


***CR 2004/121 - Income tax: Scheme A private practice arrangements of specialist medical officers employed by the ACT Government as represented by ACT Health***

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## Class Ruling

Income tax: Scheme A private practice arrangements of specialist medical officers employed by the ACT Government as represented by ACT Health

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### **Preamble**

*The number, subject heading, **What this Class Ruling is about** (including **Tax law(s)**, **Class of persons** and **Qualifications** sections), **Date of effect**, **Arrangement** and **Ruling** parts of this document are a 'public ruling' in terms of Part IVA 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 law(s)' identified below apply to the defined class of persons, who take part in the arrangement to which this Ruling relates.

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

2. The tax laws dealt with in the is Ruling are:
- section 6-5 of the *Income Tax Assessment Act 1997* (ITAA 1997);
  - section 8-1 of the ITAA 1997; and
  - Division 35 of the ITAA 1997.

### **Class of persons**

3. The class of persons to which this Ruling applies is medical officers employed in Specialist and Senior Specialist classifications ('Specialists') by the ACT Government as represented by ACT Health ('ACT Health') under the terms of the 'Medical Officers (Australian Capital Territory Public Sector) Award 2000', who as part of their employment conditions elect to participate in a Scheme A private practice arrangement.

## 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 actually carried out is carried out in accordance with the arrangement described in paragraphs 9 to 15.
6. If the arrangement actually carried out is materially different from the arrangement that is described in this Ruling, then:
  - this Ruling has no binding effect on the Commissioner because the arrangement entered into is not the arrangement on which the Commissioner has ruled; and
  - this Ruling may be withdrawn or modified.
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## Date of effect

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8. This Ruling applies for the income year ended 30 June 2005 and subsequent income years. However, the Ruling only applies to the extent that:
  - there is no material change in the arrangement or in the class of persons involved in the arrangement;
  - 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.

## Arrangement

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9. The arrangement that is the subject of this Ruling is described below. This description is based on the following documents. These documents, or relevant parts of them, as the case may be, form part of the arrangement and are to be read with this description. The relevant documents or parts of documents incorporated into this description of the arrangement are:

- Application for Class Ruling dated 12 March 2004, lodged by ACT Health, as amended by letter dated 1 April 2004;
- Letter of Offer of Appointment for position of Specialist;
- Acceptance of Offer of Appointment;
- Scheme A Terms and Conditions; and
- Deed of Variation of Conditions of Employment.

10. The Specialists are employees of ACT Health. Their employment conditions are contained in the ACT Health Portfolio, Medical Officers Agreement 2003-2004, and the Medical Officers (Australian Capital Territory Public Sector) Award 2000. Each Specialist has the right under their conditions of employment to elect to participate in a private practice arrangement.

11. In accepting their offer of appointment as a Specialist, the Specialist agrees to participate in the private practice Scheme A arrangement. In doing so, as a condition of their employment, they are:

- paid an allowance equivalent to 20% of the total of their annual salary and any allowances;
- required to 'assign' to the Australian Capital Territory (represented by ACT Health) all fees charged or to be charged arising from their private practice (as defined in the Scheme A Terms and Conditions); and
- required to comply with the provisions of the Scheme A Terms and Conditions.

12. A Specialist who is already employed as a Specialist by ACT Health may, by Deed, vary their conditions of employment to allow them to participate in the Scheme A arrangement. In doing so they agree that the following will be added to their conditions of employment and they will be:

- paid an allowance equivalent to 20% of the total of their annual salary and any allowances;
- required to 'assign' to ACT Health all fees charged or to be charged arising from their private practice (as defined in the Scheme A Terms and Conditions); and
- required to comply with the provisions of the Scheme A Terms and Conditions.

13. Under the Terms and Conditions of the Scheme A arrangement when private patients are seen by the Specialist, ACT Health raises an invoice on behalf of the Specialist in the Specialist's name. Clause 5.1 of the Terms and Conditions states that ACT Health in rendering accounts to chargeable patients in this circumstance is doing so as agent for the Specialist.

14. All billings in respect of the private practice activities of a Specialist in the Scheme A arrangement are required to be paid over to ACT Health under the terms of the Specialist's appointment or under the Deed of variation of conditions of employment.

15. Under the terms of the Scheme A arrangement the Specialist uses ACT Health's infrastructure and resources but is not required to pay an infrastructure charge.

## Ruling

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### Salary and allowance

16. The salary and the allowance paid to the Specialist under the contract of employment are assessable income to the Specialist under section 6-5 of the ITAA 1997. The allowance paid to the Specialist by ACT Health under the terms of the Specialist's appointment or under the Deed of variation of conditions of employment is an allowance related to the Specialist's employment.

### Private practice income

17. The gross billings of the Specialist, under the Scheme A private practice arrangement, are derived as ordinary income and are assessable income of the Specialist under section 6-5 of the ITAA 1997.

### Deductibility of amounts paid over to ACT Health

18. A deduction is allowable under section 8-1 of the ITAA 1997 to the Specialist for an amount equal to the gross billings paid over to ACT Health as part of the terms of the Specialist's appointment or under the Deed of variation of conditions of employment.

## Explanation

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### Salary and allowance

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

20. The allowance is paid to the Specialist under the terms of the Specialist's appointment or under the Deed of variation of conditions of employment. It is unrelated to the amount (if any) of billings generated by the Specialist from the Scheme A private practice arrangement. It is considered that the payment represents an allowance related to the Specialist's employment as it is a condition of their employment.

### **Private practice income**

21. Under the Scheme A private practice arrangement, the Specialist attends to private patients in the hospital utilising the hospital's infrastructure and resources. However, the Specialist is providing a direct medical service to their private patients in the Specialist's private practice and not in their capacity as an employee of ACT Health. The gross billings of the Specialist are derived as ordinary income and are assessable income of the Specialist under section 6-5 of the ITAA 1997. ACT Health acts as the Specialist's agent in billing and collecting the amounts due by the patient (Clause 5.1 of the Terms and Conditions).

22. The decision in a Board of Review case reported as *Case T44 86 ACT 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 a hospital, were assessable to the individual as ordinary income.

### **Deductibility of amounts paid over to ACT Health**

23. Under subsection 8-1(1) of the ITAA 1997, a Specialist in a Scheme A arrangement is entitled to claim a deduction for an amount equal to the gross billings paid over to ACT Health under the terms of the Specialist's appointment or under the Deed of variation of conditions of employment.

24. The Specialist is required, as a condition of their employment, to pay over all fees charged or to be charged by them arising from their private practice under the Scheme A arrangement. In these circumstances, the payment over to ACT Health of the amount derived from private practice is an expense that the Specialist 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.

25. The billings are paid over, as a condition of employment and this creates the connection with the activities which more directly gain or produce the assessable income. Therefore, the deduction for the amount paid over is a 'work related expense'.

**Non-commercial loss provisions**

26. Depending on the particular circumstances of an individual Scheme A Specialist, Division 35 of the ITAA 1997 – Deferral of losses from non-commercial business activities – may have application. If the Scheme A Specialist 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 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.

**Detailed contents list**

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

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*Previous draft:*

Not previously issued as a draft

*Related Rulings/Determinations:*

CR 2001/1; TR 92/1; TR 97/16

*Subject references:*

- business income
- health professionals
- medical practitioners
- work related expenses

*Legislative references:*

- ITAA 1997 6-5
- ITAA 1997 8-1
- ITAA 1997 8-1(1)

- 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
- Copyright Act 1968
- TAA 1953 Pt IVAAA

*Case references:*

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

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*ATO references*

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