

Payroll Tax Ruling PTA031

Commissioner's Discretion to Exclude from a Group

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PREAMBLE

The *Payroll Tax Act* (the Act), which commenced on 1 July 2009, rewrites the *Pay-roll Tax Act* to largely harmonise it with the legislation of other states.

Part 5 of the Act provides for the grouping of two or more employers. The effect of grouping is that only one payroll tax deduction can be claimed for each group. Broadly speaking, two employers will constitute a group where:

1. the two employers are corporations which are related to each other by virtue of section 50 of the *Corporations Act 2001* (Cth) (related corporations);
2. at least one employee of a business performs any duties for or in connection with a business conducted by another employer, or there is an agreement between two employers for the employee of one of them to perform duties in the business conducted by the other employer (sharing of employees);
3. the same person has, or the same persons have together, a controlling interest in two businesses (common control); or
4. an entity has a controlling interest in a corporation arising from tracing of interests in corporations (tracing provisions).

To avoid anomalies which may arise from the strict application of the grouping provision, section 79 of the Act provides that an employer that is grouped because of 2 (sharing of employees) or 3 (common control) or 4 (tracing provisions) may apply in writing to the Commissioner of Territory Revenue (the Commissioner) to be excluded from the group.

However, corporations which are grouped under 1 (related corporations) are not eligible to apply for an exclusion order.

The purpose of this Payroll Tax Ruling is to explain the exclusion discretion available under section 79, including the matters the Commissioner takes into account in exercising the discretion.

RULING

In order to be granted an exclusion from a group, the applicant employer must satisfy the Commissioner that:

1. the business is carried on independently of businesses carried on by every other member of the group; and
2. the business is not connected with the carrying on of businesses carried on by any other member of the group.

The matters that the Commissioner must have regard to are:

1. the nature and degree of the ownership and control of the business;
2. the nature of the businesses; and
3. any other matters the Commissioner considers relevant.

The Commissioner must be satisfied that:

1. there is not a continuous course of active and significant relationship, in a business or commercial sense, between the carrying on of the applicant's business and the carrying on of businesses conducted by every other member of the group; and
2. the connections which do exist are no more than casual, irregular or occasional occurrences.

The onus is on the employer who applies for an exclusion order to prove these matters.

Excluding a smaller group from a larger group

Where a single member of a group applies for an exclusion order, the tests for exclusion must be satisfied in respect of the relationship between the member (or members) seeking exclusion and every other member of the larger group.

Where a group is made up of smaller groups that have been subsumed into a larger group under section 74, the members of a smaller group may be excluded from the larger group. The businesses carried on by all members of the smaller group must be substantially independent of, and not substantially connected with the businesses carried on by every other member of the larger group. It doesn't matter if the members of the smaller group are not entitled to be excluded from their smaller group. The excluded members of the smaller group become a separate group.

Matters taken into account

In making a decision, the Commissioner will consider the nature and the extent of all relevant agreements and dealings between the member and other members of the group, including:

1. the nature and extent of any commercial transactions between the members, including the value and percentage of the member's total business which is conducted with other members of the group;
2. the extent to which members share resources, facilities or services, including premises, staff, management and accounting services;

3. the extent to which the member controls or is involved in managerial decisions and day to day administration of the other members and the extent to which other members control or are involved in managerial decisions and day to day administration of the member;
4. the extent to which there are financial interdependencies, including intra-group loans or guarantees and common banking facilities, and the terms and conditions attached to such agreements;
5. the degree to which there is a connection between a member and other members of the group in the purchase or sales of goods and services;
6. the extent to which there is a connection between the nature of the businesses of the member and other members of the group; and
7. the extent to which there is a connection between the ultimate owners of the member and other members of the group.

None of the matters listed above are determinative in isolation from the other matters listed, nor are they an exhaustive list of the relevant issues. Each case will be considered on the basis of all of the relevant facts and circumstances.

Please note that rulings do not have the force of law. Each decision made by the Territory Revenue Office is made on the merits of each individual case, having regard to any relevant ruling. Commissioner's Guideline CG-GEN-001, which sets out information on the revenue publication system, is incorporated into and is to be read as one with this Ruling. All Circulars, Guidelines and Rulings are available from www.revenue.nt.gov.au.



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