AMA
TASMANIA
ABN 11 009 484 931

Friday 1 July 2022

Dear Colleagues,

Re: MEDICAL PRACTICE PAYROLL TAX - TASMANIA

As a General Practitioner, I know all too well the costs of running a practice, and you can imagine my fear when I heard about the NSW Revenue Office draft decision to no longer accept GPs as independent contractors to a practice, but to treat them as employees to whom payroll tax would be applied.

The NSW State Revenue Office (SRO) change in policy came after the *Optical Superstore* case in 2020, and the more recent *Thomas* and *Naaz* case in 2021, affirmed that state and territory governments might recoup payroll tax from medical practices where service contracts are found to resemble employment conditions. Alarmingly, the NSW SRO is also looking at applying the tax retrospectively.

Up to this point, with the income of many health practitioners generated from patient fees, it was understood that because the doctor contracts the medical practice entity to provide services for them – and not the other way around – payroll tax does not apply. However, several recent Court and Tribunal decisions have created significant uncertainty in this regard and potentially threatened the viability of many medical practice entities.

With the knowledge that this would be the straw to break the camel's back for private medical practices, AMA Tasmania took the issue up to the State Government, warning them that should payroll tax be applied in Tasmania, many private practices would be forced to close their doors. We are already operating on thin margins and retaining little or no profit at the end of the year, on the back of rising costs and far from adequate Medicare rebates, all the while navigating significant changes in demand and operations due to COVID-19.

AMA Tasmanian met with the Secretary of Treasury and Finance to outline our concerns should such an approach be adopted in Tasmania. After our meeting, we were pleased to be provided with the following information:

> There are several specific features associated with the *Optical Superstore* decision which generally differentiate it from the broader Tenancy Agency Model described in our discussion. Please note the following is for your information only and should not be considered as advice, which would require detailed consideration of the specific issues in each circumstance.
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> **Tenancy Agency Model**
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> Generally, this model includes:

- a medical centre enters into individual contracts with doctors. The medical centre agrees to provide administrative services (e.g., billing, booking system, consultation rooms etc) in exchange for a fixed management fee;

- patients book an appointment with the doctors via an online booking system or over the telephone with administrative staff employed by the medical centre. However, doctors commonly have their own patients when they join the practice and are not required to accept new patients;

- doctors provide the medical services to the patients from the medical centre's facilities;

- the medical centre bills the patient (or Medicare) on behalf of the doctor. The fees usually go into the medical centre's bank account, which then transfers to the doctors their patient fees (after deducting the management fee); and

- there are usually limited restraints on the doctors. For example, doctors commonly set their own hours. However, the doctors are usually required to confirm their intended hours in advance and are usually required to work from one centre.

This type of TA Model above is generally not considered to be one in which the doctors are engaged as contractors under a relevant contract. Accordingly, the transfer of patient fees from the medical centre to doctors is not a payment for services under a relevant contract and is therefore not subject to payroll tax.

Optical Superstore

In *Optical Superstore*, the optometrist and Optical Superstore entered into a variant of a TA model. However, there a number of facts that differentiate this situation from the standard model (TA Model). These are:

- the contracts between Optical Superstore and the optometrists did not specify a particular location from which the optometrists were to work;

- the percentage of the patient fees that the optometrist received (the reimbursement amount) was calculated by reference to the hours that the optometrist worked;

- where the patient fees were less than reimbursement amount (calculated on hours worked), a payment of a "location attendance premium" would be made by Optical Superstore to the optometrist and an invoice would be issued by the optometrist to the store (i.e., the optometrist always received a fee based on the hours worked);

- the optometrists completed timesheets, which recorded the hours they worked. The timesheets had to be submitted to, and signed off by, the relevant store manager (and in some cases by the head office); and

- the stores were selling products (e.g., frames, lens, contacts, etc) in conjunction with the services provided by the optometrist.

The two key findings from the Court of Appeal's decision and preceding lower court decisions were:

1. The Tribunal held that services provided by the optometrists were provided to both patients and *Optical Superstore*. Consequently, there was a relevant contract between the optometrists and *Optical Superstore*. This conclusion was not challenged on appeal; and

2. The Court of Appeal held that once a relevant contract is identified any amounts 'paid or payable' under that arrangement will be subject to payroll tax, regardless of whether the optometrist was beneficially entitled to the amount paid or payable.

The Tribunal's conclusion should not be treated as authority that all arrangements between medical practitioners and medical centres give rise to a relevant contract. Specifically, there were a number of unique facts to Optical Superstore that suggest the decision should be distinguished in most cases. Instead, each matter should be considered on its own individual facts and circumstances.

Notwithstanding the above, there may be some specific arrangements which have features which give rise to a relevant contract and are therefore already paying/liable for Payroll tax.

Therefore, it is important that you and your practice carefully consider the arrangements you have in place to ensure that your contract for services is clearly one between a landlord and a tenant, rather than one where the landlord is in fact an employer and the tenant an employee; a relationship that would potentially attract payroll tax.

AMA Tasmania is here for you. If you know of a colleague who is not already a member, I urge you to encourage them to join. We work for the collective good of our profession, but without members, we cannot provide the services or advocacy we all require.

Give me or Lara, our CEO of AMA Tasmania a call on 0400 417 160 or drop us a line at ama@amatas.com.au if you want to explore anything I have raised in this correspondence further.

Kind regards,

Dr John Saul
President