Print whole section

Working out if the PSI rules apply

How the personal services income (PSI) rules apply to you and how to self-assess based on your situation.

Work out if the PSI rules apply to you

If you have received personal services income (PSI), you need to determine if the PSI rules apply to that income.

Self-assessing as a PSB

To self-assess as a PSB, you must either meet the results test, or meet another PSB test and pass the 80% rule.

Results test

If you are earning PSI, you can use the results test to self-assess as a personal services business (PSB).

Unrelated clients test

If you are earning PSI, you can use the unrelated clients test to self-assess as a personal services business (PSB).

Employment test

If you are earning PSI, you can use the employment test to self-

Business premises test

If you are earning PSI, you can use the business premises test to self-assess as a personal services business (PSB).

PSI - obtaining work through an agency

Obtaining work through an agency can affect whether the personal services income (PSI) rules apply to your income.

QC 70976

Work out if the PSI rules apply to you

If you have received personal services income (PSI), you need to determine if the PSI rules apply to that income.

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If you have worked out that the **income you have received is PSI**, the next step is to work out whether the PSI rules apply to you.

To do this, you need to work out if you are a personal services business (PSB) in the year that you received PSI.

You can **self-assess as a PSB** if you:

- meet the **results test** in relation to at least 75% of your PSI, or
- meet one of the other PSB tests and less than 80% of your PSI is from the same entity and its associates.

The other PSB tests are **Unrelated clients test**, the **Employment test**, and the **Business premises test**.

If you're a company, partnership or trust and you have more than one individual generating PSI, the self-assessment rules and PSB tests need to be applied to each individual. It is possible for one individual to conduct a PSB but not another.

If you are unable to self-assess as a PSB for a particular income year, you may be able to **apply for a PSB determination** (PSBD) in some circumstances.

If you self-assess as a PSB, or have a PSBD, then the PSI rules will not apply to the PSI you receive in that income year. See **What to do if the PSI rules don't apply** for more information.

If you are unable to self-assess as a PSB, and do not have a PSBD for the relevant income year, the PSI rules will apply. See **What to do when the PSI rules apply** for more information.

The PSI rules will not affect:

- the contractual relationships between you and your clients or customers – for example, you do not become an employee or stop being a contractor
- your entitlement to an Australian business number (ABN) or registration for goods and services tax (GST)
- whether you are still considered to be running a business.

You may find this **flow chart** useful in determining whether the PSI rules apply to you or your business.

If you are still unsure, you may need to **seek further advice** from us or a registered tax professional.

QC 46003

Self-assessing as a PSB

To self-assess as a PSB, you must either meet the results test, or meet another PSB test and pass the 80% rule.

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How to self-assess as a PSB

If you are able to self-assess as a PSB, the personal services income (PSI) rules will not apply to your PSI for that income year. You can self-assess as a PSB if you either:

- meet the **results test** in relation to at least 75% of your PSI, or
- meet one of the other PSB tests and less than 80% of your PSI is from the same entity and its associates.

The other PSB tests are:

- **unrelated clients test**
- **employment test**
- **business premises test**.

If you're a company, partnership or trust and you have more than one individual generating PSI, the self-assessment rules and PSB tests need to be applied to each individual. It is possible for one individual to conduct a PSB but not another.

If you are unable to self-assess as a PSB for a particular income year, you may be able to **apply for a PSB determination** (PSBD) in some circumstances. If you are unable to self-assess as a PSB, and do not have a PSBD for the relevant income year, then the PSI rules will apply – refer to **What to do when the PSI rules apply**.

The 80% rule

If you are self-assessing using the **unrelated clients**, **business premises**, or **employment test**, then you will also need to meet the 80% rule for that income year. The purpose of the 80% rule is to look at how much of your income comes from one client and their associates.

If 80% or **more** of your PSI comes from one client and their associates, you do not meet the 80% rule. The PSI rules will apply.

If **less than 80%** of your PSI comes from one client and their associates you do meet the 80% rule. If you also meet one of the unrelated clients, employment, or business premises tests, you can self-assess as a PSB.

