



## Pay-roll Tax

### Grouping Provisions

*Pay-roll Tax Assessment Act 2002*

As at 1 July 2012

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#### Introduction

The grouping provisions were introduced with effect from 1 January 1976.

The effect of grouping is that the wages of all businesses in a group are combined to determine:

- if a liability to register for pay-roll tax exists; and
- the threshold amount.

Tax is paid by each individual group member on the wages paid in its own right.

The *Pay-roll Tax Assessment Act 2002* ("the Act") was amended with effect from 1 July 2009 and the amendments introduced a package of measures aimed at achieving a greater level of harmonisation in a number of areas of the pay-roll tax regime between Western Australia and the other States and Territories.

The amendments relating to the grouping of employers, which provide the Commissioner of State Revenue discretion to exclude a member from a group, took effect in Western Australia from 1 July 2012.

#### Grouping of business

Businesses constitute a group where any one or more of the following criteria is met:

- one company is related to another company under the *Corporations Act 2001* (Cwth)
  - an employee or employees of one business perform duties for or of another business, whether by arrangement or otherwise;
  - the same person or persons together, have a controlling interest of more than 50% in each of two or more businesses;
  - an entity has a direct, indirect or aggregate controlling interest in a corporation ("tracing provisions")
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## Related corporations

Corporations constitute a group for pay-roll tax purposes if they are related to each other within the meaning of Section 50 of the *Corporations Act 2001 (Cwth)*. For example, a subsidiary company would constitute a group with the holding company.  
*Refer to Section 30 of the Act.*

## Employees used in another business

Businesses constitute a group where:

- an employee of one employer performs duties for a business carried on by another employer;
- an employer has an agreement, arrangement or undertaking with another employer in respect of the employment or the performance of duties by one or more of his employees.

*Refer to Section 31 of the Act.*

## Commonly controlled businesses

Two businesses constitute a group where the same person or persons together have a controlling interest in each business.

For the purposes of the Act, a person or persons have a controlling interest in a business where:

- any director or directors of a corporation can exercise or influence a majority of the voting power at meetings of directors, or the director or those directors are under an obligation (whether formal or informal) to act in accordance with the direction of that person or those persons;  
*Refer to Section 33(1) of the Act.*
- a person or persons together (directly or indirectly) exercise or control more than 50% of the voting power of the shares in a corporation;  
*Refer to Section 33(2) of the Act.*
- a person or persons together own more than 50% of the capital, **or** the person is (or the persons together are) entitled to more than 50% of the profits of a partnership;  
*Refer to Section 33(3) of the Act.*
- a person as a beneficiary of a trust has, or persons as beneficiaries of a trust have a beneficial interest of more than 50% of the value of the interests in that trust;  
*Refer to Section 33(4) of the Act.*
- a person is the sole owner of a business;  
*Refer to Section 33(5) of the Act.*
- two or more persons own the business as trustees;  
*Refer to Section 33(6) of the Act.*
- Where a corporation has a controlling interest in a business, it will also have a controlling interest in any business in which a corporation related to the first corporation has a controlling interest;  
*Refer to Section 33(7) of the Act.*

- the person or persons who carry on the business have a controlling interest in another business;  
*Refer to Section 33(8) of the Act.*
- the person is a beneficiary of a trust, or the persons are beneficiaries of a trust, and the trustee or trustees of that trust have a controlling interest in a business, in circumstances where the beneficiary has, or the beneficiaries have, an interest of more than 50% in the value of the interests of the trust;  
*Refer to Section 33(9) of the Act.*
- it should be noted that a beneficiary under a discretionary trust is, or beneficiaries under a discretionary trust are, deemed to have a beneficial interest in respect of more than 50% of the value of the interests in that trust;  
*Refer to Section 34 of the Act.*

## Tracing provisions

Under the tracing provisions, an entity will be grouped with a corporation if the entity has a controlling interest in the corporation. A controlling interest will exist if the entity has:

- a direct interest in the corporation;
- an indirect interest in the corporation, or
- an aggregate interest in the corporation.

In each case the value of the interest must be greater than 50%.

“Entity” means a person or set of associated persons.

“Associated persons” means a person who is associated with another person in any of the following circumstances:

- One person is the spouse or de facto partner of the other person; or
- The relationship between the persons is that of parent and child, or siblings; or
- Related corporations; or
- An individual and a private company, if the individual is a majority shareholder or director of the company, or of another company that is a related corporation of the company; or
- An individual and a trustee where the individual is a beneficiary of the trust of which the trustee is the trustee (does not include public unit trust schemes); or
- A private company and a trustee where the beneficiary of the trust (of which the trustee is trustee) is the company, or a major shareholder or director of the company, is a beneficiary of the trust (does not include public unit trust schemes); or
- If the individuals are partners in a partnership; or
- Private companies if common shareholders have a majority interest in each of private company; or

- Trustees, if any person is a beneficiary common to each trust of which the trustees are trustees (does not include public unit trust schemes); or
- A private company and a trustee if the company, or a major shareholder or director of the company, is a beneficiary of the trust of which the trustee is trustee (does not include public unit trust schemes).

