

<b>REVENUE CIRCULAR PTA041</b>
<b>Relevant Contracts – Medical Centres – <i>Payroll Tax Act 2011</i></b>
Issue Date: 7 September 2023
Status: Current – Effective 1 July 2018
Previous Circular: N/A

## Preamble

1. The *Payroll Tax Act 2011* (the Act), which commenced on 1 July 2011, replaced the *Payroll Tax Act 1987* (the 1987 Act) and harmonised the payroll tax legislation in the Australian jurisdictions.
2. This revenue circular has been issued to provide guidance to medical centre businesses and reflects the position of ACT Revenue Office. This circular should not be interpreted as a change in position or interpretation.
3. A contract between a principal and a contractor may be a ‘relevant contract’ under the contractor provisions in Division 3.7 of Part 3 of the Act.
4. If the contract is a relevant contract, the principal who engages the contractor is deemed to be an employer (section 33 of the Act), the contractor is deemed to be an employee (section 34 of the Act) and payments made under the contract for the performance of work are deemed to be wages (section 35 of the Act). Deemed wages are wages (section 13 (d) of the Act) and are taxable in the Australian Capital Territory if they meet the nexus provisions under section 11 of the Act. Taxable wages are subject to payroll tax (section 6 of the Act).

## Purpose of circular

5. The purpose of this circular is to explain the application of the relevant contract provisions in the Act to an entity that conducts a medical centre business (referred to as a ‘medical centre’), including dental clinics, physiotherapy practices, radiology centres and similar healthcare providers who contract with medical, dental and other health practitioners or their entities (‘practitioners’) to provide patients with access to the services of practitioners.
6. This circular incorporates the decisions in *Thomas and Naaz Pty Ltd v Chief Commissioner of State Revenue* [2023] NSWCA 40 (“the Thomas and Naaz case”) and the *Commissioner of State Revenue (Vic) v The Optical Superstore Pty Ltd* [2019] VSCA 197 (“the Optical

Superstore case”), which considered the application of the relevant contractor provisions in the context of arrangements between medical and optometry centres and practitioners.

## **Circular**

### **Liability for payroll tax**

7. Part 2 of the Act imposes liability for payroll tax. Whether there is a payroll tax liability will depend on the particular facts and circumstances of each matter.
8. Generally, payroll tax is payable by employers on all taxable wages paid to a common law employee (Part 2 Division 2.1 of the Act).
9. Where there is no common law employer-employee relationship, liability for payroll tax will arise if it is established amounts are paid under a relevant contract to a contractor (Part 3 Division 3.7 of the Act).
10. Where there is no common law employer-employee relationship or no relevant contract involving a contractor, liability may still arise if it is established amounts are paid under a ‘employment agency contract’ to a service provider (Part 3 Division 3.8 of the Act).
11. If liability for payroll tax arises due to the operation of Part 3 Division 3.7 or 3.8 of the Act, there are deeming provisions that apply to bring contractors and employment agents within the operation of Part 3 Division 3.1 of the Act.
12. Under Part 2 Division 2.1 of the Act, employers are liable to payroll tax on wages paid by common law employers to employees. The definition of ‘wages’ includes amounts paid ‘to a person who is not an employee in the same way as it applies to wages paid or payable to an employee’. The term ‘employee’ is not defined in the Act, therefore common law employment tests apply to determine whether a worker is an employee. For further details refer to Revenue Circular PTA038 *Determining whether a worker is an employee*.
13. In many cases, the common law employer tests can be difficult for businesses to apply to accurately assess their liability when they engage contractors. Further, it was recognised the increasing use of contractor arrangements to convert common law employees to contractor arrangements provided increased opportunities for revenue avoidance. As a result, the Act includes contractor provisions (Part 3 Division 3.7).
14. Consequently, the definition of ‘wages’ also includes an amount taken to be wages under another provision of the Act. Therefore, in addition to wages paid to a common law employee under Division 2.1, Division 3.7 makes payments to contractors providing services under a relevant contract liable to payroll tax unless one or more exemptions in Division 3.7 apply. The Division 3.7 exemptions are designed to exclude payments to certain contractors.
15. This has the result that if the contract is a relevant contract, the principal is deemed to be an employer, the contractor is deemed to be an employee and payments made under the contract for the performance of work are deemed to be wages unless an exemption applies.

