

WITHDRAWN – replaced by EE003



Determination EE002A: Variation to Determination EE002 - Payments to employees for working from home costs during the COVID-19 pandemic

Application

Determination EE002A (the Determination) applies to payments made by employers for the period from 18 September 2020 to 17 March 2021.

Background

During the COVID-19 pandemic period of lockdown some employers made payments to employees to reimburse costs incurred by those employees as a result 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 only and applied to 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 continuing to work from home as a consequence of the COVID-19 pandemic.

Discussion

The Commissioner is currently considering issuing a public statement dealing with the tax implications of having employees working from home as a “new way of working” rather than being limited to the enforced way of working that occurs during a lockdown period of the COVID-19 pandemic.

Because this public statement will not be ready for publication before 17 September 2020, it is the Commissioner’s view that both employers and employees should be able to continue applying the approach set out in Determination EE002 until 17 March 2021. This will allow 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 EE002 by:

- **removing 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*, wherever this requirement appears in Determination EE002; and**

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- **extending the timeframe by a further 6 months; Determination EE002A applies to payments made by employers from 18 September 2020 to 17 March 2021¹.**

These variations will ensure that, for this extended period, the determination will apply to any employee that works from home whether or not they do so as a result of the COVID-19 pandemic. Should COVID-19 reappear before 17 March 2021, to the extent

that employees are once again asked to work from home, these variations ensure that the Determination is able to be applied to these changed circumstances.

It is important to note that, other than for the above variations, 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.

¹ The timeframe has been extended by a further 6 months from Determination EE002 to 17 March 2021. This date also coincides with threshold decrease for low value assets from \$5000 to \$1000.

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This Determination is signed by me on 14 August 2020

Rob Falk

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