



Better clarity on payroll tax obligations for dental practices in Western Australia

In two 2019 and 2021 decisions from the Victorian Court of Appeal and New South Wales Civil and Administrative Tribunal, it was held that an optical dispensary and a medical practice were liable for payroll tax on earnings passed through to optometrists and medical practitioners who had been operating under facilities and services agreements.

These decisions have sparked concern that health practices in this State (including dental practices) might face similar unexpected payroll tax liabilities on practitioners' earnings where (by virtue of those practitioners being on 'facility and services' or independent contractor type arrangements) it had been believed that their earnings would not incur payroll tax.

The WA Government, however, has recently issued advice (by way of a letter from Deputy Premier and Treasurer Rita Saffioti to the Royal Australian College of General Practitioners WA Chair) confirming that there will be no change to the way payroll tax is applied to general practitioners (and by extension, one would therefore also hope,

dental practices). In this article we explain what the issue is all about.

Payroll tax legislation in WA

The Payroll Tax Assessment Act 2002 (WA) (WA Act) generally imposes payroll tax on 'taxable wages'. In order to determine what constitutes 'taxable wages', regard must be had to:

- which payments are 'wages';
- whether payments that are wages are exempt from payroll tax; and
- whether non-exempt wages are taxable based on:
 - *where the wages are earned;*
 - *where the employee is based; or*
 - *where the employer is based.*

Both Victoria and NSW – as well as South Australia, Queensland, the Australian Capital Territory, Tasmania and the Northern Territory – are all part of a payroll harmonisation agreement for the treatment of contractors. Their legislation contains 'contractor deeming' provisions that have

paved the way for payroll tax in respect of health practitioner earnings that historically were not thought of as 'wages' in the usual sense.

The other States' and Territories' legislation, however, is materially different to the WA Act; in that here, our legislation does not contain equivalent contractor deeming provisions.

Remaining uncertainty for WA dental practices

Although some comfort might be drawn from the WA Government's recent advice, there is still no absolute clarity for WA dental practices.

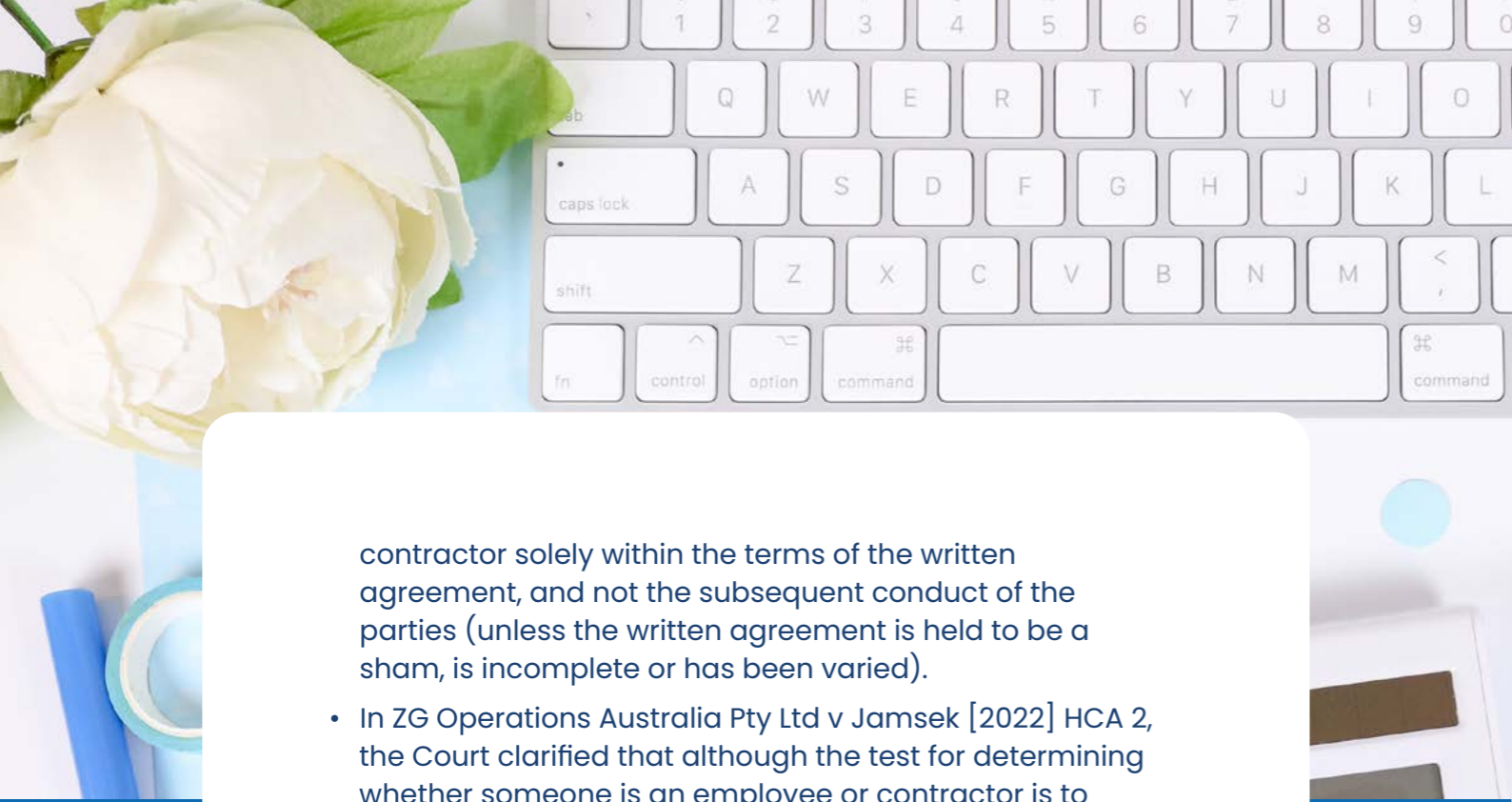
First, there has been no announcement in relation to dentistry specifically, or the health sector beyond GP practices. Second, Government positions can change over time; and under the WA Act, there is power to make regulations about the classes of contracts under which payments attributable to labour will be treated as 'wages' attracting payroll tax. For the time being, it remains as important as ever for dental contractor agreements, and facility

