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Practical Compliance Guideline

PCG 2025/5

Personal services businesses and Part IVA of the *Income Tax Assessment Act 1936*

There is a Compendium for this document: **PCG 2025/5EC** .

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Relying on this Guideline

This Practical Compliance Guideline sets out a practical administration approach to assist taxpayers in complying with relevant tax laws. Provided you follow this Guideline in good faith, the Commissioner will administer the law in accordance with this approach.

What this Guideline is about

1. This Guideline explains when we will be more likely to have cause to apply compliance resources to consider the potential application of Part IVA of the *Income Tax Assessment Act 1936* (the general anti-avoidance provisions of the income tax law) to an alienation arrangement where personal services income (PSI) of an individual is derived through a personal services entity (PSE) that is conducting a personal services business (PSB).

2. All further legislative references in this Guideline are to the *Income Tax Assessment Act 1936,* unless otherwise indicated.

3. This Guideline provides practical guidance on the types of alienation arrangements that we consider to be of 'low' or 'higher' [1] risk of Part IVA applying and the likelihood of us having cause to apply compliance resources to review those arrangements.

4. In this Guideline:

- 'Alienation' refers to redirecting or retaining income away from the individual who performed the services, usually through another entity or associate.
- 'Self-assess' refers to a PSE that has not sought a personal services business determination (PSBD) from us and has formed their own view that they meet a PSB test.
- 'Tax benefit' refers to an amount of assessable income that is not included in the individual's tax return in the year the services were performed. [2]

5. For the purposes of this Guideline, alienation of PSI occurs when the services of an individual are provided by an interposed entity (the PSE) controlled by or associated with the individual, rather than directly by the individual who performs the services. Alienation arrangements create a compliance risk when they are used to retain income in the PSE (referred to as 'retention of profits' arrangements) or divert income to associates (referred to as 'income splitting' arrangements), or both, such that the income is taxed at an overall lower rate.

6. We have a long-standing view on the treatment of PSI according to ordinary tax rules and the potential application of Part IVA, and its predecessor, former section 260, to income splitting and retention of profits arrangements. [3] There have been many cases where those provisions have been found to apply to the alienation of PSI. [4] Nevertheless, and despite the note to section 86-10 of the *Income Tax Assessment Act 1997* (ITAA 1997) [5] , we are aware that some taxpayers incorrectly assume that where a PSB is being conducted, and the provisions of Division 86 of the ITAA 1997 do not apply, that Part IVA will also not apply to their income splitting or retention of profits arrangements.

7. Existing guidance and judicial decisions have made clear that Part IVA can apply to alienation arrangements involving income splitting and retention of profits where the dominant purpose of a participant in a scheme [6] was to obtain a tax benefit. In an alienation arrangement, a tax benefit will generally arise because an amount is not included in the assessable income of the individual, being an amount that would have been included, or might reasonably be expected to have been included, in the assessable income of the individual if the scheme had not been entered into.

8. While the introduction of the PSI rules in Part 2-42 of the ITAA 1997 had the practical effect of narrowing the scope for Part IVA to apply to alienation arrangements (because where the PSI rules apply, no tax benefit is obtained), it did not otherwise affect the continued operation of Part IVA. Today, where a PSE qualifies as a PSB and therefore the PSI rules do not apply, it remains possible that Part IVA will apply to the scheme under which the services are provided. [7]

9. Although this Guideline addresses the likelihood (risk) that an alienation arrangement will bring Part IVA into question, it does not provide detailed guidance on when Part IVA will apply to arrangements involving income splitting or retention of profits. Existing guidance material covering the administration and application of Part IVA more broadly is available in Law Administration Practice Statement PS LA 2005/24 *Application of General Anti-Avoidance Rules.*

10. An arrangement is considered low risk where the net PSI received through the PSE is assessed in the form of assessable income [8] to the individual whose personal efforts or skills generated that income and tax is not deferred. In contrast, a higher-risk arrangement will include either, or both, an income splitting or retention of profit arrangement which diverts PSI away from the individual or facilitates the deferral of tax.

11. While Part IVA can apply to any higher-risk arrangement, the materiality of the PSI diverted will always be a relevant factor we consider when deciding whether to review an arrangement or pursue Part IVA. We are more likely to target arrangements where there are substantial distributions or payments made to associated lower-tax persons or entities. Further, taxpayers should not be concerned that we will apply compliance resources to pursue Part IVA where they have made a genuine attempt to move into a low-risk arrangement by 30 June 2027.

12. This Guideline is limited to the matters described herein and does not affect our compliance approach to other tax issues that might arise in connection with your PSE arrangements – for example, whether Division 7A of Part III [9] applies to an arrangement within the PSE's group. If we consider that your arrangement poses a risk under other tax provisions, we will have cause to apply compliance resources to address those risks.

13. This Guideline does not replace, alter, or affect the operation of law in any way. It does not relieve you of your legal obligation to comply with all the relevant tax laws and it does not create any safe harbour administrative concessions.

Date of effect

14. This Guideline applies both before and after its date of issue.

Who this Guideline applies to

15. This Guideline is relevant for taxpayers who have entered, or are contemplating entering, alienation arrangements where:

- there is a PSE (a company or trust) that derives the PSI of an individual, and
- the PSI rules do not apply to that PSI because the PSE is conducting a PSB. [10]

16. While a partnership can also be a PSE, these structures are not the focus of this Guideline. We have a long-standing view on spousal partnerships in which (usually) one spouse earns PSI while the other provides administrative support. [11]

17. The mere fact that 2 spouses carry on a business in common in the form of a partnership, dividing profits in a way that may be advantageous for tax purposes, is not a sufficient basis, in the absence of some artificiality or contrivance, for concluding that they have arranged their affairs in that way in order to obtain tax benefits. [12] However, if the partnership or its terms has features apparently explicable only by a purpose of obtaining a tax benefit, a different conclusion could, in principle, follow. For example, a partnership in which one partner performs no services, provides no capital and takes no part in the management of the business, would raise a question about the potential application of Part IVA.

18. For the avoidance of doubt, this Guideline does not apply to alienation arrangements where:

- the income of the interposed entity is not PSI – that is, income mainly generated from the supply and sale of goods, the supply and use of income-producing assets, or from the business structure of the interposed entity [13]
- despite the interposed entity being held out as a PSE, the entity does not derive the PSI, in which case it will be the individual rather than the entity to whom the PSI is assessable under section 6-5 of the ITAA 1997 [14] ,and
- a PSE has incorrectly self-assessed that it is conducting a PSB in an income year, in which case the PSI rules will apply. [15]

19. In considering whether this Guideline applies to your arrangement, it is important to understand that income is not considered to be generated from a business structure [16] merely because:

- a company or trust (the PSE) is established through which to provide an individual's personal services
- the PSE carries on a business for tax purposes [17]
- the PSE qualifies as a PSB in an income year.

20. If a PSE mischaracterises its PSI as income from a business structure, this Guideline will still apply.

21. Where the interposed entity has income which is not personal services income, but is professional or personal services in nature (for example, because it has substantial income-producing assets or a number of employees such that it is business structure income), regard should be had to Practice Compliance Guideline PCG 2021/4 *Allocation of professional firm profits – ATO compliance approach* which we will continue to apply in relation to the ATO's application of compliance resources.

Qualifying as a personal services business

22. Where a PSE receives the PSI of an individual, the application of the PSI rules must be considered, including whether the PSE is conducting a PSB. There are 4 PSB tests against which a PSE may be able to self-assess that it conducts a PSB in relation to an individual's PSI. [18] If the PSE is unable to self-assess as a PSB for a particular income year, the PSE may be able to apply for a PSBD from us. [19]

23. If a PSE is not conducting a PSB because it has not satisfied one of the PSB tests or we have not issued a PSBD, the PSI rules will apply to the PSI it has received. Consequently, the following 3 things happen:

- The PSE will have pay as you go (PAYG) withholding obligations in relation to the PSI under Divisions 12 or 13, or both of Schedule 1 to the *Taxation Administration Act 1953*.
- The deduction limitation rules apply. [20]
- The net PSI must be attributed to the individual who performed the personal services. [21]

24. If a PSE meets one of the PSB tests, or obtains a PBSD, it qualifies as a PSB. Consequently, the PSI rules will not apply to the PSI it has received and the 3 things set out in paragraph 23 of this Guideline do not happen. However, the ordinary tax rules continue to apply to that income and that income also retains its character as PSI.

