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29 April 2025

Dear Chair and Members of the Legislative Council,

**Post-hearing response: Inquiry into the application of the contractor and employment agency provisions in the Payroll Tax Act 2007 (NSW)**

We, Alvarez & Marsal ('A&M'), are grateful for the opportunity to have presented as a witness to the NSW Legislative Council's inquiry into 'The application of the contractor and employment agent provisions in the Payroll Tax Act'.

Following our appearance at the inquiry, we confirm we have no adjustments or corrections to be made to the transcript.

During the appearance, we took one question on notice and have since been provided with a supplementary question. We set each out in the enclosed appendices. We have also taken up the offer to include additional information to the committee within our responses.

Should there be any questions in relation to this submission, please do not hesitate to contact Alston Kam at \_\_\_\_\_ me at \_\_\_\_\_ or \_\_\_\_\_

The information contained in this document is of a general nature and has been obtained from publicly available information plus market insights. This information is not intended to address the specific circumstances of an individual or institution. There is no guarantee that the information will be accurate into the future.

Yours faithfully,

**box** SIGN 4KQJP5JR-175YZZX9

Amanda Spinks  
Managing Director  
Alvarez & Marsal Australia

## Appendix A – Question taken on notice

During the inquiry, a question was raised in relation to specific advice provided to clients at the time that *Commissioner of State Revenue v The Optical Superstore Pty Ltd* [2019] VSCA 197 (**Optical Superstore**) was handed down.

A&M was not operating in Australia at the time of the Optical Superstore case. In the years immediately prior to commencing at A&M in December 2023, I was working in commerce and not advising clients. However, I am aware that many of my former and current colleagues were actively involved in advising clients on these matters. Whilst I am not privy to specific details, my understanding is that the nature of the advice evolved over time in response to developments and changing interpretations as they were handed down.

From what I have gathered, advisors at the time initially believed Optical Superstore to be an overreach that would have been better decided by application of anti-avoidance provisions, rather than stretching the application of the contractor provisions. As such, most of the advice provided to clients at the time of the original decision was that more commercial arrangements shouldn't be subject to the contractor provisions.

At the time of the original decision, it was still widely considered that existing business structures for medical practices were appropriate. However, once the appeal decisions didn't correct the perceived overreach, this position needed to be reconsidered. For those in the advisory sector, each subsequent decision that looked at medical practices seemingly changed the interpretation of the contractor provisions and shifted the goal posts. Subsequent decisions involving *Uber Australia Pty Ltd v Chief Commissioner of State Revenue* [2024] NSWSC 1124 (**Uber**) and the gig economy have only further confused the interpretation of the relevant contract provisions.

This constant interpretive change makes it incredibly difficult to advise clients on appropriate alternative business structures, particularly as the law seemingly is yet to be settled.

During the hearing, a question was asked about the ability for clients to restructure their businesses following the outcome of these cases. Even if we assume the outcome was solidified and without question (which, as noted above, was not the case), for a business to restructure operations in such a way that payroll tax was not payable would require (at a minimum):

- Professional tax & legal advice;
- A Project Manager to coordinate and implement transformation projects;
- Time away from commercial activities to train staff on new procedures; and
- Investment in new technology to facilitate new payment and receipt methods.

Finding the necessary funds and resources for a restructure is not always viable in an industry based on low-margin operations. Further, taxpayers would need to be clear as to the purpose of any restructure as restructuring solely as a reaction to the adverse outcomes of payroll tax cases could be seen as tax avoidance.

As a result, restructuring has been out of reach for many businesses. Instead, many GP practices have taken the position that they will instead seek to pass on the cost to the end user, by adding ~5% to their invoices to cover the additional payroll tax liability.

Finally, it is worth noting that although many of the recent cases have focused on GPs, similar structures are used by a whole range of specialist medical practitioners and allied health professionals. However, the payroll tax relief measures are only available for GPs that meet the specific requirements. This further means that the additional payroll tax levied on many health professionals not eligible for relief will be passed onto everyday Australians, which is particularly impactful as we negotiate the current cost of living crisis.

## **Appendix B – Supplementary Question subsequently received**

### **What communications (including letters, emails and meetings) have you had with NSW Government Ministers and/or Ministerial staff on payroll tax issues since 2017?**

A&M has only been operating in Australia since 2023. Notwithstanding, in my personal capacity at former employers, I have not personally had any direct communications with Government Ministers and/or Ministerial staff on payroll tax issues since 2017. As a matter of practice, matters of this nature would usually be dealt with directly with the relevant Revenue Authorities (not with government).

For completeness, the majority of the cases considered to broaden the original intention of the contractor provisions have only been decided in the last 4-5 years. Hence, there was little need to raise issues of concern directly with government, until more recent times.

As noted, although I personally had no direct government contact, I am aware that former colleagues raised with Treasury the particular issues in relation to medical practices in the period following the Optical Superstore decisions and A&M has welcomed the opportunity to air these issues with the inquiry.