



APSI and the Results Test

Policy Background

- Under the residential building industry subcontracting system, contractors provide their personal services to achieve work outcomes. They are small business persons who work for profit.
- A key component in preserving contracting independence is to ensure that contractors are treated as businesses by the tax laws, including being able to access business tax deductions.
- Income tax legislation adopts the Alienation of Personal Services Income Test (APSI) to differentiate independent contractor arrangements from PAYG employees in relation to taxation. Contractors who satisfy the APSI test qualify to utilise the business tax deductions regime.
- The APSI rules are intended to protect the integrity of the taxation system by preventing individuals who generate income from their personal services from reducing their liability to taxation by diverting income through a company, partnership or trust, and to clarify the work-related deductions available to the individual and interposed entity.
- APSI has two main elements. Firstly, the 'results test' which individuals can self-assess against. The results test is based on the traditional criteria used to distinguish independent contractors from employees, namely, working to produce a result; providing their own plant, equipment and tools of trade; and being liable to rectify defective work.
- Under the second element, if the results test is not satisfied, tax payers are able to move to other tests including the '80/20 rule', that the business employs its own workers and the unrelated clients test. A binding personal services business determination from the ATO is also available.

HIA's Policy Position on APSI and the Results Test

1. HIA supports the inclusion of the Alienation of Personal Services Income (APSI) rules in the Income Tax legislation to allow tax payers to self-assess against the test of "independence".
2. For promoting greater consistency in the legal treatment of contractors and employees:
 - (a) HIA supports the current "results" test set out in Division 84 of the Income Tax Assessment Act 1997 as the appropriate single national objective test of who should be treated as a trade contractor for the purposes of all relevant Commonwealth and state legislation;
 - (b) HIA should lobby the Commonwealth for the adoption of this national objective test for the purposes of Income Tax, Superannuation Guarantee and all other relevant Commonwealth legislation; and
 - (c) once a person obtains an ABN they are and should be treated as a business for all purposes and the burden is on the regulator to prove otherwise.
3. State and Territory Governments should adopt the same objective test for the purposes of WorkCover, Payroll Tax, Industrial relations legislation, etc.