Northern Territory Government
Northern Territory Treasury

REVENUE CIRCULAR PRT 012

ISSUED JUNE 2004

2004-05 Budget Amendments Payroll Tax

This circular provides information on proposed amendments to the Pay-roll Tax Act as part of the 2004-05 Budget.

Commencement date

The changes outlined in this Circular commence on 1 July 2004 with the exception of the increase in the threshold to $1 million, which is to commence from 1 July 2005.

Summary of measures

In summary, the measures:

a) Increase the general exemption threshold:
   i) from $600 000 to $800 000 from 1 July 2004; and
   ii) from $800 000 to $1 million from 1 July 2005;

b) Clarify the grouping provisions for businesses that share employees;

c) Allow a person to be removed from a group where they carry on a separate business that is grouped as a result of the sharing of employees;

d) Clarify the grouping provisions for businesses that operate through a trust;

e) Align the way in which the general exemption threshold is determined for single employers and groups; and

f) Remove the requirement for taxpayers to notify the Commissioner of general exemption threshold deductions.

Increases to the general exemption threshold

From 1 July 2004, the general exemption threshold is increased to $800 000. Consequently, an employer's fixed **monthly** general exemption threshold increases from a maximum of $50 000 to a maximum of $66 667. Further, an employer who pays total Australian wages in excess of $15 384 in a week (where some of those wages are Territory wages) is required to register with Territory Revenue Management (TRM) as an employer.

From 1 July 2005, the general exemption threshold is increased to $1 million. Consequently, an employer's fixed **monthly** general exemption threshold will increase from a maximum of $66 667 to a maximum of $83 333. Further, an employer who pays total Australian wages in excess of $19 230 in a week (where some of those wages are Territory wages) is required to register with TRM as an employer.

Where the total Australian wages of an employer (or designated group employer for a group) exceed the general exemption threshold, payroll tax is payable on the Territory component of the wages (currently at a rate of 6.2 per cent). Where an employer pays wages in the Territory **only**, payroll tax is only payable on the component of the wages that exceed the general exemption threshold. Where an employer pays wages in the Territory and interstate, the threshold is reduced proportionately based on the employer's ratio of local to interstate wages. For example, if an employer pays 30 per cent of its wages in the Territory and 70 per cent interstate, the threshold is reduced proportionately (that is the threshold is reduced by 70 per cent).

For more information on the calculation of pay-roll tax, the general exemption threshold or registration as an employer, see the *Employers Guide to Pay-roll Tax in the Northern Territory*.

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Grouping provisions - businesses that share employees

Section 17C of the *Pay-roll Tax Act* causes employers to be grouped where employees are shared between two businesses. In particular, section 17C applies where:

- one or more employees of an employer perform duties solely or mainly for or in connection with a business carried on by that employer and other persons or by other persons; or
- an employer has an agreement, arrangement or undertaking with other persons in respect of the employment of, or the performance of duties by, one or more of his employees relating to a business carried on by those other persons, whether alone or together with other persons.

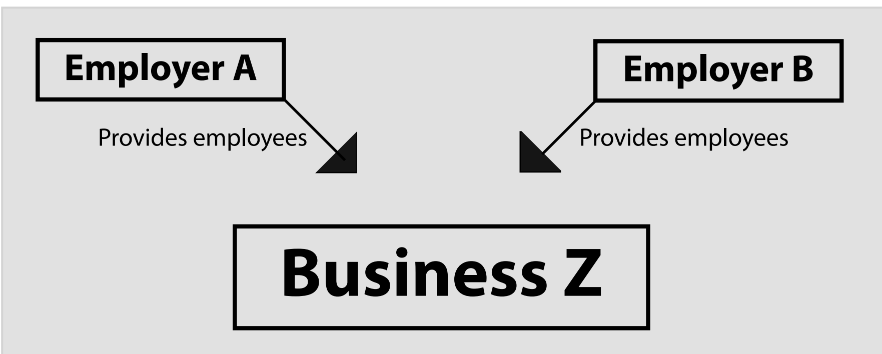
The decision in *Commissioner of State Revenue (Vic) v Muir Electrical Co Pty Ltd & Ors* 2003 ATC 4 858 highlighted a deficiency in the Victorian equivalent of the Territory's section 17C. The Court decided that the term "business" as used in section 17C could not be taken to mean "businesses". This effectively would mean that section 17C could only apply where the shared employee works in one business rather than two or more businesses.

The amendment clarifies that whether the agreement or performance of duties by the shared employees is in respect of one business or a number of businesses, the employer and the persons who carry on the business or businesses form a group.

Grouping provisions - exclusion from a group

Section 17H of the *Pay-roll Tax Act* provides that the Commissioner may exclude a person from the group where satisfied that their business(es) operate independently of the business(es) of the other group members and no person has (or persons together have) controlling interests in those businesses.

