

Payroll Tax Year End

The payroll tax year ended on 30 June and registered businesses are required to lodge their annual reconciliation returns by 21 July. The next 2 weeks is an ideal time for affected businesses to critically review their payroll tax compliance, as our experience shows that the majority of businesses are either underpaying or overpaying payroll tax. Few businesses get it exactly right. Critical issues to address include:

- whether your client's business is grouped with other businesses, by common shareholders, common directors or sharing of employees (refer below);
- whether payments to contractors need to be included in taxable wages (refer below);
- whether all available exemptions and concessions have been availed of; and
- whether clients are applying the correct payroll tax treatment to superannuation contributions, fringe benefits, allowances, employee share and option schemes, etc.

***Action Point:** We recommend that advisers review clients who regularly engage contractors or subcontractors or who have interests in more than one entity/business, as they may be unaware of their exposure. ITC Group can perform an external evaluation of compliance if required.*

Payroll Tax: How does Grouping Work?

In all States and Territories, payroll tax is only payable on wages in excess of the exemption threshold (\$638,000 in NSW in 2009/10). If two or more businesses are "grouped", they are required to share the threshold. Also, if a business has interstate wages, the threshold is reduced proportionately, e.g., if 50% of national wages are paid in NSW, then only 50% of the NSW threshold is available.

Businesses are grouped where:

- they are "related bodies corporate" under the Corporations Act 2001;
- the same "person" or "set of persons" has a "controlling interest" (i.e., >50%) in two or more businesses, by shareholding or directorship (note, particularly, that any beneficiary of a discretionary trust is deemed to have a controlling interest in the business conducted by that trust); or
- an employee of one business performs duties for another business (whether for a commercial fee or not, and regardless of the level of inter-use of employees)

Our experience is that many businesses (especially those operated through discretionary trusts) do not realise they are grouped with other businesses until they receive an audit questionnaire or audit, and often find themselves with a five-year OSR assessment with penalties and interest.

***Action Point:** If you have clients who have interests in more than one business (directly or indirectly), we recommend you critically review whether they have a potential exposure through the grouping provisions.*

Indirect Tax News

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Payroll Tax: When are Contractor Payments Taxable?

Payments to certain contractors are deemed to be wages for payroll tax purposes. In broad terms, the intention of the Government is to tax such payments where contractors/subcontractors work exclusively or primarily for a single principal.

The legislation works by making all contractor payments (for labour) subject to payroll tax, unless the payments are covered by one of the 9 prescribed exclusions (e.g., contractor engaged for less than 90 days, the contract requires the services to be provided by two persons, etc.).

Note that payments to contractors can be subject to payroll tax even if the contractor operates through an interposed entity (e.g., company or trust structure).

As with grouping, our experience is that many businesses do not realise they have a liability to pay payroll tax on contractor payments until they receive an audit questionnaire or audit, and are subject to a five-year adjustment.

***Action Point:** If you client's P&L statement shows an amount for "contractors" or "subcontractors" (the proverbial "red flag" for OSR auditors), has your client considered whether they have a potential payroll tax liability?*

Payroll Tax: Changes to the Nexus Rules

All States and Territories have new nexus rules, applicable for the 2009/10 year, where an employee works in two or more States.

Under the old rule, payroll tax was payable to the State in which the employee was paid (effectively the State in which the employee had their bank account).

Under the new rule, payroll tax is payable to the State in which the employee has their principal place of residence (regardless of where paid).

***Action Point:** Caution is required if clients operate in border towns (Tweed Heads, Albury, Queanbeyan, etc.) or have mobile employees, such as sales reps, truck drivers and the like.*

DISCLAIMER

This newsletter is issued as a helpful guide. It is not intended to, and does not cover all aspects of the topics discussed. Professional advice should be sought before any action upon these topics is taken.