

EXPORT MARKET DEVELOPMENT GRANTS ADMINISTRATIVE GUIDELINES

PART 6 – AMOUNT OF GRANT

SECTIONS 60 – 65 GUIDELINES

How to work out an applicant's provisional grant amount

6.1.1 The provisional grant amount is the maximum amount each applicant is entitled to in respect of a grant year. The provisional grant is calculated according to the rules outlined at section 63 of the EMDG Act.

6.1.2 Applicants will not necessarily receive their provisional grant amount in full. Some circumstances where grants might be reduced are where:

- The provisional grant amount exceeds the initial payment ceiling amount. The total annual cost of the EMDG scheme is capped and if demand for grants exceeds the budgeted amount, applicants with provisional grants exceeding the initial payment ceiling amount will have their grants paid on a pro-rata basis. Refer to sections 66 – 69 of the EMDG Act for an explanation on how the provisional grant calculation relates to the actual grant payable to an applicant
- An applicant's grant is adjusted because of the application of section 96 of the EMDG Act. Such adjustments arise from Austrade's determination that an applicant:
 - (a) claimed unsubstantiated, unreasonable, uncommercial or non-bona fide expenses; or
 - (b) entered into arrangements for the sole or dominant purpose of obtaining a grant or increasing the amount of a grant.
- The applicant is a member of a related company group and other members of the group have also applied for a grant in respect of the grant year and the group's provisional total grant amount exceeds \$250,000. In this case grants will be pro-rated according to the formula at subsection 65(2) of the EMDG Act.

General calculation

6.1.3 Subsection 63(1) of the EMDG Act states that the provisional grant is based on:

- [50% of the applicant's "eligible expenses" for the grant year] less \$2,500.

"Eligible expenses" must be at least \$15,000 in the grant year – refer paragraph 29(d) of the EMDG Act. First-time

applicants can combine expenses incurred in the grant year with those of the year immediately preceding the grant year – refer sub-paragraph 29(c)(i) of the EMDG Act. The combined expenses are assessed under the rules applicable to the grant year.

6.1.4 The maximum provisional grant payable is \$150,000 – refer to subsection 63(4)) of the EMDG Act.

6.1.5 Guideline deleted.

Calculation where applicant is a member of a related company group

6.1.6 The maximum of the total provisional grants paid to a related company group is \$250,000.

6.1.7 Individual group members should lodge individual grant applications and these will continue to be assessed in the normal manner. Once all applications lodged by corporate group members have been assessed, the individual grant amounts will be adjusted, on a pro-rata basis, should the total assessments of the company group exceed \$250,000.

6.1.8 The terms *related company* and *related company group* are defined at section 107 of the EMDG Act.

6.1.9 Under the Corporations Act the expression “related bodies corporate” has a widely known meaning. The EMDG Act adopts this definition. That is, “related company” in the EMDG Act has exactly the same meaning as “related body corporate” in the Corporations Law and includes all holding companies and all subsidiaries in a corporate group.

6.1.10 Companies are part of a group if (per Corporations Act sections 46–50):

- a company is a subsidiary of another, or
- a company is a holding company of another, or
- subsidiaries are held by the same holding company.

6.1.11 A company is a subsidiary of another company if:

- the holding company controls the composition of the subsidiary’s board
- the holding company can control more than 50 per cent of the voting rights in the subsidiary
- the holding company holds more than 50 per cent of the issued capital; or the subsidiary is a subsidiary of a holding company which, in turn, is held by another company.

EXAMPLE 1

Company A [a holding company] individual assessment	\$150,000
Company B [a subsidiary of A] individual assessment	\$100,000
Company C [a subsidiary of B] individual assessment	\$125,000
	\$375,000

As the total group assessment exceeds \$250,000, each individual claim is then adjusted on a pro-rata basis:

Company	Adjustment		Payment
A	$150,000/375,000 \times \$250,000$	=	\$100,00
B	$100,000/375,000 \times \$250,000$	=	\$66,667
C	$125,000/375,000 \times \$250,000$	=	\$83,333
Total of Payments to Group Members		=	\$250,000

EXAMPLE 2

Company A [a holding company] individual assessment	\$100,000
Company B [a subsidiary of A] individual assessment	\$20,000
Company C [a subsidiary of A] individual assessment	\$40,000
Company D [a subsidiary of C] individual assessment	\$60,000
Total Group Assessment	\$220,000

As the total group assessment is less than \$250,000, each individual claim is then paid at the individually assessed rate.

