



Class Ruling

Income tax: Category B 100% assignment model private practice arrangement for salaried specialists employed by the Northern Territory in Northern Territory Public Hospitals

Contents Para

**LEGALLY BINDING
SECTION:**

What this Ruling is about 1

Date of effect 8

Scheme 9

Ruling 19

**NOT LEGALLY BINDING
SECTION:**

Appendix 1:

Explanation 25

Appendix 2:

Detailed contents list 47

❶ This publication provides you with the following level of protection:

This publication (excluding appendixes) is a public ruling for the purposes of the *Taxation Administration Act 1953*.

A public ruling is an expression of the Commissioner's opinion about the way in which a relevant provision applies, or would apply, to entities generally or to a class of entities in relation to a particular scheme or a class of schemes.

If you rely on this ruling, the Commissioner must apply the law to you in the way set out in the ruling (unless the Commissioner is satisfied that the ruling is incorrect and disadvantages you, in which case the law may be applied to you in a way that is more favourable for you – provided the Commissioner is not prevented from doing so by a time limit imposed by the law). You will be protected from having to pay any underpaid tax, penalty or interest in respect of the matters covered by this ruling if it turns out that it does not correctly state how the relevant provision applies to you.

What this Ruling is about

1. This Ruling sets out the Commissioner's opinion on the way in which the relevant provisions identified below apply to the defined class of entities, who take part in the scheme to which this Ruling relates.

Relevant provisions

2. The relevant provisions dealt with in this ruling are:

- Section 6-5 of the *Income Tax Assessment Act 1997* (ITAA 1997);
- Section 8-1 of the ITAA 1997;
- Section 17-5 of the ITAA 1997;
- Section 45-120 of Schedule 1 to the *Taxation Administration Act 1953* (TAA); and
- Section 45-205 of Schedule 1 to the TAA.

Class of entities

3. The class of entities to which this Ruling applies comprises salaried specialists employed in a Public Hospital operated by the Northern Territory Department of Health, who enter into a Private Practice Agreement (Category B 100% Assignment Model).

Qualifications

4. The Commissioner makes this Class Ruling based on the precise arrangement identified in the class Ruling.

5. The class of entities defined in this Ruling may rely on its contents provided the scheme actually carried out is carried out in accordance with the scheme described in paragraphs 9 to 18 of this Ruling.

6. If the scheme actually carried out is materially different from the scheme that is described in this Ruling, then:

- this Ruling has no binding effect on the Commissioner because the scheme entered into is not the scheme on which the Commissioner has ruled; and
- this Ruling may be withdrawn or modified.

7. This work is copyright. Apart from any use as permitted under the *Copyright Act 1968*, no part may be reproduced by any process without prior written permission from the Commonwealth. Requests and inquiries concerning reproduction and rights should be addressed to:

Commonwealth Copyright Administration
Copyright and Classification Policy Branch
Attorney-General's Department
3-5 National Circuit
Barton ACT 2600

or posted at: <http://www.ag.gov.au/ccca>

Date of effect

8. This Ruling applies from 1 July 2011. However, this Ruling will not apply to taxpayers to the extent that it conflicts with the terms of a settlement of a dispute agreed to before the date of issue of this Ruling (see paragraphs 75 and 76 of Taxation Ruling TR 2006/10).

Scheme

9. The following description of the scheme is based on information provided by the applicant.

10. Specialists are employed to work in Northern Territory Public Hospitals by the Northern Territory of Australia through the Department of Health (the Territory). Their salary and conditions of employment are in accordance with the current Medical Officer (Northern Territory Public Sector) Enterprise Agreement 2011-2013 (MOE), and the Letter of Offer which is sent to each Specialist prior to employment.

11. If a Specialist wishes to undertake private practice work at a hospital whilst employed by the Territory, they must first seek the approval of the Chief Executive Officer of the Department of Health and then enter into a private practice arrangement with the Territory which complies with the Guidelines prepared by the Territory and with one of two standard and approved models:

- Category A: Facility Fee (between the hospital and specialist) model; or
- Category B: 100% assignment (to the hospital) model.

12. Under the Category A Facility Fee model, the Specialist elects to receive their ordinary annual salary and additional earnings through the relevant private practice trust account in accordance with the rules of that account. This model is not the subject of this Ruling.

13. Under the Category B 100% assignment model the Specialist receives their ordinary annual salary and a Category B private practice allowance which is currently 50% of the Specialist's base salary.

