CR 2006/24 - Income tax: standard private practice arrangements of salaried medical officers of a South Australian health agency

Class Ruling

Income tax: standard private practice arrangements of salaried medical officers of a South Australian health agency

This Ruling 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, we must apply the law to you in the way set out in the ruling (or in a way that is more favourable for you if we are satisfied that the ruling is incorrect and disadvantages you, and we are 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 taxation provision(s) identified below apply to the defined class of entities, who take part in the scheme to which this Ruling relates.

2. This Ruling does not address the tax consequences of work related payments and benefits provided from a Special Purpose Fund.

Relevant taxation provision(s)

3. The taxation 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 27-5 of the ITAA 1997; and
- section 12-35 of Schedule 1 to the *Taxation Administration Act 1953* (TAA);
- section 45-120 of Schedule 1 to the TAA.

Class of entities

4. The class of entities to which this Ruling applies is the Specialist Salaried Medical Officers ('Specialists') employed by any South Australian health agency ('Health Agency') who conduct private practice in their individual capacity in accordance with the Standard Private Practice Agreement they enter into with the Health Agency. A Health Agency is a public hospital or health centre incorporated under the *South Australian Health Commission Act 1976*.

5. The class of entities to which this Ruling applies is limited to those Specialists who conduct private practice in their individual capacity where the receipts method (cash basis) is appropriate to determine assessable income.

6. The class of entities to which this Ruling applies does not include any Specialist who:

- conducts private practice in group arrangements;
- has control over the allocation of amounts from a Special Purpose Fund or Equipment Fund for their own benefit; or
- is an STS taxpayer for the relevant income year.

Qualifications

7. The Commissioner makes this Ruling based on the precise scheme identified in the Ruling.

8. 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 12 to 22.

9. 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

11. This Ruling applies for the income year ended 30 June 2006 and subsequent income years. However, the Ruling only applies to the extent that:

- there is no material change in the scheme or in the class of entities involved in the scheme;
- it is not later withdrawn by notice in the *Gazette*;
- the relevant tax provisions are not amended.

Scheme

12. The scheme 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 scheme and are to be read with this description. The relevant documents or parts of documents incorporated into this description of the scheme are:

- Application for Class Ruling dated 20 December 2004, lodged on behalf of the South Australian Department of Health and additional information provided on 26 April 2005, 22 June 2005, 15 November 2005, 1 December 2005 and 9 March 2006;
- Standard Private Practice Agreement (Memorandum of Agreement) for Full-time Specialists (Salaried Medical Officers);
- Standard Private Practice Agreement (Memorandum of Agreement) for Part-time Specialists (Salaried Medical Officers);
- South Australian Medical Officers Award;
- Department of Health Salaried Medical Officers Enterprise Agreement 2005;
- sample Letter of Appointment for a medical officer;
- sample Special Purpose Fund Deeds; and
- sample Equipment Fund operating terms of reference.

13. The Specialists are employees of a Health Agency. Their employment conditions are contained in the South Australian Medical Officers Award and the Department of Health Salaried Medical Officers Enterprise Agreement 2005. Each Specialist has an entitlement under their Letter of Appointment to apply for approval to conduct limited private practice in accordance with the Standard Private Practice Agreement.

14. The Specialist and Health Agency enter into a Standard Private Practice Agreement (the Agreement). Under clause 4 of the Agreement, the Health Agency grants the Specialist permission to engage in individual private practice at the Health Agency subject to the terms and conditions in that Agreement.

15. Under clause 14(a) of the Agreement, the Specialist appoints the Health Agency as agent to render accounts in the Specialist's name and collect payments on his/her behalf in respect of the private practice.

16. The Health Agency maintains a holding account for each Specialist engaged in private practice. All fees collected on behalf of a Specialist are paid into that Specialist's holding account (clause 18 of the Agreement). The funds are separately identified in the Health Agency's financial statements as being administered funds which are not within its control.

17. The Health Agency agrees to provide to the Specialist, facilities and resources (clause 12 of the Agreement), billing services (clauses 14(a) and 20) and professional indemnity cover (clause 24) in connection with the conduct of private practice.

18. Under the terms of the Agreement, the Specialist must pay certain amounts to the Health Agency as consideration for allowing the Specialist to engage in private practice using the Health Agency's facilities and resources:

- an administration fee under clause 5(g)(A) of the Agreement (generally 9% of billings in the holding account, plus GST). This amount is payable as a contribution towards professional indemnity cover and billing services; and
- any residual (plus GST) which occurs if the Specialist's billings, after paying the administration fee, exceed their particular income limit set under the Agreement (commonly 65% or 45% of base salary depending on the speciality). The residual is required to be paid into the Health Agency's Special Purpose Fund and Equipment Fund in fixed proportions (usually 80% and 20% respectively). (This is provided for in clause 5(g)(B) and (C). The applicable GST is added in accordance with clause 17 and Schedule 2 to the Agreement.)

