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Alert

Tax

Payroll Tax and Medical Practices: An Update and Warning to Others

By Daniel Idema

In September this year, we took the opportunity to write in some detail about the payroll tax amnesty program[1] in South Australia, as outlined in RevenueSA's Information Circular Number 106 (**Circular**), and some aspects of the program that might be of concern to medical practices considering registering an expression of interest.

One such concern was the requirement that medical practices, as a condition of eligibility for the amnesty, make a "voluntary disclosure" to RevenueSA. We posited that the breadth of that term in the Circular, and consequently, the breadth of information that RevenueSA might require a practice to disclose as to its structure, arrangements and affairs, might prove to be of concern to some practices.

Given the context in which the amnesty was introduced, the pronouncement by RevenueSA of there being a potential widespread lack of awareness of the application of the "Relevant Contract" provisions among medical practices, and the amnesty intending to support medical practices to bring themselves forward and into compliance with their payroll tax obligations, one might have hoped, perhaps optimistically, that the amnesty would be administered generously to those medical practices falling squarely in the firing line under Revenue Ruling PTASA003.

Some support for such a position is arguably to be found in the Circular. Whilst recognising the other sorts of information RevenueSA could ask practices to provide as part of administering the amnesty (couched in terms such as you "*may be*" requested or required to provide etc), the emphasis appeared to be on the actual wages data (including contractor GP payments), as opposed to an examination of the intricacies of the practice's structure, or the specific terms of the arrangements with those contracted general practitioners.

What is seemingly a standard response sent by RevenueSA to practices that have registered their interest in the amnesty has come as quite a shock to some practices where, off the bat, they are being required within 28 days to provide, inter alia, details of the structure of their practice including any associated or related entities, and copies of the contracts with contracted general practitioners.

Provision of such information may well lead to liabilities beyond the ambit of the amnesty if, for example, Revenue SA were to contend that the practice and any entities disclosed by the practice as possibly being associated or related to the practice constitute a group for payroll tax purposes.

Some practices might find themselves in the invidious

1 https://www.dwfoxtucker.com.au/2023/09/payroll-tax-and-medical-practices

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position of having to comply with such requests for information or otherwise risk disqualification from the amnesty but needing to recognise omitted payroll tax liabilities for other reasons, for example, because of a failure to appreciate the ambit of the grouping provisions. Even if disqualified, or for practices that might seek to withdraw their expression of interest on the basis of the breadth of RevenueSA's request for information, audit activity might then soon follow.

As we have raised previously, the other concern is the possible use of that information by RevenueSA post-administration of the amnesty to scrutinise the legitimacy of any restructuring undertaken by a practice to achieve valid legal and commercial objectives.

Some further food for thought that ties into the above comment is an emerging position of RevenueSA with respect to fixed-share partners and the distribution of profit to such partners, possibly constituting wages assessable to the partnership.

It has long been the view within the legal and accounting professions that partner drawings or profit distributions should not be regarded as wages. The concept of Wages, as explained in the *Payroll Tax Act 2009 (SA)*, is a range of specified payments paid or payable to an employee and to a person who is not an employee, the latter nevertheless referring to payments to persons taken to be employees or from persons taken to be employers, including such payments by persons deemed to be employers under the Contractor provisions for or in relation to the performance of work relating to a Relevant Contract.

The interpretation of the Contractor provisions, particularly the scope of their deeming of payments as Wages by reason of the breadth of the definition of a Relevant Contract, will, it appears, now require careful consideration as to whether these drawings and distributions might be, and have been, included within the concept of Wages and, if so, whether a liability for payroll tax will exist, or has existed.

For practices structured as a partnership or for those considering moving to such a structure, the position in this regard will warrant some in-depth analysis, whether as to existing arrangements or those now contemplated.

It goes without saying that any practice considering a restructure ought take considered legal, tax and accounting advice before embarking on this course.

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