Doctors on Short Term Assignment from New Zealand to Australia - Tax Arrangements

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Summary
This Information Bulletin applies to New Zealand doctors who are engaged to fill short term locum requirements either as an employee or contractor. The taxation liability for such doctors is covered by the Australian/New Zealand Double Tax Agreement.

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DOCTORS ON SHORT TERM ASSIGNMENT FROM NEW ZEALAND TO AUSTRALIA - TAXATION ARRANGEMENTS

APPLICATION OF AUSTRALIA/NEW ZEALAND DOUBLE TAX AGREEMENT

This Information Bulletin applies to New Zealand doctors who are engaged to fill short term locum requirements either as an employee or independent contractor. The taxation liability for such doctors is covered by the Australian/New Zealand Double Tax Agreement.

INDEPENDENT PERSONAL SERVICES

Under the independent personal services article of the Australia/New Zealand double tax agreement, New Zealand doctors would not be taxable in Australia if the following conditions were met:

- they are self employed; and
- they do not have a “fixed base” in Australia from which they work; and
- they are in Australia for less than 183 days in any 12 month period

For all these conditions to be satisfied all health services are to ensure the following criteria is documented and available for any taxation audit:

1. Self Employed Test

In order to determine if a doctor is self employed, it is necessary to analyse each particular arrangement in its own right. In each case, this issue will turn on whether the doctor is deemed to be an employee of NSW Health, or a genuine independent contractor.

Notwithstanding that a written agreement might be in a place stating that a given relationship is one of contractor/principal, reference is required to the common law meaning of the term “employee”. The common law has not developed a single objective test and has indicated that the totality of the relationship between the parties must be considered.

This is essentially a question of fact to be determined on a case-by-case basis. Reference must be given to a variety of factors, including:

- what right of control has the health service over the work to be performed by the doctor (including the place and time the doctor is required to work );
- what contractual arrangements exist between NSW Health and the doctor; and
- how payment is made under the contract (ie do they receive regular remuneration from the NSW Health payroll with tax withheld by NSW Health, or is payment made upon issue of a final invoice by the doctor).

To determine whether, on balance, a doctor is a common law employee or a genuine independent contractor, the degree of control in the relationship will...
generally be the most significant factor in this determination ie if the Area determines where and when the doctor will work they are deemed to be an employee.

If a doctor is found to be not self employed, and hence an employee of the health service irrespective how paid, the independent personal services article of the double tax agreement would not apply and the doctors would be PAYG tax withheld.

2. **Fixed Base Test**

An example of a fixed base is a consulting room from which a doctor may run a private practice. If such a place is regularly made available to a New Zealand doctor in Australia for the purpose of performing their work activities, the doctor will be deemed to be working from a “fixed base” and will be subject to tax in Australia on the income received for the duration of the assignment.

3. **183 Day Test**

If the first two tests are satisfied that the doctor is an independent contractor and has no fixed Australian base, proof is required that on a rolling 12 month basis that in the last 12 months the Doctor has been in Australia for less than 183 days. These days do not need to be consecutive, but include the day of entry into Australia and the day of leaving Australia for each visit.

**DEPENDENT PERSONAL SERVICES**

Where the New Zealand doctors are not self employed, the independent personal services article does not apply. However, under the dependent personal services article of the Australia/New Zealand double tax agreement, the New Zealand doctors will not be taxable in Australia if the following criteria are met.

- they are employees; and
- they are in Australia for less than 183 days in any 12 month period; and
- they are paid by, or on behalf of, a non resident employer; and
- they are paid by an employer who is unable to make tax deductions for the payments in Australia; and
- they are taxed in New Zealand on this income.

**Who is the employer?**

The nature of the locum work is such that there is a clear need to be fulfilled in a NSW hospital and as such, the services being provided would be for the benefit of NSW Health. Therefore, if the New Zealand doctors are not self employed,
they will most likely be deemed to be in an employment relationship, where NSW Health is the employer for the duration of their stay in Australia.

**Residency status of NSW Health**

NSW Health meets the Australian definition of a “resident of Australia” as it is deemed to be a company by definition, and its central management and control is in Australia. As such, the remuneration derived by the New Zealand doctors would not be paid by, or on behalf of, a non resident employer, and the conditions of the dependent personal services article would not be met.

Therefore, if the New Zealand doctors are not self employed, the income they receive from NSW Health will be taxable in Australia.

**Conclusion**

NSW Health Services are advised therefore that based upon the Australian/New Zealand double tax arrangement that its tests generally support the position the income that New Zealand doctors or other health care workers (whether paid as locums or employees) receive from NSW Health is taxable as PAYG.

For administrative convenience, arrangements should be made therefore, to ensure that all such New Zealand doctors or other health employees currently or in future are appointed to the health service payroll so that appropriate PAYG tax can be deducted from their remuneration to comply with ATO policy.

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Director-General