



Office of State Revenue
NSW TREASURY

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Revenue Ruling No. PT 7

Part IVA - Grouping Provisions Exclusion of Groups from Larger Groups

Ruling history

Ruling no.	Issued date	Dates of effect		Status
		From	To	
PT 7	7 January 1987	7 / 1 / 87	30 / 6 / 99	Obsolete

Preamble

- 1 Yeldham, J., in the case of Baxter and Anor v Chief Commissioner of Pay-roll Tax (NSW) has ruled that, for the purposes of section 16H of the Pay-roll Tax Act, 1971, the Chief Commissioner has a discretion to exclude groups of employers from larger groups.
- 2 The Chief Commissioner has decided not to appeal the decision and this ruling outlines the principles arising from the judgement.

Ruling

- 3 Part IVA of the Pay-roll Tax Act sets out the circumstances under which employers may be grouped for pay-roll tax purposes. Employers may be grouped through common control or ownership, use of common employees or as a result of being related by definition under the Companies Code.
- 4 Where two or more groups have a common link, i.e. where one entity is a member of more than one group, Section 16E of Part IVA provides that the smaller groups are subsumed into one and that the smaller groups cease to exist.
- 5 Section 16H, on the other hand, provides the Chief Commissioner with a discretion to exclude a group member where that member's business is not substantially connected with the carrying on of the business of any other group member.
- 6 To date, the Chief Commissioner has interpreted section 16H to provide only for the exclusion of a single member and not a group of members from a larger group.
- 7 In the Baxter case, a solicitor's partnership practice and his service trust were grouped with an accountant's practice and his service trust through the common control of the solicitor's service trust. All members were subsumed into one group and the Chief Commissioner maintained that there was no authorisation to separate one of the sub-groups from the main group.
- 8 In his judgement, Yeldham J. observed that the grouping provisions cast a wide net potentially giving rise to possible unintended grouping situations. Section 16H, he noted, should provide a balance against this to prevent injustice in any particular case.

9 To construe that more than one member could be excluded from a group, His Honour used Section 21(b) of the Interpretation Act 1997. This section, which provides that words in the singular shall include the plural and words in the plural shall include the singular, can effectively, according to Yeldham J., cause Section 16H(1), of the Pay-roll Tax Act to be read as follows:

"Where the Chief Commissioner is satisfied, having regard to the nature and degree of ownership or control of the businesses, the nature of the businesses and any other matters he considers relevant, that businesses carried on by members of a group are carried on substantially independently of, and are not substantially connected with the carrying on of a business or businesses of another member or other members of that group, the Chief Commissioner may, by order in writing served on those first mentioned members, exclude them from that group."

10 As a result of this judgement, the Chief Commissioner will now exercise the discretion to exclude a group of members where it has been demonstrated that the group is operating substantially independently of other members.

11 The guidelines for determining "substantial independence" are set out in Revenue Ruling PT 2.

J Isaacs,
Acting Chief Commissioner of Pay-roll Tax.
7 January 1987