19. A Special Purpose Fund is established in each Health Agency by way of a deed. Amounts in the Fund are applied by the Health Agency for its own use and benefit for medical research, travel, training, advancement of education and similar. Under the terms of the deed, no portion of the fund shall be applied for the personal profit of any Specialist or employee of the Health Agency.

20. An Equipment Fund is established and managed by each Health Agency for the purchase of equipment for the Health Agency. The Health Agency retains unfettered control over the use and disposition of such equipment (clause 23 of the Agreement).

21. In accordance with clause 5(g) of the Agreement, the administration fee and payments to the Special Purpose Fund and Equipment Fund are payable from the total billings collected on behalf of the Specialist in any practice period, and calculated on the total amount. A practice period for this purpose is defined in clause 2(n) of the Agreement as a period during which the Specialist is entitled to engage in private practice under the Agreement, ending on 31 May each year.

22. Clause 19 of the Agreement requires the Health Agency to make interim payments and deductions from the holding account having regard to clause 5. Schedule 2 to the Agreement sets out the interim payments and GST procedure under which the Specialist receives a monthly payment from their holding account net of the administration fee and subject to their agreed income cap. On a quarterly basis, the Health Agency issues a tax invoice for the administration fee and any amounts payable into the Special Purpose Fund and Equipment Fund, plus GST applicable to those amounts. The relevant amounts are then paid quarterly from the Specialist's holding account. The quarterly invoices and payments (in September, December, March and June) cover the previous 3 months. For example, the September invoice will show information for June to August.

Ruling

Private practice income

23. The gross fees of the Specialist, billed under the private practice arrangement, are derived as ordinary income and are assessable income of the Specialist under section 6-5 of the ITAA 1997 when they are received by the Health Agency on the Specialist's behalf. Under section 17-5 of the ITAA 1997, the assessable amount is exclusive of any GST component.

Deductibility of amounts paid to The Health Agency

24. A deduction is allowable under section 8-1 of the ITAA 1997 to the Specialist for the administration fee and amounts payable into the Health Agency's Special Purpose Fund and Equipment Fund under the terms of the Standard Private Practice Agreement, except to the extent it includes an amount relating to input tax credit entitlements or a GST decreasing adjustment (section 27-5 of the ITAA 1997).

25. The outgoing is incurred at the time the quarterly tax invoice is issued in respect of the administration fee and the residual amount payable into the Special Purpose Fund and Equipment Fund (if applicable).

Instalment income

26. The gross fees of the Specialist, billed under the private practice arrangement, are part of the Specialist's instalment income as defined in section 45-120 of Schedule 1 to the TAA.

Payments to the Specialist from the holding account

27. Payments by the Health Agency to a Specialist from that Specialist's holding account are not subject to PAYG withholding under section 12-35 of Schedule 1 to the TAA.

Commissioner of Taxation
12 April 2006

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.

Private practice income

28. Under the private practice arrangement, the Specialist attends to private patients in the hospital utilising the Health Agency'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 the Health Agency. The Health Agency acts as the Specialist's agent in billing and collecting the amounts due by the patient (clause 14(a) of the Standard Private Practice Agreement). The gross fees of the Specialist are derived as ordinary income and are assessable income of the Specialist under section 6-5 of the ITAA 1997.

29. The decision in a Board of Review case reported as *Case T44* 86 ATC 366 supports the assessability of the fees. 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.

30. Section 17-5 of the ITAA 1997 provides that an amount is not assessable income, and is not exempt income, to the extent that it includes an amount relating to GST payable on a taxable supply or certain GST increasing adjustments.

31. Where the Specialist is registered or required to be registered for GST and the Specialist's billings include an amount for a taxable supply – such as for the supply of medical reports to an insurer or employer – the assessable income does not include the GST component.

Deductibility of amounts paid to The Health Agency

32. Under subsection 8-1(1) of the ITAA 1997, the Specialist is entitled to claim a deduction for amounts payable to the Health Agency under the Standard Private Practice Agreement, except to the extent it includes an amount relating to input tax credit entitlements or a GST decreasing adjustment.

33. The Specialist is required, as a condition of engaging in private practice using the Health Agency's facilities and resources, to pay certain amounts to the Health Agency. The administration fee plus GST is payable as a contribution towards professional indemnity cover and billing services provided by the Health Agency. If the Specialist's billings reach a specified level, the Specialist must also pay the residual amount plus GST into the Health Agency's Special Purpose Fund and Equipment Fund. This amount is payable as consideration for allowing the Specialist to engage in private practice using the Health Agency's facilities and resources. That is, the amounts are payable for billing services, professional indemnity cover and the use of the facilities and resources needed to undertake individual private practice from which the Specialist derives assessable income.

34. In these circumstances, the amounts payable by the Specialist to the Health Agency under the Standard Private Practice Agreement are outgoings that the Specialist necessarily incurs in carrying on a business for the purpose of gaining or producing assessable income.

