


CR 2015/57 - Income tax: private practice arrangement for Clinicians of Queensland Health

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Class Ruling

Income tax: private practice arrangement for Clinicians of Queensland Health

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① 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 provision(s)

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 comprises are permanent Senior Medical Officers and Visiting Medical Officers (together referred to as *Clinicians*) employed by Queensland Health.

4. Queensland Health is responsible for the management, administration and delivery of public health services in Queensland. It is comprised of the governing Department of Health and all of the Hospital and Health Service (HHS) providers.

5. Pursuant to Schedule 3 of their Senior Medical Officer core contract or Visiting Medical Officer core contract, as the case maybe, Clinicians are granted a right to engage in two types of Granted Private Practice arrangements:

- An Assignment Arrangement, and
- A Retention Arrangement.

Qualifications

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

7. The class of entities defined in this Ruling may rely on its contents provided the scheme is actually carried out in accordance with the scheme described in paragraphs 10 to 30 of this Ruling.

8. 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

9. This Ruling applies from 1 July 2014 to 30 June 2019. 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

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

11. Enactment of the *Hospital and Health Boards Act 2011 (Qld)* from 1 July 2012 resulted in the establishment of 16 HHS providers. The HHS providers are independent statutory bodies governed by their own boards and managed by a Health Services Chief Executive with responsibility for the delivery of public health services in their local area.

12. National health reforms introduced from July 2014 have significantly changed the way private patient activity is funded in the public health system. As part of these changes, Queensland Health has transitioned the Clinicians to new Senior Medical Officer core contracts and Visiting Medical Officer core contracts (collectively referred to as *Contracts of Employment*). All current, permanent, Clinicians will be offered a Contract of Employment.

13. Under the Contracts of Employment, the Clinicians will be employees of a HHS provider. Their employment conditions are also contained in the Contracts of Employment which contain clauses relating to the Granted Private Practice arrangements and their rates of pay. In particular, Schedule 3 of each Contract of Employment details whether the HHS provider has granted the Clinician permission to participate in one of the two types of Granted Private Practice arrangements and, if so, the type of arrangement.

Granted Private Practice arrangements

14. A Granted Private Practice arrangement is a limited arrangement whereby Clinicians provide professional services to private patients on the terms set out in Schedule 3 of the Contract of Employment. The HHS provider and the Clinicians agree that the Clinician exercises Granted Private Practice where the Clinician provides a professional service to a private patient during the Clinician's hours of work with Queensland Health.

15. The Queensland Health Private Practice Framework dated May 2014, in conjunction with Schedule 3 of the Contracts of Employment, detail the two types of Granted Private Practice arrangements being the Assignment Arrangement and the Retention Arrangement.

Assignment Arrangement

16. Under the Assignment Arrangement a HHS provider requires a Clinician to engage in private practice and to treat a private patient in response to clinical need, business requirements or patient choice during employed time with the HHS provider.

17. Under the Assignment Arrangement, in accordance with paragraph 8(2)(a) of Schedule 3 of the Contract of Employment, the HHS provider and Clinician agree for the Clinician to assign to the HHS provider the full amount of any fees charged by the Clinician in treating a private patient when engaged under the Assignment Arrangement. This amount is referred to as *assignment private practice revenue*.

18. Further, under the Assignment Arrangement, the HHS provider does not charge the Clinician a service fee for the use of the HHS provider's resources, infrastructure and administrative support.

19. In return for being engaged in Granted Private Practice under the Assignment Arrangement, the Clinician may receive an additional allowance based upon a proportion of their base salary. The calculation of this additional allowance will be based upon Key Performance Indicators that are outlined in Schedule 2 of the Contract of Employment.

20. The Assignment Arrangement is the default arrangement.

Retention Arrangement

21. Under the Retention Arrangement a HHS provider requires a Clinician to engage in private practice and to treat a private patient in response to clinical need, business requirements or patient choice during employed time with the HHS provider.

22. However, under the Retention Arrangement, in accordance with paragraph 8(2)(b) of Schedule 3 of the Contract of Employment, the HHS provider and the Clinician agree that the full amount of any fees charged by the Clinician in treating a private patient, capped at the earnings ceiling published annually in the Department of Health's fees and charges, will be remitted to the Clinician or as the Clinician directs.

23. The full amount of any fees charged by the Clinician in treating a private patient when engaged under the Retention Arrangement, irrespective of whether those fees are capped at, or exceeds the earnings ceiling, is referred to as *retention private practice revenue*.

