PERSONAL SERVICES INCOME (PSI) AND PSB SELF-ASSESSMENT CHECKLIST

Income which is mainly a reward for an individual’s personal efforts or skills may be regarded as personal services income (PSI) assessable to that individual even where the income is earned by another entity such as a company, partnership or trust under the PSI rules pursuant to [Divisions 84 to 87](https://www.ato.gov.au/uploadedFiles/Content/MEI/downloads/Personal_services_income_guide.pdf) of the *Income Tax Assessment Act* (1997). [[1]](#footnote-1)

The following checklist can be applied to determine whether the PSI rules apply to a particular individual.

This checklist refers to information contained in Taxation Ruling TR 2001/7 and Taxation Ruling TR 2001/8. On 11 March 2021, the Commissioner released Draft Taxation Ruling TR 2021/D2 which consolidates the ATO’s opinion on the application of the PSI rules, the 2001 rulings and case law interpretation since the release of the earlier rulings. The draft ruling also provides a number of examples. As at the date this checklist is released, the draft ruling has not yet been finalised. Once finalised it is expected the ruling will apply from 1 July 2021. It is recommended that any clients with PSI / personal services businesses are reviewed once the ruling is finalised to confirm the existing tax treatment.

This information is based on legislation current as at 11 June 2021.

**About the author**

This checklist was prepared by Moore Australia (VIC) Pty Ltd on behalf of CPA Australia.

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| **ENTITY’S NAME** |  |

| IS THE INCOME MAINLY FROM: | YES | NO |
| --- | --- | --- |
| Sale of goods / trading stock? |  |  |
| Passive investments (e.g. rental properties, shares etc.)? |  |  |
| Use of assets (e.g. operating a bulldozer)? |  |  |
| Granting of a right to use property (e.g. copyright to a computer program)? |  |  |
| A business structure (e.g. multiple associates/employees working together, such as in a large professional practice)? |  |  |
| If YES to any of the above, then the income is not PSI. Do not complete the below personal services business (PSB) exception checklist.  If NO to all of the above, then income is likely to be PSI. However, income from the conduct of a genuine PSB is not subject to the PSI regime. Therefore, it should be determined whether a PSB is being carried on. See the checklist below.  Further guidance as to whether income is (or is not) generated by a business structure is set out in Taxation Ruling TR 2001/7 (note also the ATO's current view in TR 2021/D2). | | |
| PERSONAL SERVICES BUSINESS (PSB) EXCEPTION CHECKLIST: SECTION A | YES | NO |
| RESULTS TEST | | |
| The Results Test will be met by passing all of the following (for at least 75% of the individual’s PSI): | | |
| * under the contractual arrangement is the PSI paid to achieve a specified result or outcome? AND |  |  |
| * does the entity need to provide its own tools or equipment necessary to do the work? (if no tools or equipment are required, the answer is ‘YES’ as the test will not be failed in these circumstances, see Taxation Ruling TR 2001/8) AND |  |  |
| * is the entity liable for rectifying defects or mistakes in the work? |  |  |
| If ‘YES’ for all of the above, the individual satisfies the Results Test and you do not need to go any further (because you will qualify for the PSB exception).  Otherwise proceed to Section B. | | |
| **PERSONAL SERVICES BUSINESS (PSB) EXCEPTION CHECKLIST: SECTION B** | **YES** | **NO** |
| SOURCE TEST | | |
| Is 80% or more of the individual’s PSI from one source?  (‘one source’ includes associated entities) |  |  |
| If ‘YES’, do not go any further on this checklist. The PSI rules apply.  Your client cannot self-assess as a PSB. You must seek a PSB Determination from the Commissioner of Taxation to establish the individual’s status as a PSB. You may consider seeking a determination if you think one of the tests in Section C is passed or there are unusual circumstances.  If ‘NO’ proceed to Section C. | | |

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| **PERSONAL SERVICES BUSINESS (PSB) EXCEPTION CHECKLIST: SECTION C** | **YES** | **NO** |
| If the individual satisfies ANY ONE of the following three tests you will satisfy the PSB exception test. | | |
| UNRELATED CLIENTS TEST | | |
| Are services provided to two or more clients?  (Clients must not be associates of each other or of the individual providing the services or of their personal services entity) AND |  |  |
| Are the services provided as a direct result of the individual or entity making offers to provide services (e.g. advertising) to the public or a section of the public? |  |  |
| If ‘YES’, the Unrelated Clients Test will be satisfied. | | |
| EMPLOYMENT TEST | | |
| The entity engages one or more other entities to perform work (it employs individuals as employees; or engages individuals or other entities, i.e. companies, trusts or partnerships, in a sub-contracting capacity)  AND (either of the following apply): |  |  |
| * the other entity (or entities) together perform at least 20% (by market value) of the first entity’s principal work for that year and that other entity (or entities) is not an associate, such as a spouse or an associated company, partnership or trust OR |  |  |
| * the entity has one or more apprentices for at least six months of the income year. |  |  |
| If ‘YES’, the Employment Test will be satisfied. | | |
| BUSINESS PREMISES TEST | | |
| The entity maintains and uses business premises, at all times during the year AND |  |  |
| The business premises satisfy all the following requirements:   * the business premises are used mainly by the entity to conduct the activities which generate the PSI AND |  |  |
| * the entity has exclusive use of those business premises AND |  |  |
| * the business premises are physically separate from any premises used for private purposes by the entity (or an associate) providing the services AND |  |  |
| * the business premises are physically separate from any premises of the client and the client’s associate(s). |  |  |
| If ‘YES’, the Business Premises Test will be satisfied. | | |
| PSB EXCEPTION SELF-ASSESSMENT RESULTS | | |
| If you have satisfied any one of the Unrelated Client Test, the Employment Test, or the Business Premises Test, then the individual will satisfy the PSB Test.  If you have not satisfied any one of these three tests in Section C, the individual does not satisfy the PSB Test.  You must therefore seek a PSB Business Determination from the Commissioner of Taxation in order for the individual’s PSI to be treated as income from a personal services business.  Further details on the application of the PSB exceptions and the making of a PSB Determination are set out in Taxation Ruling TR 2001/8.  It should be noted that the ATO's view in TR 2021/D2 is that even if one of the PSB tests is satisfied, the general anti-avoidance rules in Part IVA may still apply to income-splitting arrangements where the dominant purpose is to obtain a tax benefit for the individual whose personal efforts or skills generated the income. | | |

1. Where it is concluded that the PSI rules do not apply it may be necessary to separately consider whether the general anti-avoidance provisions of Part IVA of the *Income Tax Assessment Act* (1936) may apply where an entity has been set up to derive income from personal services for the dominant purpose of income splitting. [↑](#footnote-ref-1)