

THE HEALTH AND POST SECONDARY EDUCATION TAX LEVY ACT

ASSOCIATED CORPORATIONS

This bulletin is issued to help employers understand how The Health and Post Secondary Education Tax Levy Act (also known as HE Levy) applies to associated corporations and certain corporate partnerships.

Section 1 – GENERAL INFORMATION

- The Health and Post Secondary Education Tax Levy Act deems two or more corporations associated with each other (and certain corporate partnerships) to be a **single employer** in respect of all the employees of the corporations/partnerships. As a result, the tax payable by the group is calculated on the total (combined) remuneration paid by the entities. If the group paid less than \$2.5 million in combined remuneration, members must share the exemption or notch reduction among them. For additional information, see Section 3.

Please note: In this bulletin, “remuneration” refers only to remuneration that is subject to HE Levy in Manitoba.

- For purposes of applying the associated rules, subsection 2(4) and 2(4.1) of the Act treats corporate partnerships as though they were corporations. As a result, the corporate partnership, the corporate partner(s) and its associated corporation(s), and other partnerships of the corporate partner may be deemed to be a **single employer** in respect of all the employees in the year of those corporations and partnerships. For additional information, see Section 5.
- Generally, corporations that are associated with each other at any time in the year are associated for the entire year. The Act provides one exception to this application: where a corporation that was not previously associated in the year becomes associated during that year. For additional information, see Section 4.

Please note: This exception does not apply to a corporation that disassociates during the year.

- See Bulletin No. HE 001 – Information for Employers, if you require general HE Levy information, e.g., tax rates, tax returns, registration requirements, etc.

Section 2 – DEFINITIONS OF TERMS USED IN THIS BULLETIN

- Year
- Year means a calendar year.

Note: Revisions to contents of previous Bulletin (April 2001) have been identified by shading ().

- Associated corporations**
- Two or more corporations are associated with one another if they are, at any time in a year, associated within the meaning of section 256 of the Income Tax Act (Canada).
- Corporate partnership**
- A corporate partnership is a partnership with one or more corporations as partners.
- Associated group**
- For HE Levy purposes, associated groups include associated corporations and certain corporate partnerships as explained in Section 5.
- Single employer**
- The meaning of “single employer” is the same as “employer.” The term is used in the Act (and in this bulletin) to clarify that the remuneration paid by all the entities of an associated group is combined and the group treated as one employer for purposes of qualifying for the exemption or notch reduction.
- Related persons**
- For purposes of the HE Levy, two or more persons are related to each other if they are related within the meaning of section 251 of the Income Tax Act (Canada).
- Remuneration**
- Generally includes payments, benefits or allowances that, before any deductions, are required to be included in an employee’s income under subsection 5(1) or section 6 or 7 of the Income Tax Act (Canada), and includes:
 - Salaries and wages
 - Bonuses
 - Gratuities/tips disbursed by the employer
 - Honorariums
 - Commissions or other similar payments
 - Other taxable allowances or benefits paid to or on behalf of the employee or officer
 - Contributions to employee trusts and employee profit sharing plans.
 - It does not include pensions, annuities or superannuation benefits paid by employers to former employees after retirement of that employee or anything contributed by an employer to a plan or trust if the value of the employer’s contribution has already been included as remuneration.
 - For further information on remuneration, see Bulletin No. HE 002 – Remuneration.

Section 3 – APPLICATION OF ASSOCIATED CORPORATIONS RULES

- An associated group is a single employer**
- An associated group (including certain corporate partnerships) is deemed to be a single employer and the remuneration of all of the entities in the group is combined for purposes of calculating the HE Levy. Therefore, if the group paid:
 - \$1.25 million or less in total remuneration in the year, the entities in the group do not pay any tax (prior to January 1, 2008, the amount of remuneration was \$1 million).
 - more than \$1.25 million but not more than \$2.5 million in total remuneration in the year, the entities in the group must share the tax that is payable on the remuneration exceeding \$1.25 million, calculated at the notch rate of 4.3% (prior to January 1, 2008, the amount of remuneration was between \$1 million and \$2 million).

For example: Corp. A and Corp. B are associated. Corp. A's remuneration for the year is \$.7 million and Corp. B's remuneration is \$1.0 million. The tax payable on the combined remuneration of \$1.7 million is:

$$\$1.7M - \$1.25M = \$.45M \times 4.3\% = \$19,350$$

- more than \$2.5 million in total remuneration in the year, each entity in the group must pay tax on its remuneration calculated at the full rate of 2.15%.

