

IN THE PRIVY COUNCIL  
ON APPEAL FROM  
THE HIGH COURT OF AUSTRALIA

No 29 of 1965.

BETWEEN:

DESMOND LEES PEATE

APPELLANT

AND:

THE COMMISSIONER OF TAXATION  
OF THE COMMONWEALTH OF  
AUSTRALIA

RESPONDENT

## APPEAL BOOK

VOLUME 1

LIGHT & FULTON

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LONDON, W.C.1.

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SOLICITORS FOR THE RESPONDENT

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SYDNEY.

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DESMOND LEES PEATE

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THE COMMISSIONER OF TAXATION  
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AUSTRALIA

RESPONDENT

TRANSCRIPT RECORD OF PROCEEDINGS

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Income Tax and Social Services Contribution  
ADJUSTMENT SHEET

Form A. 19  
COPY..

5

Name DR. DESMOND L. PEATE.

File No. 

SN	67243
----	-------

The following adjustments have been made to the income returned by you for the year ended 30th June 1958

	Taxable income as returned ..	
		1232
<b>ADD</b>		
1. Additional income from partnership		6690 ✓
2. Subscription to B.M.A. reduced from £12.12.0. to £10.10.0. maximum.		2 ✓
		<hr/> 7924
<b>DEDUCT</b>		
1. Salary Deleted	1560	✓
2. Allowable deductions in connection with additional partnership income	2066	✓
		<hr/> 3526
		<hr/> <hr/> 4298
Taxable income as shown in attached notice ... ..		4



PA  
N.S.W. -- 1958

COMMONWEALTH OF AUSTRALIA  
**NOTICE OF ASSESSMENT**  
**INCOME TAX AND SOCIAL SERVICES CONTRIBUTION**  
BASED ON INCOME DERIVED DURING YEAR ENDED 30TH JUNE, 1958

In accordance with the provisions of the *Income Tax and Social Services Contribution Assessment Act 1936-57*, the Income Tax and Social Services Contribution payable by you on income derived during year ended 30th June, 1958, has been assessed as under. The provisional tax and contribution payable by you in accordance with that Act in respect of the income of the year ending 30th June, 1958, is the amount notified hereunder. That amount is based on the assumption that your income for that year will be the same as for the year ended 30th June, 1958.

**LATE PAYMENT PENALTY** — An additional amount for late payment becomes due and payable at the rate of 10% per annum on the amount unpaid by the due date.

**HOURS FOR PAYMENT:** 9 a.m. to 4.30 p.m. Monday to Friday inclusive  
**GOVERNMENT LOAN INTEREST** — Any interest on Commonwealth Government Loans and on certain other loans issued by Public Authorities guaranteed free of State Income Tax, has been included in the taxable income, but a rebate of 2% in the £ has been allowed in respect of any such interest when arriving at the amount set out in column 2.

**OBJECTION** may be lodged against this assessment within sixty days after service by post of this notice but notwithstanding any objection the full amount payable must be paid by the due date.  
**TAX** on the assessment notified in column 8 is due on the date shown. Other amounts included are due as previously notified.

File No. **BN67243** Assessment No. **(COPY)**  
**DR. DESMOND L. PEAVE**  
**C/- D. B. ROLLASON, DAVIES & CO. 132, 928.**  
**BOX 2590 G.P.O. SYDNEY**  
Issue Date **AUG 25 59** Date Due **SEP 28 59** and Payable

Taxable Income (1)	Tax and Contribution on income derived during year ended 30.6.1958 (2)	Additional Amount Late Return or Omitted Income (3)	Provisional Tax and Contribution in respect of income year ended 30.6.1958 (4)	Credit for Certificates and Tax Stamps (5)	Balance of Tax & Contribution on income derived during year ended 30.6.1958 (6)	ADD Provisional Tax and Contribution in respect of income year ending 30.6.1958 (7)	AMOUNT PAYABLE (8)	ARREARS (9)
£	£ s. d.	£ s. d.	£ s. d.	£ s. d.	£ s. d.	£ s. d.	£ s. d.	
4,298.	1,341.10.0		260. 0. 0	1,081.10. 0	1,341. 0. 0	2,422.10.0		

**4,298. 1,341.10.0** **260. 0. 0** **1,081.10. 0** **1,341. 0. 0** **2,422.10.0**  
TOTAL AMOUNT PAYABLE →

**OPTION TO VARY PROVISIONAL TAX**

Until the due date of this assessment you have the option of varying the amount of provisional tax if your income has been increased or decreased.  
If you decide to have your provisional tax recalculated you should obtain the necessary form from the Taxation Office and complete it. In such case payment should not be made until a notice of adjustment is received.

14 CASTLEREAGH STREET, SYDNEY C.C.O. GREEN Deputy Commissioner of Taxation

OFFICIAL RECEIPT

Copy Notice of Assessment year 30/6/58.

5. Copy Notice of Assessment year 30/6/58.

**INCOME**

- DO NOT FAIL TO ATTACH YOUR ORIGINAL GROUP CERTIFICATES AND TAX STAMPS SHEETS TO YOUR RETURN.
- If you have not received them by 31st July, 1958, your employer should request an extension of time for lodgment of your return.
- Hold for inclusion in your NEXT return any Group Certificates or Tax Stamps Sheets covering earnings AFTER 30th JUNE, 1958.

**ITEM 1.**

Include in the space provided at top of page 2, all income from which tax instalments have been deducted during year ended 30th June, 1958.

**ITEMS 2-17.**

Include under items 2-17 all income of year ended 30th June, 1958, not included in item 1. If space is insufficient attach detailed list.

Show income from all sources. If any doubt arises, the full facts should be placed before the Department for decision.

**WHERE TAX HAS BEEN EVADED THE PENALTIES ARE SEVERE.**

**AGE ALLOWANCE**

(i.e. limitation of tax payable)

Applicable to persons who are residents of Australia during the whole of the year ended 30th June, 1958, who are males aged 65 or females aged 60 on or before that date, as follows:—

**Individuals—**

If income not more than £410—no tax is payable.

If income between £410 and £460—tax payable shall not exceed 9/20ths of the excess over £410.

**Married Couples (who both satisfy the above conditions of age and residence)—**

If taxpayer contributes to the maintenance of his or her spouse—

(a) where their combined income is not more than £819—no tax is payable;

(b) where their combined income is between £819 and £1,106—tax payable shall not exceed 9/20ths of the excess over £819.

**NOTE**—Income means the amount shown in item 18, plus exempt income and exempt pensions, and less only deductions claimed under items 19 to 25, and 44.

If this allowance is claimed, complete statement on page 1.

**DEDUCTIONS**

In the notes below, "widow" or "children" includes a legally adopted child, a step-child, or ex-nuptial child of the taxpayer.

**SPOUSE, DAUGHTER-HOUSEKEEPER, CHILDREN UNDER 16 YEARS, PARENTS, PARENTS-IN-LAW, INVALID RELATIVES, STUDENT CHILDREN 16-21 YEARS.**

- A deduction of the amount specified on page 3 is allowable for any of the above dependants if, during the whole of the year of income, the taxpayer is the sole contributor to the dependant's maintenance and that dependant is a resident of Australia and has no separate net income.
- If a dependant derives a separate net income, the deduction should be REDUCED—
  - (a) for spouse or daughter-housekeeper—by £2 for every £1 by which separate net income exceeds £65;
  - (b) for parents or parents-in-law—by the amount of the separate net income;
  - (c) for invalid relatives or student children—by the amount of invalid pension or value of government assistance plus £2 for every £1 by which other income exceeds £52;
  - (d) for children under 16 years—by £2 for every £1 by which separate net income exceeds £52.

● If a person becomes, or ceases to be, a dependant during the year, or if two or more taxpayers contribute to the dependant's maintenance, a proportionate deduction is allowable.

**NOTE**—"Daughter-housekeeper" means a daughter, adopted daughter, step-daughter, or ex-nuptial daughter wholly engaged in keeping house for a widowed taxpayer, and "invalid relative" means a person over 16 years who is a child, brother or sister of the taxpayer and who is in receipt of an invalid pension or for whom a certificate of invalidity has been obtained from the Commonwealth Department of Health, or a doctor approved by the Director-General of Social Services.

**HOUSEKEEPER**—A deduction of £14 is allowable if the housekeeper during the whole of the year is wholly engaged in keeping house for the taxpayer, and has the care of (a) the taxpayer's children under 16 years, or (b) any child under 16 years, or invalid relative in respect of whom the taxpayer is entitled to a deduction. If these conditions apply for part only of the year, a proportionate deduction only may be allowed. This deduction does not apply where, for example, a taxpayer is entitled to a deduction for spouse or daughter-housekeeper.

**MEDICAL, DENTAL, OPTICAL, FUNERAL EXPENSES, ETC.**

The following classes of payments are allowable deductions, except to the extent to which they were or will be recouped by a Government, benefit society, etc.

**MEDICAL EXPENSES** paid to any legally qualified medical practitioner, nurse, chemist, or hospital on account of illness.

**DENTAL EXPENSES** paid to any legally qualified dentist—maximum £30 per person.

**OPTICAL EXPENSES** paid to any legally qualified person for testing of eyes or prescribing of spectacles, or to any person for the supply of such spectacles.

**THERAPEUTIC EXPENSES** if incurred under direction of a legally qualified medical practitioner.

**ARTIFICIAL LIMB** (or part of a limb), **ARTIFICIAL EYE** or **HEARING AID**.

**APPLIANCES (MEDICAL OR SURGICAL)** prescribed by a legally qualified medical practitioner.

**ATTENDANT'S REMUNERATION** paid on account of blindness or permanent confinement to a bed, etc.

● **EXPENDITURE** (maximum, including £30 dental expenses, £150 per person) is allowable only on account of taxpayer, his spouse, his child under 21 years, or a "dependant," except housekeeper.

**FUNERAL**, burial, cremation expenses. Maximum £30 for any one dependant, in addition to above expenses.

**OTHER DEDUCTIONS** are allowable as follows:—

**SUBSCRIPTIONS** to trade, business or professional association or union (maximum £10 10s. to each).

**MEDICAL or HOSPITAL BENEFITS FUND** payments for personal benefit of taxpayer, his spouse or children only.

**LIFE, SICKNESS and ACCIDENT ASSURANCE** premiums and payments to a **FRIENDLY SOCIETY** (excluding Medical or Hospital Benefits Fund payments), **SUPERANNUATION, SUSTENTATION**, or similar **FUND**—For taxpayer, his spouse or children only.

**GIFTS** of £1 and upwards to Public Benevolent Institutions and to approved Research Institutes for scientific research, etc.

**CALLS**—One-third of calls (not application or allotment moneys) paid to mining, prospecting or afforestation companies operating in Australia.

**ZONE ALLOWANCE and OVERSEAS FORCES ALLOWANCE** to persons residing in specified areas for more than half the income year and to members of Defence Forces serving overseas. See map at Taxation Office or post offices in the zones. Deduction: Zone A, £180; Zone B, £10; Overseas Forces, £100. (Maximum deduction £190.)

**LIVING-AWAY-FROM-HOME ALLOWANCE**—If the allowance is paid in cash under any award, industrial agreement, etc., and does not exceed £3 10s. per week, the first £2 10s. per week is an allowable deduction. If the allowance is received otherwise than in cash and does not exceed a value of £2 10s. per week, the amount by which the value exceeds £1 per week is an allowable deduction. In any other case, the deduction allowable is the amount which the Commissioner deems reasonable, but may not exceed the total amount received less £1 per week.

**EDUCATION EXPENSES**—Payments made for recognized school uniforms, fees, books, fares, etc., in connexion with the full time education at a school, college or university, or from a tutor, of the taxpayer's children or dependants under 21 years of age—only amounts actually paid may be claimed up to a maximum of £100 for each child or dependant.

**RATES** (excluding excess water) and **LAND TAXES** for which taxpayer is liable.

ATTACH TO YOUR ORIGINAL GROUP CERTIFICATE AND TAX STAMPS SHEET.

DEDUCTIONS (if space insufficient, attach list)							1959	
Dependent	Name in full	Date of birth	Place of residence of dependent	Separate return (if any) for the year ending 31/12/57	Wholly or partly (if not, give details)	Amount of deduction for each dependent	AMOUNT CLAIMED	
25	SPOUSE OR DAUGHTER-HOUSEKEEPER	Margaret Peate	With Taxpayer	See separate Return	143	-	-	
29	CHILDREN UNDER 16 YEARS OF AGE	CAROLYN PEATE 10/6/45	"	Nil	Wholly	91 (for one)	91	
		JOHN PEATE 30/1/46	"	"	"	63 (others)	65	
(W.B. Phillips as Trustee - not presently entitled)								
30	PARENTS OF TAXPAYER or of SPOUSE			Amount of pension	Other income	143		
31	INVALID RELATIVES OVER 16 YEARS			Amount of pension	Other income	91		
32	STUDENT CHILDREN 16-21 YEARS			Value of grant assistance	Other income	91		
Give name of school also.								
33	HOUSEKEEPER			If also engaged for whole of year, write WHOLLY. If not, state for what period wholly engaged.		143		
34	MEDICAL, DENTAL, OPTICAL, FUNERAL EXPENSES, ETC.							
Name of person in respect of whom each claim is made		Relationship to taxpayer (if child, state date of birth)		Name and address of legally qualified medical practitioner, optician, dentist, etc.		State nature of expenses, e.g. medical, dental, etc.	AMOUNT	
				Chemist		18.2.8.		
TOTAL							£	
SUBTRACT amounts recovered or payable by a Government, Public Authority, Society or Association							£	18
35	SUBSCRIPTIONS	Paid to B.M.A. £12.12.0. N.S.W. medical Reg. Bnd. £1.1.-					14	
36	MEDICAL or HOSPITAL BENEFITS FUND	Paid to						
37	LIFE ASSURANCE, SUPER-ANNUATION, etc. payments	Paid to A.P.A. £361/3.9. A.L.P. £229				(Minimum deduction) £300	266	
38	GIFTS to public institutions, etc.	Paid to						
39	CALLS, mining and afforestation	Paid to		Amount £		£		
40	ZONE AND OVERSEAS FORCES ALLOWANCE	Place of residence within zone		Dates of receipt, part only		Period of residence to		
41	LIVING AWAY FROM HOME ALLOWANCE	Date of allowance weekly		Period of receipt		Amount received		
		Name of child		Name of school, college, etc.		Amount actually paid		
42	EDUCATION EXPENSES (if space insufficient, attach list)	John Peate		Scots College		233	100	
43	RATES AND LAND TAXES paid on property from which income is not derived (rates less 1/3)	Municipal		£70	Water	£42	112	
44	OTHER DEDUCTIONS (give details)							
45	TOTAL DEDUCTIONS—(items 28 to 44)						666	
46	TAXABLE INCOME (deduct item 45 from item 27)						£ 1232	

SEE NOTES ON PAGE 4

TAX TABLE

Taxable income.		Tax on total taxable income:	
Not less than—	Not more than—	(1)	
(1)	(2)	£	s. d.
Nil	101	Nil	(No tax payable unless taxable income exceeds £13)
105	149	0	9 7 plus 0.2 in the £1 on excess over 105
150	199	1	0 10 0 7
200	249	2	10 0 0 10
250	299	4	15 10 1 3
300	349	7	10 4 1 0
400	449	15	5 0 2 2
500	549	22	15 0 2 6
600	649	29	11 0 2 10
700	749	35	15 0 3 2
800	849	42	11 0 4 5
900	949	47	1 8 5 10
1,000	1,049	56	5 0 8 4
1,200	1,249	69	11 0 4 11
1,400	1,449	84	15 0 5 5
1,600	1,649	101	18 4 5 11
1,800	1,799	112	1 8 6 5
2,000	2,199	126	5 0 7 1
2,400	2,799	177	10 4 7 8
2,800	3,199	227	15 0 5 3
3,200	3,599	275	19 0 5 9
3,600	3,999	321	23 0 6 3
4,000	4,399	374	27 0 6 9
4,400	4,799	425	31 0 7 4
5,000	5,999	500	38 0 11 0
6,000	7,199	625	50 0 11 7
8,000	8,999	869	74 0 12 1
10,000	11,999	1,125	98 0 12 8
16,000	17,999	1,817	18 4 13 4

**EXAMPLE OF CALCULATION**

TAXABLE INCOME 1938

£ s. d.

Tax on £900 ..... 67 11 8

Tax on £ 38 @ 3s. 10d. .... 7 5 8

Tax on £938—to nearest shilling ..... £94 7 0

**TAXPAYER'S CALCULATION BASED ON HIS OWN INCOME.**

£ s. d.

Tax on £ ..... : :

Tax on £ ..... : :

Tax on £ —to nearest shilling ..... £ : : 0

Copy Return of Income of D.I. Peate for year ended 30/6/58.

**INCOME**

**1** **INCOME SHOWN ON GROUP CERTIFICATES AND TAX STAMPS SHEETS.** (Attach to page 3.)

Serial number	Whether Group Certificate or Tax Stamps Sheet	Employer's name	Period of employment	INSTALLMENTS £	s	d.	GROSS RECEIPTS £
A 15365	Tax Stamps	W. Raleigh Pty. Ltd.	12 months	250	-	-	1580
If unemployed during year, state period			195 to 195	TOTAL INSTALLMENTS	250	-	-

**INCOME NOT INCLUDED ABOVE**

**2** Salary, wages, stipend, bonuses, workers' compensation (give details), overtime, and earnings as employee of

**3** Value of (a) Board £ (b) Use of premises or quarters £ allowed to me by employer for weeks

**4** Living-away-from-home allowance, travelling allowance, entertainment allowance, cash allowance in lieu of quarters, sustenance and other allowances allowed to me by employer (attach list). All such allowances must be shown. Expenditure deductible in respect thereof may be claimed under items 41 and 44

**5** Tips and other gratuities received for services rendered

**6** Five per centum of retiring allowance, gratuity or compensation received in lump sum (total amount received £ ) 5% (1/20th)

**7** Pension (not being a war or service pension, or invalid, age or widow's pension), superannuation, or retiring allowance received from

**8** Fees, commissions (attach list)

**9** Profits from sales of land, leases, shares, or any other property, purchased for re-sale (attach full particulars)

**10** Share in partnership of Drs. Peate, Wiles, Lawson, Bertinshaw, Atkinson, Spence and Allen in the State of N.S.W.

**11** Income as beneficiary under will, settlement, deed of gift or instrument of trust—  
of (a) in the State of  
of (b) in the State of

**12** Gross rents—including rent from sub-letting (attach list) 225

**13** Premiums and other amounts received in connexion with the grant, assignment or surrender of leases, including goodwill and licence (attach list)

**14** **DIVIDENDS** (including Exempt and ex-Australian Dividends, Bonus Shares and Liquidators' Distributions)

Company	Gross amount £	Company	Gross amount £
Brought Forward			
Carried Forward			

If it is claimed that the whole or part of any dividend, bonus share issue, or liquidator's distribution is exempt, an appropriate note should be inserted. Dividends on preference shares should be separately shown. Dividends must be expressed in Australian currency.

**15** **INTEREST RECEIVED BY OR CREDITED TO ME** (including ex-Australian interest expressed in Australian currency)

**Interest on Commonwealth Government Loans, on State Government Loans and on Loans issued free of State Income Tax by State Authorities**

Name of Government or Public or Municipal Body	Principal £	Rate	Interest £
Carried Forward			

**16** **Other Interest.**

Name of Government, Bank, Company, firm or Person to whom money is lent	Address	Principal 1-7-57	30-6-58	Rate	Interest £
Carried Forward					

**17** **OTHER INCOME** (give details)

**18** **TOTAL INCOME** 1898

**DEDUCTIONS**

**19** RATES and LAND TAXES paid on property from which income is derived (attach list)

**20** REPAIRS (not including alterations, additions or improvements) to properties from which rent is received (attach list)

**21** INSURANCE Premiums (Fire, Burglary, etc.) paid on income producing properties (attach list)

**22** INTEREST paid to of on borrowed money used to produce income from investments

**23** COMMISSION paid to of for collection of income from investments

**24** RENT paid to of for property or part thereof from which rent is received

**25** OTHER DEDUCTIONS from property income

**26** **NET INCOME** (carried to item-27, page 3)

SEE NOTES ON PAGE 4

FORM  
**A**  
COMMONWEALTH OF AUSTRALIA  
INCOME TAX AND SOCIAL SERVICES CONTRIBUTION

NEW SOUTH WALES  
RETURN OF INCOME derived from all sources in and out of Australia during the twelve months from 1st July, 1957 to 30th June, 1958

**PERSONAL RETURN**

Taxpayers who carry on a business, or profession, and their Co-partners and Partnerships, must complete FORM 100.

THIS RETURN SHOULD BE LODGED WITH THE DEPUTY COMMISSIONER OF TAXATION, BOX 4197, G.P.O., SYDNEY, BY 31st JULY, 1958.

If income (other than salary, wage, or dividends) was derived from more than one State, lodge this return with the Deputy Commissioner of Taxation, P.O. Box 7000, Melbourne. If a full-time member of the Defence Force, send this return to the Deputy Commissioner of Taxation in the Capital City of the State in which you enlisted or were called up.

For office use only

NAME IN FULL (USE BLOCK LETTERS)	DR. PEATE DESMOND LESLIE	
Postal address for service of notices (USE BLOCK LETTERS)	C/- D.E. ROLLASON, DAVIES & CO., BOX 2590 G.P.O., SYDNEY.	You are required to notify the Deputy Commissioner of any change of address for service of notices.
Residential address	WOLLOMBI ROAD, CESSNOCK.	If same as post office address write "as above"
If married, state full name of wife or husband	MARGARET PEATE.	A deduction will not be allowed (unless item 2B on page 1 is completed).
My occupation is	MEDICAL PRACTITIONER.	When stating industry and occupation, state what kind of manufacturer, wholesaler, retailer, craftsman, etc.
Employer's industry	MEDICAL SERVICES.	Unemployed person, to state industry of last employer.
Last return lodged at Taxation Office (Capital City)	SYDNEY	File No. D-53888
My address then being	AS ABOVE.	If no previous return, attach statement giving reasons and showing date of birth, and income for each of the previous three years.
If name changed, state former name:		If married during year, state date of marriage.

For office use only.

**AGE ALLOWANCE.**

This statement must be completed if Age Allowance is claimed. (See Notes for Guidance, page 4.)

DATE OF BIRTH (in block letters or figures)	MALES 30-6-1893 FEMALES 30-6-1898	Taxpayer	Spouse
TOTAL INCOME (including all pensions and exempt income)	Taxpayer £	Spouse £	

**DECLARATION.**

I, the person making this return, declare that the particulars shown therein are true and correct in every particular and disclose without reservation or exception a full and complete statement of the total income derived from all sources both in and out of Australia by me during the year 1st July, 1957, to 30th June, 1958.

If the return has been made up for any other period, after this declaration, accept responsibility for the declaration.

Dated this 28th day of November 1958

SIGN HERE  
(Usual signature of taxpayer) (Sgd.) D.L. Peate.

This declaration and all attached sheets must be signed by the taxpayer personally.

**PARTICULARS RELATING TO SOURCES OF INFORMATION.**

To be given by—A. Any person who charges directly or indirectly any fee for preparing, or assisting to prepare, this return. Cross out whichever does not apply.  
B. Every person carrying on business who does not furnish with his return an agent's certificate.

Question	Answer
(1) What books of account, if any, are kept by or on behalf of the taxpayer?	
(2) By whom are those books of account kept? (State name and address)	
(3) Are those books of account audited each year? If so, by whom?	Information received from taxpayer the accuracy of which we have no reason to doubt.
(4) Is the return in accordance with those books?	
(5) If the return is not in accordance with those books, on what basis and upon what information has the return been prepared?	
(6) Have you satisfied yourself, and, if so, how, that the books of account, or other sources of information upon which the return is based, are correct and disclose the whole of the taxpayer's income from all sources?	NO.

N.B.—No. (6) to be answered only by the person mentioned in "A" above.

**CERTIFICATE BY AGENT** WE, D.E. ROLLASON, DAVIES & CO., being charged the taxpayer a fee for preparing, or assisting in the preparation of, this return, hereby certify that the answers set forth above in the second column in this statement opposite to the questions set forth in the first column thereof are true and correct in every particular.

Date 1/12/58 Signature of agent (Sgd.) Geoffrey C. Davies.

Where the agent is a partnership or a company, this certificate must be signed in the name of the partnership or company, as the case requires, by a person who is registered as a member of that partnership or company, and that person's name must also be given.

Agent's registered number TA15160

**CALCULATION OF TAX BY TAXPAYER.**

Taxpayer should complete this block if his income other than salary or wages does not exceed £100.

The amount of tax is calculated by using the TAX TABLE on page 3.

Completion of the following statement will then show either the amount of refund due or the balance of tax to be paid when the Notice of Assessment is issued by the Taxation Office.

AMOUNT OF TAXABLE INCOME—from page 3	£	For office use only
TAX PAYABLE on TAXABLE INCOME—from tax table on page 3	£	
Less REBATE of 2/- for each £1 of Government Loan Interest (from 15 on page 2)	£	
NET TAX PAYABLE	£	
Less TAX INSTALMENTS as per group certificates or tax stamp sheets pinned to page 3	£	
REFUND DUE TO TAXPAYER OR BALANCE PAYABLE BY TAXPAYER	£	

For office use only.

Copy Return of Income of D.L. Peate for year ended 30/6/58.

COMMONWEALTH OF AUSTRALIA

COPY

Telephone: B 0322 Taxation Office,  
21 Elizabeth Street,  
Telegraph: "Depcomtax", Sydney. (Box 4197 G.P.O.)

25th August, 1959

Dr. Desmond L. Peate, In reply please quote:  
C/- Messrs. D. E. Rollason, SN.67243  
Davies and Co.,  
Box 2590, G.P.O.,  
SYDNEY.

10

Dear Sir,

8 The amount of £6690 shown as net income from partnership of Drs. Peate, Wiles, Lawson, Bertinshaw, Atkinson, Spence, Allen and Short in the enclosed adjustment sheet represents your individual interest in the net income shown in the return lodged in the name of A. E. Westbank Pty. Ltd. adjusted as follows -

Net income as returned	£5013	
<u>ADD:</u>		20
Superannuation contributions	1200	
Service fees	<u>41574</u>	<u>42774</u>
Net income as adjusted	<u>£47787</u>	
Your individual interest therein	<u>6690</u>	

Consistently with this adjustment the amount of £5820 shown in the return of W. Raleigh Pty. Ltd. as fees received has been excluded, the expenses claimed in the return of W. Raleigh Pty. Ltd. adjusted as under have been allowed as deductions and the amount of £1560 shown in your own return as salary from W. Raleigh Pty. Ltd. has been excluded in ascertaining your assessable income.

30

Total deductions claimed in return of W. Raleigh Pty. Ltd.	£4767
--	-------

LESS:

Private proportion of car expenses	£45	
Private proportion of car depreciation	33	40
Superannuation contributions	400	
Remuneration of Dr. Peate	1560	
" " Mrs. Peate reduced from £1200 to £540	660	
Cost of signboard	<u>3</u>	<u>2701</u>
Deductions allowed	<u>£2066</u>	

Copy letter from  
Deputy Commissioner  
of Taxation accompany-  
ing assessment

Copy letter from  
Deputy Commissioner  
of Taxation accom-  
panying assessment

It has been necessary to make the above adjustments as it is considered that the gross income shown in the company's return was, in fact and in law, derived by the partnership. Correspondingly, the expenditure claimed in the companies returns, with the exceptions noted above, is considered to have been incurred by the partnership and you through the agency of the companies. 10

This view is based on the understanding that services to patients are personally rendered by members of the partnership and that the accounts for services rendered and acknowledgements of fees received are issued in the firm's name. In these circumstances, any amounts received by the company are considered to represent the application of income after it has been derived by the partnership. 20

The above view is supported by reference to the provisions of sections 41A, 41B and 42 (2)(a) of the N.S.W. Medical Practitioners Act 1938 (as amended) which provide, in effect, that only a registered medical practitioner can treat certain diseases, sue for fees or advertise himself as qualified to practise medicine or surgery.

As A. E. Westbank Pty. Ltd. and W. Raleigh Pty. Ltd. are not registered medical practitioners it is understood that they cannot treat the diseases prescribed in section 41A, sue for fees or advertise themselves as qualified to practise medicine or surgery. Any attempt on the part of the companies to hold themselves out as qualified to do these things would appear to contravene the provisions referred to above. 30

In these circumstances, it is considered that registration as a medical practitioner is a condition precedent to the derivation of the income which has been assessed as income of the partnership. 40

Yours faithfully,

C. C. GREEN (intld.)

DEPUTY COMMISSIONER OF TAXATION

Copy letter from  
Deputy Commissioner  
of Taxation accom-  
panying assessment  
8.

THE COMMONWEALTH OF AUSTRALIA

COPY

INCOME TAX AND SOCIAL SERVICES CONTRIBUTION  
ASSESSMENT ACT

NOTICE OF OBJECTION AGAINST ASSESSMENT

I, DESMOND LEES PEATE, hereby object against the assessment of income tax based on income derived during the year ended 30th June, 1958, and issued to me by notice of Assessment dated 25th August, 1959, and claim that the Assessment should be amended to :- 10

- (a) To excise the amount of £6,690 included in the assessable income.
- (b) To allow the amount of £6,690 as a deduction.
- (c) To excise such amount of the sum of £6,690 as represents moneys outstanding by debtors of A. E. Westbank Pty. Limited.
- (d) To excise any amount over the sum of £1,234 from the assessable income. 20

The grounds upon which I rely are :

- (i) The amount of £6,690 is not in whole or in part income in fact or in law derived by me.
- (ii) The amount of £6,690 is income derived by A. E. Westbank Pty. Limited or W. Raleigh Pty. Limited.
- (iii) There is no partnership between myself and the other Doctors mentioned in the 1st paragraph of your letter of the 25th August, 1959. 30
- (iv) A former partnership between myself and the Doctors mentioned in the preceding paragraph was duly dissolved on the 31st August, 1956.
- (v) There is no agency between myself and the companies nominated by you.
- (vi) There is no agency between the companies nominated by you and a non-existent partnership. 40
- (vii) I understand that amounts included by the companies nominated by you

Notice of objection  
Copy letter from  
Deputy Commissioner  
of Taxation accom-  
panying assessment



Notice of objection  
Copy letter from  
Deputy Commissioner  
of Taxation accom-  
panying assessment

in their income tax returns were not in fact received by such companies in as much as such amounts are shown in the balance sheets of such companies as book debts.

- (viii) I am employed by W. Raleigh Pty. Limited under a service agreement, a copy of which is hereunto annexed. 10
- (ix) The moneys in respect of services to patients are earned by A. E. Westbank Pty. Limited which avails itself of the services of many doctors.
- (x) The accounts for medical services provided by A. E. Westbank Pty. Limited are issued by that Company
- (xi) I do not contract with any patient on my own account in respect of medical services or attention. 20
- (xii) I have no right in law to receive any moneys from any of the patients in respect of services rendered.
- (xiii) The amounts received by the companies nominated by you are not derived by me or by any partnership of which I am a member.
- (xiv) There is no basis in law or fact for the contention that the amounts received by the companies nominated by you represent the application of income after it has been derived by me. 30
- (xv) There is no income derived in fact or law by any partnership.
- (xvi) The provisions of the Medical Practitioners' Act 1938 as amended do not prevent the companies nominated by you from providing medical services by means of medical practitioners employed or engaged by those companies. 40
- (xvii) In any event the provisions of the Medical Practitioners' Act 1938 as amended are irrelevant, it being the fact that the companies nominated by you do provide medical services and obtain payment therefor. 50

Notice of objection

- (xviii) Whether or not the companies nominated by you are registered as Medical Practitioners is irrelevant.
- (xix) The whole of the amounts added to my income as returned are allowable deductions.
- (xx) The sums added to my returned income by you have in fact as to part been distributed by way of dividends by the companies nominated by you, and some of the shareholders receiving such dividends have paid income tax thereon. 10
- (xxi) There is no basis in law or fact for the adjustments to deductions referred to in the 2nd paragraph of your letter of 25th August, 1959.
- (xxii) The matters referred to in the covering letter herewith. 20

DATED this 24 SEP. 1959 day of 1959.

Signature ..... (Sgd.) D.L.Peate

Address .....  
.....

(COPY)

D. E. ROLLASON, DAVIES & CO.

Donald E. Rollason. F.C.A. (Aust.)

Geoffrey C. Davies. F.A.S.A.

Box 2590, G.P.O., Sydney

Manchester House,  
3rd Floor,  
241-243 Castlereagh St.,  
Sydney.

24th September, 1959.

The Deputy Commissioner of Taxation,  
14 Castlereagh Street,  
S Y D N E Y

10

Dear Sir,

Re Dr. Desmond L. Peate  
File No. SN67243

We are acting for Dr. D. L. Peate in connection with the Notice of Assessment issued to him under the Income Tax and Social Services Contribution Act on 25th August, 1959. This Assessment was accompanied by an adjustment sheet and also by a letter written by yourself.

20

Your letter states that our client's income has been adjusted by you as it is considered by you that the net income shown in a return of A. E. Westbank Pty. Limited was in fact and in law derived by the partnership of Drs. D. L. Peate, K. J. J. Atkinson, B. Short, D. W. Lawson, W. A. Spence, C. A. Wiles, J. A. L. Allen and L. D. Bertinshaw. It is stated by you that your view is based upon the understanding that the services to patients are personally rendered by the members of the alleged partnership and that the accounts for services rendered and acknowledgements of fees received are issued in the firm's name.

30

The understanding on your part is not in accordance with the facts, and our client is objecting to the assessment.

Dr. Peate is employed by W. Raleigh Pty. Limited which company, by agreement has made available the services of Dr. Peate to A. E. Westbank Pty. Limited, a company which provides medical services. A copy of the Service Agreement between Dr. Peate and W. Raleigh Pty. Limited and copy of an agreement between A. E. Westbank Pty. Limited and W. Raleigh Pty. Limited are forwarded for your perusal. We might mention that A. E. Westbank Pty. Limited, a company duly registered under the Companies Act of New South Wales also provides

40

Letter from agents  
accompanying notice  
of objection.

medical services by many other doctors besides Dr. Peate.

It would seem to us that your main contention in this case rests upon the provisions of the Medical Practitioner's Act.

It is open to persons in all walks of life to seek employment with a proprietary company, even though such proprietary Company might be wholly or partly controlled by such persons. It is the intention, we are instructed of A. E. Westbank Pty. Ltd. and W. Raleigh Pty. Limited, to extend their activities still further. It is clear that A. E. Westbank Pty. Limited and W. Raleigh Pty. Limited may employ five, six, or any number of Doctors, plus radiologists, nurses and other persons in the rendering of medical services, and may conduct a hospital or convalescent home or medical clinic.

Not any of the moneys received by A. E. Westbank Pty. Ltd. from patients is the property of Dr. Peate or the alleged partnership referred to in your letter. Dr. Peate has no right, legal or otherwise, to receive such moneys, nor does he. We submit he should not be assessed as if he had received such moneys.

In these times a great deal of stress is placed upon professional men such as medical practitioners, and it is only natural that they should wish to organise their affairs in the same way as persons in other walks of life do. Also many other professional men, such as chemists, engineers, opticians or accountants are able to be employed by a Company wholly or partly controlled by themselves, and there is not any reason why a medical practitioner should be in any different position. As previously stated, your main contention seems to be based upon the provisions of the Medical Practitioners Act, which provisions seem to be regarded by you as placing medical practitioners in the position that they cannot in law be employed by a Company providing medical services. This being so, it is suggested for consideration that if the present objection be disallowed by you it should be upon the basis that the disallowance is justified by the provisions of the Medical Practitioners Act.

There would thus arise for determination the only real question of law involved in this matter, and it would be possible to obtain an early judicial decision whether medical practitioners are to be treated differently to many other professional men because of the particular provisions of the Medical Practitioners Act. As you are aware there are numerous other medical practitioners who would be affected by a decision in this

Letter from agents  
accompanying notice  
of objection

Letter from agents  
accompanying notice  
of objection

case, and for this reason alone we feel that the  
realistic approach is to facilitate the hearing of  
the question of law which is common to every case.

Yours faithfully,

(Sgd.) D. E. Rollason, Davies & Co.

FORM

A

NEW SOUTH WALES

Copy Return of Income of D.L. Peate for year ended 30/6/59.

RETURN OF INCOME derived from all sources in and out of Australia during the twelve months from 1st July, 1958 to 30th June, 1959

PERSONAL RETURN

Taxpayers who carry on a Business or Profession, and Trust Estates and Partnerships, must complete FORM "B"

THIS RETURN SHOULD BE LODGED WITH THE DEPUTY COMMISSIONER OF TAXATION, BOX 4197, G.P.O., SYDNEY, BY 31st JULY, 1959.

If income (other than salary, wages or dividends) was derived from more than one State, lodge this return with the Deputy Commissioner of Taxation, P.O. Box 769 G. Melbourne. If a full-time member of the Defence Force, send this return to the Deputy Commissioner of Taxation in the Capital City of the State in which you enlisted or were called up.

For office use only

COMMONWEALTH OF AUSTRALIA

INCOME TAX AND SOCIAL SERVICES CONTRIBUTION

NAME IN FULL (USE BLOCK LETTERS)

DR. PEATE DESMOND LEES

Postal address for service of notices (USE BLOCK LETTERS)

C/- D.E. ROLLASON, DAVIES & CO. BOX 2590 G.P.O., SYDNEY

You are required to notify the Deputy Commissioner of any change of address for service of notices.

Residential address

WOLLOMBI ROAD, CESSNOCK

If change of postal address write "as above"

If married, state full name of wife or husband

MARGARET PEATE

A deduction will not be allowed unless item 20 on page 3 is completed.

Main occupation is

MEDICAL PRACTITIONER

When stating industry and occupation, state what kind of manufacturer, wholesaler, retailer, craftsman, etc.

Employer's industry

MEDICAL SERVICES

Unemployed, refer to state, industry of last employer.

Last return lodged at Taxation Office (Capital City)

SYDNEY

File No. D.53888

On previous returns attach statement giving reasons and showing date of birth, and income for each of the previous three years.

New address, this being

AS ABOVE

If married during year, state date of marriage.

AGE ALLOWANCE

For office use only

This statement must be completed if Age Allowance is claimed. (See Notes for Guidance, page 4.)

DATE OF BIRTH (if born in or before 1st July, 1959, or 30th June, 1957)

MALES 30-6-1894 FEMALE 30-8-1899

Taxpayer

Spouse

TOTAL INCOME (including all pensions and exempt income)

Taxpayer

Spouse

DECLARATION

I, the person making this return, declare that the particulars shown herein are true and correct in every particular and disclose without reservation or exception a full and complete statement of the total income derived from all sources both in and out of Australia, by me during the year 1st July, 1958, to 30th June, 1959.

If the return has been made up for any other period, after this declaration accordingly, insert the alteration.

Dated this 17th day of December 1959 SIGN HERE (Usual signature of taxpayer) (Sgd) D.L. Peate

This declaration and all attached sheets must be signed by the taxpayer personally.

PARTICULARS RELATING TO SOURCES OF INFORMATION

To be given by: A. Any person who charges directly or indirectly any fee for preparing, or assisting to prepare, this return. B. Every person carrying on business who does not furnish with his return an agent's certificate. Cross out whichever does not apply.

- (1) What books of account, if any, are kept by or on behalf of the taxpayer?
(2) By whom are those books of account kept? (State name and address)
(3) Are those books of accounts audited each year? If so, by whom?
(4) Is the return in accordance with those books?
(5) If the return is not in accordance with those books, on what basis and upon what information has the return been prepared?
(6) Have you satisfied yourself, and if so, how, that the books of account, or other sources of information upon which the return is based, are correct and disclose the whole of the taxpayer's income from all sources?

Information supplied by taxpayer the accuracy of which there is no reason to doubt.

No.

N.B. No. (6) to be answered only by the person mentioned in (a) above.

CERTIFICATE WE, D.E. ROLLASON, DAVIES & CO. BY AGENT return hereby certify that the answers set forth above in the second column in the statement, in response to the questions set forth in the first column thereof are true and correct in every particular.

D.E. ROLLASON, DAVIES & CO. (Sgd) ?

Date 17th December, 1959 Signature of agent

This certificate is a partnership or a company, this certificate must be signed in the name of the partnership or company, as the case requires, by a person who is registered as a partner or a director of the company, and that person's name must also be appended.

Agent's registered number TA15160

CALCULATION OF TAX BY TAXPAYER.

Taxpayer should complete this block if his income other than salary or wages does not exceed £100.

The amount of tax is calculated by using the TAX TABLE on page 3. Completion of the following statement will then show either the amount of refund due or the balance of tax to be paid, when the Notice of Assessment is issued by the Taxation Office.

AMOUNT OF TAXABLE INCOME—from page 3 £

TAX PAYABLE on TAXABLE INCOME—from tax table on page 3 £

Less REBATE of 2% on each £1 of Government Loan Interest (item 15 on page 2) £

NET TAX PAYABLE £

Less TAX INSTALLMENTS as per group certificates or tax stamps sheets pinned to page 3 £

REFUND DUE TO TAXPAYER

BALANCE PAYABLE BY TAXPAYER

Copy Return of Income of D.L. Peate for year ended 30/6/59.

For office use only 15.

For office use only

A

B

C

D

Copy Adjustment Sheet

Income Tax and Social Services Contribution

Form A 3

ADJUSTMENT SHEET

COPY

Name Dr Desmond L. PEATE

File No.