You need to work out the amount of PSI that comes from each client and their associates in an income year.

If you're a company, partnership or trust and you have more than one individual generating PSI, the 80% rule applies to each individual separately. You need to look at the amount of PSI that you receive for each individual and how much of that amount comes from one source.

Associates of clients

When you apply the 80% rule, you need to work out the amount of PSI that comes from each client, including their associates, in an income year.

A client's associates can include:

- the client's relatives
- the client's partner in a business partnership and their spouse or children
- a trustee of a trust that the client (or an associate) benefits from
- if the client is a trust, the beneficiary or their associates of that trust
- a company which is under the client's (or their associate's) control, or controlling entities where the client is a company.

If you receive PSI from a client or from an associate of that client, you need to treat the PSI as coming from one client. For example, if you received PSI in the same income year from a company and from a subsidiary of that company, then both amounts of PSI are treated as coming from the same source and count as just one client.

Example: client associates

Binglei is an IT consultant who designs software for 2 different clients in an income year.

The first client, ABC Pty Ltd, is charged $70,000.

The second client, ABC Telecommunications Pty Ltd (a company owned by the first client), is charged $30,000.

The income Binglei receives is classified as PSI, as it was mainly for their knowledge, skills and expertise.

As both clients are associates of one another, they are treated as one client. Binglei has received more than 80% of their PSI from one client, and does not meet the 80% rule.

Special rule for agents

The PSI rules are modified for agents who act or represent others and bear an entrepreneurial risk in the way they provide their services. The special rule allows agents to treat the clients of a principal as their own clients for the purposes of passing the 80% rule.

If you are acting or representing others as an agent who bears an entrepreneurial risk, you can treat the clients of a principal as your own clients if you meet all of the following:

- you're an agent of the principal, but not the principal's employee
- you receive income from the principal for services that you provide to customers on the principal's behalf
- you receive at least 75% of that income from the principal as commissions or results-based payments (as opposed to a retainer or salary-like payments)
- you actively seek customers for the principal
- you do not provide services to clients from a premises owned or leased by the principal (or their associate) unless you have an arm's-length arrangement to use the premises.

You can use the principal's premises to negotiate, organise or administer arrangements solely between yourself and principal, such as:

- negotiating agency agreements
- receiving training
- attending strategy meetings.

Example: commission agents

Chris provides financial services as an agent for Big Finance Pty Ltd.

In the relevant income year, Chris receives a payment of $70,000, which represents an 80% commission on the services he provides to clients on behalf of Big Finance Pty Ltd.

Over the course of the year, Big Finance Pty Ltd also pays Chris a regular amount of $2,500 per month (totalling $30,000 for the year).

Even though Chris receives a commission payment of more than 75%, the retainer that he is paid is also taken into account in determining whether this requirement of the agents test is met.

Chris's total income for the year from Big Finance Pty Ltd is $100,000. Only $70,000 out of the $100,000 (that is, 70%) is paid as a commission.

As less than 75% of Chris's income is a performance-based payment, he does not bear the level of entrepreneurial risk required. Chris is therefore unable to use the modified rules for agents.

Apply for a PSB determination

If you are unable to self-assess as a PSB, you can apply to the ATO for a PSB determination in some circumstances.

QC 46014

Apply for a PSB determination

If you are unable to self-assess as a PSB, you can apply to the ATO for a PSB determination in some circumstances.

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What is a PSBD?

A personal services business determination (PSBD) is a notice from the Commissioner of Taxation which states that one of the **personal service business (PSB) tests** has been met for the relevant income year.

Where a PSBD is issued, the personal services income (PSI) rules will not apply to that income for the income year.

PSBDs are only issued in relation to one 'test' individual. If multiple individuals are earning PSI through another entity such as a company,

partnership or trust (which we refer to as a 'personal services entity' or PSE), the entity will need to apply for a PSBD for each individual.

