

Information Circular No: 4

Payroll Tax Act 2009

Groupings

Issued 1 July 2009

The *Payroll Tax Act 2009*, which commenced on 1 July 2009, rewrote and repealed the *Pay-roll Tax Act 1971* and provides fully harmonised legislation with New South Wales, Victoria, Tasmania and Northern Territory.

Payroll tax is a state tax calculated on wages paid or payable and applies in all states and territories of Australia. It is collected and administered in accordance with the *Taxation Administration Act 1996*.

This Information Circular contains a brief explanation of the provisions of the legislation relating to grouping.

Authorised copies of the Act can be purchased from the Service SA Government Legislation Outlet, Ground Floor, 101 Grenfell Street, Adelaide.

Online versions of State Legislation are available at the South Australian legislation website:

www.legislation.sa.gov.au

For further details on any matters relating to the Act mentioned in this Information Circular, please contact RevenueSA on (08) 8204 9880.

Contents

- Contents 3**
- Introduction..... 4**
 - Preface4
 - Overview4
- Grouping Provisions 5**
 - Effect of the grouping provisions.....5
 - Definition5
 - When will a group exist.....5
 - Registration requirements for groups6
- Related Corporations 7**
- Common Employees 9**
- Commonly Controlled Businesses 10**
 - Controlling interest 10
 - Indirect relationships 11
 - Same person owning two or more businesses 13
- Tracing Provisions 14**
 - Entities 14
 - Tracing provisions in corporations 15
- Amalgamations..... 17**
 - Amalgamations of groups 17
- Interstate Groups..... 18**
- Exclusions..... 19**
 - Exclusions from the grouping provisions 19
- Exclusions - Commissioner’s Discretion..... 20**
 - Practical considerations20
- Further Information 22**

Introduction

Preface This Information Circular provides information on the payroll tax grouping provisions contained in the *Payroll Tax Act 2009* (the “Act”), but it does not constitute a Revenue Ruling.

If any uncertainty exists with a particular aspect of the information provided, please contact RevenueSA. The information provided in this Information Circular is correct at the time of publication.

A reference to state(s) includes the Australian Capital Territory and the Northern Territory.

COMMISSIONER OF STATE TAXATION

1 July 2009

Overview When payroll tax was introduced in South Australia, all employers were entitled to claim a deduction from their taxable wages up to a specified threshold (maximum deduction). Some employers (whose wages exceeded the maximum deduction) avoided or reduced their payroll tax liability by splitting their wages among a number of entities, with each entity being entitled to claim the maximum deduction.

Grouping provisions were introduced on 1 January 1976 to overcome this problem. Since then, these provisions have undergone several amendments. The most recent modifications arose as a result of payroll tax harmonisation in South Australia, Victoria, New South Wales, Tasmania and Northern Territory.

The current grouping provisions in the Act are similar to the old grouping provisions in the *Pay-roll Tax Act 1971*, except for the following which are effective from 1 July 2009:

1. The Commissioner of State Taxation (the “Commissioner”) has discretion to exclude a trustee company from a group even though the trustee company and the other members of the group are related bodies corporate within the meaning of the *Corporations Act 2001* (Cwlth) (the “Corporations Act”).
2. Where two or more members of a group, when considered together, have a controlling interest in a business, all the members of the group and the person or persons who carry on that business will together constitute a group.

Grouping Provisions

Under certain circumstances, the grouping provisions have the effect of deeming businesses to be related and including these businesses in a group. The wages of these related businesses are then added together, and only one member of the group is entitled to claim the maximum deduction.

Effect of the grouping provisions

Therefore in most cases, although each member of the group must register for payroll tax and lodge a separate return, the businesses which constitute the group are treated as one entity and the calculation of their payroll tax liability is based on the group's total wages.

Further, all members of the group (irrespective of whether or not they are employers) become jointly and severally liable for the debts of the group which are incurred while they are members of that group. This means that if one member defaults in the payment of tax, that amount may be recovered from any of the other group members.

Business means:

Definition

- ▶ a profession or trade;
- ▶ any other activity carried on for fee, gain or reward;
- ▶ the activity of employing one or more persons to perform duties in connection with another business;
- ▶ the carrying on of a trust, including a dormant trust; and
- ▶ the activity of holding any money or property used for or in connection with another business whether carried on by 1 person or 2 or more persons together.

