

Grouping

Part 5 of the PRT Act contains provisions to group persons for the purpose of payroll tax. The main effect of grouping is to ensure employers share only one tax-free threshold by:

- combining their Australian taxable wages to determine whether a member is required to register for payroll tax; and
- allowing only one member of the group, the Designated Group Employer (DGE), to claim the general exemption deduction on behalf of all members of the group (refer to [Calculation of Payroll Tax](#) on page 30).

The grouping provisions were amended with effect from 1 July 2008 to harmonise their operation with the corresponding provisions of other states. The following is general summary of the application of the provisions from that date. The previous grouping provisions, including the exclusion provisions, continue to apply in relation to matters prior to 1 July 2008. For further details of the transitional arrangements, refer to [Revenue Circular RC-PRT-001: 2008-09 Payroll Tax Changes](#).

Meaning of a Business

A business is defined as any of the following, whether carried on by one person or two or more persons together:

- a profession or trade;
- any other activity carried on for fee, gain or reward;
- the activity of employing one or more persons to perform duties in connection with another business;
- the carrying on of a trust, including a dormant trust; and
- the activity of holding any money or property used for or in connection with another business.

A person does not have to be an employer to be a member of a group for payroll tax purposes. While non-employer members of a group do not have to register for payroll tax, they are jointly and severally liable for the payroll tax liabilities of other group members (see [Joint and Several Liability of Group Members](#) on page 49).

Same Person Owning Two or More Businesses

The grouping provisions do not apply where the same person owns two or more businesses. In these circumstances, there is only one employer and the wages for those businesses must be combined into a single return for that employer. The only exception to this rule is a trustee that operates businesses for different trusts, where the trustee is considered a different person in respect of each trust. In these circumstances, the grouping provisions must be considered.

Geographical Location of Businesses

It does not matter where a person carries on a business for grouping purposes. If there are two or more persons that constitute a group and at least one of them pays Territory taxable wages, that member must register for payroll tax if the combined Australian taxable wages of all members of the group exceeds the registration threshold (see [Who Must Register for Payroll Tax](#) on page 5 for further details).

Constitution of Groups

Persons can be grouped in one or more of the following ways:

- if they are 'related corporations' within the meaning of section 50 of the *Corporations Act 2001* (Cth);
- if there is an inter-use or sharing of employees between them; or
- if the same person, or persons together, have a controlling interest in the businesses carried on by those persons.

Grouping can also occur through indirect interests and tracing provisions. Smaller groups are subsumed into one larger group where there is a common member. Due to the broad application of the grouping provisions, the Commissioner has the ability to exclude a member from a group in certain circumstances.

These are explained in more detail below.

Groups of Corporations

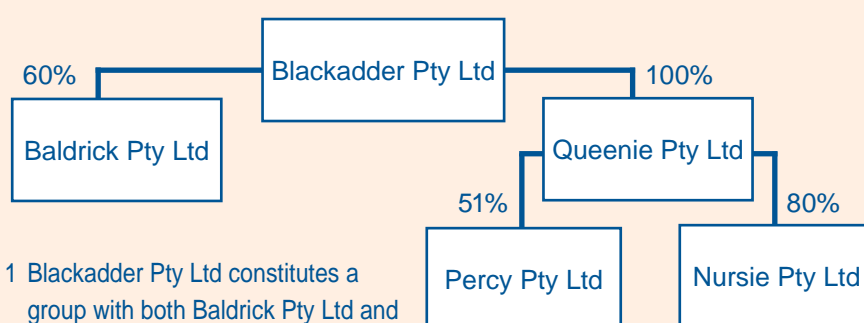
Corporations constitute a group if they are 'related bodies corporate' within the meaning of the *Corporations Act 2001* (Cth). This is more commonly described as a holding/subsidiary company relationship.

A holding/subsidiary company relationship occurs where one corporation:

- holds more than 50 per cent of the issued share capital of that other corporation;
- controls the composition of the board of directors of that other corporation; or
- can cast, or control the casting of, more than 50 per cent of the votes which can be cast at a general meeting of that other corporation.

