



Australian Government

Australian Taxation Office

Personal services income schedule 2004

Schedule and explanatory notes.



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INTRODUCTION

This schedule is to be used by companies, partnerships and trusts only.

Please read the instructions to help you to complete this schedule.

If you are an individual receiving personal services income (PSI) you must complete item **P1** of the *2004 business and professional items schedule*.

ALIENATION OF PERSONAL SERVICES INCOME

On 1 July 2000 the *New Business Tax System (Alienation of Personal Services Income) Act 2000* introduced rules which affect the tax treatment of PSI earned by contractors and consultants.

WHAT IS PERSONAL SERVICES INCOME (PSI)?

This is income that is mainly a reward for an individual's personal efforts or skills.

Examples of PSI include:

- income of a professional practitioner in a sole practice
- income payable under a contract which is wholly or principally for the labour or services of a person
- income derived by a professional sportsperson or entertainer from the exercise of professional skills, and
- income derived by consultants from the exercise of personal expertise.

It does not include income that is mainly:

- for supplying or selling goods—for example, from retailing, wholesaling or manufacturing
- generated by an income-producing asset—for example, from operating a bulldozer
- for granting a right to use property—for example, the copyright to a computer program, or
- generated by a business structure—for example, a large accounting firm.

If PSI is received by a company, partnership or trust (a personal services entity), it is still the individual's PSI for income tax purposes.

The rules do not affect PSI received by employees, except where the individual is an employee of a personal services entity. The rules also do not apply to PSI that is earned in the course of conducting a personal services business.

NOTE

'you' and 'your' in these instructions refers to the personal services entity.

WHAT IS A PERSONAL SERVICES BUSINESS?

You qualify as a personal services business if:

- you meet the results test, or
- less than 80% of the individual's PSI in an income year comes from each client and you meet either the unrelated clients test or the employment test or the business premises test, or
- you obtain a determination from the Commissioner of Taxation confirming that you are a personal services business.

WHAT IS THE RESULTS TEST?

You will meet the results test in an income year if, in respect of at least 75% of the PSI of the individual doing the personal services work, having regard to the custom or work practice when work of that kind is performed:

- the PSI is paid to achieve a specified result or outcome under your contract or arrangement, and
- you provide the tools or equipment necessary (if any) to do the work, and
- you are liable for the cost of rectifying defects in the work performed.

You can self-assess whether you meet the results test.

WHAT IS THE 80% RULE?

If you don't meet the results test and 80% or more of the PSI in the income year comes from one client (and their associates) you cannot self-assess whether you meet the other tests. The changes to the tax law apply to you unless you get a determination from the Commissioner.

When considering the 80% rule do not take into account PSI received as an employee or income that is not PSI (for example, investment income or income from the sale of goods or the use of an income-producing asset).

If you are a commission agent your PSI will be treated as coming from each customer provided you meet all of the following conditions:

- You are an agent of the principal but not an employee.
- You receive income from your principal for services that you provide to customers on the principal's behalf.
- At least 75% of that income is performance-based commissions or fees.
- You actively seek other customers to whom you could provide services on the principal's behalf.
- You do not provide any services to the customers, on the principal's behalf, using premises that the principal (or their associate) owns or has a leasehold interest in, unless you use the premises under an agreement entered into at arm's length.

If you meet all of these conditions and, as a consequence, less than 80% of the PSI is treated as coming from each customer, you can self-assess against the unrelated clients test, employment test and business premises tests. You do not need to obtain a determination from the Commissioner to be a personal services business although you may apply for a determination if you are unsure.

UNRELATED CLIENTS TEST

You will meet the unrelated clients test in the income year, if the individual doing the personal services work generates PSI from two or more clients who are not associated with each other or with the individual or with you.

The personal services must also be provided as a direct result of making offers to the public—for example, by advertising or word of mouth. Do not count clients obtained by putting your name with a labour hire firm, placement agency or similar organisation.

