

## **WITHDRAWN - replaced by EE003**

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

#### Application

This Determination is a temporary response to the COVID-19 pandemic and applies to payments made for the period from 17 March 2020 to 17 September 2020.

#### Background

Some employers have made, or intend to make, payments to employees to reimburse costs incurred by their employees as a result of the employees working from home during the COVID-19 pandemic. Inland Revenue has been asked to clarify the tax treatment of such payments.

It is also acknowledged that many employers will not be in a financial position to make additional payments to employees during the COVID-19 pandemic. This Determination is not intended to suggest that employers should make such payments to employees.

Under s CW 17 of the Income Tax Act 2007, such payments may be exempt income for the employees. The amount that can be paid as exempt income for expenditure incurred by an employee depends on various factors. One of the factors is the extent to which the employee would be able to claim a deduction for the expenditure 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. This deductibility test means that 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 depreciation loss).

Employers may find it administratively difficult to establish the extent to which expenditure is incurred by employees in deriving employment income or is private in nature.

Employers may also find it difficult to establish or estimate the expenditure each employee has incurred or is likely to incur.

This Determination is intended to remove some of this difficulty and reduce compliance costs for employers by providing some safe harbours. You do not have to apply this Determination. You can calculate tax-free allowance and reimbursement amounts under s CW 17 based on your own reasonable estimates or actual employee costs.

Last year (December 2019), the Commissioner issued Determination EE001, which provides guidance on arrangements where employees agree to use their own telecommunication devices and usage plans (or just their usage plans) for their employment. EE001 sets out proportions of expenditure or loss that the Commissioner will accept as being exempt income of an employee. The proportions differ depending on whether a device or usage plan is used by the employee principally for employment. EE001 also provides a *de minimis* rule which treats a payment made to an employee of up to \$5 per week as exempt income of the employee. All that is required for this *de minimis* rule

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to apply is that there is an arrangement where the employee will provide their own telecommunications tools and usage plan, or just their usage plan, and the employee agrees to use these for their employment.

Determination EE001 can be used in relation to payments made to employees for mobile phone and internet costs incurred by employees working at home.

This Determination (Determination EE002) applies to working from home costs not already covered by Determination EE001. Determination EE002 can be relied on in addition to Determination EE001.

As noted above, this Determination is a temporary response to the COVID-19 pandemic only. It applies for a 6-month period and the treatment it provides depends on an employee continuing to work from home (in a more than minor way) as a result of COVID-19.

### **Determination**

This Determination (EE002) is made under s 91AAT of the Tax Administration Act 1994 and s CW 17(2C) and (2D) of the Income Tax Act 2007.

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.
- 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.

This Determination can apply to an employee who is partly working from home and partly outside of their home, provided that the home-based work is more than minor. For example, the Determination can apply to an employee who works at the employer's premises on alternative days to cater for physical distancing policies. **Exclusions**

This Determination does not apply to:

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

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This Determination is not binding on employers or employees

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 threshold**

Under this Determination, where an employer pays an employee who is working from home due to the COVID-19 pandemic (an “affected employee”) an allowance, up to \$15 per week of the amount paid can be treated as exempt income of the employee. The same treatment can be applied to an equivalent amount paid for a different period of time, eg \$30 per fortnight or \$65 per month.

This amount is in recognition of general expenditure (eg, additional heating costs) that an affected employee may incur when working from home, other than:

- Depreciation loss, which is separately addressed in this Determination.
- An expenditure or loss covered by Determination EE001.

The treatment of this weekly threshold amount can apply in addition to both the treatment of an amount paid in accordance with Determination EE001 and the treatment of the cost of furniture and equipment that applies under this Determination.

For example, if an employer pays an employee \$20 per week for working from home expenses, \$15 of this can be treated as exempt income under this Determination (EE002) and \$5 can be treated as exempt income under Determination EE001 (if the *de minimis* option in EE001 is chosen).

For this treatment to apply, the employer does not need to collect information about the actual expenditure incurred by the employee or make any estimate of expenditure incurred or likely to be incurred by the employee.

### **Payments for the cost of furniture and equipment**

The following recognises that an employee might incur a depreciation loss on home office furniture or equipment, which the employee would be able to claim as a deduction, but for the employment limitation.

Because of the low-value asset rule, for many assets, the depreciation loss is likely to be equal to the cost of the asset. Note that the threshold for low-value assets was recently amended. For assets purchased before 17 March 2020 the threshold is \$500. For assets purchased on or after 17 March 2020 and before 17 March 2021 the threshold is \$5,000 (note that the threshold will decrease to \$1,000 on 17 March 2021).

