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## Grouping and Payroll Tax

### What is 'Grouping?'

For payroll tax purposes, businesses are 'grouped' when they are subject to 'common control' (whether direct or indirect) and or share the use of one or more employees.

'Common control' means they are directly or indirectly majority controlled by the same person, people or businesses – typically because those people or other businesses have a majority holding of share capital (for example, a holding company or subsidiary relationship), a majority of common directors, common shareholders, common partners or common trust beneficiaries.

These people are said to have a 'controlling interest'.

'Majority', in terms of control, means greater than 50 per cent.

The majority control can be direct or indirect.

#### **Example:** Direct and Indirect Interests

A Pty Ltd holds 80% of the voting shares in B Pty Ltd. Therefore A Pty Ltd has a (majority) controlling interest in B Pty Ltd, and A Pty Ltd and B Pty Ltd are grouped. B Pty Ltd acquires 80% of the voting shares in C Pty Ltd. Therefore, A Pty Ltd has an 80% controlling interest in B Pty Ltd and an indirect 64% (80% x 80%) controlling interest in C Pty Ltd.

Further, B Pty Ltd has an 80% controlling interest in C Pty Ltd. As all controlling interest ratios exceed 50%, all three businesses are grouped. This situation is sometimes referred to as grouping due to a 'cascade' of controlling interests (see examples from on page 61).

'Common employees' means two or more businesses share the services of one or more employees – for example, an accounts clerk whose full-time job is reception, bookkeeping and clerical work for three businesses that operate from the same building (regardless of whether or not those businesses are commonly controlled).

### 'Subsuming' of Multiple Groups into a Single 'Master' Group

If a single business is a member of two or more groups, all of the members of those groups are automatically 'subsumed' into a single 'master' group.

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**Example:**

Group 1 (ABC Pty Ltd and DEF Pty Ltd): John and Mary are the only two directors and 50/50 shareholders of two companies – ABC Pty Ltd and DEF Pty Ltd. These companies are grouped through ‘common control’. This group is called ‘Group 1’.

Group 2 (GHI Pty Ltd and JKL Pty Ltd): Jim and Jean are the only two directors and 50/50 shareholders of two companies – GHI Pty Ltd and JKL Pty Ltd. These companies are grouped through ‘common control’. This group is called ‘Group 2’.

Group 3 (DEF Pty Ltd and GHI Pty Ltd): DEF Pty Ltd and GHI Pty Ltd operate from a common office. Three employees of DEF Pty Ltd provide administrative, debtor/creditor and face-to-face and telephone reception to both DEF Pty Ltd and GHI Pty Ltd. GHI Pty Ltd reimburses DEF Pty Ltd for 40% of the employee costs. Because there is an arrangement between DEF Pty Ltd and GHI Pty Ltd for the sharing of employees, the two businesses are grouped, even though they are not subject to common control. This group is called ‘Group 3’.

Group 4 (Subsuming Into ‘Master Group’):

Group 1 comprises ABC Pty Ltd and DEF Pty Ltd.

Group 2 comprises GHI Pty Ltd and JKL Pty Ltd.

Group 3 comprises DEF Pty Ltd and GHI Pty Ltd.

Because:

DEF Pty Ltd is a member of Group 1 and Group 3; and

GHI Pty Ltd is a member of Group 2 and Group 3;

All three groups are subsumed into a single group (for convenience referred to as Group 4).

## Background – How Does Grouping Affect Payroll Tax?

A non-grouped business is entitled to claim the tax-free threshold (ADA), calculated upon its NT and Australian wages.

When two or more businesses are grouped, only one member of the group (the DGE, which is selected by the group members) can claim a tax-free threshold, which is then calculated taking account of wages paid by all group members in all states of Australia.

Any other group members who pay NT wages then pay payroll tax on their full value of their NT wages.

## Group Members are Jointly and Severally Liable for each Other’s Payroll Tax Debts

Each member of a group is jointly and severally liable for the payroll tax debts of all other group members, provided only that they were all members of the group when the liability arose.

## A Group Member Need not be an Employer to be Jointly and Severally Liable

A group member will be jointly and severally liable for the payroll tax debts of other members of the group, regardless whether or not it employs and pays wages itself. However, only NT wage-paying businesses need to register for payroll tax purposes.

**Example:**

A1 Pty Ltd is a construction company that pays NT wages of \$2 million per annum. As this exceeds the \$1.5 million tax-free entitlement, A1 is liable for NT payroll tax.

A2 Pty Ltd has the same directors and shareholders as A1 Pty Ltd, and is therefore grouped with A1 Pty Ltd under the 'common control' provisions. A2 Pty Ltd has no employees, it simply owns the property from which A1 Pty Ltd operates its business.

A1 Pty Ltd fails to pay its payroll tax liabilities. In this case A2 Pty Ltd automatically becomes jointly and severally liable to pay A1's payroll tax debts. This could involve TRO initiating recovery action against A2 as well as A1.