Separate government departments are deemed not to be associates of each other for the purposes of this test.

If you are a commission agent that meets all of the conditions for the special rules and satisfy the 80% rule, you will pass the unrelated clients test if your services are provided to at least two customers as a direct result of you making offers or invitations to the public on behalf of your principal.

EMPLOYMENT TEST

Subject to certain exceptions noted below, you will meet the employment test in the income year if you:

- have employees, engage sub-contractors or engage entities that perform at least 20% (by market value) of the principal work, or
- you have apprentices for at least half the income year.

Principal work is the main work that generates the PSI and does not usually include support work such as secretarial duties.

You can count a spouse or family member who does principal work but not companies, partnerships or trusts associated with you.

If you are a partnership you can also count any partners who perform principal work that helps to generate the PSI.

You cannot count any individual whose PSI you receive.

BUSINESS PREMISES TEST

You will meet the business premises test if at all times in the year of income you maintain and use business premises that are:

- mainly used to conduct the work—more than 50% of the use from which time personal services income is gained or produced

- used exclusively by you
- physically separate from the private residence of:
 - the individual doing the personal services work
 - their associates
 - your associates
- physically separate from the business address of your clients or their associates.

The Phrase 'at all times during the income year' is taken to mean the whole period during which activities are conducted for the purposes of generating personal services income.

You need not maintain and use the same business premises throughout the year but you must satisfy all the above criteria.

WHAT IF THE PSI RULES APPLY?

Generally if the rules apply to you, there are three main effects:

- The PSI, reduced by certain deductions to which the personal services entity is entitled, is treated as the income of the individual who does the personal services work and must be included in their income tax return.
- The personal services entity must either:
 - pay the PSI promptly, as salary or wages, to the individual who does the personal services work, or
 - attribute the net PSI to the individual who does the personal services work and withhold and remit tax on that income.
- The deductions you can claim are limited.

In those cases where the personal services entity has made a net personal services income loss:

- The individual is entitled to a deduction for the loss; and
- The total amount of the deductions to which the entity is entitled is reduced by the amount of the individual's deduction for the loss.

DEDUCTIONS

The deductions which may be limited include the following:

Certain car expenses

You may deduct:

- a car expense for each car used solely for business purposes
- a car expense or an amount of fringe benefits tax payable for a car fringe benefit where a car is used partly for private purposes. However, there cannot be, at the same time, more than one car for which such deductions can arise in relation to gaining or producing the same individual's PSI. If there is more than one car of which there is private use at the same time, in respect of the same individual, you must choose one car only upon which to claim deductions. The choice remains in effect until you cease to hold that car.

Superannuation contributions

You may claim a deduction up to the age-based limit for contributions you make to a complying superannuation fund or retirement savings account (RSA) for the purposes of making provision for superannuation benefits payable for an individual whose PSI is included in your ordinary or statutory income.

If you make a contribution to a complying superannuation fund or RSA for an individual who is an associate of an individual whose PSI is included in your ordinary or statutory income, and the contribution is for principal work, then your deduction cannot exceed the amount you would have to contribute to a complying superannuation fund or RSA in order to ensure that you did not have an individual superannuation guarantee shortfall in respect of that individual.

You cannot claim any deduction relating to PSI for contributions you make to a complying superannuation fund or RSA for an associate of an individual whose PSI is included in your income, where the associate only performs non-principal work.

Entity maintenance deductions

These are:

- fees or charges associated with an account with an authorised deposit-taking institution (but not including interest or interest-like amounts)
- tax-related expenses
- any expense incurred in relation to the preparation or lodgment of a document under Corporations Law, except where the payment is made to an associate, and
- statutory fees.

Entity maintenance deductions must first be offset against your other income. Where the entity maintenance deductions exceed your other income, the excess of the entity maintenance deductions may reduce PSI attributable to the individual(s).

