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Pharmacy Insights

Payroll tax clampdown on healthcare clinic operators

In recent times, there has been a strong focus by revenue authorities on tax compliance by health service providers including operators of medical, dental, optometry and other allied health clinics.

Payroll tax compliance in particular has been in the spotlight.

In the recent decision of *Commissioner of State Revenue V The Optical Superstore Pty Ltd [2019]* (The Optical Superstore Case), the Victorian Supreme Court of Appeal found against the taxpayer in a decision that is likely to have wide ranging consequences.

The taxpayer was Optical Superstore Pty Ltd (OS). OS carried on an optical dispensary business known as "The Optical Superstore". OS provided consulting rooms to optometrists (or their related entities) who, as independent practitioners, provided optometric services to patients.

The agreement between OS and each optometrist clearly established that all optometric fees (consultation fees) would be collected and held by OS as trustee for the optometrist and that each month OS may deduct a fee and remit the balance of the consultation fees to the optometrist.

The Commissioner assessed OS for payroll tax on the basis that the amounts OS transferred from its bank account to various optometrists over the previous 6 year period were taxable wages for payroll tax purposes by reason of the contractor provisions in sections 31-36 of the *Payroll Tax Act 2007* (Vic) (the Act).

Simply put, the contractor provisions operate by reference to the notion of amounts 'paid or payable' … for or in connection with work'.

The Trial Judge in the Supreme Court of Victoria had previously decided that OS was not making a 'payment' to the optometrist for the purposes of the Act when it remitted the balance of consultation fees each month because the optometrist already owned those funds by virtue of the trust arrangements created in the agreement between OS and each optometrist.

However, the Court of Appeal said that it saw no basis upon which it could be said that the distributions in question were not amounts 'paid or payable' for the purpose of the Act.

Accordingly, the consultation fees were taxable wages pursuant to section 35 of the Act. Similar provisions are found in the *Payroll Tax Act 2007* (NSW) and in other state based legislation.

In our experience, many clinic owners do not have appropriate agreements in place with practitioners and are not aware of the potential liabilities that can arise from the failure to properly analyse and document the arrangements between clinic and practitioner.

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In light of the decision in the OS case, healthcare clinic operators should consider seeking specialist advice on their potential liability for payroll tax, and other tax compliance, even if the clinic has agreements in place with its practitioners.

Where the clinic has no agreements, or agreements that are unsuitable or outdated, the risk of potential for claims against the clinic from revenue authorities, practitioners and patients of the clinic is even greater.

This article was written by Special Counsel Julia Smith. Please contact her if you have any questions or would like more information.

Julia Smith

Special Counsel

03 9810 6700

jsmith@meridianlawyers.com.au