Timing of Austrade payments to related company group members

6.1.12 Sections 80 – 84 of the EMDG Act (guidelines 7.4.1–7.5.6) inclusive refer to Austrade’s requirements to pay grants to applicants.

Section 83 of the EMDG Act refers directly to payments to related company group members. The important point to note is that because of the possibility of the \$250,000 group cap being exceeded in the event of successful appeals by group members, Austrade will not make payments to any group member until the period for lodging appeals has passed.

Export performance requirements

6.1.13 Under section 63(3) of the EMDG Act, applicants other than approved bodies and approved trading houses that have:

- already received two EMDG grants; and
- elected grants **Option A** for a particular grant year

will be subject to the EMDG Act’s export performance requirements. The *Export Market Development Grants (Export Performance Requirements) Determination 2008* contains the rules for measuring an applicant’s export earnings as follows (see especially the table at section 2.1 (2) of the Determination).

Under this test applicants will receive the lesser of:

- 50% of (total eligible expenses less A\$5,000)*; and
- The relevant % of export earnings depending on how many grants you have received.

* Subject to the maximum legislated grant amount of \$150,000.

EXAMPLE 1

An applicant has received six grants and applies for its seventh grant for the 2013–14 grant year. Its eligible expenses are \$200,000 meaning that its provisional grant based on expenses alone would be \$97,500.

Its claimed 2013–14 grant year exports are \$400,000 meaning that if it chose Option A (export performance requirements) and if its claimed exports were assessed as eligible, its grant would be \$20,000.

However, if this applicant was to have any or all of its claimed export earnings disallowed by Austrade, e.g. if it was assessed not to be the principal in transactions, its grant would be reduced, possibly to a zero amount. This applicant could not then revert to Option B (ANBRs).

These percentages are as follows:

GRANT YEAR	% OF EXPORT EARNINGS
3	40
4	20
5	10
6	7.5
7 and 8	5

Types of eligible export transactions

Export earnings – goods

6.1.14 Item 1 in section 2.1 (2) of the Export Performance Requirements Determination notes eligible goods to be goods that are:

- (a) made in or outside of Australia; and
- (b) exported by the applicant from Australia; and
- (c) sold by the applicant at any time to a person that is not a resident of Australia.

EXAMPLE 1

An applicant contracts with a UK buyer to supply Australian wine. It exports the wine and receives consideration for the export transaction in the 2013–14 grant year.

The consideration received in 2013–14 for the free on board (FOB) export earnings value will be the assessed export earnings amount for the applicant.

EXAMPLE 2

An applicant sells wine to foreign tourists in Australia. The wine is taken out of Australia by the tourists.

The consideration received in 2013–14 for the FOB export earnings value will be the assessed export earnings amount for the applicant.

N.B. Section 2.4 of the Determination enables the applicant in this case to be taken to be the exporter even though the buyer exports the goods.

EXAMPLE 3

An applicant exports medical equipment to its USA branch during 2012–13. The equipment was held in a warehouse as consignment stock but not sold until 2013–14 and later years.

The consideration received in 2013–14 for the consignment sales, and which is based on the FOB export earnings value, will be the applicant's assessed export earnings.

For consignment sales, payments received by the claimant (that is, gross receipts) are to be reduced to FOB values of the goods sold by deducting:

- *ocean freight*
- *insurance*
- *customs and clearing charges*
- *internal freight in country of sale*
- *warehousing costs*
- *interest on advances etc relating to the provision of that consignment stock originally.*

EXAMPLE 4

An applicant is a manufacturer and sells to an Australian wholesaler that in turn sells to foreign residents.

The applicant is not able to claim any eligible export earnings for exported goods that are not sold by it to a foreign resident.

EXAMPLE 5

An applicant promotes eligible goods that it has made in China by a related company and claims eligible EMDG expenses for the promotion of these goods.