Related corporations also include corporations with a common holding company or ultimate holding company.

Example: Related corporations



- 1 Blackadder Pty Ltd constitutes a group with both Baldrick Pty Ltd and Queenie Pty Ltd. Blackadder Pty Ltd is the holding company of this group because it holds more than 50 per cent of the issued shares of each company.
- 2 Queenie Pty Ltd constitutes a group with both Percy Pty Ltd and Nursie Pty Ltd. Queenie Pty Ltd is the holding company in this group because it holds more than 50 per cent of the shares issued in each company.
- 3 All of these companies constitute a group because Blackadder Pty Ltd is the ultimate holding company.

Corporations are not 'related bodies corporate' if one holds shares in another in a fiduciary capacity such as a trustee company. The corporations may still be grouped for payroll tax purposes if there is inter-use of employees or under the common control or tracing provisions.

Groups Arising From the Use of Common Employees

An employer that provides the services of one or more of its employees to one or more other businesses constitutes a group with the person or persons that carry on that other business or businesses in the following circumstances:

- one or more employees of the employer perform duties for or in connection with one or more businesses carried on by the employer and one or more other persons;
- one or more employees of the employer are employed solely or mainly to perform duties for or in connection with one or more businesses carried on by one or more other persons; or
- one or more employees of the employer perform duties for or in connection with one or more businesses carried on by one or more other persons, being duties performed in connection with or in fulfilment of the employer's obligation under an agreement, arrangement or undertaking (whether formal or informal, express or implied) for the provision of services to any of those persons.

Example 1

Alpha Pty Ltd employs Judy Jones as a receptionist and Judy provides those services to Alpha Pty Ltd, Bravo Pty Ltd and Charlie Pty Ltd. Alpha is grouped with each of Bravo and Charlie and each of these smaller groups is subsumed into a larger group of all three persons.

Example 2

Delta Pty Ltd employs David Brown and Jane Green. Both workers mainly provide stock ordering and restocking services to Echo Pty Ltd and Foxtrot Pty Ltd. Delta is grouped with each of Echo and Foxtrot and each of these smaller groups is subsumed into a larger group of all three persons.

Example 3

Golf Pty Ltd employs Andrew Roberts, Cheryl Hughes and Paul Woo. Golf Pty Ltd has an agreement to produce, provide and deliver retail stock from their factory to Hotel Pty Ltd, Indigo Pty Ltd and Juliet Pty Ltd. Under this agreement, Andrew and Cheryl determine Hotel, Indigo and Juliet's stocking needs and complete orders on their behalf. Paul delivers the stock to each of Hotel, Indigo and Juliet. Golf is grouped with each of Hotel, Indigo and Juliet and each of these smaller groups is subsumed into a larger group of all four persons.

'Ownership' or 'control' of the businesses is not a factor in determining whether grouping applies. Persons constitute a group through the inter-use of employees in circumstances described above. However, due to the broad application of these provisions, the Commissioner may exclude a person grouped under these provisions based on their independence and lack of connection with the business carried on by the other group members (see '[Exclusion from a Group](#)' on page 47 and [Payroll Tax Ruling PTA031 – Commissioner's Discretion to Exclude from a Group](#)).

Groups Arising from Common Control

If a person or set of persons has a controlling interest in each of two businesses, the persons who carry on those businesses constitute a group. Controlling interests need not be direct control and can be traced through business structures where control can be exerted indirectly.

The following table details what constitutes a 'controlling interest' in various business entities and structures:

