



## DIRECT SELLING AUSTRALIA

# Review of Payroll Tax Administration

*Submission to NSW Treasury 6 July 2018*

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## Introduction – Direct Selling

1. Direct Selling Australia (**DSA**) is an industry body representing over 60 companies operating a direct selling business in Australia (**Members**). “Direct selling” describes the retailing of goods and services to consumers away from a fixed location. These goods and services are supplied by direct selling companies under wholesale or agency arrangements with independent distributors. Direct sellers generally are not employees, they are independent contractors who sell the products or services of a company in return for a commission.
2. An independent survey<sup>1</sup> recently identified that Member companies generated sales of \$1.38 billion in the 2017 financial year and that 576,000 independent sales people in Australia were involved with Members. The industry is estimated to have grown at a real compound average growth rate of approximately 1.5% each year in the four years prior to that.
3. The predominant activity of a direct seller is selling or using a Member’s products or service away from a fixed store, typically person-to-person or in a small group setting. Direct sellers may also be engaged to recruit other persons to join and sell. The operational models and sales channels used by Members vary enormously.

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<sup>1</sup> Survey Matters DSA 2017 Member Survey (December 2017)

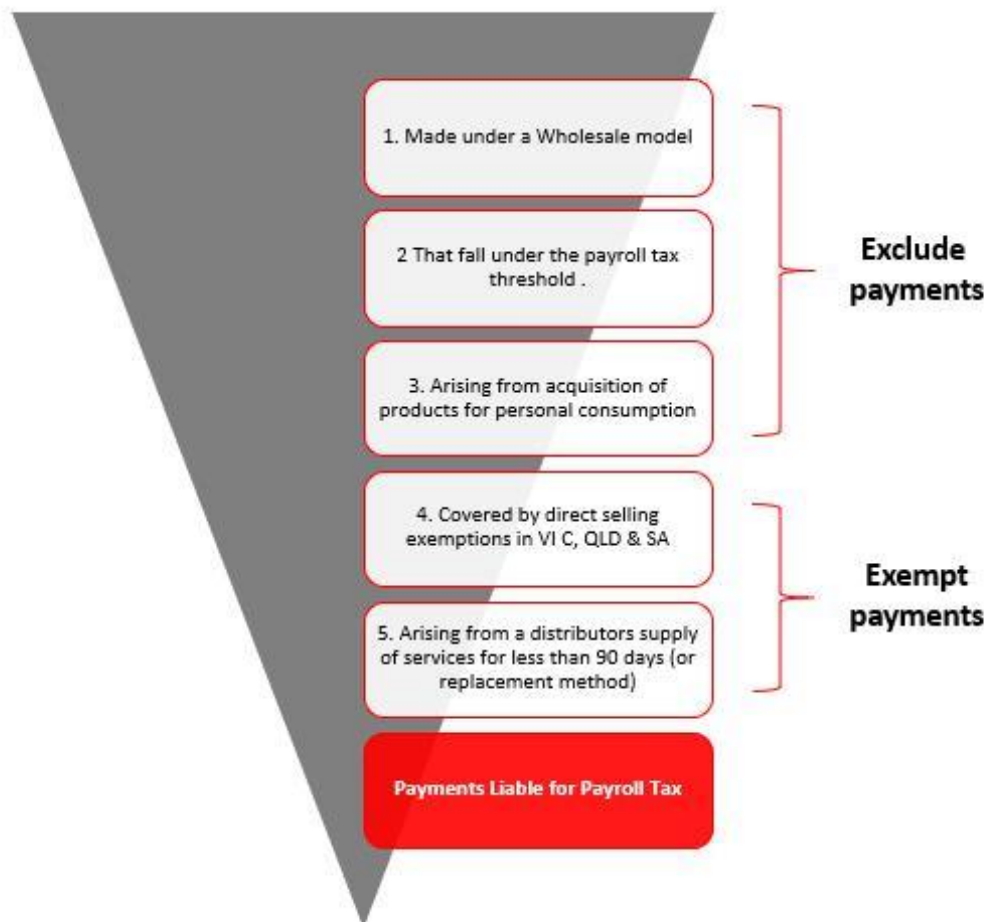
4. A key characteristic of direct selling is the role of independent salespersons in the distribution of products and services. Independent salespersons have the ability to choose their level of involvement and set their own hours. In a 2013 Deloitte study<sup>2</sup>, the top 3 reasons given for becoming an independent salesperson were: flexibility, personal consumption of product and potential income. With low entry costs and on-going training and support, Members offer independent salespersons the opportunity to develop new skills in a home-based business. Other sectors of the economy benefit from this skill development if an independent salesperson subsequently works outside of the direct selling industry.
5. Of the sales generated in the last financial year, 25.9% related to cosmetic products, 24.7% wellness products, 10.8% household goods, 9.2% clothing and accessories, 4.7% homecare and 2.4% foodstuff and beverages. **Annexure A** sets out a graph demonstrating direct selling revenue by reference to both sales channel and product.