24. Under the Retention Arrangement, where the fees charged by the Clinician in treating a private patient exceeds the earnings ceiling, the HHS provider and the Clinician agree that \$1 in every \$3 will be remitted to the Clinician or as the Clinician directs.

25. Under paragraph 8(3)(b) of Schedule 3 of the Contract of Employment, the Clinician authorises the HHS provider to remit the balance, being \$2 in every \$3 to the provider. This amount is referred to as the *service retention amount*.

26. Further, under clause 7 of Schedule 3 of the Retention Arrangement, the HHS provider charges, and the Clinician agrees to pay, a **service fee** for the use of HHS provider's resources, infrastructure and administrative support.

27. Under paragraph 8(3)(a) of Schedule 3 of the Contract of Employment, the Clinician authorises the HHS provider to deduct that service fee and the GST payable in respect of that service fee from the full amount of the retention private practice revenue that is to be remitted to the Clinician or as the Clinician directs.

28. In return for being engaged in Granted Private Practice under the Retention Arrangement, the Clinician agrees to forgo an additional allowance based upon a proportion of their base salary that is available under the Assignment Arrangement.

Billing Arrangements – Assignment Arrangement and Retention Arrangement

29. Under clause 6(1) of Schedule 3 of the Contract of Employment, the Clinician appoints the HHS provider as agent to render accounts in the Clinician's name or in the name of an entity or entities nominated by the Clinician and to collect payment of the assignment private practice revenue and retention private practice revenue.

30. Under clause 6(2) of Schedule 3 of the Contract of Employment, the Clinician is required to prepare and keep records pertaining to the assignment private practice revenue and retention private practice revenue for the purposes of enabling the HHS provider to render accounts to private patients.

Ruling**Private Practice Revenue**

31. The private practice revenue under either the Assignment or Retention Arrangement is the Clinician's ordinary income under subsection 6-5(1) of the ITAA 1997. As such, the private practice revenue derived by the Clinician in an income year will be included in the Clinician's assessable income under subsection 6-5(2) of the ITAA 1997 for that income year.

32. The assessable income of the Clinician 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.

Private practice revenue where accounts are rendered in the name of the entity or entities nominated by the Clinician

33. Where the Clinician nominates to have their accounts rendered in the name of the entity or entities nominated by the Clinician under clause 6(1)(a) of Schedule 3 of the Contract of Employment, and/or amounts are remitted in accordance with that nomination or a direction under clause 8(3)(c), the private practice revenue under either the Assignment or Retention Arrangement is the Clinician's ordinary income under subsection 6-5(1) of the ITAA 1997 and not the ordinary income of the entity or entities nominated by the Clinician.

34. As the private practice revenue is the Clinician's ordinary income under subsection 6-5(1) of the ITAA 1997, the private practice revenue derived by the Clinician in an income year will be included in the Clinician's assessable income under subsection 6-5(2) of the ITAA 1997 for that income year.

Deductibility of assignment private practice revenue

35. A deduction is allowable under paragraph 8-1(1)(a) of the ITAA 1997 to the Clinician for the assignment by the Clinician to the HHS provider of the full amount of any assignment private practice revenue under the Assignment Arrangement.

Deductibility of service retention amount

36. A deduction is allowable under paragraph 8-1(1)(a) of the ITAA 1997 to the Clinician for the service retention amount remitted by the Clinician to the HHS provider under the Retention Arrangement.

Deductibility of service fee

37. A deduction is allowable under paragraph 8-1(1)(a) of the ITAA 1997 to the Clinician for the service fee remitted by the Clinician to the HHS provider under the Retention Arrangement.

PAYG instalments – instalment income and instalment rate

38. The private practice revenue derived by the Clinician under either the Assignment or Retention Arrangement for his or her services to private patients is included in the Clinician's instalment income as defined in subsection 45-120(1) of Schedule 1 to the TAA.

39. If the Clinician is a quarterly or monthly payer under the PAYG instalment system, they may choose to vary their instalment rate under section 45-205 of Schedule 1 to the TAA.

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.*

Assessability of private practice revenue to the Clinician

40. Subsection 6-5(1) of the ITAA 1997 provides that the assessable income of a taxpayer includes income according to ordinary concepts, which is called ordinary income. If you are an Australian resident, subsection 6-5(2) of the ITAA 1997 provides your assessable income includes the ordinary income you derived directly or indirectly from all sources, whether in or out of Australia, during the income year.

