

NEW LEGISLATION > ACT > SPECIAL REPORT

Tax relief for North Island flooding events

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This special report provides early information on the provisions that provide tax relief for certain payments and benefits provided by employers to employees who have been affected by the North Island flooding events included in the Taxation (Annual Rates for 2022–23, Platform Economy, and Remedial Matters) Act 2023 ahead of an upcoming edition of the *Tax Information Bulletin*.

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Tax relief for employers' welfare contributions to employees

Changes included in the Taxation (Annual Rates for 2022–23, Platform Economy, and Remedial Matters) Act 2023 provide an exemption for certain welfare contributions made by an employer to employees because of the North Island flooding events. The exemption may be applied to:

- accommodation
- “sundry” fringe benefits when the employer cannot reasonably estimate which employees received which benefits, and
- the first \$5,000 of monetary remuneration and fringe benefits of the kind where the employer can reasonably be expected to know which employees received which benefits.

A further change extends the definition of “project of limited duration” for projects that are recovering and rebuilding the affected areas.

Effective date

The exemption for certain welfare contributions applies to payments made within an eight-week period from the beginning of the relevant North Island flooding event.

The extended definition of “project of limited duration” applies where the employee starts work at the distant workplace within six months of the first date of the relevant North Island flooding event.

Background

Under existing tax law (with a few limited exclusions), payments and benefits provided by an employer to an employee are taxable, either as monetary remuneration or by way of fringe benefit tax (FBT).

Following the North Island flooding events, employers may make ex-gratia welfare contributions of cash or benefits to their flood-affected employees. As was done for the Canterbury earthquakes, the current changes provide for certain amounts and benefits not to be subject to income tax or FBT.

The changes comprise inter-linked tax exemptions for employers and their employees for North Island flood-related employer welfare contributions.

Detailed analysis

What is a North Island flooding event ?

A new definition of “North Island flooding events” has been added to section YA 1 of the Income Tax Act 2007 (ITA) and means:

- (a) Cyclone Hale, which crossed the North Island of New Zealand during the period starting on 8 January 2023 and ending on 12 January 2023, in 1 or more of the following districts:
 - (i) Coromandel:
 - (ii) Gisborne:
 - (iii) Northland:
 - (iv) Wairarapa:
 - (v) Wairoa:

- (b) heavy rainfall starting on 26 January 2023 and ending on 3 February 2023, in 1 or more of the following regions:
 - (i) Auckland:
 - (ii) Bay of Plenty:
 - (iii) Northland:
 - (iv) Waikato:

- (c) Cyclone Gabrielle, which crossed the North Island of New Zealand during the period starting on 12 February 2023 and ending on 16 February 2023, in 1 or more of the following regions or districts:
 - (i) Auckland:
 - (ii) Bay of Plenty:
 - (iii) Gisborne:
 - (iv) Hawke’s Bay:
 - (v) Northland:
 - (vi) Tararua:
 - (vii) Waikato.

Income tax exemption

New section CZ 23B of the ITA provides that income (which can include accommodation benefits) derived by an employee from an employer is exempt income if:

- it is provided by the employer for the purpose of relief of employees from the adverse effects of a North Island flooding event
- it would otherwise be assessable income
- it is derived in the eight-week period beginning on the first day of the relevant North Island flooding event
- it does not replace a PAYE income payment, that is, it is not paid in substitution for wages or salary
- it does not depend on the seniority of the employee
- if the employee is associated with the employer, it is also available to an unrelated full-time employee, and
- the employer treats the income as being exempt income of the employee.

Extent of the exemption

Income that satisfies the above criteria is exempt income to the extent it is:

- an accommodation benefit as defined in section CE 1(2), and/or
- less than or equal to \$5,000 in total, if the income is in a form other than accommodation (including fringe benefits under new section CZ 24B).

Frequently Asked Questions

This section deals with several questions we have been asked about the application of new section CZ 23B.

The new provision mirrors the provisions that were enacted following the Canterbury Earthquakes, with modifications for the different event and the quantum of the amount paid.

How was the \$5,000 determined?

This figure was based on the amount used for the Canterbury Earthquakes, increased by wage inflation over the period since the earthquakes and rounded to \$5,000.

How was the eight-week period determined?

This is the same period as that used for the Canterbury Earthquake provisions.

What does the criterion “does not depend on the seniority of the employee” mean?

This restriction is aimed at ensuring that relief payments are not targeted at more senior employees. This could occur in two ways:

- when payments are only made to senior employees, or
- when senior employees are paid higher payments than lower-level employees.