For example: If in the above example, Corp. A paid remuneration of \$1.1 million and Corp. B paid \$1.8 million, for a total of \$2.9M in the year, the tax payable is:

$$\text{Corp. A} - \$1.1M \times 2.15\% = \$23,650$$

$$\text{Corp. B} - \$1.8M \times 2.15\% = \$38,700$$

Association at any time in a year

- For HE Levy purposes, two or more corporations that are associated with each other at any time in a year are deemed by subsection 2(3) of the Act to be associated with one another for the entire year.

For example: Corporations A and B were only associated from January 1 to September 1 in the year. Corp. A paid remuneration of \$.4 million for the year (\$.2 million while associated and \$.2 million for the balance of the year). Corp. B paid remuneration of \$.9 million for the year (\$.6 million while associated and \$.3 million for the balance of the year).

Although the two corporations were not associated for the full year, their combined remuneration for the full year (\$.4M + \$.9M = \$1.3M) must be used to calculate the tax payable for that year. The total remuneration paid is in the notch reduction range, and the total tax payable to be shared by the two corporations is:

$$\$1.3M - \$1.25M = \$.05M \times 4.3\% = \$2,150$$

- For the exception to subsection 2(3) of the Act, see Section 4.

Corporations associated through a third corporation

- If two otherwise unassociated corporations are associated with the same third corporation, for HE Levy purposes, all three corporations are considered to be associated and shall calculate the tax payable as a single employer.

Please note: Although subsection 256(2) of the Income Tax Act (Canada) provides relief in this case to certain corporations (i.e., for purposes of the income tax small business deduction), these corporations are nevertheless **associated** within the meaning of that act.

Corporations deemed not to be associated under ITA

- The Income Tax Act (Canada) provides some "saving" provisions under subsections 256(3), (4), (5) and (6) for corporations that for a period of time become associated circumstantially. Where corporations in these situations are deemed not to be associated for income tax purposes, they are also not associated for HE Levy purposes.

Declaration re sharing of exemption or notch reduction

- Where an associated group is eligible for an exemption/notch reduction, subsection 5(2.6) of the Act requires the group to file a declaration of the tax payable and the exemption/notch reduction that was shared among them (to be included as part of the Annual Report).

Please note: If an associated group does not file its annual declaration of sharing, or if the declaration made by the group is unreasonable, subsection 2(5.2) of the Act allows the Taxation Division to allocate the exemption/notch reduction among the group as is reasonable in the circumstances.

General anti-avoidance rule (also known as GAAR)

- Taxation Division may recover tax benefits obtained by persons from transactions or arrangements made by them primarily for the purpose of reducing, avoiding or deferring any tax.
- For further information, please contact the Taxation Division.

Section 4 – CORPORATIONS BECOME ASSOCIATED DURING THE YEAR

General rule

- Corporations that are associated at any time during a year are generally associated for HE Levy purposes for the full year. As discussed in the above section, the combined remuneration paid by all the entities associated at any time during that year is used to calculate their tax payable and the exemption/notch reduction (if applicable) they must share for the year.

Relief for corporations not previously associated

- Subsection 3(3.10) of the Act provides relief to the above general rule for a corporation that became associated with one or more corporations, or an associated group, during a year, but only if:
 - a) the corporation has not been previously associated with any other corporation(s) in that year,
 - b) in the case where a corporation becomes associated with a group of associated corporations, the group was associated for the entire pre-association period,
 - c) the corporation is not part of an associated group where other corporations subsequently become associated with the group at different times in that year.

Essentially, this provision allows corporations that become associated in the above circumstances to split the year into two separate short periods for purposes of calculating the tax payable. That is, in the pre-association period, each corporation, and/or the associated group that has been associated for the entire period, pays the tax based on its remuneration paid in the pre-association period. The newly associated group is required to share the tax payable and the exemption/notch reduction based on the total remuneration paid in the post-association period only. For this purpose, the exemption/notch reduction (if applicable) that the corporations or associated group may claim for the pre-association and post-association periods is prorated in proportion to the number of days in each period over the days in the year. Examples explaining the application of this provision follow in this section.

Pre-association period

- The following are three examples of how the tax applies in the pre-association period. Examples 4, 5 and 6 explain the tax application for the post-association period:

Please note: In these examples, the notch range is equal to 2 times the amount of the prorated exemption.

Example 1:

- Corp. A and Corp. B became associated on August 1 (212 days in the pre-association period) and are eligible for the tax application under subsection 3(3.10).

