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Public Ruling Payroll Tax Act:

ADMINISTRATIVE ARRANGEMENT— EXCLUSION OF SUBGROUPS FROM GROUPS

A public ruling, when issued, is the published view of the Commissioner of State Revenue (the Commissioner) on the particular topic to which it relates. It therefore replaces and overrides any existing private rulings, memoranda, manuals and advice provided by the Commissioner in respect of the issue(s) it addresses. Where a change in legislation or case law (the law) affects the content of a public ruling, the change in the law overrides the public ruling—that is, the Commissioner will determine the tax liability or eligibility for a concession, grant or exemption, as the case may be, in accordance with the law.

What this ruling is about

1. This public ruling outlines an administrative arrangement that allows s.74 of the *Payroll Tax Act 1971* (Payroll Tax Act) to be administered so that the Commissioner may make an exclusion order that excludes smaller groups (subgroups) from groups.
2. Payroll tax is imposed at the rates set out in the Payroll Tax Act on all taxable wages paid or payable in a financial year.¹
3. Payroll tax applies when the total yearly Australian taxable wages of an employer, or a group of employers, exceeds the exemption threshold. Therefore, an employer that has taxable wages below the threshold exemption may be liable for payroll tax if it is a member of a payroll tax group and the total taxable wages of the group exceed the exemption threshold.
4. Part 4 of the Payroll Tax Act provides for the grouping of two or more employers. A group is constituted by all the persons forming a group that is not part of a larger group.² If a person is a member of two or more groups, the members of all the groups together constitute a group.³
5. Under s.74 of the Payroll Tax Act, the Commissioner has discretion to exclude a person from a group. The relevant provisions of s.74 are summarised as follows:
 - (a) Section 74(1) gives the Commissioner discretion to exclude a person from a group by an order in writing (exclusion order).

¹ Section 10 of the Payroll Tax Act

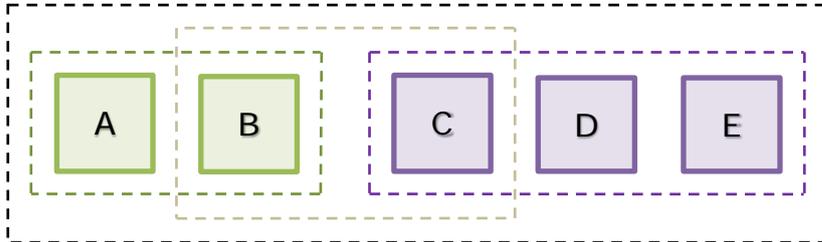
² Section 68 of the Payroll Tax Act

³ Section 73 of the Payroll Tax Act

- (b) Section 74(2) provides that the Commissioner may make an exclusion order only if the Commissioner is satisfied a business carried on by the person is carried on independently of, and is not connected with the carrying on of, a business carried on by any other member of the group.
 - (c) Section 74(3) sets out a number of factors the Commissioner must have regard to in deciding whether to make an exclusion order.
6. Public Ruling PTA031—*Commissioner's discretion to exclude from a group* explains the exclusion discretion under s.74 of the Payroll Tax Act, particularly the matters the Commissioner takes into account under s.74(3).
7. It has been a longstanding practice, in accordance with the intention of the Payroll Tax Act, that the Commissioner has discretion to exclude a subgroup from a group. That is, more than one person can be excluded from a group, resulting in those persons effectively forming a new group, which is separate to the larger group that they are excluded from. The grouping provisions in Part 4 of the Payroll Tax Act are also harmonised with other states and territories with respect to outcomes, and it is an intended outcome that subgroups can be excluded from groups.
8. On 30 October 2018, in *Xede Pty Ltd & Ors v Commissioner of State Revenue* [2018] QCAT 362, the Queensland Civil and Administrative Tribunal (QCAT) held that a subgroup cannot be excluded from a group. Specifically, QCAT interpreted s.74 of the Payroll Tax Act as follows:
- (a) Section 74(1) only allows the Commissioner to make an individual exclusion order relating to a single member of a group.
 - (b) Section 74(2) requires that the single member referred to in s.74(1) satisfies the Commissioner that it has no dependency or connection with any other member of the group.
9. An administrative arrangement was approved on 3 February 2020 that confirms the intended policy and practice such that the Commissioner may make an exclusion order that excludes subgroups from groups under s.74 of the Payroll Tax Act.

Ruling and explanation

10. Pending legislative amendment, s.74 of the Payroll Tax Act is administered from 31 October 2018 as follows.
- (a) Despite ss.68 and 73, under s.74(1) the Commissioner may, by an exclusion order, exclude a person or a smaller group of persons from a group.
 - (b) Under s.74(2), the Commissioner may make an exclusion order only if the Commissioner is satisfied a business or businesses carried on by the person or smaller group of persons is carried on independently of, and is not connected with the carrying on of, a business carried on by any other member of the group that they seek to be excluded from.
 - (c) All other provisions in s.74 continue to operate as provided for in the Payroll Tax Act, subject to references to a 'person' being taken to include a smaller group of persons.

Example

- A and B are grouped through common control and ownership.
- C, D and E are grouped through common control and ownership.
- B and C are also grouped through common ownership, via a common beneficiary of a discretionary family trust.
- A, B, C, D and E are ultimately subsumed to form one large group.

Exclusion application

- A and B apply to the Commissioner to be excluded from C, D and E.
- A and B demonstrate their businesses are independent of and not connected with the businesses carried on by C, D and E.

Outcome

The Commissioner is satisfied that the businesses of A and B are independent of and not connected with the businesses carried on by C, D and E. An exclusion order is issued so that A and B (as a smaller group of persons) are excluded from C, D and E thus creating two separate groups.

11. This public ruling is to be read in conjunction with PTA031 and modifies PTA031 where it refers to s.74 of the Payroll Tax Act, if the context permits.

Date of effect

12. This public ruling takes effect from the date of issue.

Mark Jackson
 Commissioner of State Revenue
 Date of issue: 9 April 2020

References

Public Ruling	Issued	Dates of effect	
		From	To
PTAQ074.1.1	9 April 2020	9 April 2020	Current