Company means a company registered under the Corporations Act. It includes all bodies and associations (corporate and unincorporated) and partnerships.

Corporation has the same meaning as in Section 9 of the Corporations Act.

A group exists where:

When will a group exist

- i) corporations are **related bodies corporate** within the meaning of Section 50 of the Corporations Act;
- ii) **common employees** are used between businesses;
- iii) the same person has (or the same persons together have), a **controlling interest** in at least two businesses; or
- iv) an entity has a **direct, indirect or aggregate controlling interest** in a corporation.

Each of these circumstances is discussed in detail below.

Registration requirements for groups

Grouping provisions apply to all entities irrespective of whether or not they are employers. Each member of the group who employs in South Australia must be registered with RevenueSA.

The RevenueSA website at www.revenuesa.sa.gov.au allows you to register electronically via RevNet.

RevenueSA must be advised when entities begin and cease to be part of a group either at the time of annual reconciliation or in writing during the year.

The Act also allows the members of a group to designate a member (the designated group employer) to receive the maximum deduction. If there is no designation by the group, the Commissioner may designate any member to receive the deduction.

Related Corporations

Corporations are grouped under **Section 70** of the Act where they are related bodies corporate within the meaning of Section 50 of the Corporations Act. This is more commonly described as a holding/subsidiary relationship.

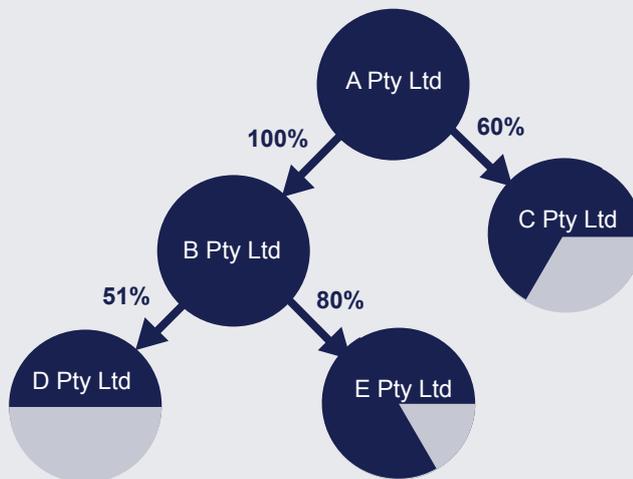
A corporation will be grouped with another corporation for the purposes of **Section 70** if it:

- ▶ holds more than 50% of the issued share capital of that other corporation;
- ▶ controls the composition of the board of directors of that other corporation; or
- ▶ can cast, or control the casting of, more than 50% of the votes which can be cast at a general meeting of that other corporation.

For the purposes of this section, a group not only includes those corporations in a direct holding/subsidiary relationship but also:

- ▶ corporations with a common holding company; or
- ▶ corporations with a common ultimate holding company.

Example



In this example:

- ▶ A constitutes a group with both B and C. A is the holding company of both B and C because it holds more than 50% of the issued shares of each company.
- ▶ B, D and E constitute a group because B is the holding company of both D and E.
- ▶ All of the companies shown on the diagram constitute a group because A is the common ultimate holding company.

A group under this section is a mandatory group. Under **Section 79(3)** of the Act, the Commissioner must not exclude a corporation from such a group, even if the business carried on by that corporation is independent of, and not connected with, the business of other corporations in the group.

However, this provision will not be applied to group a corporation which only acts as a trustee of a trust and is not trading in its own right, even though it forms a holding/subsidiary relationship with another corporation.

The grouping provisions apply to corporations regardless of where those corporations are located. This is particularly relevant to Australian subsidiaries of an overseas parent corporation. The grouping provisions could apply to group these corporations even if the Australian subsidiaries are unaware of each others existence.

For this reason, a corporation which is owned by an overseas parent should contact their parent corporation to determine whether there are other subsidiaries operating in Australia.

