Inland Revenue
Te Tari Taake

DETERMINATION > MISCELLANEOUS

Determination EE003 – Payments provided to employees that work from home; Employee use of telecommunications tools and usage plans in their employment

Issued: 25 August 2021

EE003

Application

Determination EE003 (the Determination) applies to relevant payments made by employers for the period from 1 October 2021 to 31 March 2023.

From 1 October 2021, this determination replaces:
Determination EE001: Employee use of telecommunications tools and usage plans in their employment, Tax Information Bulletin Vol. 32, No.1 (February 2020);

Determination EE002: Payments to employees for working from home costs during the COVID-19 pandemic, Tax Information Bulletin Vol. 32, No. 5 (June 2020);

Determination EE002A: Variation to Determination EE002 - Payments to employees for working from home costs during the COVID-19 pandemic, Tax Information Bulletin Vol. 32, No. 8 (September 2020);

Determination EE002B: Payments to employees for working from home costs, Tax Information Bulletin Vol. 33, No. 3 (April 2021).

Background

1. Amounts paid by an employer to an employee to reimburse that employee for costs that they incur in connection with their employment are taxable in the hands of the employee unless the payment is exempted by the provisions of s CW 17 of the Income Tax Act 2007.

2. Under s CW 17 a reimbursing payment is treated as exempt income to the employee to the extent that the expenditure in question would be ordinarily deductible to the employee if the employment limitation did not apply. The employment limitation is the rule that prevents an employee from claiming most deductions for expenditure incurred in deriving employment income.

3. As the expenditure in question must also be ordinarily deductible, there needs to be a connection between the expenditure and the performance of the employee's job. It also means that the expenditure cannot be private expenditure or expenditure of a capital nature (however, an amount can be paid for a depreciation loss).

4. Employers may find it administratively difficult to establish the extent to which expenditure is incurred by employees in connection with their employment income or is of a private or capital nature. They may also find it difficult to establish or realistically estimate the expenditure each of their employees has incurred (or is likely to incur).

5. To remove some of this difficulty and reduce the compliance costs for employers, the Commissioner of Inland Revenue (the Commissioner) has, over the past two years, published several determinations that deal with the additional expenditure that employees may face when they work from home and/or use their personal telecommunications tools and usage plans in their employment.

DET EE001 Determination EE001: Employee use of telecommunications tools and usage plans in their employment

6. In December 2019 the Commissioner issued Determination EE001. This determination provided guidance on arrangements where employees agree to use their own telecommunication devices and/or usage plans for their employment. EE001 sets out proportions of expenditure or loss that the Commissioner accepted as being exempt income of an employee. The proportions differed depending on whether a device or usage plan is used by the employee principally for employment.

7. EE001 also provided a *de minimis* rule which treated a payment made to an employee of up to $5 per week as exempt income of the employee. All that was required for this *de minimis* rule to apply was for there to be an arrangement where the employee provided their own telecommunications tools and usage plan, or just their usage plan, and the employee agreed to use these for their employment.

8. Determination EE001 could be used in relation to payments made to employees for mobile phone and internet costs incurred by employees as an ordinary incident of their day-to-day employment. The payment could be made irrespective of where the employee worked from; the determination was not limited to those employees that worked from home.

9. It should be noted that Determination EE001 was "open ended"; it did not have a cessation date. Amalgamating all previous determinations into this determination means that all the provisions previously contained in those determinations now have a consistent end date (of 31 March 2023).

10. Although Determination EE001 is now being amalgamated into this determination, its contents remain unchanged, other than for the inclusion of an end date. **In particular, employers that wish to reimburse those employees that are required to use their personal telecommunications tools and/or usage plans in their employment may do so, even where the employee is not required to work from home**. See [28] and [29] for further discussion on this topic.

Determination EE002: Payments to employees for working from home costs during the COVID-19 pandemic

11. During the initial COVID-19 pandemic national lockdown, some employers made payments to employees to reimburse the additional costs incurred by those employees in having to work from home. Inland Revenue was asked to clarify the tax treatment of such payments.

12. Subsequently Determination EE002 was published in April 2020. Determination EE002 was issued as a temporary response to the COVID-19 pandemic and applied to reimbursement payments of up to $15 per week, 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.

