PAYROLL TAX, AMNESTIES AND RELATED DEVELOPMENTS FOR HEALTH PRACTICES

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Health practices across Australia have been paying increasing attention to their potential exposure to payroll tax. The importance of doing so continues, particularly with new legislation bringing some further certainty.

Payroll tax has become a critical compliance and business decision-making issue for medical, dental and allied health practices. Despite intentions to have a harmonised approach, the various states have different approaches to the legislation and enforcement; further legislated differences exist regarding the applicable wages threshold before payroll tax is applied to a business.

Exceptions or amnesties exist in some states where practices meet certain criteria. Audit and enforcement activity remain as available measures to the authorities to enforce the legislation in each jurisdiction, and that activity continues.

KEY TAKE-AWAYS

Health practitioners should:

- Review specific legislation and rulings applicable to the states(s) in which they operate;
- Determine what amnesties or relief are available under their contractual arrangements with practitioners;
- Assess the merits of voluntary disclosure and associated potential benefits (where available);
- Review the advantages and disadvantages of their current contractual relationship with practitioners from both a payroll tax and nonpayroll tax perspective; and
- Seek legal advice to ensure they take steps appropriate to their circumstances.

SNAPSHOT – PAYROLL TAX RELIEF FOR HEALTH PRACTICES IN AUSTRALIA

A range of amnesties and concessions apply from state to state for the health sector, some of which require practices to opt-in and make critical, and potentially far-reaching, disclosures to the revenue authorities.

Practices should consider whether doing so is suitable in their particular circumstances and interests, having regard to all their circumstances (and not just in respect of payroll tax).

Payroll Tax Wage Thresholds	Payroll Tax Relief for Health Practices

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New South Wales	
Wages threshold: AU$1.2 million	**General practitioners:** ▪ From 4 September 2023 to 3 September 2024, a 12-month pause on payroll tax audits (or the application of penalty interest) for general practitioner (GP) practices. More recent announcements have confirmed payroll tax on payments to contracted GPs before 4 September 2024, will be exempt. ▪ From 4 September 2024, a rebate is available for practices where at least 70% (80% in metropolitan Sydney) of GP services are bulk billed. The rebate will apply by excluding the amount of payroll tax that would have applied to the relevant amounts paid to GPs.
Queensland	
Wages threshold: AU$1.3 million	**General practitioners:** ▪ Wages paid by a medical practice to a GP are exempt from payroll tax, following recent amendments to the *Payroll Tax Act 1971* (Qld). These enshrine the amnesty previously available to GPs since 1 December 2024, under an administrative arrangement. **Dental practitioners:** ▪ A limited amnesty is available for payments to contracted dentists from 1 July 2018 to 30 June 2025, PROVIDED, the practice must have (among other things) registered for payroll tax and made voluntary disclosure to the Queensland Revenue Office by 30 June 2025.
Victoria	

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Wages threshold: AU$900,000	**General practitioners:** ▪ Up to 30 June 2025, relief may be available for any payments to contracted GPs by practices which have not paid payroll tax for their contracted GPs (or received advice that payroll tax was payable) before 30 June 2024. ▪ From 1 July 2025, under new legislation in Victoria, exemptions will apply for wages paid or payable to GPs, although limited to payments relating to bulk-billed consultations.
South Australia	
Wages threshold: AU$1.5 million Tax is applied to total wages less a deduction of up to AU$600,000.	**General practitioners:** ▪ From 1 July 2018 to 30 June 2024, an amnesty is available for this period for payments to contracted GPs where practices registered for payroll tax and made voluntary disclosure to RevenueSA. ▪ From 1 July 2024, an exemption is now available for payments relating to bulk-billed consultations. **Medical specialists and dentists:** ▪ Up to 30 June 2024, no similar exemption or amnesty is available to medical specialists or dental practices for the period after 30 June 2024. However, retrospective relief is available to specialists or dental practices who registered with RevenueSA prior to 30 June 2024.
Australian Capital Territory	
Wages threshold: AU$2 million	**General practitioners:** ▪ Up to 30 June 2023, unpaid payroll tax has been waived on payments to GPs

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	prior to 30 June 2023. **From 1 July 2023 to 30 June 2024:** An amnesty is available for this period for payments to contracted GPs where the practice: ▪ Registered for payroll tax by 29 February 2024 ▪ Bulk billed at least 65% of GP attendances. ▪ Registered for MyMedicare.
Tasmania	
Wages threshold: AU$1,250,001	Tasmania has not announced any amnesties or concessions.
Northern Territory	
Wages threshold: AU$1.5 million	The Northern Territory has not announced any amnesties or concessions.
Western Australia	
Wages threshold: AU$11 million	Western Australia does not levy payroll tax on payments to contractors.