25. It is critical to understand that qualifying as a PSB does not mean that the PSB is legally entitled to divert or retain the net PSI to obtain a tax benefit for the individual whose PSI it is, by attracting an overall lower rate of tax. Part IVA can still apply where a PSB engages in income splitting arrangements or retention of profits arrangements and this consequence should be carefully considered before entering such arrangements.

Potential application of Part IVA to an alienation arrangement

26. Part IVA empowers the Commissioner to cancel a 'tax benefit' that has been obtained under a scheme where, having regard to the 8 factors in section 177D, it is concluded that the dominant purpose of the arrangement is to obtain a tax benefit.

27. Our views on the potential application of Part IVA to alienation arrangements involving income splitting or retention of profits are expressed in:

- Taxation Ruling IT 2121 *Income tax: family companies and trusts in relation to income from personal exertion*
- Taxation Ruling IT 2330 *Income tax: Income Splitting*
- Taxation Ruling IT 2503 *Income tax: Incorporation of medical and other professional practices*
- Taxation Ruling IT 2639 *Income tax: personal services income*
- Taxation Ruling TR 2003/6 *Income tax: attribution of personal services income*
- Taxation Ruling TR 2022/3 *Income tax: personal services income and personal service businesses*.

28. We also provide instruction and practical guidance to tax officers on the application of Part IVA and other general anti-avoidance rules and outline the role and operation of the General Anti-Avoidance Rules Panel of the ATO in PS LA 2005/24.

29. IT 2121, IT 2330, IT 2503, and IT 2639 applied before the introduction of the PSI rules and continue to apply to alienation arrangements that are not subject to the PSI rules (for example, because a PSE has qualified as a PSB).

30. In addition, TR 2022/3 expresses our view that Part IVA can still apply despite a PSE qualifying as a PSB in accordance with the PSI rules. [22] Paragraph 161 of TR 2022/3 sets out a non-exhaustive list of considerations that may be relevant to deciding whether the PSB and individual have engaged in income splitting to obtain a tax benefit.

31. The type of scheme to which Part IVA may apply will depend on the particular facts and circumstances of the arrangement. However, drawing from the principles established in existing guidance and judicial decisions, a scheme that has a dominant purpose of obtaining a tax benefit by alienating PSI is likely to include some, or all, of the following features:

- the use of a PSE as a vehicle to supply the personal services of the individual to the engaging entity
- the amount paid by the PSE to the individual is less than the amount of the income derived through the PSE from the provision of the personal services of the individual
- the PSI is distributed in part, or in full, to one or more associates of the individual who pay tax at a lower rate than the individual would have paid had the individual received the PSI.

32. The facts and circumstances of a particular arrangement can often demonstrate 2 different schemes – a narrower scheme or a wider scheme [23] :

- The wider scheme will generally include a contention that the PSE was created with the purpose of diverting the PSI away from the individual or retaining it in a lower-taxed entity.
- The narrower scheme will generally include a contention that the PSI derived by the PSE is the result of the individual's personal efforts or skills, and that the PSE has failed to adequately remunerate the individual but instead has distributed that income to associated entities with a lower tax rate or has retained that income in a lower-taxed entity.
- A narrow articulation of scheme may be more appropriate where the PSE is interposed for clearly commercial reasons, for example, where income can only be earned through an entity because that is a tender requirement.

Low-risk arrangements

33. Although it is not possible to make definitive statements about when Part IVA will apply to a particular arrangement, there are some arrangements which will clearly be outside the scope of Part IVA because no tax benefit is obtained. Such arrangements are referred to in this Guideline as 'low risk' because the likelihood of review by us is low. That is, having an arrangement with features that correspond to these low-risk arrangements means that we will not have cause to apply compliance resources to review the arrangement. [24]

34. Examples illustrating these types of low-risk arrangements are set out at paragraphs 49 to 119 of this Guideline.

35. This Guideline is limited to the risks associated with arrangements involving the potential alienation of PSI through a PSE that is conducting a PSB. It does not articulate our compliance approach to other tax issues that might arise in connection with your PSE arrangements. [25] If we consider that your arrangement poses a risk under other tax provisions, including the potential application of Part IVA, we may apply compliance resources to address those risks.

Higher-risk arrangements

36. The application of Part IVA depends on a broad survey of the circumstances in each case. The fact that an arrangement has features which bring Part IVA into question does not mean that Part IVA will apply. It does, however, indicate an increased likelihood of review by us, which would include a deeper consideration of whether Part IVA should apply. Arrangements which bring Part IVA into question are referred to in this Guideline as 'higher risk' because they carry this increased compliance risk.

37. An arrangement is considered higher risk where a tax benefit is obtained for the individual, being the amount of PSI that might reasonably be expected to have been included in the individual's assessable income in the relevant income year.

38. Examples illustrating these types of higher-risk arrangements are set out at paragraphs 120 to 174 of this Guideline.

Indicators of risk

39. The general principles set out in IT 2121, IT 2330, IT 2503, and IT 2639, together with the considerations in TR 2022/3, allow for indicators to be identified within alienation arrangements that carry either a low or higher risk of potentially triggering Part IVA. The existence of these indicators also informs how we will assess alienation arrangements as having either a low or higher likelihood of compliance resources being applied to review the arrangement.

40. A non-exhaustive list of indicators that may contribute to an arrangement being assessed as low risk or higher risk are summarised in Table 1 and 2 of this Guideline.

Table 1: Indicators that may contribute to an arrangement being assessed as low risk where an individual's PSI is alienated through a PSE conducting a PSB

Indicator of low risk	Relevant Guideline example
The net PSI is distributed to the individual whose personal efforts or skills generated that income and taxed at their marginal rate.	All examples of low-risk arrangements in paragraphs 49 to 119 of this Guideline.
The remuneration received by the individual is substantially commensurate with the value of their personal services. [26]	All examples of low-risk arrangements in paragraphs 49 to 119 of this Guideline.
Remuneration (for example, salary or wages) is paid to an associate [27] (or a service trust or company) for bona fide services related to the earning of the PSI if that amount is reasonable for the services provided by them. [28]	Examples 1, 2 and 3 of this Guideline.

There is a timing difference between the earning of the PSI and the distribution of net PSI to the individual, either for reasons outside the control of the individual and PSE or where the delay is explained by circumstances not attributable to tax. This creates only a temporary deferral of tax to a following income year.	Examples 4 and 6 of this Guideline.
The PSE makes a superannuation contribution on behalf of the individual, who is an employee [29] of the PSE, for the purpose of providing a superannuation benefit.	Example 5 of this Guideline.
There is an intention to temporarily retain the profits for working capital purposes, such as to fund business operations or acquire an asset for a clear commercial purpose, and that intention is carried out.	Examples 6, 7 and 8 of this Guideline.

Table 2: Indicators that may contribute to an arrangement being assessed as higher risk where an individual's PSI is alienated through a PSE conducting a PSB.

