



MT 2018 - ACT Pay-Roll Tax: exclusion of persons from pay-roll tax groups

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TAXATION RULING NO. MT 2018

ACT PAY-ROLL TAX : EXCLUSION OF PERSONS FROM PAY-ROLL
TAX GROUPS

F.O.I. EMBARGO: May be released

REF H.O. REF: L81/4 DATE OF EFFECT: Immediate

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F.O.I. INDEX DETAIL

REFERENCE NO:	SUBJECT REFS:	LEGISLAT. REFS:
I 1209505	ACT PAY-ROLL TAX GROUPING PROVISIONS EXCLUSION FROM GROUP	PAY-ROLL TAX (TERRITORIES) ASSESSMENT ACT 1971; SECTION 21F

PREAMBLE The Taxation Laws Amendment Act 1986 (Act No. 46 of 1986, which received the Royal Assent on 24 June 1986) inserted, as new Part IVA, "grouping" provisions into the Pay-roll Tax (Territories) Assessment Act 1971 (the Act). By virtue of sub-section 2(2) and section 41 of that Amendment Act, the grouping provisions apply in relation to wages paid or payable on or after 1 July 1986.

2. Under the grouping provisions, two or more employers are, in certain circumstances, treated as an employer group for pay-roll tax purposes. Where such a group is constituted, only one member of the group - the designated group employer - is entitled to benefit from the annual pay-roll tax exemption level, with any such benefit being determined by reference to the wages paid or payable by all members of the group. All other group members are liable to pay-roll tax on their ACT-related wages, unless total group wages are below the annual exemption level.

3. A detailed explanation of the operation of the grouping provisions can be found at pages 11 and 75 to 94 of the explanatory memorandum that accompanied the introduction of the amending legislation into the Parliament. This Ruling does not purport to explain aspects of the provisions already covered in that memorandum. Its primary purpose is to expand on the "other matters" to which regard is to be had in the application of sub-section 21F(1) of the Act, which authorises the exclusion of persons from pay-roll tax groups in certain circumstances.

4. Broadly, under the Act, a group may be made up of -

- . two corporations that are related by virtue of sub-section 7(5) of the Companies Act 1981 (section 21B);
- . an employer and another person, where an employee

of the employer performs duties wholly or principally for, or in connection with, a business carried on by the other person or the employer has agreed with the other person that an employee will perform duties in relation to the other person's business (section 21C); or

- . two persons who carry on commonly controlled businesses (section 21D).

If, as a result of the application of section 21B, 21C or 21D, a person is a member of two or more groups, all of the members of those groups are treated as a single group (section 21E).

5. Because of the potentially wide scope of the grouping provisions, sub-section 21F(1) of the Act authorises the making of an order excluding a person (in the sub-section called the "independent person") from a group in circumstances where, having regard to -

- . the nature and degree of ownership or control of each of the businesses carried on by members of the group;
- . the nature of those businesses; and
- . any other matters considered relevant,

the Commissioner of Taxation is satisfied that the business, or each of the businesses, carried on by the "independent person" is carried on substantially independently of, and is not substantially connected with the carrying on of, a business carried on by any other member of that group. However, in terms of sub-section 21F(2), an order cannot be made in respect of a corporation if, on the date from which the order would otherwise have effect, that corporation is or was related, by virtue of sub-section 7(5) of the Companies Act 1981, to another corporation in the group.

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6. Businesses are to be taken to be substantially independent of, and not substantially connected with, each other where it is established that the factors that gave rise to the constitution of the group (effectively only those factors referred to in sections 21C and 21D) stemmed from a casual, occasional or irregular - and not a continuous and active - relationship. In determining that question, regard is, as noted in the preceding paragraph, to be had not only to the specific matters of the ownership or control of, and the nature of, the businesses but also to any other relevant matters.

7. Those other relevant matters would include -

- . the extent to which the "independent person" takes a part in the management and administration of the business or businesses of one or more of the other group members or, conversely, the extent to which any other group members take part in the

management and administration of the independent person's business;

- . the extent to which the "independent person" shares resources, facilities or services (such as premises, equipment, banking facilities and office services) with any other group members;
- . the extent of any financial interrelationship (for example, by way of loans or guarantees) between the "independent person" and any other group members;
- . the nature and extent of any business dealings between the "independent person" and any other group members (for example, whether a significant proportion of the "independent person's" total business is with other group members); and
- . the existence of shared marketing or purchasing arrangements between the "independent person" and any other group members (for example, whether there is a sharing of business with particular customers or the receipt or provision of complementary goods or services).

8. A person who is a group member for ACT pay-roll tax purposes may make written application to the Deputy Commissioner of Taxation, Canberra (P.O. Box 15, Belconnen, ACT 2616) for the making of an exclusion order under sub-section 21F(1) of the Act. That application should address the matters outlined in paragraphs 6 and 7 above and provide any additional information which has, or is likely to have, a bearing on the question whether that person is an "independent person".

9. Where a sub-section 21F(1) exclusion order is made, it is to specify the date, not being later than the date of the order, from which the exclusion has effect. The order should also specify the circumstances in which it has been made. For example, where an order is being made on the basis that the only connection between 2 businesses is that the owners have agreed that one of the employees in each business will be available to perform duties in the other business on particular occasions (such as when employees in that other business are unexpectedly not able to perform the duties), that basis should be stated in the order. In terms of sub-section 21F(3) of the Act, if specified circumstances change materially, the "independent person" is required to provide written advice of that change within 7 days.

COMMISSIONER OF TAXATION
25 June 1986

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