

# ATO NEW RULES – CLIENT BRIEFING

PSI Rules | PSB Rules | Trust Distributions  
Based on PCG 2025/5, TR 2022/3 & PCG 2022/2 | March 2026

## PART 1 — PERSONAL SERVICES INCOME (PSI): THE BASICS

### What is PSI?

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- Income that is MAINLY a reward for your personal effort, skill or expertise
- The 50% test: if more than 50% of a contract's income is from your personal efforts, ALL of that contract's income is PSI
- If 50% or less is from personal effort — NONE of that contract is PSI
- Can be earned in almost any industry: IT, engineering, consulting, law, medicine, trades, and more
- PSI character is NOT changed by the structure — earning through a company or trust does NOT escape the PSI rules automatically

### When do the PSI Rules Apply?

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- PSI rules apply when: (1) you earn PSI, AND (2) you do NOT qualify as a Personal Services Business (PSB)
- Key effect if PSI rules apply:
  - All PSI is attributed directly to the INDIVIDUAL who performed the services
  - Income splitting with family members is disallowed
  - Deductions are limited to those available to an employee
  - Cannot claim: rent, home mortgage interest, rates, land tax, or payments to a spouse/associate for support work

## PART 2 — PERSONAL SERVICES BUSINESS (PSB): THE FOUR TESTS

To qualify as a PSB and escape the PSI attribution rules, you must pass ONE of the following four tests:

### Test 1 — Results Test (MOST COMMON)

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- Must satisfy ALL THREE of the following conditions:
  - You produce a result (not just provide your time/effort)
  - You supply the tools/equipment needed to do the work
  - You are liable to fix defects at your own cost
- This is the most commonly passed test for sole practitioners and contractors

### Test 2 — Unrelated Clients Test

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- At least 80% of your PSI comes from 2 or more UNRELATED clients
- Services must be offered to the GENERAL PUBLIC (e.g. via advertising)
- Cannot satisfy this test if most income comes from a single client/employer

### Test 3 — Employment Test

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- At least 20% of the principal work is performed by employees or sub-contractors that are NOT associates
- The 20% is measured by value of the work done

### Test 4 — Business Premises Test

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- You maintain your own business premises that are:
  - Used to perform the personal services
  - Not your home or an associate's home
  - Not the client's premises

### Alternatively — Personal Services Business Determination (PSBD)

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- If you cannot pass any of the four tests, you may apply to the ATO for a PSBD
- The ATO will consider your specific circumstances
- This is a discretionary decision by the Commissioner

## PART 3 — NEW ATO COMPLIANCE: PCG 2025/5 (FINALISED NOV 2025)

*Key message: Passing the PSB tests does NOT guarantee protection from Part IVA (general anti-avoidance rules)*

### What Has Changed?

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- On 28 November 2025, the ATO finalised PCG 2025/5 — converting draft PCG 2024/D2 into binding compliance guidance
- This is a LIVE ATO focus area as of December 2025 — not theoretical
- The ATO has confirmed: even if your structure passes the PSB tests and escapes Division 86, Part IVA CAN STILL APPLY
- The ATO will use Part IVA if the dominant purpose of any arrangement is to obtain a tax benefit through:
  - Income splitting with associates (spouse, family members, related entities)
  - Retaining profits in the PSE (company or trust) at a lower tax rate
  - Diverting PSI to loss entities or low-tax entities
  - Paying associates above-market remuneration for minimal/no genuine work

### Who is Affected?

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- ANY individual whose personal services income is earned through a company, trust or partnership
- Common affected professions: doctors, lawyers, accountants, engineers, IT consultants, architects, and tradespeople
- Sole practitioners — especially those with a single controlling individual
- Small businesses where income primarily derives from one person's skill/effort
- CRITICAL: This guideline also now covers tradespeople — not just white-collar professionals

## Low-Risk Indicators — Green Zone

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The ATO considers the following arrangements **LOW RISK** under PCG 2025/5:

- ALL (or substantially all) net PSI ends up assessed to the INDIVIDUAL who performed the services at their full marginal tax rate
- The individual's salary/remuneration is commercially realistic and comparable to equivalent sole practitioners
- Associates are ONLY paid for genuine work performed — and at market-rate remuneration
- Any profit retained in the entity is TEMPORARY and has a CLEAR commercial purpose (e.g. saving to buy equipment, cash flow management)
- Prompt distribution of retained profits once the commercial purpose is fulfilled
- Comprehensive documentation maintained for all decisions