SN

67243

The following adjustments have been made to the income returned by you for the year ended 30th June 1959			
	Net income as returned—		1399
<u>Add:</u>			
	Share of income from partnership of Drs Peate, Wiles, Lawson, Bertinshaw, Atkinson, Spence, Short and Allen originally returned by A.E. Westbank Pty Limited - see explanatory letter attached.	6091	
	Section 59(2) adjustment on sale of car	60	
	Rents as notified in your agent's letter dated 4th November 1960.	77	
	Subscription to B.M.A. reduced to £10.10. 0 - maximum amount allowable	2	
<u>Deduct:</u>			
	Salary from W.Raleigh Pty Limited now excluded	2080	
	Expenses connected with practice - originally claimed in return of W.Raleigh Pty Limited	2306	4386
Taxable and Contributable Income as shown in attached notice ..		£	63243

COMMONWEALTH OF AUSTRALIA

**NOTICE OF ASSESSMENT**

**INCOME TAX AND SOCIAL SERVICES CONTRIBUTION**

BASED ON INCOME DERIVED DURING YEAR ENDED 30TH JUNE, 1959

In accordance with the provisions of the *Income Tax and Social Services Contribution Assessment Act 1936-58*, the Income Tax and Social Services Contribution payable by you on income derived during year ended 30th June, 1959, has been assessed as under. The provisional tax and contribution payable by you in accordance with that Act in respect of the income of the year ending 30th June, 1959, is the amount notified hereafter. That amount is based on the assumption that your income for that year will be the same as for the year ended 30th June, 1959.

**LATE PAYMENT PENALTY**—An additional amount for late payment becomes due and payable of the rate of 10% per annum on the amount unpaid by the due date.

**HOURS FOR PAYMENT:** 9 a.m. to 4.30 p.m. Monday to Friday inclusive.

**GOVERNMENT LOAN INTEREST**—Any interest on Commonwealth Government Loans and on certain other loans issued by Public Authorities guaranteed by the State Income Tax has been included in the taxable income, but a rebate of 2s. in the £ has been allowed in respect of any such interest when deriving of the amount set out in column 2.

**OBJECTION** may be lodged against this assessment within sixty days after service by post of this notice but notwithstanding any objection the full amount payable must be paid by the due date.

**TAX** on the assessment notified in column 8 is due on the date shown. Other amounts included are due as previously notified.

File No.

SH67243

(COPY)

Dr. Desmond L. Peate,  
C/- D.E. Rolleston Davies & Co.  
Box 2590 G.P.O. SYDNEY.

Assessment No.  
2060041

JAN 27 61

MAR 1 61

Taxable Income (1)	Tax and Contribution on income derived during year ended 30.6.1959 (2)			Additional Amount Omitted Income (3)			Provisional Tax and Contribution in respect of income year ended 30.6.1959 (4)			Credit for Certificates and Tax Stamps (5)			Variance of Tax and Contribution on income derived during year ended 30.6.1959 (6)			ADD Provisional Tax and Contribution in respect of income year ending 30.6.1959 (7)			AMOUNT PAYABLE (8)			ARREARS (9)																					
	£	s.	d.	£	s.	d.	£	s.	d.	£	s.	d.	£	s.	d.	£	s.	d.	£	s.	d.	£	s.	d.																			
3,243																																											
	855.	1.	0				1,341.	0.	0				875.	19.	0	812.	0.	0				63.	19.	0	722.	10.	0																
TOTAL AMOUNT PAYABLE →																							658.11.0																				

OFFICIAL RECEIPT

OPTION TO VARY PROVISIONAL TAX

Until the due date of this assessment you have the option of varying the amount of provisional tax if your income has been increased or decreased. If you decide to have your provisional tax recalculated you should obtain the necessary form from the Taxation Office and complete it. In such case payment should not be made until a notice of adjustment is received.

21 ELIZABETH STREET, SYDNEY

C. C. GREEN  
Deputy Commissioner of Taxation

Copy Notice of Assessment year 30/6/59.

Copy Notice of Assessment year 30/6/59.



## INCOME

- DO NOT FAIL TO ATTACH YOUR ORIGINAL GROUP CERTIFICATES AND TAX STAMPS SHEETS TO YOUR RETURN.
- If you have not received them by 31st July, 1959, your employer should request an extension of time for lodgment of your return.
- Hold for inclusion in your NEXT return any Group Certificates or Tax Stamps Sheets covering earnings AFTER 30th JUNE, 1959.

## ITEM 1.

Include in the space provided at top of page 2, all income from which contributions have been deducted during year ended 30th June, 1959.

## ITEMS 2-17.

Include under items 2-17 all income of year ended 30th June, 1959, not included in item 1. If space is insufficient attach details.

Show source from all sources. If a doubt arises, the full facts should be placed before the Department for decision.

**WHERE TAX HAS BEEN EVADED THE PENALTIES ARE SEVERE.**

## AGE ALLOWANCE

(i.e. limitation of tax payable.)

Applicable to persons who are residents of Australia during the whole of the year ended 30th June, 1959, who are males aged 65 or females aged 60 on or before that date, as follows:—

## Individuals—

If income not more than £410—no tax is payable.

If income between £410 and £460—tax payable shall not exceed 9/20ths of the excess over £410.

## Married Couples (who both satisfy the above conditions of age and residence)—

If taxpayer contributes to the maintenance of his or her spouse—

(a) where their combined income is not more than £819—no tax is payable;

(b) where their combined income is between £819 and £1,106—tax payable shall not exceed 9/20ths of the excess over £819.

**NOTE**—Income means the amount shown in item 18, plus exempt income and exempt pensions, and less only deductions claimed under items 19 to 25, and 45.

If this allowance is claimed, complete statement on page 4.

## DEDUCTIONS

In the notes below "child" or "children" includes a legally adopted child, a step-child, or ex-nuptial child of the taxpayer.

## SPOUSE, DAUGHTER-HOUSEKEEPER, CHILDREN UNDER 16 YEARS, PARENTS, PARENTS-IN-LAW, INVALID RELATIVES, STUDENT CHILDREN 16-21 YEARS.

- A deduction of the amount specified on page 3 is allowable for any of the above dependants if during the whole of the year of income, the taxpayer is the sole contributor to the dependant's maintenance and that dependant is a resident of Australia and has no separate net income.
- If a dependant derives a separate net income, the deduction should be REDUCED—
  - (a) for spouse or daughter-housekeeper—by £2 for every £1 by which separate net income exceeds £65;
  - (b) for children under 16 years—by £2 for every £1 by which separate net income exceeds £52;
  - (c) for parents or parents-in-law—by the amount of the separate net income;
  - (d) for invalid relatives or student children—by the amount of invalid pension or value of government assistance plus £2 for every £1 by which other income exceeds £52.

● If a person is wholly engaged to be a dependant during the year, or if two or more taxpayers contribute to the dependant's maintenance, a proportionate deduction is allowable.

**NOTE**—DAUGHTER-HOUSEKEEPER means a daughter, adopted daughter, step daughter, or ex-nuptial daughter wholly engaged in keeping house for a widowed taxpayer.  
INVALID RELATIVE means a person over 16 years who is a child, brother or sister of the taxpayer and who is in receipt of invalid pension or of a certificate of invalidity has been obtained from the Commonwealth Department of Health, or a doctor approved by the Director-General of Social Services.

**HOUSEKEEPER**—A deduction of £42 is allowable if the housekeeper during the whole of the year is wholly engaged in keeping house for or otherwise and his/her care of (a) the taxpayer's children under 16 years, or (b) any child under 16 years, or invalid relative, in respect of whom the taxpayer is entitled to a deduction. If those conditions apply for part only of the year, a proportionate deduction only may be allowed. This deduction does not apply where, for example, a taxpayer is entitled to a deduction for spouse or daughter-housekeeper.

## MEDICAL, DENTAL, OPTICAL, FUNERAL EXPENSES, ETC., are allowable as follows:—

**MEDICAL EXPENSES** paid to any legally qualified medical practitioner, nurse, pharmacist, or hospital on account of illness.

**DENTAL EXPENSES** paid to any legally qualified dentist—maximum £30 per person.

**OPTICAL EXPENSES** paid to any legally qualified person for testing of eyes or prescribing of spectacles or to any person for the supply of such spectacles.

**THERAPEUTIC EXPENSES** if incurred under direction of a legally qualified medical practitioner.

**ARTIFICIAL LIMBS** (or part of a limb), **ARTIFICIAL EYE** or **HEARING AID**.

**APPLIANCES (MEDICAL OR SURGICAL)** prescribed by a legally qualified medical practitioner.

**ATTENDANCE AND NURSING** paid on account of blindness or permanent confinement to a bed, etc.

**FUNERAL EXPENSES** and other expenses, maximum £30 for any one dependant, in addition to above expenses.

**NOTE**—EXPENSES are allowable only on account of taxpayer, his spouse, his child under 21 years, or a dependant, (except where expenses must be reduced by amounts recouped or payable by a Government, Public Authority, Society or Association).

**ALLOWANCES**—Funeral expenses, maximum £30 for any one dependant—Other expenses, maximum £150 (including funeral expenses up to £30) for taxpayer and each dependant.

## OTHER DEDUCTIONS are allowable as follows:—

**SUBSCRIPTIONS** to trade, business or professional association or union (maximum £10s. to each).

**MEDICAL or HOSPITAL BENEFITS FUND** payments for personal benefit of taxpayer, his spouse or children only.

**LIFE, SICKNESS and ACCIDENT ASSURANCE** premiums and payments to a FRIENDLY SOCIETY (excluding Medical or Hospital Benefits Fund payments), **SUPERANNUATION, SUSTENTATION**, or similar FUND—For taxpayer, his spouse or children only.

**GIFTS** of £1 and upwards to Public Benevolent Institutions and to approved Research Institutes for scientific research, etc.

**CALLS**—One-third of calls (not application or allotment moneys), paid to mining, prospecting or afforestation companies operating in Australia. In lieu of the deduction for one-third of calls, capital subscribed direct to oil exploration companies on shares issued after 20th September, 1958, may, if company lodges the required declaration, be deductible in full.

**ZONE ALLOWANCE and OVERSEAS FORCES ALLOWANCE** to persons residing in specified areas for more than half the previous year and to members of Defence Forces serving overseas. See maps at Taxation Office or post offices in the zone. **ZONE A and OVERSEAS FORCES** £270 plus one-half of total deductions allowable items 28 to 35. **ZONE B** £45 plus one-fourth of total deductions allowable items 28 to 35.

**LIVING-AWAY-FROM-HOME ALLOWANCE**—If the allowance is paid in cash under any award, Industrial agreement, etc., and does not exceed £3.10s. per week, the first £2.10s. per week is an allowable deduction. If the allowance is received otherwise than in cash and does not exceed a value of £2.10s. per week, the amount by which the value exceeds £1 per week is an allowable deduction. In any other case, the deduction allowable is the amount which the Commissioner deems reasonable, but may not exceed the total amount received less £1 per week.

**EDUCATION EXPENSES**—Payments made for recognized school uniforms, fees, books, fares, etc., in connexion with the full time education at a school, college or university, or from a tutor, of the taxpayer's children or dependants under 21 years of age—only amounts actually paid may be claimed up to a maximum of £100 for each child or dependant.

**RATES** (excluding excess water) and **LAND TAXES** for which taxpayer is personally liable. Copy Return of Income

27	NET INCOME (carried from Item 26, page 2)							2081
DEDUCTIONS (If space insufficient, attach list)								
28	Dependant	Name in full	Date of birth	Place of residence of dependant	Dependant not receiving during year: If not income write "NIL"	If wholly or partly dependent for whole or part, write "WHOLLY" If not, give extent	Portion of deduction for said dependant	AMOUNT CLAIMED
	WITH TAXPAYER			See Separate Return		143		
29	SPOUSE or DAUGHTER-HOUSEKEEPER	MARGARET PEATE						
30	CHILDREN UNDER 16 YEARS OF AGE	CAROLYN PEATE JOHN PEATE	10.6.48 30.1.46	" "	NIL "	WHOLLY "	91 65 (for one) (others)	91 65
31	PARENTS of TAXPAYER or SPOUSE				Amount of pension	Other income	143	
32	RELATIVES OVER 16 YEARS				Amount of pension	Other income	91	
33	STUDENT CHILDREN UNDER 16 YEARS	Give name of school also			Value of gov. assistance	Other income	91	
34	HOUSEKEEPER				If wholly engaged for whole of year, write "WHOLLY" If not, state for what period wholly engaged		143	
34 MEDICAL, DENTAL, OPTICAL, FUNERAL EXPENSES, ETC.								
	Name of person in respect of whom expenses incurred	Relationship to taxpayer, if any, state date of birth	Name and address of legally qualified medical practitioner, optician, dentist, chemist, etc.	Particulars of expenses, e.g. medicine, etc.	AMOUNT			
	Self and Family		Evans Pharmacy	Chemist	21			
TOTAL							21	
SUBTRACT amounts repaid or payable by a Government, Public Authority, Society or Association							21	
35	SUBSCRIPTIONS	B.M.A. £12.12.0		Post Grad Comm. £1.10.0				
36	MEDICAL or DENTAL BENEFITS FUNDS	Med. Def. Union £10.10.0		Med. Board Reg. £1. 1.0		25		
37	LIFE ASSURANCE	A.P.A. £36.13. 9.		A.M.P. £229		300		
38	GIFTS to public entertainers, etc.	Paid to						
39	Charitable and other gifts (not including donations to approved charities)	Paid to						
40	CAPITAL GAINS TAX DEDUCTION TO OIL EXPLORATION COMPANIES	Paid to						
41	ZONE AND OVERSEAS HOUSES RENT ALLOWANCES	Allowance of rent is conditional upon company holding the relevant deduction						
42	LIVING ALLOWANCE FROM PARENTS	Rate of allowance weekly	Period of receipt	Amount received	Amounts actually paid			
43	EDUCATION EXPENSES (If space insufficient, attach list)	John Peate		Scots College		186		
44	RATES AND TAXES on property from which income is not derived (attach list)	Municipal		£73.		Water		
45	OTHER DEDUCTIONS (If space insufficient, attach list)							114
TOTAL DEDUCTIONS—(Items 28 to 45)							682	
TAXABLE INCOME (deduct item 46 from item 27)							1399	

TAX TABLE

Taxable income:		Tax on total taxable income.	
Not less than—	Not more than—	(£)	(s. d.)
£	£	£	s. d.
100	100	0	0
150	150	1	0
200	200	2	0
250	250	3	0
300	350	4	0
400	450	6	0
500	550	8	0
600	650	10	0
700	750	12	0
800	850	14	0
900	950	16	0
1,000	1,050	18	0
1,200	1,250	24	0
1,400	1,450	30	0
1,600	1,750	36	0
1,800	1,950	42	0
2,000	2,150	48	0
2,400	2,550	60	0
2,800	2,950	72	0
3,200	3,350	84	0
3,600	3,750	96	0
4,000	4,150	108	0
4,400	4,550	120	0
4,800	4,950	132	0
5,200	5,350	144	0
5,600	5,750	156	0
6,000	6,150	168	0
6,400	6,550	180	0
6,800	6,950	192	0
7,200	7,350	204	0
7,600	7,750	216	0
8,000	8,150	228	0
8,400	8,550	240	0
8,800	8,950	252	0
9,200	9,350	264	0
9,600	9,750	276	0
10,000	10,150	288	0
10,400	10,550	300	0
10,800	10,950	312	0
11,200	11,350	324	0
11,600	11,750	336	0
12,000	12,150	348	0
12,400	12,550	360	0
12,800	12,950	372	0
13,200	13,350	384	0
13,600	13,750	396	0
14,000	14,150	408	0
14,400	14,550	420	0
14,800	14,950	432	0
15,200	15,350	444	0
15,600	15,750	456	0
16,000	16,150	468	0

EXAMPLE OF CALCULATION

TAXABLE INCOME 1958

Tax on £900..... £ s. d.  
87 : 1 : 8

Tax on £ 38 @ 3s. 10d..... 7 : 5 : 8

Tax on £938—to nearest shilling..... £94 : 7 : 0

TAXPAYER'S CALCULATION BASED ON HIS OWN INCOME.

Tax on £..... £ s. d.

Tax on £..... @ ..... s. .... d.....

Tax on £..... —to nearest shilling..... £ : s. d.

Copy Return of Income of  
D.L. Peate for year ended

# INCOME

Copy Return of Income of  
**D.L. Peate** for year ended  
**30/6/59.**

## INCOME SHOWN ON GROUP CERTIFICATES AND TAX STAMPS SHEETS. (Attach to page 3.)

Serial number	Whether Group Certificate or Tax Stamps Sheet	Employer's name	Period of employment	INSTALLMENTS	GROSS INCOME
A. 85891	Tax Stamps	W. Raleigh Pty. Ltd.	1.7.58 to 30.6.59	390 - -	2080
If unemployed during year, state period ____/____/195__ to ____/____/195__			TOTAL INSTALLMENTS		

### INCOME NOT INCLUDED ABOVE

- 1 Salary, wages, superannuation, bonuses, workers' compensation (give details), overtime, and earnings as employee of \_\_\_\_\_
- 2 Value of (a) Board £ \_\_\_\_\_ (b) Use of premises or quarters £ \_\_\_\_\_ allowed to me by employer for \_\_\_\_\_ weeks \_\_\_\_\_
- 3 Living-away-from-home allowance, travelling allowance, entertainment allowance, cash allowance in lieu of quarters, sustenance and other allowances allowed to me by employer (attach list). All such allowances must be shown. Expenditure deductible in respect thereof may be claimed under items 42 and 45 \_\_\_\_\_
- 4 Tips and other gratuities received for services rendered \_\_\_\_\_
- 5 Five per centum of retiring allowance, gratuity or compensation received in lump sum (total amount received £ \_\_\_\_\_) 5% (1/20th) \_\_\_\_\_
- 6 Pension (not including amounts paid by the Commonwealth Government, by way of war, invalid, age or widows' pension), superannuation, or retiring allowance received from \_\_\_\_\_
- 7 Fees, commissions (attach list) \_\_\_\_\_
- 8 Profits from sales of land, leases, shares, or any other property, purchased for resale (attach full particulars) \_\_\_\_\_
- 9 Share in partnership of **Dr. Peate, Wiles, Lawson, Bertinshaw, Atkinson, Spence, Short and Allen** in the State of **N.S.W.** 1
- 10 Income as beneficiary under will, settlement, deed of gift, or instrument of trust—  
of (a) \_\_\_\_\_ in the State of \_\_\_\_\_  
of (b) \_\_\_\_\_ in the State of \_\_\_\_\_
- 11 Gross rents including rent from sub-letting (attach list) \_\_\_\_\_
- 12 Premiums and other amounts received in connexion with the grant, assignment or surrender of leases, including goodwill and licence (attach list) \_\_\_\_\_

### 14 DIVIDENDS (including Exempt and ex-Australian Dividends, Bonus Shares and Liquidators' Distributions)

Company	Gross amount, £	Company	Gross amount, £
Carried Forward			

If it is claimed that a whole or part of any dividends, bonus share issue, or liquidator's distribution is exempt, an appropriate note should be attached. Exemption preference shares should be separately shown. Dividends must be expressed in Australian currency.

### 15 INTEREST RECEIVED BY OR CREDITED TO ME (including ex-Australian interest expressed in Australian currency)

Interest on Government Loans, on State Government Loans and on Loans raised by State Authorities			
Name of Government or Public or Municipal Body	Principal at 30-6-59	Interest, £	Name of Government or Public or Municipal Body
Other Interest:			
Name and address of Government, Bank, Company, Firm or Person to whom money is lent	Principal at 30-6-59	Interest, £	Name and address of Government, Bank, Company, Firm or Person to whom money is lent

17 OTHER INCOME (give details) _____	
<b>TOTAL INCOME</b> ...	<b>2081</b>

### DEDUCTIONS

- 18 RATES and LAND TAXES paid on property from which income is derived (attach list) \_\_\_\_\_
- 19 REPAIRS (not including alterations, additions or improvements) to properties from which rent is received (attach list) \_\_\_\_\_
- 20 INSURANCE Premiums (Fire, Burglary, etc.) paid on income-producing properties (attach list) \_\_\_\_\_
- 21 INTEREST paid to \_\_\_\_\_ of \_\_\_\_\_ on borrowed money used to produce \_\_\_\_\_
- 22 COMMISSION paid to \_\_\_\_\_ of \_\_\_\_\_ for collection of income from investments \_\_\_\_\_
- 23 RENT paid to \_\_\_\_\_ of \_\_\_\_\_ for property or part thereof from which rent is received \_\_\_\_\_
- 24 OTHER DEDUCTIONS from property income \_\_\_\_\_

25 NET INCOME (carried to item 27, page 3) ...	
<b>Copy Return of Income of</b> <b>D.L. Peate</b> for year ended ...	<b>2081</b>

SECRET

COMMONWEALTH OF AUSTRALIA

COPY

Telephone: B 0322                      TAXATION OFFICE,  
Telegraph "Depcomtax,"                21 Elizabeth Street,  
Sydney                                      SYDNEY. (Box 4197 G.P.O.)

27th January 1961

In reply please quote:  
6/G/SN.67243/59.

Dr. Desmond L. Peate,  
C/- Messrs. D. E. Rollason, Davies & Co.,  
Box 2590, G.P.C.,  
SYDNEY.                      N.S.W.

10

Dear Sir,

The amount of £6091 shown as net income from the partnership of Drs. Peate, Wiles, Lawson, Bertinshaw, Atkinson, Spence, Short and Allen in the enclosed adjustment sheet represents your individual interest in the net income shown in the return lodged in the name of A. E. Westbank Pty. Limited, adjusted as follows -

Net income as returned	£5,000	20
<u>Add:</u>		
Superannuation Fund contributions	£1200	
Superannuation Fund interest	48	
Valuation Fees	17	
Service Fees	<u>34386</u>	<u>35,651</u>
Net income as adjusted	£40,651	
	<hr/>	
Your individual interest therein	£ 6,091	30
	<hr/>	

Consistently with this adjustment, the amounts of £5155 service fees and section 59 (2) adjustment of £67 shown in the return of W. Raleigh Pty. Limited have been excluded, the expenses claimed in the return of W. Raleigh Pty. Limited adjusted as under have been allowed as deductions and the amount of £2080 shown in your own return as salary from W. Raleigh Pty. Limited has been excluded in ascertaining your assessable income.

Copy letter from  
Deputy Commissioner  
of Taxation accompanying adjustment  
sheet

Copy letter from  
Deputy Commissioner  
of Taxation accom-  
panying adjustment  
sheet

Total deductions claimed in return of Raleigh Pty. Limited -		£5643	
Deductions as claimed		£5643	
Private portion of car expenses	£ 55		10
Private portion of car depreciation	39		
Private portion of car insurance	3		
Superannuation Fund con- tributions not allowable	400		
Remuneration of Dr. Peate	2080		
Remuneration of Mrs. Peate reduced from £1300 to £540			20
Deductions allowed	<u>760</u>	<u>£3337</u>	
		£2306	

It has been necessary to make the above adjustments as it is considered that the gross income shown in the company's return was, in fact and in law, derived by the partnership. Correspondingly, the expenditure claimed in the companies returns, with the exceptions noted above, is considered to have been incurred by the partnership and you through the agency of the companies. 30

This view is based on the understanding that services to patients are personally rendered by members of the partnership and that the accounts for services rendered and acknowledgments of fees received are issued in the firm's name. In these circumstances, any amounts received by the company are considered to represent the application of income after it has been derived by the partnership.

The above view is supported by reference to the provisions of sections 41A, 41B and 42 (2)(a) of the N.S.W. Medical Practitioners Act 1938 (as amended) which provide, in effect, that only a registered medical practitioner can treat certain diseases, sue for fees or advertise himself as qualified to practise medicine or surgery. 40

As A. E. Westbank Pty. Limited and Raleigh Pty. Limited are not registered medical practitioners, it is understood that they cannot treat the diseases prescribed in section 41A, sue for fees or advertise themselves as qualified to practise medicine or surgery. Any attempt on the part of the companies to hold themselves out as qualified to do these things would appear to contravene the provisions referred to above. 50

Copy letter from  
Deputy Commissioner  
of Taxation accom-  
panying adjustment  
sheet

Copy letter from  
Deputy Commissioner  
of Taxation accom-  
panying adjustment  
sheet

In these circumstances, it is considered that registration as a medical practitioner is a condition precedent to the derivation of the income which has been assessed as income of the partnership.

10

Yours faithfully,

C. C. GREEN. (Intld.)

DEPUTY COMMISSIONER OF TAXATION.

Encls.

Copy letter from  
Deputy Commissioner  
of Taxation accom-  
panying adjustment  
sheet

COPY

File No. SN.67243

THE COMMONWEALTH OF AUSTRALIA

INCOME TAX AND SOCIAL SERVICES CONTRIBUTION  
ASSESSMENT ACT

NOTICE OF OBJECTION AGAINST ASSESSMENT

I, DESMOND LEES PEATE, hereby object against the assessment of income tax based on income derived during the year ended 30th June, 1959, and issued to me by notice of Assessment dated 27th January, 1961, and claim that the Assessment should be amended to:- 10

- (a) Excise the amount of £6,091 included in the assessable income.
- (b) Excise the amount of £60 included in the assessable income.
- (c) Allow the amount of £6,091 as a deduction.
- (d) Allow the amount of £60 as a deduction.
- (e) Excise such amount of the sum of £6,091 as represents moneys outstanding by debtors of A. E. Westbank Pty. Limited. 20
- (f) Excise any amount over the sum of £1,478 from the assessable income.

The grounds upon which I rely are:-

- (i) The amount of £6,091 is not in whole or in part income in fact or in law derived by me.
- (ii) The amount of £6,091 is income derived by A. E. Westbank Pty. Limited or W. Raleigh Pty. Limited. 30
- (iii) There is no partnership between myself and the other Doctors mentioned in the 1st paragraph of your letter of the 27th January, 1961.
- (iv) A former partnership between myself and the other doctors mentioned in the preceding paragraph was duly dissolved on the 31st August, 1956. 40
- (v) There is no agency between myself and the companies nominated by you.

Notice of objection

- (vi) There is no agency between the companies nominated by you and a non-existent partnership.
- (vii) I understand that amounts included by the companies nominated by you in their income tax returns were not in fact received by such companies in as much as such amounts are shown in the balance sheets of such companies as book debts. 10
- (viii) I am employed by W. Raleigh Pty. Limited under a Service Agreement, a copy of which has been forwarded to you.
- (ix) The moneys in respect of services to patients are earned by A. E. Westbank Pty. Limited which avails itself of the services of many doctors.
- (x) The accounts for medical services provided by A. E. Westbank Pty. Limited are issued by that company. 20
- (xi) I do not contract with any patient on my own account in respect of medical services or attention.
- (xii) I have no right in law to receive any moneys from any of the patients in respect of services rendered.
- (xiii) The amounts received by the Companies nominated by you are not derived by me or by any partnership of which I am a member. 30
- (xiv) There is no basis in law or fact for the contention that the amounts received by the companies nominated by you represent the application of income after it has been derived by me.
- (xv) There is no income derived in fact or law by any partnership. 40
- (xvi) The provisions of the Medical Practitioners' Act 1938 as amended do not prevent the companies nominated by you from providing medical services by means of medical practitioners employed or engaged by those companies.
- (xvii) In any event the provisions of the



Notice of objection

Medical Practitioners' Act 1938 as amended are irrelevant, it being the fact that the companies nominated by you do provide medical services and obtain payment therefore.

- (xviii) Whether or not the companies nominated by you are registered as Medical Practitioners is irrelevant.
- (xix) The whole of the amounts added to my income as returned are allowable deductions. 10
- (xx) The sums added to my returned income by you have in fact as to part been distributed by way of dividends by the companies nominated by you, and some of the shareholders receiving such dividends have paid income tax thereon.
- (xxi) There is no basis in law or fact for the adjustments to deductions referred to in the 2nd paragraph of your letter of the 27th January, 1961. 20
- (xxii) I do not own a motor car and during the year ended 30th June, 1959, I did not sell a motor car.
- (xxiii) The matters referred to in the covering letter herewith.

DATED this 14 MAR 1961 day of 1961.

Signature ... (Sgd.) ... D. L. Peate ... 30

Address. 204 Wollombi Rd. ....  
.....Cessnock.....

TO: The Deputy Commissioner of Taxation,  
Box 4197 G.P.C.,  
SYDNEY.

COPY Form A. 19

**Income Tax and Social Services Contribution  
ADJUSTMENT SHEET**

Name DR DESMOND L. PEATE

File No.	SN	67243
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The following adjustments have been made to the income returned by you for the year ended 30th June **1960**

Taxable income as returned		<b>1735</b>
<u>Add:</u>		
Net income from Partnership of Drs Wiles, Peate, Lawson, Spence, Allen, Bertinshaw, Atkinson, Pitsch & Cook as set out in the attached explanation.		<u>6097</u>
		<b>7832</b>
<u>Deduct:</u>		
Salary £2080 and director's fees £200 received from W. Raleigh Pty Ltd.	2280	
Expenses previously claimed by W. Raleigh Pty. Ltd.	<u>1978</u>	<b>4258</b>
Taxable income as shown in attached notice		<b>3574</b>

## NOTES FOR GUIDANCE

## INCOME

- DO NOT FAIL TO ATTACH YOUR ORIGINAL GROUP CERTIFICATES AND TAX STAMPS SHEETS TO YOUR RETURN.
- If you have not received them by 31st July, 1960, your employer should request an extension of time for lodgment of your return.
- Hold for inclusion in your NEXT return any Group Certificates or Tax Stamp Sheets covering earnings AFTER 30th JUNE, 1960.

## ITEM 1.

Include in the space provided at top of page 2, all income from which tax instalments have been deducted during year ended 30th June, 1960.

## ITEMS 2-17.

Include under items 2-17 all income of year ended 30th June, 1960, not included in item 1, if space is insufficient attach detailed list.

Show income from all sources. If any doubt arises, the full facts should be placed before the Department for decision.

**WHERE TAX HAS BEEN EVADED THE PENALTIES ARE SEVERE.**

## AGE

(Applicable to persons who are residents of Australia during the whole of the year ended 30th June, 1960, who are males aged 55 or female aged 60 or on or before that date, as follows:—

- Individuals—
  - if income not more than £429—no tax is payable.
  - if income between £429 and £455—tax payable shall not exceed 9/20ths of the excess over £429.
- Married Couples (who both satisfy the above conditions of age and residence)—
  - if taxpayer contributes to the maintenance of his or her spouse—
    - (a) where their combined income is not more than £655—no tax is payable;
    - (b) where their combined income is between £655 and £1,161—tax payable shall not exceed 9/20ths of the excess over £655.

**NOTE**—Income means the amount shown in item 18; plus exempt income and exempt payments, and less only deductions claimed under items 19 to 28, and 45.

If this allowance is claimed, complete statement on page 1.

## DEDUCTIONS

In the notes below "net income" includes a family adopted child, a stepchild, or any other kind of child taxpayer.

## SPOUSE, DAUGHTER-HOUSEKEEPER, CHILDREN UNDER 16 YEARS, STUDENT CHILDREN 15-17 YEARS, INVALID RELATIVES, PARENTS, PARENTS-IN-LAW.

- A deduction of the amount specified on page 2 is allowable for any of the above dependants if, during the whole of the year of income, the taxpayer is the sole contributor to the dependant's maintenance and that dependant is a resident of Australia and has no separate net income.
- If a dependant derives a separate net income, the deduction should be REDUCED—
  - (a) for spouse or daughter-housekeeper—by £2 for every £1 by which separate net income exceeds £55;
  - (b) for children under 16 years—by £2 for every £1 by which separate net income exceeds £52;
  - (c) for invalid relatives or student children—by the amount of invalid pension or value of government assistance plus £2 for every £1 by which other income exceeds £52;
  - (d) for parents or parents-in-law—by the amount of the separate net income.
- If a person becomes, or ceases to be, a dependant during the year, or if two or more taxpayers contribute to the dependant's maintenance, a proportionate deduction is allowable.

**NOTE**—"DAUGHTER-HOUSEKEEPER" means a daughter, adopted daughter, step-daughter, or non-legal daughter wholly engaged in the same house for a widowed taxpayer.

"INVALID RELATIVE" means a person over 16 years who is a child, brother or sister of the taxpayer and who is in receipt of an invalid pension or for whom a certificate of invalidity has been obtained from the Commonwealth Department of Health, or a doctor approved by the Director-General of Social Services.

**HOUSEKEEPER**—A deduction of £143 is allowable if the housekeeper during the whole of the year is wholly engaged in keeping house for the taxpayer, and has the care of (a) the taxpayer's children under 16 years, or (b) any child under 16 years, or invalid relative in respect of whom the taxpayer is entitled to a deduction. If these conditions apply for part only of the year, a proportionate deduction only may be allowed. This deduction does not apply for any period during which the taxpayer contributed to the maintenance of a spouse or daughter-housekeeper.

## MEDICAL, DENTAL, OPTICAL, FUNERAL EXPENSES, ETC., are allowable as follows:—

- MEDICAL EXPENSES paid to any legally qualified medical practitioner, nurse, chemist, or hospital on account of illness.
- DENTAL EXPENSES paid to any legally qualified dentist—maximum £30 per person.
- OPTICAL EXPENSES paid to any legally qualified person for testing of eyes or prescribing of spectacles, or to any person for the supply of such spectacles.
- THERAPEUTIC EXPENSES if incurred under direction of a legally qualified medical practitioner.
- ARTIFICIAL LIMBS (or part of a limb), ARTIFICIAL EYE or HEARING AID.
- APPLIANCES (MEDICAL OR SURGICAL) prescribed by a legally qualified medical practitioner.
- ATTENDANT'S REMUNERATION paid on account of illness or permanent confinement to a bed, etc.
- FUNERAL, burial, cremation expenses. Maximum £30 for any one dependant in addition to above expenses.

**NOTE**—EXPENDITURE is allowable only on account of taxpayer, his spouse, his child under 21 years, or a "dependant" (except housekeeper) and must be reduced by amounts received or payable by a Government, Public Authority, Society or Agency on ALLOWANCES—Funeral expenses, maximum £30 for any one dependant—Other expenses, maximum £180 (including dental expenses, up to £30) for taxpayer and each dependant.

## OTHER DEDUCTIONS are allowable as follows:—

- MEDICAL or HOSPITAL BENEFITS FUND payments for personal benefit of taxpayer, his spouse or children only.
- SUBSCRIPTIONS to trade, business or professional association or union (maximum £10 10s. to each).
- LIFE, SICKNESS and ACCIDENT ASSURANCE premiums and payments to a FRIENDLY SOCIETY (excluding Medical or Hospital Benefits Fund payments), SUPERANNUATION, SUSTENTATION, or similar FUND—For taxpayer, his spouse or children only.
- GIFTS of £1 and upwards to Public Benevolent Institutions and to approved Research Institutes for scientific research, etc.
- CALLS—One-third of calls (not application or allotment moneys) paid to mining, prospecting or afforestation companies operating in Australia.
- OIL EXPLORATION—In lieu of the deduction for one-third of calls, from 1st July 1959 the full amount paid as application and allotment moneys and calls to oil exploration companies may be deducted under item 40, if the companies lodge the required declarations.
- ZONE ALLOWANCE and OVERSEAS FORCES ALLOWANCE for persons residing in specified areas for more than half the income year and to members of Defence Forces serving overseas. See maps at Taxation Office or Post Offices in the zone. ZONE A and OVERSEAS FORCES £270 plus one-half of total deductions allowable items 28 to 33. ZONE B £45 plus one-twelfth of total deductions allowable items 28 to 33.
- LIVING-AWAY-FROM-HOME ALLOWANCE—if the allowance is paid in cash under any award, industrial agreement, etc., and does not exceed £3 0s. per week, the first £2 10s. per week is an allowable deduction. If the allowance is received otherwise than in cash and does not exceed a value of £2 10s. per week, the amount by which the value exceeds £1 per week is an allowable deduction. In any other case, the deduction allowable is the amount which the Commissioner deems reasonable, but may not exceed the total amount received less £1 per week.
- EDUCATION EXPENSES—Payments made for recognized school uniforms, fees, books, fares, etc., in connection with the full-time education at a school, college or university, or from a year's end up to a maximum of £100 for each child of any age—only amounts actually paid may be claimed up to a maximum of £100 for each child.
- RATES (excluding excess water) and LAND TAXES for which tax is payable.

Copy Return of Income of for 21  
D.L. Page for year ended  
1959/60.

PUT HERE YOUR ORIGINAL GROUP CERTIFICATES AND TAX STAMPS SHEETS.

27	NET INCOME (carried from item 25, page 2)						2605	
DEDUCTIONS (if space insufficient, attach list)								
28	DEPENDANT	NAME OF DEPENDANT	PERIOD OF RELIEF OF DEPENDANT	SEPARATE RETURN DURING YEAR, IF NO INCOME WRITE "NIL"	IF WHOLLY RELIEVED FOR WHOLE OF YEAR WRITE "WHOLLY". IF NOT, GIVE DETAILS.	TAXAMOUNT DEDUCTION FOR EACH DEPENDANT	AMOUNT CLAIMED	
	DAUGHTER, HOUSEKEEPER	Margaret Peate	With Taxpayer	See separate return		143	-	
29	CHILDREN UNDER 16 YEARS OF AGE	John Peate 30.1.46 Carolyn Peate 10.6.48	" "	Nil "	Wholly "	91 (for one) 65 (others)	91 65	
30	STUDENT CHILDREN 16-21 YEARS	Give name of school also					91	
31	INVALIDS RECEIVING CIVIL PENSIONS	Amount of pension, Other income.					91	
32	TAXPAYS OF TAXPAYERS OR WIFE	Amount of pension, Other income.					143	
33	HOUSEKEEPER	The housekeeper for the whole of year, write "WHOLLY" if not, state for what period wholly engaged.					143	
34	MEDICAL, DENTAL, OPTICAL, FUNERAL, EXPENSES, ETC. (receipts must be produced on request)							
	NAME OF PERSON IN RECEIPT OF WHOM EXPENSE INCURRED	AMOUNT PAID TO TAXPAYER	NAME AND ADDRESS OF LEGALLY QUALIFIED MEDICAL PRACTITIONER, OPTICIAN, DENTIST, CHEMIST, ETC.	STATE NATURE OF EXPENSES, E.G., MEDICAL, DENTAL, ETC.		AMOUNT		
	SELF AND FAMILY		Evans Pharmacy	Chemist		£16		
	*State class of birth of Self and Spouse (over 65) and claims for either exceed £150.						TOTAL £ 16	
	SUBTRACT (and its receipt) or PAYABLE BY A GOVERNMENT, PUBLIC AUTHORITY, SOCIETY, OR ASSOCIATION						16	
35	MEMBERSHIP FEES	Post. Grad. Conn. £2.2.0; N.S.W. Med. Ben. Ass. £1.1.0; H.V.M.A. £4.4.0; Med. Ben. Soc. £2.2.0;						
36	SUBSCRIPTIONS	D.M.A. £14.14.0; Med. Ref. Union £13.2.6.					33	
37	LIFE ASSURANCE, SUPERANNUATION, ETC. PAYMENTS	A.P.A. £36.13. 9; A.M.P. £229.0.0; Legal & General £191.16. 0					400	
38	LETTING OF LAND, BUILDINGS, ETC.	Legacy £6.6.0; Cess. Disn. Agric. Assn. £1.1.0					7	
39	UNEMPLOYMENT AND RETIREMENT PAYMENTS	Amount £					rd =	
40	SHARES, STOCKS, BONDS, ETC.	NAME OF COMPANY	NUMBER OF SHARES	APPROPRIATION AND ALLOTMENT INQUIRIES		Calls		
41	EDUCATION EXPENSES	NAME OF PERSON	PERIOD OF RECEIPT	AMOUNT RECEIVED	DERIVED FROM			
42	EDUCATION EXPENSES	John Peate Carolyn Peate		£182.17. 0 £ 30. 0. 0	Sects College		130	
44	RATES AND LAND TAXES	Municipal £90; Water £38. 7. 6					128	
45	ANY OTHER DEDUCTIONS (GIVE DETAILS)							
46	TOTAL DEDUCTIONS—(Items 28 to 45)						870	
47	TAXABLE INCOME (deduct item 46 from item 27)						1735	

TAX TABLE

Total taxable income	Rate	Tax
£ 0	0%	0
100	0%	0
200	0%	0
300	0%	0
400	0%	0
500	0%	0
600	0%	0
700	0%	0
800	0%	0
900	0%	0
1000	0%	0
1100	0%	0
1200	0%	0
1300	0%	0
1400	0%	0
1500	0%	0
1600	0%	0
1700	0%	0
1800	0%	0
1900	0%	0
2000	0%	0
2100	0%	0
2200	0%	0
2300	0%	0
2400	0%	0
2500	0%	0
2600	0%	0
2700	0%	0
2800	0%	0
2900	0%	0
3000	0%	0
3100	0%	0
3200	0%	0
3300	0%	0
3400	0%	0
3500	0%	0
3600	0%	0
3700	0%	0
3800	0%	0
3900	0%	0
4000	0%	0
4100	0%	0
4200	0%	0
4300	0%	0
4400	0%	0
4500	0%	0
4600	0%	0
4700	0%	0
4800	0%	0
4900	0%	0
5000	0%	0
5100	0%	0
5200	0%	0
5300	0%	0
5400	0%	0
5500	0%	0
5600	0%	0
5700	0%	0
5800	0%	0
5900	0%	0
6000	0%	0
6100	0%	0
6200	0%	0
6300	0%	0
6400	0%	0
6500	0%	0
6600	0%	0
6700	0%	0
6800	0%	0
6900	0%	0
7000	0%	0
7100	0%	0
7200	0%	0
7300	0%	0
7400	0%	0
7500	0%	0
7600	0%	0
7700	0%	0
7800	0%	0
7900	0%	0
8000	0%	0
8100	0%	0
8200	0%	0
8300	0%	0
8400	0%	0
8500	0%	0
8600	0%	0
8700	0%	0
8800	0%	0
8900	0%	0
9000	0%	0
9100	0%	0
9200	0%	0
9300	0%	0
9400	0%	0
9500	0%	0
9600	0%	0
9700	0%	0
9800	0%	0
9900	0%	0
10000	0%	0

EXAMPLE OF CALCULATION

TAXABLE INCOME £1,235 (lies between £1,000-£1,299)

Tax on £1,200 ... £149 : 11 : 8

on £ 35 at 4s. 11d. ... £ 19 : 18 : 3

Total Tax on £1,235 (nearest shilling) ... £ 169 : 10 : 0

Less 5% Rebate (£20-9-4) (nearest shilling) ... £ 8 : 9 : 0

AMOUNT PAYABLE ... £ 161 : 1 : 0

TAXPAYER'S CALCULATION BASED ON HIS OWN INCOME

TAXABLE INCOME £

Tax on £ ... £

on £ ... s. d. ... £

Tax on ... £

Copy Return of income of D.L. Peate for year ended 30/6/60.

