



Office of State Revenue
NSW TREASURY

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Payroll Tax – Grouping of trustee companies

TPI history

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BACKGROUND

Following the harmonisation of NSW and Victorian Payroll Tax Acts from 1 July 2007, differences in the way each jurisdiction has applied the grouping provisions in Part 5 of the Payroll Tax Act 2007 (the 2007 Act), and under the equivalent provisions of the Taxation Administration Act 1996 (the TAA) to trustee companies have been identified. Consequently legal advice has been obtained by both jurisdictions. Based on those advisings, the following interpretations of the legislation are to be adopted.

APPLICATION OF GROUPING PROVISIONS TO TRUSTEE COMPANIES

The following approach is to be applied to trustee companies under the 2007 Act and the equivalent provisions of the TAA.

Where a company is a trustee, the carrying on of the trust by the company (including a dormant trust) is deemed to be a business carried on by the company as trustee, by virtue of the definition of “business” in section 67 of the 2007 Act (referred to as the “trusteeship business”). A director or shareholder of the trustee company (or two or more directors or shareholders) may have a controlling interest in the company in respect of the carrying on of the trusteeship business.

If a trustee company also carries on a business under the trust (referred to as the “trust business”), that trust business is a separate business and the trustee is required to lodge separate payroll tax returns for that business by virtue of section 90 of the 2007 Act. In respect of that trust business, the company can only be grouped under s72 of the 2007 Act with another company conducting a trust business if a beneficiary or beneficiaries of the trusts has (or have) a controlling interest in both trust businesses. Neither the directors nor the shareholders are regarded as having a controlling interest in the trust businesses for the purposes of applying section 72(1) of the 2007 Act.

These principles are also to be applied under the equivalent provisions of the TAA.

Example 1

Assume ABC Pty Ltd acts as the trustee of the ABC Trust and incurs taxable wages in carrying on the trusteeship business (i.e. wages paid to persons engaged to run its trusteeship business). ABC Pty Ltd may be required to lodge a payroll tax return in respect of that trusteeship business.

Assume ABC Pty Ltd also carries on a business under the ABC Trust and incurs wages in respect of that trust business. ABC Pty Ltd may be required to lodge a separate payroll tax return in respect of that trust business.

If A is the sole director of ABC Pty Ltd and is also the sole beneficiary of the ABC Trust, then the two businesses would form a group for payroll tax purposes. This is because A has a controlling interest in both the trusteeship business and the trust business.

However, if the sole beneficiary of ABC Trust is X, then the two businesses would not form a group for payroll tax purposes under s 72(1) because the same person does not have a controlling interest in each of the two businesses.

Example 2

Assume company ABC Pty Ltd carries on a trust business under the ABC Trust and XYZ Pty Ltd carries on a trust business under the XYZ Trust, and both companies incur wages in carrying on those trust businesses.

Assume Person A is the sole director of ABC Pty Ltd and XYZ Pty Ltd and the sole beneficiary of the XYZ Trust.

The trusteeship business conducted by ABC Pty Ltd and the trusteeship business conducted by XYZ Pty Limited would form a group for payroll tax purposes. This is because A (as sole director of both companies) has a controlling interest in the trusteeship business carried on by ABC Pty Ltd and the trusteeship business carried on by XYZ Pty Ltd.

If the sole beneficiary of the XYZ Trust is X, then the two trust businesses conducted by ABC Pty Ltd and XYZ Pty Ltd do not form a group because different beneficiaries (A and X) control the two trust businesses.

Example 3

Assume company ABC Pty Ltd is the trustee of the ABC Trust and carries on a trust business under the ABC Trust. Assume also that A is the sole beneficiary of the ABC Trust.

Assume XYZ Pty Ltd is the trustee of the XYZ Trust and carries on a trust business under the XYZ Trust. Assume also that B is the sole beneficiary of the XYZ Trust.

Assume Person A is the sole director of both ABC Pty Ltd and XYZ Pty Ltd.

The two trusteeship businesses (ABC Pty Ltd and XYZ Pty Ltd) would constitute a group because A has a controlling interest as director in both trustee companies.

The trusteeship business of ABC Pty Ltd would also constitute a group with the trust business of the ABC Trust because A has a controlling interest as sole beneficiary of the Trust.

As ABC Pty Ltd is a member of two groups, all three members of both groups (ie ABC Pty Ltd, ABC Trust, and XYZ Pty Ltd) together constitute a group under s74 of the 2007 Act.

However, the two trustee companies in their capacity of carrying on the trust businesses under the two trusts (the ABC Trust and the XYZ Trust) do not form a group. This is because different beneficiaries have a controlling interest in each of the trust businesses.

However, if the sole beneficiary of both the ABC Trust and the XYZ Trust was A, then ABC Pty Ltd and XYZ Pty Ltd would form a group in respect of the two trust businesses.

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