and service agreements, to be appropriately structured. This mitigates the risk not only of unexpected payroll tax liabilities should the law in WA gravitate towards the east coast position. It also guards against accidental liability for other benefits and entitlements.

Interpretation of contractual arrangements

The Victorian and NSW payroll tax decisions serve as a reminder – in WA as well as the rest of Australia – that 'labels' alone are not determinative. Contracts and working arrangements may be labelled or structured as one thing, but their interpretation by a Court or tax office may be something else. Two fairly recent High Court decisions illustrate how a person's true legal status as an employee or a contractor is determined:

- In *Construction Forestry, Maritime, Mining and Energy Union & Anor v Personnel Contracting Pty Ltd* [2022] HCA 1, the Court held that in determining whether a person is an employee or a contractor, it is appropriate to look for indicators of whether the relationship is employment or



contractor solely within the terms of the written agreement, and not the subsequent conduct of the parties (unless the written agreement is held to be a sham, is incomplete or has been varied).

- In *ZG Operations Australia Pty Ltd v Jamsek* [2022] HCA 2, the Court clarified that although the test for determining whether someone is an employee or contractor is to characterise the relationship by reference to the terms of the written agreement between the parties, practical evidence of how the parties conducted themselves is both admissible and may be practically useful in determining the nature of the relationship.

The importance of good contracts

Good contracts are essential for dental practices who have dentists on independent contractor agreements, or facility and service agreements. Payroll tax is the latest issue under the spotlight, but there are a range of obligations, and liabilities for benefits and entitlements, that practices would not wish to take on unintentionally.

**PANETTA
MCGRATH**

WADA Golf Lake Karrinyup

This fixture was a hark back to the past glories of Long Lunches. Due to lack of daylight at this time of year we decided to have an early start and enjoy a long lunch after the game held at the spectacular Lake Karrinyup Country Club, where a field of 29 golfers gathered to contest the ADA Cup, sponsored by Garry Bishop and Health Practice Brokers. This is a long-standing trophy, dating back to 1936, which is contested as a stroke event, with the winner determined by the best nett score.

We were joined at the lunch this year by retired ADA dentists who came at the invitation of both the ADAWA and the WADA Golf Society for a chance to share memories and renew friendships and to introduce some 'younger' players to esteemed past members of the ADAWA.

The course was once again magnificent, and the wind and rain added to the drama of the day. Jay Vaddagiri produced some great steady golf to take the best gross score on 81 and is the 2023 WADA Golf Club Champion for 2023. The day belonged to another young golfer in Patrick Douglas who scored a brilliant Nett score of 67 Strokes to take the ADA Cup for 2023 and receive a generous first prize from our major sponsor in Garry Bishop and Health Practice Brokers.

Nearest the pin

3rd hole Long drive	Michael Welten Insight Dental Ceramics
5th hole NTP	John Scully Health Practice Brokers
8th Hole NTP	Michael Welten Dentsply Sirona
12th Hole NTP	Patrick Douglas Healthinc
14th Hole NTP	Patrick Douglas WADA
17th Hole NTP	Jay Vaddagiri Swan Valley Dental Laboratory

Our placegetters

- 3rd place on 73 strokes, Jannie Pieterse
- 2nd place on 72 Strokes, Jay Vaddagiri
- WADA Golf Champion 2023 - gross score of 81, Jay Vaddagiri
- ADA Cup winner on 67 strokes, Patrick Douglas

Our next day out is Kwinana Golf Course on September 15. If you're interested in playing with ADA colleagues, let me know!

Good golfing
Frank Welten
WADA Golf Captain
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