

The Commissioner's discretion under the grouping provisions

Revenue Ruling PT.063

Preamble

The *Pay-roll Tax Act 1971* (the Act) provides for the grouping of two or more employers. The effect of grouping is that only one pay-roll tax deduction can be claimed for each group.

Broadly speaking, an employer and another person will constitute a group where:

- (i) **corporations are related to each other by virtue of section 50 of the Corporations Law, or**
- (ii) **an employee or employees of an employer perform any duties for, or in connection with another business, or where there exists an agreement for the performance of duties for the other business by at least one employee of the employer, or**
- (iii) **the same person has or the same persons have together a controlling interest in two businesses.**

Grouping of employers under (i) is mandatory. (See Revenue Ruling PT.032).

However, in order to avoid anomalies which may arise from the strict application of the legislation, section 9A(1J) of the Act provides that employers who are grouped under (ii) and (iii) can apply in writing to the Commissioner of State Revenue to exercise the discretion reserved by the Commissioner to exclude an employer from a group.

The purpose of this ruling is to explain the discretion available under section 9A(1J) of the Act and the matters the Commissioner may consider in exercising the discretion to exclude an employer from a group.

Ruling

Under section 9A(1J) of the Act, the Commissioner may exercise the discretion and exclude an employer from a group. Before exercising the discretion, the Commissioner must be satisfied, having regard to the nature and degree of ownership and control of the businesses carried on by members of a group, the nature of those businesses and any other relevant factors, that a business carried on by a member of a group, is carried on independently of and is not connected with the carrying on of, a business carried on by any other member of that group.

In making a decision, the Commissioner will consider the nature and the extent of all relevant agreements and dealings between the member and other members of the group, including:

- **the nature and extent of any commercial transactions between the member and other members of the group, including the value and percentage of the member's total business which is conducted with other members of the group;**
- **the extent to which members share resources, facilities or services, including premises, staff, management and accounting services;**
- **the extent to which the member controls or is involved in managerial decisions and day to day administration of the other members and the extent to which other members control or are involved in managerial decisions and day to day administration of the member;**
- **the extent to which there are financial interdependencies, including intra-group loans or guarantees and common banking facilities, and the terms and conditions attached to such agreements;**

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- the degree to which there is a connection between a member and other members of the group in the purchase of sales of goods and services;
 - the extent to which there is a connection between the nature of the businesses of the member and other members of the group; and
 - the extent to which there is a connection between the ultimate owners of the member and other members of the group.

The matters detailed above are merely some of the issues the Commissioner may consider in exercising the discretion. It is not an exhaustive list, and each case will be considered on the basis of all the relevant facts.

In general, for the Commissioner to exercise the discretion in the employer's favour, the Commissioner must be satisfied that there is not a continuous active and significant relationship, in a business or commercial sense, with any other member of the group, and that the connections which do exist are no more than casual or irregular occurrences.

Please note that rulings do not have the force of law. Each decision made by the State Revenue Office is made on the merits of each individual case having regard to any relevant ruling. All rulings must be read subject to Revenue Ruling GEN.01.

Denzil Griffiths
Commissioner of State Revenue
28 February 1994