

EXPOSURE DRAFT - FOR COMMENT AND DISCUSSION ONLY

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OPERATIONAL STATEMENT

When employee allowances for additional transport costs are exempt from tax

Issued:

OS 22/xx

Operational Statements set out the Commissioner of Inland Revenue's (the Commissioner's) view of the law in respect of the matter discussed and deal with practical issues arising out of the administration of the Inland Revenue Acts.

This Statement clarifies the operation of s CW 18 of the Income Tax Act 2007, which provides for an income tax exemption for certain allowances for additional transport costs.

All legislative references in this Statement are to the Income Tax Act 2007, unless specified otherwise.

START DATE - END DATE

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Introduction

1. Payments an employer makes for a private expense of an employee are usually subject to income tax in the hands of the employee.
2. The general rule is that home-to-work travel is private expenditure as it is expenditure to get to work and reflects the employee's personal choice about where their home is. The two main reasons for this rule are that the:
 - employee's private choices (about where to live and how to get to work) are the key factor in determining the cost of home-to-work travel;
 - expense of starting work is distinguished from expenses while "on work", and employees are expected to bear the cost of starting work.
3. As this expenditure is usually private, if the employer provides the employee with an allowance for travel from home to work, the starting point is that it is taxable.
4. If an allowance is taxable for income tax purposes, then the employer must deduct and pay PAYE for that payment. This is because the allowance is "salary or wages" under the PAYE rules.
5. However, s CW 18 exempts from tax some allowances that an employee receives from their employer to reimburse additional transport costs arising from the employee's travel from home to work (the additional transport costs exemption).
6. The purpose of this Statement is to clarify when this exemption applies and to help employers to determine the amount of tax payable.
7. It includes examples for further clarification.

Employers often provide travel for their employees from home to a distant workplace. These employers may find it useful to refer to the Commissioner's position on employer-provided travel: [OS 19/05: Employer-provided travel from home to a distant workplace – income tax \(PAYE\) and fringe benefit tax](#) (Inland Revenue, 2019).

Summary of approach

8. The Commissioner considers that three main steps are needed to determine the extent to which the additional transport costs exemption applies to an allowance an employer pays to an employee for travel from home to work:

- *Step One* – Are one or more of the factors present that are required for the exemption to additional transport costs to apply? If none of these factors is present, then the additional transport costs exemption cannot apply.
- *Step Two* – Did the employee incur the additional transport costs in connection with their employment and for the employer’s benefit or convenience?
- *Step Three* – How much of a travel allowance is exempt under the additional transport costs exemption? Calculate the additional transport costs and compare them with the allowance paid.

Application of this statement

9. This statement applies from ...

Definitions

10. Key terms in this Statement have the following definitions:

- **Additional transport costs** are costs to an employee of travelling between their home and place of work that are more than would ordinarily be expected. (See also [\[12\]](#).)
- **Additional transport costs exemption** means the exemption from income for some allowances an employer pays for the employee’s cost of home-to-work travel provided for in s CW 18
- **Home** means a dwelling the employee uses as their residence.
- **Travel allowance** means an allowance an employer pays to an employee (or a group of employees) for their travel between home and work.
- **Workplace** means a particular place or base:
 - where an employee performs their employment duties; or
 - from which an employee’s duties are allocated.

This means that a workplace is not confined to premises of the employer. It can be any place where the employee performs employment duties, which could be a client’s premises.

Discussion

When does the additional transport costs exemption apply?

11. A travel allowance will be exempt under the additional transport costs exemption in s CW 18 **to the extent** that:
 - the allowance reimburses the employee for their additional transport costs; and
 - the employee incurred those transport costs in connection with their employment and for the employer's benefit or convenience.
12. "**Additional transport costs**" are costs to an employee of travelling between their home and place of work that are more than would ordinarily be expected. The costs must be attributable to one or more of the following factors:¹
 - (a) the day or time of day when the work duties are performed:
 - (b) the need to transport any goods or material for use or disposal in the course of the employee's work:
 - (c) the requirement to fulfil a statutory obligation:
 - (d) a temporary change in the employee's place of work while in the same employment:
 - (e) any other condition of the employee's work:
 - (f) the absence of an adequate public passenger transport service that operates fixed routes and a regular timetable for the employee's place of work.
13. The Commissioner considers that three main steps determine the extent that the additional transport costs exemption applies to an allowance an employer pays to an employee for travel between home and work:
 - *Step One* – Are one or more of the factors ((a) to (f)) present that are required for the exemption to apply? If none of the factors is present, then the additional transport costs exemption cannot apply.
 - *Step Two* – Did the employee incur the transport costs in connection with their employment and for the employer's benefit or convenience?

