

In Confidence

Office of the Minister of Revenue

Chair, Cabinet Legislation Committee

Income Tax (Employment Income—Meaning of Accommodation) Regulations 2021

Proposal

1. This paper seeks the Cabinet Legislation Committee's agreement to submit the Income Tax (Employment Income—Meaning of Accommodation) Regulations 2021 to the Executive Council.

Policy

2. The employment income rules define accommodation in broad terms, with some targeted exclusions to exempt accommodation provided in certain circumstances from tax.
3. The starting position under the employment income rules is that the value of accommodation provided to a person in relation to their employment is treated as employment income and subject to tax. This is because it is effectively an alternative to receiving more salary or wages, which would normally be taxed.
4. Accommodation is inherently private in nature since it provides a private benefit. In some cases, however, the private benefit is either incidental to a business objective or is minimal or hard to measure. For these reasons, certain types of accommodation are excluded from the accommodation definition and exempt from tax.
5. I recommend that the Committee agrees that a new exclusion is added to the definition of accommodation, to exempt accommodation that is provided to allow an employee to isolate due to the risk of the outbreak or spread of COVID-19. Accommodation provided for this purpose has a primary business objective of protecting employees, as well as the wider community, from COVID-19 infection. The private benefit is incidental to this business objective.
6. Examples of types of accommodation that would be exempt from tax under this exclusion are accommodation provided to isolate:
 - 6.1 airline crew on their return to New Zealand;
 - 6.2 harvest worker teams in separate bubbles during a lockdown, to manage the risk of COVID-19 transmission through a workforce during a harvest window; and
 - 6.3 front-line workers from vulnerable family members.

7. The criteria for the new exclusion are that where the accommodation is provided, it is:
 - 7.1 to enable an employee to isolate due to the risk of the outbreak or spread of COVID-19;
 - 7.2 not normally provided as part of the employee's remuneration package for their role or for a similar role;
 - 7.3 not provided in substitution for a greater amount of employment income;
 - 7.4 provided for a period of 3 months or less; and
 - 7.5 provided between 22 April 2021 and 30 June 2022.
8. An existing power provides for additional types of accommodation to be excluded from the accommodation definition by Order in Council.

Timing and 28-Day Rule

9. I propose that the change should apply from the date the *New Zealand Gazette* is published giving notice of the Order in Council, and that the 28-day rule is waived in this case, as the new exclusion will confer only benefits to the public.

Compliance

10. The Order in Council complies with:
 - 10.1 the principles of the Treaty of Waitangi;
 - 10.2 the rights and freedoms contained in the New Zealand Bill of Rights Act 1990 and the Human Rights Act 1993;
 - 10.3 the principles and guidelines set out in the Privacy Act 1993;
 - 10.4 relevant international standards and obligations;
 - 10.5 the Legislation Guidelines (2018 edition), which are maintained by the Legislation Design and Advisory Committee.
11. No statutory prerequisite exists for making the Order in Council.

Regulations Review Committee

12. There are no anticipated grounds for the Regulations Review Committee to draw the Order in Council to the attention of the House of Representatives under Standing Order 319.

Certification by Parliamentary Counsel

13. The Parliamentary Counsel Office has certified that the Order in Council is in order for submission to Cabinet.

Impact Analysis

14. The Regulatory Impact Analysis Team at the Treasury has determined that the regulatory proposal in this paper is exempt from the requirement to provide a Regulatory Impact Statement on the basis that it has no or minor impacts on businesses, individuals or not-for-profit entities.
15. The Climate Implications of Policy Assessment (CIPA) team has been consulted and confirms that the CIPA requirements do not apply to this proposal as the threshold for significance is not met.

Revenue Implications

16. This change will have no fiscal impact.

Communications

17. Inland Revenue will publish an article about the change in its *Tax Information Bulletin*.

Proactive Release

18. I propose to proactively release this Cabinet paper and associated minutes in whole within 30 working days of Cabinet making final decisions.

Consultation

19. The proposal has been developed in response to queries raised by employers and various stakeholders have been consulted informally during the design process.
20. The Treasury has been consulted in the preparation of this paper and supports the change.

Recommendations

The Minister of Revenue recommends that the Committee:

1. **agree** to a new exclusion from the definition of accommodation in the employment income rules, by Order in Council, for accommodation that is provided for the purpose of enabling an employee to isolate due to the risk of the outbreak or spread of COVID-19;
2. **note** that the Income Tax (Employment Income—Meaning of Accommodation) Regulations 2021 will give effect to the decision referred to in paragraph 1 above;
3. **authorise** the submission to the Executive Council of the Income Tax (Employment Income—Meaning of Accommodation) Regulations 2021;
4. **note** that a waiver of the 28-day rule is sought:
 - 4.1 so that the regulations can come into force as soon as possible;
 - 4.2 on the grounds that they will confer only benefits to the public;

5. **agree** to waive the 28-day rule so that the regulations can come into force when the next *New Zealand Gazette* is published on 22 April 2021.

Authorised for lodgement

Hon David Parker
Minister of Revenue