

## EMPLOYER SUPPORT PAYMENT SCHEME

### STANDARD ADVICE ON EVIDENCE FROM FINANCIAL ADVISERS/ACCOUNTANTS

A statement from a financial adviser or accountant must specify the amounts of income earned, derived or received from all sources (a statement that a Reservist receives his or her principal source of income from the business, without income details, is insufficient).

The example information provided (in the box below) is intended to meet the minimum requirements of the Defence Determination for acceptable evidence from a financial adviser or accountant for Defence service commenced after 31 Aug 05.

#### *Example only*

This information is provided in relation to self employed Reservist X's Employer Support Payment claim for Defence service in February 2006.

I act as accountant for Mr X. and I confirm that his business has been operating/trading during the period noted below.

Mr X is currently employed as a building contractor through his sole trader business, trading as X Building (*the letter should specify whether Reservist is a sole trader or partner, or an employee or director of a company in which the Reservist has a controlling interest*).

His income for the six month period from 1 July 2005 to 31 December 2005 was as follows (*show all income sources*):

Net income from business (as would be shown in X's personal tax return) *	\$ 56,789	
Less Income from ESP payments **	\$ 10,000	
Total - Income from business		\$ 46,789
Investment income		\$ 7,890
Defence service pay		
- Continuous full-time service	\$ 14,567	
- Reserve days	\$ 4,321	
Total – Defence pay		\$ 18,888
Other income		\$ 2,345

I confirm these figures have been calculated in accordance with the requirements of the Defence Determination, as explained at para 64 –80 of DI(G) PERS 05-42.

Signed and dated

#### **Notes**

\* If a partner, replace with 'Net income from the partnership, as would be shown in X's personal tax return.'

\* If an employee or director of a company in which the Reservist has a controlling interest, replace with "Member's income from the company including any fees, emoluments and dividends but excluding repayment of loans"

\*\* If payments of ESP have been made to the member's business or company over the assessment period, then the amount of the payments is subtracted from the member's income from the business. In some circumstances, this reduction may be varied or eliminated (see extract from DI(G)).

An extract of the relevant paras from DI(G) PERS 05-42 is enclosed. This should be provided to the financial adviser or accountant.

### **EXTRACT FROM DI(G) PERS 05-42**

#### **Principal source of income**

64. Income means the amount earned, derived or received by the person for the person's own use or benefit, including personal earnings, moneys or profits. Income means income from all sources, including Reserve salary, except that any pension received by the member is excluded. The principal source of income relates to the Reservist's income from the business, not to the business' income, profit, loss or turnover. Potential or projected income cannot be used to satisfy the principal source of income requirement.

65. Income received from the business must relate to the activities of the business and, when income is derived from the sale of stocks or assets, the stocks or assets must have been owned by the business. For example, if a Reservist uses income received from the sale of shares as contributing to satisfying the principal source of income requirement, then the share trading must have been conducted by the business as a business activity, the shares would need to have been owned by the business and the business would need to have provided the income from the share trading to the Reservist.

66. For sole traders, their income from the business is the net income/loss from the business that would be required to be shown in the member's personal tax return.

67. For partnerships, a partner's income is their share of the partnership net income, whether profit or loss and whether distributed or not, as would be required to be shown in the partner's personal tax return.

68. For members employed by a company in which the member has a controlling interest, their income from the business is the member's income from the company including any fees, emoluments and dividends but excluding repayment of loans.

#### **Consideration of payments of ESP**

69. Payments of ESP cannot be used to meet the principal source of income requirements. Principal source of income documentation must relate to a specified period of at least six months in length. If payments of ESP have been made to the member's business or company over the assessment period, then the amount of the payments is subtracted from the member's income from the business.

*For example: A self-employed member is a sole trader who provides principal source of income documentation for a financial year. His normal business income is \$45k pa with business expenses of \$15k pa (net profit of \$30k pa). He receives \$10k in employer support payments and uses these payments towards his normal expenses (thus increasing his net annual profit to \$40k). The employer support payments are subtracted from his income for principal source of income purposes and his income from the business is assessed as \$30k over the 12 month period.*

70. Reduction of the member's income from the business by the amount of the payments of ESP may be varied or eliminated by DESPS or a delegate if:

- a. the payments of ESP, in whole or part, were provided to other persons who shared ownership or control of the business; or
- b. the payments of ESP were used to address extra costs to the business that related directly to the member's absence on defence service; or
- c. DESPS is satisfied that it would be reasonable to include the payments, having regard to the aims of the scheme and provisions of the Defence Determination.