### ***Application of relevant contract provisions to a medical centre***

16. A contract between an entity that conducts a medical centre, and a practitioner is a relevant contract under section 32 of the Act if all the following apply:

- a. the practitioner carries on a business or practice of providing medical-related services to patients;
  - b. in the course of conducting its business, the medical centre:
    - i. provides members of the public with access to medical-related services; and
    - ii. engages a practitioner to supply services to the medical centre by serving patients on its behalf; and
  - c. an exemption under section 32(2) of the Act does not apply.
17. Under section 31 of the Act, 'contract' includes an agreement, arrangement or undertaking, whether formal or informal and whether express or implied.
18. If a medical centre engages a practitioner to practise from its medical centre or holds out to the public that it provides patients with access to medical services of a practitioner, it is likely the relevant contract provisions will apply to the contract with the practitioner unless an exception (that is an exemption) applies.
19. A practitioner engaged by a medical centre to serve patients for or on behalf of the medical centre under a relevant contract supplies services to the medical centre as well as to patients (see *The Optical Superstore Pty Ltd v Commissioner of State Revenue* [2018] VCAT 169 at [82]-[85]).

***Separate business conducted by medical centres and practitioners***

20. Under a relevant contract, the medical centre and each practitioner engaged by the medical centre conducts separate but related businesses (see, for example, *Commissioner of Taxation v Healius Ltd* [2020] FCAFC 173 at 32). The medical centre provides patients with access to medical services provided by practitioners. The medical centre also provides services and facilities to the practitioners and patients by attracting patients, advertising the services offered by practitioners, managing the services provided to patients including arranging appointments and billing patients either directly or by bulk billing Medicare, and maintaining patient records.
21. Practitioners have professional responsibility for the medical care and advice they provide to patients. The services provided by practitioners are provided during their own business. However, the medical centre has operational or administrative control over the practitioners if it is able to influence matters such as who practices at the centre, the hours and days when they practice, and the space within the centre where that occurs.

***When is a contract a relevant contract?***

22. A contract is a relevant contract under section 32(1) of the Act if it provides for the supply of services 'in relation to the performance of work' by one party for or on behalf of the other party unless one of the exemptions in section 32(2) of the Act applies. The reference to services 'in relation to the performance of work' is satisfied if the services performed under the contract are work-related.
23. The requirement that a practitioner supplies services to a medical centre is satisfied if the practitioner serves patients for or on behalf of the medical centre. This principle has been endorsed by the High Court in *Accident Compensation Commission v Odco Pty Ltd* [1990] HCA 43; (1990) 95 ALR 641 at 652 (paragraph 30) concerning similar Victorian legislation regulating workers' compensation. This principle has also been applied by courts<sup>1</sup> and tribunals in a range of industries including cases involving medical centres.

24. The matters generally dealt with in a contract between a practitioner and a medical centre are listed in Attachment 1. However, each contract must be considered individually on a case-by-case basis to determine whether it is a relevant contract. If the contract provides, either expressly or by implication, that a practitioner is engaged to supply work-related services to the medical centre by serving patients for or on behalf of the medical centre, the contract is a relevant contract under section 32(1) of the Act.

**Example 1: supply of services for or in relation to work by practitioners**

ABC Pty Ltd (“ABC”) operates a medical centre that provides patients with access to a range of medical services performed by qualified practitioners who are engaged by ABC to service patients of ABC.

A patient who consults a practitioner engaged by a medical centre to serve patients of the medical centre is considered to be a customer of both the medical centre and the practitioner.