QUEENSLAND LEGISLATES PERMANENT RELIEF FOR GPS

On 20 February 2025, the Queensland Parliament passed new legislation enshrining relief from payroll tax for payments to any contracted GPs. This goes beyond the administrative relief or more limited legislated exemptions in other states. It does not offer assistance to practices beyond GPs, though outside the legislation there remains a more limited amnesty for Queensland dentists until 30 June 2025 (subject to some conditions).

It remains to be seen whether other states and territories will follow suit. Some have applied similar amnesties administratively but have not yet legislated to make those changes permanent. Others have legislated more limited exemptions, e.g., GP practices that bulk bill.

PAYROLL TAX AND "RELEVANT CONTRACTOR" PROVISIONS FOR HEALTH PRACTICES

Historically, though clearly no longer, industry and revenue authorities generally operated on the basis that certain contracting arrangements between practice owners and nonemployee practitioners did not attract payroll tax. This was particularly the case for clinics offering facilities and services to practitioners operating their own independent businesses. In those arrangements, clinics would usually collect patient fees (or Medicare entitlements) on behalf of those practitioners and remit the balance of those funds to the practitioners after deducting service fees charged by the clinic.

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However, while the underlying legislation has not changed, the recent decisions in *Optical Superstore Pty Ltd v Commissioner of State Revenue* and *Thomas and Naaz v Chief Commissioner of State Revenue* questioned whether (or when) payroll tax should apply under the extended "relevant contractor" provisions existing in most states' legislation.

Practice owners face the task of assessing whether they have an exposure to payroll tax and what might be done to mitigate it (while being mindful of important anti-avoidance provisions). Key questions for practice owners are whether:

- The practitioner is providing a service to the practice;
- There is a relevant payment from the practice to the practitioner "in relation to the performance of work";
- The business exceeds the applicable threshold for payroll tax (which can include consideration of other "grouped" businesses); and
- Any exemptions or exceptions apply.

BROADER CONTRACTING ISSUES

While payroll tax issues have been a key recent focus for practices in revisiting their commercial and legal arrangements with practitioners, it is important to consider other (nonpayroll tax) issues relevant to those arrangements.

For some practices, the perennial question of whether a practitioner potentially has entitlements as an employee or an independent contractor are still relevant. While High Court decisions in 2022 (briefly) restored the focus on the written contractual terms (with some exceptions), the effect of those were largely undone by federal legislation that commenced in August 2024 to re-instate the previous "multi-factorial" test.

It is critical to have regard to other potential obligations (superannuation, leave entitlements etc.) in assessing the type of contractual arrangement to be entered into, and how it is to be implemented.

MORE CHANGES ON THE HORIZON

More change at state and federal levels remains possible from potential new legislation and anticipated court decisions, namely:

- The various state governments and revenue authorities can be expected to consider their positions regarding payroll tax for contractors, particularly in light of the recent legislative changes in Queensland.
- In New South Wales, a Parliamentary inquiry has commenced to undertake a broader review of the legislated contractor provisions. The inquiry's terms of reference indicate a focus on on-demand and "gig economy" workers, but the inquiry may have broader implications for how health practices and other businesses contract and establish payment arrangements with practitioners.
- In September 2024, Uber Australia Pty Ltd (Uber) successfully challenged its liability for payroll tax in New South Wales in relation to payments made to drivers. The Supreme Court of New South Wales concluded that the payment from Uber to drivers was not taxable for payroll tax purposes, taking a

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narrower interpretation of the legislation than in some other recent decisions (such as, in a case involving a medical practice, *Thomas and Naaz Pty Ltd*). However, Revenue NSW appealed that decision. The appeal has yet to be heard, and the result will be keenly followed nationally.

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