


# ***CR 2003/34 - Income tax: Level 1 private practice arrangements of senior medical practitioners employed by a NSW Public Health Organisation***

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## **Class Ruling**

### **Income tax: Level 1 private practice arrangements of senior medical practitioners employed by a NSW Public Health Organisation**

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#### ***Preamble***

*The number, subject heading, and the **What this Class Ruling is about** (including **Tax law(s)**, **Class of persons** and **Qualifications** sections), **Date of effect**, **Withdrawal**, **Arrangement** and **Ruling** parts of this document are a 'public ruling' in terms of Part IVAAA of the **Taxation Administration Act 1953**. CR 2001/1 explains **Class Rulings** and **Taxation Rulings** TR 92/1 and TR 97/16 together explain when a **Ruling** is a public ruling and how it is binding on the Commissioner.*

## **What this Class Ruling is about**

1. This Ruling sets out the Commissioner's opinion on the way in which the 'tax laws' identified below apply to the defined class of person who takes part in the arrangement to which this Ruling relates.

#### **Tax law(s)**

2. The tax laws dealt with in this Ruling are sections 6-5, 8-1 and 17-5 of the *Income Tax Assessment Act 1997* ('ITAA 1997').

#### **Class of persons**

3. The class of persons to whom this Ruling applies are Salaried Senior Medical Practitioners ('SMPs') employed by a NSW Public Health Organisation ('PHOs'), who as part of their employment conditions contained in the Salaried Senior Medical Practitioners (State) Award NSW and the Salaried Senior Medical Practitioners Determination (Revised version as at 22 December 2000), are participating in a Level 1 private practice arrangement as a result of an election.

## Qualifications

4. The Commissioner makes this Ruling based on the precise arrangement identified in the Ruling.
5. The class of persons defined in this Ruling may rely on its contents provided the arrangement described below at paragraphs 9 to 14 in this Ruling is carried out in accordance with the details of the arrangement provided in this Ruling.
6. If the arrangement described in this Ruling is materially different from the arrangement that is actually carried out:
  - (a) the Ruling has no binding effect on the Commissioner, as the arrangement entered into is not the arrangement ruled upon; and
  - (b) the Ruling will be withdrawn or modified.
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## Date of effect

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8. This Ruling applies for the years ended 30 June 2003 and subsequent years. However, the Ruling does not apply to taxpayers to the extent that it conflicts with the terms of settlement of a dispute agreed to before the date of issue of the Ruling (see paragraphs 21 and 22 of Taxation Ruling TR 92/20).

Furthermore, the Ruling only applies to the extent that:

- it is not later withdrawn by notice in the Gazette;
- it is not taken to be withdrawn by an inconsistent later public ruling; or
- the relevant tax laws are not amended.

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## Arrangement

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9. The arrangement that is the subject of this Ruling is described below.

10. SMPs are employees of NSW PHOs. Their employment conditions are contained in the Salaried Senior Medical Practitioners (State) Award NSW and the Salaried Senior Medical Practitioners Determination (Revised Version as at 22 December 2000) ('Determination'). Each SMP has the right under their conditions of employment to elect to participate in a private practice arrangement.

11. The Determination provides as follows in relation to a Level 1 private practice arrangement:

    '2(b)(i) Level 1

- (1) A Senior Medical Practitioner who elects a Level 1 arrangement pursuant to this Clause, will be paid the salary referred to in Schedule 2, Column 2 of this Determination; and
- (2) A Senior Medical Practitioner who elects Level 1 shall be entitled to an allowance of 20% of salary (refer Schedule 2, Column 3) in return for the assignment of the billings from the Senior Medical Practitioner's private practice to the Public Health Organisation.'

12. Under the terms of the Level 1 private practice arrangements when private patients are seen by the SMP, the PHO raises an invoice on behalf of the SMP in the SMP's name. Clause 2(a)(ix) of the Determination states that the PHO in rendering accounts to private patients in this circumstance, is doing so as agent for the SMP.

13. All billings in respect of the private practice activities of an SMP in a Level 1 arrangement are required to be paid over to the PHO in accordance with the terms of the Determination.

14. Under the terms of the Level 1 arrangement, the SMP uses the public hospital's infrastructure and resources but is not required to pay an infrastructure charge.

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## Ruling

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### Salary and allowance

15. The salary and the allowance paid to the SMP under the contract of employment are assessable income to the SMP under section 6-5 of the ITAA 1997. The allowance paid to the SMP in

return for the assignment to the PHO of the fees from the SMP's Level 1 private practice arrangement is an allowance related to the SMP's employment.

## **Private practice income**

16. The gross billings of the SMP under the Level 1 private practice arrangement are derived by the SMP as ordinary income and are assessable income of the SMP as an individual. Under section 17-5 of the ITAA 1997, the assessable amount is exclusive of any GST component.