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<sup>2</sup> Social and economic impacts of direct selling Deloitte Access Economics 2013

## Overview

6. DSA welcomes the opportunity to comment on the NSW Treasury's Review of Payroll Tax Administration.
7. DSA is very concerned that the removal in 2015 of the NSW payroll tax exemption for direct selling companies has resulted in significant unintended in terms of administrative burdens and compliance costs for our Members now that they no longer benefit from the exemption.
8. The nature of direct selling industry models means that the commission payments of independent salespersons representing the 35 percent of direct selling companies who opt for an agency model structure are now liable to be included in NSW payroll tax calculations.
9. Set out below is an overview of the exemption options now available to direct selling companies:



10. Independent salespersons in an agency model are now considered in NSW to be potential 'deemed employees' and as such must be assessed under the relevant exemptions to those provisions. However, DSA submits that the relevant potential exemptions relating to the 90-day rule and related Replacement Method are completely unsuited to an analysis involving direct selling companies who have little control or little visibility of the working habits of their independent salespersons who set their own hours and working schedules. In a recent survey, only 2 Members reported that they were able to indicate whether their independent salespersons worked for more than 90 days in the 2017 financial year.
11. In relation to the Replacement Method, which refers to utilising the applicable industry award, DSA seeks to highlight that there is no Industry Award applicable to direct selling making analysis under this exemption virtually impossible.
12. Further complexity arises from the fact that only 6 Members (35%) indicated that they knew the percentage of agency commission that related to purchases for personal use.
13. DSA submits that only the commissions of a very small group of independent salespersons are likely to be liable for NSW payroll tax liability by direct selling companies. However, the administrative burden on direct selling companies across Australia operating agency agreements with independent salespersons located in NSW, in terms of both the time and cost to collect this information, is completely disproportionate to the administrative burden it creates.
14. Therefore, DSA does not consider that minor administrative fixes are the solution to much the larger structural problem of the operation of the contractor exemptions as set out in the NSW payroll tax legislation. DSA ideally seeks the re-instatement NSW exemption for direct selling which was removed in 2015 or alternatively an agreement from Revenue NSW to a private ruling for DSA Members implementing a suitable threshold so that the Replacement Method can be sensibly and effectively applied.

## Direct Selling and Payroll Tax

### Payroll Tax

15. NSW and other governments except WA and ACT apply payroll tax to raise revenue from employment. They also apply payroll tax to non-employment arrangements through the use of "relevant contract" provisions. The rationale for this is to catch arrangements which in form are styled contracting but are in substance employment.

16. Applying payroll tax affects direct selling companies and many thousands of ordinary Australians who use the channel for income generation. A recent Deloitte Access Economics study shows the socio-economic contribution direct selling makes in Australia. Independent salespersons in direct selling are small and micro-businesspeople, about 90% of whom are women and 62% are in the lowest half of socio-economic status, seeking supplementary income for their families and flexibility in the way they earn this income. DAE reported 477,000 people across Australia were contracted by DSA Members, only 32,000 of these spent over 9 hours per week on this and only 7,700 worked on a full-time basis. However, the tax may be applied to all commissions paid, whether someone spends 1 hour or 40 hours per week, or even no time at all, earning these commissions.

### Removal of Door-to-door Selling Exemption

17. In Australia, the organisational structure for the supply chain that direct selling companies operate under is either a wholesale (or buy-resell) model, an agency model or hybrid model. The role of independent salespersons under both models is essentially the same, in which sales can be made at a party plan event, through person-to-person sales, door to door or doorstep catalogue sales. A description of the wholesale versus agency models in direct selling is set out at **Annexure B**.

18. For decades, direct selling activities had been specifically exempted from payroll tax across multiple Australian jurisdictions in recognition of a number of factors not least the genuine independent contracting arrangements and the difficulty of assessing potential tax liability.<sup>3</sup> Harmonization of the direct selling exemption existed across jurisdictions which afforded direct selling companies certainty when assessing their payroll tax obligations across the country. The graph at **Annexure C** sets out the percentage of agency and hybrid models registered for payroll tax in each State and Territory.

19. Until 2015, the direct selling exemption in NSW, known as the “door-to-door selling exemption (**Exemption**)” enjoyed bi-partisan support and recognised the peculiarity of arrangements between direct selling companies and distributors of their products. However, in 2015, the NSW Government removed the Exemption with no consultation with the direct selling industry. Similar exemptions were also removed in Tasmania and the ACT.

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<sup>3</sup> The Hansard from Victoria and NSW in 1984 and 1986 respectively that introduced the Exemption demonstrates that those Parliaments considered the Exemption necessary and received bi-partisan support as payroll tax was never intended to apply to direct selling companies. The Hansard uses the term “direct selling” throughout, however, the term “door-to-door” was used in the legislated exemptions in order to match other legislation, which at the time was termed the Door to Door Sales Act.