41. An amount is ordinary income, and therefore may be included in assessable income under section 6-5 of the ITAA 1997, if there is a sufficient nexus between the amount and an earning activity. The nexus test is satisfied if the amount is characterised as a product or incident of employment or a reward for services rendered. For example, in a Board of Review decision,¹ it was held that private patient revenue 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 income year in which the payments were made by the private patient.

42. As part of the Arrangement between the Clinician and the HHS provider, the Clinician attends to private patients in the hospital and is providing a direct service to these patients as part of their own private practice. The HHS provider acts as the agent of the Clinician in billing and collecting the assignment private practice revenue.

43. Therefore, it is the Clinician providing the personal services under the Arrangement. It follows that the private practice revenue received by the Clinician is received by the Clinician as a reward for the Clinician providing personal services.

44. As such, under subsection 6-5(2) of the ITAA 1997, the Clinician's assessable income for an income year includes the assignment private practice revenue received by a Clinician under the Assignment Arrangement that is derived by the Clinician in that income year.

45. However, under section 17-5 of the ITAA 1997, an amount of private practice revenue is not assessable income under subsection 6-5(2) of the ITAA 1997 to the extent that it includes an amount relating to:

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

¹ Case T44 86 ATC 366.

46. The explanation relating to the 'Assessability of assignment private practice revenue to the Clinician under the Assignment Arrangement' in paragraphs 40 to 43 of this Ruling, applies equally to the assessability of retention private practice revenue to the Clinician under the Retention Arrangement.

47. As such, under subsection 6-5(2) of the ITAA 1997, the Clinician's assessable income for an income year includes the retention private practice revenue received by the Clinician under the Retention Arrangement that is derived by the Clinician in that income year.

Private practice revenue where the accounts are rendered in the name of the entity or entities nominated by the Clinician is included in the Clinician's assessable income

48. Where, under the Arrangement, the Clinician nominates to have their accounts rendered in the name of the entity or entities nominated by the Clinician under clause 6(1)(a) of Schedule 3 of the Contract of Employment, and/or amounts are remitted in accordance with that nomination or a direction under clause 8(3)(c), the private practice revenue is income according to ordinary concepts of the Clinician.

49. This is because it is the Clinician providing the personal services under the Arrangement and the private practice revenue is received by the Clinician as a reward for providing their personal services. As such, it is the Clinician's ordinary income under subsection 6-5(1) of the ITAA 1997 and not the ordinary income of the entity or entities nominated by the Clinician.

50. Consequently, as the private practice revenue is the Clinician's ordinary income under subsection 6-5(1) of the ITAA 1997, the private practice revenue derived by the Clinician in an income year will be included in the Clinician's assessable income under subsection 6-5(2) of the ITAA 1997 for that income year.

Deductibility of amounts to the Clinician that have been assigned or remitted by the Clinician to the HHS provider

51. Subsection 8-1(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 your assessable income, or
- it is necessarily incurred in carrying on a business for the purpose of gaining or producing your assessable income.

52. However, under subsection 8-1(2) of the ITAA 1997, you cannot deduct a loss or outgoing to the extent that:

- it is a loss or outgoing of capital, or of a capital nature, or
- it is a loss or outgoing of a private or domestic nature, or
- it is incurred in relation to gaining or producing exempt income or non-assessable non-exempt income, or
- a provision of the ITAA 1936 or the ITAA 1997 prevents you from deducting it.

Assignment Arrangement

53. Under the Assignment Arrangement, in accordance with paragraph 8(2)(a) of Schedule 3 of the Contract of Employment, the HHS provider and the Clinician agree for the Clinician to assign to the HHS provider the full amount of any private practice revenue. On being assigned, the full amount of any private practice revenue becomes the property of the HHS provider.

54. In *Service v. Federal Commissioner of Taxation*,² the Full Federal Court found that the taxpayer was allowed a deduction for directors' fees he paid over to his 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.

55. In light of that decision, the assignment by the Clinician to the HHS provider of the full amount of any private practice revenue under the Assignment Arrangement has the essential character of a loss or outgoing incurred in gaining or producing the Clinician's assessable income. Further, such a loss or outgoing does not come within any of the paragraphs in subsection 8-1(2) of the ITAA 1997.

56. Accordingly, the assignment by the Clinician to the HHS provider of the full amount of any private practice revenue under the Assignment Arrangement is deductible to the Clinician under paragraph 8-1(1)(a) of the ITAA 1997.

Retention Arrangement

57. The Clinician is required, as a condition of engaging in private practice using the HHS provider's resources, infrastructure and administrative support, to remit certain amounts to the HHS provider.

