Inland Revenue
Te Tari Taake

DETERMINATION > MISCELLANEOUS

Determination EE004 – Tax treatment of reimbursing payments made to employees who work from home and/or payments made for an employee's use of personal telecommunications tools and/or usage plans in their employment

Issued: 27 March 2023

EE004

Application

This determination applies to relevant payments made by employers from 1 April 2023.

All legislative references are to the Income Tax Act 2007 unless otherwise stated.

From 1 April 2023, this determination replaces:

- Determination EE003: Payments provided to employees that work from home; employee use of telecommunications tools and usage plans in their employment", *Tax Information Bulletin* Vol 33, No 9 (October 2021): 35.

Background

1. Amounts an employer pays to an employee to reimburse that employee for costs they incurred in connection with their employment are taxable in the employee's hands unless the payment is exempted by the provisions of s CW 17.
2. Under s CW 17(2), a reimbursing payment is treated as exempt income to the extent that it meets three tests. The payment must:
   - be paid to the employee in connection with an employees' employment; and
   - be of a kind that would be ordinarily deductible to an employee if the employment limitation did not apply.

3. Section CW (2B) only treats expenditure as having been incurred **in connection with an employee's employment** when the:
   - expenditure is incurred or paid because the employee is performing an obligation required by their employment;
   - employee is deriving employment income from performing that obligation; and
   - expenditure is necessary to perform that obligation.

4. The first test at s CW 17(2) requires that expenditure being reimbursed must be of a kind that, if it were not for the employment limitation in s DA 2(4), it would be ordinarily deductible by the employee. Therefore, the expenditure in question must be deductible, under the general permission in s DA 1(1)(a): the employee must incur the expenditure in gaining their assessable income.

5. The general permission is subject to a number of general limitations. The effect of two of these limitations, the capital and private limitations, is to render both capital and private expenditure non-deductible. Consequently, if these types of expenditure are reimbursed, that reimbursement cannot be treated as exempt income[1]as the expenditure is not **ordinarily deductible** as required by s CW 17.

6. The second test at s CW 17(2) requires the expenditure to be *incurred or paid in connection with the employee's employment.* As explained at [3], meeting this test requires that the expenditure meet the specific requirements of s CW 17(2B). It requires (amongst other things) that the expenditure is incurred or paid because the employee is performing an obligation required by their employment. It is the Commissioner's view that expenditure that is ordinarily incurred by an employee in their personal capacity cannot meet this test. To be recognised as exempt income, the expenditure reimbursed must be additional to any expenditure that may be ordinarily incurred by the employee in their personal capacity. This additional expenditure must be *incurred or paid in connection with the employee's employment.*

7. This means that any amounts reimbursed for an employee's non-variable personal expenditure (such as rent, rates and mortgage interest) could not be recognised as an exempt payment in the hands of an employee. This is because as well as being expenditure of a private nature, the quantum of the expenses do not vary depending on whether the employee works from home. There is no "additional" element to this type of expenditure that could be said to be *incurred or paid in connection with the employee's employment.*

[1] For the purposes of s CW 17, a depreciation loss is treated as an item of expenditure (s CW 17(4)).

8. The types of expenditure that would meet the tests set out above are generally limited to variable "utilities" costs. Electricity, gas, telephone, and internet charges. In addition, some small amounts of plant and equipment depreciation may also be deductible, on office equipment for example.

9. Given the complexity of these tests, 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. Employers may also find it difficult to establish, or realistically estimate, the expenditure that each employee may have incurred.

10. To reduce this difficulty and the subsequent compliance costs for employers, the Commissioner has published several determinations that deal with the treatment of this additional expenditure. The most recent of these determinations is "Determination EE003: Payments provided to employees that work from home; employee use of telecommunications tools and usage plans in their employment", *Tax Information Bulletin* Vol 33, No 9 (October 2021): 35.

11. The end date for Determination EE003 is 31 March 2023. Given this, the Commissioner has decided to issue this current determination, which extends the effect of the previous determination and does so without stipulating an end date. The Commissioner will continue to monitor the amount of variable expenditure employees typically incur and periodically update the amounts in this determination as well as reviewing the determination from time to time.

12. The amounts an employer may pay an employee as an exempt allowance from 1 April 2023 when that payment meets the requirements of s CW 17 are:

- $20 per week to reimburse the employee for working from home ($15 per week in Determination EE003); and
- $7 per week to reimburse the employee for use of personal telecommunications equipment or usage plans or both ($5 per week in Determination EE003).