You can apply to us for a PSBD if:

- you are unsure whether you have passed one of the PSB tests
- unusual circumstances prevented you from passing one of the PSB tests, or
- you met the unrelated clients test but unusual circumstances prevented you from meeting the **80% rule**.

Unusual circumstances

Unusual circumstances are temporary, short-term circumstances that stop you from passing a PSB test because they are completely out of the ordinary.

The unusual circumstances must specifically apply to the individual that the PSBD is in relation to. Industry-wide circumstances, such as economic downturn affecting a particular industry, cannot be relied on as an unusual circumstance when applying for a PSBD.

The unusual circumstances must be temporary, rather than the 'new norm' or a new mode of operation. The more temporary the circumstances are, and the greater the likelihood that the situation will return to normal, the easier it will be to demonstrate that there were unusual circumstances which prevented you from meeting a PSB test.

If you are applying for a PSBD in relation to the **unrelated clients test**, we will also accept the following as unusual circumstances:

- you started a business during the income year and can reasonably expect to pass one of the PSB tests in the next income year, or
- you provided services to only one client during the income year, but you passed the unrelated clients test in one or more prior income years and can reasonably expect to pass the unrelated clients test again in the next income year.

Apply for a PSBD

There are 2 ways to apply for a PSBD:

1. Use our **Personal services income tool**

2. Complete the **Personal services business determination application**

If you're still unsure of your circumstances, you may need to **seek further advice** from us or a registered tax professional.

QC 46036

Results test

If you are earning PSI, you can use the results test to self-assess as a personal services business (PSB).

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About the results test

The results test is one of 4 personal services business (PSB) tests that taxpayers earning personal services income (PSI) can use to self-assess as a PSB.

If you pass the results test, your business is a PSB for that income year. The PSI rules **don't apply to the income you earn from this PSB**.

To pass the results test, you need to **meet all 3 of the following conditions** for **at least 75%** of your PSI you earnt:

- You must be paid to produce a specific result.
- You are required to provide equipment or tools (if required).
- You are required to fix mistakes at your own cost.

You may find that some of your business contracts meet the 3 conditions of the test and some don't.

If you're a company, partnership or trust and you have more than one individual generating PSI, you will need to work out whether the results test is passed for each individual. It is possible to have different outcomes for different individuals.

Paid to produce a specific result

To meet this condition, you must produce a specific result or outcome before being entitled to be paid.

Generally, you are paid to produce a specific result when:

- payment is made after contractual conditions have been fulfilled – for example, only on completion of each job or specific objectives (this can include receiving progress payments and deposits)
- being paid an amount for an agreed number of completed items or activities – for example, a furniture upholstering business that is contracted to a furniture factory and paid a specified amount to complete 100 lounge suites.

Generally, you are not paid to produce a specific result if you are paid:

- based on an hourly or daily rate for the work you perform
- regardless of whether you achieve a specific outcome or reach agreed objectives.

If you're paid on an hourly basis or daily rate for the services you provide, it's unlikely that you will meet the first condition of the results test. This is because payments on an hourly or daily basis are not generally linked to producing a specific result or outcome.

Example: not paid to produce a result

Joseph provides services to a local authority through his company JoCo, which has entered into a contract with the local authority.

Under the terms of the contract, Joseph must work 40 hours per week for the authority and will be paid based on an hourly rate.

At the end of each fortnight, JoCo issues an invoice to the local authority for hours worked by Joseph and receives payment.

The contract does not meet the first condition of the results test because JoCo:

- isn't contracted to complete a specific job
- isn't paid on the condition that the job is completed
- is paid for time worked rather than the results produced.

Required to provide equipment or tools (where applicable)

To meet this condition you must supply any plant, equipment or tools needed to complete the work which produces the result. This includes plant, equipment or tools that your client would ordinarily expect you to provide, or where you have a contractual obligation to provide it.

You will not fail this condition if you have minor use of tools or equipment provided by your client.

If you do not need plant, equipment or tools to perform the work, then this condition will be met.

