Employment tax considerations resulting from COVID-19

As a result of the lockdown measures the Government has put in place to fight the battle against COVID-19, there are a number of issues arising due to a significant proportion of employees now either working from home or unable to work due to the Alert Level 4 lockdown.

This guidance is intended to highlight a few key issues with working from home, the differing tax implications arising from how wage subsidies are paid out and the Fringe Benefit Tax (FBT) treatment of motor vehicles which are unable to be used due to the Alert Level 4 lockdown. We also provide some useful reminders to keep your FBT bills down.

Home office set ups

For many employees, preparing to work from home before the lockdown period meant setting up a home office. If employees have taken business equipment home to continue using for work during this period, there are no tax implications.

If employers have provided their employees with an allowance or reimbursement to purchase computer equipment to use at home during the lockdown (e.g. buying an extra computer monitor, wireless keyboard and mouse etc) it may be possible that such allowances or reimbursements could be treated as non-taxable. The tax treatment may vary depending on how the arrangements have been put in place and whether the amount in question is reasonable in the circumstances.

Example:

Infinity Limited is a software development company. As part of its business continuity plan, in February 2020 Infinity Limited asked all employees to purchase a computer monitor to be stored at the employee's home in the event it was necessary for the employee to work from home due to COVID-19. Each employee made an expense claim for the cost of the computer monitor (on average employees made an expense claim for $200 each). As a condition of the reimbursement, Infinity Limited is to be considered the legal owner of each computer monitor, and if an employee ceases their employment with Infinity Limited they are required to either return the computer monitor to Infinity Limited or purchase it for its market value.

As the payment is simply a reimbursement of the cost and the employer will be the owner of the asset, then this payment will not be taxable to the employee.

It's important to also note that employees cannot claim deductions in their own income tax returns for home office expenditure, this is only available to people that are self-employed or a contractor.

Reimbursing employees or paying an allowance to cover household expenses

With employees home throughout the day working, it is expected that many will see an increase in their utility bills from running heating and lighting during the day when they would normally be at work. Some employers are looking to pay their employees an allowance to assist with the increase in their household expenses during the lockdown period (e.g. power, internet, heating etc.).

Inland Revenue released guidance last year (Determination EE001) in relation to telecommunication allowances or reimbursements paid to employees for using their own devices or usage plans. The starting point is that if the allowance/ reimbursement only covers the business use of the device, then payment will be fully exempt. If the payment covers both business and personal use then the Determination sets out three categories for allocating the cost of these payments between business and private use:

- 75% exempt (Class A), if the device / usage plan is principally used in employment. *(Businesses need to demonstrate reasonably judgement in determining whether the principal use is employment. This can be based on time spent or signed declarations from employees confirming principal use)*;
- 25% exempt (Class B), if the device / usage plan is not principally used in employment but still required; and
- 100% exempt (de minimis Class C) where the amount reimbursed is $5 a week or less (maximum of $265 a year).

Example:
Sarah is working full time from home during the lockdown, Sarah is required to be contactable at all times and estimates that she is spending 60% of her working day on either Skype or Zoom video calls, the remainder of her working day is spent connected to the internet. Her monthly broadband bill is $100, of which her employer, Blue Skies Ltd, has agreed to contribute $10 towards each week she is working from home. In this instance the broadband connection is being principally used for business purposes and Sarah falls within Class A. Because the amount of the contribution is actually less than 75% of the costs incurred by Sarah the full amount of the payment is treated as tax exempt.

As for other expenses that employees might incur in working from home, it is possible that an allowance or reimbursement could be made to cover these costs during the lockdown period given the extraordinary circumstances. For an allowance or reimbursement from an employer to be tax exempt for the employee, the payment would need to be reasonable and have evidence supporting the payment made i.e. it is reasonable to believe employee's costs have increased given they are home all day working.

Example:
Veronica is working from home during the lockdown and her employer, Rolling Hills Ltd, pays her an allowance of $15 a week to cover the increased costs she has incurred working from home. Veronica

does not ordinarily work from home and her house is usually empty during standard working hours. Rolling Hills Ltd is paying this as a tax exempt allowance of the basis that the $15 is made up of a $5 a week Class C telecommunications payment to go towards her broadband bill and the remaining $10 is to pay the increased power bill to account for the extra heating and lighting Veronica is using being home all day.

To the extent that any payment reimburses an employee for costs that are private in nature (i.e. do not relate, or assist the employee in, undertaking their ordinary employment duties), PAYE or FBT should apply to the private portion. If you are considering paying an allowance or reimbursement to your employees, we recommend getting in touch with your usual Deloitte tax advisor.

Weekly wage subsidy vs lump sum payments

A large amount of employers are currently receiving, or are planning to receive a payment under the Government's Wage Subsidy scheme. This scheme provides an amount per week for both full time and part time employees to allow the employer to either contribute to or pay wages or salaries to their employees over 12 weeks. These subsidies should be processed as part of the employee's normal wages and all deductions of PAYE, KiwiSaver, student loans, child support etc are made as normal. More detail of the Wage Subsidy scheme is available here.