¹ Section CW 18(3).

- *Step Three* – How much of a travel allowance is exempt under the additional transport costs exemption? Calculate the additional transport costs and compare them with the allowance paid.

Step One – Are one or more of the factors present that are required for the exemption to apply?

14. As one or more the factors listed in s CW 18 must be present for the additional transport costs exemption to apply, an employer's first step is to determine whether any of these factors are present.
15. Each of these factors ((a) to (f)) is discussed in turn below.

Factor (a): The day or time of day when the work duties are performed

16. For this factor to apply, the additional transport costs must be attributable to:
 - the time or times of the day; or
 - the day (or days) of the week

that the employee was required to perform the duties of that employment (Example 1).

Example 1: Factor (a) applies

Employees of a restaurant start their shift at 4 pm and finish after midnight. Public transport serves the place of work at 4 pm but stops at 11 pm. The employees need alternative transport home that will usually cost more than public transport.

Factor (b): The need to transport any items for use or disposal in the course of the employee's work

17. This factor will apply if, as part of their job, the employee is required to use a particular type of transport (which they provide or pay for) to move any of the following items:
 - plant,
 - machinery,

- equipment,
- technical aids,
- goods, or
- material.

18. The employee must move those items, as part of their job, for use or disposal (Example 2).

Example 2: Factor (b) applies

Harlie is an assistant garage door installer in a provincial city. Being environmentally conscious, she prefers to use her e-bike to get to work. Occasionally, however, her employer needs her to collect a scissor lift from a hire centre for use on that day. On those days, Harlie needs to use her motor vehicle to collect the scissor lift on the way to work.

Harlie's employer pays her an allowance to recognise the additional costs she incurs because she needs to use her motor vehicle on those days.

Factor (c): Fulfilling an obligation under any Act

19. This factor will apply if an employee incurs the transport costs in fulfilling an obligation that arises under any Act. The Commissioner considers that this factor will also apply to regulations issued under any Act.
20. Importantly, this provision does not apply simply because an Act provides for a travel allowance to be paid to certain employees. While the employer is fulfilling a statutory obligation by paying the allowance, **the employee must incur additional transport costs** in fulfilling a statutory obligation before this factor applies (Example 3).

Example 3: Factor (c) applies

Due to the nature of her employment Penelope is required to get a COVID-19 test every week under a Public Health Order. She usually travels to work by public transport but cannot use public transport to get the COVID-19 test.

One day a week Penelope takes her car to work so she can get tested on the way.

Penelope's employer pays her an allowance to recognise the additional costs she incurs because she needs to use her car on that day.

Factor (d): A temporary change in the employee's place of work from the normal place of work for the same employer

21. Factor (d) will apply when the employee has a temporary change in their place of work while still working for the same employer.
22. In line with the approach in [OS 19/05](#) (which relates to employer-provided travel from home to a distant workplace), the Commissioner will treat a change in workplace as temporary (for the purposes of determining whether the additional transport costs exemption applies) if that change is for two years or less (Example 4).
23. To treat the change as temporary, the employer must be able to show that the parties reasonably expected the change would be for two years or less. Reasonable expectation is initially measured at the time the requirement for the change arose.
24. Evidence for the parties' expectation may come from the employee's terms of employment. In many cases, however, no written agreement may exist. Other documentation such as board minutes, planning documents and correspondence may demonstrate how long the parties expected the change would be.
25. It is possible that a payment for additional transport costs that is initially treated as non-taxable can become taxable. If it becomes clear that the parties now have a reasonable expectation that the requirement for the employee to change their place of work is no longer temporary (for a period of two years or less), any payment will be taxable from the date the expectation changed (Example 5).²
26. Equally, if it becomes clear that a change in location which was expected to be more than a temporary requirement is now expected to be a temporary requirement (a period of two years or less), any payment for additional transport costs can be treated as non-taxable from the date the expectation changed.

Example 4: A temporary change in place of work (factor (d)) applies

Robyn usually works in the Wellington central business district. She is seconded to work in her employer's Lower Hutt branch office for 12 months.

As the secondment is for two years or less (in this case, 12 months), this is a temporary change in her work location. Her employer can treat this travel as temporary.

² Not from the end of the original date of the arrangement.

