CR 2012/20 - Income tax: NSW VMOs and eligible health professionals' participation in the COAG Improving Access to Primary Care in Rural and Remote Areas (section 19(2) Exemptions) Initiative

This document has changed over time. This is a consolidated version of the ruling which was published on *11 April 2012*

Class Ruling

Income tax: NSW VMOs and eligible health professionals' participation in the COAG Improving Access to Primary Care in Rural and Remote Areas (section 19(2) Exemptions) Initiative

Contents Para

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.

[**Note:** This is a consolidated version of this document. Refer to the Tax Office Legal Database (http://law.ato.gov.au) to check its currency and to view the details of all changes.]

What this Ruling is about

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

Relevant provision(s)

2. The relevant provisions dealt with in the Ruling are:

- section 6-5 of the *Income Tax Assessment Act 1997* (ITAA 1997)
- section 8-1 of the ITAA 1997

Class of entities

3. The class of persons to which this Ruling applies is the Visiting Medical Officers (VMOs) and eligible health professionals who elect to participate in the NSW Health Policy, Improving Access to Primary Care in Rural and Remote Areas (S19(2) Exemptions) Initiative in New South Wales.

Qualifications

4. 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 37 of this Ruling.

5. 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.

Date of effect

7. This Ruling applies from 1 July 2011. The ruling continues to apply to all entities within the specified class who entered into the specified scheme during the term of the Ruling. 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

8. The scheme that is the subject of the 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 27 October 2011;
- NSW Health Policy Statement titled – Improving Access to Primary Care In Rural and Remote Areas (s19(2) Exemptions Initiative)(Initiative) which incorporates the NSW Health Framework for the Initiative and relevant Letters of Agreement; and
- Memorandum Of Understanding between NSW Ministry of Health and Federal Health Minister.

9. In February 2006 the participants (heads of the Commonwealth, States and Territories) at the Commonwealth of Australia Heads of Government (COAG) meeting agreed on introducing the Improving Access to Primary Care Services in Rural Areas.

10. The policy intent underlying the Initiative is to improve access to primary health care for people living in rural and remote areas of Australia.

11. The initiative helps achieve this aim by providing an exemption from section 19(2) of the *Health Insurance Act 1973* (HI 1973).

12. Section 19(2) of the HI 1973 states:

> Unless the Minister otherwise directs a Medicare benefit is not payable in respect of a professional service that has been rendered by, or on behalf of, or under an arrangement with:
>
> (a) the Commonwealth;
>
> (b) a State;
>
> (c) a local governing body; or
>
> (d) an authority established by a law of the Commonwealth, a law of a State, or a law of an internal Territory.

13. The Initiative, once implemented, will operate to allow Medicare benefits to be claimed with respect to the provision of professional non-admitted, non-referred eligible services to patients by NSW Local Health Districts through arrangements with VMOs and eligible health professionals at eligible rural hospital sites.

14. For the exemption under section 19(2) of the HI 1973 to be granted the following criteria must be met:

- site – Health facilities from which services are traditionally provided by the state health service such as the NSW Local Health Districts, including Hospitals located in eligible locations;
- locations – The exemption will be limited to those rural and remote communities that have populations of less than 7,000 people experiencing a general practitioner workforce shortage; and
- eligible services under the Initiative are non-admitted, non-referred services provided by medical practitioners and eligible health professionals. A non-admitted patient is defined as a patient who does not undergo a hospital's formal admission process. There are three categories of patients for these purposes:
    - emergency department patient;
    - outpatient; and
    - patient treated by hospital employees off the hospital site – which includes community and/or outreach services.

15. Eligible professionals under the initiative include VMOs that under contractual arrangements with the NSW Local Health District provide eligible services to patients at an eligible site operated by the Local Health District.

16. Funds earned by NSW Local Health Districts through the initiative must be used to enhance primary health care services within the approved locality.

17. Agreement of local stakeholders- the initiative must have the unanimous support of local primary care practitioners (private and/or community based) in eligible locations evidenced by a written agreement. An exception will be considered by the Federal Minister for Health where support is overwhelming but not unanimous.

