

2024/2025 Summer Edition

TAX MATTERS

For Medical & Dental Practitioners

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ASSET PROTECTION STRATEGIES FOR PRACTITIONERS

Asset protection means protecting your home and other assets you own against claims against you. As a practitioner, there is always the risk associated with a patient making a negligence claim.

For some practitioners the risk is higher than others due to the field of medicine/dentistry they work in and the type of surgery they perform. For those practitioners operating private practices where they are employing staff, renting premises, financing equipment etc., the risks are increased.

Each practitioner's circumstances will differ and this needs to be taken into account when considering potential asset protection strategies. Listed below are some key strategies:

- Have the appropriate level of professional indemnity insurance;
- Ensure your professional skills are kept up to date;
- Have the appropriate level of business insurances, including where applicable: worker compensation, contents, building, public liability, business interruption, directors and equipment insurance;
- Where practical, ensure the practitioner (the 'at risk' person) does not own assets in their own name;

- Have investment assets held in a discretionary trust, Self Managed Super Fund (SMSF) or in the name of the spouse of the practitioner, assuming the spouse is also not an 'at risk person';
- Have the appropriate business/practice operating structure(s);
- Have good systems and processes in place, which will help to minimise errors;
- Ensure assets and investments are held in the correct legal name;
- Ensure you have an appropriate estate plan.



We are an accounting firm specialising in providing accounting, taxation and advisory services to medical and dental professionals. As a result of our many years of experience, we have a comprehensive understanding of the needs, issues and concerns that are unique to medical and dental professionals.

Please refer to our website for further details.



ATO SCRUTINY - ALLOCATION OF PROFESSIONAL FIRM'S PROFITS

On 16 December 2021, the ATO announced the finalisation of *PCG 2021/4 - Allocation of professional firm profits - ATO compliance approach*, which applies from 1 July 2022. The guidelines set the ATO's compliance approach to the allocation of profits or income from professional firms in the assessable income of the individual professional practitioner.

Professional firms named as being covered by the guidelines include **medicine**, architecture, law and engineering. However, the guidelines definition of 'professional' is very broad. A 'professional' is defined as a member of a recognized profession. Therefore, the guidelines would also cover **dental practices and dental practitioners**.

Transitional arrangements ceased 30 June 2024

The guidelines included transitional arrangements, which permitted businesses with pre-existing arrangements, subject to certain conditions being satisfied, to continue with those arrangements until 30 June 2024. **Commencing 1 July 2024**, the transitional arrangements no longer apply and the ATO expects all professional firms to comply with the guidelines.

Guideline Targets

The guidelines are targeted at the owners of professional firms who also work in the business as practitioners. The issue in the ATO's sights is whether the practitioner is being taxed on a sufficient amount of the profits of the business or are a disproportionate amount of the profits being allocated to related parties (i.e. family members) on a lower tax rate.

Income derived by a professional practitioner from their own efforts is regarded as personal services income and must be included in the practitioner's tax return. Where a practice firm has many practitioner employees, it is the business structure which is deriving the profit. However, the ATO still takes the position that some of the profits of the business is attributed personally to the owner practitioner(s).

The ATO Guideline uses two 'gateways' and a risk assessment framework of objective factors to rate the individual professional practitioners (IPP) arrangement as low (green), moderate (amber) or high (red) risk.

For the guidelines to apply both gateways must be passed.

The two gateways are:

- There must be a sound commercial rationale for entering into the arrangement or structure; and
- There must not be certain 'high- risk features'.

If the gateways are passed, the risk assessment framework explained in the Guideline may be used.

The following table sets out the score for each risk assessment factor:

| Risk Assessment Factor | Score | | | | | |
|---|-------|------------------|------------------|-----------------|----------------|-------|
| | 1 | 2 | 3 | 4 | 5 | 6 |
| (1) Proportion of profits entitlement from the whole of firm group returned in the hands of IPP | >90% | >=75% to <=90% | >=60% to <=75% | >=50% to <=60% | >=25% to <=50% | <=25% |
| (2) Total effective tax rate for income received from the firm by the IPP and associated entities | >40% | >=35% to <=40% | >=30% to <=35% | >=25% to <=30% | >=20% to <=25% | <=20% |
| (3) Remuneration returned in the hands of the IPP as a percentage of the commercial benchmark for the services provided to the firm | >200% | >=150% to <=200% | >=100% to <=150% | >=90% to <=100% | >=70% to <=90% | <=70% |

The following table sets out the risk rating depending on whether you risk assess against two factors or all three factors in the above table:

| Risk Zone | Risk Level | Aggregate score against first two factors | Aggregate of all three factors |
|-----------|---------------|---|--------------------------------|
| Green | Low Risk | <=7 | <=10 |
| Amber | Moderate Risk | 8 | 11 & 12 |
| Red | High Risk | >=9 | >=13 |

With transitional arrangements ceasing on 30 June 2024, careful consideration needs to be given to how the profits of the practice are to be allocated. If profit allocations put you in the amber or red risk zones, be prepared for possible ATO scrutiny.



