
5 TAXATION AND DUTY

Commercial developments have a different tax treatment from that applicable to government infrastructure. Core infrastructure is often delivered by a special purpose project vehicle. If the commercial development sits under the umbrella of the project company's business, or revenue from the commercial development flows through the project company, it can adversely affect the project company's tax profile with a consequential reduction in the value which can be delivered to government.

A number of these issues can be addressed by structuring the commercial development to sit separately from the project company and as a direct relationship with government. But the additional value this generates needs to be balanced against government's policy objectives in respect of risk transfer and single point accountability for the entire project.

In other respects, infrastructure projects typically benefit from clarity in respect of stamp duty and land tax treatment due to project facilitation legislation. In many cases where commercial developments are involved, there can be difficult questions as to whether associated commercial developments fall within the regime otherwise applicable to the project.

A disproportionate amount of management and adviser time and cost can be spent seeking to structure outcomes which preserve value for government. The ideal would be for the regime applicable to the project to be developed anticipating that material commercial developments (along with the core public infrastructure) may form part of the overall project.