

TD 93/D123 - Income tax: do payments received by an employee from an employer in respect of motor vehicle expenses incurred by an employee need to be considered when ascertaining the rebate for personal superannuation contributions to which the employee may be entitled under section 159SZ, and the repealed section 159TL, of the Income Tax Assessment Act 1936 ?

 This cover sheet is provided for information only. It does not form part of *TD 93/D123 - Income tax: do payments received by an employee from an employer in respect of motor vehicle expenses incurred by an employee need to be considered when ascertaining the rebate for personal superannuation contributions to which the employee may be entitled under section 159SZ, and the repealed section 159TL, of the Income Tax Assessment Act 1936 ?*

This document has been finalised by TD 93/196.

Draft Taxation Determinations (TDs) represent the preliminary, though considered, views of the ATO. Draft TDs may not be relied on; only final TDs are authoritative statements of the ATO.

Draft Taxation Determination

Income tax: do payments received from an employer in respect of motor vehicle expenses incurred by an employee need to be considered when ascertaining the rebate for personal superannuation contributions to which the employee may be entitled under section 159SZ, and the repealed section 159TL, of the *Income Tax Assessment Act 1936*?

1. Yes, where the employee receives an allowance or his or her motor vehicle expenses are reimbursed on a cents per kilometre basis. Dependant on the level of eligible personal superannuation contributions (or rebatable contributions in the case of the repealed section 159TL), the amount of rebate allowable may be based on the amount of the employee's assessable income. Therefore it will be necessary to determine how much, if any, of the amounts received in respect of motor vehicle expenses form part of the employee's assessable income.

2. Motor vehicle expenses payments will be included in the assessable income of an employee if:

- (a) they are received as an allowance; or
- (b) they are received as a cents per kilometre reimbursement.

Other forms of reimbursement are exempt income and therefore should not be included in the employee's assessable income when calculating a superannuation rebate.

3. A payment is an allowance when a predetermined amount is paid by the employer to cover an employee's estimated expense. It is paid regardless of whether the employee incurs the expected expense.

4. A payment is a reimbursement when an employee is compensated exactly for an expense already incurred although not necessarily disbursed.

Examples:

1. *Mark, an auditor, is entitled to payments from his employer for expenses incurred in using his own vehicle to visit clients. To claim the amount from his employer, he is required to produce receipts or invoices.*

The payments made to Mark are reimbursements. He is compensated exactly for his expenses and would not be entitled to payment if he were unable to prove that he incurred the expenses. As such the payments are not included in his assessable income.

2. *Serge is an employee of Travel Insurance Ltd. Apart from his usual salary, he is paid an amount to cover travel expenses. The travel expenses are paid at a cents per kilometre rate on the distance shown in log book records kept by Serge.*

The payments of travel expense based on cents per kilometre are expressly included as assessable income by the Income Tax Assessment Act.

3. *Madeleine, who occasionally uses her car for work related trips during business hours, receives a set amount per month to compensate her for expenses incurred in using her own vehicle. The amount she receives is based on an average monthly figure derived from a log book she kept for her employer in a prior year. She is not required to provide evidence for such use in order to keep receiving the payments.*

The payments Madeleine receives constitute an allowance and are included in her assessable income.

Commissioner of Taxation

20/5/93

FOI INDEX DETAIL: Reference No.

Related Determinations: TR 92/15

Related Rulings: IT 2614

Subject Ref: Allowances

Legislative Ref: ITAA 159SZ; 159TL(repealed), 26(e), 26(eaa), 23(L)(1)(b);
FBTAA section 22

Case Ref: Case 153 10 TBRD 480; Case B55 (1951) 2 TBRD (NS) 227

ATO Ref: NOR J91/2/1

ISSN 1038 - 8982