- The remuneration paid in the pre-association period is: Corp. A - \$.5M and Corp. B - \$.9M.
- The exemption prorated to the pre-association period per subsection 3(3.10) is: $212/365 \times \$1.25M = \$726,027$.
- The notch reduction range is: \$726,027 to \$1,452,055. In this case, the remuneration that is in excess of \$726,027, but less than \$1,452,055, is taxable at 4.3%.
- Corp. A - the remuneration paid of \$.5M is less than the prorated exemption and therefore not subject to tax.
- Corp. B - the remuneration paid of \$.9M is in the notch range, and tax is payable as follows: $\$900,000 - \$726,027 = \$173,973 \times 4.3\% = \$7,481$.

Example 2:

- Where a corporation becomes associated with a group of associated corporations (that have been associated for the entire pre-association period in the year), the group in the pre-association period must calculate the tax payable as a single employer.
- Referring to Example 1, substitute Corp. B with Group B.
- The remuneration paid in the pre-association period is: Corp. A - \$.5M and Group B - \$.9M (total remuneration).
- Corp. A - the remuneration of \$.5M is less than the prorated exemption and therefore not subject to tax.
- Group B - the total remuneration of \$.9M is in the notch range, and tax is payable as follows: $\$900,000 - \$726,027 = \$173,973 \times 4.3\% = \$7,481$.

Example 3:

- Assume in Example 1, the remuneration paid by Corp. A in the pre-association period is \$1.6M, Corp. B's remuneration remains at \$.9M.
- In this case, the remuneration paid by Corp. A exceeds the prorated exemption/notch range calculated in Example 1 and is subject to tax as follows: $\$1,600,000 \times 2.15\% = \$34,400$.
- The tax payable by Corp. B remains the same as in Example 1.

Post-association period

- Following are three examples of how the tax applies in the post- association period.

Example 4:

- Referring to Example 1 above, in the post-association period, the corporations in the newly associated group paid remuneration of: Corp. A - \$.4M and Corp. B - \$.3M, so the total remuneration paid by the group is \$.7M.
- The prorated amount of tax exemption for the remainder of the year that the corporations in the new group must share is: $\$1,250,000 - \$726,027 = \$523,973$. The notch reduction range is: \$523,973 to \$1,047,946.
- In this case, the remuneration paid by the group is in the notch range and the remuneration in excess of \$523,973 is taxable at 4.3%.
- The total remuneration of \$.7M paid by the newly associated group of corporations is subject to tax as follows: $\$700,000 - \$523,973 = \$176,027 \times 4.3\% = \$7,569$.

Example 5:

- Assume in Example 4 that the newly associated group's combined remuneration for the post-association period is \$.4M, i.e., less than the prorated exemption for this period. In this case, no tax is payable.

Example 6:

- Assume in Example 4 that the newly associated group’s combined remuneration for the post-association period is \$1.2M. In this case, the remuneration exceeds the notch range calculated in Example 4 and is subject to tax on the total amount as follows: \$1,200,000 x 2.15% = \$25,800.

Corporation disassociates during a year

- Subsection 3(3.10) does not apply to situations where a corporation disassociates from a group during a year. In this case, the “general rule” described at the beginning of this section applies.

Section 5 – APPLICATION OF ASSOCIATED RULES TO CORPORATE PARTNERSHIPS

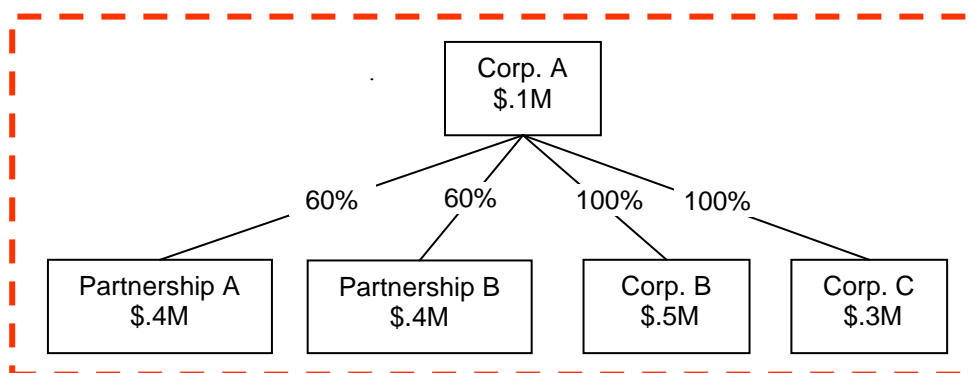
Purpose of corporate partnership rules

- Provisions in the Act deem certain corporate partnerships to be part of an associated group (single employer) for purposes of calculating the tax payable and sharing the exemption/notch reduction amongst them. The intent of these provisions is to treat corporate partnerships, for HE Levy purposes, similar to corporations that are associated under section 256 of the Income Tax Act. For this reason these HE Levy provisions are based on the concept of “control” that a corporation has over a partnership.