*Refer to Section 35A of the Act.*

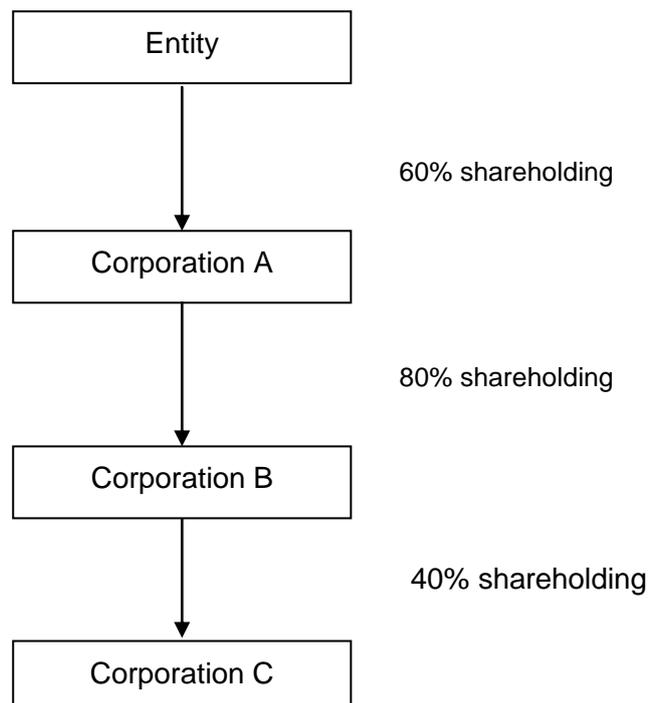
A **direct interest** in a corporation is where an entity can, either directly or indirectly, exercise, control or influence the voting power attached to any voting shares in the corporation. The value of the interest is the proportion of the voting power (expressed as a percentage) attached to all voting shares in the corporation that the entity can exercise, control or influence.

*Refer to Section 35B of the Act.*

An **indirect interest** in a corporation exists where an entity has a direct interest in a corporation (i.e. the directly controlled corporation) that is linked to another corporation. A corporation is linked to another corporation where it is part of a chain of corporations where each link in the chain has a direct interest in the next corporation in the chain. The value of the indirect interest is calculated by multiplying the value of the entity's direct interest in the directly controlled corporation with the value of that corporation's direct interest in the next corporation in the chain, and so on as necessary.

*Refer to Section 35C of the Act.*

See the following example:



In this example, the entity has a direct interest in Corporation A of 60%.

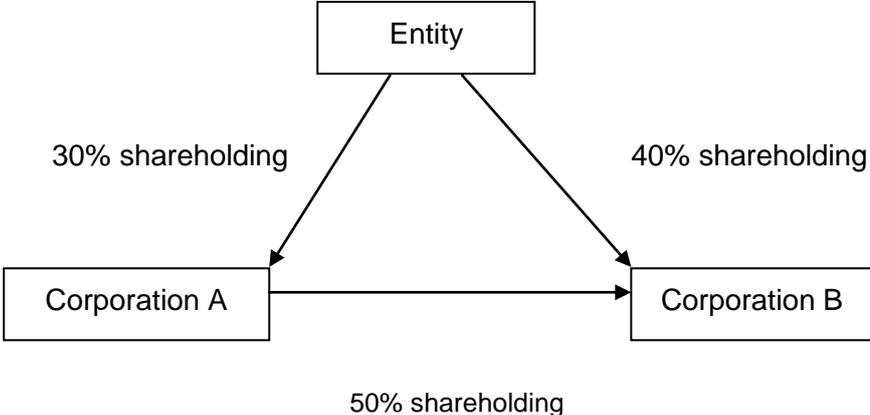
Corporation A has a direct interest in corporation B to the value of 80%, therefore the value of the entity's indirect interest in corporation B is  $60\% \times 80\% = 48\%$ .

As corporation B has a direct interest in corporation C to the value of 40%, the value of the entity's indirect interest in corporation C is  $60\% \times 80\% \times 40\% = 19.2\%$ .

An **aggregate interest** means the sum of an entity's direct and indirect interests in a corporation, and occurs when an entity has either:

- a direct and indirect interest in a corporation; or
- more than one indirect interest in a corporation

The value of the aggregate interest is the sum of the value of the entity's direct interest in the corporation and the value of each indirect interest. See the following example:



In this example, the entity has a direct interest in Corporation A of 30%. The entity has a direct interest in corporation B of 40%.

The entity also has an indirect interest in corporation B of  $30\% \times 50\% = 15\%$ .

The entity's aggregate interest in corporation B is therefore 15% (indirect interest) + 40% (direct interest) = 55%.