Practitioners are engaged by ABC to provide their services to the medical centre by serving patients of the medical centre in accordance with the terms of individual contracts. The contracts also require ABC to provide practitioners a consultation room for patients, manage appointments, maintain patient contact information and medical records, collect fees from patients and pay practitioners a share of revenue.

Each contract between ABC and a practitioner satisfies the requirement to supply services ‘in relation to the performance of work’ under section 32(1) of the Act because practitioners are required to serve patients for or on behalf of ABC.

The elements of a relevant contract under section 32(1) are satisfied because the services are supplied by each practitioner ‘in the course of a business’ and are supplied ‘in relation to the performance of work’ by the practitioner.

**Recent decisions**

25. The terms and conditions of contracts held to be relevant contracts under equivalent provisions to section 32(1) of the Act in two recent decisions are summarised below:

***The Optical Superstore (TOS) case***

26. In the Optical Superstore case, the Victorian Civil and Administrative Tribunal concluded that contracts between TOS and optometrists—or companies or trusts associated with optometrists (‘optometrist entities’)—were relevant contracts under the equivalent provision to section 32(1) (at [53]). The Tribunal concluded as follows:

- a. TOS was supplied with the services of optometrists for or in relation to the performance of work.
- b. The optometrist entities ensured the attendance of optometrists at agreed locations and times, and the optometrists provided optometry services to TOS customers.
- c. The arrangements also benefitted TOS by potentially leading to increased sales of frames, lenses and other optometry products.
- d. The services of the optometrists were provided to TOS as well as to the patients.
- e. The contracts were not tenancies because the optometrists did not have rights to exclusive occupancy and were more consistent with a contracting arrangement.

27. The Tribunal's decision that some contracts between TOS and optometrist entities were relevant contracts was not challenged by TOS in appeals by the Victorian Commissioner of State Revenue to the Victorian Supreme Court in *Commissioner of State Revenue (Vic) v The Optical Superstore Pty Ltd* [2018] VSC 524, or to the Victorian Court of Appeal in *Commissioner of State Revenue (Vic) v The Optical Superstore Pty Ltd* [2019] VSCA 197, which upheld the Commissioner's assessments.

### ***The Thomas and Naaz Case***

28. In the Thomas and Naaz case, the NSW Civil and Administrative Tribunal (NCAT) concluded the typical agreement entered between Thomas and Naaz Pty Ltd (Thomas and Naaz), being the entity that conducted the medical centres, and various doctors was a relevant contract under the equivalent provision to section 32(1) (at [41]). The Tribunal determined as follows:

- a. The terms of the agreement indicate the doctors agreed to (at [38]):
  - i. provide services on a five day per week basis, including weekend rosters.
  - ii. provide advance notice and obtain approval of vacations limited to four weeks per annum.
  - iii. promote the interests of Thomas and Naaz, including not channelling patients away from its business.
  - iv. abide by Thomas and Naaz's operating protocols and complete all necessary documentation.
  - v. comply with a restrictive covenant for two years after the doctor departs from the medical practice owned by Thomas and Naaz.
- b. The terms of the agreement secured the provision of the services provided by the doctors to the patients of Thomas and Naaz's medical centres. Where such services were a necessary part of Thomas and Naaz's business, doctors provided their services to the medical centre as well as to patients (at [39]).
- c. The services provided by the doctors were provided for or in relation to the performance of work, and the services supplied were work-related (at [40]).

29. In an appeal by Thomas and Naaz to the Appeal Panel of NCAT in *Thomas and Naaz Pty Ltd (ACN 101 491 703) v Chief Commissioner of State Revenue* [2022] NSWCATAP 220), Thomas and Naaz argued the Tribunal made an error of law by finding that the doctors provided their services to Thomas and Naaz as well as patients, and by concluding there was a relevant contract. The Appeal Panel rejected these grounds, deciding they were findings of fact and did not raise questions of law. Although these decisions were not reviewed, the Appeal Panel noted the Tribunal's approach was entirely orthodox and in accordance with binding authority.