35. The outgoings are incurred at the time the quarterly tax invoices are issued. The meaning of 'incurred' for the purposes of a deduction under section 8-1 of the ITAA 1997 (formerly subsection 51(1) of the *Income Tax Assessment Act 1936*) is considered in Taxation Ruling TR 94/26: Income tax: subsection 51(1) – meaning of incurred – implications of the High Court decision in Coles Myer Finance. Paragraph 3 of that Ruling states:

> In most cases where a loss has not been realised or an outgoing has not been made, a presently existing pecuniary liability, at the end of the relevant income year, will be a necessary prerequisite to an expense being 'incurred' for the purposes of subsection 51(1) (*Coles Myer Finance* 93 ATC 4220; 25 ATR 95; *Nilsen Development Laboratories Pty Ltd & Ors v. FC of T* 81 ATC 4031; 11 ATR 505). In this respect it is not sufficient that the liability to pay is pending, threatened or expected, no matter how certain it is in the year of income that the loss or outgoing will occur in a future year (*Nilsen Development Laboratories* 81 ATC 4031; 11 ATR 505). However, this does not mean that there must be an actual disbursement of money. It is sufficient if the presently existing liability is due though payable in a future year (*Nilsen Development Laboratories*; *FC of T v. James Flood Pty Ltd* (1953) 88 CLR 492).

36. Paragraph 6 of TR 94/26 states:

> Whether there is a presently existing pecuniary liability is a question which must be determined in light of the particular facts of each case, and especially by reference to the terms of the contract or arrangement under which the liability is said to arise (*Nilsen Development Laboratories*; *James Flood* (1953) 88 CLR 492; *Ogilvy and Mather Pty Ltd v. FC of T* 90 ATC 4836; 21 ATR 841; and *Woolcombers (WA) Pty Ltd v. FC of T* 93 ATC 5170). This may require a careful analysis of such things as contracts (*Ogilvy and Mather Pty Ltd v FC of T* 90 ATC 4836; 21 ATR 841; and *Woolcombers*), industrial awards (*Nilsen Development Laboratories*; *James Flood*) or particular statutes.

37. Clause 5(g) of the Agreement requires the Specialist to pay amounts from, and calculated on, the total amount of fees collected for the Specialist in any practice period. This creates an annual liability at the end of each practice period on 31 May, subject to any interim payments required under clause 19 and Schedule 2 to the Agreement. As tax invoices are issued requiring payment on a quarterly basis, the outgoing is incurred at that time.

38. Where the Specialist is registered or required to be registered for GST, section 27-5 of the ITAA 1997 requires that input tax credit entitlements and GST decreasing adjustments are to be excluded from the amount deductible. A decreasing adjustment can arise where the input tax credit originally allowed was too little because of an adjustment event – such as an increase in the previously agreed consideration for an acquisition.

Instalment income

39. Under subsection 45-120(1) of Schedule 1 to the TAA, ordinary income is included in instalment income to the extent it is assessable income. Income subject to PAYG withholding (other than where the withholding is due to a failure to quote an ABN or TFN), and certain personal services amounts assessable under section 86-15 of the ITAA 1997, are excluded from instalment income under subsection 45-120(3) of Schedule 1 to the TAA.

40. The gross billing income of the Specialist is assessable as ordinary income (see paragraph 23 of this Ruling) and is not covered by any of the exclusions to instalment income. Therefore the gross billing income is included in instalment income for the purpose of the PAYG instalment system.

Payments to the Specialist from the holding account

41. The Specialist's holding account is maintained by the Health Agency for the Specialist's private practice billings that the Health Agency collects as agent for, and on behalf of the Specialist.

42. Payment by the Health Agency to a Specialist of amounts from that Specialist's holding account is a distribution of the Specialist's own moneys and is not a payment in respect of their employment by the Health Agency. Therefore, these payments are not subject to PAYG withholding under section 12-35 of Schedule 1 to the TAA.

Appendix 2 – Detailed contents list

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

References

Previous draft:

Not previously issued as a draft

Related Rulings/Determinations:

TR 94/26

Subject references:

- business expenses
- business income
- health professionals
- medical practitioners
- PAYG instalments
- PAYG withholding

Legislative references:

- ITAA 1997 6-5
- ITAA 1997 8-1
- ITAA 1997 8-1(1)
- ITAA 1997 17-5
- ITAA 1997 27-5
- ITAA 1997 86-15
- ITAA 1936 51(1)
- TAA 1953
- TAA 1953 Sch 1 12-35
- TAA 1953 Sch 1 45-120
- TAA 1953 Sch 1 45-120(1)
- TAA 1953 Sch 1 45-120(3)
- South Australian Health Commission Act 1976
- Copyright Act 1968

Case references:

- Board of Review Case T44 86 ATC 366
- Coles Myer Finance 93 ATC 4220; 25 ATR 95
- FC of T v. James Flood Pty Ltd (1953) 88 CLR 492
- Nilsen Development Laboratories Pty Ltd & Ors v. FC of T 81 ATC 4031; 11 ATR 505
- Ogilvy and Mather Pty Ltd v. FC of T 90 ATC 4836; 21 ATR 841
- Service v. FC of T (2000) 97 FCR 265; 2000 ATC 4176; (2000) 44 ATR 71
- Woolcombers (WA) Pty Ltd v. FC of T 93 ATC 5170

ATO references

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