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Public Ruling Payroll Tax Act:

ADMINISTRATIVE ARRANGEMENT— APPLICATION OF GROUPING PROVISIONS TO EMPLOYERS THAT ARE, OR ARE ASSOCIATED WITH, THE STATE

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 the terms of an administrative arrangement that allows Part 4 of the *Payroll Tax Act 1971* (Payroll Tax Act) to be administered for the 2022–23 and 2023–24 financial years so that certain government entities are not grouped merely due to state, ministerial or Governor in Council control.

Payroll tax

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. Currently, payroll tax applies when the annual Australian taxable wages of an employer, or a group of employers, exceed \$1.3 million (exemption threshold). An employer that has taxable wages below the exemption threshold 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.

Mental health levy

4. A mental health levy (levy) applies under the Payroll Tax Act to employers, or groups of employers, with annual Australian taxable wages more than \$10 million. The levy is payable by an employer on Queensland taxable wages paid or payable on or after 1 January 2023 at the rate of:
 - (a) 0.25% to the extent that the annual Australian wages of the employer (or the group, if relevant) exceed \$10 million

¹ Section 10 of the Payroll Tax Act

- (b) an additional 0.5% to the extent that the annual Australian wages of the employer (or the group, if relevant) exceed \$100 million.

Grouping

5. 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
6. An employer's status as a member of a group (i.e. whether the employer is a member of a group and, if so, whether the employer is the designated group employer for the group) applies for the purposes of both payroll tax and the levy.
7. Section 71 of the Payroll Tax Act provides that if a person has a controlling interest in each of two businesses, the persons who carry on those businesses constitute a group. A person has a controlling interest in a business if, among other things:
 - (a) the person is the sole owner of the business, whether or not as trustee⁴
 - (b) for a business carried on by a body corporate or unincorporate—the person controls the composition of the board of management, by whatever name called, of the body⁵
 - (c) for a business carried on by a corporation with a share capital—the person can (directly or indirectly) exercise, control the exercise of, or substantially influence the exercise of, more than 50% of the voting power attached to the voting shares, or a class of voting shares, issued by the corporation.⁶
8. Section 72 of the Payroll Tax Act provides that a person and a corporation constitute a group if the person has a controlling interest in the corporation.
9. Under section 74 of the Payroll Tax Act, the Commissioner has discretion to exclude a person from a group. The relevant provisions of section 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).
 - (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.

² Section 68 of the Payroll Tax Act

³ Section 73 of the Payroll Tax Act

⁴ Section 71(2)(a) of the Payroll Tax Act

⁵ Section 71(2)(d) of the Payroll Tax Act

⁶ Section 71(2)(e) of the Payroll Tax Act

10. Public Ruling PTA031 *Commissioner's discretion to exclude from a group* (Public Ruling PTA031) explains the exclusion discretion under section 74 of the Payroll Tax Act, particularly the matters the Commissioner takes into account under section 74(3).⁷

Application of Part 4 of the Payroll Tax Act to employers that are, or are associated with, the state

11. The Governor in Council may, by gazette notice, establish or abolish a government entity as defined in the *Public Sector Act 2022* (government entity).⁸ A government entity includes:
- (a) a department
 - (b) a public service entity
 - (c) an agency, authority, commission, corporation, instrumentality, office or other entity established under an Act or under state authorisation for a public or state purpose.⁹
12. Whether a government entity is a separate legal entity to the state (and, if so, the nature and extent of the state's control over that entity) depends on the legislation creating or governing the government entity.
13. Under the *Local Government Act 2009*, the state has monitoring, enforcement, dismissal and dissolution powers in relation to local governments to enable the state to meet its constitutional responsibility for local government under the *Constitution of Queensland 2001*.¹⁰
14. Under the *Government Owned Corporations Act 1993* (GOC Act), the shares in a government owned corporation are held equally on behalf of the state by the minister responsible for the GOC Act and another minister.¹¹
15. These and other legislative frameworks have the potential to result in the unintended consequence of Part 4 of the Payroll Tax Act applying to constitute a number of groups of employers, on account of the state, a minister and/or the Governor in Council being taken to have a controlling interest (in terms of sections 71 or 72) in a range of businesses. Such groups may then be subsumed into a larger group of employers pursuant to section 73.
16. As noted in paragraph 9, the Commissioner has discretion to make an exclusion order to exclude an employer from a particular group. However, an administrative arrangement was approved on 22 December 2022 that modifies some aspects of the application of Part 4 of the Payroll Tax Act for the 2022–23 and 2023–24 financial years in relation to certain employers. This administrative arrangement was approved having regard to:
- (a) the number of employers that may potentially be members of a group for the reason described in paragraph 15
 - (b) the circumstances giving rise to such grouping