### **Engaging a practitioner from practitioner's entity**

30. In some cases, a practitioner's services may be obtained under a contract between a medical centre and a related entity (such as a company) established by the practitioner (practitioner's entity). A practitioner may be engaged by the practitioner's entity either as a contractor or as an employee.

### **Example 2: Supply of practitioner's services using a company**

Federico is a practitioner employed by F Pty Ltd ("F Co"), which is the trustee of the Federico Family Trust.

ABC Pty Ltd ("ABC") enters into a contract with F Co under which F Co is to supply healthcare services at the medical centre conducted by ABC. F Co engages Federico to work as a practitioner at ABC's medical centre.

F Co, in the course of its business, supplies the services of Federico to ABC, and the services are supplied 'in relation to the performance of work.'

### **Exemptions from relevant contract provisions under Section 32(2) of the Act**

31. If an exemption applies under section 32(2) of the Act, no payroll tax liability under the relevant contract provisions arises.
32. Under section 32(2) of the Act, the exemption more likely to apply to a contract between a medical centre and a practitioner is where the practitioner provides services to the public generally—section 32(2)(b)(ii) of the Act.
33. When claiming an exemption, a medical centre must be able to substantiate the exemption with sufficient evidence.

### **Providing services to the public generally—Section 32(2)(b)(ii)**

34. A contract between a medical centre and a practitioner is not a relevant contract in relation to a financial year if the Commissioner is satisfied the practitioner who provided the services under the contract ordinarily performs services of that kind to the public generally in that financial year. Prior to claiming this exemption, the principal (medical centre) is required to apply to the Commissioner for a determination (unless using the 10 days or less per month method). The exemption is explained in Revenue Circular PTA021.1 *Exemption for Contractors Ordinarily Perform Services to the Public*.
35. To qualify for the exemption, the practitioner must provide services of the same kind to other principals, such as other medical centres or hospitals. The provision of services to patients for or on behalf of a single medical centre may not satisfy the requirement that services are provided to the public generally (see, for example, the Thomas and Naaz case). If a practitioner practises at multiple medical centres but those centres are members of the same group for payroll tax purposes, the medical centre may not be entitled to the exemption (see Revenue Circular PTA021.1).

### **Example 3: Providing services to the public generally**

#### **Example 3.1**

ABC Pty Ltd ("ABC") operates ABC Medical Centre and engages Dr Taylor under a contract to serve patients at the medical centre. Dr Taylor also provides similar medical services to a range of other principals including medical centres and hospitals during the financial year. Dr Taylor performs work under separate contracts with these principals concurrently during the financial year. The contract between ABC and Dr Taylor is not a relevant contract.

#### **Example 3.2**

ABC engages Dr Sou under a contract to provide medical services to patients at its medical centre for 5 days a week on a full-time basis. Dr Sou is also engaged by Top Care Pty Ltd (Top

Care) to provide similar health care services after hours on an ad-hoc basis to Top Care's patients at their home. Under the contract with Top Care, Dr Sou generally spends 1–2 hours per week serving Top Care's patients, due to restrictions under Dr Sou's contract with ABC. The contract for medical services between ABC and Dr Sou is unlikely to be exempt.

### **Example 3.3**

ABC engages Dr Joan to provide medical services to patients at its medical centre and see patients on 3 days per week. Dr Joan is also contracted to provide medical services on 2 days each week to patients of the ABC Private Hospital. ABC Medical Centre and ABC Private Hospital are grouped for payroll tax purposes. Therefore, the 2 ABC entities should seek determinations before treating the contract with ABC Private Hospital as exempt under the 10 days or less per month method.