Where your income includes the PSI of more than one individual, apportion the excess entity maintenance deductions between the individuals using the following formula:

$$\text{Excess entity maintenance deductions} \times \frac{\text{Individuals PSI}}{\text{Total PSI}}$$

Mortgage interest, rates and land tax

You cannot deduct amounts that are incurred in gaining or producing an individual's PSI where such amounts represent rent, mortgage interest, rates and land tax for the residence of the individual or the residence of an associate of yours.

Payments to associates

You cannot deduct payments to associate(s) or any amount you incur from an obligation you have to your associate to the extent the payment or obligation relates to the associate performing non-principal work.



NOTE

Other expenses you incur in gaining or producing other income—for example, investment income—should be claimed in your tax return and not on the attached schedule.

For more information:

You can :

- phone the Tax Office (ATO) on **13 28 66**
- visit the our website at **www.ato.gov.au**
- speak to a recognised tax adviser
- write to us at

**Small business law
Australian Taxation Office
PO Box 1130
PENRITH NSW 2470**

- phone the Telephone Typewriter Service on **13 36 77** if you have a hearing or speech impediment
- refer to *Taxation Ruling TR 2001/7—the meaning of personal services income*, *Taxation Ruling TR 2001/8—what is a personal services business*, *Taxation Ruling TR 2003/6—contribution of personal services income* and *Taxation Ruling TR 2003/10—deductions that relate to personal services income*
- apply to the Tax Office for a personal services business determination. You can download a copy of the form and instructions from our website or phone **1300 720 092**.

Taxpayers who do not speak English and need help from the Tax Office can phone the Translating and Interpreting Service (TIS) on **13 14 50**.

Did you satisfy the results test in respect

PS1 ARE YOU CONDUCTING A PERSONAL SERVICES BUSINESS?

of any individual?

Print **X** in the appropriate box at label **W**.

Do you hold a personal services business (PSB) determination(s) in respect of any individual?

Print **X** in the appropriate box at label **B**.

NOTE

If you printed **X** in the yes box at label **W** and/or at label **B** and this applies to all individuals you do not need to complete the remaining parts of the PSI schedule. Go to the signature block at the bottom of page 2. Otherwise go to the next question.

For any individual who did not satisfy the results test or hold a PSB determination, did 80% or more of their PSI come from one source?

Print **X** in the appropriate box at label **A**.

For any individual who did not satisfy the results test or hold a PSB determination, did each source of their PSI yield less than 80% of their total PSI?

Print **X** in the appropriate box at label **C**.

If you printed **X** in the yes box at label **C** you must indicate which of the personal services business tests you satisfy (if any). Print **X** at the appropriate label(s) **D1**, **E1**, **F1**.

NOTE

Before you can complete the rest of your PSI schedule you will need to make some calculations. The worksheet attached to these instructions has been provided for this purpose.

PS2 PERSONAL SERVICES INCOME DETAILS

1 Total amount of income gained by you during the year that is PSI of one or more individuals (excludes exempt and non-assessable income)

This item records the total amount of income gained by you during the income year that is the PSI of one or more individuals and that is not earned in the course of conducting a personal services business.

At this item exclude any exempt or non-assessable components of the PSI for example goods and services tax (GST).

Examples of PSI include:

- income derived by consultants for the exercise of personal expertise, and
- income derived by professional sportspeople for the exercise of their professional skill. This does not include income from the endorsement by the person of a sponsor's products.

At step 1 on your worksheet, write down the PSI that relates to each individual. Add these amounts together and write the total at label **G** on your PSI schedule.

2 Total amount of this income that you promptly paid as salary or wages

At step 2 on your worksheet, write down the amounts of PSI from step 1 that have actually been paid to each individual as salary or wages before the end of the 14th day after the PAYG payment period, during which you received the income.

Add these amounts together and write the total at label **H** on your PSI schedule.