14. Under the terms of the Private Practice Agreement Category B, the Territory agrees to allow the Specialist access to hospital facilities to enable him/her to undertake private practice work. The Private Practice Revenue Unit bills and collects the fees from the private practice patients as agent for the individual Specialist. Fees derived from undertaking private practice are acknowledged to be income derived in the hands of the Specialist (clause 4.2 of the Private Practice Agreement Category B).

15. Pursuant to Clause 4.3 of the Private Practice Agreement Category B, the Specialist, as a condition of employment, is required to pay over to the Territory all the fees arising from his/her private practice work, in consideration for the Territory paying to the Specialist the Category B private practice allowance.

16. Pursuant to Clause 11 of the Private Practice Agreement Category B the Specialist assigns and authorises payment of all payments for services billable under the Private Practice Agreement Category B to be paid into the Private Practice Revenue subaccount of the Accountable Officers Trust Account established pursuant to section 7 of the Northern Territory *Financial Management Act 2009*.

17. Pursuant to Clause 11 of the Private Practice Agreement Category B the Territory is required to abide by the principles set out in schedule 2 and 3 of the Private Practice Agreement Category B as a guide to the use of the amounts paid over by the Specialists.

18. Pursuant to clause 24 of the MOE the Specialist must elect to receive Category A or Category B private practice allowance as soon as practicable after commencing employment. Specialists can elect to change between the Category A and Category B model, but can make only one election in any single financial year. Any new election will take effect from the beginning of the following financial year.

Ruling

Private practice income

19. The private practice fees derived by the Specialist from undertaking private practice work are assessable income of the Specialist under section 6-5 of the ITAA 1997 when it is collected by the Hospital on behalf of the Specialist.

20. The assessable income does not include any Goods and Services Tax (GST) component of the Private Practice fees by virtue of section 17-5 of the ITAA 1997.

Deductibility of amounts paid to the Territory

21. A deduction is allowable under section 8-1 of the ITAA 1997 to the Specialist for the amounts payable to the Territory under the terms of the Private Practice Agreement Category B.

PAYG instalments – instalment income and instalment rate

22. The Private Practice fees of the Specialist, billed under the Private Practice Agreement Category B, form part of the Specialist's instalment income as defined in subsection 45-120(1) of Schedule 1 to the TAA.

23. If the Specialist is a quarterly payer, they may choose to vary their instalment rate in accordance with section 45-205 of Schedule 1 to the TAA.

Category B private practice allowance received by a Specialist

24. The Category B private practice allowance received by the Specialist as part of their remuneration package is considered to be remuneration for the discharge of services under the Specialist's employment contract. This payment is assessable income of the Specialist under section 6-5 of the ITAA 1997.

Appendix 1 – Explanation

❶ *This Appendix is provided as information to help you understand how the Commissioner's view has been reached. It does not form part of the binding public ruling.*

Private practice income

25. Section 6-5 of the ITAA 1997 provides that an amount is assessable income if it is income according to ordinary concepts (ordinary income).

26. The term 'ordinary income' is not defined in the legislation. However, it is well established that this term includes amounts received as a reward for providing personal services.

27. As part of the private practice arrangement between the Specialist and the Territory, the Specialist attends to private patients in the Hospital. The Specialist utilises the Hospital's infrastructure and resources whilst performing this role. The Specialist is however providing a direct service to these patients as part of their own private practice and not in their capacity as employee of the Territory. The Territory acts as the agent of the Specialist in billing and collecting the fees from the private practice.

28. The amount paid by or on account of a patient is a reward for services provided by the Specialist and is assessable as ordinary income of the Specialist under section 6-5 of the ITAA 1997.

29. The decision in a Board of Review case¹ supports the conclusion that the fees are assessable as ordinary income of the Specialist. In that case, it was held that private patient fees received by a hospital on behalf of a salaried doctor as a result of accounts issued in the doctor's name by the hospital acting as his agent, were assessable to the individual doctor as ordinary income. The amounts were included in the assessable income of the doctor in the year in which the payments were made by the patient.

¹ Taxation Case T44 86 ATC 366.

The GST component

30. The amount included in assessable income under section 6-5 of the ITAA 1997 excludes any goods and services tax (GST) component. Section 17-5 of the ITAA 1997 ensures that an amount is treated as not being assessable income (or exempt income) to the extent that it consists of an amount relating to:

- GST payable on a taxable supply;
- increasing adjustment in the GST payable on a supply; or
- an increasing adjustment that relates to an acquisition and arises in circumstances that give rise to a recoupment that is included in assessable income.