13. The $15 amount that was able to be treated as exempt income excluded payments made to reimburse employees for the use of their personal telecommunications tools and usage plans. Effectively this meant that, where appropriate, employees that incurred expenditure for both working from home and the use of their personal telecommunications tools and/or usage plans, they were able to be reimbursed a total of $20 per week and have that amount treated as exempt income.

14. To ensure that these payments continued to be treated as exempt income after the lockdown period ended, the Commissioner 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 out to 17 March 2021. It also removed the requirement that the expenditure or loss must be incurred by the employee because the employee was required to work from home because of the COVID-19 pandemic.

15. In February 2021 this timeframe was further extended to 30 September 2021 by the issue of *Determination EE002B: Variation to Determination EE002A - Payments to employees for working from home cost*. As with the previous determination extension, determination EE002B 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. This meant that, where appropriate, employees that incurred expenditure on both working from home and the use of their personal telecommunications tools and/or usage plans continued to be able to be reimbursed a total of $20 per week.

As it is now necessary to extend determination EE002B beyond that determinations' expiry date of 30 September 2021, the Commissioner has decided to take this opportunity to make it easier for employers and employees to locate the information that they require by amalgamating all previous determinations into one publication.

Determination

This Determination is made under s 91AAT of the Tax Administration Act 1994 and s CW 17(2C) and (2D) of the Income Tax Act 2007. It may be cited as; Determination EE003: *Payments provided to employees that work from home; Employee use of telecommunications tools and usage plans in their employment* and it applies to the following payments made by employers for the period from 1 October 2021 to 31 March 2023.

This determination's requirements and exclusions

16. For this Determination to apply:

- 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.
- Where an employee is partly working from home and partly outside of their home, the home-based work must be more than minor. For example, the Determination can apply to an employee who works at the employer's premises on alternate days.

17. This Determination does not apply to:

- Any payment that is already the subject of a payment as expenditure on account of an employee[1].
- Any payments made for a period after an employee ceases to work from home (other than telecommunications payments made in accordance with [28] of this determination).
- An amount paid under a salary sacrifice arrangement.

This determination is not binding on employers or employees

18. This Determination is not binding on employers or employees. An employer or employee may treat a different amount paid to the employee as exempt if they have evidence to demonstrate that in their circumstances some other amount is appropriately treated as exempt income.

Weekly thresholds of this determination

19. Under this determination, where an employer pays an employee who is working from home an allowance, or pays an allowance in respect of the employees use of their personal telecommunications equipment and/or usage plans (an "affected employee"), the most appropriate of the following options can be chosen and that amount treated as exempt income of the affected employee:

Where the affected employee works from home but does not use their own telecommunications tools and/or their own usage plans.

20. Up to $15 per week of the amount paid by the employer can be treated as exempt income of the affected employee. The same treatment can be applied to an equivalent amount paid for a different time period, $30 per fortnight for instance.

21. The Commissioner considers this to be a *de minimis* amount that recognises:

- any potential increase in household costs that an affected employee may incur when working from home,

[1] Per s CW 17(1) of the Income Tax Act 2007.

- any amount of depreciation loss on existing depreciable assets (but see [33] – [44] in relation to newly acquired assets), but
- excludes any reference to telecommunications tools and/or usage plans.

Where the affected employee both works from home and uses their own telecommunications tools and/or their own usage plans for their employment.

In this circumstance an employer and an affected employee may choose one of the following options:

The de minimis option:

22. Up to $20 per week of the amount paid can be treated as exempt income of the affected employee. The same treatment can be applied to an equivalent amount paid for a different time period, $40 per fortnight for instance

23. The Commissioner considers this to be a *de minimis* amount that recognises:

    - any potential increase in household costs that an affected employee may incur when working from home, and
    - telecommunications costs (previously set out in Determination EE 001), and
    - any amount of depreciation loss on existing depreciable telecommunications assets (but see [33] – [44] in relation to newly acquired assets).

Principally business use option:

24. Per [20], this option allows up to $15 per week of the amount paid to be treated as exempt income of the affected employee. The same treatment can be applied to an equivalent amount paid for a different time period, $30 per fortnight for instance. This amount excludes any amount paid in relation to the use of the affected employee's telecommunications usage plans.

