DISTRICT COURT OF QUEENSLAND

CITATION:	*The Commissioner of State Revenue v Gympie Noosa Broadcasters Pty Ltd & Others* [2015] QDC 74
PARTIES:	**THE COMMISSIONER OF STATE REVENUE** **(Plaintiff)** **v** **GYMPIE NOOSA BROADCASTERS PTY LTD ACN 009 885 349** **(First Defendant)** AND **RADIO 4AK PTY LIMITED ACN 008 620 611** **(Second Defendant)** AND **AMALGAMATED MARKETING PTY LIMITED ACN 010 037 297** **(Third Defendant)**
FILE NO/S:	4972/12
PROCEEDING:	Application
DELIVERED ON:	17 April 2015
DELIVERED AT:	Brisbane
HEARING DATE:	24 March 2015
JUDGE:	Bowskill QC DCJ
ORDER:	Summary judgment for the plaintiff against the defendants. The parties to be heard on the form of the order
CATCHWORDS:	PROCEDURE - Courts and Judges Generally – Courts – Application for Summary Judgment TAXES AND DUTIES - Payroll Tax – Liability to Taxation – Assessment, Collection and Recovery of Payroll Tax *The Commonwealth Constitution* s 92 *Acts Interpretation Act 1954 (Qld)* ss 39, 39A *Payroll Tax Act 1971 (Qld)* *Taxation Administration Act 2001 (Qld)* *Uniform Civil Procedure Rules 1999* (Qld) r 292 *Bath v Alston Holdings Pty Ltd* (1988) 165 CLR 411 *Deputy Commissioner of Taxation v Broadbeach Properties*

Pty Ltd (2008) 237 CLR 473
Fancourt v Mercantile Credits Ltd (1983) 154 CLR 87
Federal Commissioner of Taxation v Futuris Corporation Ltd (2008) 237 CLR 146
Harvey v Commissioner of State Revenue [2014] QSC 183
Immobilari Pty Ltd v Opes Prime Stockbroking Ltd (2008) 252 ALR 41
Sportsbet Pty Ltd v Harness Racing Victoria & Ors (2012) 206 FCR 51

COUNSEL: D Marks for the Applicant

A Collins for the Respondents

SOLICITORS: Crown Law for the Applicant

Reichman Lawyers for the Respondents

[1] By these proceedings commenced on 19 December 2012, the Commissioner of State Revenue (**Commissioner**) seeks to recover unpaid payroll tax, penalty tax and unpaid tax interest under the *Payroll Tax Act 1971 (Qld)* (**PTA**) and the *Taxation Administration Act 2001 (Qld)* (**TAA**).

[2] Up until recently, the matter has not proceeded with any degree of swiftness. On 13 October 2014 the Commissioner gave notice of intention to proceed under r 389 of the *Uniform Civil Procedure Rules 1999 (Qld)* (**UCPR**).

[3] On 5 February 2015, the Commissioner applied for:

(a) leave pursuant to r 375 UCPR to amend the claim and statement of claim; and

(b) summary judgment against the defendants pursuant to r 292 UCPR, or alternatively, an order striking out the defence under r 171 UCPR.

[4] That application came on for hearing on 23 February 2015. On that occasion, there being no objection from the defendants, leave was granted to amend the claim and statement of claim, in the manner foreshadowed.

[5] However, what the defendants did object to was the hearing of the summary judgment application, in circumstances where they had not been given an opportunity to plead in response to the amended statement of claim.

[6] There may be circumstances where amendments to the statement of claim, made on or shortly before the application for summary judgment, would not prevent that application proceeding to be heard and determined.[1] However, in this case, a combination of factors, including the late amendments, issues with the Commissioner's

[1] See, for example, *National Australia Bank Ltd v Sinnathamby & Ors* [2000] QSC 303 at [4] per Wilson J.

evidence following objections made on behalf of the defendants, and the fact that notices had only recently, on 17 February 2015, been issued under s 78B of the *Judiciary Act 1903 (Cth)* to the Attorneys-General of the Commonwealth, States and Territories,[2] resulted in the hearing being adjourned until 24 March 2015.

[7] The amended claim and statement of claim were filed on 26 February 2015. Following those amendments, the amounts claimed are for payroll tax incurred from and including the 2006/2007 financial year to November 2014.

[8] In respect of amounts incurred prior to 1 July 2008, they are claimed separately as against each of the first, second and third defendants, on the basis of their individual assessments. However, in respect of the amounts incurred post 1 July 2008,[3] they are claimed against all three defendants, on the basis that they are members of a group for the purposes of s 71 of the PTA, and are therefore jointly and severally liable for each other's payroll tax debts under to s 51A of the PTA.

Summary judgment – relevant principles

[9] Rule 292 UCPR confers a discretion on the Court to give judgment for the plaintiff against the defendant(s), if the court is satisfied that:

(a) the defendant has no real prospect of successfully defending all or part of the plaintiff's claim; and

(b) there is no need for a trial of the claim or the part of the claim.

[10] As White JA (with whom de Jersey CJ and McMurdo P agreed) observed, in *Coldham-Fussell v Commissioner of Taxation* (2011) 82 ACSR 439 at [98]:

> "The key expressions are 'no real prospect' in respect of the defence of a claim and 'there is no need for a trial of the claim'. Other expressions have been proffered in an attempt to describe the task of the court in language which is thought to be of more assistance. Rule 292 is expressed in clear and plain language. It requires no judicial gloss to understand its meaning. What those phrases mean is best understood, in the time honoured way, on a case by case basis, informed by judgment about the relevant legal principles. In *Deputy Commissioner of Taxation v Salcedo*[4] the President described the rule as 'clear and unambiguous language'.[5] Justice Williams quoted with approval observations of Lord Woolf MR in *Swain v Hillman*[6] considering the English Rule 24.2 upon which r 292 was based:

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[2] In respect of an issue raised in the defence, relying upon s 92 of the Constitution. See the affidavit of Samantha Amos filed 23 February 2015.

[3] This being the relevant date on which the "group" provisions commenced (*Pay-roll Tax (Harmonisation) Amendment Act 2008 No. 16*).

[4] [2005] 2 Qd R 232; [2005] QCA 227.

[5] At [2]. See also Williams JA at [11]-[17] and Atkinson J at [47].

[6] [2001] 1 All ER 91 at 92.

> The words ‘no real prospect of succeeding’ do not need any amplification, they speak for themselves. The word ‘real’ distinguishes fanciful prospects of success or … they direct the court to the need to see whether there is a ‘realistic’ as opposed to ‘fanciful’ prospect of success.”