Example 5: A temporary change in place of work (factor (d)) does not apply

After 11 months of working at the Lower Hutt branch office, Robyn and her employer agree that she will continue to work there for another 16 months.

As the parties now expect that Robyn will be working in Lower Hutt for more than two years (27 months in total), from the date their expectation changed her employer can no longer treat her travel there as temporary.

Factor (e): Any other condition of work of the employee

27. The Commissioner considers that factor (e) has limited application. That is, it refers to “any other condition of the employee’s work” that the legislation does not identify **but is similar to the factors the legislation specifically lists.**³
28. An employer must be able to explain how the particular condition of work is similar to the factors listed.
29. For the exemption to apply, “any other condition” would have to increase the cost of travelling between an employee’s house and their workplace by more than what would be ordinarily expected. It would also have to be for the benefit or convenience of the employer.

Factor (f): The absence of an adequate public passenger transport service that operates fixed routes and a regular timetable for the employee’s place of work

30. Factor (f) applies when no public passenger transport service serves an employee’s **place of work** (Example 6). To qualify as servicing the place of work, the public transport service must operate fixed routes and a regular timetable that service the employee’s place of work (Example 7).
31. It is important to note that whether a public passenger transport service serves an employee’s home is an irrelevant consideration.

³ Factors (a)–(d) and (f).

Example 6: No public transport service – factor (f) applies

Rosie's employer is based 10 kilometres outside Masterton. Although a bus network serves Wairarapa, it does not provide services near Rosie's workplace.

In this example, no public transport service serves Rosie's workplace and factor (f) applies.

Example 7: A public transport service operates – factor (f) does not apply

The bus network provides a regular, timetabled service to Rosie's employer but it does not go near her house.

In this example, a public transport service serves Rosie's workplace so factor (f) does **not** apply.

32. The Commissioner considers that where the public transport services available do not neatly fit with an employee's hours of work, that does not in itself mean that the public transport service is inadequate.
33. The Commissioner considers that this factor will apply when a workplace:
 - has no public transport service at all;
 - has no public transport service available to shift workers;
 - clearly has more employees starting work at one time than public transport can accommodate; or
 - is not close to the nearest bus or train stop.

Step Two – Did the employee incur the additional transport costs in connection with their employment and for the employer's benefit or convenience?

34. The Commissioner accepts that where an employee incurs additional transport costs as a result of one of the listed factors, they will incur those costs in connection with their employment.
35. This means that the key question to answer at Step Two is whether the employee incurred the costs for the employer's benefit or convenience.

36. This means that, for any allowance to be exempt, one of the factors (a) to (f) must arise from the nature of the employment or a need or requirement of the employer (Example 8).
37. It cannot arise for the benefit or convenience of the employee.

Example 8: Employee incurs transport costs for employer's benefit or convenience

Mikaere usually works in the Christchurch CBD. Due to staff shortages, he is seconded for six months to work at his employer's branch office located at Christchurch Airport.

As this temporary change in work location arises from a need of the employer, it is for the employer's benefit or convenience and the additional transport costs exemption can apply.

Example 9: Employee incurs transport costs for their own benefit or convenience

What if the change was made because Mikaere asked for a temporary change in location due to his personal circumstances rather than because of staff shortages?

In that case, the temporary change arises from Mikaere's personal need so the change is for his benefit or convenience not his employer's. This means that the additional transport costs exemption cannot apply.

Step Three – How much of a travel allowance is exempt under the additional transport costs exemption?

38. The amount of the allowance that is exempt from income tax is the amount that relates to the additional transport costs.
39. This means that to determine how much of any travel allowance is exempt, an employer must identify what those additional costs are. Then the employer must compare the total amount of the allowance paid with the additional transport costs to determine how much of the allowance is exempt.

40. If the additional transport costs the employee incurred are less than the total allowance, only the amount that is equal to the additional transport costs is exempt.
41. If the additional transport costs the employee incurred are equal to or greater than the actual allowance paid, the entire allowance is exempt.

Calculating any additional transport costs: factors (a) to (e)

42. When any of factors (a) to (e) apply (but not (f)), the additional costs are the amount by which the costs are more than the travel costs the employee would ordinarily expect without reference to that factor.
43. This means that the amount of the additional transport costs is not the total transport costs. Rather, it is the **total** transport costs **less** the costs the employer would have "expected to find" the employee incurred "in the ordinary course of events" if the factors that caused the employee to incur the "additional" travel costs did not apply (Examples 10 and 11).