## Higher-Risk Indicators — Red Zone

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The ATO will apply compliance resources (audit risk) where:

- PSI is split with associates (spouse/family/related entities) primarily to reduce overall tax
- Individual is paid a salary SIGNIFICANTLY BELOW commercial rates while profits are retained in the entity
- Profits are retained indefinitely in the entity without a clear non-tax commercial reason
- Income is diverted to entities with losses to offset tax
- Associates receive payments for little or no genuine contribution to the business
- No documentation or inadequate records to justify income allocation decisions

## Transition Period — Important Deadline

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- Taxpayers have until 30 JUNE 2027 to restructure arrangements into a low-risk zone
- The ATO will NOT pursue Part IVA where taxpayers make a GENUINE ATTEMPT to move into low-risk arrangements by 30 June 2027
- This window should be used to:
  - Review current structures and distribution strategies
  - Adjust remuneration levels to commercial rates
  - Establish documented commercial reasons for any profit retention
  - Seek professional advice to restructure if necessary

## Record-Keeping Requirements Under PCG 2025/5

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- The ATO expects CONTEMPORANEOUS documentation — records made at the time of decisions, not retrospectively
- Key records to maintain:
  - Contracts with clients and between the individual and the PSE
  - Financial statements, profit & loss, and tax returns
  - Notes and records of meetings/discussions explaining income allocation decisions
  - Evidence of commercial purpose behind any profit retention
  - Remuneration justification — comparisons to sole practitioner equivalents
  - Minutes of trustee/director resolutions for distributions/payments

## PCG 2025/5 — Client Examples for Discussion

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 Example A — LOW RISK (IT Consultant via Trust)

Sam is an IT consultant operating through a family trust (PSB — passes Results Test).  
Trust income: \$280,000. Sam pays himself a salary of \$260,000 (market rate for his skills).  
Remaining \$20,000 retained temporarily — documented plan to purchase a server next month.  
RESULT: Low-risk. Sam receives substantially all the income at his marginal rate,  
with a clear commercial reason for the temporary retention.

#### **Example B — HIGHER RISK (Doctor via Company — Income Splitting)**

Dr. Wang operates through her company (PSB — passes Results Test).  
Company income: \$400,000. Dr. Wang pays herself \$180,000 salary.  
She pays her spouse \$60,000 for 'administration' work — spouse does minimal admin.  
Remaining \$160,000 retained in company (taxed at 25%) indefinitely.  
RESULT: Higher-risk. Significant income splitting + below-market salary + unjustified retention.  
ATO will likely consider Part IVA. **X**

#### **Example C — LOW RISK (Electrician via Company — Temporary Retention)**

Tom is a licensed electrician via his company (PSB — passes Results Test).  
Net income: \$215,000. Tom pays himself \$189,000 salary (market rate).  
Remaining \$26,000 retained to purchase a new vehicle for the business (purchase confirmed within 3 months).  
RESULT: Low-risk. Market-rate salary, documented commercial purpose for retention,  
temporary deferral with prompt payment.

## **PART 4 — TRUST DISTRIBUTIONS: SECTION 100A & NEW ATO FOCUS**

*Key message: Trust income distributed to one person, but used by another, is squarely in the ATO's sights*

### **What is Section 100A?**

- Section 100A is an anti-avoidance rule in the Income Tax Assessment Act 1936 (over 40 years old, but NOW being strictly enforced)
- It applies when a beneficiary is made PRESENTLY ENTITLED to trust income, but ANOTHER PERSON receives the benefit of that income
- The ATO's position (confirmed in TR 2022/4 and PCG 2022/2, finalised December 2022) is now significantly stricter
- When Section 100A applies: the trustee — NOT the beneficiary — is taxed at the TOP MARGINAL RATE (47%)

### **The Three Conditions That Trigger Section 100A**

- Condition 1: A beneficiary has been made presently entitled to trust income
- Condition 2: An arrangement exists where SOMEONE ELSE (not the beneficiary) receives a benefit from that income
- Condition 3: At least ONE PARTY entered the arrangement with a purpose of REDUCING TAX