### **Who is the employer under Section 33?**

36. Section 33(1) of the Act deems the employer under a relevant contract to be the person:
  - a. who supplies services to another person; or
  - b. to whom the services of persons are supplied in relation to the performance of work.
37. Section 33(1)(c) of the Act applies to a person who gives goods to individuals and is not generally applicable in relation to contracts involving medical centres.
38. If both subsections (a) and (b) under section 33(1) of the Act apply to a relevant contract, section 33(2) of the Act provides the person who is supplied with the services of another person is deemed to be the employer.
39. Applying section 33(1)(b) of the Act to a relevant contract between a medical centre and a practitioner, the medical centre is taken to be the employer because it receives the services of the practitioner who serves the patients. Those services are work-related because the practitioner performs work in the course of supplying the services. (See, for example: *Accident Compensation Commission v Odco Pty Ltd* [1990] HCA 43; (1990) 95 ALR 641 at 652 (paragraph 30); *The Optical Superstore Pty Ltd v Commissioner of State Revenue* [2018] VCAT 169 at [82].)

### **Example 4: Medical centre is taken to be an employer**

ABC Pty Ltd ("ABC") operates a medical centre and enters into relevant contracts with several practitioners to provide medical services to patients for or on behalf of ABC.

ABC is taken to be the employer under each relevant contract because it is supplied with the services of practitioners who serve the patients. In supplying services to patients, the practitioner supplies services to ABC in the form of work.

### **Who is the employee under Section 34?**

40. Under section 34(a), a person who performs work in relation to which services are supplied to another person under a relevant contract is taken to be an employee.
41. Section 34(b) only applies to a relevant contract under which goods are resupplied.
42. Under a relevant contract between a medical centre and a practitioner, the practitioner, being the person who performs the work required under the contract, is taken to be the employee (see, for example: *The Optical Superstore Pty Ltd v Commissioner of State*

*Revenue* [2018] VCAT 169 at [82]; *Homefront Nursing Pty Ltd v Chief Commissioner of State Revenue* [2019] NSWCATAD 145 at [46]). If the relevant contract is between a medical centre and a practitioner's entity, and the practitioner's entity engages the practitioner to provide services under a separate contract with practitioner, the practitioner is taken to be an employee under section 34.

**Example 5: Practitioner taken to be an employee**

ABC Pty Ltd ("ABC") operates a medical centre and enters into a relevant contract with P Pty Ltd to obtain the services of Dr Peters who is engaged by P Pty Ltd to provide medical services to patients for or on behalf of ABC.

Dr Peters is taken to be an employee of ABC under section 34(a) because Dr Peters performs the work in relation to which medical services are supplied under the relevant contract.

**Which payments are deemed wages under Section 35 of the Act?**

43. Under section 35(1) of the Act, amounts paid or payable under a relevant contract by a medical centre (the deemed employer) are wages for payroll tax purposes if the payments are in relation to the performance of work relating to the relevant contract by the deemed employee.
44. The phrase 'in relation to work' requires either a 'direct' or 'indirect' relationship between the payment and the performance of work (see *Commissioner of State Revenue (Vic) v The Optical Superstore Pty Ltd* [2019] VSCA 197 at [65]). In *Thomas and Naaz* the Tribunal decided (at [67]–[68]) that there was such an 'indirect' relationship where the contractual relationship included the following characteristics:
  - a. the doctors provided the services to patients;
  - b. the patients assigned their medical benefits to the doctors;
  - c. *Thomas and Naaz*, on behalf of the doctors, submitted the assigned claims for the medical benefits to Medicare;
  - d. Medicare paid those benefits to *Thomas and Naaz*; and
  - e. *Thomas and Naaz* retained 30% of the amounts received from Medicare and paid the remaining 70% to the doctors as the payments.
45. It does not matter that payments to a practitioner are paid from money received by the medical centre on behalf of practitioners, whether from patient fees or Medicare payments, even if the practitioner is beneficially entitled to that money (see *Commissioner of State Revenue (Vic) v The Optical Superstore Pty Ltd* [2019] VSCA 197 at [67]). When the practitioner's entitlement is recognised and the money is paid or becomes payable, it constitutes wages for payroll tax purposes.