20. The rationale for removing the Exemption seemed to arise in the context of NSW and other State/Territory governments attempting to harmonise their general payroll tax policies and administration.
21. Further, the NSW government were seemingly persuaded that the introduction of the Australian Consumer Law (ACL) spawned tax avoidance opportunities from the operation of the Exemption. DSA submits that whilst the ACL took the regulation of direct selling beyond traditional door-to-door selling, the Exemption always used the extended meaning. At the time, the Government claimed the exemption allowed suppliers to use the Exemption in their supply of services. However, the Exemption did not apply to the supply of services.
22. DSA also understands that the NSW Government were concerned by the actions of an individual company who sought to take advantage from the Exemption without legitimately being a direct selling company – the actions of this one company and the resultant impact on revenue appears to have spurred the decision to remove the Exemption which could arguably be seen as draconian approach given the significant impact on so many legitimate direct selling businesses.
23. As stakeholder representing the interests not only of our Members but indirectly the significant number of their contracted independent salespersons, DSA fully supports the initiatives to harmonise payroll tax. However, the removal of the Exemption in NSW, Tasmania and ACT was misguided and has created the effect of creating more disparity between jurisdictions for direct selling companies and making compliance obligations more complex and expensive to administer. Therefore, DSA considers reinstatement of the Exemption should be considered at a broader policy level to bring back certainty for a significant number of direct selling companies in both NSW and across Australia grappling with the applicability of NSW payroll tax legislation to their business operations.

#### **Application of current payroll tax legislation**

24. As independent businesses, direct selling salespersons choose when to work, how much they do and what effort they put in – therefore they are their own boss and not like some other contractors in other industries – direct selling is a unique model.
25. Based on supplied data, DSA Member organisations operating under an Agency or Hybrid model had 546 employees in the 2017 financial year. New South Wales accounted for a majority of these, with Queensland, Victoria, and Western Australia also having relatively high employee numbers. Employees of direct selling companies operating under an Agency or Hybrid model were paid \$40.8 million in wages in the 2017 financial year.

26. Since the removal of the exemption, as well as wages paid to employees and payments to contractors who are common law employees, GST exclusive payments for services provided by independent salespersons are also subject to payroll tax unless they are excluded or exempt under the following provisions:

a) excluded payments:

- i. made under a wholesale model
- ii. that fall under the Payroll Tax Threshold
- iii. arising from an acquisition of products for personal consumption or based on the sales of other independent salespersons in a downline.

b) exempted payments:

- i. covered by door to door direct selling exemptions in QLD, VIC and SA
- ii. arising from a distributors' supply of services for less than 90 days' work
- iii. where days worked cannot be determined, the Replacement Method is relied upon.

27. Sales commissions paid by direct selling companies using the Agency or Hybrid model totalled \$125.4 million nationally in the most recent year. These commissions were paid out to approximately 146,100 independent salespersons across Australia. Thirty-five per cent of these companies are registered for payroll tax in NSW. However, the average annual sales commission for the most recent financial year for independent salespersons associated with direct selling companies operating under an Agency or Hybrid model is low.

28. Based on supplied data, payroll tax paid by direct selling companies totalled \$1.8 million in the 2017 financial year. Almost all of this was paid on wages for employees, with just a small proportion applicable to independent salespersons.

29. Direct selling companies now have a compliance obligation to assess whether they are able to claim the benefit of any other exemption under the NSW payroll tax legislation to determine whether they have a liability to pay. This assessment is complicated by the fact that different direct selling companies operate different models and some companies operate more than one model simultaneously (hybrid model).

30. Under the exemptions now available to direct selling companies, independent contracting in wholesale arrangements is not subject to payroll tax.

31. Independent contracting in agency arrangements are, since 2015, now potentially caught by the payroll tax legislations as "deemed employees" and their commissions must be included in a company's payroll tax calculations unless a specific exemption applies (see next section in relation to the 90-day exemption and Replacement Method).

32. The NSW Government argued that it is not taxing genuine independent contracting and direct selling arrangements can rely on other exemptions. However, DSA submits that this is simply not correct as the alternative exemptions are either not applicable or not adequate – this was the reason that the Exemption was introduced in the first place.
33. The practical effect of the current system is that there is no longer a level playing field between direct selling companies – depending on whether a wholesale model or agency model deployed will determine whether payroll tax compliance burden is potentially applicable – the current legislative framework puts those companies affected at a competitive disadvantage.

### **Difficulty with applying existing exemptions to Direct Selling**

34. The areas which are particularly problematic as a result of the imposition of NSW payroll tax for direct selling companies which have been the subject of research in a DSA Survey are:
- i. identifying commissions that relate to the acquisition of products for personal consumption; and
  - ii. the applicability of the 90-day exemption and the Replacement Method.
35. These issues are explored in greater detail in the paragraphs below.

