

WITHDRAWN – replaced by EE003



DETERMINATION > MISCELLANEOUS

Variation to Determination EE002A - Payments to employees for working from home costs

Issued: 15 February 2021

EE002B

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Application

Determination EE002B (the Determination) applies to relevant payments made by employers for the period from 18 March 2021 to 30 September 2021.

Discussion

During the COVID-19 pandemic national lockdown some employers made payments to employees to reimburse costs incurred by those employees as a consequence of the employees having to work from home. Inland Revenue was asked to clarify the tax treatment of such payments and subsequently issued Determination *EE002: Payments to employees for working from home costs during the COVID-19 pandemic* in April 2020.

Determination EE002 was issued as a temporary response to the COVID-19 pandemic and applied to reimbursement payments made by employers during the six month period from 17 March to 17 September 2020, so long as the employee who received the payment was working from home as a consequence of the COVID-19 pandemic. Where this occurred the reimbursement payments were exempt income in term of section CW 17 of the Income Tax Act 2007 (the Act).

In order to ensure that these payments continued to be treated as exempt income after the lockdown period, and to allow the Commissioner time to consider the tax implications of reimbursement payments made to employees who work from home as a “new way of working”, the Commissioner subsequently issued Determination *EE002A: Variation to Determination EE002 - Payments to employees for working from home costs during the COVID-19 pandemic*. This determination mirrored Determination EE002 but extended the timeframe of the determination to 17 March 2021. It also removed the requirement that the expenditure or loss must be incurred by the employee as a result of the employee being required to work from home because of the COVID-19 pandemic. It applied to any payment made to an employee that worked from home, to the extent it was to reimburse that employee for costs incurred in working from home.

The Commissioner is continuing to consider the wider tax implications of reimbursing employees who work from home as a “new way of working”. Because any public statement on this topic will not be ready for publication before 17 March 2021, it is the Commissioner’s view that both employers and employees should be able to continue applying the approach set out in Determination EE002 and EE002A until 30 September 2021. This will allow further

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time for the Commissioner to consider all matters relating to the tax consequences of employees working from home.

In order to achieve this outcome the Commissioner is issuing this determination in terms of s 91AAT(6) of the Tax Administration Act 1994, to vary and extend Determination EE002A by:

- extending the timeframe through to 30 September 2021; Determination EE002B applies to reimbursement payments made by employers from 18 March 2021 to 30 September 2021.

This variation will ensure that, for this extended period, the determination will continue to apply to any employee that works from home and that qualifying payments continue to be treated as exempt income under section CW 17 of the Act.

It is important to note that, other than for the above variation, all aspects of Determination EE002 remain in place, including the following requirements and exclusions. The requirements are that:

- An employer must make a payment to an employee.
- The payment must be for expenditure or a loss incurred (or likely to be incurred) by the employee.
- The expenditure or loss must be incurred by the employee in deriving their employment income and not be private or capital in nature (the capital limitation does not apply to an amount of depreciation loss).
- The payment must be made because the employee is doing their job and the employee must be deriving employment income from performing their job.
- The expenditure or loss must be necessary in the performance of the employee's job.

Excluded from the determination are:

- Expenditure on account of an employee.
- Any payments made for a period after an employee ceases to work from home.
- All amounts paid under a salary sacrifice arrangement.
- Payments made to an employee to compensate the employee for the conditions of their service.

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This determination was signed by me on 15 February 2021.

Rob Falk

National Advisor, Technical Standards, Legal Services

Inland Revenue