5 STEPHENSONS PAPER 4

**FORM A**  
COMMONWEALTH OF AUSTRALIA  
INCOME TAX AND SOCIAL SERVICES CONTRIBUTION

NEW SOUTH WALES  
RETURN OF INCOME derived from all sources in and out of Australia during the twelve months from 1st July, 1959 to 30th June, 1960

Copy Return of Income of D.L. Peate for year ended 30/6/60.  
**1960**

**PERSONAL RETURN**

Taxpayers who carry on a Business or Profession, and Trust Estates and Partnerships, must complete FORM "B".  
THIS RETURN SHOULD BE LODGED WITH THE DEPUTY COMMISSIONER OF TAXATION, BOX 4197, G.P.O., SYDNEY, BY 31st JULY, 1960.  
If income (other than salary, wages or dividends) was derived from more than one State, lodge this return with the Deputy Commissioner of Taxation, P.O. Box 769G, Melbourne. If a full-time member of the Defence Force, send this return to the Deputy Commissioner of Taxation in the Capital City of the State in which you enlisted or were called up.

For office use only

NAME IN FULL (USE BLOCK LETTERS)	Surname <b>DR. PEATE</b>	Christian Names <b>DESMOND LEE</b>
Postal address for service of notices (USE BLOCK LETTERS)	* Strike out whichever do not apply.	
Residential address	o/- D. E. ROLLASON, DAVIES & CO., BOX 2590, G.P.O., SYDNEY	
If married, state full name of wife or husband	WOLLOMBI ROAD, CESSNOOK.	
My occupation is	MARGARET PEATE	
Employer's industry	MEDICAL PRACTITIONER & COMPANY DIRECTOR	
Last return lodged at Taxation Office (Capital City)	MEDICAL SERVICES	
My address then being	SYDNEY	
If name changed, state former name.	File No. D.53888	
	AS ABOVE	

You are required to notify to the Deputy Commissioner any change of address for service of notices.  
If same as postal address write "as above."  
A deduction will not be allowed unless item 28 on page 3 is completed.  
When stating industry and occupation, state what kind of manufacturer, wholesaler, retailer, craftsman, etc.  
Unemployed persons to state industry of last employer.  
If no previous return, attach statement giving reasons and showing date of birth, and income for each of the previous three years.  
If married during year, state date of marriage.

**DECLARATION**

I, the person making this return, declare that the particulars shown therein are true and correct in every particular and disclose without reservation or exception a full and complete statement of the total income derived from all sources both in and out of Australia by me during the year 1st July, 1959, to 30th June, 1960.  
If the return has been made up for any other period, alter this declaration accordingly. Initial the alteration.

Dated this 6th day of March 1960. SIGN HERE (Usual signature of taxpayer) (Sgd.) D. L. Peate

This declaration and all attached sheets must be signed by the taxpayer personally.

**PARTICULARS RELATING TO SOURCES OF INFORMATION**

To be given by—A. Any person who charges directly or indirectly any fee for preparing, or assisting to prepare, this return. B. Every person carrying on business who does not furnish with his return an agent's certificate. Cross out whichever does not apply.

Question	Answer
(1) What books of account, if any, are kept by or on behalf of the taxpayer?	Information supplied by taxpayer
(2) By whom are those books of account kept? (State name and address)	the accuracy of which we have
(3) Are these books of account audited each year? If so, by whom?	no reason to doubt.
(4) Is the return in accordance with those books?	
(5) If the return is not in accordance with those books, on what basis and upon what information has the return been prepared?	
(6) Have you satisfied yourself, and, if so, how, that the books of account, or other sources of information upon which the return is based, are correct and disclose the whole of the taxpayer's income from all sources?	No.

N.B.—No. (6) to be answered only by the person mentioned in "A" above.

**CERTIFICATE BY AGENT** D. E. ROLLASON, DAVIES & CO. having charged the taxpayer a fee for preparing, or assisting in the preparation of, this return, hereby certify that the answers set forth above in the second column in this statement opposite to the questions set forth in the first column thereof are true and correct in every particular. D. E. ROLLASON, DAVIES & CO.

Date 6.3.60 Signature of agent (Sgd.)  
Agent's registered number TA.15160

**AGE ALLOWANCE**

This statement must be completed if Age Allowance is claimed; (See Notes for Guidance, page 4)

DATE OF BIRTH—BORN ON OR BEFORE { MALES 30-6-1895 ... Taxpayer / / Spouse / /  
{ FEMALES 30-6-1900 ... Taxpayer £ / Spouse £

**CALCULATION OF TAX BY TAXPAYER.**

Taxpayer should complete this block if his income other than salary or wages does not exceed £100. The amount of tax is calculated by using the TAX TABLE on page 3.

Completion of the following statement will then show either the amount of refund due or the balance of tax to be paid when the Notice of Assessment is issued by the Taxation Office.

TAXABLE INCOME—from page 3 ... £ : 0 : 0  
TAX INSTALMENTS as per group certificates or tax stamps sheets pinned to page 3 ... £ : :  
TAX PAYABLE on TAXABLE INCOME—from tax table on page 3 ... £ : : 0  
Less REBATE of 2/- for each £1 of Government Loan Interest (item 16 on page 2) £ : : 0  
NET TAX PAYABLE (nearest shilling) ... £ : : 0  
REFUND DUE TO TAXPAYER ... £ : :  
OR  
BALANCE PAYABLE BY TAXPAYER ... £ : : 0

for office use only  
T.I. £  
T.I.D. £  
G.T. £  
A.B. £  
N.T.P. £  
R. £  
P. £

Copy Return of Income of D.L. Peate for year ended 30/6/60.

COMMONWEALTH OF AUSTRALIA

Telephone: B 0322

Copy

Telegraph: "Depcomtax,"  
Sydney

TAXATION OFFICE,  
21 Elizabeth Street,  
SYDNEY. (Box 4197 G.P.O.)

14th June 1961

In reply please quote:  
6/G/SN.67243/60

Dear Sir,

10

The amount of £6,097 shown as net income from the Partnership of Drs. Wiles, Peate, Lawson, Spence, Allen, Bertinshaw, Atkinson, Fitsch & Cook in the enclosed adjustment sheet represents your individual interest in the net income shown in the return lodged in the name of A. E. Westbank Pty. Ltd. adjusted as follows -

Net income as returned	£5,040	
<u>Add:</u> Superannuation fund contributions	£150	20
Interest on superannuation fund loan	£164	
Registrar General's fees	£6	
Frames for certificates of incorporation	£8	
Service fees	<u>£33,330</u>	<u>£33,658</u>
		£38,698
<u>Less:</u> Net income from rents	<u>£142</u>	
Net income as adjusted	<u>£38,556</u>	
		<u>£ 6,097</u>
Your individual interest therein		30

Consistently with this adjustment the amount of £5,271 shown in the return of W. Raleigh Pty. Ltd. as service fees received has been excluded, the expenses claimed in the return of W. Raleigh Pty. Ltd. adjusted as under have been allowed as deductions and the amounts of £2,080 and £200 shown in your own return as salary and director's fees from W. Raleigh Pty. Ltd. have been excluded in ascertaining your assessable income.

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Deputy Commissioner  
of Taxation accom-  
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Deputy Commissioner  
of Taxation accom-  
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Total deductions claimed in return of W. Raleigh Pty. Ltd.		£5,553	
<u>Less:</u> Registrar General's fees	£6		
Superannuation contribu- tions	£400		10
Interest and registration regarding mortgage	£46		
Director's fees	£200		
Wages - Dr. Peate	£2,080		
" Mrs. Peate reduced from £1300 to £540	£760		
Car expenses not incurred in production of assess- able income	£44		20
Reduction of car depreci- ation in terms of Section 61.	<u>£39</u>	<u>£3,575</u>	
Deductions allowed		<u>£1,978</u>	

It has been necessary to make the above adjust-  
ments as it is considered that the gross income  
shown in the company's return was, in fact and in  
law, derived by the partnership. Correspondingly,  
the expenditure claimed in the companies returns,  
with the exceptions noted above, is considered to  
have been incurred by the partnership and you  
through the agency of the companies. 30

This view is based on the understanding that  
services to patients are personally rendered by  
members of the partnership. In these circum-  
stances, any amounts received by the company are  
considered to represent the application of income  
after it has been derived by the partnership.

The above view is supported by reference to  
the provisions of sections 41A, 41B and 42 (2)(a)  
of the N.S.W. Medical Practitioners Act 1938 (as  
amended) which provide, in effect, that only a  
registered medical practitioner can treat certain  
diseases, sue for fees or advertise himself as  
qualified to practise medicine or surgery. 40

As A. E. Westbank Pty. Ltd. and W. Raleigh  
Pty. Ltd. are not registered medical practitioners  
it is understood that they cannot treat the dis-  
eases prescribed in section 41A, sue for fees or  
advertise themselves as qualified to practise  
medicine or surgery. Any attempt on the part of  
the companies to hold themselves out as qualified  
to do these things would appear to contravene the  
provisions referred to above. 50

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In these circumstances, it is considered that registration as a medical practitioner is a condition precedent to the derivation of the income which has been assessed as income of the partnership.

10

Yours faithfully,

C. C. GREEN. (intld.)

DEPUTY COMMISSIONER OF TAXATION

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Deputy Commissioner  
of Taxation accom-  
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COPY

File No. SN.67243

THE COMMONWEALTH OF AUSTRALIA

INCOME TAX AND SOCIAL SERVICES CONTRIBUTION  
ASSESSMENT ACT

NOTICE OF OBJECTION AGAINST ASSESSMENT

WE, D. E. ROLLASON, DAVIES & CO., being the registered Tax Agents for DESMOND LEES PEATE, hereby object against the Assessment of Income Tax based on income derived during the year ended 30th June, 1960, and issued to DESMOND LEES PEATE by Notice of Assessment dated 14th June, 1961, and claim that the Assessment should be amended to:- 10

- (a) Excise the amount of £6,097 included in the assessable income.
- (b) Allow the amount of £6,097 as a deduction.
- (c) Excise such amount of the sum of £6,097 as represents moneys outstanding by debtors of A. E. Westbank Pty. Limited. 20
- (d) To excise any amount over the sum of £1,735 from the assessable income.

The grounds upon which I rely are:-

- (i) The amount of £6,097 is not in whole or in part income in fact or in law derived by me.
- (ii) The amount of £6,097 is income derived by A. E. Westbank Pty. Limited or W. Raleigh Pty. Limited.
- (iii) There is no partnership between myself and the other doctors mentioned in the 1st paragraph of your letter of the 14th June, 1961. 30
- (iv) There never has been any partnership between myself and those Doctors mentioned in the first paragraph of your letter of the 14th June, 1961.
- (v) There is no agency between myself and the companies nominated by you.
- (vi) There is no agency between the companies nominated by you and a non-existent partnership. 40

Notice of objection

- (vii) I understand that amounts included by the companies nominated by you in their income tax returns were not in fact received by such companies in as much as such amounts are shown in the balance sheets of such companies as book debts.
- (viii) I am employed by W. Raleigh Pty. Limited under a Service Agreement, a copy of which has already been forwarded to you. 10
- (ix) The moneys in respect of services to patients are earned by A. E. Westbank Pty. Limited which avails itself of the services of many doctors.
- (x) The accounts for medical services provided by A. E. Westbank Pty. Limited are issued by that Company. 20
- (xi) I do not contract with any patient on my own account in respect of medical services or attention.
- (xii) I have no right in law to receive any moneys from any of the patients in respect of services rendered.
- (xiii) The amounts received by the companies nominated by you are not derived by me or by any partnership of which I am a member. 30
- (xiv) There is no basis in law or fact for the contention that the amounts received by the companies nominated by you represent the application of income after it has been derived by me.
- (xv) There is no income derived in fact or law by any partnership.
- (xvi) The provisions of the Medical Practitioners' Act 1938 as amended do not prevent the companies nominated by you from providing medical services by means of medical practitioners employed or engaged by those companies. 40
- (xvii) In any event the provision of the Medical Practitioners' Act 1938 as amended are irrelevant, it being the fact that the companies nominated by you do provide medical services and obtain payment therefor. 50

Notice of objection

- (xviii) Whether or not the companies nominated by you are registered as Medical Practitioners is irrelevant.
- (xix) The whole of the amounts added to my income as returned are allowable deductions.
- (xx) The sums added to my returned income by you have in fact as to part been distributed by way of dividends by the companies nominated by you, and some of the shareholders receiving such dividends have paid income tax thereon. 10
- (xxi) There is no basis in law or fact for the adjustments to deductions referred to in the 2nd paragraph of your letter of 14th June, 1961.
- (xxii) The matters referred to in the covering letter herewith. 20

DATED this 8th August, 1961 day of 1961.

Signature D. E. ROLLASON DAVIES & CO.

Per (Sgd.) ?

As agents

Address 241-243 Castlereagh Street,  
SYDNEY

TO: The Deputy Commissioner of Taxation,  
Box 4197 G.P.O.,  
SYDNEY.

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- - -

IN THE HIGH COURT OF AUSTRALIA

No. 28 of 1960

Original Jurisdiction

BETWEEN

10

DESMOND LEES PEATE

Appellant

AND

THE COMMISSIONER OF TAX-  
ATION OF THE COMMONWEALTH  
OF AUSTRALIA

Respondent

- - -

CORAM: MENZIES, J.

- - -

TRANSCRIPT OF PROCEEDINGS

AT SYDNEY ON TUESDAY, 4TH SEPTEMBER 1962, at 10.30 A.M. 20

- - -

MR. H. JENKINS, Q.C., with him MR. R. B. MURPHY  
(instructed by Herbert Smith and W.B. Phillips)  
appeared for the appellant.

MR. M. H. BYERS, Q.C., with him MR. J. R. GIBSON,  
(instructed by the Commonwealth Crown Solicitor)  
appeared for the respondent.

- - -

Appearances

MR. BYERS: I am prepared to admit that by transfer dated 12th April 1960 A. E. Westbank Pty. Ltd. became the registered proprietor of land on which it built surgeries at Paxton and Bellbird on 4th August 1960.

KENNETH DOUGLAS MARTYN, sworn:

MR. JENKINS: Your full name is Kenneth Douglas Martyn and you live at 24 Alfred Street, Cessnock?---Yes. 10

You are the headmaster of the primary school?---  
At West Cessnock.

Have you heard of the company called A. E. Westbank Pty. Ltd.?---Yes.

When did you hear of it?---I first heard somewhere towards the end of 1957.

Did you have any conversation with Dr. Peate about it?---Yes, at that time I was being treated by Dr. Peate who called to see me. I had an attack which was not as bad as I thought it was and we chatted for quite a while. 20

What did he say to you about Westbank?---He said that he and a number of doctors had formed a company. We were discussing the matter of superannuation, and I took it one of the primary objectives of the company was in respect to superannuation.

MR. BYERS: I object to that.

HIS HONOUR: Yes. When you are answering questions, Mr. Martyn, it is necessary you should just give the substance of the conversation rather than any impression you formed from it. 30

MR. JENKINS: At some time after that did you get accounts in respect of medical services? ---Yes.

Have you got any accounts in respect of the years 1957 or 1958?---I am afraid I have not.

What has happened to them?---I have destroyed them. 40

In those circumstances, what was on the accounts? ---They were stamped with the name of A. E. Westbank & Co.

Did you pay those accounts by cheque?---Yes.

Mr. Martyn, first of all on what bank were the cheques drawn?---The Commonwealth Trading Bank.

K.D.Martyn x

In whose name were the cheques made out?---I think some of the cheques were made payable to Dr. Peate and more latterly they were made payable to A. E. Westbank.

Could you say, when you say "more latterly they were made payable to A. E. Westbank", can you say when you changed from Dr. Peate to A. E. Westbank?---I think that would be rather difficult, probably within the last three years.

10

In respect of those cheques, did you receive receipts?---Yes.

What happened to those receipts?---Usually I submitted them with a claim on the New South Wales Medical Benefit Fund.

So far as the receipts are concerned, what did they have on them as to a name?---They were all stamped with the name A. E. Westbank & Company.

20

I think you said you sent the receipts to a medical benefits fund?---Yes.

What happened then, did you get them back?---I received the cheque and the receipts were returned to me.

Did you get a full 100% refund or a 75% refund? ---I think 16/- for each consultation. The amount varies, of course.

Would it have any other name apart from A. E. Westbank - was that in rubber stamp?--- Yes.

30

Did it have any other names on it?---I think it would have the name of the person who had authority to sign at the bottom, for or per somebody.

Do you remember the name of Peate, Spence or Atkinson being on it?---I cannot remember that being on the receipt.

HIS HONOUR: Do you remember whether those names were on the account?---They were on the top of the account.

40

MR. JENKINS: And on the account also was the words "A. E. Westbank Pty. Ltd."?--- Yes.

MR. JENKINS: May I have Exhibit 'F'?

(To the witness): Have you seen that before?---It is very similar to one

K.D.Martyn x

which was hanging in the waiting room  
of the doctor's surgery.

When do you recollect having first seen the one  
hanging in the waiting room of the  
surgery?---It would probably be 3 or 4  
years ago.

Have you on occasions been attended by other  
doctors in Cessnock?---Yes.

HIS HONOUR: Doctors other than Dr. Peate?---Yes. 10

CROSS-EXAMINED BY MR. BYERS:

MR. BYERS: Dr. Peate was your physic-  
ian?---Before the company was formed,  
yes.

You had confidence in the doctor?---Yes.

You had gone to him for many years?---Yes.

Prior to 1956 or so?---Yes, a couple of years.

At your request to treat you?---Yes.

And from time to time you paid him?---Yes.

Why you sought Dr. Peate was because of your con- 20  
fidence in him?---Because he had  
previously been my doctor.

And you trusted his skill?---Yes.

That is one of the reasons why you have continued  
to go to Dr. Peate?---Yes.

Both at surgery and by his coming to your home?  
---Yes.

The real reason is because you relied on his  
capacity as a doctor and you had con- 30  
fidence in him?---Yes.

RE-EXAMINED BY MR. JENKINS:

MR. JENKINS: In years prior to 1957, had you  
been seen by doctors other than Dr.  
Peate?---Not in Cessnock.

Since 1957, have you seen doctors other than Dr.  
Peate?---Yes.

Who are they?---Dr. Atkinson and Dr. Spence.

Did you have confidence in Dr. Atkinson?---Yes.

And in Dr. Spence?---Yes.

I have no further questions. 40

WILLIAM ALFRED STUART BARNES, sworn:

MR. JENKINS: What is your full name?---William  
Alfred Stuart Barnes.

You reside at Nepean Av., Penrith?---Yes.

You are the senior clerk with a firm of account-  
ants, Rollason, Davies & Co.

As such you keep the books of Westbank Pty. Ltd.  
and W. Raleigh Pty. Ltd.?---Yes.

Yourself and others under your supervision?---Yes. 10

You have been with that firm since 1950?---Yes.

You also prepared the income tax returns of the  
two companies, Westbank and Raleigh, and  
also the income tax returns of Dr. Peate?  
---Yes.

You have taken out certain figures, have you not,  
in respect of the commissioners adjust-  
ment sheets and assessments for the  
years 1958, 1959 and 1960?---Yes.

Have you got your figures with you?---I have my 20  
working papers in my file.

Take the 1958 year in respect of Dr. Peate, in  
this year the commissioner, as appears  
from the letter of 25th August 1959, came  
to a total figure of £47,787 as being  
the net income of Westbank?---Yes.

Then he allocated of that amount £6690 to Dr.  
Peate?---That is correct.

That represents a percentage of 14%?---Yes.

You have taken out figures on the basis that the 30  
net income is on a cash basis?---Yes.

The cash figure for the year ended 30th June 1958  
is the sum of £40,313?---Yes.

HIS HONOUR: That is the net income of the com-  
pany A. E. Westbank Pty. Limited?---On  
a cash basis.

MR. JENKINS: The amount of £6690 allocated to  
Dr. Peate by the commissioner represents  
16.595%, does it not, of the net cash  
income of Westbank?---That is correct. 40

If one takes 14% of £40,313, that is the net cash  
income, that amounts to the figure of  
£5653.16.5?---I am afraid I have not got



W.A.S.Barnes x

that calculation in front of me; may I have a few moments to work it out?

Yes. 14% of £40,313?---£5643.16.5.

Would you now go to the 1959 year? In respect of that year the commissioner arrived at a total figure for the net income of Westbank on a credit basis of £40,651? ---That is correct.

He allocated to Dr. Peate the sum of £6091 which represents 14.983% of such net credit income of Westbank?---That is correct. 10

If that income were dealt with on a cash basis it would include in the year 1959 moneys which accrued due in 1958 but came in in 1959?---That is correct.

You have taken out that figure for the actual cash takings for 1959?---Yes.

That is £40,764?---That is the net profit on a cash basis. 20

You have taken out the percentage which £6091 bears to that figure?---Yes.

It is the percentage of 14.942%?---That is correct.

If you would proceed with the 1960 year the commissioner for that year arrived at a net credit income for Westbank of £38,556? ---Yes.

He then allocated of that figure £6097 to Dr. Peate? ---Yes.

And that represented a percentage of that figure of 15.81%?---That is correct. 30

You took out the figure for the net cash income of Westbank for the year 1960?---Yes.

That was £39,217?---Yes.

Of that figure the amount of £6097 was allocated by the commissioner to Dr. Peate, representing 15.546%?---Yes.

Over the years 1958, 1959 and 1960 you were auditing these books?---Yes.

The books that are available for inspection show that all the moneys which form part of the income shown in the 1958, 1959 and 1960 returns were paid into Westbank's banking account?---Yes. 40

All of the expenditure which forms the basis of

W.A.S.Barnes x

deductions was paid out of Westbank's banking account?---That is correct.

For the purpose of returning the income you look at the receipt books, do you not?---Yes.

And the cheque butts?---No, not the cheque butts.

What do you peruse in lieu of the cheque butts?---  
To verify the existence of the cheque butts and the drawing of the cheques I rely on the bank pass sheets and also upon receipts and invoices. 10

So far as Westbank's gross income is concerned are you able to say that the gross income as returned in Westbank's 1958, 1959 and 1960 returns all went into Westbank's banking account?---Yes.

So far as the deductions are concerned in 1958, 1959 and 1960 which were taken off to arrive at Westbank's net credit income - all the expenditures - did they all come out Westbank's banking account?---Yes. 20

Apart from small amounts for petty cash etc.?---  
Apart from any items such as accrued charges for payments to be made.

HIS HONOUR: Items shown to be paid were paid from the account?---Yes.

MR. JENKINS: The accounting system in operation is what is called a Ruf system?---Yes.

That shortly amounts to this, does it not, when a receipt is written out for money you are also at the same time writing out the bank deposit slip?---That is correct, also the cash receipts book itself. 30

It is a system of carbons, is it not?---Yes, a system of carbons.

So that when a person comes to the counter to pay an account a receipt is given and it is written on to the bank deposit slip at the same time?---Yes.

That Ruf system has been in operation in Westbank's surgery since 1957?---I could not tell you the exact date when it was put into force, but I know it was in force prior to June 1958. 40

You also audit, do you not, A. E. Westbank's super-annuation fund?---Yes.

This fund has a bank account with the Bank of New South Wales?---Yes.

You have the balance sheets for the fund and can procure them if necessary?---Yes.

The bank account for that fund is in whose name?  
---The name of A. E. Westbank Super-annuation Fund. I would like to check that, I am not absolutely sure of that.

Who operates on the fund?---That banking account is operated by William Berge Phillips and Donald Ernest Rollason, trustees.

10

You have with you books showing the credit entitlement of the staff employees at the moment?---I have with me the register of members.

So far as the employees of Westbank are concerned the group system of tax deduction is used?---They work on the group tax deduction system.

And every month Westbank sends to the Commissioner of Taxation the appropriate deductions?  
---Yes.

20

In respect of the 1958 year for Westbank the amount which the commissioner has taken and split up for the purpose of adding into Dr. Peate's income is an amount of £47,787. Could you go to your 1958 figure?---£47,787, yes.

So far as the service fees are concerned, at the end of each financial year they are calculated out to a final figure by you?  
---Yes.

30

Where do you get your instructions as to how the service fee is to be calculated? On what basis?---I receive my instructions from the directors of Westbank Pty. Ltd.

Have there been variations from time to time in the amount of service fees so far as percentage is concerned?---Yes.

HIS HONOUR: When is what the service fee will be fixed? At the end or the beginning of a financial year?---I could not answer that.

40

When do you get the instructions?---When I am up there from time to time carrying out the audit. I may go up during the middle of the year or I may go up after the close of the financial year. There is no set time.

CROSS-EXAMINED BY MR. BYERS:

MR. BYERS: In arriving at your figures in relation to the sums you include in the Raleigh account by way of income, do you have regard to the agreement between Westbank and Raleigh?---Yes.

You of course are not aware of how it is that some percentage of receipts is retained in Westbank prior to the allocation for assessment of the sums due under the Raleigh/Westbank contract?---Just give me the first part of the question again? 10

In point of fact it is true that from 1958 certainly £5000 was paid away by Westbank by way of dividend?---That is correct.

And you are aware that under the agreement between Westbank and Raleigh Raleigh was entitled to 14 per cent of Westbank's income?--- Under the original agreements, yes. 20

What other agreement are you speaking of?---I have been informed that there have been verbal arrangements or verbal variations to the original written agreements.

MR. BYERS: When were you informed of that?--- From time to time during the course of the audit.

When was the first occasion?---I would have to refer back to the time when I first prepared the accounts. 30

Was it in 1957?---It would have been in 1957, yes.

That is before 30th June 1957?---I could not answer that with any great degree of accuracy. I would have to check to see when I was in Maitland or Cessnock carrying out audits.

Who gave you these instructions?---I would have received them from the directors of the company.

Which directors?---In the main it would be Dr. Peate. I have received some instructions from Dr. Atkinson and I have also addressed queries to Dr. Spence. 40

The best of your memory is that it was in 1957?--- Yes. That is to the best of my memory.

You have not seen any agreement varying the agreement between Westbank and Raleigh?---No.

Each year Westbank shows in its balance sheet an item which it describes as sundry debtors?---Yes.

That item varies from year to year?---Yes.

It represents that amount which as at 30th June of each year is payable to the company in respect of work done?---That is correct.

During that year?---Yes.

10

From your knowledge, the work that is done is work done by medical practitioners?---Yes.

The only source of income that this company has is income it gets in relation to the work done by the doctors?---Other than the rent received from the surgeries.

Do you remember the amount shown in the Westbank balance sheet for the year ended 30th June 1957 ---

HIS HONOUR: Just before you go to that - what rent does it get for the surgeries?---It receives rent for the Bellbird and Paxton surgery.

20

From whom?---From the company which is supplying the services of the medical practitioner operating at that surgery - - no, I am wrong there, it receives rent for one of the surgeries, I just forget offhand which one it is, which is used by one company to render medical services.

30

MR. BYERS: May I assist your recollection? Does it receive rent from Raleigh?---No.

You say it receives rent from some associated company?---That is correct.

Do you mean in relation to Paxton and Bellbird?--- From one of the surgeries, either Paxton or Bellbird. I am afraid at this moment I cannot recall which surgery.

Do you remember the figure shown in the balance sheet for Westbank for the year ended 30th June 1957 as representing the sundry debtors?---There is a figure shown in the sundry debtors, yes.

40

You would agree that for that year - I will show you this if you wish, with his Honour's permission - the amount shown in the balance sheet of Westbank for sundry debtors was

£4977/7/10? Would you care to look?  
Might he be shown that figure?---Yes.

I think the amount shown for the 30th June of each of the succeeding years up to and including 1960 appears in the balance sheet with the income tax returns?---That is correct.

I suppose you worked out or checked the figures in each of the years by reference to which the commissioner arrived at the income of Dr. Peate?---Yes. 10

Setting aside for a moment the assumptions made, those figures are mathematically correct?---Yes.

In each of the years 1958, 1959 and 1960 the net income of Westbank was round about £5000? ---That is correct.

That sum was arrived at by taking the income on a credit basis and deducting the charges payable, you say, under the agreements with the various doctor companies?---Yes. 20

Plus the other deductions that are set out in the profit and loss account?---Yes.

And on each occasion you get a sum round about £5000 by way of profit?---Yes.

In what way did the deductions achieve that result? Do you follow what I am putting to you? ---I think I can follow you.

HIS HONOUR: Were you working to a predetermined £5000?---Yes. 30

MR. BYERS: And therefore, working to the predetermined £5000, your deductions for service fees were calculated upon a sum arrived at after deducting £5000?---Yes.

HIS HONOUR: The fees for services, that was an adjustable figure?---Yes.

MR. BYERS: Do you audit the superannuation account?---Yes. I carry out the audit for the office. 40

I suppose sums have been lent from the fund?--- There have been amounts advanced from the superannuation fund.

To the doctors?---No.

To the doctor companies?---To the associated companies, yes.

Large sums? What percentage?---You mean at what rate of per cent?

No. What percentage of the fund shown in the corpus accounts have been lent to the doctor companies?---The year ended 30th June 1960 it would be approximately 33 per cent.

I take it there is a statement as to the interest payable on that?---I do not think that you have been given a statement of interest receivable on those amounts. 10

You mean you have not been given?---I have not prepared one.

You do not know?---I know the interest rate.

RE EXAMINED BY MR. JENKINS:

MR. JENKINS: What is the interest rate?---8 per cent per annum.

So far as the £5000 is concerned, is that wholly distributed in dividends or is it distributed in dividends less tax?---It would be distributed in dividends less tax. 20

After tax is paid?---Yes.

(THE WITNESS WITHDREW)

NOREEN AGNES O'CONNOR, sworn:

MR. JENKINS: Your full name is Noreen Agnes O'Connor and you live at 2 Cooper Street, Cessnock?---Yes.

You are a receptionist/clerk employed by A. E. Westbank Pty. Ltd.?---That is right. 30

When did you commence employment with that company?---In December 1957.

Have you been in the employment of that company ever since December 1957?---Yes.

Where do you carry out your duties?---In the 204 Main Street surgery.

Your duties comprise interviewing patients when they first arrive at the waiting room? ---That is right. 40

You get their names, give them a number so that they know in what order they are to go in to the doctor?---Yes.

N.A.O'Connor x

You make entries of the amount of charges due in respect of the consultation or whatever it is?---Yes.

In respect of the medical services rendered you keep those entries?---That is right.

Your duties also comprise the taking of payments over the counter in the waiting room?---Yes.

Then you have duties in respect of banking and sending out of the accounts?---Yes. 10

You do the banking in the A. E. Westbank bank account, do you not?---Yes.

I think you have a Ruf system of accountancy whereby when you write a receipt you also write the bank deposit slip at the same time? ---Yes.

You send out the accounts, do you not?---Yes.

If cheques come in you take those and pay them into the bank?---Yes. 20

When you first commenced at the surgery - would you have a look at Exhibit "E" which is being shown to you by the Court Officer, was that hanging in the surgery?---Yes.

It was there when you commenced duty?---That is right.

When you commenced duty in December 1957 in what form were the accounts going out? Was A. E. Westbank appearing on the accounts at all?---Not when I first went there. 30

Just the words D. L. Peate, K. J. Atkinson and W. J. Spence?---Yes, that is right.

That was also appearing on the receipts, was it not?---Yes.

And did that change?---Yes.

When?---Some time in the year 1958, early in the year.

Could you give me the month at all?---No.

Early in the year - closer to the beginning of the year?---Yes, I would say soon after I joined their employ. 40

What change occurred then, early in the year 1958, so far as the accounts and receipts were



concerned?---We had the stamp made and we put it on the accounts and the receipts.

You could tell me what was this stamp that you put on?---A. E. Westbank Pty. Ltd.

Did you notice anything in the actual surgery itself in relation to A. E. Westbank after you started there, on the surgery table?---Yes, the notice was there. 10

The notice you referred to, did you see that notice anywhere else?---No.

Not at that time, when it was on the table, but at a subsequent time was a notice like that anywhere else?---We did eventually put it on the wall.

Can you tell me whether that is the notice you referred to, one similar to this document the court officer shows you, Exhibit "F"?---Yes. 20

Could you give his Honour any idea when you first saw that on the doctor's table, one like that?---I could not remember when I first saw it. It has been there for many years.

HIS HONOUR: Could I see that again? Was the one on the table this size?---It was the same size.

Was it framed?---No, unframed.

How was it standing up?---It was just lying on the table. 30

What sort of a table was it?---In the doctor's consulting room.

Was it a wooden table?---Yes.

This was a paper on the table?---Yes.

MR. JENKINS: Is it the one that was in the waiting room?---The one which was in the waiting room.

Can you give his Honour any idea when that went up in the waiting room?---I could not remember offhand. 40

Can you fix it with regard to your commencement of duty, how long after?---That would be difficult.

Could you fix it, say whether it was during 1958? ---That too is difficult.

Could you say when it went up?---Not when we put it up.

You cannot recollect?---No.

Can you say today how long it has been there?---  
A long time.

MR. BYERS: I object to that.

MR. JENKINS: Anyhow, has it been there a long time?---It has, yes.

What - years?---I would say so. 10

Was there another notice in the waiting room apart from that one?---Yes.

Have a look at Exhibit "G"?---Yes, that is the one.

Have you seen that notice before?---Yes.

Is that the one that was in the waiting room?---  
Yes.

Can you say when that appeared in the waiting room?  
---That too is difficult. It has been there for a long time because I typed it out. 20

From time to time have patients spoken to you about A. E. Westbank?---Yes, they have.

Can you say in 1958 if patients spoke to you about Westbank?---They did.

You mentioned earlier that the stamp was going on accounts and receipts?---Yes.

Of A. E. Westbank?---Yes.

Was it soon after that, that you had it mentioned to you?---I was getting inquiries.

What did you inform the patients?---That the money was payable to the company and not to the individual doctors. 30

Did you at one stage have inquiries as to whether moneys payable to the company were able to be claimed in income tax returns?---  
Yes.

Do you remember getting a clipping out of a newspaper?---Yes.

Could you say when that was?---Not offhand.

Would you look at Exhibit 'W' and tell me if it is the clipping?---Yes, that is the one. 40

Where did you get that clipping?---Someone gave it to us.

HIS HONOUR: Do you know who gave it to you?---No.

Do you know what paper it came from?---I could not remember that either.

Could you remember when you got it - roughly?---At the time it appeared in the paper. We had several inquiries from people and someone kindly cut it out of the paper and gave it to us. 10

What did you do with it?---We pinned it up on the back of a cupboard we had so that if anyone asked us we could show it to them.

MR. BYERS: I object.

MR. JENKINS: You put it on the back of a cupboard.

Did you show it to anyone?--Yes.

How did you do that? When you opened the cupboard door, it was apparent to patients standing at the counter and they could read it?---Yes. 20

Were they satisfied with it?---Quite satisfied.

You had moneys paid to the surgery by cash over the counter by a lot of people?---Yes.

In respect of other people, cheques came in?---Yes.

In the year 1958, you got cheques in?---Yes.

In that year you informed us that A. E. Westbank had stamped receipts and accounts?---Yes.

Did the cheques come in payable to different payees?---Different ones. 30

Different payees?---Yes.

As far as A. E. Westbank is concerned, in the year 1958 would that form the majority of the cheques - that name on the payee slip, or would it be the minority?---I would say the minority.

How were the other cheques made out?---To the various doctors.

In the following year, 1959, what was the situation? ---An increasing number in the company's name. 40

And the year 1960?---Even more so.

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By the year 1960, was the majority of cheques in the name of A. E. Westbank?---It is difficult to say.

About 50-50?---I think so.

You even had cheques made payable to Dr. Westbank?  
---Yes.

You had payments coming in from different sources, you have payments coming in from a number of funds and public departments?---Yes. 10

You compile the accounts for these departments and send them out?---Yes.

That is part of your duty?---Yes.

As far as the Northern District Miners Medical Fund is concerned, from February 1958 onwards you adopted a procedure as to that fund?---Yes.

What did you do?---We sent them the account.

You sent out accounts?---Yes, and we had the stamp of A. E. Westbank on it. 20

That was in 1958?---Yes.

You sent in the accounts with A. E. Westbank on them and that was posted to the secretary of the Northern District Miners' Medical Fund?---Yes.

How did the cheque come back?---It came back in favour of the doctors.

Did you get one back in the name of Westbank?---Some years after.

As far as the Sub Treasury is concerned for old age pensions examinations, you sent the memorandum of fees in printed with Westbank after February 1958?---Yes. 30

The cheques came back with the names of the doctors?  
---Yes.

Invariably?---Yes.

So far as insurance companies are concerned, how have you had payments back from them in respect of workers' compensation and such like?---The biggest majority has been in the company's name. 40

I am reminded that as far as the Northern Miners Fund is concerned, the envelope comes back addressed to Westbank, but when it

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is opened, the names of the doctors are in the payee part of the cheque?---Yes.

Take the Coal Miners Insurance Co. Pty. Ltd. which insures miners and pays for the doctors until recently 9d. per miner per week, to look after the miners; in so far as that company is concerned, did you send an account to them?---We sent them an account.

10

That is just a regular payment which comes in?---Yes.

How is the cheque made out?---In the doctor's name.

It is paid into Westbank's account?---Yes.

The councils have clinics from time to time such as Polio clinics etc.?---Yes.

The doctors associated with Westbank, staff this clinic on a number of days, taking turn and turn about?---Yes.

Take salary doctors: do they also staff the clinic from time to time?---They vary.

20

The cheques from the councils are made payable to the actual doctor who attended?---Yes.

But all the cheques are handed in to you and you bank them in Westbank's banking account?---Yes.

I think so far as the Hunter Medical Benefits Fund is concerned they have a system whereby the patient takes the receipt to the fund and gets a refund?---That is so.

30

You hand out receipts, do you not?---Do you know whether a person is a member of a fund or not?---They sometimes tell us.

You hand out Westbank receipts to them?---Yes.

Do you ever get cheques brought back by these patients from a medical fund?---Yes.

Which one is that, the Medical Benefits Fund of New South Wales?---Yes.

So far as that is concerned the procedure is that the memorandum from A. E. Westbank is taken to the fund and a cheque is made out?---That is so.

40

Is the cheque brought back and handed to you?---Yes.

To whom is the cheque made payable?---In the doctor's name.

You pay it in to the bank account?---Yes.

Do you issue a receipt with A. E. Westbank on it?  
---Yes.

And send it to the fund?---No, the patient collects that.

You attend to the payment of the staff?---Yes.

So far as doctors are concerned, other than director doctors, you also arrange for their payment?---Yes.

10

Is that done fortnightly?---Yes.

You draw a cheque and hand it to those doctors, or do you pay them in cash?---By cheque.

You hand them a cheque?---Yes.

Do you deduct from that cheque the appropriate tax in cases where tax is being deducted?---Yes.

In respect of some of the doctor employees, other than director doctors, is a fee paid in lieu of salary?---Yes.

20

And no tax is deducted?---That is right.

In the year 1960 Dr. Pitsch - this becomes relevant, your Honour, in view of the commissioner's allocation in the adjustment sheet attached to Peate's return of 1960 and the accompanying letter - was on salary with the company?---Yes.

Did he change and become at some time a director director?---Yes.

How long was he on salary during 1960, could you say?---I think it was 1959.

30

I withdraw that. Dr. Pitsch is not a director, is he?---No.

Dr. Cook is not a director?---No.

The services of Dr. Wiles in 1960 were not - he was no longer with the company?---No.

But he remained a director still, did he not?---Yes.

Dr. Pitsch was an employee on a salary for how long?  
---From February to October 1959.

Then he was changed to a fee basis?---Yes.

40

And you did not deduct tax?---Not from then on.

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What was the date he changed from salary to a fee basis?---I think the 1st October 1959.

And from then on until now he has not become director?---No.

Nor has Dr. Cook?---No.