The China made goods are sold by the applicant to customers in USA and delivered from China without coming to Australia.

The applicant is entitled to claim the consideration received during the 2013–14 grant year for the sale of the goods to the USA customers.

N.B. Section 2.1 (6) of the Determination provides that if goods are exported from one country to another, the amount or value of the consideration is the free on board value of the goods from the country of delivery.

EXAMPLE 6

An applicant promotes eligible goods that it has made in China by a related company and claims eligible EMDG expenses for the promotion of these goods.

The China made goods are sold by the related company to customers in China.

The applicant is not able to claim any eligible export earnings for exported goods that are not sold by it to a foreign resident.

Principal status

6.1.16 Eligible export earnings must be based on amounts received for goods sold by the applicant. Section 109 of the EMDG Act provides that a person is taken to sell eligible goods only if Austrade is satisfied that the property in the goods passes from that person to a person that is not a resident of Australia at the time when the goods are sold.

The goods can be sold either in or outside Australia.

To substantiate the issue of principal status for goods, Austrade may examine:

- a) the sales contract between the applicant and the overseas purchaser
- b) invoice/s from the applicant to the purchaser
- c) bills of lading/air waybills
- d) evidence that the sale has been taken up in the applicant's profit and loss (P&L) statement
- e) the payment flow – transfer of title from claimant to an overseas resident.

EMDG applicants may make arrangements for financing their export activities with businesses such as those providing factoring services. For example, in a factoring operation, there will be a sales contract between the applicant and the overseas purchaser, a bill of lading/air waybill, and the P&L evidence, however, the invoice is made out to the factoring organisation, which is often an Australian company.

Where EMDG applicants' factoring arrangements are done on an arm's length and bona fide basis and are purely for financing the export business, they will be accepted as principal in export transactions. The amount claimable as export earnings will be the amount invoiced to the foreign resident customer – refer to 'Accounting for agent's commission etc' below – guideline 6.1.18 refers.

Free on board (FOB) export values

6.1.17 FOB values would normally be calculated by taking the selling price to the overseas buyer and deducting any costs incurred by the exporter in transporting the goods beyond the point of export (freight and insurance).

FOB values include:

- material costs
- labour costs
- value of packaging
- seller's mark-up
- freight ex works to the point of export
- domestic insurance for the risk in bringing the goods to the point of export
- export duties
- internal taxes
- agent's commission or brokerage to the point of export
- costs of obtaining and drawing up export documents in bringing the goods to the vehicle of export
- loading or wharfage or portage charges.

FOB values exclude:

- duties, taxes and consular fees imposed by the country of destination
- transport charges beyond the point of export
- marine freight and insurance
- patent, trade mark, licensing charges etc in the country of destination.

There will also be cases where the goods are sold in Australia to a foreign resident buyer who is in Australia.

If the buyer later exports the goods, section 2.4 of the EMDG (Export Performance Requirements) Determination 2008 provides that the seller (not the buyer) is taken to be the exporter of the goods.

Accounting for agent's commission etc

6.1.18 FOB export earnings are generally deemed to include commission paid or payable to an agent. However, amounts representing discounts or similar payments are excluded.

For example, where an applicant invoices a customer but only receives 95 per cent of the invoiced amount, there are two likely scenarios:

- a) If the customer is simply taking advantage of a 5 per cent discount, then the eligible EMDG earnings will be the 95 per cent amount.
- b) If an agent (such as a factoring business) is paid the 5 per cent fee by either the applicant or the customer, that fee is considered to be part of the applicant's EMDG eligible earnings. The onus is on the applicant to substantiate that the commission is eligible for inclusion and that it has been paid. This rule also applies where an applicant uses a factoring organisation to finance an export sale.

Export earnings – services

Item 3 in the section 2.1 (2) table of the Export Performance Requirements Determination – export earnings for eligible non-tourism services sold by the applicant to non-Australian residents

6.1.19 This covers all eligible services that do not fall within the meaning of the following two schedules in the EMDG Regulations 2008 as follows:

Schedule 1 Tourism services; and

Schedule 2 Services that are not non-tourism services.

