



# ***PCG 2024/D2 - Personal services businesses and Part IVA of the Income Tax Assessment Act 1936***

 This cover sheet is provided for information only. It does not form part of *PCG 2024/D2 - Personal services businesses and Part IVA of the Income Tax Assessment Act 1936*

 For information about the status of this draft guideline, see item 4115 on our [Advice under development program](#).



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## **Draft Practical Compliance Guideline**

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

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### **📌 Relying on this draft Guideline**

This Practical Compliance Guideline is a draft for consultation purposes only. When the final Guideline issues, it will have the following preamble:

*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.*

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### What this draft Guideline is about

1. This draft Guideline<sup>1</sup> 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 legislative references in the 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’<sup>2</sup> risk of Part IVA applying and the likelihood of us having cause to apply compliance resources to review those arrangements.
4. 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, so that it is taxed at an overall lower rate.
5. 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, section 260, to income splitting and retention of profits arrangements.<sup>3</sup> There have been many cases where those provisions have been found to apply to the alienation of PSI.<sup>4</sup> Nevertheless, and despite the note to section 86-10 of the *Income Tax Assessment Act 1997* (ITAA 1997)<sup>5</sup>, we are aware that some taxpayers incorrectly assume that where a PSB is being conducted and

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<sup>1</sup> For readability, all further references to ‘this Guideline’ refer to the Guideline as it will read when finalised. Note that this Guideline will not take effect until finalised.

<sup>2</sup> 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 determinative statements about the likelihood of Part IVA applying to a particular arrangement.

<sup>3</sup> Expressed in public rulings including Taxation Ruling IT 2121 *Income tax: family companies and trusts in relation to income from personal exertion* and most recently in Taxation Ruling TR 2022/3 *Income tax: personal services income and personal services businesses*.

<sup>4</sup> 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.

<sup>5</sup> 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’.

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the provisions of Division 86 of the ITAA 1997<sup>6</sup> do not apply, that Part IVA will also not apply to their income splitting or retention of profits arrangements.

6. 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<sup>7</sup> 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.

7. While the introduction of the PSI rules in Part 2-42 of the ITAA 1997<sup>8</sup> had the practical effect of narrowing the scope for Part IVA to apply to alienation arrangements (because where it applies 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 continues to remain possible that Part IVA will apply to the scheme under which the services are provided.<sup>9</sup>

8. Although this Guideline addresses the likelihood (risk) that an alienation arrangement will bring Part IVA into question and should be reviewed, it does not provide detailed guidance on when Part IVA could potentially 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*.

9. An arrangement is considered low risk where the net PSI received through the PSE is assessed in the form of assessable income<sup>10</sup> 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.

10. 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<sup>11</sup> 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.

11. 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 or create any safe harbour administrative concessions.

### **Date of effect**

12. When finalised, this Guideline is proposed to apply to arrangements entered into both before and after its date of issue.

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<sup>6</sup> See Division 86 of the ITAA 1997.

<sup>7</sup> A scheme to which Part IVA applies is defined in section 177A. Section 177A provides a broad definition which includes any agreement, arrangement, promise or undertaking, whether express or implied and whether or not enforceable or intended to be enforceable by legal proceedings.

<sup>8</sup> See Part 2-42 of the ITAA 1997.

<sup>9</sup> 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.

<sup>10</sup> For example, as dividends, salary, and wages, or pursuant to section 97.

<sup>11</sup> See Division 7A of Part III which sets out the taxation treatment of three kinds of amounts as dividends paid by a private company.

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### Who this Guideline applies to

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

- there is a PSE (a company or trust<sup>12</sup>) that derives the PSI of an individual, and
- the PSI rules do not apply to that PSI because the PSE is conducting a PSB.<sup>13</sup>

14. 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<sup>14</sup>
- 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<sup>15</sup>, 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.<sup>16</sup>

15. 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<sup>17</sup> 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<sup>18</sup>
- the PSE qualifies as a PSB in an income year.

