

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 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.

Example only

This information is provided in relation to self employed Reservist X's Employer Support Payment claim for Defence service in August 2015.

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, partner, director or employee of a company in which the Reservist has a controlling interest*).

His income for the twelve month period from 1 July 2014 to 30 Jun 2015 was as follows (*show all income sources*):

Net income received from business (as would be shown in X's personal tax return)*	\$56,789
Less Income from ESPS 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, Defence Determination 2012/68, Reserve employer support payments (as

amended), as explained at Division 5, s 19 – 21.

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 a director or employee 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 ESPS payments 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. This may be varied in some circumstances. See s 21.2

NOTE: Any document or information provided in the above advice the member must provide both the member's Individual Tax Return and the notice of assessment in relation to this tax return provided as soon as practicable after it has been issue by the Commissioner of Taxation.

An extract of the relevant sections from Defence Determination 2012/68, Reserve employer support payments (as amended) is enclosed. This should be provided to the financial adviser or accountant.

EXTRACT FROM DEFENCE DETERMINATION 2012/68, RESERVE EMPLOYER SUPPORT PAYMENTS (AS AMENDED)

Division 5: Principal Source of Income

19 What income includes

19.1 Income is the amount received by a member (in the form of earnings, moneys or profits) for the member's own use or benefit.

19.2 The table sets out examples of things that are, or are not, income.

Examples of...	
..things that are income	
1.	Salary paid in respect of defence service as a member
2.	A non-cash benefit that forms part of a package of remuneration, including: a. contributions to superannuation, made in accordance with a salary sacrifice or other arrangement, that exceed the amount that would be paid under the Superannuation Guarantee (Administration) Act 1992; and b. an amount deducted from a member's salary or wages in accordance with a salary sacrifice or other arrangement
3.	An amount related to, or derived from, the depreciation of a business asset
..things that are not income	
4.	An amount of pension
5.	Potential income or projected income
6.	For a claim relating to an income year—a profit made, or a loss incurred, in a previous income year
7.	A capital gain or loss, including a gain or loss relating to: a. the sale of plant, equipment or other property; or b. the sale of shares or an investment; or c. the sale of a business or company, or a significant part of the business or company; or d. a transaction relating to foreign currency that is treated as a capital gain for taxation purposes

20 When income is received

20.1 A member receives an amount of income from a business or a company if all of the following conditions are met in relation to an amount.

- a. The amount is not the income, profit, loss or turnover of the business or company itself (unless it is the profit or loss of a sole trader).
- b. The amount relates to the activities of the business.

Exception: If the activities of the business are investment of accumulated wealth or investment in a superannuation fund, then the related amount is not income for the purpose of this Determination.

c. Any additional requirements in this section are met.

20.2 If the member receives the amount from the sale of stocks or assets, the amount is only income received from the business if the stocks or assets were owned by the business or company.

Example: If a member identifies income received from the sale of shares as part of the member's income from the business:

- a. the share trading must have been conducted by the business or company that provides the member's principal source of income; and
- b. the shares must have been owned by the business or company; and
- c. the business or company must have provided the income from the share trading to the member.

20.3 If the member is a director of a company or is employed by a company in which the member has a controlling interest, the following conditions apply in relation to income.

- a. An amount is income from the business only if it is attributable as the member's income from the company.
- b. Fees, emoluments and dividends are part of the member's income from the company.
- c. An amount paid as a repayment of a loan is not part of the member's income from the company.

20.4 An amount of distribution of the net income of a trust is the member's income from the trust if both of the following circumstances apply in relation to the amount.

- a. It is the amount that would be declared by the member as personal income in the member's tax return.
- b. The member is employed by a trust or the trustee of a trust and holds any of the following powers or positions.
 - i. They are a trustee of the trust.
 - ii. They have power under the trust deed to remove the trustee or trustees of the trust and appoint another trustee or trustees.
 - iii. If the trustee is a company— they are a director of the company or has a controlling interest in the company.

20.5 If the member is a partner in a business that is a partnership, an amount is only the member's income from the partnership if it is the member's share of the net income of the partnership that would be required to be shown in the partner's personal tax return as a partner's share:

- a. whether the income is a profit or a loss; and
- b. whether or not the partnership has distributed the income.

20.6 If the member is a sole trader, an amount is only the member's income from the business if it is the net income or loss from the business that would be required to be shown in the member's personal tax return.

21 Evidence of principal source of income

21.1 A business, company or member (a claimant) that wishes to assert that the business or company provides the member's principal source of income, as part of a claim for employer support payment, must give the documents and information relevant to the reasons specified in the table, in writing, to a decision-maker.