Person or set of persons with controlling interest in the business	Examples
Sole Trader The person who is the sole owner, whether or not as the trustee of a trust.	(1) Bob is a sole trader, trading under the name Bob's Business. Bob has a controlling interest in Bob's Business. (2) Dave is the trustee of the Dave Trust and in that capacity runs the business Alpha Contracting. Dave has a controlling interest in Alpha Contracting.
Corporation (1) The person or set of directors who together can exercise more than 50 per cent of the voting power at directors' meetings. (2) The person or set of persons to whom the director(s) who can exercise more than 50 per cent of the voting power at directors' meetings are under an obligation (whether formal or informal) to act in accordance with the wishes of.	(1) Beta Pty Ltd carries on business under the name Beta Business. Fred, Joe and Bill are the directors of Beta Pty Ltd. The following sets of persons have a controlling interest in Beta Business: <ul style="list-style-type: none">• Fred and Joe• Fred and Bill• Bill and Joe• Fred, Bill and Joe (2) Jill and her daughter Jane are the directors of JJ Pty Ltd, which carries on the business of Jill's Dresses. Jane was appointed as a director under the understanding that Jill was the real owner of the business and that Jane was to vote at directors' meetings in accordance with Jane's votes and has always done as her mother requests. Jill has a controlling interest in Jill's Dresses.

Person or set of persons with controlling interest in the business	Examples
<p>Corporation with Share Capital</p> <p>As above, plus:</p> <p>The person or set of persons that directly or indirectly –</p> <ul style="list-style-type: none"> • exercise more than 50 per cent of the voting power attached to the voting shares or any class of voting shares; or • control the exercise of more than 50 per cent of the voting power attached to the voting shares or any class of voting shares; or • substantially influence the exercise of more than 50 per cent of the voting power attached to the voting shares or any class of voting shares. 	<p>(1) Dan, Mary and Mick are ordinary shareholders of Gamma Pty Ltd, which carries on the business Gamma Consulting. Dan and Mary hold 30 per cent of the voting shares each and Mick owns 40 per cent. The following sets of persons have a controlling interest in Gamma Consulting:</p> <ul style="list-style-type: none"> • Dan and Mary • Dan and Mick • Mick and Mary • Dan, Mick and Mary <p>(2) If the shareholdings in Gamma Pty Ltd were that Dan and Mary held 20 per cent of the voting shares each and Mick held 60 per cent, then the following persons or sets of persons have a controlling interest in Gamma Consulting:</p> <ul style="list-style-type: none"> • Mick • Mick and Dan • Mick and Mary • Mick, Dan and Mary <p><i>(Note: when determining whether sets of persons have a controlling interest, it does not matter that Mick alone can exercise more than 50 per cent of the voting power and so has a controlling interest.)</i></p>
<p>Body Corporate or Unincorporated</p> <p>The person or set of persons that either –</p> <ul style="list-style-type: none"> • constitute more than 50 per cent of the board of management of the body; or • control the composition of the board of management of that body. 	<p>Bill, Robert and Jill are the board members of a body corporate which carries on the business of the Buffalo Sporting Club. The following sets of persons have a controlling interest in Buffalo Sporting Club:</p> <ul style="list-style-type: none"> • Bill and Robert • Bill and Jill • Robert and Jill • Bill, Robert and Jill

Person or set of persons with controlling interest in the business	Examples
<p>Partnership</p> <p>The person or set of persons that –</p> <ul style="list-style-type: none"> • own (beneficially or not) more than 50 per cent of the capital of the partnership; or • are entitled (beneficially or not) to more than 50 per cent of the profits of the partnership. 	<p>(1) A, B and C operate the ABC Business as equal partners and each have a one-third entitlement to capital and profits. The following sets of persons have a controlling interest in ABC Business because of their entitlement to both the capital and profit:</p> <ul style="list-style-type: none"> • A and B • A and C • B and C • A, B and C <p>(2) A, B and C operate the ABC Business as partners. A and B are entitled to 50 per cent of the capital each. A and B are each entitled to 20 per cent of the profits and C is entitled to 60 per cent of the profits. The following set of persons have a controlling interest in ABC Business on the basis of their entitlements to capital:</p> <ul style="list-style-type: none"> • A and B <p>The following person or sets of persons have a controlling interest in ABC Business on the basis of their entitlement to profits:</p> <ul style="list-style-type: none"> • C • A and C • B and C • A, B and C <p><i>(Note: when determining whether sets of persons have a controlling interest, it does not matter that C alone is entitled to more than 50 per cent of the profits and so has a controlling interest.)</i></p>