*Examples:*

1. *A self-employed member is one of four partners in a legal practice. The practice receives \$10k in employer support payments and divides this equally, with each partner receiving \$2.5k. On production of evidence, verified by the partnership's accountant, \$7.5k of the employer support payments would not be subtracted from the member's income for principal source of income purposes.*
2. *A self-employed member operates a rural property. He receives \$10k in employer support payments and uses these payments to pay for a replacement farm manager while he is absent on Defence service. These employer support payments are not subtracted from his income for principal source of income purposes as they were used to meet extra costs to the business that would not have arisen except for the member's absence on Defence service.*

## **Documentation**

71. A self-employed Reservist must provide sufficient documentation to satisfy the delegate that each eligibility requirement detailed in paragraphs 46 and 59 has been satisfied. Such documentation must cover each of the following requirements:

- a. proof that the business, company or partnership is legitimate, including at least one of the following:
  - (1) a copy of notification of ABN registration from the ATO; or
  - (2) a copy of certificate of incorporation; or
  - (3) a copy of business registration certificate;
- b. proof that the business, company or partnership is trading or operating, including at least one of the following:
  - (1) a copy of a current business activity statement for the business or company; or

- (2) a copy of a current financial statement for the business or company, certified by the company's accountant or financial adviser; or
  - (3) a copy of the current business tax return, substantiated by forwarding the ATO notice of assessment within seven days of its receipt; or
  - (4) other evidence from a financial adviser or accountant for the business; and
- c. proof that the business, company or partnership provides the Reservist's principal source of income, including at least one of the following:
- (1) a copy of the Reservist's current financial statement, certified by the member's accountant or financial adviser; or
  - (2) a copy of the Reservist's current personal tax return, substantiated by forwarding the ATO notice of assessment within seven days of its receipt; or
  - (3) other evidence certified by the member's financial adviser or accountant concerning the Reservist's income (see paragraphs 74 to 77).

72. In order to meet the requirements of the Defence Determination, evidence must be provided in an acceptable form (as detailed in paragraph 71). However, the evidence must also provide proof of the relevant requirement. There are two requirements – the correct form and the substance of the information contained in the document.

*For example, if an Individual tax return is provided to prove that a business provides a Reservist's principal source of income, then the tax return must show the member received more income from the business than from any other source. A tax return that shows more income was received from another source cannot be accepted.*

73. **Currency.** If the period covered by the member's current financial statement or tax return is more than three months prior to the commencement of the Reserve service detailed on the ESP claim form, then the delegate may require that more up-to-date supporting evidence is provided.

*For example: A self employed Reservist, who commences recruit training in Jan 06, submits his 2005 personal tax return (covering the period 1 Jul 04 – 30 Jun 05) as evidence of principal source of income. The tax return confirms the business provided the member's principal source of income over the previous FY. However, as the gap between 30 Jun 05 and Jan 06 is over three months, the decision-maker might request the member provide further supporting evidence (eg his Oct – Dec 05 Business Activity Statement to show that the business continues to receive similar income to the previous FY - this would support an assessment that the business continues to provide the member's principal source of income).*

### **Evidence from financial adviser/accountants**

74. When principal source of income evidence is provided by a financial adviser or accountant it must be current, relate to a period of at least six months immediately

prior to the member's Reserve service and contain details of all the member's income over the period.

75. Where full financial year results exist (in a financial statement or tax return), income for shorter periods is to be calculated on a proportional basis from the full year result.

76. When an ESP claim is submitted before a full year financial statement or tax return has been compiled covering the nominated principal source of income assessment period (eg if a business or company is in the first year of operation), a self employed Reservist is required, by using the same methods and principles, to provide financial information prepared on a basis consistent with that to be used for the member's or business/company/partnership's tax return.

77. If a self employed Reservist wishes to use income figures for a shorter period that are not calculated on a proportional basis from the full year result or that have been prepared using different methods and principles to those that are to be used for the member's or business/company/partnership's tax return, they must submit evidence and justification to DESPS as to why this variation should be accepted. DESPS may accept or reject this submission.

78. **Substantiation.** A delegate may require that the financial statement or the tax return and ATO notice of assessment are provided to substantiate the figures submitted by a financial adviser or accountant.

- a. If the tax return or financial statement is not yet available, the delegate must assess the claim, subject to substantiation at a later time.
- b. If the tax return or financial statement is available, the delegate must specify a time period within which the substantiation must be provided and may require the substantiation be provided before assessing the claim.

79. If the tax return or financial statement is not provided within the specified time period or does not fully substantiate the earlier figures, then:

- a. if the claim has not already been paid, the claim may be rejected or it may be approved only in respect of that part of the claim considered by the delegate to meet the requirements of the Defence Determination; or
- b. if the claim has already been paid, DESPS may review the decision under section 10A of the Defence Determination and require repayment in full or repayment for that part of the claim considered not to meet the requirements of the Defence Determination.

80. If a delegate requires that a financial statement or a tax return and ATO notice of assessment be provided for substantiation and the documents are not provided within the specified time period or do not fully substantiate the earlier figures then, if the claim has already been paid, it is to be forwarded to DESPS for review. Similarly, if an ATO notice of assessment is not provided, within seven days of its receipt, to substantiate a tax return or, when provided, does not fully substantiate the tax return then, if the claim has already been paid, it is to be forwarded to DESPS for review.