NOTE

Paying salary or wages creates an obligation in respect of pay as you go withholding and a PAYG payment summary—individual non-business must be completed.

An individual receiving such salary or wages must complete item **1**—Gross salary or wages on their individual tax return.

3 Total payments to associates for principle work claimed as deductions

At step 3 on your worksheet, write down the amounts paid to each associate to perform work that forms part of the principle work from which each individual gained or produced PSI. Add the amounts for each individual together and write the total at label **K** on your PSI schedule.

PS3 PERSONAL SERVICES INCOME DISTRIBUTION

4 Total amount of other deductions against PSI

Work out the total of your entity maintenance deductions and subtract this amount from your non-PSI income (if any). Allocate any excess between each individual as described at **Entity maintenance deductions** in the introduction of these instructions.

Allocate your other PSI deductions to each individual to the extent that the deductions relate to gaining or producing that person's PSI. If a deduction relates to more than one individual it must be pro-rated between those individuals.

Add the excess entity maintenance deductions and other deductions for each individual and record the answers at step 4 on your worksheet.

Add these amounts together and write the total at label **L** on your PSI schedule.

The sum of the excess entity maintenance deductions and the PSI deductions will reduce the attributable PSI of each individual.

5 Net PSI

On your worksheet, for each individual subtract the amounts at step 2, step 3 and step 4 from the amount at step 1. Write this amount at step 5, Net PSI. Where the total is a negative amount, a loss, print **L** in the box at the right of the amount. Write down the answer for each individual on your worksheet.

If the amount calculated is positive, this is the amount of PSI attributable to the individual. The attributed amount is not included in the assessable income of the personal services entity.

If the amount calculated is negative, this is the amount that the individual is entitled to deduct for the net personal services income loss at item **D15** of *TaxPack 2004 supplement*. The total amount of the deductions to which the personal services entity is entitled is reduced by this amount.

Add the amounts of attributed income and personal services income losses together and write the total at label **M** on your PSI schedule. If the amount is negative, print **L** in the box at the right of the amount.

In the income tax returns of the personal services entities:

- the total of the attributed income amounts are included in the reconciliation items – item **7** label **Q** (Other income not included in assessable income) in the company tax return and item **5** label **A** (Income reconciliation adjustments) in the partnership and trust tax returns; and
- the total of the net personal services income loss amounts are included in the reconciliation items – item **7** label **W** (Non-deductible expenses) and item **5** label **B** (Expense reconciliation adjustments) in the partnership and trust tax returns.

The attribution of PSI creates obligations for pay as you go withholding. Refer to the Tax Office fact sheet *Alienation of personal services income: additional pay as you go withholding obligations* (NAT 3517—05.2002).

The payer must complete the *Payment summary—personal services attributed income*.

1 Total number of individuals to whom income is attributable or was promptly paid as salary and wages

Write this number at label **N** on your PSI schedule.

2 Individuals to whom PSI is attributable or promptly paid as salary and wages

On your worksheet, for each individual add the amount determined at step 2 to the amount determined at step 5 that is not a loss. This is the combined amount of income attributable and income that is promptly paid as salary or wages to each individual.

At step 6 on your worksheet, write the four highest combined amounts at labels **S**, **T**, **U** and **V**. In the 'TYPE' box at the right of the labels, write the appropriate type codes (step 7), where:

- code **A** is attributable PSI
- code **P** is promptly paid salary or wages, and
- code **B** is both.

Transfer the amounts at labels **S**, **T**, **U** and **V** on your worksheet to **S**, **T**, **U** and **V**, respectively, on your PSI schedule. Also transfer the appropriate type codes.

Write the tax file numbers (TFNs) of the individuals to whom labels **S**, **T**, **U** and **V** relate at labels **O**, **P**, **Q** and **R**, respectively, and print the relevant family name and given name in the spaces provided.

NOTE

The law does not require you to provide the tax file numbers of the individuals but providing it will assist in processing your tax return.