Indicator of higher risk	**Relevant Guideline example**
The net PSI is distributed to another entity, so that it is taxed at an overall lower rate than if the individual had received the income directly.	All examples of higher-risk arrangements in paragraphs 120 to 174 of this Guideline.
The remuneration received by the individual is less than commensurate with the value of their personal services. [30]	All examples of higher-risk arrangements in paragraphs 120 to 174 of this Guideline.
The PSE does not distribute any income to the individual who provided the actual services.	Examples 10, 14 and 17 of this Guideline.
There is an intention to temporarily retain the profits for working capital purposes, such as to fund business operations or acquire an asset but the intention is not carried out, and there are no sound commercial reasons for not carrying that intention out.	Example 8 of this Guideline.
The net PSI (or a part thereof) is split with an associate of the individual, thereby reducing the overall income tax liability.	Examples 10, 14, 15 and 16 of this Guideline.
Remuneration is paid to an associate (or a service trust) that is not commensurate with the skills exercised or services provided by the associate. [31]	Examples 10 and 15 of this Guideline.
The net PSI (or a part thereof) retained in the PSE is greater than required for clear commercial purposes, and the retained funds are subsequently made available to the individual for their personal use (for example, via a complying Division 7A loan). However, the mere fact that PSI is retained is a sufficient indicator of higher risk.	Examples 11, 12, 13, and 17 of this Guideline.

41. This Guideline does not establish a 'safe' level of PSI diversion. However, in some circumstances, the extent to which PSI has been diverted from the individual is a relevant factor when considering the application of Part IVA and may be relevant to whether it would be concluded that the dominant purpose of the taxpayer in entering into the arrangement was to obtain a tax benefit.

42. In this context, our prioritisation for compliance treatment to pursue Part IVA will include consideration of the relative materiality of the PSI diverted, its quantum, and impact on tax outcomes. Such a decision would be made on a case-by-case basis considering the individual facts and circumstances of the arrangement. See Example 12 of this Guideline.

Record keeping

43. The company or trust that an individual may use to divert PSI are separate legal entities for tax purposes. You should prepare and keep good records that document and explain all transactions, decisions, and other acts that each separate entity engaged in. [32]

44. Having a clear understanding about why an entity has entered into an arrangement or has chosen to deal with income and expenditure in a particular way will help to support your position and assist in the timely resolution of any review activity that we undertake.

45. The kind of documents and records that are important will depend on the facts and circumstances of each arrangement. However, the following is a non-exhaustive list of documents and records that are important where PSI of an individual is derived by a PSE:

- contracts with schedules, including contracts between the individual or an associate and PSE, and between the client and PSE
- evidence of contract negotiations such as relevant letters or emails
- timesheets or diaries detailing what work was performed, when and for whom
- tax invoices
- bank statements and loan documents
- general ledgers and journals
- dividend or distribution statements
- wage and superannuation records
- financial statements including profit and loss statements, balance sheets, depreciation schedules and tax returns
- minutes of members or directors' meetings
- trust deeds (including amendments) and trustee resolutions
- trust distribution statements
- notes, contemporaneous documents and records of discussions or meetings explaining the transactions that have happened or calculations that have been made
- documents containing particulars of any election, choice, estimate, determination, or calculation made by the taxpayer and the basis on which any such calculation was made. [33]

46. To the extent possible, the trustee, director or their registered tax agent should maintain contemporaneous records that are ordinarily created which demonstrate the objectives an arrangement was intended to achieve and how it would achieve them. [34] It is expected that a record of transactions is made as they occur, or if that is not possible, as soon as practical after the transactions have occurred. [35] For example, this could be in the form of a file note of a meeting between the trustee, director, and registered tax agent.

47. The maintenance of contemporaneous records by the trustee or director is part of good governance arrangements for managing the entity's affairs and dealing with the ATO. This is especially true where taxpayers have taken the decision to use corporate and trust structures to alienate PSI and minimise their tax. Notwithstanding that an arrangement is fully documented, Part IVA may still apply, particularly where the arrangement is contrived or artificial, is overly complex or has tax-driven features.

Examples

48. These examples are provided to assist taxpayers and their advisers in identifying the types of arrangements that would be considered to have a low or a higher risk of review activity, including a deeper consideration of Part IVA. They are not intended to be an exhaustive list of all possible low-risk and higher-risk arrangements.

Low-risk arrangements

Example 1 – interposed trust, no inappropriate diversion or retention of income

49. *Eddy is an accountant who provides his personal services through a family trust, Eddy's Accounting Practice (the Trust). Eddy is also the sole director and shareholder of Eddy Accounts Co (EA), which he set up to be the corporate trustee of the Trust. EA employs Eddy to provide accounting services. The beneficiaries of the Trust are Eddy, his wife and 2 school-aged children.*

50. *EA (in its capacity as trustee) enters into contracts with unrelated clients for Eddy's personal services. No services are provided by any other beneficiary. EA employs Maggie, who is an associate of Eddy. Maggie provides administrative support under the contracts but does not perform any principal work.* [36] *The Trust has no substantial income-producing assets or other employees. The Trust is a PSE because its income includes the PSI of Eddy, the individual who does the work.*

51. *For the income year, the Trust self-assesses as a PSB because it meets one of the PSB tests, and accordingly determines that the PSI rules do not apply to Eddy's PSI. EA pays Eddy a fixed salary which is less than the fee income received for his services and withholds tax and superannuation from those salary payments. Maggie is paid a wage which is commensurate with the administrative work she performs. After claiming allowable business deductions, EA distributes*

the balance of the Trust's net income to Eddy and remits the prescribed amount of superannuation to his superannuation fund and the associated withholding amount to the ATO.

52. *This is a low-risk arrangement in the relevant income year because the entire net PSI received by the Trust has been included as assessable income in Eddy's individual tax return, through the salary paid by the Trust and the trust distribution to Eddy.*

Example 2 – interposed company, no inappropriate diversion or retention of income

53. *Ellen is an engineering consultant who provides her personal services through a private company, EBEC Co (EBEC). Ellen and her de facto, Brody, are both directors and joint shareholders in the company.*

54. *EBEC enters contracts with unrelated clients for Ellen's personal services. Ellen is an employee of the company, engaged to perform all principal work. EBEC has no substantial income-producing assets and only one other employee, Hooper, who provides administrative support under the contracts, but does not perform any principal work. Hooper is not an associate of Ellen or EBEC. The income received by the company under contracts is mainly a reward for Ellen's personal efforts and skills and is therefore her PSI.*

55. *In the income year, the company self-assesses as a PSB because it meets one of the PSB tests, and accordingly determines that the PSI rules do not apply to Ellen's PSI. EBEC pays Ellen a fixed salary which is less than the fee income it receives for her personal services and withholds tax and superannuation from those salary payments. Hooper is paid a wage that is commensurate with the work he performs. After claiming allowable business deductions, the company resolves to distribute the net PSI to Ellen as a director's fee, remit the prescribed amount of superannuation to her superannuation fund and the associated withholding amount to the ATO.*

56. *This is a low-risk arrangement in the relevant income year because the entire net PSI has been included as assessable income in Ellen's individual tax return through the salary paid by the company and director's fees paid to Ellen.*

Example 3 – interposed trust, multiple test individuals, no inappropriate diversion or retention of income

57. *Adam, Olivia, and Yang are IT consultants. They establish a discretionary trust called the Kika Trust. The corporate trustee of the Kika Trust is OYA Co (OYA), a company of which Adam, Olivia and Yang are each a director and equal shareholder. Adam, Olivia, and Yang are also beneficiaries of the Kika Trust.*

58. *OYA, as trustee of the Kika Trust, engages Adam, Olivia, and Yang as principals, via a contractor arrangement, to provide IT services to unrelated clients and enters into contracts with those clients for their services.*

59. *The income the Kika Trust earns under the contracts is mainly a reward for the personal efforts and skills of the principals and is therefore PSI of each principal. The Kika Trust has no substantial income-producing assets or employees.* [37] *Kika Trust is a PSE, because its income comprises the PSI of the principals.*

60. *Adam, Olivia and Yang each have their own PSI to which there will have to be a separate assessment of the PSB tests to determine if the PSI rules will apply.*

61. *In the income year, Adam, Olivia and Yang are each paid a fee in line with industry norms for their skill and experience:*

- *Adam's personal services generate $250,000 in income for the Kika Trust, and he is paid a fee of $80,000.*
- *Olivia's personal services generate $750,000 in income for the Kika Trust, and she is paid a fee of $300,000.*
- *Yang's personal services generate $150,000 in income for the Kika Trust, and she is paid a fee of $50,000.*

