

Deadline for comment: 20 September 2019, reference ED0219

Determination DET 19/XX: Employee use of telecommunications tools and usage plans in their employment

The determination provides employers with the option of applying certain percentages to make an allocation between business use and private use for usage plans related to telecommunications tools. This option will reduce business compliance costs.

Contents

- Determination
- Flowchart
- Examples
- Commentary

Determination

This Determination is made under section 91AAT of the Tax Administration Act 1994.

The determination applies to the arrangements described and in circumstances where employees use their own telecommunications tools in their employment and also use the tools for private use. It may also apply where the employer provides payments in relation to usage plans only. This determination can be relied on for the required apportionment.

This determination relates to the following arrangements, which comprise three classes: Class A, Class B and the De Minimis Class.

Class A covers situations where:

- an employer enters into an arrangement with the employee whereby the employee will provide their own telecommunications tools and usage plan, or the arrangement involves the employee using their own usage plan; and
- the employee incurs the cost of the telecommunications tools and the usage plan or the cost of the usage plan alone and there is reimbursement; or
- in the case of reimbursement, an estimated amount or allowance represents a reasonable estimate of the likely expenditure to be incurred by the employee; and
- the telecommunications tools and usage plan are principally used by the employee in their employment, and the employee also uses the tools and usage plan or usage plan alone for private use; and
- there may be an amount relating to depreciation loss.

Class B covers situations where:

- an employer enters into an arrangement with the employee whereby the employee will provide their own telecommunications tools and usage plan, or the arrangement involves the employee using their own usage plan; and
- the employee incurs the cost of the telecommunications tools and the usage plan or the cost of the usage plan alone and there is reimbursement; or
- in the case of reimbursement, an estimated amount or allowance represents a reasonable estimate of the likely expenditure to be incurred by the employee; and
- the employee is required to use telecommunications tools and usage plan in their employment based on a business reason and also uses the tools for private use; and
- there may be an amount relating to depreciation loss.

The De Minimis Class covers situations where:

- an employer enters into an arrangement with the employee whereby the employee will provide their own telecommunications tools and usage plan, or the arrangement involves the employee using their own usage plan; and
- the employee incurs the cost of the telecommunications tools and the usage plan or the cost of the usage plan alone and there is reimbursement; or
- in the case of reimbursement, an estimated amount or allowance represents a reasonable estimate of the likely expenditure to be incurred by the employee; and
- the employee is required to use telecommunications tools and a usage plan in their employment based on a business reason and also uses the tools and usage plan for private use; and
- there is a payment of no more than \$5 per week per employee, amounting to no more than \$265 per year, as a reimbursement or an allowance in relation to the use of telecommunications tools and a usage plan or the cost of the usage plan alone.

Class A

For Class A cases, employers can treat 75% of the amount paid (total bill amount) either by reimbursement or by allowance for usage plans, as exempt income of the employee. The extent to which the payment is taxable is 25%. If the employer pays 75% of the total bill as an allowance or reimbursement, then the whole amount paid is exempt.

Depreciation loss is calculated using the Commissioner's rates for the items.

Class B

For Class B cases, employers can treat 25% of the amount paid by reimbursement or by allowance for usage plans as exempt income of the employee. The extent to which the payment is taxable is 75%. If the employer pays 25% of the total bill as an allowance or reimbursement, then the whole amount paid is exempt.

Depreciation loss is calculated using the Commissioner's rates for the items.

De Minimis Class

A payment up to \$5 per week, amounting to no more than \$265 per year, per employee, as reimbursement or an allowance in relation to telecommunication tools and a usage plan can be treated as exempt income of the employee. This is in circumstances where the employee uses telecommunications tools in employment and incurs expenditure.

Limitations on the scope of the determination

Additional and supplementary telecommunications tools

If the employer provides telecommunications tools, then the employer should also not be **paying an allowance, which is exempt income, for use of the employee's own** telecommunications tools of that type. However, an employer who provides employees with laptops can also have a **bring your own device ("BYOD")** plan for cell phones or home internet connections.

Additional remuneration or salary sacrifice

The determination does not apply if the amount paid is materially more than the actual plan costs or if there is evidence of the amounts being taken into account in remuneration levels so that a salary sacrifice arrangement exists.

