LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY

STANDING COMMITTEE ON ECONOMIC DEVELOPMENT AND TOURISM
JEREMY HANSON MLA (CHAIR), MICHAEL PETTERSSON MLA (DEPUTY CHAIR), SUZANNE ORR MLA, MARK PARTON MLA

Inquiry into referred 2015–16 Annual and Financial Reports
ANSWER TO QUESTION ON NOTICE 30
27 February 2017

Asked by Alistair Coe MLA:

Chief Minister, Treasury and Economic Development Directorate 2015-16 Annual Report, Revenue Management and Government Business, Output 3.1

In relation to: payroll tax

1. In relation to payroll tax, could you outline the provisions relating to 'Grouping of Employers'.
    a. What is deemed to be a 'controlling interest' in a business for the purposes of payroll tax?
    b. What would be the situation if a person owned a very minor shareholding in a number of similar businesses?
        i. Does that generate an increased payroll tax liability?
2. When is payroll tax payable?
    a. How much notice is an employer given of a payroll tax liability?
    b. What penalties may apply if the payment of payroll tax is late or if a payroll tax debit is not met?
    c. Can payroll tax be paid in instalments?
    d. What avenues are there, if any, for an employer to appeal or question the rate of payroll tax which has been levied or if they wish to appeal against being designated as a 'grouping of employers'?
3. How much revenue was received in payroll tax in 2014-15 and in 2015-16?
4. From how many employers was the payroll tax revenue in 2014-15 and in 2015-16 drawn?
5. Please outline the process of undertaken when investigating whether payroll tax applies.
    a. What resources, databases, and registries are used in the course of an average investigation?
6. Please outline how the Revenue Office handles objections to payroll tax.
    a. Who forms part of the independent team reviewing the objection?
        i. What are their qualifications?

Mr Andrew Barr MLA: The answer to the Member's question is as follows:–

1. Part 5 of the Payroll Tax Act deals with the grouping of employers. In broad terms, the grouping provisions seek to treat multiple employers as a single employer for the purposes of payroll tax in circumstances where there is a sufficient degree of commonality, control and/or interdependence between multiple entities. Key indicators for multiple employers to be treated as a single employer are; where the entities have common employees, where the entities have sufficient elements of common control, where entities have common interest holders (either directly or indirectly).

The Grouping provisions are often spoken of as being an anti-avoidance measure to prevent taxpayers from splitting what would ordinarily be a single employer into multiple entities, so as to get the benefit of multiple thresholds. However, contemporary taxation administration requires greater contemplation of legitimate tax minimisation, so the grouping provisions are more appropriately thought of as a mechanism to equalise tax outcomes to create a fair and equitable scheme for all taxpayers.

a. The grouping provisions concerning 'common control' are necessarily broad as the legislation needs to accommodate changing corporate structures and shareholding arrangements. Generally though, if someone's interest in a company is so significant that they can exercise more than 50% voting power, either directly or indirectly, or a group of people can collectively do the same, then the Commissioner may consider that to be a controlling interest. If a person is the sole owner of a business, or a set of people are together as trustees the sole owner, their interest will be deemed to be a controlling interest.

   The legislation contains provisions that require the Commissioner to trace interest and control elements in order to determine whether a controlling interest exists. That is because individuals and entities can dilute bare interest but retain implied interest that retain elements of control. In most instances, the Commissioner must apply the legislation to each particular set of facts and make a judgement on whether those control elements are sufficient to meet one or more of the grouping provisions.

b. If a minority shareholding in a number of entities was the only element present for payroll tax purposes – it is unlikely to trigger a grouping outcome or increase in payroll tax liability. However, if that person or a set of people exercise sufficient control over a number of business (e.g. the same three people each own 33.3% in 2 or more business), the grouping provisions may be triggered because that set of people have a controlling interest or common shareholding.

   Once again, the Commissioner must apply the legislation to each particular set of facts and make a judgement call.

2. Payroll tax is payable by an employer who employs personnel in the ACT and pays annual Australia-wide wages exceeding the ACT threshold of $2 million (as at 1 July 2016).

Monthly payroll tax liabilities are due for payment on the 7th day of the month for the previous month (e.g. The February 2017 monthly return is due for payment on 7 March 2017). The December monthly return is due 14 January to allow for the end of year shutdown period. The annual reconciliation is due on 21 July of the same year. If a due date falls on a weekend or public holiday the due date automatically transfers to the next working day.