Person or set of persons with controlling interest in the business	Examples
<p>Trust</p> <p><u>Trustee(s)</u> The person or set of persons that are the trustee of the trust and are the sole owners of the business.</p> <p><u>Beneficiaries</u> The person or set of persons (whether or not as a trustee of, or beneficiary under, another trust) that is the beneficiary in respect of more than 50 per cent of the value of the interests in the first-mentioned trust.</p> <p><i>(Note: A person who may benefit from a discretionary trust as a result of the trustee or another person exercising or failing to exercise a power or discretion is taken to be a beneficiary in respect of more than 50 per cent of the value of the interests in the trust.)</i></p>	<p>Examples</p> <p>(1) Murray and Ed, in their capacity as trustees of the Galaxy Trust are the owners of the business Galaxy Furniture. Murray and Ed are a set of persons that has a controlling interest in Galaxy Furniture.</p> <p>(2) Jim, Murray and Ed are unit holders in the EMJ Unit Trust, under which the business of EMJ Accountants is carried on. Each of Jim, Murray and Ed hold one-third of the issued units in the EMJ Unit Trust. The following sets of persons have a controlling interest in EMJ Accountants:</p> <ul style="list-style-type: none"> • Jim and Murray • Jim and Ed • Murray and Ed • Jim, Murray and Ed <p>(3) Trustee Co in the trustee of the JME Discretionary Trust, a trust under which the business of JME Supplies is carried on. Jim, Murray and Ed are the named beneficiaries of the JME Discretionary Trust and in the absence of the exercise of a discretion by the trustee, each have a one-third interest in the trust property. However, the trustee has the discretion to distribute income or capital to any beneficiary. Accordingly, each of Jim, Murray and Ed are taken to be a beneficiary in respect of more than 50 per cent of the value of the interests in the trust. As such, each person and set of persons that can be formed by those three persons has a controlling interest in JME Supplies:</p> <ul style="list-style-type: none"> • Jim • Murray • Ed • Jim and Murray • Jim and Ed • Murray and Ed • Jim, Murray and Ed

Having established the basis for determining a controlling interest in a business, the grouping provisions operate to group the persons who carry on two businesses, where the same person or set of persons have a controlling interest in each business.

Example	
Company A Shareholders: John (75%), David (5%) and Jason (20%)	
Partnership B Entitlements to capital and profits: John (40%), David (20%) and Ian (40%)	Unit Trust C Interest in trust: John (45%) and David (55%)
<p>Together, John and David are a set of persons who have a controlling interest in each of the businesses carried on by Company A (80 per cent), Partnership B (60 per cent) and Unit Trust C (100 per cent). Accordingly, Company A and Partnership B constitute a group, Company A and Unit Trust C constitute a group and Partnership B and Unit Trust C constitute a group. Because of the common members, these smaller groups are subsumed into one group consisting of Company A, Partnership B and Unit Trust C.</p>	

The grouping provisions also provide for the cascading of controlling interests, so that where a person or set of persons has a controlling interest in a business and the person carrying on that business has a controlling interest in another business, then the first person or set of persons is taken to also have a controlling interest in the other business.

For example, Mary has a controlling interest in Duncan's Donuts, a business carried on by Duncan Pty Ltd. Duncan Pty Ltd has a controlling interest in the business Bob's Bakery. Mary is taken to have a controlling interest in Bob's Bakery because of her controlling interest in Duncan's Donuts.

In relation to specific controlling interests:

- If a person or set of persons is the beneficiary of a trust in respect of more than 50 per cent of the value of the interests in the trust and the trustee(s) of the trust has a controlling interest in the business of another trust, then the person or set of persons has a controlling interest in the second business.
- If a person or set of persons has a controlling interest in the business of a trust and the trustee(s) of the trust has a controlling interest in the business of a corporation, then the person or set of persons is taken to have a controlling interest in the business of the corporation.
- If a person or set of persons has a controlling interest in the business of a trust and the trustee(s) of the trust has a controlling interest in the business of a partnership, then the person or set of persons is taken to have a controlling interest in the business of the partnership.

Smaller groups subsumed into one group

If any member of a group is also a member of another group, both groups are subsumed into one group for payroll tax purposes as detailed in the example above.