In respect of cheques from the hospital where, for instances any of the doctors gives a lecture or marks an examination paper, did you get that and pay it into the bank account?---Yes. 10

Into Westbank's bank account?---Yes.

What about fees for giving evidence in court in compensation cases?---It goes into Westbank's account.

AT 4.30 P.M. THE COURT ADJOURNED THE FURTHER HEARING OF THIS MATTER UNTIL THE FOLLOWING DAY, WEDNESDAY, 5TH SEPTEMBER 1962, AT 10.30 A.M.

AT SYDNEY ON WEDNESDAY, 5TH SEPTEMBER 1962, AT 10.30 A.M. 20

(Continued from 4/9/62)

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For APPEARANCES - see page 1.

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MR. JENKINS: Just one other matter, Miss O'Connor. His Honour asked you yesterday about the notice in the actual room where the doctor saw patients, and you referred to it as being on the table. Could you say where it was on the table?---It was on the table in front of where doctor would sit, and also in view of the patient. 30

Which way was it facing so far as being able to read it was concerned, was it facing the doctor or facing the other side of the table where the patient was?---It could be seen by both.

If one wanted to read it would the patient have to read it upside down?---No.

It would be so that the patient could read it?--- Yes. 40

HIS HONOUR: In that case how would the doctor be

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able to read it?---The way the chairs were situated.

Was it just on the table?---Yes.

It could move about from time to time?---Yes.

It was not pinned down?---No.

It was not under glass?---No.

CROSS-EXAMINED BY MR. BYERS:

MR. BYERS: I suppose there would be other things on the table, doctor's notes, cards, calendar, inkwells and blotting paper and matters of that description?---Yes. 10

Ever since you have been at this surgery the doctors' names on the conventional brass plates are fixed to the front?---Yes.

That would be Doctor Peate, and I think Doctor Atkinson and Doctor Spence?---Yes.

About how large would they be?---The usual name-plates for doctors.

In brass?---Yes. 20

How large is the waiting room?---It is only comparatively small.

Can you give his Honour some indication?---It would be very difficult.

HIS HONOUR: Would it be larger than 12 by 12?---Perhaps a little less, not very much.

MR. BYERS: It has no doubt chairs around the walls?---Yes.

And a table with reading material?---No table.

Is the reading material scattered around for patients who are waiting, magazines and things of that type?---Yes. 30

During surgery hours I suppose you get a large number of patients at one time present in the waiting room?---Yes.

And from the waiting room is there direct access to each of the surgeries?---Yes.

Are the doctors present at the one time in each of their surgeries?---Yes.

That is throughout the surgery hours?---Yes. 40



I take it that throughout the surgery hours the waiting room you could say would be full of patients?---Yes.

Sitting around the walls, and so on?---Yes.

Reading their magazines, and so on?---Yes.

Has this waiting room any windows to it?---Yes.

It has a window to the main street?---Louvred windows.

How are these louvres, closed or open?---Depending on the weather. 10

And then I suppose you have pictures around the walls?---No pictures.

No notices?---We have notices.

Tuberculosis notices?---We might have one, it refers to vaccinations.

What other notice?---A notice of surgery hours, that is about all.

You have a number of notices, all framed?---Some of them are and some are not. 20

What about this Exhibit G, that is the little document you said you typed out, that was in the waiting room?---Yes.

Whereabouts in the waiting room was it?---Near the window, where the other notices were.

It of course was not framed?---No.

When you say it was near the window, was it pasted up by a piece of Scotch tape?---Yes.

That is presently on top of the notice?---Yes.

Would that be on the frame of the window, or on the wall?---No, it is part of the wall near the window. 30

You find the notices, if I may use the expression, all round about the window, do you?---Yes.

I take it the patients come in and out from their doctors fairly quickly, do they?---That is difficult.

As a general run, the normal treatment the doctor would give the patient would be fairly brief?---That is difficult. 40

Is there a constant coming and going into and out of the waiting room?---Yes.

People coming in through the doorway from the street into the waiting room, people going from the waiting room into the three doctors' surgeries, coming out of the waiting room and going out?---Yes.

That is common to the whole period you have mentioned, from 1958 onwards?---Yes. 10

And indeed 1957?---Yes.

You have mentioned to his Honour certain sources of income, if I could use that expression, such as the - - -

HIS HONOUR: Just before you go on to this, while you are speaking of the notices, did the company's name appear outside the building?---It did.

Whereabouts?---Underneath the nameplates.

Do you remember the name of which company?---A. E. Westbank Pty. Ltd. 20

MR. BYERS: That was all, was it, just A. E. Westbank Pty. Ltd.?---Yes.

Was that on a doctor's plate?---No, plastic.

So that it is quite clear, on that plastic there was nothing other than the name of the company?---No.

You did mention to his Honour that all the cheques you had received, with one exception, from the Northern District Miners Medical Fund were made payable to the doctors?---Yes. 30

And you did mention also as falling within that category the cheques from the Commonwealth Sub-Treasury?---Yes.

And the Council clinics?---Yes.

And the Medical Benefits Fund?---Yes.

May I hand the witness a copy of Exhibit S. Have you seen that before, that sheet of paper, or anything like that?---No. 40

I take it the Medical Benefits Fund cheque would be included under the heading "Fees"?---Yes.

I suppose it is quite commonplace for patients to

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be members of the Medical Benefits Fund?  
---Yes.

Would you say the majority of your patients are  
members of that fund?---Not of that fund,  
no.

Apart from the patients who are members of the  
Northern Districts Fund, apart from the  
pensioners in one form or another, about  
what percentage of your patients would  
be members of the Medical Benefits Fund? 10  
---I would say not very many.

All cheques in relation to cremation certificates  
would be made payable to the doctors?---  
Yes.

All cheques from the Cessnock District Hospital  
for examination and lecture fees would be  
made payable to the individual doctors?  
---Yes.

All cheques from the Commonwealth Public Service 20  
in relation to examinations would be  
payable to the individual doctors?---  
Yes.

And the same would apply to the Department of the  
Army?---Yes.

There is an army camp up there, is there not?---  
No, it has nothing to do with it.

This is for some other sort of work done or the  
Department?---Yes.

The Department of Social Services for the invalid 30  
pensioners' examinations would make the  
cheques payable to the doctors?---Yes.

That is for the examinations of invalid pension-  
ers?---Yes.

The same would apply to the Department of Child  
Welfare?---Yes.

Those cheques would also be made payable to the  
doctors?---Yes.

Also the Department of Public Health in relation 40  
to postmortem and examinations for  
entry to the Public Service?---Yes.

That would apply in each of the years 1958, 1959  
and 1960?---Yes.

It would be true to say, would it not, that if you  
look to the amount of money that came in

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year by year very much more than 60%  
came in by way of cheques payable to the  
doctors?---I do not know.

In addition to the cheques from those Departments  
you do get cheques from the patients as  
well?---Yes.

Take the year 1958, it would be true to say, would  
it not, that of the cheques you received  
from the patients by far the greater pro- 10  
portion was made payable to the doctors?  
---In 1958, yes.

That is in number, is it?---Yes.

Not necessarily in amount?---No.

I suppose it is impossible for you to say what  
percentage of the whole of the cheques  
received from the patients was made pay-  
able to the doctors and what percentage  
was made payable to Westbank?---That would  
be difficult. 20

It is impossible?---For 1958, yes.

But you would still say the greater amount in 1958  
of patients' cheques were made payable to  
the doctors?---Yes.

That was also true for 1959?---There were an  
increasing number payable to the company  
in 1959.

The greater number of cheques in 1959 from patients  
were made payable to the doctors?---That  
is hard to say. 30

That is what you said, is it not?---In 1959 I said  
there were an increasing number.

But you said the majority in 1959 were payable to  
the doctors, that would be as far as  
number goes?---It is very difficult to  
remember.

I take it it is very difficult for you to remember  
also what the relevant proportions were  
for 1960?---Yes.

You have not, I take it, made any check?---No, we 40  
have not kept a check.

You did mention to his Honour, I think, that after  
you had started sending out statements  
of account with Westbank's stamp on the  
top you received some enquiries?---Yes.

They were enquiries from patients about to pay  
their accounts?---Yes.

That would be after they had received their treatment from the doctors?---Yes.

Those enquiries took place during 1958, did they?  
---Yes.

In each one of those enquiries was the enquiry relating to the payment of the account?  
---Yes.

Did they cease in 1958?---The enquiries?

Yes?---No.

10

They went on into 1959?---Yes.

And again the enquiries were enquiries as to whom the cheque should be made payable to after treatment had been received?---Yes.

That is the situation that occurred in 1960 as well, is it, or was it absent in 1960?  
---More people knew, I would say, and the enquiries were less.

HIS HONOUR: Knew what?---That we were a company.

MR. BYERS: You got less enquiries in 1960?---  
Yes.

20

It would be true to say that every one of the enquiries you referred to were enquiries made of you in relation to the destination of the payment for treatment already received?---Yes.

This piece of newspaper, Exhibit W, if I understand you correctly, you put it in a cupboard, did you?---Yes.

The cupboard having a closed door on it?---Yes.

30

I suppose it was only when one of those enquiries expressed some doubt about whether they could get a deduction that you opened your cupboard and revealed your statement?---That is correct.

RE-EXAMINED BY MR. JENKINS:

MR. JENKINS: My friend asked you about the enquiries being as to the destination of payment for treatment already received?  
---Yes.

40

Did those persons on returning to the surgery for further treatment enquire again?---No.

You were asked about the Medical Benefits Fund, as

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far as that is concerned, the position is that the patient pays some money at the consulting room?---Some of them do.

The patient pays some money, is that correct?---  
Yes.

And gets a receipt with a Westbank stamp on it?---  
Yes.

You make a claim, do you not, to the medical benefits fund?---There are two medical funds we deal with. 10

That is the Sydney one?---Yes, and the Hunter Medical Fund.

The company makes the claim, is that so?---No, the patient makes the claim.

You mean the patient makes the claim on an A. E. Westbank receipt?---Yes, or an account.

The patient makes a claim on that account or receipt to the fund?---To the medical fund, yes. 20

Have you made a claim on the fund yourself?---Yes.

Did you send a Westbank receipt?---I have sent an account for my brother.

With "Westbank" on it?---Yes.

Then a cheque came back from the fund?---Yes.

So far as the Hunter River one is concerned, the other fund, the patient pays a portion of the account?---Some do.

And what do the others do?---The others pay the full amount and get the refund then. 30

Have you made a claim yourself to the Hunter River Fund?---No.

Has your brother made one?---No.

Or anyone in the family?---No.

You referred to the notices being near a window?---  
Yes.

Is that the window on to the street or the window into the receptionist's part?---The window into the receptionist's part.

Is it at that reception place where you stand to take payment?---Yes. 40

And the notices are right alongside that?---Yes.

So far as the framed notices were concerned, were there one or two?---There was one framed and two unframed at each end of the surgery.

Stuck up?---Yes.

With sticky tape?---No, with a thumb tack.

MR. BYERS: With Your Honour's permission Miss O'Connor the Hunter fund is one from which you occasionally receive cheques?---No - oh yes.

10

Occasionally?---Yes.

And of course they are payable to the doctors, are they not?---Yes.

RONALD DOUGLAS FARADAY, sworn:

MR. JENKINS: Mr. Faraday, your full name is Ronald Douglas Faraday?---That is right

You live at 23 Hailsham Street, Cessnock?---That is correct.

You are a school teacher?---That is correct.

I think you have been in Cessnock for some 15 or 16 years now, have you not?---Almost 17 years now.

20

Did you hear of a company, A.E. Westbank Pty. Limited? ---I have.

When did you hear of that?---Some time during 1958.

Did you hear it from a doctor?---From Dr. Peate.

What did he say to you about it?---Dr. Peate informed me that the company was being formed and that in future my dealings would be through the company.

30

Did you visit the waiting room and surgery in 204 Main Street?---On quite a number of occasions.

Did you see anything in the waiting room?---I saw a sign there stating it was the office of A.E. Westbank.

Did you see a notice there?---I saw a notice there.

Will you have a look at this and see if you have seen it or something like it (Exhibit F handed to witness)?---That is the one or similar to the one I have seen in the waiting room.

40

Have you received accounts in respect of medical services?---On quite a number of occasions.

How do you pay those accounts?---I usually pay by cash at the surgery.

The surgery in 204 Main Street?---Yes.

Have you some of the accounts?---Yes, I have some of them here.

Can you produce them?---I have some for 1954 and 1955, the rest go back to 1951 (documents produced, those relating to years ending 30th June 1958, 1959 and 1960 tendered and marked Exhibit Z).

HIS HONOUR: I will accept those to show that this witness received certain accounts with A. E. Westbank on them and received receipts with A. E. Westbank on them. 10

MR. JENKINS: You have said you paid cash?---Yes.

To whom did you pay the cash?---The secretary actually at the surgery.

When you say the secretary?---I passed the money to her but I received a receipt from the company, A. E. Westbank.

HIS HONOUR: You paid the money to someone who was there?---Yes. 20

Did you receive a receipt from someone who was there?---I received a receipt from them.

MR. JENKINS: Are you a member of a fund?---I am a member of the teachers' federation health society fund.

At Cessnock you have doctors come to your home?---Yes.

In order to have a doctor come to your home how do you proceed?---I usually telephone to the surgery and ask for a doctor to come. 30

Do you ask for any particular doctor?---It is my usual practice to ask for Dr. Peate because I have known him longer, but I do not object if any of the other doctors come along from his surgery.

When you telephone to whom do you speak?---The sister at the surgery, who just takes a message, and I want a doctor to come to the home. 40

In the weekends have you had doctors?---Yes.

What is the position in the weekends?---I just put the telephone call through. It goes to whichever particular doctor is on for the weekend and that is the doctor that comes.



What about holidays?---The same procedure applies.

CROSS-EXAMINED BY MR. BYERS:

MR. BYERS: You are in the main Dr. Peate's patient?---Generally speaking.

And on other occasions you are the patient of the other doctors?---That is correct.

All of whom you have confidence in?---Fully.

This conversation with Dr. Peate in relation to a company, do you remember where that occurred?---I could not say exactly. I will put it this way, if I might: Dr. Peate and I are both associated with a swimming association and we often have conversations there. 10

It occurred in the swimming?---It could have occurred there. It could have occurred at the surgery. I am not sure.

You do not know?---I am not sure.

You are unable to say whether it occurred before or after you had received treatment from Dr. Peate, or indeed that it related to any treatment at all?---I could not say exactly as far as that is concerned. 20

NORMAN LESLIE EMERY, sworn:

MR. JENKINS: What is your full name?---Norman Leslie Emery.

You are a solicitor practising at Cessnock?---Yes.

You from time to time get medical services for yourself and family?---Yes. 30

Have you heard of a company A. E. Westbank Pty. Ltd.? ---Yes.

When did you hear of that?---Purely from memory, certainly early 1957. It may have been before that, but I can clearly remember it early 1957.

Did you hear of it from a doctor?---Various doctors and other sources.

In respect of the years 1958, 1959 and 1960, you or your family received medical treatment?---Yes. 40

Were you attended by different doctors?---Yes. My wife mostly actually. Not me.

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What doctors were they?---Dr. Spence, Dr. Atkinson  
and I think on one occasion Dr. Peate.

In respect of that medical attention did you  
receive accounts?---Yes.

What did the accounts have on them so far as West-  
bank was concerned?---They had the name  
A. E. Westbank Pty. Ltd. and some doctors  
names underneath, those three doctors  
actually.

10

Did you pay those accounts?---Yes.

How?---By cheque. As far as I recall they were  
all by cheque.

To whom did you make out the cheque?---A. E. West-  
bank Pty. Ltd.

Why did you do that?---I received an account from  
A. E. Westbank.

You had doctors come to the home?---Yes.

Did you have doctors come in the weekend also or  
on holidays?---It would be difficult to  
remember now. It could have been. I  
would not know. It was most frequently  
at that particular time for my wife at  
night, I would say. It could have been  
weekends. I would not know now for  
sure.

20

CROSS-EXAMINED BY MR. BYERS:

MR. BYERS: Dr. Spence is your doctor, is he?---  
He is one of the doctors, yes.

And Dr. Atkinson, in the main?---Yes.

30

And they treat you and your family?---Yes.

GRAFTON SINCLAIR MUNRO, sworn:

MR. JENKINS: Your name is Grafton Sinclair Munro?  
---Yes.

You live at 1 Sheddon Street, Cessnock?---Yes.

You are a bank accountant with the Commercial  
Banking Company of Sydney?---Yes.

You have been at Cessnock since 1955?---Yes.

From time to time in respect of yourself and your  
family you get medical attention at  
Cessnock?---Yes.

40

Did you hear of a company A. E. Westbank Pty. Ltd.?  
---Yes.

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When did you hear of that?---Practically when the company was formed I heard of that.

Have you been to the surgery at 204 Main Street?  
---Yes.

Have you seen any notices or signs there relating to the company?---As you go in the door there is A. E. Westbank Pty. Ltd. on a plate on the lefthand side.

In the surgery?---In the surgery there is a notice up regarding Westbank. 10

Might I have Exhibit F? Would you mind having a look at that? Is that the notice or like the notice?---Yes, that is similar to the notice that was there.

Did you get accounts in respect of medical services?---Yes.

What did those accounts have on them so far as a name?---A. E. Westbank Pty. Ltd.

How did you pay the accounts?---I paid them by cheque. 20

To whom did you make the cheque payable?---Some of my cheques were payable to A. E. Westbank Pty. Ltd.

Why did you make them payable to A. E. Westbank Pty. Ltd.?---Because I noticed on the account it was A. E. Westbank Pty. Ltd. and I thought the money was owing to them.

You have had doctors come to your home?---Yes.

During the week and weekends?---That is right. 30

Do you telephone?---At times, yes.

To whom do you speak?---To whoever is at the phone at the time.

A doctor?---A receptionist at the phone.

Do you ask for any particular doctor?---No. Whatever doctor is available.

And you accept any doctor who comes?---Yes.

CROSS-EXAMINED BY MR. BYERS:

MR. BYERS: Any doctor from the Main street surgery?  
---Yes. 40

Either Dr. Peate, Atkinson or Spence?---Yes.

And you have been treated by them for a number of years?---Myself and the family have been.

And of course you have confidence in those three doctors?---Every confidence.

Were there any notices in the waiting room?---  
Notices similar to what I have seen.

Any others?---Only on the outside door.

Any other notices at all in the waiting room?---  
Not that I can remember.

10

Any notice about vaccination, for example?---No,  
I could not say I have seen that.

When did you last see that notice Exhibit F?---  
That would be about five months, I should say.

It was shown to you?---No. I happened to be in the waiting room and just noticed it on the wall.

The first time you had noticed it?---No, it would not be the first time, it would be the last time.

20

Did you see it after that five months ago?---No. I have not been in the surgery since then.

Have you seen it outside the surgery?---Yes, I pass by every morning.

I suppose it is difficult to remember what is on the notice?---As far as I can remember it is A. E. Westbank Pty. Ltd. on the notice.

30

On the notice that was in the waiting room, it is rather difficult for you to remember what that notice says?---I could not tell you the full context of it.

In fact I suppose having once seen it you dismissed it from your mind?---Yes.

And you then paid Westbank because you thought you had to pay Westbank?---Yes.

DESMOND LEES PEATE, sworn:

MR. JENKINS: Your full name is Desmond Lees Peate?  
---Yes.

40

You are a legally qualified medical practitioner?  
---Yes.

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When did you graduate in medicine?---1938, registered in 1939.

Pretty well from 1939 onwards you were in the R.A.A.F.?---Yes.

As a medical officer and then in 1945 on discharge you went to Cessnock after a short period?---That is so.

At Cessnock you became employed, did you not, employed doctor?---I was an assistant for 12 months. 10

Receiving a salary?---Yes.

Of £16 a week?---16 guineas a week.

You were employed by a partnership consisting of - - -?---Doctor Street, Doctor Wiles, Doctor Conolly and Doctor Gorman - four doctors.

You were so employed for a year?---That is so.

In that period would you do work at the hospital and various other places, marking examination papers, giving evidence in Court or conducting examinations for insurance companies, and that type of thing?---Yes. 20

Would you get cheques payable to you in your own name?---I would.

What did you have to do with those?---They were banked to the partnership.

And you merely got your 16 guineas?---That is all.

I think eventually you became a partner?---I did.

After that 12 months, and eventually you became a party to a partnership in 1954?---Yes. 30

The partners with you under that partnership agreement were Doctor Wiles, Doctor Lawson, Doctor Bertinshaw, Doctor Mathers, Doctor Atkinson, Doctor Short, Doctor Spence and Doctor Allen?---That is so.

Prior to the 29th June 1956 this partnership varied, did it not?---Yes.

Doctor Mathers left?---Doctor Mathers left.

When Doctor Mathers left, and at the time he left, he entered into a deed of covenant with the other parties not to practise within a radius of ten miles for a period of ten 40

years?---That is so. That is the routine covenant usually taken out in a partnership.

For the record, your Honour, that deed of covenant he entered into is Exhibit M.

(To the witness): There had been a similar deed of covenant with a Dr. Connolly who had gone out before this partnership agreement was arrived at?--- 10  
Yes.

He had entered into a similar covenant?---Yes.

That is Exhibit L. In the several years leading up to 1956 had consideration been given by yourself to the question of a company taking over the medical services in Cessnock?---Yes, I had been making enquiries since 1953, in actual fact.

From time to time were there discussions between the partners as to the formation of a company to provide medical services?--- 20  
Yes.

We know that the company A. E. Westbank was eventually formed and there were associated companies formed, yours being W. Raleigh Pty. Ltd.? ---Yes.

We know the company A. E. Westbank Pty. Ltd. was incorporated on 29th June 1956 and that a company W. Raleigh Pty. Ltd. was incorporated on 31st August 1956. Would you 30  
tell his Honour what were the reasons which motivated you in joining in the firm of both companies?---There were many reasons. The partnership was very big and there was a large income. Some of the partners were not strong financially and had to be guaranteed by other partners at the bank and I felt that some sort of structure as has eventuated would 40  
render the associated companies and the doctors less liable for any negligence on behalf of partners which they would be liable for in a partnership. It was done for business reasons, to streamline the office work, introduce proper accounting systems and, of course, each doctor who had a surgery had a different set of books and a different method of accounting. We did know - we had been informed - that there 50  
were certain tax benefits which we could gain from this. We had gone into the question and we knew we would be paying tax in some way or other on all moneys

that came in and there was also the added security for families if we had an associated company where, in the event - I am driving around in a car every day and all day - of my sudden death my wife would have available to her the associated companies' assets and finance without having to wait for probate to be declared and it was also pointed out to us that there would be death duty savings and probate savings and we felt if we got our partnership running along these lines it would be of major benefit to us. 10

HIS HONOUR: When you say it was pointed out to you, who pointed it out?---We had advice from accountants and also barristers' opinions through solicitors and this was discussed over quite a period of time with regard to the ethical side of the thing. It was freely discussed in the BMA and the general opinion was that it would not be unethical. 20

MR. BYERS: I object to that.

HIS HONOUR: Yes, I cannot have that.

MR. JENKINS: It was discussed by the BMA; was there a ruling by the BMA on your association?

MR. BYERS: I object to that.

HIS HONOUR: I do not see that it is relevant whether the BMA approved or not, I do not really think that will affect Dr. Peate's taxability. 30

MR. JENKINS: You were dealing with your reasons for forming the company, I think, and your trend of thought may have been interrupted. Would you go on?---There is another reason. Since having the experience of these five years where the structure has been established with the prior experience of the partnership from 1945 to 1956 - this, of course, is my opinion - I feel there has been a tendency amongst medical practitioners and specialists - - - 40

MR. BYERS: I object to this,

HIS HONOUR: I will not accept it.

MR. JENKINS: I had asked you a question as to what motivated you in the formation of these companies. Would you go on?---The other major factor was that as self-employed 50

persons we could not make provision for our retirement except through ordinary insurance and we were able under this structure to establish a provident fund in which we could make provision for the staff and the doctor employees and also the doctors' wives and also by means of the trustees we could make provision for our children. This was a major consideration because as self-employed persons we could not do that. 10

HIS HONOUR: That is because of taxation?---Yes.

MR. JENKINS: Did your mind go to the question of assets and what happens on dissolution of partnership as against a company?---Yes, that was taken into consideration. In a partnership if it broke up there would probably be considerable dissension amongst the doctors involved; some would want to sell the assets and others would not want to which would make it very difficult, but under the company structure whereby the company held the assets none of this could have occurred. It was also felt if major equipment was to be purchased it would be much better for a company to own it rather than a partnership. 20

In these modern times to provide adequate medical services is the equipment getting dearer and is it necessary to acquire more equipment as the years go by?---Much more equipment and it is much more expensive. We had envisaged putting in x-ray plants and all that sort of thing but up to the moment we have not been able to do it because of the present situation. 30

Did your mind go to the question of acquisition of surgeries perhaps by a company?---Yes, that was considered, that ultimately the company would either buy or lease the various surgeries used by the doctors. 40

The company has purchased two at the moment?---Yes.

Did you have a motive to avoid tax by this?

MR. BYERS: I object to that.

MR. JENKINS: I press it.

HIS HONOUR: I think you can ask him did he have any purpose in relation to tax?---We did know we would be getting a benefit but 50



we also knew that all moneys would be taxed and we did have quite a big benefit from this method of operation in that we would pay our tax as we went by means of buying some hundreds of pounds worth of tax stamps per year to cover our wages from the associated companies.

MR. JENKINS: In the process of coming up to the formation of the company, did you discuss with your partners the proposed method in which the company would operate and were there decisions about that?---  
Oh yes. 10

What was proposed so far as the operation was concerned?---That we would have - - -

MR. BYERS: I do not want to object unnecessarily but I am not quite sure what this gets to. If it gets to what has happened - I do not know whether my friend is leading the question - - - 20

HIS HONOUR: As I follow it, the question is directed to this: was consideration given before the formation of the companies to the way in which they would operate after their incorporation and it would seem to me that if that is the question, that is a relevant matter.

MR. JENKINS: That is what I wanted to ascertain.

(To witness): You heard the way his Honour put the question; will you answer that?---It was proposed that there would be the holding company, which was A. E. Westbank Pty. Limited, and associated companies and those associated companies would receive service fees when that associated company supplied a doctor to earn those fees. 30

Was it not only supplying a doctor but was it also proposed to supply other things than a doctor from the service company? I am referring particularly to the matter of cars and surgeries?---Cars and surgeries also, they had to be made available to A. E. Westbank. 40

How was it proposed that A. E. Westbank should operate in the medical field?---It would render accounts for services rendered by the employee doctors.

Westbank and Raleigh were eventually formed on the dates I put to you. I think perhaps 50

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without worrying the doctor about this, the minutes of the meetings show the various steps and what occurred?---Yes.

Then the agreements were signed between yourself and Raleigh?---Yes.

Then between Raleigh and Westbank and, I think, you joining in that as to provisions of services?---That is correct.

HIS HONOUR: What was the order in which these agreements were made, do you remember? (After referring to Exhibit A): they were made the same day were they? 10

MR. JENKINS: That is so.

(To witness): After the companies were formed, so far as persons going to the surgery were concerned for medical treatment, did the company do something in relation to a business name?---Yes, we had a business nameplate framed and displayed. 20

Was that shortly after the incorporation of the company?---Shortly after.

And you displayed it in the waiting room?---Yes.

So far as persons coming to the surgery were concerned who saw you after the formation of the company, did you say anything to those persons about Westbank?---Frequently I informed the patients. I would not say I informed every patient but very frequently I informed them, often depending on how full the surgery was and how busy I was. 30

What did you say?---I informed them that we had formed a company and we were, through the company, going to supply medical services and actually I was becoming an employee.

I think the accounts and receipts for the company were handled by Miss O'Connor and another young lady in the office?---That is so. 40

And initially the accounts went out with D.L.P. Atkinson and Spencer, the business name of on the top?---That is so.

When was that altered, that system?---Early in 1958, somewhere between February - - -

HIS HONOUR: Perhaps this would assist: were the

accounts in exactly the same form earlier except that they were overstamped later?  
---Yes.

You might hand Exhibit H to the doctor. I gathered from him that the names on the top of the account corresponded with the business name. (Handed to witness)?---Yes, the three names.

Yes, but will you read the second part of the business name?---D.L.Peate and K.J.J. Atkinson - - - 10

Read the "Atkinson"?---D.L.Peate and K. Atkinson.

Was this the business name or was it merely the names of the doctors?---No, that is the business name.

MR. JENKINS: Do you know of any accounts with the other initials of Dr. Atkinson?---There may be, I could not say.

In any event, there was a change, was there not, as early as February 1958; was it the stamping of the receipts with the rubber stamp?---Yes. 20

With the name A. E. Westbank Pty. Limited?---Some time between February and April.

Apart from the accounts, were also the receipts over-stamped?---That is so.

(Approaching witness): Where did that come from (Exhibit F handed to witness)?---That is out of my surgery. 30

From the waiting room or the surgery?---From the waiting room.

Where did Exhibit G come from (handed to witness)?  
---That is also from the waiting room.

Were these on the wall?---They were.

Near the counter where the money is paid?---That is correct.

When were they put up, can you say?---The typewritten notice was up before the printed one and, I think, during the year 1958. I could not say the exact date, it would be early in the year. 40

The typewritten one?---I think so.

What about the printed one?---I think it was probably a little bit before the typewritten one.

The printed one was before the typewritten one?---  
Yes.

And then the typewritten one was put up?---Yes, we  
had that printed one put up until the  
typewritten ones became available.

HIS HONOUR: Have you got this right, doctor,  
just think; you said you used the  
printed ones before the typewritten ones  
became available?---It was back to front. 10

You put it in the right order now?---We typed that  
one out and put it up until such time as  
the printed ones became available.

MR. JENKINS: And when would the printed one have  
gone up approximately?---A month or more  
later, I do not know exactly how long  
after.

That notice which appears in the frame, Exhibit F,  
before the notice went on the wall was  
it used anywhere else in the premises?--- 20  
Yes, I had copies - well, a copy on my  
table.

Were there copies on the tables of other doctors?  
---They were all given copies to put on  
their tables.

It was loose, as we have heard, but whereabouts  
mostly was it on the table?---I usually  
placed mine somewhere near the lefthand  
corner because the patient sat at the  
lefthand corner of the table and I sat 30  
in the centre and it faced where the  
patient sat - - the righthand corner, I  
mean.

Did you continue to discuss with the patients the  
matter of Westbank Pty. Ltd.?---Yes.

What did you say to them?---I merely used to  
inform them that we had formed a company  
to supply medical services.

And the status of the doctors?---And that the  
doctors had become employees, that when 40  
they came to see us actually they were  
contracting with the company.

Over 1958, 1959 and 1960 there have been doctors  
who received what have been referred to  
as - not doctors, there have been in the  
first instance service companies who  
received service fees?---Yes.

Also in the year 1960 also two doctors, apart from

service companies, who received service fees?---That is so.

In the initial stages the directors of Westbank were the eight doctors who were in the old partnership?---That is so.

Has the directorship varied from 1958 to 1960?---  
Yes.

In what way?---R. Dalton has withdrawn its services. G. Dalton was Dr. Short.

10

The company which provided your services to Westbank was W. Raleigh Pty. Ltd.?---That is so.

A company named C. Marlow Pty. Ltd. provided the services of doctor?---Dr. Allen.

Then a company C. Hinton Pty. Ltd.?---Dr. Bertinshaw.

Provided the services of Dr. Bertinshaw. A company Carban Pty. Ltd. provided the services of Dr. Atkinson?---Yes.

20

I think we have dealt with G. Dalton Pty. Ltd. That provided the services of Dr. Short? ---Yes.

T. Neville Pty. Ltd. provided the services of Dr. Spence?---Yes.

W. Gladstone Pty. Ltd. provided the services of Dr. Wiles?---Yes.

And Repton Pty. Ltd. provided the services of Dr. Lawson?---Yes.

And I think that covers the position.

30

HIS HONOUR: Do you know whether each of these companies made agreements with their particular doctor on 1st September and whether each of those companies made arrangements with A. E. Westbank Pty. Ltd. on 1st September?---That is what I understand.

That is 1st September 195 - - - ?---1956.

MR. JENKINS: In the initial stages the doctors who have been just mentioned, the eight of them, became directors of Westbank?---  
That is so.

40

And you became chairman of directors?---Yes.

Then there were changes in the directors?---Yes.

Dr. Short ceased to be a director?---That is so.  
In November 1959, I think.

Then - - - ?---Gladstone, I think.

Then were Dr. Wiles' services withdrawn by Gladstone at some stage?---Yes.

HIS HONOUR: On these matters I am sure Mr. Byers would not mind you leading him.

MR. BYERS: No, your Honour.

HIS HONOUR: You cannot expect him to carry all these dates.

THE WITNESS: It was 1st October 1960. 10

MR. JENKINS: I have all the dates here. On 19th November 1958 G. Dalton Pty. Ltd. withdrew the services of Dr. Short?---That is correct.

Dr. Wiles' services were withdrawn on 1st October 1959?---Yes.

And then did Dr. Wiles remain a director?---Dr. Wiles is still a director.

As from 1st October 1959 a service fee ceased to be payable to the company providing his services, that is W. Gladstone Pty. Ltd.? ---That is so. 20

Of course, after the year we are talking about, that is in 1961, Repton Pty. Ltd. withdrew the services of Dr. Lawson?---That is so.

Is Dr. Lawson still a director?---Yes.

So far as two doctors are concerned, Dr. Pitsch and Dr. Cook, are they in receipt of service fees from A. E. Westbank?---Yes. 30

When did they get service fees? What year?---I think it dates from 1st October 1959.

Onwards?---Onwards.

Are they directors of the company?---No.

So that presently the directorship consists of six doctors whose services are being provided and two doctors whose services are not being provided? Five, I am sorry? ---Five.

HIS HONOUR: Did Dr. Short remain a director?--- No. 40

MR. JENKINS: Dr. Short's services were withdrawn

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on 19th November 1958?---That is correct.

Did he remain a director for some period after that and then resign?---I cannot say.

So far as the service fee is concerned we have your agreement, we have the agreement between Raleigh and Westbank fixing 14% in 1956?  
---Yes.

When Westbank commenced to operate in 1956 how were the service fees fixed in respect of each of the associated companies?---It was felt that in order to get all the doctors to be associated with Westbank there would have to be some relationship between their service fee in the company and their earning capacity in the partnership. 10

HIS HONOUR: In the agreement between Westbank and Raleigh it was provided that you would get 14% of the balance?---Yes.

I gather from what you say that all the other doctors did not get that same percentage?  
---No. 20

And it was a varying percentage?---It was.

Amounting in all to 100%---Exactly.

MR. JENKINS: From time to time has the service fee payable to an associated company or in respect of doctors without companies varied?---Yes. Since the incorporation of the company it has varied.

And on what basis has it varied?---Of course, we have had to wait for the appropriate time, and income has been considered and also with the junior doctors their merit and their improved earning capacity bringing in greater service fees. Some of them have had an increase in the amount of service fees. 30

Who determines the increase?---The directors.

When is the amount of the service fee for a particular year determined? At the beginning of the year or - - -?---Usually at the beginning of the financial year. 40

So far as any increases are concerned have they occurred during the course of a year, between the beginning of the financial year and the end of the financial year?---In some cases, yes.

Does the board of directors determine that?---Yes.

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So far as Dr. Pitsch and Dr. Cook are concerned, I think they were receiving from the end of 1959 a service fee on the same basis as the associated companies?---Correct.

Did they have any say at the directors' meetings?  
---No.

Would they have any say as to whether service fees will be increased or not?---No.

When a company withdraws a doctor from the services of Westbank is there any splitting up of shares, or anything like that?---No. 10

What happens?---The accountants do the books as from that date.

The service fee is calculated up to that date?---  
Yes.

From that date on the company retains the shareholding?---Yes.

And is that the only interest the company retains in Westbank, the shareholding it has?---  
Yes, the shareholding it has, and it also draws service fees for work done prior to that date. 20

Yes of course, but the service fee ends on the date of withdrawal?---Yes.

Do doctors receive service fees up to that date and then retain only the shareholding?---Yes.

Is the doctor withdrawn, so far as the board is concerned, free to practise in Cessnock?---  
Yes. 30

And the shares held by an associated company which has withdrawn a doctor are then sold?---  
Yes.

To whom have they been sold?---Dr. Lang, Dr. Pitsch and Dr. Cook.

And I think a number of shares were bought by trustees and held in suspense by one of the associated companies?---Yes. That happened with regard to G. Dalton, they were held in trust by myself and Dr. Wiles for a fairly long period, I think about 12 months, and then ultimately there was a re-distribution and some of the junior doctors, of course they had increased their earning capacity, purchased additional shares. 40

In Westbank?---Yes.



While I am on this, doctor, an amount of £5,000 has been mentioned as being retained by Westbank. What is the position as to that £5,000, could you explain that?--- That is the profit, we pay tax on that. That was suggested to us on advice, as the Westbank income for the year has not varied a very great deal there has been no alteration to it as yet. 10

You could not increase that without cutting down the service fees?---No.

Are the service fees at the moment adequate or inadequate?---I think they are adequate.

MR. BYERS: I object to that.

MR. JENKINS: Doctor, in respect of that £5,000, after payment of tax most of that in each year is distributed in dividends, is it not?---That is so.

To the companies holding shares?---Yes. 20

And in respect of the doctors holding shares who are not companies they get dividends too? ---Yes.

HIS HONOUR: What happens to the dividend in the company where you and Dr. Wiles held the shares in trust - was the dividend paid to you?---I don't think it was paid to me. I cannot remember that.

I suppose really the shares were paid to you against their being allotted in the future, and for the time being for whom are they in trust?---Actually it proves to be a benefit because if the other doctors improved their practices these shares held in trust were able to be distributed. 30

I appreciate that. That gave you a reservoir of shares?---Yes.

But you and Dr. Wiles who held these shares, were they your shares for the time being, but you were holding them to sell to other doctors when the time came?---If another doctor had been available at that time they were available to be sold directly to him. 40

Did you pay for the shares?---By bank overdraft.

I am not concerned very much about the bank overdraft. Did the company which sold the shares get its money from you?---Yes.

MR. JENKINS: I think the company which sold those shares, the G. Dalton company, the shares sold at about £178 a share, did they not?  
---Yes.

And on the basis of the dividend paid in that year, that is the balance of the £5,000 after tax, that represented a 10% return on that purchase price?---About 10% return.

While they were held in reserve the dividends payable on them were distributed to other shareholders in proportion that their shares held to the issued shares?---Yes. 10

Holding them in that way you did not receive any personal benefit?---No.

There was a bank overdraft arranged?---There was.

It was in your name and in the name of several other doctors?---It was a joint and several guarantee.

In whose name was the bank account - I think it was a number of doctors?---A number of doctors. 20

All these doctors who were directors?---Yes.

Was it all the doctors, can you recollect?---The bank insisted on all the doctors.

The bank insisted on all the doctors coming in and taking out an overdraft again?---Yes.

From time to time service fees were due and payable in the books of Westbank?---Yes.

And the books show that overdue service fees were paid in proportionately by the companies to reduce this overdraft?---That is so. 30

HIS HONOUR: Service fees due for the period before the doctor withdrew?---Yes.

MR. JENKINS: They were paid in to reduce the overdraft, and that is the reason why the dividends on these reserve shares were handed out in proportion to the shareholders?---Yes.

But in subsequent withdrawals of doctors by the companies the shares available for sale have been acquired by other associated companies, or else the individual doctors?---That is so. 40

HIS HONOUR: Just to bring this to a head, has anybody other than an associated company

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or one of the doctors who is employed by Westbank been a shareholder of the company?---No.

MR. JENKINS: While we are on this matter of the service fee, we have it from you that Dr. Wiles' services were withdrawn by W. Gladstone Pty. Ltd. on the 1st October 1959?---Yes, that is correct.

And the service fee ceased as at that date?---It did. 10

Did Dr. Wiles return to the employment of Westbank? ---He did.

For what period of time?---From the date of his withdrawal he continued to work until approximately 18th December 1959 as a locum.

He was paid a salary?---Yes.

Did he work in 1960 for the company?---I think he finished in December 1959; I cannot remember. 20

I would like you to deal with one or two special matters; from time to time you do, do you not, arrange clinics for the local council?---Yes.

Who at the council communicates with you in respect of clinics?---Mrs. Douglas.

She is in the health section, is she?---Yes.

What is your task or assignment in respect of the clinics?---I am the Government Medical Officer and it is one of my duties with the local council to arrange these polio clinics and also to make available a doctor. The number of doctors needed depends upon the size of the clinic. If you have 500 or 1000, as we did with the high school the other day you would need about four doctors and they are drawn from all the practices around Cessnock. 30

Not only from Westbank but from all the practices in the Cessnock area?---Yes. 40

Westbank has employed, as apart from a service fee, doctors who are paid a fee, or it has paid a salary to the doctor over the years, has it not?---Yes.

I think that is an expanding practice with the company, is it not?---Yes.

In respect of those employed doctors they, on occasions, visit the clinic?---Yes.

The cheques are made payable to such employed doctors?---It is paid on a sessional basis. I think it is four guineas firstly and two guineas or one guinea each half-hour thereafter. The council keeps the time check and they forward the cheques.

10

To the individual doctors who do the work?---Yes.

Those cheques which the employed doctors get go into Westbank's account?---Yes.

They merely get their salary?---Yes.

