

# DESPS ADVISORY NOTICE 04/2007

## ESP CLAIMS

### RENTAL PROPERTIES

*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 Self-Employed Reservist claims when the Reservist claims to be in the rental property business.

#### Rental Properties

When a Self-Employed Reservist claimant submits a claim on the basis of having a rental property business, normal eligibility criteria, including Principal Source of Income requirements, apply. However, delegates may have difficulty determining whether the claimant is in the rental property business or is simply the owner of an investment property (an investor).

Section 3A(2)(b) outlines that an amount is taken to be income earned, derived or received by a member from a business or a company if the amount relates to the activities of the business.

Due to the nature of rental property businesses, it may be difficult to ascertain whether rental property activities constitute a rental property business or simply an investment.

A person who simply owns or co-owns an investment property or several investment properties is usually regarded as an investor who is not carrying on a rental property business, either alone or with other co-owners. This is because of the limited scope of the rental property activities and the limited degree to which an owner or co-owner actively participates in rental property activities.

Most rental activities are a form of investment and do not amount to carrying on a business.

It is suggested that the following factors be considered in determining whether real estate activity is in fact a rental property business.

- Significant commercial activity.
- Purposely engaging in the activity with the intent to make a profit.
- Repetition and regularity of activity.
- Activity is organised and carried on in a business like and systematic manner.
- Significant size of the venture.

- Not a hobby, recreation or sporting activity.
- Existence of a business plan.
- Commercial sales.
- Knowledgeable or skilled taxpayer.

When a Reservist is carrying on a rental property business in partnership with others, the Reservist must divide the net rental income or loss according to the partnership agreement. The Reservist must do this whether or not the legal interests in the rental properties are different to the partners' entitlements to profits and losses under the partnership agreement. If a Reservist does not have a partnership agreement, the Reservist should divide the net rental income or loss between the partners equally.

Where a Reservist holds property but does not **actively** participate in the management, derivation of income or maintenance of these properties, they are not considered to have a business, regardless of whether or not the income received from those properties provides them with their PSI.

## Examples

### *Example 1*

*WOFF Jones, in partnership with her husband, owns 6 different buildings, each comprising 4 units for a total of 24 rental properties, and actively manages each property with the intent of generating a substantial profit from rental income. She and her husband each work an average of 40 hours per week conducting property inspections, performing maintenance, repairs and landscaping tasks on the properties and interviewing tenants. While they make the final decision on tenants, they have hired a property manager to find prospective tenants, collect rent and handle legal matters. Their business plan outlines a further 6 unit development to be acquired within 2 years, and their partnership agreement denotes a 50% split of profits generated from the rental property business to each partner.*

*This venture would be classified as a rental property business, as it has a significant amount of commercial activity (with 24 units let), generates a substantial income into the partnership, is conducted in an organised, regular fashion and the business is intended to expand in the near future. In this case, WOFF Jones' business would be classified as a rental property business.*

### *Example 2*

*CPL and Mrs Adams own, as joint tenants, two units and a house from which they derive rental income. They occasionally inspect the properties and also interview prospective tenants. CPL Adams performs most repairs and maintenance on the properties himself, although he generally relies on the tenants to let him know what is required. They do any cleaning or maintenance that is required when tenants move out, and have made arrangements with the tenants for the weekly rent to be paid into an account at their local bank. Although the Adams' devote some of their time to rental income activities, their main sources of income are their respective full-time jobs.*

*CPL and Mrs Adams are not considered to be partners carrying on a rental property business – they are only co-owners of several rental properties.*

### **Full Time Work**

The fact that a Reservist's business has been determined by a delegate to be a rental property business does not automatically mean that the Reservist is employed in that business in a full time capacity. When a Reservist has submitted a claim on the basis of working full-time in a rental property business, a delegate may still require evidence to satisfy themselves that the Reservist is involved in the work of the rental property business for at least 35 hours per week.

### **Further queries**

Much of the content of this Advisory Notice was drawn from the Australian Tax Office fact sheet *Rental Properties 2006*, available at <http://www.ato.gov.au/content/downloads/NAT1729-06.pdf>.

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*

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Director ESP Scheme

**12 January 2007**