⁷ [Public ruling PTA031](#)

⁸ Section 198 of the *Public Sector Act 2008* (Public Sector Act)

⁹ Section 276 of the Public Sector Act

¹⁰ See, for example, section 123 of the *Local Government Act 2009*.

¹¹ Chapter 3, Part 3 of the GOC Act

- (c) the intent of Part 4 of the Payroll Tax Act.¹²

17. This administrative arrangement:

- (b) provides that a person is taken not to have a controlling interest in a business carried on by the employer in certain circumstances
- (c) clarifies the matters that the Commissioner may take into account when determining whether to make an exclusion order to exclude the employer from a group.

Ruling and explanation

Commencement and duration of administrative arrangement

18. Subject to paragraph 19(c), this administrative arrangement commences with effect from 1 July 2022 and expires on 30 June 2024, both dates inclusive (the arrangement period).

Expiration of this administrative arrangement

19. Following the expiration of this administrative arrangement:

- (a) Subject to paragraph 19(c), the Payroll Tax Act as in force from time to time on or after 1 July 2024 will apply to an employer referred to in paragraphs 21 or 28 (subject to any other administrative arrangement that may be in effect at a particular time).
- (b) Without limiting paragraph 19(a), an employer who was not a member of a group on 30 June 2024 only because of the following reasons will be taken to have become a member of a group on 1 July 2024 (subject to any other exclusion order or administrative arrangement or provision of the Payroll Tax Act that may be in effect at that time):
 - (i) the application of paragraph 22
 - or
 - (ii) an exclusion order where the Commissioner disregarded particular matters as required by paragraph 25 in its making.
- (c) The administrative arrangement will continue to apply to an obligation in relation to wages paid or payable by an employer during the arrangement period, even where such obligation arises after expiration (such as the obligation to lodge an annual return in relation to the 2023–24 financial year).

Employers that are, or are directly or indirectly associated with, the state

20. For the purposes of the Payroll Tax Act, each government entity is taken to be a separate employer, carrying on one or more separate businesses, from each other government entity during the arrangement period.

¹² Part 4 of the Payroll Tax Act has been described judicially as being 'aimed at a particular mischief namely the [payroll] tax avoidance which might occur if employers split their payroll over several entities each claiming the ... deduction/threshold': *Scott and Bird & Ors v Commissioner of State Revenue* [2016] QSC 132, per Bond J at [24].

