



**“MADA NEWS” SPECIAL EDITION: NOVEMBER 2005**

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**INTRODUCTION**

In response to a number of client queries regarding an article written in the 25 November 2005 edition of Australian Doctor Magazine (page 3) headed “GP tax bill warning” we have produced an additional newsletter for November that aims at addressing the issues raised in the article.

If you have any comments in relation to the contents of MADA News, please do not hesitate to contact either Caroline Poon or Elaine Hinds at our Elwood office on (03) 9531 6666 or Michael Waycott at our Kew office on (03) 9819 7308 or email us at [caroline@madabayside.com.au](mailto:caroline@madabayside.com.au); [elaine@madabayside.com.au](mailto:elaine@madabayside.com.au); or [michael@mada.com.au](mailto:michael@mada.com.au).

If you feel that this newsletter may be of interest to your colleagues, please feel free to pass it on.

**TOPICS COVERED**

1. General Practice: Associate GPs versus Employee GPs
2. Superannuation: Self Employed
3. Rental Property Tax Tips

## **General Practice: Associate GPs versus Employee GPs**

Some of our practice owner clients have asked us to comment on the article headed 'GP tax bill warning' recently published in the 25 November 2005 edition of the Australian Doctor magazine.

From reading the article, it appears that the NSW Office of State Revenue has told Mayne that its doctors are classified as "contractors working solely or mainly for a single employer" a definition that makes the company liable for payroll tax. Mayne plans to appeal the decision in the NSW Supreme Court.

This has caused some concern for our clients and the comments below are aimed at providing guidance in relation to the correct documentation required when engaging GPs in general practice.

In general when a GP is engaged as an Associate within the general practice he or she receives a percentage of their gross patient fees, generally in the range of 55% to 60%. Each practice should have in place a 'Trust Bank Account' that is used solely to collect 100% of the patient fees generated by each Associate GP. From this the practice has the following two options in paying the Associate GP (in our examples assume that the GP is receiving 55% of the patient fees):

1. From the practice 'Trust Account' the practice passes on 100% of the GP's patient fees. The practice then prepares an invoice to be handed to the Associate GP that is equal to 45% (plus GST) of the gross patient fees passed on to the Associate GP. See Annexure A for an example of the invoice prepared by the practice.
2. The practice 'Trust Account' again collects 100% of the Associate GP's patient fees on their behalf of the GP however the Management/Service Fee of say 45% (plus GST) is deducted from the gross billings and the balance is passed onto to the Associate GP. See Annexure B for an example of the invoice prepared by the practice.

We are conscious of the problems practices may incur in implementing the use of the 'Trust Account' as we understand it is difficult to split Medicare payments between each GP within the practice and direct the Medicare receipts into various bank accounts. We understand that in order to break up the Medicare receipts between each GP within the practice separate Eftpos machines are required for each GP which may cause some internal problems and additional costs. We are at present exploring ways where this scenario can hopefully be avoided. We will cover the alternatives in our next edition of MADA News. In the interim if any client has queries regarding the above, please contact Caroline or Elaine (Elwood) or Michael (Kew).

Documentation is critical which means each general practice when engaging a GP as an Associate should have a signed Associate Agreement for all GPs (salaried GPs and Registrars are excluded here). The wording of the agreement is also critical as a clear distinction needs to be made as to the relationship of the Associate GP and the general practice. The wording of agreement must state that the practice is a 'Service Provider' not an employer. The Associate GP is a tenant and leases practice management services, he or she is not a contractor/employee.

The services provided by the practice to the Associate GP include:-

- Secretarial services including booking appointments, billing patients, typing reports, following up on bad debts;
- Premises including the supply of all equipment necessary for general practice;
- Computers and telephones;
- One car park of the Associate GP whilst working on the premises; and
- Any other services agreed by the parties from time to time.

In addition the agreement must clearly state the following points:-

- The parties to the agreement acknowledge that the relationship created shall not be one of employer and employee;
- The Associate GP shall perform its obligations as an independent contractor; and
- This agreement does not constitute a contract of service or a contract for services.

#### *Vicarious Liability Issue*

In addition to the above there is some serious vicarious liability issues that owners in general practice need to consider. If the GP is engaged as an employee, the employer is legally liable to third parties for the wrongful or negligent act of its employee where the employee commits that act while performing his or her employment duties. This is a long established legal principle and is interpreted broadly. For this reason, it is advisable for all medical practices where possible, to engage GPs within general practice as Associates (contractors). That way, if the Associate GP commits a wrongful or negligent act while acting as an Associate GP the owner GPs of the practice are not liable for the actions of the Associate GP.

Each Associate GP, if engaged this way, should have an Associate Agreement prepared by a solicitor. We can arrange for all Associate Agreements to be prepared by a solicitor at reasonable prices.

As a firm we are extremely conscious of the importance of correctly worded up to date Associate Agreements for all GPs engaged in general practice. If any client has any questions on the above topic or wishes to check to see if they require up to date Associate Agreements, please contact Caroline Poon (Elwood) or Michael Waycott (Kew) to discuss further.