The deduction of amounts paid or payable outside Australia will be made when an applicant engages local non-Australian resident contractors to carry out part of the work on an overseas project. That is, where an applicant pays part of the selling price to contractors who perform part of the service, the amount paid to the contractor will be deducted. However, Austrade will not deduct general expenses incurred by an applicant in relation to receiving consideration for the supply of its external services.

Item 4 in the section 2.1 (2) table – export earnings for events

6.1.20 Note: This item only applies to event promoters. Event holders or owners may be eligible for EMDG support under the eligible tourism services product category, but only where they have not engaged an event promoter.

Because events promoters do not themselves export, the EMDG rules attribute the event holder's export earnings to event promoter.

The event promoter will claim the sum of the eligible export earnings of all of its event holder clients – whether Australian or foreign residents – for a particular grant year for EMDG purposes, as if these were its own exports.

The event holder's export earnings to be attributed to the events promoter will include:

- the event admission or entrance fees of foreign residents
- the event holder's sales of goods or services in connection with the event – including accommodation or pre- and post-event tours – if the sales are made to a foreign resident who attends the event in Australia.

Export earnings that do not relate to the attendance at an Australian event by a foreign resident will not qualify as export earnings for EMDG purposes. For example, sponsorship paid to the event holder by a foreign corporation would not be eligible export earnings for the events promoter.

Given that export earnings are attributed to the events promoters, it is important that events promoters have arrangements in place with their event holder clients that ensure that the events promoters will have access to the appropriate export earnings information.

As a general rule, Austrade will not require a detailed transaction-level accounting of their clients' earnings from events promoters, but will endeavour to assist events promoters to comply with this requirement in a practical manner which recognises the realities of the situation. The export performance test does not apply until the events promoter's third grant, by which time Austrade would expect to have negotiated a mutually satisfactory way of meeting this requirement with each claimant.

Only sales revenues earned by the event holder(s) that the event promoter has contracted will count.

How are export earnings allocated where there is more than one events promoter for an event?

It is expected that there would usually be an obvious basis to allocate an event holder's export earnings in such cases, such as a geographic basis.

The EMDG legislation provides for regulations to provide for allocating export earnings between two or more events promoters, but there are no plans to draft such regulations at this stage. Austrade would prefer at this stage to handle any such cases by seeking agreement on a case by case basis

Items 5, 6 and 7 in the section 2.1 (2) table of the Export Performance Requirements Determination – export earnings for exporters of eligible tourism services

6.1.21 Suppliers of eligible tourism services to Australian resident inbound tour operators (ITOs) where the ITO on-sells the services to foreign resident tourists are entitled to 20 per cent of the value of the consideration received during the grant year for the sales of the services.

N.B. The term 'inbound tour operator' (ITO) is not defined in the *EMDG (Export Performance Requirements) Determination 2008*. For the purpose of the Determination, this term is taken to mean any Australian business that buys eligible tourism services from an Australian supplier for on-sale to foreign residents.

EXAMPLE 1

An applicant operates a hotel and sells rooms to an Australian inbound tour operator (ITO) for on-sale to foreign residents. In the 2013–14 grant year the applicant charges the ITO and is paid \$100,000 for these room sales.

The applicant is entitled to \$20,000 for the purposes of the EMDG export performance requirements.

Inbound tour operators (ITOs) supplying eligible tourism services to foreign residents that the ITOs had purchased from another tourism services supplier are entitled to claim 80 per cent of the amount or value of the consideration received during the grant year for the sale of the service.

EXAMPLE 2

The inbound tour operator (ITO) referred to in example 1 above invoices the hotel rooms to foreign residents for \$150,000 and receives this amount in the 2013–14 grant year. Because the ITO purchased the rooms from an Australian hotel, the ITO is entitled to claim 80 per cent or \$120,000 export earnings for this transaction.

Any EMDG applicant that sells eligible tourism services based on its own amenities will be entitled to claim 100 per cent of the sales income received in the grant year. Some tourism applicants may own tourism amenities and package these with bought-in services for on-sale to foreign resident tourists. These applicants will be able to claim 100 per cent of earnings based on the sale of their own amenities and 80 per cent of earnings based on selling their bought-in services

EXAMPLE 3

An applicant owns buses and buys in other amenities such as accommodation and admission to tourist attractions for packaging for sale to foreign residents. 100 per cent of the income from the buses will be eligible and 80 per cent of the income from the bought-in amenities will be eligible.

