Small Business Management Toolbox

Manage finances

Alienation of personal services income

This tax law affects the personal services income of some contractors and consultants. Income is personal services income if it is mainly a reward for an individual’s personal efforts or skills. This applies regardless of whether the income is received directly by the individual or is received by a company, trust or partnership (personal services entity).

If the personal services income laws apply to you, your personal services income will be treated as your income and you must include it in your individual tax return.

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

Your business is a personal services business if:

- it meets the results test
- less than 80% of your personal services income in an income year comes from each client and you meet one of the other three personal services business tests:
  - the unrelated clients test
  - employment test
  - business premises test
- you obtain a determination from the Tax Office confirming that you are a personal services business.

Even if your income is not affected by the personal services income rules, the general anti-avoidance provisions may still apply to schemes to reduce income tax by income splitting.

The results test

If you earn personal services income, you will meet the results test in an income year if, for at least 75% of this income, you can answer ‘yes’ to all of the following questions.

- Under contract or arrangement, is the personal services income paid to achieve a specified result or outcome?
- Do you have to provide the tools or equipment necessary (if any) to do your work? (If no tools or equipment you are required answer ‘yes’.)
- Are you liable for rectifying defects in your work?
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If you don’t meet the results test, you can self-assess against the other tests for an income year if less than 80% of your personal services income in that year comes from each client. You can work out whether you meet one or more of the other three tests.

Unrelated clients test

Does the entity or sole trader receive personal services income from two or more entities unrelated to each other and to the entity itself, and are these services provided as a direct result of making offers to the public?

Employment test

Does the entity or sole trader engage one or more entities or individuals to perform at least 20% of the principal work? Or does the entity or sole trader have one or more apprentices for at least half the income year?

Business premises test

Does the entity or sole trader maintain, for its own exclusive use at all times during the year, physically separate business premises at which it mainly does the personal services work?

If you don’t meet the results test and 80% or more of your personal services income comes from one client in an income year, you cannot self-assess. You will need to apply for a determination from the Tax Office if you are not sure whether you meet one or more of the personal services income tests, or there are special circumstances preventing you from meeting one or more of these tests.