Australian Capital Territory

Payroll Tax (Motor Vehicle Allowances—Exempt Rate) Determination 2017 (No 1)

Notifiable instrument DI2017–332

made under the

***Payroll Tax Act 2011*, s 29 (9) (Motor vehicle allowances)**

EXPLANATORY STATEMENT

Commencement

This notifiable instrument is taken to have commenced on 1 July 2016.

Background

The purpose of this instrument is to determine the exempt rate of motor vehicle allowances for the 2016-17 and 2017-18 financial years under the *Payroll Tax Act 2011* (the Act). The rates apply to the 2016-17 and 2017-18 financial years respectively for the purposes of payroll tax.

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. These are allowances paid or payable to an employee to compensate the employee for any business use of the employee's own private vehicle.

Section 29 of the Act provides that motor vehicle allowances are not taxable to the extent that each of these allowances do not exceed the exempt component, which is worked out using the formula in section 29 (4): $E = K \times R$.

In the formula ***R*** means the exempt rate for the financial year. Under section 29 (9) the Minister may determine the exempt rate by notifiable instrument. In the absence of the Minister's determination, the exempt rate is the rate prescribed by regulation under section 28-25 of the *Income Tax Assessment Act 1997* (Cwlth) (ITAA) 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.

Determination

This instrument determines the exempt rate at 66 cents per kilometre for both the 2016-17 and 2017-18 financial years.

The *Tax and Superannuation Laws Amendment (2015 Measures No. 5) Act 2015* (Cwlth), which commenced on 30 November 2015, amended the methods for calculating work-related car expenses by providing a single rate of deduction (rather than separate rates for different categories of car). The amendments also provided for the exempt rate to be set by legislative instrument rather than by regulation.

In the absence of a regulation under the ITAA, this instrument determines exempt rates that align with the Australian Taxation Office exempt rates for both the 2015-16 and 2016-17 income (financial) years.

The 2015-16 exempt rate of 66 cents per kilometre was determined by a transitional provision under section 46 of the *Tax and Superannuation Laws Amendment (2015 Measures No. 5) Act 2015* (Cwlth) and was applied by the Commissioner for ACT Revenue by administrative practice in 2016-17.

The 2016-17 rate, also 66 cents per kilometre, was determined by the legislative instrument *Income Tax Assessment Act – Cents per kilometre deduction rate for motor vehicle expenses* (Cwlth), made under section 28-25 (4) of the ITAA. This rate will continue to apply for 2017-18.

Retrospective effect

The retrospective commencement of this instrument on 1 July 2016 is considered not to have a prejudicial effect in accordance with section 76 of the *Legislation Act 2001*.

Section 76 of the *Legislation Act 2001* provides that only non-prejudicial provisions of a statutory instrument (which includes a notifiable instrument) can commence retrospectively.

The purpose of the retrospective commencement is to avoid any doubt that the exempt rate of 66 cents per kilometre in 2015-16 applied for the whole of the 2016-17 year.

The determination of the exempt rate is not a prejudicial provision because it does not operate to the disadvantage of any person, adversely affect rights, or impose new liabilities.

The effect of the determination is to set the rate to be applied to exempt certain wages from payroll tax. It enables employers to claim an exempt component for part of a motor vehicle allowance paid or payable to an employee, thereby reducing the employer's tax liability under the Act (a beneficial effect).

Expiry

This instrument will expire on 30 June 2018.

Authorised by the Treasurer
Andrew Barr MLA

20 June 2017