Tracing and Aggregation of Interests In Corporations

Tracing provisions operate to group a person or set of associated persons, with a corporation if the person or set of associated persons has a controlling interest in the corporation.

'Associated person' is defined in the PRT Act and may include direct family members, partners in a partnership, private companies that have common majority interest shareholders and trustees where there are common beneficiaries.

A person or set of associated persons will have a controlling interest in a corporation if the person or set of associated persons has a direct interest, an indirect interest, or an aggregate of its direct and indirect interests in the corporation that exceeds 50 per cent.

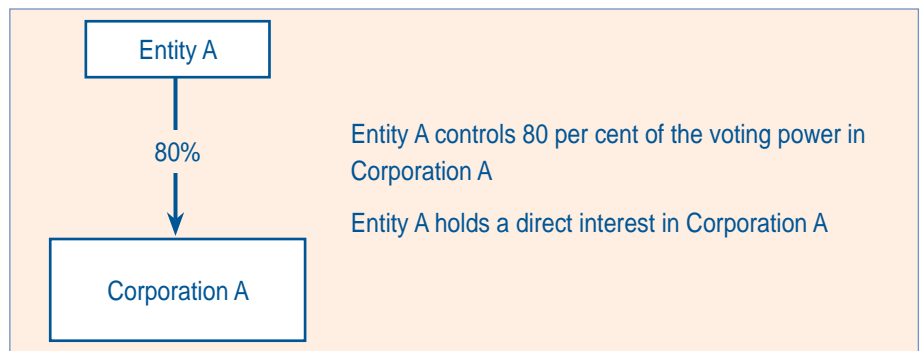
In the following examples, the term 'entity' is used to refer to the person or set of associated persons that have a direct or indirect interest in a corporation.

Direct Interests

A direct interest exists if the entity can directly or indirectly:

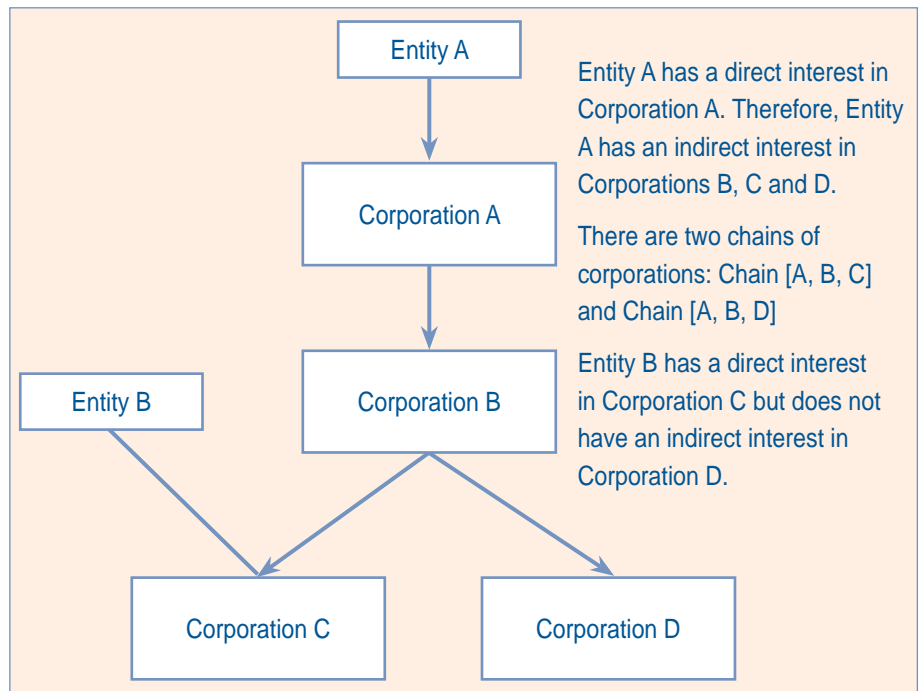
- exercise the voting power attached to the voting shares in the corporation;
- control the exercise of voting power attached to the voting shares in the corporation; or
- substantially influence the exercise of the voting power attached to the voting shares in the corporation.