Required to fix mistakes at own cost

To meet this condition, you must be liable for the cost of rectifying any defects in your work. You do not need to actually perform the work that fixes the mistake, so long as you are liable for the cost of the defect to be fixed.

A contractual term which states that you are required to fix mistakes at your own cost may indicate that you have fulfilled this condition. However, this condition will only be fulfilled if this term in the contract can actually be enforced by the client should mistakes in your work happen.

You will not meet this condition if you invoice the client for time spent to fix defects in your work, or if you fix mistakes during your usual working times under the contract. This is because you will not have been liable for the cost of fixing mistakes, as in both these situations the client will have paid for the time taken to correct defects.

Example: required to fix mistakes at own cost

Dave is a software specialist who provides services through his company DaveCo. DaveCo has contracted with a large firm. DaveCo's contract doesn't specify whether he is personally responsible for correcting his mistakes.

In practice, Dave invoices for fixing any mistakes he makes. Therefore, DaveCo does not meet the third condition of the results test.

More examples

Example: passing the results test

Joe offers his services to the public, installing air conditioning ducts.

The contract price is based on the installation of specific duct work according to a set of plans, and any changes are subject to the variation clauses in the contract.

Joe assumes the risk of not being able to complete the work to specification or for defective work, as he must fix defects at his own cost. He brings the tools he needs to do the work, such as a hammer, tin snips, dolly, hacksaw, electric drill, pop rivet gun and ladder. He also incurs his own expenses for duct tape, glue, pop rivets, nuts, bolts and drill bits.

Joe satisfies the results test because he is contracted to produce a result (installation of ducts), he brings his own tools to do the work, and he is liable for fixing defects.

Example: not passing the results test

A government department enters into a contract with Consultant Co for the services of Louise, an individual who is nominated in the contract.

The terms and conditions of the contract are that Louise:

- is paid an hourly rate and works for a maximum of 8 hours per day
- has her work quality checked by departmental officers
- is provided with an office, stationery and desktop computer, and uses the department's computer system, software and data for carrying out the required tasks.

Louise also uses her personal laptop to assist her in tasks (but isn't required by the department to use it).

If the work performed by Louise is unsatisfactory, the department is entitled to terminate the contract, but the company isn't required under the contract to fix any defects in the work performed. Consultant Co is a personal services entity (PSE) because its income includes the PSI of Louise, the individual who does the work.

Applying the conditions of the results test:

- The income is for doing work – not producing a result – as Consultant Co is entitled to payment for each hour Louise works for the department, with no risk of making a loss as a result of undertaking the work.
- Consultant Co is not required to supply the plant, equipment or tools of trade needed to perform the work, even though Louise uses her personal laptop to assist her.
- The department is entitled to terminate Louise's contract for unsatisfactory work, but Consultant Co doesn't have any liability to fix any faulty work.

All conditions must be satisfied for the results test to be met.

In this example none of the conditions are satisfied, so Consultant Co doesn't pass the results test and the PSI rules apply.

QC 46006

Unrelated clients test

If you are earning PSI, you can use the unrelated clients test to self-assess as a personal services business (PSB).

Last updated 23 November 2022

Overview

The unrelated clients test is one of the 4 PSB tests that taxpayers earning personal services income (PSI) can use to self-assess as a PSB.

If you self-assess as a PSB, the PSI rules will not apply to the PSI you earnt in that income year.

You must also meet the **80% rule** to self-assess using the unrelated clients test.

To pass the unrelated clients test in an income year, you must meet **both** of the following conditions:

- You must have received PSI from 2 or more unrelated clients.
- There must be a direct connection between the offer to the public and you being engaged to perform the work.

If you operate through a company, partnership, or trust and you have more than one individual generating PSI, you'll need to work out whether you pass the unrelated clients test for each individual separately. It is possible to have different outcomes for different individuals.

Two or more unrelated clients

To satisfy this condition, you must have received PSI from 2 or more unrelated clients. Unrelated clients are clients who aren't associated with each other or with you.

Companies in the same group are related, as they are controlled by the same entity.