Example 10: Calculating additional transport costs where costs are higher than ordinarily expected

Robyn works in the Wellington CBD. She is seconded to work in her employer's Lower Hutt branch office for 12 months.

Normally Robyn's costs in getting to work involve a single bus trip each way with a weekly cost of \$30. But this temporary change in work location requires her to take the train at the cost of an additional \$43 a week. Her total temporary travel costs are \$73 per week.

The **additional transport cost** per week is \$43.

Example 11: Costs must be higher than ordinarily expected

Bob (a builder) works for a company whose depot is in Seaview in Lower Hutt, but he rarely visits the depot. Instead, he travels directly to various building sites. Most of the sites are in the Wellington CBD but from time to time his employer sends him to building sites in other parts of the Wellington region.

The fact that an employee may be working at multiple sites in a geographic area will not be relevant to the s CW 18 exemption if the costs of travel to those diverse sites are not more than would ordinarily be expected.

However, if the employer decided that Bob was needed to work in Featherston (in the Wairarapa region), that might be a temporary change in the place of work that would lead to higher than ordinary costs. In that way, the costs could come within the s CW 18 exemption.

Calculating any additional transport costs – factor (f): lack of public transport

44. When the employee incurs the additional transport costs because of a lack of public transport services (see [30]), the additional transport costs are the amount by which the costs are more than \$5 for each day on which the employee attends work (Example 12).

Example 12: Calculating additional transport costs where no public transport is available

There is no public transport service to Rosie's workplace so factor (f) applies. Rosie incurs transport costs of \$60 a week getting to work for a five-day working week. In this example, the **additional transport costs** are \$35 ($\$60 - (5 \times \$5)$).

Limit of 70 kilometres a day

45. There is a limit on what travel an employer can take into account in calculating additional transport costs.
46. An employer should not take into account the costs of travelling any distance **over** 70 kilometres in 1 day in calculating additional transport costs. This means that, to the

extent that the allowance is exempt because it is for additional transport costs, the exemption is limited to the costs for travelling up to 70 kilometres in 1 day.

47. However, in special circumstances, an employer **does include** the costs of travelling any distance over 70 kilometres in 1 day in calculating additional transport costs.
48. The phrase “except in special circumstances” means that those circumstances are set apart from the usual case. It covers exceptional, abnormal or unusual – but not extraordinary or unique – cases.
49. It is important to understand that the simple fact that an employee has to travel more than 70 kilometres between work and home is **not** a “special circumstance” (Example 12).
50. Given the obligation is on the employer to assess whether there are special circumstances justifying exempting additional transport costs for distances over 70 kilometres per day, the employer needs to be able to demonstrate that the circumstances meet the statutory test of “special circumstances” (Example 13).
51. The special circumstances must arise from the location of the workplace rather than where the employee chooses to live.

Example 12: Special circumstances do not apply

Paullina lives in Waikanae but is working in Wellington (60 kilometres one way, and 120 kilometres return). Her employer pays her an allowance to meet the transport costs of getting to work in Wellington.

To the extent that the allowance is exempt because it is for additional transport costs, the exemption is limited to the costs for travelling 70 kilometres in 1 day. The costs for the additional 50 kilometres of travel per day are not exempt unless special circumstances exist.

“Special circumstances” do not exist **just** because Paullina’s daily commute is longer than 70 kilometres.

Example 13: Special circumstances do apply

Barry works in a national park where there is no accommodation. Barry lives in the nearest town, which is more than 50 kilometres away. His round trip each day between that accommodation and his workplace is more than 70 kilometres.

In this example, special circumstances exist because no one (including Barry) could live any closer to his workplace.

However, these "special circumstances" would not exist just because Barry's daily commute is longer than 70 kilometres.

Additional transport costs – estimated expenditure of employees

52. In determining the additional transport costs, the employer may make a reasonable estimate of the amount of expenditure the employee or a group of employees is likely to incur for which they can receive reimbursement.
53. In calculating the additional transport costs involving the use of a motor vehicle, an employer can use the approach in OS 19/04b: *Commissioner's statement on using a kilometre rate for employee reimbursement of a motor vehicle* (Inland Revenue, 2019) to make a reasonable estimate of the costs the employee is likely to incur (Example 14).

Example 14: A reasonable estimate of the costs the employee is likely to incur

There is no public transport service to Rosie's workplace so factor (f) applies. Rosie uses her car to get to work each day. The total distance she travels each working day is 40 kilometres.