Determination

13. This determination is made under s 91AAT of the Tax Administration Act 1994 and s CW17 (2C) and (2D). It applies to the following payments made by employers for the period from 1 April 2023.

This determination's requirements and exclusions

14. For this determination to apply:

- an employer must make a payment to an employee;
- the payment must be for an expenditure or 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 (but noting that the capital limitation does not apply to an amount of depreciation loss);
- the employee must derive employment income from performing their job;
- where an employee is working in part from home and in part outside home, the home-based work must be more than minor (e.g., the determination can apply to an employee who works at the employer's premises on alternate days).

15. This determination does not apply to:

- any payment already the subject of a payment as expenditure on account of an employee;[2]
- any payments made for a period after an employee ceases to work from home (other than telecommunications payments made in accordance with [29]; and
- an amount paid under a salary sacrifice arrangement.

This determination is not binding on employers or employees

16. This determination is not binding on employers or employees. An employer or employee may treat a different amount paid to the employee as exempt. However, they must be able to show that the amount treated as being exempt meets the requirements of s CW 17(2).

Weekly thresholds of this determination

17. Under this determination, where an employer pays an employee who is working from home an allowance or pays an allowance in respect of the employee's use of their

[2] Section CW 17(1).

personal telecommunications equipment[3] or usage plans or both, the most appropriate of the following options can be chosen and that amount treated as exempt income of the employee.

Where the employee works from home but does not use their own telecommunications tools or usage plans or both

18. Up to $20 per week of the amount the employer pays to reimburse their employee for additional expenditure incurred due to the employee working from the employee's home can be treated as exempt income of the employee. The same treatment can be applied to an equivalent amount paid for a different period, $40 per fortnight for instance.

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

- recognises any potential increase in household costs that an employee may incur when working from home;
- recognises any amount of depreciation loss on existing depreciable assets (but see [39]–[50] in relation to newly acquired assets); but
- excludes any reference to telecommunications tools or usage plans or both.

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

20. Where the employee works from home and uses their own telecommunications tools or usage plans or both for their employment, the employer and the employee may choose one of three options: the de minimis option, principally business use option or principally private use option.

De minimis option

21. Up to $27 per week of the amount the employer pays to reimburse their employee for additional expenditure incurred due to the employee working from the employee's

[3] In this determination, the term *telecommunication equipment* means not only the principal telecommunication device (laptop, smartphone) but all peripheral equipment required to enable an employee to use that equipment for employment purposes. For the avoidance of doubt, this can include such equipment as power cords, mouse, keyboard, monitor and printer.

home can be treated as exempt income of the employee. The same treatment can be applied to an equivalent amount paid for a different period, $54 per fortnight for instance.

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

- potential increase in household costs that an employee may incur when working from home (per [19]);
- potential increase in telecommunications costs; and
- amount of depreciation loss on existing depreciable telecommunications assets (but see [39]–[50] in relation to newly acquired assets).

Principally business use option

23. The principally business use option allows up to $20 per week of the amount paid to be treated as exempt income of the employee. The same treatment can be applied to an equivalent amount paid for a different period, $40 per fortnight for instance. This amount excludes any amount paid in relation to the use of the employee's telecommunications usage plans.

24. In addition to this $20, where the employee uses their personal telecommunications tools or usage plans or both principally for business purposes, employers can treat any reimbursement of up to 75% of the amount of the 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. For further discussion about reasonable estimates, see [36]–[38].

25. An amount of depreciation loss on existing telecommunications assets the employee owns may also be paid using the Commissioner's depreciation rates for the item (but see [39]–[50] in relation to newly acquired assets).

Principally private use option

26. The principally private use option allows up to $20 per week of the amount to be treated as exempt income of the employee on the same basis as described at [19].

27. In addition to this $20, where the employee uses their personal telecommunications tools or usage plans or both principally for private purposes, employers can treat any reimbursement of up to 25% of the amount of the 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. For further discussion about reasonable estimates, see [36]–[38].

28. An amount of depreciation loss on existing telecommunications assets the employee owns may also be paid using the Commissioner's depreciation rates for the item (but see [39]–[50] in relation to newly acquired assets).

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

29. Where an employee does not work from home but uses their own telecommunications tools or usage plans or both in the course of their employment, an employer may choose one of three options: the *de minimis* option, principally business use option or principally private use option.

De minimis option

30. The *de minimis* option allows up to $7 per week of the amount paid to be treated as exempt income of the employee. The same treatment can be applied to an equivalent amount paid for a different time-period, $14 per fortnight for instance. The Commissioner considers that this *de minimis* amount recognises all costs an employee might incur, including any amount of depreciation loss on existing depreciable telecommunications assets that the employee may use (but see [39]–[50] in relation to newly acquired assets).