If you're a **commission agent**, you may be able to treat the clients of a principal as your own clients.

Example: unrelated clients

Kevin is an engineer who provides his services as a sole trader.

Kevin produces income from providing services to his brother's company, Lost Exploration Pty Ltd. Lost Exploration Pty Ltd is an associate of Kevin. The contract with Lost Exploration Pty Ltd is a result of his relationship with his brother.

In addition, Kevin advertises his services on a website he has set up. Two companies, Pebbles Pty Ltd and GemCo Pty Ltd, contact Kevin after viewing his website. Kevin provides services to Pebbles Pty Ltd and GemCo Pty Ltd, neither of which is an associate of Kevin, or of each other, or of Lost Exploration Pty Ltd.

In the income year, none of these sources provides Kevin with more than 80% of his PSI, so he is able to self-assess whether he meets the unrelated clients test.

Although Lost Exploration Pty Ltd does not qualify as an unrelated client because it is an associate of Kevin's, Kevin still meets the requirements of the unrelated clients test. This is because Pebbles Pty Ltd and GemCo Pty Ltd are 2 unrelated clients obtained as a direct result of Kevin making offers to the public at large or a section of the public (through his website).

Making offers to the public

To meet this condition, there must be a direct connection between the offer to the public at large and you being engaged to perform the work.

The offer to the public must be the reason why you obtained the work from the client. Making offers to the public can include:

- print advertising
- radio and television broadcasting
- posting internet advertisements
- maintaining a website
- applying for competitive public tenders
- advertising in a newspaper, industry journal or business directory.

Importantly, all of these examples involve a public announcement of some kind.

'Word-of-mouth' referrals will not satisfy this condition of the unrelated clients test, unless the offer is made in very specialised or niche

industries where there are only a very small number of potential clients.

Offers accepted by labour hire firms or similar intermediaries, or responding to advertisements on web-based recruitment sites, will not meet this condition.

To meet the unrelated clients test, new work from clients you have worked with previously still needs to be obtained as a result of your offers to the public in that year.

Example: making offers to the public

Deb is a graphic artist who works through her company, Debart Pty Ltd. Deb is the sole director and shareholder of the company. Debart Pty Ltd advertises its services on a website, and also in industry periodicals. Sometimes work is referred to Deb by word of mouth from industry contacts.

Any clients that Debart Pty Ltd sources from the website, or as a result of advertising in the industry periodicals, would meet the requirements of the unrelated clients test for making offers or invitations to the public at large or a section of the public. These forms of advertising are capable of reaching a wide audience.

As Debart Pty Ltd does not provide services in an industry that could be described as a niche industry, any clients obtained through the word-of-mouth referrals would not be counted for the purposes of the unrelated clients test.

QC 46019

Employment test

If you are earning PSI, you can use the employment test to self-assess as a personal services business (PSB).

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Overview

The employment test is one of 4 PSB tests that taxpayers earning personal services income (PSI) can use to self-assess as a PSB.

If you self-assess as a PSB, the PSI rules will not apply to the PSI you earnt in that income year.

You must also meet the **80% rule** to self-assess using the employment test.

To pass the employment test, your business must employ or contract others to help perform work that generates your PSI, and you must meet **one** of the following conditions:

- at least 20% of the principal work is performed by others
- one or more apprentices are employed for at least 6 months of the income year.

If you operate through a company, partnership or trust and you have more than one individual generating PSI, you will need to work out whether you pass the employment test for each individual. It is possible to have different outcomes for different individuals.

Principal work performed by others

To meet this condition, your business must employ or contract others to perform at least 20% of the principal work that generates your PSI.

Principal work is:

- the work you must perform under a contract or agreement that you are paid for
- central to meeting your contractual obligations between you and your client.

It does not include work that supports you in meeting your contractual obligations, such as administrative tasks or bookkeeping.

To work out whether at least 20% of the principal work is being performed by your employee or contractor, you need to determine the market value of the principal work completed by your workers for the contract.