62. *The Kika Trust meets one of the PSB tests in respect of the PSI of both Adam and Olivia and therefore self-assesses as a PSB in relation to those 2 individuals. Accordingly, it is determined that the PSI rules do not apply to Adam and Olivia's PSI.*

63. *The Kika Trust resolves to distribute net income to Adam ($170,000) and Olivia ($450,000) as beneficiaries, in amounts that are both commensurate with the value of the services each provided to the Kika Trust and represent the net PSI of that individual received by the Kika Trust.*

64. *The Kika Trust self-assesses that it does not pass a PSB test in relation to the PSI of Yang, and therefore, the PSI rules do apply. During the year, the Kika Trust has been withholding amounts from the PSI it has been earning and not paying to Yang. It attributes the net PSI to Yang, which she includes as assessable income in her individual tax return. The Kika Trust remits to the ATO the withholding amounts in relation to the net PSI attributed to Yang.*

65. *This is a low-risk arrangement in the relevant income year because the entire net PSI of Adam and Olivia has been included as assessable income in their respective individual tax returns. Further, the PSI rules have been correctly applied in respect of Yang's PSI.*

Example 4 – interposed company, temporary deferral of tax

66. *Tran is a solicitor who provides his personal services through his company, Tran Prac Co (TP), of which he is the sole director and shareholder.*

67. *TP employs Tran to provide his services as a solicitor and enters contracts with clients to provide Tran's personal services. All principal work is performed by Tran and TP has no substantial income-producing assets or other employees.* [38] *TP is a PSE because its income includes the PSI of Tran, the individual who does the work.*

68. *During each year, TP pays Tran a monthly salary and, shortly before 30 June each year, Tran works out an annual bonus amount that is equal to the amount of net profit generated by TP in the income year. This amount is paid to Tran before 30 June each year, with appropriate withholding and superannuation contributions made by TP and recorded in its annual financial statements. Tran includes the bonus payment in his tax return.*

69. *The company self-assesses as a PSB because it meets one of the PSB tests, and accordingly determines that the PSI rules do not apply to Tran's PSI. In these circumstances, Tran is at low risk of us having cause to apply compliance resources to review his affairs because the entire net PSI derived by TP has been included in Tran's individual tax return each year.*

70. *However, in May 2021, Tran undergoes a serious medical procedure that requires a lengthy recovery period. This means he is unable to do any client work or complete administrative requirements during the rest of that income year, including calculating net PSI for TP before the end of the income year.*

71. *In July 2021, when Tran recovers, he undertakes the relevant calculation for the year ended 30 June 2021 and directs TP to pay out the retained net PSI amount as a franked dividend to himself by 30 July 2021. For the 2021–22 and subsequent income years, TP resumes its normal profit analysis and distribution pattern.*

72. *This circumstance results in a franked dividend and franking credit being reported in Tran's 2021–22 individual tax return, being the franked dividend paid in July for the 2020-21 income year net PSI.*

73. *This is considered a low-risk arrangement in the relevant income year, because the one-off deferral of distribution of the net PSI derived in the 2020–21 income year was temporary and clearly driven by factors outside the control of the taxpayer. Further, the normal pattern of behaviour resumed in the following years, demonstrating the timing difference was an isolated occurrence.*

Example 5 – interposed company, superannuation benefit for individual

74. *Maxine is an audio engineer who provides her personal services through her company, Maximum Acoustics Co (MAPL). Maxine is an employee and the sole director and shareholder of MAPL.*

75. *MAPL enters into contracts with clients for Maxine's personal services. Maxine performs all principal work under these contracts. MAPL has no substantial income-producing assets or other employees* [39] *and depends on the personal efforts of Maxine to derive income. MAPL is a PSE because its income includes the PSI of Maxine, the individual who does the work.*

76. *In the income year, the company self-assesses as a PSB because it meets one of the PSB tests, and accordingly determines that the PSI rules do not apply to Maxine's PSI. MAPL derives $80,000 under the contracts, and Maxine directs MAPL to make a superannuation contribution for her benefit, to her complying self-managed super fund. The amount of the contribution corresponds to the level of Maxine's concessional contributions cap. MAPL distributes the balance of net PSI to Maxine as a salary. MAPL complies with its PAYG withholding obligations in relation to the salary paid to Maxine.*

77. *This example involves the derivation of PSI through a private company and the use of that entity to make a superannuation contribution, for which a deduction is available to the company.*

78. *However, this is considered a low-risk arrangement in the relevant income year because the superannuation contribution made on behalf of Maxine, who is an employee of MAPL, is clearly for the purpose of providing a superannuation benefit, and not for the dominant purpose of obtaining a tax benefit. Further, the remaining PSI is distributed to Maxine as a salary on which she pays tax at her marginal rate.*

Example 6 – interposed company, retention of profits for commercial purpose

79. *Hayley is a specialist medical practitioner, who provides her services to clients through Hayley Medical Co (Hayley Medical). She is the sole director and shareholder of the company.*

80. *Hayley Medical enters into contracts with clients for Hayley's personal services and she performs all principal work under these contracts. Hayley Medical has no substantial income-producing assets or other employees.* [40] *The income Hayley Medical earns under the contracts is mainly a reward for the personal efforts and skills of Hayley and is therefore Hayley's PSI. The company is a PSE because its income comprises the PSI of Hayley.*

81. *For this income year, Hayley Medical self-assesses as a PSB because it meets one of the PSB tests, and accordingly determines that the PSI rules do not apply to Hayley's PSI.*

82. *In each year that it has operated, Hayley Medical has generated profits of over $250,000. During this time, Hayley Medical has paid 100% of the profits of the business to Hayley as either salary, bonuses* [41] *, or directors fees, and each year Hayley has included those amounts in her assessable income.*

83. *During the 2022–23 income year, Hayley Medical identifies an opportunity to purchase a customer relationship management (CRM) platform that will enable Hayley to provide more efficient personal services to clients. The estimated cost of the equipment is $7,000 (excluding GST).*

84. *To fund the purchase, Hayley Medical retains $7,000 of post-tax profits derived from Hayley's personal services in the 2022–23 income year instead of paying the amount to Hayley. The acquisition is made in August of the 2023–24 income year. Due to a sale offer, the purchase price of the CRM platform is $5,000 (excluding GST), rather than the provisioned $7,000. Hayley Medical resolves to pay the post-tax $2,000 saving as a franked dividend to Hayley, with the payment made one week later.*

85. *This is considered a low-risk arrangement in the relevant income year because the temporary retention of profits to acquire the asset has a clear commercial purpose, being the potential for Hayley to charge more for her personal services, take on more clients, and thereby increase future profits. At the time of retention, the purchase of the equipment was seriously contemplated, with the purchase finalised shortly thereafter. Further, the deferral of tax relating to the $2,000 saving was temporary, with the prompt payment to Hayley indicating that there was no ongoing tax deferral strategy in place.*

Example 7 – interposed company, cash flow issues, retention of profits to pay upcoming debts

86. *Andrea is a web designer and runs her own business through her company, Andrea Web Works Co (AWW).*

87. *When Andrea first starts her business, AWW does not have any capital, so she takes out a commercial business loan for $50,000 to pay for a new powerful laptop with a bigger screen, a desk, ergonomic chair and to fund her wages through the first year.*

88. *The company self-assesses as a PSB because it meets one of the PSB tests, and accordingly determines that the PSI rules do not apply to Andrea's PSI.*

89. *After a few years of successfully running her business, there is a downturn in the industry. During the relevant income year, AWW enters a number of contracts for Andrea's services and through these contracts, the business earns total PSI income of $80,000. This is about 20% below the average amount of PSI income that AWW has earned in previous years.*

90. *AWW pays Andrea a wage of $60,000 and, after other additional expenses are deducted, AWW is left with $15,000 net profit before tax.*