Common Employees

An employer will be grouped with the person(s) carrying on another business or other businesses where:

- ▶ one or more employees of the employer perform duties for one or more businesses carried on by the employer and one or more persons;
- ▶ one or more employees of the employer are employed solely or mainly to perform duties for one or more businesses carried on by one or more other persons; or
- ▶ one or more employees of an employer performs duties for one or more businesses carried on by one or more other persons, being duties performed in connection with, or in fulfillment of the employer's obligation under an agreement, arrangement or undertaking for the provision of services to any of those persons.

A situation where the common employee provisions may apply is where a separate entity is established to provide administrative services to the main operating business. Also, where two businesses share premises and use the same receptionist, those two businesses may be grouped. Only minimal service provided by the employee(s) of one business to another business is required for these provisions to apply.

Example

CDE Manufacturing Pty Ltd

- ▶ manufacturer of widgets

XYZ Administration Pty Ltd

- ▶ administration company
- ▶ provides the services of its employees to CDE

CDE and XYZ constitute a group because the employees of XYZ are employed to perform duties for or in connection with, the business of CDE.

Commonly Controlled Businesses

Controlling interest

A group exists where a person (or a set of persons) has a controlling interest in each of two businesses. In such circumstances, it is the entities conducting the businesses that are grouped, and not the persons who have the controlling interest in the businesses.

What constitutes a controlling interest depends on the type of entity which operates the business. Under **Section 72** of the Act, a person (or a set of persons) is considered to have a controlling interest as follows:

- a) **Where a business is conducted by a corporation, that person (or set of persons):**
 - ▶ is the director of that corporation and can exercise more than 50% of the voting power at a directors' meeting;
 - ▶ is able to instruct or influence a director(s) who can exercise more than 50% of the voting power at a directors' meeting; or
 - ▶ can exercise or influence the exercise of more than 50% of the voting power attached to any class of issued voting shares of the corporation.
- b) **Where a business is conducted by either an incorporated or unincorporated body, that person (or set of persons):**
 - ▶ constitutes more than 50% of the board of management of the corporate or unincorporated body carrying on that business; or
 - ▶ can control the composition of the board.
- c) **Where a business is conducted by a partnership, that person (or set of persons):**
 - ▶ owns, whether beneficially or not, more than 50% of the capital of the partnership; or
 - ▶ is entitled to more than 50% of the profits of the partnership.
- d) **Where the business is conducted by one person, that person is the sole owner of the business.**
- e) **Where in the case of a set of persons, the persons are together as trustees the sole owners of the business.**
- f) **Where a business is conducted by a trust, that person (or set of persons) is the beneficiary in respect of more than 50% of the value of the interests in the trust.**

In relation to trusts, it should be noted that:

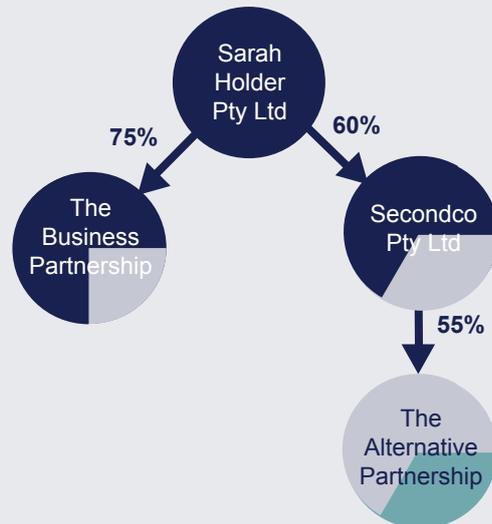
- ▶ 'interests' in a trust include, among other things, entitlements to profits or capital distributions; and
- ▶ any person who may benefit from a discretionary trust is deemed to be a beneficiary of more than 50% of the value of the interests in the trust and therefore has a controlling interest in that trust.

Indirect relationships

A controlling interest for the purposes of the grouping provisions need not be direct. Control may be held through another entity to which a person is related, or in which a person has a controlling interest. This can occur in the following ways

- (i) If corporations are related under Section 50 of the Corporations Act, a corporation is deemed to have a controlling interest in any business in which a related corporation has a controlling interest.

