

Wednesday, 14 February 2024

Simon McKee  
Commissioner  
Queensland Revenue Office

By email: [simon.mckee@treasury.qld.gov.au](mailto:simon.mckee@treasury.qld.gov.au)

Cc: The Hon. Cameron Dick MP, Treasurer and Minister for Trade,  
[deputy.premier@ministerial.qld.gov.au](mailto:deputy.premier@ministerial.qld.gov.au)

- Ms Jennifer Howard MP, Assistant Minister for Treasury, Trade and Investment,  
[deputy.premier@ministerial.qld.gov.au](mailto:deputy.premier@ministerial.qld.gov.au)
- Melinda Kross, Chief Revenue Counsel, Queensland Revenue Office,  
[melinda.kross@treasury.qld.gov.au](mailto:melinda.kross@treasury.qld.gov.au)

Dear Mr McKee

### **Increased resourcing for the Queensland Revenue Office**

Chartered Accountants Australia and New Zealand (CA ANZ) and CPA Australia represent over 300,000 professional accountants who work in diverse roles across public practice, commerce, industry, government and academia throughout Australia, New Zealand and internationally.

Our Queensland-based members help businesses and individuals comply with Queensland revenue laws such as land tax, payroll tax and stamp duty. They therefore interact with the Queensland Revenue Office (QRO) on a regular basis.

For some time now our members have been raising concerns about the timeliness of both the resolution of client matters and the publishing of guidance on significant tax matters by the QRO. For example:

- members have informed us that the objection process can take more than 12 months
- there are significant delays in the allocation process of complex stamp duty cases
- public guidance on whether a person is an employee is still to be updated after 13 years.

The attached appendix provides further detail on some of the issues our members are experiencing with the public guidance process.

We understand that the key reason for these issues arising is the inadequate resourcing of the QRO. This leads to QRO officers having heavy workloads and being unable to access appropriate training. As a consequence, taxpayers and their advisers are spending a disproportionate amount of time dealing with administrative issues.

We recommend that the 2024-25 Budget include funding for an increase in staffing and resources for the QRO. This will improve the QRO's ability to meet the service standards set in its [client charter](#). A strong and efficient QRO is key to both collecting vital state revenue and ensuring that businesses can operate efficiently in Queensland.

We recommend that such a funding boost for the QRO be directed to:

- Ensuring that public guidance, especially guidance about whether someone is an employee, is up to date. By providing up-to-date general guidance, many taxpayers will be better able to resolve their queries without having to contact the QRO or practitioners, thus freeing up both practitioners and the QRO to deal with other matters.
- Process and review areas. Currently, the time and effort needed to make applications for *ex gratia* relief from the land tax foreign surcharge can be significant. Further, resolution of objections can take more than a year and allocation of complex stamp duty cases is very slow. This hinders the efficiency of businesses operating in Queensland. Businesses need to be able to focus on growing not administration.
- Providing training to staff to help them identify and resolve issues quickly. The below appendix has greater information on potential training opportunities to streamline operations. It is recommended that training be provided regarding:
  - Benefits and limitations of data matching.
  - Understanding financial statements.
  - Tax technical issues.

Should you have any questions about this submission or wish to discuss them further, please contact either Susan Franks (CA ANZ) at [susan.franks@charteredaccountantsanz.com](mailto:susan.franks@charteredaccountantsanz.com) or Gavan Ord (CPA Australia) at [gavan.ord@cpaaustralia.com.au](mailto:gavan.ord@cpaaustralia.com.au)

Sincerely,

**Simon Grant FCA**  
Group Executive – Advocacy and International Development  
**Chartered Accountants Australia and New Zealand**

**Ram Subramanian CPA**  
Interim Head of Policy and Advocacy  
**CPA Australia**

# Appendix

## Timeliness of public guidance

Public rulings generally have a preamble that where a change in legislation or case law affects the content of a public ruling, the change in the law overrides the public ruling – however it seems technical guidance does not seem to be updated in a timely manner, presumably due to a lack of resourcing.