91. *AWW is concerned that, because of the downturn in the industry, it will not be successful in obtaining jobs in the first months of the following income year. The company has interest costs of $500 per month, plus wages for Andrea and other administrative costs.*

92. *AWW decides to retain the $15,000, less corporate income tax of $3,750, in the company to help guard against the potential lack of income and so that it can continue paying interest and wages costs for the first couple of months of the following income year. This decision and justification is supported by contemporaneous records.*

93. *In the following income year, AWW carries out its intention to apply the retained profit to cover its costs and pay Andrea her wages.*

94. *This is considered a low-risk arrangement in the relevant income year because the retention of profits to keep the company afloat during a downturn is for a clear commercial purpose and AWW carries through with that purpose.*

Example 8 – interposed company, start-up costs, retention of profit for reasonable commercial purposes, low and higher risk arrangements

95. *Brooke is an IT specialist who decides to start her own business as a cybersecurity consultant, providing advice to businesses on improving their cybersecurity strategies. Brooke has recently been employed as a cybersecurity expert and was earning $130,000 per year.*

96. *Brooke has developed a business plan which outlines the income she hopes to generate, and estimates the expenses she'll need to cover during the first 5 years of business. Brooke estimates expenses will be higher than income for the first 2 years of business until she develops a solid customer base and reputation.*

97. *Brooke sets up a company through which she provides her personal services, Brooke Cybersecurity Co (BC). Brooke is the sole director and shareholder of BC. BC engages Brooke as a cybersecurity consultant.*

98. *In the income year, BC successfully tenders for 2 three-month projects to provide Brooke's services. BC earns $85,000 in total from these 2 contracts. BC also incurs expenditure of $6,000 on web design and digital marketing for the new business. It also has travel and other costs totalling $3,000. BC pays Brooke a wage of $65,000.*

99. *BC self-assesses as a PSB as it meets one of the PSB tests, and accordingly determines that the PSI rules do not apply to Brooke's PSI.*

100. *After paying Brooke's wages of $65,000 and other expenses, BC's net profit before tax is $11,000. BC decides to retain this profit, less corporate income tax of $2,750, in the company, rather than pay it to Brooke in the current income year because it is uncertain when it will obtain new clients and wants to use it to cover its start-up costs, particularly Brooke's wages, in the following income year.*

101. *In the following income year, BC carries out its intention to apply the retained profit to cover its start-up costs. It uses the retained profit to pay its expenses, including Brooke's wages.*

102. *This is considered a low-risk arrangement in the relevant income year because the retention of profits to fund the operating expenses of the company has a clear commercial purpose, evidenced by appropriate business records and the carrying through with that purpose.*

103. *By way of contrast, suppose that, in the following income year, BC unexpectedly receives more contracts for Brooke's services than it anticipated. It is able to cover its costs for the income year and increase Brooke's wages to an amount commensurate with her skills.*

104. *BC does not carry out its intention to apply the retained profit to pay its expenses, including Brooke's wages, in the income year but continues to retain the profit for no sound commercial reasons.*

105. *This alternative scenario is considered a higher-risk arrangement because BC does not follow through on its plan to apply the retained profit to pay its expenses, including Brooke's wages, in the following income year. There is no sound commercial reason for it to continue to hold onto the retained profit and not pay it out to Brooke. This means that we are more likely to have cause to apply compliance resources to review this arrangement, including a consideration of whether Part IVA should apply.*

Example 9 – interposed company, silent investor

106. *Logan is a landscaper and wants to start his own company, Meadow Vine Landscape Co (MVL). He has a vision to provide top-notch gardening and landscaping services but lacks the finances to get the business up and running.*

107. *To support his son's entrepreneurial venture, Ian invests $25,000 into Logan's business as a silent investor. Ian, however, does not want to involve himself into the day-to-day operations or perform any gardening or landscaping work.*

108. *Logan is the director and is an equal shareholder of MVL with Ian, each holding 50% of the company's shares. MVL has no other employees. Logan has an option to purchase Ian's shares once he has accumulated sufficient financial means to do so.*

109. *In the 2022–23 income year, MVL enters a few contracts with various clients for Logan's personal gardening and landscaping services and Logan performs all the principal work under these contracts.*

110. *Logan's work under the contracts is mainly for his personal services and skills and not for supplying rocks, pavements and plants.*

111. *In order to get the business started and build a reputation, MVL charges its customers less than what other suppliers are charging for the same services that Logan provides. Over the income year, the number of contracts obtained comprise the equivalent of 8 months work for Logan. The total income from the contracts over the income year is $60,000. MVL enters a contract with Logan to pay wages of $52,000.*

112. *MVL also has significant start-up expenses including $18,000 for a second-hand ute, $5,000 for a second-hand trailer, $1,000 for a reliable lawn mower and $3,000 for sundry items such as chainsaw, wheelbarrow, whipper snipper and leaf blower. In addition, MVL incurs marketing, publicity and other costs of $3,000.*

113. *MVL self-assesses as a PSB as it meets one of the PSB tests, and accordingly determines that the PSI rules do not apply to Logan's PSI.*

114. *MVL's total costs for the income year of $82,000 are significantly more than its PSI of $60,000, and MVL must apply $22,000 of Ian's investment into the business to cover its costs. There is no profit distribution to shareholders and the company incurs a loss of $22,000.*

115. *In the 2022–23 income year, the arrangement is low-risk because MVL has paid Logan all of the net PSI in the form of wages.*

116. *In the following 2023–24 income year, MVL successfully bids for more contracts at a higher price and earns $100,000. It pays Logan a wage of $80,000. Its other expenses, which are less this year because it has no significant equipment costs, total $10,000. It therefore has a net PSI profit of $10,000.*

117. *MVL self-assesses as a PSB in the 2023–24 income year, as it meets one of the PSB tests, and accordingly determines that the PSI rules do not apply to Logan's PSI.*

118. *MVL decides to carry forward its loss and distributes $5,000 each in dividends to Ian and Logan.*

119. *In the 2023–24 income year, the arrangement is considered low-risk because MVL has paid Logan a significant part of the PSI it derived, and paid the remaining net PSI as a dividend to Ian as a return on his investment. Although a closer examination of the facts might reveal a case for the application of Part IVA if the return to Ian appeared to be inexplicably disproportionate to the investment risk he undertook, we would be less likely to apply compliance resources to it.*

Higher-risk arrangements

Example 10 – interposed trust, income splitting arrangement

120. *Kelly is a broker who has previously provided her personal services as a sole trader. During this time, Kelly was found personally liable for defaults of her clients and having made good those defaults, resolves to no longer carry on her business in her own right.*

121. *Kelly establishes a discretionary trust, the Kelly Trust, through which she will provide her personal services going forward. Beneficiaries of the Kelly Trust include Kelly, her de facto partner, and a family trust (KLY Family Trust) controlled by Kelly. A private company, FTK Co (FTK), is also established to act as corporate trustee of the Kelly Trust. FTK (in its capacity as trustee) enters into new agreements with each of Kelly's previous clients for her personal services and all principal work is done by Kelly. FTK also enters into a contract with Kelly for the provision of her services.*

122. *The Kelly Trust does not have any substantial income-producing assets or employees* [42] *and depends upon the rendering of Kelly's personal services to generate income. The Kelly Trust is a PSE because its income includes the PSI of Kelly, the individual who performs the principal work.*

123. *In the income year, a self-assessment determines that the Kelly Trust is a PSB because it meets one of the PSB tests, and accordingly, that the PSI rules do not apply to Kelly's PSI. FTK does not remunerate Kelly for her personal services and resolves to distribute the trust's net income to Kelly and KLY Family Trust in equal amounts. The KLY Family Trust (of which Kelly, her partner and their 2 adult children are beneficiaries) subsequently resolves to distribute its net income to Kelly and the children. Kelly and the children pay tax on their respective trust distributions at their marginal tax rates.*

124. *The amounts Kelly receives as trust distributions from the Kelly Trust and KLY Family Trust are not commensurate with the value of the personal services that Kelly provided.*

