



REVENUE CIRCULAR PTA005.1

Exempt Allowances – Motor Vehicle and Accommodation – *Payroll Tax Act 2011*

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Exempt Allowances

The *Payroll Tax Act 2011* (the Act), which commenced on 1 July 2011, rewrites the Payroll Tax Act 1987 (the 1987 Act) and harmonises the payroll tax legislation in the Australian jurisdictions.

1. This circular explains the ACT Revenue Office's position regarding exempt allowances.

Circular

2. Section 13 of the Act defines wages to include allowances paid or payable to an employee. Generally, all allowances paid or payable to an employee are taxable for payroll tax purposes.
3. However, there are specific provisions which apply to motor vehicle allowances and overnight accommodation allowances. Sections 29 and 30 of the Act provide that motor vehicle allowances and overnight accommodation allowances are not taxable to the extent that each of these allowances do not exceed the exempt component.

Motor vehicle allowance

4. A motor vehicle allowance is paid or payable to an employee to compensate the employee for any business use of the employee's own private vehicle.
5. The exempt component is calculated using the formula: $E = K \times R$

Where:

E is the exempt component;

K is the number of business kilometres travelled during the financial year;

R is the exempt rate.

6. The exempt rate of an allowance may be determined by the Minister by notifiable instrument. In the absence of the Minister's determination, the exempt rate is the rate prescribed under section 28-15(4) of the *Income Tax Assessment Act 1997* (Cwlth) for calculating a deduction for car expenses car using the cents per kilometre method in the financial year immediately preceding the financial year in which the allowance is paid or payable.

7. A motor vehicle allowance can be paid on the basis of an amount per business kilometre travelled by the employee, or as a regular flat or fixed amount.

Motor vehicle allowance paid on a per kilometre basis

8. Section 22 of the *Fringe Benefits Tax Assessment Act 1986* (Cwlth) (FBT Act) generally exempts an expense payment if it is a reimbursement of car expenses of a car owned or leased by an employee that is calculated by reference to the distance travelled by the car (i.e. paid on a cents per kilometre basis). There are some circumstances where the fringe benefit exemption does not apply, for example, where the expense payment benefit relates to a holiday taken by the employee or where the travel relates to relocation.
9. Some uncertainty may exist as to whether or not such exempt expense payment benefits are subject to payroll tax where the benefit also falls within another part of the definition of wages under the Act. The Commissioner for ACT Revenue is of the view that exempt expense payment benefits are generally not wages for payroll tax purposes even where the exempt benefit may also fit within another part of the definition of wages under the Act. Therefore, a car expense payment paid on a cents per kilometre basis is not subject to payroll tax.

Allowances not paid on a per kilometre basis

10. An allowance which is paid as a fixed amount is not an exempt car expense benefit. In the absence of records confirming the business kilometres travelled, the total payments are subject to payroll tax. For example, a regular travelling allowance of \$200 per month, paid to a sales person who keeps no records of the business use of the person’s private motor vehicle, is taxable in full.
11. However, where an employer can produce records to demonstrate the business kilometres travelled in the period covered by the allowance, the exempt component may be calculated. The amount of a motor vehicle allowance paid up to the exempt component is exempt. Where the allowance exceeds the exempt component, only the amount in excess of the exempt component is taxable.

Allowance paid as fixed amount plus a rate per kilometre.

12. Where a motor vehicle allowance is paid as a combination of a fixed amount plus a rate per kilometre, the total amount of the allowance that exceeds the exempt rate will be taxable.

Example:

Total business kilometres travelled during the 2017-18 year: 10,000	
Allowance paid during the year:	
Negotiated fixed amount	\$8,000
Negotiated rate per kilometre @ 30 cents	\$3,000*
Total allowance paid	\$11,000
Less exempt fringe benefit	\$3,000*
Sub total	\$8,000
Less exempt component (using the 2016-17 ATO rate of 66 cents per km)	\$6,600
Taxable portion of allowance	\$1,400

* Where the negotiated rate is less than the exempt fringe benefit, the values are negated.

Overnight accommodation allowance

13. An overnight accommodation allowance is paid to cover temporary accommodation costs necessarily incurred as a consequence of employment. Temporary accommodation in this context means:

- (a) accommodation for a continuous period of no more than 21 days; or
 - (b) accommodation for a continuous period of more than 21 days where the employee continues to maintain a domestic dwelling for the purpose of accommodating the employee and/or the employee's family.
14. All allowances paid or payable for accommodation that is not of a temporary nature are fully taxable.
 15. An overnight accommodation allowance is distinguished from an accommodation expense payment (or a reimbursement) in that it is a pre-determined amount paid to an employee and the employee is not required to substantiate the costs incurred in securing the accommodation.
 16. An overnight accommodation allowance is also distinguished from a living away from home allowance. An overnight accommodation allowance is generally paid where there is no change of employment location whereas a living away from home allowance is paid where the employee has moved and taken up temporary residence away from his or her usual place of residence. These allowances are subject to different Commonwealth taxation treatments. An overnight accommodation allowance is treated as assessable income in the hands of the employee, whereas a living away from home allowance is a fringe benefit.
 17. An overnight accommodation allowance, provided to an employee for temporary accommodation costs, will be taxable only to the extent that it exceeds the exempt rate.
 18. The exempt rate for overnight accommodation allowances is the total reasonable amount for daily travel allowance expense using the lowest capital city for the lowest salary band for the financial year determined by the Commonwealth Commissioner of Taxation. These determinations are made by the Commonwealth Commissioner of Taxation in June of each year and set out the amounts that the Commonwealth Commissioner of Taxation considers are reasonable for the following income tax year in relation to claims made for travel allowance expenses. However, the Minister may determine an exempt rate, which is prescribed by Notifiable Instrument.
 19. The ATO determination of reasonable amounts for travel allowance expenses includes components for meals and incidental expenses. These components are also exempt when paid as part of the overnight accommodation allowance to the extent that they do not exceed the respective ATO limits whether or not the employer separately identifies these payments made to an employee.
 20. In some instances, the accommodation is paid by the employer directly to the hotel, motel or serviced apartment and the employee is only paid an allowance for meals and incidentals in respect of the period of absence from the employee's usual place of residence. The allowances for meals and incidentals are exempt from payroll tax up to the respective ATO limits for these payments.

Living away from home allowance

21. A living away from home allowance is a fringe benefit and, therefore, the value for payroll tax purposes is the value determined in accordance with the FBT Act. If the allowance does not qualify as a living away from home allowance benefit under the FBT Act, it will be treated in the same manner as an overnight accommodation allowance.

SIGNED

Kim Salisbury
Commissioner for ACT Revenue
5 July 2019