Example



- ▶ Sarah Holder Pty Ltd and Secondco Pty Ltd are related under Section 50 of the Corporations Act because Secondco Pty Ltd is a subsidiary of Sarah Holder Pty Ltd. These two companies have controlling interests in two businesses, The Business Partnership, and The Alternative Partnership, respectively.
- ▶ As Sarah Holder Pty Ltd and Secondco Pty Ltd are related, Sarah Holder Pty Ltd is deemed to have a controlling interest in the business in which Secondco Pty Ltd has a controlling interest (i.e. The Alternative Partnership). Therefore, The Business Partnership and The Alternative Partnership constitute a group because Sarah Holder Pty Ltd has a controlling interest in The Business Partnership, and is deemed to have a controlling interest in The Alternative Partnership.

- (ii) If a person has a controlling interest in one business and the person who carries on that business has a controlling interest in another business, then that first person is also deemed to have a controlling interest in the second business.

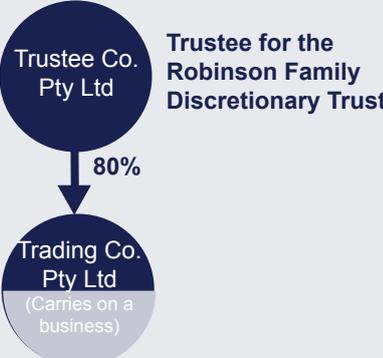
Example



Ian Vestor has a controlling interest in Business A. Company A, which carries on Business A, has a controlling interest in Business B. Ian Vestor is, therefore, also deemed to have a controlling interest in Business B, via his controlling interest in Business A.

- (iii) Where a trustee of a trust has a controlling interest in a business, a beneficiary of that trust will be deemed to have a controlling interest in that business if that beneficiary is a beneficiary in respect of more than 50% of the value of the interests in that trust.

Example



The diagram consists of two circles. The top circle is dark blue and contains the text 'Trustee Co. Pty Ltd'. To its right, the text 'Trustee for the Robinson Family Discretionary Trust' is written. An arrow points from the bottom of this circle to the top of a second circle below it. The arrow is labeled '80%'. The second circle is light grey and contains the text 'Trading Co. Pty Ltd' and '(Carries on a business)' below it.

Ben Robinson stands to benefit from the Robinson Family Discretionary Trust. He is, therefore, deemed to be a beneficiary of more than 50% of the value of the interests in that trust, and as such, he is deemed to also have a controlling interest in the business carried on by Trading Co. Pty. Ltd.

Where two businesses are conducted by the same entity or person, there is no need to consider the application of the grouping provisions. In such cases, there is only one employer and the wages paid for each business must be combined in returns lodged by that employer. The same applies to a trustee owning two businesses, except where the trustee owns the businesses on behalf of two different trusts, in which case the grouping provisions would need to be considered.

**Same person
owning two or more
businesses**

Tracing Provisions

Effective from 1 July 2008, the circumstances in which businesses can be grouped for payroll tax purposes were extended to include the tracing of interests in corporations. Under the tracing provisions, an entity will be grouped with a corporation in which the entity has a controlling interest. A controlling interest exists if the entity has:

- ▶ a direct interest;
- ▶ an indirect interest; or
- ▶ an aggregate interest;

in the corporation and the value of that interest exceeds 50%.

Entities

An entity is a person or set of associated persons. Under the definition of associated persons provided at **Section 73(4)** of the Act, this includes:

- ▶ a person and his/her spouse or domestic partner;
- ▶ natural persons where the relationship between them is that of parent and child, or siblings;
- ▶ related corporations;
- ▶ a natural person and a private company where the natural person is a majority shareholder or director of the company or of another private company that is a related body corporate of the company within the meaning of the Corporations Act;
- ▶ a natural person and a trust where the natural person is a beneficiary of the trust (not being a public unit trust scheme) of which the trustee is a trust;
- ▶ a private company and trustee where a related corporation is a beneficiary of the trust (not including a public unit trust scheme) of which the trustee is a trustee;
- ▶ natural persons if they are partners in a partnership;
- ▶ private companies if common shareholders hold a majority interest in each corporation;
- ▶ trustees if beneficiaries are common to the trust (not including a public unit trust scheme) of which they are trustees; and
- ▶ a private company and a trustee where a related body corporate of the company (within the meaning of the Corporations Act) is a beneficiary of the trust (not including a public unit trust scheme) of which the trustee is a trustee.