CHRISTMAS GIFTS TO EMPLOYEES – TAX IMPLICATIONS

To reward and thank staff, some businesses provide their employees with 'non-cash' gifts at Christmas time. Non-cash gifts provided to employees (and their associates) can give rise to Fringe Benefit Tax (FBT) consequences. Cash gifts received by an employee would usually be assessed as ordinary income and be subject to PAYG Withholding Tax.

The tax implications of a gift will depend on whether the gift is:

- an entertainment or non-entertainment gift; and
- if the cost of the gift is less than \$300 and subject to the minor benefits exemption

Entertainment gifts include tickets to the theatre, sporting event or movies, airfares, holiday accommodation, gym memberships and similar items.

Non-Entertainment gifts include Christmas hampers, bottles of wine, chocolates, gift vouchers, etc.

Minor benefits exemption allows FBT to be avoided where the benefit given meets the following criteria:

- costs less than \$300 per benefit inclusive of GST; and
- is provided on an infrequent or irregular basis.

Tax treatment of each classification of gift:

Entertainment Gift (Not Minor - \$300 or more)

- Subject to FBT
- Tax Deductible
- GST component of expense claimable

Entertainment Gift (Minor – under \$300)

- Not subject to FBT
- Not tax deductible
- GST component of expense not claimable

Non-Entertainment Gift (Not Minor - \$300 or more)

- Subject to FBT
- Tax Deductible
- GST component of expense claimable

Non-Entertainment Gift (Minor – under \$300)

- Not subject to FBT
- Tax Deductible
- GST component of expense is claimable



PAYROLL TAX – EXEMPTIONS & REBATES FOR NSW MEDICAL CENTRES

Following a recent amendment to the NSW Payroll Tax legislation on 23 August 2024, Revenue NSW released guidance on the payroll tax exemption and rebate available for medical centres that engage contractor practitioners.

The rebate and exemptions only apply to contractor general practitioners (GP's) and do not extend to GP's engaged as employees or to other staff such as nurses, receptionists, administration staff, pathology and allied health services.

Exemption

An exemption for past unpaid payroll tax in respect of 'relevant general practitioner wages' (contractor GP's) paid or payable before 4 September 2024 are exempt, unless payroll tax has already been paid on those wages before that date.

Where an employer has already paid payroll tax in respect of 'relevant general practitioner wages' paid or payable prior to 4 September 2024, the employer is not entitled to a refund.

Rebate

Subject to satisfying a bulk billing arrangement, an employer is entitled to a rebate of payroll tax paid or payable on the contractor GP's wages if the wages are paid or payable on or after 4 September 2024.

The bulk billing arrangement exemption is at least 80% for Metropolitan Sydney, otherwise at least 70%.

For purposes of determining whether a medical centre meets the relevant bulk billing arrangement, the employer must consider the total number of GP services that are bulk billed as a proportion of the total number of GP services provided by the medical centre, including those GP services provided by GP's who are engaged as employees.

Record Keeping

To allow the Chief Commissioner to verify the amount of any rebate claimed for a financial year, the medical centre must maintain sufficient records to enable Revenue NSW to calculate the amount of the rebate.

Records that should be maintain include:

- the number of GP services bulk-billed and the number of GP services that have out of pocket expenses if you are a mixed billing practice
- the locations where GP services are provided if you operate more than one medical centre
- how you have pro-rated for any GP's engaged under a relevant contract if the GP works at more than one medical centre location
- the relevant general practitioner wages for the financial year
- the payroll tax payable for the financial year when the relevant general practitioner wages are included
- the payroll tax that would be payable for the financial year if the relevant general practitioner wages are not included.



IF YOU CO OWN A PRACTICE, DO YOU HAVE AN OWNERSHIP AGREEMENT?

An 'ownership agreement' is a document between the owners of the practice and contains agreed terms as to how the practice is to be managed and also determines the rights of the owners.

The key purposes of an ownership agreement are:

- to help avoid potential conflict between the owners
- to provide a clear process on how certain identified matters are to be dealt with.

Examples of matters that may be included in the agreement:

- the processes to be followed if an owner wants to exit the practice.
- decisions which require unanimous agreement i.e., selling the practice or admitting another owner.
- owner's entitlement to benefits such as annual, personal, long service and sabbatical leave.
- the \$ value of a practice expense which requires the approval of all owners i.e., expenses over \$5,000.
- the process to be followed to resolve owner disputes.
- if required, who is to be appointed to prepare a valuation of the practice or should owners appoint more than one valuer (e.g. one each).

It is recommended an 'ownership agreement' be prepared by a solicitor who has expertise in drafting such documents.

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