In the circumstance detailed in the following diagram, where a business is carried on by two people and one or both of those persons provide workers who carry on duties in respect of the business, section 17C would operate to cause A and B to be grouped due to the sharing of employees. Typically this arrangement occurs in the form of an unincorporated joint venture.



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Grouping provisions - exclusion from a group - cont'd

However, in this circumstance a technical anomaly prevents the Commissioner from applying section 17H to de-group these employers. This is because section 17H operates to exclude a person from another person where that person's businesses are carried on substantially independently of the other businesses of the group, with no substantial connection between those businesses. However, in the above example there is only one business. This can result in unintended and inequitable consequences for a business that is structured in this way.

An amendment is proposed to section 17H to provide an additional ability to de-group persons grouped only under section 17C where the Commissioner considers it just and reasonable to do so, having regard to:

1. the nature and degree of the duties referred to in section 17C;
2. the nature of the agreement, arrangement or undertaking referred to in section 17C; and
3. any other matters the Commissioner considers relevant.

The nature and degree of the duties performed is an important factor in determining whether exclusion should be allowed. To determine the nature and degree of duties performed, the business activities will be evaluated and the nature of work completed by the employees for each business examined. Factors considered concerning the business activities of each business and the nature of the work completed by the employees include:

- the proportion of work completed by the employees for each person;
- the integration of the duties completed by the employees to the operations of the other business;
- whether a commercially realistic payment has been made for the duties completed by the employees.

Other relevant matters such as managerial control, ownership, commercial and financial arrangements and sharing of common resources are also important factors in making an exclusion determination.

The Commissioner will generally **not** exclude a person from a group where any of the following situations occur:

- one business was created or exists solely to provide support services for another business (for example, a service trust);
- the business could not operate in its own right. An example is a separate private entity providing substantially all of its services to a single client; or
- a single business splits its operations into separate but related activities (eg. manufacturing and selling) with the intention of avoiding pay-roll tax.

For more information on the factors taken into account in determining whether a person should be excluded from a group, see the *Employers Guide to Pay-roll Tax in the Northern Territory*.

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Grouping provisions - businesses operated through a trust

Section 17D of the *Pay-roll Tax Act* provides that two persons are grouped where there is a common controlling interest between the businesses carried on by those persons.

Where a business is carried on under a trust, a person (or persons together) have a controlling interest in that business where the person (or persons together) is the beneficiary in respect of more than 50 per cent of the value of the interests in the trust under which the business is operated.

In some situations, a beneficiary may be entitled only to the capital or only the income of a trust (rather than both), which can make it difficult to determine whether the person is the beneficiary in respect of more than 50 per cent of the value of the interests in the trust.

An amendment is proposed that clarifies the trust grouping provisions in section 17D by outlining that a person (or persons together) have a controlling interest in a business carried on under a trust where they are beneficiaries in respect of:

- more than 50 per cent of the value of the capital of the trust; or
- more than 50 per cent of the value of income of the trust.

Align single and group employers' general exemption threshold

The general exemption threshold is reduced on a pro-rata basis by the proportion of interstate wages paid or payable by an employer or group. It is also reduced in proportion to the number of days in a financial year that wages were paid or payable by the employer or group to account for employers who commence or cease paying wages part-way through a financial year.

These measures align the treatment of employers that are members of a group with that of single employers such that both receive a general exemption threshold proportional to the number of days in a financial year that the employer pays any wages (whether in the Territory or interstate).

No requirement to notify general exemption threshold deductions

The *Pay-roll Tax Act* provides that a taxpayer may calculate the amount of the general exemption threshold to which they are entitled in each return period (generally one month) up to a maximum of $50 000 per month (ie $600 000 per year).

This amount will increase to a maximum of $66 667 per month (ie $800 000 per year) from 1 July 2004 and to a maximum of $83 333 per month (ie $1 000 000 per year) from 1 July 2005.

A taxpayer is currently required to notify the Commissioner in writing of the amount of general exemption threshold that the taxpayer will be claiming as a deduction.

This is an unnecessary administrative burden, especially when a taxpayer pays pay-roll tax electronically and is not required to lodge monthly returns. The proposed amendments do away with this requirement provided the amount is calculated in a manner specified by the Commissioner.

For more information on determining the amount of general exemption threshold to which an employer is entitled, see the *Employers Guide to Pay-roll Tax in the Northern Territory* and the *Electronic Pay-roll Tax Returns Package*.

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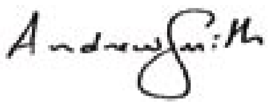
Other tax changes

Detail on other tax changes in the 2004-05 Budget can be found in the following circulars:

- SD 027 for the stamp duty changes
- DT 001 for the debits tax changes

Revenue Circular RA001, which sets out information on the revenue circular system, is incorporated into and is to be read as one with this Circular.

Refer to the Pay-roll Tax Amendment Bill 2004 and the Stamp Duty Amendment Bill (No. 2) 2004 for precise details of the changes. For general information, please contact Territory Revenue Management on 1300 305 535.



Authorised by
the Commissioner of Taxes
June 2004