Tracing provisions in corporations

A **direct interest** in a corporation exists where an entity can (directly or indirectly) exercise, control or influence the voting power attached to voting shares in the corporation. The value of the direct interest is the proportion of the corporation's voting shares (expressed as a percentage) that the entity can exercise, control or influence.

An **indirect interest** exists where an entity has a direct interest in a corporation (i.e. the directly controlled corporation) which is linked to another corporation. A corporation is linked to the directly controlled corporation if it is part of a chain of corporations where each link in the chain has a direct interest in the next corporation in the chain. The value of the indirect interest is calculated by multiplying the value of the entity's direct interest in the directly controlled corporation, with the value of each direct interest forming the link.

Example

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graph TD; Entity((Entity)) -- 80% --> CorpA((Corporation A)); CorpA -- 70% --> CorpB((Corporation B)); CorpB -- 40% --> CorpC((Corporation C));
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In this example:

- ▶ Entity has a direct interest in Corporation A
- ▶ Corporation A has a direct interest in Corporation B
- ▶ Corporation B has a direct interest in Corporation C
- ▶ Corporations B and C are linked to Corporation A.

Therefore, Entity has an indirect interest in both Corporations B and C

The value of Entity's indirect interest in Corporation B is:

80% x 70% = 56%

The value of Entity's indirect interest in Corporation C is:

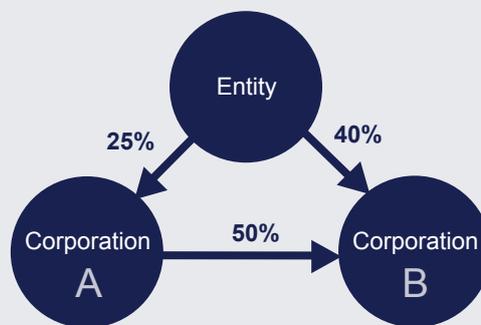
80% x 70% x 40% = 22.4%

An **aggregate interest** is the sum of an entity's direct and indirect interests in a corporation and occurs when an entity has:

- ▶ a direct and indirect interest in a corporation; or
- ▶ more than one indirect interest in a corporation.

The value of the aggregate interest is the sum of the value of the entity's direct interest in the corporation and the value of each indirect interest.

Example



In this example:

- ▶ Entity has a direct interest in A (25%) and B (40%)
- ▶ Entity has an indirect interest in B ($25\% \times 50\% = 12.5\%$)
- ▶ Entity's aggregate interest in B is $40\% + 12.5\% = 52.5\%$

Entity therefore has a controlling interest in Corporation B.

Amalgamations

Where two or more groups exist, and at least one member is common to each, those groups will, subject to the Commissioner's discretion, be amalgamated and treated as one.

Amalgamations of groups

Example

Group 1
Comprises Company A and Company B
Group 2
Comprises Company A and Partnership C

Company A is common to each group. Therefore, Group 1 and Group 2 will be amalgamated and Companies A and B, and Partnership C will form one group.

From 1 July 2009, where two or more members of a group, when considered together, have a controlling interest in a business (within the meaning of **Section 72**), all the members of the group and the person or persons who carry on the business together form a group.

Example

The diagram illustrates a group structure. A box labeled "Group" contains two circles representing "Company A" and "Company B". An arrow points from Company A to Company B. Below the box, two arrows point to a third circle representing "Company C". The arrow from Company A is labeled "25%" and the arrow from Company B is labeled "30%".

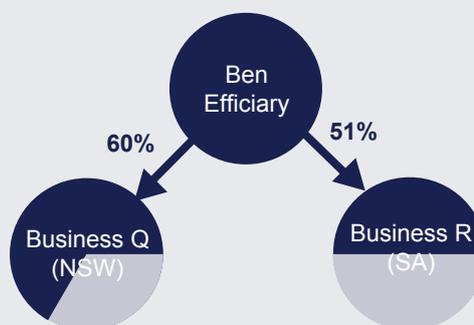
In the above example:

- ▶ Company A and Company B form a group for payroll tax purposes.
- ▶ Company A has a 25% interest in Company C.
- ▶ Company B has a 30% interest in Company C.
- ▶ As Company A and Company B together have a controlling interest (55%) in Company C, the three companies form a group for payroll tax purposes.