NOTE

Keep your worksheet with your tax records.

Signature as prescribed on tax return

Remember to sign the signature block at the bottom of page 2 of the PSI schedule.

TREATMENT OF ATTRIBUTED PSI IN YOUR INCOME TAX RETURN

Where PSI is attributed to an individual, the income is not assessable to the company trust or partnership. Therefore:

- *Partnership tax return 2004 or Trust tax return 2004* Include the attributed amount in the amount shown at item **5**, Reconciliation items, as calculated in the reconciliation statement (worksheet 1), item **J—Personal services income included in the assessable income of an individual (attributed amount)** in the partnership and trust tax return instructions.
- *Company tax return 2004* Include the attributed amount at item **7**, label **Q—Other income not included in assessable income**, as calculated in worksheet 1 (Other reconciliation items) in the company tax return instructions.

Examples

The following examples are designed to help you complete the PSI schedule and company, trust or partnership tax return in respect of PSI. The entities in the examples are not conducting personal services business

EXAMPLE 1

Company tax return

Where some salary or wages have been promptly paid and some PSI, which has not been promptly paid as salary or wages, is attributed to an individual

A company derives PSI from the efforts of a director.

Part of the PSI has been promptly paid as salary within 14 days of the end of the relevant PAYG withholding period. The company's profit and loss statement comprises:

Income (all PSI of the director)		\$100,000
Less Expenses		
Salary	\$30,000	
Rent for director's home that is a place of business	\$5,000	
Other expenses (all deductible)	\$25,000	\$60,000
Net profit		\$40,000

The rent paid for the director's home that is used as a place of business is not deductible under the alienation of personal services income provisions. The net profit is PSI of the director and is attributed to the director for income tax purposes (together with the amount representing non-deductible rent expense).

The information is entered at the following labels at item **6**—Calculation of total profit or loss, on the *Company tax return 2004*:

Income		
Other gross income (label R)	\$100,000	
Total income (label S)		\$100,000
Expenses		
Rent expenses (label H)	\$5,000	
All other expenses (label S)	\$55,000	
Total expenses (label Q)		\$60,000
Operating profit or loss (subtract Total expenses from Total income) (label R)		
		\$40,000
Total profit or loss (label T)		\$40,000

Item **7**—Reconciliation to taxable income or loss is then completed as follows:

Total profit or loss amount shown at label T , item 6 :	\$40,000
Add	
Non-deductible expenses [rent] (label W)	\$5,000
Subtotal	\$45,000
Less	
Other income not included in assessable income (label Q)	\$45,000
Subtraction items subtotal	\$45,000
Taxable income or loss (label T)	\$0

EXAMPLE 2

Partnership tax return

Where income of the partnership comprises PSI which is attributed to one or more of the partners

A partnership derives PSI from the contributions of its two partners; however the PSI is mainly derived by the efforts of partner A. The partnership's profit and loss statement comprises:

Income (all PSI of the partners)		\$100,000
Less Expenses		
Rent for home that is a place of business	\$5,000	
Other expenses (all deductible)	\$55,000	\$60,000
Net profit		\$40,000

There are two partners, A and B. The business is conducted from the home of partner A. The rent paid for partner A's home that is used as a place of business is not deductible under the alienation of personal services income provisions. The net profit is PSI of partner A and will be attributed for income tax purposes (together with the amount representing non-deductible rent expense).

The information is then entered at the following labels at item **5**—Business income and expenses, on the *Partnership tax return 2004*:

It is assumed the income is non-primary production income.