Item 8 in section 2.1 (2) table of the Export Performance Requirements Determination– export earnings for exporters of eligible intellectual property or eligible know-how

6.1.22 These categories of products (eligible intellectual property and eligible know-how) are defined at sections 26 and 27 of the EMDG Act respectively. The definition of disposal of eligible intellectual property and eligible know-how is found at section 111 of the EMDG Act. It requires that the intellectual property or know-how is disposed of for reward to a person that is not a resident of Australia for use or enjoyment outside Australia.

The eligible earnings will be the amount received in return for that disposal by the applicant as principal in export transactions during the grant year.

Withholding tax levied by overseas governments on royalties earned by Australian residents in those countries is not regarded as being part of the consideration received for the disposal of eligible industrial property rights or of eligible know-how. That is, the consideration received by the applicant is the net amount after deduction of the source of the withholding tax.

Export earnings – related entities

6.1.23 Section 2.5 of the *Export Market Development Grants (Export Performance Requirements) Determination 2008* provides that the export earnings of an applicant's related entity are taken to have been earned by the applicant itself in the following circumstances:

1. The applicant must be incorporated under the *Corporations Act 2001*; and
2. The applicant claims expenses of promoting export sales for a related entity *; and
3. The export earnings of this related entity* are attributable to the promotion of export sales by the applicant.

* Related entity means:

- a company incorporated under the *Corporations Act 2001* (Corporations Act) that controls or is controlled by the applicant. The test of 'control' is that found at section 50AA of the Corporations Act
- a company incorporated under the Corporations Act that has the same shareholder or shareholders as the applicant
- a board-approved Australian resident shareholder/director of the applicant company.

EXAMPLE

Applicant company XYZ Pty Ltd incurs expenses of promoting export sales of IP in relation to medical treatment owned by its parent company ABC Pty Ltd in its 2013–14 EMDG claim. XYZ claims in the grant year and prior years were limited to expenses for the promotion of the medical treatment IP royalties, although ABC also exported goods during 2013–14. These goods exports were achieved independently of any promotional expenses ever claimed in any XYZ claim.

ABC Pty Ltd receives IP royalty income of \$500,000 during 2013–14. It also receives \$100,000 from the sales of its goods. Austrade will only deem the \$500,000 export earnings amount to have been received by XYZ for the purposes of the EMDG export performance requirements.

In cases where two entities related under section 37(1A) of the EMDG Act both claim expenses promoting a particular product, the export earnings earned by one of them may be apportioned, on some objective basis, between the two entities for the purposes of section 2.5 of the *Export Market Development Grants (Export Performance Requirements) Determination 2008*.

EXAMPLE:

Company A and Company B are related entities. They promote the same intellectual property. While each company is able to identify its own promotional expenditure, they cannot identify whose promotional effort generated the export earnings.

In this case, the export earnings must not be claimed in their entirety by each applicant. Austrade would expect the companies to identify an objective way to apportion the export earnings between Company A and Company B. The export earnings entered into each claim should reflect this apportionment, and include a note that documents the rationale for the apportionment.

EXAMPLE

Company A is a holding company that owns IP in relation to a medical product. It incurs patent registration expenses but does not export in its own right. It has received two prior grants and claims an EMDG grant in 2013–14 grant year.

Company B earns \$200,000 export income from the sale of its medical product in 2013–14. The earnings of this entity that can be attributed to the promotion of export sales by the applicant can be claimed.

Export earnings – contra arrangements

6.1.24 Austrade will allow earnings under contra or offset arrangements where the applicant owes the overseas customer a matching amount and where it can substantiate the legitimacy of the arrangement.

Export earnings – conversion from foreign currency amounts

6.1.25 Applicants should generally claim the Australian dollar amounts received as detailed in bank statements.

For applicants that have export earnings deposited into their foreign currency bank accounts, Austrade will apply the exchange rate prevailing on the day the earnings are received.

