



Office of State Revenue  
NSW TREASURY

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# Payroll Tax Act 2007

## Revenue Ruling No. PTA005

### Exempt allowances:

### Motor vehicle and accommodation

#### Ruling history

Ruling no.	Issued date	Dates of effect		Status
		From	To	
PTA005	12 July 2007	1 July 2007	-	Current

#### Preamble

The *Payroll Tax Act 2007* (the Act), which commenced on 1 July 2007, rewrites the *Pay-roll Tax Act 1971* and harmonises the payroll tax legislation in Victoria and NSW. One of the areas which has been harmonised is exempt allowances.

This revenue ruling explains the position regarding exempt allowances.

#### Ruling

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. However, there are specific provisions which apply to motor vehicle allowances and overnight accommodation allowances. Sections 29 and 30 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**

A motor vehicle allowance is paid or payable to an employee to compensate them for any business use of his or her own private vehicle.

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.

The exempt rate is the rate prescribed under the income tax legislation for calculating a deduction for car expenses for a large car using the cents per kilometre method in the financial year immediately preceding the financial year in which the allowance is paid or payable. If no such rate is prescribed, the exempt rate is the rate prescribed under the Payroll Tax Regulations.

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*

Certain motor vehicle allowances are exempt benefits under section 22 of the *Fringe Benefits Tax Assessment Act 1986* (the FBT Act) where they are paid according to the distance travelled in the car (i.e. a cents per kilometre basis).

The Chief Commissioner of State Revenue (the Chief Commissioner) is aware that the Australian Taxation Office (ATO) adopts a 'liberal' interpretation of this section and generally accepts that any amount paid to an employee on a per kilometre travelled basis for the business use of his or her private motor vehicle is an exempt car expense payment for FBT purposes.

To overcome uncertainty as to whether these payments are subject to payroll tax and to ensure maximum consistency with the ATO, the Chief Commissioner has ruled that such payments will be accepted as exempt from payroll tax provided the following conditions are met:

- (a) The amount paid per kilometre is reasonable given:
  - the type of vehicle concerned
  - the expenses incurred by the employee in relation to the vehicle
  - normal industry or award rates, and
  - previous rates of payment in respect of the vehicle;
- (b) The vehicle must be owned or leased by the employee.

Where a payment made on a per kilometre basis does not fit within the above conditions, any amount paid in excess of the exempt component is subject to payroll tax.

### *Allowances not paid on a per kilometre basis*

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 his or her private motor vehicle, is taxable in full.

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.*

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 component will be taxable.

#### Example

Total business kilometres travelled during the 2007-08 year:	10 000
Allowance Paid during the year:	
Fixed amount:	\$5 000
Rate per kilometre @ 30 cents	<u>\$3 000</u>
Total allowance paid	\$8 000
Exempt component (using the 2006-07 ATO rate of 70 cents per km)	<u>\$7 000</u>
Taxable portion of allowance	\$1 000

### ***Overnight Accommodation Allowance***

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

- Accommodation for a continuous period of no more than one month (30 days) or
- Accommodation for a continuous period of more than one month (30 days) where the employee continues to maintain a domestic dwelling for the purpose of accommodating the employee and/or his or her family.

All allowances paid or payable for accommodation that is not of a temporary nature are fully taxable.

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.

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.

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.

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 Federal Commissioner of Taxation. These determinations are made by the Federal Commissioner of Taxation in June of each year and sets out the amounts that the Federal Commissioner of taxation considers are reasonable for the following income tax year in relation to claims made for travel allowance expenses.

### ***Living Away From Home Allowance***

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.

Please note that rulings do not have the force of law. Each decision made by the Office of State Revenue is made on the merits of each individual case having regard to any relevant ruling.

**Tony Newbury**  
Chief Commissioner of State Revenue  
12 July 2007