### **Personal use of product and sales by downline**

36. In the agency model when an independent salesperson consumes product themselves or is a group purchaser (types 4 and 5 above) they are effectively consumers who are paying a wholesale price for such product. When payroll tax is applied to the commissions paid to such independent salespersons, then DSA submits that payroll tax is in effect a tax on consumption. From surveys undertaken by DSA and an analysis of the industry undertaken by Deloitte Access Economics, the majority of direct selling ‘sales’ made in Australia are for personal or family consumption.
37. Only 35.6% relevant respondents indicated that they knew the percentage of agency commission that related to purchases for personal use. Amongst these 6 respondents, there was a large variation in the reported proportions of agency commission paid that related to independent salespersons’ purchases for personal use.



38. The vast majority of direct selling companies operating an Agency or Hybrid model, at 64.4% of respondents, were not able to calculate the percentage of agency commission that related to purchases for personal use.
39. Commission payments to independent salespersons will often aggregate a variety of different amounts earned under a compensation plan that contains a range of bonuses. A typical compensation plan would include bonuses for personal sales (including personal orders), recruitment and team building. In respect of bonuses for personal sales, these should not be included in payroll tax calculations as they amount to a rebate on product purchases.
40. This data shows that most direct selling companies do not know the proportion of product purchased by independent salespersons for their own use. Therefore, it is not possible for direct selling companies to determine permissible exemptions from the acquisition by independent salespersons of products for personal use. Further, requirements to keep and maintain these records are excessively burdensome.
41. For those that do make sales to others, they are true independent contractors, as they choose if and when to work, how much work they do and what effort they put in. In addition, due to commissions being paid on sales made by their downline, there are significant numbers of people in the industry that have built large businesses over time and are no longer actively making sales themselves. Applying payroll tax to these commission payments is effectively a tax for no work being done – yet payroll tax is for all other circumstances a tax on actual employment.

#### **Independent salespersons working more than 90 days**

42. An exemption to payroll tax is available to contracts under which a direct selling contractor provides services to an employer on no more than 90 days in a financial year. Contracts with direct selling salespersons may satisfy this exemption, for example, if the salesperson is employed to work 1 or 2 days per week during the whole year, or if the salesperson commenced or ceased working for the employer partway through the year and as a result provided services on no more than 90 days during the particular financial year. Once the 90-day limit is exceeded, the total payments made to that contractor during the financial year, including payments made for the work performed in the first 90 days, is subject to payroll tax.
43. The DSA is concerned, however, that in response to a DSA survey, only 11.8% of Members (2 organisations) were able to indicate whether their independent salespersons worked for more than 90 days in the latest financial year. The balance of 88.2% were not able to

determine whether their independent salespersons had worked for more than 90 days during the year.

44. DSA also submits that it is very unlikely that many independent salespersons would actually be able to quantify how many days they worked in a given year.
45. Again, due to the low number of direct selling companies who are aware of the number of days their independent salespersons work each year, this is not a reliable measure of whether a direct selling company should be exempt from having to pay payroll tax.

### **Replacement method**

46. Where an employer encounters difficulty in determining the actual number of days on which a contractor worked for the employer, an estimate may be made using what is called the "Replacement Method". Under the Replacement Method, a formula is used to calculate the estimated remuneration a contractor working for the particular employer normally receives for 90 days of service. The "normal" rate of remuneration paid can be determined by using an award rate applying to the particular industry or a similar industry for a similar type of work, or the normal rate of remuneration paid to full-time contractors employed by the particular employer. In a direct selling example, if the actual amount earned for the whole year by an individual salesperson is less than or equal to the amount calculated using the Replacement Method, then the 90-day exemption will apply.
47. Direct sellers are true independent contractors, as they chose if and when to work, how much they work and what effort they put into their business. If DSA takes the 90 days exemption as an example, a direct selling company will generally not know the number of days or hours worked by their salespersons, so if the "Replacement Method" is to be used, DSA Members currently have no clarity as to the expected values of inputs to the calculation (i.e. whether 7.5 hours is considered a day, what rate per hour would be considered as appropriate for the work done - accounting for the role that salespersons have in managing their own business etc).
48. The nature of the direct selling industry is that use of social media and personal interactions in social settings make it difficult to necessarily determine whether a particular "touch point" with a potential or existing customer constitutes work for that particular day (e.g. may only be 5-10 minutes for the day).
49. The other major issue with the Replacement Method is that independent salespersons in the direct selling industry are not subject to any relevant Industry Awards.

50. DSA urgently seeks clarity as to how affected Members can effectively apply the Replacement Method to establish whether they are exempted from payroll tax. DSA believes that if it could agree a private ruling for a suitable monetary threshold with Revenue NSW on behalf of DSA Members, then the current administrative dilemma and compliance burden emanating from the current drafting of the remaining exemptions would assist Members in complying with their obligations.

### **Minimal Revenue Returns from NSW Payroll Tax**

51. The average annual sales commission for independent salespersons associated with direct selling companies operating under an Agency or Hybrid model is relatively low with the majority earning less than \$30,000 for the in the financial year ending 2017.

