

INNOVATION IN FUNDING DON'T FORGET THE TAX!

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Legal Briefings

Following the [27 July 2015 article](#) by [William Breeze](#) and [Andrew McLean](#), [Nick Heggart](#), Head of Energy and Resources at our affiliated tax firm Greenwoods & Herbert Smith Freehills, provides the following insights on the tax considerations.

Like our colleagues at Herbert Smith Freehills we have also seen an increase in the use of innovative funding structures. In our experience, careful thought also needs to be given to the differing tax outcomes delivered under the alternate structures for both the financier and customer. This can have a large bearing on the choice of/viability of possible options.

For instance, in Australia, section 6CA of the Tax Act deems natural resource payments to be sourced in Australia and therefore potentially subject to tax at ordinary tax rates (eg 30% for a corporate). A natural resource payment refers to a payment to a non-resident calculated in whole or in part by reference to the value or quantity of natural resources produced and/or or recovered in Australia. Section 6CA is often overlooked and we understand the Australian Taxation Office may be looking to provide further guidance on its operation in the near future – watch this space!

There are many other examples of issues to look out for. Each alternative financing needs to be carefully considered as each transaction is generally bespoke meaning assumptions should not be made as to the tax outcomes.

KEY CONTACTS

If you have any questions, or would like to know how this might affect your business, phone, or email these key contacts.



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