For example, revenue ruling PTA038.1 issued on 3 August 2011 to provide guidance on whether a worker is a common law employee. In particular:

- Paragraphs 44 and 45 of PTA038.1 (which were in effect from 1 July 2011 to 2 February 2022) specifically stated ‘a common law employment relationship cannot exist between a principal and an interposed entity such as a company.’ This was in direct contradiction of the full Federal Court decision in *ACE Insurance Limited v Trifunovski* [2013] FCAFC 3 (ACE), which confirmed a common law employment relationship can exist even where interposed entities are involved (appeal of which was refused by the High Court).
- On 2 February 2022, the Commissioner issued PTA038.2, updating paragraphs 44 and 45 of PTA038.1 to acknowledge a common law employment relationship can exist even where the principal makes payments to an entity interposed between the principal and the worker (presumably to recognise the decision in ACE, which had issued some nine years previously).
- On 9 February 2022, the High Court issued its unanimous decision in *ZG Operations Australia Pty Ltd v Jamsek* [2022] HCA 2 (Jamsek), which confirmed that in determining whether a worker is a common law employee, it is necessary to look at the legal rights and obligations agreed under the relevant contract. This decision which moved away from the previously accepted ‘multi-factorial’ approach (similar to that outlined in PTA038.1) and directly impacting the law regarding whether a common law employment relationship can exist in circumstances where a principal makes payments to an interposed entity.

While PTA038.2 is largely identical to New South Wales Revenue Ruling PTA 038 (NSW Ruling), the NSW Ruling has revised its equivalent wording of paragraphs 44 and 45 to acknowledge ‘a common law employment relationship cannot exist between a principal and an interposed entity... However, payments made in these circumstances may still be subject to payroll tax under the contractor or avoidance arrangement provisions.’

As PTA038.2 is currently written, it would seem contradictory to the unanimous High Court decision in *Jamsek* and inconsistent with the equivalent NSW ruling.

An increase in resourcing should help ensure rulings are published and updated on an ongoing and prompt basis – consistent with the principles contained in the Client Charter.

## Training

### Data-matching

Data-matching is useful in identifying potential tax shortfalls but given the data has been prepared for other purposes, it may not necessarily evidence shortfalls for state revenue purposes. For instance:

- Immigration records – while immigration records may provide an indication of whether landowners have been overseas for more than six months (relevant in determining whether the land tax home exemption applies under the main test), this data should be considered in the context of whether return airfares have been booked (relevant to determining whether the residual test is satisfied, in determining whether a property is used as a home).
- Income tax records:
  - In the context of the land tax home exemption available for properties held in trust – merely because an income tax return for a trust may be generated which includes a distribution statement for a company beneficiary (auto-generated given a corporate beneficiary had received a distribution in a prior year), does not mean the land tax home exemption has been incorrectly claimed – particularly when the distribution statement contained in the income tax return states ‘nil’ distributions.
  - In the context of whether superannuation contributions are subject to payroll tax – and whether such payments were paid to an individual in their capacity as an employee or as an owner. While superannuation may be included as an expense in an income tax return, QRO officers need to be aware that other sections of an income tax return need to be reviewed, including to ascertain if the ‘expense’ was treated as non-deductible, for instance was the superannuation:
    - included as an ‘other’ addback item?
    - referenced in any capital gain schedules?

Similarly, there have been instances where it appears investigation officers do not properly understand common items contained in financial statements. For example, unpaid present entitlements (UPE) may appear in balance sheets, which reflect entitlements owing to beneficiaries accruing over multiple years. While a particular beneficiary’s name may appear in the balance sheet as having a UPE owing to them, this does not evidence a power of appointment that has been exercised in the previous 12 months in their favour (relevant to determining who is a beneficiary of a discretionary trust at a particular liability date for land tax purposes).