

Is your practice ‘payroll tax audit ready’?

Following the Victorian 2019 decision in the Optical Superstores case and the NSW 2019 Homefront Nursing case, the various State Revenue offices (collectively ‘OSR’) have been actively engaged in payroll tax audits on medical and dental practices. With the power to issue backdated assessments for up to five years and impose penalties of between 10-75% of any back taxes levied, the potential claims could be substantial.

WHAT IS YOUR POTENTIAL EXPOSURE?

At a high level, the Optical Superstores and Homefront Nursing cases support the view held by OSR that the net payment remitted by a medical practice to the independent practitioner (for example, the 65% remitted to the doctor after deduction of a 35% service fee) is subject to payroll tax.

As an example, a practice with five GPs with gross patient fees of \$3m and a 33% service fee structure would see a net \$2m paid out by the practice to the GPs across a year. Assuming another \$500,000 for administrative and nursing staff, this would result in annual taxable payments for payroll tax purposes of \$2.5m, well above the current tax-free threshold. This would result in an annual payroll tax liability of \$81,750 in NSW, \$57,000 in Queensland or \$34,250 in the ACT.

Now imagine that OSR assess the practice for back tax (on the same basis) for five years and then impose a 60% penalty – suddenly the practice would be facing a payroll tax debt of \$650,000 in NSW, \$456,000 in Queensland or \$278,000 in the ACT.

IS THE RISK OF AN AUDIT REAL?

Consider these statistics from an experienced legal practitioner involved in OSR audit activity:

- There is currently an active audit program in NSW and it is expected that Queensland will follow suit.
- At least 20 audits have been conducted by NSW OSR in the last 18 months.

- Payroll tax claims by OSR (excluding penalties) on these audits range from \$50,000 for smaller practices to up to \$700,000 on larger practices.

WHAT ARE THE RISK FACTORS?

In simple terms, when OSR come knocking they will be looking at two key areas:

1. The contracts in place between the practice and the independent contracting doctor or dentist.

Key issues on their checklist will include:

- How the relationship between the parties is described;
- What services are provided by each party to the other;
- Whether the conditions fit within the ‘Relevant Contract’ provisions or any of the exclusions.

2. The administration of payments and records within the practice, including:

- How payments flow between the patients, the practice and the doctor;
- Whether patient payments are banked into separate ‘on trust’ bank accounts;
- The record keeping arrangements around staffing; and
- Whether the realities of how the practice is run are in alignment with the contracts.

In the current audit environment, the unfortunate approach is often one of assumed guilt.

OUR PROPOSED APPROACH

We have teamed up with one of Australia's leading payroll tax practitioners in order to put your practice in the best position to contest an OSR audit and minimise any penalties. Preparation is your best form of defence on this issue.

Step 1 - Establish whether you are at risk

This step involves the following:

Review of all your existing contractual arrangements with non-salaried independent contractor doctors/ dentists

- Identification of any contracts which leave the practice highly exposed
- High level advice on proposed remedial actions

Review of your existing practice arrangements and record keeping

- Identification of risk areas
- High level advice on proposed remedial actions

Based on above, quantification of potential payroll tax exposure.

Pricing: Dependent on size of your practice and number of contracts in place. Likely range \$4,000 to \$8,000

Step 2- Remedial action to minimise risk

This step will be tailored based on the outcome of Step 1 but may include:

- Implementation of new contractual arrangements with independent contractors
- Implementation of new banking arrangements and funds flows within the practice
- Implementation of new record keeping arrangements
- Advice on management of OSR obligations (if any)
- Possible voluntary disclosure to OSR in certain circumstances in order to mitigate penalties

Pricing: To be determined based on Step 1 findings.

NEXT STEPS

For further details and to review your own practice arrangements, contact one of our specialist medical advisory team directors.



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