



8 May 2023

Tēnā koe

On 7 March 2023 you emailed the Ministry of Social Development (the Ministry) requesting, under the Official Information Act 1982 (the Act), the following information:

MSD Policies regarding assessing self-employment business income for benefit purposes ie Depreciation and office expenses

On 4 April 2023, the Ministry advised you that more time was required to respond to your request and that the Ministry's decision will be with you no later than 5 May 2023.

On 5 May 2023, we notified you that we required more time to respond to you. The Ministry will now respond to your request.

The Ministry has interpreted your request to mean 'current policies'. Please contact the Ministry if this was not the intention of your request for information.

The Ministry does not currently have a policy around how the Ministry assesses self-employment business income for benefit purposes in regard to depreciation and home office costs. As such, your request for this information is refused under section 18(e) of the Act as this document does not exist or, despite reasonable efforts to locate it, cannot be found. However, you may be interested to know that the Ministry are in the process of assessing its operational guidelines regarding self-employment business income and are currently in the early stages of a draft.

Depending on the nature and needs of each business, the expenses that may be acceptable for one client's business may not be for another. Due to the range of business scenarios, the Ministry is flexible in its adding back of expenses. For example, a real estate agent claiming home office expenses seldom incurs greater household outgoings, however, a plumber operating from home may have purchased or rented a home of extra size to house a workshop or vehicles.

Overall, the Ministry generally does not allow for the inclusion of common expenses such as depreciation and home office costs, as outlined below.

Depreciation

The Ministry's practice is informed by the comments of the High Court in *Hendrickson* and further decisions by the Social Security Appeal Authority. The Ministry's approach is that depreciation is not recognised as an expense for benefit purposes. The Ministry endeavours to follow the guidance that these authorities provide and acknowledge that not all cases are the same and in some cases a level of flexibility may be required.

Home Office

In most cases this is an apportionment of costs that would ordinarily be incurred by any home owner, such as rates, insurance, mortgage and so on (or a percentage of rent). For taxation purposes, it is normally calculated by measuring up the area of the 'home office' which may be a spare bedroom, lounge etc and using this area as a percentage of the total home that is apportioned as a business expense. In most situations this is not considered an eligible expense.

However, if the client can show that this is an expense that has been incurred by the business directly (i.e. it only exists because of the business – and would cease to exist if the business ceased) then it may be considered.

On occasions where a staff member decides to allow the inclusion of such costs, the next step is to confirm what the total expenses are and ensures that whatever is claimed on the business is not also claimed as costs for financial assistance granted by the Ministry (for example, if rent was \$200 per week and \$50 was claimed as home office and it is accepted – only \$150 rent is claimable for Accommodation Supplement).

It is important to note that income for benefit purposes does not follow income rules under the Income Tax Act 2007. Income for benefit purposes under Schedule 3, Part 2 of the Social Security Act 2018 includes money received, or interests acquired, and the Social Security Act 2018 does not provide direction on offsetting money received from money spent.

However, the Ministry makes allowances for business type situations and will allow expenses that were necessarily incurred in generating the income.

The Ministry's website Manuals and Procedures (MAP) contains current guidelines that operationalise legislation for staff to follow when assisting clients. These documents are written to enable staff to make accurate and sound decisions, ensuring clients receive their full and correct entitlement.

Please see the MAP links below provided as a resource for staff when defining income:

- www.workandincome.govt.nz/map/income-support/core-policy/income/index.html
- www.workandincome.govt.nz/map/income-support/core-policy/income/definition-of-income/introduction.html

You can find relevant legislation applied for the assessment of income for benefit purposes as advised above at the following links:

- www.legislation.govt.nz/act/public/2018/0032/latest/DLM6784817.html
- www.legislation.govt.nz/act/public/2018/0032/latest/DLM6784812.html

You may be interested to know that the Ministry employs a small group of qualified Chartered Accountants who specialise in analysing and interpreting financial statements and other business information that is presented by clients seeking income or asset-tested assistance. They provide front-line staff with advice and support on the more complex cases, as well as addressing general queries. When involved in a case, the services offered by this group are:

- Assessing income and assets - providing a calculation or assessment of a client's income and/or assets in accordance with the provisions of the Social Security Act, policies and case law (including High Court and Social Security Appeal Authority decisions) when determining a client's eligibility to benefit assistance, and
- Providing expertise in dealing with business situations - including sole traders, partnerships, companies and trusts, particularly with respect to the deprivation provisions of schedule 3, part 4, Social Security Act 2018.

The principles and purposes of the Official Information Act 1982 under which you made your request are:

- to create greater openness and transparency about the plans, work and activities of the Government,
- to increase the ability of the public to participate in the making and administration of our laws and policies and
- to lead to greater accountability in the conduct of public affairs.

This Ministry fully supports those principles and purposes. The Ministry therefore intends to make the information contained in this letter and any attached documents available to the wider public. The Ministry will do this by publishing this letter on the Ministry's website. Your personal details will be

deleted, and the Ministry will not publish any information that would identify you as the person who requested the information.

If you wish to discuss this response with us, please feel free to contact OIA_Requests@msd.govt.nz.

If you are not satisfied with this response, you have the right to seek an investigation and review by the Ombudsman. Information about how to make a complaint is available at www.ombudsman.parliament.nz or 0800 802 602.

Ngā mihi nui

A handwritten signature in blue ink, consisting of several loops and a long horizontal stroke at the end.

George Van Ooyen
Group General Manager
Client Service Support