Interstate Groups

The grouping provisions apply to businesses regardless of where they operate. Accordingly, two businesses may be grouped even though one is located in South Australia and the other is in another state (e.g. NSW). This is relevant for the purposes of determining a group's total Australian wages, as it will have an impact on the amount of the approved deduction which the group is entitled to claim in South Australia.

Example



Despite the fact that the two businesses are located in different states, Business Q and Business R will be grouped because Ben Efficiary has a controlling interest in each.

Exclusions from the grouping provisions

By necessity, the grouping provisions are very broad in their application. In recognition of this, the Act gives the Commissioner discretion to exclude a member from a group in certain circumstances. This discretion is available only in relation to groups which arise as a consequence of:

- a) use of common employees;
- b) commonly controlled businesses;
- c) tracing; or
- d) amalgamation of groups with common membership.

The discretion is not available for members that are related corporations within the meaning of Section 50 of the Corporations Act. However, from 1 July 2009, the Commissioner has the discretion to exclude a trustee company from a group even though the trustee company and the other members of the group are related bodies corporate within the meaning of the Corporations Act.

The Commissioner may exclude a member from a group formed as a result of any of (a), (b), (c) or (d) above, if satisfied the business conducted by that member is independent of, and not connected with, the business conducted by any other member of the group. In considering the application of this discretion, the Commissioner will have regard to:

- ▶ the nature and degree of ownership and control of the businesses;
- ▶ the nature of the businesses; and
- ▶ any other relevant matters.

Exclusions - Commissioner's Discretion

Practical considerations

The following (not in any order of importance) are some of the practical considerations the Commissioner will consider when determining whether or not to exercise his discretion to exclude a member from a group. Some of the questions that the Commissioner may consider include:

▶ **Trade between the businesses**

- Are transactions occurring between the businesses?
- If yes, what is the purpose of those transactions?
- What is the level of trade between the businesses?
- Do the purchases of one of the businesses constitute a large proportion of the sales of the other business?
- Are these transactions conducted on normal commercial terms, or are discounts provided?

▶ **Sharing of resources between the businesses**

- Do the businesses share resources, including premises, staff, management and accounting services?
- If there is sharing of resources is there any charge made?
- If there is a charge, is the charge reasonable given the type of resource shared and the level of such sharing?

▶ **Common management of the businesses**

- Is the same person or are the same persons responsible for the day-to-day operation of the businesses?
- If so, are the operating decisions of one of the businesses made with the impact of such decisions on the other businesses in mind?
- Are the managers of the businesses controlled or obliged to follow the directions of another person(s)?

▶ **Common financial arrangements between the businesses**

- Do the businesses have common financial arrangements?
- Have the businesses sought finance, as a group, from a financial institution?
- If yes, are there 'cross-securities' for such arrangements between the businesses?
- Are there loans between the businesses?
- If there are loans between the businesses, do written loan agreements exist?
- Is a reasonable rate of interest charged on the loans?
- Are regular repayments required to be made?

▶ **Common customers of the businesses**

- Is there a relationship between the customers of the businesses?
- Do the customers of one of the businesses automatically become customers of the other business(es)?
- Do the businesses provide complementary services to their customers?
- Is there a connection between the nature of the businesses?
- Does one of the businesses add value to goods or services provided by the other business?

▶ **What is the extent of the connection between the business owners?**

- Are the same people the owners of the businesses?
- Are the owners of the businesses closely related?

These factors are just some of the more common issues that the Commissioner will consider when deciding whether to exercise the discretion to exclude a member from a group. It is not an exhaustive list. Each case will be considered on all of its relevant facts.

Generally, the Commissioner will exercise the discretion if he is satisfied that:

- ▶ the relationship between the businesses is not continuous, active and significant; and
- ▶ the connections which do exist between the businesses are merely casual or irregular.

If there is any uncertainty about the application of the grouping provisions please apply to RevenueSA for a determination.

Further Information

Further information can be obtained from RevenueSA.

Location	RevenueSA State Administration Centre 200 Victoria Square East ADELAIDE SA 5000
Postal	Commissioner of State Taxation RevenueSA GPO Box 1353 ADELAIDE SA 5001
Telephone	(08) 8204 9880
Facsimile	(08) 8226 3805
Email	payrolltax@sa.gov.au
Website	www.revenuesa.sa.gov.au