[11] Rule 292 is also to be applied keeping in mind the purpose of the UCPR, articulated in r 5, to facilitate the just and expeditious resolution of the real issues in civil proceedings at a minimum expense.[7]

[12] That of course does not detract from the well-established principle that the exercise of powers to summarily terminate proceedings must always be attended with caution.[8] As Gaudron, McHugh, Gummow and Hayne JJ said in *Agar v Hyde (*2000) 201 CLR 552 at 575-576:

> “Ordinarily, a party is not to be denied the opportunity to place his or her case before the court in the ordinary way, and after taking advantage of the usual interlocutory processes. The test to be applied has been expressed in various ways, but all of the verbal formulae which have been used are intended to describe a high degree of certainty about the ultimate outcome of the proceeding if it were allowed to go to trial in the ordinary way.”[9]

[13] In this matter, for the reasons explained below, I consider that the defendants have no real prospect of successfully defending the plaintiff’s claim, and there is no need for a trial of the claim, such that the discretion under r 292(2) is enlivened. In the circumstances, I am satisfied that it is appropriate to exercise my discretion to give judgment for the plaintiff against the defendants.

Legislative framework

[14] Having regard to the issues raised on the hearing of the application, it is necessary first to set out the relevant legislative framework.

Payroll Tax Act

[15] “Taxable wages” are wages that, under s 9 of the PTA, are liable to payroll tax.[10]

[16] Under s 9(1) of the PTA wages are liable to payroll tax in particular circumstances demonstrating a nexus with Queensland, including:

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7 *Bernstrom v National Australia Bank Ltd* [2003] 1 Qd R 469 at [38]; *Salcedo* at [3], [17] and [45]; *Coldham-Fussell v Commissioner of Taxation* at [101]; *Thomas v Balanced Securities* Ltd [2012] 2 Qd R 482 at [69].

8 *Spencer v Commonwealth* (2010) 241 CLR 118 at [24] per French CJ and Gummow J and at [60] per Hayne, Crennan, Kiefel and Bell JJ.

9 *Agar v Hyde (*2000) 201 CLR 552 at 575-576 per Gaudron, McHugh, Gummow and Hayne JJ.

10 Definition of “taxable wages” in the schedule to the PTA.

(a) where the wages are paid or payable by an employer[11] in relation to services performed or rendered by an employee entirely in Queensland (s 9(1)(a)); or

(b) otherwise, where the employee is based in Queensland, the employer is based in Queensland, the wages are paid or payable in Queensland, or the services are performed or rendered mainly in Queensland (s 9(1)(b) and (c)).

[17] The rate of payroll tax is dealt with in s 10 of the PTA. For wages paid or payable in the financial year ending 30 June 2002, the rate is 4.8%; for wages paid or payable in a later financial year, the rate is 4.75%.

[18] By s 11, a liability for payroll tax imposed on taxable wages arises on the <u>return date</u> for lodgement by an employer of a return. "Return date" is defined in the schedule to mean the date by which the employer is <u>required to</u> lodge the return (whether a periodic return, annual return or final return) under part 3, division 2.

[19] Part 3 deals with registration and returns. Section 52 defines the "criteria for registration" as follows:

> "that, during a month, an employer pays, or is liable to pay, taxable wages and the employer –
>
> (a) pays, or is liable to pay, wages <u>anywhere</u> of more than $21,153 a week; or
>
> (b) is a group member[12]."[13]

[20] By s 53(1) of the PTA, an employer who meets the criteria for registration, is required, within 7 days after the end of the month during which that occurs, to give the Commissioner an application for registration as an employer. It is an offence not to, attracting a fine of up to 100 penalty units. Even without an application, under s 54, the Commissioner may, by written notice given to a person who meets the criteria for registration, register the person as an employer.

[21] For division 2 of part 3 (dealing with returns) "relevant employer" is defined to mean an employer who is:

(a) registered as an employer under division 1; or

(b) <u>required to</u> apply for registration as an employer under division 1.

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[11] "Employer" is defined in the schedule to the PTA to mean "any person who pays or is liable to pay any wages…".

[12] "Group member" is defined in the schedule to mean a person who is a member of a group. "Group" is defined to mean a group constituted under part 4.

[13] Emphasis added.

[22] Under s 59(1), a relevant employer is required to lodge a return for taxable wages paid or payable for a (relevant) period, not later than 7 days after[14] the last day of each periodic return period[15] for all or part of which they are a relevant employer.

[23] Section 63 requires an employer who is a relevant employer on 30 June in a financial year to lodge an annual return for taxable wages paid or payable by the employer for the year, not later than 21 July. Section 64 makes provision for lodgement of a "final return", within 21 days after a "change of status"[16] happens. In each case, it is an offence not to lodge a return if required.[17]

[24] Part 4 of the PTA contains the "grouping provisions". Groups can be constituted in various ways under the provisions of part 4. One of those ways, provided for in s 71(1), is where a person or set of persons has a "controlling interest" (defined in s 71(2)) in each of 2 businesses, the persons who carry on those businesses constitute a group. Here, Ms Pamela Caralis and Mr Bill Caralis are the only directors of each defendant, and on the basis of s 71(2)(c)(i), are a set of persons having a controlling interest in the business of each defendant.[18] On this basis, the defendants are each a member of a group.[19]

[25] If a member of a group fails to pay an amount the member is required to pay under the PTA in respect of a period, s 51A(2) provides that every member of the group is liable jointly and severally to pay that amount, whether or not the member was an employer during the period to which the amount relates.

Tax Administration Act

[26] The TAA makes general provision about the administration and enforcement of revenue laws, including the PTA, and is to be read as one Act with, relevantly, the PTA (s 3).

[27] As defined in schedule 2, "assessment" means a determination, under part 3, of a taxpayer's liability for tax for which an assessment notice is given, and includes a reassessment.[20] The circumstances in which the Commissioner must or may make an assessment are dealt with in s 11.

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14 Unless varied by the commissioner: s 59(2).

15 A "periodic return period" is generally a month (s 60(1)), unless the commissioner gives a notice authorising another period (s 60(2)), which must be less than a year (s 60(3)).

16 Defined in s 5 of the PTA.

17 Section 121 of the TAA

18 See paragraphs 11A and 11B of the amended statement of claim, which are admitted in paragraph 8(a) of the amended defence.