We expect an employer is likely to make identical payments to employees who have been affected by the flooding events, although they may scale payments depending on the scale of the damage suffered by different employees. In either case, it is unlikely that the payment is in substitution for salary and wages. The more linked the payment is to the employee’s salary or status, the more likely the payment is in substitution for other PAYE payments.

What if an “accommodation” benefit is provided in cash?

The exemption covers accommodation provided to an employee with no monetary limit, whereas there is a maximum amount payable for monetary benefits that are not accommodation. However, some accommodation benefits are paid in cash (that is, as an allowance or reimbursement) rather than as the provision of accommodation directly to an employee.

Under the ITA there is no difference between the taxation treatments of the provision of accommodation and the provision of a reimbursement for accommodation costs in the form of allowances. The same applies to this relief, and therefore “accommodation” includes both the provision of accommodation and the provision of an accommodation allowance.

Example 1: Payment of accommodation allowance

Grovers Grapes Limited (GGL) has been adversely affected by the flooding in the Hawkes Bay area. Its grape vines have been badly damaged. It is a family-owned business that has several long-serving staff (including some family members) who live in dwellings near the property. Those dwellings have been substantially damaged by the flooding and are not currently liveable.

Gene Grover, the owner of GGL, tells her staff to find alternative accommodation and advises that the company will provide the staff with an accommodation allowance until the staff can get back to some sense of normality after the impact of the flooding. GGL

pays an accommodation allowance to its staff for 8 weeks. All employees have the same entitlement, and therefore it is not relevant that some payments were made to associated family members of Gene.

The staff (including the family members) can treat the accommodation allowance paid as exempt income as it meets the requirements of new section CZ 23B(2)(a). No limit will apply to the amount as it is the provision of accommodation and thus the \$5,000 limit will not apply.

What if an employer made payments before the Supplementary Order Paper (SOP) being released ?

New section CZ 23B was originally introduced into the Taxation (Annual Rates for 2022–23, Platform Economy, and Remedial Matters) Act 2023 by way of SOP No 319 on 14 March 2023.

One of the requirements of the new section is that the payment has been treated by the employer as being exempt income of the employee. Given the timing of the floods and the release of the SOP, some employers may have provided amounts to their employees before the SOP was released and conservatively treated those payments as taxable to the employee and accounted for PAYE on those amounts.

The section does not prevent those taxpayers from reversing that treatment to treat those previous payments as exempt, as there is no requirement that the payment is treated as exempt at the time the payment was made. If an employer has treated eligible payments made before the release of the SOP as taxable, they should reverse that treatment for the employee as an error correction to a previous employer information return provided. For payments made before 31 March 2023, employers should ensure that an employer information return filed before 31 March 2023 is corrected to ensure that the right amount of income is treated as tax exempt in the correct tax year.

The requirement is designed to prevent asymmetry of the payments where the employer deducts PAYE from a non-flood-related payment and the recipient claims back the PAYE paid as an additional benefit. It is not designed to prevent employers from being able to treat the payment as exempt due to timing.

Example 2: Payment before release of the SOP

B&E Wines Limited (B&E) has a large operation in one of the areas affected by the North Island flooding events. The company has several staff who have been working for it for a long period. When the floods hit, Bert and Ernie, the owners of B&E, want to provide immediate help to their employees, so they pay them all an ex-gratia payment of \$4,000 per employee. They pay PAYE on 20 February 2023 as they are unsure if the government will be enacting a tax exemption for those payments.

B&E makes this payment to around 100 employees. Once the SOP is released, the company decides to amend the treatment of the payments in the employer information return for the period including 20 February 2023 to treat them as exempt payments.

As the employer has treated those payments as exempt, and all the other requirements of section CZ 23B have been met, the payments can be treated as exempt income.

Example 3: Asymmetry of payments

In July 2023, Devon decides to file a personal tax return for the year ended 31 March 2023. Devon lives in Esk Valley and, while at the pub one night, heard from a mate that \$5,000 is available tax free if he lives in an affected area. He just needs to file his tax return on that basis by reducing the employment income figure Inland Revenue holds for him by \$5,000. Devon's employer, Monty Enterprises Limited, didn't provide any specific support payments for its staff.

Inland Revenue will not accept the reduction in employment income as Monty Enterprises Limited has not made a payment eligible for the exemption. For an amount to be tax exempt, all the criteria in section CZ 23B must be satisfied, including the employer treating a payment as exempt.