Deductibility of amounts paid over to the Territory

31. Section 8-1 of the ITAA 1997 provides that you can deduct from your assessable income any loss or outgoing to the extent that it is incurred in gaining or producing assessable income and is not:

- capital, private or domestic in nature;
- incurred in gaining or producing exempt income; or
- prevented from being deductible by another provision in the ITAA 1997.

32. In the Full Federal Court decision in *Service v. Federal Commissioner of Taxation*² the taxpayer was allowed a deduction for directors' fees he paid over to the employer in accordance with a contractual arrangement he had with his employer. The Court concluded that the directors' fees paid to the employer were outgoings incurred by the taxpayer in gaining or producing his assessable income of salary from the employer and potential income from superannuation benefits. In reaching its decision, the Court noted that a number of propositions had been established within existing case law to help determine if a deduction was allowable under the former equivalent provision in the *Income Tax Assessment Act 1936*, namely subsection 51(1):

First, ... the language of the section requires there to be a connection between the loss or outgoing on the one hand and the assessable income on the other.

Secondly the reference in the subsection to 'the assessable income' does not ... relate to the income of a particular year of income any more than it relates to a particular item of income, but to assessable income generally: *cf AGC (Advances) Ltd v. Federal Commissioner of Taxation* (1975) 132 CLR 175 at 196-8; 75 ATC 4057 at 4072; 5 ATR 243 at 259-60 per Mason J.

² (2000) 97 FCR 265, 2000 ATC 4176; (2000) 44 ATR 71.

Thirdly, where the subsection refers to the loss or outgoing being incurred in gaining or producing the assessable income, this means 'in the course of' gaining or producing assessable income:

Amalgamated Zinc (de Bavay's) Ltd v. Federal Commissioner of Taxation (1935) 54 CLR 295 at 303 per Latham CJ, at 309 Dixon J.

Fourthly, the question whether a particular outgoing was incurred in gaining or producing the assessable income looks to the 'essential character' of the expenditure itself, rather than to the purpose for which an item of expenditure has been incurred.³

33. Under the Private Practice Agreement Category B, the Specialist is required, as a condition of employment, to pay over to the Territory all fees arising from private practice. Consequently, the expenditure will be incurred at the moment the private patient fees are received. On being paid over, the fees become the property of the Territory.

34. In the circumstances, the payment over to the Territory of the fees derived from private practice has the essential character of expenditure incurred in gaining or producing the specialist's assessable income.

Non-commercial loss provisions

35. Depending on the particular circumstances of a Specialist conducting a private practice under the Private Practice Agreement Category B (100% assignment model), Division 35 of the ITAA 1997 – Deferral of losses from non-commercial business activities – may have application. If the Specialist makes a loss from this business activity and does not meet one of the tests set out in Sections 35-30, 35-35, 35-40, or 35-45 of the ITAA 1997, or the Commissioner has not exercised the discretion set out in section 35-55 of the ITAA 1997, then the loss deferral rule in subsection 35-10(2) of the ITAA 1997 will apply.

PAYG instalments

36. A Specialist who has been given a PAYG instalment rate from the Commissioner is liable to pay PAYG instalments on business and investment income to provide for their income tax liability under section 45-15 of Schedule 1 to the TAA.

37. Some Specialists may be required to pay quarterly PAYG instalments calculated as the product of their 'instalment rate' by their 'instalment income' under Section 45-110 of Schedule 1 to the TAA.

³ *Service v. Federal Commissioner of Taxation* (2000) 97 FCR 265 at paragraphs 50-53; 2000 ATC 4176 at 4185-4186; (2000) 44 ATR 71 at 81.

Instalment income

38. Billing fees from private patients to a Specialist participating in the Private Practice Agreement Category B are ordinary income in accordance with section 6-5 of the ITAA 1997.

39. Subsection 45-120(1) of Schedule 1 to the TAA contains the general rule that 'instalment income' for a period includes ordinary income. An exception to this rule is provided by paragraph 45-120(3)(a) of Schedule 1 to the TAA which provides that certain withholding payments are not included in instalment income. Withholding payments include a payment from which an amount must be withheld under the PAYG withholding provisions in Division 12 of Schedule 1 to the TAA.

40. As the Private Practice fees derived by the Specialist for his or her services to private practice patients are not considered to be withholding payments, the fees are included in the Specialist's 'instalment income' and are subject to the PAYG instalment system.

