribute the majority of the fiscal cost assumed in this RIS.
19. Inland Revenue has also dealt with a number of individual borrowers who have inadvertently not met AIL registration requirements. Exact figures are not available.
20. The most common scenario involves an individual with a foreign mortgage on an overseas property – the individual does not realise until sometime into the term of the mortgage that they have New Zealand tax obligations in relation to the interest payments flowing from their overseas bank account to the overseas lender. When the individual does become aware of their obligations, they register the loan for AIL, but are required to pay NRWT on the interest paid prior to registration.¹⁰
21. The amounts of additional tax paid in the cases involving individual borrowers are generally less than \$10,000. This is reflective of AIL and NRWT being small percentages. For example, suppose an individual borrowed the equivalent of NZ \$1 million from a UK bank at a fixed 5% rate of interest. The interest in year 1 would be \$50,000, and the tax payable for that year would be \$1,000 of AIL at 2% or \$5,000 of NRWT at 10%, the differential ('additional tax') being \$4,000.¹¹ Thus, for an individual to incur more than \$10,000 of additional tax as a result of failing to register a loan for AIL on time, the loan would generally be significant (over \$1 million in the example), or the error would have to be discovered several years after interest payments began.
22. The overall picture is that mistakes with AIL registration are uncommon generally, but somewhat more common in an individual context than a corporate context. This is likely because corporates are generally well-advised and familiar with the AIL regime, while some individuals with foreign loans may not be. In either case, the default removal of access to 0% NRWT increases the borrower's cost of funds.

¹⁰ It should be noted, however, that if the foreign lender has a New Zealand branch and the interest is paid to that branch, the individual has no NRWT or AIL obligation as the obligation remains with the foreign lender and its New Zealand branch.

¹¹ In practice the differential could be slightly higher than \$4,000 as the NRWT may be grossed up.

Stakeholder engagement

23. Several private sector firms and groups have written to Inland Revenue and the Minister of Revenue about this issue over the past few years. While mistakes with AIL registration are uncommon generally, as previously noted, they are a pain point for the taxpayers involved, and private sector stakeholders generally view the current policy of enforcing the NRWT liability in these cases as punitive and disproportionate to the gravity of the mistake.
24. There has been limited consultation on allowing retrospective registration, since retrospective registration is what stakeholders have themselves suggested. In our view, the bill process will provide sufficient opportunity for stakeholders to comment on the detail of the proposal.

What objectives are sought in relation to the policy problem?

25. The policy objective is to subject borrowers to the appropriate tax impost when they borrow from an unassociated non-resident but fail to register the security for AIL before starting interest payments.

Section 2: Deciding upon an option to address the policy problem

What criteria will be used to compare options to the status quo?

26. Four criteria will be used to compare options to the status quo:
- a. **Flexibility:** the degree to which the option allows borrowers to access the AIL regime despite making genuine errors with registration.
 - b. **Voluntary compliance:** the degree to which the option encourages voluntary compliance with the AIL regime and the tax system more broadly.
 - c. **Coherence:** the alignment of tax outcomes in substantively similar sets of circumstances.
 - d. **Administration costs:** the costs associated with Inland Revenue implementing and administering the option.

What scope will options be considered within?

27. The scope is limited to regulatory options, on the basis that AIL is a regulatory regime and problems with the core mechanics of it cannot be solved without legislative change.
28. The scope of the regulatory options is limited to comparing the status quo to legislative changes to allow retrospective AIL registration in some limited circumstances. This is because that is the simplest way to allow administrative flexibility to deal with late registrations.
29. There are other options that could potentially deal with such late registrations, including: (i) universal or targeted exemptions for NRWT on interest paid to unassociated non-resident lenders; or (ii) changing the default position for borrowing from unassociated non-resident lenders to AIL (instead of NRWT) and abolishing the registration requirement. Such wholesale changes to the AIL/NRWT rules are not considered as they go much further than addressing the specific and relatively uncommon policy problem of failure to register securities for AIL on time, and would need to be considered in a wider review of the AIL regime.
30. Experience from other countries could not be considered, as the AIL regime is unique to New Zealand.

What options are being considered?