**Example 6: Payments by a medical centre to practitioners taken to be wages**

Under relevant contracts with practitioners, ABC Pty Ltd ("ABC")—which operates a medical centre—receives fees payable by patients, or Medicare rebates if bulk billing applies. All payments of fees and Medicare rebates are received by ABC and deposited in ABC's bank account.

Each practitioner is paid a specified percentage of the revenue attributed to the practitioner, including fees invoiced by medical centre staff and Medicare rebates received from bulk billing.



On the last working day of each month, each practitioner's share of receipts for the month are calculated and transferred to the practitioner's nominated bank accounts within 5 days. The amounts paid or payable to each practitioner under a relevant contract are taken to be 'wages' paid or payable by ABC.

46. If a practitioner's services are provided under a relevant contract between a medical centre and the practitioner's entity, and the practitioner is taken to be an employee of the medical centre, payments by the medical centre to the practitioner's entity that are in relation to the performance of work related to the relevant contract are taken to be wages.

**Example 7: Payments by a medical centre to a practitioner's company taken to be wages**

Under a relevant contract between ABC Pty Ltd ("ABC"), which operates a medical centre, and Fox Pty Ltd (Fox Co), ABC is deemed to be an employer and Dr Fox, whose services are provided under the contract, is taken to be an employee. ABC is required to pay 70% of the gross revenue generated by Dr Fox to Fox Co as a deemed employee of ABC.

The gross payments by ABC to Fox Co are taken to be wages paid by ABC.

The source of the funds used to pay the practitioner's company does not affect the classification of an amount as wages, even if the payment is made from money held in a trust account for the practitioner or the practitioner's entity (see *Commissioner of State Revenue (Vic) v The Optical Superstore Pty Ltd* [2019] VSCA 197 at [64]–[68]).

47. If a payment by a medical centre to a practitioner includes an amount that is not attributed to the performance of work, only the amount paid for the performance of work is subject to payroll tax. A payment for something other than the performance of work is not subject to payroll tax, but it must be substantiated with sufficient evidence that the practitioner is required to provide it under the contract. Reimbursement of general business expenses of the practitioner cannot be claimed as a deduction from payments by the medical centre that are taken to be wages under section 35(1) of the Act.

**Third party payments taken to be wages under Section 46 of the Act**

48. Under section 46 of the Act, 'third party payments' of money or other consideration may be taken to be wages paid or payable by an employer to an employee. This provision applies to a third-party payment under a relevant contract that would be wages if paid by an employer to an employee under the contract.
49. A person taken to be an employer under section 33 of the Act is taken to be an employer under section 46 of the Act, and a person taken to be an employee under section 34 of the Act is taken to be an employee under section 46 of the Act.
50. A third-party payment may consist of:
- a payment by a person other than a deemed employer to a deemed employee;
  - a payment by a deemed employer to a person other than a deemed employee;
  - a payment by a person other than a deemed employer to a person other than a deemed employee.

**Example 8: Wages paid by a third party to a practitioner—Section 46 of the Act**

ABC Pty Ltd ("ABC"), which operates a medical centre, enters into a contract with Dr Wolf who agrees to serve patients for or on behalf of ABC. The contract is a relevant contract under section 32(1) and none of the exemptions under section 32(2) of the Act apply.

ABC is taken to be an employer under section 33 of the Act. Dr Wolf is taken to be an employee under section 34(a).

The contract provides patient fees are to be assigned to Dr Wolf. At the end of each month Dr Wolf is required to pay 30% of the revenue to ABC.

Under section 46 of the Act, the payments to Dr Wolf are taken to be wages paid by ABC to Dr Wolf because the payments are remuneration for the services of Dr Wolf that would have been wages if they had been paid or payable by ABC (a person taken to be an employer) to Dr Wolf (a person taken to be an employee).