### **Key Exclusions (When Section 100A Does NOT Apply)**

- The beneficiary simply receives and USES their own entitlement themselves — no arrangement
- The arrangement is made in the course of ORDINARY FAMILY OR COMMERCIAL DEALING
- The beneficiary is UNDER 18 years of age or under a legal disability
- NOTE: The ATO now takes a NARROW view of 'ordinary family or commercial dealing' — do NOT assume this exclusion applies automatically

## PART 5 — TRUST DISTRIBUTIONS TO HUSBAND & WIFE: NEW REQUIREMENTS

*The ATO's risk zones now define what is safe and what is not when distributing trust income between spouses*

### The ATO Risk Zone Framework — PCG 2022/2

The ATO classifies trust distribution arrangements into four risk zones:

Zone	Risk Level	ATO Response
White	Negligible	No compliance resources allocated
Green	Low	Confident ATO will not audit — standard family dealings
Blue	Medium	ATO may seek further information or commence a review
Red	High	ATO will investigate — S.100A likely to be applied (top marginal rate 47%)

### New Requirements for Distributions to Husband and Wife

The following requirements now apply when distributing trust income between spouses:

- The distributing spouse/beneficiary must ACTUALLY RECEIVE and USE their distribution — they must benefit from it economically
- Funds must be paid into the beneficiary's OWN bank account — or a JOINT account used for genuine shared family expenses
- The ATO no longer accepts arrangements where the distribution is simply notional and money flows elsewhere
- Each spouse must be able to demonstrate INDEPENDENT economic benefit from their distribution
- Clear documentation must exist to show HOW and WHEN funds were paid and used

### What Can Husband & Wife Still Do — Low-Risk Scenarios (Green Zone)

- Equal distribution to Mum and Dad — paid into a JOINT BANK ACCOUNT — used for genuine family living expenses and assets
- Equal distribution to Mum and Dad — paid into SEPARATE accounts — each uses their own funds independently
- Distribution to one spouse, who then lends the money to their ADULT CHILD on commercial terms (e.g., for a house deposit) — the other spouse is not the one who benefits

- Distribution remains UNPAID (UPE) — used as working capital of the trust's business — as long as no benefit is provided to a third party

## What Now Raises ATO Red Flags — Higher Risk Scenarios

- Distribution made to spouse A — but spouse B (or a child/parent) actually receives the economic benefit
- Distribution to adult child — but parents actually receive or use the money
- Distribution made to a lower-income family member — funds are immediately given back to the trustee or controlling person as an interest-free loan
- Distribution to a low-tax entity where the individual controlling the trust ultimately receives the economic benefit
- Distributions that are entirely paper entries with no actual payment and no commercial reason

## Key New Requirement: Contemporaneous Records for All Distributions

- The ATO expects records made AT THE TIME — not reconstructed later
- Trustees must document:
  - Trustee resolutions (signed by 30 June each year)
  - Evidence that each beneficiary received their entitlement (bank statements, transfer records)
  - How each beneficiary used or benefited from their distribution
  - Any arrangement between beneficiaries regarding shared funds — must be explainable as genuine family/commercial dealing
  - Minutes, emails, or notes that demonstrate decisions were made for non-tax purposes

## IMPORTANT: Trustee Resolution Must Be Made by 30 June

- Resolutions must be made and recorded BEFORE 30 June each financial year
- The resolution must clearly identify: (a) the beneficiary, (b) the amount, and (c) the nature of the income
- Resolutions cannot be made retrospectively after 30 June — this is a critical deadline
- Even if the trust has no income that year — or the amount is uncertain — a resolution should still be considered

## Trust Distribution — Client Examples for Husband & Wife

### Example 1 — LOW RISK (Equal Split to Joint Account — Family Expenses)

Trustee distributes \$120,000 equally — \$60,000 to Mum, \$60,000 to Dad.

Distribution is paid into a JOINT bank account in both names.

Account is used for mortgage, groceries, school fees and family holidays.

Both Mum and Dad benefit from the funds — genuine shared family dealings.

RISK: GREEN ZONE — Low Risk. ATO will not allocate compliance resources.