125. *In this example, although entities have been interposed between Kelly and the clients for commercial purposes (to limit personal liability), Kelly has utilised the interposed entities to distribute Kelly Trust's net income (the net PSI) without regard to the value of her personal services.*

126. *The total amount of tax paid between Kelly and the other beneficiaries is less than would have been paid if Kelly had returned the entire net PSI in her individual tax return. The splitting of Kelly's PSI with an associate, being the KLY Family Trust (and ultimately her 2 adult children) results, overall, in less tax being paid. This is because there is an amount of assessable income which is not included by Kelly in her individual tax return for the year, which is a tax benefit to which Part IVA may apply.*

127. *This example involves the splitting of an individual's PSI and is therefore considered a higher-risk arrangement that brings Part IVA into question. This means that we are more likely to have cause to apply compliance resources to review this arrangement, including a consideration of whether Part IVA should apply.*

Example 11 – interposed company, salary under highest marginal tax rate, retention of profits

128. *Jai is a licensed electrician who provides his personal services through his company, Jai Electrical Services Co (JES). Jai is the sole director and shareholder of JES. JES engages Jai as an electrician.*

129. *During the 2024–25 income year, JES enters subcontracts with a number of electrical contractors to provide electrical installation in new homes. These subcontracts form the bulk of JES's income for the income year.*

130. *The electrical wiring, cabling and appliances are provided by the electrical contractors, but JES uses its own tools and equipment to install them. JES leases a commercial vehicle and owns basic equipment required to do the job.*

131. *The income JES earns under the subcontracts is mainly a reward for the personal efforts and skills of Jai and is therefore PSI. JES has self-assessed that it meets one of the PSB tests for the income year and is a PSB.*

132. *JES generates a total income of $250,000 in the income year.*

133. *Jai is paid wages of $189,000 during the 2024–25 income year, in order that he remain under the top marginal income tax rate of 45% which applies from $190,000. There is a remaining profit of $26,000 after deductions for Jai's wages, lease payments, tools and materials and this profit is retained in JES and taxed at the lower corporate rate of 25%.*

134. *This example involves the retention of a significant part of an individual's PSI in a lower-taxed entity and is therefore considered a higher-risk arrangement that brings Part IVA into question. This means that we are more likely to have cause to consider applying compliance resources to reviewing this arrangement, including a consideration of whether Part IVA should apply.*

135. *By way of variation, suppose that JES pays Jai an annual wage amount which is commensurate with the work performed (and not with reference to the applicable personal income tax rate), and that his salary is therefore $200,000 over the income year. After deduction of other costs such as lease payments, insurance, tools and materials, JES has a remainder profit of $15,000.*

136. *JES pays the $15,000 profit to Jai as an end-of-year bonus, and Jai includes this amount in his assessable income.*

137. *This variation would be considered a low-risk arrangement in the relevant income year because JES has paid the whole of the net PSI to Jai, which Jai has reported as his assessable income.*

Example 12 – interposed company, retention of profits arrangement

138. *Chester is a corporate consultant who has provided his personal services to unrelated corporate clients, Company X, Company Y, and Company Z, since 2018. In each income year, Chester receives a combined total of approximately $400,000 under contracts with these clients for his services.*

139. *At the beginning of 2022, Chester meets with his accountant to get advice on how to minimise the tax he must pay. Following this advice, at the beginning of the 2022–23 income year, Chester sets up a private company, Consult Chester Co (CC), through which he will provide his personal services going forward. Chester is the sole director of CC, and the shareholder is a corporate trustee of a discretionary trust controlled by Chester.*

140. *CC enters into new agreements with Company X, Y, and Z, under which CC agrees to provide Chester's personal services. CC also enters into a contract with Chester for the provision of his services to CC. The income CC earns under the contracts is mainly a reward for Chester's personal efforts and skills and is therefore his PSI. CC has no substantial income-producing assets or employees* [43] *and is therefore a PSE because its income comprises the PSI of Chester.*

141. *During the 2022–23 income year, CC self-assesses as a PSB as it meets one of the PSB tests, and accordingly determines that the PSI rules do not apply to Chester's PSI. CC pays Chester $20,000 for his services, an amount that is less than the income it receives for his personal services and which is not commensurate with the value of the services he provided. The net profit is retained by CC and Chester borrows this money from CC on Division 7A-compliant terms for his private purposes.*

142. *In this example, the use of the interposed entity does not provide Chester with any additional material, commercial or practical benefit as compared to the previous arrangement whereby he was paid directly by clients for services provided. Absent the arrangement, Chester might reasonably have been expected to have continued to personally derive the income from his services. The retention of profits in CC results, overall, in less tax being paid. By interposing CC, Chester did not include amounts which would have otherwise been included in his assessable income, which is a tax benefit to which Part IVA may apply.*

143. *This example involves the retention of an individual's PSI in a lower-taxed entity and is therefore considered a higher-risk arrangement that brings Part IVA into question. This means that we are more likely to have cause to apply compliance resources to reviewing this arrangement, including a consideration of whether Part IVA should apply.*

144. *By way of variation, had CC paid Chester an amount that represented a significant part of the PSI derived, for example, $380,000, then although Part IVA could still apply, we would be less likely to have cause to apply compliance resources to pursuing Part IVA, based on the relative materiality of income retained in the lower-taxed entity. In this example, Chester would be provided with education regarding his compliance obligations and should expect monitoring to ensure future compliance.*

Example 13 – interposed company, retention of profit without commercial purpose

145. *Diana is an IT consultant who is employed by JDIT Co (JDIT), a private company owned and controlled by Diana and her husband, Joe. Diana and Joe are employees of the company, with Joe undertaking small amounts of administrative tasks one day a month for a fixed salary. Joe has other employment income of $174,000 a year from an unrelated employer.*

146. *JDIT enters into contracts with 5 clients to provide Diana's consultancy services and all principal work is performed by Diana. The company does not have any substantial income-producing assets or other employees.* [44] *The income received by JDIT under contracts is mainly a reward for Diana's personal efforts and skills and is therefore her PSI.*

147. *For each income year, the company self-assesses as a PSB as it meets one of the PSB tests, and accordingly determines that the PSI rules do not apply to Diana's PSI.*

148. *Due to the nature of the IT consulting services Diana provides to clients, she must have access to the latest computer software and hardware (IT equipment). The IT equipment that Diana uses is owned by JDIT, and JDIT incurs capital expenditure of $12,000 every 2 years on equipment upgrades.*

149. *In each income year, JDIT receives between $350,000 and $400,000 from contracts for Diana's personal services. Diana is paid a salary of $80,000, which is not commensurate with the value of the services she provides. Joe is paid a salary of $5,000, which represents a market value salary for his administrative services. JDIT always retains any remaining profit and invests it in a share portfolio. JDIT has not distributed profits in any year. Diana and Joe live off their respective employment incomes.*

150. *Although JDIT incurs capital expenditure in upgrading the IT equipment, this simply means that it must retain at least the post-tax cost of the equipment every 2 years. However, the fact that JDIT incurs this expenditure cannot explain the overall scheme as having a non-tax purpose because the amount JDIT retains each year is significantly more than what is needed to fund the IT equipment upgrades.*

151. *The total amount of tax paid between JDIT, Diana and Joe is less than what would have been paid if Diana had returned the entire net PSI from her personal efforts and skills in her individual tax return. This amount which is not included in her assessable income is a tax benefit to which Part IVA may apply. The retention of profit in JDIT results, overall, in less tax being paid.*

152. *This example involves the retention of profits in a lower-taxed PSB and is therefore considered a higher-risk arrangement that brings Part IVA into question. This means that we are more likely to have cause to apply compliance resources to reviewing this arrangement, including a consideration of whether Part IVA should apply.*

Example 14 – interposed trust, diversion of income to controlled entity with carry forward losses

