

ATO guidance on personal services business arrangements and Part IVA

On 28 November 2025, the ATO released finalised [PCG 2025/5 Personal services businesses and Part IVA of the ITAA 1936](#) in respect of the potential application of the general anti-avoidance rules in Part IVA of the ITAA 1936 to an 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”). While in such a scenario the PSI rules are generally not applicable, the ATO is concerned with the use of PSBs to divert, alienate or split an individual’s PSI and/or the retention of profits in the lower taxed PSB.

As PSI can be derived in almost any industry, trade or profession, the PCG can be relevant to various taxpayers including professional services (accountants, lawyers, doctors etc), IT consultants, brokers, engineers, construction workers, medical practitioners and tradespeople such as plumbers and electricians.

Under the PCG, higher-risk arrangements may have one or more of the following characteristics:

- Retention of profit without commercial purpose e.g. reinvestment, business growth
- Income splitting – e.g. use of discretionary trusts to divert income to lower taxed individuals
- Remuneration to associates not commensurate with services provided e.g. substantial payment to family member for minimal administrative work; inadequate remuneration for the provision of skills
- Retention / diversion of income in entities with tax losses

Low-risk arrangements generally do not have the above characteristics.

The ATO has indicated that it will not apply compliance resources to taxpayers with high-risk arrangements where genuine attempts have been made to move into a low-risk arrangement by 30 June 2027.

The release of the finalised PCG signals the ATO’s compliance focus on the derivation of PSI. In particular, simply meeting the PSI criteria is not sufficient – taxpayers need to also consider how their arrangements are structured (e.g. interposed entities involved, remuneration arrangements, income distributions) and to assess their risk of being reviewed or audited by the ATO.

Taxpayers should:

- Consider whether PSI rules are applicable to their scenario or not
- Assess their risk zone against PCG 2025/5
- Maintain robust supporting documentation on commercial purpose e.g. business plans, growth forecasts, board minutes, evidence of genuine reinvestment strategies, reason for retaining profits
- Ensure payments to associates reflect actual services and the value of their contribution
- If required, adjust arrangements before 30 June 2027
- Seek professional advice where required

Cases Update – Ierna, Charles Apartments

- *Ierna / Hicks* – the Full Federal Court has unanimously [dismissed](#) the Commissioner of Taxation’s appeal and reaffirmed that the 2016 restructure of City Beach was not a tax avoidance scheme. In particular, both the primary judge and Full Federal Court found that the restructure involving a capital return was not made in substitution for dividends and that the dominant purpose of the restructure was to facilitate repayment of Division 7A loans while preserving pre-CGT status of certain assets. Therefore, neither section 45B nor Part IVA applied.
- *Charles Apartments* – the Full Federal Court has [dismissed](#) the taxpayer’s appeal from the decision of the Federal Court which ruled that a \$1.87m payment was not deductible interest but a capital guarantee payment. The case emphasised substance over form, a direct connection to income-producing activities being essential for s8-1 deductibility and the need for robust records and substantiation to support tax claims.

ATO Top 500 Program Findings Report 2025

On 27 November 2025, the ATO released its [Findings Report](#) in respect of the Top 500 Program. The Top 500 private groups program includes private groups with (a) over \$500 million net assets, regardless of turnover; (b) with over \$200 million turnover and over \$250 million in net assets; or (c) that are market leaders or groups of specific interest. The specific tax issues and risks observed by the ATO in the Top 500 program include the following:

Specific Tax Issue / Risk	Suggested Action
Trust taxation issues <ul style="list-style-type: none"> Unintended application of family trust distribution tax (FTDT) due to “set and forget” approach to family trust and interposed entity elections Complex or involved wealth extraction arrangements Distributions to ineligible beneficiaries Omitted trust income 	<ul style="list-style-type: none"> Identify which entities have made elections and who the test individual is for each election Have appropriate tax governance in place to review trust deeds regularly and ensure financial records are accurate, and positions are substantiated
Private company benefits <ul style="list-style-type: none"> Division 7A compliance (failure to document loans, minimum yearly repayments, report interest income, uncommercial arrangements) 	<ul style="list-style-type: none"> Maintain a documented Division 7A register to track shareholder loans, repayments and asset usage
Capital Gains Tax <ul style="list-style-type: none"> Recognition of CGT events when disposing of assets, restructuring or changing residency Incorrectly classifying income as capital rather than revenue Inadequate documentation to substantiate cost base of assets or support eligibility for the 50% CGT discount and small business concessions 	<ul style="list-style-type: none"> Maintain accurate and complete records for all CGT assets, including documentation detailing the acquisition of assets, any improvements and their disposal
Succession Planning <ul style="list-style-type: none"> Failing to recognise a CGT event occurring in a restructure or transfer of asset e.g. due to incorrect claim an asset is pre-CGT Transferring wealth through loans, payments or forgiveness of debt and failing to recognise the application of Division 7A Trusts that have made FTEs and IEEs and are distributing outside the family group 	<ul style="list-style-type: none"> Put a succession plan in place as part of tax governance Ensure there is documentation in place to support transactions Ensure legal positions and tax outcomes are aligned and consistent with documentation
‘Business as usual’ income and deductions <ul style="list-style-type: none"> Omitted income (including offshore income and foreign capital gains) Timing of income recognition Treatment of related party transactions Claiming expenses lacking connection to assessable income Interest deductions involving loans for private use or on non-arm’s length terms 	<ul style="list-style-type: none"> Strengthen internal controls and procedures to ensure accurate reporting of income, substantiation for deductions, reconciliation of accounting and tax records and commercial terms for related-party transactions
Property and Construction Correct reporting of property development activities including: <ul style="list-style-type: none"> Whether the development was undertaken for profit-making purpose or part of a business of property development (e.g. misclassification of a revenue project as a capital project) The manipulation of income and expense recognition between related parties, including through the use of long-term construction contracts 	<ul style="list-style-type: none"> Conduct an internal review / audit of your business to confirm commercial and tax positions considering documentation and evidence Consider whether previous BASs are correct or whether they may need to be amended
Other Tax Issues <ul style="list-style-type: none"> GST – misclassification of supplies, failure to make adjustments for a creditable purpose, errors in preparation of activity statements FBT – identification, valuation and reporting of fringe benefits International – cross-border transactions, withholding obligations, transfer pricing, related party financing 	<ul style="list-style-type: none"> Ensure specific GST controls within a Top 500 group’s tax governance framework are implemented Maintain a documented FBT governance framework Ensure documented process for regularly reviewing international tax issues as well as ensuring arm’s length arrangements Ensure thin capitalisation and debt deduction creation rules have been considered where relevant

Contact

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