



Commissioner's Discretion to Exclude from a Group

The *Pay-roll Tax Assessment Act 2002* (the Act) was amended in 2010 to increase the consistency of Western Australia's payroll tax system with that of other jurisdictions.

Harmonised revenue rulings provide the interpretation and application of harmonised payroll tax provisions. In other jurisdictions, this Commissioner's practice is published as harmonised Revenue Ruling PTA 031.

Revenue Ruling PTA 031 sets out the practice that will be followed when considering whether to apply the discretion to exclude members from a group.

This Commissioner's Practice outlines the matters the Commissioner will take into consideration when exercising this discretion.

Background

Part 4 of the Act provides for two or more employers to be grouped. The effect of grouping is that only one payroll tax threshold amount can be claimed for a single group.

Broadly speaking, two employers will constitute a group if:

- the two employers are corporations related to each other by virtue of section 50 of the *Corporations Act 2001* (Cth) (related corporations) or
- at least one employee of a business performs 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) or
- the same person has, or the same persons have together, a controlling interest in two businesses (common control) or
- 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 38 of the Act provides that an employer grouped because of sharing of employees, or common control or tracing provisions may apply in writing to the Commissioner of State Revenue to be excluded from the group.

Corporations grouped because they are related corporations cannot apply to be excluded.

To be excluded from a group, the applicant employer must satisfy the Commissioner that:

- the business is carried on independently of businesses carried on by any other member of the group and
- the business is not connected with the carrying on of businesses carried on by any other member of the group.

The Commissioner must have regard to:

- the nature and degree of the ownership and control of the business
- the nature of the businesses and
- any other matters the Commissioner considers relevant.

The Commissioner must be satisfied that:

- 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 any other member of the group and
- 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

If 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.

When a group is made up of smaller groups that have been subsumed into a larger group, 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 does not 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.

Commissioner's Practice

1. When making a decision to exercise discretion to exclude a member of a group, 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:
 - 1.1 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
 - 1.2 the extent to which members share resources, facilities or services, including premises, staff, management and accounting services
 - 1.3 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
 - 1.4 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
 - 1.5 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
 - 1.6 the extent to which there is a connection between the nature of the businesses of the member and other members of the group and
 - 1.7 the extent to which there is a connection between the ultimate owners of the member and other members of the group.

2. 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 relevant facts and circumstances.

Date of effect

This Commissioner's practice takes effect from 5 May 2022.

Chris McMahon
COMMISSIONER OF STATE REVENUE

5 May 2022

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