



# ***MT 2035 - Fringe benefits tax : classification of employees : Local Government Councillors, Mayors, etc.***

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TAXATION RULING NO. MT 2035

FRINGE BENEFITS TAX : CLASSIFICATION OF EMPLOYEES :  
LOCAL GOVERNMENT COUNCILLORS, MAYORS, ETC.

F.O.I. EMBARGO: May be released

REF

H.O. REF: 86/8836-2

DATE OF EFFECT: Immediate

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F.O.I. INDEX DETAIL

REFERENCE NO:	SUBJECT REFS:	LEGISLAT. REFS:
I 1209195	FRINGE BENEFITS TAX	FRINGE BENEFITS TAX ASSESSMENT ACT : SECTION 136 INCOME TAX ASSESSMENT ACT : SECTION 82KT

PREAMBLE

This Ruling addresses the question whether local government councillors, i.e. mayors, presidents, aldermen, wardens, etc. are employees for fringe benefits tax purposes and whether benefits provided in respect of their official duties are subject to fringe benefits tax. As appears in paragraph 9, the Ruling is equally relevant to the question whether councillors are subject to the full income tax substantiation requirements of Subdivision F of Division 3 of the Income Tax Assessment Act 1936 (the "ITAA").

2. To be subject to fringe benefits tax a benefit must be a "fringe benefit" as defined in sub-section 136(1) of the Fringe Benefits Tax Assessment Act 1986 (the "FBTAA"). The definition requires, among other things, that the benefit must be provided to an employee (or to an associate of an employee such as a family member) in respect of the employment of the employee.

3. The term "employee" is defined in sub-section 136(1) of the FBTAA to mean a current employee, a future employee or a former employee. The term "current employee", to which the meanings of future and former employees are, in turn, linked, is in the sub-section defined to mean, in effect, a person who is an employee for the purposes of the PAYE provisions of the income tax law.

4. As is evident from the terms of section 221A of the ITAA the classification of a person as an employee is not dependent upon the existence of the relationship of master and servant - it depends solely on whether the special definitions of "employee", "employer" and "salary and wages" in the section apply. While the definitions include many persons who at common law would be regarded as employees they also extend to persons who would not be regarded as employees at common law, e.g. members of parliament.

5. An "employee" is defined in section 221A to mean a person who receives, or is entitled to receive, salary or wages. The term "salary or wages" includes, amongst other things, allowances paid to an employee as such. An "employer" includes an authority of a State. Local government councils are authorities of a State.

6. In the context of section 221A, therefore, the payment of allowances by local government councils to mayors, presidents, aldermen, wardens, etc. represents the payment by an employer of salary and wages, i.e. allowances, to a person. This means that such persons are employees in terms of section 221A.

7. Recognition of the legislative intention to treat mayors, presidents, aldermen, wardens, etc. as employees for the purposes of fringe benefits tax appears in the definition of "employment" in sub-section 136(1) of FBTAA. Employment is defined to include the holding of any office or appointment or the performance of any functions or duties, etc. which results in the person being treated as an employee.

RULING

8. It follows from this that allowances and other remuneration payable to councillors are salary or wages within the meaning of section 221A of the ITAA as it applies for fringe benefits tax purposes and that mayors, presidents, aldermen, wardens, etc., being in receipt of salary or wages, are employees for those purposes.

9. A further effect of the conclusion in paragraph 8 is that mayors, presidents, councillors, aldermen, etc. are subject to the income tax substantiation requirements of Subdivision F of Division 3 of the ITAA as they relate to "employment-related expenses". This is because under the definition of that term in sub-section 82KT(1) of the ITAA, an employment-related expense is, broadly, an outgoing incurred by a taxpayer in gaining or producing salary or wages of the taxpayer. Salary or wages is, in turn, defined in that sub-section by reference to its meaning for the purposes of section 221A.

10. It should be noted that they are, in any event, subject to the remaining income tax substantiation requirements of Subdivision F relating to "car expenses" and "travel expenses", the operation of which are not limited to expenditure incurred in deriving salary or wage income.

COMMISSIONER OF TAXATION  
16 October 1986