52. This low proportion shows that payroll tax liability is minimal and the time and cost to collect this information is therefore a significant compliance burden on direct selling companies for minimal revenue returns for Revenue NSW. DSA estimates that the compliance cost to Members operating an Agency Model in having to allocate resources to calculate whether their previously exempt independent salespersons commission payments fall within the relevant exemptions is significant.

53. This task is made particularly difficult and more time-consuming by the fact that the payroll tax exemptions are not uniform across jurisdictions and direct selling contractors are still specifically exempt in South Australia, Victoria and Queensland – although any commissions payable to their downline sales agents in NSW are not exempt.

### **Focus Questions**

We set out below more targeted responses to the specific questions raised in the context of the Review.

#### **1. How can payroll tax administration processes in NSW be streamlined, noting that thresholds and rates are outside the scope of this Review?**

The decision by the NSW Government to remove the Exemption in 2015 has created a significant administrative burden for direct selling companies operating an agency model who are now significantly disadvantaged compared to their competitors operating a wholesale model due to the structure they have adopted.

Due to the complexity of some direct selling global compensation schemes, it is often not possible for to determine which independent salespersons may benefit from the legislated contractor exemptions which now remain available. DSA submits that undertaking an analysis

of eligibility for the 90-day exemption and the replacement method adds significantly to the administrative burden facing direct selling organisations, even in circumstances that they ascertain that their independent salespersons are exempt and there is no liability for payroll tax – the process of undertaking the analysis can be costly.

DSA therefore submits that, the most effective way to streamline this part of the administrative process is to seek to reinstate the Exemption which has been retained in South Australia, Queensland and Victoria. However, DSA recognises this would require a legislative change which may take time. For the sake of expediency and guaranteeing more immediate clarity for Members, DSA submits that a potentially appropriate solution would be to grant private ruling applicable to DSA Members to exempt from the payroll tax calculation, all commission payments made to independent contractors under an agency model.

DSA notes that as an industry body, it has experienced great success recently working collaboratively with the Australian Taxation Office to negotiate a practical outcome to a taxation/revenue issue in the form of an industry wide exemption from the Federal withholding tax provisions. DSA would be very keen to explore a similar collaborative approach with Revenue NSW in order to achieve a similar industry-based solution to the very practical difficulties in administering the contractor exemptions in the context of direct selling in order to provide our Members with certainty as to their obligations and liabilities.

**2. What is the single change to the way payroll tax is administered in NSW which would be of greatest benefit?**

Please see our response to Question 1 above.

**3. Is there a simple, short term change that should be considered to make an immediate improvement to tax administration?**

Please see our response to Question 1 above.

**4. Are there practices that NSW should adapt from other jurisdictions, and what would their impact be if taken up in NSW?**

Although, the NSW Government has previously cited that the removal of the door-to-door selling exemption arose in the context of a move to try and harmonise legislation across jurisdiction, DSA notes that South Australia, Western Australia and Queensland all elected to retain a door-to-door selling exemption, acknowledging the complexities of the channel.

There are several important reasons that direct selling organisations should be exempt from paying payroll tax on independent salesperson's commission. As seen above, most of these reasons relate to the burdensome nature of collecting and reporting data.

As discussed above, there are a large number of independent salespersons associated with direct selling companies, with high turnover rates of these independent salespersons each year. Further, depending on the type of direct selling model used by a direct selling company issues such as the purchase of product for personal use, the number of days worked or the amount earned by an independent salesperson may or may not contribute to permissible exemptions in relation to payroll tax.

The time and cost associated with collecting, maintaining and reporting on these data can be very high for some companies. Burdens on the industry relate to:

- i. the large number and high turnover of independent salespersons;
- ii. difficulties in determining permissible exemptions for payroll tax on independent salespersons; and
- iii. different payroll tax rates across states and territories.

DSA therefore submits that NSW seek to realign its position with that of South Australia, Queensland and Victoria by reinstating the Exemption or working effectively and collaboratively with SDA to implement a reasonable threshold for the replacement method so there is effective guidance for direct selling companies seeking to determine their liability to payroll tax.

**5. Are there additional guidance/materials/tools that could be provided by Revenue NSW to improve an employer's user experience?**

Some of DSA's Members operate in other states where the payroll tax exemptions for direct selling are either still in place or where there is no applicable payroll tax liability. Some of these Members have reported being either confused about or completely unaware of their potential liability for payroll tax in NSW under the deemed employee provisions.

DSA has approached NSW Revenue on many occasions in the last 2 years to seek clarity for our Members as to how the 90- day replacement rule provisions may be applied to our Members' independent contractors. In particular, we have sought to collaborate with Revenue NSW to negotiate a suitable monetary threshold which may be used to address the peculiarities of the direct selling industry in the absence of the Exemption. Presently, DSA has many Members who have indicated a desire to comply with the NSW legislation but they have received no clarity as to how they can calculate their monthly liabilities in a timely and cost-effective manner. If DSA could get sufficient clarity and agree a threshold with Revenue NSW, it would

enable DSA to more effectively educate our Members as to their potential NSW payroll tax liabilities.