Export earnings – New Zealand and markets subject to trade sanctions

6.1.26 No export earnings will be allowed for New Zealand or North Korea. For Iran, no export earnings acquired up to and including 17 January 2016 will be allowed.

Export earnings – deposits and prepayments

6.1.27 Applicants receiving payment from customers before the shipment of goods or before the supply of services will be entitled to claim export earnings when they are received as long as the payment received is taken up as revenue in the applicant's profit and loss statement for the particular grant year. Payments received from foreign resident customers that are held in the balance sheet at 30 June of the particular grant year will not be allowed as export earnings for that grant year.

6.1.28 The *Export Market Development Grants (Export Performance Requirements) Determination 2008* requires that exports to markets subject to trade sanctions will be ineligible. Exports to North Korea will not be eligible, and exports to Iran will not be eligible up to and including 17 January 2016.

6.1.29 GST and export earnings

All exports will be assessed for EMDG purposes at their full sales price (which may include the GST component in some cases, particularly for internal services such as tourism).

6.1.30 Export earnings based on management charges to an applicant's related overseas entity

Austrade will not generally allow offset arrangements with an applicant's overseas related entity where the applicant claims a management charge as export earnings. Austrade considers that in most cases such management charges represent a cost recovery amount for the resources the applicant has spent on supporting its related overseas entity. Austrade will consider circumstances where an applicant can substantiate that the management charges between members of a related group are both reasonable and commercial, and where the charges are in the nature of service delivery.

SECTIONS 66 – 69 GUIDELINES

How to work out the amount of grant

6.2.1 Divisions 3 and 4 of Part 6 (sections 66 – 69) of the EMDG Act cover the rules for calculating the amount of grant payable to an applicant.

6.2.2 Since 1 July 1997 funding for the EMDG scheme has been capped. Up to five per cent of this can be directed to the administration of the scheme. To ensure that the cap is not exceeded, grants are paid under a split

payment system. Grants up to an amount termed the “initial payment ceiling amount” will be paid in full. Grants exceeding this amount will be paid in two instalments.

6.2.3 The “initial payment ceiling amount” is the maximum payment an applicant can receive immediately following assessment of their application by Austrade. This amount is set by Ministerial determination and is advised by Austrade before the end of the particular grant year.

Applicants will fall into one of two categories:

1. **Applicant’s provisional grant does not exceed the “initial payment ceiling amount”**

6.2.4 Where an applicant's provisional grant amount as determined by Austrade is equal to or less than the initial payment ceiling amount, the grant will be paid immediately following assessment by Austrade.

2. **Applicant’s provisional grant exceeds the “initial payment ceiling amount”**

6.2.5 Where an applicant’s provisional grant exceeds the “initial payment ceiling amount”, only the “initial payment ceiling amount” is payable in the first instance.

6.2.6 Unpaid provisional grants (balance grants) are then dealt with in the following manner:

During June of the year following the particular grant year, Austrade will total the amounts paid out as initial payments (including payments for earlier years if applicable) and also administrative outlays for that year. The balance subtracted from the total EMDG scheme appropriation will be the amount distributed.

6.2.7 The Minister is required to determine the date at which this calculation is made. This date, set by Ministerial determination, is called the “balance distribution date”. The “payout factor” is determined as soon as practicable following the “balance distribution date”.

6.2.8 The “payout factor” will be applied to all unpaid provisional grants so that the balance amounts can be paid. The payout factor ensures the funding cap for that grant year is not exceeded. Unless outstanding provisional grants equal or fall below the amount calculated to be distributed, the payout factor will be a multiplier of less than 1. That is, all outstanding provisional grant amounts will be reduced proportionately.

6.2.9 The actual formula for the “payout factor” can be found at Regulation 3 accompanying the Act.

6.2.10 It should be noted that the “payout factor” applies to the grant year for which an application was submitted and all determinations in relation to that year.

EXAMPLE:

Applicant claims a grant for 2013–14. A grant greater than the initial payment ceiling amount is determined and paid late in the processing cycle in June 2015. The payout factor for 2013–14 grant year applications is, for the purposes of this example only, determined to be 0.75. An appeal is lodged and processed in August 2015 with a supplementary grant being determined. The supplementary grant will be based on application of the same 2013–14 payout factor of 0.75.