GPSA
GENERAL PRACTICE SUPERVISORS AUSTRALIA

Payroll Tax

Proposal: National Council of Primary Care Doctors (NCPCD) calls on all state and territory Revenue Offices to exempt general practice from Payroll tax.

Payroll tax will lead to increased patient costs, increased ramping and hospital presentations. General Practice will need to increase prices to cover the costs and reduce the GP workforce through practice closures and less doctors wanting to train in general practice.

Background
Payroll tax is a state/territory-based tax assessed on wages paid or payable by employers where wages exceed a threshold amount.

The threshold amount is set by each state and territory and may change each financial year. (Appendix 1)

There have been 3 cases the past 3 years, significant cases in NSW and Vic which have challenged how payroll tax is applied to GPs who work as 'contractors'. Thomas and Naaz being the most recent (Appendix 2)

Although this is a state issue it needs a national approach to inform and pressure state governments on the implications of enforcing payroll tax on previously exempt general practice.

How do most community GP's work?
GPs are engaged by the medical practice as tenant doctors. The tenant doctors pay the medical practice a service fee for the facilities, nursing support and administration services. The GP consults with the patient. The patients engages the GP via the medical practice entity, which collects fees for the medical services provided to the patients on behalf of the GP.

The Risk of Payroll Tax

- Increase costs to patients(voters) as fees increase to cover costs
- Increase ramping and pressure on hospitals (states)
- Change the way GPs work – tenant doctor to employees. Appendix 3 for costs comparison
- Impact on Strengthening Medicare and Voluntary Patient Registration – Who is the patient enrolled with – GP or practice?
- Create a financial burden on already struggling community general practices leading to closures. GP practices are individually spending significant amounts on legal and accounting advice.
- Workforce: less GPs wanting to come into general practice and may reduce training capacity as employment of registrars may put practices over the threshold.

Appendix 1.
For the 2022 financial year, the thresholds are:

Jurisdiction	Threshold
Victoria	$650,000 (annually) $54,166 (monthly)
New South Wales	$1,200,000 (annually) $101,918 (31-day month) $98,630 (30-day month) $92,055 (28-day month)
Australian Capital Territory	$2,000,000 (annually) $166,666.66 (monthly)
Queensland	$1,300,000 (annually) $108,333 (monthly) $25,000 (weekly)
Northern Territory	$1,500,000 (annually) $125,000 (monthly)
Western Australia	$1,000,000 (annually) $83,333 (monthly)
South Australia	$1,500,000 (annually) $125,000 (monthly)
Tasmania	$1,250,000 (annually) $106,164 (31-day month) $102,740 (30-day month) $95,890 (28-day month)

Appendix 2. Thomas and Naaz P/L v Chief Commissioner of State Revenue

This most recent case was decided in the NSW Civil and Administrative Tribunal in September 2021. The taxpayer operated three medical centres in NSW.

Much like the two previous cases discussed, the taxpayer engaged GPs for medical services, either individually or through their entities, with an agreement. The agreement included:

- GPs provided with access to consultation room in the medical centre and shared administrative and medical support services,
- GPs were required to see patients, and patients paid the taxpayer for the services received
- The majority of the GPs assigned the taxpayer to deal with Medicare to obtain benefits for their services
- GPs were required to provide services on a five day per week basis, including weekend rotation

The Agreement required the GP have certain qualifications and insurances, along with other general obligations, including:

- Promoting the interests of the clinics
- Meet roster commitments
- Sign in and out of each shift
- Completing all necessary documentation for taxpayer's operating protocols
- GPs were required to bulk-bill patients and pay 30% plus GST of billings to the taxpayer

- GPs were paid a minimum rate of $140 per hour (inclusive of GST) or 30% plus GST paid to the taxpayer (whichever was higher)
- A rostered day was nine hours with a one-hour unpaid lunch break
- Payments would be made to the GPS fortnightly, two weeks in arrears
- At the end of the first four weeks of the agreement and every fortnight, thereafter, amounts equal to 70% of the claims paid by Medicare were paid to the attributable GP
- GPs were required to provide notice for planned leave, and wer allowed a maximum of four-weeks leave per 12 month period
- A restrictive covenant was imposed that the GP could not practice within 5km from the medical centre for a period of 2 years after their departure.

The issues dealt with in this case are identical to those in *Homefront Nursing*, being:

1. Did the Agreement meet the 'relevant contracts' requirement in s32?

2. Where the payments made to the GP's wages for the purposes of s35?

As concluded in *Homefront*, the Tribunal determined that the GPs were providing a service to patients as well as the taxpayer under the Agreement, and therefore met the 'relevant contract' requirement.

On the issues of whether the payments were wages – the Tribunal considered the nexus between performance of work and payments. The Tribunal identified the following facts as indicators:

1. the GPs provided the services to patients

2. the patients assigned their medical benefits to the GPs

3. the taxpayer, on behalf of the GP, submitted the assigned claims for the medical benefits to Medicare

4. Medicare paid those benefits to the taxpayer, and

5. the taxpayer retained 30% pf the amounts from Medicare and paid the remaining 70% to the GP

The Tribunal differed in their opinion in this case compared to *Homefront Nursing.* The Tribunal considered that these facts showed the relationship between the services provided by the GPs and the payments made by the taxpayer to the GPs. As a result, the payments to the GP's were considered to be wages for the purposes of payroll tax.

Both the *Homefront Nursing* and *Thomas and Naaz* cases had similar fact patterns, however the Tribunal came to different decisions – resulting in an unexpected payroll tax liability for a structure that was previously widely believed in the industry not to incur payroll tax liabilities.

Written by Bruce Collins – Tax Controversy Partners

CONTACT – online contact form, via email at admin@taxcontroverypartners.com.au or by phone at +61 2 8513 3813.
https://taxtechnical.com.au/59883-2/

https://www.revenue.nsw.gov.au/help-centre/resources-library/case-summary/thomas-and-naaz-pty-ltd-v-chief-commissioner-of-state-revenue-2021-nswcatad-259#:~:text=The%20applicant%20relied%20on%20Homefront,doctors%20and%20the%20applicant%20was

Appendix 3. Comparison of Employee Doctor vs Tenant Doctor

Value of employee statutory entitlements:			
Annual Leave	7.69%	20 days per year	
Personal leave	3.85%	10 days per year (if taken)	
Public holidays (QLD)	3.85%	10 days per year	
Long service leave (QLD)	1.67%	8.6667 weeks for 10 years of continuous service	
Superannuation (2023 FY)	10.50%		
Employer additional obligations:			
Workcover (2023 FY)	0.322%	[Workcover industry classification - General Practice Medical services] [Policy rating 1 - 80% of IR] [Wages less than $1,500,000]	
Payroll tax (2023 FY)	4.75%	$1,300,000 - $6,500,000 (if applicable)	
Equivalent position to Independent contractor on 65% of billings:			
Employee Billing %	**48%**		
Annual Leave	3.69%		
Personal leave	1.85%		
Public holidays (QLD)	0.14%		
Long service leave (QLD)	0.03%		
Superannuation (2023 FY)	5.04%		
Workcover (2023 FY)	0.322%		
Payroll tax (2023 FY)	4.75%		
Independent contractor billing %	**64%**		

https://www.healthandlife.com.au/new-medical-practice-payroll-tax-ruling-how-you-pay-your-contractor-doctors-may-affect-your-bottom-line/