Variation to the instalment rate

41. Specialists who are already within the PAYG instalment system, will, in the first year of their participating in the Private Practice Agreement Category B, be required to pay instalments in respect of their billing income.

42. A Specialist's instalment rate will be re-calculated after their first income tax assessment on entering into the Private Practice Agreement Category B. This is to reflect the fact that the billing income will be wholly negated by the pay over agreed to in clause 4 of the Private Practice Agreement Category B.

43. However, section 45-205 of Schedule 1 to the TAA allows a quarterly payer to vary the instalment rate applied to instalment income by choosing a different instalment rate. As a result, Specialists who are quarterly payers will be able to vary the instalment rate applied to their instalment income to reflect that, due to them being required to pay over all the fees received, their net income for the relevant period will be nil.

44. It should be noted that under section 45-230 of Schedule 1 to the TAA the Specialist will be liable for the general interest charge if the varied instalment rate is too low. However, the Commissioner may remit the general interest charge if satisfied that because of special circumstances it is fair and reasonable to do so in accordance with section 45-240 of Schedule 1 to the TAA.

Category B private practice allowance received by a Specialist

45. The Category B private practice allowance is paid as remuneration for the discharge of services undertaken by the Specialist in accordance with their employment contract and forms part of the salary and wages of the Specialist. As a result, these amounts are subject to PAYG withholding under section 12-35 of Schedule 1 to the TAA.

46. The Category B private practice allowance received by the Specialist as part of their remuneration package is assessable income of the Specialist under section 6-5 of the ITAA 1997.

Appendix 2 – Detailed contents list

47. The following is a detailed contents list for this Ruling:

	Paragraph
What this Ruling is about	1
Relevant provisions	2
Class of entities	3
Qualifications	4
Date of effect	8
Scheme	9
Ruling	19
Private practice income	19
Deductibility of amounts paid over to the Territory	21
PAYG instalments – instalment income and instalment rate	22
Category B private practice allowance received by a Specialist	24
Appendix 1 – Explanation	25
Private practice income	25
<i>The GST component</i>	30
Deductibility of amounts paid over to the Territory	31
<i>Non-commercial loss provisions</i>	35
PAYG instalments	36
<i>Instalment income</i>	38
<i>Variation to the instalment rate</i>	41
Category B private practice allowance received by a Specialist	45
Appendix 2 – Detailed contents list	47

References

Previous draft:

Not previously issued as a draft

Related Rulings/Determinations:

TR 2006/10

Subject references:

- business income
- deductions and expenses
- health professionals
- medical practitioners
- PAYG instalment income
- PAYG withholding

Legislative references:

- ITAA 1936
- ITAA 1936 51(1)
- ITAA 1997
- ITAA 1997 6-5
- ITAA 1997 8-1
- ITAA 1997 17-5
- ITAA 1997 Div 35
- ITAA 1997 35-10(2)
- ITAA 1997 35-30
- ITAA 1997 35-35
- ITAA 1997 35-40
- ITAA 1997 35-45
- ITAA 1997 35-55
- TAA 1953
- TAA 1953 Sch 1 Div 12
- TAA 1953 Sch 1 12-35
- TAA 1953 Sch 1 45-15
- TAA 1953 Sch 1 45-110

- TAA 1953 Sch 1 45-120
- TAA 1953 Sch 1 45-120(1)
- TAA 1953 Sch 1 45-120(3)(a)
- TAA 1953 Sch 1 45-205
- TAA 1953 Sch 1 45-230
- TAA 1953 Sch 1 45-240
- Copyright Act 1968
- Financial Management Act (NT) 2009

Case references:

- AGC (Advances) Ltd v. Federal Commissioner of Taxation (1975) 132 CLR 175; 75 ATC 4057; 5 ATR 243
- Amalgamated Zinc (de Bavay's) Ltd v. Federal Commissioner of Taxation (1935) 54 CLR 295
- Service v. Federal Commissioner of Taxation (2000) 97 FCR 265; 2000 ATC 4176; (2000) 44 ATR 71
- Taxation Case T44 86 ATC 366

Other references:

- Medical Officer (Northern Territory Public Sector) Enterprise Agreement 2011-2013

ATO references

NO: 1-3VNV5JW

ISSN: 1445-2014

ATOlaw topic: Income Tax ~~ Assessable income ~~ business and professional income – Australian sourced