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

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<sup>12</sup> While a partnership can also be a PSE, these structures are not an entity of focus in this Guideline.

<sup>13</sup> 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, the Commissioner recognises that the PSI rules still apply to assessing whether an entity is conducting a PSB.

<sup>14</sup> See paragraphs 38 to 45 of TR 2022/3 which sets out the Commissioner's view on income that is not PSI.

<sup>15</sup> 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.

<sup>16</sup> In this situation, the PSE may have failed to withhold as required by Division 13 of Schedule 1 to the *Taxation Administration Act 1953* (TAA) 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 TAA. 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.

<sup>17</sup> 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.

<sup>18</sup> 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?*

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16. Where an interposed entity has income that is mainly generated from its business structure rather than the provision of personal services, for example, because it has substantial income-producing assets or a number of employees, or both, regard should be had to Practical Compliance Guideline PCG 2021/4 *Allocation of professional firm profits – ATO compliance approach* which we will continue to apply to arrangements where that income is allocated to associated entities.

### **Qualifying as a personal services business**

17. 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.<sup>19</sup> If unable to self-assess as a PSB for a particular income year, the PSE may be able to apply for a PSB determination (PSBD) from us.<sup>20</sup>

18. If a PSE is not conducting a PSB because it has not satisfied one the PSB tests or obtained 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 TAA.
- The deduction limitation rules apply.<sup>21</sup>
- The net PSI must be attributed to the individual who performed the personal services.<sup>22</sup>

19. If a PSE meets one of the PSB tests, or obtains a PSBD, it qualifies as a PSB and consequently the PSI rules will not apply to the PSI it has received and the 3 things set out in paragraph 18 of this Guideline do not happen. However, the ordinary tax rules continue to apply to that income, and it also retains its character as PSI.

20. As such, 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 pay an overall lower rate of tax and thereby obtain a tax benefit for the individual whose PSI it is. Part IVA can still apply where a PSB engages in income splitting or retention of profits arrangements and this consequence should be carefully considered before entering into such arrangements.

### **Potential application of Part IVA to an alienation arrangement**

21. Part IVA gives us the power to cancel a 'tax benefit' that has been obtained under a scheme where, having regard to the 8 factors in section 177D, it would be concluded that the dominant purpose of the arrangement is to obtain a tax benefit.

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<sup>19</sup> See paragraphs 67 to 148 of TR 2022/3 which sets out the Commissioner's view on the application of the PSB tests.

<sup>20</sup> See paragraphs 152 to 159 of TR 2022/3 for guidance on when an entity can apply for a PSBD from the Commissioner.

<sup>21</sup> For guidance on deductions in relation to PSI, see Taxation Ruling TR 2003/10 *Income tax: deductions that relate to personal services income*.

<sup>22</sup> For guidance on attribution of PSI, see Taxation Ruling TR 2003/6 *Income tax: attribution of personal services income*.

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22. 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.*

23. 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). 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.<sup>23</sup> Paragraph 161 of TR 2022/3 sets out a non-exhaustive list of considerations that may be relevant in deciding whether the PSB and individual have engaged in income splitting to obtain a tax benefit.

24. The views articulated in these rulings are based on common law principles established in key judicial decisions.<sup>24</sup>

25. 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 where there is a dominant purpose to obtain a tax benefit by alienating PSI, is likely to include some or all of the following:

- the use of a PSE as a vehicle that is contractually engaged by the engaging entity to supply the personal services of the individual to the engaging entity
- the amount of the distributions paid by the PSE to the individual being less than the amount of the income derived through the PSE from the provision of 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 if the individual had received the PSI. For example, by means of a dividend, trust distribution, being a shareholder in a company in which profits are retained or being paid remuneration above a level commensurate with the value of services provided by the associate.