## Legislative Background to Grouping

The historic objective behind grouping was to ensure companies did not artificially separate their operations into separate legal entities to gain the benefit of multiple tax-free threshold entitlements and to separate their liabilities.

This has evolved over time to apply in all circumstances where there is an active or significant relationship, whether in a business or commercial sense, between the carrying on of two or more businesses.

**Example:**

Johnnie Johnston is the sole director and shareholder of JJ Pty Ltd, which has two divisions and carries on business under two trading names – JJ's Constructions and JJ's Transport. The businesses pay total NT wages of \$4 million per annum.

On professional advice, Johnnie Johnston creates two separate companies to run the two businesses; he remains as sole director and sole shareholder of each. The advice was unrelated to payroll tax. As these businesses would be grouped under the 'common control' provisions, they in effect 'share' one tax-free entitlement and the action would have no effect upon the overall payroll tax liabilities of the companies, although each company would now need to be separately registered as an employer.

## Grouping is Automatic

Grouping occurs automatically through the application of law – that is, TRO does not make a decision as to whether businesses are grouped or not.

The main effect of grouping is to ensure two or more grouped businesses share only one tax-free threshold amount by:

- combining their Australian taxable wages to determine whether this total exceeds the NT tax-free threshold of \$1 500 000 per annum;
- where the total Australian wages of group members combined exceeds \$1 500 000, requiring each wage-paying NT employer in the group (regardless of amount of wages paid) to register as an employer for payroll tax purposes; and
- allowing only one member of the group, the DGE, to claim the tax-free entitlement (ADA) on behalf of all members of the group (refer to [Calculating your Payroll Tax](#) and [Lodging and Paying your Payroll Tax Returns](#) for further details).

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## Meaning of 'Person'

The PRTA makes frequent references to the term 'person'. This term is not limited to 'persons' in the sense of a human being.

For grouping purposes, 'person' includes an individual person (a 'natural person'), two or more individual persons together, a partnership of individuals, a partnership of companies, a trustee of a trust, or a private or public company.

This recognises that a business may be carried on, and wages paid under any of these arrangements.

### Examples:

1. Dave Devonshire is a person.
2. Dave Devonshire trading as Dave's Electrical Services is the same person as Dave Devonshire alone (Dave's Electrical Services is simply a trading name and not an entity or person in its own right).
3. Dave and Donna Devonshire Family Partnership is a person.
4. Dave's Electrical Services Pty Ltd is a person.
5. Dave Pty Ltd is a person.
6. In the case of Dave Pty Ltd as trustee for the Dave and Donna Devonshire Family Trust trading as Dave's Electrical Services, the 'person' is the trustee (Dave Pty Ltd).

## What is a Business?

The grouping provisions apply to businesses, regardless of whether the business pays wages.

'Business' includes any of the following:

- any profession or trade;
- any activity carried on for fee, gain or reward;
- the employing of people to provide services to another business;
- the carrying on of a trust, (whether active or dormant); and
- holding property (including goods, equipment or money) used for or by another business.

## What if One 'Person' Operates More than One Business?

When one person operates more than one business (usually under different trading names), this is not a group – it is the same business.

In these circumstances, there is only one employer and (subject to tax-free thresholds) the wages for those businesses must be combined into a single return for that employer.

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**Example:** John and Beryl have a family partnership with its own ABN and GST registration. The family partnership operates two separate businesses – John works as a plasterer under the trading name of JB Plasterers, and Beryl operates a small retail outlet under the name of Beryl's Boutique.

This is a single business for payroll tax purposes, not a group.

The only exception to this rule is a trustee that operates businesses for different trusts, where the trustee is considered a different person in respect of each trust.

## Geographical Location of a Business is Irrelevant

It does not matter where (in which state or states) a business is carried on.

If there are two or more group members, anywhere within Australia, and at least one of them pays NT taxable wages, the NT wage-payer(s) must register for payroll tax if the combined Australian taxable wages of all members of the group exceeds the NT tax-free threshold of \$1 500 000 per annum (\$125 000 per month) (see [When does a business need to register and start paying payroll tax?](#) for further details).

## Groups Arising from the Use of Common Employees

An employer that provides the services of one or more of its employees to one or more other businesses constitutes a group with the other business:

**Example:** Business A employs Employee 1. Employee 1 provides services to Business A and Business B. It does not matter whether Business A and Business B are related or unrelated. Further, it does not matter whether or not Business B reimburses Business A for part of Employee 1's wages. In these circumstances, Business A and Business B are grouped.

This type of situation may exist where, for example, two businesses operating from the same premises set up a single group of people to operate a common accounting, payroll, personnel, debtor management and creditor management section.

**Note:** Simply because two or more otherwise unrelated businesses share premises does not result in them being grouped – there must be a common use of employees as in the above example.