

CR 2020/70 - Queensland Health clinicians - private practice arrangement



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Class Ruling

Queensland Health clinicians – private practice arrangement

❶ Relying on this Ruling

This publication (excluding appendix) is a public ruling for the purposes of the *Taxation Administration Act 1953*.

If this Ruling applies to you, and you correctly rely on it, we will apply the law to you in the way set out in this Ruling. That is, you will not pay any more tax or penalties or interest in respect of the matters covered by this Ruling.

Further, if we think that this Ruling disadvantages you, we may apply the law in a way that is more favourable to you.

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What this Ruling is about

1. This Ruling sets out tax consequences for clinicians who have a private practice agreement with Queensland Health through a Queensland hospital and health service (HHS) provider or the Department of Health.
2. Details of this employment arrangement are set out in paragraphs 16 to 24 of this Ruling.
3. All legislative references are to provisions of the *Income Tax Assessment Act 1997* (ITAA 1997) unless otherwise indicated.

Who this Ruling applies to

4. This Ruling applies to you if you are a senior medical officer (SMO) or a visiting medical officer (VMO) (together referred to as 'clinicians') employed by a HHS provider or the Department of Health and you have been granted a right to engage in private practice under the Assignment Arrangement or Retention Arrangement.

When this Ruling applies

5. This Ruling applies for the income year ended 30 June 2020 and subsequent income years.

When this Ruling does not apply

6. This Ruling will not apply if:
- the scheme actually carried out at a point in time is materially different to that described at paragraphs 16 to 24 of this Ruling
 - a taxation law change affects how the relevant provision applies to you in relation to the scheme, or
 - it is withdrawn.

Ruling

Private practice revenue

7. The private practice revenue derived under either the Assignment Arrangement or Retention Arrangement is your ordinary income under subsection 6-5(1). As such, the private practice revenue derived by you in an income year will be included in your assessable income under subsection 6-5(2) for that income year.

8. Your assessable income does not include any goods and services tax (GST) component of the private practice fees by virtue of section 17-5.

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

9. Where you nominate under clause 6(1)(a) of the VMO contract to have your accounts rendered in the name of another entity or entities, and the amounts are remitted in accordance with that nomination or a direction under clause 8(3)(c) of that contract, the private practice revenue under either the Assignment Arrangement or Retention Arrangement is your ordinary income under subsection 6-5(1) and not the ordinary income of the entity or entities nominated by you.

10. As the private practice revenue is your ordinary income under subsection 6-5(1), the private practice revenue derived by you in an income year will be included in your assessable income under subsection 6-5(2) for that income year.

Deductibility of assignment private practice revenue

11. A deduction is allowable to you under paragraph 8-1(1)(a) for private practice revenue assigned by you to the HHS provider or the Department of Health under the Assignment Arrangement.

Deductibility of service retention amount

12. A deduction is allowable to you under paragraph 8-1(1)(a) for the service retention amount remitted by you to the HHS provider or the Department of Health under the Retention Arrangement.

Deductibility of service fee

13. A deduction is allowable to you under paragraph 8-1(1)(a) for the service fee remitted by you to the HHS provider or the Department of Health under the Retention Arrangement.

Pay as you go (PAYG) instalments – instalment income and instalment rate

14. The private practice revenue derived by you under either the Assignment Arrangement or Retention Arrangement for your services to private patients is included in your instalment income as defined in subsection 45-120(1) of Schedule 1 to the *Taxation Administration Act 1953* (TAA).

15. If you are a quarterly or monthly payer under the PAYG instalment system, you may choose to vary your instalment rate under section 45-205 of Schedule 1 to the TAA.

Scheme

16. The following description of the scheme is based on information provided by the applicant. If the scheme is not carried out as described, this Ruling cannot be relied upon.

17. Queensland Health is responsible for the management, administration and delivery of public health services in Queensland. Queensland Health is comprised of the governing Department of Health and HHS providers, established under the *Hospital and Health Boards Act 2011* (Qld).

18. VMOs and SMOs can be party to an employment agreement with the HHS providers and the Department of Health.

19. Pursuant to the contracts of employment for VMOs, the applicable industrial relations award, and the certified agreement for SMOs, a HHS provider or the Department of Health may choose to grant clinicians permission to participate in one of two types of private practice arrangement during the contract period of employment – an ‘Assignment Arrangement’ or a ‘Retention Arrangement’.

20. Under either arrangement, the clinician appoints the HHS provider or the Department of Health as billing 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 the private practice revenue. The clinician is required to prepare and keep records pertaining to the private practice for the purposes of enabling the billing agency to render accounts to private patients.

Assignment Arrangement

21. Under the Assignment Arrangement, a HHS provider or the Department of Health requires a clinician to engage in private practice and to treat a private patient in response to clinical need, business requirements or patient choice. Private practice can be granted by the HHS provider or the Department of Health to the clinician under this model. This is the default arrangement and is specifically included as part of the clinician’s employment arrangement.