Control by corporate partner and its associated corporations s.s. 2(4)(a)

- Where a corporate partner, alone or together with its associated corporations, is at any time in the year entitled/obligated to share in more than 50% of the profits or losses of the partnership (i.e., controls the partnership), the following entities are deemed to be part of an associated group, i.e., a single employer:
 - i) The corporate partnership
 - ii) The corporate partner
 - iii) Each corporation associated with the corporate partner at any time in the year
 - iv) Each other corporate partnership in which the corporate partner, alone or together with its associated corporations, is entitled at any time in the year to share more than 50% of the profits or losses

Example 1:



- Corp. A is a partner and entitled to a 60% share of the profits or losses in each of Partnership A and Partnership B.
- Corp. A is also associated to Corp. B and to Corp. C (but neither Corps. B or C are a partner in Partnerships A or B).
- For purposes of the HE Levy rules, Corp. A, Corp. B, Corp. C, Partnership A and Partnership B are considered to be a single employer (associated group),

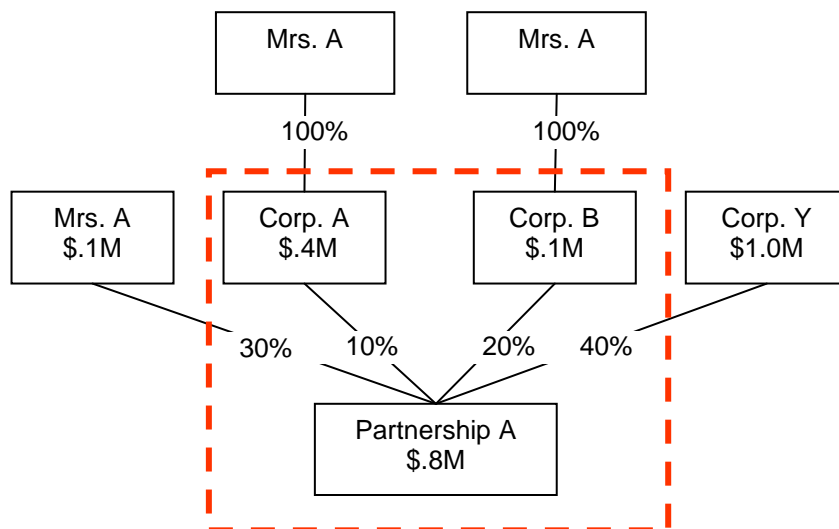
and the remuneration paid in the year by each entity is combined to calculate the tax payable.

- Remuneration paid in the year by each entity is: Corp. A - \$.1M; Corp. B - \$.5M; Corp. C - \$.3M; Partnership A - \$.4M; Partnership B - \$.4M, for a total of \$1.7M.
- The total remuneration is in the notch range. The tax payable is as follows: $\$1.7M - \$1.25M = \$.45M \times 4.3\% = \$19,350$.

Control by related group s.s. 2(4)(b)

- Where one or more corporate partners is included in a group of related persons and the related group is at any time of the year entitled/obligated to share in more than 50% of the profits or losses of the partnership (i.e., controls the partnership), the following entities are deemed to be part of an associated group, i.e., single employer:
 - i) The corporate partnership
 - ii) Each corporate partner in the related group that, either alone or together with every other corporation in the related group with which it is associated, is at any time in the year entitled/obligated to share in 25% or more of the profits or losses of the partnership
 - iii) Each corporation associated at any time in the year with a corporate partner described in (ii) above
 - iv) Each other partnership that is “controlled” by a related group (not necessarily the same related group) that includes the corporate partner(s) described in (ii) above, which, either alone or together with every other corporation in the related group with which it is associated at any time in the year, is entitled/obligated to share in 25% or more of the profits or losses of such partnership

Example 2:



- Remuneration paid in the year: Partnership A - \$.8M; Mrs. A - \$.1M; Corp. A - \$.4M; Corp. B - \$.1M; Corp. Y - \$1M.
- Corp. Y is not related or associated to any other entity in the partnership.
- Mrs. A, Corp. A and Corp. B are a related group and, together, have 60% interest in Partnership A (i.e., control the partnership).
- Corp. A and Corp. B are part of the related group and are associated to each other. Together they have 30% interest in Partnership A (i.e., more than the 25%

interest requirement).