## **Other Matters**

### ***Tenancy contract that is not a relevant contract.***

51. Under a tenancy contract, a landlord (who may be a sub-lessor) by lease or licence provides a practitioner with use of a suite or space in, for example, a building from which the practitioner conducts their own independent medical practice. The tenancy contract will reference the specific space being leased or licensed and generally includes provisions for fit-out and alterations to accommodate the practitioner's requirements and services such as building maintenance and signage for the practitioner's operating hours.
52. A tenancy contract is not a relevant contract if the practitioner does not supply work-related services to patients for or on behalf of the landlord. In these circumstances, the practitioner must operate their own independent medical practice responsible for such matters as advertising and attracting patients, providing medical services to their own patients (that is, not for or on behalf of anyone else), managing patient appointments and records and directly submitting claims for medical benefits to Medicare; with Medicare paying those benefits to the practitioner (or the practitioner's entity).
53. If a tenancy contract refers to a medical centre as a 'landlord' and the practitioner as a 'tenant', but in substance the practitioner is providing medical services for or on behalf of the medical centre to its patients, the tenancy contract is more likely to be a relevant contract.

#### ***Example 9: Tenancy contract not a relevant contract***

A practitioner enters a tenancy contract with DEF Pty Ltd ("DEF Co") for the lease of specific premises comprising a consultation room, waiting room and administration office (suite). DEF Co's only business activity is leasing the suite. The practitioner conducts a medical practice from the suite by hiring administration staff to manage patient and Medicare matters, and providing medical services to patients who make appointments to see the practitioner. The 'tenancy contract' is not a relevant contract.

#### ***Example 10 – Tenancy contract is a relevant contract***

A practitioner enters a tenancy contract with ABC Pty Ltd ("ABC"), which operates multiple medical centres. Under the tenancy contract, the practitioner is referred to as the 'tenant' and the medical centre the 'landlord'. The tenancy contract does not refer to the lease, being the grant of exclusive possession, of any specific location or physical space, but provides that the practitioner as 'tenant' is to work at the various medical centres operated by ABC as required. The terms of the 'tenancy contract' secures the provision of medical services provided by the practitioner to the patients of ABC. The tenancy contract is a relevant contract because ABC, in

the course of operating its medical centres, has supplied to it the services of the practitioner in relation to the performance of work.

***A contract with an administration entity may be a relevant contract***

54. Multiple medical practices conducted by individual practitioners may operate from the same premises and use the same entity that provides administration and support services (administration entity) to practitioners. A contract with the administration entity may be a relevant contract depending on the terms and conditions of each contract. In some cases, a contract may be a relevant contract under section 32(1) of the Act, but an exemption may apply under section 32(2) of the Act. The terms and conditions of each contract must be considered on a case-by-case basis having regard to ‘When is a contract a relevant contract?’ above.

***Grouping of practitioners and administration entities***

55. An entity that provides administration services only to practitioners may be grouped with practitioners or the practitioners’ entity under Part 5 of the Act Revenue Circular PTA017 *Grouping of professional practices and administration businesses* explains the application of the grouping provisions to professional practices and service entities.

***Reference to practitioner being ‘principal’ not determinative.***

56. A contract between a medical centre and a practitioner may state the practitioner is the principal, and/or the medical centre only provides administrative services to the practitioner. Such clauses do not prevent the application of the relevant contract provisions if the medical centre is able to exercise operational or administrative control over the services provided to patients or is able to exercise operational or administrative control over a practitioner to influence decisions about who practises at the centre, when they practise, and the space within the centre where that occurs. The manner in which the parties describe or label their relationship in a contract cannot change the character of the relationship established by their rights and obligations.<sup>3</sup>

***Medicare Provider Number (MPN)***

57. A practitioner, being an eligible health professional, must apply for a unique Medicare provider number (MPN) to provide services listed under the Medical Benefits Schedule (MBS) and, where eligible, refer patients to relevant specialists and/or consultant physicians and request certain imaging and pathology services. Further, an MPN is required to access and claim Medicare services and benefits. Only an eligible health professional, being a natural person, can be granted an MPN meaning the medical services under the MBS are provided by a practitioner to a patient.