21. Paragraphs 22 to 27 apply in relation to an employer who is one of the following (each, a relevant entity):
- (a) a government entity
 - (b) a local government
 - (c) a government owned corporation, as defined in the GOC Act.
22. For the purposes of section 71 of the Payroll Tax Act, during the arrangement period the state, a minister or the Governor in Council is taken not to have a controlling interest in a business carried on by a relevant entity solely because of:
- (a) for a business carried by a government entity—the state being the sole owner of the business
 - (b) for a business carried on by a relevant entity that is a body corporate or unincorporate—the ability of the state, a minister and/or the Governor in Council to control the composition of the board of management, by whatever name called, of the relevant entity
 - (c) for a business carried on by a relevant entity that is a corporation with a share capital—the ability of the state and/or a minister to directly or indirectly exercise, control the exercise of, or substantially influence the exercise of, more than 50% of the voting power attached to the voting shares, or a class of voting shares, issued by the corporation.
23. For the purposes of section 72 of the Payroll Tax Act, during the arrangement period the state is taken not to have a controlling interest in a government owned corporation.
24. For the avoidance of doubt, paragraphs 22 and 23 do not prevent:
- (a) two or more relevant entities being members of a group constituted under another provision of Part 4 of the Payroll Tax Act (as contemplated by section 67 of the Payroll Tax Act)
- or
- (b) a relevant entity being a member of a group constituted with one or more entities that are not relevant entities.
25. For the purposes of the Commissioner deciding whether to make an exclusion order pursuant to section 74(1) of the Payroll Tax Act to exclude a relevant entity from a group for some or all of the arrangement period:
- (a) In determining whether the Commissioner is satisfied that a business carried on by the relevant entity 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, the Commissioner must disregard any lack of independence in, or any connection between, the carrying on of such businesses to the extent that it is as a direct or indirect result of legislation establishing or governing the other member and/or the relevant entity.
 - (b) Without limiting paragraph 25(a), in considering the nature and degree of ownership and control of the businesses carried by the relevant entity and other members of the group as required by section 74(3)(a), the Commissioner must disregard such ownership and

control to the extent that it is as a direct or indirect result of legislation establishing or governing the other members and/or the relevant entity.

Example 1

Under a particular Act (the Act):

- two companies are established—Company A Pty Ltd and Company B Pty Ltd
- the state is the sole shareholder of the voting shares in each company
- the holders of two particular statutory offices under the Act are to be appointed as directors of each company, along with a third person (who is different for each company), with each director having equal voting power.

Although the terms of the administrative arrangement as detailed in paragraph 22 of this public ruling means that Company A and Company B will not be grouped on account of the state's shareholdings, the companies will be grouped under section 71(1) of the Payroll Tax Act because the two common directors (collectively holding two-thirds of the voting power) have a controlling interest in the business of each company under section 71(2)(c).

In considering an application for an exclusion order by Company A, the Commissioner must disregard the impact that the common directorship has on the businesses carried on by Company A and Company B. This is because the common directorship is a requirement of the Act that established the two companies.

If the common directorship was not required by the Act (i.e. a decision was made to appoint the same two people as directors of the two companies, without a legislative requirement to do so), the Commissioner would not be required to disregard the common directorship when considering an application for an exclusion order.

26. Despite sections 5(1)(c) and (d) of the Payroll Tax Act, a change of status is taken not to have happened for a relevant entity if the relevant entity:
- (a) would (but for the terms of the administrative arrangement) be a member of a particular group during some or all of the arrangement period
 - (b) solely on account of the operation of the terms of the administrative arrangement and with effect from 1 July 2022 or a later date, either:
 - (i) starts paying, or becomes liable to pay, taxable wages other than as a group member
 - or
 - (ii) ceases to be the designated group employer for a group.
27. The terms of the administrative arrangement detailed in this public ruling are to be read in conjunction with Public Ruling PTA031 and Public Ruling PTAQ074.1 *Administrative arrangement—exclusion of subgroups from group*¹³ (collectively, the Public Rulings), and modify these Public Rulings to the extent the context permits or requires.

¹³ [Public ruling PTAQ074.1](#)

Employers that are, or are directly or indirectly associated with, the Commonwealth, another state or a territory

28. Paragraphs 18, 19 and 25 apply to an employer who is equivalent to a relevant entity under a law of the Commonwealth, another state or a territory.

Existing exemptions for relevant entities

29. For the avoidance of doubt, the terms of this administrative arrangement as detailed in this public ruling do not affect any existing exemption from payroll tax and the levy that may currently apply to certain wages paid or payable by a relevant entity.¹⁴

Date of effect

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

Amy Rosanowski
Acting Commissioner of State Revenue
Date of issue: 18/01/2023

References

Public Ruling	Issued	Dates of effect	
		From	To
PTA000.7.1	18/01/2023	18/01/2023	Current

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¹⁴ For example, section 14(2)(da) of the Payroll Tax Act provides that wages paid or payable by a department are not liable to payroll tax and the levy, except to the extent that those wages are paid or payable by a commercialised business unit as defined in section 14(9) of the Payroll Tax Act.