26. The facts and circumstances of a particular arrangement can often demonstrate 2 different schemes – a narrower scheme or a wider scheme. The wider scheme will generally involve 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 involve a contention that the PSI derived by the PSE is the result of the individual's personal efforts or skills and the PSE has failed to adequately remunerate the individual and instead distributed that income to associated entities with a lower tax rate or

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<sup>23</sup> See paragraphs 160 to 162 of TR 2022/3.

<sup>24</sup> 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. See also paragraph 14 and footnote 17 of TR 2022/3.

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retained the income in a lower-taxed entity. A narrow scheme may be in question instead of a wider scheme where the PSE is interposed for clearly commercial reasons, such as where income can be earned only through an entity, because, for example, it is a tender requirement.

27. In the case of *Commissioner of Taxation v Mochkin* [2003] FCAFC 15, our argument, which was based on a wider scheme, was ultimately unsuccessful with the Court accepting that the dominant purpose of the relevant party to the subject arrangement was not to obtain a tax benefit but to limit personal liability. However, Sackville J indicated that it was arguable we could have been successful in the application of Part IVA had the narrower scheme have been argued.<sup>25</sup>

28. Procedures and safeguards have been put in place to ensure we approach Part IVA consistently, including establishing the General anti-avoidance rules Panel. See PS LA 2005/24 for further clarification of our view on the application of Part IVA.

### **Low-risk arrangements**

29. Although it is not possible to make determinative 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 negligible. 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.<sup>26</sup>

30. Examples illustrating these types of low-risk arrangements are set out from paragraph 44 of this Guideline.

### **Higher-risk arrangements**

31. 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 activity 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.

32. 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.

33. Examples illustrating these types of higher-risk arrangements are set out from paragraph 78 of this Guideline.

### **Indicators of risk**

34. The general principles set out in IT 2121, IT 2330, IT 2503, and IT 2639, together with the TR 2022/3 considerations, 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 inform how we will assess alienation arrangements as

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<sup>25</sup> *Commissioner of Taxation v Mochkin* [2003] FCAFC 15 at [39].

<sup>26</sup> See Practical Compliance Guideline PCG 2016/1 *Practical Compliance Guidelines: purpose, nature, and role in ATO’s public advice and guidance*.



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having either low or higher likelihood of compliance resources being applied to review the arrangement.

35. These indicators have been summarised in the following table. This is not an exhaustive list of indicators that may contribute to an arrangement being assessed as low or higher risk.

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.

<b>Low-risk indicator</b>	<b>Guideline example</b>
The net PSI is distributed to the individual whose personal efforts or skills generated the income and taxed at their marginal rate.	All low-risk examples.
The remuneration received by the individual is substantially commensurate with the value of their personal services. <sup>27</sup>	All low-risk examples.
Remuneration (for example, salary or wages) is paid to an associate <sup>28</sup> (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. <sup>29</sup>	Example 1.
There is a timing difference between the earning of the PSI and the distribution of net PSI to the individual for reasons outside the control of the individual and PSB or where the delay can be explained by circumstances not attributable to tax. This creates only a temporary deferral of tax to a following income year.	Examples 4 and 6.
The PSB makes a superannuation contribution on behalf of the individual, who is an employee <sup>30</sup> of the PSB, for the purpose of providing a superannuation benefit.	Example 5.
There is a temporary retention of profits to acquire an asset for a clear commercial purpose.	Example 6.

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<sup>27</sup> 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).

<sup>28</sup> 'Associate' has the same meaning as in section 318.

<sup>29</sup> Paragraph 13 of IT 2330.