Section CW 17(2C) does not permit a determination under s 91AAT of the Tax Administration Act 1994 to apply to salary sacrifice arrangements. The inclusion of a telecommunications benefit in a salary statement to document the allowance does not by itself indicate a salary sacrifice arrangement.

Fringe benefit tax

The determination does not apply where there is no employment income under the arrangement, that is, where the employer provides the telecommunications tool and pays for the usage. In such circumstances, there may be FBT implications.

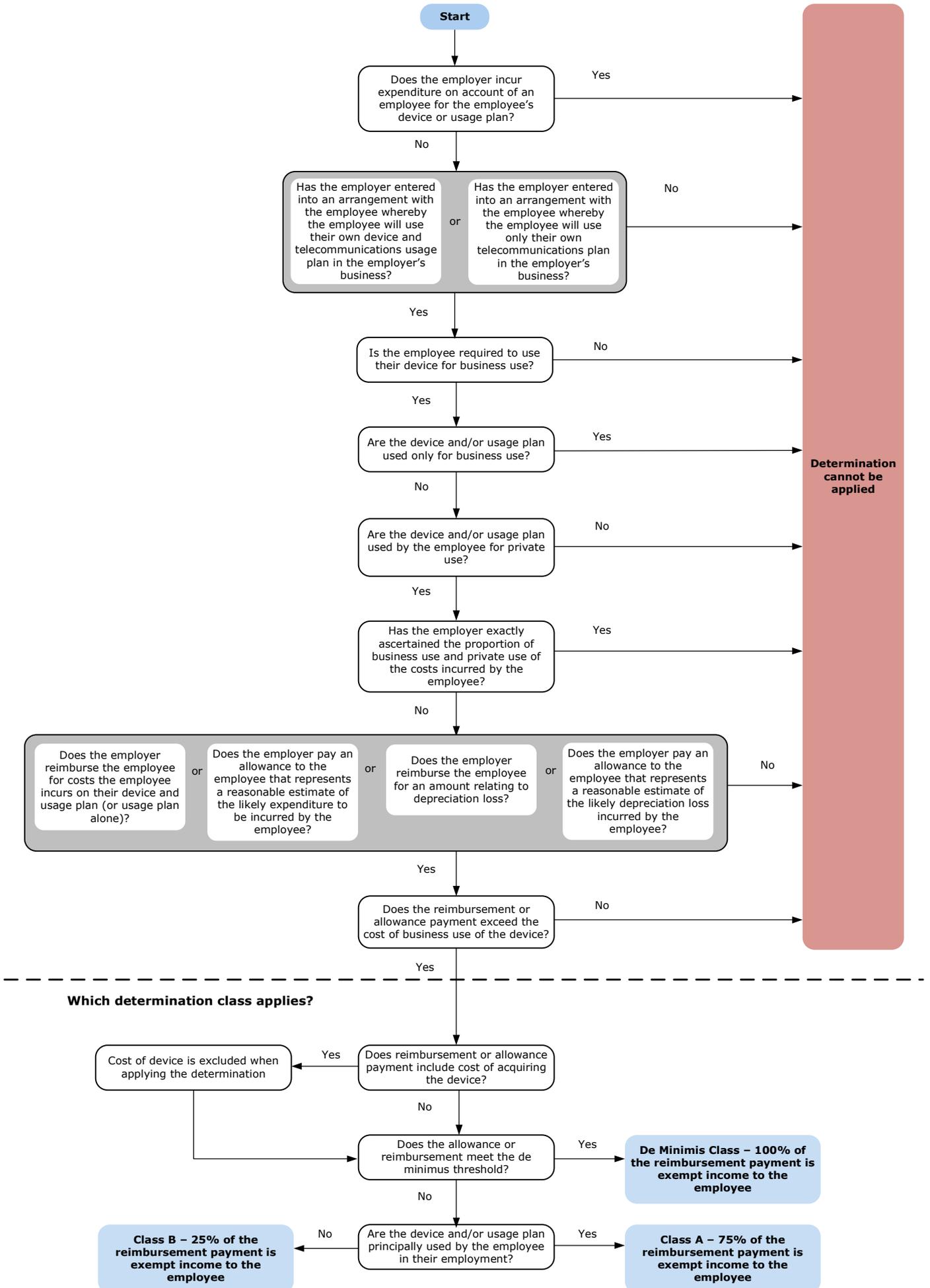
Determination is not binding on employer or employee

The determination is not binding on the employer or the employee. If the employer or employee has evidence to demonstrate that, in their particular circumstance, some other apportionment is appropriate under s CW 17, the taxpayer may apply that apportionment.