If that market value is 20% or more of the total contract price charged to your client, then this condition will be met.

When applying the employment test, you cannot count principal work completed by the following entities:

- a business (company, partnership or trust) associated with you or your business
- yourself as an employee of your business
- other individuals in your business who earn PSI through their own contracts with clients.

Example: principal work performed by others

Glenn is a house builder who provides building services as a sole trader. Glenn contracts with a major company to build houses. While Glenn does the physical building work, he pays his wife, Nan, to perform the tasks of contract administration, keeping track of costs, recording times worked, recording agreed or automatic variations, and making progress payment claims on clients. Such contract administration activities are not part of Glenn's principal work, as they are not integral to and part of the principal work.

As Glenn does not engage Nan to perform any principal work, he does not meet that element of the employment test.

Apprentices

To meet this condition, you must employ one or more apprentices for at least 6 months of the income year.

An apprentice is a person who works for a fixed period of time to learn a trade, business or skill. This includes government or industry group training programs. Research and other assistants are not considered to be apprentices.

An apprentice doesn't need to be apprenticed directly to your business. For example, apprentices supplied through a government program to work for a business as part of their trade training may meet this requirement.

An apprentice may work periodically throughout the income year, as long as their total time worked is at least 6 months.

Example: apprentices

Meg is an apprentice electrician who is sent by the Group Apprentice Scheme to work for Joe as part of her trade training. Meg works for 2 months, takes a 3-week break, and then works for a further 2 months, for a total of 4 months. Later in the same income year another apprentice electrician, John, is placed with Joe for 3 months.

In total, Joe has an apprentice working with him for 7 months in the income year.

Joe satisfies the employment test because for at least half of the income year he has one or more apprentices working with him.

Contracts over multiple income years

PSB tests are used to work out if the PSI rules apply to a particular income year.

If a contract goes across more than one income year, then for the purposes of applying the employment test you will only consider the amount of the contract price and market value of the employee's or contractor's work that was derived in the income year that you are applying the test to.

QC 46027

Business premises test

If you are earning PSI, you can use the business premises test to self-assess as a personal services business (PSB).

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Overview

The business premises test is one of 4 PSB tests that taxpayers earning personal services income (PSI) can use to self-assess as a PSB.

If you self-assess as a PSB, the PSI rules will not apply to the PSI you earnt in that income year.

You must also meet the **80% rule** to self-assess using the business premises test.

You will pass the business premises test if at all times in the income year you maintained and used a business premises which meets **all** of the following conditions:

- used mainly to gain or produce PSI
- used exclusively by you
- physically separate from your private premises
- physically separate from your clients' premises

If you operate through a company, partnership or trust, and the company, partnership or trust has more than one individual generating PSI, then the company, partnership or trust must work out whether they pass the business premises test for each individual separately. It is possible for one individual to conduct a PSB but not another.

At all times in the income year

At all times in the income year means on every day during the income year in which the PSI is generated. If you only traded for part of the income year, and maintained and used the premises to conduct activities for the entire time you traded, you may still be able to pass the test.

You can change premises during the year as long as, at all times, there are premises meeting the requirements of the test.

Example: at all times in the income year

John does consultancy work as a sole trader. He started trading on 1 February, which means, in the income year, he only traded

for 5 months. For these 5 months, John did the consultancy work from an office he rented.

John **meets** this condition of the business premises test, as he maintained and used a business premises for the entire time he was trading in the income year.

Used mainly to gain or produce PSI

To meet this condition, you must use the business premises mainly (more than 50%) for work activities that generate your PSI.

Where the business premises is used for more than one type of work or activity, you will need to consider which activities are PSI related, and which are not related to producing PSI. If more than 50% of the activities are not related to producing PSI, then you will not meet this condition.

Used exclusively by you

To meet this condition, you must have exclusive use of the premises. This means you must own or lease the premises.

If you jointly lease premises with another person or business, this would not be considered exclusive use.