19 Although the facts pleaded in respect of s 72(2)(c)(i) of the PTA are admitted, the defendants deny "that there is any entitlement of the plaintiff to assess by reference to a Group" (paragraph 8(b) of the amended defence), on the basis of the matters pleaded in paragraph 4 of the amended defence (which pleads the invalidity of the provisions, by reason of s 92 of the Constitution). This is dealt with below.

20 See also *Federal Commissioner of Taxation v Futuris Corporation Ltd* (2008) 237 CLR 146 at [2] per Gummow, Hayne, Heydon and Crennan JJ.

[28] Section 13 provides for the making of a default assessment by the Commissioner where, for example a self assessment is not made; or for another assessment, the taxpayer does not lodge a document required to be lodged under a lodgement requirement (s 13(1)(a)). If s 13 applies because a lodgement requirement has not been complied with (whether or not the time for compliance has ended), the Commissioner may make the default assessment as if the document were in existence and in the Commissioner's possession (s 13(3)).

[29] Under s 17, the Commissioner may make a reassessment of a taxpayer's liability to tax.

[30] Section 26(1) requires the Commissioner to "give notice of the making of an assessment (an ***assessment notice***) to the taxpayer". By s 26(2), the assessment notice must state:

(a) the amount of the tax assessed; and

(b) the date by which the tax must be paid; and

(c) the taxpayer's right to object to the assessment (and in this regard, must state that the taxpayer may, within 60 days after the notice is given, object to the assessment; and how to object (s 26(3)); and

(d) the basis on which unpaid tax interest may accrue; and

(e) if assessed interest or penalty tax is payable under the notice – enough information to enable the taxpayer to ascertain the basis for the assessment of the interest or penalty tax; and

(f) for a compromise or default assessment – that it is a compromise or default assessment; and

(g) for a reassessment – the amount of the liability for tax under the previous assessment.

[31] The time for payment of tax is dealt with in s 30(1), as follows:

> "(1) Tax payable under a tax law must be paid –
>
> (a) for a return self assessment – on the date the return for the self assessment is required to be lodged; or
>
> (b) for a standard self assessment – by the date that is 14 days after the date the transaction statement for the self assessment is lodged; or
>
> (c) for a default assessment made because of a failure to make a self assessment – <u>on the date the assessment notice for the default assessment is given to the taxpayer</u>; or

(d) otherwise, by the date stated in the assessment notice as the date by which the tax must be paid" (which must be at least 30 days after the assessment notice for the tax is given to the taxpayer (s 30(2)).[21]

[32] Section 45 then provides:

> "(1) An amount payable under a tax law must be paid to the Commissioner.
>
> (2) If the whole or part of an amount payable under a tax law is not paid as required –
>
> (a) the unpaid amount is a debt payable to the State; and
>
> (b) the Commissioner may recover the unpaid amount for the State in a court of competent jurisdiction."

[33] If two or more taxpayers are liable to pay the amount, the Commissioner may recover the whole or part of the amount from any one or more taxpayers (s 47(1)).

[34] Part 5 contains provisions dealing with unpaid tax interest (s 54) and penalty tax (s 58).

[35] Unpaid tax interest accrues daily on the unpaid tax, starting on the "start date" and ending on the date the tax is paid in full (s 54(2)). Late payment interest accrues weekly after the start date (s 54(3)). In each case, the start date is, for a default assessment, the date the return was required to be lodged (s 54(4)(b)). Likewise, for a reassessment (s 54(4)(e)).

[36] Late payment interest is payable on the date it accrues (s 31). The time for payment of unpaid tax interest, and penalty tax, is covered by the general provision in s 32, the effect of which, for a default assessment, is that the amount must be paid immediately after the assessment notice is given to the taxpayer (s 32(2)(a)).

[37] Section 60 confers a discretion on the Commissioner to remit the whole or part of unpaid tax interest or penalty tax, in the following terms:

> "(1) The Commissioner may remit the whole or part of unpaid tax interest or penalty tax.
>
> (2) The remission of assessed interest or penalty tax must be made by assessment.
>
> (3) Despite section 26(1), the Commissioner is not required to give an assessment notice for the assessment if, after the remission and the application of payments received by the Commissioner for the taxpayer's assessment liability, the taxpayer has no assessment liability."

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[21] Emphasis added.

[38] By s 63(1), a taxpayer who is dissatisfied with an original assessment,[22] other than a compromise assessment, may object to the assessment. An objection may be made on any grounds (s 64(1)). An objection must be lodged within 60 days after the assessment notice for the assessment to which the objection relates is given to the taxpayer (s 65(1)(d)).

[39] A taxpayer who is dissatisfied with the Commissioner's decision on their objection may appeal to the Supreme Court, or apply to QCAT for review, but only if they have paid the whole of the amount of the tax, and late payment interest payable under the relevant assessment (s 69).

[40] Section 131 provides for evidence of certain things to be given by way of certificate purporting to be signed by the Commissioner, including, inter alia, that on a stated date:

(i) a stated person was liable to pay, or paid, a stated amount; or

(ii) a stated notice was published in a stated way; or

(iii) a stated person made, gave or executed a stated document; or

(iv) an assessment was made and the details of the assessment; or

(v) a stated document was given to a stated person in a way.

[41] Section 132 is an important provision in the context of a proceeding of this kind. It provides:

> "(1) Production of a document signed by the Commissioner purporting to be a copy of an assessment notice –
>
> (a) is conclusive evidence of the proper making of the assessment; and
>
> (b) for -
>
> (i) a proceeding on an appeal against, or review of, a decision on an objection – is evidence that the amount and all particulars of the assessment are correct; or
>
> (ii) another proceeding – is conclusive evidence that the amount and all particulars of the assessment are correct.
>
> (2) The validity of an assessment is not affected merely because a provision of a tax law has not been complied with."

[22] "Original assessment" is defined in schedule 2 to mean the first assessment of a taxpayer's liability for tax for an instrument, transaction or other matter.

[42] Finally, in terms of the requirement in s 26(1) for the Commissioner to "give" notice of the making of an assessment to the taxpayer, s 148 provides that a document is properly given by the Commissioner if it is, relevantly, given as provided under the *Acts Interpretation Act 1954*, part 10.[23]

[43] Part 10 of the *Acts Interpretation Act 1954* contains ss 39 and 39A. Section 39(1)(b) provides for a document to be served (or given (s 39(2)) to a body corporate by leaving it at, or sending it by post, telex, facsimile or similar facility to, the head office, a registered office or a principal office of the body corporate.