This Determination provides two options. An employer may apply either:

- the safe harbour option, or
- the reimbursement option.

### **Safe harbour option**

Under the safe harbour option, an employer can treat up to \$400 of an amount paid to an employee for furniture and equipment costs as exempt income.

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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.

If an employer adopts this safe harbour option, it cannot treat any other allowance or reimbursement payment for furniture or equipment as exempt income.

### The reimbursement option

The following applies to reimbursement payments made to employees for the cost of furniture or equipment purchased by employees.

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

- The amount is for furniture or equipment purchased by the employee.
- The amount is equal to or less than the deduction that the employee could have for depreciation loss on the asset (or the cost of the asset, in the case of a low-value asset) for the income year, but for the employment limitation.

The deduction that the employee could have for an asset and, therefore, 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 that the amount that can be paid as exempt income will be equal to a proportion of the depreciation loss on the asset (or a proportion of the cost of the asset in the case of a low-value asset).

Applying s CW 17, where there is evidence that an asset will be used exclusively for employment purposes, 100% of the depreciation loss on the asset (the 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:

- For an employee who uses an asset principally for their employment, an amount of up to 75% of the depreciation loss on the asset (the cost of the asset, in the case of a low-value asset) can be paid as exempt income of the employee.
- For an employee who does not use an asset principally for their employment, an amount of up to 25% of the depreciation loss on the asset (the cost of the asset, in the case of a low-value asset) can be paid as exempt income of the employee.

The reimbursement option will require an employer to identify the cost of the asset for which the reimbursement is paid so that they can calculate the above proportion. An employer will also need to determine whether the asset is being used exclusively, principally or less than principally for employment. 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.

Whether an asset is used exclusively for employment purposes will depend on the circumstances. Employers need to use their judgement.

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

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A written statement (an email or expense claim application is sufficient) 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. [Overlap with Determination EE001](#)

For depreciation losses on telecommunications devices, employers cannot apply the reimbursement option in this Determination (EE002) in addition to the treatment available in Determination EE001. [Summary of options available under Determinations EE001 and EE002](#)

The options available under Determinations EE001 and EE002 are summarised in the following table. Note that the table does not detail all the requirements of the Determinations. The table must be read together with the Determinations themselves.

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What is the payment for?	How much is treated as exempt income?	When can I use this option?	What evidence do I need to keep?
<b>Furniture or equipment</b>	Up to \$400 maximum ("safe harbour")	The safe harbour amount is the only amount paid for furniture and equipment	No evidence required
	25% of cost of item*	Item is used at least partly for job	<ul style="list-style-type: none"> <li>Evidence of the employee's costs</li> <li>Evidence that the item is used for the employee's job</li> </ul>
	75% of cost of item*	Item is used mainly for job	<ul style="list-style-type: none"> <li>Evidence of the employee's costs</li> <li>Evidence that the item is used <b>mainly</b> for the employee's job</li> </ul>
	100% of cost of item*	Item is used exclusively for job	<ul style="list-style-type: none"> <li>Evidence of the employee's costs</li> <li>Evidence that the item is used <b>exclusively</b> for the employee's job</li> </ul>
<b>Telecommunication usage plan costs</b>	Up to \$5 per week	Plan used for job	No evidence required
	25% of employee's costs	Cost is at least partly for job	<ul style="list-style-type: none"> <li>The employee's costs</li> <li>Evidence that the cost is for the employee's job</li> </ul>
	75% of employee's costs	Cost is mainly for job	<ul style="list-style-type: none"> <li>The employee's costs</li> <li>Evidence that the cost is <b>mainly</b> for the employee's job</li> </ul>
	100% of employee's costs	Cost is exclusively for job	<ul style="list-style-type: none"> <li>The employee's costs</li> <li>Evidence that the cost is <b>exclusively</b> for the employee's job</li> </ul>
<b>Other expenditure</b>	Up to \$15 per week	The \$15 per week amount is the only amount paid for other expenditure	No evidence required

\* Assuming the item is a low-value asset. For items that are not low-value assets, the percentage is applied to the amount of depreciation loss.



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This Determination is signed by me on the 24<sup>th</sup> of April 2020.

A handwritten signature in black ink, appearing to read 'Susan Price'.

**Susan Price**

Group Leader

Tax Counsel Office