If your business premises has shared areas such as reception and waiting rooms, you do not have to consider the use of these shared spaces for working out if you have exclusive use of your business premises.

If you operate through a company, partnership or trust that owns or leases premises, and you have multiple individuals generating PSI at that premises, you would still be considered to have exclusive use.

Example: exclusive use

Norm is a draftsperson who conducts his drafting activities from an office he leases from Morn Pty Ltd. Norm's office is adjacent to a suite of offices occupied by other professionals. Each occupant jointly leases a shared reception and waiting area from Morn Pty Ltd.

None of Norm’s drafting activities are done at the premises of his clients (or their associates) or from his (or his associates') private premises.

Norm has exclusive use of the relevant premises because he has a discrete lease over his office and all of the principal work of drafting is carried out in the office. Therefore, the business premises test is met.

Physically separate from your private premises

To meet this condition, the business premises must be physically separate from any premises you or your associates use for private purposes.

This means business premises within private premises (for example, within your home) won't be considered physically separate.

Physically separate from your private premises means:

- the physical appearance of the business premises is distinct and separate from adjoining or surrounding private premises
- access to the business premises for you and your clients is separate from access to your home.

Example: not physically separate from your private premises

Melanie is an executive editor who provides consulting services to various publishing companies. She works from home in an office she has set up on the top floor of her garage. It contains everything she needs to run her business.

The garage is a separate structure to her home, and consists of vehicle storage and an entertainment room on the ground floor, with the office taking up the whole top floor. The office is used to undertake her editing work and occasionally she will meet clients there.

Melanie and her family often entertain, and frequent use is made of the entertainment room on the ground floor.

Melanie will not meet the ‘physically separate’ requirement of the business premises test, as her business premises are not physically separate from premises that she and her family use for private purposes.

Example: physically separate from your private premises

Robert is an architect who contracts through his company, Robbo Enterprises Pty Ltd. Robert owns 2 adjoining duplexes. He lives in one duplex and rents the adjoining duplex to his company to use as its business premises.

The duplexes are on separate titles and have a dividing wall which prevents internal access between premises. Each duplex has its own front and back entrance and a fence separating the 2 properties. The duplex used by Robbo Enterprises Pty Ltd for its business premises displays the business’s signage.

The only activities undertaken at the business premises generate Robert’s PSI. The business premises are physically separate from Robert’s private premises and those of his clients. The business premises test is met.

Physically separate from your clients' premises

The premises must also be physically separate from your clients' (or their associates') premises.

Generally, physically separate from your clients means:

- the business premises are not physically or functionally incorporated into the premises of your client (or clients)
- access to your business premises is separate to the access to your clients' premises

- there is no internal access between your business premises and your clients' business premises.

For example, if you lease a room at the premises of your client to conduct your business, your business premises are not physically separate from your client's premises.

If you lease a discrete floor, or part of a floor, at the premises of your client, whether your premises are physically separate will depend on a range of factors, such as:

- the extent to which the floors in the building are functionally and physically integrated
- entry and exit facilities
- signage
- security arrangements
- occupancy rights.

QC 46035

PSI – obtaining work through an agency

Obtaining work through an agency can affect whether the personal services income (PSI) rules apply to your income.

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Overview

This information is relevant to you if your business receives PSI and obtains work through an agency (for example, a labour hire firm, group training organisation or employment agency).

If you are contracting through an agency, where the agency provides your services to a client, the agency will ultimately be responsible for the payment for your services.

There are many factors you need to consider when **working out if the PSI rules apply**. Obtaining your contracts through an agency may prevent you from passing some of the personal services business (PSB) tests.

PSI does not affect you if you are an employee receiving only salaries and wages. However, if you are operating through an entity, such as a company, partnership or trust, and are an employee of that entity, then the PSI rules may still apply.

Results test

To pass the **results test**, you need to meet **all** of the following conditions for 75% of your PSI for the income year:

- You are paid to produce a specific result.
- You are required to provide the equipment or tools needed to produce the result.
- You are required to fix mistakes at your own expense.