**6. What is the administrative burden (time, cost) on your business associated with:**

**a. The initial payroll tax registration process?**

Some DSA Members report that in their experience the initial tax registration process in NSW is a relatively simple as long as the person registering is the registered company representative to be able to initially set up the account.

However, Members note that the complexity arises in the fact that some direct selling companies must register (and pay) payroll tax in a State or Territory if total wages exceed each individual jurisdictions' wage threshold and that each state and territory in Australia has a different wage threshold applicable for the payment of payroll tax. These different thresholds add to the complexity of financial recording, particularly for direct selling companies that have operations across multiple states and territories. For example, one DSA Member who does not employ any staff in NSW, or any other state other than Western Australia reported that they did not have sufficient understanding of the NSW payroll tax legislation to be able to understand their registration obligations in the first place.

A general concern of Members was the lack of uniform definitions of the employee relationship and standard rates of payroll tax across states which would be beneficial, (including proper categorisation of independent salespersons as contractors and therefore exempt from payroll tax).

**b. Monthly and annual returns and payments? How might this burden be reduced?**

One DSA Member reported that the NSW government website has a monthly calculator which makes their monthly payments an easier task as long as they are aware of and include all the payments which are liable for payroll tax. Some of the items could be open to interpretation i.e. contractor or consultant wages. Again, Members noted that the real burden they face arises when they employ in other states. In those circumstances, they are required to undertake a separate calculation for each State first to reach a national salary figure, before completing each State's return. Therefore, affected Members' consider that would be easier if there was only one submission which includes all states rather than a return for each state.

Members reported that, in general, making NSW payroll tax payments tends to be relatively straightforward as the liability can be deducted directly from the company's nominated bank account.

**c. Record keeping and evidentiary requirements for employers when claiming exemptions under the relevant contract provisions? How might this burden be reduced?**

At this stage record keeping has not been a substantive issue for Members who have not yet claimed exemptions and have to-date paid only payroll tax on staff wages in NSW only. However, Members' are awaiting clarity of the position in respect of the 90-day exemption and replacement method and anticipate that record keeping and evidentiary requirements could become quite significant unless an easy to understand and manage system (such as a suitable and realistic monetary threshold) is implemented if direct selling companies are required to include their independent contractors in their payroll tax calculations.

Data collected by DSA demonstrates that most direct selling companies do not know the proportion of product purchased by independent salespersons for their own use. Therefore, it is not possible for direct selling companies to determine permissible exemptions from the acquisition by independent salespersons of products for personal use. Requirements to keep and maintain these records are therefore excessively burdensome.

**d. The audit process undertaken by Revenue NSW? How might this burden be reduced?**

Based on supplied data, payroll tax paid by DSA Members operating under an Agency or Hybrid model totalled \$1.8 million in the 2017 financial year. Almost all of this was paid on wages for employees, with just a small proportion applicable to independent salespersons.

Introducing a realistic threshold to exempt the majority of lower earning independent salespersons so that payroll tax is genuinely targeted at the type of independent contracting which actually resembles an employee relationship would ultimately make the audit process much more streamlined and less of a burden to direct selling companies whose independent salespersons have been inadvertently caught by the ill-thought out removal of the Exemption.

**7. Are there any areas where further harmonization or co-ordination with other jurisdictions would be beneficial?**

On the issue of direct selling exemptions, DSA notes that prior to 2015 the States and Territories were fairly uniform in their application of an exemption for the industry. The decision of NSW, Tasmania and ACT to remove the relevant exemptions from their legislation

has moved away from a harmonized position, creating additional administrative burdens for direct selling companies.

NSW should reinstate the exemption applicable to direct selling organisations in order to reflect the practices in South Australia, Victoria, Queensland and Western Australia.

Most direct selling companies have independent salespersons that operate in all state jurisdictions and even internationally. The salespersons themselves may make sales to customers in multiple jurisdictions as well. With some states not removing the direct selling exemptions, DSA seeks clarification as to which payments should be included as taxable payments.