22. Under clause 6.2(a) of the SMO contract or clause 8(2)(a) of Schedule 3 of the VMO contract, the clinician engages in private practice during employed time and agrees to assign to the HHS provider or the Department of Health the full amount of any private practice revenue. The HHS provider or the Department of Health acts as billing agent on behalf of the clinician and retains all revenue it is assigned. In return, the clinician engaged under a SMO contract may receive an additional allowance based upon a proportion of their salary. Clinicians engaged in private practice under a VMO contract may not receive an additional allowance.

Retention Arrangement

23. Under the Retention Arrangement, a HHS provider or the Department of Health may grant a clinician permission to engage in private practice during employed time and allow the clinician to retain the private practice revenue after paying the applicable service fees for use of the HHS provider or the Department of Health's resources, infrastructure and administrative support (clause 8(2)(b) of Schedule 3 of the VMO contract and clause 6.2(b) of the SMO contract) up to the earnings ceiling published periodically in the Queensland Health Fees and Charges Register.

24. Where the private practice revenue (net of service fees) exceeds this earnings ceiling, the clinician is required to pay to the HHS provider or the Department of Health \$2 in every \$3 from that point for the remainder of the financial year (the Service Retention Amount). The net amount retained by the clinician is to be remitted by the billing agency of the HHS provider or the Department of Health as directed by the clinician.

Appendix – Explanation

❗ *This Explanation 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.*

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Assessability of private practice revenue to the clinician: Assignment Arrangement

25. Subsection 6-5(1) 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) 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.

26. An amount is ordinary income, and therefore may be included in assessable income under section 6-5, 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.¹

27. As part of the private practice arrangement between the clinician and the HHS provider or the Department of Health, 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.

28. Therefore, it is the clinician providing the personal services under the Assignment 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.

¹ For example, in Board of Review Case T44 86 ATC 366 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 the doctor's 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.

29. The HHS provider or the Department of Health acts as the agent of the clinician by billing and collecting the fees from the private patients. These fees are the property of the clinician who then assigns them to the HHS provider or the Department of Health.

30. As such, under subsection 6-5(2), the clinician's assessable income for an income year (subject to the exceptions in paragraph 31 of this Ruling) includes the total assignment private practice revenue received by a clinician under the Assignment Arrangement that is derived by the clinician in that income year.

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

- GST payable on a taxable supply
- 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.

Assessability of private practice revenue to the clinician: Retention Arrangement

32. The explanation relating to the assessability of private practice revenue to the clinician under the Assignment Arrangement at paragraphs 25 to 31 of this Ruling applies equally to the assessability of private practice revenue to the clinician under the Retention Arrangement.

33. As such, under subsection 6-5(2), 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

34. Where, under either Arrangement, the clinician nominates to have their accounts rendered in the name of another entity or entities (clause 6(1)(a) of the VMO contract or clause 5(b) of the SMO contract), and the amounts are remitted in accordance with that nomination or a direction under clause 8(3)(c) of the VMO contract, the private practice revenue is income according to ordinary concepts of the clinician.

35. 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) and not the ordinary income of the entity or entities nominated by the clinician.

36. Consequently, as the private practice revenue is the clinician's ordinary income under subsection 6-5(1), 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) for that income year.

Deductibility of losses or outgoing generally

37. Subsection 8-1(1) 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.

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

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

Deductibility of amounts to the clinician that have been assigned or remitted by the clinician: Assignment Arrangement

39. Under the Assignment Arrangement, in accordance with paragraph 8(2)(a) of the VMO contract, either the HHS provider or the Department of Health 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.

40. The assignment of the full amount of any private practice revenue by the clinician to the HHS provider or Department of Health 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).²

41. Accordingly, the assignment of the full amount of any private practice revenue by the clinician to the HHS provider or Department of Health under the Assignment Arrangement is deductible to the clinician under paragraph 8-1(1)(a).

Deductibility of amounts to the clinician that have been assigned or remitted by the clinician: Retention Arrangement

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

² For example in *Service v Commissioner of Taxation* [2000] FCA 188, 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.

43. Under the Retention Arrangement, in accordance with paragraph 8(3)(b) of the VMO contract, the HHS provider or the Department of Health and the clinician agree for the HHS provider or the Department of Health to remit the service retention amount to the HHS provider or the Department of Health.

44. Under the Retention Arrangement, in accordance with paragraph 8(3)(a) of the VMO contract, the HHS provider or the Department of Health and the clinician agree for the HHS provider or the Department of Health 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 HHS provider or the Department of Health.

45. In these circumstances, the service retention amount and the service fee remitted by the clinician to the HHS provider or the Department of Health 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).

46. Accordingly, the service retention amount and the service fee remitted by the clinician to the HHS provider or the Department of Health under the Retention Arrangement is deductible to the clinician under paragraph 8-1(1)(a).

PAYG instalments

47. 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.

48. 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

49. 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.

50. 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

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

52. 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.

53. As such, clinicians who are quarterly or monthly payers engaged under the 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.

References

Previous draft:

Not previously issued as a draft

Related Rulings/Determinations:

TR 2006/10

Legislative references:

- ITAA 1936
- 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
- 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:

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

ATO references

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