58. The MPN requirement does not alter the outcome that, under a relevant contract, where a practitioner is engaged by a medical centre to serve patients for or on behalf of the medical centre, the practitioner is still providing medical services to the medical centre and to the patients, consistent with the principles determined in the Optical Superstore Case and the Thomas and Naaz Case.

## Records Must be Kept for 5 Years

59. Medical centres must keep records that enable their tax liability under the Act to be properly assessed and must keep the records for a minimum of 5 years after the end of the financial year in which wages were paid or became payable (see Part 8 section 64 of the *Taxation Administration Act 1999*).
60. An employer who disputes the correctness of a payroll tax assessment in an objection to the Commissioner bears the onus of proving the assessment was incorrect on the balance of probabilities (see Part 10 of the *Taxation Administration Act 1999*).

Kim Salisbury  
Commissioner for ACT Revenue  
7 September 2023

## Footnotes

1. See for example: *Levitch Design Associates Pty Ltd ATF Levco Unit Trust v Chief Commissioner of State Revenue* [2014] NSWCATAD 215 at [54]; *Freelance Global Ltd v Chief Commissioner of State Revenue* [2014] NSWSC 127 at [173]; *Bridges Financial Services Pty Ltd v Chief Commissioner of State Revenue* [2005] NSWSC 788 at [233]-[226].
2. See for example: *The Optical Superstore Pty Ltd v Commissioner of State Revenue* [2018] VCAT169 at [85]-[86]; *Homefront Nursing Pty Ltd v Chief Commissioner of State Revenue* [2019] NSWCATAD 145 discussed at [46]-[48]; *Thomas and Naaz Pty Ltd v Chief Commissioner of State Revenue* [2021] NSWCATAD 259 at [38]-[41].
3. See *Construction, Forestry, Maritime, Mining and Energy Union v Personnel Contracting Pty Ltd* [2022] 96 ALJR 89 at [63]-[66].

## **Attachment 1**

### **Contracts between medical centres and practitioners**

The contract between a medical centre and a practitioner or the entity through which their services are provided, generally deal with the following matters:

1. The medical centre and the practitioner agree that the practitioner will provide competent, professional medical services to patients.
2. The agreement can be terminated by either party by giving notice as specified in the contract.
3. The practitioner is engaged as a contractor, is solely responsible for medical advice or medical procedures, and must take out professional indemnity insurance at their own cost to cover malpractice.
4. Responsibilities of each party for controlling the manner in which services are provided.
5. Responsibilities of each party in the determination and payment of fees by patients, including decisions as to which patients may be bulk billed to Medicare, payments by the Department of Veterans' Affairs (DVA) and other specified fees and amounts paid or payable.
6. How patients' fees are shared between the medical centre and the practitioner or the entity through which the practitioner's services are obtained.
7. How Medicare and DVA benefits are to be assigned and shared by the medical centre and the practitioner.
8. Provision for the practitioner to periodically invoice the medical centre; or for the medical centre to invoice the practitioner or the entity through which the practitioner's services are provided.
9. Hours or days of attendance by the practitioner may be specified.
10. The practitioner's entitlement to take a leave of absence may be specified, including any requirement to seek approval from the medical centre or to ensure a minimum number of practitioners are available to service patients.
11. The practitioner may be required to provide the medical centre with specified information and documents, and to keep and maintain records required by law.
12. Ownership of, or access to records, including patient information may be specified.
13. There may be restrictions on copying or removing records from the medical centre.
14. The practitioner may be required to promote the interests and welfare of the medical centre.
15. The practitioner may be required to commit to provide a share of duties relating to after-hours calls, home visits and nursing home visits.

16. The medical centre agrees to provide the practitioner with administrative services, clerical and professional staff and facilities, plant and equipment necessary for the practitioner to provide medical services to patients.
17. The practitioner must ensure that they have a Medicare provider number and local medical officer status with DVA.
18. The medical centre does not provide medical services to patients, is not registered as a medical practitioner and does not have a Medicare provider number.