18. Implementation Plan – Local Health Districts are responsible for identifying locations that are likely to meet the Site and Location criteria. NSW Ministry of Health will confirm initial eligibility with the Commonwealth. In accordance with the NSW Health Policy Statement and Policy Framework issued for that purpose, Local Health Districts will then develop an implementation plan and submit it, together with consent forms obtained from local stakeholders, to the NSW Ministry of Health for review.

19. NSW Ministry of Health will then submit applications for exemption to the Federal Minister for Health, who is ultimately responsible for the approval or otherwise of applications made for the initiative.

20. The NSW Health Policy Statement and Framework 'Improving Access to Primary Care in Rural and Remote Areas (S19(2) Exemptions) Initiative' provides that once relevant VMOs and eligible health professionals consent to participate in the initiative at the eligible site, a Letter of Agreement is issued by the relevant Local Health District outlining the requirements for the participant, including the assignment of Medicare benefits.

21. The participating VMOs and eligible health professionals will be required to apply to Medicare Australia for a separate Medicare Provider Number (MPN) specifying the eligible site (location specific provider).

22. The service is provided to the patient by the VMO\eligible health professional on behalf of the Local Health District. The assignment of the patient's Medicare benefit takes place in a similar way to the general Medicare bulk billing procedures, pursuant to the Medicare statutory framework.

23. That is:

> VMOs/eligible health professionals must have an agreement with patients who receive eligible services under the initiative for the patient's Medicare benefits to be assigned to the VMO/eligible health professional who provided the service.

24. Under the Initiative, patients will not be charged a co-payment for eligible services.

25. The VMOs/eligible health professionals will be responsible for claiming Medicare benefits under the Initiative by the allocation of the correct item numbers on the Medicare claim forms and otherwise ensuring compliance with Medicare Australia requirements. The assignment takes place by means of an approved form (for example, DB2-gp), which assigns the benefits to the VMO/eligible health professional who provided the services.

26. All benefits assigned by patients to the VMOs/eligible health professionals under the initiative must be paid over to the relevant Local Health District to be used for primary care enhancement.

27. Local Health Districts will facilitate the billing process with Medicare on behalf of the VMOs/eligible health professionals.

28. Local Health districts are Public Health Organisations as defined in the *Health Services Act 1997 (NSW)*.

29. The Medicare benefit will not be received by the VMO/eligible health professional but will be paid into a separately identifiable bank account held by the relevant Local Health District.

30. The Letters of Agreement provide:

> For a VMO
>
> > That as part of the terms and conditions of the Initiative, you are required to pay over to the Local Health District the Medicare billings assigned to you for relevant services provided under the Initiative.

For an eligible health professional

Participation requires that you must pay over to the Local Health District the Medicare billings assigned to you for the relevant services provided under the Initiative.

31. VMOs who may consent to participate in the Initiative are those VMOs who are engaged by NSW Local Health Districts operating the eligible sites in NSW to provide services to public patients for, or on behalf of, eligible sites.

32. Under part 8 of the *Health Services Act 1997 (NSW)*, VMOs are engaged under a fee for service contract between the VMO (entered into by the VMO either in their individual capacity or through the VMOs 'practice company', as defined in Part 1 of the *Health Services Act 1997 (NSW)*) and a Local Health District to provide services to public patients for or on behalf of the Local Health District.

33. VMOs will be required to comply with the requirements of the NSW Health Policy directive that relates to the Initiative under the terms of their appointment.

34. Eligible health professionals who are able to participate in the initiative are nurses, midwives and eligible health professionals who are NSW Health Service employees and are eligible for a Medicare provider number.

35. As NSW Health Service employees, eligible health professionals are required to comply with NSW Health policies.

36. The Local Health Districts are to:

- record Medicare benefits received from Medicare under the initiative;
- report on Medicare revenue and expenditure under the initiative to the NSW Ministry of Health and the Commonwealth; and
- ensure that receipts and expenditure of the funds comply with NSW Ministry of Health accounts and audit policies.