Step	Action
Reason 1	Documents and information about whether the business or company is legitimate
	At least one of the following: <ul style="list-style-type: none"> 1.1 evidence of the allocation of an Australian Business Number that has not been withdrawn; 1.2 a copy of a certificate of incorporation; 1.3 a copy of a business registration certificate
Reason 2	Documents and information about whether the business or company is trading or otherwise operating
	At least one of the following: <ul style="list-style-type: none"> 2.1 a copy of the current Business Activity Statement for the business or company; 2.2 a copy of a current financial statement for the business or company, certified by the accountant or financial adviser for the business or company to be accurate; 2.3 if the member is a sole trader: <ul style="list-style-type: none"> 2.3.1 the member's current tax return, including business and professional items in the Supplementary section; and 2.3.2 the notice of assessment in relation to the member's current tax return (which must be given as soon as practicable after it has been issued by the Commissioner of Taxation); 2.4 if the member is not a sole trader—the current tax return of the business or company; 2.5 other relevant evidence from an accountant or financial adviser for the business or company, certified by the accountant or financial adviser to be accurate

Reason 3	Documents and information about whether the business or company provides the member's principal source of income
	<p>At least one of the following:</p> <p>3.1 a copy of a current financial statement for the member, certified by the member's accountant or financial adviser to be accurate;</p> <p>3.2 a copy of:</p> <p>3.2.1 the member's current personal tax return; and</p> <p>3.2.2 the notice of assessment in relation to the member's current personal tax return (which must be given as soon as practicable after it has been issued by the Commissioner of Taxation);</p> <p>3.3 other relevant documents and information provided by the member's accountant or financial adviser, certified by the accountant or financial adviser to be accurate, that the decision-maker is satisfied:</p> <p>3.3.1 is current; and</p> <p>3.3.2 relates to a period of at least the previous 12 months; and</p> <p>3.3.3 contains details of all of the member's income during the period; and</p> <p>3.3.4 for information requested by the decision-maker—is of a kind mentioned in paragraph 3.1 or 3.2 that is sufficient to substantiate the information</p>

21.2 The decision maker must reduce the income from a business or company for a self-employed member over any period by any amount of employer support payment that was paid to the member over the period, unless satisfied of any of the following matters.

- a. There is documentary evidence that the amount was used to address a loss or shortcoming directly caused by the absence of the member on defence service.
- b. Ownership or control of the business or company is shared by the member with another person or persons and there is documentary evidence that the share of the employer support payment was received by that person or persons and not, either directly or indirectly, by the member.
- c. It is reasonable to count the income, having regard to the outcome under this Determination.

Note: Any decision made under this subsection must be notified to the claimant in the reasons for decision on the claim.

Example: The member has receipts to show that the amount of the employer support payment was used to pay a locum who filled the member's place in the business for the period of the absence.

21.3 A document or information mentioned under item 3.1, 3.2 or 3.3 of the table in subsection 1 may be used for a part of a year, with the following effects on calculations.

- a. Calculations made in support of a claim using the document or information must be made on a proportional basis, by reference to a financial statement or income tax return mentioned in items 3.1 or 3.2.
- b. If no financial statement or income tax return mentioned in items 3.1 or 3.2 of the table is available, calculations that are made using the document or information must be made on a proportional basis using the same methods and principles that are intended to be used in preparing the member's income tax return for the income year in which the defence service was undertaken.
- c. The decision-maker may approve or reject a submission from the member to use, in support of a claim, a statement that is not calculated on a proportional basis or that was prepared using methods or principles other than those mentioned in paragraph b.

21.4 If a self-employed member wishes to continue to rely on evidence of principal source of income, the member must provide updated evidence, as detailed in subsection 1, 2 years after the period covered by the previous evidence.

Example: The member has provided principal source of income evidence covering the period 1 July 2013 to 30 June 2014. This can be relied upon for service between 30 June 2014 and 30 June 2016. For service after 30 June 2016 to be eligible for an employer support payment, updated principal source of income evidence would be required.

21.5 A decision-maker may treat evidence of principal source of income provided by a self-employed member as not being current, if the information contained in it was last up-to-date more than 3 months before the service to which the claim relates, and may require the member provide up to date information.

Example: The member has submitted a claim, with supporting principal source of income evidence, for service in November 2014. The principal source of income evidence covers the period 1 July 2013 to 30 June 2014. As this period finishes more than 3 months before the service, the decision-maker may accept the evidence or may require more up to date information be provided.

21.6 If a self-employed member relies on a document or information mentioned under item 3.3 of the table in subsection 1, the member must provide both of the following documents as substantiation, in the timeframes described.

- a. The member's tax return must be provided as soon as practicable.
- b. The notice of assessment in relation to the member's tax return must be provided as soon as practicable after it has been issued by the Commissioner of Taxation.

21.7 If the member fails to respond to a requirement to substantiate evidence within a specified period or provides a response that does not, in the opinion of the decision maker, wholly substantiate the evidence; then the decision maker may:

- a. if the claim has not already been paid:
 - i. pay so much of the claim as he or she considers reasonable; or
 - ii. reject the claim.
- b. if the claim has been paid:
 - i. require repayment of so much of the claim as he or she considers reasonable; or
 - ii. require full repayment of the claim amount as a debt owing to the Commonwealth.

See: Rule 11, Public Governance, Performance and Accountability Rule 2014.