Fringe benefit tax exemption

New section CZ 24B of the ITA provides that a benefit received by an employee from an employer is exempt from FBT if:

- it is for the purpose of relief of employees from the adverse effects of the effects of a North Island flooding event

- it would otherwise be a fringe benefit
- it is received in the eight-week period beginning on the first day of the relevant North Island flooding event
- it does not replace a PAYE income payment, that is, it is not paid in substitution for wages or salary
- it does not depend on the seniority of the employee
- if the employee is associated with the employer, it is also available to an unrelated full-time employee, and
- the employer treats the benefit as not being a fringe benefit.

Extent of the exemption

All “sundry benefits” are exempt – for example, benefits that were provided at a drop-in centre. Almost always in that case, an employer would have no idea which employee had received what benefits. Accordingly, if the employer cannot estimate the value of the benefits provided to each employee, they are treated as exempt.

If the employer can estimate the value of a benefit that an employee has received for a North Island flooding event, the benefit will be exempt from FBT to the extent that the \$5,000 employee income exemption for the North Island flooding event under new section CZ 23B has not been used to exempt employee income.

Example 4: Sundry benefits

Big T’s Tech Limited (BTT) is a retail chain that has branches all around the Northland area. BTT’s stores have largely been unaffected by the flooding, but many of its staff have been affected. BTT decides to distribute their remaining stock of satellite internet dishes to drop-in centres around the Northland area.

As BTT’s staff live in the Northland area and many have lost all forms of communication, some end up going to the drop-in centres to access the internet and call family and friends. The provision of the internet dishes may constitute a fringe benefit to those staff. However, as BTT has no ability to track which employees are using the benefit, or to determine the value of that benefit, it will be exempt from fringe benefit tax as a sundry benefit under new section CZ 24B(3).

Example 5: Specific benefit

Liz is an employee of Fowlers Fencing Limited (FFL), which is a fencing company based in Gisborne. Liz is a keen cyclist and travels to work and most other places on her e-bike. She has access to a work ute during the day to allow her to travel to worksites and carry fencing materials. No private use of the vehicle is permitted, and the vehicle is locked in a garage at FFL's premises during the evenings and at weekends.

Liz lives in a rural area that was hit hard by the North Island flooding events. Due to the damage to roading and the loss of her e-bike to the floods, she is unable to get around. Josh, the owner of FFL, allows Liz to use the work ute to travel to and from home as well as to assist her neighbours in the clean-up of their properties. This private use of the vehicle would usually incur fringe benefit tax.

FFL also provided a cash payment of \$500 to each of its staff that has been paid as exempt income under section CZ 23B.

FFL can treat the provision of the vehicle as exempt from FBT up to the value of \$4,500 (as the maximum collective amount of exempt cash and fringe benefits permitted is \$5,000).

Projects of limited duration

New section CZ 29B of the ITA provides for a modified definition of "projects of limited duration" for projects related to the North Island flooding events to recognise the extended timeframes which those rebuilding projects could take. The value provided or expenditure incurred by an employer on accommodation for employees working on those projects is exempt income of the employees.

The provision applies for the purposes of section CW 16B (Accommodation expenditure: out-of-town secondments and projects) when:

- the employment duties of an employee require them to work on a project of limited duration for rebuilding or recovery in areas affected by the North Island flooding events, and
- the distant workplace is a workplace in the areas affected by the North Island flooding events.

The usual 3-year time limit in the definition of “project of limited duration” is extended to 5 years if the employee starts work within 6 months of the first date of the relevant flooding event.

The section also includes an ability for the time limits to be modified by Order in Council made on the recommendation of the Minister of Revenue. As it is not known how long the recovery and rebuild process will take, this allows for the time limit to be extended if necessary.

Example 6: Extended time limit

Kaitlyn’s Kontractors Limited (KKL) provides contracting services, primarily road building. They have a large plant based in Northland that services the area. They also have a plant based in Palmerston North that services the lower North Island.

In May 2023, with the need to assist in rebuilding the roading infrastructure in the Northland area, Kaitlyn asks 20 of the Palmerston North crew to relocate to Northland to assist with the work for the foreseeable future.

Kaitlyn provides those employees with accommodation in Northland for the duration of the project, which is expected to be 4 to 5 years. The exemption in section CZ 29B will apply to treat the provision of that accommodation as exempt income (subject to the other criteria in section CW 16B being satisfied¹).

About this document

Special reports are published shortly after new legislation is enacted or Orders in Council are made to help affected taxpayers and their advisors understand the consequences of the changes. These are published in advance of an article in the *Tax Information Bulletin*.

¹ See <https://www.taxtechnical.ird.govt.nz/operational-statements/2021/os-21-01> for an outline of the requirements of section CW 16B.