Option One – *Status Quo*

31. Under the status quo, borrowers who do not register securities for AIL before making an interest payment will continue to be subject to NRWT on the interest paid prior to AIL registration once the mistake is discovered by Inland Revenue (whether through the borrower's own disclosure or otherwise). This will result in an increased cost of capital for the borrowers on the securities.
32. **Flexibility:** No flexibility for Inland Revenue to let borrowers benefit from the AIL regime if they make a mistake with AIL registration.

33. **Voluntary compliance:** At the margin, some borrowers may take the risk of not disclosing mistakes with AIL registration if they know that doing so will alter their tax cost from AIL at 2% to NRWT at 10% or 15%. That said, at the margin, the high tax cost differential between the options may be encouraging borrowers to take more care with their AIL registrations such that mistakes are less likely.
34. **Coherence:** A borrower who registers a security for AIL on time but does not pay AIL will likely continue to get a better tax outcome than a borrower who does not register a security for AIL on time but does pay AIL, which could be seen as unfair and incoherent.
35. **Administration costs:** Administration costs are low; there are few requests for retrospective registration and these cannot be accepted.

Option Two – Retrospective registration (officials’ preferred option)

36. Legislative provision would be made for a borrower who had not met the AIL registration requirements for the security (or itself) before interest payments began to be able to register retrospectively with Inland Revenue in limited circumstances. The security could therefore be treated as registered before the first interest payment was made, and accordingly, the borrower would be entitled to pay AIL on the interest payments, rather than NRWT on interest payments before the security was registered. Use of money interest and penalties could still apply.
37. Conditions should be imposed on retrospective registration to ensure that it is:
 - i) available only to borrowers who failed to register the security at the outset due to a genuine error; and
 - ii) not available indefinitely (e.g. the taxpayer may need to apply for registration within a certain period after the first interest payment (e.g. 1-2 years)).
38. The criteria for considering a retrospective registration should be set out in the legislation. Officials also considered outlining these criteria in guidance issued by Inland Revenue but on balance prefer including them in legislation to increase certainty for taxpayers and operational staff processing retrospective registrations.¹² Including the criteria in guidance has not been considered in this RIS as a separate option because its consideration against the RIS criteria would be very similar to option two.
39. The purpose of restricting retrospective registration to cases of genuine error would be to support voluntary compliance with the AIL regime. If retrospective registration for AIL were permitted in all circumstances, taxpayers could deliberately not comply with the regime in the knowledge that, if they were audited, they would get the same basic outcome as if they registered for and paid AIL on time (although interest and penalties could also be payable in the former case).

¹² Tax legislation does provide administrative flexibility for tax elections/tax type registrations in other cases. See for example, section HB 13(5) of the Income Tax Act 2007, which applies to look through company elections, and section 51(4) of the Goods and Services Tax Act 1985 (with associated guidance in *Standard Practice Statement 18/03*) in relation to the effective date of GST registrations (including retrospective registration).

40. The purpose of imposing a time limit on availability of retrospective registration would be to preserve fiscal certainty. If retrospective registration were available indefinitely, there would be an ongoing unquantified potential liability on the revenue. The time period should also help support AIL compliance at the margin, as borrowers would be incentivised to review their AIL compliance and identify and rectify registration mistakes in a timely manner.
41. **Flexibility:** Flexibility would be improved. The Commissioner would have the flexibility to allow borrowers to access the AIL regime when making genuine errors with registration within a particular time period. However, the time period will mean that the Commissioner has less flexibility to allow retrospective registration than if there was no time period.
42. **Voluntary compliance:** This option would promote voluntary compliance at the margin by keeping borrowers who report mistakes with AIL registration in the AIL regime in relation to past interest payments, rather than enforcing NRWT, which borrowers may perceive as a punitive treatment and thus attempt to evade. However, it would also lessen the incentive for borrowers to be fully compliant in the first place, at the margin, but the time period should mitigate this potential.
43. **Coherence:** This option would improve coherence by giving a borrower who did not register a security on time but paid AIL the potential for the same basic tax outcome as a borrower who registered a security but did not pay AIL (although interest and penalties could be payable). However, it would also potentially give a borrower who neither registered a security nor paid AIL on time due to a genuine error the same basic tax outcome as a fully compliant borrower that did register on time and paid AIL.
44. **Administration costs:** Administration costs would increase at the margin because Inland Revenue staff would need to review and process retrospective registrations, although there are not expected to be many cases.

How do the options compare to the status quo/counterfactual?