If you operate through a company, partnership or trust and you have more than one individual generating PSI, you need to work out whether you pass the results test for each individual. It is possible for one individual to conduct a PSB but not another.

If you obtain work through an agency, you most likely **won't** pass the results test. This is because you are generally hired by an agency to provide your services on an ongoing basis for an hourly or daily rate, not to produce a specific result. If you earn more than 25% of your PSI in this way, you will not pass the results test.

Example 1: Erica – one agency, 3 end users

Erica's company, Erica's Consulting Pty Ltd, contracts with Agency 1 to deliver Erica's services. Erica is required to perform work for, and at the direction of, the agency's clients. Agency 1 has 3 contracts that Erica works on. Erica's company receives 100% of its income from Agency 1.

Income flow – Example 1


Income flow for 1 agency, 3 end users

Example 2: Alan – 2 agencies, one end user

Alan's company, Alan's Architectural Services Pty Ltd, contracts with 2 agencies, Agency 1 and Agency 2, to deliver Alan's services. Under both contracts, Alan is required to perform work for, and at the direction of, the agencies' clients. Agency 1 and Agency 2 provide Alan's services to the same client, Big Corp. Alan's company receives 50% of its income from Agency 1 and 50% from Agency 2.

Income flow – Example 2


Income flow for 2 agencies, 1 end user

Example 3: Simon – 2 agencies, 2 end users

Simon's company, Simon's Trade Services Pty Ltd, contracts with Agency 1 and Agency 2 to deliver Simon's services. Under both contracts, Simon is required to perform work for, and at the direction of, the agencies' clients. Each agency has a different client. Simon's company receives 50% of its income from Agency 1 and 50% from Agency 2.

Income flow – Example 3


Income flow for 2 agencies, 2 end users

In these examples, Erica's, Alan's and Simon's companies are not engaged by the end users. Their companies are contracted by the agencies to provide services to the end users. They do not contract with the agencies to complete a specific result or outcome for them. They are contracted by the agencies to provide labour on an ongoing basis in accordance with direction from the agencies' clients or end users.

This means that the companies are not being paid to produce a specific result. As 100% of their PSI is earnt through these agency contracts, these companies don't pass the results test in relation to Erica, Alan or Simon. The PSI rules will apply unless they pass one of the other PSB tests.

80% rule

To meet the **80% rule**, you need to work out the amount of PSI that comes from each client (including the client's associates) in an income year.

If you obtain work through an agency, the source of the PSI you receive is the agency, not the end clients.

If you obtain work through one agency only (even if you work for multiple clients of that agency), you will not meet the 80% rule. You cannot self-assess for any of the other tests. If you obtain work through more than one agency, you need to work out what percentage of PSI comes from each agency.

If you operate through a company, partnership or trust and you have more than one individual generating PSI, the 80% rule applies to each individual. You need to look at the amount of PSI that you receive for each individual and how much of that amount comes from one client (including associates of the client).

Example 1: Erica – one agency

Erica's Consulting Pty Ltd provides consultancy services performed by Erica. Erica's Consulting Pty Ltd receives 100% of its PSI from Agency 1.

Since the company receives more than 80% of its PSI from one client, the company cannot self-assess using the unrelated clients, employment, or business premises test. The PSI rules apply unless the company has a PSB determination for the relevant income year.

Example 2: Alan – more than one agency

Alan is an architect and provides his services through a company called Alan's Architectural Services Pty Ltd. The company receives 50% of its PSI from Agency 1 and 50% from Agency 2.

Since less than 80% of its PSI comes from one source, the company can self-assess using the unrelated clients, employment or business premises test.

Unrelated clients test

To pass the **unrelated clients test**, your income must be produced from 2 or more clients who are not related or connected with each other. The work must be obtained by making offers to the public or a section of the public.

If your business obtains work by registering with an agency, it is not making offers to the public under the unrelated clients test.

Making offers to the public can include:

- advertising in a newspaper, industry magazine, or business directory
- maintaining a website
- public tender.

QC 46087

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