25. In addition to this $15, where the affected employee uses their personal telecommunications tools and/or their usage plans principally for business purposes, employers can treat any reimbursement of up to 75% of the amount of the affected employee's total usage plan bill as exempt income of that employee. If the cost of the employee's usage plan is not a regular amount, then a reasonable estimate of the likely expenditure is acceptable. See [30] – [32] for further discussion regarding reasonable estimates.

An amount of depreciation loss on existing telecommunications assets that are owned by the employee may also be paid using the Commissioner's depreciation rates for the item (but see [33] – [44] in relation to newly acquired assets).

Principally private use option:

26. This option allows up to $15 per week of the amount to be treated as exempt income of the affected employee on the same basis as described in [24].

27. In addition to this $15, where the affected employee uses their personal telecommunications tools and/or their usage plans principally for private purposes, employers can treat any reimbursement of up to 25% of the amount of the affected employee's total usage plan bill as exempt income of that employee. If the cost of the employee's usage plan is not a regular amount, then a reasonable estimate of the likely expenditure is acceptable. See [30] – [32] for further discussion regarding reasonable estimates.

An amount of depreciation loss on existing telecommunications assets that are owned by the employee may also be paid using the Commissioner's depreciation rates for the item (but see [33] – [44] in relation to newly acquired assets).

Where an affected employee does not work from home, but uses their own telecommunications tools and/or usage plans in the course of their employment

28. In this circumstance, an employer may choose one of the following options:

- *de minimis option:* This option allows up to $5 per week of the amount paid to be treated as exempt income of the affected employee. The same treatment can be applied to an equivalent amount paid for a different time-period, $10 per fortnight for instance. The Commissioner considers that this *de minimis* amount recognises all costs that an affected employee may incur, including any amount of depreciation loss on existing depreciable telecommunications assets that the employee may use (but see [33] – [44] in relation to newly acquired assets).

- *The principally business use option:* Per [25], employers can treat any reimbursement of up to 75% of the amount of the affected employee's total usage plan bill as exempt income of the employee. If the cost of the employee's usage plan is not a regular amount, then a reasonable estimate of the likely expenditure is acceptable. See [30] – [32] for further discussion regarding reasonable estimates.

An amount of depreciation loss on existing telecommunications assets that are owned by the employee may also be paid using the Commissioner's depreciation rates for the item (but see [33] – [44] in relation to newly acquired assets).

- *The principally private use option:* Per [27], employers can treat any reimbursement of up to 25% of the amount of the affected employee's total usage plan bill as exempt income of that employee. If the cost of the employee's usage plan is not a regular amount, then a reasonable estimate of the likely expenditure is acceptable. See [30] – [32] for further discussion regarding reasonable estimates.

  An amount of depreciation loss on existing telecommunications assets that are owned by the employee may also be paid using the Commissioner's depreciation rates for the item (but see [33] – [44] in relation to newly acquired assets).

29. This Determination does not apply where there is no employment income under the arrangement, that is, where the employer provides the telecommunications tool and pays for the usage. In such circumstances there may be FBT implications. It is noted that s CX 21 provides an exemption for business tools.

Reasonable estimate to be made

30. As is the case when making any apportionment to account for the business use of an asset, reasonable judgement must be exercised and there must be some reasonable evidential basis to justify the apportionment used.

31. However, it may be difficult to determine the level of use precisely and this Determination is intended to allow for less than precise estimation. The employer may for instance rely on some evidence of time spent to show that the asset is used principally for business purposes. However, the employer may instead choose to obtain a signed declaration from an employee that telecommunications tools will be used principally for employment purposes.

32. It is expected that the apportionment used would be reviewed periodically to check that the level of use remains the same. A review once every two years would be adequate. If an employer has obtained a signed declaration from an employee that telecommunications tools will be principally used for employment purposes, then a review is only required if there has been a material change to the employee's circumstances.

Payments for the cost of newly acquired furniture and equipment and telecommunications equipment

33. The Commissioner recognises that the employee may need to acquire personal home office furniture or equipment or telecommunications equipment to enable them to effectively work from their home. Where assets are acquired for this purpose, an employee would incur a depreciation loss which the employee would be able to claim as a deduction, but for the employment limitation[2].