<sup>30</sup> For guidance on the meaning of employee, see Draft Taxation Ruling TR 2023/4DC1 *Income tax and superannuation guarantee: who is an employee?*

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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

Higher-risk indicator	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 higher-risk examples.
The remuneration received by the individual is less than commensurate with the value of their personal services. <sup>31</sup>	All higher-risk examples.
The PSB does not distribute any income to the individual who provided the actual services.	Examples 7, 10 and 13.
The net PSI (or a part thereof) is split with an associate of the individual, thereby reducing the overall income tax liability.	Examples 7, 10, 11 and 12.
Remuneration is paid to an associate (or a service trust) that is not commensurate with the skills exercised or services provided by the associate.	Examples 7 and 11.
The net PSI (or a part thereof) is retained in the PSB. In most cases, 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 sufficiently higher-risk indicator.	Examples 8, 9 and 13.

36. While this Guideline does not establish an acceptable level of income splitting, the degree to which PSI has been diverted away from the individual is a relevant factor in considering the application of Part IVA, and whether the dominant purpose of the taxpayer in entering into the arrangement is to obtain a tax benefit.

37. In this context, despite an arrangement being otherwise assessed as higher risk, we may decide based on the relative materiality of the PSI diverted, or other considerations, that it would be an inefficient use of resources for us to pursue Part IVA. Such a decision would be made on a case-by-case basis considering the individual facts and circumstances of the arrangement. See Example 8 of this Guideline.

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<sup>31</sup> See footnote 27 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.

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### Record keeping

38. The company or trust that an individual may use to divert PSI are separate legal entities for tax purposes and it is clearly important that you should prepare and keep good records that document and explain all transactions, decisions, and other acts you are engaged in with these separate entities.<sup>32</sup>

39. Having a clear understanding as to why an entity has entered into an arrangement, has chosen to deal with income and expenditure in the way they have, and the knowledge of the relevant parties to the transaction or arrangement will help support your position and assist in the timely resolution of any review activity we undertake.

40. 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.<sup>33</sup>

41. We acknowledge that family arrangements are typically conducted with a greater level of informality than dealings between unrelated parties. Nonetheless, 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.<sup>34</sup> It is expected that a record of transactions is made as they occur, or if that is not possible, as soon as

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<sup>32</sup> Subsection 262A(2) and paragraph 1 of Taxation Ruling TR 96/7 *Income tax: record keeping - section 262A - general principles*.

<sup>33</sup> Subsection 262A(2).

<sup>34</sup> You are liable to incur penalties if you fail to meet your tax obligations, including keeping or retaining records as required.

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practical after the transactions have occurred.<sup>35</sup> For example, this could be in the form of a file note of a meeting between the trustee, director and registered tax agent.

42. 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 so that the dealings cannot be explained by ordinary family or commercial purpose.

### Examples

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

### Low-risk arrangements

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

44. *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 Pty Ltd (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.*

45. *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 services under the contracts but does not perform any principal work.<sup>36</sup> 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.*

46. *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 remunerated for her work in accordance with the relevant State Award. 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.*

47. *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.*

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<sup>35</sup> Paragraph 19 of TR 96/7.

<sup>36</sup> 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.

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

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

49. *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 services 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.*

50. *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 remunerated for his work in accordance with the relevant State Award. After claiming allowable business deductions, the company distributes the net PSI to Ellen as a director’s fee and remits the prescribed amount of superannuation to her superannuation fund and the associated withholding amount to the ATO.*

51. *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**

52. *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 Pty Ltd 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.*

53. *OYA Pty Ltd, 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.*

54. *The income 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. There are no substantial income-producing assets or employees. Kika Trust is a PSE because its income comprises the PSI of the principals.*

55. *Adam, Olivia, and Yang each has 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.*

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

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57. *The Kika Trust meets one of the PSB tests in respect of the PSI of each of 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.*

58. *The Kika Trust resolves to distribute net income to Adam and Olivia as beneficiaries in amounts that are both commensurate to the value of the services provided by each of them to Kika Trust and represent the net PSI of that individual received by the Kika Trust.*

59. *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 that has not been paid to Yang. It attributes the net PSI to Yang which is included 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.*

60. *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**

61. *Tran is a solicitor who provides his personal services through his company, Tran Prac Pty Ltd (TP), of which he is the sole director. The shareholder of TP is the TRN Family Discretionary Trust whose beneficiaries include Tran, his parents and daughter.*