This Determination is signed by me on the xx day of xx 2019

Name
Position

Does the determination apply?



Examples

The following eight examples explain the application of this determination.

Example 1: Class A – allowance

An employee brings their own telecommunications tool to work and uses it in the course of their work. The telecommunications tool is principally used for work. In recognition of that, the employer pays an allowance of the total monthly account of \$60 per month to the employee. A portion of this payment (\$45) can be treated as exempt income to the employee.

The determination (for Class A) can be relied on in lieu of establishing the apportionment by exact measurement of usage.

Example 2: Depreciation

An employer has an optional BYOD policy. Employees who opt into the policy must return their employer-provided laptop and use their own laptop and associated equipment instead. Under this policy, employees must use a laptop that meets certain specifications. The employee must also purchase a mouse, keyboard and docking station to use at their workplace.

This arrangement is within Class A. The employer estimates that the average cost of a laptop that meets the required specifications and associated equipment is \$1,500. The cost of this device and equipment per year is subject to a depreciation calculation made using the Commissioner's rates for the items. The employee can receive the amount calculated as depreciation loss (75% of that amount) annually as exempt income.

Example 3: Class B – allowance

An employee uses their home internet connection to do work for their employer, and the employer pays the employee a monthly allowance of \$60. It is understood that the allowance is sufficient to cover both business use and private use, on the basis that it covers the total monthly account. The employee is required to use the home internet connection in their employment, but employment is not the principal use. There is some actual business use.

A portion of the allowance (\$15) can be treated as exempt income to the employee. The determination (for Class B) can be relied on in lieu of establishing the apportionment by exact measurement of usage.

Example 4: Reimbursement equal to or below business use percentage

An employer makes a monthly reimbursement payment of \$25 to the employee. The home internet plan costs the employee \$100 per month. The employer has evidence that the \$25 reimbursement will cover monthly business use because business use amounts to at least 25%.

The monthly payment by the employer is equal to the business use percentage, so it is unnecessary to make a private use apportionment. The determination is not needed as it is inapplicable on these facts.

Example 5: De minimis payment

An employer makes a monthly reimbursement payment of \$20 to the employee. The employee must use their telecommunications tool in their employment based on a business reason and also uses the tool for private use. The payment is exempt income.

Example 6: Second mobile phone

An employer provides a mobile phone for work purposes that is also available for private use. The employer reimburses or pays an allowance for a second mobile phone for the employee. No additional facts indicate that the employee needs two phones for business purposes such as specifically needing separate phone numbers.

The determination cannot be relied on in relation to the usage plan for the second mobile phone. The reimbursement or allowance amount is likely to be employment income and not exempt.

Example 7: Salary sacrifice

An employer provides an allowance of \$1,000 per month for telecommunications tools as part of a salary package. The employee spends \$100 per month on the internet (usage) plan.

This determination cannot be relied on. The allowance is employment income to the extent it relates to private use.

Example 8: Employee needs to be contacted at any time

An employee needs to be able to be contacted at any time to deal with work related emergencies. While the level of usage of the plan is less than 50% these facts still meet the principal use test.

1. Commentary (which does not form part of the determination)

Purpose of determination

- 1.1 Section CW 17 provides an exemption for certain payments to or made on behalf of an employee. The payments are in connection with an employee's employment or service and are for the employee's job-related expenditure. Often this expenditure might also have a private element. Under s CW 17, apportionment is required for this private element.
- 1.2 The determination allows the employer to use the relevant percentage for the taxable portion of the payment to the employee, if the requirements set out in the determination are met and the employer considers that it is preferable not to commit resource to establishing the actual percentage.
- 1.3 This determination applies where the payment covers both business use and private use and the proportion is not ascertained.

