

# Tax-e-mail



**DON'T LET THE IRD NAIL YOU**

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## Employees working from home

The Commissioner of Inland Revenue has realised working from home is likely to be permanent for some employees. Therefore, limiting its application only to those affected by Covid 19 needs correcting. The Commissioner also requires longer to think about all the matters relating to tax consequences of the Determination. Two changes have been made by [Determination EE002A](#) as follows:

1. Determination [EE002](#) will now expire on 17 March 2021.
2. It will now apply to all those working from home regardless of whether it was caused by Covid 19 or not.

Reminder: you do not have to apply Determination EE002.

## Supplying commercial accommodation and GST

If a client has been forced, due to Covid 19, to convert their commercial accommodation to residential and this has occurred between 14 February 2020 and 31 October 2020, instead of having 12 months to get back into the commercial market in order to avoid being de-registered for GST, [COV 20/09](#) has extended this time to 18 months.

The client must inform Inland Revenue using the email address [STRdisclosures@ird.govt.nz](mailto:STRdisclosures@ird.govt.nz) of:

- Cessation of all taxable activities.
- The date of cessation.
- They intend to carry on a taxable activity within 18 months of that date.

## Lump sum settlement payments

The Commissioner of Inland Revenue has produced [IS 20/01](#). It sets out her view on how to account for lump sum amounts received in settlement of a claim where the amount comprises a mixture of capital and revenue receipts.

Apportionments must be made on an objective basis.

Australian courts have determined that where there is a mixture of capital and revenue and the split cannot be determined, the whole lot is a capital receipt. Our Commissioner does not agree with this.

Start by looking at the settlement agreement and related documents. Evidence of negotiations can be considered and the circumstances surrounding the agreement. The onus of proof is on the taxpayer.

In rare circumstances where the payment cannot be appropriately apportioned and the taxpayer cannot prove the amount which is not to be taxed, the whole lot will generally be treated as income.

## Mortgage deferral scheme extended

The scheme allowing a mortgage holiday for six months was set to end on 27 September 2020. This has now been [extended](#) to 31 March 2021.

## Research and development approval

If you have a 31 March balance date you are allowed until 7 May to file an application for approval for a research and development scheme. Equivalent time is allowed for non-31 March balance dates.

If, due to Covid 19 you are not able to get information, advice etc [COV 20/10](#) provides you with an extra three months for putting in the application for the 2021 financial year. The variation applies from 1 September 2020 to 30 September 2021.

## GST policy issues

The Policy and Strategy division of Inland Revenue has produced [GST policy issues](#). On pages 5, 6 and 7 you will find a table summarising the proposed changes. The proposals include:

- Reducing some of the requirements of what constitutes a tax invoice including:
  - Details of quantity and volume could be removed.
  - The requirement to write "copy only" on a copy becomes nonsense in an electronic environment.
  - Eliminate need for Inland Revenue approval to use buyer created tax invoices.
- Excluding cryptocurrencies from GST and from **financial arrangement rules**.
- Making the wash-up rule for non land assets fairer and allowing for wash up where the change in use is other than 100%.
- Requiring some output tax if an asset bought as part of a going concern sale and purchase are subsequently used privately. Also, some changes to zero rating for some couriers who subcontract international transport as part of their business process and conferences supplied to non-residents, to allow both of these to claim back GST.
- New rules for fund manager and investment manager services.
- Tackling problem with GST received by a third party to a claim.
- Improvements to the law relating to CZR of land transactions.

## Contractor or employee?

Inland Revenue has produced an [eNewsletter](#) from time to time. The latest one reminds its readers of the legal tests:

- Intention
- Control or independence test
- Integration test
- Fundamental/economic reality test.

You are also reminded of the consequences of getting it wrong and that Employment New Zealand can help you get it right.

## GST and unconditional gifts

Inland Revenue has produced [PUB00332](#), which is an interpretation statement. Its objective is to provide guidance on the meaning of “unconditional gifts” made to GST registered non-profit bodies. An unconditional gift has two elements:

- Payment is voluntary
- No “identifiable direct valuable benefit” arises or **may arise** in respect of the payment.

If a benefit does arise and it is not conditional or dependent on the payment, you could still have an unconditional gift. Examples:

- A benefit might arise regardless of whether or not the payment was made.
- A benefit still arises to the payer but he/she did not seek expect or anticipate this benefit.

Donations for specific purposes with conditions as to how the funds are to be used may still be unconditional gifts.

There is no GST output tax on receipt of unconditional gifts.

The interpretation statement looks closely at the definition of terms being used.

There are some good worked examples on pages 11, 12 and 13 of this publication.

## Currency conversions

### Foreign residential rental property currency conversion

Inland Revenue has now issued [FX 20/01](#). We discussed the proposed changes in Tax-e-mail 2005. This determination confirms you can use either a monthly rate or an annual rate or if you prefer it you can convert each income and expenditure item at the rate applicable on that day – rather a lot of work!

If you are dealing with an accounting period which is more or less than 12 months, use the mid month actual rate for your conversions each month.

### Other currency conversions

If you are dealing with FIF income, you can use the 12 months rolling average when accounting under the accounting profits method, comparative value method, fair dividend rate method, deemed rate of return method or cost method.

When converting non – FIF dividends (for example, money received in April, July, October and January) and your balance date is 31 March, use the 31 March rolling average to convert all of the amounts.

If you are converting financial statements, you may use the 12 months rolling average at the year end.

## Look through Company – debt remission

Inland Revenue has produced [PUB00349](#). It is a document for discussion. The question posed is “Does a look-through company derive debt remission income when a close friend or family member of the shareholder forgives a loan made to the look-through company?”

IRD says section EW 46C says there is no debt remission income if the shareholder and the close friend or family member have natural love and affection for each other. However, in IRD’s view ‘close friend’ requires a very close relationship as in “life-long friends”

## Assets costing less than \$5000

The limit for writing off assets of \$5000 applies for only 12 months being the 17/3/20 to 16/3/21 Inclusive. There could be an issue some time in the future, if you are using your depreciation schedule as your plant register. A client may want to know what happened to an asset not showing on the depreciation schedule.

Instead of writing off the cost as an expense, you could capitalise it and apply 100% depreciation for 12 months, thus claiming the whole cost but leaving a trail. If the asset is ever sold any amount received is taxable.

There could also be an issue over what is the purchase date. The general rule is the date of purchase is the date on which the buyer becomes legally liable to pay for the goods even if that date is sometime in the future.

## Compulsory CV

As you will know, [compulsory CV](#) (see page 35) losses are allowed as a deduction in the clients tax return.

So if income calculated from another source produces a negative amount for CV, you treat this as zero. You then claim the compulsory CV loss in the tax return. The reason for this is enforced CV treats the investment as though it is producing interest income and not dividends. It is no longer considered to be an equity investment.

It follows if there are tax credits, which would be claimable under the FDR/CV method and there is no FDR/CV income for the year, these tax credits cannot be brought into the tax return simply because there is enforced CV.