## **Deductibility of amounts paid over to the PHO**

17. A deduction is allowable under section 8-1 of the ITAA 1997 to the SMP for an amount equal to the gross billings paid over to the PHO as part of the Level 1 private practice arrangement.

# **Explanations**

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## **Salary and allowance**

18. The salary and the allowance paid to the SMP under the contract of employment are assessable income to the SMP under section 6-5 of the ITAA 1997.

19. While the allowance is paid to the SMP in return for the assignment to the PHO of the fees from the Level 1 private practice arrangement, it is considered that the payment represents an allowance related to the SMP's employment.

## **Private practice income**

20. Under the Level 1 private practice arrangement, the SMP attends to private patients in the hospital utilising the hospital's infrastructure and resources. However, as the SMP is providing a direct medical service to their private patients, the gross billings of the SMP are derived by the SMP as ordinary income and are assessable income of the SMP as an individual. The PHO acts as the SMP's agent in billing and collecting the amounts due by the patient (refer Clause 2(a)(ix) of the Determination).

21. The decision in a Board of Review case reported as *Case T44 86 ATC 366* supports the assessability of the billings. In that case it was held that funds received by a hospital as a result of accounts issued by it to the private patients of a doctor employed by the hospital, were assessable to the individual as ordinary income.

**Deductibility of amounts paid over to the PHO**

22. Under subsection 8-1(1) of the ITAA 1997, an SMP in a Level 1 arrangement is entitled to claim a deduction for an amount equal to the gross billings assigned to the PHO as part of the Level 1 private practice arrangement.

23. Clause 2(b)(i)(2) of the Determination requires the SMP in a Level 1 arrangement to assign private practice billings to the PHO. In these circumstances, the disbursement back to the PHO of the amount derived from private practice is an expense that the SMP incurs in gaining his/her assessable income. This view is supported by the decision in the Full Federal Court case of *Service v. FC of T* (2000) 97 FCR 265; 2000 ATC 4176; (2000) 44 ATR 71.

24. The billings are assigned for the purpose of obtaining an entitlement to the allowance and this creates the connection with the activities which more directly gain or produce the assessable income. The calculation of the allowance is based on the salary. The allowance based on the salary is paid even if no billings are received. In our view the allowance is related to the SMP's employment and is paid because of the assignment. Therefore the deduction for the amount paid over is a 'work related expense'.

**Non-commercial loss provisions**

25. Depending on the particular circumstances of an individual Level 1 SMP, Division 35 of the ITAA 1997 – Deferral of losses from non-commercial business activities – may have application. If the Level 1 SMP makes a 'loss' from a business activity and does not meet one of the tests set out in sections 35-30, 35-35, 35-40, or 35-45, or the Commissioner has not exercised the discretion set out in section 35-55, then the loss deferral rule in subsection 35-10(2) will apply.

**Pay as you go (PAYG)*****Withholding obligation for the PHO***

26. Under the arrangements the PHO would be required by section 12-35 of Schedule 1 to the *Taxation Administration Act 1953* (TAA), to withhold an amount from a payment to the SMP representing salary, wages, commission, bonuses or allowances paid to the SMP as an employee of the PHO.

**Goods and services tax (GST)**

27. Under the Level 1 private practice arrangements, SMPs make supplies to patients and other entities. The majority of these supplies are GST-free but some may be taxable supplies (e.g. provision of a medico-legal report to an insurer) where the SMP is registered or required to be registered.

28. The allowance paid under Clause 2 (b)(i) of the Determination is subject to PAYG withholding and consequently, is not subject to GST pursuant to paragraph 9-20(2)(a) and subsection 9-20(4) of *A New Tax System (Goods and Services Tax) Act 1999* ('GST Act').

29. Under the terms of the arrangement the infrastructure services provided by the PHOs are not being supplied to the SMPs for consideration within the meaning of the GST Act. Under the Level 1 private practice arrangements, there are no supplies between the SMP and the PHO which satisfy the requirements of section 9-5 of the GST Act.

**Detailed contents list**

30. Below is a detailed contents list for this Class Ruling:

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**Commissioner of Taxation**
**30 April 2003**


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*Previous draft:*

Not previously released in draft form.

*Related Rulings/Determinations:*
 TR 92/1; TR 92/20; TR 97/16;  
 CR 2001/1
*Subject references:*

- health Professionals
- medical Practitioners
- business Income
- work related expense

*Legislative references:*

- ITAA 1997 6-5
- ITAA 1997 8-1
- ITAA 1997 8-1(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 Part IVAAA

- GST (ANTS) 1999 Act 9-20(2)(a)

- GST (ANTS) 1999 Act 9-20(4)

- GST (ANTS) 1999 Act 9-5

- Copyright Act 1968

*Case references:*

- Board of Review Case T44 86 ATC 366
- Service v. FC of T (2000) 97 FCR 265; 2000 ATC 4176; (2000) 44 ATR 71

## ATO references

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