

DESPS ADVISORY NOTICE 02/2007

ESP CLAIMS

SUBSTANTIATION

DESPS Advisory Notices provide advice or more detailed explanations concerning aspects of the ADF Reserves Employer Support Payments (ESP) Scheme.

ADVICE

The following advice is provided specifically in relation to the substantiation of Self-Employed Reservist claims.

Evidence from financial advisor/accountant

In order to prove Principal Source of Income (PSI), a claimant may submit evidence from their financial advisor or accountant covering a period that is less than a full year (but the evidence must cover not less than six months).

When part year figures are provided, income figures for the part year must be calculated on a proportional basis to the claimant's full year financial statement or tax return or, if these are not yet available, must be prepared using the same methods and principles that will be used in preparing the tax return (see section 3B[2A] of the Defence Determination).

A claimant may provide a submission to the Director ESP Scheme requesting approval to use evidence that has not been calculated on a proportional basis to the claimant's full year financial statement or tax return or has not been prepared using the same methods and principles that will be used in preparing the tax return. The Director ESP Scheme may approve or reject such a submission (section 3B[2B] of the Determination).

When a claimant submits evidence to meet PSI from their financial advisor or accountant then, as long as this evidence meets the requirements of section 3B(1)(c)(iii) of the Determination (and other eligibility criteria have been met), a delegate may approve the claim.

If the accountant or financial advisor's letter is in the appropriate format and details all the Reservist's sources of income over the nominated assessment period then, unless doubt exists as to the legitimacy of the figures or over a related issue, substantiation by way of providing a financial statement or individual tax return is not normally required.

Substantiation

Under section 3B(2C) of the Determination, the Director ESP Scheme or an authorised decision maker (a delegate) may request a financial statement or a tax return and associated Australian Tax Office (ATO) notice of assessment, as

substantiation of the figures provided by the claimant's financial advisor or accountant to prove PSI.

If the substantiation is not yet available, the claim must still be assessed by the delegate (section 3B[2D] of the Determination). The delegate may approve the claim, subject to the substantiation being provided by a specified date. In these circumstances (in accordance with section 3B[2E] of the Determination), the delegate should:

- Advise the substantiation requirement to the claimant, including specifying the date by which the substantiation must be provided.
- Require the claimant to agree, in writing, to repay the claim, in whole or part, if the substantiation is not provided by the date specified or does not, in the opinion of the delegate, wholly substantiate the claim.

In cases where the Individual tax return and notice of assessment is requested as substantiation, if the notice of assessment has not yet been issued, the claimant should be advised that it should be forwarded to the approving delegate within seven days of its receipt from the ATO.

Review of substantiation evidence

When a claimant has provided evidence from a financial advisor or accountant covering a period that is less than a full year and has subsequently provided a financial statement or tax return as substantiation then, if the figures in the financial statement or tax return do not indicate that the figures in the advisor/accountant's evidence have been calculated on a proportional basis to the full year financial statement or tax return, the delegate should normally not accept the earlier advisor/accountant's evidence as satisfying PSI (however, if the full year figures, while showing the earlier figures were not calculated on a proportional basis to the full year result, do in fact satisfy PSI for the full year, the delegate may accept the full year figures as meeting the requirements of the Determination).

If the claimant provides a submission to the Director ESP Scheme requesting approval to use evidence that has not been calculated on a proportional basis or has not been prepared using the same methods and principles that will be used in preparing the tax return, this should be forwarded to the Director.

In some cases, circumstances may make it evident that, if the figures covering less than a full year in an advisor/accountant's evidence are calculated on a proportional basis from a claimant's full year financial statement or tax return, this might produce a result that is unfair to the claimant.

Examples of this might include a claimant who is a sole trader and whose business income is derived solely from his personal skills, if that Reservist has been on an extended period of continuous full-time Defence service (CFTS) during the FY (for example, if the member had undertaken four months of CFTS during the latter part of the FY).

- *Income figures provided for the six months just prior to the Reserve service indicate that the business generated \$26,000 (\$1,000 per week) in business profit as income to the Reservist over the period and received \$10,000 in ESP payments over the period. This would indicate that the business generated \$16,000 in income to the Reservist over the six month assessment period (\$26,000 less \$10,000 in ESP payments).*
- *When the Individual's tax return is received as substantiation, it indicates that the Reservist received \$34,000 during the FY from the business and \$20,000 in ESP payments.*
- *If the full year tax return figure is used to determine a six monthly income figure (calculated on a proportional basis), it would indicate that the business only generated \$7,000 in income to the Reservist over the six month assessment period (\$17,000 less \$10,000 in ESP payments).*
- *However, the Reservist explains that when he rendered Reserve service for four months (commencing early February) the business was unable to generate any profit.*

In this case, the facts should be submitted to the Director ESP Scheme for approval not to use a full year proportional approach. It would be appropriate that the figures be proportioned over an eight month period (excluding the months on CFTS when the member was unable to generate income from the business). This would provide a proportional six month income figure of \$25,500 (\$15,500 after deducting ESP payments). The Individual tax return could then be taken as substantiating the earlier accountant's letter.

Further queries

If **Delegates or clerks** have any queries about this topic (or about any aspect of the ESP Scheme), they are encouraged to ring the ESP Help Line on 1800 001 696.

If **claimants** have any queries about this topic (or about any aspect of the ESP Scheme), they are encouraged to ring the Defence Reserves Support Help Line on 1800 803 485.

Doug Stedman

M.D. STEDMAN

Director ESP Scheme

12 January 2007