[44] In so far as service by post is concerned, s 39A(1) provides:

> "If an Act requires or permits a document to be served by post, service –
>
> (a) may be effected by properly addressing, prepaying and posting the document as a letter; and
>
> (b) is taken to have been effected at the time at which the letter would be delivered in the ordinary course of post, unless the contrary is proved."

The basis for the Commissioner's summary judgment application

[45] In what follows, I make no findings of fact as to any substantive matter, consistent with the proper approach on a summary judgment application: *Immobilari Pty Ltd v Opes Prime Stockbroking Ltd* (2008) 252 ALR 41 at 44 [6] per Finkelstein J. Rather, what follows is a summary of the evidence adduced by the Commissioner, given by way of affidavits of Neville Baker, a Senior Collections Officer employed by the Officer of State Revenue, and Samantha Amos, the solicitor for the plaintiff.

[46] Each of the defendants were registered for payroll tax purposes, from 26 July 2012.[24]

[47] They, or some of them, may have been registered prior to that,[25] but the material does not permit me to reach a clear view about that.

[48] The material includes copies of letters addressed to each of the defendants, at their common registered office, and also to the defendants' then solicitor, Michael Sing,

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23 Section 148 also provides for documents to be left in a collection box kept at the commissioner's office; addressed to a person and left in their exchange box at a document exchange; and being sent by email – none of which are applicable in the present case. Section 148(e) refers to a document being given in another way prescribed by regulation, but I was not referred to any such regulation (and the giving of documents is not dealt with in the *Tax Administration Regulation 2012*)

24 Affidavit of Neville Baker filed 2 March 2015 at [2] and exhibit "NB-3" at pp 1, 5 and 9) (notices of registration addressed to each of the defendants, at their common registered office (as to which see exhibit "NB-4" at pp 13, 18 and 24). See also paragraph 3 of the amended statement of claim, and paragraph 3 of the amended defence (admitting registration, but putting in issue whether the plaintiff was entitled to register the defendants, on the basis of a non-admission that the criteria for registration have been met).

25 Affidavit of Neville Baker sworn 30 March 2015, filed with leave on 2 April 2015 at [2].

giving notice of their registration (and in separate letters, of their having been "reinstated" as payroll tax employers).[26]

[49] The defendants' current solicitor, Mr Reichman, says that he is informed by Mr Bill Caralis, a director of each of the defendants, that Mr Caralis does not believe any of the defendants received those letters. Mr Reichman also says he has reviewed the documents provided to him by the defendants' former solicitor, and could not find the letters within those documents.[27]

[50] Whether or not the defendants received notice of their registration in July 2012, or were or were not in fact registered prior to that, does not affect: (i) their liability for payroll tax; and (ii) the Commissioner's ability to recover payroll tax for which they are shown to be liable. This is because:

(a) registration as an employer is not a criterion of the liability of wages to payroll tax (see ss 9 and 10 of the PTA);

(b) liability for payroll tax arises on the date an employer is *required to* lodge a return (as opposed to the date they actually do lodge a return) (s 11); and

(c) the requirement to lodge a return is imposed on a "relevant employer" which includes both an employer which is registered as such, and an employer which is *required to* apply for registration (s 59(1)).

[51] It is therefore unnecessary on this application for me to address this matter further.

[52] The defendants are each a member of a group, for the purposes of ss 71 and 51A of the PTA.[28]

[53] The Commissioner issued assessment notices for payroll tax to the first, second and third defendants.[29] Copies of the assessment notices are contained in exhibit "NB-1" to Mr Baker's affidavit filed 5 February 2015. The Commissioner relies upon s 132 of the TAA in relation to those notices of assessment.[30]

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26 Exhibit "NB-3" to Mr Baker's affidavit filed 2 March 2015; exhibit "NB-12" to the affidavit of Neville Baker filed 2 April 2015; and the attachments to the email which is "NB-12", which have been made exhibit 1 in these proceedings.

27 Affidavit of Darren Reichman sworn 31 March 2015, filed with leave on 2 April 2015.

28 See again paragraph [24] above.

29 See paragraph 13 of the affidavit of Mr Baker filed 5 February 2015 (by reference to paragraphs 6, 8 and 10 of the statement of claim filed 19 December 2012); together with paragraphs 15, 16, 17 and 20 of that affidavit.

30 The majority of the notices of assessment are in respect of default assessments. There are 6 reassessment notices, 2 issued to each of the 3 defendants, for the periods 1 July 2006 to 30 June 2007 and 1 July 2008 to 30 June 2009 (in the case of the first defendant) ("NB-1" at pp 1 and 3); for the periods 1 July 2006 to 30 June 2007 and 1 July 2007 to 30 June 2008 (in the case of the second defendant) ("NB-1" at pp 73 and 75) and for the periods 1 July 2007 to 30 June 2007 and 1 July 2007 to 30 June 2008 (in the case of the third defendant) ("NB-1" at pp 145 and 147).

[54] The Commissioner says the unpaid amounts of payroll tax, penalty tax and interest which the defendants have been assessed as liable to pay is a debt payable to the State which it is entitled to recover (s 45 of the TAA). In this regard, the Commissioner relies upon a certificate prepared under s 131(a)(i) of the TAA as evidence of the amounts each defendant was, on 24 March 2014, liable to pay for outstanding payroll tax, penalty tax and interest in accordance with s 45 of the TAA.[31]

The basis for the defendants' defence of the proceeding, and this application

[55] The issuing[32] of the assessment notices is not disputed by the defendants. What the defendants do dispute is:

(a) the constitutional validity of the provisions of the PTA relied upon as the basis for the taxation liability of the defendants;[33]

(b) the accuracy of the amounts contained in each of the assessment notices;[34]

(c) the giving (or serving) of the assessment notices, on a date earlier than 9 February 2015;[35]

(d) the appropriateness of bringing this application for summary judgment when, on the basis of the preceding paragraph, the time period of 60 days for lodgement of an objection under s 65(1) has not yet expired, and therefore the "statutory right of the taxpayer to object to each assessment has not been exhausted";[36] and

(e) the bringing of this application for summary judgment, when the plaintiff has not yet exercised any discretion (provided for in s 60 of the TAA) to remit penalty tax, unpaid tax interest or late payment interest.[37]

[56] Mr Darron Reichman, the solicitor for the defendants, in an affidavit filed on 24 March 2015, deposes to being informed by Mr Bill Caralis, a director of each of the defendants, that the defendants "will be objecting to all of the amounts claimed in the assessment notices, including amounts assessed for primary tax, penalty tax and UTI". The basis(es) of any such objection has not been identified or articulated.