When you carry out any work at the clinic, or at the hospital, the examination of invalid pensioners or any other type of medical service in respect of a public department do you do that work in the time that you are supposed to be rendering services on behalf of Westbank?---Yes.

20

What are your hours of service with Westbank?--- I think we all regard ourselves as being available for 24 hours a day.

I suppose you do have some time at home. Could you give me - - - ?---My surgery hours are 9 to 12 in the morning and 3 to 5 in the afternoon.

Between 12 and 3 would that be time off or what?--- I would be doing calls.

30

What about night time?---Some nights I am off duty.

On other nights you are on duty?---Yes.

HIS HONOUR: That is the position, that any moneys you earn from any source as a doctor are paid into Westbank?---Yes.

MR. JENKINS: From time to time the doctors who are directors of Westbank have a meeting, do they not?---Yes.

When large numbers of matters are discussed relating to the business?---Yes.

40

The minute books do not show those discussions about every day things and that type of thing, do they?---No.

Have other doctors other than director doctors attended those meetings?---Oh yes.

Who would they be, the employed doctors?---Just the employed doctors.

You had mentioned that with the proposed incorporation of the company the idea was to supply the services of a doctor with a car and with a surgery to work in?---Yes.

Has that actually happened?---Yes.

Supposing a doctor has not got a surgery, are steps taken to get one?---Yes.

10

He rents it, does he?---Yes.

The associated company rents it in the case of a company?---Yes.

And in the case of an individual?---He would rent it himself.

There was at one stage, was there not, some proposed draft agreement drawn up in writing?---That is so.

To regulate the relationship in some detail between the associated companies, Westbank and the doctors?---That is so.

20

Was that draft ever executed?---No.

Why?---Some of the associated companies would not sign it.

This was approximately 19th June 1957?---Yes.

Was there a lot of discussion about this particular draft agreement when it was proposed?---Yes.

At that time was there agreement between the associated companies and Westbank as to the provision of cars and surgeries?

30

MR. BYERS: I object to that.

MR. JENKINS: I press it.

HIS HONOUR: You are the Chairman of Directors of Westbank?---Yes.

I will admit in evidence any oral arrangement you made about these things with the associated companies.

MR. JENKINS: All the directors who were there were also directors in the associated companies? ---That is correct.

40

You were chairman?---Yes.

Was there oral agreement?---Yes.

What was the nature of it?---That each of the associated companies would supply a doctor, car and surgery. If the associated doctor did not have a surgery he would have to make arrangements so that he would have a surgery available.

The associated company?---Yes.

In pursuance of that has rent been paid in respect of the Main Street surgery by any associated companies in respect of the doctors using it?---Yes. 10

With the Main Street surgery the fee simple is in W. Raleigh, is it not?---Yes.

In respect of Drs. Spence and Atkinson who use that surgery the rent is paid by the associated companies supplying them to Raleigh? ---They are T. Neville and Carban.

That position pertains elsewhere, does it not, rent is paid by some of the other associated companies in respect of the surgeries not owned?---Yes. 20

I must correct something; you own the surgery yourself, personally, at Main Street, do you not?---Yes.

There is a minute, is there not, in Raleigh's minute book of 3rd September 1956 in which you undertook to Raleigh in consideration of employment to make the surgery available to Raleigh free of charge?---Yes. 30

But that any rent received in respect of the surgery was to be your personal property?---Yes.

So that Carban in respect of Dr. Atkinson and Neville in respect of Dr. Spence paid rent to you for the occupation of the surgery by the doctors provided by them?---That is correct.

So far as the cars are concerned you sold those, did you not, to W. Raleigh Pty. Ltd. for a figure?---Yes. 40

That appears in the minutes?---Yes.

I think the registrations have been in Raleigh's name, have they not?---Yes, for some years.

Prior to the formation of these companies, did the

doctors in partnership meet together on a matter of dissolution of partnership?  
---Yes, on 20th August, 1956 there was a meeting and it was agreed that the partnership would be dissolved on 31st August.

Was there any further meeting?---There was another meeting on 31st August or 1st September concerning that resolution. 10

On 31st August?---Yes, 31st August.

On the next day, 1st September, I think you entered into an agreement with Raleigh to sell to Raleigh the goodwill you had in your own hands as a medical practitioner in Cessnock?---That is correct.

You put a value of £7500 on that goodwill?---I did.

And that value was accepted by Raleigh?---Yes.

How did you arrive at the figure of £7500?---It was arrived at taking into consideration my previous three years income, which was approximately £7000 - £6600 to £7000 - but as I was staying on and I felt there would not be any loss of income, I thought a reasonable figure was £7500. 20

That figure became a debt to you, did it not, in the books of W. Raleigh?---Yes.

And from time to time has been reduced, has it not? ---That is so. 30

Westbank established a superannuation fund, did it not, and appointed trustees?---Yes.

From time to time W. Raleigh has paid amounts into this superannuation fund?---Yes.

Have the amounts been substantial over the last two or three years or not so substantial? ---Prior to December 1960 we had raised objection to the commissioner's attitude - the sums were substantial but since then they have not been so substantial. 40

HIS HONOUR: What you mean is you made payments, that those payments were disallowed by the commissioner?---Yes.

What payments did you make during the years before they were disallowed, in round figures?---£400 each year for three years.

Who were those payments made in respect of?---Myself and my wife.

Equally?---Equally.

Then after 1960 you say that they have been very much smaller?---Well, yes. We have kept the insurance policies going but we have not made any substantial payments.

MR. JENKINS: I was coming to the matter of the staff, you, being chairman of directors. Since 1960, so far as the ordinary staff are concerned, not doctors, have payments been made?---No. 10

Not since 1960. How are they covered, are they covered in any way since 1960?---Yes, again by insurance policies that have been taken out on them and we are keeping these going.

In 1954/1956 when you were in partnership with other doctors there was clerical staff serving the partnership, was there not? ---Yes. 20

You were in court and you heard the accountant give certain figures representing the percentage which the commissioner claims should be added to the salary from the income of Westbank - 15% and 14 point something per cent, that type of thing. Can you explain those figures, how those percentages are arrived at?---(No reply).

HIS HONOUR: Take the first one, 14%? Have you any idea whether it was 14% - - - 30

MR. JENKINS: Your Honour, I said - - -

HIS HONOUR: You asked him the whole lot.

MR. JENKINS: I asked him 15% and 14 point something.

HIS HONOUR: Suppose you start with the 14%?

THE WITNESS: I think that is the percentage of service fees that has been paid to W. Raleigh.

HIS HONOUR: That year?---That year.

MR. JENKINS: So far as the following years are concerned, is there anything that you know of in the structure of the company or anything that has happened which would allow you to explain the percentages over 14%?---No. 40

HIS HONOUR: Has your service fee increased above the 14%?---Not during those three years.



During the years 1958, 1959 and 1960 your service fee was fixed at 14% during the whole of that time?---Yes, that is correct; 1st July 1961 was the change.

MR. JENKINS: The service fee of others varied, did it not?---Yes.

So far as the staff is concerned, has Westbank a nurse on the staff?---Yes.

So far as anaesthetists are concerned, does the company engage such?---Yes, on occasions we have to engage outside practitioners for anaesthetics. 10

Take the position of a patient going into hospital, who arranges the admission of the patients to hospital?---The patient is given a note requesting admission which they take to the hospital. With it goes the history sheet and at the hospital they are means tested and placed in a bed according to their means test. 20

HIS HONOUR: Who gives the note?---The patient.

Who gives the note to the patient?---The doctor.

MR. JENKINS: Does the Westbank staff, such as Miss O'Connor or the nurse, ring up and engage beds?---Where a patient requests an intermediate bed my staff do ring and reserve a bed.

(Sitting suspended from 12.56 p.m. to 2.30 p.m.) 30

Doctor, so far as weekends and holidays are concerned are all the doctors on duty or some only?---Only some.

Do locums and doctors in receipt of a salary purely and simply serve at weekends?---Yes.

Do you find that so far as patients are concerned that there is a personal preference by the patients for a particular doctor or doctors?---Patients do ring fairly often for a particular doctor, but if he is not available I have never had anyone object to one of the other doctors or myself going. 40

And also so far as the locums are concerned and the salaried doctors?---Yes.

Do they go in answer to a call?---Yes.

CROSS EXAMINED BY MR. BYERS:

MR. BYERS: From November 1954 the partnership of which you were a member carried on the practice of medicine at Cessnock?---Yes.

Whereabouts in Cessnock was that done? How many surgeries and what surgeries?---Three in the city of Cessnock and two outlying ones.

They are the same surgeries to which patients come now?---Yes. 10

From 1956 onwards when the patient comes for treatment to the surgery he is put into the waiting room and sent to the various doctors?---Yes.

And in so far as he makes a choice between one doctor and another, his choice is given effect to?---Yes.

I suppose you will agree that the relationship between a doctor and patient is a particularly close one?---Yes. 20

And you will find patients coming to doctors in whom they have confidence over a large period of years?---Yes.

I suppose the patients that now come to those surgeries comprise very many of the patients who came there to the surgeries prior to 1957?---No, I cannot agree with that. There are a considerable number. But we have a filing cabinet which contains many hundreds of family history files which are no longer coming to the surgery. 30

But there are very very many patients who come now who went before 1956?---Yes.

I suppose it is your experience as a general practitioner that once a patient comes to a particular doctor he tends to return for very substantial periods of time?---Yes.

I suppose it would be fair to say that you are the senior of these doctors in practice at Cessnock?---Yes. 40

You are the chairman of the directors of the company and you were the senior partner at any rate in August 1956?---No, Dr. Wiles.

You are a government medical officer?---Yes.  
Commonwealth medical officer.

The patients that come to those surgeries come in

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large proportion, for example, to see you and the other doctors?---Yes.

And you have, if I may use this expression, your own following amongst the patients?---I think all medical practitioners have a certain amount of following.

You do remember that on 20th August the partners met together and decided to dissolve the partnership?---Yes. 10

That was the only decision they came to at that stage in relation to the partnership?---Yes.

You had been aware well before that of the proposal to incorporate Westbank and to incorporate one company per doctor?---Yes. Westbank had already been incorporated, 29th June.

It is true to say that each doctor who was a partner up till 31st August 1956 had a company formed in relation to himself?---That is correct. 20

I think you as chairman of directors of Westbank did see each of the agreements between Westbank, the doctor's company and the doctor, on the one side, and between the doctor's company and the doctor on the other?---I think so.

All those agreements were in exactly the same form as the agreement between yourself and Raleigh and between yourself, Raleigh and Westbank?---Yes. 30

Also it is true to say that those doctors who had children, from what you observed, had settlements made upon their children?---That is quite correct.

And that applied to a large number of doctors?---Those that had children.

It is also true to say that each of the doctors became a governing director of his company?---Yes. 40

And no doubt his wife became a co-director of his company?---Yes.

HIS HONOUR: I suppose that was so eventually. In your own case, for instance, I think the two Messrs. Phillips were the original directors?---Yes.

And it was at a later stage you and your wife took their place?---Yes.

Two or three days later?---3rd September.

Was that practice followed with regard to the other doctors, do you know?---I think so.

MR. BYERS: So far as the trustees of the children's trusts for the other doctors were concerned, the trustee was in all cases Mr. Phillips?---I don't know that.

But would it be true to say, again so far as you know, Messrs. Phillips were the two signatory shareholders in all the companies, that is Westbank and each of the others? If you don't know, tell me?---I don't know. I think there were some variations. 10

On the 20th August 1956 you remember you told his Honour that there was the meeting of the partners?---Yes.

And of course you will agree, will you not, on the same date the doctors who were then still partners, on two days prior to that, on the 18th August the doctors who were then partners all became directors of Westbank? ---Yes. 20

And on the 20th August Messrs. W. Berge Phillips and E. Berge Phillips resigned as directors of Westbank? Do you remember that? ---Well I know they did, I presume it was that day.

You were of course present at the meeting, were you not, of Westbank held on the 20th August 1956?---Yes. 30

Together with all the other partner doctors?--- Yes, they were all there.

Where did that take place?---There were many meetings at that particular time. I think it was at my home.

I think the minutes as to that show Main Street, Cessnock?---At my home.

Did the meeting of the partner doctors in relation to the dissolution of the partnership precede or did it follow this directors' meeting?---I cannot remember. 40

They both occurred on the same day?---Yes.

I suppose when you got there, when this meeting was held, minutes had already been typed out? ---I could not remember.

May I ask you this, doctor, when this meeting was held on the 20th you had decided, all the doctors, what would happen at that meeting?---Yes.

You had been told, had you not, what would happen?  
---We had been given legal advice.

You had been told what should happen?---Yes.

And you had a typescript setting out the various resolutions?---I cannot remember whether I did. 10

You do remember, don't you, that your name was written or printed into the resolution relating to the public officer?---Yes.

That motion I take it that at that stage there had been no decision in relation to who should be the public officer?---No.

But before the meeting began there had been decisions as to who should be the chairman of directors?---Yes. 20

And who should be the secretary of the company?---Yes.

Then what you did was to pass each resolution in accordance with what you had been told you should do?---That is right.

And would it be true to say again, having thought about that, that you had typed out in front of you the various resolutions that were to be passed?---They could have been; I cannot recollect. 30

You do remember, doctor, that you had decided on the 20th August to dissolve the partnership as and from the 31st August?---Yes, that is correct.

And of course on the 31st August there was also a meeting of the directors of Westbank?---Yes.

And you remember that at that meeting Mr. E. Berge Phillips transferred his ordinary share to Raleigh, and Mr. Davies transferred a share to W. Blackstone?---Yes. 40

May I take you to what happened on the next day, 1st September. Prior to the 1st September you had had some discussions with Mr. Ernest Berge Phillips, had you not?---Yes.

I don't want to ask you anything about the minute,

but it is true that prior to the meeting of directors at 10.40 on the 1st September you had spoken to Mr. Phillips in relation to the sale of what you considered to be your goodwill in the partnership?---  
Yes.

And that part of the plant and assets which belonged to you?---That is correct.

And you had decided at that stage to sell it to Raleigh?---Yes. 10

And you had decided on a price?---Yes.

And you decided on that well before the 1st September?---All these discussions had taken place over a period of three months.

Would you agree with me, so far as your memory goes, you decided on what you would sell to Raleigh and the price at which you would sell it before the 1st September 1956?---On or about that time. 20

Were you in Sydney, so far as you can recollect, on 1st September 1956?---No.

Did you receive a phone call from Mr. William Berge Phillips on that day between 10.40 and 10.50?---No.

It would be prior to 1st September that you had already signed the agreement between yourself and Raleigh? You had signed it?  
---I do not know.

Can you remember or not?---No. 30

HIS HONOUR: Will you just look at those two minutes?---I think I only have Westbank.

No, you had the others earlier. Have you got the minutes of the meeting of Raleigh?---1st September?

Yes, at 10.40 a.m. Have you got that?---Yes.

You will notice there was a meeting of directors, reference was made to negotiations with you and it was resolved to purchase your practice and Mr. Phillips was authorised to verbally confirm acceptance on behalf of the company of such offer?---Yes. I had discussions then with the accountant, Mr. Geoff Davies, and had arrived at a figure with him and I told him to inform  
- - - 40

If you turn over the page you see there was another

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meeting of directors of Raleigh ten minutes later and Mr. Phillips reported in accordance with instructions of the Board he confirmed on behalf of the company acceptance of the verbal offer made by Dr. Peate for the purchase of the company's assets?---Yes.

So you had previously authorised the accountant to sell for this price?---Yes. 10

Before the 1st September.

MR. BYERS: And of course you had - if you would look to the next resolution so far as it may assist you memory - at that time agreed to a form of service agreement between yourself and Raleigh?---Yes.

Do you remember whether you had signed it or not?  
---No, I cannot remember.

You had also agreed to a form of agreement between Westbank, Raleigh and yourself? See the next resolution, the operating agreement? 20  
---This is the meeting on the ?

1st September at 10.50 a.m. of Raleigh? You can see "operating agreement" in the margin?  
---Yes. That operating agreement, I think, is the one - - -

The one that bears date 1st September between Raleigh, Westbank and yourself?---Yes.

HIS HONOUR: What is being put to you seems fairly clear; these agreements had all been drawn up. 30

MR. BYERS: Yes, beforehand?---Yes.

Would you be kind enough to turn now to the minutes of the meeting of directors of Westbank held at Main Street, Cessnock, on 1st September at 8.30 p.m.?---Yes.

You and all the other doctors were present?---Yes.

That was held in your home?---That is correct.

Both Messrs. Phillips were present?---Yes.

And Mr. Rollason?---Yes. 40

He is the accountant?---Yes.

Who also advised you in relation to the formation of the companies in the service group?---  
Yes, this was a Saturday evening.

On that occasion you had produced all the agreements

between all the doctors' companies, the doctors and Westbank?---Yes, that is correct.

The common seal of Westbank was then affixed to those?---Yes.

And each of those agreements was in the same form as your agreement with Raleigh?---Yes.

HIS HONOUR: The doctor did say there were differences, for instance, the amount of the service fee. 10

MR. BYERS: I am sorry, doctor, the only difference between the agreement was the amount, or proportion of the service fee, to which the doctors' companies would become entitled?---That would be correct.

I take it you had seen all these agreements well before the 1st September, would that be correct?---No, I think we saw them - we could have seen them before, I am not absolutely certain. 20

Would you look at the next minute, you see the next resolution - - -

HIS HONOUR: I suppose it had been arranged earlier what the service fee would be in relation to each of the doctors' companies?---Oh yes.

MR. BYERS: And the proportions selected were the proportions appearing in the partnership agreement?---Yes. 30

Look to the next resolution, joint companies' agreement?---Yes.

"The Chairman produced to the meeting a draft agreement between the company and its associated companies. It was resolved the company enter into the agreement and that the common seal be affixed thereto by Dr. Peate as a director in accordance with the provisions of the articles." Do you remember what that agreement is?---I think that is the agreement which some of the doctors refused to agree to. 40

On that day also at 8.30 in the evening the company resolved to register the various names as set out in the resolution, the business names?---Yes.

The names to be found in the business names exhaust the doctors who were members of the partnership?---I agree.



- And of course, the first business name was selected because you, Dr. Atkinson and Dr. Spence had the one surgery in Main Street?---We carried out the majority of our work in that surgery.
- And you had done so while the partnership subsisted?---Yes, we also worked in other surgeries.
- But you had done the main amount of your work in the Main Street surgery?---Yes. 10
- The second business name, Wiles, Short and Allen was because those three doctors in the main practised from another surgery, I think also in Main Street?---No, that was in Cumberland Street.
- The third, that is Bertinshaw and D. W. Lawson was selected because that was the third surgery partnership and those were the two doctors in the main carrying on their practices there?---Yes. 20
- Will you turn again to the minutes of Raleigh of 1st September 1956 at 10.50?---Yes.
- Will you look to the last resolution relating to the appointment of yourself and wife. You had, of course, prior to 1st September 1956 decided that as part of this arrangement you and your wife would be directors of Raleigh, had you not?---Yes.
- May I take you to the next minute of Raleigh on 3rd September 1956, do you remember that? ---Yes. 30
- You do remember, do you not, that prior to 1st September you had had pointed out to you that a provision in relation to the situation and powers of the governing director appeared in that memorandum of Raleigh, do you remember having that pointed out to you?---I presume I did.
- You were told, were you not, that that was so, that it could not be altered except by the shareholders in general meeting, by 75% of the shareholders in general meeting; you were told that?---Yes. 40
- Do you remember on the occasion of this meeting - I suppose again at your home - you had before you, did you not, typed out the resolutions which you were to pass?---Yes, on the advice we had been given.
- Of course - because at this meeting there were 50

present only yourself and your wife and you had to have some guide as to what you should do to achieve the intended result, had you not?---Yes.

You had received a notice of resignation from Mr. W. B. Phillips?---Yes.

And the resolutions that were typed out, you and your wife went through them one by one at your home and carried them, did you not?---Yes. 10

You see the last resolution - occupancy of surgery - that had been discussed, I suppose, between yourself, your fellow doctors and no doubt your advisers - that is, your solicitor and your accountant - before 1st September, had it not?---Oh yes.

This again you had been advised was a way to render effective the arrangements you had already come to before 1st September?---Yes. 20

You then, of course, having those in front of you, you and your wife carried the resolutions?---Yes.

At that stage it would be true to say, would it not, that you had executed the agreement between yourself and Raleigh?---Yes.

It was dated 1st September?---Yes.

May I for the moment leave Raleigh and take you back to the minutes of Westbank of 13th August 1956. 30

It is four from the back, doctor?---That is the one at 3 p.m.?

That is right. Read it, first of all. Would you agree that prior to 13th August it had been decided between yourself and the other directors, on the advice of your solicitor and accountant, that each one of the then partners should become a director of Westbank?---That is those who were going to come in, yes. Some of them at that stage were still undecided. 40

HIS HONOUR: So that you will understand what this refers to, doctor: article 76 deals with a number of directors and as it stood, the maximum number of directors was seven and this was to lift the maximum from 7 to 12?---Yes.

MR. BYERS: At any rate, the matters that had been

discussed between you, your partners and advisers envisaged that each of the doctors should become a director of Westbank as well as the governing director in his own company?---Yes.

You would agree, would you not, that that had been decided before 13th August 1956?---Yes.

Were you told the reason why the partnership should be dissolved as from 31st August?---The partnership was to be dissolved so that each individual doctor would actually have possession of his own goodwill. 10

You were no doubt told the date on which you should dissolve the partnership?---Yes.

And that date had been decided, as I understand you, by 20th August?---Yes.

That would come from what either Mr. Phillips, Mr. Rollison or Mr. Davies told you?---Yes.

They had told you, had they not, that the doctors' companies had not been incorporated by 20th August 1956?---Yes. 20

But that they anticipated that they would be incorporated on 31st August?---On 31st August.

And of course, Raleigh was incorporated on that day, was it not?---Yes.

I want to ask you some questions about the settlement. When you discussed the settlement with your advisers were you told, for example, that if the company declared dividends on shares, the shares could be held by a trustee for the children?---Yes. 30

And that if you did that, that would mean a saving in tax to you?---That is correct.

You were told also, of course, that you would have to get someone other than yourself to settle some money on your children?--- That is right.

And you were told £1 would be enough?---Yes.

You asked your brother to do that?---Yes. 40

In each case, Caroline and John?---Yes, I think so.

You were also told, were you not, that if the settlement was drawn up and if the trustee could invest in the shares in what I will call your company - - -

MR. JENKINS: It is not his company.

MR. BYERS: In Raleigh, that would mean the money could remain in Raleigh?---Yes.

When you came to declare dividends in Raleigh, you did that no doubt pursuant to what I will call, if I may, the plan of campaign that was drawn up by your advisers?---That is correct.

Might I take you to the meeting of directors of Raleigh of 24th April 1958 (Exhibit B). That was a meeting at which you and your wife alone were present?---Yes. 10

And this, of course, was held at your home as well, was it not?---That is correct.

You had present before you typescript on this occasion, did you not?---Yes.

And you and your wife then passed the resolution determining a dividend in relation to the C class shares?---That is correct. 20

At any rate, you passed all the resolutions there, did you not?

HIS HONOUR: On whose behalf are the C class shares held?

MR. BYERS: They are held by William Berge Phillips as trustee for - I think it is John.

HIS HONOUR: At any rate, one was John and Caroline was the other, C and D.

MR. BYERS: Do you remember doing that?---Yes.

First of all, you determined the dividend in relation to the C class shares?---Yes. 30

Then you resolved that you would declare interim dividends of £385 to be set aside by the issue of 335 C class shares of £1 each in the company?---That is correct.

And the balance of £50 was to be credited to the shareholders account, that is Mr. Phillips account?---Yes.

You then declared a dividend or determined a dividend in relation to the D class shares, that is the other child's shares?---Yes. 40

And the same procedure was gone through?---Yes.

Might I just take you back to the meeting of

directors of the same company on 28th February 1958 at 7 p.m. That again was held in your home and only yourself and your wife were present?---Yes.

And again you worked according to the programme with which you were supplied?---Yes.

On that occasion did you receive any money? Did you receive £30? Can you remember that?---No. I do not remember receiving £30. 10

Of course you did have with you at this meeting of 28th February, again already drawn up for you, the document which is next to, immediately behind, that directors meeting headed "Consent". It is not there; I am sorry. Would your Honour allow the witness to see a photostat copy?

HIS HONOUR: Yes.

MR. BYERS: Would you look to the photostat document I am showing you? You see it is headed "Consent"?---Yes. 20

Does it bear photostat of your signature and your wife's signature?---Yes.

Was that present when you met in your home on 28th February at 7 o'clock, yourself and your wife?---I think so.

HIS HONOUR: What does it consent to?

MR. BYERS: It is a consent to the issue of shares in the capital of the company as follows: to Mr. William Berge Phillips 15 D - and 15 C - class shares upon the following conditions, no right to vote at all, on winding up receive such dividends as the directors shall at that time or from time to time determine, and the shares are to rank equally with the ordinary shares, as to return on capital on winding up shall not confer a right to participate in any surplus assets on the winding up. 30 40

I think you have told his Honour that you had that, so far as your memory goes?---So far as my memory goes.

Also, of course, as you have told his Honour, previous to the incorporation of these companies, the signing of the agreement, your advisers had discussed with you a superannuation scheme?---Yes.

And they told you that from the money coming due to Raleigh you could make contributions in favour of yourself and your wife towards a superannuation scheme pursuant to the deed?---Yes.

That money would be a tax deduction?---That is correct.

And of course, that was an obvious attraction?---  
My word.

10

It would be true that every minute in Westbank, both meetings of directors and meetings of shareholders, were drawn up prior to the meeting by your advisers?---I do not know. Yes, the whole thing was sort of ironed out over this period of three months.

Your advisers, that is Mr. Phillips and Mr. Rollason, told you that they had worked out this programme and that all you had to do was abide by what you had to do?---Yes. We did not know anything about company law.

20

And that is of course what you did?---That is correct.

They told you that in this way or by adopting this procedure, that is the incorporation of the companies, the service agreements, trusts, superannuation, you would very substantially reduce your income tax?---  
We would certainly have to pay less tax.

30

And very much less, you were told, weren't you?---  
I do not know that any amount was actually mentioned.

You were told that you would reduce your income tax by following this programme?---By following this programme, and we were also told that we would also establish these other things, like superannuation funds.

It would be true to say that one of the reasons why, and an important reason why, you followed this procedure was to get an income tax advantage?---It is one of the reasons, yes.

40

And an important one?---I could not say it was not important.

Were you told prior to signing the agreements of 1st September 1956 what you had to do in relation to your patients?---Prior to 1st September?

Yes?---No, I think it was after 1st September, that

we were advised to advise our patients that we had formed ourselves into a company providing medical services.

You were told that by your advisers, by either Mr. Phillips or Mr. Rollason or Mr. Davies?  
---Yes, I think they were the ones.

And you were told that you had to do that in order to make the programme work?---I do not think they said it like that at all. I think they advised us to let the patients know. 10

They told you that was one of the things you had to do?---Yes,

To make it work?---Yes.

Did you read the agreement of 1st September 1956 between yourself and Raleigh before you signed it?---My word I did.

Carefully?---Yes.

And understood what you were signing?---Well, I had a reasonable understanding. 20

You did appreciate when you signed that agreement that you would within a matter of days become the governing director of Raleigh and your wife would in a matter of days become a director of Raleigh?---I did.

May I take you to clause 3. You appreciated, I suppose, that what you were obliged to do under the agreement was to observe and conform with the laws and customs of the medical profession?---Yes. 30

There was no difficulty so far as you were concerned in that?---No.

You were to fulfil and obey all the lawful directions and orders of the directors of the company from time to time?---Yes.

You appreciated that that would be your own directions?---Yes.

But really your own directions?---Yes.

Because of your greater power as governing director? ---That is correct. 40

And that is what you were told, before this agreement was signed by you, that performance by you of clause 3 would involve?---As I was the life governing director.

And that all you had to do as a party to this agreement, in what I might call your professional capacity, was to do what you told yourself to do?---Yes.

Did you regard that as a serious obligation? Did you think that seriously meant anything to you?---Well, I knew, I mean, I would have to have - if I wanted to do anything within the structure of the company I would have to get legal advice. 10

I am not putting quite that. When under clause 3 (d) you as a professional man were to obey the lawful directions of the directors of the company, you understood that to mean that you were to obey your directions as governing director of Raleigh? ---That is right.

And when you read the other part of clause 3 (b), about not absenting yourself except in the case of illness or unavoidable cause from the service of the company without the previous consent of the directors, you appreciated that that meant you could give yourself such leave when you wished? ---That is right. 20

And then you understood that is what it would involve before you signed it?---Yes.

When you go to clause 3 that you would not disclose except to the directors of the company - that meant to yourself and your wife?---Yes. 30

Professional secrets, that is your secrets as a legal medical practitioner, that is what came to you from your patients - is that what you accepted it to mean?---Yes.

Of course you would not in any event I take it disclose to your wife what came to you by reason of your being a doctor of any particular patient?---No. 40

And that you would not disclose any information with respect to the directors of the company? ---No.

Did you understand what that involved you in, doctor?

HIS HONOUR: Don't hesitate to say if you do not understand.

THE WITNESS: I do not.

MR. BYERS: Of any information with respect to



your family, your patients or practice -  
that I take it you meant to mean your  
practice as a legal medical practitioner?  
---Yes.

I will not ask you about the remainder because I  
profess I do not understand. You tell  
me if you did not understand? Did you  
understand what the rest of 3 (c) meant?  
---I understood it as more or less as a  
clause I would not disclose any profes- 10  
sional secrets to anyone.

Well, you would not have done that in any case?---  
No.

May I just take you to what happened on the 1st  
September. On the 31st August 1956  
there had been a partnership in existence?  
---Yes.

And on the 1st September you had signed these agree- 20  
ments?---Yes.

And Westbank was incorporated?---Yes.

And all the other companies incorporated as well?---  
Yes.

Westbank had been incorporated and by the 1st Sep-  
tember the remaining companies were just  
incorporated, the previous day?---Yes.

When you went to your surgery on the 1st September  
I suppose your patients were waiting for  
you as usual?---Yes.

In the same number?---As usual. 30

Of course it would be correct to say that Raleigh  
never at any stage through you, or anyone  
else, carried on a medical practice?---  
Never.

And it is quite accurate to say, is it not, it was  
never intended it should?---No.

It was intended that Westbank should do it?---Yes.

Were you told why you should sell your goodwill to  
Raleigh?---I was, but - - -

Can you remember, doctor?---There were reasons for 40  
it.

But you cannot remember?---No.

Was the reason that you were told was that Raleigh  
should owe you a large sum of money?---I  
cannot remember.

On the 1st September all the three doctors came into the Main Street surgery at their customary surgery hours?---Yes.

And the same applied in relation to the other two surgeries?---Yes.

When was it precisely, if you can say, that you first mentioned this to any patient, by this I mean the fact of Westbank being incorporated?---I cannot give you the exact date as to when I first told patients but, well I actually told people who were patients of mine prior to the company being formed that we were considering it. 10

What about patients coming into the surgery, you had not told them I take it prior to the 31st August?---No.

Did you tell them on the 1st September?---1st September was a Saturday. 20

Did you have surgery hours on the Saturday?---Yes. I did not do surgery that Saturday.

Would you have done surgery on the succeeding Monday?---Yes, on the 3rd.

Did you tell anyone on the 3rd?---Not that I can recollect.

You have told his Honour that in so far as the exigencies of the practice permitted you told patients from time to time that Westbank was incorporated?---Quite true. 30

Can you remember the precise words you used?---I think words to the effect that we had formed this company which was supplying medical services. Naturally if they continued to come to the surgery we wished them to understand they were contracting with the company.

Had you been told what to say?---Well, they expressed the legal opinion to us that that is what should be told the patients. 40

Was it written down for you?---No.

No?---No.

Well, who told you what to say?---I think it was Mr. Phillips or Mr. Rollason.

When did they tell you what to say?---I think it was some time after the 1st September. I don't know when.

When, after the 1st of September, have you any idea? Tell me if you don't know?---I don't know.

The 1st September is now some five years ago?---  
Yes.

I suppose you find it rather difficult to remember exactly the words you used?---Oh yes.

And I suppose you would not care to say that on each occasion you mentioned it to a patient you used the same formula?---Oh no. 10

When you are sitting in your surgery I take it the patient comes in and tells you his complaints?---That is correct.

And you make a note of them?---Yes.

And then you tell him what he is to do - is that right?---Yes.

To look after himself, and you write out prescriptions?---Yes. 20

You have always written out prescriptions yourself, have you not?---Yes.

And you have throughout written the prescriptions in a form which contains no reference to Westbank?---That is correct.

That has gone on throughout the period from its incorporation?---Right throughout.

The form you did use for prescriptions would contain your name, Dr. Atkinson's name and Dr. Spence's name?---Yes, some of them. They are not all identical. The ones required by the Government under the National Health Scheme, the duplicate ones, are identical. 30

May I just by way of illustration show you this one (document shown to witness). That would be a fair representative of the typescript on the top?---Yes.

And that of course bears your handwriting, does it not?---Yes. 40

That is headed "N.H.S." which I think is National Health Scheme, Pensioners Benefit?---P.B.

Will you take this in your hand, and with his Honour's permission to save tendering the document - National Health Scheme,

D.L.Peate xx

Pensioners Benefit. Then it has on the left hand side, reading across, "D. L. Peate, Main Street, Cessnock, telephone 877"?---377.

"K. J. Atkinson, 186 Wollambi Street, Cessnock, telephone 870"?---570.

HIS HONOUR: It might be better to put the document in, Mr. Byers.

EXHIBIT EXHIBIT 2 ... Sample of pre- 10  
scripture form

MR. BYERS: Do I understand you right to say that some time after the 1st September 1957 you mentioned to your patients, or to a number of your patients in the surgery when you had time the fact that Westbank was incorporated and the fact that you were an employee of Westbank?---Yes.

And you have told his Honour you cannot remember the formula you used, and that it varied from time to time?---Oh yes. 20

Did that cease in April 1958, your habit of telling your patients?---April 1958, yes. It was pretty well known around the town as far as I was concerned at that stage.

May I ask you the fact, did your practice or habit of informing your patients of those facts cease early in 1958?---Not entirely. If a new patient came along I always informed them, and I had instructed Miss O'Connor to inform them. 30

Do you remember what you told them on every occasion?---No. I would not say I told them on every occasion.

In your waiting room it is right to say you have a number of notices on the wall, is it not? ---Yes.

It is a normal doctor's waiting room?---Yes.

And it is also right to say you have reading material scattered around?---Yes. The reading material does not last long. It seems to go home. 40

At any rate you do have reading material. Then you have your plates on the front and then Westbank sign on plastic?---White plastic with black lettering.

And the names on the doctors' plates are your name,

Dr. Atkinson's name and Dr. Spence's name?---Yes.

And at the other surgeries there are on the brass plates the names of the doctors?---Yes, other doctors.

And they are Dr. Peate, Dr. Spence and Dr. Atkinson - all doctors, though?---Yes.

"D" with a small "r"?---I don't think it has got Doctor on it. I think they are just "D. L. Peate, M.B. B.S." 10

You think again?---It could be doctor.

Would you not agree on your brass plate on your surgery in Main Street there is Dr. D. L. Peate, Dr. K. J. Atkinson and Dr. W. J. Spence?---Yes, that is probably right.

When you were told by your advisers of this programme, or proposal, were you also told that your wives could become secretaries of your respective companies such as Raleigh and so on?---Yes. 20

You were told your wife would be entitled to remuneration from the funds of Raleigh for that service?---Yes.

Were you told what salary your wife should be given? ---Certain salaries were recommended. I think originally my wife in 1957 was paid £20 per week which was subsequently increased to £25, I am not sure.

Were you told that you should charge a fee as a director in Raleigh?---I cannot remember that. 30

What does your wife do for Raleigh?---Usually what happens is when I have the service fee cheque to bank she checks it and asks Miss O'Connor to bank it.

That is about all?---She also has the telephone duties at the house on the weekends I am working and at night.

Are you working for Raleigh?---Yes, I am employed by Raleigh. 40

That is your view of what you are doing, is it, you are employed by Raleigh to work where?---The idea is that I make my services available to Westbank.

Is it correct to say that you are working as a

D.L.Peate xx

doctor for Westbank or Raleigh?---I think I am working for both.

All these telephone calls that you get relate to patients at what I might call the three surgeries?---Yes.

Apart from answering those calls, as I suppose nearly every doctor's wife in general practice does, does she do for Raleigh anything else than what you have already described?---No. 10

You would agree, I suppose, a remuneration of £500-odd would be a very generous remuneration for what she does as Raleigh's secretary?---Yes. She spends quite a lot of time answering the phone.

She answers the phone for patients?---Yes, and interviews patients who come to the house.

Apart from using your car in your practice you also use it for private purposes?---Yes. 20

Going driving and so on?---Yes.

I do not know whether you told his Honour this:  
I think you are a member of the honorary staff of the Cessnock District Hospital?  
---That is correct.

That is an annual appointment, is it?---Every three years.

Periodically you apply to that institution for renewal of your appointment as an honorary?---Yes, April every three years. 30

You would apply for that on a letterhead which has no reference to Westbank?---Yes, I just make a formal application.

Do you remember what your income was in 1956?---  
(No answer).

Would it be true to say that there is a very substantial difference in the amount of your income returned for 1958 and that returned for 1956?---One was when I was a partner.

And one was under this structure?---You mean my own personal income tax return? 40

Yes. It would be three or four times higher than for 1958, would it not?---No, about twice, I think.

You do get money, I take it, other than £1500-odd?  
---Raleigh does.

D.L.Peate xx

No, you. You get paid, do you not, £1500 under your agreement with Raleigh?---Yes.

That is because you have struck some arrangement putting it up above the contract price? ---Yes.

That would, of course, be very much less than you were getting as a partner?---Yes.

Do you still live in the same way?---Yes.

You have told his Honour that you are chairman of directors of Westbank and that there was on some occasion a discussion relating to a profit of £5000 to be made year by year by Westbank?---Until such time as the directors thought they should vary it. 10

Your advisers, or one of them, told you that?---Yes.

Which one was it, do you remember?---I do not remember. 20

Can you remember him advancing any reason for such a proposal?---No.

You did appreciate, of course, that with the service agreements you could work whatever profits for Westbank you thought fit?---Yes.

What you have done is to work out in advance that it should have a profit of £5000?---Yes, and pay tax on it. That profit could be varied depending on the total service fees received. 30

It could be £1 or £10,000?---Yes.

Westbank, I understand, receives all the money that patients pay for your medical services? ---Yes.

Or what you do in relation to patients and what all the other doctors do in relation to patients?---On a similar basis, yes.

It all comes into Westbank?---Yes.

(THE WITNESS WITHDREW) 40

FREDERICK JAMES HAYES, sworn:

MR. BYERS: Your full name is Frederick James Hayes?---Yes.

What is your occupation?---Investigation officer.

F.J.Hayes x

Employed by whom?---The Taxation Department.

What is your address?---6 Pearce Street, South  
Coogee.

Did you recently make a visit to Cessnock?---Yes.

Did you go to any bank there?---I went to the four  
banks in Cessnock.

Which banks did you go to?---The Commercial Banking  
Company of Sydney, the ANZ, the Common-  
wealth Bank and the Bank of New South  
Wales. 10

At the Commercial Banking Company of Sydney did you  
look at any particular things?---We looked  
at some of the cheques.

Before you got to the cheques did you go to any-  
thing else first?---When I went there I  
had details of some cheques which I took  
with me from the Department and I asked  
them to extract those cheques for me.  
That was on my first visit to the bank. 20

Did you see any deposit slips?---No, I did not see  
any deposit slips at the Commercial.

When was your most recent visit?---On Monday this  
week.

Did you go to any bank on that occasion?---Yes, I  
went to the four banks mentioned.

Did you go to the Commercial Banking Company?---  
Yes.

First of all, did you?---I went to the Bank of New  
South Wales first. 30

What did you see there?---I saw deposit slips there.

Did you ask to be shown the deposit slips?---Yes.

Who did you ask?---I rang up Mr. Sweet, the manager,  
before I went to Cessnock and asked him if  
he would have certain deposit slips avail-  
able for inspection.

When you say certain deposit slips, what did you  
ask him?---I asked him if he would get  
out deposit slips for the months of March,  
April and May 1959 and March, April and  
May 1960, if I remember rightly. 40

Of whose account?---The account of A. E. Westbank  
Pty. Ltd.

When you got there did you look at these deposit  
slips?---Yes.



F.J.Hayes x

Did you read all of them?---No, I only wanted - I was asked to look at a certain number which would give me what we estimated would be a reasonable number to look at.

That is a little ambiguous?---We did not know how many deposit slips there would be for these particular months and I think they got out about 200 altogether for 1959 and 200 for 1960. We looked through about the first three quarters of each year. 10

The first three quarters?---The first three quarters of those they had out for us.

Did you select them in any particular order or not?---No, we only looked at those with cheques on them.

Did you deal with them in the order they were shown to you?---Yes, I did.

Without any selection, apart from the selection in relation to cheques?---There was a certain selection. I did not worry about cheques paid into the company by doctors who were members of the company or companies that were associated with A. E. Westbank. 20

Excluding those cheques, was there any selection of the remaining ones?---Possibly if I saw a name that I had already looked at; it is no good having all the same names for purposes of this selection and so where I struck a name, say, on two or three occasions I did not bother to write that name down again. Apart from that, there was no other selection. 30

Apart from those exclusions that you have mentioned to his Honour, you took them as they appeared on the deposit slips?---Yes.