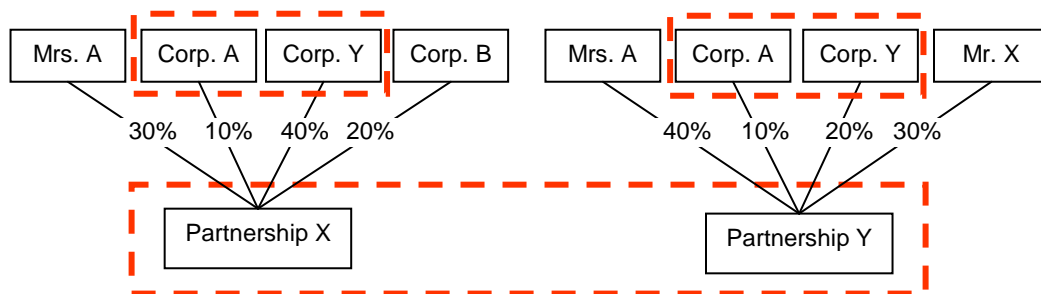
- Therefore, in accordance with this provision, Partnership A, Corp. A and Corp. B are deemed to be associated, i.e., a single employer. The total remuneration paid by them is: $\$.8M + \$.4M + \$.1M = \$1.3M$.
- The remuneration paid by Partnership A, Corp. A and Corp. B is in the notch range, and the tax payable to be shared by them is: $\$1.3 - \$1.25M = \$50,000 \times 4.3\% = \$2,150$.
- Mrs. A has no tax to pay; because Mrs. A is not a corporation, she is not deemed to be associated with the group. This means the remuneration she paid directly to her own employees is eligible for a separate $\$1.25M$ exemption.
- Corp. Y has no tax to pay. It is not associated to any other entity, and the $\$1M$ remuneration it paid is within the exemption limit.

Two or more partnerships controlled by the same group s.s. 2(4.1)

- Two or more partnerships are associated for HE Levy purposes and must calculate the tax payable as a single employer where the following circumstances exist:
 - a) The same group of persons is at any time of the year entitled/obligated to share in more than 50% of the profits or losses of the two or more partnerships (i.e., controls the partnerships), and
 - b) The group includes a corporation that alone, or together with its associated corporations in the same group, is entitled/obligated to 25% or more of the profits or losses of each partnership.

Please note: This provision does not require the group to be “related.”

Example 3:



- The same group made up of Mrs. A, Corp. A and Corp. Y has interests of 80% in Partnership X and 70% in Partnership Y. This meets part a) of the above provision.
- In this same group, Corp. A and Corp. Y are associated (but are not related to Mrs. A) and together have interests totaling 50% in Partnership X and 30% in Partnership Y. This meets part b) of the above provision.
- In this example, parts a) and b) of the above provision are met, and therefore Partnerships X and Y are deemed to be associated with each other (i.e., a single employer).

Please note: Corp. A and Corp. Y are not associated with either Partnership X or Y. Because Corp. A and Corp. Y are not related to Mrs. A, the requirements previously discussed in Example 2 have not been satisfied (i.e., the “related group,” which consists of Corps. A and Y, does not “control” either partnership).

Treatment of remuneration paid by a joint venture

- Whether a particular arrangement is a joint venture or a partnership is a question of fact. It depends upon the agreement between the parties and their conduct. In this regard, a partnership is deemed to be an employer for purposes of the HE Levy; whereas a joint venture is not considered to be an employer. Rather, it is the venturers individually that are considered to be the employers. The remuneration paid through the joint venture must be allocated to the individual venturers on the same basis otherwise used to allocate their revenues and expenses and is considered to be remuneration paid directly by the individual venturers. Each venturer is subject to the HE Levy on its total remuneration paid in the year (including the remuneration allocated from a joint venture).

FURTHER INFORMATION

This bulletin is intended as a guideline and is not all-inclusive. For the specific wording of the law, please refer to The Health and Post Secondary Education Tax Levy Act and Regulation. Further information may be obtained from:

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ONLINE SERVICES

Our Web site at manitoba.ca/finance/taxation provides tax forms and publications about taxes administered by Taxation Division, and a link to Manitoba's laws and regulations. Forms and publications can also be obtained by contacting the Taxation Division.

Our online service at manitoba.ca/TAXcess provides a simple, secure way to apply for, and to file, pay and view your Taxation Division tax accounts.