Ruling

37. The assignment of Medicare benefits by patients to Visiting Medical Officers (VMOs) and eligible health professionals under the Initiative is income according to ordinary concepts, and is assessable income of the VMOs and the eligible health professionals under section 6-5 of the ITAA 1997.

38. The amount included in assessable income excludes any goods and services tax (GST) component, section 17-5 of the ITAA 1997.

39. The amount of Medicare benefit income derived by VMOs and eligible health professionals under the Initiative and paid over to Local Health Districts that operate eligible sites under contractual and employment arrangements is an allowable deduction under section 8-1 of the ITAA 1997.

Commissioner of Taxation
28 March 2012

Appendix 1 – Explanation

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.

Assigned Medicare Benefits – Assessability

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

41. Under the arrangement, a service will be provided to a patient, by the VMO/eligible health professional, and in return for the provision of that service, the patient agrees to assign the Medicare benefits to the VMO/eligible health professional.

42. That assignment takes place pursuant to the Medicare Australia statutory framework, by means of an approved form (for example DB2-gp), whereby the patient assigns the benefits to the VMO/eligible health professional who provided the services.

43. The VMO/eligible health professional is responsible for claiming the Medicare benefit by completing and signing a Medicare form.

44. The money received is then paid over by the VMO/eligible health professional to the relevant Local Health District.

45. Therefore the VMO/eligible health professional derives the claimed assigned benefits as income according to ordinary concepts.

46. The Local Health District is not a party to the assignment arrangement the VMO/eligible health professional has with the patient, under which the provision of services gives rise to the assignment of the benefits. The Medicare Australia statutory assignment framework is such that benefits can only be assigned to the identified registered or licensed natural person, who provided the services (or who supervised their provision). A reward for the performance of personal services in the form of the assigned benefits is income according to ordinary concepts. The fact of non-receipt does not derogate from this conclusion. The decisions in *Case T44* 86 ATC 366 and *Ho v. Federal Commissioner of Taxation* [2008] AATA 783 are in accordance with this.

The GST component

47. 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.

Assigned Medicare Benefits that are Paid over to the Local Health District – Deductibility

48. 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.

49. The Full Federal Court decision in *Service v. Federal Commissioner of Taxation (2000) 97 FCR 265; [2000] FCA 188; 2000 ATC 4176; (2000) 44 ATR 71* (Service) is relevant. In Service, the taxpayer was allowed a deduction for fees obtained from acting as director of other companies and as a member of various governmental bodies which he paid over to his employer company under his employment agreement. The Court held that the directors' fees paid to the company were outgoings incurred by the taxpayer in gaining or producing his assessable income from the employer.

50. It is a term of the Letter of Agreement the VMO/eligible health professional has with the relevant Local Health District that all claimed assigned benefits are paid over to the relevant Local Health District. This Letter of Agreement, together with the broader terms and conditions of their engagement, is the framework pursuant to which the VMO/eligible health professional provides services under the Initiative. Performing services under the Letter of Agreement, together with the broader terms and conditions of their engagement, gives rise to assessable income in the hands of the VMO/eligible health professional. The payment of the claimed assigned benefits to the Local Health District is incurred in gaining or producing the assessable income.

51. The payment of the claimed assigned benefits to the relevant Local Health District is an allowable deduction pursuant to section 8-1 of the ITAA 1997.

Appendix 2 – Detailed contents list

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

References

Previous draft:

Not previously issued as a draft

Related Rulings/Determinations:

TR 2006/10

Subject references:

- Assessable income
- Assigned Medicare Benefits

Legislative references:

- ITAA 1997 6-5
- ITAA 1997 8-1
- ITAA 1997 17-5
- TAA 1953
- Copyright Act 1968
- Health Insurance Act 1973
- Health Services Act 1997 (NSW)

Case references:

- Case T44 86 ATC 366
- Ho v. Federal Commissioner of Taxation [2008] AATA 783;
- Service v. Federal Commissioner of Taxation (2000) 97 FCR 265; [2000] FCA 188; 2000 ATC 4176; (2000) 44 ATR 71

ATO references
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