The diagram below illustrates a direct interest:



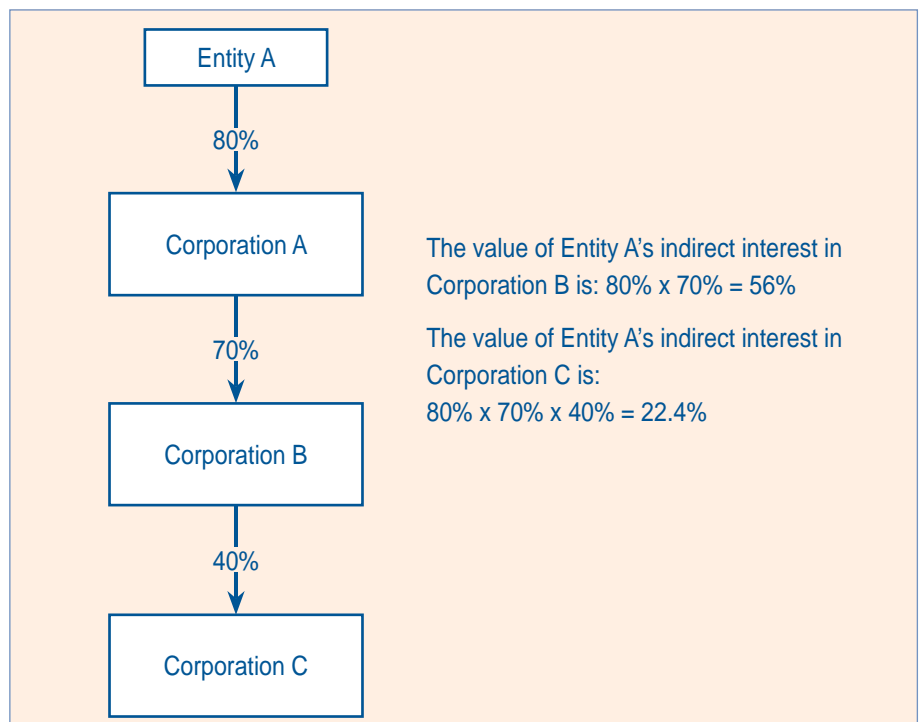
Indirect Interests

An indirect interest in a corporation (the 'indirectly controlled corporation') exists if the entity is linked to that corporation by a direct interest in another corporation which has a direct or indirect interest in the indirectly controlled corporation. The diagram below illustrates indirect interests:



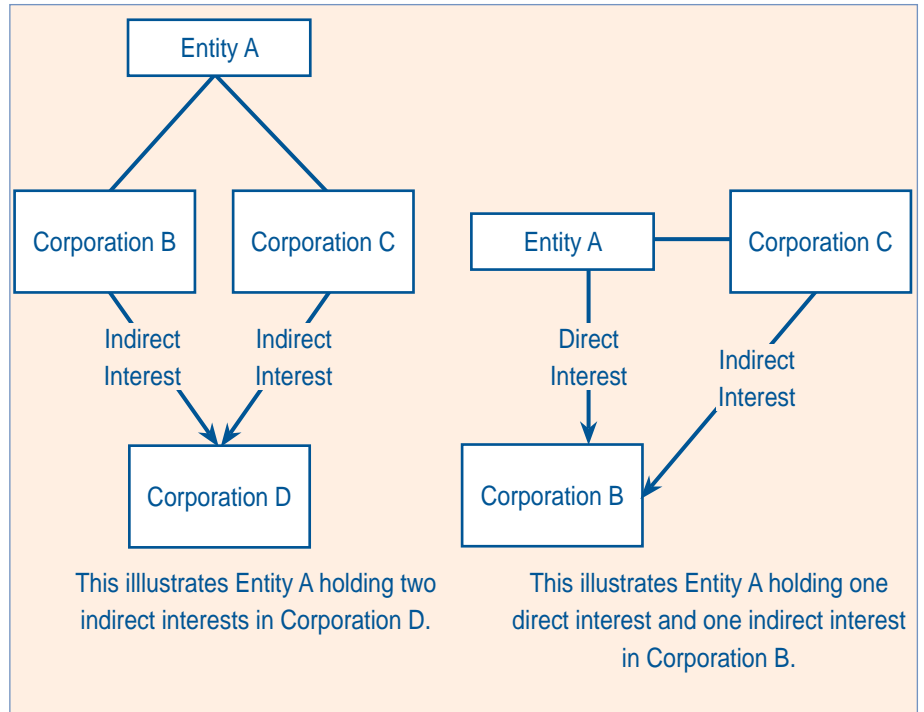
Value of Indirect Interest

The value of an indirect interest in an indirectly controlled corporation is determined by multiplying the value of the entity's direct interest in the directly controlled corporation by the value of the directly controlled corporation's interest in the indirectly controlled corporation. The diagram below illustrates how the values of indirect interests are calculated:



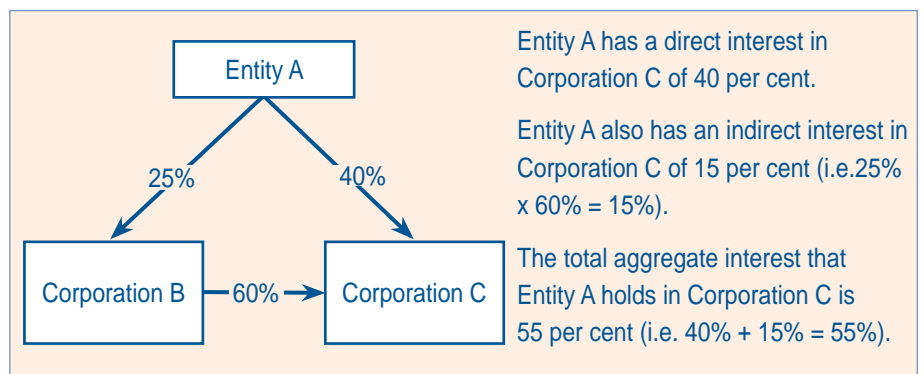
Aggregate Interests

An aggregate interest exists if an entity has a direct and an indirect interest or two or more indirect interests. The aggregate interest is the sum of the entity's direct and indirect interests in the corporation. The diagram below illustrates two indirect interests (left example) and one direct and one indirect interest (right example):