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

63. *During each year, TP pays Tran a salary, and in the lead up to 30 June Tran undertakes an analysis of profits generated through his practice, which identifies an annual bonus amount equal to the profits generated. This amount is calculated and paid to Tran prior to 30 June each year, with appropriate withholding and superannuation payments made by TP. 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 as the entire net PSI derived by TP has been included in Tran's individual tax return each year.*

64. *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, including profit analysis for TP before the end of the income year. In July, when Tran recovers, he undertakes the relevant calculation for the year ended 30 June and directs TP to pay out the profit amount as a bonus to himself by 30 July 2021. For the 2021–22 and subsequent income years, TP resumes its normal profit analysis and distribution pattern. This circumstance results in 2 bonus payments being reported in Tran's 2021–22 individual tax return.*

65. *This is considered a low-risk arrangement in the relevant income year because the deferral of income derived in the 2021–22 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.*

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**Example 5 – interposed company, superannuation benefit for individual**

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

67. *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 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.*

68. *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.*

69. *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.*

70. *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**

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

72. *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. 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.*

73. *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.*

74. *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<sup>37</sup>, or directors fees, and each year Hayley has included those amounts in her assessable income.*

75. *During the 2022–23 income year, Hayley Medical identifies an opportunity to purchase a customer relationship management platform (CRM) that will enable Hayley to*

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<sup>37</sup> 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.

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*provide more efficient personal services to clients. The estimated cost of the equipment is \$7,000.*

76. *To fund the purchase, Hayley Medical retains \$7,000 of 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 is \$5,000, rather than the provisioned \$7,000. Hayley Medical resolves to pay the \$2,000 saving as a bonus to Hayley, with the payment made one week later.*

77. *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.*

### **Higher-risk arrangements**

#### **Example 7 – interposed trust, income splitting arrangement**

78. *Kelly is a broker who 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.*

79. *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 Pty Ltd (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.*

80. *The Kelly Trust does not have any substantial income-producing assets or employees 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.*

81. *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 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 resolve 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.*

82. *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.*

83. *In this example, although entities have been interposed between Kelly and the clients for clearly 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 which generated the income.*

84. *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.*



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*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, which is a tax benefit.*

85. *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 8 – interposed company, retention of profits arrangement**

86. *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.*

87. *At the beginning of 2023, 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 Pty Ltd (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.*

88. *CC enters into new agreements with Companies X, Y and Z, under which CC agrees to provide Chester's personal services. CC also enters 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 and is therefore a PSE because its income comprises the PSI of Chester.*

89. *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.*

90. *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. By interposing CC, Chester did not include amounts which would have otherwise been included in his assessable income. The retention of profits in CC results, overall, in less tax being paid, which is a tax benefit.*

91. *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 apply compliance resources to reviewing this arrangement, including a consideration of whether Part IVA should apply.*

92. *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, the taxpayer would be provided with education regarding their compliance obligations and should expect monitoring to ensure future compliance.*

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**Example 9 – interposed company, retention of profit without commercial purpose**

93. *Diana is an IT consultant who is employed by JDIT Pty Ltd (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 work one day a month for a fixed salary. He has other employment income of \$174,000 a year from an unrelated employer.*

94. *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. The income received by JDIT under contracts is mainly a reward for Diana’s personal efforts and skills and is therefore her PSI.*

95. *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.*

96. *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.*

97. *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 provided. 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.*

98. *Although JDIT incurs capital expenditure in upgrading the IT equipment, this simply means that it must retain at least the after-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.*

99. *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 effort and skills in her individual tax return. The retention of profit in JDIT results, overall, in less tax being paid, which is a tax benefit.*

100. *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 10 – interposed trust, diversion of income to controlled entity with carry forward losses**

101. *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 Pty Ltd (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.*

102. *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. Company Z only pays TEE when the required specified outcome agreed to in the contract*

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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.