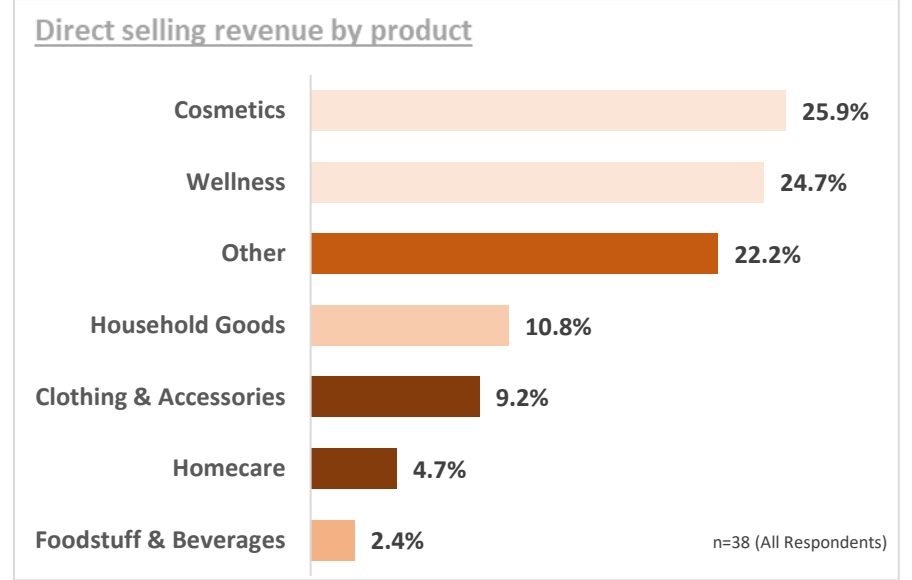
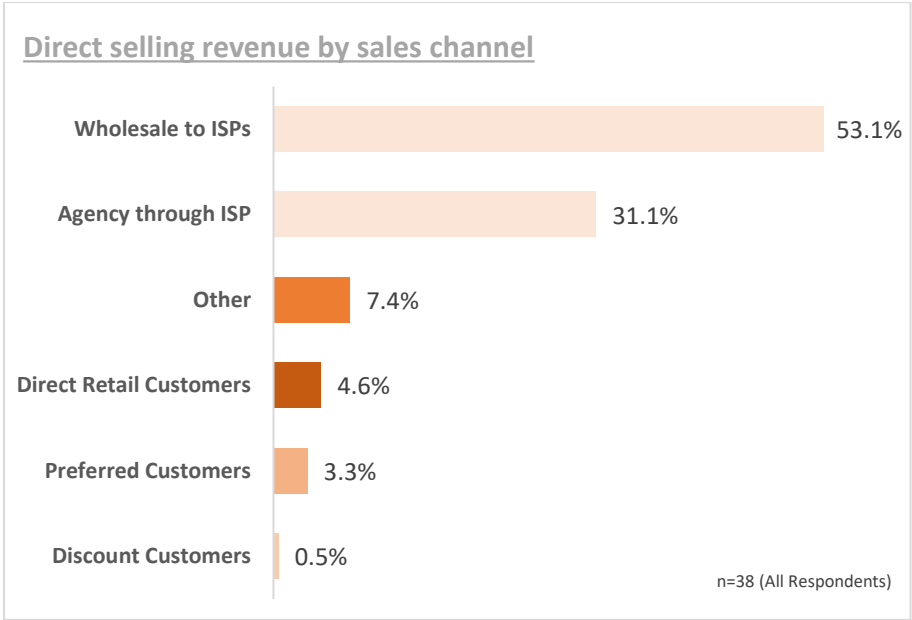
**8. How might the performance of the NSW payroll tax administration process be measured to keep track of the efficiency and effectiveness of the system, and to benchmark with other tax administration systems.**

DSA submits that it is impossible to gauge what the ultimate payroll tax liability or compliance costs to DSA Member businesses and the independent salespersons that are engaged with them will be. Costs such as the direct liability and payment of payroll tax are compounded by a huge red tape burden and significant administrative difficulties in determining which payments are subject to the tax which have arisen solely as a result of the removal of the Exemption.



# Annexure A

## Direct Selling Revenue



## Annexure B

### Direct Selling Business Models

#### Wholesale Model

In a Wholesale model (also known as Buy / Resell), the direct selling company sells goods to the independent salesperson at a wholesale price. The independent salesperson takes legal title over the goods and is able to re-sell those goods to a retail consumer (usually at an RRP suggested by the direct selling company) or keep and consume the products themselves.

An independent salesperson's income consists of the retail margin between wholesale and retail price and any other commissions payable under the compensation plan. Just over half (54.2%) of the direct selling organisations who completed the survey operate under a wholesale business model.

Income is earned by the independent salesperson from the margin between the wholesale purchase price and the retail price. Income can also be earned on the sales of others who are introduced into the business by the independent salesperson (known as a 'downline').

