

Alienation of personal services income: contractors and consultants

(Note: Please refer to the original document located at *Original at*
<http://www.ato.gov.au/businesses/content.asp?doc=/Content/15900.htm&page=10&H10>)

Changes to the tax law that affect contractors and consultants

On 1 July 2000 the *New Business Tax System (Alienation of Personal Services Income) Act 2000* introduced changes to the tax treatment of personal services income earned by contractors and consultants. The changes to the tax law apply only to personal services income.

Work out whether you are affected by these changes

Follow the steps outlined in the following flowchart and use the following notes to work out whether your personal services income is affected by the changes to the tax law. If the personal services income is paid to a company, partnership or trust, the words 'you' and 'your' refer to that entity.

If you had a prescribed payments system (PPS) declaration in force at 13 April 2000, the changes to the tax law apply from 1 July 2002.

If you are a commission agent, special rules apply. Contact the ATO for more information by phoning 13 28 66.

The following sections will help you determine whether you are affected by these changes

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Unsure?

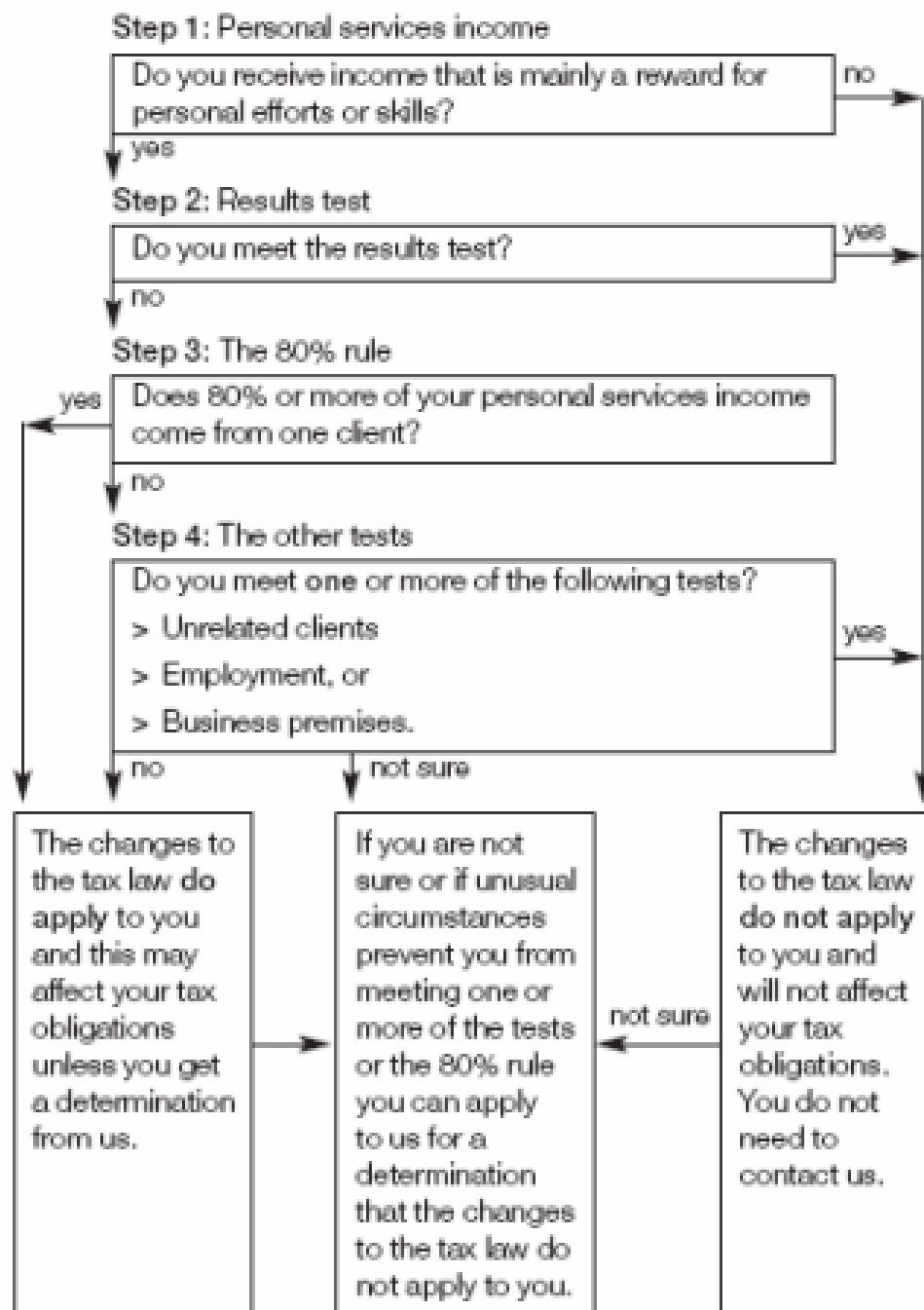
If you are not sure about any step in the flowchart or checklist, or whether the changes to the tax law apply to you, you can:

- phone **13 28 66**
- speak to your tax adviser, or
- apply to us for a determination.
 - *Alienation of personal services income: application for determination – personal services business – form* (NAT 3360)
 - *Alienation of personal services income: application for determination – personal services business – instructions* (NAT 3363), or
 - by phoning **1300 720 092**.

Important

Even if you are not affected by the alienation of personal services income legislation, the general anti-avoidance provisions of Part IVA may apply to a scheme where the dominant purpose is to reduce a taxpayer's income tax liability, for example, by income splitting. More information on this is available in the fact sheet *General anti-avoidance rules and how they may apply to a personal services business* (NAT 8028).

You can seek a private binding ruling from the Tax Office on any issue of law, including whether you receive personal services income, whether you meet any of the tests for conducting a personal services business, or whether the Part IVA provisions apply to you.



Step 1: What is personal services income?

This is income that is mainly a reward for an individual's personal efforts or skills. It does not include income that is mainly:

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

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

The changes to the tax law only apply to personal services income.

Step 2: What is the results test?

If you earn personal services income, you will meet the results test in the income year if, in respect of at least 75% of this income, you can answer YES to ALL the following questions about your work.

- Under your 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 are required, answer YES.)
- Are you liable for rectifying defects in your work?

You can work out whether you meet the results test without contacting the Tax Office. If you prefer, you can use the [Personal Services Business Self-Assessment Guide and Checklist](#) (NAT 3416).

Step 3: What is the 80% rule?

If you don't meet the results test and 80% or more of your personal services income in the income year comes from one client, you cannot self-assess whether you meet the other tests at step 4. The changes to the tax law apply to you unless you get a determination from the Tax Office.

If you don't meet the results test, you can self-assess against the other tests at step 4 if less than 80% of your personal services income comes from each client.

You can work out whether you meet the other tests at step 4 without contacting the Tax Office. If you prefer, you can use the [Personal Services Business Self-Assessment Guide and Checklist](#) (NAT 3416).

Step 4: What are the other tests?

If you meet one or more of the following tests in the income year, the changes will not apply to you.

Unrelated clients test

You will meet the unrelated clients test in the income year if you can answer YES to the following question:

- Does the individual doing the personal services work have personal services income from two or more clients who are not associated with each other or with you (or the individual, if you are a personal services entity)?

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

Employment test

You will meet the employment test in the income year if you can answer YES to either of the following questions:

1. Do you have employees or engage sub-contractors or entities who perform at least 20% (by market value) of the principal work?

Principal work is the main work that generates the personal services income and does not usually include support work such as secretarial duties. You can count a spouse or family member who does principal work, but not companies, partnerships or trusts associated with you. If you operate through a personal services entity, don't count yourself as an employee.

2. Do you have apprentices for at least half the income year?

Business premises test

You will meet the business premises test if you can answer YES to ALL of the following questions.

At all times in the income year do you maintain (that is, have a right to occupy) and use business premises that are:

- owned or leased by you?
- mainly used to conduct the work (that is, more than 50% of the use) from which the personal services income is gained or produced?
- used exclusively by you?
- physically separate from the private residence of the individual doing the personal services work, or their associates?
- physically separate from the business address of your clients, or their associates?

The phrase 'at all times in the year of income' requires you to have business premises on each day during the income year in which in which activities are conducted which produce the personal services income.

If you do not pass any of the tests

The changes to the tax law will apply to you and this may affect your tax obligations, unless you receive a personal services business determination.