153. *Terry is an environmental engineer who provides his services through his discretionary trust, Terry Trust. Beneficiaries of the Terry Trust are Terry, his wife Anita, a private company, and a unit trust which has carried forward losses. Both the private company and unit trust are controlled by Terry. Terry also establishes a private company, Terry EE Co (TEE) to be the corporate trustee of Terry Trust, with Anita the sole director and shareholder. Terry agrees to provide his services gratuitously under a verbal agreement with TEE.*

154. *TEE enters into a written contract with Company Z for Terry to provide personal services. TEE does not have any substantial income-producing assets or employees.* [45] *Company Z only pays TEE when the required specified outcome agreed to in the contract is achieved. TEE is dependent upon the rendering of Terry's personal services to generate income, and therefore the income received is Terry's PSI. The Terry Trust is a PSE because its income includes the PSI of Terry, the individual who performs the principal work.*

155. *For the income year, it is determined that the Terry Trust is a PSB because it meets one of the PSB tests, and accordingly, that the PSI rules do not apply to Terry's PSI. Terry does not receive any remuneration from the Terry Trust for the services provided to Company Z. The Terry Trust resolves to distribute the net trust income to the unit trust beneficiary. This distribution is completely offset by the carried forward losses in the unit trust.*

156. *This example involves the derivation of PSI through a discretionary trust with that income paid to a tax-advantaged beneficiary. As the income derived by the Terry Trust is sheltered by losses available to the beneficiary unit trust, the tax results of the arrangement are a reduction in what would otherwise have been Terry's assessable income (which is a tax benefit to which Part IVA may apply), and, overall, less tax being paid. The fact that Terry has entered into a verbal agreement with TEE to provide his services for free does not alter the fact that the arrangement results in income earned from the personal efforts of Terry being diverted to an associated entity, and a lower amount of tax being paid.*

157. *This example involves an arrangement to divert an individual's PSI to a lower-taxed associate and is therefore considered a higher-risk arrangement that brings Part IVA into question. This means that we are more likely to have cause to apply compliance resources to reviewing this arrangement, including a consideration of whether Part IVA should apply.*

Example 15 – interposed company, remuneration to associate not commensurate with services provided

158. *Adam is an IT specialist who, in the previous 5 income years, has provided his personal services directly to clients as a sole trader. Adam received income of approximately $250,000 in each of those years.*

159. *After speaking with a friend in the same profession who has set up a private company through which to provide their services, Adam decides to set up XYZ Co (XYZ) through which he will provide his personal services going forward. Adam and his wife Emily are the only directors and shareholders in the company. Emily is a childcare educator who is employed by a local council service. She is currently on unpaid leave caring for their one-year-old daughter.*

160. *XYZ enters into contracts for Adam's personal services with the same clients Adam previously worked with. Under the contracts, all work is performed by Adam, although Emily provides some assistance, under his supervision and instruction, one day per fortnight. Emily is contracted by XYZ to provide her services but does not perform any principal work. XYZ does not have any substantial income-producing assets. The company is a PSE because its income includes the PSI of Adam, the individual who does the work.*

161. *For the income year, XYZ self-assesses as a PSB because it meets one of the PSB tests, and accordingly determines that the PSI rules do not apply to Adam's PSI. The clients make payments of $256,000 to XYZ for Adam's services and Adam directs XYZ to distribute the net income to himself and Emily on a 70:30 basis. Emily is allocated $77,000 from XYZ by way of a nominal salary and fully franked dividends on which she pays tax at her marginal tax rate. The amounts paid to Emily are disproportionate to the value of the services she has provided during the year. Adam receives a salary of $179,000 on which he pays tax at his marginal tax rate.*

162. *This example involves the derivation of PSI through a private company that is used to enable a significant part of that income to be paid to an associate on a lower tax rate. The remuneration received by both Adam and Emily is not commensurate with the value of the respective services they provided. The tax results of the arrangement are a reduction in what would otherwise have been Adam's assessable income (which is a tax benefit to which Part IVA may apply), and, overall, less tax being paid.*

163. *This example involves an arrangement to divert an individual's PSI to a lower-taxed associate, and is therefore considered a higher-risk arrangement that brings Part IVA into question. This means that we are more likely to have cause to apply compliance resources to reviewing this arrangement, including a consideration of whether Part IVA should apply.*

Example 16 – interposed trust, income splitting to family members, remuneration not commensurate with services provided

164. *Daniel is a lawyer and the sole director and shareholder of Law Prac Co, the corporate trustee for the DA Family Trust (DAFT). Daniel provides his personal services through DAFT under a contract for service. He is also employed separately by Q University as a part-time law lecturer, for which he earns a salary of $80,000.*

165. *The trustee for DAFT enters into contracts with unrelated clients to provide Daniel's legal services. This includes a contract with Why Lee Co (WL), pursuant to which DAFT would be paid an annual amount of $300,000 for the provision of legal services. Daniel is named in the WL contract and performs all the work. DAFT does not employ or engage any other persons other than Daniel to provide the services and does not have any substantial income-producing assets.* [46] *DAFT is a PSE because its income includes the PSI of Daniel, the individual who performs the principal work.*

166. *In the income year, it is determined that DAFT is a PSB because it meets one of the PSB tests, and accordingly, that the PSI rules do not apply to Daniel's PSI. Daniel receives a trust distribution of $35,000 as remuneration for the services he provided under the WL contract. The distribution is significantly less than the annual fee received by DAFT for the provision of his services. DAFT resolves to distribute the remainder of the net income to the other beneficiaries of the trust who are the immediate family members of Daniel and in a lower tax bracket. Each beneficiary pays tax on their trust distribution at their marginal rate.*

167. *The total amount of tax paid by Daniel and his associates is less than what would have been paid if Daniel had returned the entire net PSI from his personal services in his individual tax return. The splitting of Daniel's PSI to his associates has reduced Daniel's assessable income, which is a tax benefit to which Part IVA may apply.*

168. *This example involves the use of an interposed company to divert an individual's PSI to lower-taxed associates and is therefore considered a higher-risk arrangement that brings Part IVA into question. This means that we are more likely to have cause to apply compliance resources to reviewing this arrangement, including consideration of whether Part IVA should apply.*

Example 17 – interposed company with historical losses, retention of profits without commercial purpose

169. *Tom is a civil engineer who provides his personal services through his company, BLD Co (BLD). Tom is the sole director and shareholder of BLD.*

170. *BLD enters into contracts with numerous clients in the years 2018 to 2023, for the provision of engineering services. Tom is named in each contract and is the only person that provides engineering services on behalf of BLD. During this time, BLD also has another business operation selling goods, which are accounted for separately. BLD does not have any substantial income-producing assets and its other employees are employed entirely in the operation for the selling of goods. The company is a PSE because its income includes the PSI of Tom, the individual who does the work.*

171. *During the relevant years, it is determined that BLD is a PSB because it meets one of the PSB tests, and accordingly, that the PSI rules do not apply to Tom's PSI. BLD receives payments for the personal services that Tom provides, and these payments are retained within the company each year. Tom does not receive a salary, dividend, or other remuneration for his services during this time.*

172. *In each income year, the retained income is applied to accounting losses accrued by BLD's other business operations.*

173. *The total amount of tax paid between Tom and BLD is less than would have been paid if Tom had returned the entire net PSI in his individual tax return. The failure of Tom to include any PSI in his assessable income, and instead include the PSI in the company's assessable income, is a tax benefit to which Part IVA may apply. The retention of Tom's PSI in an entity that has tax losses, and the offsetting of those losses against that PSI, results, overall, in less tax being paid by both Tom and BLD.*

174. *This example involves the failure to adequately remunerate Tom for his personal efforts in providing his services and the retention of profits in a tax-advantaged PSB and is, therefore, considered a higher-risk arrangement that brings Part IVA into question. This means that we are more likely to have cause to apply compliance resources to reviewing this arrangement, including a consideration of whether Part IVA should apply.*

Commissioner of Taxation
28 November 2025

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[1]
The use of 'higher' denotes the increased degree of compliance risk associated with these arrangements. This Guideline does not use the term 'high' risk as this denotes an absolute and it is not possible to make such definitive statements about the likelihood of Part IVA applying to a particular arrangement.

