



Further Update on Federal Taxation—Australian Infrastructure Investment and Privatisation

Last month, we reported in our [White Paper](#) on taxation proposals directed at infrastructure and utility privatisation transactions. Since we wrote, the Commonwealth Treasury ("Treasury") has published a policy paper directed at the use of stapled structures, for consultation. The [Treasury paper](#) focuses on the recharacterisation of trading income as "passive" flow-through income in these structures, on which we also reported in our White Paper.

In summary, Treasury states that the recharacterisation results in "taxation distortions" and that the federal government "is considering measures which remove the tax advantages of stapled arrangements". The cost of capital may increase for transactions which rely on stapled structures to improve investor after-tax rates of return, but Treasury says that appropriate policy changes will remove "distortions to investment decisions and improve competitive neutrality". Possible changes include:

- Disallowing cross-staple payment deductions;
- Taxing recipients of cross-staple payments at the Australian company tax rate (subject to double tax treaties); and/or
- Treating stapled structures as consolidated for tax purposes.

Separately, the Australian Taxation Office ("ATO") has announced that a further consultation timetable on its Taxpayer Alert TA 2017/1 on stapled structures and draft Privatisation and Infrastructure—Australian Federal Tax Framework will be supplemented by a round of consultation on control for the purposes of Division 6C (specifically, veto rights giving rise to control). The ATO requests feedback by 26 May 2017 (on the control test) and 30 June 2017 (on the Framework), and it will initiate feedback starting in early June 2017 on TA 2017/1.

You might note that the feedback date on Treasury's paper (20 April 2017) is unusually short—notably, before the next Commonwealth budget due to be handed down on 9 May 2017—which may signal that the federal government is keen to act soon on stapled structures, well before the ATO finalises its own position on the matter.

CONTACTS



Bill Napier
Sydney



John Cooper
Brisbane



Paul Riethmuller
Perth



Margot King
Sydney

Disclaimer: Jones Day publications should not be construed as legal advice on any specific facts or circumstances. The contents are intended for general information purposes only and may not be quoted or referred to in any other publication or proceeding without the prior written consent of the Firm, to be given or withheld at our discretion. To request reprint permission for any of our publications, please use our "Contact Us" form, which can be found on our website at www.jonesday.com. The mailing of this publication is not intended to create, and receipt of it does not constitute, an attorney-client relationship. The views set forth herein are the personal views of the authors and do not necessarily reflect those of the Firm.

© 2017 Jones Day. All rights reserved. 51 Louisiana Avenue, N.W., Washington D.C. 20001-2113