Effect of s 132 of the TAA – what cannot be challenged on this application

[57] Exhibit "NB-1" comprises documents, signed by Elizabeth Goli, the Commissioner of State Revenue since 21 February 2014, purporting to be copies of the assessment

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[31] Exhibit "AM-1" to the affidavit of Alexandra Matthie filed on 24 March 2015.

[32] I emphasise the word "issued", because it is to be distinguished from "given" (or served), a matter dealt with below.

[33] See paragraphs 4, 5(a), 6(a) and 7(a) of the amended defence.

[34] See paragraphs 5(b), 6(b) and 7(b) of the amended defence.

[35] See paragraphs 5(c), 6(c) and 7(c) of the amended defence.

[36] See paragraphs 5(d)-(f), 6(d)-(f) and 7(d)-(f) of the amended defence.

[37] See paragraphs 5(g), 6(g) and 7(g) of the amended defence.

notices issued to the defendants (as referred to in paragraphs 15, 16 and 17 of Mr Baker's affidavit filed 15 February 2015).[38]

[58] By operation of s 132(1) of the TAA, that is conclusive evidence:

(a) of the proper making of the assessments; and

(b) that the amount and all particulars of the assessments are correct.[39]

[59] Accordingly, in this proceeding, and on this application, the defendants cannot challenge those things.

[60] The only means of challenging an assessment is by way of objection (under s 63 of the TAA), and subsequent appeal or review (under s 69 of the TAA).

[61] There is not, in the TAA, an express provision equivalent to ss 14ZZM and 14ZZR of the *Taxation Administration Act 1953 (Cth).*[40] Although, in so far as an *appeal* or *review* of the Commissioner's decision on an objection is concerned, the taxpayer's right in that regard is conditional upon payment of the whole amount of tax and interest payable under the relevant assessment (s 69(2)).

[62] Nevertheless, there are a number of provisions of the TAA which reveal that, consistently with its Federal counterpart, the evident policy of the legislation is to require the taxpayer to "pay now and argue later",[41] even in respect of objections under s 63.

[63] Those provisions are s 30(1) (the time for payment of tax, eg, on a default assessment, being the date the assessment notice is given to the taxpayer), s 45 (unpaid tax is a debt payable to the State which the commissioner may recover in a court of competent jurisdiction); s 54 (as to the accrual of unpaid paid tax interest and late payment interest, from the date the return was required to be lodged); ss 31 and 32 (time for payment of late payment interest, unpaid tax interest and penalty tax); and s 132.

[64] As the plurality observed in *Deputy Commissioner of Taxation v Broadbeach Properties Pty Ltd* (2008) 237 CLR 473 at [44]:[42]

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38 See paragraph 20 of Mr Baker's affidavit filed 5 February 2015.

39 See, in relation to the equivalent provisions in the *Income Tax Assessment Act 1936 (Cth)*, ss 175 and 177, *Federal Commissioner of Taxation v Futuris Corporation Ltd* (2008) 237 CLR 146 at 156-157 and 166-167; and *Deputy Commissioner of Taxation v Broadbeach Properties Pty Ltd* (2008) 237 CLR 473 at 488 and 491-494; and in relation to s 132 of the TAA, *Harvey v Commissioner of State Revenue* [2014] QSC 183 at [111]-[123] (Jackson J).

40 Section 14ZZM provides that: The fact that a review is pending in relation to a taxation decision does not in the meantime interfere with, or affect, the decision and any tax, additional tax or other amount may be recovered as if no review were pending. Section 14ZZR makes similar provision in respect of an appeal.

41 To adopt the words of Nathan J in *Deputy Commissioner of Taxation v Akers* (1989) 89 ATC 4725 at 4727.

42 By reference to the combined effect of ss 175 and 177 of the *Income Tax Assessment Act 1936 (Cth)* and the relevant equivalents of ss 14ZZM and 14ZZR of the *Taxation Administration Act 1953 (Cth).*

> "… harsh though the operation of these provisions may be, they implement a long-standing legislative policy to protect the interests of the revenue. In *Deputy Commissioner of Taxation v Niblett* [(1965) 83 WN (Pt 1) (NSW) 405 at 411) Asprey J struck out pleas of non-liability to a recovery action instituted by the Deputy Commissioner in the Supreme Court of New South Wales while objections were pending under what was then s 185 of the Assessment Act. His Honour observed:
>
> > 'It may be thought to be a hardship that a taxpayer should have to pay the tax assessed when an objection to the assessment has not been decided upon but there are obvious financial considerations of high policy that must be weighed in the balance against cases of individual hardship with which the Commissioner through the appropriate use of his powers under [the Assessment Act] can cope… Where the meaning of the words of a statute is clear 'it is not open to the Court to narrow down or whittle down the operation of the Act by seeming considerations of hardship or of business convenience or the like' – *Attorney-General v Carlton Bank* [1899] 2 QB 158 at 164.' "

[65] Notwithstanding the absence of an express provision such as s 14ZZM there is nothing in the TAA which, as a matter of construction, would tend to displace the application of these policy considerations to the PTA and TAA, and therefore displace the operation of provisions such as ss 30, 45 and 132, other than in accordance with their clear meaning and effect.

Giving (service) of the notices of assessment

[66] The defendants plead in their amended defence that each of the assessment notices upon which the Commissioner relies were not provided to the defendants until on or after 9 February 2015.[43]

[67] It is apparent that this is a specific pleading, in respect of the copies of the assessment notices, signed by Elizabeth Goli, which comprise exhibit "NB-1" to Mr Baker's affidavit filed 5 February 2015.

[68] There is no pleading, or evidence otherwise before me, of the non-receipt of the assessment notices (as originally issued) by the defendants.

[69] However, the defendants submit that it is a matter for the Commissioner to prove that the assessment notices were given to the defendants, as required by s 26 of the TAA. The defendants argue that the Commissioner has not done so.

[70] As will become apparent, the primary practical significance of this argument concerns the time period in which an objection can be lodged, under s 63 of the TAA (because

[43] Paragraph 5(c) of the amended defence.

the 60 day time period runs from the date the notice of assessment is given to the taxpayer, under s 65(1)(d) of the TAA).

[71] The concession that the defendants have been given the notices of assessment, that is, the signed copies which comprise exhibit "NB-1", means that there has been compliance with the Commissioner's obligation under s 26(1) of the TAA, at least from 9 February 2015.