And in that order?---Yes.

Did you then make a list of what you had seen?---Yes.

After you had done that, did you go to the three other banks you have mentioned?---Yes. 40

And you there saw some cheques, did you?---That is right. I also asked the Bank of New South Wales to take out cheques in addition.

That is cheques that were drawn by their customers? ---Yes, that is right.

What you went to the Bank of New South Wales for

F.J.Hayes x

was the deposit slips relating to the Westbank account?---That is true.

From those you took the material that appears on these three sheets - correct me if I am wrong - will you look at the documents (handed to witness)?---Actually, these all refer to the 1958 year; that was a previous visit. 1959/1960 are the ones I saw on this occasion.

10

Will you look to the office memorandum behind the typed list on this document I am showing you (handed to witness)?---Yes, that is right.

Is that your handwriting?---Yes.

Where did you make that?---I made this in Sydney on 29th August 1962.

From what?---From details of cheques previously obtained by the Taxation Department and also from details I obtained from the secretary of the Cessnock District Hospital.

20

When you went to the Bank of New South Wales last you have told his Honour you went through the deposit slips?---I am sorry, I was looking at the wrong page. The ones I got from the deposit slips are here underneath.

That is the list you made at the bank as you went through them, is it?---That is true.

30

HIS HONOUR: This is the list of cheques?

MR. BYERS: This is the list of cheques you got from the deposit slips?---That is correct.

I think that comprises two sheets, does it not (handed to witness)?---Yes, two sheets.

Having taken that down from the deposit slip, what bank did you go to next?---We took a sheet down for each particular bank concerned, listing the cheques for the particular banks and these ones here concern the Bank of New South Wales.

40

When you were at the Bank of New South Wales did you also take a list of the cheques drawn on the Australian and New Zealand Bank?---Yes.

Is that the list of those cheques (handed to witness)?

F.J.Hayes x

HIS HONOUR: What is the first list? That is a list of cheques drawn on the Bank of New South Wales?---That is correct.

MR. BYERS: Obtained from the deposit slips?--- Yes, at the Bank of New South Wales.

The second list is the list of cheques drawn on the Australian and New Zealand Bank obtained from the deposit slips at the Bank of New South Wales (handed to witness)?---That is correct. 10

This list is a list of cheques drawn on the Commercial Banking Company of Sydney obtained from the deposit slips of Westbank with the Bank of New South Wales (handed to witness)?---That is correct.

I think the last one is a list of the cheques drawn on the Commonwealth Trading Bank obtained from the deposit slips in Westbank's account at the Bank of New South Wales?---That is correct. 20

Having obtained that list, you left it with each of the banks concerned, is that so?--- That is so.

And after that, did you do anything further?---We arranged to call back to the banks when they said they would have the cheques out. We asked them to extract those cheques and arranged to call back.

You called back to the banks and saw them, did you not, got the cheques?---Yes. 30

AT SYDNEY ON THURSDAY, 6TH SEPTEMBER 1962, AT  
10.30 A.M.

(Continued from 5/9/62)

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For APPEARANCES - see page 1

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You did inform his Honour yesterday, I think, as to the months in relation to which you went through the deposit slips at the Bank of New South Wales relating to A. E. Westbank Pty. Ltd.?---That is right. 40

Was that correct as to the months?---No. I stated yesterday that the months were March, April and May; in fact they were April, May and June.

F.J.Hayes x

HIS HONOUR: What year?---1959 and 1960.

MR. BYERS: You have explained to his Honour the way in which you treated the deposit slips, is that so?---Yes.

You set aside associated company payments and what else?---There were a number of cheques occurring of the same name, drawn by the same person. Where we struck that name two or three times we did not bother to write it down again. 10

So you made one entry, you took one example of a person who had paid in more than once?---Roughly that was the position. Mr. Dunne assisted me in getting that information.

He was with you when you were present at the four banks?---Yes.

Then you made notes, of course, of what you saw and these are the notes you made, are they not, the ones I showed you yesterday?---Yes. 20

HIS HONOUR: Which notes are these, notes of what he saw at which bank?

MR. BYERS: First of all the note relate to four different banks?---Yes.

The Bank of New South Wales, the Australian and New Zealand Bank, the Commonwealth Trading Bank and the Commercial Banking Company of Sydney?---That is so.

If you look through them I think there is a note in relation to each of the banks, a separate note?---Yes, a separate sheet for each bank. 30

That has been typewritten, has it not, in the form of these brief size sheets?---That is right.

Transcribed from the notes you have?---A copy for each bank, yes.

I think you have checked the typewritten sheet against your note, have you not?---I have not personally myself, but the typists who did the work between them checked them. 40

HIS HONOUR: For the time being I will take these lists, but unless they are merely lists of the cheques that are in court I will reject them eventually.

F.J.Hayes x

EXHIBIT

EXHIBIT 3 ... List of cheques  
prepared by wit-  
ness Hayes

CROSS-EXAMINED BY MR. JENKINS:

MR. JENKINS: Mr. Hayes, you had 64 cheques sent  
down from the Bank of New South Wales to  
Sydney, did you not?---I could not tell  
you the number.

You gave a list to the bank, did you not?---Yes. 10

And you gave a list containing 64 cheques to the  
Bank of New South Wales?---That could be  
the number.

That you have subpoenaed alone from the head office?  
---I do not know the numbers but that  
probably would be correct.

You can take it from me that if you count those up  
shown in this list it is about 40?---  
Yes.

What about the other 14?---What other 14 do you 20  
mean?

You gave a list to the bank of 64 cheques, did you  
not?---Yes.

And the 64 came to Sydney?---No, I do not think so.

Are you sure that there are not now cheques with the  
Bank of New South Wales sent down from  
Cessnock, do you know that?---No, I would  
say that is not right. All the cheques  
they got out for us were sent down as far  
as I know. 30

You had particulars of 64 cheques, did you not?---  
If 64 names are on that sheet I gave to  
the bank, that would be correct.

Cheques you had looked at?---No, I did not look at  
any of those cheques covering the names  
on the lists. They did not get them all  
out for us, they could not locate some of  
them. I would assume that the 40 they  
located were all they could locate on the  
list I gave to them. 40

What does this notation mean, "1439 ... could not  
locate"?---The bank could not locate that  
cheque. That would account for the dif-  
ference in the numbers they could find and  
the numbers on the list I gave them.

Did you make a note of every cheque they could not

F.J.Hayes xx

locate?---I either tossed it out or made a note of it.

So that any cheques that could not be located are shown on this list as crossed out or noted as could not be located?---As far as I know, that is correct; there could be some not crossed out.

You may take it that counting up the ones not crossed out and those that could not be located, there is about 40 on this list? ---All right. 10

What has happened to the other 14?---I do not know where the cheques are; I have not seen any of the cheques that have been sent down.

You gave a list to the bank containing particulars of 64 cheques?---That is correct, that is the number on the list. 20

HIS HONOUR: Is the list that you produced the list that you gave to the bank, or is it the list of cheques that have been produced in court?---That is a list that I gave to the bank.

I do not follow this 64. I never have.

MR. JENKINS: You attended at the Bank of New South Wales and went through the deposit slips?---I went through some of them. About three quarters of them. 30

And in respect of cheques drawn by patients on the Bank of New South Wales you listed 64?---Yes. Both myself and Mr. Dunn.

You then gave that list to the bank?---Yes.

Have you got a copy of that list?---I have not got it here with me.

And this is not the copy of it, is it?---No. That is a copy of the original. The original is here somewhere in court.

I put it to you these are the cheques you selected out of that list of sixty four?---That is a copy of the original list. 40

Do you suggest that this is a copy of the list of 64 cheques?---Yes.

Although it has only got 41 on it?---I explained

to the bank that I did not want all of those cheques, we only wanted about 15 for the 1959 year and 15 for the 1960 year.

So that originally there were 64 cheques and you picked out forty one?---No.

Well, 41 only of the 64 cheques - - - there are a number of other cheques for the month somewhere, at least 14 or 15?---The bank could not locate the balance of them. 10

I put it to you that the balance of them are now in Sydney at the head office of the Bank of New South Wales?---No, I would say not.

Have you been there?---No.

Is this the list that you left with the bank?---That is.

So that the bank would have a list exactly the same as this?---This is the list they worked from. 20

Did you leave one with the bank?---Yes, I left this with the bank.

And it is an exact copy of this?---Yes.

When was this compiled?---This was compiled on the Monday morning we went to the bank. We got to the bank about 10 o'clock and from about 10 till I suppose 11.30 we were compiling these lists.

Did you not hand to the bank a list containing particulars of 64 cheques?---These are the lists. 30

Would you answer that question?---Yes. I am not certain as to the number, but if that is the number on here, that is correct.

You would agree that these are copies of the deposit slips you had to look at at the bank?---Yes, that type of - - -

It is true that in these deposit slips for April and May there are many cheques by private patients - not the second cheque by the private patient, but many cheques for patients whose name does not appear on your list, which you did not look at or did not get out?---We were not concerned with cheques drawn on banks outside Cessnock. 40

No, this is the Bank of New South Wales Cessnock I am talking about, the cheques drawn on the Bank of New South Wales Cessnock?---Yes. 50

F.J.Hayes xx

You would agree with that?---We jotted down those  
as we came to them, as far as I know.

Did you not jot them down at random?---Yes, we  
jotted them down at random.

You would agree that in these deposit slips there  
are many cheques drawn on the Bank of  
New South Wales by private patients whose  
name does not appear on the list?---No,  
I would not say that. We did not look  
at all those deposit slips for the months  
mentioned. 10

You did look at all in May?---I said that we  
started at the beginning and I do not  
know that they were in order. As far  
as I recollect we started at the begin-  
ning and worked through and when we  
reckoned we had enough we did not go any  
further.

You started in May, did you? Would you have a  
look at this list and tell me is there a  
cheque there by Mr. Oldfields?---Yes. 20

You have that crossed out?---Yes.

That is one that you could not locate?---No.

Why is it crossed out?---When we prepared the list  
and handed it to the bank I indicated to  
the bank that we only wanted roughly 15  
cheques for each particular year.

You could not say that Mr. Oldfield's cheque is  
not payable to A. E. Westbank?---No. 30

You took 15 cheques for each year from each bank?  
---Not fifteen. Just roughly. When  
I went up there I was told - - -

Just answer the question. You took 15 cheques  
from each bank for each year?---No, that  
is not right.

What did you do?---As I was beginning to explain,  
we roughly wanted - I was asked to get  
about 30 cheques for the 1959 year and  
30 for the 1960 year and at all banks. 40

All the banks?---Yes. No particular bank.

Did you leave the choice to the bank?---I handed  
this list to them.

And left the choice to the bank?---No.

Did you indicate out of that list, or the list



F.J.Hayes xx

which you handed, what cheques you wanted?  
---I said I wanted - I indicated I wanted  
all of them as far as possible, but I did  
also indicate that this information shown  
here as the drawer was not too clear in  
lots of cases, our information was jotted  
down from carbon copies of deposit slips  
and lots of cases we were not quite sure  
if we had the correct name copied down. 10  
So I handed this to the bank and they had  
a quick look through and for instance they  
said "No, we do not know that name, do  
not think that is one of our customers",  
so I crossed those names out, I said  
"Don't worry about looking for those,  
wasting your time over them, we will be  
able to get sufficient from the balance  
of the list that I have given you".

Did you say you gave them a different list?---No. 20

Is this correct, all the cheques that are on this  
list are in Court?---All the ones where  
the payee is shown. I should imagine  
they are all here, all those cheques that  
they were able to locate on these lists.  
I understand they have been subpoenaed.

Did you pick the cheques out yourself, or did the  
bank do it?---The bank just located all  
the cheques they could, so they picked the  
cheques out. 30

In going through these deposit slips on that list,  
did you in respect of the month of May  
include every cheque by a private  
patient, not setting aside the second  
cheque?---I don't know that we looked at  
May. As a matter of fact on the first  
list they are all April. Apparently we  
reckoned we had enough just at April.

In respect of April, did you do that? Did you  
take out every one?---No. Some of 40  
them we could not decipher the carbon  
name on the deposit slips so we did not  
waste any time over those. There is  
another one I remember, the Greater  
Cessnock Council, I happen to know that  
that Council got its own cheques back so  
we did not put those names down also,  
but generally speaking we put down every  
name that we could decipher in the order  
it came to us. There is something about 50  
that 64 cheques, if I might add, which  
occurs to me. We have also subpoenaed  
a number of cheques for the 1958 year.  
They do not occur on any of these lists.  
That apparently could account for the  
difference in numbers.

F.J.Hayes xx

Could I just show you this. You went through April 1960?---Yes, there are a number of April 1960 on the list.

RE-EXAMINED BY MR. BYERS:

MR. BYERS: You were asked some questions in relation to a list which was said to have on it 64 cheques?---Yes.

When you went to the banks of New South Wales, the Australian and New Zealand, the Commercial Banking Company of Sydney and the Commonwealth Trading, on the occasion you made this check did you leave on that occasion with any copy list other than the one which is tendered in evidence this morning, a written out one. 10

There was one list I left I think with the Bank of New South Wales concerning cheques of the Cessnock District Hospital. That was the only other list. 20

Did that relate to what you did at the bank in relation to a random check of the 1959 and 1960 cheques?---No.

Apart from the list you left with the bank on this day, and arising from your check, have you left other lists relating to cheques citing, other than the one you left on this occasion?---I had left a list on a previous occasion.

Was that in any way related to the spot check you made at the four banks on this occasion? ---No. That other list related to the year 1958 only. 30

(THE WITNESS WITHDREW)

GABRIEL JABOUR, sworn

MR. BYERS: Your full name is Gabriel Jabour?---Yes.

You live at 24 Vincent Street, Cessnock?---Yes.

What is your occupation?---Milk bar proprietor.

Do you know Dr. Peate?---Yes. 40

Have you been a patient of his?---Yes.

For how long?---Myself, before I was married for many years, seven years since I have been married he has been the family doctor.

Have you been to the surgery?---Yes.

G.Jabour x

Has he come and treated you at home, you and your family?---Yes.

First of all did Dr. Peate ever tell you that a company named Westbank had been formed?  
---No.

Did he tell you that so far as persons going to the surgery were concerned for medical treatment the doctors were employed by a company called Westbank?---No, I cannot remember that. 10

Did he ever tell you when you went to his surgery that the doctors were employees of the company and that you were contracting with a company?---No.

I think you have from time to time received statements of account from the doctor?---Yes.

And you have from time to time paid those accounts?  
---Yes.

Have you received any accounts after 1957?---Yes. 20

Did you notice any stamped name on the account?---  
Yes.

How did you pay your account?---I paid Dr. Peate, by cheque.

To whom did you make your cheque payable?---Dr. Peate.

By the way, did you ever see a notice in the surgery relating to Westbank?---Yes, I had noticed it on a couple of occasions.

Did anyone tell you in the surgery that Dr. Peate was treating you as a person employed by a company, Westbank?---No. 30

And that the contract you were making was with Westbank and yourself?---What do you mean by that?

Did anyone tell you in the surgery, apart from Dr. Peate that the money for the treatment had to be paid to Westbank?---No, nobody mentioned it.

CROSS-EXAMINED BY MR. JENKINS: 40

MR. JENKINS: You have Dr. Peate come to you, you say?---Yes.

If he is not there another doctor will come?---  
That is right.

G.Jabour xx

You still pay Dr. Peate?---Yes.

Even if another doctor comes?---Yes.

And do you do that because it is a matter of habit?  
---He is the family doctor.

You have been doing it for years and it just kept  
on?---That is right.

There are other doctors who have been to see you  
from this group?---Yes.

And you still wrote the cheque out to Dr. Peate? 10  
---Yes that is right.

You have had receipts in 1960 and in 1959 and in  
1958 with the name A. E. Westbank stamped  
on them?---Yes.

And the accounts came to you in the name of A. E.  
Westbank, did they not?---Yes.

And you have noticed the sign "A. E. Westbank" out-  
side the surgery?---Yes.

And you have been in the waiting room many times? 20  
---Not many. Thank God I have not been  
in too many times, three or four times  
that I can remember.

You have seen the notices?---Yes.

You are not much interested, as long as you get  
medical service, to whom the money is  
due?---No.

(THE WITNESS WITHDREW)

VICTOR EDWARD HARRIS, sworn:

MR. BYERS: What is your full name?---Victor Edward 30  
Harris.

Your address is 57 Boomerang Street, Cessnock, and  
you are a jeweller by trade?---That is  
correct.

You know Dr. Peate, do you not?---Yes.

You have been going to him for how long?---As long  
as he has been in Cessnock.

Over the last five years have you been to see Dr.  
Peate as a patient?---Yes.

That is in the years 1957, 1958, 1959 and 1960?--- 40  
That is correct.

Has Dr. Peate ever mentioned a company A. E. West-  
bank to you?---No.

V.E.Harris x

Did he ever tell you he was employed by a company?  
---No.

Did he ever tell you that you were contracting with  
a company?---No.

Did anyone on the staff at the surgery tell you  
that?---No, nobody.

I think you have received from time to time receipts,  
have you not?---Yes.

A number of those have had on them the name of  
A. E. Westbank stamped?---Yes. 10

How have you made your cheque payable?---D. L.  
Peate.

Have you ever seen notices in the waiting room?---  
They could be there but when I go in it  
is generally by appointment and I more or  
less go straight in to see the doctor.

CROSS-EXAMINED BY MR. JENKINS:

MR. JENKINS: Did you have any treatment in 1958?  
---I cannot say particularly; the family  
might have, quite possibly. Every year  
there is somebody or other who is sick. 20

I am asking about you yourself, not the family;  
did you have any treatment in 1958?---  
Not as far as I know, I might have.

And you did not have any treatment in 1959, did  
you?---I could not say. If I did have  
any it would only have been for something  
slight, nothing very important.

I am putting it to you that you did not have any  
treatment in 1959?---I would not know, I  
have not checked. 30

And you did not have any treatment in 1960?---No,  
not 1960.

So far as you know - you could not be certain - you  
have had no treatment in the years 1958  
to 1960?---No, but I know the family has.

I am talking about you personally?---No, I could  
not definitely say myself.

You have heard the name Westbank, have you not?---  
Yes. 40

You know that it is a company which the doctors  
formed?---Yes.

You knew that in 1958?---Yes.

V.E.Harris xx

You got receipts with Westbank on them?---It was stamped on some of them, yes.

Apart from Dr. Peate other doctors attend to your family at your house?---Yes.

Dr. Spence, Dr. Atkinson and you still make your cheques out to Dr. Peate, do you not?---Yes.

It is a matter of habit, is it not?---Yes.

RE-EXAMINED BY MR. BYERS:

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MR. BYERS: From whom did you hear the name Westbank?---That would be hard to say. I have seen it on the statement, but I just could not say.

(THE WITNESS WITHDREW)

RUTH McCORD sworn:

MR. BYERS: What is your full name?---Ruth McCord.

You are a married woman?---Yes.

You live at 23 Brown Street, Cessnock?---Yes.

20

You are a buyer employed by Paynes-Hustlers?---Yes.

That is a store in Vincent Street, Cessnock?---That is correct.

Do you know Dr. Peate?---Yes.

When did you first go to him as a doctor?---When I came to Cessnock in 1955.

Can you remember going to the surgery in 1958?---I cannot recall the exact dates when I went to the surgery, but I visited the surgery a few times that year.

30

When you came in you sat down, I take it?---In the doctor's surgery?

In the waiting room?---Yes.

And you were sent in to see a doctor?---I went to see the receptionist when I walked in and asked to see Dr. Peate and then I waited my turn to see the doctor.

In due course you saw the doctor?---Yes.

Have you been to Dr. Peate for treatment since

40

R. McCord x

1958?---I think only about once; it is about three or four years since I was in his surgery.

On any occasion in 1958 did the doctor tell you that a company had been formed called A. E. Westbank Pty. Ltd.?---No.

Did he tell you he was employed by that company?---No.

Did he tell you that the money due for treatment was due to that company?---No. 10

Did anyone else in the surgery; the staff in the surgery, mention the name Westbank to you?---Not that I recall.

Or that the doctor was employed by a company?---No.

At any time before 1958 had Dr. Peate mentioned the name Westbank to you?---No.

Or that he was employed by a company?---No.

At any time after 1958 has the doctor mentioned that to you?---No. 20

Or the staff?---No.

I think you did receive accounts for treatment you had?---Yes.

You paid those accounts by cheque?---I think so, yes.

Do you remember noticing any signs on the wall in the waiting room?---There was a notice there, but I just do not recall what was on it, I did not pay particular attention.

You told his Honour, I think, you first went to Dr. Peate after your arrival in Cessnock in 1955?---That is the first time I visited the doctor. 30

Did you go to the doctor prior to 1958?---Yes.

May I first of all ask you a question about the visits you had to the doctor in 1958?--- Did you on any of those visits see a piece of typewritten or printed paper on the doctor's desk in his surgery?---I do not think I would have noticed anything like that in his surgery. 40

Can you remember the month in 1958 when you first saw the doctor?---I think it would be about February or March.

CROSS-EXAMINED BY MR. JENKINS:

MR. JENKINS: You have been mostly going to see Dr. Zabiell, the ear, nose and throat specialist, have you not?---Yes.

He was the person you were going to see in 1958?  
---I do not know if the two visits were to Dr. Peate or Dr. Zabiell, I was not attending him for myself, it was for one of my children.

10

As far as you can recollect your visits in 1958 may have been to Dr. Zabiell?---I think they would have been.

He was a doctor who was using the surgery as an ear, nose and throat specialist?---Yes.

It is also correct, is it not, that your attendances since then have mostly been to see Dr. Zabiell?---That is right.

You cannot recollect any specific occasion on which you attended Dr. Peate in 1958 for attention?---I do not know, I must have attended him some time in that year, but I do not know the date.

20

It was probably Dr. Zabiell you saw?---I do not think these visits could have been to see Dr. Peate, I do not know, I cannot remember.

Your husband pays the accounts, does he not, the doctor's accounts?---No, not always.

He pays them sometimes?---Yes.

You knew of the existence of A. E. Westbank from your husband, did you not?---I did not know.

30

Did he not tell you about the notice?---Afterwards.

After when?---Just a few weeks ago he told me about it.

Your husband spoke to you about the notice at Westbank?---When I told him about this company I asked him if he knew about it and he said Yes, he had seen the notice with the name Westbank, but I have not seen a notice.

40

You had your little girl with you on most occasions?  
---Yes.

You could not say in respect of the attendances in 1958 whether you paid it or your husband



R. McCord xx

paid it, can you?---I cannot tell you truthfully, no.

You have had receipts with Westbank on them, have you not?---Not that I recall.

You cannot recall?---No.

You have doctors come to your home?---If I am too sick to come to the surgery, yes.

A number of doctors have come from time to time?---  
A number of doctors? 10

Yes, not all at once, but sometimes Dr. Spence, sometimes Dr. Atkinson and sometimes Dr. Peate?---No, I have only had Dr. Peate.

At your home?---Yes.

(THE WITNESS WITHDREW)

ALEXANDER BUCHANAN, sworn:

MR. BYERS: Your full name is Alexander Buchanan, is it not?---Yes.

Do you live at 268 Vincent Street, Cessnock?---Yes.

What is your occupation?---Clerk. 20

You know Dr. Peate, do you not?---Yes.

How long have you been going to him as a patient?  
---About 11 years.

Have you been to his surgery since 1956?---Oh yes.

On one or more occasions?---Several occasions.

Has Dr. Peate ever told you that a company called Westbank was formed?---No, never discussed that.

Has he ever said to you that he was employed by that company?---No. 30

Has he said to you that the moneys due in respect of the treatment that you received from him were due or payable to Westbank?---  
No.

Has anyone in the surgery mentioned to you the existence of this Company?---No, it has never been mentioned.

You have received, I think, from time to time accounts in respect of treatment for yourself and family?---Yes. 40

A.Buchanan x

Have you noticed the name "Westbank" on the accounts?---Yes, on the top of the account.

It is stamped on, is it?---Yes.

How do you pay these, by cash or by cheque?---  
Generally by cash.

CROSS-EXAMINED BY MR. JENKINS

MR. JENKINS (Approaching witness): You have seen that in the surgery when you have been there, have you not (Exhibit F)?---Yes, I have seen a notice, either that one or something very similar. 10

Have you seen this (Exhibit G)?---I cannot say I have ever seen that one.

You have seen Exhibit F?---Yes, I think I have seen that one in the surgery.

As far as your memory goes, you say that was in 1958?---I could not be sure on that.

It could have been 1958?---It could have been. 20

Do you remember that was near the window where you pay your money?---I think it was, if I remember rightly, yes.

You have seen the notice outside the surgery "A. E. Westbank", have you not?---Yes.

You have doctors who come to your home, do you?---  
Yes.

On occasions doctors other than Dr. Peate, like Dr. Spence or Dr. Atkinson?---Dr. Spence or Dr. Atkinson. 30

You are quite satisfied with them, are you not?---  
Yes, very satisfied.

Have you had Dr. Pitsch come to your home?---No.

RE-EXAMINED BY MR. BYERS:

MR. BYERS: Do you remember being shown a few minutes ago by my learned friend Exhibit F, which is a framed notice?---Yes.

Have you ever read that?---I did not read it in detail. I just started to read it one day I was round there but I did not read it in detail. 40

Apart from the name "Westbank" in the front, are

A.Buchanan re-x

there any other plates in the front, as you know the building?---In connection with Westbank?

Any other plates?---Doctors' plates.

ALAN FREDERICK WATSON, sworn:

MR. BYERS: Your name is Alan Frederick Watson, is it not?---That is correct.

You live at 26 Love Street, Cessnock, do you?---  
That is correct. 10

You are employed by the Greater Cessnock City Council?---That is correct.

Do you know Dr. Peate?---I do.

Have you or your family been treated by Dr. Peate?  
---Yes, we have.

Since when?---Many, many years, I could not exactly tell you; it would be over 10 years.

Have you been to the surgery in the last 6 years?  
---I would say I would have gone there in the last 6 years, yes. 20

Once or more than once?---More than once.

I think you have also been treated by Dr. Atkinson in Dr. Peate's absence?---That is correct.

On any occasion has Dr. Peate told you that a company named Westbank has been formed?---  
No, I have not been told.

Did he tell you he was employed by Westbank?---No, he did not.

Did he tell you that the amounts for treatment had to be paid to Westbank?---He did not. 30

Has any other person - the staff, for instance - told you that?---No.

Did Dr. Atkinson tell you that?---No.

Have you noticed any signs up on the wall in the waiting room?---Not in the waiting room, I noticed a sign outside the surgery itself, the company's name.

Do you remember the name of the company?---A. E. Westbank.

CROSS EXAMINED BY MR. JENKINS: 40

MR. JENKINS: You have known of the existence of

A.F.Watson xx

A. E. Westbank for some years, have you not?---I have.

You knew it was a company the doctors had formed, did you not?---I surmised that.

So far as the surgery is concerned, you cannot say you have been there in 1958, 1959 or 1960, can you?---No.

Or that you have had any medical treatment in 1958, 1959 or 1960?---I have not had any treatment personally, my family has. 10

But so far as you are concerned, you have had no treatment in those years?---I would not like to say for certain but I have not been to the doctor very much.

You doubt whether you have had any treatment?---I doubt it.

So far as the family are concerned, you have had doctors other than Dr. Peate come to your home like Dr. Spence and - - ?---No, Dr. Atkinson and Dr. Peate. 20

When Dr. Atkinson comes you still pay the cheque to Dr. Peate, do you?---Generally; I think on one occasion I have paid it to Dr. Atkinson but it is - - -

Mostly Dr. Peate?---Yes.

(THE WITNESS WITHDREW)

A.F.Watson xx retd

REASONS FOR JUDGMENT

PEATE

V.

FEDERAL COMMISSIONER OF TAXATION

It is perhaps inevitable in an acquisitive society that taxation is regarded as a burden from which those who are subject to it will seek to escape by any lawful means that may be found. This is generally called tax avoidance and it is successful if by reason of what is done what is potentially taxable is put outside the effective operation of the revenue laws. Furthermore, in the absence of a special law a genuine transaction does not lose its legal effect because it was carried out to avoid, limit or postpone tax. It is the recognition of this that accounts for the legislature casting its net wide to frustrate the attempts of these confronted with tax liabilities to get round the law. As often as a particular loophole is closed through which it has been discovered that revenue is lost, another is likely to be found, so that as long as it confines itself to stopping gaps the legislature is always a step behind reluctant taxpayers and their ingenious advisers. It is not, therefore, surprising that Parliament has sometimes sought to anticipate tax avoidance by general laws rendering ineffectual against the Commissioner arrangements which are not shams but are entered into to avoid taxation obligations that would otherwise in due course be incurred. Such a law is S. 260 of the Income Tax and Social

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Reasons for judgment  
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Justice Menzies

Services Contribution Assessment Act, to which  
fuller reference will have to be made later.

A further observation of a general character  
is relevant. As the law stands, taxpayers who are  
in business as employers or employees have found it  
easier than those who are not to reap advantages  
from some of the deductions from assessable income  
that are allowed in the calculation of taxable  
income upon which tax is assessed. The establish-  
ment and maintenance of superannuation schemes is  
a good instance of this. So is the provision of  
a wide variety of amenities from which employees  
obtain non-taxable benefits while the cost is in a  
large measure deductible from the employer's  
assessable income. These are often called fringe  
benefits. Holiday pay is again something which  
those who do not get it envy those who do. Such  
benefits, real enough as they are in ordinary cir-  
cumstances, would, however, obviously be of far  
greater value if it could be so arranged that they  
should accrue to taxpayers who would in substance  
employ themselves in the sense that their salaries,  
amenities, superannuation payments, etc. would come  
from their own earnings. Cases such as Lee. v.  
Lee's Air Farming Ltd. 1961 A.C. 12 illustrate how  
incorporation may be used to effectuate what can be  
loosely described as self-employment. So long as  
the employer and the employee are separate, economi-  
cally as well as legally, the cost of benefits to  
employees (such, for instance, as holiday pay and

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superannuation payments) must, after allowing for the value of tax deductibility, be borne by the employer but if a person were, in effect, to provide himself with such benefits and obtain taxation deductions in his role of a self-employer, the resulting tax saving would simply be money in the taxpayer's pocket. A further refinement would, however, bring even greater advantages to a family man, who it is established, cannot achieve taxation immunity by the simple expedient of assigning his earnings to his wife and family: Parkins v. Warwick 1943 25 T.C. 419. If, for instance, it were possible for a man to re-arrange his affairs so as to work for his wife and family as he previously worked for himself with the consequence that the return which his work produced, instead of being his own income and taxable as such, would be divisible between him, - as salary - and his wife and family as his employers and that his holiday pay, superannuation payments and other benefits would be tax deductions from the income which his work produced, how much more would be left in the hands of the family group after each of them had paid tax on what came to his or her hands! To achieve such a result where a son has been working in partnership with others and wishes to continue to work with those who were his partners in much the same way except fiscally would, however, necessitate the exercise of some ingenuity, not to say boldness, particularly in

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the case of men subject to both professional and statutory controls, e.g. lawyers, or doctors.

It is at this point that I turn from general observations and reflections which provide no more than background to the facts of the case, which is an appeal by Dr. Peate from assessments of income tax for the years 1958, 1959, and 1960.

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Pursuant to a deed dated 30th November, 1954, nine doctors practised in partnership in Cessnock and the surrounding districts but ostensibly did so not in one group but in three groups of three. One of these groups comprised Dr. Peate, Dr. Atkinson, and Dr. Spence and their principal surgery was in Main Street, Cessnock. One of the nine partners retired on 1st July, 1956 and subsequently the eight doctors then in partnership orally dissolved their partnership as from 31st August 1956, but, because of arrangements then in contemplation, they found it necessary to do no more than to agree that the goodwill of the partnership should be the goodwill of the doctors individually and that outstanding fees should be collected by A. E. Westbank Pty. Limited - a company which had been incorporated on 29th June 1956 - and accounted for by that company. On the day on which the partnership was determined there was incorporated a company, W. Raleigh Pty. Limited, and, it seems, seven other similar companies. Each of these eight companies was the family company of one for the eight doctors - Raleigh being the family company of Dr. Peate -

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and it is sufficient for present purpose to take Raleigh as an example of what was done in every case. The signatories to the memorandum and articles of association and the first directors were two solicitors, E. B. and W. B. Phillips, who were members of the firm of solicitors advising the doctors and doing the legal work that the acceptance of their advice entailed. W. B. Phillips was the first governing director and the memorandum of association gave the governing director for the time overriding powers. Included among the comprehensive statement of the objects for which the company was incorporated (which ran into fifty seven paragraphs) there was the following: 10

"(45). To carry on the business of importers and dealers in pharmaceutical, medicinal, chemical, industrial and other preparations and articles and providers of medical surgical hospital services and facilities of all kinds". 20

It was seemingly pursuant to this paragraph that Raleigh on the day after its incorporation purchased Dr. Peate's practice, library, plant, motor cars, etc. and entered into a service agreement with him. It appears from the minutes of meetings of directors that at 10.40 a.m. on 1st September W. B. Phillips reported that he had conducted negotiations with Dr. Peate for the purchase of his medical practice for £7500 and it was resolved that the company should buy the goodwill for this sum 30

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and should also buy the personal chattels required for the practice at a valuation to be agreed. The total price was eventually fixed at £9542. Ten minutes after this meeting began and according to Dr. Peate without reference to him in the meantime, there was a second meeting of Directors and Mr. W. B. Phillips reported "that in accordance with the instructions of the Board he had conveyed verbally on behalf of the Company the acceptance of the verbal offer made by Dr. Peate for the purchase by the Company of certain assets". At this second meeting the agreement between Dr. Peate and Raleigh was sealed, as was an agreement between Raleigh, Dr. Peate and Westbank. The central feature of the agreement between Raleigh and Dr. Peate was that Dr. Peate should serve the company "as Medical Practitioner in the business carried on by the Company" at a salary of £1000 per annum or other agreed sum and in so doing should obey the lawful orders of the directors. Provision was made for sick leave, holidays and overseas visits. It is desirable to quote in extenso several of the clauses which the agreement contains:

- "3. During the period of his employment hereunder the Doctor shall
- (a) Observe and conform to all the laws and customs of the medical profession.
  - (b) Fulfil and obey all the lawful directions and orders of the Directors of the Company from time to time and not at any

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time except in case of illness or other unavoidable cause absent himself from the service of the Company without the previous consent of the Directors of the Company.

- (c) Not disclose (except to the Directors of the Company) any professional secrets or any information with respect to the Directors of the Company or his family patients practice or affairs in relation to the affairs of the Company or any directions given him by the Directors of the Company. 10

7. (a) The Doctor hereby covenants that he will as the agent of the Company or its nominee ensure that any person to whom the Doctor renders medical or surgical treatments contracts whether orally or otherwise with the Company or its nominee that payment for such medical and surgical treatment is due to the Company or its nominee directly and even although the accounts for such services may be rendered by the Company or its nominee in the name of the Doctor AND IT IS EXPRESSLY AGREED that if the Doctor fails to carry out the terms of this covenant there shall become due and payable by the Doctor to the Company or its nominees as 20 30

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liquidated damages an amount equivalent to the amount of the usual fees for such treatment and in satisfaction of such liability for liquidated damages the Doctor covenants with the company that any moneys tendered or forwarded to him by any person in respect of such fees shall be the property of the company or its nominee. 10

(b) The Doctor hereby authorises the Company or its nominee during the term of his employment hereunder to render in his name accounts for all medical and surgical treatment carried out or given by him during his employment and covenants that he will at the request and expense of the Company or its nominee do and agree to permit to be done all such actions and things as may be necessary or required by the Company for the purpose of ensuring payment of any account to the Company or its nominee. 20

9. The said Doctor agrees that he will during the term of this agreement whenever required by the Board of Directors serve any Company or partnership carrying on a similar business to the Company as a medical practitioner during such time as the Board of Directors shall direct". 30

It is to be observed that clauses 7 and 9

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contemplate that Raleigh might nominate a "Company or partnership carrying on a similar business" which Dr. Peate should serve and there is no doubt that Westbank was the intended nominee. Before turning to Westbank, however, it is convenient to record a little more of the affairs of Raleigh. At the second meeting of the Directors on 1st September, after the resolutions relating to the agreements, Dr. Peate and his wife were appointed Directors and in due course Dr. Peate was appointed Governing Director, W. B. Phillips then resigned as governing Director and E. B. Phillips as Director. Raleigh, therefore, came under the control of Dr. Peate as governing Director. Mrs. Peate became the company's secretary. On 3rd September, Raleigh accepted Dr. Peate's offer to make available his surgery at 230 Main Street, Cessnock, on terms that Dr. Peate should get any rent in sub-letting. This was a surgery used by Drs. Peate, Atkinson and Spence and the point of the arrangement was that Drs. Atkinson and Spence - or rather their family companies - should pay Dr. Peate rent for the premises. On 28th February, 1958, W.B. Phillips, as the trustee of two settlements each of £1 made by Dr. Peate's brother, R. L. Peate, on 21st November, 1957 - one in favour of Dr. Peate's infant son John and the other in favour of his infant daughter - Carolyn - applied for and was allotted fifteen "C" Class Shares and fifteen "D" Class Shares of £1 each in Raleigh. It is doubtful whether these shares were paid for.

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At this point it is necessary to go back to Westbank.

Westbank, incorporated on 29th June, 1956, had among the multiplicity of its objects one (9) as follows:

"To carry on the business of and dealers in anatomical, orthopaedic, radiological, scientific, chemical, photographic and surgical appliances of all kinds and the business of chemists, druggists and providers of medicinal (sic.) surgical and hospital facilities and services of all kinds whether alone or in conjunction with any other person firm or corporation".

Objects 50 and 51 cover inter alia the establishment of a superannuation fund. The subscribers were E. B. Phillips and G. C. Davies who is a member of the firm of accountants, D. E. Rollason, Davies & Co., who were associated with the solicitors in advising the doctors. W. B. Phillips and E. B. Phillips were the first directors but on 18th August the eight doctors became directors of the company and on 20th August W. B. Phillips and E. B. Phillips resigned as Directors. As the minutes record, their resignations were accepted with regret. On 31st August, the two original shares were transferred, one to Raleigh and one to W. Gladstone Pty. Limited, Dr. Wiles' family company. On 1st September, Westbank entered into separate agreements with Raleigh and the

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seven other doctors' family companies, to each of which the doctor concerned was a party. The substance of the agreement between Westbank, Raleigh and Dr. Peate was that Raleigh would for a fee arrange with Dr. Peate to serve Westbank - which was aptly called "the operating Company" - as a medical practitioner. It was agreed that the fees should be fixed as follows:- "From the gross income of the Operating Company there shall be deducted all the expenses incurred in conducting the Operating Company's business including any contributions to a Provident Fund to be established by the Operating Company. Fourteen per centum of the balance of the gross income after deducting the sums as aforesaid from the gross income shall be paid to the Company". Clause 6 of the agreement was the same mutatis mutandis as Clause 7 of the agreement between Raleigh and Dr. Peate which I have already quoted.

Here I may interpolate that I think it is quite clear that all the agreements and resolutions to which I have referred were drafted in advance to give effect to what had been agreed upon by the Doctors concerned. Everything had been arranged so that the change-over from firm to company could take place as it did on 1st September. It is also convenient here to say a little more about the service fees to be paid by Westbank to the doctors' family companies. The percentage set out in clause 2 (i.e. 14 per cent in the case of Raleigh)

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represented the proportion in which the doctor concerned had shared in the profits of the partnership and during the years 1957 and 1958 Raleigh did in fact receive 14 per cent of what was distributed as service fees. As time went on there were changes: thus, in the course of the year 1959 Dr. Short withdrew and his family company, G. Dalton Pty. Limited, received only 4.235 per cent of the service fees instead of the full year's share (12.50) per cent so that the other companies received a correspondingly larger percentage and Raleigh's share was in fact 14.993 per cent for that year. In 1960 there were more substantial changes: W. Gladstone Pty. Limited (Dr. Wiles' family company) that year received only 5.022 per cent instead of its original share of 14 per cent and Dr. Pitsch and Dr. Cook, who had previously been paid fixed salaries deductible before service fees were fixed, began to share in service fees. For the year 1960 Raleigh's share of the service fees distributed was 15.815 per cent.

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Returning now to Westbank's doings, at the meeting of directors on 1st September, one resolution that was adopted was as follows:-

"REGISTRATION OF FIRM NAMES"

It was resolved that the Company make application to register:

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- (1) 'D. L. Peate, K. J. J. Atkinson,  
W. A. Spence'
- (2) 'C. A. Wiles, B. Short, J.A.L. Allen'



(3) 'L. D. Bertinshaw, D. W. Lawson'

as business names under the provisions of  
the Business Names Act 1934 and further that  
the Company's Solicitors be instructed to  
complete the necessary formalities".

The two groups of three and the one group of two  
here referred to were the doctors who had practiced 10  
together as partners and who it was intended should  
do so as the employers of Westbank. I will return  
to this when I come to deal with accounts for fees.  
On 10th September the following resolutions relat-  
ing to the rendering of accounts was adopted:-

"RESOLVED that the Company use the provisions  
of the Agreements with Associated Companies  
when rendering accounts or making claims upon  
medical funds or public departments or like  
institutions if this course is more expedit- 20  
ious than rendering the accounts or making  
the claims directly in the Company name".