103. 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 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.

104. 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 Terry Trust is sheltered by losses available to the beneficiary unit trust, the tax result of the arrangement is a reduction in what would otherwise have been Terry's assessable income and, overall, less tax being paid, which is a tax benefit. 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 effort of Terry being diverted to an associated entity and a lower amount of tax being paid.

105. 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 11 – interposed company, remuneration to associate not commensurate with services provided**

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

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

108. 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 the Adam, the individual who does the work.

109. 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 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.

110. 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.

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*The remuneration received by both Adam and Emily is not commensurate with the value of the respective services they provided. The tax result of the arrangement is a reduction in what would otherwise have been Adam's assessable income and, overall, less tax being paid, which is a tax benefit.*

111. *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 12 – interposed trust, income splitting to family members, remuneration not commensurate with services provided**

112. *Daniel is a lawyer and the sole director and shareholder of Law Prac Pty Ltd, 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.*

113. *The trustee for DAFT enters into contracts with unrelated clients to provide Daniel's legal services. This includes a contract with Why Lee Pty Ltd (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. DAFT is a PSE because its income includes the PSI of Daniel, the individual who performs the principal work.*

114. *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 paid tax on the trust distribution at their marginal rate.*

115. *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 results, overall, in less tax being paid, which is a tax benefit.*

116. *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 13 – interposed company with historical losses, retention of profits without commercial purpose**

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

118. *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*

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*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.*

119. *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 provided, 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.*

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

121. *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 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, which is a tax benefit.*

122. *This example involves the failure to adequately remunerate Tom for his personal effort 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.*

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**Commissioner of Taxation**

28 August 2024

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## Your comments

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123. You are invited to comment on this draft Guideline including the proposed date of effect. Please forward your comments to the contact officer by the due date.

124. A compendium of comments is prepared when finalising this Guideline, and an edited version (names and identifying information removed) may be published to our Legal database on [ato.gov.au](http://ato.gov.au)

125. Please advise if you do not want your comments included in the edited version of the compendium.

**Due date:** 11 October 2024  
**Contact officer:** Sally Cummins  
**Email:** [SBPAGConsultation@ato.gov.au](mailto:SBPAGConsultation@ato.gov.au)  
**Phone:** 07 3213 3299

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## References

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*Related Rulings/Determinations:*

IT 2121; IT 2330; IT 2503; IT 2639; TR 96/7;  
TR 97/11; TR 2003/6; TR 2003/10;  
TR 2019/1; TR 2022/3; TR 2023/4DC1

*Legislative references:*

- ITAA 1936 Pt III Div 7A
- ITAA 1936 Pt IVA
- ITAA 1936 97
- ITAA 1936 177A
- ITAA 1936 177D
- ITAA 1936 260
- ITAA 1936 262A(2)
- ITAA 1936 318
- ITAA 1997 6-5
- ITAA 1997 Div 86
- ITAA 1997 86-10
- ITAA 1997 Pt 2-42
- TAA 1953 Sch 1 Div 12
- TAA 1953 Sch 1 Div 13

- TAA 1953 Sch 1 16-30(1)(b)

*Cases relied on:*

- Commissioner of Taxation (Cth) v Gulland; Watson v Commissioner of Taxation (Cth); Pincus v Commissioner of Taxation (Cth) [1985] HCA 83; 160 CLR 55; 85 ATC 4765; 17 ATR 1; 62 ALR 545
- Commissioner of Taxation v Mochkin [2003] FCAFC 15; 127 FCR 185; 2003 ATC 4272; 52 ATR 198
- Tupicoff, Gary v The Commissioner of Taxation [1984] FCA 382; 4 FCR 505; 84 ATC 4851; 56 ALR 151

*Other references:*

- PCG 2016/1
- PCG 2021/4
- PS LA 2005/24

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ATO references

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