We understand that some employers are considering paying out their wage subsidies as a lump sum amount to employees, rather than continuing to make the payment as a substitute or alongside the employee's regular salary or wage payment. This has the advantage of providing a cash in hand benefit up front, to ease economic and financial pressures for the employees now, rather than being spread across the 12 weeks the scheme is applicable for.

While the lump sum payment may be well intentioned this has a tax consequence to the detriment of your employees and we would strongly recommend against this approach. The following tax consequences can arise when a lump sum payment is made outside of, or in addition to, their usual pay cycle:

- As PAYE is determined on the expected amount earned per pay cycle to be consistent throughout the year, the employee may be taxed at the wrong rate (highlighted in an example below). This can result in a reduced lump sum reaching the employee after relevant deductions.
- If an employee has already received a lump sum payment prior to 31 March 2020, this will have brought forward income that would have normally been earned in the next tax year. This additional income may move them into a higher tax bracket and result in them receiving a tax bill for the year. Or if the additional income pushes their total income for the year to over $48,000 they will no longer qualify for the Independent Earner Tax Credit.
- It may also have an effect on the employee's other deductions such as Student Loan, Working for Families.

If you are finding that your employees are in hardship, it is possible to make an advance of salary and wages of up to $2,000 without any adverse tax consequences (i.e. a small advance is specifically excluded from being a fringe benefit).

Example:

Weekly wage example – Tom receives his wage subsidy of $585.80 as part of his normal weekly pay. PAYE of $91.80 is deducted from this and Tom receives $494 in his bank account each week.

Lump sum example – Lucy receives the full amount of her wage subsidy ($585.80 x 12 weeks = $7,029.60) as a lump sum from her employer. PAYE of $2,180.14 is deducted and Lucy receives $4,849.46 in her bank account.

Difference – Tom will receive $5,928 when paid weekly, whereas Lucy will only receive $4,849.46, as she is paying $1,080 more in PAYE because of the difference in how the different pays are taxed. Lucy may be able to claim some, or all, of the extra PAYE back but this won't be until the tax year has finished and Inland Revenue generates a refund.

Inland Revenue are strongly encouraging employers to pay the wage subsidy as part of their normal pay cycles for the above reasons. If you still wish to pay any amounts as a lump sum payment you should discuss with employees the potential impacts before doing so and we recommend discussing this with your payroll staff or your usual Deloitte Tax advisor.

Wage subsidy effects on sole traders / contractors

In addition to standard businesses, sole traders and contractors are eligible for the wage subsidy in many instances. Sole traders and contractors should treat the receipt of the wage subsidy as taxable income as it is to replace lost income that would otherwise be taxable.

Although many self-employed people will have received the subsidy in the tax year ended 31 March 2020, only one or two weeks of the subsidy will relate to the 2020 income year. Inland Revenue has stated these payments qualify as 'compensation' for tax purposes and are therefore returned in the income year to which they relate.

Example:

Jack works as a sole trader and received his wage subsidy of $7,029.60 on 25 March 2020. Of this Jack needs to include 1/12th (i.e. 1 of 12 weeks at $585.80) of this as taxable income in his return ending 31 March 2020, the remainder will all be in his tax return for the year ended 31 March 2021.

FBT on motor vehicles

Now that we are in April, one matter that many employers are turning their minds to is FBT. With the March 2020 quarter return due to be filed with Inland Revenue at the end of May, a common question we have been asked is what effect the lockdown will have on the FBT payable on motor vehicles provided to employees.

Where an employee is allowed to use an employers' vehicle for their own private purposes, employers have to pay FBT on the number of days the vehicle is *available* for private use, not the actual number of private use days. A question naturally arises as to whether a vehicle is actually available for private use in the lockdown; or if it is, the value of the benefit is severely reduced because of travel restrictions. We have raised this issue with Inland Revenue, and we understand they are considering what potential relief could be offered to employers so watch this space.

FBT tips

In the current environment it is particularly important for businesses to be considering their tax costs and taking advantage of available exemptions from FBT and considering how their FBT liability is calculated. For example:

- Ensure your employees are claiming all available exempt days for all motor vehicles provided; don't just pay FBT on 90 days every quarter if there was not actually full private use;
- Review your motor vehicle policies; are there any options here to reduce the availability of vehicles for private use?
- Are there any vehicles being provided which could be work related vehicles (and exempt from FBT) but are not currently being treated as such?
- Ensure you are structuring your employees arrangements correctly to fall within FBT rather than PAYE if there is a possible exemption in the FBT regime which is not replicated for PAYE purposes;
- Consider the application of the de minimis rule (which allows unclassified fringe benefits of up to $300 per employee per quarter and $22,500 to all employees over the previous four quarters to be exempt from FBT); can you manage your fringe benefits to fall within these rules?
- Are you attributing fringe benefits to your employees? While undertaking an FBT attribution is more time consuming than paying FBT at a flat rate of 49.25%, there are potentially tax savings to be made.
- If you don't want to do an attribution calculation, do you have benefits that can be pooled and returned at the pool rate of 42.85%?

For more information about FBT or any topics in this article please contact your usual Deloitte advisor.

The content of this article is accurate as at 6 April 2020, the time of publication. This article does not constitute tax advice. If you wish to understand the potential tax implications of current events for your business or organisation, please contact your usual Deloitte advisor.

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