34. Because of the low-value asset rule, for many assets the depreciation loss is likely to be equal to the cost of the asset.[3]

35. Where an employer wishes to reimburse the employee for the cost that they incurred in acquiring their home office furniture or equipment, this Determination provides that they can use one of the following options.

- the safe harbour option for furniture and equipment and a separate safe harbour option for telecommunications equipment, or
- the reimbursement option.

The safe harbour option

36. Under this option an employer can treat payments of up to $400 made to reimburse the employee for the costs incurred in acquiring new furniture and equipment as exempt income. Additionally, they may also treat payments of up to $400 made to reimburse the employee for the costs incurred in acquiring new telecommunications equipment as exempt income. Each of these $400 limits apply to the costs of ALL the furniture and equipment, and all telecommunications equipment that the employee acquires. It is not an item by item limit.

37. The safe harbour option saves an employer from having to identify the costs that their employees have or are likely to incur, and from having to make judgements about the extent to which the furniture or equipment is used by employees for their employment.

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[2] Note that to the extent that an employee incurs a depreciation loss on existing furniture or equipment, this loss is included in the exempt income thresholds.

[3] Note that the threshold for low-value assets that were purchased before 17 March 2020 was $500. For assets purchased on or after 17 March 2020 and before 17 March 2021 the threshold was $5,000 and from 17 March 2021 the threshold was decreased to $1,000.

38. If an employer adopts this safe harbour option, they cannot treat any future allowance or reimbursement payment for any subsequent furniture or equipment, or telecommunications equipment purchases made by the employee as exempt income. It is not an amount that refreshes on a regular basis; annually for instance.

The reimbursement option

39. Under this reimbursement option, an amount paid by an employer will be exempt income of an employee if:

- The amount is for furniture or equipment or telecommunications equipment purchased by the employee to enable them to work from home, and
- The amount paid is no more than the deduction that the employee would have been entitled to for depreciation loss on the furniture or equipment (or the cost of the asset, in the case of low-value assets) for the income year in which the payment is made, but for the employment limitation.

40. The deduction that the employee would have been entitled to for an asset and, therefore, the amount that can be paid as exempt income, is dependent on the extent to which the employee uses the asset for their employment. This means that the amount that can be paid as exempt income will be equal to a proportion of the yearly depreciation loss on the asset (or a proportion of the cost of the asset in the case of a low-value asset).

41. Applying s CW 17, where there is evidence that an asset will be used exclusively for employment purposes, 100% of the yearly depreciation loss on the asset (or the total cost of the asset, in the case of a low-value asset) can be paid as exempt income of the employee. Further, under this Determination:

- Where an employee who uses an asset principally (but not exclusively) for their employment, an amount of no more than 75%[4] of the yearly depreciation loss on

[4] In this context, the use of the words “no more than” indicates that it is up to the employer to determine the extent to which they are prepared to reimburse the employee for any amount of depreciation loss. But for those wishing to use this option, the exempt portion of any reimbursement can be no more than 75% of the applicable depreciation loss (and 25% where the item is used principally for private use).

the asset (or the cost of the asset, in the case of a low-value asset) can be paid as exempt income of the employee.

- Where an employee uses an asset principally for private use, an amount of no more than 25% of the yearly depreciation loss on the asset (or the cost of the asset, in the case of a low-value asset) can be paid as exempt income of the employee.

42. The reimbursement option will require an employer to identify the cost of the asset for which the reimbursement is paid as well as determining whether the asset is being used exclusively or principally for employment purposes or whether the asset is being used principally for private purposes (so that they can calculate the appropriate proportion). For assets that are not low-value assets (which are likely to be uncommon), the employer will also need to apply the relevant depreciation rate to calculate the depreciation loss that would have been available to the employee.

43. It is acknowledged that the reimbursement option could be onerous in some cases, for instance, where an employer has many employees. That is why the safe harbour option has also been provided.

44. A written statement from an employee to their employer that the employee intends to use an asset for their employment, and whether principally or not, will be sufficient to establish such use. An email or expense claim application is sufficient to show the employee's intended use of the furniture or equipment.

This determination was signed by me on 25 August 2021.

Rob Falk
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