Other options

- 1.4 Employers do not have to apply this determination. Section CW 17 provides the basis to apportion when the determination is not applied.

Arrangement

- 1.5 Many employers have a policy of agreeing to or allowing employees to bring their own telecommunications tools to work for business use or agreeing to the business use of the employee's usage plan and telecommunications tools. There also may be an understanding that the employee will use the tools or usage plan away from work for business purposes. This use has the benefits of convenience, flexibility, increased productivity and cost savings. It also results in reimbursement or allowances paid to the employee in relation to the costs of the telecommunications tools and usage plan. There may be a depreciation loss in using these devices. The acquisition cost of any telecommunications tool is not itself a depreciation loss.
- 1.6 This determination relates to an arrangement whereby an employer reimburses an employee or employees the cost of usage plans for telecommunications tools, or the employer reasonably estimates the amount of expenditure and pays an allowance. There may also be payments relating to depreciation loss.
- 1.7 This determination applies to a variety of arrangements. They may be described as bring your own device (BYOD) plans, whereby the employer and employee agree on a reimbursement or an allowance for the employee because the employee uses their own telecommunications tools for work.

Arrangements vary and the usage plan may include the supply of telecommunications tools

- 1.8 The arrangement described below applies to variations where the usage plan also involves the supply of a telecommunications tool. The arrangements may vary as to what particular telecommunications tools and usage plans are included. They may vary as to whether there is a reimbursement or an allowance in relation to an on-going service plan.

- 1.9 The determination operates to allow a percentage of any costs relating to a usage plan or depreciation loss as exempt income. There is also a de minimis acceptable level of payment.

Usage plan only

- 1.10 The arrangement includes the employer providing the telecommunications tools and then reimbursing the employee for the cost of the employee's usage plan or estimating the amount of reimbursement.

Fringe benefit tax implications are not covered

- 1.11 FBT implications are not covered by this determination.

Payment can be made in different ways

- 1.12 Payment could be made to an employee in a variety of ways. There could be an allowance or an actual reimbursement of costs. The determination applies to these types of payment that cover both business use and private use. Private use could involve allowing household use.

- 1.13 The determination does not provide a percentage or reasonable estimate for expenditure on account of an employee.

Employment requirement

- 1.14 In all cases, the payment is made because the telecommunications tools are required for the employee to do their job. In this respect, the telecommunications tools:

- are used when the employee is performing an obligation required by their employment or service;
- the employee derives employment income through the performance of the obligation;
- the expenditure is necessary in the performance of the obligation.

If payment only meets cost of business use, determination does not apply

- 1.15 The determination does not apply if the reimbursement (based on an estimate of use) or an allowance can be evidenced as being an amount that does not exceed the actual or reasonable estimate of business use.

De minimis allowance

- 1.16 There is also a de minimis allowance when a reimbursement or an allowance is no more than \$5 per week, or \$265 per year, per employee. This level of expenditure is unlikely to involve private use. In such cases, the allowance or reimbursement will be exempt income. If this level of expenditure is not exceeded, there is no requirement to hold evidence in support of the expenditure.

Acquisition cost of telecommunications tools is not covered; an amount of depreciation loss is covered

- 1.17 The telecommunications tools are likely to be capital assets, and the initial payment for these would not be expenditure on account under s CW 17 because they would be subject to the capital limitation in s DA 2(1). Telecommunications

tools are identifiable assets of an enduring benefit. Therefore, the initial cost of the telecommunications tool is excluded when applying the determination.

- 1.18 The determination can include an amount that represents an amount for depreciation of the telecommunications tool. Section CW 17(4) states that for the purposes of s CW 17 expenditure, the expenditure can include an amount of depreciation loss. If the telecommunications tool costs \$500 or less, the amount of the depreciation loss is the cost of the tool (see s EE 38).
- 1.19 Employers may estimate the cost of telecommunications tools for the purpose of depreciation, and then apply the applicable ratio to the estimated depreciation loss. The estimate should be based on the depreciation rates the Commissioner has set.

Class A, Class B and the De Minimis Class are covered

- 1.20 The determination covers three classes: Class A, Class B, and the De Minimis Class.
- 1.21 A variation of Class A and Class B is where the employer makes a payment or reimbursement in relation to the usage plan alone.