The entity therefore has a controlling interest in Corporation B  
*Refer to section 35D of the Act.*

### Small groups subsumed into one group

Where an employer is a member of two or more groups, all the members of those groups constitute one group.  
*Refer to Section 36(1) of the Act.*

Where two or more members of a group have together a controlling interest in a business, the person who carries on that business and the members of the group constitute a group.  
*Refer to Section 36(2) of the Act.*

### Exclusions of persons from groups

A corporation cannot be excluded from a group if it is related, within the meaning of section 50 of the *Corporations Act 2001* (Cwth), to another corporation which is a member of the group.  
*Refer to Section 38(2) of the Act.*

The Commissioner has a discretionary power to exclude a business from a group. The grounds for exclusion vary according to the provisions under which the businesses constitute a group.

*Refer to Section 38 of the Act.*

The Commissioner can exercise discretion to exclude in the following grouping situations:

- EMPLOYEES USED IN ANOTHER BUSINESS
- COMMONLY CONTROLLED BUSINESSES
- TRACING
- SUBSUMING

When considering exclusion of a person from a group, in relation to a business carried on by that person, the Commissioner must be satisfied that the business 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. In being satisfied, the Commissioner must have regard to:

- nature and degree of ownership and control of the businesses;
- the nature of the businesses; and
- any other matters the Commissioner considers relevant.

### **Nature and degree of ownership and control of the businesses**

Is the same person, or are the same persons, the ultimate owners of the businesses? Are the owners of each business closely related?

Where grouping has been effected under the provisions relating to discretionary trusts, what is the involvement of the beneficiary in the business and what are the beneficiary's entitlements under the trust?

### **The nature of the businesses**

What is the industry type for each business and what are the operations of each business within those industries? What are the activities of each business and the extent to which these activities are integral to the operations of the other business? Are the businesses complementary? Can each business operate in its own right?

**“Other matters” the Commissioner will have regard to include:**

- Nature and extent of commercial transactions between members;
- Extent of shared resources, facilities or services;
- Extent of involvement in managerial and day-to-day decision making;
- Extent of financial interdependencies;
- Extent of duties performed by shared employees.

## **Nature and extent of commercial transactions between members**

Do transactions occur between the grouped businesses? If so, what is the purpose of these transactions, and to what extent? Do these transactions occur at normal commercial rates, or, if not, are discounts provided? Do the purchases of one business constitute a substantial amount of the sales of the other business?

## **Extent of shared resources, facilities or services**

Does the business share any staff, resources, administrative services or premises? If so, does this sharing, or these sharing arrangements, occur at normal commercial rates?

## **Extent of involvement in managerial and day to day decision making**

Is the same person, or are the same persons, responsible for the day-to-day management of either business? Are the managers of either business required to conduct the business under an obligation or direction of another person? Is any consideration made regarding how one business' management decisions impact upon the other business?

## **Extent of financial interdependencies**

Are there any loans or other financial arrangements in place between the two businesses? If there are loans in place, is a normal commercial rate of interest charged on such loans, and are there any written agreements? Is interest on any loan actually paid or required to be paid? Have the businesses together sought finance from a financial institution? Do the businesses have common financial arrangements, including accounting services?

## **Extent of duties performed by shared employees**

What is the proportion of work completed by the employees for each employer? What is the level of integration of the duties completed by the employees to the operations of the other employer? Has a commercially realistic payment been made for the duties completed by the employees? Was one business created, or does one business exist solely to provide support services for the other business, for example, a service trust?

Refer to [Commissioner's Practice PT 2](#)

Refer to [Commissioner's Practice PTA 031](#)

[Application for Exclusion from Grouping - Pay-roll Tax](#)

## **Liability of group members**

If a member of a group fails to pay any amount of pay-roll tax, every other member of that group is jointly and severally liable to pay the outstanding tax.

*Refer to Section 7(2) of the Act.*

## **Designated group employer**

A member of a group must be nominated as the designated group employer for the purposes of claiming any threshold amount due to the group.

The members of the group may change the designated group employer by notice to the Commissioner.

*Refer to Section 39 of the Act.*

**Note:** The information contained in this FACT SHEET is issued for guidance purposes only. It is not an exhaustive explanation of the provisions of the *Pay-roll Tax Assessment Act 2002* and reference should be made to the Act for complete details.

### Contact the Office of State Revenue

<b>Office</b>	Office of State Revenue Plaza Level 200 St Georges Terrace PERTH WA 6000	<b>Telephone</b>	(08) 9262 1300 1300 368 364 (WA country STD callers only – local call charge)
<b>Office hours</b>	8:00 am – 5:00 pm Monday to Friday	<b>Facsimile</b>	(08) 9226 0841
<b>Postal</b>	Office of State Revenue GPO Box T1600 PERTH WA 6845	<b>Web Enquiry</b>	<a href="http://www.osr.wa.gov.au/PayrollEnquiry">www.osr.wa.gov.au/PayrollEnquiry</a>
		<b>Website</b>	<a href="http://www.osr.wa.gov.au">www.osr.wa.gov.au</a>