[2]
See paragraph 177C(1)(a).

[3]
Expressed in public rulings, including Taxation Rulings IT 2121 *Income tax: family companies and trusts in relation to income from personal exertion* and TR 2001/8 *Income Tax: what is a personal services business* (now withdrawn) and most recently in Taxation Ruling TR 2022/3 *Income tax: personal services income and personal services businesses* (which replaced TR 2001/8).

[4]
Including *Tupicoff, Gary v The Commissioner of Taxation* [1984] FCA 382 and *Commissioner of Taxation (Cth) v Gulland; Watson v Commissioner of Taxation (Cth); Pincus v Commissioner of Taxation (Cth)* [1985] HCA 83.

[5]
The note to section 86-10 of the ITAA 1997 states 'The general anti-avoidance provisions of Part IVA of the *Income Tax Assessment Act 1936* may still apply to cases of alienation of personal services income that fall outside this Division'.

[6]

A scheme to which Part IVA applies is defined in section 177A. Section 177A provides a broad definition:

(a) any agreement, arrangement, promise or undertaking, whether express or implied and whether or not enforceable or intended to be enforceable by legal proceedings; and

(b) any scheme, plan, proposal, action, course of action or course of conduct.

[7]
Refer to the note to section 86-10 of the ITAA 1997 which states the general anti-avoidance provisions may still apply to cases of alienation of personal services income.

[8]
For example, as dividends, salary, and wages, or pursuant to section 97.

[9]
See Division 7A of Part III which sets out the taxation treatment of 3 kinds of amounts as dividends paid by a private company.

[10]
The PSI rules are measures contained in Part 2-42 of the ITAA 1997 that determine how PSI is to be treated, deductions available against that income and any pay as you go obligations. The expression 'PSI rules do not apply' is used for ease of reference, however, we recognise that the PSI rules still apply to assessing whether an entity is conducting a PSB.

[11]
See IT 2330 *Income Tax: Income Splitting.*

[12]
See paragraphs 1.20 to 1.22 of the Explanatory Memorandum to the Tax Laws Amendment (Countering Tax Avoidance and Multinational Profit Shifting) Bill 2013.

[13]
See paragraphs 38 to 45 of TR 2022/3 which set out the Commissioner's view on income that is not PSI.

[14]
See paragraph 10 of TR 2022/3. In addition, the individual would need to consider whether the PSI rules apply to limit the deductions available against that PSI.

[15]
In this situation, the PSE may have failed to withhold as required by Division 13 of Schedule 1 to the *Taxation Administration Act 1953* in relation to the PSI derived by the PSE and attributable to the individual. A failure to withhold comes with the consequence that the PSE will become liable for failure to withhold penalties under paragraph 16-30(1)(b) of Schedule 1 to the *Taxation Administration Act 1953.* The same outcome will arise where a PSE that has self-assessed as conducting a PSB in a previous year fails to self-assess in a subsequent year, but continues to operate on the assumption it is a PSB, even though it fails to meet any of the tests in that year.

[16]
See paragraphs 42 to 45 and Examples 6, 7, and 8 of TR 2022/3 for guidance on what is income from a business structure.

[17]
For guidance on when an entity is 'carrying on a business', see TR 97/11 *Income tax: am I carrying on a business of primary production?* and TR 2019/1 *Income tax: when does a company carry on a business?*

[18]
See paragraphs 67 to 148 of TR 2022/3 which sets out our view on the application of the PSB tests.

[19]
See paragraphs 152 to 159 of TR 2022/3 for guidance on when an entity can apply for a PBSD from us.

[20]
For guidance on deductions in relation to PSI, see Taxation Ruling TR 2003/10 *Income tax: deductions that relate to personal services income.*

[21]
For guidance on attribution of PSI, see Taxation Ruling TR 2003/6 *Income tax: attribution of personal services income.*

[22]

See paragraphs 160 to 162 of TR 2022/3.

[23]
Commissioner of Taxation v Mochkin [2003] FCAFC 15 and *Commissioner of Taxation v Hart* [2004] HCA 26.

[24]
See Practical Compliance Guideline PCG 2016/1 *Practical Compliance Guidelines: purpose, nature, and role in ATO's public advice and guidance*.

[25]
This Guideline does not consider the interaction with other tax issues including, but not limited to, Divisions 7 and 7A of Part III, sections 99A and 100A of the ITAA 1936 and Division 83A of the ITAA 1997.

[26]
In most cases, a salary or other distribution that is commensurate with the duties and responsibilities of the individual will be the gross amount received by the PSE less allowable deductions (other than deductions associated with income splitting).

[27]
'Associate' has the same meaning as in section 318.

[28]
Paragraph 13 of IT 2330.

[29]
For guidance on the meaning of employee, see Taxation Ruling TR 2023/4*: Income tax and superannuation guarantee: who is an employee?*

[30]
See footnote 26 of this Guideline. Also, for example, Part IVA may apply where a salary is paid to the individual as the principal worker by the trust or company and that salary is not commensurate with the value of their personal services - see paragraph 29 of IT 2330.

[31]
See section 109.

[32]
Subsection 262A(2) and paragraph 1 of TR 96/7 *Income tax: record keeping - section 262A - general principles*.

[33]
Subsection 262A(2).

[34]
You are liable to incur penalties if you fail to meet your tax obligations, including keeping or retaining records as required.

[35]
Paragraph 19 of TR 96/7.

[36]
A reference in this Guideline to 'principal work' means work carried out by an individual (or PSE) that is central to meeting the obligations under the contract with the service acquirer. Principal work does not include associated clerical or administrative work (such as bookkeeping and answering phones) unless the principal work is administrative in nature. See paragraph 26 of TR 2022/3.

[37]
Income mainly generated from substantial income-producing assets or a number of employees is not PSI, see paragraphs 18 to 21 of this Guideline and paragraphs 38 to 45 of TR 2022/3 for further guidance.

[38]
Income mainly generated from substantial income-producing assets or a number of employees is not PSI, see paragraphs 18 to 21 of this Guideline and paragraphs 38 to 45 of TR 2022/3 for further guidance.

[39]
Income mainly generated from substantial income-producing assets or a number of employees is not PSI, see paragraphs 18 to 21 of this Guideline and paragraphs 38 to 45 of TR 2022/3 for further guidance.

[40]
Income mainly generated from substantial income- producing assets or a number of employees is not PSI, see paragraphs 18 to 21 of this Guideline and paragraphs 38 to 45 of TR 2022/3 for further guidance.

[41]
It is important to note that Hayley Medical has PAYG withholding obligations in relation to any salary, wages or bonuses paid to Hayley. If Hayley Medical does not comply with those obligations, it may be liable for a penalty for failure to withhold or pay a PAYG withholding amount when required.

[42]
Income mainly generated from substantial income-producing assets or a number of employees is not PSI, see paragraphs 18 to 21 of this Guideline and paragraphs 38 to 45 of TR 2022/3 for further guidance.

[43]
Income mainly generated from substantial income-producing assets or a number of employees is not PSI, see paragraphs 18 to 21 of this Guideline and paragraphs 38 to 45 of TR 2022/3 for further guidance.

[44]
Income mainly generated from substantial income-producing assets or a number of employees is not PSI, see paragraphs 18 to 21 of this Guideline and paragraphs 38 to 45 of TR 2022/3 for further guidance.

[45]
Income mainly generated from substantial income-producing assets or a number of employees is not PSI, see paragraphs 18 to 21 of this Guideline and paragraphs 38 to 45 of TR 2022/3 for further guidance.

[46]
Income mainly generated from substantial income-producing assets or a number of employees is not PSI, see paragraphs 18 to 21 of this Guideline and paragraphs 38 to 45 of TR 2022/3 for further guidance.

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