### Example 2 — LOW RISK (Loan to Adult Child for House Deposit)

Trustee distributes \$120,000 equally — \$60,000 to Mum, \$60,000 to Dad.

Distribution is paid out. Mum and Dad together lend \$80,000 to their adult child for a house deposit.

The adult child (higher income earner) receives the loan — NOT a lower-taxed person.

Loan is on commercial terms.

RISK: GREEN ZONE — Low Risk. Mum and Dad received their entitlement and used it for a genuine family purpose.

**Example 3 — HIGHER RISK ✗ (Child Gets Distribution but Parents Use the Money)**

Trustee distributes \$150,000 — \$140,000 to adult son (lowest tax bracket), \$10,000 to Mum. Son's \$140,000 is 'distributed' but transferred back to Mum and Dad's account immediately. Mum and Dad use the funds for their renovation and living expenses. Son gets a nominal tax benefit — Mum and Dad receive the economic benefit.

RISK: RED ZONE — High Risk. Section 100A applies. Trustee taxed at 47% on \$140,000. ✗

**Example 4 — MEDIUM RISK ⚠ (UPE — Funds Left with Trust — No clear purpose)**

Trustee distributes \$80,000 to spouse B (lower marginal rate). The \$80,000 is left with the trustee (unpaid present entitlement — UPE). No Division 7A loan agreement in place. No sub-trust established. No documented commercial reason for the funds to remain with the trust.

RISK: BLUE ZONE — Medium Risk. ATO may seek further information.

Recommended: Put a complying Division 7A loan in place or make actual payment. ⚠

**Example 5 — LOW RISK  (Separate Accounts — Both Benefit Independently)**

Trustee distributes \$200,000 — \$120,000 to husband (higher earner) and \$80,000 to wife. Each amount is paid into their respective individual bank accounts. Husband uses his share for investment in shares; wife uses hers for personal expenses. Both genuinely benefit from their own entitlement.

RISK: GREEN ZONE — Low Risk. Both spouses receive and use their own distributions.

## PART 6 — WHAT YOU NEED TO DO: ACTION CHECKLIST

### For PSI / PSB Structures — Act Before 30 June 2027

- STEP 1 — Review whether your income is PSI: Does your income mainly come from your personal effort/skill?
- STEP 2 — Confirm your PSB test: Which of the 4 PSB tests do you pass? Do you have evidence?
- STEP 3 — Review remuneration: Is your salary commercially realistic vs a sole practitioner equivalent?
- STEP 4 — Review profit retention: Is there a documented commercial reason for retaining profits in your entity?
- STEP 5 — Review associate payments: Are associates doing genuine work at genuine market rates?
- STEP 6 — Improve documentation: Start keeping contemporaneous records of all key decisions NOW
- STEP 7 — Seek advice: Speak with your advisor to map your current arrangement against the PCG 2025/5 risk zones

### For Trust Distributions — Act Before 30 June Each Year

- Ensure trustee resolutions are signed BEFORE 30 June — never retrospectively
- Ensure each beneficiary ACTUALLY RECEIVES their distribution (physical payment or documented UPE with complying arrangement)

- For spouse distributions: maintain joint or individual account records showing the funds were genuinely used by each beneficiary
- Review any 'circular' arrangements — funds distributed then loaned back — with your advisor immediately
- Establish a Division 7A complying loan agreement for any amounts owed by the trust to a corporate beneficiary
- Document a contemporaneous commercial reason for any UPE arrangements
- Review adult child distributions — ensure the child genuinely benefits, not the parents

## Bottom Line for Clients

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- The ATO is NOT creating new law — but it IS enforcing existing law much more strictly
- The era of informal family trust arrangements without documentation is OVER
- Taxpayers who genuinely move their arrangements into the low-risk zones by 30 June 2027 will receive protection from audit
- Those who do not act risk significant penalties, back-taxes, and interest at the top marginal rate (47%)
- Get your records, resolutions, and structures reviewed now — do not wait

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*This document is a summary for client discussion purposes based on PCG 2025/5 (28 Nov 2025), TR 2022/3, TR 2022/4 and PCG 2022/2. It does not constitute legal or tax advice. Clients should obtain advice specific to their circumstances.*