

SGD 93/12 - Are allowances and sitting or meeting fees paid to local government councillors salary or wages for the purposes of the Superannuation Guarantee (Administration) Act 1992?

⚠ This cover sheet is provided for information only. It does not form part of *SGD 93/12 - Are allowances and sitting or meeting fees paid to local government councillors salary or wages for the purposes of the Superannuation Guarantee (Administration) Act 1992?*

⚠ This document has changed over time. This is a consolidated version of the ruling which was published on *12 August 1993*

Superannuation Guarantee Determinations do not have the force of law. Each decision made by the Australian Taxation Office is made on the merits of each individual case having regard to any relevant Determinations and Rulings.

Superannuation Guarantee Determination

Are allowances and sitting or meeting fees paid to local government councillors salary or wages for the purposes of the *Superannuation Guarantee (Administration) Act 1992*?

1. Yes. Where the payment is an allowance, as distinct from a reimbursement of expenditure, it will form part of the salary or wages paid to a local government councillor.

2. Local government councillors are specifically included as employees by subsection 12(10) of the Act. Paragraph 11(1)(e) defines 'salary or wages' to include 'remuneration' of local government councillors.

Remuneration

3. The word 'remuneration' is not defined in the Act and so will have its ordinary meaning. That meaning is payment, recompense or reward for work. Whether a payment is remuneration depends on the reason for the payment. An allowance is a recompense or reward for work, a reimbursement is not. If the payment is in fact a reward for work, then it will be salary or wages regardless of what it is called.

Reimbursement

4. A payment is a reimbursement when the employee is compensated exactly for an expense already incurred (although not necessarily disbursed). A reimbursement does not form part of salary or wages. With reimbursements in general, the employer considers the expense to be its own and the employee incurs the expenditure on behalf of the employer. A requirement that an employee vouch expenses lends weight to a presumption that a payment is a reimbursement rather than an allowance. A payment made in advance of expenditure but which has the other characteristics of a reimbursement, will be treated as a reimbursement.

Allowance

5. A payment is an allowance when the employee is paid a definite predetermined amount to cover an estimated expense. It is paid regardless of whether the employee incurs the expected expense. The employee has the discretion whether or not to expend the allowance. An allowance is salary or wages.

Examples:

- (a) Councillor Colin travels on behalf of the council and pays for the petrol used on the trip. On his return he provides receipts to the council for the cost of the petrol amounting to \$150. When council reimburses Colin the \$150 the payment is a **reimbursement** and does not form part of salary or wages.
- (b) Councillor Cathy travels on behalf of council and receives an allowance to cover the costs of travel and accommodation. The payment is paid irrespective of the distance travelled or the expense incurred. This payment is an **allowance** and is included in salary or wages.
- (c) Councillor Bob receives a meeting fee each time he attends a council meeting. This payment is a recompense or reward for work and, therefore, is salary or wages.
- (d) Councillor Mick travels long distances to attend council meetings. He is paid an allowance at the rate of 51 cents per kilometre travelled. This is an **allowance** and part of salary or wages. It is not a reimbursement because it is not an exact compensation for the expense.

Commissioner of Taxation

12/8/93

FOI INDEX DETAIL: Reference No. I 1215826

Previously issued as Draft SGD93/D4

Related Determinations:

Related Rulings: SGR 93/4; TR 92/15; IT 2614

Subject Ref: local government councillors; salary or wages; allowances; reimbursements;

Legislative Ref: SGAA 11(1)(e); 12(10);

Case Ref:

ATO Ref: NO 92/7706-4

ISSN 1038 - 7455