Class A – telecommunications tools are principally used in employment

- 1.22 Class A covers arrangements where the telecommunications tools are principally used in employment.

Meaning of 'principally used'

- 1.23 'Principally used', the basis for Class A arrangements, means the main or primary use of the telecommunications tools in these arrangements is for use in employment.

Reasonable judgement can be exercised

- 1.24 Reasonable judgement must be exercised as to the level of use that is expected or required. In many cases, it will be clear from time or data usage that business use amounts to the principal or leading use. Measurement may involve a variety of factors, including time of use, amount of data used or the importance of the employee's availability for communication. It is expected that, as a minimum, employers have a record of the plan or agreement entered into by the employee.
- 1.25 In lieu of monitoring usage, an employer may choose to obtain a signed declaration from an employee that telecommunications tools will be principally used in employment.
- 1.26 It is expected that the situation would be reviewed periodically to check that the level of use remains the same. A review once every two years would be adequate.
- 1.27 In some cases, the importance of the employee having access to the telecommunications tools might mean that principal use is established. For example, an employee might need to be available at all times for calls. This factor on its own, does not mean there is principal use of the telecommunications tools for employment purposes. In some cases, data or expected usage could indicate a less than 50% usage, but the importance of availability might be a factor resulting in the principal use test being met.

Implications

- 1.28 Employers can treat 75% of the amount paid either by reimbursement or by allowance for usage plans and depreciation loss (if any) as exempt income of the employee. If employers pay 75% of the total usage charge as reimbursement or allowance, then the whole amount paid by the employer will be exempt.
- 1.29 If the employer pays a fixed amount per month the employer could obtain a declaration from the employee that the employee's costs are at least 1.33 times the amount of the allowance paid. The whole amount paid by the employer will be exempt.

Class B – arrangements where telecommunications tools are required, but not principally used for employment

- 1.30 Class B covers arrangements where the telecommunications tools are still required for employment, but the tools are not principally used for employment. There must be an employment reason for the use of the telecommunications tools.
- 1.31 Class B provides a second-tier option. This enables a reduction in the compliance costs involved in the active measurement of use. An employment reason still exists for the use of the telecommunications tools. Employers apply a lesser percentage for exempt income of 25%.

Employment policy is sufficient to show employment-use obligation

- 1.32 Class B is intended to cover arrangements where there is an employment reason and an obligation for the employee to use the tools, but private use is predominant. An established employment policy related to the use of the tools would be sufficient to establish the obligation. It is expected that there would be actual business use of the tools over time. Access to telecommunications tools is needed, but employment use is not the principal use.

Implications

- 1.33 Employers can treat 25% of the amount paid either by reimbursement or by allowance for usage plans and depreciation loss (if any) as exempt income of the employee. If employers pay 25% of the total usage charge as reimbursement or allowance, then the whole amount will be exempt.
- 1.34 If the employer pays a fixed amount per month, the employer could obtain a declaration from the employee that the employee's costs are at least four times the amount of the allowance paid. The whole amount paid by the employer is exempt.

De Minimis Class – minimum payment treated as exempt income

- 1.35 The De Minimis Class allows for a payment of up to \$5 per week, or up to \$265 per year, per employee as reimbursement or allowance for the cost of a usage plan to be treated as exempt income.

No records necessary

- 1.36 It is not necessary to support this de minimis level of reimbursement or allowance with records.

Implications

1.37 Employers can treat a minor payment as exempt.

Interpretation

All legislative references are to the Income Tax Act 2007, unless otherwise stated.

Unless the context otherwise requires:

- "business use" means use in connection with an employee's employment or service;
- "depreciation loss" means an amount calculated under s CW 17(4);
- "employee" does not include an independent contractor;
- "principally used" means the main or primary use;
- "required to use" means an obligation and a business reason to use;
- "telecommunications tools" includes, telephones, mobile phones, tablets, laptops and personal computers;
- "usage plans" means internet connection, service plans or usage plans in relation to telecommunications tools.
- "depreciation loss" is calculated using the Commissioner's rates for the items and, if claimed, is counted as part of the \$265 per year.