



12 June 2023

Tēnā koe

On 12 May 2023, you emailed the Ministry of Social Development (the Ministry) requesting, under the Official Information Act 1982 (the OIA), the following information:

- *I am requesting information from the Ministry of Social Development (MSD) and Work and Income New Zealand (WINZ) relating to beneficiaries having income from self employment.*

*Can you provide for the OIA Internal documents and publicly available information pertaining to:*

- 1) what can be considered self employed income.*
- 2) Deductibility of expenses and what expenses are considered deductible and are these in line with the same allowed expenses that IRD uses for calculation of income tax for self employed persons. Can you provide a comprehensive document that details how deductibility can be used while on a benefit.*
- 3) Is income while earned on a benefit paid at a secondary tax rate and if yes why?*

In the interest of clarity, I will respond to each of your questions in turn.

*1. What can be considered self-employed income?*

Self-employed clients earn their income by working for themselves, either as a contractor, or as an owner of business.

The Ministry's consideration of income earned by beneficiaries or benefit applicants is informed by the definition of income found in clauses 3 and 4 of Schedule 3, Part 2 of the Social Security Act 2018 (SSA 2018).

Clause 3 states that:

*Income, of a person, means the money value (before income tax) of a thing that-*

- (a) is money received, or an interest acquired, by the person; and*
- (b) is not an interest in capital received or acquired by the person.*

Clause 4 states that:

*(1) A person's income includes any periodical payments made to the person, and the value of any credits or services provided periodically to the person,—*

- (a) from any source for income-related purposes; and*
- (b) used by the person for income-related purposes.*

*(2) Subclause (1) applies—*

- (a) whether or not the payments, credits, or services are capital; and*
- (b) to the payments, credits, or services as calculated before the deduction (if applicable) of income tax.*

*(3) The contrary provisions that (under clause 2(2)) override this clause include clause 10 (which requires MSD to have regard to specified matters in considering, in respect of a person, whether a payment, credit, or service is for an income-related purpose).*

'Income-related purposes', mentioned in the above definitions, is defined in Schedule 2 of the SSA 2018 as:

*... in relation to a person, means the purpose of—*

- (a) replacing lost or diminished income; or*
- (b) maintaining the person or a member of the person's family;*

*Or*

- (c) purchasing, for the person, or for a member of the person's family, goods or services of a kind that are commonly paid for from income; or*
- (d) enabling the person to make payments that the person is liable to make and that are commonly made from income*

It is important to note that the definition of income for the purposes of social security under the SSA 2018 is separate and distinct from the definition of income for the purpose of taxation under the Income Tax Act 2007. The existence of a separate definition of income in the SSA 2018 is a clear indication that the two assessments of income are to be treated differently.

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](http://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](http://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 self-employment income for benefit purposes as advised above at the following links:

- [www.legislation.govt.nz/act/public/2018/0032/latest/DLM6784375.html](http://www.legislation.govt.nz/act/public/2018/0032/latest/DLM6784375.html)
- [www.legislation.govt.nz/act/public/2018/0032/latest/DLM6784812.html](http://www.legislation.govt.nz/act/public/2018/0032/latest/DLM6784812.html)
- <https://www.legislation.govt.nz/act/public/2018/0032/latest/DLM6784835.html>

You may also 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-facing 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 SSA 2018, 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.

*2. Can you provide a comprehensive document that details how deductibility can be used while on a benefit?*

The Ministry does not currently have a blanket all-inclusive policy for assessing the deductible expenses of self-employed beneficiaries. As a result, there is no 'comprehensive document' detailing how deductibility can be used while on a benefit. For this reason, your request for this information is refused under section 18 (e) of the OIA as the document does not exist or, despite reasonable efforts to locate it, cannot be found.

However, in the spirit of helpfulness, I can confirm that certain expenses which are deducted from revenue under income tax legislation cannot be deducted for social security purposes. As a general rule, non-allowable expenses include depreciation and home office costs.

In decision [2001] NZSSAA 143, the Social Security Appeal Authority found that:

*In general, it could be said that the enquiry as to what is "income" under the Social Security Act 1964 is an enquiry into what funds were available for the appellant and his family to meet their living expenses. It is for that reason that book entries in relation to depreciation and home office expenses which are deductible when assessing income for the purposes of the Income Tax Act will not generally be permitted when ascertaining income for the purposes of the Social Security Act 1964.<sup>1</sup>*

That being the case, there are circumstances in which the aforementioned expenses may be considered as allowable, particularly when the expenses were necessarily incurred in generating the income.

For instance, while depreciation is typically not considered to be an allowable expense, replacement capital items may be considered when the amount claimable is the same as the actual capital committed to the purchase (i.e., if all funds were borrowed to purchase said asset there would be no reduction in funds available to the client and thus no deduction).<sup>2</sup>

Home office costs (e.g., rates, insurance, mortgage, rent, etc) are also not typically considered to be an allowable expense. However, if the client can show the home office is a direct expense tied to the business (i.e., it only exists because of the business – and would cease if the business ceased) then the Ministry can consider it as an allowable expense.

When the Ministry considers home office costs as an allowable expense, the Ministry will confirm what the total of these expenses are and ensure that whatever is claimed on the business is not also claimed as an accommodation cost. For example, if rent was \$200 per week and \$50 was claimed for the home office and the Ministry determines that it is actually a home office, only \$150 rent is claimable for accommodation supplement.

Because of the wide range of business scenarios, the Ministry is relatively flexible in its adding back of expenses. For example, a real estate agent claiming home office expenses seldom incurs greater household outgoings,

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<sup>1</sup> Section 9(3) of the SSA 2018 states that the provisions of the SSA 2018 are the provisions of the SSA 1964 in rewritten form and are intended to have the same effect as the corresponding provisions of the SSA 1964. Therefore, case law judged under the 1964 act continues to apply under the 2018 act.

<sup>2</sup> In the case of *Hendrickson v. the Director-General of Social Welfare*, the High Court found that the Ministry's approach to depreciation is lawful and correct.

however, a plumber operating from home may have purchased or rented a home of extra size to house a workshop or vehicles. These examples highlight that the degree of flexibility depends on the circumstances.

It is important to note that expenses that may be allowable for one client's business may not be allowable for another business. That being the case, it is difficult for the Ministry to provide more comprehensive advice than the above, since our approach to assessing income depends on the nature and needs of each business.

*3. Is income while earned on a benefit paid at a secondary tax rate and if yes, why?*

The following main benefits are taxed at the 'M' rate:

- Emergency Benefit
- Jobseeker Support
- Sole Parent Support
- Supported Living Payment
- Young Parent Payment

When a person receives one of these benefits, it is considered to be their highest or main source of income. Since these benefit payments are, for the purpose of taxation, a person's main source of income, any other income earned by the beneficiary will be considered as secondary income.

When a beneficiary earns secondary income, they pay secondary tax. A beneficiaries' rate of secondary taxation varies according to the applicable tax code, which depends on a range of factors such as the type and amount of secondary income. When a beneficiary has multiple employers, Inland Revenue will review their total income at the end of the year, which allows the beneficiary's secondary tax to be reconciled and adjusted as needed.

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](mailto: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](http://www.ombudsman.parliament.nz) or 0800 802 602.

Ngā mihi nui

*Bridget Saunders*

Bridget Saunders  
**Manager, Issue Resolution**