58. Under the Retention Arrangement, in accordance with paragraph 8(3)(b) of Schedule 3 of the Contract of Employment, the HHS provider and the Clinician agree for the HHS provider to remit the service retention amount to the provider.

² (2000) 97 FCR 265; [2000] FCA 188; 2000 ATC 4176; (2000) 44 ATR 71.

59. Under the Retention Arrangement, in accordance with paragraph 8(3)(a) of Schedule 3 of the Contract of Employment, the HHS provider and the Clinician agree for the HHS provider to deduct the service fee and the GST payable in respect of that service fee from the full amount of any retention private practice revenue and to remit those amounts to the provider.

60. In these circumstances, the service retention amount and the service fee remitted by the Clinician to the HHS provider under the Retention Arrangement have the essential character of a loss or outgoing incurred in gaining or producing the Clinician's income. Further, such loss or outgoing does not come within any of the paragraphs in subsection 8-1(2) of the ITAA 1997.

61. Accordingly, the service retention amount and the service fee remitted by the Clinician to the HHS provider under the Retention Arrangement is deductible to the Clinician under paragraph 8-1(1)(a) of the ITAA 1997.

Non-commercial loss provisions

62. Depending on the particular circumstances of a Clinician conducting a private practice under the Private Practice Agreement, Division 35 of the ITAA 1997 – Deferral of losses from non-commercial business activities – may have application.

63. That is, if the Clinician 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 does not meet the income requirement under section 35-10(2E); then unless the Commissioner has exercised the discretion set out in section 35-55 of the ITAA 1997, the loss deferral rule in subsection 35-10(2) of the ITAA 1997 will apply.

PAYG instalments

64. Subsection 45-15(1) of Schedule 1 to the TAA provides that the Commissioner may give you an instalment rate from time to time, by giving you written notice of the rate. Subsection 45-15(2) of Schedule 1 to the TAA provides that you are liable to pay instalments under this Division if the Commissioner has given you an instalment rate. As such, a Clinician who has been given a PAYG instalment rate by the Commissioner is liable to pay PAYG instalments to provide for their income tax liability under subsection 45-15(2) of Schedule 1 to the TAA.

65. Some Clinicians may be required to pay quarterly PAYG instalments calculated as the product of their 'instalment rate' by their 'instalment income for that quarter' under subsection 45-110(1) of Schedule 1 to the TAA. Similarly, some Clinicians may be required to pay monthly PAYG instalments under subsection 45-114(1) of Schedule 1 to the TAA.

Instalment income

66. Subsection 45-120(1) of Schedule 1 to the TAA contains the general rule that a taxpayer's instalment income for a period includes your ordinary income derived during that period, but only to the extent that it is assessable income of the income year that is or includes that period. An exception to this rule is contained in paragraph 45-120(3)(a) of Schedule 1 to the TAA which provides that your instalment income for a period does not include amounts in respect of withholding payments made to you during that period. 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.

67. As the private practice revenue derived by the Clinician for his or her services to private patients is not considered to be a withholding payment, the private practice revenue is included in the Clinician's 'instalment income' and is subject to the PAYG instalment system.

Variation to the instalment rate

68. Clinicians who are already within the PAYG instalment system, will, in the first year of their engagement under the either Arrangement, be required to pay instalments in respect of their private practice revenue.

69. However, section 45-205 of Schedule 1 to the TAA allows a quarterly or monthly payer to vary the instalment rate applied to instalment income by choosing a different instalment rate.

70. As such, Clinicians who are quarterly or monthly payers engaged under Assignment Arrangement will be able to vary the instalment rate applied to their instalment income to reflect that due to the assignment of the assignment private practice revenue, their net income for the relevant period may be nil.

Appendix 2 – Detailed contents list

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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 1997
- ITAA 1997 6-5
- ITAA 1997 6-5(1)
- ITAA 1997 6-5(2)
- ITAA 1997 8-1
- ITAA 1997 8-1(1)
- ITAA 1997 8-1(1)(a)
- ITAA 1997 8-1(2)
- ITAA 1997 17-5
- ITAA 1997 Div 35

- ITAA 1997 35-10(2)
- ITAA 1997 35-10(2E)
- 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 45-15(1)
- TAA 1953 Sch 1 45-15(2)
- TAA 1953 Sch 1 45-110(1)
- TAA 1953 Sch 1 45-114(1)
- 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
- Hospital and Health Boards Act 2011 (Qld)

Case references:

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

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