This equates to 200 kilometres a week. The employer could use the Tier One rate for the cost per kilometre estimate of expenditure.

So each week⁴ Rosie's additional transport costs are 200×79 cents, which equals \$158. Then the employer subtracts \$25⁵ to arrive at **additional transport costs** of \$133.

54. In making a reasonable estimate for a group of employees, the employer should use a system that groups "like" employees together. (In this way, any exemption can be related to a fair and reasonable estimate of costs the employees incur.)

⁴ Based on 2021 rates in [OS 19/04 \(KM2021\)](#) : "Kilometre rates for the business use of vehicles for the 2021 income year."

⁵ $5 \times \$5$ per day non-exempt amount.

What if circumstances change?

55. If circumstances change, then the extent to which any allowance is exempt may change.
56. For example, in some cases, as the result of a change in circumstances, none of the factors required for an exemption may be present any more. If the employer continues to pay the allowance in such a case, none of that allowance would be exempt.
57. The Commissioner is aware that in some situations, employers are continuing to treat an allowance for additional transport costs as tax exempt even when an employee no longer incurs those costs on every working day (because the employee now works from home). The allowance is only exempt to the extent it is for additional transport costs. An employer will need to make adjustments to the amount treated as exempt under the additional transport costs exemption to reflect the change in circumstances.

What if an employee is required to enter into a salary sacrifice to receive the allowance?

If an employee is required to enter into a salary sacrifice arrangement to receive any allowance for additional transport costs, then the Commissioner considers that the allowance does not truly reimburse the employee for those costs. As such, the employer should not treat the allowance in question as exempt under the additional transport costs exemption. Rather, they should treat it as a taxable allowance with PAYE deducted.

This Statement was signed on.

Technical Lead
Legal Services – Technical Standards

References

Legislative references

Income Tax Act 2007, s CW 18

Other references

OS 19/04 (KM 2021): *Kilometre rates for the business use of vehicles for the 2021 income year*. <https://www.taxtechnical.ird.govt.nz/operational-statements/2021/05-19-04-km-2021>

OS 19/04b: *Commissioner's statement on using a kilometre rate for employee reimbursement of a motor vehicle* (Inland Revenue, 2019). <https://www.taxtechnical.ird.govt.nz/operational-statements/os-1904-b-commissioner-s-statement-on-using-a-kilometre-rate-for-employee-reimbursement-of-a-motor-v>

OS 19/05: *Employer-provided travel from home to a distant workplace – income tax (PAYE) and fringe benefit tax* (Inland Revenue, 2019). <https://www.taxtechnical.ird.govt.nz/operational-statements/os-1905-employer-provided-travel-from-home-to-a-distant-workplace-income-tax-payee-and-fringe-benefit>

Appendix: Section CW 18 of the Income Tax 2007

CW 18 Allowance for additional transport costs

Exempt income

- (1) An allowance that an employee receives from an employer to reimburse the employee's additional transport costs is exempt income to the extent to which the employee incurs the costs in connection with their employment and for the employer's benefit or convenience.

Estimated expenditure of employees

- (2) For the purposes of subsection (1),—
 - (a) the employer may make, for a relevant period, a reasonable estimate of the amount of expenditure likely to be incurred by the employee or a group of employees for which reimbursement is payable; and
 - (b) the amount estimated is treated as if it were the amount incurred during the period to which the estimate relates.

Meaning of additional transport costs

- (3) In this section, additional transport costs means the costs to an employee of travelling between their home and place of work that are more than would ordinarily be expected. The costs must be attributable to 1 or more of the following factors:
 - (a) the day or time of day when the work duties are performed:
 - (b) the need to transport any goods or material for use or disposal in the course of the employee's work:
 - (c) the requirement to fulfil a statutory obligation:
 - (d) a temporary change in the employee's place of work while in the same employment:
 - (e) any other condition of the employee's work:
 - (f) the absence of an adequate public passenger transport service that operates fixed routes and a regular timetable for the employee's place of work.

Quantifying additional transport costs

- (4) Additional transport costs are quantified as follows:
 - (a) when the additional transport costs are attributed to a factor described in any of subsection (3)(a) to (e), the amount by which the costs are more than the employee's ordinarily expected travel costs without reference to that factor:
 - (b) when the additional transport costs are attributed to the factor described in subsection (3)(f), the amount by which the costs are more than \$5 for each day on which the employee attends work:
 - (c) except in special circumstances, the costs of travelling any distance over 70 kilometres in 1 day are not taken into account in calculating additional transport costs.