PAYROLL TAX AND MEDICAL CENTRES

The New South Wales Civil and Administrative Tribunal ("NCAT") has recently ordered a company that owns a chain of medical centres to pay nearly $800,000.00 worth of payroll tax over a five year period.

Generally, employers are liable to pay payroll tax on all taxable wages under the *Payroll Tax Act 2007* (NSW) ("the Act"). However, where the workers are employed as contractors under service agreements, as many medical practitioners are, their earnings are usually exempt from payroll tax because they are not classified as "working for" their employer. Rather, they are taken to be providing services to the public generally.

However, the recent case of *Thomas and Naaz Pty Ltd v Chief Commissioner of State Revenue* has found that medical centres employing practitioners under service agreements may still be subject to payroll tax, as the practitioners may be considered to be supplying services to the medical centre under their contracts.

Thomas and Naaz Pty Ltd v Chief Commissioner of State Revenue ("Thomas and Naaz")

In this particular case, Naaz Pty Ltd ("Naaz") entered into written service agreements with various doctors, whereby Naaz would provide them with rooms at its medical centres in exchange for the doctors seeing patients. The doctors would be paid an amount equal to 70% of the claims paid by Medicare under their name, and the remaining 30% would be retained by Naaz as a service fee. Naaz argued that the doctors were providing services to patients, as opposed to services to Naaz, and therefore they should not be liable for payroll tax. However, the Chief Commissioner successfully argued that the services being provided by the doctors were necessary for Naaz to carry on its business, and therefore the services formed part of the conduct of the business.

One of the determinative factors in this decision was the nature of the service agreements. The agreements contained a number of clauses that ultimately led to the conclusion that the doctors were providing services to Naaz under "relevant contracts" under the Act, including:

- the doctors were provided with work rosters;
- in some circumstances there were payments of hourly rates;
- there was a leave policy in place;
- the doctors were obligated to comply with protocols and promote the medical centre business; and
- there was a restrictive covenant that imposed a five kilometre "exclusion zone" around the medical centre that would stay in place for two years after the doctors leave the practice.

NCAT also had to consider whether the doctors were performing services that they would ordinarily perform to the public in general, or if they were performing services for Naaz. This issue turned on whether the doctors were also providing their services at other medical centres unconnected to Naaz. In this case, Naaz provided a spreadsheet of over 40 doctors who also worked at other medical centres, along with two letters relating to two separate doctors evidencing that they supplied their services elsewhere. NCAT found that the letters were sufficient evidence to find that those two doctors were performing services to the public in general, but it could not be inferred from a simple spreadsheet that the rest of the doctors practising at the medical centres were earning income outside of Naaz's medical centres.

Overall, the NCAT found that the services provided by the doctors in the medical centres were the performance of work for Naaz, and that their payments were sufficiently connected to that performance of work to form part of a relevant contract for the purposes of payroll tax. Therefore, the NCAT found that Naaz was liable to pay their payroll tax liability.

Revenue NSW

In light of this recent development, Revenue NSW is currently in the process of developing a practice note or ruling in relation to the application of payroll tax to service agreements. It is expected that the guidance to be published by Revenue NSW will confirm the approach taken in *Thomas and Naaz* and provide guidelines as to when arrangements between medical centres and their practitioners will be classified as “relevant contracts” for the purposes of payroll tax.

What does this mean for my practice?

As these kinds of service agreements are quite common in the conduct of medical practices and centres, it is important to take note of the NCAT’s findings and look closely at the agreements that are being entered into. It is vital to make sure that these agreements are properly drafted, in order to ensure that your practice is not faced with an unwanted payroll tax liability.

We can assist you with preparing appropriate practitioner service agreements.

If you have any questions or require any further information about payroll tax or practitioner service agreements, please do not hesitate to contact our office on (02) 9687 3755.