At the same meeting applications for shares by  
each of the doctors' family companies were received  
and it was resolved to issue 198 shares of £1 each.  
The number applied for and allotted to each com-  
pany varied from twenty-two to twenty-seven and  
Raleigh took twenty-seven shares in addition to the  
one share that it obtained by transfer. On 15th  
May, 1957, Westbank established a superannuation 30  
fund with W. B. Phillips and D. E. Rollason as  
trustees for the benefit of employees of Westbank  
itself and those of the doctors family companies

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and their dependants. On the same day Raleigh decided to pay £400 into the superannuation fund - £200 for Dr. Peate and £200 for his wife. It is not, I think, necessary to trace the various contributions made to the superannuation fund, which by 30th June, 1960, had a capital of about £14,700, of which the trustee, in the exercise of their investment powers, had lent sums to Westbank and to the doctor's family companies. It is apparent that at some point it was realised that in providing in the agreements between Westbank and the doctors' family companies that the service fees should absorb the whole of gross income less working expenses, there would be nothing left for dividends to the doctors' family companies and so, without any formal agreement, it was arranged that service fees should be fixed annually at a figure which would leave £5000 for the payment of taxes and for dividends. These altered arrangements made it possible for Westbank to pay dividends as follows: £3750 on 28th April, 1958, and 31st July, 1958; £1425 on 19th November, 1958 £2525 on 31st July, 1959; and £2525 on 1st January, 1960. Raleigh received its due proportion of these dividends and from time to time itself declared and paid dividends, partly in cash and partly by bonus shares.

Some evidence was given about the way in which the practice was carried on after 1st September, 1956; at some time a plate with the name A.E. Westbank Pty. Limited was added to the

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doctors' plates at the surgeries and, after what it appears to have been a considerable time, notices that the doctors were employees of the company to whom fees were payable were exhibited at the surgery in Main Street. About the same time Dr. Peate and Miss O'Connor, who was an employee at the Main Street surgery, began telling some of the patients who came to the surgery that the doctors were employees of Westbank and fees were payable to the Company. Accounts for medical services were in the first instance sent out from the Main Street surgery, as had been done previously, in the names - D. L. Peate, K. Atkinson, W. A. Spence - which it will be observed is not exactly the same as one of the business names registered by Westbank, but this, I think, was the result of inadvertence. Receipts were similarly headed. Considerably later on the name A. E. Westbank Pty. Limited was stamped on such accounts and receipts. I am inclined to think that immediately after the incorporation of Westbank the change was in general glossed over but later on and at a time I cannot fix there was a change of policy and the notices to which I have referred were put up, in the Main Street surgery at any rate, and some intimation of the change was made to patients. I have the evidence of Dr. Peate and Miss O'Connor about this, which I am prepared to accept as a not very exact statement of what they said, but I have no evidence about what was done by

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other doctors at the Main Street surgery and I have no evidence at all about what was done at surgeries other than at Main Street, Cessnock. Over the period with which I am concerned, not only did Commonwealth departments and authorities, State departments and authorities, municipal clinics, hospitals, union funds and insurance companies (whose payments made up half of the income of the practice) pay by cheques payable to the doctors or one of them personally, but most of the patients did so too. It seems that some patients at least were troubled about obtaining deductions for fees paid for medical services as provided by S. 82F of the Income Tax and Social Services Contribution Assessment Act, which is in terms confined to payments to a legally qualified medical practitioner, but such concern as there was was in some measure at least allayed by showing the patients an unidentified newspaper cutting stating that the Federal Government would ensure that medical expenses paid to doctor companies were allowed as taxation deductions and that, if necessary, legislation would be introduced to bring this about. There is no doubt, however that under the section as it stood and still stands medical fees payable to a company such as Westbank were and are not deductible. It is clear that all fees paid either in cash or by cheque, whoever was the payee, were paid into Westbank's banking account. Where

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necessary the doctors endorsed cheques to enable this to be done.

There are a few matters of minor importance that I should add to complete the statement of facts. First, for her service as secretary of Raleigh, Dr. Peate's wife was paid an agreed salary of £1200 per year, later increased to £1300. 10

Secondly, during the years with which I am concerned, Westbank itself had no telephone number but each doctor retained his own number. Thirdly, it seems that Westbank did demand payment of fees and did sue a number of persons for medical services rendered by it and in some cases obtained judgment upon default summonses. Fourthly, Westbank did arrange employer's indemnity policies covering its employees. Fifthly, Westbank introduced an up to date system of bookkeeping and constituted itself a 20

group employer for the purpose of the collection of income tax by instalments deducted from wages. Sixthly, although Westbank originally had practically no assets apart from debts owing to it by the doctor's family companies and sundry debtors, later on it did acquire some property for use as surgeries. Seventhly some patients knew and some patients did not know of the change that had been made. It appears that some of the foregoing facts were proved to forestall a submission, which was not 30

in the event made, that Westbank was nothing but a facade behind which things went on exactly the same as previously.

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It is now convenient to refer to the tax-  
ation returns that were made by Westbank, Raleigh  
and Dr. Peate and the assessments that were issued.  
Up to the year 1957 Dr. Peate made returns showing  
as his professional income a share in the medical  
partnership of which he was a member, doing so on a  
cash basis. In 1957, his return showed such an 10  
item for the period to 31st August, and for the  
period thereafter a salary from Raleigh of £953  
with tax deductions of £107. It also showed  
losses on the sale of his library, furniture, car,  
etc. to Raleigh on 31st August. With a minor  
adjustment, tax was assessed upon the nett income  
as returned for 1957. In its return of income for  
the year 1957, Raleigh showed £4100 approximately  
as income from fees and claimed as deductions from  
its income consisting of the service fee and 20  
claimed and paid by Westbank salaries of £953 paid  
to Dr. Peate and to his wife and £400 contributed to  
Westbank's superannuation fund for Dr. Peate and his  
wife. The Commissioner disallowed the superannuat-  
ion fund payments and £503 of the salary paid to Mrs.  
Peate. Raleigh objected and in 1960 its objections  
were allowed. Westbank's return for 1957, showing  
about £43,000 for fees and a deduction of about  
£29,400 for service fees, was also accepted except  
for a deduction of £1000 contributed to the super- 30  
annuation fund. Objection to this disallowance was  
allowed in 1960. In 1958 Dr. Peate's return showed  
as his only professional income a salary of £1560

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paid by Raleigh, which was described as carrying on the industry of "medical services". The Commissioner did not assess tax upon this return. Instead he went to Westbank's return, made on a credit basis, and starting with the nett income as returned, £5013, he added the superannuation payments, £1200, and service fees, £41,574, to arrive at a nett income of 10 £47,787 and then treated 14 per cent of this, namely £6690, as Dr. Peate's income. The basis of this assessment was that the partnership of the doctors continued and that Westbank and Raleigh were but its agents. The Commissioner, in a letter of 25th August 1959, explained the basis of the assessment saying it was based "on the understanding that services to patients are personally rendered by members of the partnership and that the accounts for services rendered and acknowledgements of fees received 20 are issued in the firm's name. In these circumstances, any amounts received by the company are considered to represent the application of income after it has been derived by the partnership". In assessing Dr. Peate, the Commissioner dealt with deductions that were not covered by starting from Westbank's nett income - which, it may be observed in passing, was arrived at after deducting payments to outside doctors - in the following terms:-

"Consistently with this adjustment the amount of 30 £5820 shown in the return of W. Raleigh Pty. Ltd. as fees received has been excluded, the expenses claimed in the return of W. Raleigh Pty. Ltd. adjusted as under have been allowed as deductions and the amount of £1560 shown in your own return as salary from W. Raleigh Pty. Limited has been excluded in ascertaining your assessable income.

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Total deductions claimed  
in return of W. Raleigh  
Pty. Ltd.

£ 4767

Less:

Private proportion of  
car expenses

£45

Private proportion of  
car depreciation

33

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Superannuation contri-  
butions

400

Remuneration of Dr. Peate 1560

" " Mrs. Peate  
reduced from £1200 to  
£540

660

Cost of signboard

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2701

Deductions allowed

£ 2066

The effect of this was that Raleigh was wholly dis- 20  
regarded and some of the deductions that had been  
claimed were attributed to Dr. Peate himself, and  
Westbank was disregarded except to the extent that  
in starting from its nett income Dr. Peate was  
given the advantage of a proportion of the moneys  
which it had spent and which it claimed as deduct-  
ions. In the result Dr. Peate was assessed to tax  
on a taxable income of £4298 instead of his return  
of taxable income of £1232. Similar assessments  
were made for the years 1959 and 1960 and, although 30  
the figures involved were different, it is not  
necessary to examine these differences, as the bases  
of both returns and assessments were the same as I  
have explained for the year 1958. In 1959 Dr.  
Peate's taxable income as returned was £1399 and as  
assessed £3243. In 1960 Dr. Peate's taxable income

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as returned was £1735 and as assessed £3574. Dr. Peate objected to these three assessments and upon his objections being disallowed he requested they be treated as appeals to this Court.

At the hearing of these appeals a good deal of attention was given to certain provisions of the Medical Practitioners Act of New South Wales and, although ultimately I do not think that my conclusions upon the questions that were argued are vital to my decision upon Dr. Peate's objections, I do think that some reference to the Act is necessary. The covenants by Dr. Peate to allow Raleigh and Westbank to use his name for the collection of fees and the resolution of the 10th September 1956 are, of course, to be explained by ss. 35, 36 and 41B which allow a registered person to sue and forbid a person not registered from suing for charges for medical or surgical services and which no doubt engendered what I consider was a well-based apprehension that no matter what was agreed between the companies, doctors and the patients, neither Raleigh nor Westbank could sue for medical services. Mr. Jenkins, relying upon the Pharmaceutical Society v. The London and Provincial Supply Association Limited (1880) 5 App. Cas 857 and Law Society v. United Service Bureau Limited 1934 1 K.B. 343, argued that "person" in the Act wherever it is used means a natural person and not a corporation and that the Act is, therefore, silent about corporations suing for medical services.

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It is clear that in some sections the word "person" means a natural person only (e.g. those relating to registration and qualification therefor) but it is just as clear that in some sections it means corporations as well as natural persons (e.g. ss. 43, 45 and 46). The sections relating to suing for medical services, therefore, may or may not apply to corporations and the conclusion I have reached is that the Act means that only registered persons can sue for fees. The language of ss. 35 and 41B, taken together, not only warrants this conclusion, but indicates it, and I see no reason to cut down the meaning of a word apt to describe a corporation as well as a natural person when to do so would, I think, be contrary to the policy of the Act and would allow an unregistered person, by the simple device of forming a company and becoming its servant, to enforce payment for medical services. Cases decided upon different statutes are of little assistance in construing this Act which, as I have said, does clearly in some places use "person" to cover a corporation as well as a natural person.

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The next question is whether there has been any departure from the Act in the sending out of accounts and receipts in the name of Westbank and by publishing both in writing and by oral statement that Westbank is carrying on a medical practice. The oral communications that I refer to are those by Dr. Peate and Miss O'Connor to patients and the writings are the notices exhibited

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in the surgery at Main Street. One notice, for instance, states:- "This practice is run as a Medical Services Company. The Doctor is really an employee of the Company and you pay the company for his services. That is why the receipt has A. E. Westbank Pty. Limited on it". It was contended for the Commissioner that ss. 27(2), 42(2) and 43(2) warrant an affirmative answer to these questions. Section 27(2) makes it infamous conduct in a professional sense for a registered person knowingly to enable an unregistered person to engage in professional practice "as if that person were duly qualified and registered". I do not think this provision has any application here. Dr. Peate did not hold Westbank out as a duly qualified registered person. Section 42(2) forbids an unregistered person from advertising himself to be willing to practise medicine or surgery or to perform any medical or surgical services. It seems to me it might well be said that Westbank did advertise that it would perform medical and surgical services, but, after some hesitation, I have come to the conclusion that s. 42 is one of the sections of the Act that relates only to natural persons. Sub-section (1) clearly does; so does sub-s. (2)(b). Sub-section (3) is a slight indication that sub-s. (2)(a) is similarly limited and the use of the word "himself" in that part of the sub-section supports this view. Upon the whole, therefore, because Westbank is a company and

not a natural person I do not think that any breach of s. 42(2) (a) was involved in its advertising that it would perform medical or surgical services through its employee doctors. Section 43(2) provides that every person who exhibits or publishes any placard, billhead, receipt form or document used in connection with any business practice or profession whereby any person advertises or holds himself out contrary to the provisions of s. 42 shall be guilty of an offence and publication by spoken words is stated to be a forbidden publication. Had Westbank committed an offence under s. 42(2) I would have thought Dr. Peate and Miss O'Connor would probably have committed offences under s. 43(2) but, having come to the conclusion that there was no offence under s. 42(2), there can, I think, be no offences under s. 43(2). It was also argued that there were breaches of s. 41A but I am not prepared to accept this argument. My conclusion is, therefore, that the Act did no more than prevent both Raleigh and Westbank from suing for fees for medical services. Whether the insistence when it occurred that fees were payable to Westbank and not to the doctor personally would prevent the formation of any contract upon which the doctors could sue is something about which I express no opinion.

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I am now in a position to consider Dr. Peate's objections to the assessments that were made and these in substance amount to this: that his only

income - and the only income to which he was entitled under the arrangements outlined - was his salary from Raleigh, despite the fact that his labours as a professional man produced substantially more, and that the arrangements made and each step which was taken leading to the foregoing result were not only real and legally effective but were not to any extent void against the Commissioner or in these proceedings by reason of s. 260. 10

For the Commissioner the assessments were supported in the first place on the footing that all the fees that were received by the doctors or by Westbank were in fact payments for services performed by the doctors and were in law the income of the doctors and all that was done by the doctors in relation to fees was to observe the covenant at the end of clause 6 (a) of the Westbank agreement and treat moneys received by them as fees as the property of Westbank. So it was argued that all the fees that were paid constituted income "derived by the doctors" for the purposes of s.17 of the Act. In support of this contention it was emphasized that only doctors could earn some of the fees that were paid and that only doctors could sue for any of the fees that become payable. Moreover, some reliance was placed upon the facts that all governmental and institutional fees were paid and treat moneys received by them as fees as the property of Westbank. So it was argued that all the fees that were paid constituted income "derived by the doctors" for the purposes of s.17 of the Act. In support of this contention it was emphasized that only doctors could earn some of the fees that were paid and that only doctors could sue for any of the fees that become payable. Moreover, some reliance was placed upon the facts that all governmental and institutional fees were paid by cheques payable to the doctors and that most of the private fees that were paid by cheque were paid by cheques in which a doctor and not the company 20 30

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was named as payee. This argument, which leaves  
s. 260 out of account, is formidable and if it  
stood alone would require very serious consider-  
ation, but there are substantial difficulties in  
the way of accepting it. For instance I find it  
difficult to regard every payment of fees that was  
made to Westbank as income of the doctors, and, as  
an illustration, I take the case of a patient who  
paid fees to Westbank because he accepted both the  
statement that the services for which he had to pay  
were rendered by the doctor, not on his own account  
but as the servant of Westbank, and the position  
that fees were payable not to the doctor but to  
Westbank. It may be that this happened but rarely  
but it did, I think, happen sometimes. Further-  
more, it would, taking the documents at their face  
value, be difficult to infer a partnership between  
the doctors although it is clear that none of the  
doctors was practising on his own. However, I see  
no point in attempting to decide this matter  
independently of s. 260 if the case falls within  
its scope, for in that event that section, without  
the Commissioner or Court "invoking" its operation,  
is part of the law that has to be applied and, so  
far as the Commissioner is concerned and in these  
proceedings, its operation would require some  
things that were done to be disregarded notwith-  
standing that for other purposes their legal  
effect would remain unimpaired. It is desirable,  
therefore, to decide whether s. 260 applies and,  
if it does, with what effect.

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In view of recent decisions, it is unnecessary for me to re-state the meaning and effect of this section. Its application depends upon whether there is here an arrangement having the purpose or effect of avoiding a liability for tax that would otherwise fall upon Dr. Peate. The facts stated indicate this purpose and this effect, for despite other reasons that were advanced by Dr. Peate for so much of what was done as consisted in putting Westbank in the place of the partnership, when all that was done is looked at and in particular when the role of Raleigh is examined, there is a strong prima facie case that the purpose and effect of what was done was to obtain increased tax deductions from assessable income and to divide what would otherwise have been Dr. Peate's taxable income between himself, his wife and his children. For Dr. Peate it was argued, however, that this conclusion should not be drawn. First, taking the language of Lord Denning in Newton's Case 1958 A.C. 450, at p. 466, it was contended that it cannot be predicated by looking at what was done that the arrangement was to avoid tax and that it was explicable "by reference to ordinary business or family dealing". To arrange for the formation of a company in which all the shares would be held in trust for two children and then that Dr. Peate should transfer his professional practice, his books and his instruments to that company and become its servant in the practice of his profession upon

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the terms of the agreement to which I have already referred is not, to my mind, explicable by reference either to ordinary business or ordinary family dealings even when due weight is given to the circumstance that Dr. Peate, upon his becoming governing director, really had control of the company.

There is little similarity between this case and Purcell's Case 29 C.L.R. 464 where, a man having declared that he held certain property in trust for his wife and daughter, it was held, rightly in the view of the Privy Council, that the declaration was not avoided by s. 260. Nor do I think that the War Assets Case 91 C.L.R. 53 shows that what took place here was an ordinary business transaction.

Lest, however, it should be thought from my emphasis upon the part played by Raleigh that it is only the interposing of Raleigh between Dr. Peate and Westbank that prevents the arrangement as a whole being regarded as an ordinary business transaction, I should say that this is not my view. It is true that I do regard the incorporation of Raleigh and the seven other doctors' family companies as colouring everything that was done here but, even without this, I would have concluded that it was not an ordinary business transaction for a body of professional men who are entitled to sue for fees for medical services to transfer their practices, their libraries and their instruments to a company which could not sue for fees and to become that company's servants in the conduct of their profession,

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particularly in the circumstance that, to the extent to which patients paid fees to the company, their expenditure was not deductible under s. 82F. What, outside a profession, might be regarded as an ordinary business transaction may, within a profession, have an altogether different appearance. In the second place, although in the face of the 10 decisions it could not be argued that s. 260 does not apply to future income, Mr. Jenkins did seek to limit its application to income derived from sources of income already in existence and it was pointed out that in cases such as Bell, Newton and Hancock when the arrangements were made the companies concerned had already in hand the funds from which the dividends that were treated as the income of the taxpayer were eventually paid. This submission is, I think, directly in conflict with 20 the recent decisions of this Court of Millard v. Federal Commissioner of Taxation (as yet unreported) and Cecil Bros. Pty. Ltd. v. Federal Commissioner of Taxation (1962-3) 36 A.L.J.R. 65. In the former case Taylor J. held that s. 260 applied when a bookmaker carried on his business as a paid servant of a Company he had formed and had returned his salary as his income. The decision was that the profits of the business gained after the introduction of the new order was the income of the bookmaker 30 himself. In this case s. 260 was applied to what became profits but what were at the time of the arrangement moneys in the pockets of punters.

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In the later case Owen J. applied s. 260 to an arrangement for future business whereby the profits of the taxpayer were to be reduced by interposing between it and the supplier of goods another company which charged the taxpayer more than the supplier's price. From the judgments it does not seem that the point taken before me was taken in either case but, independently altogether of the authority in these cases, I do not regard it as a good argument and consider that s. 260 can apply to prospective income from future personal exertion as well as to prospective income from property. The language in which (a), (b), (c) and (d) of s. 260 is expressed affords no support for the appellant's argument. In Newton's case, at p.464, their Lordships, in disposing of an argument that the avoidance with which s. 260 is concerned is nothing beyond the displacement of an accrued liability, said:- "Their Lordships cannot accept this submission. They are clearly of opinion that the word "avoid" is used in its ordinary sense - in the sense in which a person is said to avoid something which is about to happen to him. He takes steps to get out of the way of it. It is this meaning of "avoid" which gives the clue to the meaning of "liability imposed". To "avoid a liability imposed" on you means to take steps to get out of the reach of a liability which is about to fall on you. If the submission of Sir Garfield Barwick were accepted, it would deprive the words

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of any effect: for no one can displace a liability to tax which has already accrued due, or in respect of income which has already been derived". It appears to me that in 1956 Dr. Peate and the other doctors did what they did to get out of the way of taxation which was in prospect if they were to carry on their professional practice in partnership as they had theretofore and that this, in the circumstances stated, is sufficient to meet the test propounded by their Lordships. I conclude, therefore, that s. 260 applies. 10

The next question is how much of the arrangement and what was done to carry it out is void against the Commissioner in assessing Dr. Peate and in these proceedings. It seems to me that it was the making of the agreements with Westbank and the making of Dr. Peate's agreement with Raleigh which effectuated the tax-avoiding purpose with regard to Dr. Peate. These agreements must, therefore, be disregarded. 20

What is left then is a group of doctors practising together but without any formal agreement of partnership, using Westbank to receive all fees paid, to provide services for the group, to pay group expenses and to make distributions of what remained in agreed proportions and using their family companies to receive those distributions and to pay the individual expenses of practice. On this basis the assessable income of the doctors as a group was the total of gross fees earned. 30

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In assessing Dr. Peate the Commissioner has rightly given him the advantage of the group expenses paid by Westbank but has excluded from these expenses the contributions made by Westbank to its superannuation fund for the benefit of employees. In so far as these payments relate to employees and dependants of employees - the doctors not being employees - I see no reason why these payments should not be allowable deductions under s. 66 of the Act in the same way as other expenses of the practice paid on behalf of the doctors as a group by Westbank. I think, therefore, the commissioner was wrong in disallowing such superannuation payments made by Westbank to its staff before calculating Dr. Peate's income by reference to Westbank's figures.

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On the basis that the agreements to which I have referred are void as against the Commissioner, the calculation of Dr. Peate's income for the years with which I am concerned is not an altogether easy matter and I am not at all sure that I understood the refinements of the method adopted by the Commissioner which, as I followed it, was for the year 1958 to treat Dr. Peate as entitled to 14 percent of what Westbank received less what it paid as expenses, and for the later years to take separately each period after a change in the identity of those receiving service fees and calculate Dr. Peate's income for that period by obtaining the proportion of service fees Raleigh received during the period

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Reasons for judgment  
of his Honour Mr.  
Justice Menzies

Reasons for judgment  
of his Honour Mr.  
Justice Menzies

and applying it to Westbank's receipts less expenditure for the same period. I agree with the Commissioner that the service fees that were paid by Westbank do provide the key to the proportions in which each doctor became entitled to share in what was left after expenses paid by Westbank had been deducted and that no question about dividends arises. What ought to have been done was, I think, to take the proportion which amounts paid as service fees to Raleigh each year bore to total service fees paid in that year as the proportion in which Dr. Peate was entitled to share in the total fees less expenses paid by Westbank of that year. The data for obtaining this proportion appears on Exhibit BB and according to the calculations there shown Dr. Peate was entitled to 14 per cent in 1958, 14.993 per cent in 1959 and 15.815 per cent in 1960. From the figures so reached the deduction of expenses of practice which the Commissioner transferred from Raleigh to Dr. Peate was correctly allowed. Here, however, contributions to the Westbank superannuation fund for the benefit of Dr. Peate and Mrs. Peate were rightly disallowed nor do I think that the Commissioner made any error in allowing only a proportion of the sums paid to Mrs. Peate for her services.

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It was argued for Dr. Peate that if the appeal on the main point failed, as it has, at least his assessments should be on a cash basis rather than on the credit basis derived from Westbank's

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Reasons for judgment  
of his Honour Mr.  
Justice Menzies

figures, and statements were tendered to show his income on the basis of fees actually paid. It seems to me that in assessing as he did on a credit basis the Commissioner followed the only course that was open to him in the circumstances and I do not propose to direct him to re-assess on a cash basis. My order will not, however, preclude him from doing so should he see fit to do so. On the figures before me it would seem that were the assessments to be made on a cash basis, Dr. Peate would be appreciably better off for the year 1958 but in very much the same position for the years 1959 and 1960. 10

The order that I propose to make is to remit the assessments to the Commissioner for amendment by (1) including in the deductions allowed to arrive at the nett income of Westbank for the years 1958, 1959 and 1960 payments to the superannuation fund made by it for the benefit of its employees and their dependants and (2) treating the taxpayer as entitled to the difference between the amounts paid to or credited by Westbank as fees and the amounts paid to or credited by expenses of the medical practice in which such fees were earned in the following proportions - 14 per cent, 14.993 per cent and 15.815 per cent for the years 1958, 1959 and 1960 respectively. The appellant, having substantially failed, must pay the costs of the appeals. 20 30

Reasons for judgment  
of his Honour Mr.  
Justice Menzies

IN THE HIGH COURT OF AUSTRALIA } Court Book No.  
NEW SOUTH WALES REGISTRY } 28 of 1960

IN THE MATTER of the  
Income Tax and Social Ser-  
vices Contribution Assess-  
ment Act 1936-1957.

AND IN THE MATTER of an  
appeal thereunder by  
DESMOND LEES PEATE against 10  
an assessment to income tax  
and social services con-  
tribution based upon income  
derived during the year  
ended the 30th day of June  
1958.

BETWEEN

DESMOND LEES PEATE

Appellant

AND

THE COMMISSIONER OF TAX-  
ATION OF THE COMMONWEALTH  
OF AUSTRALIA

20

Respondent

BEFORE HIS HONOUR MR. JUSTICE MENZIES

MONDAY, THE THIRD DAY OF DECEMBER 1962

THIS APPEAL which was instituted by Notice of  
Objection dated the 24th day of September 1959  
forwarded to the New South Wales Registry of this  
Court on the 6th day of December 1960 coming on for  
hearing before this Court at Sydney on the 4th, 5th, 30  
6th, 7th and 10th days of September 1962 WHEREUPON  
AND UPON READING the said Notice of Objection and  
the exhibits put in on behalf of the Appellant and  
marked "A" to "I" inclusive, "K" to "S" inclusive,  
"Sl", "T", "T1", "U", "U1", "V" to "Z" inclusive,  
"AA" and "BB" AND UPON HEARING the oral evidence

Order in Appeal re  
Assessment for year  
ended 30th June 1958  
(Court Book No. 28  
of 1960)

Order in Appeal re  
Assessment for year  
ended 30th June 1958  
(Court Book No. 28  
of 1960)

of Kenneth Douglas Martyn, William Alfred Stuart  
Barnes, Noreen Agnes O'Connor, Ronald Douglas  
Faraday, Norman Leslie Emery, Grafton Sinclair  
Munro and Desmond Lees Peate called on behalf of  
the Appellant AND UPON READING the exhibits put 10  
in on behalf of the Respondent and marked 1, 2 and  
3 respectively AND UPON HEARING the oral evidence  
of Frederick James Hayes, Gabriel Jabour, Victor  
Edward Harris, Ruth McCord, Alexander Buchanan and  
Alan Frederick Watson called on behalf of the  
Respondent AND UPON HEARING Mr. Jenkins of Queen's  
Counsel and Mr. Murphy of Counsel for the Appellant  
and Mr. Byers of Queen's Counsel and Mr. Gibson  
of Counsel for the Respondent THIS COURT DID ORDER  
on the said 10th day of September 1962 that this 20  
appeal should stand for judgment and the same stand-  
ing for judgment this day at Sydney accordingly  
THIS COURT DOETH ORDER that the Appellant's assess-  
ment for the year ended the 30th day of June 1958  
be remitted to the Respondent for amendment by  
(1) including in the deductions allowed to arrive  
at the nett income of A. E. Westbank Pty. Limited  
for the year ended 30th day of June 1958 payments  
to the superannuation fund made by it for the benefit  
of its employees and their dependants and (2) treat- 30  
ing the Appellant as entitled to the difference  
between the amounts paid to or credited to A. E.  
Westbank Pty. Limited as fees and the amounts paid  
by it on account of the expenses of the medical

Order in Appeal re  
Assessment for year  
ended 30th June 1958  
(Court Book No. 28  
of 1960)



Order in Appeal re  
Assessment for year  
ended 30th June 1958  
(Court Book No. 28  
of 1960)

practice in which such fees were earned in the pro-  
portion of 14 per cent for the year ended the 30th  
day of June 1958 AND THIS COURT DOTH FURTHER ORDER  
that this Appeal be otherwise dismissed AND THIS  
COURT DOTH FURTHER ORDER that it be referred to the 10  
proper Officer of this Court to tax and certify the  
costs of the Respondent of this Appeal and that  
such costs when so taxed and certified be paid by  
the Appellant to the Respondent or to his Solicitor  
Harold Edward Renfree, Crown Solicitor for the  
Commonwealth.

By the Court

A.N. GAMBLE

District Registrar.

Order in Appeal re  
Assessment for year  
ended 30th June 1958  
(Court Book No. 28  
of 1960)

IN THE HIGH COURT OF AUSTRALIA } Court Book No.  
NEW SOUTH WALES REGISTRY } 27 of 1962

IN THE MATTER of the  
Income Tax and Social  
Services Contribution  
Assessment Act 1936-1957

AND IN THE MATTER of an  
appeal thereunder by  
DESMOND LEES PEATE against  
an assessment to income tax  
and social services con- 10  
tribution based upon income  
derived during the year  
ended the 30th day of June  
1959

BETWEEN

DESMOND LEES PEATE

Appellant

AND

THE COMMISSIONER OF TAX-  
ATION OF THE COMMONWEALTH  
OF AUSTRALIA

20

Respondent

BEFORE HIS HONOUR MR. JUSTICE MENZIES

MONDAY, THE THIRD DAY OF DECEMBER 1962

THIS APPEAL which was instituted by Notice of  
Objection dated the 14th day of March 1961 forwarded  
to the New South Wales Registry of this Court on the  
3rd day of September 1962 coming on for hearing  
before this Court at SYDNEY on the 4th, 5th, 6th, 30  
7th and 10th days of September 1962 WHEREUPON AND  
UPON READING the said Notice of Objection and the  
exhibits put in on behalf of the Appellant and marked  
"A" to "I" inclusive, "K" to "S" inclusive, "SI",  
"T", "TI", "U", "UI", "V" to "Z" inclusive, "AA" and  
"BB" AND UPON HEARING the oral evidence of

Order in Appeal re  
Assessment for year  
ended 30th June 1959  
(Court Book No. 27  
of 1962)

Order in Appeal re  
Assessment for year  
ended 30th June 1959  
(Court Book No. 27  
of 1962)

Kenneth Douglas Martyn, William Alfred Stuart  
Barnes, Noreen Agnes O'Connor, Ronald Douglas  
Faraday, Norman Leslie Emery, Grafton Sinclair  
Munro and Desmond Lees Peate called on behalf of  
the Appellant AND UPON READING the exhibits put  
in on behalf of the Respondent and marked 1, 2 and  
3 respectively AND UPON HEARING the oral evidence  
of Frederick James Hayes, Gabriel Jabour, Victor  
Edward Harris, Ruth McCord, Alexander Buchanan and  
Alan Frederick Watson called on behalf of the  
Respondent AND UPON HEARING Mr. Jenkins of Queen's  
Counsel and Mr. Murphy of Counsel for the Appellant  
and Mr. Byers of Queen's Counsel and Mr. Gibson of  
Counsel for the Respondent THIS COURT DID ORDER  
on the said 10th day of September 1962 that this  
appeal should stand for judgment and the same  
standing for judgment this day at Sydney accordingly  
THIS COURT DOTH ORDER that the Appellant's assess-  
ment for the year ended the 30th day of June 1959  
be remitted to the Respondent for amendment by  
(1) including in the deductions allowed to arrive  
at the nett income of A. E. Westbank Pty. Limited  
for the year ended 30th day of June 1959 payments  
to the superannuation fund made by it for the  
benefit of its employees and their dependants and  
(2) treating the Appellant as entitled to the  
difference between the amounts paid to or credited  
to A. E. Westbank Pty. Limited as fees and the  
amounts paid by it on account of the expenses of

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Order in Appeal re  
Assessment for year  
ended 30th June 1959  
(Court Book No. 27  
of 1962)

Order in Appeal re  
Assessment for year  
ended 30th June 1959  
(Court Book No. 27  
of 1962)

the medical practice in which such fees were earned  
in the proportion of 14.993 percent for the year  
ended the 30th day of June 1959 AND THIS COURT  
DOETH FURTHER ORDER that this Appeal be otherwise  
dismissed AND THIS COURT DOETH FURTHER ORDER that 10  
it be referred to the proper Officer of this Court  
to tax and certify the costs of the Respondent of  
this Appeal and that such costs when so taxed and  
certified be paid by the Appellant to the Respon-  
dent or to his Solicitor Harold Edward Renfree,  
Crown Solicitor for the Commonwealth.

By the Court

A.N. GAMBLE

District Registrar.

IN THE HIGH COURT OF AUSTRALIA } Court Book No.  
NEW SOUTH WALES REGISTRY } 28 of 1962

IN THE MATTER of the  
Income Tax and Social  
Services Contribution  
Assessment Act 1936-  
1959

AND IN THE MATTER of an  
appeal thereunder by  
DESMOND LEES PEATE against 10  
an assessment to income tax  
and social services con-  
tribution based upon income  
derived during the year  
ended the 30th day of June  
1960

BETWEEN

DESMOND LEES PEATE

Appellant

AND

THE COMMISSIONER OF TAX-  
ATION OF THE COMMONWEALTH  
OF AUSTRALIA

Respondent 20

BEFORE HIS HONOUR MR. JUSTICE MENZIES

MONDAY THE THIRD DAY OF DECEMBER 1962

THIS APPEAL which was instituted by Notice of  
Objection dated the 8th day of September 1961  
forwarded to the New South Wales Registry of this  
Court on the 3rd day of September 1962 coming on 30  
for hearing before this Court at Sydney on the 4th,  
5th, 6th, 7th and 10th days of September 1962  
WHEREUPON AND UPON READING the said Notice of  
Objection and the exhibits put in on behalf of the  
Appellant and marked "A" to "I" inclusive, "K" to  
"S" inclusive, "S1", "T", "T1", "U", "U1", "V" to

Order in Appeal re  
Assessment for year  
ended 30th June 1960  
(Court Book No. 28  
of 1962)

Order in Appeal re  
Assessment for year  
ended 30th June 1960  
(Court Book No. 28  
of 1962)

"Z" inclusive, "AA" and "BB" AND UPON HEARING the  
oral evidence of Kenneth Douglas Martyn, William  
Alfred Stuart Barnes, Noreen Agnes O'Connor, Ronald  
Douglas Faraday, Norman Leslie Emery, Grafton  
Sinclair Munro and Desmond Lees Peate called on 10  
behalf of the Appellant AND UPON READING the  
exhibits put in on behalf of the Respondent and  
marked 1, 2 and 3 respectively AND UPON HEARING  
the oral evidence of Frederick James Hayes, Gabriel  
Jabour, Victor Edward Harris, Ruth McCord, Alexander  
Buchanan and Alan Frederick Watson called on behalf  
of the Respondent AND UPON HEARING Mr. Jenkins  
of Queen's Counsel and Mr. Murphy of Counsel for  
the Appellant and Mr. Byers of Queen's Counsel and  
Mr. Gibson of Counsel for the Respondent THIS 20  
COURT DID ORDER on the said 10th day of September  
1962 that this appeal should stand for judgment  
and the same standing for judgment this day at  
Sydney accordingly THIS COURT DOETH ORDER that  
the Appellant's assessment for the year ended the  
30th day of June 1960 be remitted to the Respondent  
for amendment by (1) including in the deductions  
allowed to arrive at the nett income of A. E. West-  
bank Pty. Limited for the year ended 30th day of  
June 1960 payments to the superannuation fund made 30  
by it for the benefit of its employees and their  
dependants and (2) treating the Appellant as  
entitled to the difference between the amounts  
paid to or credited to A. E. Westbank Pty. Limited

Order in Appeal re  
Assessment for year  
ended 30th June 1960  
(Court Book No. 28  
of 1962)

Order in Appeal re  
Assessment for year  
ended 30th June 1960  
(Court Book No. 28  
of 1962)

as fees and the amounts paid by it on account of  
the expenses of the medical practice in which such  
fees were earned in the proportion of 15.815 per  
cent for the year ended the 30th day of June 1960

AND THIS COURT DOTH FURTHER ORDER that this Appeal 10  
be otherwise dismissed AND THIS COURT DOTH FURTHER  
ORDER that it be referred to the proper Officer of  
this Court to tax and certify the costs of the  
Respondent of this appeal and that such costs when  
so taxed and certified be paid by the Appellant to  
the Respondent or to his Solicitor Harold Edward  
Renfree, Crown Solicitor for the Commonwealth.

By the Court

A.N. GAMBLE

District Registrar

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IN THE HIGH COURT OF AUSTRALIA }  
NEW SOUTH WALES REGISTRY } No. 149 of 1962

ON APPEAL from a single Justice of the  
High Court of Australia

BETWEEN

DESMOND LEES PEATE

Appellant

AND

THE COMMISSIONER OF TAX-  
ATION OF THE COMMONWEALTH  
OF AUSTRALIA

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Respondent

NOTICE OF APPEAL

TAKE NOTICE that the abovenamed Appellant HEREBY  
APPEALS to the Full Court of the High Court of  
Australia from the judgment and order of His Honour  
Mr. Justice Menzies delivered and made on the Third  
day of December 1962 whereby His Honour dismissed  
with costs appeals by the Appellant in respect of  
income tax assessments for the years 1958, 1959 and  
1960 under the Income Tax and Social Services Con-  
tribution Assessment Act 1936 as amended AND

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FURTHER TAKE NOTICE that on the hearing of this  
Appeal the Appellant intends to rely upon the  
following amongst other grounds:

1. That His Honour was in error in dismissing  
the appeals.
2. That His Honour was in error in holding that  
Section 260 of the said Income Tax and Social



Notice of Appeal

Services Contribution Act applies in the circumstances of this case.

3. That as none of the moneys upon which the Respondent assessed the tax appealed against came into the hands of the Appellant in any direct or indirect way Section 260 of the said Income Tax and Social Services Contribution Act does not apply.
4. The Respondent did not show that moneys had come into the hands of the Appellant which the Respondent was entitled to treat as income derived by him. 10
5. The onus of showing that Section 260 applies is the onus of the Respondent and it was not discharged.

AND FURTHER TAKE NOTICE that the Appellant seeks an order upholding the said appeals with costs or such other order as to this Honourable Court may seem meet. 20

DATED this 18th day of December 1962.

R. B. Murphy

Counsel for the Appellant

This Notice of Appeal is filed by Messrs. Herbert Smith & W. E. Phillips of 35 Pitt Street, Sydney, Solicitors for the Appellant, Desmond Lees Peate.

TO The Registrar,  
High Court of Australia

AND TO The Respondent,  
The Commissioner of Taxation of  
the Commonwealth of Australia,  
and his Solicitor,  
The Commonwealth Crown Solicitor,  
119 Phillip Street,  
SYDNEY. 30

IN THE HIGH COURT OF AUSTRALIA }  
NEW SOUTH WALES REGISTRY } No. 149 of 1962

ON APPEAL from a single Justice of the  
High Court of Australia

BETWEEN

DESMOND LEES PEATE

Appellant

AND

THE COMMISSIONER OF TAX-  
ATION OF THE COMMONWEALTH  
OF AUSTRALIA

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Respondent

ON this 18th day of December One thousand nine  
hundred and sixty two ERNEST BERGE PHILLIPS of 35  
Pitt Street Sydney in the State of New South Wales,  
Solicitor, being duly sworn makes oath and says as  
follows:-

1. I am the Solicitor for the Appellant herein.
2. Pursuant to the provisions of Section 187 of  
the Income Tax and Social Services Contribution  
Assessment Act, 1936 as amended the Appellant  
requested the Respondent to treat his objections  
to income tax assessments for the years 1958, 1959  
and 1960 as appeals and to forward them to the High  
Court of Australia.
3. The necessary procedural steps were taken and  
the appeals came on for hearing before His Honour  
Mr. Justice Menzies who on the third day of December  
1962 dismissed the said appeals.
4. By virtue of the above facts an appeal lies  
from the judgment and order of His Honour

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Affidavit of Ernest  
Berge Phillips showing  
how Appeal lies

Affidavit of Ernest  
Berge Phillips showing  
how Appeal lies

Mr. Justice Menzies to the Full Court of the High  
Court of Australia without leave or special leave.

SWORN by the said Deponent )  
on the day and year first )  
abovementioned at Sydney )  
before me: )

E. Berge Phillips

S. Brigden

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A Justice of the Peace

IN THE HIGH COURT OF AUSTRALIA }  
NEW SOUTH WALES REGISTRY } No. 149 of 1962

ON APPEAL from a single Justice of the  
High Court of Australia

BETWEEN

DESMOND LEES PEATE

Appellant

AND

THE COMMISSIONER OF TAX-  
ATION OF THE COMMONWEALTH  
OF AUSTRALIA

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Respondent

BEFORE HIS HONOUR THE CHIEF JUSTICE  
SIR OWEN DIXON IN CHAMBERS

FRIDAY THE FIFTH DAY OF JULY 1963

UPON application made this day at Melbourne on  
behalf of the abovenamed Appellant DESMOND LEES  
PEATE and upon reading the consent of the  
Solicitor for the Appellant and the Respondent it  
is by consent ordered pursuant to Rule 23 of Order 20  
44 of the High Court Rules that:

1. Notice of Appeal dated the 18th day of  
December 1962 filed in the matter of Full Court No.  
149 of 1962 with respect to the Order of His  
Honour, Mr. Justice Menzies, delivered on the 3rd  
day of December 1962 in these proceedings in  
respect of the Appellant's Income Tax Assessments  
for the years 1958, 1959 and 1960 be treated as a  
regular Notice of Appeal in respect of each of the  
three matters in Original Jurisdiction of the High 30  
Court numbered in the New South Wales Registry  
Court Book Nos. 28 of 1960 and 27 and 28 of 1962.