An employer may apply to the Commissioner for a variation of the period, or the time within which, the employer is to lodge payroll tax returns. An application must be in writing, addressed to the Commissioner and specify the grounds on which the variation is sought. The Commissioner will consider applications to lodge annual payroll tax returns by employers who anticipate that their annual ACT payroll tax liability will be $6,000 or less or where their circumstances justify lodgement on this basis.

a. ACT Payroll Tax is a self assessed tax. The employer is responsible for determining liability for ACT Payroll Tax and notifying the ACT Revenue Office 7 days after the month-end in which the taxable wages exceeded the threshold.

   Advice on due dates answered above.

   Following an assessment where interest and/or penalty tax has been imposed, depending on the nature of the assessment, either 14 or 30 days is given to pay the liability which is specified on the assessment notice.

   Reminders are sent to registered employers should they fail to complete their submission or make payment by the relevant due date.

b. Interest and penalty tax are imposed on overdue payroll tax under sections 25 and 30 of the *Taxation Administration Act 1999* (TAA), respectively.

   The amount of penalty tax payable in relation to overdue payroll tax is provided under sections 31 and 34 of the TAA. Penalty tax ranges from 25 per cent to 90 per cent on the basis of the level of care taken by an employer to fulfil their payroll tax obligations and if there was any intent of the employer to conceal information or evade their payroll tax obligations.

   Interest is payable on the amount of unpaid payroll tax calculated on a daily basis from the end of the last day for payment until the day it is paid. Interest is accrued on a daily simple interest basis.

c. An employer who is experiencing financial difficulty can contact the Debt Management Team of the Revenue Office to enter a repayment plan.

d. An employer can lodge an objection to a payroll tax assessment, within 60 days of service of the notice of the assessment.

   A decision will then be made by the independent objections team within the ACT Revenue Office. If the objection is disallowed or partly allowed, the employer has the right to appeal the matter to the ACT Civil and Administrative Tribunal (ACAT) to seek review of the objection decision.

   For decisions that refuse to exercise the degrouping discretion or revoke a degrouping decision the employer may lodge an appeal directly with the ACAT to review.

3. The revenue from payroll tax was $357.225 million in 2014-15 and $422.424 million in 2015-16 (source: 2015-16 CMTEDD annual report).

4. The payroll tax revenue was drawn from 3,547 employers in 2014-15 and from 3,727 employers in 2015-16 (source: annual reconciliation status – Operations). This represents 32 per cent and 33 per cent of Territory employers in 2014-15 and 2015-16, respectively[1].

5. A payroll tax compliance investigation can be triggered by many events, such as follow-up of a taxpayer's returns, referrals from interstate jurisdictions, Compliance's industry projects, tipoffs and ad hoc discovery of unregistered clients. While the scope of investigation (e.g. desk audit or

[1] Territory employers are total businesses with one employee or more, who were still operating by June 2015 and June 2016, respectively (ABS Cat. No 8165.0).

field audit) depends on the circumstances of the case, each process generally includes registration checking, data matching with other resources, issuance of notice of investigation, collection of evidence and determination of whether penalties and interest apply.

a. The databases and registries used in investigations include but are not restricted to information from the Australian Taxation Office, Australian Business Register, Australian Securities & Investments Commission, ACT Government records (e.g. Workcover and ACT Procurement) and bank records.

6. The ACT Revenue Office has an independent Objections Unit. An objection is determined by a delegate of the Commissioner who is independent of the original decision-maker.

Following consideration of available information, the objection may be allowed, partly allowed or disallowed. If the objection is allowed or partly allowed, any overpaid tax will be refunded to the employer in line with the objection decision and interest is also paid on the overpaid tax.

As noted above, the Objection Unit does not review decisions that refuse to exercise the degrouping discretion or decisions that revoke a degrouping decision. These decisions are only reviewable by the ACAT.

a. Objection Officers have varied qualifications and are experienced in applying ACT tax laws. They are delegated by the Commissioner to exercise the Commissioner's powers and functions to provide the objection determination.

Approved for circulation to the Standing Committee on Economic Development and Tourism

Signature: Andrew Barr

Date: 20.3.2017

Mr Andrew Barr MLA
Treasurer