

[5.2.14] Allowances, Expenses and Gratuities Payable to Local Authority Chairpersons and Members

1. Introduction

The purpose of this memo is to advise on the taxation treatment of various allowances, expenses and gratuities payable to local authority members.

Districts should be aware of the distinction between:

- The special allowance payable to the Cathaoirleach and Leas-Chathaoirleach of each local authority.
- The representational payment payable to all local authority members
- Expense allowances payable to all local authority members including the Cathaoirleach or Leas-Chathaoirleach.
- The superannuation gratuity payable to local authority members.

2 Allowance Payable to Cathaoirligh and Leas-Chathaoirligh

2.1 Background

The Cathaoirligh and Leas-Chathaoirligh are elected by a vote of the local authority members at every annual meeting and hold office for a term of one year. The tax treatment of allowances as outlined below applies to any new appointees to the post of Cathaoirleach and Leas-Chathaoirleach with effect from the annual meeting in 2002 and following years.

Under the provisions of Section 143 of the Local Government Act, 2001, a local authority may pay an allowance for reasonable expenses to its Cathaoirleach and Leas-Chathaoirleach. Because each local authority can set the level of payment itself the amounts payable vary from one local authority to another. For example, the average payable to the Cathaoirleach of a town council would be in the region of €3,000 compared to €20,000 to the Cathaoirleach of a county council. The amounts payable are in addition to the normal expenses due to such individuals in their capacity as local authority members - see paragraph 4.

2.2 Tax Treatment of Such Allowances

The allowance to the Cathaoirligh and Leas-Chathaoirligh is paid on a round sum basis to cover reasonable expenses incurred in the performance of the duties of the office. The correct treatment of such unvouched expenses is that the payment should be included as pay and subjected to PAYE/PRSI in the normal way.

In the present circumstances given the unique nature of the duties involved, it is accepted that the Cathaoirligh and Leas-Chathaoirligh would, in performing the duties of their office, incur a certain amount of expenditure which would be deductible for tax purposes. For ease of administration and efficiency, it may be accepted that 50% of the allowance (subject to a fixed minimum amount of €5,000 and a maximum of €10,000) may be paid tax-free with the balance being subjected to PAYE/PRSI.

This treatment does not affect in any way an individual's right under Section 114 TCA 1997 to claim a deduction for allowable expenses for tax purposes. A deduction may be claimed for expenses which the holder of the office or employment is obliged to incur and defray out of those emoluments which are expended wholly, exclusively and necessarily in the performance of the duties of the office or employment.

2.3 Summary

The following is a summary of the position:

1. Each local authority determines the allowance, if any, to be paid to the Cathaoirleach and Leas-Chathaoirleach.
2. The local authority can pay 50% tax free (subject to a fixed minimum amount of €5,000 and a maximum of €10,000) – see examples at appendix 1.
3. Any balance in excess of the amount determined at 2) must be included as taxable pay and subject to PAYE/PRSI in the normal way.
4. Each local authority should already have received a certificate of tax credits and standard rate cut-off point for the individuals involved following the instructions relating to the taxation of the Representational Payment which issued in January 2002 – see paragraph 3.

5. If districts receive any queries in relation to the above tax treatment and the adequacy of the amount allowed, the individual should be advised to keep receipts in respect of all expenditure incurred in relation to their period in office as Cathaoirleach or Leas-Chathaoirleach and to make a fully vouched claim at the end of the year if the amount incurred exceeds the amount allowed tax-free by the local authority. (Note that such an expense claim should not include matters already covered by the councillor's annual expenses allowance as outlined in paragraph 4.)

All local authorities have been advised of the above treatment.

3. Representational Payment

The Local Government Act 2001 also provided for the introduction of a representational payment for councillors. The regulations (SI 552 of 2001) provide for an annual rate of payment of €11,000 for members of county and city councils. Members of town councils receive an annual payment of €5,500, €2,750 or €1,500 depending on the town involved. The representational payment came into operation from 1 January 2002. Individuals who are members of more than one local authority only receive one payment – normally the higher amount. The payment is not applicable to councillors who are also Oireachtas members.

A once-off payment was also made in respect of the period 4 May 2000 to 31 December 2001 (i.e. from date of publication of the Local Government Bill 2000). The once-off payments varied between €2,103 and €15,420 and were paid in the first quarter of 2002.

The representational payment is fully taxable and councillors were advised to contact their tax districts directly to arrange for the issue of a certificate of tax credits and standard rate cut-off point to the relevant local authority.

4. Expenses of Local Authority Members

In addition to the representational payment, local authority members, including members who are also acting as Cathaoirleach or Leas-Chathaoirleach, receive expense payments comprising:

- a composite annual expenses allowance in respect of travel, subsistence and other expenses incurred in the performance of the members' functions and duties within the functional area of the Local Authority
- travel and subsistence expense allowance in respect of travel and subsistence expenses in respect of certain meetings etc., outside the functional area of the local authority.

As provided in Tax Instruction 5.2.8, such expenses are regarded as

- no more than reimbursing the members for overall costs incurred, and
- having been incurred wholly, exclusively and necessarily in the performance of the duties of the office held,

and accordingly the payments may be paid by the local authorities without deduction of tax.

As the existing expenses regime is already considered to cover expenses incurred wholly, exclusively and necessarily in the performance of the duties of the office and are being paid on a tax-free basis districts should resist claims for any further deduction for expenses against the representational payment.

5. Superannuation Gratuity

Section 142 of the Local Government Act, 2001 allows for the introduction by way of regulations of superannuation arrangements for councillors. The Local Authority Members (Gratuity) Regulations, 2002 (SI No. 281 of 2002) provide for the payment of a gratuity to councillors based on their service as members from 4 May 2000. The main features of the arrangements are as follows:

- Any period of service as a member of a local authority from 4 May 2000 reckons as service for the purposes of the gratuity.
- The maximum gratuity is three times the representational payment rate at date of cessation and is payable after 20 years' service (this equates to an accrual rate of 3/20ths of the representational payment for each year of service).
- The minimum service required for the gratuity is 3 years.
- The gratuity will be paid on retirement at or after age 50.
- The gratuity will be paid before age 50 where retirement is due to permanent infirmity or where the member dies in office.

The gratuity is chargeable to tax under the provisions of Section 123 TCA 1997 subject to the normal exemptions available under Section 201 TCA 1997.

A further gratuity may be paid to a former member who received a gratuity where he/she becomes a member of a local authority subsequently, provided he/she has at least 3 years' subsequent service. In such circumstances the two payments should be treated as connected payments for the purposes of calculating the reliefs due under Section 201.

APPENDIX 1

Examples:

Allowance payable	50%	Fixed Minimum amount	Restriction €10,000	Payable tax-free	Taxable
€5,000 or less	€2,500	€5,000	Not Applicable	Up to €5,000	Nil
€6,000	€3,000	€5,000	N/A	€5,000	€1,000
€7,000	€3,500	€5,000	N/A	€5,000	€2,000
€8,000	€4,000	€5,000	N/A	€5,000	€3,000
€9,000	€4,500	€5,000	N/A	€5,000	€4,000
€10,000	€5,000	€5,000	N/A	€5,000	€5,000
€12,000	€6,000	N/a	N/A	€6,000	€6,000
€15,000	€7,500	N/A	N/A	€7,500	€7,500
€20,000	€10,000	N/A	N/A	€10,000	€10,000
€22,000	€11,000	N/A	€10,000	€10,000	€12,000
€30,000	€15,000	N/A	€10,000	€10,000	€20,000
€40,000	€20,000	N/A	€10,000	€10,000	€30,000