Order of His Honour  
the Chief Justice

2. That the aforesaid three Appeals be set down for the sittings appointed to commence at Sydney on 23rd day of July 1963.

3. The said three Appeals be heard together.

4. For the purposes of the preparation of the transcript record of proceedings in the three Appeals a single transcript be prepared in respect of the aforesaid three matters.

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A.N. GAMBLE

District Registrar

PEATE

v.

THE COMMISSION OF TAXATION OF THE  
COMMONWEALTH OF AUSTRALIA

I agree with the judgment and reasons of  
Kitto J.

PEATE

v.

THE COMMISSIONER OF TAXATION OF THE  
COMMONWEALTH OF AUSTRALIA

The Court has before it three appeals against orders of Menzies J. made on the hearing of appeals against three assessments of income tax under the provisions of the Income Tax and Social Services Contribution Assessment Act, 1936 (C'th) as amended. The assessments related to the income derived by the appellant in the years ended 30th June 1958, 1959 and 1960 respectively. His Honour remitted the assessments to the Commissioner for amendment in certain minor respects and otherwise dismissed the appeals. 10

The contest between the parties relates to certain amounts of an income nature which, though the appellant did not in fact derive them, have nevertheless been treated in the assessments as part of his assessable income. The ground of their inclusion is that s. 260 of the Act applies to the facts of the case with the result that the appellant must be considered as having derived those amounts. The section declares void as against the Commissioner (inter alia) every "arrangement" made or entered into, orally or in writing, so far as it has or purports to have the purpose or effect of in any way, directly or indirectly, avoiding any liability imposed on any person by the Act. A liability is imposed by s. 17 upon any person to pay tax at the rates declared by the Parliament upon the taxable income derived by him, that is to say (see s. 6) upon 20 30

Reasons for Judgment of  
his Honour Mr. Justice Kitto

the amount remaining after deducting from his assessable income all allowable deductions. The assessments in the present case have been made on the footing that an arrangement into which the appellant entered had the purpose or effect of avoiding his liability under s. 17 in respect of the amounts abovementioned, by making what otherwise would have been a derivation by him a derivation by others, and that s. 260 makes the arrangement ineffectual to achieve that result.

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The relevant facts as established before Menzies J. are fully stated in his Honour's judgment, and I shall not restate them in detail. It is sufficient to pick out here the salient features only of the case. The taxpayer is a doctor. For some years before the relevant years of income he practised in partnership with a number of other doctors, but the partnership was dissolved by mutual agreement on 31st August 1956. This was done in order to clear the ground for the adoption of a plan which the doctors were advised would serve several purposes, including the improvement of their tax position. By a series of concerted steps, including the formation of companies and the execution of agreements, a situation was brought about in which the doctors practised no longer in partnership with one another, but each of them attended to patients on behalf of a company called A.E. Westbank Pty. Limited, the formation of which had been part of the plan. I shall call the company Westbank. Each doctor bound himself by an agreement to which Westbank was a party to

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Reasons for Judgment of  
his Honour Mr. Justice Kitto

ensure that every patient should contract with Westbank that payment for treatment should be due to Westbank directly, even though the doctor might have rendered services in his own name. The doctor further bound himself, if he should fail to carry out the obligation just mentioned, to pay Westbank as liquidated damages an amount equivalent to the usual fees for the treatment; and he agreed that in satisfaction of such damages any moneys tendered or forwarded to him by any person in respect of fees should be the property of Westbank. What happened in fact was that some payments in respect of the doctors' services to patients were made to Westbank, while others were made to the doctors, but the doctors passed on the amounts they received to Westbank.

Westbank employed, in addition to the doctors referred to, some doctors who were outside the plan and some persons who were not doctors. The fees received by Westbank for medical services rendered, whether rendered by the doctors in the group or by doctors engaged from outside, were applied in accordance with decisions made from time to time by the participating doctors in their capacity of directors of Westbank. In particular, disbursements were made (1) in paying the salaries and wages of the doctors engaged from outside and of other employees, and in meeting the expenses of Westbank's business as a company supplying medical services to the public through the doctors who were in the plan; (2) in making contributions to a superannuation fund for employees; and (3) in paying what were called service fees. The recipients of the service fees were family

Reasons for Judgment of  
his Honour Mr. Justice Kitto

companies which had been formed under the plan, one in respect of each of the participating doctors. The payment of the service fees was, in effect, the distribution of Westbank's net income among the family companies in proportions agreed upon between the doctor-directors from time to time. The proportions did not always correspond exactly with the proportions in which the profits of the partnership had been divided - not even while all the doctors who had been partners continued to participate in the carrying out of the plan; and from time to time changes in the personnel of the group took place. But at the beginning the appellant's share was the same as under the partnership, and it increased slightly later on.

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The issued shares in each family company (except two subscribers' shares in the case of the appellant's family company and possibly in the other cases also) were held by or in trust for members of the family of the doctor concerned. Each doctor had sold his practice, motor cars, etc., to his family company, and had entered into an agreement with it to serve it or its nominee at a salary. Westbank was the nominee of each of the family companies for this purpose. In the case of the appellant, the family company was W. Raleigh Pty. Limited, which I shall call Raleigh. From September 1956 Raleigh's directors were the appellant and his wife. He was the governing director with all the powers of the board, and one consequence was that it was in his power to depress his own salary as he chose, and so to regulate

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Reasons for Judgment of  
his Honour Mr. Justice Kitto

the portion of the service fees from Westbank that would be available for distribution to or for the benefit of his family. His wife was the secretary of Raleigh at a salary of £1,200 at first, and later £1,300. Out of the service fees which Westbank paid to Raleigh there were paid the appellant's salary and his individual professional expenses, that is to say his expenses over and above the group expenses met by Westbank.

In accordance with the plan, the appellant and the other doctors who participated from time to time conducted as employees of Westbank the work of the practices that formerly they had carried on in partnership. The plan and all that was done under it plainly constituted an "arrangement" in the sense of s. 260; for Newton's case, 1958 A.C. 450 at p. 465 establishes, as this Court had held in earlier cases, that the word "arrangement" in the section comprehends both a plan made between two or more persons and all the transactions by which it is carried into effect. Newton's case makes clear also that the question whether an arrangement has or purports to have the purpose or effect of avoiding a liability to tax under the Act is a question as to the purposes or effects of the arrangement itself, rather than of the purposes in the minds of the parties. That is to say that it is a question whether, upon consideration of the overt acts which have been done in carrying out the plan, the arrangement is to be recognised as a means for the avoidance of a tax liability, whether or not it be a means to other ends also.

Reasons for Judgment of  
his Honour Mr. Justice Kitto

The arrangement in the present case, considered objectively as is thus required, may well seem to be characterised by several purposes and effects, some of them unconnected with taxation, including the protection of individual members of the group against liability for negligence; the making of superannuation provision for employees, including doctors employed to assist the group; the better organisation of the group's activities and particularly its methods of accounting; and the making of provision for the doctors' families. (All of these purposes, indeed, the appellant swore were actually contemplated in the formation of the plan). But the question remains, whether the overt acts that were done under the plan are fairly explicable without an inference being drawn that tax-avoidance is a purpose of the arrangement as a whole. Menzies J. thought they were not, and with respect I agree. The arrangement bears ex facie the stamp of tax-avoidance. An understandable purpose of providing for the doctors' families, and doing so quite honestly, is perfectly evident; but what is equally evident is a purpose of doing so by a method which will divert income away from the participating doctors to or for the benefit of their families, to the end that a substantial part of the tax might be avoided which would have been incurred if the income had first been derived by the doctors and then applied by them for the benefit of their families.

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The case therefore falls, plainly as I venture to think, within the application of s. 260. The

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Reasons for Judgment of  
his Honour Mr. Justice Kitto

argument we have heard has been directed mainly to the consequences of this conclusion. In most of the cases which the Courts have decided under s. 260 the purpose and effect of the arrangements has been to avoid tax by converting what would have been a derivation of income into a derivation of capital. The work of the section being to invalidate such an arrangement "so far as it has or purports to have" that purpose or effect, the success of the arrangement as a means of achieving the conversion of income into capital has been denied. For the appellant in the present case an endeavour has been made to limit the operation of the section to arrangements of that kind. But the section must be given full operation according to its terms, and its terms apply to every arrangement which has the stated purpose or effect, whatever be the method by which it seeks to produce an avoidance of tax. The provision, it is true, operates only to destroy; it supplies nothing. But if a statutory denial of any of the legal consequences of the steps taken in carrying a concerted plan into effect will suffice to defeat a tax-avoidance for which the arrangement as a whole is a recognisable means, the section supplies the denial, and by so doing enables an assessment to be made in disregard of those legal consequences.

The Commissioner contends that the assessments are sustainable under the section without departure from this view of its operation. It is nothing to the point so far as the decision of the case is

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concerned that s. 260 was not mentioned either in the adjustment sheets which accompanied the notices of assessment nor in contemporaneous letters in which the Commissioner offered the appellant an explanation of the steps taken in making the assessment. The adjustment sheets showed that what had been done was to reject so much of the appellant's return as treated his salary from Raleigh as an item in his assessable income, and instead to treat him as having derived a proportion of the net income of Westbank. The explanation in the letters was expressed in terms which went a little too far. It was considered, the letters said, that the gross income shown in Westbank's return was, "in fact and in law", derived by the partnership. This way of putting the matter has led the appellant to give prominence to a submission that s. 260 will not support the notional creation of a partnership where no partnership existed in fact. It is important to remember, however, that the word "partnership" is given by s. 6 an extended meaning. It includes inter alia an association of persons in receipt of income jointly. The adjustment sheets and the explanatory letters should be read with this in mind. The Commissioner was saying, in effect, that he ignored the separate corporate existence of Westbank, and consequently put out of account the contracts with Westbank, both of doctors and of patients, and the position of the participating doctors as directors of that company, and that the result was to find gross income produced by the work

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of the participating doctors and others who worked with them, pooled in an agreed bank account which was under the control of the participating doctors, drawn upon for the payment of the group expenses of producing that income, and (subject to that) made available for distribution in agreed proportions among the family companies. He was saying that there you have an association of doctors receiving income jointly, (i.e. into a common purse in the form of Westbank's bank account) and agreeing that the amount of that income which they considered available for distribution after providing for expenses should be divided, each doctor's share being paid to a company set up by him for the purpose.

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Menzies J. took the same view of the application of s. 260 to the facts of the case. "What is left then", he said, "is a group of doctors practising together but without any formal agreement of partnership, using Westbank to receive all fees paid, to provide services for the group, to pay group expenses and to make distributions of what remained in agreed proportions and using their family companies to receive those distributions and to pay the individual expenses of practice. On this basis the assessable income of the doctors as a group was the total of gross fees earned".

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In my opinion this is correct. It means that s. 260 renders the arrangement void as against the Commissioner so far as it gave Westbank the beneficial property in fees collected and gave the quality of a resolution of a board of directors to

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the decisions of the doctors as to disbursement.  
What remains is the income produced by an association of doctors, received by them jointly, and subject to division in agreed proportions so that, in the language of s. 19, each doctor's distributable share was dealt with as he directed. It follows that each doctor must be considered to have derived his proportion of the income. It is nothing to the point that some of the income consisted of fees which had become due to Westbank and not to any individual doctor, or that some of it consisted of fees for the services of doctors employed from outside. Clearly s. 260 does not enable contracts that were made between patients and Westbank to be notionally replaced by contracts between patients and the individual doctors; but no such process is required for the upholding of the assessments. If all the patients' contracts be simply treated as void, so that all fees paid are regarded as having been paid gratuitously, it makes no difference. The fees are none the less income, brought into existence by the associated activities of the doctors and those who worked at their direction, and channelled into the common fund which bore the name of Westbank, there to be dealt with in the agreed manner.

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We have not been asked to review so much of the orders of Menzies J. as remitted the assessments to the Commissioner for amendment in respect of certain matters of detail. Having reached the conclusion abovestated on the substantial question in the case, I am of opinion that the appeals should be dismissed.

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The relevant facts are fully set out in the reasons which led Menzies J. to make the orders from which these appeals are brought and I find it necessary only to refer to the principal features of the plan disclosed by the evidence. What is disclosed is that eight medical practitioners, then practising their profession in partnership, devised, with the aid of their legal advisers, a somewhat complicated plan pursuant to which they would, after its inception, cease to practise in partnership and, thereafter, each would become an employee of a family company incorporated for that express purpose (in the appellant's case W. Raleigh Pty. Limited) and bound to work as a medical practitioner either for that company or, at its direction, for any other company carrying on a business similar to that carried on by the family company. The salary payable to the appellant by Raleigh was to be £1,000 per annum "or such other salary as shall be mutually agreed upon from time to time". As evidenced by the minutes of a meeting of directors of Raleigh held on 3rd September 1956 the appellant also agreed to make available to Raleigh the surgery theretofore used by him in consideration of his employment by that company. On the same day as the appellant entered into a formal agreement with Raleigh to this effect he entered into a further agreement to which that company and a recently incorporated company,

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Justice Taylor

known as Westbank Pty. Limited, were parties. One of the two subscribers' shares in Westbank was transferred to Raleigh on 31st August 1956 and the other was transferred to another of the family companies on the same date. The only other issue of Westbank's shares which took place occurred on 10th September 1956 when 198 shares were issued in parcels of twenty-five plus or minus a few shares in some cases to each of the eight family companies and at all material times the eight medical practitioners were its directors. By this second agreement Raleigh undertook to arrange for the appellant to serve Westbank as a medical practitioner and the appellant undertook that he would as the agent of Westbank ensure that any person to whom he should render medical or surgical treatment would contract orally or otherwise with Westbank that payment for such medical or surgical treatment should be due to Westbank directly even though the accounts for such service might be rendered by Westbank in the name of the appellant. In return Westbank undertook to pay to Raleigh a service fee of fourteen per cent. of its gross income after deducting therefrom all the expenses incurred in conducting Westbank's business including any contributions to a provident fund to be established by that company. At all material times only two ordinary shares in the capital of Raleigh were issued and these were held by the appellant's legal advisers whilst 15 C class and 15 D class shares were issued on 28th February 1958 to trustees for each of the appellant's two children.

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Taylor

This latter shareholding did not carry any right to vote at any general meeting except as the directors might determine and it conferred a right to such dividends only as the directors might think fit to determine. On 24th April 1958 the directors determined that the holders of the C and D class shares should be entitled to receive separate dividends of £385 in respect of each class of shares but as to £350 in each case the dividend was to be satisfied by a further issue of these special category shares. Further dividends were declared on these shares in April 1960 and further C and D class shares were issued to the trustees. Prior to the 30th June 1960 850 C class shares and 850 D class shares had been issued. It remains to be said at this stage that the appellant and his wife were the directors of Raleigh and that a resolution in writing of the appellant as governing director was by the articles of association as valid and binding as a resolution passed by the board of directors. Further, Article 79 provided that the remuneration of the directors should be fixed by the directors and that such remuneration should be divided among them in such proportion and manner as they might determine.

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The initial step in the implementation of the plan was the dissolution of the pre-existing partnership and the purported sale to Raleigh by the appellant of the goodwill of his medical practice together with instruments, furniture and plant at valuation. The price payable for goodwill -

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£7,500 - was apparently arrived at by taking the

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appellant's average income over the previous three years and the amount of the purchase money became a debt owing by Raleigh to the appellant. This debt, it is said, has been reduced from time to time. It is, it seems to me, doubtful whether the appellant had any goodwill to sell to Raleigh for prior to the dissolution of the partnership the practice was the property of the partnership and the capital and assets of the partnership and the profits and losses thereof were expressed to be divided into a hundred parts, the share of the appellant being fourteen of such parts. 10

Another feature of the plan was the formation by Westbank of a superannuation fund to provide benefits for the employees of that company and for employees of such of the eight family companies, including Raleigh, as became members of the fund and from time to time Raleigh made contributions on account of its employees, that is to say the appellant and his wife. 20

It is clear to the point of demonstration that the pivotal point of the whole plan was an exchange by the appellant of his income from the pre-existing partnership, that is to say, fourteen per cent. of the net profits, for the right to receive a salary from Raleigh and the right of that company to receive from Westbank fourteen per cent. of its net profits. However, as governing director of Raleigh, the appellant was at liberty to fix his own salary and the disposition of the profits, if any, of that company was to a very large extent in the 30

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hands of the appellant. In the first of the years under review Raleigh paid to the appellant a salary of £1,560, in the second £2,080 and in the third £2,080 and £200 as director's fees. In the same years Raleigh paid as salary to the appellant's wife £1,200, £1,300 and £1,300 respectively. Additionally, as already mentioned, Raleigh, pursuant to resolutions of the appellant and his wife, paid several sums to the trustees of the superannuation fund established by Westbank on their respective accounts and, as already appears, they also determined that dividends should become payable on its C and D class shares and that the bulk of the dividends so declared should be appropriated as payment for shares issued to trustees for their children. All of these disbursements and appropriations were made out of the "service fee" paid by Westbank to Raleigh, supplemented in each of the years under review by a comparatively small amount of dividends declared by the former company. The "service fees" were, during the years in question, £5,820, £5,155 and £5,271 respectively and the dividends were £525, £724 and £632. 10 20

The interrelated and concerted transactions by which these results were brought about were attacked as constituting an arrangement having the purpose or effect of defeating, evading or avoiding a duty or liability imposed on the appellant by the provisions of the Income Tax and Social Services Contribution Assessment Act. The difficulties attendant upon the application of the provisions 30

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of s. 260 of the Act to any given set of facts have been adverted to in a number of recent cases and the effect of the decision in Newton's Case (1958 A.C. 450) has been comprehensively stated by Kitto J. in Hancock v. Federal Commissioner of Taxation (108 C.L.R. 258 at p. 283). I do not repeat what his Honour there said but it is clear enough that here there was an arrangement constituted by a predetermined and concerted series of transactions which had the effect, and were calculated to have the effect, of avoiding the liability of the appellant to tax on a specified share of profits earned by him in co-operation with a number of other medical practitioners and yet leaving him free, to all intents and purposes, to make such dispositions of that share for his own benefit and for the benefit of his wife and children. Indeed, in its final analysis, the picture is little different from that which would have appeared if the appellant had assigned his future gross income upon condition that the assignee, after paying the appellant's share of working expenses, should then pay to the appellant such part of the net amount as he should direct and, thereafter, expend the balance in a specified manner for the benefit of the appellant's wife and children.

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For the appellant it was contended that, although the interrelated transactions in question, prearranged and concerted as they were, may be said to constitute an arrangement, the arrangement, as such, was not of such a character as to bring it

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within s. 260. First of all it was somewhat boldly contended that it was "capable of explanation by reference to ordinary business or family dealing, without necessarily being labelled as a means to avoid tax" (see per Lord Denning in Newton's Case (supra at p. 466) and then it was suggested that the application of s. 260 is limited to cases where it appears that the arrangement which is attacked, is concerned with the disposal of a fund already in existence when the arrangement is made. 10

I confess to some difficulty in appreciating the basis upon which the latter submission is made for the interrelated transactions, pursuant to the general framework of the arrangement which had been made and which envisaged those transactions, dealt with the ultimate destination of the income that had resulted from the professional activities of the eight medical practitioners. Indeed, in Newton's Case the shareholders had no present rights, either by way of capital or income, to the fund in the hands of their company when they became parties to the arrangement which subsequently regulated the various dealings which took place. I see nothing in s. 260 to preclude the view that an agreement to deal in a particular manner with a fund when it comes into existence and which, when that event occurs, is carried into effect, is within the terms of the section. 20

As to the appellant's first submission it is, I think, not open to doubt that the purpose and effect of the arrangement which is now attacked was to avoid 30

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tax. It is true, no doubt, that it had other ends in view such as the making of provision for the appellant's wife and children. But avoidance of tax was the means to those ends and a diminution in the appellant's tax was not merely an incident of what might be regarded as an ordinary family settlement; as I have already indicated avoidance of tax on income produced by the professional activities of the eight medical practitioners in question was at the very heart of the arrangement which was about as far removed as possible from any concept of ordinary business or family dealing. Further, it possessed no other feature to deny its true character, that is an arrangement having the purpose or effect of defeating, evading or avoiding income tax.

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A further point was made that even if the various dealings did constitute an arrangement of that character its avoidance did not enable it to be said that the appellant had derived the income in respect of which he has been assessed. That is to say, that no part of the profits earned by the professional activities of the appellant could be said to have found its way into his hands. It may be of some significance on this aspect of the case to advert to the manner in which fees were paid by the patients attended to by the doctors concerned for the evidence disclosed "that all governmental and institutional fees were paid by cheques payable to the doctors concerned and that most of the private fees that were paid by cheque were paid by cheques

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in which the doctor and not the company (Westbank) was named as the payee" and that where necessary the doctors endorsed cheques to enable them to be paid into Westbank's bank account. In these circumstances the bulk of the income earned found its way in the first instance into the hands of one or other of the doctors concerned. It may also be of some importance to observe, as I have already pointed out, that the disposition of the whole of the service fee received by Raleigh from Westbank was, for all practical purposes, in the hands of the appellant as governing director of Raleigh. But it is unnecessary to rely upon these matters in rejecting the appellant's submission on this point. I have no doubt that the avoidance of the agreements made by the appellant with Raleigh and Westbank produces a situation in which the Commissioner is entitled to say that what Westbank received it received in part on behalf of the appellant. The part which it can be said to have received on his behalf is the proportion of the total amount received ascertained by applying to that amount the percentage used in each of the income years under review for the calculation of the services fee paid to Raleigh. I have used this formula because Raleigh's "service fee" did not remain constant during the three years under review. In the year ended 30th June 1958 it was 14% of Westbank's net income and in the two years following it was 14.993% and 15.815% respectively. These variations were said to have occurred because of the withdrawal of

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one medical practitioner and his family company during the second year and other changes in the composition of those practising ostensibly on Westbank's account during the third year. These departures from the express terms of Raleigh's agreement with Westbank show clearly enough that from time to time there was agreement among the medical practitioners concerned as to how the profits resulting from their professional activities should be shared among their family companies. I agree with Menzies J. that when the agreements between the appellant and Raleigh and between those parties and Westbank are treated as void as against the Commissioner what is left exposed is a receipt of moneys by Westbank on account of the medical practitioners in question and that to the extent of the percentages indicated the appellant can be said, within the meaning of s. 19 of the Act, to have derived income. 10

Other questions relating to the necessity of minor adjustments in the assessments which were debated before Menzies J. were not raised upon the appeals and I do not refer to them. In my view the appeals should be dismissed. 20

I certify that this and the nine preceding pages are a true copy of the reasons for judgment of his Honour Mr. Justice Taylor.

DENIS A. WHITEMAN

Associate

13th August, 1965.

PEATE

v.

THE COMMISSIONER OF TAXATION OF THE  
COMMONWEALTH OF AUSTRALIA

I need not repeat the facts in detail.

It was argued that the arrangement that the taxpayer and his associates made was outside the operation of s. 260. Doubtless several elements of the total scheme could, for the participants in it, have other advantages than the avoidance of a liability for income tax. And when, with the advice of their advisers, they concerted and entered into the scheme they had some of those advantages in mind. But that does not redeem their arrangement and what was done under it from the provisions of s. 260. Moreover, in so far as those ulterior advantages do not themselves depend upon the avoidance of taxation they can be enjoyed. Section 260 makes the arrangement void as against the Commissioner of Taxation only; it does not impair whatever be the validity and effect of it and of its subordinate transactions as between the parties. In this respect s. 260 is a new form of response to the attempts of taxpayers to escape by lawful means from the tax-gatherer's net. It is not altogether fanciful to see the section as a parallel with the Statute of Uses and its reference to "divers and sundry imaginations subtle inventions and practices". For, just as in Tudor times men sought to separate the enjoyment of the profits of land from the legal title to it and so to avoid the burdens of the old feudal

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Windeyer

dues, so in modern times men have sought to have the enjoyment or the disposition of the produce of their labour or their capital without the burden of the levy which the state imposes. In each case the legislature intervened to frustrate their designs.

A taxpayer may legitimately regard it as a businesslike action so to arrange his affairs in the interest of himself and his family as to reduce his liability for taxes. But that does not mean that whatever method he adopts to that end can itself be said to be explicable as an ordinary business or family dealing putting it outside s. 260. It was argued that the arrangement in this case did not differ essentially in one of its aspects from the mere carrying on by a company of a trading business formerly carried on in partnership and in another aspect from the management and investment of capital assets by a private company and the distribution among shareholders of the income periodically arising. The resemblance seemed to me remote. Whatever may be said of the company Westbank Pty. Limited separately regarded, the combined and inter-related activities and purposes of it and its companion Raleigh Pty. Limited are certainly remarkable and out of the ordinary.

A proprietary company, controlled by one man, has today taken the place of John Doe, William Roe and others who at an earlier time came out of ink-wells in attorneys' offices to do acts in the law of which law-abiding citizens might have the benefit

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while avoiding disadvantageous consequences. By incantations by typewriter, the obtaining of two signatures, payment of fees and compliance with formalities for registration, a company emerges. It is a new legal entity; a person in the eye of the law. Perhaps it were better in some cases to say a legal persona, for the Latin word in one of its senses means a mask: Eripitur persona, manet res.

Raleigh Pty. Limited was upon its creation at once obedient in its mind and its actions to the bidding of its governing director. He was a solicitor, who with his partner had subscribed the memorandum of association (each for one share) as desirous of themselves being formed into a company. The expressed objects for which, according to the memorandum, the company was established range from buying and selling all forms of property, manufacturing a great variety of goods to building and running ships and aeroplanes, and so forth and so on - stated with much elaboration and some tautology in fifty-seven paragraphs. Tucked away among them was paragraph 45: "To carry on the business of importers and dealers in pharmaceutical, medicinal, chemical, industrial and other preparations and articles and providers of medical surgical hospital services and facilities of all kinds". Relying on this disingenuous phraseology the company commenced a form of business, surely odd. Pursuant to plan, it first bought, or purported to buy, what was said to be the taxpayer's goodwill of the practice he had

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formerly carried on in partnership with the other medical practitioners who were participants in the plan, and also his surgical instruments, furniture in his surgery, and motor car. He, being then in law without the equipment he needed to carry on his profession, a few minutes later covenanted "to serve the company as medical practitioner in the business carried on by the company" for a salary and to obey the lawful orders of the directors: the deed further provided that he would during the term of the agree- 10  
ment "whenever required by the board of directors serve any company or partnership carrying on a similar business to the company as a medical practitioner during such time as the board of directors shall direct". Accordingly he became, at the direction of Raleigh Pty. Limited, a servant of Westbank Pty. Limited. The two companies had been begotten and born at the same time. For a medical practitioner to enter into an agreement to become the paid servant of a company which was to make it 20  
its business to hire him out as a servant of another company is surely not an ordinary business dealing. If it were not that we can look further and see what was really intended and what occurred I would have said that a statement of Lord Atkin's was apposite at this point: "I had fancied", his Lordship said, "that ingrained in the personal status of a citizen under our laws was the right to choose for himself whom he would serve: and that this right of choice constituted the main differ- 30  
ence between a servant and a serf": Nokes v.

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Justice Windeyer

Doncaster Amalgamated Collieries Ltd., (1940) A.C.

1014 at p. 1026. But, of course, the appellant was in no danger from his subjection to the dictates of Raleigh Pty. Limited, because no sooner had he become its servant on these terms than he became in substance and effect its master. That occurred in this way: the governing director, the solicitor who had formed the company, resigned, and the appellant thereupon became governing director with complete and overriding powers under the memorandum. This was pursuant to the pre-arranged plan. 10

It is not in legal theory impossible or incompatible for a person to be both governing director in sole control of a company and servant of that company or its agent to contract on its behalf, "always assuming", said Lord Morris, "that the company was not a sham": Lee v. Lee's Air Farming Ltd., (1961) A.C. 12. If a company is duly incorporated and registered under the Act and the proper records are kept in due form and the prescribed returns are made, it continues to exist as a legal entity. In that sense it is a reality not a sham. But I thought that in the argument for the appellant too much was made of this. The cat that the monkey employed to pull the chestnuts from the fire was a real cat. And other cats' paws have been real too. Straw bail were real men. 20

Whatever philosophical theory, if any, one entertains of the nature of corporate personality, not much assistance for questions such as arise in 30

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Windeyer

this case is got by emphasising that in law a company is an entity distinct from its members. What is important is the function that the company in fact performs and which it was created to perform. It is not necessary for the application of s. 260 to find that the case is one for "lifting the veil". As to this, see Professor Gower's Modern Company Law, 2nd ed. (1957) chapter 10. To the authorities and articles there cited I would add the decision of the Court of Appeal in Tunstall v. Steigmann, (1962) 2 Q.B. 594. There Ormerod L.J. said that any departure from the strict observance of the principle laid down in Solomon's Case, (1897) A.C. 22, "if indeed any of the instances given can be treated as a departure, has been made to deal with special circumstances when a limited company might well be a facade concealing the real facts". Whether that description could be used of Raleigh Pty. Limited I do not consider; for I prefer to regard that company not as a facade or screen but as one of the instruments by which the appellant and others sought to carry their plan into effect. I agree with my brother Taylor that it, Raleigh, was like an assignee to whom the appellant had assigned the future income which Westbank Pty. Limited was to collect as the fruits of his practice of his profession, such assignment to Raleigh being upon condition that it would deal with the moneys it got as he, the appellant, directed. That seems to be substantially the only part Raleigh had to play. Nevertheless its business was treated as sufficiently

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important to justify it paying a salary of £1,300 a year to the appellant's wife. What services she had to perform for Raleigh is not very clear, because the taxpayer had become the servant of Westbank and the details of his medical practice, appointments with patients and so forth, were no concern of Raleigh.

I have made these remarks about Raleigh because it sheds a light upon the purpose and effect of the whole arrangement in which it was created to play and did play a part. But I agree with Menzies J. that it is not the interposition of Raleigh that brings the arrangement within s. 260. That comes about, not because of some particular element in the arrangement or of any of its subordinate transactions but from a consideration of it as a whole.

Of other matters discussed in the argument I need say no more than that I agree in what my brothers Kitto and Taylor have written. I agree that the appeals should be dismissed.

I certify that this and the 6 preceding pages are a true copy of the reasons for Judgment herein of his Honour Mr. Justice Windeyer.

DAVID TONGE  
Associate

DATED 12/8/65.

PEATE

v.

THE COMMISSIONER OF TAXATION OF THE  
COMMONWEALTH OF AUSTRALIA

For the reasons given by Kitto J. I agree  
that the appeals should be dismissed.

IN THE HIGH COURT  
OF AUSTRALIA  
NEW SOUTH WALES REGISTRY

No. 149 of 1962

ON APPEAL

FROM A SINGLE JUSTICE OF THE  
HIGH COURT OF AUSTRALIA

BETWEEN

DESMOND LEES PEATE

Appellant

AND

THE COMMISSIONER OF TAXATION  
OF THE COMMONWEALTH OF AUSTRALIA

Respondent

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BEFORE THEIR HONOURS MR. JUSTICE McTIERNAN,  
MR. JUSTICE KITTO, MR. JUSTICE TAYLOR, MR.  
JUSTICE WINDEYER and MR. JUSTICE OWEN.

WEDNESDAY, THE 12th DAY OF AUGUST 1964.

THIS APPEAL from the whole of the judgment and order of the High Court of Australia given and made on the 3rd day of December, 1962 by his Honour Mr. Justice Menzies a Single Justice of the High Court of Australia upon the hearing of an appeal under the Income Tax and Social Services Contribution Assessment Act, 1936 - 1957 against an assessment to income tax for the financial year 1957 - 1958 coming on for hearing before this Court at Sydney on the 21st and 22nd days of April 1964 UPON READING the transcript Record of proceedings herein AND UPON HEARING Mr. Jenkins of Queen's Counsel and Mr. Murphy of Counsel for the Appellant and Mr. Byers of Queen's Counsel and Mr. Gibson of Counsel for the Respondent THIS COURT DID ORDER on the said 22nd day of April 1964 that this Appeal should stand for judgment and the same standing for judgment this

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Order

day accordingly at Sydney THIS COURT DOTH ORDER  
that this Appeal be and the same is hereby dismiss-  
ed AND THIS COURT DOTH FURTHER ORDER that it be re-  
ferred to the proper officer of this Court to tax  
and certify the costs of the Respondent of this  
Appeal and that such costs when so taxed and cert-  
ified be paid by the Appellant to the Respondent or  
to his Solicitor, Harold Edward Renfree, Crown Sol-  
icitor for the Commonwealth.

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By the Court,

E.P. FOX

ACTING DISTRICT REGISTRAR

IN THE HIGH COURT  
OF AUSTRALIA  
NEW SOUTH WALES REGISTRY

)  
) No. 45 of 1963  
)

ON APPEAL

FROM A SINGLE JUSTICE OF THE  
HIGH COURT OF AUSTRALIA

BETWEEN

DESMOND LEES PEATE

Appellant

AND

THE COMMISSIONER OF TAXATION  
OF THE COMMONWEALTH OF  
AUSTRALIA

Respondent

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BEFORE THEIR HONOURS MR. JUSTICE McTIERNAN,  
MR. JUSTICE KITTO, MR. JUSTICE TAYLOR, MR.  
JUSTICE WINDEYER and MR. JUSTICE OWEN.

WEDNESDAY, THE 12th DAY of AUGUST 1964.

THIS APPEAL from the whole of the judgment and  
order of the High Court of Australia given and made  
on the 3rd day of December, 1962 by his Honour Mr.  
Justice Menzies a Single Justice of the High Court  
of Australia upon the hearing of an appeal under  
the Income Tax and Social Services Contribution  
Assessment Act, 1936 - 1958 against an assessment to  
income tax for the financial year 1958 - 1959 coming  
on for hearing before this Court at Sydney on the 21st  
and 22nd days of April 1964 UPON READING the trans-  
cript Record of proceedings herein AND UPON HEARING  
Mr. Jenkins of Queen's Counsel and Mr. Murphy of  
Counsel for the Appellant and Mr. Byers of Queen's  
Counsel and Mr. Gibson of Counsel for the Respondent  
THIS COURT DID ORDER on the said 22nd day of April  
1964 that this Appeal should stand for judgment and  
the same standing for judgment this day accordingly

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Order

at Sydney THIS COURT DOTH ORDER that this Appeal  
be and the same is hereby dismissed AND THIS COURT  
DOTH FURTHER ORDER that it be referred to the pro-  
per officer of this Court to tax and certify the  
costs of the Respondent of this Appeal and that  
such costs when so taxed and certified be paid by  
the Appellant to the Respondent or to his Solicitor,  
Harold Edward Renfree, Crown Solicitor for the  
Commonwealth.

By the Court,

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E.P. FOX

ACTING DISTRICT REGISTRAR

IN THE HIGH COURT  
OF AUSTRALIA  
NEW SOUTH WALES REGISTRY

)  
) No. 46 of 1963.  
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ON APPEAL

FROM A SINGLE JUSTICE OF  
THE HIGH COURT OF AUSTRALIA

BETWEEN

DESMOND LEES PEATE

Appellant

AND

THE COMMISSIONER OF TAXATION  
OF THE COMMONWEALTH OF  
AUSTRALIA

Respondent

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BEFORE THEIR HONOURS MR. JUSTICE McTIERNAN,  
MR. JUSTICE KITTO, MR. JUSTICE TAYLOR, MR.  
JUSTICE WINDEYER and MR. JUSTICE OWEN.

WEDNESDAY THE 12th DAY of AUGUST 1964.

THIS APPEAL from the whole of the judgment and  
order of the High Court of Australia given and made  
on the 3rd day of December, 1962 by his Honour Mr.  
Justice Menzies a Single Justice of the High Court  
of Australia upon hearing an Appeal under the Income  
Tax and Social Services Contribution Assessment Act,  
1936-1959 against an assessment to income tax for  
the financial year 1959-1960 coming on for hearing  
before this Court at Sydney on the 21st and 22nd  
days of April 1964 UPON READING the transcript  
Record of proceedings herein AND UPON HEARING Mr.  
Jenkins of Queen's Counsel and Mr. Murphy of Counsel  
for the Appellant and Mr. Byers of Queen's Counsel  
and Mr. Gibson of Counsel for the Respondent THIS  
COURT DID ORDER on the said 22nd day of April 1964  
that this Appeal should stand for judgment and the  
same standing for judgment this day accordingly at

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Order

Sydney THIS COURT DOTH ORDER that this Appeal be  
and the same is hereby dismissed AND THIS COURT  
DOTH FURTHER ORDER that it be referred to the  
proper officer of this Court to tax and certify the  
costs of the Respondent of this Appeal and that such  
costs when so taxed and certified be paid by the  
Appellant to the Respondent or to his Solicitor,  
Harold Edward Renfree, Crown Solicitor for the  
Commonwealth.

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By the Court

E.P. FOX

ACTING DISTRICT REGISTRAR



AT THE COURT AT BUCKINGHAM PALACE

The 29th day of January, 1965

PRESENT

THE QUEEN'S MOST EXCELLENT MAJESTY

LORD PRESIDENT  
MR. LEE  
MRS. CASTLE

MR. ROBINSON  
SIR WINTRINGHAM STABLE

WHEREAS there was this day read at the Board a Report from the Judicial Committee of the Privy Council dated the 19th day of January 1965 in the words following, viz.:- 10

"WHEREAS by virtue of His late Majesty King Edward the Seventh's Order in Council of the 18th day of October 1909 there was referred unto this Committee a humble Petition of Desmond Lees Peate in the matter of an Appeal from the High Court of Australia between the Petitioner and The Commissioner of Taxation of The Commonwealth of Australia Respondent setting forth that the Petitioner is desirous of obtaining special leave to appeal to Your Majesty in Council from the Judgment of the Full Court of the High Court of Australia delivered on the twelfth August 1964 dismissing three Appeals against an Order and Judgment of the said Court made and delivered on the third December 1962 whereby the Court dismissed three Appeals by the Petitioner against the disallowance by the Respondent of objections by the Petitioner against assessments of the taxable income of the Petitioner made by the Respondent in purported pursuance of the Income Tax and Social Services Contribution Assessment Act 1936 as amended for the three taxation years from 1st July 1957 to 30th June 1960: that the questions which would arise upon an Appeal to Your Majesty in Council concern Section 260 of the aforementioned Act and are of great public interest and importance: 20  
And humbly praying Your Majesty in Council to order that the Petitioner should have special leave to appeal from the Judgment of the High Court of Australia delivered on the twelfth August 1964 and for further or other relief: 30 40

"THE LORDS OF THE COMMITTEE in obedience to His late Majesty's said Order in Council have taken the humble Petition into consideration and having heard Counsel in support thereof and in opposition thereto Their Lordships do this day agree humbly to report to Your Majesty as their opinion that leave ought to be granted to the Petitioner to enter and prosecute his Appeal against the Judgment of the Full Court of the High Court 50

of Australia dated the 12th day of August 1964 upon depositing in the Registry of the Privy Council the sum of £400 as security for costs:

"AND Their Lordships do further report to Your Majesty that the proper officer of the said High Court ought to be directed to transmit to the Registrar of the Privy Council without delay an authenticated copy under seal of the Record proper to be laid before Your Majesty on the hearing of the Appeal upon payment by the Petitioner of the usual fees for the same".

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HER MAJESTY having taken the said Report into consideration was pleased by and with the advice of Her Privy Council to approve thereof and to order as it is hereby ordered that the same be punctually observed obeyed and carried into execution.

Whereof the Governor-General or Officer administering the Government of the Commonwealth of Australia for the time being and all other persons whom it may concern are to take notice and govern themselves accordingly.

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W.G. AGNEW

IN THE PRIVY COUNCIL  
ON APPEAL FROM THE  
HIGH COURT OF AUSTRALIA

No.            of 1965.

CERTIFICATE VERIFYING TRANSCRIPT RECORD OF  
PROCEEDINGS

BETWEEN            DESMOND LEES PEATE

Appellant

AND            THE COMMISSIONER OF  
TAXATION OF THE  
COMMONWEALTH OF  
AUSTRALIA

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Respondent

CERTIFICATE OF DISTRICT REGISTRAR OF HIGH COURT  
OF AUSTRALIA, NEW SOUTH WALES REGISTRY

I, HAROLD OSCAR FREDERICK CANNON District Registrar of the High Court of Australia, New South Wales Registry, DO HEREBY CERTIFY as follows:-

1. That this Transcript Record of Proceedings contains a true copy of all such Orders, Judgments and documents as have relation to the matter of this Appeal and a copy of the Reasons for the respective Judgments pronounced in the course of the proceedings out of which the appeal arose.

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2. That the Respondent herein has received notice of the Order of Her Majesty in Council giving the Appellant leave to appeal to Her Majesty in Council AND has also received notice of the dispatch of this Transcript Record to the Registrar of the Privy Council.

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DATED at Sydney in the State of New South Wales  
this            day of            One thousand  
and    and sixty-five.

.....  
District Registrar of the  
High Court of Australia