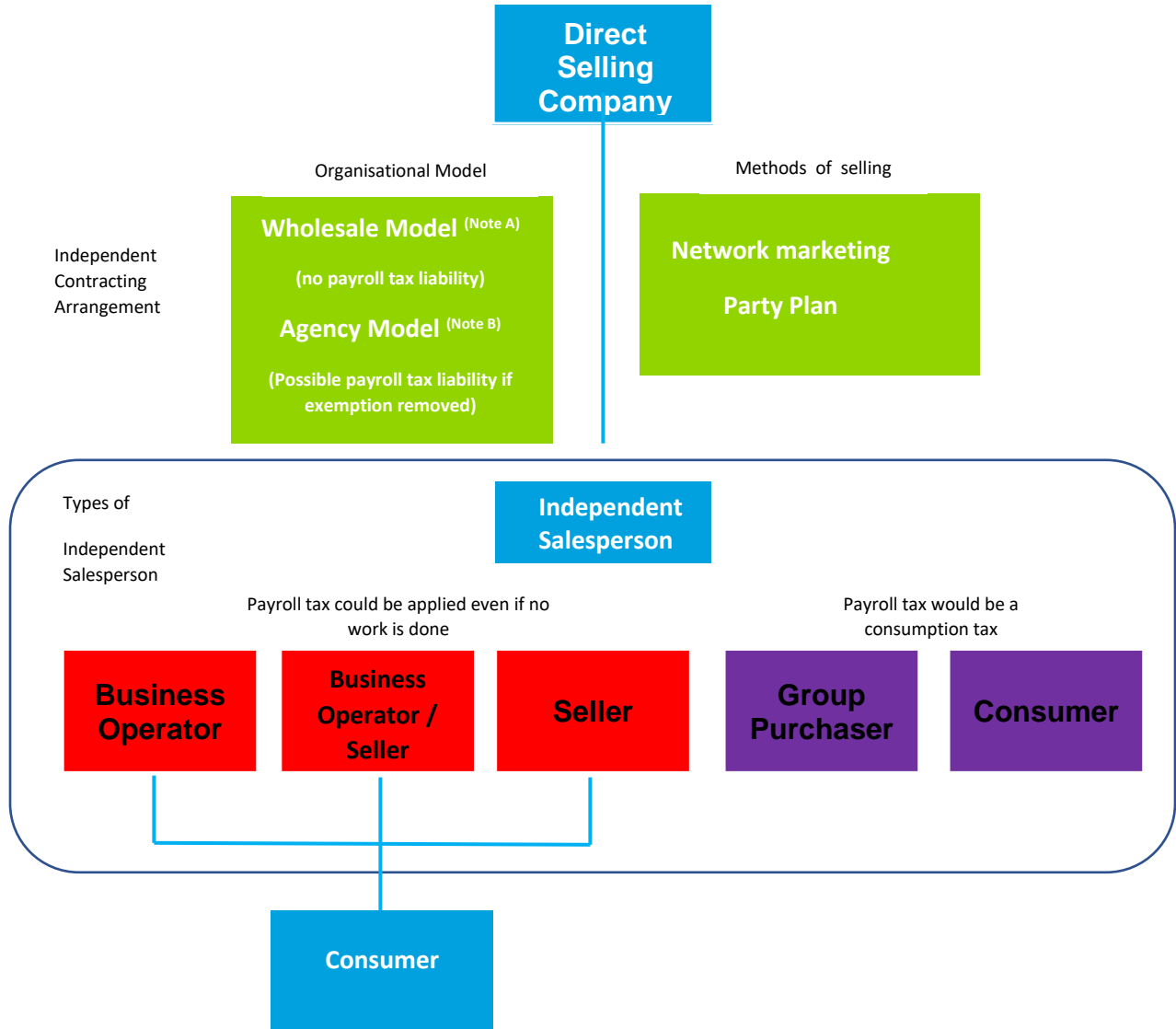
In this model there is a contract between the direct selling company and the independent salesperson that sets out the terms of this relationship. Payroll tax could not be applied to companies that operate under a wholesale model as the contract is for the sale of goods.

Income is earned through commissions on the sales made by the independent salesperson and on sales made by people that are introduced into the business by the salesperson (the 'downline'). In this model there is also a contract between the direct selling company and the independent salesperson that sets out the terms of this relationship and the circumstances in which commissions and bonuses are paid.

#### Agency Model

In an Agency model, the direct selling company appoints the independent salesperson to act as its independent agent to procure the sale of goods or services. Sales are made by the independent salesperson at a retail price set either to customers or to themselves if they or their families wish to consume the products. Independent salespersons do not assume legal title over the products. Independent Salesperson's income consists of commission for the retail sale plus other commissions payable under the compensation plan. Thirty four percent (34.1%) of respondents operate an agency model direct selling organisation.

A Hybrid model comprises a mix of agency and wholesale transactions. A total of 11.7% of responding organisations operate under a hybrid business structure.



As well as sales made through independent salespersons, organisations make sales directly to end consumers under one of three methods: sales to discount customers, preferred customers or direct retail customers.

Discount customers are eligible to sell, sponsor and buy products at a discount, but in practice only does the latter. Preferred customers are eligible to purchase at a discount while direct retail customers are eligible to purchase products at a price set by the direct selling company.

Independent salespersons in direct selling can be categorised into 5 types:

1. Business Operator – one who builds and manages a downline that makes sales but does not sell product themselves
2. Seller/Business Operator – one who makes sales as well as building and managing a downline
3. Seller – one who sells product to others but does not manage a downline
4. Group Purchaser – one who purchases product for family and friends for consumption at wholesale prices but does not on-sell products
5. Consumer – one who purchases at wholesale for their own consumption and does not on-sell

## Annexure C

### Direct Selling Business Models

Percentage of Agency & Hybrid direct selling companies registered for payroll tax in each State and Territory