[72] But in so far as the defendants have put in issue the question whether the notices of assessment were given earlier, for the following reasons, I am of the view the Commissioner has not proved this.

[73] As the High Court observed in *Fancourt v Mercantile Credits Ltd* (1983) 154 CLR 87 at 96, in relation to a legislative provision providing for service other than personal service (including by post): [44]

> "[such provisions] contemplate the possibility of something less than actual receipt by the person to be served. As was observed by Tindal CJ in *Bishop v Helps* in relation to a comparable provision, although leaving notices at a place of abode or sending them through the post involve the possibility of non-receipt by the intended recipient:
>
> > 'It was probably considered that the public convenience would be promoted by the present provision, and that its advantages would greatly outweigh the inconvenience which, in some few cases, might possibly arise from it.'
>
> Nevertheless, proof of the use of any one of the methods of service provided by s 42(1) constitutes proof of service for the purpose of the *Hire-Purchase Act*…"[45]

[74] Notwithstanding the adoption of a permitted means of service (such as by post), service will be ineffective if there is proof of non-delivery.[46] However, as the Court in *Fancourt v Mercantile Credits* also observed, at 97:

> "… delivery may be different from receipt by the intended recipient and, provided that delivery is not disproved, the fact of non-receipt does not displace the result that delivery is deemed to have been effected at the time at which it would have taken place in the ordinary course of the post."

[75] The evidence of the giving of the notices of assessment, relied upon by the Commissioner, is the following:

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[44] Relevantly, s 42(1)(b) and (c) of the *Hire Purchase Act 1959 (Qld),* which permitted service of a notice or document "by leaving it at his place of abode or business …" or "by posting it addressed to him at his last known place of abode or business", respectively.

[45] Footnote omitted.

[46] *Fancourt v Mercantile Credits* (1983) 154 CLR 87 at 96-97.

(a) The "issue date" which appears on the notices of assessment comprising exhibit "NB-1", and s 132 of the TAA.

In my view, whilst the effect of s 132 is that there is conclusive evidence of the "issue date" of the notices of assessment; that is not evidence of the "giving" of the notices, in the sense required by s 148 of the TAA and ss 39 and 39A of the *Acts Interpretation Act 1954*.

I was not referred to any authority on the meaning of the word "issue" in this context. But even if I were prepared to infer that "issue" could be equated with "give", in my view, what s 148 of the TAA, and ss 39 and 39A of the *Acts Interpretation Act 1954* require is more than simply a statement that the notices "were issued". There must be evidence of delivery in terms of the proper addressing, prepaying and posting of the notices.

There is a facilitative evidentiary provision in s 131(a)(v) of the TAA, which would enable the Commissioner to prove, by certificate, that a stated document (a notice of assessment) was given to a stated person in a stated way (for example, as provided for in s 39A of the *Acts Interpretation Act 1954*). If necessary, this could be combined with a certificate under s 95 of the *Evidence Act 1977 (Qld)* (where the information is stored on a computer). But the Commissioner has not produced any such certificate(s) in these proceedings.

(b) Paragraph 13 of Mr Baker's affidavit filed on 5 February 2015, in which he states "the plaintiff issued assessment notices for payroll tax to the first, second and third defendants as particularised in paragraphs 6, 8 and 10 of the statement of claim". Apart from the lack of specificity as a result of deposing in these terms by cross-reference to a superseded pleading, again, the evidence is only of "issuing", not giving of the notices, in terms required by s 148 of the TAA.

(c) Service of the Commissioner's list of documents, and copies of the documents referred to in the list, in the course of making disclosure in this proceeding.[47] What is in evidence before me is the list of documents dated 13 November 2014, but not the documents themselves.[48]

The Commissioner invites me to infer that the documents listed are the same as those which comprise exhibit "NB-1" to Mr Baker's affidavit filed 5 February 2015 (save that they are not signed by Elizabeth Goli).

The defendants submit that, in the absence of the actual documents, that cannot be assumed. In an affidavit filed on 24 March 2015, Mr Reichmann, the defendants' solicitor, confirms he received the documents referred at items 1.3 to 1.101 in the list of documents on 17 November 2014 (which are described as notices of assessment, of various dates); says none of those documents were

47 Affidavit of Samantha Amos filed 19 March 2015 at [2].

48 Exhibit "SAA-11" to the affidavit of Samantha Amos filed 19 March 2015.

signed; and notes that none of those documents calculate alleged liability for payroll tax to or at 22 January 2015 (it is apparent the notices of assessment in the list of document finish at July 2014; whereas the amended statement of claim takes in assessments issued up to November 2014). Mr Reichmann also says his firm is not the tax agent for the defendants.[49]

In my view, the bare production of the list of documents is inadequate to prove giving of the relevant notices of assessment to the defendants.

(d) Finally, in respect of the returns for August 2014 to November 2014, reliance is placed on an affidavit of Mr Baker filed on 19 March 2015, in which he refers to the process by which default assessments are "automatically" generated and printed out by the computer system used by the Office of State Revenue (for example at [8] and [9]). He then refers to a process whereby a Revenue Officer puts the printed assessment notice into an envelope and places it into an out tray "on or about the same day that the assessment notice is printed" (at [11]), and to the "mail system" employed at the OSR (involving use of in-trays and out-trays, collection of mail from out-trays, and collection by Australia Post) (at [12]). Finally, at [13], he says:

> "The assessments for the periodic returns for August 2014 to November 2014 for each of the defendants are default assessments which <u>would have</u> been generated as described at paragraph 8. According to the office practice described above, these default assessment notices <u>would have</u> been served by post on or about the date the default assessments were issued."[50]

In my view, this is not evidence of the proper addressing, prepaying and posting of the notices (cf s 39A of the *Acts Interpretation Act 1954)*, such as to enable reliance on the presumption of delivery provided for by that provision. As already noted, there are provisions, both in s 131 of the TAA and s 92 of the *Evidence Act 1977* which facilitate proof of a matter such as this. To my mind, the possibility, or probability, which the language "would have" suggests is inadequate.

[76] Nevertheless, it cannot be controverted that the defendants have been given all of the notices of assessment, at the latest, when they were given Mr Baker's affidavit filed on 5 February 2015.

[77] As I noted at the outset, on this summary judgment application, it is not for me to find facts. In expressing the view I have above, I do not suggest that the Commissioner cannot prove the notices were given at an earlier time. I simply do not consider she has done so on this application.