	Option One – <i>Counterfactual</i>	Option Two – <i>Retrospective registration</i>
Flexibility	0	++
Voluntary compliance	0	+
Coherence	0	+
Administration costs	0	-
Overall assessment	0	++

Key for qualitative judgements:

++	much better than doing nothing/the status quo/counterfactual
+	better than doing nothing/the status quo/counterfactual
0	about the same as doing nothing/the status quo/counterfactual
-	worse than doing nothing/the status quo/counterfactual
--	much worse than doing nothing/the status quo/counterfactual

What option is likely to best address the problem, meet the policy objectives, and deliver the highest net benefits?

45. Option two meets the policy objective; the status quo does not. Option two is likely to deliver the highest net benefits. It scores better on all criteria other than administration costs. Increased administration costs are the trade-off for increased flexibility of the ALL regime through the availability of retrospective registration. There is also a partial trade-off between flexibility and voluntary compliance; the more generous the criteria for retrospective registration, the less incentive borrowers have to register securities before an interest payment, though borrowers are more incentivised to report mistakes rather than conceal them. However, imposing conditions which target retrospective registration at cases of genuine error mitigates the adverse impact of increased flexibility on voluntary compliance with the base regime.

What are the marginal costs and benefits of the option?

Affected groups <i>(identify)</i>	Comment <i>nature of cost or benefit (eg, ongoing, one-off), evidence and assumption (eg, compliance rates), risks.</i>	Impact <i>\$m present value where appropriate, for monetised impacts; high, medium or low for non-monetised impacts.</i>	Evidence Certainty <i>High, medium, or low, and explain reasoning in comment column.</i>
Additional costs of the preferred option compared to taking no action			
Borrowers	No or negligible additional costs. Retrospective registration involves a compliance cost, but this should be similar to the compliance cost the borrower would have borne if they had registered the security for AIL on time in the first place.	N/A	Medium
Inland Revenue	Low additional administrative costs of Inland Revenue staff processing retrospective registrations for AIL.	Low	Medium
Government	Small fiscal cost as a result of no longer requiring some borrowers to pay NRWT instead of AIL.	Approx. \$200,000 per year from the 2025/26 year onwards (based on extrapolation from past cases)	Low
Total monetised costs		Approx. \$200,000 per year	Low
Non-monetised costs		Low	Medium
Additional benefits of the preferred option compared to taking no action			
Borrowers	Reduced tax cost of borrowing	Approx. \$200,000 per year (equal to fiscal cost)	Low
Inland Revenue	Improved compliance with AIL regime	Low	Low
Government	None	N/A	Medium
Total monetised benefits		Approx. \$200,000 per year	Low
Non-monetised benefits		Medium	Low

46. One assumption underlying this analysis is that some borrowers will neglect to register securities for AIL at the outset in the future, and will request retrospective registration. This assumption is based on an extrapolation from past occurrences, as described in

the section 'Scale of the problem', and helps inform the fiscal costing. However, there is no guarantee that the past is an accurate predictor of the future. The frequency of retrospective registration in the future is inherently uncertain, so the level of certainty as to the size of the benefit for borrowers is low.

Section 3: Delivering an option

How will the new arrangements be implemented?

47. A legislative provision for retrospective registration of securities for AIL would be enacted via amendments to the Stamp and Cheque Duties Act 1971, the Income Tax Act 2007, and the Tax Administration Act 1994 as required. These amendments will be included in the upcoming omnibus tax bill, which is scheduled to be introduced in August 2024.
48. Retrospective registration will be available from 1 April 2025, and will not be able to be backdated before that date. This will ensure the change is prospective and does not result in any borrowers coming forward and claiming refunds of NRWT paid as a consequence of past failures to register securities for AIL on time.
49. Inland Revenue will be responsible for processing applications for retrospective registration of a security for AIL, just as it is responsible for processing AIL registrations currently.
50. The exact details of implementation have not yet been determined, however retrospective registration will not require any significant systems changes.

How will the new arrangements be monitored, evaluated, and reviewed?

51. Tax policy officials will engage periodically with operational staff to monitor the number of retrospective AIL registrations, the kinds of circumstances in which retrospective registration is utilised, and how the process is working generally. Stakeholders will also have the opportunity to contact Inland Revenue through the usual channels about these matters. If any integrity concerns emerge in relation to retrospective registration, officials will consider a review of the policy.