Income		
Other business income (label H)	\$100,000	
Total business income		\$100,000
Expenses		
Rent expenses (label H)	\$5,000	
All other expenses (label N)	\$55,000	
Total expenses (label O)		\$60,000
Subtotal		\$40,000
Reconciliation items		
Add		
Income reconciliation adjustments: attributed income (label A)	\$45,000	/L*
Add		
Expense reconciliation adjustments: rent (label B)		\$5,000
Net income or loss from business (labels R and S)		\$0
Item 13 Total of items 5 to 12 (assuming no other amounts in items 6–12 are relevant to the tax return)		\$0
Item 17 Net Australian income or loss (assuming no other amounts in items 14 to 16 are relevant to the tax return)		\$0

* This figure is a loss and is deducted from the net income figure.

EXAMPLE 3

Trust tax return

Where all PSI has been promptly paid as salary or wages

A unit trust derives PSI from the efforts of its unit holder. As at 30 June, the trust's profit and loss statement comprises:

Income (all PSI of the unit holder)		\$100,000
Less Expenses		
Salary	\$35,000	
Rent for home that is a place of business	\$5,000	
Other expenses (all deductible)	\$20,000	\$60,000
Net profit		\$40,000

The business is conducted from the home of the unit holder. The rent paid for the unit holder's home that is used as a place of business is not deductible under the alienation of personal services income provisions. The unit holder's salary has been promptly paid within 14 days of the end of the relevant PAYG withholding period.

The balance of net profit (\$40,000), plus the non-deductible rent (\$5,000), (\$45,000 in total) was paid as salary to the unit holder by 14 July. This removed the need to attribute this income.

The information is then entered at the following labels at item **5**—Business income and expenses, on the *Trust tax return 2004*:

It is assumed the income is non-primary production income.

Income	
Other business income (label H)	\$100,000
Total business income	\$100,000
Expenses	
All other expenses (label N)	\$100,000
Total expenses (label O)	\$100,000
Net income or loss from business (labels R and S)	\$0
Item 13 Total of items 5 to 12 (assuming no other amounts in items 6–12 are relevant to the tax return)	\$0
Item 17 Net Australian income or loss (assuming no other amounts in items 14 to 16 are relevant to the tax return)	\$0

EXAMPLE 4**Company tax return (Net personal services income loss)****A company derives PSI from the services of a director**

Part of the PSI has been promptly paid as salary within 14 days of the end of the relevant PAYG withholding period. The company's profit and loss statement comprises:

Income (all PSI of the director)		\$75,000
Less Expenses		
Salary	\$40,000	
Salary—Director's son (non-principal work)	\$10,000	
Other expenses (all deductible)	\$40,000	\$90,000
Net loss		\$(15,000)

The salary paid to the director's son for non-principal work is not deductible under the alienation of personal services income provisions.

The information at PS2 in the *Personal services income schedule 2004*:

1	Total amount of income gained by you during the year that is PSI of one or more individuals (label G) (excludes exempt and non assessable income)	\$ 75,000
2	Total amount of this income that you promptly pay as salary or wages (label H)	\$ 40,000
4	Total amount of other deductions against PSI (label L)	\$ 40,000
5	Net PSI (label M)	\$ 5,000 L

The Director is entitled to a deduction for the amount of the net personal services income loss. The deductions to which the company is entitled is reduced by this amount.

The information is entered at the following labels at item **6**—Calculation of total profit or loss, on the *Company tax return 2004*:

Income		
Other gross income (label R)	\$75,000	
Total income (label S)		\$75,000
Expenses		
All other expenses (label S)	\$90,000	
Total expenses (label Q)		\$90,000
Operating profit or loss (subtract Total expenses from Total income) (label R)		\$15,000 L
Total profit or loss (label T)		\$15,000 L

Item 7—Reconciliation to taxable income or loss is then completed as follows:

Total profit or loss amount shown at label T , item 6 :	\$15,000 L
Add	
Non-deductible expenses [Salary paid to Director's son and reduction in total deductions for the net personal services income loss that Director is entitled to claim] (label W)	\$15,000
Subtotal	\$15,000
Less	
Other income not included in assessable income (label Q)	\$0
Subtraction items subtotal	\$0
Taxable income or loss (label T)	\$0