Principally business use option

31. Under the principally business use option, employers can treat any reimbursement of up to 75% of the amount of the employee's total usage plan bill as exempt income of the employee (as per [24]). If the cost of the employee's usage plan is not a regular amount, then a reasonable estimate of the likely expenditure is acceptable. For further discussion about reasonable estimates, see [36]–[38].

32. 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 [39]–[50] in relation to newly acquired assets).

Principally private use option

33. Under the principally private use option, employers can treat any reimbursement of up to 25% of the amount of the employee's total usage plan bill as exempt income of that employee (as per [27]). If the cost of the employee's usage plan is not a regular

amount, then a reasonable estimate of the likely expenditure is acceptable. For further discussion about reasonable estimates, see [36]–[38].

34. 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 [39]–[50] in relation to newly acquired assets).

35. This determination does not apply where the employer provides the telecommunications tool and pays for usage. In such circumstances, there may be fringe benefit tax implications. Note that s CX 21 provides an exemption for business tools.

Reasonable estimate to be made

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

37. However, it may be difficult to determine the level of use precisely, so this determination allows for less than precise estimation. The employer may, for instance, rely on evidence of time spent to show 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.

38. The employer should periodically review the apportionment used to check the level of use remains consistent. A review once every two years is 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 required only if the employee's circumstances have materially changed.

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

39. The Commissioner recognises that the employee may need to acquire personal home office telecommunications equipment or furniture and other equipment to enable them to work effectively at home. Where assets are acquired for this purpose, an

employee will incur a depreciation loss that the employee can claim as a deduction, but for the employment limitation.[4]

40. Because of the low-value asset rule, for many assets the depreciation loss is likely to be equal to the cost of the asset.[5]

41. Where an employer wishes to reimburse the employee for the cost they incurred in acquiring their home office furniture or equipment, this determination provides they can use the:

- safe harbour option for telecommunications equipment and a separate safe harbour option for furniture and other equipment; or
- reimbursement option.

Safe harbour option

42. Under the safe harbour option, an employer can treat payments of up to $400 made to reimburse the employee for the costs incurred in acquiring new telecommunications 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 furniture and other equipment as exempt income. Each $400 limit applies to the costs of **all** furniture and other equipment and **all** telecommunications equipment the employee acquires. The limit is not an item-by-item limit.

43. The safe harbour option saves an employer from having to identify the costs their employees have incurred (or are likely to incur) and to judge the extent to which the furniture or equipment is used by employees for their employment.

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

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

[5] The threshold for low-value assets purchased before 17 March 2020 is $500. For assets purchased on or after 17 March 2020 and before 17 March 2021, the threshold is $5,000. From 17 March 2021, the threshold decreased to $1,000.

Reimbursement option

45. Under the reimbursement option, an amount an employer pays is exempt income of an employee if the amount is:

- for telecommunications equipment or furniture or other equipment purchased by the employee to enable them to work from home; and
- no more than the deduction 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.

46. The deduction the employee would have been entitled to for an asset, so the amount that can be paid as exempt income, depends on the extent to which the employee uses the asset for their employment. This means 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).

47. Where evidence exists 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 uses an asset:

- principally for their employment, an amount of no more than 75%[6] 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; and
- 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.

48. The reimbursement option requires an employer to identify the cost of the asset for which the reimbursement is paid as well as to determine whether the asset is being used exclusively or principally for employment purposes or principally for private purposes (so they can calculate the appropriate proportion). For assets that are not low-value assets (which are likely to be uncommon), the employer also needs to apply

[6] In this context, the use of the words "no more than" indicates 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. However, 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 for principally private use).

the relevant depreciation rate to calculate the depreciation loss that would have been available to the employee.

49. The reimbursement option may be onerous to use in cases such as where an employer has many employees. That is why the safe harbour option has also been allowed.

50. A written statement from an employee to their employer that the employee intends to use an asset for their employment, whether principally or not, is 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 27 March 2023.

Rob Falk
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References

Legislative references

Income Tax Act 2067, ss CW 7, CW 17, CX 21, DA 1, DA 2

Tax Administration Act 1994, s 91AAT

Other references

"Determination EE003: Payments provided to employees that work from home; employee use of telecommunications tools and usage plans in their employment", *Tax Information Bulletin* Vol 33, No 9 (October 2021): 35
www.taxtechnical.ird.govt.nz/tib/volume-33---2021/tib-vol-33-no9