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[49] Cf s 146(1) of the TAA, which provides that a document is taken to be given by the commissioner to a taxpayer if it is given to an agent of the taxpayer with apparent authority to be given the document.

[50] Emphasis added.

[78] That being the case, the only relevant question is whether that has any impact on these recovery proceedings.

[79] For the reasons outlined at paragraphs [58] to [65] above, in my view, it does not. There is nothing which prevents the Commissioner exercising the right conferred by s 45 of the TAA, before the time for lodging an objection has expired. Of course, in this case the Commissioner says that did not happen, because the notices of assessment were "given to" the taxpayers when they were issued. Although I consider that has not been proved in the context of this application:

(a) that does not affect the Commissioner's entitlement to the substantive relief she seeks (although may affect the award of interest under s 58 of the *Civil Proceedings Act 2011*); and

(b) that does not prevent the Commissioner from proving the giving of the notices of assessment at or about the date they were issued, in another context (for example, in the context of objections sought to be made under ss 63-65 of the TAA).

[80] I note also that, quite apart from proof of the giving of the notices of assessment to the defendants, the defendants undoubtedly became aware of the Commissioner's claim upon these proceedings being served on them in December 2012. I do not suggest that service of recovery proceedings is an appropriate alternative to the proper giving of notices as required by s 26 of the TAA. Nevertheless, it cannot be said that the defendants have been unaware of the Commissioner's claims against them. It would have been open to them to take (indeed one would expect that they would have taken) steps to ascertain the basis for the Commissioner's claims, if they were truly unaware of their exposure to liability for payroll tax, or held a particular view about their liability in that regard.

[81] In all the circumstances, this argument affords the defendants no reasonable defence to the plaintiff's claim.

Exercise of the discretion to remit, under s 60 of the TAA

[82] The defendants refer to the discretion of the Commissioner to remit the whole or part of any unpaid tax interest or penalty tax, under s 60 of the TAA, and say they have "not exhausted [their] rights to apply for a remittance of each".[51]

[83] This point is linked to the previous one, in the sense that the defendants foreshadow, in a general sense, objecting to the assessments, and, presumably if successful in some respect, seeking the remission of unpaid tax interest and penalty tax.[52]

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51 Paragraphs 5(g), 6(g) and 7(g) of the amended defence.

52 As to the considerations that may be relevant to the exercise of the discretion, see *Orica IC Assets Pty Ltd & Anor v Commissioner of State Revenue* [2011] QSC 1 at [93].

[84] This affords the defendants no reasonable defence to the plaintiff's claim either. It is a matter that can only be addressed by the Commissioner if, or when, an occasion for the exercise of the discretion arises. That is not the case yet.

Invalidity of the PTA provisions, for inconsistency with s 92 of the Constitution

[85] Finally, the Defendants seek to defend these proceedings on the basis that the provisions of the PTA which purport to impose taxation liabilities on the defendants are void or invalid because of s 92 of the Commonwealth Constitution.

[86] Section 92 of the Constitution provides that trade, commerce and intercourse among the States shall be absolutely free.

[87] In this regard, the defendants plead in paragraph [4] of the amended defence as follows:

> "As to paragraph 4 of the statement of claim the defendants say:
>
> (a) the purported liability of each of the defendants to make any payment to the plaintiff is pursuant to various provisions of the [PTA]…;
>
> (b) The PTA purports to impose a taxation liability:
>
> (i) on corporations (such as each of the defendants) carrying on business in the State of Queensland at a rate different to other corporations carrying on business in the State of Queensland but which pay the same amount of wages in Queensland;
>
> (ii) on corporations (such as each of the defendants) carrying on business in the State of Queensland at a rate different to other corporations carrying on business in the State of Queensland but which pay the same amount of wages in Queensland only by reason such the [sic] first named corporations are related entities to other corporations carrying on business in jurisdictions other than Queensland;
>
> (iii) on corporations which are alleged to have sufficient nexus with the State of Queensland at a rate different to other corporations operating within the State of Queensland but which pay the same amount of wages in Queensland;
>
> (iv) on corporations which are alleged to have sufficient nexus with the State of Queensland at a rate different to other corporations carrying on business in the State of Queensland only by reason such the [sic] first named corporations are related entities to other corporations carrying on business in jurisdictions other than Queensland;
>
> (v) imposes a different liability on employers for payroll tax in the State of Queensland to employers in other jurisdictions which pay the same amount of wages in each of those jurisdictions.

(c) in the premises aforesaid imposes a restriction on the freedom of interstate trade and commerce by prejudicing or discriminating against corporations (such as each of the defendants) who trade in competition with other corporations in the State of Queensland or wish to establish business activities in the State of Queensland;

(d) otherwise discriminates or is otherwise prejudicial as between corporations which pay the same amount of wages in the State of Queensland;

(e) the provisions of the PTA which purport to impose the taxation liabilities is therefore void or invalid by reason of the provisions of section 92 of the *Commonwealth of Australia Constitution Act (Cth)*."

[88] In her amended reply filed on 19 March 2015, the Commissioner denies the allegations in 4(b) to (e) (other than the allegation in the opening words of 4(b) that the PTA imposes a taxation liability which is admitted), on the following basis:

"(a) The rate of payroll tax, 'on all taxable wages', is 4.75%, in accordance with section 10(b) of the [PTA]…;

(b) The rate is not different, as alleged (Amended Defence paragraphs 4(b)(i) to (iv);

(c) The [PTA] … does not impose a different liability, as alleged in paragraph 4(b)(v) of the Amended Defence.

(d) Cannot otherwise answer the allegations in paragraph 4(b), as they lack specificity as to the alleged position of the Defendants, as against the alleged comparator group; or as to the alleged position of the two posited comparator groups;

(e) The factual premises of paragraphs 4(c)-(e) are denied as untrue, for the reasons given above. The legal assertions made are incorrect, as misconstructions of the … [PTA], and as misapplications of section 92 of the *Constitution*."[53]

[89] As developed, and as I understand it, the defendants' argument is that the defendants are corporations having their registered office in New South Wales. They are members of a group for the purposes of the PTA. For group members, the determination of liability for payroll tax is not by reference to what a single corporation pays by way of wages (see s 52(a) of the PTA), but by reference to what the group may pay by wages wherever the members are located (see s 52(b) of the PTA). That may result in one group member (say company C) being liable to pay payroll tax on wages below the threshold provided for in s 52(a) of the PTA (because their liability arises from being a group member with companies A and B). Company C's position in that regard compares unfavourably with the position of an independent, stand-alone company (say

53 Amended Reply filed 19 March at [2C]

company D), which is not a member of a group. The defendants argue that company C, if it is, for example, based in New South Wales, is therefore subject of a discriminatory burden.

