

# ADVISOR DAY 2020

PAYROLL TAX AND GROUPING

| CASES FROM THE CGLAW VAULT

Presented by

Danny Clifford, Director &

Ebony Archer, Associate

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# TOPICS

A. WHAT IS PAYROLL TAX?

B. GROUPING AND WORKSHOP EXAMPLE

C. WHAT ARE THE AREAS OF RISK?

# A. What is Payroll Tax?

1. OBLIGATION TO PAY PAYROLL TAX
2. DEFINITION OF WAGES
3. JURISDICTIONAL ISSUES

# 1. Obligation to pay payroll tax

- Employer must register for payroll tax within seven (7) days at the end of a month whereby they:
  - pay more than \$25,000.00/week in wages; or
  - become a member of a group that collectively pays more than \$25,000.00/week in wages.
- > \$1.3 million/year in wages = payroll tax liability.
- **NB:** payments to Contractors can be included.

## 2. Definition of wages

*PAYROLL TAX ACT 1971 (QLD):*

### **WAGES—**

*means any wages, remuneration, salary, commission, bonuses or allowances paid or payable (whether at piecework rates or otherwise and whether paid or payable in cash or in kind) to an employee as an employee*

*[emphasis added]*

### 3. Jurisdictional issues – what if the employee works across different states?

STATE	THRESHOLD (\$ ANNUALLY)	RATE (%)
QLD	\$1,300,000.00	4.75 – 4.95
NSW	\$950,000.00	5.45
VIC	\$650,000.00	2.425 – 4.85
SA	\$1,500,000.00	up to 4.95
WA	approx. \$1,000,000.00	approx. 5.5
ACT	\$2,000,000.00	6.85
NT	\$1,500,000.00	5.50

### 3. Jurisdictional issues – what if the employee works across different states?

Wages will likely be assessed in a particular state if:

- the employee is based in that state;
- where the employee is not based in an Australian jurisdiction, but the employer is based in that state;
- where both the employer and employee are not based in an Australian jurisdiction, where the wages are paid or become payable; and
- where both the employer and employee are not based in an Australian jurisdiction and the wages are not paid or become payable in an Australian jurisdiction, where the services are primarily performed.



# C. Grouping and Workshop Example

## Grouping and Exclusion Orders

- A. when one or more entities will be grouped
- B. issues to consider whether an exclusion order application should be made
- C. extract the important points from:

*Telgrove Pty Ltd t/as P&E Francis Plant Hire v Commissioner of State Revenue*  
*[2019] QCAT 199*



Telgrove

- Postville Pty Ltd
- CFS Hire Pty Ltd
- Gnurhan B Pty Ltd ATF the Nahrung Family Trust

The link was a Mr Nahrung.

# Grouping

Two or more employers will be grouped if:

- a. they are 'related bodies corporate' (s 69)
- b. they use common employees (s 70)
- c. a person (or set of persons) have a controlling interest in more than one of the businesses (s 71)
- d. a person (or set of persons) have a controlling interest in the corporation (s 72)

# Exclusion Orders

## Section 74(1)

The commissioner may, by order in writing (an exclusion order), exclude a person from a group.

# An exercise of discretion:

## Section 74(3)

For deciding whether to make an exclusion order, the commissioner must have regard to—

- (a) the nature and degree of ownership and control of the businesses carried on by the person and the other members of the group; and
- (b) the nature of the businesses; and
- (c) any other matters the commissioner considers relevant.

See also Public Ruling PTA031.2

Whether the discretion will be exercised is a question of fact and degree:

*it is not the case that any connection between businesses will disentitle an Applicant from de-grouping. The connection must be material and not insignificant or inconsequential.*

*Lombard farms Pty Ltd v Chief Commissioner of State Revenue* [2013]  
NSWADTAP 42

# The Telgrove Case

It is the business that should be analysed, not the entities

Only substantial or material dependencies or connections should deny exclusion

The focus of the exclusion test should be how the business are actually carried on

# Outcome

The Exclusion Order sort by Telgrove should be granted.



# Key Takeaways from Telgrove

1. There is no one determining factor
2. The description of the business (when compared to the other group members) is of primary importance
3. Independence of the business is persuasive

# C. What are the areas of risk?

1. POTENTIAL PENALTIES

2. KEY QUESTIONS FOR ADVISORS

# 1. Potential Penalties

If an employer is issued with a default assessment notice = an **additional** 75% of the payroll tax amount.

This penalty tax can be increased by a further 20% in certain circumstances.

## 2. Key Questions to Identify Potential Risk

1. Is this business closely connected with another entity? **GROUPING**
2. Does the Director of this business have a controlling interest in another entity? **GROUPING**
3. Do the employees of the business reside in a different location to where payment is made or the services are performed? **JURISDICTION**
4. Are there any contractors involved? **WAGES THRESHOLD**

#### TOOWOOMBA OFFICE

Level 1, 610 Ruthven Street, Toowoomba Q 4350  
PO Box 8208, Toowoomba South Q 4350

#### BRISBANE OFFICE

Level 54, 111 Eagle Street Brisbane 4000

**P** 07 4688 2188

**F** 07 4688 2199

**E** [mail@cglaw.com.au](mailto:mail@cglaw.com.au)

[www.cglaw.com.au](http://www.cglaw.com.au)

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