

Economic infrastructure Staples tax concession

The Federal Government introduced Stapled Group legislation earlier this year, increasing the MIT withholding tax from 15% to 30% for certain stapled arrangement distributions.

Various carve-outs exist from the new legislation, including a concession for an *approved economic infrastructure facility*, which will continue to attract the 15% withholding tax for a period of 15 years.

Only specifically approved facilities by the Federal Treasurer will be entitled to the concession and applications to the Treasurer can only be made by an Australian Government agency which must provide evidence that:

- The facility is an economic infrastructure facility
- The estimated capital expenditure on the facility is \$500m or more
- The facility is yet to be constructed
- The facility will significantly enhance the long-term productive capacity of the economy
- Approving the facility is in the national interest.

Economic infrastructure facilities are enduring facilities that support or enable economic activity and improve national productivity in Australia.

A facility is an economic infrastructure if it is:

- Transport infrastructure
- Energy infrastructure
- Communications infrastructure, or
- Water infrastructure.

The Treasury has released a [draft guidance note](#) on how to apply for the concession.

The draft guidance note makes clear that only an Australian Government agency may make an application, however, applications can be in respect of a non-government owned, operated and/or proposed facility.

Applications made to the Treasurer will be treated as being provided in-confidence.

The Treasurer, in assessing the application, may seek input from any federal, state and territory or local government department or agency including:

- The Department of Infrastructure, Transport, Cities and Regional Development
- Infrastructure Australia
- The ATO
- The Infrastructure and Project Financing Agency
- The Department of Communications and the Arts
- The Department of the Environment and Energy, and/or
- The Department of Agriculture.

Infrastructure Australia

Importantly, applicants must also submit a final business case to Infrastructure Australia (IA) for evaluation in order to be eligible for the 15% concession.

Long term productive capacity of economy

The Treasurer is entitled to take the following into account in determining whether a facility will significantly enhance the long term productive capacity of the economy:

- Whether the economic benefits resulting from the facility outweigh the economic costs;
- In the opinion of Infrastructure Australia, whether the facility is nationally significant infrastructure within the meaning of the Infrastructure Australia Act 2008.

If IA's assessment is available, the application must include a copy of the IA application and whether the business case has been positively assessed and determined to be a "High Priority" or "Priority" Project. Any other information related to the economic costs and benefits of the facility should also be included.

National interest

According to the draft guidance, the Treasurer may have regard to the following factors in determining whether the facility is in the national interest:

- The cost to revenue of approving the concession
- The likely uplift in economic growth
- Whether approving the concession is likely to have a material impact on whether the project goes ahead
- Whether an approval of the concession is consistent with the Government's objectives
- Whether the entities to the cross staple arrangement and any known ultimate investors are compliant with Australian laws
- The impact of the facility on the relevant community (this might include social impacts, issues of social exclusion and/or quality of life, such as access to services, employment and safety)
- Whether the facility will impact on any particular geographical area
- The type and magnitude of any other government assistance that has been sought or provided in relation to the same or similar infrastructure facility



Who can apply?

The *approved economic infrastructure facility* concession is aimed at the top 1% of national infrastructure projects. The guidelines and process for applying for this concession are relevant for developers, equity investors and other stakeholders in these projects.

How can we help?

The Government has released draft guidance regarding the process for applications to the Treasurer.

ShineWing can assist in providing further information in relation to the concession, the application and the process, and to make a submission on your behalf in relation to the draft guidance note.

Submissions and comments on the draft guidance must be lodged by 17 January 2020.

Get in touch



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