[90] The Commissioner submits that no matter of interstate trade or commerce is pleaded by the defendants. In any event, the Commissioner submits the legislation is "colour blind", which I take to mean non-discriminatory, referring, inter alia, to s 52(a) (one of the criterion for registration, being payment, or liability to payment, of wages "anywhere" of more than a certain amount) and s 10 of the PTA, pursuant to which the same rate of payroll tax is applied to all taxable wages for the purposes of s 9 of the PTA.

[91] A helpful summary of the relevant principles to be applied when a matter involving s 92 of the Constitution is raised is set out in the reasons of Mansfield J in *Sportsbet Pty Ltd v Harness Racing Victoria & Ors (No 6)* (2012) 206 FCR 51 at [70]:

> "The relevant two-step procedure to be applied in determining whether s 92 is contravened is set out in *Cole v Whitfield*[54] and as more recently reiterated in *Betfair HC*[55] was explained by Gordon J in the *Sportsbet Pty Ltd v Victoria* (2011) 282 ALR 423 at [74] (the *Sportsbet/Eureka* case):
>
> '1. [F]irst, *an invalidating criterion*. This requires the Court to determine whether a law or measure imposes a burden on interstate trade and commerce which is discriminatory in a protectionist sense by reference to three matters:
>
> 1.1 does the law or measure impose a *burden*; does it prohibit or restrict a trader's ability to import a product or service or deal with it once it is imported;
>
> 1.2 does the burden *discriminate* against interstate trade and commerce; is the burden not imposed at all, or to the same extent, on intrastate trade in respect of the same product or service or a substitutable product(s) or service(s); and
>
> 1.3 if the burden does discriminate against interstate trade or commerce, is the discrimination *protectionist* in character; that is, does the law give the domestic product a market advantage over the imported product or the interstate trade in that product;
>
> 2. [S]econdly, a *saving criterion* (*Castlemaine Tooheys Ltd v South Australia* (1990) 169 CLR 436 at 472 and 479-480). This renders a law valid if it has a purpose that is not protectionist and any burden it imposes on interstate trade and commerce is

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54 (1988) 165 CLR 360.

55 *Betfair Pty Ltd v Western Australia* (2008) 234 CLR 418.

> appropriate and adapted to achieving that purpose. That criterion may be assessed by reference to three matters:
>
> 2.1 identify a non-protectionist purpose(s);
>
> 2.2 considering whether the means adopted by the law are capable of being seen as likely to achieve the identified purpose(s); and
>
> 2.3 considering whether there are or are not alternative means to achieve the identified purpose(s) which involve no, or a lesser, burden on interstate trade and commerce than the means adopted.' "

[92] In relation to the expression "interstate trade or commerce", at [72] Mansfield J referred to the following statement of principle by Gordon J in the *Sportsbet/Eureka* case at [77] (references omitted):

> "The object of s 92 of the Constitution is to eliminate the protection of local industry against interstate competition. A reduction in competition, without more, is not contrary to s 92… A State law may contravene s 92 if it protects the domestic industry from competition from traders in another State. That is, the State law reduces competition from interstate traders. Section 92 prevents the use of State boundaries as barriers to protect intrastate traders from competition from interstate traders in the same market."

[93] A clear example of the operation of the relevant principles in circumstances leading to invalidity is *Bath v Alston Holdings Pty Ltd* (1988) 165 CLR 411. In that case, legislation which purported to impose an additional *ad valorem* fee on retail tobacco merchants in respect of the sale of tobacco *other than* tobacco purchased in Victoria from the holder of a wholesale tobacco merchant's licence, was found to infringe s 92. The legislation was found to discriminate against interstate trade and commerce in a protectionist sense by taxing a retailer only because of, and by reference to the value of, his purchases of products in States other than Victoria.

[94] Here, I am unable to discern any basis on which to find that the provisions of the PTA infringe s 92. There is no allegation (nor evidence) that the defendants are engaged in interstate trade or commerce. The defendants are each companies that have their registered office in New South Wales. But liability for payroll tax in Queensland is indiscriminately imposed on "taxable wages" (being wages that in various ways have a relevant nexus with Queensland, the primary one being where the services have been performed in Queensland). There is no basis to conclude that employers based outside Queensland are treated any differently from employers based in Queensland, in so far as the payment of payroll tax on "taxable wages" under the PTA is concerned. This is so for both individual employers, and those who are members of a group.

[95] Returning to the defendants' argument, as it was put to me, the position of a group member (such as company C), as compared with a standalone employer (such as

company D) is what it is regardless of where company C or company D are based. The same comparison could be made between two companies based in Queensland. There is no basis to conclude that an employer corporation, which is based in a State other than Queensland, is treated any differently, in terms of "taxable wages" under s 9 of the PTA, from an employer corporation based in Queensland.[56]

[96] Although payroll tax, like any tax, is undoubtedly a burden, I cannot discern any basis on which to conclude, within the legislative context of the PTA, that it is a burden on interstate trade and commerce which is discriminatory in a protectionist sense.[57] Accordingly the first, invalidating, criterion is not present.

[97] In the circumstances, in my view, the defendants have no reasonable prospects of defending the plaintiff's claim on this basis either.

[98] For the foregoing reasons, I am satisfied both that the defendants have no real prospect of defending the plaintiff's claim, and that there is no need for a trial of the claim, and therefore that it is appropriate to exercise my discretion under r 292 UCPR to give judgment for the plaintiff against the defendants. I will hear the parties on the appropriate form of the order.

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56 I note also that the amendments made, inter alia, to the grouping provisions of the PTA, by the *Pay-roll Tax Amendment (Harmonisation) Act 2008,* were intended to bring the Queensland provisions into line with the New South Wales and Victorian provisions (cf explanatory notes to the Bill which became that Act, at p 11-12). Further, although liability in the first instance is determined by reference to wages paid or payable *anywhere* (s 52), in practical terms, the tax is paid on "taxable wages" as defined in s 9 (that is, wages having the requisite nexus with Queensland), leaving wages not having that nexus to be taxed under the equivalent payroll tax legislation of the relevant other jurisdiction (see in this regard Public Ruling PTA039.1, issued on 3 June 2011).

57 *Cole v Whitfield* (1988) 165 CLR 360 at 392-3, 394, 407-8.