### **Super deductions for self employed contractors**

Proposed amendments to the Superannuation Guarantee (SG) legislation have raised the possibility that employers will be able to deduct contributions made to self-employed contractors.

The Bill - Tax Laws Amendment (Loss Recoupment Rules and Other Measures) expands the meaning of an 'employee' to include any persons under contract wholly or principally for labour.

As a result, SG payments made to contractors who are engaged principally for labour will be deductible for the employer.

### **Superannuation age based contribution limits**

Generally, superannuation contributions are deductible for income tax purposes in the year they are incurred, up to certain limits.

The following limits apply to employers and their associates claiming deductions for contributions made for the benefit of an employee, and for individuals claiming a deduction for personal superannuation contributions.

Below are the ATO key superannuation deduction limits for 2005/2006:

<u>Age</u>	
Under 35	\$14,603
35 – 49	\$40,560
50 and over	\$100,587

Note superannuation contributions must be paid to the relevant superannuation fund prior to 30 June 2006 in order for the superannuation deduction to be claimed for tax purposes in the year ended 30 June 2006.

## **Rental property tax tips**

When determining what you can and can't claim in relation to rental properties, it is recommended that you consider the following general tax tips.

### *Be able to justify your claim*

Make sure you have receipts to justify the deductions you are claiming, and can justify the connection between the expense and deriving the rental income (eg it wasn't also for a private purpose).

### *Low cost depreciable assets of \$300 or less*

You generally get an immediate deduction for depreciable assets costing \$300 or less. However, if you purchased other items during the same tax year and together they form part of a set, or are substantially identical and the combined cost is more than \$300, each item must be separately depreciated.

### *Depreciable assets of between \$300 and \$1,000*

Subject to certain conditions, these assets can be 'pooled' and the total cost depreciated at 37.5 per cent, which may be more favourable than separately depreciating them.

### *Allocating total purchase price*

If you purchase property with depreciable assets (eg. dishwasher, clothes dryer etc.), you must allocate the total purchase price between the property and other items on a reasonable basis. If the sale contract does allocate the purchase price, the ATO may challenge it if the amounts allocated appear unreasonable.

It would be prudent to have a quantity surveyor report prepared (the cost being tax deductible) to allocated the total purchase price between land, building and depreciable items. We can arrange for such a report to be prepared by a reputable quantity surveyor at a reasonable cost to you.

### *Part of the building*

Items such as built-in wardrobes, swimming pools, electric cabling and security screens are treated as being part of the building and are not depreciable assets. Expenditure on 'capital works' (eg. the building and surrounding structures, driveways etc) is generally deductible over 40 years at 2.5 per cent. There are restrictions on claiming it on capital works already constructed when you purchased the property.

### *Improvements*

The cost of repairs to the property that amount to an improvement, and don't merely restore it back to its original condition, is generally considered capital and not deductible.

### *Repairing existing wear / damage*

The cost of renovations or repairs to fix damage or wear in existence at the time you purchased the property is generally considered capital and not deductible.

### *Renovate and sell*

If your intention was to renovate and sell at a profit, rather than a long-term income producing investment, you may be taxed on the entire profit as a 'profit-making scheme'. This falls outside the capital gains tax (CGT) rules so you will not be eligible for the 50 per cent CGT concession.

### *Body corporate fees*

These fees are generally deductible. However if a component is for a special-purpose sinking fund rather than general running of the complex, it may be considered capital and not deductible.

### *Travel to inspect property*

You can claim a deduction for the cost of travel to inspect the rental property. If there was also a private purpose to the trip (eg a holiday or to visit family or friends) then you can only deduct a portion of the travel cost and potentially none if the property inspection was merely incidental to the private purpose for the trip.

These are guidelines only, and you should discuss them with either Caroline Poon, Elaine Hinds (Elwood) or Michael Waycott (Kew) to determine how they apply to your particular circumstances.

*The contents of this newsletter are general in nature and are not advice that applies to any particular client situation. Whilst every care has been taken in preparing the newsletter, specific advice should be obtained before proceeding with any suggestion or recommendation made in this newsletter.*

*By Caroline Poon & Michael Waycott*

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**Annexure A**

**Draft tax invoice from Practice Service Entity to Associate Doctor where Associate collects 100 % of patient fees.**

Name of Practice Service Entity:

ABN:

Period:

Gross Patients fees for period	\$
	_____
Management fee = 45%	\$
Plus GST	\$
	_____
Total Management fee (incl. GST)	\$
	=====

N.B. Associate G.P. claims the GST paid on Management fee to the practice on their BAS.

**Annexure B**

**Draft tax invoice from Practice Service Entity to Associate Doctor where Management fee is deducted from Associates gross billings.**

Name of Practice Service Entity:

ABN:

Period:

Gross Patients fees for period	\$	(A)
	_____	
Management fee	\$	
Plus GST	\$	
	_____	
	\$	(B)
	_____	
Net Payment (A less B)	\$	
	=====	

N.B. GST on Management fee deducted from gross billings to be claimed back from ATO via Associates BAS.