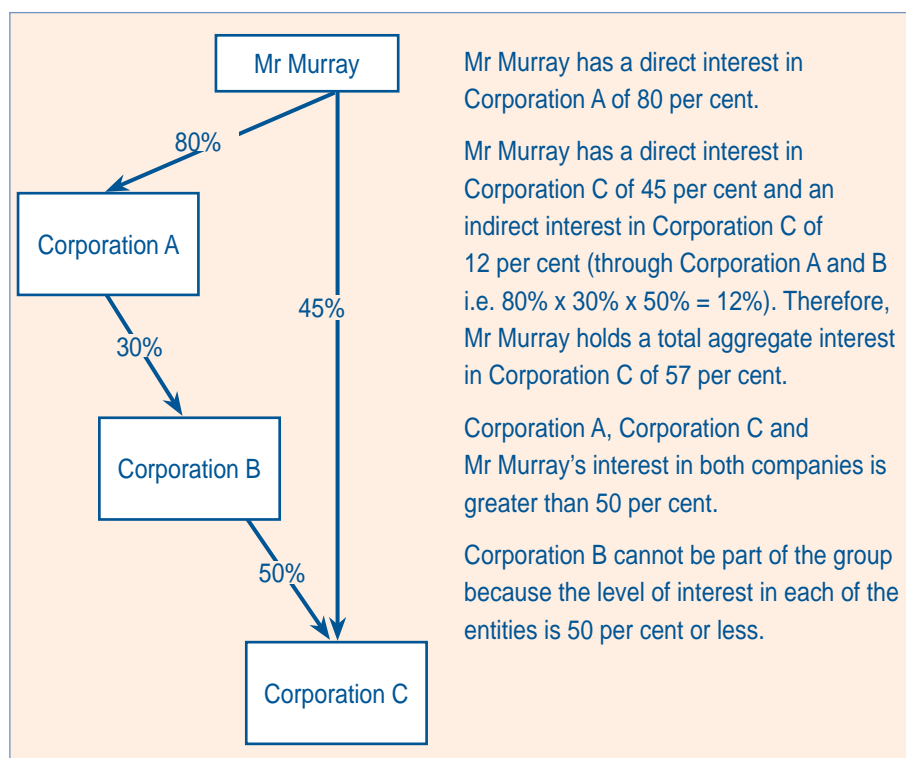


Value of Aggregate Interest

The value of an entity's aggregate interest is the sum of the value of the entity's direct and indirect interests in that corporation. The diagram below illustrates how the values of aggregate interests are calculated.



A further example to illustrate grouping through tracing is set out below in the diagram below:



Exclusion from a Group

Due to the broad application of the grouping provisions and to ensure that they do not have any unintended consequences, the Commissioner may, by order in writing, exclude a member from a group in all circumstances other than corporations that are grouped by reason of being related bodies corporate within the meaning of section 50 of the *Corporations Act 2001* (Cth). This includes groups that have been subsumed into a single group by reason of having a common member.

Note: For periods prior to 1 July 2008, only a member of a group that has been grouped by reason of an inter-use of employees between businesses or a beneficiary being deemed to have a controlling interest in the business carried on by a discretionary trust may be excluded from a group.

To exclude a member from a group, the Commissioner must be satisfied, having regard to the nature and degree of ownership or control of the businesses, the nature of the businesses and any other matters considered relevant, that the business carried on by that member:

- is carried on independently of the businesses carried on by the other members of that group; and
- is not connected with the carrying on of the businesses carried on by the other members of that group.

Independence and Connection

In considering whether or not there is independence or connection, it is necessary for a member of a group to demonstrate to the satisfaction of the Commissioner that there does not exist a continuous course of active and substantial relationship, in a business or commercial sense, with any other member of the group, and that the connections which exist are no more than casual, irregular or occasional occurrences.

In arriving at a decision the Commissioner will consider the nature and extent of all relevant contracts and dealings taken as a whole, between the member and all other members of the group, including:

- the nature and extent of any commercial transactions or dealings, 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;
- the extent to which there is a relationship between customers of the member and customers of other members of the group, including such matters as sharing of customers' total business, and receiving or providing complementary goods or services in respect of particular customers;
- the degree to which there is a connection between a member and other members of the group in the purchase or 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;
- the extent to which there is a connection between the ultimate owners of the member and other members of the group; and
- any other relevant information.

Application for Exclusion

A person who is a member of a group may apply to TRO to be excluded from the group. The application must be in writing addressing the above matters and any other relevant matters. Where a new grouping is identified through audit or any other activity, TRO will generally consider the exclusion provisions, including inviting submissions from the relevant persons, prior to finalising any resulting assessment.

Other Matters

Nomination of Designated Group Employer (DGE)

To claim the general exemption deduction (GED), the group must nominate a member, the DGE, to claim the exemption. All other Territory members of the group are required to pay tax on their taxable wages without deduction. It is not necessary for a group to have the same DGE in each state that it employs. It can be any member that employs in the Territory. Furthermore, it is not mandatory for the group to claim the GED.

The DGE also has the obligation of reconciling the group's Territory payroll tax liability each financial year (see [Calculation of Payroll Tax](#) at page 30) by lodging a group annual return.

If the group does not nominate a DGE, the Commissioner may nominate one on its behalf.

Single Return

A DGE of a group may nominate to lodge a single return and make a single payment for all Territory group members. Aside from this convenience, a single return allows the group to claim the full monthly general exemption deduction it is entitled to claim, even where the monthly taxable wages of the DGE is less than this amount (see [Payroll Tax Returns](#) on page 29 for further details).

Joint and Several Liability of Group Members

If any payroll tax, including penalty tax and interest, is not paid by any member of group, each other member of the group becomes jointly and severally liable for the payment of the tax. This includes members of the group that do not employ in the Territory or at all.